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*Proposed Counsel for the Debtors
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	: Chapter 11
	:
TGHI, INC., <u>et al.</u> ,	: Case No. 16-10300(MEW)
	:
Debtors. ¹	: Joint Administration Pending
	:
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**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING AND
APPROVING THE EMPLOYMENT AND RETENTION OF KURTZMAN CARSON
CONSULTANTS LLC AS ADMINISTRATIVE AGENT FOR THE DEBTORS
AND DEBTORS IN POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE**

TGHI, Inc. ("**Holdings**") and Parent THI, Inc. ("**Parent**"), as chapter 11 debtors and debtors in possession (each a "**Debtor**" and collectively the "**Debtors**") in the above-referenced chapter 11 cases (the "**Chapter 11 Cases**"), hereby submit this application (the "**Application**") for entry of an order (the "**Proposed Order**"), substantially in the form annexed hereto as **Exhibit A**, authorizing the Debtors to employ and retain Kurtzman Carson Consultants LLC ("**KCC**"), as administrative agent (the "**Administrative Agent**") for the Debtors in connection with the Debtors' Chapter 11 Cases, *nunc pro tunc* to the Petition Date (as defined below). The Debtors seek to employ and retain the Administrative Agent pursuant to the terms

¹ The Debtors, and, if applicable, the last four digits of their taxpayer identification numbers are as follows: Parent THI, Inc. (5521) and TGHI, Inc. (3814).



of the Retention Agreement between KCC and the Debtors, attached hereto as **Exhibit B** (the “**Retention Agreement**”). In support of this Application, the Debtors rely upon the Declaration of Christopher Layden pursuant to Local Bankruptcy Rule 1007-2 and in Support of First Day Motions and Applications (the “**First Day Declaration**”), and the Declaration of Evan Gershbein attached hereto as **Exhibit C** (the “**Gershbein Declaration**”), and respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief requested herein is section 327(a) of Title 11 of the United States Code (the “**Bankruptcy Code**”).

GENERAL BACKGROUND

4. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

5. The Debtors respectfully refer the Court and interested parties to the First Day Declaration for a detailed description of the Debtors’ businesses and events leading to the commencement of the Chapter 11 Cases.

RELIEF REQUESTED

6. This Application is made by the Debtors pursuant to sections 327(a), 330 and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014 and 2016 of

the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rule for the Southern District of New York Bankruptcy Court 2014-1 (the “**Local Rules**”), authorizing the Debtors to employ and retain KCC as administrative agent in these Chapter 11 Cases *nunc pro tunc* to the Petition Date in accordance with the terms and conditions of the Retention Agreement.

7. On the Petition Date, the Debtors filed an application under 28 U.S.C. § 156(c) for authorization to retain and employ KCC to serve as the claims and noticing agent in the Chapter 11 Cases (the “**Section 156(c) Application**”). The administration of the Chapter 11 Cases will require KCC to perform duties outside the scope of the Section 156(c) Application, and thus, consistent with the practices in this District, the Debtors are filing separate applications for authority to retain KCC to perform services in its distinct capacities as claims and noticing agent and administrative agent.

KCC’S QUALIFICATIONS

8. As a specialist in claims management and legal administration services, KCC provides comprehensive administrative solutions for chapter 11 cases. KCC is one of the country’s leading chapter 11 administrators, with substantial experience in matters of this size and complexity, including several large bankruptcy cases pending in the Southern District of New York. See, e.g., In re Eagle Bulk Shipping, Inc., No. 14-12303 (SHL) (Bankr. S.D.N.Y. Aug. 7, 2014) [Docket No. 30]; In re ConnectEdu, Inc., No. 14-11238 (SCC) (Bankr. S.D.N.Y. May 1, 2014) [Docket No. 26]; In re MPM Silicones, LLC, No. 14-22503 (RDD) (Bankr. S.D.N.Y. Apr. 15, 2014) [Docket No. 36]; In re Metro Affiliates, Inc., No. 13-13591 (SHL) (Bankr. S.D.N.Y. Nov. 7, 2013) [Docket No. 43]; In re Flat Out Crazy, LLC, No. 13-22094 (RDD) (Bankr. S.D.N.Y. Jan. 29, 2013) [Docket No. 40]; In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. May 16, 2012) [Docket No. 96]; In re LightSquared Inc., No. 12-

12080 (SCC) (Bankr. S.D.N.Y. May 15, 2012) [Docket No. 34]; In re Grubb & Ellis, No. 12-10685 (MG) (Bankr. S.D.N.Y. Feb. 23, 2012) [Docket No. 33]; In re Eastman Kodak Co., No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 19, 2012) [Docket No. 47]; In re The Connaught Group, No. 12-10512 (SMB) (Bankr. S.D.N.Y. Feb. 21, 2012) [Docket No. 46]; In re Jobson Med. Info. Holdings, LLC, No. 12-10434 (SHL) (Bankr. S.D.N.Y. Feb. 3, 2012) [Docket No. 28]; In re Hostess Brands, Inc., No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012) [Docket No. 201]. Based on KCC's experience, the Company believes that KCC is well-qualified to serve in the capacity of administrative agent.

SERVICES TO BE PROVIDED

9. Pursuant to the Retention Agreement, and subject to the Court's approval, the Administrative Agent will, among other things, if and to the extent requested:

- (a) Assist with, among other things, solicitation, balloting, tabulation, and calculation of votes, as well as preparing any appropriate reports, as required in furtherance of confirmation of plan(s) of reorganization (the "**Balloting Services**");
- (b) Generate an official ballot certification and testify, if necessary, in support of the ballot tabulation results;
- (c) Gather data in conjunction with the preparation, and assist with the preparation, of the Debtors' schedules of assets and liabilities and statements of financial affairs;
- (d) Managing and coordinating any distributions pursuant to a confirmed plan of reorganization or otherwise; and
- (e) Provide such other processing, solicitation, balloting, and other administrative services described in the Agreement, but not included in the Section 156(c) Application, as may be requested from time to time by the Debtors, the Court, or the Clerk.

10. Because the administrative services described above are necessary to the administration of these Chapter 11 Cases, the retention of the Administrative Agent by the Debtors is appropriate and is in the best interests of the Debtors' estates. By appointing an

administrative agent, the administration of these Chapter 11 Cases will be expedited as the Debtors and the Debtors' professionals will be relieved of handling certain necessary administrative burdens and may focus on other priorities.

COMPENSATION OF KCC

11. The Debtors respectfully submit that the fees the Administrative Agent will charge in connection with its services to the Debtors, as set forth in the Retention Agreement and as further modified to reflect agreed upon discounts to be provided by the Administrative Agent to the Debtors, are competitive and comparable to the rates KCC's competitors charge for comparable services. Prior to engaging the Administrative Agent, the Debtors solicited bids from three other firms with experience in providing administrative services in bankruptcy cases. As such, the Debtors believe that KCC's rates are reasonable given the quality of KCC's services and its prior bankruptcy expertise and that KCC is the appropriate choice as the Debtors' administrative agent.

12. The Administrative Agent intends to apply to the Court for allowance of compensation and reimbursement of actual and necessary out-of-pocket expenses incurred after the Petition Date in the performance of the duties described in this Application, to the extent that such duties exceed the scope of 28 U.S.C. § 156(c), subject to Court approval and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, General Order M-412 Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals, dated December 21, 2010 ("**General Order M-412**"), General Order M-447, Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, dated January 29, 2013 ("**General Order M-447**"), and further orders of this Court.

13. As part of the overall compensation payable to the Administrative Agent under the terms of the Retention Agreement, the Debtors have agreed, subject to certain exceptions, to indemnify and hold harmless the Administrative Agent and its directors, officers, employees, affiliates, and agents, against any losses incurred by the Administrative Agent arising out of, in connection with, or related to (a) any gross negligence or willful misconduct by the Debtors, their employees, agents, or representatives, or misrepresentations made by such persons to third parties in connection with the Administrative Agent's acts or omissions in connection with its rendering the Services (as defined in the Retention Agreement); (b) any breach of the Retention Agreement by any of the Debtors; or (c) any erroneous instructions or information provided to the Administrative Agent by any of the Debtors for use in providing services pursuant to the Retention Agreement.

14. If any dispute arises relating to the Retention Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute. If a resolution is not reached, the parties may seek resolution of the matter from the Court.

DISINTERESTEDNESS

15. To the best of the Debtors' knowledge, and as disclosed in the Gershbein Declaration, KCC: (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code; (b) does not hold or represent an interest adverse to the Debtors' estates in connection with any matter on which the Administrative Agent will be employed, except as set forth herein and in the Gershbein Declaration; and (c) neither the Administrative Agent nor any of its employees has any connection with the Debtors, their creditors, the U.S. Trustee or any other party-in-interest in these Chapter 11 Cases.

16. Prior to the Petition Date, the Administrative Agent performed certain professional services for the Debtors in accordance with the Retention Agreement. The Debtors

do not owe the Administrative Agent any amount for services performed or expenses incurred prior to the Petition Date.

17. In connection with its appointment as administrative agent in these Chapter 11 Cases, the Administrative Agent represents, among other things, that it will not employ any past or present employees of the Debtors in connection with its work as the administrative agent in these Chapter 11 Cases.

18. If any new facts or circumstances are discovered that would require disclosure, the Administrative Agent will supplement its disclosure to the Court.

BASIS FOR RELIEF

19. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor's] duties under this title.

11 U.S.C. § 327(a).

20. Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

21. In light of the size and complexity of these Chapter 11 Cases, the Debtors seek an order appointing KCC as the administrative agent pursuant to sections 327(a), 330, and 331 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rule 2014-2 to assist in managing the administrative tasks described in the Retention Agreement.

NOTICE

22. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion has been given to: (a) the Office of the U.S. Trustee for the Southern District of New York; (b) counsel to the Prepetition \$20 Million Facility Agent; (c) counsel to the PIK Note Administrative Agent; (d) the Internal Revenue Service; and (e) any such other party entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b). The Debtors submit that no other or further notice need be given.

NO PRIOR REQUEST

23. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested and such other or further relief as is just and proper.

Dated: New York, New York
February 9, 2016

TGHI, INC.

/s/ Christopher Layden
Christopher Layden
President

PARENT THI, INC.

/s/ Christopher Layden
Christopher Layden
President

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:
In re:	: Chapter 11
	:
TGHI, INC., <u>et al.</u> ,	: Case No. 16-10300(MEW)
	:
Debtors. ¹	: Joint Administration Pending
	:
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**ORDER AUTHORIZING AND APPROVING THE EMPLOYMENT AND
RETENTION OF KURTZMAN CARSON CONSULTANTS LLC AS
ADMINISTRATIVE AGENT TO THE DEBTORS**

Upon the application (the “**Application**”)² of TGHI, Inc. (“**Holdings**”) and Parent THI, Inc. (“**Parent**”), as chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively the “**Debtors**”) in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”), pursuant to 11 U.S.C. § 327(a), 330, and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Bankruptcy Rule 2014-1 of the Local Bankruptcy Rules of the Southern District of New York (the “**Local Rules**”), for entry of an order authorizing the Debtors to employ and retain Kurtzman Carson Consultants LLC (“**KCC**”) as administrative agent (“**Administrative Agent**”) for the Debtors, *nunc pro tunc* to the Petition Date, all as more fully set forth in the Application; and upon the Declaration of Evan Gershbein attached to the Application as **Exhibit C** (the “**Gershbein Declaration**”); and the Court having subject matter jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order M-431 of Referral of Cases to*

¹ The Debtors, and, if applicable, the last four digits of their taxpayer identification numbers are as follows: Parent THI, Inc. (5521) and TGHI, Inc. (3814).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

Bankruptcy Court Judges of the District Court for the Southern District of New York, dated January 31, 2012 (Preska, Acting C.J.); and the Application being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, and no other or further notice being required; and the relief requested in the Application being in the best interests of the Debtors and their estates; and the Court having reviewed the Application and the First Day Declaration, and having heard the statements in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Application, the First Day Declaration, the Gershbein Declaration, and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The retention of KCC as administrative agent to the Debtors, *nunc pro tunc* to the Petition Date, on the terms and conditions set forth in the Retention Agreement and as described in the Application, is hereby approved.
3. The administrative agent is authorized to perform all actions and services set forth in the Application, including:
 - (a) Assist with, among other things, solicitation, balloting, tabulation, and calculation of votes, as well as preparing any appropriate reports, as required in furtherance of confirmation of plan(s) of reorganization (the “**Balloting Services**”);
 - (b) Generating an official ballot certification and testifying, if necessary, in support of the ballot tabulation results;

- (c) Gather data in conjunction with the preparation, and assist with the preparation, of the Debtors' schedules of assets and liabilities and statements of financial affairs;
- (d) Managing and coordinating any distributions pursuant to a confirmed plan of reorganization or otherwise; and
- (e) Provide such other processing, solicitation, balloting, and other administrative services described in the Agreement, but not included in the Section 156(c) Application, as may be requested from time to time by the Debtors, the Court, or the Clerk.

4. The Administrative Agent shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on (a) the Debtors, (b) any statutory committee, and (c) any party-in-interest who requests service of the monthly invoices (each a "**Notice Party**" and collectively, the "**Notice Parties**").

5. The Administrative Agent shall apply for allowance of compensation and reimbursement of out-of-pocket expenses incurred after the Petition Date in the performance of the duties described in the Application, to the extent that such duties exceed the scope of 28 U.S.C. § 156(c), in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, General Order M-412, General Order M-447 and further orders of this Court.

6. The Debtors shall indemnify the Administrative Agent under the terms of the Retention Agreement.

7. Notwithstanding any term in the Retention Agreement to the contrary, KCC's liability shall not be limited to the amount billed to or paid by the Debtors.

8. The Debtors and the Administrative Agent are authorized to take such other action to comply with all of the duties set forth in the Application.

9. To the extent that there may be any inconsistency between the terms of the Application, the Retention Agreement, or this Order, the terms of this Order shall govern.

10. This Order shall be immediately effective and enforceable upon its entry.

11. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
_____, 2016

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Retention Agreement



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 5th day of November, 2015, between TGHI, Inc. and Parent THI, Inc. (together, the "Holding Companies"),¹ and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, "KCC").

In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Terms and Conditions

I. SERVICES

A. KCC agrees to provide the Holding Companies with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC's standard reports as well as consulting and programming support for the Holding Companies requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Holding Companies (the "KCC Fee Structure").

C. Without limiting the generality of the foregoing, KCC may, upon request by the Holding Companies, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Holding Companies or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Holding Companies when provided by KCC.

E. The Holding Companies acknowledges and agrees that KCC will often take direction from the Holding Companies' representatives, employees, agents and/or professionals (collectively, the "Holding Companies Parties") with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Holding Companies agrees to be bound by, any requests, advice or information provided by the Holding Companies Parties to the same extent as if such requests, advice or information were provided by the Holding Companies. The Holding Companies agrees and understands that KCC shall not provide the Holding Companies or any other party with any legal advice.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Holding Companies agrees to pay KCC for its services, expenses and supplies at the rates or prices set by KCC and in effect as of the date of this Agreement in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment. KCC reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceed 10%, KCC will give thirty (30) days written notice to the Holding Companies.

B. The Holding Companies agrees to pay the reasonable out of pocket expenses incurred by KCC in connection with services provided under this Agreement, including but not limited to, transportation, lodging, and meals.

C. In addition to all fees for services and expenses hereunder, the Holding Companies shall pay to KCC (i) any fees and expenses related to, arising out of, or as a result of any error or omission made by the Holding Companies or the Holding Companies Parties, as mutually determined by KCC and the Holding Companies, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Holding Companies requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Holding Companies at a competitive rate.

E. KCC agrees to submit its invoices to the Holding Companies monthly and the Holding Companies agrees that the amount invoiced is due and payable upon the Holding Companies' receipt of the invoice. However, where total fees and expenses are expected to exceed \$10,000 in any single month, KCC may require advance payment from the Holding Companies due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Holding Companies further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Holding Companies shall give written notice to KCC within ten (10) days of receipt of the invoice by the Holding Companies. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) as well as certain expenses must be paid at least three (3) days in advance of those fees and expenses being incurred.

F. In the event that the Holding Companies files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) ("Section 156(c)") and that all fees and expenses due under this Agreement shall be paid as administrative expenses of the Holding Companies' chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Holding Companies shall cause a motion to be filed with the Bankruptcy Court seeking entry of an order pursuant to Section 156(c) approving this Agreement in its entirety (the "Section 156(c) Order"). The form and substance of the motion and the Section 156(c) Order shall be reasonably acceptable to KCC. If any Holding Companies chapter 11 case converts to a case under



KCC AGREEMENT FOR SERVICES

chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with Section 156(c) and under the terms of this Agreement.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$7,500 (the "Retainer") that may be held by KCC as security for the Holding Companies' payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Holding Companies any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Holding Companies agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Holding Companies further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Holding Companies do not vest in the Holding Companies any rights in such property, it being understood that such property is only being made available for the Holding Companies' use during and in connection with the services provided by KCC under this Agreement.

IV. NON-SOLICITATION

The Holding Companies agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

V. CONFIDENTIALITY

Each of KCC and the Holding Companies, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.



KCC AGREEMENT FOR SERVICES

VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Holding Companies' reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Holding Companies to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Holding Companies and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Holding Companies agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Section 156(c) Order, the Holding Companies shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility under Section 156(c) and this Agreement.

C. Any data, programs, storage media or other materials furnished by the Holding Companies to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Holding Companies shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Holding Companies. The Holding Companies agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Holding Companies has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Holding Companies for the expense of such disposition, after giving the Holding Companies thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Section 156(c) Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Holding Companies, so long as any such changes do not materially interfere with ongoing services provided to the Holding Companies in connection with the Holding Companies' chapter 11 case.



KCC AGREEMENT FOR SERVICES

VIII. BANK ACCOUNTS

At the Holding Companies' request, KCC shall be authorized to establish accounts with financial institutions in the name of and as agent for the Holding Companies. To the extent that certain financial products are provided to the Holding Companies pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Holding Companies shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Holding Companies shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Holding Companies becomes aware of with respect to the services provided by KCC under this Agreement. The Holding Companies' indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Holding Companies or any person making a claim through or under the Holding Companies for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Holding Companies for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC's liability to the Holding Companies for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Holding Companies and actually paid to KCC for the services contemplated under the Agreement. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

C. The Holding Companies is responsible for the accuracy of the programs, data and information it or any Holding Companies Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Holding Companies and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Holding Companies. The Holding Companies reviews and approves all schedules and statements filed on behalf of, or by, the Holding Companies; KCC bears no responsibility for the accuracy or contents therein. The Holding Companies agrees to initiate and maintain backup files that would allow the Holding Companies to regenerate or duplicate all programs and data submitted by the Holding Companies to KCC.

D. The Holding Companies agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.



KCC AGREEMENT FOR SERVICES

X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

XI. INDEPENDENT CONTRACTORS

The Holding Companies and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245
Attn: Drake D. Foster
Tel: (310) 823-9000
Fax: (310) 823-9133
E-Mail: dfoster@kccllc.com

Company
Address
City, ST Zip
Attn:
Tel:
Fax:

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Holding Companies represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified



KCC AGREEMENT FOR SERVICES

only by a written instrument duly executed by an authorized representative of the Holding Companies and an officer of KCC.

XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

XVII. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in Los Angeles County, State of California.

XVIII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT C

Declaration of Evan Gershbein

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X
	:
In re:	: Chapter 11
	:
TGHI, INC., <u>et al.</u> ,	: Case No. 16-10300(MEW)
	:
Debtors. ¹	: Joint Administration Pending
	:
-----	X

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF THE DEBTORS’
APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION OF
KURTZMAN CARSON CONSULTANTS LLC AS THE ADMINISTRATIVE AGENT**

Evan Gershbein makes this declaration under 28 U.S.C. § 1746, and states the following:

1. I am a Senior Vice President of Corporate Restructuring Services of Kurtzman Carson Consultants LLC (“**KCC**”), and I am authorized to make and submit this declaration on behalf of KCC. This declaration is submitted in support of the application (the “**Application**”) of TGHI, Inc. (“**Holdings**”) and Parent THI, Inc. (“**Parent**”), as chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively the “**Debtors**”) in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”), for entry of an order authorizing the Debtors to employ and retain KCC as administrative agent (“**Administrative Agent**”) for the Debtors in connection with the Debtors’ Chapter 11 Cases. The statements contained herein are based upon personal knowledge.

2. KCC is one of the country’s leading chapter 11 administrators with expertise in balloting administration and distribution and is well-qualified to provide administrative services in connection with these Chapter 11 Cases. KCC is or was retained as the administrative agent in several large chapter 11 cases pending in the Southern District of

¹ The Debtors, and, if applicable, the last four digits of their taxpayer identification numbers are as follows: Parent THI, Inc. (5521) and TGHI, Inc. (3814).

New York. See, e.g., In re Eagle Bulk Shipping, Inc., No. 14-12303 (SHL) (Bankr. S.D.N.Y. Aug. 7, 2014) [Docket No. 30]; In re ConnectEdu, Inc., No. 14-11238 (SCC) (Bankr. S.D.N.Y. May 1, 2014) [Docket No. 26]; In re MPM Silicones, LLC, No. 14-22503 (RDD) (Bankr. S.D.N.Y. Apr. 15, 2014) [Docket No. 36]; In re Metro Affiliates, Inc., No. 13-13591 (SHL) (Bankr. S.D.N.Y. Nov. 7, 2013) [Docket No. 43]; In re Flat Out Crazy, LLC, No. 13-22094 (RDD) (Bankr. S.D.N.Y. Jan. 29, 2013) [Docket No. 40]; In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. May 16, 2012) [Docket No. 96]; In re LightSquared Inc., No. 12-12080 (SCC) (Bankr. S.D.N.Y. May 15, 2012) [Docket No. 34]; In re Grubb & Ellis, No. 12-10685 (MG) (Bankr. S.D.N.Y. Feb. 23, 2012) [Docket No. 33]; In re Eastman Kodak Co., No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 19, 2012) [Docket No. 47]; In re The Connaught Group, No. 12-10512 (SMB) (Bankr. S.D.N.Y. Feb. 21, 2012) [Docket No. 46]; In re Jobson Med. Info. Holdings, LLC, No. 12-10434 (SHL) (Bankr. S.D.N.Y. Feb. 3, 2012) [Docket No. 28]; In re Hostess Brands, Inc., No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012) [Docket No. 201].

3. To the best of my knowledge, neither KCC, nor any of its professional personnel, have any relationship with the Debtors that would impair KCC's ability to serve as Administrative Agent. KCC does have relationships with some of the Debtors' creditors, but they are in matters completely unrelated to these Chapter 11 Cases, either as vendors or in cases where KCC serves in a neutral capacity as a class action settlement claims administrator or bankruptcy administrator. KCC's assistance in the cases where KCC acts as a class action settlement claims administrator has been primarily related to the design and dissemination of legal notice and other administrative functions in class actions. In addition, KCC personnel may have relationships with some of the Debtors' creditors; however, such relationships are of a personal, financial nature and completely unrelated to these Chapter 11 Cases. KCC has

working relationships with certain of the professionals retained by the Debtors and other parties herein but such relationships are completely unrelated to these Chapter 11 Cases. KCC has and will continue to represent clients in matters unrelated to these Chapter 11 Cases and has had and will continue to have relationships in the ordinary course of its business with certain vendors and professionals in connection with matters unrelated to these Chapter 11 Cases.

4. KCC is an indirect subsidiary of Computershare Limited. Computershare Limited is a financial services and technologies provider for the global securities industry. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare Limited and its affiliates maintain do not create an interest of KCC that is materially adverse to the Debtors' estate or any class of creditors or equity security holders.

5. KCC is a "disinterested person," as that term is defined in 11 U.S.C. § 101(14) of the Bankruptcy Code, in that KCC and its professional personnel:

- are not creditors, equity security holders or insiders of the Debtors;
- are not and were not, within two years before the date of the filing of these Chapter 11 Cases, directors, officers or employees of the Debtors; and
- do not have an interest materially adverse to the interests of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

6. The Administrative Agent has not been retained to assist any entity or person other than the Debtors on matters relating to, or in connection with, these Chapter 11 Cases. If KCC's proposed retention is approved by this Court, KCC will not accept any engagement or perform any service for any entity or person other than the Debtors in these Chapter 11 Cases without the expressed consent and authority of the Debtors; provided, however, that on the Petition Date, the Debtors filed a separate application to retain KCC

pursuant to section 156(c), title 28 of the United States Code, to provide notice and claims services within the scope of 28 U.S.C. § 156(c). In addition, the Administrative Agent may provide professional services to entities or persons that may be creditors or parties-in-interest in these Chapter 11 Cases, which services do not relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

7. In accordance with section 504 of the Bankruptcy Code and Bankruptcy Rule 2016, neither I nor KCC have entered into any agreements, express or implied, with any other party-in-interest, including the Debtors, any creditor, or any attorney for such party-in-interest in the Chapter 11 Cases (a) for the purpose of sharing or fixing fees or other compensation to be paid to any such party-in-interest or its attorneys for services rendered in connection therewith, (b) for payment of such compensation from the assets of the estates in excess of the compensation allowed by the Court pursuant to the applicable provisions of the Bankruptcy Code, or (c) for payment of compensation in connection with the Chapter 11 Cases other than in accordance with the applicable provisions of the Bankruptcy Code. If any such agreement is entered into, KCC undertakes to amend and supplement this Declaration to disclose the terms of any such agreement.

* * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 5, 2016

/s/ Evan Gershbein
Evan Gershbein