

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

In re:	)	Chapter 11
)	
PALM HARBOR HOMES, INC., <u>et al.</u> , ¹	)	Case No. 10-____ (____)
)	
Debtors.	)	Joint Administration Pending
)	

**APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO
RETAIN AND EMPLOY BMC GROUP, INC. AS CLAIMS, NOTICING AND
BALLOTING AGENT AS OF THE PETITION DATE**

Palm Harbor Homes, Inc. (“Palm Harbor”) and its related debtors (collectively, the “Debtors”), as debtors and debtors in possession in the above-captioned cases, hereby file their Application for Entry of an Order Authorizing the Debtors to Retain and Employ BMC Group, Inc. as Claims, Noticing, and Balloting Agent as of the Petition Date (the “Application”). In support of this Application, the Debtors submit the Declaration of Tinamarie Feil, President of Client Services at BMC Group, Inc. (the “Feil Declaration”), attached hereto as Exhibit A, as well as the Declaration of Brian E. Cejka in Support of the Chapter 11 Petitions and the First Day Pleadings (the “Cejka Declaration”). In further support hereof, the Debtors respectfully state:

**I.
JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Application under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and this Application is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Palm Harbor Homes, Inc. (6634); Palm Harbor Albemarle, LLC (1014); Nationwide Homes, Inc. (4881); Palm Harbor Real Estate, LLC (8234); Palm Harbor GenPar, LLC (0198); and Palm Harbor Manufacturing, LP (0199). The location of the Debtors’ corporate headquarters and service address is: 15303 Dallas Parkway, Suite 800, Addison, Texas 75001.

2. The statutory predicates for the relief requested herein are 28 U.S.C. § 156(c), Rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”).

II. **BACKGROUND**

3. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Court”) commencing the above-captioned chapter 11 cases. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Cejka Declaration, filed concurrently herewith and fully incorporated by reference.²

4. The Debtors have continued in possession of their respective properties and have continued to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in these chapter 11 cases, and no committees have yet been appointed or designated.

III. **RELIEF REQUESTED**

6. By this Application, pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f) and Local Bankruptcy Rule 2002-1(f), the Debtors request entry of an order (the “Order”) authorizing them to employ and retain BMC Group, Inc. (“BMC”) as claims, noticing and

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

balloting agent (the “Claims Agent”) in these chapter 11 cases, as of the Petition Date, pursuant to the terms and conditions set forth in the engagement agreement between the Debtors and BMC dated November 15, 2010 and attached hereto as Exhibit B (the “Services Agreement”).

IV.
BASIS FOR RELIEF

7. The Debtors have thousands of creditors, potential creditors, and parties in interest to whom certain notices will be sent. The size of the Debtors’ creditor body makes it impracticable for the Clerk of the Court (the “Clerk”) to undertake, without assistance, the task of sending notices to creditors and other parties in interest. Pursuant to 28 U.S.C. § 156(c),³ this Court is authorized to utilize agents and facilities other than the Clerk for the administration of bankruptcy cases, including such matters as: (i) giving notice of the order for relief, the hearings and orders filed in the case, the meeting of creditors pursuant to section 341 of the Bankruptcy Code, and the setting of claims bar dates; (ii) providing record keeping and claims docketing and reconciliation; and (iii) mailing and tabulating ballots for the purposes of voting in chapter 11 cases. In addition, Local Bankruptcy Rule 2002-1(f) requires a debtor to file an application to retain a claims and noticing agent within ten (10) days of the Petition Date in all cases with more than 200 creditors.

8. As described more fully in the Cejka Declaration and the Debtors’ Petitions, the Debtors have more than 200 potential creditors. Accordingly, pursuant to Local Bankruptcy Rule 2002-1(f) and for the reasons set forth below, the Debtors submit this Application to engage BMC to act as Claims Agent.

³ 28 U.S.C. § 156(c) provides, in relevant part, that “[a]ny court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States.”

9. In consideration of the number of anticipated claimants and other parties in interest, the nature of the Debtors' businesses, and the scope of the tasks for which the Debtors will require the assistance of a claims noticing and balloting agent, the Debtors respectfully submit that the appointment of BMC is in the best interests of the Debtors' estates, their creditors, parties in interest, and this Court. The Debtors believe that BMC's assistance will expedite service of notices, streamline the claims administration process, and permit the Debtors to focus on their reorganization efforts.

10. Based on BMC's considerable experience in providing similar services in large chapter 11 cases, the Debtors believe that BMC is eminently qualified to serve as Claims Agent in these chapter 11 cases. Parties to these cases will benefit as a result of BMC's experience and cost-effective methods. BMC has been retained in numerous complex chapter 11 cases in this District, including GI Joe's, InPhonic, Chi-Chi's, Inc., Exide Technologies, Inc., J.L. French Automotive Castings, Inc., Musicland Holding Corp., Nobex Corp., OCA, Inc., Sea Containers, Ltd., WR Grace, Dewey Ranch Hockey, LLC, PT Holdings Company, Inc., and Barcalounger Corporation for identical or substantially similar services.

11. Specifically, as Claims Agent, BMC will undertake the actions and procedures provided in the Services Agreement including, but not limited to, the following:

- a. Prepare and serve those notices required in the bankruptcy cases;
- b. Receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy cases;
- c. Create and maintain the official claims register(s);
- d. Receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e);
- e. Maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy cases;

- f. Assist the Debtors and their counsel with the administrative management, reconciliation and resolution of claims;
- g. Print, mail and tabulate ballots for purposes of plan voting;
- h. Assist with the preparation of and maintenance of the Debtors' Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities;
- i. Assist with the production of reports, exhibits and schedules of information to be used by the Debtors or to be delivered by the Court, the Clerk's Office, the U.S. Trustee or third parties;
- j. Provide other technical and document management services of a similar nature requested by Debtors or the Clerk's office;
- k. Facilitate or perform distributions; and
- l. Assist the Debtors with all analyses and/or collections of avoidance actions pursuant to Chapter 5 of the Bankruptcy Code.

12. BMC has advised the Debtors of its willingness to perform the above-described services in accordance with the terms of the Services Agreement and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

13. For all of the foregoing reasons, the Debtors believe that the retention of BMC as Claims Agent is appropriate and in the best interests of the Debtors, their estates and their creditors.

14. As an administrative agent and an adjunct of the Court, the Debtors do not believe that BMC is a "professional person" whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under sections 330 and 331 of the Bankruptcy Code.

15. The Feil Declaration represents that BMC has conducted a thorough analysis of its contacts with each of the Debtors and the significant potential creditors and parties in interest in these chapter 11 cases. BMC has informed the Debtors that neither BMC nor any of its

personnel have any relationship with the Debtors that would impair BMC's ability to serve as Claims Agent.

V.
BMC'S COMPENSATION

16. BMC's compensation is set forth in the Services Agreement. The Debtors respectfully submit that such compensation is reasonable in light of the services to be performed by BMC as Claims Agent. Furthermore, the Debtors request authorization to compensate BMC for services rendered, without further order of this Court, upon the service by BMC of reasonably detailed monthly invoices by hand, overnight delivery, or email on: (i) the Debtors, 15303 Dallas Parkway, Suite 800, Dallas, Texas 75001 (Attn: Kelly Tacke) (ktacke@palmharbor.com); (ii) counsel to the Debtors, Locke Lord Bissell & Liddell LLP, 111 S. Wacker Dr., Chicago, Illinois 60606 (Attn: David W. Wirt and Aaron C. Smith) (dwirt@lockelord.com, asmith@lockelord.com), and Polsinelli Shughart PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801 (Attn: Christopher A. Ward) (cward@polsinelli.com); (iii) the Office of the United States Trustee (the "U.S. Trustee"), District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801; and (iv) counsel to any statutory committee(s) appointed in these cases (individually, a "Notice Party" and collectively, the "Notice Parties"); provided, however, that the Notice Parties shall have fifteen (15) days from the submission of each such invoice to object thereto, and the Court shall resolve any such objections.

17. As part of the overall compensation payable to BMC under the terms of the Services Agreement, the Debtors have agreed to certain indemnification obligations. The Services Agreement provide that the Debtors will indemnify BMC to the extent permitted by applicable law for any claim arising from, related to, or in connection with BMC's performance

of the services described in the Services Agreement. The Debtors request the Court's approval of the indemnification provisions in the Services Agreement, subject to the following clarifications:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, BMC, in accordance with the Services Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with BMC's performance of the services described in the Services Agreement;
- b. BMC shall not be entitled to indemnification, contribution, or reimbursement for services other than the claims agent services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are 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 or expense to the extent that it is either: (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of BMC's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Court's 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, BMC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Services Agreement, including without limitation the advancement of defense costs, BMC must file an application before this Court, and the Debtors may not pay any such amounts to BMC 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 payment by BMC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify BMC.

VI.
NOTICE

18. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Internal Revenue Service; (iii) the Office of the United States Attorney for the District of Delaware; (iv) the Securities and Exchange Commission; (v) the Debtors' thirty largest unsecured creditors on a consolidated basis; (vi) counsel to Textron, the Debtors' prepetition lender; (vii) counsel to the DIP Lender and the Buyer; and (viii) each of the Debtors' cash management banks. Notice of this Motion will be served in accordance with Local Bankruptcy Rule 9013-1(m). In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

VII.
NO PRIOR REQUEST

19. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter an Order in substantially the same form as that attached as Exhibit C, granting the relief requested herein; and (ii) provide such other relief as the Court deems appropriate and just.

Dated: Wilmington, Delaware
November 29, 2010

Palm Harbor Homes, Inc., et al.
Debtors

/s/ Brian E. Cejka
Name: Brian E. Cejka
Title: Chief Restructuring Officer
PALM HARBOR HOMES, INC.
15303 Dallas Parkway, Suite 800
Addison, TX 75001
Telephone: (972) 764-9319
Facsimile: (972) 764-9018

EXHIBIT A

Declaration of Tinamarie Feil

EXHIBIT B

Services Agreement

EXHIBIT C

Proposed Order

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

In re:	)	Chapter 11
)	
PALM HARBOR HOMES, INC., <u>et al.</u> , ¹	)	Case No. 10-____ (____)
)	
Debtors.	)	Joint Administration Pending
)	
	)	Related Docket No. _____

**ORDER AUTHORIZING THE DEBTORS TO RETAIN AND EMPLOY BMC GROUP,
INC. AS CLAIMS, NOTICING AND BALLOTING AGENT
AS OF THE PETITION DATE**

Upon the Application for Entry of an Order Authorizing the Debtors to Retain and Employ BMC Group, Inc. as Claims, Noticing, and Balloting Agent as of the Petition Date (the “Application”); and upon the Feil Declaration² and the Cejka Declaration, wherein it appears that BMC Group, Inc. (“BMC”) is not connected with the Debtors, their creditors, or other parties in interest, with respect to the matters upon which BMC is to be engaged; and the Court finding that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Application was due and proper under the circumstances; and it appearing that the relief requested in the Application is in the best interests of the Debtors, their estates and creditors; and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

1. The Application is granted.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Palm Harbor Homes, Inc. (6634); Palm Harbor Albemarle, LLC (1014); Nationwide Homes, Inc. (4881); Palm Harbor Real Estate, LLC (8234); Palm Harbor GenPar, LLC (0198); and Palm Harbor Manufacturing, LP (0199). The location of the Debtors’ corporate headquarters and service address is: 15303 Dallas Parkway, Suite 800, Addison, Texas 75001.

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

2. The Debtors are hereby authorized to retain and employ BMC as Claims Agent in these chapter 11 cases for the purposes set forth in the Application and the Services Agreement, attached to the Application as Exhibit B, effective as of the Petition Date.

3. The indemnification provisions of the Services Agreement are approved, including the following clarifications:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, BMC, in accordance with the Services Agreement and to the extent permitted by applicable law, for any claim arising from, related to, or in connection with BMC's performance of the services described in the Services Agreement;
- b. BMC shall not be entitled to indemnification, contribution, or reimbursement for services other than the claims agent services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are 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 or expense to the extent that it is either: (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of BMC's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Court's 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, BMC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Services Agreement, including without limitation the advancement of defense costs, BMC must file an application before this Court, and the Debtors may not pay any such amounts to BMC 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 payment by BMC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify BMC.

4. BMC shall continue to serve as Claims Agent in these chapter 11 cases, and shall continue to be paid for its services in this capacity under the terms set forth herein, in the Application and in the Services Agreement, until relieved of such duties by order of the Court.

5. The Debtors are hereby authorized to pay, without further order of this Court, the reasonable fees and expenses of BMC incurred in connection with the services rendered to the Debtors as Claims Agent under the terms set forth herein, in the Application and in the Services Agreement, from the assets of the Debtors' estates, upon BMC's submission, on a monthly basis, of reasonably detailed invoices to the Notice Parties; provided, however, that the Notice Parties shall have 15 days from the submission of each such invoice to object thereto, and the Court shall resolve any such objections.

6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

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

Dated: Wilmington, Delaware
_____, 2010

United States Bankruptcy Judge

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

In re:	)	Chapter 11
)	
PALM HARBOR HOMES, INC., <u>et al.</u> , ¹	)	Case No. 10-____ ()
)	
Debtors.	)	Joint Administration Pending
)	

**DECLARATION OF TINAMARIE FEIL IN SUPPORT OF APPLICATION FOR
ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO RETAIN AND EMPLOY
BMC GROUP, INC. AS CLAIMS, NOTICING AND BALLOTING
AGENT AS OF THE PETITION DATE**

I, TINAMARIE FEIL, hereby make this declaration (the "Declaration") pursuant to 28 U.S.C. § 1476, and state:

1. I am the President of Client Services at BMC Group, Inc. ("BMC")², a firm whose services include a specialization in the administration of large bankruptcy cases, with offices located at 875 Third Avenue, 5th Floor, New York, NY 10022.

2. I submit this declaration (the "Declaration") in support of the *Application for Entry of an Order Authorizing the Debtors to Retain and Employ BMC Group, Inc. as Claims, Noticing and Balloting Agent as of the Petition Date* (the "Application") pursuant to the terms and conditions set forth in the Application and the services agreement attached to the Application as Exhibit B (the "Service Agreement"). Except as otherwise noted, I have personal knowledge of the matters set forth herein.³

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Palm Harbor Homes, Inc. (6634); Palm Harbor Albemarle, LLC (1014); Nationwide Homes, Inc. (4881); Palm Harbor Real Estate, LLC (8234); Palm Harbor GenPar, LLC (0198); and Palm Harbor Manufacturing, LP (0199). The location of the Debtors' corporate headquarters and service address is: 15303 Dallas Parkway, Suite 800, Addison, Texas 75001.

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

³ Certain of the disclosures in this Declaration relate to matters within the knowledge of other professionals at BMC and are based on information provided by them.

3. BMC is one of the country's leading chapter 11 administrators with vast experience in noticing, claims processing, claims reconciliation and making distributions. In particular, BMC has acted or currently is acting as notice agent, claims agent, and/or balloting agent in the following cases: GI Joe's, InPhonic, Chi-Chi's, Inc., Exide Technologies, Inc., J.L. French Automotive Castings, Inc., Musicland Holding Corp., Nobex Corp., OCA, Inc., Sea Containers, Ltd., WR Grace, Dewey Ranch Hockey, LLC, PT Holdings Company, Inc., and Barcalounger Corporation. Thus, BMC is well-qualified to provide experienced services as noticing, claims, and balloting agent in these chapter 11 cases (the "Cases").

4. The services that BMC proposes to render as Claims Agent are set forth in the Application and are incorporated herein by reference.

5. The compensation arrangement provided in the Services Agreement and the Application, including BMC's hourly rates, is consistent with and typical of arrangements entered into by BMC and other such firms with respect to rendering similar services in other chapter 11 cases.

6. Regarding the reimbursement of actual and necessary expenses, it is BMC's policy to charge its clients for direct expenses incurred in connection with providing client services. These expenses and charges include postage, long distance telephone charges, hand delivery and other delivery charges, travel expenses, computerized research, transcription costs, and third party photocopying charges.

7. Subject to the terms and conditions of the Application and the Services Agreement, the Debtors will pay BMC's fees and expenses upon the submission of monthly invoices by BMC summarizing, in reasonable detail, the services for which compensation is sought.

8. In connection with its appointment as Claims and Noticing Agent, BMC represents, among other things, that:

(a) BMC will not consider itself employed by the United States and shall not seek any compensation from the United States in its capacity as Claims and Noticing Agent in these chapter 11 cases;

(b) BMC waives any rights to receive compensation from the United States;

(c) BMC will not be an agent of the United States and will not act on behalf of the United States; and

(d) BMC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases.

9. To the best of my knowledge, BMC: (i) does not have any adverse connection with the Debtors, the Debtors' creditors or any other party in interest or their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, and (ii) does not hold or represent an interest adverse to the Debtors' estates.

10. To the best of my knowledge, BMC is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code.

11. To check and clear potential conflicts of interest in these cases, BMC searched its client database and performed reasonable diligence to determine whether it had any relationships with the entities provided by the Debtors. At this time, BMC is not aware of any relationship that would present a disqualifying conflict of interest. To the extent BMC discovers any relationship, it will make appropriate disclosures to the Court in a supplemental declaration.

12. To the best of my knowledge and belief, and except as described herein, neither I nor BMC, nor any officer or director of BMC, has any connection or relationship with the Debtors, their creditors, or any other parties in interest in these Cases (or their attorneys or accountants) that would conflict with the scope of BMC's retention or would create any interest adverse to the Debtors' estates, any unsecured creditors, or any other party in interest. BMC has and will continue to represent clients that may be parties in interest in these Cases in matters unrelated to these Cases and has had and will continue to have relationships in the ordinary course of the business with certain professionals involved in these Cases in connection with matters unrelated to these Cases.

13. There is no agreement or understanding between BMC and any other person or entity for sharing compensation received or to be received for services rendered by BMC in connection with these chapter 11 cases. BMC will comply with all requests of the Clerk of the Bankruptcy Court and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

IN ACCORDANCE WITH 28 U.S.C. § 1746, I DECLARE UNDER PENALTY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Dated: November 16, 2010



TINAMARIE FEIL
President of Client Services
BMC Group, Inc.

AGREEMENT FOR SERVICES

This Agreement dated as of ^{November 15} ~~October~~, 2010, is entered between Palm Harbor Homes, Inc. ("Customer") and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below.

TERMS AND CONDITIONS

I. SERVICES

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, BMC agrees to provide services as follows: (a) assisting the Customer, Counsel and Office of the Clerk with noticing and claims docketing and (b) assisting Customer with the compilation, administration, evaluation and production of documents and information necessary to support a restructuring effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy cases; (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy cases; (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy cases; (6) assist Customer and Counsel with the administrative management, reconciliation and resolution of claims; (7) print, mail and tabulate ballots for purposes of plan voting; (8) assist with the preparation and maintenance of Customer's Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities, (9) assist with the production of reports, exhibits and schedules of information or use by the Customer, Counsel or to be delivered the Court, the Clerk's Office, the U.S. Trustee or third parties; and (10) provide other technical and document management services of a similar nature requested by Customer or the Clerk's office; (11) facilitate or perform distributions, and (12) assist Customer with all analyses and/or collections of avoidance actions pursuant to Chapter 5 of the United States Bankruptcy Code.

II. TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and programming support for Customer requested reports, program modifications, database modification, and/or other features.

III. PRICES, CHARGES AND PAYMENT

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in effect on the day such services and/or supplies are provided to the Customer, in accordance with the Fee Schedule annexed hereto.
- B. BMC shall be provided with an advance payment retainer of \$15,000.00. BMC will be compensated at its stated rates for services rendered and reimbursed for necessarily incurred expenses.

- C. Wire transfer information for the transmission of payments is as follows:

Bank Name -	Wells Fargo Bank
Address -	933 3 rd Avenue, Seattle, WA 98104
ABA/Routing # -	121000248
Account Name -	BMC Group, Inc.
Account # -	0033022633

- D. BMC raises its rates from time to time and generally does so each January.
- E. Customer agrees to pay BMC for any necessarily incurred out-of-pocket reasonable expenses for transportation, lodging, meals and related items.
- F. In connection with noticing services, upon BMC's request, Customer agrees to prepay BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.
- G. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable upon its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) interest on the amount unpaid, accruing from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. Interest shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.
- H. BMC will look only to the Customer for payment of invoices and in no event shall Counsel be liable for any of BMC's invoices in connections with this Services Agreement.

IV. WARRANTY

The BMC warranty under the Agreement shall be limited to the re-running, at its expense, of any inaccurate reports, provided that such inaccuracies were caused solely as a result of BMC performance hereunder and provided further that BMC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to BMC within the prescribed time limit Customer is liable for all charges. Customer agrees that the foregoing constitutes the exclusive remedy available with respect to inaccurate reports.

V. RIGHTS OF OWNERSHIP

- A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.
- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed during the course of its Agreement by BMC shall be exclusive property of BMC.

- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall immediately deliver to Customer at Customer's sole expense, any or all of the non-proprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer. Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.
- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

VI. NON-SOLICITATION

Customer agrees that it shall not, directly or indirectly, solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless mutually agreed upon by both parties.

VII. CONFIDENTIALITY

- A. BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section VII "Confidentiality" (the "Confidential Information"). BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to, keep all information with respect to BMC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

VIII. TERMINATION

- A. This Agreement shall remain in force until terminated by Customer, or, by BMC upon thirty (30) days' prior written notice to the other party.
- B. In the event that this contract is terminated, regardless of the reason for such termination, BMC shall cooperate with Customer to orderly transfer to Customer or its designee (or destroy, at Customer's direction) data, records and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

IX. SYSTEM IMPROVEMENTS

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operations procedures, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the BMC data center serving the Customer.

X. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

Except with respect to breaches under Section VII "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. Except with respect to breaches under Section VII "Confidentiality" above, BMC shall be without liability to Customer with respect to any performance or non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. Except with respect to breaches under Section VII "Confidentiality" above, in no event shall liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed or billable to Customer for the portion of the particular work which gave rise to the loss or damage. Except with respect to breaches under Section VII "Confidentiality", in no event shall BMC 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.

XI. NOTICES

All notices in connection with this Agreement shall be given or made upon the respective parties in writing by facsimile or overnight courier and shall be deemed as given, if by facsimile, on the business day immediately following confirmed transmission, or if by courier, on the day it is delivered by such courier to the appropriate address set forth below:

BMC Group, Inc. Attn: Tinamarie Feil 600 1st Avenue Suite 300 Seattle, WA 98104 Telephone 206.516.3300 Fax 206.516.3304	Palm Harbor Homes, Inc. Attn: Ms. Kelly Tacke Executive Vice President and Chief Financial Officer 15303 Dallas Parkway, Ste. 800 Addison, TX 75001 E-mail: ktacke@palmharbor.com
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Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XII. APPLICABLE LAW

This agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

XIII. 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 and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that it has the authority to enter into this Agreement, may be subject to bankruptcy court approval, 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. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer bankruptcy cases, the term of the order shall govern.

XIV. 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 by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BMC Group, Inc. By: <u><i>Tinamarie Feil</i></u> Name: Tinamarie Feil Title: President, Client Services <u>November 15</u> Date: October __, 2010	Palm Harbor Homes, Inc. By: <u><i>Kelly Tacke</i></u> Name: Kelly Tacke Title: Executive VP and Chief Financial Officer <u>November 15</u> Date: October __, 2010
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