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

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In re : **Chapter 11**  
CRABTREE & EVELYN, LTD., : **Case No. 09-14267 (BRL)**  
Debtor. :  
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**DEBTOR’S APPLICATION FOR ENTRY OF AN ORDER UNDER  
BANKRUPTCY CODE SECTIONS 327, 328 AND 330 AUTHORIZING RETENTION  
AND EMPLOYMENT OF CLEAR THINKING GROUP LLC AS FINANCIAL  
ADVISOR TO THE DEBTOR, *NUNC PRO TUNCTO* TO THE PETITION DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The debtor and debtor in possession in the above-captioned case (the “Debtor”)<sup>1</sup> hereby applies (the “Application”) for entry of an order under sections 327(a), 328(a) and 330 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), (i) authorizing the Debtor to retain and employ Clear Thinking Group LLC (“Clear Thinking”) as financial advisor to the Debtor, effective as of the Petition Date (as defined

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 1685.

herein), (ii) approving the terms and conditions under which Clear Thinking will be retained and compensated effective as of the Petition Date, and (iii) granting related relief. In support of this Application, the Debtor relies upon the Declaration of Lee A. Diercks (the “Diercks Declaration”), attached hereto as **Exhibit A**. In further support of this Application, the Debtor respectfully states as follows:

## **BACKGROUND**

### **General**

1. On the date hereof (the “Petition Date”), the Debtor commenced with this Court a voluntary case under the Bankruptcy Code. The Debtor is authorized to operate its businesses and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors’ committee has been appointed in this chapter 11 case.

### **The Debtor’s Businesses**

2. Crabtree & Evelyn has evolved from a small, entrepreneurial business, to a company with worldwide manufacturing and distribution capabilities, worldwide distribution channels and 126 retail locations in the United States, making it well-known and respected for its English-style elegance. Through a multi-channel sales strategy, including sales through retail, wholesale, export, affiliate and internet channels, the Debtor manufactures and distributes its products worldwide.

3. Founded as a purveyor of fine soaps from around the world, products were first sold under the Crabtree & Evelyn name starting in approximately 1972.<sup>2</sup> During nearly four decades Crabtree & Evelyn has expanded its product offerings from fine soaps to include

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<sup>2</sup> The name of the Debtor is inspired from (i) the crabapple tree, the original species from which all cultivated apple trees have derived, and (ii) John Evelyn, the seventeenth century renaissance Englishman, who wrote one of the first works on conservation of forests and timber.

personal care products and related accessories, fragrances, comestibles (*i.e.*, food products including cookies, teas and jams), products for the home and gift arrangements. The Debtor also sells Vera Bradley (purses and related accessories) products in its retail store locations. Crabtree & Evelyn manufactures and distributes more than twenty-five product lines, including LaSource®, Gardeners, India Hicks Island Living® and Naturals and its products have been frequently mentioned in numerous magazines, including Vogue, Glamour, and Lucky. In 1977, Crabtree & Evelyn opened its first retail store, and its retail business has gradually expanded to include a manufacturing and distribution facility, as well as 126 stores in the United States. In 1996, Kuala Lumpur Kepong Berhad purchased 100 percent of the equity of the Debtor. The Debtor is incorporated in Connecticut, and its headquarters, distribution center, manufacturing facility, and warehouse are located in Woodstock, Connecticut.

4. The Debtor's primary assets include inventory, contract rights, intellectual property rights, and accounts receivable for goods sold. The Debtor also owns its headquarters, manufacturing facility, distribution center and warehouse in Woodstock, Connecticut. In addition, the Debtor leases a significant number of retail stores located in 34 states.

#### **JURISDICTION**

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **RELIEF REQUESTED**

6. By this Application, the Debtor respectfully requests entry of an order, pursuant to sections 327(a), 328(a) and 330 of the Bankruptcy Code and Bankruptcy Rule 2014, (i) authorizing the Debtor to retain and employ Clear Thinking as financial advisor to the Debtor

effective as of the Petition Date, (ii) approving, effective as of the Petition Date, the terms and conditions contained in that certain amended and restated letter agreement, dated May 18, 2009 (the “Engagement Agreement”), under which Clear Thinking will be retained and compensated at the expense of the Debtor’s estate, and (iii) granting related relief. A copy of the Engagement Agreement is annexed as **Exhibit B**.<sup>3</sup>

### **BASIS FOR RELIEF REQUESTED**

7. Under section 327 of the Bankruptcy Code, a debtor in possession may employ one or more professionals, that do not hold or represent an interest adverse to the estate and that are disinterested persons, to assist the debtor-in-possession in carrying out its duties under the Bankruptcy Code. 11 U.S.C. § 327(a). Section 328 of the Bankruptcy Code provides, in pertinent part, that under section 327 of the Bankruptcy Code a professional may be employed “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a).

8. Bankruptcy Rule 2014 requires that an application for retention of a professional person include:

[S]pecific facts showing the necessity for the employment, the name of the person 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 person'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).

9. By this Application, the Debtor requests that the Court approve the employment and compensation arrangements described in the Engagement Agreement pursuant to sections

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<sup>3</sup> Any statements contained herein concerning the terms and conditions of the Engagement Agreement are qualified entirely by reference to the Engagement Agreement. In the event of a conflict between this Application and the Engagement Agreement, the Engagement Agreement shall control.

327 and 328 of the Bankruptcy Code, with fees and expenses incurred subject to review for reasonableness under section 330 of the Bankruptcy Code. The employment arrangements contained in the Engagement Agreement are beneficial to the Debtor's estates and the compensation arrangements provide certainty and proper inducement for Clear Thinking Group LLC to act expeditiously and prudently with respect to the matters for which it will be employed.

### **Necessity**

10. The Debtor engaged Clear Thinking as its financial advisor under Engagement Agreement to actively lead and manage the Chapter 11 case, to, among other things, assist the Debtor (i) in the preparation of necessary schedules, budgets and court related reporting, (ii) with Court required records retention processes, (iii) in the preparation of a bankruptcy reorganization plan, and (iv) with other agreed upon tasks as required by the Debtor. In sum, pursuant to the Engagement Agreement, the Debtor has engaged Clear Thinking as its financial advisor to provide financial advisory services in connection with the Debtor's bankruptcy case and related financial matters as to which the Debtor and Clear Thinking may agree in writing during the term of this Engagement Agreement.

11. The Debtor seeks to retain Clear Thinking to act as the Debtor's financial advisor subsequent to the Petition Date because Clear Thinking has substantial knowledge of the Debtor's financial and its operational condition, which further enable Clear Thinking to advise and perform its services under the Engagement Agreement post-petition. As a result, the Debtor believes that Clear Thinking is well qualified to perform these services and represent the Debtor's interests in its Chapter 11 case.

12. It is necessary that the Debtor employ Clear Thinking to render the foregoing professional services. The Debtor believes that the services will not duplicate the services that other professionals will be providing the Debtor in this case.

**a. Clear Thinking's Qualifications**

13. Established in 2001, Clear Thinking has advised companies and creditors in numerous distressed situations, both in and out of bankruptcy proceedings. Clear Thinking clients include companies, creditors, corporate parents, and financial sponsors, as well as acquirers of troubled assets. Clear Thinking has participated in many restructurings and liquidations for retail clients including One Price Clothing, Inc., Market Antiques & Home Furnishing, Inc., Prints Plus, Inc., Bag'n Baggage, Inc., Boot Town & Western Wearhouse LTD, Copeland Sports, Inc., The Parent Company, Inc., Lillian Vernon, Inc., Rag Shop, Inc., Barbeques Galore, Inc., and Bachrach Acquisition, LLC. Clear Thinking has a wealth of experience of providing services in retail Chapter 11 cases and has an excellent reputation as a result of many years of quality services it has rendered on behalf of debtors throughout the United States.

14. As described above, the Debtor retained Clear Thinking on May 18, 2009 to serve as its financial advisor in connection with its financial restructuring. As a result, Clear Thinking has developed extensive knowledge of the Debtor's business, operations and financial condition.

**b. Services to be Provided by Clear Thinking**

15. The parties have entered into the Engagement Agreement, which governs the relationship between Clear Thinking and the Debtor. The terms and conditions of the Engagement Agreement were negotiated, and reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement. To date, Clear Thinking has

provided, and/or will provide on an on going-forward basis upon the Court's approval of this Application, the following services:

- (a) Assist in the evaluation of the Debtor's business and prospects;
- (b) Assist in the development of the Debtor's Chapter 11 plan;
- (c) Assist in the development of financial data and presentations to the Debtor's Board of Directors, secured lender, landlords, various creditors, the Court and other third parties;
- (d) Assist with the preparation of necessary schedules, budgets and court related reporting;
- (e) Analyze various liquidation scenarios and potential impact of these scenarios on the recoveries of those stakeholders impacted by the Debtor's partial or full liquidation;
- (f) Participate in negotiation among the Debtor and its creditors, suppliers, lessors, landlords and other parties in interest;
- (g) Assist in arranging debtor in possession financing for the Debtor, as requested;
- (h) Provide expert witness testimony concerning and of the subjects encompassed by Clear Thinking's services;
- (i) Assist the Debtor in preparing marketing materials in conjunction with the sale or liquidation of some or all of the Debtor's assets; and
- (j) Provide such other advisory services as customarily provided in connection with these proceedings under Chapter 11 of the Bankruptcy Code.

**c. Disclosure Concerning Conflicts of Interest**

18. To the best of the Debtor's knowledge, information and belief, and based entirely and in reliance upon the Diercks Declaration: (a) Clear Thinking is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code and referenced by section 328 of the Bankruptcy Code, and holds no interest materially adverse to the Debtor, its creditors, and shareholders for the matters for which Clear Thinking is to be employed; and (b) Clear Thinking has no connection to the Debtor, its

creditors, shareholders or related parties herein except as disclosed in the Diercks Declaration. Moreover, the retention and employment of Clear Thinking is necessary and in the best interests of the Debtor, its estate, creditors and equity interest holders.

19. Also to the best of the Debtor’s knowledge, information and belief, and based entirely and in reliance upon the Diercks Declaration: (i) to the best of Lee Diercks’ knowledge, information and belief, none of Clear Thinking’s past or current engagements would or does appear to create an interest materially adverse to the interests of the Debtor, creditors, or equity security holders in this case and, as such the Debtor believes that Clear Thinking is disinterested and holds no materially adverse interest as to the matters upon which they are to be retained; and (ii) to the extent Clear Thinking discovers any facts bearing on the matters described herein during the period of Clear Thinking’s retention, it will supplement the information contained in the Diercks Declaration.

### **Compensation**

20. As set forth in the Engagement Agreement, the Debtor and Clear Thinking agreed to the following terms of compensation:

- (a) **Retainer Fee**: In addition to the other fees provided for within the Engagement Agreement, upon the execution of the Engagement Agreement, the Debtor paid Clear Thinking a \$100,000 retainer prior to the Petition Date for postpetition work. The Debtor also agreed to pay Clear Thinking for all pre-petition services provided at the Hourly Rate, as defined hereafter, and pay for all pre-petition expenses incurred prior to the filing its petition in the bankruptcy court;
- (b) **Hourly Fees**: Clear Thinking’s fees are based on the hours charged at its hourly rates (“Hourly Rates”), which currently are:

Partner	\$450.00
Managing Director	\$400.00
Manager	\$350.00
Consultant	\$275.00
Analyst	\$150.00



Administrative \$75.00

- (c) Cash Expenses: In addition to the other fees provided for within the Engagement Agreement, the Debtor shall pay directly or reimburse Clear Thinking for all reasonable out-of-pocket expenses incurred in connection with its assignments under the Engagement Agreement, such as travel, lodging, postage, telephone, courier services, copying, conferences calls, and facsimile charges. The Debtor will also pay for all legal requirements and actions regarding the bankruptcy case. All such billings will be in accordance with standard Bankruptcy Court practices.

21. The fees described above are consistent with Clear Thinking's normal and customary billing practices for cases of this size and complexity, which requires the level and scope of services outlined in the Engagement Agreement.

22. The Debtor believes that the fee arrangements set forth in the Engagement Agreement are reasonable under the standards set forth in section 330 of the Bankruptcy Code.

23. Pursuant to sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, Clear Thinking will apply to the Court for the interim and final allowance of compensation and reimbursement of expenses as a professional person pursuant to, and subject to the standard of review of, Section 330 of the Bankruptcy Code, the Bankruptcy Rules and applicable local rules and orders and not subject to any other standard of review under section 330 of the Bankruptcy Code.

#### **Indemnification and Contribution Provisions**

24. As set forth more fully in the Engagement Agreement, subject to the Court's approval after the filing of fee applications(s) on notice to the U.S. Trustee, the Debtor agreed to indemnify, hold harmless and defend Clear Thinking against claims, liabilities, losses, damages and reasonable expenses, including reasonable legal fees, relating to or arising out of the engagement of Clear Thinking by the Debtor except for any such losses, claims, damages or

liabilities due to the gross negligence, willful misconduct, breach of fiduciary duty, bad faith and, self-dealing of Clear Thinking.

**NOTICE**

25. The Debtor has served notice of this Application on (i) the U.S. Trustee (Attn: Serene Nakano, Esq.), (ii) SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman, Esq.) as counsel for Kuala Lumpur Kepong Berhad, and (iii) the Debtor's 40 largest unsecured creditors. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

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

WHEREFORE, the Debtor respectfully requests that this Court enter an order, filed herewith, (i) authorizing the Debtor to retain and employ Clear Thinking as financial advisor to the Debtor *nunc pro tunc* to the Petition Date, (ii) approving the terms and conditions contained in the Engagement Agreement *nunc pro tunc* and (iii) granting related relief.

Dated: New York, New York  
July 1, 2009

By: /s/ Stephen W. Bestwick  
Stephen W. Bestwick, Acting President

**EXHIBIT A**

See Attached

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

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: **Chapter 11**  
: **Case No. 09-14267 (BRL)**  
: **Debtor.**  
: **Case No. 09-14267 (BRL)**  
: **Debtor.**  
----- X

**AFFIDAVIT OF LEE A. DIERCKS IN SUPPORT OF DEBTOR’S APPLICATION  
FOR ENTRY OF AN ORDER UNDER BANKRUPTCY CODE SECTIONS 327, 328 AND  
330 AUTHORIZING RETENTION AND EMPLOYMENT OF  
CLEAR THINKING GROUP LLC AS FINANCIAL ADVISOR TO THE DEBTOR,  
NUNC PRO TUNC TO THE PETITION DATE**

I, Lee A. Diercks, hereby declare under penalty of perjury as follows:

1. I am a Partner of Clear Thinking Group LLC (“Clear Thinking”) a consulting firm that specializes in corporate restructuring, operations improvements, litigation analytics, valuations, liquidation and asset sales, case management services and maintains offices at 401 Towne Centre Drive, Hillsborough, New Jersey 08844. I have read the Application for an Order pursuant to Sections 327(a), 328 and 330 of the Bankruptcy Code authorizing the employment of Clear Thinking as financial advisors to the Debtor, executed by Stephen W. Bestwick on behalf of Crabtree & Evelyn, Ltd., the above captioned debtor and debtor in possession (the “Debtor”), and submit this affidavit in support thereof.

**Clear Thinking’s Qualifications**

2. Clear Thinking is recognized for its expertise in providing financial advisory services in financially distressed situations, including advising debtors, creditors and other constituents in Chapter 11 proceedings and serving as investment bankers in numerous cases.

3. I have considerable expertise with Chapter 11 restructuring, asset liquidation,

sale of distressed assets, and other distressed company circumstances, advising both debtors and creditors. Retail advisory assignments in which Clear Thinking and I have been actively involved include, among others: One Price Clothing, Inc., Market Antiques & Home Furnishing, Inc., Prints Plus, Inc., Bag'n Baggage, Inc., Boot Town & Western Wearhouse LTD, Copeland Sports, Inc., The Parent Company, Inc., Lillian Vernon, Inc., Rag Shop, Inc., Barbeques Galore, Inc., and Bachrach Acquisition, LLC.

4. My duties as Partner with respect to Clear Thinking's engagement to represent the Debtor include, among other things, strategic advice, assistance with the negotiation of a DIP facility, development of a DIP loan budget, operational improvements, participation in negotiations among the Debtor and its creditors, suppliers, and other parties in interest, assistance to the Debtor in reviewing the terms, conditions and impact of any proposed full or partial liquidation of the Debtor's assets, advice and assistance to the Debtor's retail operations and participation in presentations to the Debtor's pre-petition and post-petition secured lender(s).

5. As described in the Application, since May 18, 2009, Clear Thinking has rendered financial advisory services to the Debtor in connection with its restructuring efforts. Clear Thinking has become familiar with the Debtor's operations and is well qualified to advise the Debtor in connection with such financial and restructuring matters in a cost-effective and efficient manner.

#### **Disinterestedness of Professionals**

6. Based on the results of the conflict search conducted to date by Clear Thinking's compliance department, as described more fully below, and based on my understanding of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, and the

practice being followed in other Chapter 11 cases, to the best of my knowledge, neither I, Clear Thinking, nor any member or employee thereof, insofar as I have been able to ascertain, has any connection with the Debtor, its creditors, or other parties in interest (as reasonably known to us), its attorneys, the U.S. Trustee, or any person employed in the Office of the U.S. Trustee, except as disclosed or otherwise described herein.

7. To the best of my knowledge, Clear Thinking 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.

8. As part of its diverse practice, Clear Thinking appears in numerous cases, proceedings, and transactions involving many different attorneys, accountants, investment bankers, and financial consultants, some of which may represent claimants and parties-in-interest in the chapter 11 case. Further, Clear Thinking or companies in which it has investments has in the past, and may in the future, be represented by several attorneys and law firms in the legal community, some of whom may be involved in this proceedings. In addition, Clear Thinking has in the past and will likely in the future be working with or against other professionals involved in this case in matters unrelated to the Debtor or this Chapter 11 case. Based on our current knowledge of the professionals involved, and to the best of my knowledge, none of these business relations constitute interests materially adverse to the Debtor herein in matters upon which Clear Thinking is to be employed.

9. Clear Thinking has represented, and will in the future represent, many different clients with various business interests in numerous industries. These clients are often referred to Clear Thinking by intermediaries such as lawyers, investment bankers, lenders and accountants.

10. Clear Thinking has undertaken a thorough review of its computerized database that contains the names of the clients and other parties of interest with respect to certain matters. Clear Thinking has run the following parties through its conflicts system: a) the Debtor; b) the Debtor's current officers and directors; c) the Debtor's secured lenders; and d) the debtor's forty (40) largest unsecured creditors. Clear Thinking's investigation has not revealed any actual or potential conflict of interest with respect to Clear Thinking's proposed representation of the Debtor. However, out of an abundance of caution, CTG makes the following disclosures regarding various unsecured creditors:

- a. CIT Commercial Finance (CIT) – Clear Thinking has performed work for borrowers of CIT, and has provided financial advisory services directly to CIT, all in matters unrelated to the Debtor.
- b. Wells Fargo Trade Capital – Clear Thinking has performed work for borrowers of Wells Fargo Trade Capital, and has provided financial advisory services directly to Wells Fargo Trade Capital, all in matters unrelated to the Debtor.
- c. Wells Fargo Business Credit – Clear Thinking has performed work for borrowers of Wells Fargo Business Credit, and has provided financial advisory services directly to Wells Fargo Business Credit, all in matters related to the Debtor.

Clear Thinking agrees to update the disclosure information from time to time, if and when additional parties with an interest in or a relationship with the Debtor are identified by the Debtor, in writing, to Clear Thinking.

11. Clear Thinking is confident that: a) it does not represent, and will not represent

any parties-in-interest in connection with this Chapter 11 case; and b) any relationship it may have with any party-in-interest will not interfere with or impair Clear Thinking's representation of the Debtor in this Chapter 11 case. If this Court approves the proposed employment of Clear Thinking by the Debtor, Clear Thinking will not accept any engagement or perform any services for any entity or person other than the Debtor in this situation.

**Professional Services to be Rendered and Compensation.**

12. The parties have entered into an agreement that would govern the relationship between Clear Thinking and the Debtor, a copy of which is attached as "Exhibit B" to Application (the "Engagement Agreement"). Clear Thinking has provided, and/or will provide the financial advisory services (the "Financial Advisory Services") as Clear Thinking and the Debtor shall deem appropriate and feasible in order to advise the Debtor in the course of the Chapter 11 case, including, but not limited to the following:

- (a) Assist in the evaluation of the Debtor's business and prospects;
- (b) Assist in the development of the Debtor's Chapter 11 plan;
- (c) Assist in the development of financial data and presentations to the Debtor's Board of Directors, secured lender, landlords, various creditors, the Court and other third parties;
- (d) Assist with the preparation of necessary schedules, budgets and court related reporting;
- (e) Analyzing various liquidation scenarios and potential impact of these scenarios on the recoveries of those stakeholders impacted by the Debtor's partial or full liquidation;
- (f) Participate in negotiation among the Debtor and its creditors, suppliers, lessors, landlords and other parties in interest;
- (g) Assist in arranging Debtor in possession financing for the Debtor, as requested;



- (h) Provide expert witness testimony concerning and of the subjects encompassed by Clear Thinking's services;
- (i) Assist the Debtor in preparing marketing materials in conjunction with the sale or liquidation of some or all of the Debtor's assets; and
- (j) Provide such other advisory services as customarily provided in connection with these proceedings under Chapter 11 of the Bankruptcy Code.

13. The Financial Advisory Services that Clear Thinking will provide to the Debtor are necessary to enable the Debtor to maximize the value of its estate in connection with its financial restructuring and/or partial or full liquidation and sale of assets.

14. Per the Engagement Agreement for the services will be based upon the time devoted on the Debtor's behalf and the experience of those providing the services. Clear Thinking will bill at standard hourly rates as follows:

Partner	\$450.00
Managing Director	\$400.00
Manager	\$350.00
Consultant	\$275.00
Analyst	\$150.00
Administrative	\$75.00

15. In addition to the above fees, the Debtor shall further reimburse Clear Thinking, pursuant to the Engagement Agreement for all of its reasonable out of pocket expenses incurred in connection with this engagement, such as travel, lodging, postage, telephone courier services, copying, conference calls and facsimile charges, all legal expenses associated with Clear Thinking's retention and approval by the Court, and all other legal requirements and actions regarding the Debtor's bankruptcy case. All such billings will be in accordance with standard Bankruptcy Court practices.

16. The fees described above are consistent with Clear Thinking's normal and customary billing practices for cases of this size and complexity, which require the level and

scope of services outlined in the Engagement Agreement.

17. Clear Thinking has provided certain financial advisory services to the Debtor since May 18, 2009 and has been paid for those services in accordance with the Engagement Agreement. Prior to the Petition Date, Clear Thinking was paid a total of \$253,058.91 for services provided prior to the Petition Date. Per the Engagement Agreement, the Debtor agreed to pay Clear Thinking for all pre-petition services provided, at the above hourly rates, and pay for all pre-petition expenses incurred prior to the filing its bankruptcy petition in the Bankruptcy Court. Clear Thinking also received a \$100,000 retainer for post-petition services per the retention agreement prior to the petition date. This retainer will be applied to the last invoice once CTG's final fee application is approved. If there are any funds remaining from the retainer, these funds will be promptly returned to the Debtor.

18. I am generally familiar with the Bankruptcy Code and the Bankruptcy Rules, and Clear Thinking will comply with them, subject to Orders of this Court.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on July 1, 2009

**Clear Thinking Group**

By: /s/ Lee A. Diercks

Lee A. Diercks  
Partner

**EXHIBIT B**



CLEAR  
THINKING  
GROUP

May 18, 2009

Mr. Koh Han Seow  
Chief Financial Officer  
Ms. Colleen Cording  
General Counsel  
Crabtree & Evelyn LTD.  
102 Peake Brook Road  
PO Box 167  
Woodstock CT 06281

Dear Mr. Seow and Ms. Cording:

Clear Thinking Group LLC (CTG) is pleased that you have asked CTG to serve in the role of Financial Advisor for Crabtree & Evelyn, Ltd. (the "Debtor") prior to and during its Chapter 11 case. This letter will confirm our discussion regarding the Debtor's engagement of CTG and the terms on which CTG will provide these advisory services to the Debtor.

The purpose of this letter is to establish our agreement with regard to the nature and scope of our retention and to provide you and the Debtor with a summary of the Debtor's obligations in connection with our retention. In this connection, CTG will provide professional services as described hereinafter in this proposal in accordance with applicable standards of the consulting, bankruptcy, and "turnaround" professions. We understand fully that the US Bankruptcy Court must approve this agreement prior to our retention after the bankruptcy petition is filed.

### **1.) SCOPE**

CTG will act as the Debtor's Financial Advisor and help prepare the Debtor for a Chapter 11 bankruptcy filing. Post filing, CTG will act as the Debtor's Financial Advisor and as such assist in leading the Debtor's Chapter 11 bankruptcy case. CTG will provide those services listed in Exhibit A – Scope of Work that may be requested by the Debtor.

We will employ commercially reasonable efforts with the goal of obtaining results that are agreeable to all parties involved, but we do not guaranty the results that are to be achieved.

## **2.) RESOURCES PROVIDED**

- Stuart Kessler, Partner, Lee Diercks, Partner and Alan Minker, Managing Director will be responsible for the day to day management of the assignment.
- Other resources, as required during the assignment.

## **3.) FEES & EXPENSES**

Fees for services will be based upon the time devoted on the Debtor's behalf and the experience of those providing the services. The Debtor will provide all other resources required.

**Hourly Fees.** The engagement will be staffed with professionals at various levels, as the tasks require. Our fees will be based on the hours charged at our standard hourly rates, which currently are:

Partner -	\$450.00
Managing Director-	\$400.00
Manager	\$350.00
Consultant-	\$275.00
Analyst-	\$150.00
Administrative-	\$75.00

CTG will not charge for travel time for this engagement.

**Cash Expenses.** In addition to the fees set forth above, the Debtor shall pay directly, or reimburse CTG directly, for all reasonable out-of-pocket expenses incurred in connection with this assignment such as travel, lodging, postage, telephone, courier services, copying, conference calls, and facsimile charges. The Debtor will also pay for all reasonable legal expenses associated with CTG's retention and approval by the Bankruptcy Court (although it is not anticipated that such legal expenses will be incurred) and all other legal requirements and actions regarding this bankruptcy case. All such billings will be in accordance with standard Bankruptcy Court practices.

We will provide monthly billing statements indicating hours, fees, and costs incurred, and their basis, in the amounts applied from deposits, and any current balance owed.

**Pre-Petition & Post Petition Retainers.** Since the Debtor requires CTG to assist the Debtor pre-petition, CTG will require a retainer of \$75,000.00 for the services to be provided prior to the petition date and a retainer of \$100,000 for post petition work. The Debtor agrees to pay CTG, prior to filing its petition in bankruptcy court, for all pre-petition services provided in accordance with this agreement and all pre-petition expenses incurred in accordance with this agreement. Any unused portion of the pre-petition retainer will be applied to and reduce the \$100,000 post-petition retainer. The post-petition retainer will be held by CTG until the conclusion of the case and will be applied to the final fee application.

#### **4.) RELATION OF THE PARTIES.**

The parties intend that an independent contractor relationship will be created by this agreement and neither party shall be considered an employee, agent or representative of the other. Employees or agents of CTG are not entitled to any of the benefits that the Debtor provides for the Debtor's employees. The Debtor also agrees not to solicit, recruit or hire any employees or agents of CTG for a period of two years subsequent to the completion and/or termination of this agreement.

#### **5.) CONFIDENTIALITY.**

CTG agrees to keep confidential all information obtained from the Debtor. CTG agrees that neither it nor its directors, officers, principals, employees, agents or attorneys will disclose to any other person or entity, or use for any purpose other than specified herein, any information pertaining to the Debtor or any affiliate thereof which is either non-public, confidential or proprietary in nature ("Information") which it obtains or is given access to during the performance of the services provided hereunder. Notwithstanding the above, CTG may, with the Debtor's consent, make reasonable disclosure of Information to third parties in connection with CTG's performance of its obligations and assignments hereunder, so long as such third parties enter into a written confidentiality agreement approved by the Debtor.

Information includes data, plans, reports, schedules, drawings, accounts, records, calculations, specifications, flow sheets, computer programs, source or object codes, results, models, or any work product relating to the business of the Debtor, its subsidiaries, distributors, affiliates, vendors, customers, employees, contractors and consultants.

The Debtor acknowledges that all advice (written or oral) given by CTG to the Debtor in connection with CTG's engagement is intended solely for the benefit and use of the Debtor (limited to its management) in considering the transactions to which it relates. The Debtor agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks and programs referred to herein without CTG's prior approval (which shall not be unreasonably withheld) except as required by law.

#### **6.) INDEMNIFICATION.**

Subject to Bankruptcy Court approval after filing a fee application on notice to the US Trustee, the Debtor agrees to indemnify, hold harmless and defend us (including our principals, employees and agents) against all claims, liabilities, losses, damages and reasonable expenses as they are incurred, including reasonable legal fees and disbursements of our counsel and the costs of our professional time (at our rates in effect when such future time is required) relating to or arising out of the engagement, including any legal proceeding in which we may be required or agree to participate but in which we are not a party. We, our principals, employees and agents, may, but are not required to, engage a single firm of separate counsel of our choice in connection with any of the matters to which this indemnification agreement relates. This indemnification

agreement excludes acts or omissions by CTG due to any gross negligence, willful misconduct, breach of fiduciary duty, bad faith, and self-dealing.

#### **7.) TERMINATION AND SURVIVAL.**

This agreement may be terminated at any time by written notice by one party to the other. Notwithstanding such termination, CTG will be entitled to any fees and expenses actually incurred under the provisions of this agreement. After such fees and expenses have been paid, CTG shall return any unused portions of the retainers to the Debtor. Such payment obligations shall inure to the benefit of any successor or assignee of CTG or the Debtor, as the case may be.

The obligations of the parties under the Indemnification and Confidentiality sections of this agreement shall survive the termination of this agreement.

#### **8.) GOVERNING LAW.**

This agreement is governed by and construed in accordance with the laws of the State of New Jersey with respect to contracts made and to be performed entirely therein and without regard to choice of law or principles thereof. In the event of any dispute arising between us, including any dispute with respect to this agreement, its interpretation, performance or breach, and are unable to agree on a mutually satisfactory resolution, either party may seek relief from the US Bankruptcy Court.

#### **9.) LIMITATIONS.**

This is a services engagement. CTG warrants that it will perform services hereunder in good faith and disclaims all other warranties. We will not be liable for any actions, damages, claims, liabilities, costs, expenses or losses arising out of or relating to the services performed hereunder for an aggregate amount in excess of the fees paid by the Debtor to CTG in performing the services that form the basis for the action or claim. In addition, we will not be liable for any delays resulting from circumstances or causes beyond our reasonable control, including without limitation, fire or other casualty, acts of God, strikes or labor disputes, war or other violence, or any law, order or required of any governmental agency or authority.

#### **10.) SEVERABILITY.**

If any portion of this agreement shall be determined to be invalid or unenforceable, we each agree that the remainder shall be valid and enforceable to the maximum extent possible.

#### **11.) NOTICES.**

All notices required or permitted to be delivered under this agreement shall be in writing and sent, if to us, to the address set forth at the signature of this letter and, if to you, to:

Crabtree & Evelyn, Ltd.  
102 Peake Brook Road  
PO Box 167  
Woodstock CT 06281  
Attn: Mr. Koh Han Seow, CFO  
Ms. Colleen Cording, General Counsel

All notices under this agreement shall be sufficient only if delivered in person or by a nationally recognized courier service with receipt of delivery. Any notice shall be deemed to be given upon actual receipt.

**12.) ENTIRE AGREEMENT.**

The Debtor agrees that this agreement represents the entire understanding of the terms of our engagement and that it supersedes any prior understandings or agreements we may have had or discussed. The terms and provisions of this agreement may not be modified or amended except in a writing signed by an authorized representative of the Debtor and CTG.

If these terms meet with your approval, please sign and return the enclosed copy of this proposal to my attention.

Very truly yours,

Stuart H. Kessler  
President  
Clear Thinking Group LLC  
401 Towne Centre Drive  
Hillsborough, NJ 08844

Accepted and Acknowledged:

Crabtree & Evelyn, Ltd.

By: \_\_\_\_\_

  
Koh Han Seow  
Chief Financial Officer

Dated: May 18, 2009



## **Exhibit A – Scope of Work**

### **Services to be performed:**

- CTG will assist Debtor in preparation of all necessary schedules and budgets prior to the filing of its Chapter 11 petition as appropriate.
- CTG will assist Debtor in negotiations for DIP financing.
- CTG will assist Debtor in determining the appropriate retail store/business strategy.
- CTG will support Debtor real-estate professional's services as appropriate.
- CTG will actively lead and manage the Chapter 11 bankruptcy case on behalf of the Debtor.
- CTG will assist Debtor with the preparation of the necessary schedules, budgets, and court related reporting.
- CTG will assist Debtor with a store liquidation bid solicitation process and selection of a stalking horse bidder, as appropriate.
- CTG will assist Debtor with the liquidation process of any additional unsold assets and collection of proceeds as appropriate.
- CTG will assist Debtor with the court required records retention process.
- CTG will assist Debtor with all other agreed upon tasks as required by the Debtor.

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

----- X  
:   
**In re** : **Chapter 11**  
:   
**CRABTREE & EVELYN, LTD.,** :   
:   
: **Case No. 09-14267 (BRL)**  
**Debtor.** :   
:   
----- X

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 327, 328 AND 330  
AUTHORIZING RETENTION AND EMPLOYMENT OF  
CLEAR THINKING GROUP LLC AS FINANCIAL ADVISOR TO THE DEBTOR,  
NUNC PRO TUNCTO TO THE PETITION DATE**

Upon the application (the “Application”) of Crabtree & Evelyn, Ltd., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), pursuant to sections 327(a), 328(a) and 330 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing the Debtor to retain and employ Clear Thinking Group LLC (“Clear Thinking”) as financial advisor to the Debtor, (ii) approving the terms and conditions of the engagement letter (the “Engagement Letter”) and (iii) granting related relief; and upon the Affidavit of Lee A. Diercks in support of Debtor’s Application for Entry of an Order Under 11 U.S.C. §§ 327, 328 and 330 Authorizing Retention and Employment of Clear Thinking as Financial Advisor to the Debtor, attached as Exhibit A to the Application (the “Diercks Affidavit”); and the Court being satisfied, based on the representations made in the Application and the Diercks Affidavit, that Clear Thinking does not hold or represent an interest adverse to the Debtor's estate and is a "disinterested person" as that term is defined under section 101(14) of the Bankruptcy Code, as modified in Section 1107(b) of the Bankruptcy Code, and that the employment of Clear Thinking and would be in the best interests of the Debtor, its creditors and estate; and the Court being satisfied that the terms of

compensation being sought by Clear Thinking as described in the Engagement Letter attached hereto as Exhibit A, are reasonable; and after due deliberation and sufficient cause appearing thereof, it is hereby

ORDERED, that the Debtor is authorized, *nunc pro tunc* to the Petition Date, to employ and retain Clear Thinking on the terms set forth in the Engagement Letter (as limited herein); and it is further

ORDERED, that all compensation and reimbursement of expenses to be paid to Clear Thinking, shall be subject to prior approval of this Court in accordance with the requirements under §§ 330 and 331 of the Bankruptcy Code and any order of this Court which establishes procedures for monthly compensation and reimbursement of expenses; and it is further

ORDERED, that the United States Trustee retains all rights to object to Clear Thinking's interim and final fee application (including expense reimbursement) on all grounds including but not limited to the reasonableness standard provided for in Section 330 of the Bankruptcy Code; and it is further

ORDERED, that all requests of Clear Thinking for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure the payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought; provided, however, that in no event shall Clear Thinking be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct; and it is further

ORDERED, that in no event shall Clear Thinking be indemnified if the Debtor or a representative of the estate, asserts a claim for, and a court determines by final order that such

claim arose out of, Clear Thinking's own bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct; and it is further

ORDERED, that in the event that Clear Thinking seeks reimbursement for attorneys' fees from the Debtor pursuant to the Engagement Letter, the invoices and the supporting time records from such attorneys shall be included in Clear Thinking's own applications (both interim and final) and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Bankruptcy Court under the standards of §§ 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under § 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy Section 330(a)(3)(C) of the Bankruptcy Code, and it is further

ORDERED, that to the extent this Order is inconsistent with the Engagement Letter, this Order shall govern; and it is further

ORDERED, that the Debtor is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Order, and it is further

ORDERED, that this Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York  
July \_\_\_\_, 2009

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**NO OBJECTION:  
OFFICE OF THE UNITED STATES TRUSTEE  
SOUTHERN DISTRICT OF NEW YORK**

**By:** \_\_\_\_\_

**EXHIBIT A**

See Attached



CLEAR  
THINKING  
GROUP

May 18, 2009

Mr. Koh Han Seow  
Chief Financial Officer  
Ms. Colleen Cording  
General Counsel  
Crabtree & Evelyn LTD.  
102 Peake Brook Road  
PO Box 167  
Woodstock CT 06281

Dear Mr. Seow and Ms. Cording:

Clear Thinking Group LLC (CTG) is pleased that you have asked CTG to serve in the role of Financial Advisor for Crabtree & Evelyn, Ltd. (the "Debtor") prior to and during its Chapter 11 case. This letter will confirm our discussion regarding the Debtor's engagement of CTG and the terms on which CTG will provide these advisory services to the Debtor.

The purpose of this letter is to establish our agreement with regard to the nature and scope of our retention and to provide you and the Debtor with a summary of the Debtor's obligations in connection with our retention. In this connection, CTG will provide professional services as described hereinafter in this proposal in accordance with applicable standards of the consulting, bankruptcy, and "turnaround" professions. We understand fully that the US Bankruptcy Court must approve this agreement prior to our retention after the bankruptcy petition is filed.

### **1.) SCOPE**

CTG will act as the Debtor's Financial Advisor and help prepare the Debtor for a Chapter 11 bankruptcy filing. Post filing, CTG will act as the Debtor's Financial Advisor and as such assist in leading the Debtor's Chapter 11 bankruptcy case. CTG will provide those services listed in Exhibit A – Scope of Work that may be requested by the Debtor.

We will employ commercially reasonable efforts with the goal of obtaining results that are agreeable to all parties involved, but we do not guaranty the results that are to be achieved.

## **2.) RESOURCES PROVIDED**

- Stuart Kessler, Partner, Lee Diercks, Partner and Alan Minker, Managing Director will be responsible for the day to day management of the assignment.
- Other resources, as required during the assignment.

## **3.) FEES & EXPENSES**

Fees for services will be based upon the time devoted on the Debtor's behalf and the experience of those providing the services. The Debtor will provide all other resources required.

**Hourly Fees.** The engagement will be staffed with professionals at various levels, as the tasks require. Our fees will be based on the hours charged at our standard hourly rates, which currently are:

Partner -	\$450.00
Managing Director-	\$400.00
Manager	\$350.00
Consultant-	\$275.00
Analyst-	\$150.00
Administrative-	\$75.00

CTG will not charge for travel time for this engagement.

**Cash Expenses.** In addition to the fees set forth above, the Debtor shall pay directly, or reimburse CTG directly, for all reasonable out-of-pocket expenses incurred in connection with this assignment such as travel, lodging, postage, telephone, courier services, copying, conference calls, and facsimile charges. The Debtor will also pay for all reasonable legal expenses associated with CTG's retention and approval by the Bankruptcy Court (although it is not anticipated that such legal expenses will be incurred) and all other legal requirements and actions regarding this bankruptcy case. All such billings will be in accordance with standard Bankruptcy Court practices.

We will provide monthly billing statements indicating hours, fees, and costs incurred, and their basis, in the amounts applied from deposits, and any current balance owed.

**Pre-Petition & Post Petition Retainers.** Since the Debtor requires CTG to assist the Debtor pre-petition, CTG will require a retainer of \$75,000.00 for the services to be provided prior to the petition date and a retainer of \$100,000 for post petition work. The Debtor agrees to pay CTG, prior to filing its petition in bankruptcy court, for all pre-petition services provided in accordance with this agreement and all pre-petition expenses incurred in accordance with this agreement. Any unused portion of the pre-petition retainer will be applied to and reduce the \$100,000 post-petition retainer. The post-petition retainer will be held by CTG until the conclusion of the case and will be applied to the final fee application.

#### **4.) RELATION OF THE PARTIES.**

The parties intend that an independent contractor relationship will be created by this agreement and neither party shall be considered an employee, agent or representative of the other. Employees or agents of CTG are not entitled to any of the benefits that the Debtor provides for the Debtor's employees. The Debtor also agrees not to solicit, recruit or hire any employees or agents of CTG for a period of two years subsequent to the completion and/or termination of this agreement.

#### **5.) CONFIDENTIALITY.**

CTG agrees to keep confidential all information obtained from the Debtor. CTG agrees that neither it nor its directors, officers, principals, employees, agents or attorneys will disclose to any other person or entity, or use for any purpose other than specified herein, any information pertaining to the Debtor or any affiliate thereof which is either non-public, confidential or proprietary in nature ("Information") which it obtains or is given access to during the performance of the services provided hereunder. Notwithstanding the above, CTG may, with the Debtor's consent, make reasonable disclosure of Information to third parties in connection with CTG's performance of its obligations and assignments hereunder, so long as such third parties enter into a written confidentiality agreement approved by the Debtor.

Information includes data, plans, reports, schedules, drawings, accounts, records, calculations, specifications, flow sheets, computer programs, source or object codes, results, models, or any work product relating to the business of the Debtor, its subsidiaries, distributors, affiliates, vendors, customers, employees, contractors and consultants.

The Debtor acknowledges that all advice (written or oral) given by CTG to the Debtor in connection with CTG's engagement is intended solely for the benefit and use of the Debtor (limited to its management) in considering the transactions to which it relates. The Debtor agrees that no such advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose other than accomplishing the tasks and programs referred to herein without CTG's prior approval (which shall not be unreasonably withheld) except as required by law.

#### **6.) INDEMNIFICATION.**

Subject to Bankruptcy Court approval after filing a fee application on notice to the US Trustee, the Debtor agrees to indemnify, hold harmless and defend us (including our principals, employees and agents) against all claims, liabilities, losses, damages and reasonable expenses as they are incurred, including reasonable legal fees and disbursements of our counsel and the costs of our professional time (at our rates in effect when such future time is required) relating to or arising out of the engagement, including any legal proceeding in which we may be required or agree to participate but in which we are not a party. We, our principals, employees and agents, may, but are not required to, engage a single firm of separate counsel of our choice in connection with any of the matters to which this indemnification agreement relates. This indemnification



agreement excludes acts or omissions by CTG due to any gross negligence, willful misconduct, breach of fiduciary duty, bad faith, and self-dealing.

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Crabtree & Evelyn, Ltd.  
102 Peake Brook Road  
PO Box 167  
Woodstock CT 06281  
Attn: Mr. Koh Han Seow, CFO  
Ms. Colleen Cording, General Counsel

All notices under this agreement shall be sufficient only if delivered in person or by a nationally recognized courier service with receipt of delivery. Any notice shall be deemed to be given upon actual receipt.

**12.) ENTIRE AGREEMENT.**

The Debtor agrees that this agreement represents the entire understanding of the terms of our engagement and that it supersedes any prior understandings or agreements we may have had or discussed. The terms and provisions of this agreement may not be modified or amended except in a writing signed by an authorized representative of the Debtor and CTG.

If these terms meet with your approval, please sign and return the enclosed copy of this proposal to my attention.

Very truly yours,

Stuart H. Kessler  
President  
Clear Thinking Group LLC  
401 Towne Centre Drive  
Hillsborough, NJ 08844

Accepted and Acknowledged:

Crabtree & Evelyn, Ltd.

By: \_\_\_\_\_

  
Koh Han Seow  
Chief Financial Officer

Dated: May 18, 2009

## **Exhibit A – Scope of Work**

### **Services to be performed:**

- CTG will assist Debtor in preparation of all necessary schedules and budgets prior to the filing of its Chapter 11 petition as appropriate.
- CTG will assist Debtor in negotiations for DIP financing.
- CTG will assist Debtor in determining the appropriate retail store/business strategy.
- CTG will support Debtor real-estate professional's services as appropriate.
- CTG will actively lead and manage the Chapter 11 bankruptcy case on behalf of the Debtor.
- CTG will assist Debtor with the preparation of the necessary schedules, budgets, and court related reporting.
- CTG will assist Debtor with a store liquidation bid solicitation process and selection of a stalking horse bidder, as appropriate.
- CTG will assist Debtor with the liquidation process of any additional unsold assets and collection of proceeds as appropriate.
- CTG will assist Debtor with the court required records retention process.
- CTG will assist Debtor with all other agreed upon tasks as required by the Debtor.