

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
ATRIUM CORPORATION, <i>et al.</i> , <sup>1</sup>	)	Case No. 10-10150 (CLS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<b>Related to Docket No. 16</b>

**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF THE  
GARDEN CITY GROUP, INC. AS NOTICE, CLAIMS AND BALLOTING AGENT**

Upon the application (the "*Application*")<sup>2</sup> of the Debtors for entry of an order (this "*Order*"), pursuant to section 156(c) of the U.S. Code and Rules 2002-1(f) and 9013-1(m) of the Local Rules, authorizing the Debtors to employ and retain GCG as notice, claims and balloting agent in these chapter 11 cases, all as further described in the Application; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application being adequate and appropriate under the particular circumstances; and a hearing having been

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Atrium Corporation (4598); ACIH, Inc. (7822); Aluminum Screen Manufacturers, Inc. (6750); Atrium Companies, Inc. (2488); Atrium Door and Window Company – West Coast (2008); Atrium Door and Window Company of Arizona (2044); Atrium Door and Window Company of the Northeast (5384); Atrium Door and Window Company of the Northwest (3049); Atrium Door and Window Company of the Rockies (2007); Atrium Enterprises Inc. (6531); Atrium Extrusion Systems, Inc. (5765); Atrium Florida, Inc. (4562); Atrium Vinyl, Inc. (0120); Atrium Windows and Doors of Ontario, Inc. (0609); Champion Window, Inc. (1143); North Star Manufacturing (London) Ltd. (6148); R.G. Darby Company, Inc. (1046); Superior Engineered Products Corporation (4609); Thermal Industries, Inc. (3452); and Total Trim, Inc. (8042). The Debtors' main corporate address is 3890 W. Northwest Highway, Suite 500, Dallas, Texas 75220.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

held to consider the relief requested in the Application (the "**Hearing**"); and upon the First Day Declaration, the Johnson Declaration and the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Application is in the best interests of the Debtors' estates, their creditors and other parties in interest; and that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Application is granted to the extent provided herein.
2. The Debtors shall be, and hereby are, authorized to retain and employ GCG as their notice, claims and balloting agent in accordance with the terms and conditions set forth in the Services Agreement, attached hereto as Exhibit 1 and incorporated herein by reference, and Local Rule 2002-1(f). Upon the Debtors' request, GCG will assist the Debtors with any other additional services requested by the Debtors.
3. GCG is authorized to render services as set forth in the Application and the Services Agreement, including: (a) maintaining and updating the master mailing lists of creditors; (b) gathering data in conjunction with the preparation of the Debtors' schedules of assets and liabilities and statements of financial affairs; (c) tracking and administration of claims; (d) solicitation and balloting services; and (e) performing other administrative tasks pertaining to the administration of these chapter 11 cases, as may be requested by the Debtors or the Clerk's Office.
4. GCG is appointed as agent for the Clerk's Office and, as such, is designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and

directed to maintain official claims registers for each of the Debtors and to provide the Clerk's Office with a certified duplicate thereof as the Clerk's Office may direct.

5. GCG is authorized to provide noticing services in these chapter 11 cases to the United States Trustee for the District of Delaware, *provided, however*, that GCG shall be paid for such services by the Debtors' estates in accordance with the terms of the Services Agreement and this Order as if such services had been provided pursuant to the Services Agreement at the request of the Debtors.

6. Without further order of the Court, pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of GCG incurred pursuant to the Services Agreement are to be treated as an administrative expense of the Debtors' chapter 11 estates, and shall be paid by the Debtors in the ordinary course of business under the terms of the Services Agreement after the submission of an invoice in reasonable detail describing the basis for the fees and expenses requested to be paid thereto; *provided, however*, that the all invoices for payment shall be submitted to the United States Trustee for the District of Delaware (the "*U.S. Trustee*") and any statutory committee appointed these chapter 11 cases (a "*Committee*"); to the extent no objection is received from the Committee or the U.S. Trustee, the Debtors shall pay GCG's invoice without further order of the Court.

7. GCG shall follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk's Office and the Judicial Conference of the United States.

8. If GCG is unable to provide the services set forth in the Services Agreement, or the Services Agreement is terminated, GCG will immediately notify the Clerk's Office, the Debtors and Debtors' counsel and cause all original proofs of claim and computer information to be turned over to the Clerk's Office or another claims agent with the advice and consent of the

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Clerk's Office, the Debtors and Debtors' counsel, *provided, however*, that GCG shall be compensated for such transition services in accordance with the terms of the Services Agreement; *provided, further*, that GCG shall not be permitted to cease providing services to the Debtors without prior approval by the Court.

9. The indemnification provision included in the Services Agreement is approved subject to the following modifications:

- a. subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, GCG in accordance with the Services Agreement, for any Claim arising from, related to or in connection with GCG's performance of the services described in the Services Agreement;
- b. GCG shall not be entitled to indemnification, contribution or reimbursement pursuant to the Services Agreement for services other than those services provided under the Services Agreement, unless such services and the indemnification, contribution or reimbursement therefore is approved by the Court;
- c. notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person for any Claim to the extent that it is either (i) judicially determined (the determination having become final) to have arisen from that person's gross negligence, willful misconduct or breach of the Services Agreement or (ii) settled prior to a judicial determination as to that person's gross negligence, willful misconduct or breach of the Services Agreement, but determined by this Court, after notice and a hearing, to be a Claim for which that person should not receive indemnity, contribution or reimbursement under the terms of the Services Agreement as modified by this Order; and
- d. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, GCG believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution

and/or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the advancement of defense costs, GCG must file an application before this Court and the Debtors may not pay any such amounts to GCG before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by GCG for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify GCG.

10. The Debtors and GCG are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

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

Date: 1/21, 2010  
Wilmington, DE

  
United States Bankruptcy Judge

**Exhibit 1 to Exhibit A**

**Services Agreement**



The Garden City Group, Inc.

## BANKRUPTCY ADMINISTRATION AGREEMENT

This Bankruptcy Administration Agreement, dated as of December 4, 2009 (the "Agreement"), is between The Garden City Group, Inc., a Delaware corporation (the "Company"), and Atrium Companies, Inc. and its affiliated and subsidiary debtors (the "Clients").

The Clients desire to retain the Company to perform certain noticing, claims processing and balloting administration services for the Clients in their Chapter 11 cases anticipated to be filed in the United States Bankruptcy Court for the District of Delaware (such Court or such other Bankruptcy Court where said cases may actually be filed in lieu thereof, the "Bankruptcy Court"), and the Company desires to be so retained, in accordance with the terms and conditions of this Agreement.

The Clients shall file an application with the Bankruptcy Court seeking approval of the Agreement (the "Application"). If an order is entered approving such Application (the "Order"), any discrepancies between this Agreement, the Application and the Order shall be controlled by the Order.

In consideration of the mutual covenants herein contained, the parties hereby agree as follows:

1. Services. The Company agrees to provide the services necessary to perform the tasks specified in the pricing schedule that has been supplied to the Clients. Such services are hereinafter referred to as "Services." The Clients agree and understand that none of the Services constitute legal advice.

2. Payment for Services; Expenses.

2.1 Compensation. As full compensation for the Services to be provided by the Company, the Clients agree to pay the Company its fees as outlined in the pricing schedule that has been supplied to the Clients (subject to Bankruptcy Court approval in the event of an unresolved dispute). Billing rates may be adjusted from time to time by the Company in its reasonable discretion, although billing rates generally are changed on an annual basis. The Clients agree to pay the Company a retainer of \$35,000 (which may be replenished from time to time in advance of the commencement of any chapter 11 case), to be applied first against the pre-petition fees and expenses incurred by the Clients in connection with Services rendered by the Company and then against the first bill that will be rendered by the Company to the Clients for the post-petition fees and expenses incurred by the Clients in connection with Services rendered by the Company.

2.2 Expenses. In addition to the compensation set forth in Section 2.1, the Clients shall reimburse the Company for all out-of-pocket expenses reasonably incurred and documented by the Company in connection with the performance of the Services (subject to Bankruptcy Court determination in the event of an unresolved dispute). The out-of-pocket expenses will be billed on the expense (non-fee) portion of the Company's invoice to the Clients and may include, but are not limited to, postage, banking fees, brokerage fees, costs of messenger and delivery service, travel, filing fees, staff overtime

meal expenses and other similar expenses. In some cases, the Company may receive a rebate at the end of a year from a vendor.

2.3 Billing and Payment. Except as provided in Section 2.2, the Company shall bill the Clients for its fees and expenses on a monthly basis, and the Clients shall pay the Company within thirty (30) days of its receipt of each such bill in the ordinary course of business (subject to Bankruptcy Court approval in the event of an unresolved dispute). Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions), if any, as well as certain expenses such as postage must be paid at least three (3) business days in advance of those fees and expenses being incurred. Each of the Clients is jointly and severally liable for the Company's fees and expenses.

3. Term and Termination.

3.1 Term. The term of this Agreement shall commence on the date hereof and shall continue until performance in full of the Services, unless earlier terminated as set forth herein.

3.2 Termination.

(a) In the event of any material breach of this Agreement by either party hereto, either party may apply to the Bankruptcy Court for an order allowing termination of the Agreement. Grounds for termination include: (i) failure to cure a material breach within thirty (30) days after receipt of the notice by the non-breaching party or (ii) in the case of any breach which requires more than thirty (30) days to effect a cure, failure to commence and continue in good faith efforts to cure such breach, provided that such cure shall be effected no later than ninety (90) days after receipt of such notice of such breach. Waiver of any such default or material breach by either party hereto shall not be construed as limiting any right of termination for a subsequent default or material breach.

(b) The Company shall be entitled to an administrative claim for all fees and expenses outstanding at the time of termination (subject to Bankruptcy Court approval in the event of an unresolved dispute).

4. Independent Contractor. It is understood and agreed that the Company, through itself or any of its agents, shall perform the Services as an independent contractor. Neither the Company nor any of its employees shall be deemed to be an employee of the Clients. Neither the Company nor any of its employees shall be entitled to any benefits provided by the Clients to their employees, and the Clients will make no deductions from any of the payments due to the Company hereunder for state or federal tax purposes. The Company agrees that the Company shall be responsible for any and all taxes and other payments due on payments received hereunder by the Company from the Clients. Nothing in this Agreement requires the Clients to use the Company for any future work relating to the Services, and, in the event the Clients decide to use another party for such future work, the Company agrees to cooperate fully with the Clients to ensure a smooth transition to the new party.

5. Accuracy of Client Supplied Information. The Clients are responsible for the accuracy of all programs, data and other information they submit to the Company (including all information for schedule and statement preparation) and for the output of such information. The Company may undertake to place that data and information into certain systems and programs, including in connection with the generation of Schedules of Assets and Liabilities ("Schedules") and Statements of Financial Affairs ("Statements"), to the extent the Clients request that the Company assist in connection with the preparation thereof. The Company does not verify information provided by the Clients and, with respect to Schedules and Statements preparation, all decisions are at the sole discretion and direction of the Clients. All Schedules and Statements filed on behalf of, or by, the Clients are reviewed and ultimately approved by the Clients, and the Company bears no responsibility for the accuracy or contents therein.



6. Confidential Information.

6.1 Confidentiality. In connection with this Agreement, each of the Clients and the Company (as the case may be, the "Disclosing Party") may disclose to the Company or the Clients (as the case may be, the "Receiving Party") certain information (a) that is marked or otherwise identified in writing as confidential or proprietary information of the Disclosing Party ("Confidential Information") prior to or upon receipt by the Receiving Party; or (b) which the Receiving Party reasonably should recognize from the circumstances surrounding the disclosure to be Confidential Information. The Receiving Party (x) shall hold all Confidential Information in confidence and will use such information only for the purposes of fulfilling the Receiving Party's obligations hereunder and for no other purpose, and (y) shall not disclose, provide, disseminate or otherwise make available any Confidential Information to any third party other than for the purposes of fulfilling the Receiving Party's obligations hereunder, in either case without the express prior written permission of the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information pursuant to a validly issued subpoena or order of a court of competent jurisdiction.

6.2 Protection of Intellectual Property. The Clients acknowledge that the Company's intellectual property, including, without limitation, the Company's inventions (whether or not patentable), processes, trade secrets and know how are of ultimate importance to the Company. Accordingly, the Clients agree to use their best efforts to protect such intellectual property, and shall not, either during the term of this Agreement or subsequent to its termination, utilize, reveal or disclose any of such intellectual property. The Clients understand that the software programs and other materials furnished by the Company pursuant to this Agreement and/or developed during the course of this Agreement by the Company are the sole property of the Company. The term "program" shall include, without limitation, data processing programs, check printing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. The Clients further agree that any ideas, concepts, know-how or techniques relating to the claims management software used or developed by the Company during the course of this Agreement shall be the exclusive property of the Company.

6.3 Scope. The foregoing obligations in Sections 6.1 and 6.2 shall not apply to (a) information that is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Receiving Party; (b) information that is known by the Receiving Party prior to the time of disclosure by the Disclosing Party to the Receiving Party; (c) information that is obtained from a third party who, to the Receiving Party's knowledge, has the right to make such disclosure without restriction; (d) any disclosure required by applicable law; or (e) information that is released for publication by the Disclosing Party in writing. The obligations set forth under Sections 6.1 and 6.2 shall survive the termination of this Agreement.

7. Indemnification. The Clients, jointly and severally, hereby indemnify and hold harmless the Company and its directors, officers, employees, affiliates and agents against any Losses incurred by the Company arising out of or in connection with or related to (a) any gross negligence or willful misconduct by Clients, their employees, agents or representatives, or any misrepresentations made by such persons to third parties in connection with the Company's acts or omissions in connection with its rendition of the Services; (b) any breach of this Agreement by any of the Clients; or (c) any erroneous instructions or information provided to the Company by any of the Clients for use in providing the Services. Notwithstanding any provision in the Application or the Agreement to the contrary, the Clients have no obligation to indemnify the Company, or provide contribution or reimbursement to the Company, for any claim or expense that is either (a) judicially determined (the determination having become final) to have arisen from the Company's gross negligence or willful misconduct or (b) settled prior to a judicial determination as to the Company's gross negligence or willful misconduct, but determined by the Bankruptcy Court, after notice and a hearing, to be a claim or expense for which the Company should not

receive indemnity, contribution or reimbursement under the terms of the Application and this Agreement, as modified by the Order. If, before the earlier of (a) the entry of an order confirming a Chapter 11 plan in this case (that Order having become a final order no longer subject to appeal), and (b) the entry of an Order closing this Chapter 11 case, the Company believes that it is entitled to the payment of any amounts by the Clients on account of the Clients' indemnification, contribution and/or reimbursement obligations under this Agreement (as modified by the Order), including without limitation the advancement of defense costs, the Company must file an application therefore in the Bankruptcy Court, and the Clients may not pay any such amounts to the Company before the entry of an Order approving the payment.

8. Jurisdiction. This Agreement is subject to the approval of the Bankruptcy Court, and such Court shall retain jurisdiction over all matters regarding this Agreement.

9. Force Majeure. Whenever performance by the Company of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportational disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reason of any other matter beyond the Company'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.

10. Notice. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier. Any such notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in the United States mail, or, if sent by overnight courier, one business day after delivery to such courier, as follows: if to the Company, to The Garden City Group, Inc., 105 Maxess Road, Melville, New York 11747-3836, Attention: David Isaac, Chief Executive Officer; and if to the Clients, to Atrium Companies, Inc., 3890 West Northwest Highway, Suite 500, Dallas, Texas 75220, Attention: Philip J. Ragona, Senior Vice President, General Counsel and Secretary, with a copy to Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022, Attention: Joshua A. Sussberg, Esq.

11. Governing Law. This contract will be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws provisions).

12. Severability. All clauses and covenants contained in this Agreement are severable and in the event any of them are held to be invalid by any court, such clause or covenant shall be valid and enforced to the maximum extent as to which it may be valid and enforceable, and this Agreement will be interpreted as if such invalid clauses or covenants were not contained herein.

13. Assignment. This Agreement and the rights and obligations of the Company and the Clients hereunder shall bind and inure to the benefit of any successors or assigns thereto.


14. General. This Agreement supersedes and replaces any existing agreement entered into by the Company and the Clients relating generally to the same subject matter, and may be modified only in a writing signed by the Company and the Clients. The paragraph headings in this Agreement are included only for convenience, do not in any manner modify or limit any of the provisions of this Agreement and may not be used in the interpretation of this Agreement. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

**ATRIUM COMPANIES, INC.**  
(on behalf of and as a representative for the Clients)

By: \_\_\_\_\_  
Name: Philip J. Ragona  
Title: Senior Vice President, General  
Counsel & Secretary

**THE GARDEN CITY GROUP, INC.**

By:   
Name: Karen B. Shaer  
Title: Executive Vice President &  
General Counsel