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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.** | : | |

**DEBTOR'S APPLICATION FOR ORDER UNDER BANKRUPTCY CODE SECTIONS 327(a) AND 328 AND BANKRUPTCY RULES 2014 AND 2016 AUTHORIZING EMPLOYMENT AND RETENTION OF KPMG CORPORATE FINANCE LLC AS SPECIAL REAL ESTATE ADVISOR FOR DEBTOR, *NUNC PRO TUNC* TO THE PETITION DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The debtor and debtor in possession in the above-captioned case (the "Debtor" or "Crabtree & Evelyn")[1] hereby applies (the "Application") for entry of an order under sections 327(a) and 328 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"), authorizing the employment and retention of KPMG Corporate Finance LLC ("KPMGCF"), *nunc pro tunc* to the Petition Date, as the

[1] The last four digits of the Debtor's federal tax identification number are 1685.

Debtor's special real estate advisor and obtaining approval of the terms by which KPMGCF will be compensated under that certain Engagement Agreement by and between KPMGCF and the Debtor attached hereto as **Exhibit A** (the "KPMGCF Agreement"). In support of the Application, the Debtor relies upon and incorporates by reference the declaration of Matthew Bordwin (the "Bordwin Declaration"), attached hereto as **Exhibit B**. In further support of the Application, the Debtor respectfully represents:

## BACKGROUND

1. On July 1, 2009 (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.

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.[2] During nearly four decades Crabtree & Evelyn has expanded its product offerings from fine soaps to include personal care products and related accessories, fragrances, comestibles (*i.e.*, food products

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[2] 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.

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 seeks to employ and retain KPMGCF *nunc pro tunc* to the Petition Date, as the Debtor's special real estate advisor and obtain approval of the terms by which KPMGCF will be compensated under the KPMGCF Agreement. Accordingly, the Debtor respectfully requests entry of an order under sections 327(a) and 328 of

the Bankruptcy Code, in substantially the form attached hereto, authorizing the Debtor to employ and retain KPMGCF as its special real estate advisor to perform real estate advisory services, as summarized herein and more fully described in the Bordwin Declaration.

**BASIS FOR RELIEF**

7. Prior to the commencement of this case, the Debtor sought the services of KPMGCF with respect to real estate matters. Since such time, KPMGCF has performed real estate advisory services for the Debtor pursuant to the terms of the KPMGCF Agreement. As a result of representing the Debtor on such matters, KPMGCF has acquired extensive knowledge of the Debtor and its real estate issues.

8. The Debtor believes that continued representation by its prepetition real estate advisors, KPMGCF, is critical to the Debtor's efforts to restructure its businesses because KPMGCF is extremely familiar with the Debtor's real estate portfolio and, accordingly, is well suited to represent the Debtor as special real estate advisor through the chapter 11 process.

9. The Debtor desires to employ KPMGCF under the terms and conditions set forth in the KPMGCF Agreement. As noted above, the Debtor believes KPMGCF is well qualified and uniquely able to act on the Debtor's behalf as special real estate advisor.

**SERVICES TO BE RENDERED**

10. As previously mentioned, the Debtor and KPMGCF have entered into the KPMGCF Agreement pursuant to which KPMGCF was retained to render the real estate services listed below. Is it anticipated that KPMGCF will continue to render the same services in this chapter 11 case:

(a) KPMGCF will organize the lease information for certain of the Debtor's leased properties (each, a "Property") in a manner that clearly displays the store and lease economics. After consultation with KPMGCF, Debtor will establish negotiating goals and parameters, such as rent reductions, lease terminations, lease term modifications, and other leasehold concessions;

(b) KPMGCF will contact each Property landlord and will use commercially reasonable efforts in negotiating modifications in accordance with the parameters established by Debtor;

(c) KPMGCF will work with the landlords and Debtor to ensure that the lease modification proposals are documented appropriately. All lease modification agreements and termination agreements shall be documented by Debtor's in-house or outside counsel;

(d) KPMGCF shall provide Debtor with a weekly status report (the "Weekly Status Report") with respect to all Properties detailing the activities relating to each Property, summarizing the status of contacts and negotiations made during the prior week. The Weekly Status Report shall be delivered on or before each Tuesday of the following week and shall be in a format reasonably agreed upon by Debtor and KPMGCF. The Weekly Status Report may be delivered electronically, to the extent feasible, in accordance with delivery instructions from Debtor.

11. It is necessary and essential that the Debtor, as debtor in possession, employ KPMGCF under the terms of the KPMGCF Agreement to render the foregoing professional services. KPMGCF has indicated a willingness to continue to act on behalf of, and render such services to, the Debtor.

## DISINTERESTEDNESS OF KPMGCF

12. To the best of the Debtor's knowledge, and except as otherwise set forth herein and in the accompanying Bordwin Declaration, the professionals of KPMGCF (a) do not have any connection with the Debtor or its affiliates, its creditors or any other party in interest, or their respective attorneys and accountants, the U.S. Trustee or any person employed in the office of the same, or any judge in the Bankruptcy Court or the United States District Court for the Southern District of New York or any person employed in the offices of the same; (b) are "disinterested persons," as that term is defined in Bankruptcy Code section 101(14); and (c) do not hold or represent any interest adverse to the estate.

13. To the best of the Debtor's knowledge and except as set forth in the Bordwin Declaration:

(a) Neither KPMGCF nor any of its professionals holds or represents an interest adverse to the Debtor's estate.

(b) Neither KPMGCF nor any of its professionals is or was a creditor or an insider of the Debtor, except that KPMGCF previously has rendered real estate advisory services to the Debtor for which it has been compensated as disclosed below.

(c) Neither KPMGCF nor any of its professionals is or was, within two years before the Petition Date, a director, officer, or employee of the Debtor.

(d) KPMGCF does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtor, or for any other reason.

(e) No professional employed by KPMGCF is related to any United States District Judge or United States Bankruptcy Judge for the Southern District of New York or to the U.S. Trustee for such district or to any known employee in the office thereof.

14. In view of the foregoing, the Debtor believes that KPMGCF is a "disinterested person" within the meaning of Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b).

15. KPMGCF has informed the Debtor that throughout this case, KPMGCF will continue to conduct periodic conflicts analyses to determine whether it is performing or has performed services for any significant parties in interest in this case and that it will promptly update this Application and disclose any material developments regarding the Debtor or any other pertinent relationships that come to KPMGCF's attention by way of a supplemental Declaration.

## PROFESSIONAL COMPENSATION

16. Upon its retention, KPMGCF was paid $25,000 by Crabtree & Evelyn for services that were rendered prepetition. In addition, KPMGCF received the sum of $25,000 (the "Retainer") from Crabtree & Evelyn to hold as a retainer to pay fees and disbursements that KPMGCF may earn pursuant to the KPMGCF Agreement.

17. Pursuant to the terms of the KPMGCF Agreement, KPMGCF is to be compensated as follows[3]:

> (a) The Retainer shall be held by KPMGCF during the term of the KPMGCF Agreement and will be credited against the final invoice for services provided under the KPMGCF Agreement or refunded, in whole or in part, as applicable, if all invoices are paid in full. If at any time during the term of the KPMGCF Agreement, the Retainer is reduced such that KPMGCF is holding less than $25,000 (such amount less than $25,000 is referred to as the "Deficiency"), the Debtor shall within one (1) business day of receiving notice from KPMGCF pay via wire transfer of immediately available funds an amount equal to the Deficiency.
>
> (b) For lease modifications, KPMGCF shall be paid, on a per property basis, the greater of (1) $4,000 or (2) the sum of (x) 5% of the difference between (a) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement that was payable by Debtor prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement payable by Debtor following the execution of the applicable Modification Agreement, and (y) 2% of the difference between (a) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement that was payable by Debtor prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement payable by Debtor following the execution of the applicable Modification Agreement.
>
> (c) For lease terminations, KPMGCF shall be paid the greater of $4,000 or 5% of the Actual Savings.

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[3] Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the KPMGCF Agreement.

18. In addition to the fees that are or may be payable to KPMGCF under the KPMGCF Agreement, KPMGCF is to be reimbursed for its reasonable out-of-pocket expenses incurred in connection with its activities under the KPMGCF Agreement.

19. Given the transactional nature of KPMGCF's engagement, KPMGCF will not be billing the Debtor by the hour and will not be keeping records of time spent for professional services rendered in this Chapter 11 matter. KPMGCF will, however, be keeping reasonably detailed descriptions of the services that were rendered pursuant to its engagement.

20. Given the transactional nature of KPMGCF's services and fee structure, KPMGCF has advised the Debtor that it seeks relief from complying with fee application requirements and shall be compensated in accordance with the procedures set forth in the Application and KPMGCF Agreement and such procedures as may be fixed by order of this Court.

21. The Debtor submits that the engagement and retention of KPMGCF on the terms and conditions set forth herein is necessary and in the best interests of the Debtor, its estate, and its creditors and should be approved.

## NOTICE

22. 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, (iii) the Debtor's 40 largest unsecured creditors, and (iv) parties in interest who have filed notices of appearance in this case. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be provided.

23. 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 the Court enter an order (i) authorizing the Debtor to employ and retain KPMGCF, effective as of the Petition Date, as the Debtor's special real estate advisor, and (ii) granting such other and further relief as is just and proper.

Dated: July 6, 2009
Woodstock, Connecticut

Respectfully submitted,

CRABTREE & EVELYN, LTD.

By: /s/ Stephen W. Bestwick___
Name: Stephen W. Bestwick
Title: Acting President

**EXHIBIT A**

**KPMGCF AGREEMENT**

KPMG

**KPMG Corporate Finance LLC**
Suite 200
1305 Walt Whitman Road
Melville, NY 11747-4302

Telephone (631) 351-7800
Fax (631) 794-2491

Internet www.kpmgcorporatefinance.com/us

March 20, 2009

CRABTREE & EVELYN, LTD.
102 Peake Brook Road
PO Box 167
Woodstock, CT 06281

Ladies and Gentlemen:

By this agreement (this "Agreement"), KPMG Corporate Finance LLC ("KPMGCF") agrees to act as a Special Real Estate Advisor to Crabtree & Evelyn, Ltd. (together with its subsidiaries and affiliates, the "Company"), and Company hereby retains KPMGCF, upon the terms and conditions set forth below, as its Special Real Estate Advisor. KPMGCF shall have the sole and exclusive authority to represent Company in the negotiation of lease modification agreements with respect to those leases for properties listed on Exhibit A hereto and incorporated herein (the "Renegotiation Properties") and with respect to negotiation of termination agreements with respect to those leases for properties listed on Exhibit B hereto and incorporated herein (the "Termination Properties" and, together with the Renegotiation Properties, the "Properties"), which exhibits can be modified from time to time with the consent of the Company and KPGMCF. All communications and inquiries from landlords regarding the negotiation of rental reductions and other lease modifications or terminations regarding a Property, whether directed to Company (including but not limited to its officers, agents and employees), or Company's counsel, accountants or other professionals, shall be re-directed to KPMGCF. Company shall retain the complete discretion to accept or reject any real estate proposal regarding a Property.

**A. Services and Fees**

1) Scope of Services:

a) KPMGCF will organize the lease information for each Property in a manner that clearly displays the store and lease economics. After consultation with KPMGCF, Company will establish negotiating goals and parameters, such as rent reductions, lease terminations, lease term modifications, and other leasehold concessions.

b) KPMGCF will contact each Property landlord and will use commercially reasonable efforts in negotiating modifications in accordance with the parameters established by Company.

c) KPMGCF will work with the landlords and Company to ensure that the lease modification proposals are documented appropriately. All lease modification agreements and termination agreements shall be documented by Company's in-house or outside counsel.

d) KPMGCF shall provide Company with a weekly status report (the "Weekly Status Report") with respect to all Properties detailing the activities relating to each Property, summarizing the status of contacts and negotiations made during the prior week. The Weekly Status Report shall be delivered on or before each Tuesday of the following week and shall be in a format reasonably agreed upon by Company and KPMGCF. The Weekly Status Report may be delivered electronically, to the extent feasible, in accordance with delivery instructions from Company.

2) Compensation. As compensation for the services to be provided by KPMGCF hereunder, the Company agrees to pay KPMGCF:

   a) An earned, non-refundable engagement fee of $25,000, payable via wire transfer of immediately available funds within two (2) days following execution of this Agreement.

   b) A retainer fee of $25,000 (the "Retainer"), payable via wire transfer of immediately available funds within two (2) days following execution of this Agreement. The Retainer shall be held by KPMGCF during the term of the Agreement and will be credited against the final invoice for services provided hereunder or refunded, in whole or in part, as applicable, if all invoices are paid in full. If at any time during the term of this Agreement, the Retainer is reduced such that KPMGCF is holding less than $25,000 (such amount less than $25,000 is referred to as the "Deficiency"), the Company shall within one (1) business day of receiving notice from KPMGCF pay via wire transfer of immediately available funds an amount equal to the Deficiency.

3) Transactional Fee Definitions:

   a) Modification Agreement: The term "Modification Agreement" shall refer to a fully executed agreement between Company and a landlord (including without limitation the execution of any lender, master landlord or other required consents), which agreement results in the modification of the terms of a Property lease by, among other things, a rent reduction, modification of the remaining term of the lease, a reduction in the size of the premises or a lease termination.

   b) Actual Savings: The term "Actual Savings" shall mean the difference between the "Remaining Leasehold Liability Threshold" and the "Modification Expenses".

   c) Remaining Leasehold Liability Threshold: The Remaining Leasehold Liability Threshold shall be ninety percent (90%) of the Remaining Leasehold Liability.

   d) Remaining Leasehold Liability: The parties hereto shall together calculate the total remaining occupancy costs for each Property pursuant to the applicable lease. The parties agree that such calculation shall subsequently be adjusted (A) so as to be calculated as of the "Lease Modification Agreement Date" (as defined below), and (B) so as to take into account any updated or corrected data. This calculation of aggregate remaining occupancy costs shall include all base rent and additional charges projected to be paid directly to the landlord for the remaining term of the applicable lease (excluding any options to renew or extend the term of the lease), including but not limited to percentage rent, unamortized construction allowances, common area maintenance, real estate taxes, insurance and other related expenses (such common area maintenance, real estate taxes, insurance and other related expenses to be determined at the rate in effect at execution of the applicable Modification Agreement, without taking into account any future increases). Such aggregate remaining occupancy costs shall be referred to as the "Remaining

Leasehold Liability".

e) Modification Expenses:

i) The term "Modification Expenses" shall include:

(1) Fees required to obtain landlord consent,

(2) Settlement payments or other consideration to a landlord pursuant to the terms of a Modification Agreement, and

(3) Any administrative or document review fees, or any other fees or expenses payable by Company to or on behalf of a landlord in connection with a Modification Agreement.

ii) The term "Modification Expenses" shall exclude:

(1) KPMGCF's fees and expenses,

(2) Company's legal fees, Company's costs for removing inventory, trade fixtures and equipment, and any security deposits held by a landlord (unless retained by a landlord to satisfy any of the items described in (e)(i) above), and

(3) Company's costs of preparing the premises to comply with the provisions of the applicable lease pertaining to the condition of the premises upon surrender.

f) Lease Modification Agreement Date: The term "Lease Modification Agreement Date" shall be the date of full and complete execution of a Modification Agreement (including without limitation the execution of any lender, master landlord or other required consents).

4) Transactional Fees: On the Lease Modification Agreement Date, KPMGCF shall have earned compensation per such Property as follows (each a "Transactional Fee"):

i) Lease Renegotiation. KPMGCF shall be paid, on a per property basis, the greater of (1) \$4,000 or (2) the *sum* of (x) 5% of the difference between (a) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement that was payable by Company prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement payable by Company following the execution of the applicable Modification Agreement, and (y) 2% of the difference between (a) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement that was payable by Company prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement payable by Company following the execution of the applicable Modification Agreement.

ii) Lease Termination: KPMGCF shall be paid the greater of \$4,000 or 5% of the Actual Savings.

iii) Following the applicable Lease Modification Agreement Date, KPMGCF shall invoice Company for the applicable Transactional Fee, and Company shall pay the Transactional Fee to KPMGCF within three (3) days following Company's receipt of the invoice.

5) Parent Guaranty. Contemporaneous with the execution of this engagement letter, KPMGCF will require the Company's parent to execute a separate Guaranty Agreement providing for the guaranty of the Company's payment and performance under this Agreement. Such Guaranty Agreement shall be capped at $400,000.00 and the cap will be reduced dollar-for-dollar by amounts paid pursuant to this Agreement.

**B. Expenses**

The Company shall reimburse KPMGCF promptly upon request from time to time for all reasonable out-of-pocket expenses (including, without limitation, travel, communication and document production expenses, the fees and expenses of counsel) incurred by KPMGCF pursuant to its engagement hereunder. All air travel must be pre-approved by the Company.

**C. Survival**

Within ten (10) days following the expiration of this Agreement, KPMGCF will provide Company with a list indicating those landlord negotiations which have been substantially negotiated by KPMGCF but which have not yet been documented, which status will include the then current details of KPMGCF negotiations, including outstanding offer, if any (the "Pending Negotiation List"). If Company arranges with a landlord for the modification or termination of a Property's lease that is on the Pending Negotiation List and is substantially similar to the offer listed on such list with respect to such Property, and Company begins to receive the benefits of that leasehold modification or termination within six (6) months of the expiration of this Agreement, or Company executes a Modification Agreement within six (6) months of the expiration of this Agreement, then KPMGCF shall be entitled to a fee in accordance with the terms of this Agreement.

**D. Indemnity, Contribution, Reimbursement, and Limitation of Liability**

The Company also agrees to indemnify KPMGCF and certain other entities and persons as set forth in Schedule I attached hereto.

**E. Company Responsibilities and Information to be Supplied**

Company shall use reasonable efforts to make available to KPMGCF all necessary information concerning each Property in connection with the performance of KPMGCF's obligations hereunder. All information provided by Company shall be materially accurate and complete at the time it is furnished and Company shall, as soon as it becomes aware of any inaccuracy or incompleteness in any information then or later provided to KPMGCF, promptly advise KPMGCF of such inaccuracy or incompleteness and correct the same. KPMGCF shall under all circumstances have the right to rely, without independent verification, on the accuracy and completeness of all such information supplied to KPMGCF in connection with KPMGCF's engagement hereunder and shall not be responsible for the inaccuracy or incompleteness of any information provided to it.

**F. Announcement of Transaction**

Subject to the prior written approval of Company, when the transactions contemplated hereby are completed, and subject to compliance with applicable securities laws, KPMGCF may, at its option and expense, place announcements and advertisements or otherwise publicize such transactions and KPMGCF's role in it (which may include the reproduction of the Company's logo and a hyperlink to the Company's web site) on KPMGCF's internet web site and in such newspapers and periodicals as it may choose stating that KPMGCF has acted as advisor to the Company with respect to the transactions.

**G. Term of Agreement**

The term of KPMGCF's retention shall be from the date of Company's execution of this Agreement for a period of six (6) months, which term can be extended pursuant to the same terms and conditions and by the mutual written agreement of the parties.

Such expiration will not affect:

a. KPMGCF's rights to receive fees accrued prior to such expiration and to receive reimbursement of its out-of-pocket expenses as set forth above; or

b. the rights of KPMGCF or any other Indemnified Person (as defined in Schedule I hereto) set forth in Schedule I hereto.

**H. Multiple Clients**

From time to time, KPMGCF, or a Member Firm, may and shall have the right to advise or provide services to several industry participants, some of which may be competitors of the Company. The Company, its directors and shareholders, waive any right to commence any action, suit or proceeding or make any demand, complaint or claim against KPMGCF and Member Firms, and its and their subsidiaries or affiliates, or their partners, directors, members, officers or other personnel, that arises out of KPMGCF's, or a Member Firm's, right to advise or provide services to industry competitors of the Company.

**I. Dispute Resolution**

Any and all issues, disputes, controversies, claims or causes of action which relate or pertain to, or result or arise from this Agreement, the alleged breach thereof, or KPMGCF's services hereunder, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, with venue vesting exclusively in New York, New York, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator(s) shall be limited to awarding compensatory damages and shall have no authority to award punitive, consequential, exemplary or similar types of special damages. The prevailing party in the arbitration proceeding shall be entitled to recover from the losing party its expenses, including the costs of arbitration proceeding, and reasonable attorneys' fees. The parties hereto expressly waive all right to trial by jury in any action arising out of or relating to this Agreement.

J. **Miscellaneous**

(a) Any required notice shall be addressed as follows and shall be sent by Certified Mail, return receipt requested, or by overnight courier, either of which notices may be supplemented by facsimile and/or email transmission, and shall be effective as of the date of actual receipt of the Certified Mail or overnight courier. Such notice shall be addressed as follows:

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| If to KPMGCF, to: | KPMG Corporate Finance LLC<br>1305 Walt Whitman Road, Suite 200<br>Melville, NY 11747<br>Attn: Matthew Bordwin<br>(t) 631-351-7800<br>(f) 631-794-2448<br>(e) mbordwin@kpmg.com |
| with a copy to: | KPMG Corporate Finance LLC<br>1 East Pratt Street<br>Baltimore, MD 21202<br>Attn: Dennis W. O'Neill<br>(t) 410.949.8990<br>(f) 410.949.2827<br>(e) dwoneill@kpmg.com |
| If to Company: | CRABTREE & EVELYN, LTD.<br>102 Peake Brook Road<br>PO Box 167<br>Woodstock, CT 06281<br>Attn: Colleen Cording<br>(t) (860) 928-2761<br>(f) (860) 928-5685<br>(e) ccording@crabtree-evelyn.com |
| with a copy to: | Cooley Godward Kronish LLP<br>1114 Avenue of the Americas<br>New York, New York 10036<br>Attn: Lawrence C. Gottlieb, Esq.<br>(t) (212) 479-6140<br>(f) (212) 479-6275<br>(e) lgottlieb@cooley.com |

(b) Upon the commencement of this Agreement, it shall be binding upon and shall inure to the benefit of the parties hereto, and their permitted successors and assigns. This Agreement contains the entire agreement between the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, entered into prior to the execution of this Agreement will alter the covenants, agreements and undertakings herein set forth. This Agreement shall not be modified in any manner, except by an instrument in writing executed by the parties.

(c) This Agreement shall be construed fairly as to all parties and there shall be no presumption against the party who drafted this Agreement in the interpretation of this Agreement.

(d) If any party initiates legal action, including an arbitration proceeding, based upon or arising out of this Agreement, then the prevailing party (or parties) in such action shall be entitled to recover, in addition to any other appropriate amounts, its reasonable costs and expenses associated with such legal action, including without limitation its reasonable attorneys' fees and court costs.

(e) The parties' obligations hereunder shall survive any change in control or ownership of such party.

(f) Neither party shall have any liability for delays, failure in performance, or damages due to fire, explosion, lighting, power surges or failures, strikes or labor disputes, water, acts of god, the elements, war, civil disturbances, acts of civil or military authorities, telecommunications failure, fuel or energy shortages, acts or omissions of communications carriers, or other causes beyond a party's reasonable control, whether or not similar to the foregoing.

(g) KPMGCF and the Company jointly shall retain ownership of the copyright and all other intellectual property rights in the product of KPMGCF's services performed hereunder, whether oral or tangible; <u>provided, however</u>, that KPMGCF will retain ownership of KPMGCF's work papers. Company shall acquire ownership of any product of the services performed in its tangible form upon payment in full of KPMGCF's fees and full reimbursement of expenses. For the purposes of delivering services to Company and other KPMGCF clients, KPMGCF and its related entities shall be entitled to use, develop or share with each other knowledge, experience and skills of general application gained through performing the services hereunder.

(h) Neither party shall sell, assign, or otherwise transfer its rights, interests, or obligations hereunder without prior written approval of the other party.

(i) Any term or provision of this Agreement that is held invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provisions in any other situation or in any other jurisdiction.

(j) In the performance of its services hereunder, KPMGCF will act solely as an independent contractor, and nothing herein will at any time be construed to create the relationship of employer and employee, partnership, principal and agent, or joint venturers as between Company and KPMGCF. KPMGCF shall be responsible for the payment of all employer portions of employment taxes relative to it's employees and representatives and none of KPMGCF's employees or representatives is entitled to any employee benefits offered by Company.

If the foregoing correctly sets forth the agreement between Company and KPMGCF, please sign and return the enclosed copy of this Agreement, whereupon it shall become our binding agreement to be governed by the internal laws of the State of New York, without regard to its conflict of law principles.

This Agreement may be executed in two or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Facsimile and electronic transmission (including the email delivery of documents in Adobe PDF format) of any signed original counterpart or retransmission of any signed facsimile transmission shall be deemed the same as the delivery of the original.

Very truly yours,

**KPMG CORPORATE FINANCE LLC**

By: ______________________
Name: Matthew B[illegible]
Title: MD

Accepted as of the date
first written above:

**CRABTREE & EVELYN, LTD.**

By: ______________________
Name:
Title:

If the foregoing correctly sets forth the agreement between Company and KPMGCF, please sign and return the enclosed copy of this Agreement, whereupon it shall become our binding agreement to be governed by the internal laws of the State of New York, without regard to its conflict of law principles.

This Agreement may be executed in two or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Facsimile and electronic transmission (including the email delivery of documents in Adobe PDF format) of any signed original counterpart or retransmission of any signed facsimile transmission shall be deemed the same as the delivery of the original.

Very truly yours,

KPMG CORPORATE FINANCE LLC

By: ______________________
Name:
Title:

Accepted as of the date
first written above:

CRABTREE & EVELYN, LTD.

By: ______________________
Name: Koh Han Seow
Title: CFO

**Schedule I**

1. **Indemnification**

The Company shall defend, indemnify and hold harmless KPMGCF, its affiliates, and their respective directors, officers, members, employees, agents, representatives and controlling persons (KPMGCF and each such entity or person being an "Indemnified Party") from and against any and all losses, claims, damages, expenses and liabilities (collectively, "Losses"), as incurred, to which such Indemnified Party may become subject, related to or arising out of activities performed by or on behalf of an Indemnified Party pursuant to this Agreement, any transactions contemplated hereby, or the Indemnified Party's role in connection therewith. The Company shall have no obligation to indemnify and hold harmless an Indemnified Party for any Losses found in a final judgment by a Court of competent jurisdiction to have resulted primarily from actions taken or omitted to be taken by the Indemnified Party in bad faith or from the Indemnified Party's gross negligence or willful misconduct in performing the services described.

Promptly after receipt by an Indemnified Party of notice of any claim or the commencement of any action, suit or proceeding with respect to which an Indemnified Party may be entitled to indemnity hereunder, the Indemnified Party will notify the Company in writing of such claim or of the commencement of such action or proceeding, provided that the failure to notify the Company shall not relieve it from any liability under this Agreement except to the extent it has been materially prejudiced by such failure. The Company may, upon written notice to the Indemnified Party, assume the defense of such claim, action, suit or proceeding, will employ counsel satisfactory to the Indemnified Party to represent the Indemnified Party, and will pay the fees and disbursements of such counsel, as incurred. Each Indemnified Party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the Company shall not have the right to assume the defense of such claim, action, suit or proceeding and shall pay or reimburse as incurred the fees and expenses of not more than one separate law firm per relevant jurisdiction (including local counsel) representing such Indemnified Party if (a) the Company shall have failed to timely assume the defense of such claim, action, suit, or proceeding, or (b) the named parties to any such claim, action, suit, or proceeding (including any impleaded parties) include one or more Indemnified Parties and the Company and the Indemnified Party shall have reasonably concluded that a conflict may arise between the positions of the Indemnified Party and the Company or that there may be legal defenses available to it that are different from or additional to those available to the Company.

The Company shall not be liable for any settlement of any claim, action, suit, or proceeding without its consent (which consent shall not be unreasonably withheld), but, if settled with its consent or if there be final judgment for a plaintiff in any claim, suit, action, or proceeding, the Company shall defend, indemnify, and hold harmless each Indemnified Party from and against any and all Losses by reason of such settlement or judgment to the extent provided in this Agreement. Notwithstanding the immediately preceding sentence, if at any time an Indemnified Party shall have requested the Company to reimburse such Indemnified Party for legal or other expenses in connection with investigating, responding to, or defending any claim, action, suit, or proceeding as contemplated by this Agreement, the Company shall be liable for any settlement of any such claim, action, suit, or proceeding without its consent if

(a) such settlement is entered into more than 30 days after receipt by the Company of such request for reimbursement and (b) the Company shall not have reimbursed such Indemnified Party in accordance with such request prior to the date of such settlement. The Company shall not, without the Indemnified Party's prior written consent, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification could be sought under this Agreement (whether or not any Indemnified Party is an actual or potential party to such claim, action or proceeding), unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action or proceeding and does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party.

In the event any Indemnified Party is requested or required to appear as a witness in any action, suit or proceeding brought by or on behalf of or against the Company or any affiliate or any participant in a Transaction covered hereby in which such Indemnified Party is not named as a party, the Company agrees to reimburse the Indemnified Party for all reasonable expenses incurred by it in connection with such Indemnified Party's appearing and preparing to appear as a witness, including, without limitation, the fees and disbursements of its legal counsel, and to compensate KPMGCF at its then-prevailing hourly rates.

2. **Contribution**

If for any reason the indemnification provided in this Agreement is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless, the Company shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received or proposed to be received by the Company on one hand and the Indemnified Party on the other hand in connection with services provided by KPMGCF under this Agreement. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or otherwise, the Company shall contribute to such amount paid or payable by any Indemnified Party to reflect not only the relative benefits but also the relative fault of the Company on the one hand and the Indemnified Parties on the other hand in connection with any actions or omissions or any other matters that result in any such Losses as well as any other relevant equitable considerations. Relative benefits to the Company, on the one hand, and to an Indemnified Party, on the other hand, shall be deemed to be in the same proportion as (a) the total Transaction Value of the Transaction or proposed Transaction bears to (b) all fees actually received by KPMGCF under the Agreement. Notwithstanding the foregoing, the aggregate contribution of all Indemnified Parties to all Losses shall not exceed the amount of fees actually received by KPMGCF under this Agreement.

3. **Reimbursement of Litigation Expenses**

The Company also agrees to reimburse KPMGCF, its affiliates, and their respective directors, officers, members, employees, agents, representatives and controlling persons for all expenses (including counsel fees and disbursements) as they are incurred by such entity or person in connection with the investigation of, preparation for, or defense of any pending or threatened claim, or any action, investigation, suit or proceeding related to or arising out of activities performed by or on behalf of such entity or person pursuant to this Agreement, any transactions contemplated hereby, or its or his role in connection therewith, whether or not such entity or person is a party and whether or not such claim, action or proceeding is initiated or brought by or on behalf of the Company.

4. **Limitation of Liability**

The Company also agrees that KPMGCF, its affiliates, and their respective directors, officers, members, employees, agents, representatives and controlling persons shall not be liable (whether directly or indirectly, in contract or tort or otherwise) to the Company or its security holders or creditors, for any matter, cause or thing related to or arising out of the engagement of KPMGCF pursuant to, or the performance by KPMGCF of the services contemplated by, this Agreement, except to the extent that KPMGCF is found in a final judgment by a Court of competent jurisdiction to have acted or failed to act in bad faith or with gross negligence or willful misconduct in performing the services described in this Agreement.

The provisions of Schedule I shall be in addition to any liability that the Company may otherwise have and shall be binding upon and inure to the benefit of any successors, assigns, heirs, and personal representatives of the Company. These provisions shall be operative in full force and effect regardless of any termination or expiration of this Agreement.

Exhibit A

| Store No. | Store Name |
|---|---|
| 55 | Embarcadero |
| 67 | Bridgewater |
| 215 | Towson |
| 12 | Oakbrook |
| 132 | Paramus Park |
| 195 | Polaris Fashion Center |
| 25 | Southdale |
| 72 | Bellevue Square |
| 119 | Liberty Place |
| 205 | Scottsdale Fashion Square |
| 202 | Chandler Fashion Center |
| 143 | Washington Square |
| 93 | Arden Fair |
| 24 | Broadway Plaza |
| 120 | Willow Grove |
| 117 | King of Prussia |
| 152 | The Westchester |
| 22 | Pheasant Lane |
| 154 | Palo Alto |
| 102 | Boca Raton |
| 85 | Pentagon City |
| 42 | Cape Cod |
| 16 | Woodfield |
| 165 | Twelve Oaks Mall |
| 17 | Westfarms |
| 35 | Short Hills |
| 193 | University Town Center |
| 218 | Columbus Circle |
| 190 | Kenwood Town Centre |
| 187 | St. Louis Galleria |
| 142 | Natick Mall |
| 121 | Cherry Hill |
| 181 | Grove City Outlet |
| 246 | Jeffersonville Outlet |
| 159 | Myrtle Beach |
| 36 | Rockefeller |
| 27 | Montgomery Mall |
| 43 | Danbury |

| | |
|---|---|
| 29 | Lakeside |
| 207 | Mall at Millenia |
| 138 | Faneuil Hall |
| 15 | Watertower |
| 167 | Beachwood Place |
| 104 | Coronado Center |
| 1 | Perimeter |
| 125 | Glendale |
| 47 | Tyson's Corner |
| 189 | Saddle Creek Shopping |
| 108 | Carousel Center Mall |
| 101 | Brea Mall |
| 163 | Roosevelt Field |
| 94 | Cherry Creek |
| 185 | Shops @ Willow Bend |
| 140 | Aventura |
| 129 | Century City |
| 109 | Annapolis |
| 231 | Seattle Outlet |
| 156 | Desert Hills |
| 219 | Woodbury Commons |
| 213 | Las Vegas Outlet |
| 170 | Gilroy Outlet |
| 188 | Wrentham Outlet |
| 235 | Leesburg Outlet |
| 214 | Chicago Outlet |
| 243 | North Georgia Outlet |
| 236 | Round Rock Outlet |
| 241 | Philadelphia Outlet |
| 226 | Jersey Short Outlets |
| 123 | Mall @ Green Hills |
| 216 | Columbia Mall |
| 111 | The Oaks |
| 208 | Miromar Outlet |
| 247 | Orlando Outlet |
| 182 | San Marcos Outlet |
| 162 | Williamsburg Outlet |
| 240 | Pleasant Prairie Outlet |
| 149 | West Town Mall |
| 107 | Mall of America |
| 203 | Prom of The Peninsula |
| 53 | Valley Fair |
| 155 | Eastview Mall |

**EXHIBIT B**

**Termination Properties**

**Exhibit B shall contain no leases for properties as of the date of the Agreement. Subject to written confirmation by the Company and KPMGCF, leases may be added hereto.**

**EXHIBIT B**

**BORDWIN DECLARATION**

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

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

# DECLARATION OF MATTHEW BORDWIN IN SUPPORT OF DEBTOR'S APPLICATION FOR ORDER UNDER BANKRUPTCY CODE SECTIONS 327(a) AND 328 AND BANKRUPTCY RULES 2014 AND 2016 AUTHORIZING EMPLOYMENT AND RETENTION OF KPMG CORPORATE FINANCE LLC AS SPECIAL REAL ESTATE ADVISOR TO THE DEBTOR *NUNC PRO TUNC* TO THE PETITION DATE

Matthew Bordwin, of full age, being duly sworn according to law, deposes and states:

1. I am a Managing Director of KPMG Corporate Finance LLC ("KPMGCF"), maintaining offices at 1305 Walt Whitman Road, Suite 200, Melville, NY 11747. I submit this affidavit in support of the application ("Application") of Crabtree & Evelyn, Ltd. (the "Debtor") for entry of an Order authorizing the Debtor to retain KPMGCF as its special real estate advisor.

2. KPMGCF is a member firm of KPMG International. KPMGCF provides a full suite of investment banking and advisory services to its domestic and international clients. KPMGCF is a U.S. limited liability company, is a member of FINRA, and is registered as a broker-dealer with the Securities and Exchange Commission (SEC). KPMGCF is a subsidiary of KPMG LLP, a UK limited liability partnership ("KPMG LLP (UK)") and a member firm of the KPMG network of independent member firms affiliated with KPMG International, a Swiss cooperative. KPMGCF is owned by KPMG LLP (UK) and its U.S. employees. KPMG International is a global network of professionals with thousands of employees and thousands of clients throughout the world. KPMGCF has, to the best of its ability, through research using the

resources provided to KPMG International member firms and publicly available documents, confirmed that the statements made herein are accurate. KPMGCF understands its obligations, and reserves the right, to supplement this statement from time to time, to disclose any connections with the Debtors, the creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed by the Office of the United States Trustee. KPMG LLP (US), the tax, audit and accounting firm, does not have any ownership interest in KPMGCF or KPMG LLP (UK).

**KPMGCF's Disinterestedness**

3. To the best of my knowledge and information after due inquiry, KPMGCF has no connection with the Debtor, its creditors, any other party-in-interest herein, or their respective attorneys or professionals, and does not hold, or represent any entity having an adverse interest in connection with this chapter 11 case, except as otherwise disclosed herein. For so long as KPMGCF represents the Debtor, and absent further applicable orders of this Court, KPMGCF will not represent any entity other than the Debtor in connection with this chapter 11 case.

4. KPMGCF has reviewed: (a) the Debtor's list of top 40 creditors, filed with the Petition in this case; and (b) the Court's docket (collectively, the "Reviewed Documents"). Based upon our review of the Reviewed Documents, and except as stated on the attached Exhibit A, KPMGCF has no connections with the Debtor, the creditors or any other party in interest.

5. KPMGCF has reviewed the Reviewed Documents and has also identified through publicly available documents that member firms of KPMG International have the connections with those professionals for the Debtor, the creditors and other parties in interest that are set forth on Exhibit B. The connections disclosed on Exhibit B are all unrelated to this case. Although

KPMGCF is unaware of other connections, given the size and scope of the business of the member firms of KPMG International, such other connections are possible; if and when such connections are discovered, they will be disclosed pursuant to a supplement to this Affidavit.

6. In the ordinary course of conducting their businesses, member firms of KPMG International, including KPMGCF, have or may reasonably expect to have in the future, professional relationships with the professional law firms, accounting firms, or other professional firms or other parties in this case. All of those relationships are or are expected to be unrelated to this case.

7. KPMGCF asserts that, with the exception of the matters disclosed in Exhibit A and Exhibit B to this Affidavit, it is "disinterested" within the meaning of Section 327(a) of the Bankruptcy Code, 11 U.S.C. § 327(a). To the best of the undersigned's knowledge, the relationships disclosed on Exhibits A and B are not related to this case in any way. Further, to the best of my knowledge, none of the relationships identified on Exhibits A and B would create interests materially adverse to the estate and the interests of the creditors in this case.

8. Based on the foregoing and except as set forth herein, neither I, KPMGCF, nor any professional thereof, insofar as I have been able to ascertain based on the information currently available to me, represents any interest adverse to the Debtors in the matters upon which KPMGCF is to be engaged. Specifically, KPMG Corporate Finance is a "disinterested" person within the meaning of Bankruptcy Code sections 327(a) and 101(14), in that:

(a) Neither KPMGCF nor any of its professionals holds or represents an interest adverse to the Debtor's estate.

(b) Neither KPMGCF nor any of its professionals is or was a creditor or an insider of the Debtor, except that KPMGCF previously has rendered real estate advisory services to the Debtor for which it has been compensated as disclosed below.

(c) Neither KPMGCF nor any of its professionals is or was, within two years before the Petition Date, a director, officer, or employee of the Debtor.

(d) KPMGCF does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtor, or for any other reason.

(e) No professional employed by KPMGCF is related to any United States District Judge or United States Bankruptcy Judge for the Southern District of New York or to the U.S. Trustee for such district or to any known employee in the office thereof.

9. As previously set forth above, KPMGCF is a member firm of KPMG International.[1] Financial information pertaining to engagement activity is the proprietary and confidential information of each individual member firm and KPMGCF does not have any legal right to access, or if accessed, disclose, the details of such information relating to other KPMG International member firms. We have, to the best of our ability, through research using the resources provided to KPMG International member firms and publicly available documents, confirmed that the statements made herein are accurate. KPMGCF understands their obligations, and reserve the right, to supplement this affidavit from time to time, to disclose any connections with the Debtor, the creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed by the Office of the United States Trustee.

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[1] KPMGCF is a member firm of KPMG International, a Swiss cooperative of member firms, each a separate legal entity, located worldwide. Only KPMGCF is being retained in this matter. While KPMGCF a separate and distinct legal entity from all other member firms of KPMG International, in an attempt to identify conflicts among or between KPMG International member firms, KPMG International has a global conflict internal computer database related to the engagement activity or potential engagement activity of a majority of such member firms since May 2, 2005 that allows KPMG International member firms to identify potential conflicts between other KPMG International member firms. KPMGCF cannot assure that an engagement will not be accepted by other member firms of KPMG International for another party that may bear upon KPMGCF's engagement by the Debtor. However, to the extent KPMGCF is aware of such engagement and believes such engagement may bear upon KPMGCF's engagement by the Debtor, KPMGCF will file a supplemental declaration with the Bankruptcy Court.

## **Scope of Employment**

10. On March 20, 2009, the Debtor and KPMGCF entered into an Engagement Agreement attached hereto as Exhibit C (the "KPMGCF Agreement") pursuant to which KPMGCF was retained to render the real estate services listed below. Is it anticipated that KPMGCF will continue to render the same services in this Chapter 11 case:

(a) KPMGCF will organize the lease information for certain of the Debtor's leased properties (each, a "Property") in a manner that clearly displays the store and lease economics. After consultation with KPMGCF, Debtor will establish negotiating goals and parameters, such as rent reductions, lease terminations, lease term modifications, and other leasehold concessions;

(b) KPMGCF will contact each Property landlord and will use commercially reasonable efforts in negotiating modifications in accordance with the parameters established by Debtor;

(c) KPMGCF will work with the landlords and Debtor to ensure that the lease modification proposals are documented appropriately. All lease modification agreements and termination agreements shall be documented by Debtor's in-house or outside counsel;

(d) KPMGCF shall provide Debtor with a weekly status report (the "Weekly Status Report") with respect to all Properties detailing the activities relating to each Property, summarizing the status of contacts and negotiations made during the prior week. The Weekly Status Report shall be delivered on or before each Tuesday of the following week and shall be in a format reasonably agreed upon by Debtor and KPMGCF. The Weekly Status Report may be delivered electronically, to the extent feasible, in accordance with delivery instructions from Debtor.

## **Professional Compensation**

11. Pursuant to the terms of the KPMGCF Agreement, KPMGCF is to be compensated as follows (defined terms have the meaning specified in the KPMGCF Agreement):

(a) An engagement fee of $25,000 was paid promptly following the original execution of the KPMGCF Agreement.

(b) A retainer fee of $25,000 (the "Retainer"), was paid promptly following execution of the KPMGCF Agreement. The Retainer shall be held by KPMGCF during the term of the KPMGCF Agreement and will be credited against the final invoice for services provided under the KPMGCF Agreement or refunded, in whole or in part, as applicable, if all invoices are paid in full. If at any time during the term of this Agreement, the Retainer is reduced such that KPMGCF is holding less than $25,000 (such amount less than $25,000 is referred to as the "Deficiency"), the Debtor shall within one (1) business day of receiving notice from KPMGCF pay via wire transfer of immediately available funds an amount equal to the Deficiency.

(c) For lease modifications, KPMGCF shall be paid, on a per property basis, the greater of (1) $4,000 or (2) the sum of (x) 5% of the difference between (a) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement that was payable by Debtor prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement payable by Debtor following the execution of the applicable Modification Agreement, and (y) 2% of the difference between (a) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement that was payable by Debtor prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement payable by Debtor following the execution of the applicable Modification Agreement.

(d) For lease terminations, KPMGCF shall be paid the greater of $4,000 or 5% of the Actual Savings.

12. In addition to the fees that are or may be payable to KPMGCF under the KPMGCF Agreement, KPMGCF is to be reimbursed for its reasonable out-of-pocket expenses incurred in connection with its activities under the KPMGCF Agreement.

13. The overall compensation structure described above is comparable to compensation generally charged by real estate advisors rendering comparable services in chapter 11 bankruptcy cases.

14. Other than as set forth herein, there is no additional proposed arrangement to compensate KPMGCF for the services described herein. KPMGCF has not shared, nor agreed to share (a) any compensation it has received or may receive with any other party or person, other than with the professionals of KPMGCF, or (b) any compensation another person or party has received or may receive.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 7th day of July, 2009.

Matthew Bordwin

# Exhibit A

1. As referenced in the Application, the Debtor retained KPMGCF pursuant to an Engagement Agreement, dated as of March 20, 2009.

<u>Exhibit B</u>

1. HSBC Bank USA, National Association
2. Standard Soap
3. Vera Bradley Designs
4. Alpha Logica
5. Seppic, Inc.
6. Symrise Inc.
7. Carole Hochman Designs, Inc.
8. Yrc, Inc.
9. Experian Marketing Solutions, Inc
10. Ccl Tubes-Wilkes Barre
11. 520 Madison Owners,L.L.C.
12. Lubrizol Advanced Materials
13. Fragrance Resources

Exhibit C

[KPMGCF Agreement]

KPMG

**KPMG Corporate Finance LLC**
Suite 200
1305 Walt Whitman Road
Melville, NY 11747-4302

Telephone (631) 351-7800
Fax (631) 794-2491

Internet www.kpmgcorporatefinance.com/us

March 20, 2009

CRABTREE & EVELYN, LTD.
102 Peake Brook Road
PO Box 167
Woodstock, CT 06281

Ladies and Gentlemen:

By this agreement (this "Agreement"), KPMG Corporate Finance LLC ("KPMGCF") agrees to act as a Special Real Estate Advisor to Crabtree & Evelyn, Ltd. (together with its subsidiaries and affiliates, the "Company"), and Company hereby retains KPMGCF, upon the terms and conditions set forth below, as its Special Real Estate Advisor. KPMGCF shall have the sole and exclusive authority to represent Company in the negotiation of lease modification agreements with respect to those leases for properties listed on Exhibit A hereto and incorporated herein (the "Renegotiation Properties") and with respect to negotiation of termination agreements with respect to those leases for properties listed on Exhibit B hereto and incorporated herein (the "Termination Properties" and, together with the Renegotiation Properties, the "Properties"), which exhibits can be modified from time to time with the consent of the Company and KPGMCF. All communications and inquiries from landlords regarding the negotiation of rental reductions and other lease modifications or terminations regarding a Property, whether directed to Company (including but not limited to its officers, agents and employees), or Company's counsel, accountants or other professionals, shall be re-directed to KPMGCF. Company shall retain the complete discretion to accept or reject any real estate proposal regarding a Property.

**A. Services and Fees**

1) Scope of Services:

a) KPMGCF will organize the lease information for each Property in a manner that clearly displays the store and lease economics. After consultation with KPMGCF, Company will establish negotiating goals and parameters, such as rent reductions, lease terminations, lease term modifications, and other leasehold concessions.

b) KPMGCF will contact each Property landlord and will use commercially reasonable efforts in negotiating modifications in accordance with the parameters established by Company.

c) KPMGCF will work with the landlords and Company to ensure that the lease modification proposals are documented appropriately. All lease modification agreements and termination agreements shall be documented by Company's in-house or outside counsel.

d) KPMGCF shall provide Company with a weekly status report (the "Weekly Status Report") with respect to all Properties detailing the activities relating to each Property, summarizing the status of contacts and negotiations made during the prior week. The Weekly Status Report shall be delivered on or before each Tuesday of the following week and shall be in a format reasonably agreed upon by Company and KPMGCF. The Weekly Status Report may be delivered electronically, to the extent feasible, in accordance with delivery instructions from Company.

2) Compensation. As compensation for the services to be provided by KPMGCF hereunder, the Company agrees to pay KPMGCF:

   a) An earned, non-refundable engagement fee of $25,000, payable via wire transfer of immediately available funds within two (2) days following execution of this Agreement.

   b) A retainer fee of $25,000 (the "Retainer"), payable via wire transfer of immediately available funds within two (2) days following execution of this Agreement. The Retainer shall be held by KPMGCF during the term of the Agreement and will be credited against the final invoice for services provided hereunder or refunded, in whole or in part, as applicable, if all invoices are paid in full. If at any time during the term of this Agreement, the Retainer is reduced such that KPMGCF is holding less than $25,000 (such amount less than $25,000 is referred to as the "Deficiency"), the Company shall within one (1) business day of receiving notice from KPMGCF pay via wire transfer of immediately available funds an amount equal to the Deficiency.

3) Transactional Fee Definitions:

   a) Modification Agreement: The term "Modification Agreement" shall refer to a fully executed agreement between Company and a landlord (including without limitation the execution of any lender, master landlord or other required consents), which agreement results in the modification of the terms of a Property lease by, among other things, a rent reduction, modification of the remaining term of the lease, a reduction in the size of the premises or a lease termination.

   b) Actual Savings: The term "Actual Savings" shall mean the difference between the "Remaining Leasehold Liability Threshold" and the "Modification Expenses".

   c) Remaining Leasehold Liability Threshold: The Remaining Leasehold Liability Threshold shall be ninety percent (90%) of the Remaining Leasehold Liability.

   d) Remaining Leasehold Liability: The parties hereto shall together calculate the total remaining occupancy costs for each Property pursuant to the applicable lease. The parties agree that such calculation shall subsequently be adjusted (A) so as to be calculated as of the "Lease Modification Agreement Date" (as defined below), and (B) so as to take into account any updated or corrected data. This calculation of aggregate remaining occupancy costs shall include all base rent and additional charges projected to be paid directly to the landlord for the remaining term of the applicable lease (excluding any options to renew or extend the term of the lease), including but not limited to percentage rent, unamortized construction allowances, common area maintenance, real estate taxes, insurance and other related expenses (such common area maintenance, real estate taxes, insurance and other related expenses to be determined at the rate in effect at execution of the applicable Modification Agreement, without taking into account any future increases). Such aggregate remaining occupancy costs shall be referred to as the "Remaining

Leasehold Liability".

e) Modification Expenses:

i) The term "Modification Expenses" shall include:

(1) Fees required to obtain landlord consent,

(2) Settlement payments or other consideration to a landlord pursuant to the terms of a Modification Agreement, and

(3) Any administrative or document review fees, or any other fees or expenses payable by Company to or on behalf of a landlord in connection with a Modification Agreement.

ii) The term "Modification Expenses" shall exclude:

(1) KPMGCF's fees and expenses,

(2) Company's legal fees, Company's costs for removing inventory, trade fixtures and equipment, and any security deposits held by a landlord (unless retained by a landlord to satisfy any of the items described in (e)(i) above), and

(3) Company's costs of preparing the premises to comply with the provisions of the applicable lease pertaining to the condition of the premises upon surrender.

f) Lease Modification Agreement Date: The term "Lease Modification Agreement Date" shall be the date of full and complete execution of a Modification Agreement (including without limitation the execution of any lender, master landlord or other required consents).

4) Transactional Fees: On the Lease Modification Agreement Date, KPMGCF shall have earned compensation per such Property as follows (each a "Transactional Fee"):

i) Lease Renegotiation. KPMGCF shall be paid, on a per property basis, the greater of (1) \$4,000 or (2) the *sum* of (x) 5% of the difference between (a) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement that was payable by Company prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the three year period immediately following the date of the Modification Agreement payable by Company following the execution of the applicable Modification Agreement, and (y) 2% of the difference between (a) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement that was payable by Company prior to the execution of the applicable Modification Agreement, and (b) the Remaining Leasehold Liability for the period after the beginning of the forth year following the date of the Modification Agreement payable by Company following the execution of the applicable Modification Agreement.

ii) Lease Termination: KPMGCF shall be paid the greater of \$4,000 or 5% of the Actual Savings.

iii) Following the applicable Lease Modification Agreement Date, KPMGCF shall invoice Company for the applicable Transactional Fee, and Company shall pay the Transactional Fee to KPMGCF within three (3) days following Company's receipt of the invoice.

5) Parent Guaranty. Contemporaneous with the execution of this engagement letter, KPMGCF will require the Company's parent to execute a separate Guaranty Agreement providing for the guaranty of the Company's payment and performance under this Agreement. Such Guaranty Agreement shall be capped at $400,000.00 and the cap will be reduced dollar-for-dollar by amounts paid pursuant to this Agreement.

**B. Expenses**

The Company shall reimburse KPMGCF promptly upon request from time to time for all reasonable out-of-pocket expenses (including, without limitation, travel, communication and document production expenses, the fees and expenses of counsel) incurred by KPMGCF pursuant to its engagement hereunder. All air travel must be pre-approved by the Company.

**C. Survival**

Within ten (10) days following the expiration of this Agreement, KPMGCF will provide Company with a list indicating those landlord negotiations which have been substantially negotiated by KPMGCF but which have not yet been documented, which status will include the then current details of KPMGCF negotiations, including outstanding offer, if any (the "Pending Negotiation List"). If Company arranges with a landlord for the modification or termination of a Property's lease that is on the Pending Negotiation List and is substantially similar to the offer listed on such list with respect to such Property, and Company begins to receive the benefits of that leasehold modification or termination within six (6) months of the expiration of this Agreement, or Company executes a Modification Agreement within six (6) months of the expiration of this Agreement, then KPMGCF shall be entitled to a fee in accordance with the terms of this Agreement.

**D. Indemnity, Contribution, Reimbursement, and Limitation of Liability**

The Company also agrees to indemnify KPMGCF and certain other entities and persons as set forth in Schedule I attached hereto.

**E. Company Responsibilities and Information to be Supplied**

Company shall use reasonable efforts to make available to KPMGCF all necessary information concerning each Property in connection with the performance of KPMGCF's obligations hereunder. All information provided by Company shall be materially accurate and complete at the time it is furnished and Company shall, as soon as it becomes aware of any inaccuracy or incompleteness in any information then or later provided to KPMGCF, promptly advise KPMGCF of such inaccuracy or incompleteness and correct the same. KPMGCF shall under all circumstances have the right to rely, without independent verification, on the accuracy and completeness of all such information supplied to KPMGCF in connection with KPMGCF's engagement hereunder and shall not be responsible for the inaccuracy or incompleteness of any information provided to it.

**F. Announcement of Transaction**

Subject to the prior written approval of Company, when the transactions contemplated hereby are completed, and subject to compliance with applicable securities laws, KPMGCF may, at its option and expense, place announcements and advertisements or otherwise publicize such transactions and KPMGCF's role in it (which may include the reproduction of the Company's logo and a hyperlink to the Company's web site) on KPMGCF's internet web site and in such newspapers and periodicals as it may choose stating that KPMGCF has acted as advisor to the Company with respect to the transactions.

**G. Term of Agreement**

The term of KPMGCF's retention shall be from the date of Company's execution of this Agreement for a period of six (6) months, which term can be extended pursuant to the same terms and conditions and by the mutual written agreement of the parties.

Such expiration will not affect:

a. KPMGCF's rights to receive fees accrued prior to such expiration and to receive reimbursement of its out-of-pocket expenses as set forth above; or

b. the rights of KPMGCF or any other Indemnified Person (as defined in Schedule I hereto) set forth in Schedule I hereto.

**H. Multiple Clients**

From time to time, KPMGCF, or a Member Firm, may and shall have the right to advise or provide services to several industry participants, some of which may be competitors of the Company. The Company, its directors and shareholders, waive any right to commence any action, suit or proceeding or make any demand, complaint or claim against KPMGCF and Member Firms, and its and their subsidiaries or affiliates, or their partners, directors, members, officers or other personnel, that arises out of KPMGCF's, or a Member Firm's, right to advise or provide services to industry competitors of the Company.

**I. Dispute Resolution**

Any and all issues, disputes, controversies, claims or causes of action which relate or pertain to, or result or arise from this Agreement, the alleged breach thereof, or KPMGCF's services hereunder, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, with venue vesting exclusively in New York, New York, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator(s) shall be limited to awarding compensatory damages and shall have no authority to award punitive, consequential, exemplary or similar types of special damages. The prevailing party in the arbitration proceeding shall be entitled to recover from the losing party its expenses, including the costs of arbitration proceeding, and reasonable attorneys' fees. The parties hereto expressly waive all right to trial by jury in any action arising out of or relating to this Agreement.

J. **Miscellaneous**

(a) Any required notice shall be addressed as follows and shall be sent by Certified Mail, return receipt requested, or by overnight courier, either of which notices may be supplemented by facsimile and/or email transmission, and shall be effective as of the date of actual receipt of the Certified Mail or overnight courier. Such notice shall be addressed as follows:

| | |
|---|---|
| If to KPMGCF, to: | KPMG Corporate Finance LLC<br>1305 Walt Whitman Road, Suite 200<br>Melville, NY 11747<br>Attn: Matthew Bordwin<br>(t) 631-351-7800<br>(f) 631-794-2448<br>(e) mbordwin@kpmg.com |
| with a copy to: | KPMG Corporate Finance LLC<br>1 East Pratt Street<br>Baltimore, MD 21202<br>Attn: Dennis W. O'Neill<br>(t) 410.949.8990<br>(f) 410.949.2827<br>(e) dwoneill@kpmg.com |
| If to Company: | CRABTREE & EVELYN, LTD.<br>102 Peake Brook Road<br>PO Box 167<br>Woodstock, CT 06281<br>Attn: Colleen Cording<br>(t) (860) 928-2761<br>(f) (860) 928-5685<br>(e) ccording@crabtree-evelyn.com |
| with a copy to: | Cooley Godward Kronish LLP<br>1114 Avenue of the Americas<br>New York, New York 10036<br>Attn: Lawrence C. Gottlieb, Esq.<br>(t) (212) 479-6140<br>(f) (212) 479-6275<br>(e) lgottlieb@cooley.com |

(b) Upon the commencement of this Agreement, it shall be binding upon and shall inure to the benefit of the parties hereto, and their permitted successors and assigns. This Agreement contains the entire agreement between the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, entered into prior to the execution of this Agreement will alter the covenants, agreements and undertakings herein set forth. This Agreement shall not be modified in any manner, except by an instrument in writing executed by the parties.

(c) This Agreement shall be construed fairly as to all parties and there shall be no presumption against the party who drafted this Agreement in the interpretation of this Agreement.

(d) If any party initiates legal action, including an arbitration proceeding, based upon or arising out of this Agreement, then the prevailing party (or parties) in such action shall be entitled to recover, in addition to any other appropriate amounts, its reasonable costs and expenses associated with such legal action, including without limitation its reasonable attorneys' fees and court costs.

(e) The parties' obligations hereunder shall survive any change in control or ownership of such party.

(f) Neither party shall have any liability for delays, failure in performance, or damages due to fire, explosion, lighting, power surges or failures, strikes or labor disputes, water, acts of god, the elements, war, civil disturbances, acts of civil or military authorities, telecommunications failure, fuel or energy shortages, acts or omissions of communications carriers, or other causes beyond a party's reasonable control, whether or not similar to the foregoing.

(g) KPMGCF and the Company jointly shall retain ownership of the copyright and all other intellectual property rights in the product of KPMGCF's services performed hereunder, whether oral or tangible; provided, however, that KPMGCF will retain ownership of KPMGCF's work papers. Company shall acquire ownership of any product of the services performed in its tangible form upon payment in full of KPMGCF's fees and full reimbursement of expenses. For the purposes of delivering services to Company and other KPMGCF clients, KPMGCF and its related entities shall be entitled to use, develop or share with each other knowledge, experience and skills of general application gained through performing the services hereunder.

(h) Neither party shall sell, assign, or otherwise transfer its rights, interests, or obligations hereunder without prior written approval of the other party.

(i) Any term or provision of this Agreement that is held invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provisions in any other situation or in any other jurisdiction.

(j) In the performance of its services hereunder, KPMGCF will act solely as an independent contractor, and nothing herein will at any time be construed to create the relationship of employer and employee, partnership, principal and agent, or joint venturers as between Company and KPMGCF. KPMGCF shall be responsible for the payment of all employer portions of employment taxes relative to it's employees and representatives and none of KPMGCF's employees or representatives is entitled to any employee benefits offered by Company.

If the foregoing correctly sets forth the agreement between Company and KPMGCF, please sign and return the enclosed copy of this Agreement, whereupon it shall become our binding agreement to be governed by the internal laws of the State of New York, without regard to its conflict of law principles.

This Agreement may be executed in two or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Facsimile and electronic transmission (including the email delivery of documents in Adobe PDF format) of any signed original counterpart or retransmission of any signed facsimile transmission shall be deemed the same as the delivery of the original.

Very truly yours,

**KPMG CORPORATE FINANCE LLC**

By: ______________________
Name: [illegible]
Title: MD

Accepted as of the date
first written above:

**CRABTREE & EVELYN, LTD.**

By: ______________________
Name:
Title:

MB

If the foregoing correctly sets forth the agreement between Company and KPMGCF, please sign and return the enclosed copy of this Agreement, whereupon it shall become our binding agreement to be governed by the internal laws of the State of New York, without regard to its conflict of law principles.

This Agreement may be executed in two or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Facsimile and electronic transmission (including the email delivery of documents in Adobe PDF format) of any signed original counterpart or retransmission of any signed facsimile transmission shall be deemed the same as the delivery of the original.

Very truly yours,

KPMG CORPORATE FINANCE LLC

By: ______________________
Name:
Title:

Accepted as of the date
first written above:

CRABTREE & EVELYN, LTD.

By: ______________________
Name: Koh Han Seow
Title: CFO

**Schedule I**

1. **Indemnification**

The Company shall defend, indemnify and hold harmless KPMGCF, its affiliates, and their respective directors, officers, members, employees, agents, representatives and controlling persons (KPMGCF and each such entity or person being an "Indemnified Party") from and against any and all losses, claims, damages, expenses and liabilities (collectively, "Losses"), as incurred, to which such Indemnified Party may become subject, related to or arising out of activities performed by or on behalf of an Indemnified Party pursuant to this Agreement, any transactions contemplated hereby, or the Indemnified Party's role in connection therewith. The Company shall have no obligation to indemnify and hold harmless an Indemnified Party for any Losses found in a final judgment by a Court of competent jurisdiction to have resulted primarily from actions taken or omitted to be taken by the Indemnified Party in bad faith or from the Indemnified Party's gross negligence or willful misconduct in performing the services described.

Promptly after receipt by an Indemnified Party of notice of any claim or the commencement of any action, suit or proceeding with respect to which an Indemnified Party may be entitled to indemnity hereunder, the Indemnified Party will notify the Company in writing of such claim or of the commencement of such action or proceeding, provided that the failure to notify the Company shall not relieve it from any liability under this Agreement except to the extent it has been materially prejudiced by such failure. The Company may, upon written notice to the Indemnified Party, assume the defense of such claim, action, suit or proceeding, will employ counsel satisfactory to the Indemnified Party to represent the Indemnified Party, and will pay the fees and disbursements of such counsel, as incurred. Each Indemnified Party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the Company shall not have the right to assume the defense of such claim, action, suit or proceeding and shall pay or reimburse as incurred the fees and expenses of not more than one separate law firm per relevant jurisdiction (including local counsel) representing such Indemnified Party if (a) the Company shall have failed to timely assume the defense of such claim, action, suit, or proceeding, or (b) the named parties to any such claim, action, suit, or proceeding (including any impleaded parties) include one or more Indemnified Parties and the Company and the Indemnified Party shall have reasonably concluded that a conflict may arise between the positions of the Indemnified Party and the Company or that there may be legal defenses available to it that are different from or additional to those available to the Company.

The Company shall not be liable for any settlement of any claim, action, suit, or proceeding without its consent (which consent shall not be unreasonably withheld), but, if settled with its consent or if there be final judgment for a plaintiff in any claim, suit, action, or proceeding, the Company shall defend, indemnify, and hold harmless each Indemnified Party from and against any and all Losses by reason of such settlement or judgment to the extent provided in this Agreement. Notwithstanding the immediately preceding sentence, if at any time an Indemnified Party shall have requested the Company to reimburse such Indemnified Party for legal or other expenses in connection with investigating, responding to, or defending any claim, action, suit, or proceeding as contemplated by this Agreement, the Company shall be liable for any settlement of any such claim, action, suit, or proceeding without its consent if

(a) such settlement is entered into more than 30 days after receipt by the Company of such request for reimbursement and (b) the Company shall not have reimbursed such Indemnified Party in accordance with such request prior to the date of such settlement. The Company shall not, without the Indemnified Party's prior written consent, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification could be sought under this Agreement (whether or not any Indemnified Party is an actual or potential party to such claim, action or proceeding), unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action or proceeding and does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party.

In the event any Indemnified Party is requested or required to appear as a witness in any action, suit or proceeding brought by or on behalf of or against the Company or any affiliate or any participant in a Transaction covered hereby in which such Indemnified Party is not named as a party, the Company agrees to reimburse the Indemnified Party for all reasonable expenses incurred by it in connection with such Indemnified Party's appearing and preparing to appear as a witness, including, without limitation, the fees and disbursements of its legal counsel, and to compensate KPMGCF at its then-prevailing hourly rates.

2. **<u>Contribution</u>**

If for any reason the indemnification provided in this Agreement is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless, the Company shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received or proposed to be received by the Company on one hand and the Indemnified Party on the other hand in connection with services provided by KPMGCF under this Agreement. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or otherwise, the Company shall contribute to such amount paid or payable by any Indemnified Party to reflect not only the relative benefits but also the relative fault of the Company on the one hand and the Indemnified Parties on the other hand in connection with any actions or omissions or any other matters that result in any such Losses as well as any other relevant equitable considerations. Relative benefits to the Company, on the one hand, and to an Indemnified Party, on the other hand, shall be deemed to be in the same proportion as (a) the total Transaction Value of the Transaction or proposed Transaction bears to (b) all fees actually received by KPMGCF under the Agreement. Notwithstanding the foregoing, the aggregate contribution of all Indemnified Parties to all Losses shall not exceed the amount of fees actually received by KPMGCF under this Agreement.

3. **<u>Reimbursement of Litigation Expenses</u>**

The Company also agrees to reimburse KPMGCF, its affiliates, and their respective directors, officers, members, employees, agents, representatives and controlling persons for all expenses (including counsel fees and disbursements) as they are incurred by such entity or person in connection with the investigation of, preparation for, or defense of any pending or threatened claim, or any action, investigation, suit or proceeding related to or arising out of activities performed by or on behalf of such entity or person pursuant to this Agreement, any transactions contemplated hereby, or its or his role in connection therewith, whether or not such entity or person is a party and whether or not such claim, action or proceeding is initiated or brought by or on behalf of the Company.

4. **Limitation of Liability**

The Company also agrees that KPMGCF, its affiliates, and their respective directors, officers, members, employees, agents, representatives and controlling persons shall not be liable (whether directly or indirectly, in contract or tort or otherwise) to the Company or its security holders or creditors, for any matter, cause or thing related to or arising out of the engagement of KPMGCF pursuant to, or the performance by KPMGCF of the services contemplated by, this Agreement, except to the extent that KPMGCF is found in a final judgment by a Court of competent jurisdiction to have acted or failed to act in bad faith or with gross negligence or willful misconduct in performing the services described in this Agreement.

The provisions of Schedule I shall be in addition to any liability that the Company may otherwise have and shall be binding upon and inure to the benefit of any successors, assigns, heirs, and personal representatives of the Company. These provisions shall be operative in full force and effect regardless of any termination or expiration of this Agreement.

Exhibit A

| Store No. | Store Name |
|---|---|
| 55 | Embarcadero |
| 67 | Bridgewater |
| 215 | Towson |
| 12 | Oakbrook |
| 132 | Paramus Park |
| 195 | Polaris Fashion Center |
| 25 | Southdale |
| 72 | Bellevue Square |
| 119 | Liberty Place |
| 205 | Scottsdale Fashion Square |
| 202 | Chandler Fashion Center |
| 143 | Washington Square |
| 93 | Arden Fair |
| 24 | Broadway Plaza |
| 120 | Willow Grove |
| 117 | King of Prussia |
| 152 | The Westchester |
| 22 | Pheasant Lane |
| 154 | Palo Alto |
| 102 | Boca Raton |
| 85 | Pentagon City |
| 42 | Cape Cod |
| 16 | Woodfield |
| 165 | Twelve Oaks Mall |
| 17 | Westfarms |
| 35 | Short Hills |
| 193 | University Town Center |
| 218 | Columbus Circle |
| 190 | Kenwood Town Centre |
| 187 | St. Louis Galleria |
| 142 | Natick Mall |
| 121 | Cherry Hill |
| 181 | Grove City Outlet |
| 246 | Jeffersonville Outlet |
| 159 | Myrtle Beach |
| 36 | Rockefeller |
| 27 | Montgomery Mall |
| 43 | Danbury |

| | |
|---|---|
| 29 | Lakeside |
| 207 | Mall at Millenia |
| 138 | Faneuil Hall |
| 15 | Watertower |
| 167 | Beachwood Place |
| 104 | Coronado Center |
| 1 | Perimeter |
| 125 | Glendale |
| 47 | Tyson's Corner |
| 189 | Saddle Creek Shopping |
| 108 | Carousel Center Mall |
| 101 | Brea Mall |
| 163 | Roosevelt Field |
| 94 | Cherry Creek |
| 185 | Shops @ Willow Bend |
| 140 | Aventura |
| 129 | Century City |
| 109 | Annapolis |
| 231 | Seattle Outlet |
| 156 | Desert Hills |
| 219 | Woodbury Commons |
| 213 | Las Vegas Outlet |
| 170 | Gilroy Outlet |
| 188 | Wrentham Outlet |
| 235 | Leesburg Outlet |
| 214 | Chicago Outlet |
| 243 | North Georgia Outlet |
| 236 | Round Rock Outlet |
| 241 | Philadelphia Outlet |
| 226 | Jersey Short Outlets |
| 123 | Mall @ Green Hills |
| 216 | Columbia Mall |
| 111 | The Oaks |
| 208 | Miromar Outlet |
| 247 | Orlando Outlet |
| 182 | San Marcos Outlet |
| 162 | Williamsburg Outlet |
| 240 | Pleasant Prairie Outlet |
| 149 | West Town Mall |
| 107 | Mall of America |
| 203 | Prom of The Peninsula |
| 53 | Valley Fair |
| 155 | Eastview Mall |

# EXHIBIT B

## Termination Properties

**Exhibit B shall contain no leases for properties as of the date of the Agreement. Subject to written confirmation by the Company and KPMGCF, leases may be added hereto.**

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

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

**ORDER APPROVING THE APPLICATION FOR ORDER UNDER BANKRUPTCY CODE SECTIONS 327(a) AND 328 AND BANKRUPTCY RULES 2014 AND 2016 AUTHORIZING EMPLOYMENT AND RETENTION OF KPMG CORPORATE FINANCE LLC AS SPECIAL REAL ESTATE ADVISOR FOR DEBTOR, *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (the "Application")[1] of the above-captioned debtor and debtor in possession (the "Debtor"),[2] for entry of an order under sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1, authorizing the Debtor to employ and retain KPMG Corporate Finance LLC ("KPMGCF") as special real estate advisor; and the Court having reviewed the Application, the Engagement Agreement, dated as of March 20, 2009 by and between KPMGCF and the Debtor (the KPMGCF Agreement") and the Declaration of Matthew Bordwin (the "Bordwin Declaration"), a managing director of KPMGCF; and the Court being satisfied with the representations made in the Application and the Bordwin Declaration that KPMGCF represents no interest adverse to the Debtor's estate, that it is a disinterested person as that term is defined under section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, that its employment is necessary and in the best interests of the Debtor's estate, creditors, and other

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

[2] The last four digits of the Debtor's federal tax identification number are 1685.

parties in interest; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby,

ORDERED that the Application is granted to the extent provided herein; and it is further

ORDERED that pursuant to sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1, the Debtor, as debtor and debtor in possession, is authorized to employ and retain KPMGCF as its special real estate advisor *nunc pro tunc* to the Petition Date to perform the services set forth in the Application and the KPMGCF Agreement; and it is further

ORDERED that pursuant to 11 U.S.C. § 328(a), the Debtor is authorized to pay KPMGCF in accordance with the terms of the Agreement; and it is further

ORDERED that (i) none of the fees payable to KPMGCF under the KPMGCF Agreement shall constitute a "bonus", (ii) KPMGCF shall not be required to keep time records for its work under the Agreement, (iii) KPMGCF's fees and expenses shall be treated as administrative expense claims, and (iv) the terms and conditions of the Agreement are fair and reasonable; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order and neither the Debtor nor KPMGCF shall be required to seek authorization from any other jurisdiction with respect to the relief granted by this Order; and it is further

ORDERED that KPMGCF shall not be required to submit fee applications and shall be compensated in accordance with the procedures set forth in the Application and KPMGCF Agreement and such procedures as may be fixed by order of this Court.

ORDERED that notice of the Application as provided herein shall be deemed good and sufficient notice of such Application.

Dated: ________________, 2009
New York, New York

_______________________________________
UNITED STATES BANKRUPTCY JUDGE