

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

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In re : **Chapter 11**
:
CRABTREE & EVELYN, LTD., : **Case No. 09-14267 (BRL)**
:
Debtor. :
:
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**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 or the KPMGCF Agreement, as applicable.

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

parties in interest; and it appearing that the terms of the KPMGCF Agreement are reasonable within the meaning of section 328 of the Bankruptcy Code; 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 KPMGCF Agreement, which contains fair and reasonable terms and authorizes the Debtor to pay KPMGCF as and when fees are earned pursuant to the terms of the KPMGCF Agreement); and it is further

ORDERED that, notwithstanding anything to the contrary in the Application, the KPMGCF Agreement or otherwise, KPMGCF shall apply the Retainer to its first postpetition invoice; and it is further

ORDERED that KPMGCF shall not be required to comply with the monthly fee application requirements of the Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals; provided, however, that KPMGCF shall not be required to keep time records, KPMGCF shall submit interim and final fee applications which

summarize the work performed and compensation received and KPMGCF's interim fees will not be subject to a holdback; and it is further

ORDERED that KPMGCF's expenses incurred in performing under the KPMGCF Agreement shall be subject to review by the United States Trustee under sections 330 and 331 of the Bankruptcy Code; and it is further

ORDERED that KPMGCF shall be permitted to charge the Debtor for reasonable fees spent preparing fee applications in this case at KPMGCF's standard hourly rates; and it is further

ORDERED that none of the fees payable to KPMGCF under the KPMGCF Agreement shall constitute a "bonus" and KPMGCF's fees and expenses shall be treated as administrative expense claims; and it is further

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

ORDERED that in no event shall KPMGCF be indemnified if the Debtor or a representative of the estate asserts a claim for, and a court determines by final order that such claim arose out of, KPMGCF's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct; and it is further

ORDERED that in the event that KPMGCF seeks reimbursement for attorneys' fees from the Debtor pursuant to the KPMGCF Agreement, the invoices and supporting time records from

such attorneys shall be included in KPMGCF's own applications (both interim and final) and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code; and it is further

ORDERED that to the extent this Order is inconsistent with the KPMGCF Agreement, this Order shall govern; 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 notice of the Application as provided herein shall be deemed good and sufficient notice of such Application.

Dated: July 29, 2009
New York, New York

/s/Burton R. Lifland
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

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

By: /s/ Serene Nakano