

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
)	
HIGHLAND CAPITAL)	
MANAGEMENT, L.P., ¹)	
)	Case No. 19-12239 (CSS)
Debtor.)	
)	

Objection Deadline: November 12, 2019, 4:00 PM (ET)
Hearing Date: November 19, 2019 at 12:00 PM (ET)

**DEBTOR’S APPLICATION FOR AUTHORIZATION TO EMPLOY AND RETAIN
KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE
ADVISOR EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

The above-captioned debtor and debtor in possession (the “Debtor”) respectfully state as follows in support of this application (this “Application”):

Relief Requested

1. The Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”) (a) authorizing the Debtor to employ and retain Kurtzman Carson Consultants LLC (“KCC”) as administrative advisor (the “Administrative Advisor”) in the Debtor’s chapter 11 cases effective *nunc pro tunc* to the Petition Date and (b) granting related relief. In support of this application, the Debtor submits the *Declaration of Evan Gershbein in Support of the Debtor’s Application to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Nunc Pro Tunc to the Petition Date* (the “Gershbein Declaration”), attached hereto as **Exhibit B**.

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2018. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1.

Background

5. October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case.

6. As of the date of the filing of this Application, the Office of the United States Trustee (the “U.S. Trustee”) has yet to appoint an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

7. A more detailed description of the business and operations of the Debtor, and the events leading to the commencement of this chapter 11 case, is provided in the *Declaration of*

Frank Waterhouse in Support of First Day Motion, [Docket No. 9] (the “First Day Declaration”) and incorporated herein by reference.²

KCC’s Retention

8. The terms of retention and employment of KCC are set forth in that certain services agreement (the “Services Agreement”), annexed as Exhibit 1 to Exhibit A, attached hereto. Pursuant to this application, the Debtor seeks to retain KCC to provide, among other things, the following bankruptcy administrative services (collectively, the “Administrative Services”), if and to the extent the Debtor requests:

- (a) assisting with, among other things, the preparation of the Debtor’s schedules of assets and liabilities, schedules of executory contracts and unexpired leases and statements of financial affairs;
- (b) assisting with, among other things, solicitation, balloting, tabulation and calculation of votes, as well as preparing any appropriate reports required in furtherance of confirmation of any chapter 11 plan;
- (c) generating an official ballot certification and testifying, if necessary, in support of the ballot tabulation results for any chapter 11 plan(s) in the chapter 11 cases;
- (d) generating, providing and assisting with claims objections, exhibits, claims reconciliation and related matters; and
- (e) providing such other claims processing, noticing, solicitation, balloting and administrative services, but not included in the Section 156(c) Application,³ as may be requested by the Debtor from time to time.

9. KCC has substantial experience providing the Administrative Services in numerous cases of comparable size, including several cases in this Court. *See, e.g., In re Perkins & Marie Callender’s, LLC, et al.*, Case No. 19-11743 (KG) (Bankr. D. Del. Aug. 5, 2019); *In re Emerge*

² A capitalized term used but not defined herein shall have the meaning ascribed to it in the Declaration.

³ On the Petition Date, the Debtor filed the *Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a) and Local Rule 2002-1(f)* (the “Section 156(c) Application”) [Docket No.7].

Energy Services LP, et al., Case No. 19-11563 (KBO) (Bankr. D. Del. Jul. 15, 2019); *In re Fuse, LLC, et al.*, Case No. 19-10872 (Bankr. D. Del. Jun. 18, 2019); *In re Achaogen, Inc.*, Case No. 19-108444 (BLS) (Bankr. D. Del. Apr. 15, 2019); *In re Southcross Energy Partner, L.P., et al*, Case No. 19-10702 (MFW) (Bankr. D. Del. Apr. 1, 2019); *In re Novum Pharma, LLC*, Case No. 19-10209 (KJC) (Bankr. D. Del. Feb. 3, 2019); *In re Welded Construction, L.P., et al.*, Case No. 18-12378 (KG) (Bankr. D. Del. Oct. 22, 2018); *In re ATD Corporation, et al.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 4, 2018); *In re RM Holdco LLC, et al.*, Case No. 18-11795 (MFW) (Bankr. D. Del. Aug. 5, 2018); *In re Heritage Home Group LLC, et al.*, Case No. 18-11736 (KG) (Bankr. D. Del. Jul. 29, 2018); *In re The Walking Company Holdings, Inc.*, Case No. 18-10474 (LSS) (Bankr. D. Del. Mar. 8, 2018); *In re VER Technologies Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. April 6, 2018); *In re Rand Logistics, Inc.*, No. 18-10175 (BLS) (Bankr. D. Del. Jan. 29, 2018); *In re ExGen Tex. Power, LLC*, No. 17-12377 (BLS) (Bankr. D. Del. Nov. 7, 2017); *In re TerraVia Holdings, Inc.*, No. 17-11655 (CSS) (Bankr. D. Del. Aug. 2, 2017); *In re Prospector Offshore Drilling S.à r.l.*, No. 17-11572 (CSS) (Bankr. D. Del. July 20, 2017); *In re Keystone Tube Co., LLC (A.M. Castle & Co.)*, No. 17-11330 (LSS) (Bankr. D. Del. June 18, 2017); *In re Sungevity, Inc.*, No. 17-10561 (KG) (Bankr. D. Del. Mar. 15, 2017); *In re Aquion Energy, Inc.*, No. 17-10500 (KJC) (Bankr. D. Del. Mar. 8, 2017).

10. The Debtor chose KCC to perform the Administrative Services because of KCC's experience, reputation, familiarity with the chapter 11 cases, and the competitiveness of its fees. The Debtor submits that using KCC to provide the Administrative Services has provided, and will continue to provide, the most cost-effective and efficient administration of the chapter 11 cases. Further, retaining KCC to perform the Administrative Services has allowed, and will continue to allow, the Debtor and its other professionals to focus on key aspects of the Debtor's restructuring

efforts. Accordingly, the Debtor believes that KCC is qualified to provide the Administrative Services and that KCC's retention in such capacity is in the best interests of the Debtor's estate and creditors.

Compensation and Disinterestedness

11. The fees KCC will charge in connection with its services to the Debtor are set forth in the pricing schedule attached to the Services Agreement. The Debtor respectfully submits that KCC's rates are competitive and comparable to the rates KCC's competitors charge for similar services, and are reasonable given the quality of KCC's services and KCC's bankruptcy expertise. Additionally, KCC will seek reimbursement from the Debtor for reasonable and documented expenses in accordance with the terms of the Services Agreement.

12. Prior to the Petition Date, the Debtor provided KCC a retainer in the amount of \$50,000. KCC seeks to first apply the retainer to all pre-petition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Services Agreement during the cases as security for the payment of fees and expenses incurred under the Services Agreement.

13. KCC intends to apply to the Court for allowance of compensation and reimbursement of out-of-pocket expenses incurred after the Petition Date in connection with the services that it provides as the Administrative Advisor in the chapter 11 cases in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable orders of the Court.

14. The Gershbein Declaration represents that, to the best of its knowledge, KCC is not connected with the Debtor, its creditors, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), or any person employed by the U.S. Trustee and that, to the best of KCC's knowledge, after due inquiry, KCC does not by reason of any direct or indirect

relationship to, connection with or interest in the Debtor, hold or represent any interest materially adverse to the Debtor, its estate or any class of creditors or equity interest holders with respect to the matters upon which it is to be engaged. Further, KCC has performed a comprehensive conflict search in connection with the Section 156(c) Application. Based upon the Gershbein Declaration, KCC is a “disinterested person,” as that term is defined in section 101(14) of the Bankruptcy Code.

Indemnification

15. As part of the overall compensation payable to KCC under the terms of the Services Agreement, the Debtor has agreed to certain indemnification and contribution obligations as set forth in the Services Agreement, to the extent permitted by applicable law and as modified in the proposed Order.

16. The terms of the Services Agreement and indemnification provisions included therein were negotiated at arm’s-length between the Debtor and KCC, and the Debtor respectfully submits that these provisions of the Services Agreement are reasonable and in the best interests of the Debtor, its estate, and its creditors. Moreover, consistent with the practice in this jurisdiction, the Debtor requests, and KCC has agreed, that the Court approve the indemnification provisions reflected in the Services Agreement subject to the modifications set forth in the proposed Order. The Debtor believes that the proposed modifications to the indemnification provisions of the Services Agreement are appropriate under the circumstances, consistent with recent orders entered in this jurisdiction and, therefore, should be approved.

Basis for Relief

I. Retention and Employment of KCC as the Administrative Advisor is Permitted.

17. The Debtor seeks approval of the employment and retention of KCC as Administrative Advisor pursuant to sections 327(a) and 328(a) of the Bankruptcy Code. Section 327(a) provides that a debtor “may employ one or more . . . 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 its duties. 11 U.S.C. § 327(a).

18. In addition, section 328(a) of the Bankruptcy Code provides, in relevant part, that debtors “with the court’s approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a).

19. 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(a).

20. Additionally, Local Rule 2014-1 requires an entity seeking approval of employment under section 327(a) of the Bankruptcy Code to file a motion, supporting affidavit and proposed order, all of which have been satisfied by this Application, the Gershbein Declaration, and the proposed Order. Further, in accordance with Local Rule 2014-1, KCC acknowledges its continuing duty to supplement the Gershbein Declaration with additional material information relating to the employment of KCC, if necessary.

21. In light of the size and complexity of the chapter 11 cases, the Debtor respectfully submits that employing and retaining KCC pursuant to the terms of the Services Agreement, as modified by the proposed Order, is necessary and in the best interests of the Debtor’s estate and all parties in interest. The Debtor also believes that the terms and conditions of the Services

Agreement, as modified by the proposed Order are reasonable, and have been previously approved by the Court in the Section 156(c) Application. Further, KCC will comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other procedures or orders of the Court.

II. *Nunc Pro Tunc* Relief is Appropriate.

22. Pursuant to the Debtor's request, KCC has agreed to serve as Administrative Advisor on and after the Petition Date with assurances that the Debtor would seek approval of its employment and retention *nunc pro tunc* to the Petition Date, so that KCC may be compensated for its pre-Application services. The Debtor believes that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment, as provided in this Application, because KCC has provided and continues to provide valuable services to the Debtor's estate in the interim period. The Local Rules empower courts in this district to approve *nunc pro tunc* employment, and the Debtor submits that such approval is justified here. *See, e.g.*, Local Rule 2014-1(b) ("If the retention application is granted, the retention shall be effective as of the date the application was filed, unless the Court orders otherwise."). Further, courts in this district have routinely approved *nunc pro tunc* employment similar to that requested herein in matters comparable to this matter.

23. Accordingly, to help manage administrative tasks with respect to the numerous notice parties that are expected to be involved in the chapter 11 case, and the complexity of the case, the Debtor respectfully requests entry of an order authorizing the Debtor to employ and retain KCC as Administrative Advisor *nunc pro tunc* to the Petition Date.

Notice

24. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Debtor's twenty largest unsecured creditors;

(d) the Debtor's principal secured parties; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

25. No prior request for the relief sought in this Application has been made to this or any other court.

[Signature Page Follows]

WHEREFORE, the Debtor respectfully requests that the Court enter the Order granting the relief requested herein and such other and further relief as the Court may deem proper.

Dated: October 29, 2019

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: /s/ Frank Waterhouse

Name: Frank Waterhouse

Title: Treasurer

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	Case No. 19-12239 (CSS)
Debtor.)	

Objection Deadline: November 12, 2019 at 4:00 p.m. (ET)
Hearing Date: November 19, 2019 at 12:00 p.m. (ET)

**NOTICE OF DEBTOR’S APPLICATION FOR AUTHORIZATION TO EMPLOY AND
RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE
ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE**

TO: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Debtor’s principal secured parties; (d) counsel to any statutory committee appointed in the case; and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that on October 29, 2019, the above-captioned debtor and debtor in possession (collectively, the “Debtor”), filed the *Debtor’s Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date* (the “Application”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). A copy of the Application is attached hereto.

PLEASE TAKE FURTHER NOTICE that any response or objection to the Application must be filed with the Bankruptcy Court on or before **November 12, 2019 at 4:00 p.m. (Eastern Time)**.

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) proposed counsel for the Debtor: Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, DE 19801, Attn: James E. O'Neill, Esq. (joneill@pszjlaw.com) and Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Attn: Jeffrey N. Pomerantz, Esq. (jpomerantz@pszjlaw.com); and (ii) the Office of the United States Trustee: 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jane M. Leamy, Esq. (jane.m.leafy@usdoj.gov).

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE APPLICATION WILL BE HELD ON NOVEMBER 19, 2019 AT 12:00 P.M. (EASTERN TIME) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, CHIEF UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

Dated: October 29, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Richard M. Pachulski (CA Bar No. 62337)

Jeffrey N. Pomerantz (CA Bar No.143717)

Ira D. Kharasch (CA Bar No. 109084)

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Proposed Counsel for the Debtor and Debtor in
Possession

Exhibit A

Proposed Order

having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Application is hereby granted as set forth herein.
2. The Debtor is authorized under section 327(a) of the Bankruptcy Code to employ and retain KCC as their Administrative Advisor in accordance with the terms set forth in the Application and the Services Agreement *nunc pro tunc* to the Petition Date. Notwithstanding the terms of the Services Agreement, attached hereto as Exhibit 1, the Application is approved solely as set forth in this Order.
3. KCC is authorized to perform the Administrative Services described in the Application and set forth in the Application and the Services Agreement, and to take such other action to comply with all duties set forth in the Application and the Services Agreement.
4. In addition to the services set forth in the Application and the Services Agreement, KCC is authorized to provide other bankruptcy administration services as the Debtor and the Clerk of the Court may request from time to time.
5. KCC shall apply to the Court for allowance of compensation and reimbursement of expenses incurred after the Petition Date in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any orders entered in the chapter 11 cases regarding professional compensation and reimbursement of expenses.
6. KCC seeks to first apply its retainer to all pre-petition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer

under the Services Agreement during the cases as security for the payment of fees and expenses incurred under the Services Agreement.

7. The Debtor shall indemnify KCC under the terms of the Services Agreement, as modified pursuant to this Order.

8. KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the services provided under the Services Agreement unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

9. Notwithstanding anything to the contrary in the Services Agreement, the Debtor shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any losses, claims, damages, judgments, liabilities or expense that are either: (a) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (b) for a contractual dispute in which the Debtor alleges the breach of KCC's contractual obligations, if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.)*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination under (a) or (b), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by this Order.

10. Before the earlier of: (a) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal) and (b) the entry of an order closing these chapter 11 cases, should KCC believe that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification,

contribution, or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, KCC must file an application in this Court, and the Debtor may not pay any such amounts to KCC before the entry of an order by this Court approving such application and the payment requested therein. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution or reimbursement.

11. The Debtor and KCC are authorized to take all steps necessary or appropriate to carry out this Order.

12. In the event of any inconsistency between the Services Agreement, the Application, and this Order, the terms of this Order shall govern.

13. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

14. Notwithstanding any term in the Services Agreement to the contrary, this Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2019
Wilmington, Delaware

Christopher S. Sontchi
United States Bankruptcy Judge

Exhibit 1

Services Agreement



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 6th day of October 2019, between Highland Capital Management, L.P. (together with its affiliates and subsidiaries, the "Company"),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 Company 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 Company 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 Company (the "KCC Fee Structure").

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (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 Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

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

¹ The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company's chapter 11 case.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement; provided that if any single expense exceeds \$1,000.00, KCC provide reasonable documentation and will obtain the Company's prior written approval.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any reasonable fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, 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 Company 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 Company at a competitive rate. However, prior to KCC commencing such work, KCC will notify the Company and provide an estimate of the cost of such services.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon thirty (30) days of the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable upon thirty (30) days receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred.

F. In the event that the Company 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) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's 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 Company shall cause pleadings to be filed with



KCC AGREEMENT FOR SERVICES

the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$50,000.00 (the "Retainer") that may be held by KCC as security for the Company's 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 Company 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 Company 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 Company 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 Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement.

IV. NON-SOLICITATION

The Company 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; provided that the Company shall not be prohibited from (x) making general advertisements for employment not specifically directed at employees of KCC or (y) employees of KCC responding to unsolicited requests for employment.

V. CONFIDENTIALITY

Each of KCC and the Company, 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



KCC AGREEMENT FOR SERVICES

other party, release the required information.

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 Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than ninety (90) 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 Company 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 Company 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 Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company 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 Company 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 Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company 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 Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention 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 Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



KCC AGREEMENT FOR SERVICES

VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company 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 Company 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 Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

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

D. The Company 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



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express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

X. FORCE MAJEURE

Whenever performance by either party 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 the party'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 Company 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
222 N. Pacific Coast Highway, 3rd Floor
El Segundo, CA 90245
Attn: Drake D. Foster
Tel: (310) 823-9000
Fax: (310) 823-9133
E-Mail: dfoster@kccllc.com

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Attn: Isaac Leventon
Tel: (972) 628-4100
Fax: (972)-628-4147

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 Delaware without regard to conflicts of laws principles.

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



KCC AGREEMENT FOR SERVICES

matter of this Agreement. The Company 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 only by a written instrument duly executed by an authorized representative of the Company 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. 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 B

Gershbein Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	
)	Case No. 19-12239 (CSS)
Debtor.)	
)	

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF THE DEBTOR'S
APPLICATION FOR AUTHORIZATION TO EMPLOY AND RETAIN
KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE
ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE**

I, Evan Gershbein, being duly sworn, state the following under penalty of perjury:

1. I am a Senior Vice President, Corporate Restructuring Services for Kurtzman Carson Consultants LLC ("KCC"), whose offices are located at 222 N. Pacific Coast Highway, 3rd Floor, El Segundo, California 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This declaration (this "Declaration") is made in support of the *Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Agent Effective Nunc Pro Tunc to the Petition Date* (the "Application").²

3. This Declaration incorporates the *Declaration of Evan Gershbein in Support of Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing*

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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

Agent for the Debtor Pursuant to 28 U.S.C. § 156(c), 11 U.S.C. § 105(a) and Local Rule 2002-1(f), attached as Exhibit B to the Section 156(c) Application [Docket No. 7].

4. As Administrative Advisor, KCC will perform the Administrative Services specified in the Application and the Services Agreement.

5. KCC is one of the country's leading chapter 11 administrators, with experience in notice, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases. KCC has provided the Administrative Services and has acted as the notice and claims agent in numerous cases of comparable size in this district. *See, e.g., In re Perkins & Marie Callender's, LLC, et al.*, Case No. 19-11743 (KG) (Bankr. D. Del. Aug. 5, 2019); *In re Emerge Energy Services LP, et al.*, Case No. 19-11563 (KBO) (Bankr. D. Del. Jul. 15, 2019); *In re Fuse, LLC, et al.*, Case No. 19-10872 (Bankr. D. Del. Jun. 18, 2019); *In re Achaogen, Inc.*, Case No. 19-108444 (BLS) (Bankr. D. Del. Apr. 15, 2019); *In re Southcross Energy Partner, L.P., et al.*, Case No. 19-10702 (MFW) (Bankr. D. Del. Apr. 1, 2019); *In re Novum Pharma, LLC*, Case No. 19-10209 (KJC) (Bankr. D. Del. Feb. 3, 2019); *In re Welded Construction, L.P., et al.*, Case No. 18-12378 (KG) (Bankr. D. Del. Oct. 22, 2018); *In re ATD Corporation, et al.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 4, 2018); *In re RM Holdco LLC, et al.*, Case No. 18-11795 (MFW) (Bankr. D. Del. Aug. 5, 2018); *In re Heritage Home Group LLC, et al.*, Case No. 18-11736 (KG) (Bankr. D. Del. Jul. 29, 2018); *In re The Walking Company Holdings, Inc.*, Case No. 18-10474 (LSS) (Bankr. D. Del. Mar. 8, 2018); *In re VER Technologies Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. April 6, 2018); *In re Rand Logistics, Inc.*, No. 18-10175 (BLS) (Bankr. D. Del. Jan. 29, 2018); *In re ExGen Tex. Power, LLC*, No. 17-12377 (BLS) (Bankr. D. Del. Nov. 7, 2017); *In re TerraVia Holdings, Inc.*, No. 17-11655 (CSS) (Bankr. D. Del. Aug. 2, 2017); *In re Prospector Offshore Drilling S.à r.l.*, No. 17-11572 (CSS) (Bankr. D. Del. July 20, 2017); *In re Keystone Tube Co., LLC (A.M. Castile & Co.)*, No. 17-11330 (LSS) (Bankr. D. Del. June 18, 2017);

In re Sungevity, Inc., No. 17-10561 (KG) (Bankr. D. Del. Mar. 15, 2017); *In re Aquion Energy, Inc.*, No. 17-10500 (KJC) (Bankr. D. Del. Mar. 8, 2017).

6. KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that KCC and its professional personnel:

- (a) are not creditors, equity security holders or insiders of the Debtor;
- (b) are not and were not, within two years before the date of the filing of the chapter 11 cases, directors, officers or employees of the Debtor; and
- (c) do not have an interest materially adverse to the interest of the Debtor’s estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the, the Debtor.

7. The Debtor has many creditors and, accordingly, KCC may have rendered and may continue to render services to certain of these creditors in matters unrelated to the chapter 11 cases, either as vendors or in cases where KCC serves in a neutral capacity as a bankruptcy claims and noticing agent or class action settlement administrator. KCC has not and will not represent the separate interests of any such creditor in the chapter 11 cases. To the best of my knowledge, neither KCC, nor any of its professional personnel, has any relationship with the Debtor that would impair KCC’s ability to serve as Notice and Claims Agent or Administrative Advisor. KCC has working relationships with certain of the professionals retained by the Debtor and other parties herein, but such relationships, except to the extent that KCC and counsel to the Debtor have communicated concerning the preparations for the chapter 11 cases, are unrelated to the chapter 11 cases. In addition, KCC personnel may have relationships with some of the Debtor’s creditors. Such relationships are, however, of a personal or financial nature and are unrelated to the chapter 11 cases. KCC has and will continue to represent clients in matters unrelated to the chapter 11

cases and has and will continue to have relationships in the ordinary course of its business with certain vendors and professionals in connection with matters unrelated to the chapter 11 cases.

8. To the best of my knowledge, and except as disclosed herein and in the Section 156(c) Application, KCC neither holds nor represents any interest materially adverse to the Debtor's estate in connection with any matter on which it would be employed and that it is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as would be required by section 327(a) of the Bankruptcy Code. KCC has performed a comprehensive conflicts check in connection with the Section 156(c) Application and will continue to supplement its disclosure to the Court if any facts or circumstances are discovered that would require disclosure.

9. KCC is an indirect subsidiary of Computershare Limited ("Computershare"). Computershare 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 and its affiliates maintain do not create an interest of KCC that would be materially adverse to the Debtor's estate or any class of creditors or equity security holders.

10. KCC has informed the Debtor that, subject to Court approval, it will invoice the Debtor at its standard hourly rates, which are set forth in the Services Agreement.

[Remainder of page intentionally left blank]

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

Dated: October 29, 2019

Respectfully submitted,

/s/ Evan Gershbein

Evan Gershbein
Senior Vice President
Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, 3rd Floor
El Segundo, California 90245
Telephone: (310) 823-9000

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	Chapter 11
Debtor.)	Case No. 19-12239 (CSS)
)	
)	

CERTIFICATE OF SERVICE

I, James E. O’Neill, hereby certify that on the 29th day of October, 2019, I caused a copy of the following document(s) to be served on the individual(s) on the attached service list(s) in the manner indicated:

Notice of Debtor’s Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective *Nunc Pro Tunc* to the Petition Date

Debtor’s Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective *Nunc Pro Tunc* to the Petition Date

/s/ James E. O’Neill

James E. O’Neill (Bar No. 4042)

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital 2002 Service List FCM
Case No. 19-12239 (CSS)
Document No. 225797
01 – Interoffice Mail
09 – Hand Delivery
51 – First Class Mail

([Proposed] Counsel for the Debtor and Debtor in Possession)

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