

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**APPLICATION OF TLC VISION CORPORATION
UNDER SECTION 47 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**MOTION RECORD
(Returnable February 18, 2010)**

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**APPLICATION OF TLC VISION CORPORATION
UNDER SECTION 47 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**NOTICE OF MOTION
(returnable February 18, 2010)**

TLC Vision Corporation (the "Applicant" or "TLC Canada") will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) on February 18, 2010 or as soon after such time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THIS MOTION IS FOR a Second Amended and Restated Initial Order (as defined below) substantially in the form included at tab 4 of the Applicant's Motion Record:

- (a) if necessary, abridging the time for service and filing of the Applicant's Notice of Motion and Motion Record, including the Affidavit of Tim Robbins, sworn February 11, 2010 (the "Robbins Affidavit"), the Supplemental Affidavit of Tim Robbins, sworn February 12, 2010 (the "Supplemental Robbins Affidavit"), the Second Report of Alvarez & Marsal Canada Inc. (the "Information Officer"), in its capacity as information officer, to be filed (the "Second Report"), the U.S. Plan Sponsor Order (as defined below) and the U.S. Second Interim DIP Order

(as defined below), so that the motion is properly returnable on February 18, 2010;

- (b) recognizing and giving full force and effect to the U.S. Plan Sponsor Order;
- (c) recognizing and giving full force and effect to the U.S. Second Interim DIP Order;
- (d) containing certain other amendments to the Amended and Restated Initial Order (as defined below);
- (e) approving the Second Report and the activities described therein; and
- (f) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) on December 21, 2009, the Applicant filed a voluntary petition under Chapter 11 of Title 11 of the *United States Code* (the “Chapter 11 Proceeding”), along with TLC Vision (USA) Corporation (“TLC USA”) and TLC Management Services Inc. (together with the Applicant, the “Debtors”), in the United States Bankruptcy Court for the District Court of Delaware (the “U.S. Court”);
- (b) on December 21, 2009, the Applicant obtained an order under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) from the Honourable Mr. Justice Cumming of the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) which, among other things, granted a stay of proceedings in Canada in respect of TLC Canada (the “Interim Initial Order”);
- (c) on December 23, 2009, the Applicant, as foreign representative, brought an application to the Canadian Court under the CCAA and an order pursuant to section 47 of the CCAA (as amended from time to time, the “Initial Order”) was granted by the Honourable Mr. Justice Cumming under which, among other things:

- (i) the Chapter 11 Proceeding was recognized as a “foreign main proceeding” in Canada;
- (ii) the Applicant was determined to be entitled to relief under the CCAA;
- (iii) Alvarez & Marsal Canada ULC was appointed as Information Officer of TLC Canada (subsequently substituted by an affiliate Alvarez & Marsal Canada Inc. in the Amended and Restated Order of the Canadian Court entered dated December 23, 2009 and entered on January 21, 2010 (the “Amended and Restated Initial Order”)), with rights, powers, duties and limitations upon liabilities set forth in the Initial Order;
- (iv) a stay of proceedings in respect of TLC Canada was granted; and
- (v) the Canadian Court recognized and gave full force and effect in all provinces and territories in Canada to orders of the U.S. Court (collectively, the “U.S. Orders”):
 - (A) authorizing the Applicant to act as a foreign representative on behalf of the Debtors’ estates in any judicial or other proceedings in a foreign country, including these proceedings;
 - (B) (i) authorizing, but not directing, the Debtors to (a) pay certain accrued prepetition wages, (b) permit employees to use accrued prepetition personal time off, (c) pay employees’ prepetition reimbursable business expenses, (d) make accrued prepetition contributions to employee benefit plans and (e) continue employee benefit plans postpetition; (ii) authorizing related relief; and (iii) authorizing, but not directing, the release of withheld taxes and employee contributions;
 - (C) authorizing the Debtors to, among other things: (i) obtain postpetition financing, on an interim basis and on a final basis, in the aggregate committed amount of up to \$15 million; (ii) use cash collateral; and (iii) grant adequate protection to Wells Fargo Bank, National Association, as agent for the prepetition lenders (the “U.S. Interim DIP Order”);
 - (D) authorizing the Debtors to maintain existing bank accounts, to continue to use existing business forms, to continue to use certain existing cash management systems, and for related relief;
 - (E) (i) prohibiting utilities from altering, refusing or discontinuing services to, or discriminating against, the Debtors on account of prepetition amounts due; (ii) determining that the utilities are adequately assured of future payment; (iii) authorizing the Debtors to establish a deposit account and pay the adequate assurance deposit; (iv) establishing procedures to object to the motion

seeking such relief; and (v) granting certain related relief (the “U.S. Interim Utilities Order”);

- (F) (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of the Debtors’ business, prepetition sales, gross receipts, utility-users, federal excise and use, real estate, property and business taxes, and certain other governmental taxes, regulatory fees, including, but not limited to, county/state licensing regulatory fees, and permit or other licensing fees to the respective federal, state and local taxing authorities and other governmental agencies, and (ii) directing financial institutions to honor and process checks and transfers related to the above taxes and fees;
 - (G) (i) authorizing the Debtors to honor two prepetition insurance premium financing agreements and renew such agreements in the ordinary course of business, without need for further authority or approval from the U.S. Court; and (ii) authorizing the Debtors’ banks or financial institutions to honor and process checks and transfers related to such obligations and agreements;
 - (H) providing for the joint administration of the Debtors’ separate Chapter 11 cases for procedural purposes only; and
 - (I) authorizing, but not directing, the Debtors, in their sole discretion, to enter into trade agreements with certain critical vendors and to pay prepetition obligations in connection therewith.
- (d) on January 21, 2010, the Applicant, as foreign representative, brought an application to the Canadian Court under the CCAA and the Amended and Restated Initial Order was granted by the Honourable Mr. Justice Cumming under which:
- (i) Alvarez & Marsal Canada Inc. was appointed as Information Officer, as described above; and
 - (ii) Schedule “C” to the Amended and Restated Initial Order was amended to include the complete Cross-Border Insolvency Protocol (the “Protocol”), as Schedule “C” had previously contained in an incomplete copy of the Protocol.
- (e) on January 26, 2010, the Applicant, as foreign representative, brought an application to the Canadian Court under the CCAA and orders were granted by the Honourable Mr. Justice Cumming under which, among other things:

- (i) the First Report of the Information Officer dated January 25, 2010 and the activities described therein were approved;
- (ii) the Canadian Court recognized and gave full force and effect in all provinces and territories in Canada to orders of the U.S. Court:
 - (A) authorizing TLC Canada to reject its unexpired nonresidential real property lease dated as of October 23, 2001 (the "Lease") for premises located at 5280 Solar Drive, Mississauga, Ontario, Canada by and between TLC Canada, as tenant, and Canada Mortgage and Housing Corporation;
 - (B) establishing bar dates for filing proofs of prepetition unsecured and secured claims and administrative expenses in the Chapter 11 Proceeding; and
 - (C) (i) prohibiting utility companies from altering, refusing or discontinuing services to, or discriminating against, the Debtors on account of prepetition amounts due; (ii) determining that utility companies are adequately assured of future payment; (iii) authorizing the Debtors to establish the Utility Deposit Account (as defined in the U.S. Final Utilities Order) and pay the Adequate Assurance Deposit (as defined in the U.S. Final Utilities Order); (iv) establishing procedures to object to the motion; and (v) granting certain related relief in the Chapter 11 Proceeding;
- (f) on February 12, 2010, the Debtors are bringing motions to the U.S. Court for orders:
 - (i) approving the Plan Sponsor Agreement among the Debtors and Charlesbank Equity Fund VII (the "Plan Sponsor") and/or certain of its affiliates (referred to collectively as "Charlesbank") dated February 3, 2010 (the "Plan Sponsor Agreement") and break-up fee and expense reimbursement provision set forth in the Plan Sponsor Agreement (the "U.S. Plan Sponsor Order"); and
 - (ii) authorizing the Debtors to, among other things: (a) obtain secured, superpriority postpetition financing, junior in priority to the prepetition secured claims and to the adequate protection claims and liens granted to the the lenders from time to time party to that certain Amended and Restated Credit Agreement dated as of June 21, 2007 (the "Prepetition Credit Agreement") by and among TLC USA, the Applicant (as guarantor) and the other additional guarantors party thereto (the "Prepetition Lenders"), and with administrative priority pursuant to the terms and conditions of that certain Junior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of February 3, 2010 (the "New DIP Credit Agreement"), by and among the Debtors, the lenders party

thereto from time to time (the “New DIP Lenders”), and the Plan Sponsor, as collateral agent and administrative agent (in such capacity, the “New DIP Agent”), for and on behalf of itself and the New DIP Lenders in the Chapter 11 Proceeding, on an interim basis and on a final basis, in an aggregate amount not to exceed \$20 million (the “DIP Facility”); (b) use cash collateral in the Chapter 11 Proceeding; and (c) grant adequate protection in the Chapter 11 Proceeding to Wells Fargo Bank, N.A., as collateral agent and administrative agent for the Prepetition Lenders (the “U.S. Second Interim DIP Order”);

U.S. Plan Sponsor Order

- (g) since the Petition Date, in furtherance of their fiduciary duties, and in accordance with the terms of the plan support agreement among the Debtors and certain of the Prepetition Lenders (the “Prepetition Lender PSA”) and the U.S. Interim DIP Order, the Debtors have continued to explore possible restructuring transactions as an alternative to the restructuring outlined in the Prepetition Lender PSA, as the Prepetition Lender PSA and paragraph 39 of the U.S. Interim DIP Order provide that the Debtors may exercise a "fiduciary out" and terminate the Prepetition Lender PSA under certain terms and conditions;
- (h) the Debtors have determined to and have exercised their fiduciary out to terminate the Prepetition Lender PSA and, in consultation with their financial and legal advisors, believe that the plan of reorganization contemplated by the Plan Sponsor Agreement provides them with the best way to exit the Chapter 11 proceeding in a prompt and expeditious manner;
- (i) the Debtors have entered into a Plan Sponsor Agreement with Charlesbank, that will provide for: (i) payment in cash in full of the Prepetition Lenders; (ii) a greater cash distribution to unsecured creditors than the Joint Plan of Reorganization filed by the Debtors on January 6, 2010 (the “Lender Plan”); and (iii) the emergence of the Debtors from the Chapter 11 Proceeding virtually debt free;
- (j) in connection with the Plan Sponsor Agreement, the Plan Sponsor has provided a written commitment to fund up to \$134,402,000 to or for the benefit of the

Debtors' estates in connection with the plan of reorganization contemplated thereby (the "Sponsored Plan");

- (k) the Debtors believe in the exercise of their sound business judgment that the Plan Sponsor Agreement constitutes the Debtors' most favourable restructuring alternative in this proceeding, and that the Sponsored Plan provides a higher and better recovery for the Debtors' secured and unsecured creditors than the recovery set forth in the Lender Plan;
- (l) given the value of Charlesbank's financial commitment to the Debtors' estates and the time, expense and effort invested by Charlesbank in this process, the Plan Sponsor Agreement provides for the payment of a break-up fee and reimbursement of reasonable out-of-pocket costs and expenses in the event the Debtors consummate a superior acquisition or similar transaction;
- (m) the Debtors believe in the exercise of their sound business judgment that the proposed break-up fee and expense reimbursement terms are fair, reasonable and appropriate under the circumstances;
- (n) the Debtors' U.S. motion materials filed in connection with the U.S. Plan Sponsor Order, including the draft U.S. Plan Sponsor Order and the First Amended Joint Chapter 11 Plan of Reorganization dated as of February 3, 2010, are exhibited to the Robbins Affidavit;

U.S. Second Interim DIP Order

- (o) prior to the Petition Date, the Debtors considered various sources of postpetition financing, including financing from certain of the Prepetition Lenders, and in considering those options, the Debtors recognized that the obligations owed to the Prepetition Lenders are secured by virtually all of their property;
- (p) in view of these circumstances, the Debtors concluded that entering into a senior, priming, debtor-in-possession financing facility with certain of their Prepetition Lenders was in their best interests;

- (q) on December 22, 2009, the U.S. Court entered the U.S. Interim DIP Order, which was subsequently recognized and given full force and effect in all provinces and territories in Canada by the Canadian Court on December 23, 2009;
- (r) the Debtors and the New DIP Agent engaged in extensive, arms'-length negotiations with respect to the terms and conditions of the New DIP Credit Agreement and the U.S. Second Interim DIP Order;
- (s) approval of the New DIP Facility will provide the Debtors with immediate and ongoing access to borrowing availability to pay their current and ongoing operating expenses, including postpetition wages and salaries and utility and vendor costs;
- (t) approval of the New DIP Facility also will pay off all obligations arising under the U.S. Interim DIP Order and enable the Debtors to prosecute a plan of reorganization that will pay the allowed claims of the Prepetition Lenders in full and in cash and permit the Debtors to emerge from the Chapter 11 proceeding debt free;
- (u) the Debtors require the use of cash collateral to fund their day-to-day operations, and absent such relief, the Debtors' business will be brought to an immediate halt, with damaging consequences for the Debtors and their estates and creditors;
- (v) in the U.S Interim DIP Order, the Prepetition Lenders agreed to the Debtors' use of cash collateral and the Debtors' entry into the New DIP Credit Agreement in consideration for the adequate protection set forth in that order, and such adequate protection was for claims that were primed by a senior debtor-in-possession loan;
- (w) here, the Debtors are proposing the same adequate protection for claims that are not being primed, and the adequate protection contained in the U.S. Second Interim DIP Order to protect the Prepetition Lenders' interests in the prepetition collateral is fair and reasonable as a result;

- (x) stay modifications of the kind contemplated by the U.S. Second Interim DIP Order are ordinary and standard features of postpetition debtor-in-possession financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances;
- (y) the U.S. Second Interim DIP Order is critical to preserving and maintaining the going concern value of the Debtors and facilitating their reorganization efforts, as the Debtors have an urgent and immediate need for cash to continue to operate, and do not currently have sufficient unencumbered funds with which to operate their business on an ongoing basis;
- (z) recognition of the U.S. Second Interim DIP Order by the Canadian Court is a condition of the New DIP Credit Agreement;
- (aa) the Debtors' U.S. motion materials filed in connection with the U.S. Second Interim DIP Order, including the draft U.S. Second Interim DIP Order, are exhibited to the Robbins Affidavit;

Other Amendments

- (bb) should the U.S. Second Interim DIP Order and U.S. Plan Sponsor Order be recognized and given full force and effect in all provinces and territories of Canada, it will be necessary to amend the Amended and Restated Initial Order accordingly;

General

- (cc) the provisions of the CCAA and, in particular, Part IV thereof, including section 49, which provides this Honourable Court with the authority to grant the orders sought if this Honourable Court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors;
- (dd) rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and
- (ee) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Michael Gries, sworn December 21, 2009;
- (b) the Interim Initial Order;
- (c) the consent of the Information Officer;
- (d) the affidavit of Tim Robbins, sworn December 22, 2009;
- (e) the U.S. Orders;
- (f) the Initial Order;
- (g) the Amended and Restated Initial Order;
- (h) the Robbins Affidavit;
- (i) the Supplemental Robbins Affidavit;
- (j) the Second Report, to be filed;
- (k) the U.S. Second Interim DIP Order;
- (l) the U.S. Plan Sponsor Order; and
- (m) such further and other material as counsel may advise and this Honourable Court may permit.

February 12, 2010

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
APPLICATION OF TLC VISION CORPORATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

Court File No. 09-8515-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

NOTICE OF MOTION

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-
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**APPLICATION OF TLC VISION CORPORATION
UNDER SECTION 47 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AFFIDAVIT OF TIM ROBBINS
(sworn February 11, 2010)**

I, Tim Robbins, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate with Torys LLP, lawyers for TLC Vision Corporation (the "Applicant" or "TLC Canada"). I swear this affidavit in support of the Applicant's motion for a Second Amended and Restated Initial Order (as defined below), which: (a) recognizes and gives full force and effect in all provinces and territories of Canada to the U.S. Plan Sponsor Order (as defined below) of the U.S. Court (as defined below) in the Chapter 11 Proceeding (as defined below); (b) recognizes and gives full force and effect in all provinces and territories of Canada to the U.S. Second Interim DIP Order (as defined below) of the U.S. Court in the Chapter 11 Proceeding; (c) contains certain other amendments; and (d) approves the Second Report of Alvarez & Marsal Canada Inc. (the "Information Officer"), in its capacity as information officer (the "Second Report"), and the activities described therein.
2. On December 21, 2009, the Applicant filed a voluntary petition under Chapter 11 of Title 11 of the *United States Code* (the "Chapter 11 Proceeding"), along with TLC Vision (USA) Corporation ("TLC USA") and TLC Management Services Inc. (together

with the Applicant, the “Debtors”), in the United States Bankruptcy Court for the District Court of Delaware (the “U.S. Court”).

3. On December 21, 2009, the Applicant obtained an order under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) from the Honourable Mr. Justice Cumming of the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) which, among other things, granted a stay of proceedings in Canada in respect of TLC Canada (the “Interim Initial Order”).

4. On December 23, 2009, the Applicant, as foreign representative, brought an application to the Canadian Court under the CCAA and an order pursuant to section 47 of the CCAA (as amended from time to time, the “Initial Order”) was granted by the Honourable Mr. Justice Cumming under which, among other things:

- (a) the Chapter 11 Proceeding was recognized as a “foreign main proceeding” in Canada;
- (b) the Applicant was determined to be entitled to relief under the CCAA;
- (c) Alvarez & Marsal Canada ULC was appointed as Information Officer of TLC Canada (subsequently substituted by an affiliate Alvarez & Marsal Canada Inc. in an amended and restated order of the Canadian Court entered on January 21, 2010), with rights, powers, duties and limitations upon liabilities set forth in the Initial Order;
- (d) a stay of proceedings in respect of TLC Canada was granted; and
- (e) the Canadian Court recognized and gave full force and effect in all provinces and territories in Canada to orders of the U.S. Court:
 - (i) authorizing the Applicant to act as a foreign representative on behalf of the Debtors’ estates in any judicial or other proceedings in a foreign country, including these proceedings;
 - (ii) (a) authorizing, but not directing, the Debtors to (i) pay certain accrued prepetition wages, (ii) permit employees to use accrued prepetition personal time off, (iii) pay employees’ prepetition reimbursable business

- expenses, (iv) make accrued prepetition contributions to employee benefit plans and (v) continue employee benefit plans postpetition; (b) authorizing related relief; and (c) authorizing, but not directing, the release of withheld taxes and employee contributions;
- (iii) authorizing the Debtors to, among other things: (a) obtain postpetition financing, on an interim basis and on a final basis, in the aggregate committed amount of up to \$15 million; (b) use cash collateral; and (c) grant adequate protection to Wells Fargo Bank, National Association, as agent for the prepetition lenders;
 - (iv) authorizing the Debtors to maintain existing bank accounts, to continue to use existing business forms, to continue to use certain existing cash management systems, and for related relief;
 - (v) (a) prohibiting utilities from altering, refusing or discontinuing services to, or discriminating against, the Debtors on account of prepetition amounts due; (b) determining that the utilities are adequately assured of future payment; (c) authorizing the Debtors to establish a deposit account and pay the adequate assurance deposit; (d) establishing procedures to object to the motion seeking such relief; and (e) granting certain related relief;
 - (vi) (a) authorizing, but not directing, the Debtors to pay, in the ordinary course of the Debtors' business, prepetition sales, gross receipts, utility-users, federal excise and use, real estate, property and business taxes, and certain other governmental taxes, regulatory fees, including, but not limited to, county/state licensing regulatory fees, and permit or other licensing fees to the respective federal, state and local taxing authorities and other governmental agencies, and (b) directing financial institutions to honor and process checks and transfers related to the above taxes and fees;
 - (vii) (a) authorizing the Debtors to honor two prepetition insurance premium financing agreements and renew such agreements in the ordinary course of business, without need for further authority or approval from the U.S. Court; and (b) authorizing the Debtors' banks or financial institutions to honor and process checks and transfers related to such obligations and agreements;
 - (viii) providing for the joint administration of the Debtors' separate Chapter 11 cases for procedural purposes only; and
 - (ix) authorizing, but not directing, the Debtors, in their sole discretion, to enter into trade agreements with certain critical vendors and to pay prepetition obligations in connection therewith.

5. On January 21, 2010, the Applicant, as foreign representative, brought an application to the Canadian Court under the CCAA and the Amended and Restated Initial Order was granted by the Honourable Mr. Justice Cumming under which:

- (a) Alvarez & Marsal Canada Inc. was appointed as Information Officer, as described above; and
- (b) Schedule "C" to the Amended and Restated Initial Order was amended to include the complete Cross-Border Insolvency Protocol (the "Protocol"), as Schedule "C" had previously contained in an incomplete copy of the Protocol.

6. On January 26, 2009, the Applicant, as foreign representative, brought an application to the Canadian Court under the CCAA and an order was granted by the Honourable Mr. Justice Cumming under which, among other things:

- (a) the First Report of the Information Officer dated January 25, 2010 and the activities described therein were approved;
- (b) the Canadian Court recognized and gave full force and effect in all provinces and territories in Canada to orders of the U.S. Court:
 - (i) authorizing TLC Canada to reject its unexpired nonresidential real property lease dated as of October 23, 2001 for premises located at 5280 Solar Drive, Mississauga, Ontario, Canada by and between TLC Canada, as tenant, and Canada Mortgage and Housing Corporation;
 - (ii) establishing bar dates for filing proofs of prepetition unsecured and secured claims and administrative expenses in the Chapter 11 Proceeding; and
 - (iii) (a) prohibiting utility companies from altering, refusing or discontinuing services to, or discriminating against, the Debtors on account of prepetition amounts due; (b) determining that utility companies are adequately assured of future payment; (c) authorizing the Debtors to establish the Utility Deposit Account (as defined in the U.S. Final Utilities Order) and pay the Adequate Assurance Deposit (as defined in the U.S. Final Utilities Order); (d) establishing procedures to object to the motion; and (e) granting certain related relief in the Chapter 11 Proceeding.

7. On February 12, 2010, the Debtors are bringing motions to the U.S. Court for orders:

- (a) approving the Plan Sponsor Agreement among the Debtors and Charlesbank Equity Fund VII (the "Plan Sponsor") and/or certain of its affiliates dated February 3, 2010 (the "Plan Sponsor Agreement") and break-up fee and expense reimbursement provision set forth in the Plan Sponsor Agreement (the "U.S. Plan Sponsor Order"); and
- (b) authorizing the Debtors to, among other things: (i) obtain secured, superpriority postpetition financing, junior in priority to the prepetition secured claims and to the adequate protection claims and liens granted to the lenders from time to time party to that certain Amended and Restated Credit Agreement dated as of June 21, 2007 by and among TLC USA, the Applicant (as guarantor), the other additional guarantors party thereto (the "Prepetition Lenders"), and with administrative priority pursuant to the terms and conditions of that certain Junior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of February 3, 2010, by and among the Debtors, the lenders party thereto from time to time (the "DIP Lenders"), and the Plan Sponsor, as collateral agent and administrative agent, for and on behalf of itself and the DIP Lenders in the Chapter 11 Proceeding, on an interim basis and on a final basis, in an aggregate amount not to exceed \$20 million; (ii) use cash collateral in the Chapter 11 Proceeding; and (iii) grant adequate protection in the Chapter 11 Proceeding to Wells Fargo Bank, N.A., as collateral agent and administrative agent for the Prepetition Lenders (the "U.S. Second Interim DIP Order").


8. The Debtors' U.S. motion materials filed in connection with the U.S. Plan Sponsor Order, including the draft U.S. Plan Sponsor Order and the First Amended Joint Chapter 11 Plan of Reorganization dated as of February 3, 2010, are attached as Exhibit "A" hereto.

9. The Debtors' U.S. motion materials filed in connection with the U.S. Second Interim DIP Order, including the draft U.S. Second Interim DIP Order, are attached as Exhibit "B" hereto.

10. Upon signed and entered copies of the U.S. Second Interim DIP Order and U.S. Plan Sponsor Order being available, the Applicant intends to serve such orders on the service list and file them with the Canadian Court.

11. Upon the Second Report being available, the Applicant or Information Officer intends to serve such report on the service list and file it with the Canadian Court.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
February 11, 2010.



Commissioner for Taking Affidavits



TIM ROBBINS

ADAM MARCUS SLAVENS
Barrister and Solicitor, Notary
Public for the Province of Ontario
My Commission is unlimited as to time.