

KPMG Corporate Finance LLC  
1305 Walt Whitman Road, Suite 200  
Melville, NY 11747  
Telephone: (631) 351-7800  
Facsimile: (631) 794-2471  
Matthew Bordwin  
Robert Tramantano

Special Real Estate Consultant  
For the Debtor

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

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<b>In re:</b>	<b>Chapter 11</b>
<b>CRABTREE &amp; EVELYN, LTD.,</b>	<b>Case No. 09-14267 (BRL)</b>
<b>Debtor.</b>	

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**INTERIM FEE APPLICATION OF KPMG CORPORATE FINANCE LLC  
AS SPECIAL REAL ESTATE CONSULTANT TO THE DEBTOR  
AND DEBTOR IN POSSESSION**

Name of Applicant:	KPMG Corporate Finance LLC
Authorized to Provide Professional Services to:	Crabtree & Evelyn, Ltd.
Date of Engagement Agreement:	Engaged Prepetition on March 20, 2009 Order Approving Engagement Agreement dated July 29, 2009
Period for which Approval of Fees and Expense Reimbursements Received is Sought:	July 1, 2009 – September 30, 2009
Amount of Approval of Fees Received Sought As Actual Reasonable and Necessary:	\$31,068.00
Amount of Approval of Expense Reimbursements Received Sought As Actual, Reasonable and Necessary;	\$44.65

This is a(n):  X  interim   final application.

TO THE HONORABLE BURTON R. LIFLAND, UNITED STATES BANKRUPTCY JUDGE:

By this Application, KPMG Corporate Finance LLC (“KPMGCF”) respectfully represents and requests as follows:

I. KPMGCF’S BACKGROUND

The Real Estate Division of KPMGCF has extensive experience and expertise in the analysis, marketing, disposition, and settlement of claims relating to the real estate and leasehold interests of companies in bankruptcy proceedings.

II. KPMGCF’S RETENTION

A. By order of the Court dated July 29, 2009 (the “Order”), (a copy of which is attached as Exhibit “A” and incorporated by reference) the Court authorized and empowered the Debtor to retain KPMGCF as its special real estate consultant *nunc pro tunc* to the petition date pursuant to the terms set forth in the Engagement Agreement between the Debtor and KPMGCF dated March 20, 2009 (the “KPMGCF Agreement”) (a copy of which is attached hereto as Exhibit “B” and incorporated by reference) and in the Order.

B. KPMGCF was retained pursuant to the KPMGCF Agreement and the Order to render the real estate services listed below:

1. Organize the lease information for each Renegotiation 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.
2. Contact each Renegotiation Property landlord and will negotiate for modifications in accordance with the parameters established by Debtor.
3. 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.

4. 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.

- C. By this application, KPMGCF seeks approval for the fees that it has earned and the expenses it has incurred for the period beginning July 1, 2009 through September 30, 2009 (the "Application Period") with regard to the negotiation of rental reductions and/or other lease modifications.

### III. KPMGCF'S RENEGOTIATION EFFORTS

- A. With respect to those Properties where-in the Debtor requested that KPMGCF commence lease renegotiations, KPMGCF undertook the following efforts:
  1. KPMGCF organized the lease information for each Property in a manner that clearly displayed the store and lease economics.
  2. KPMGCF and Debtor jointly established negotiating goals and parameters, such as rent reductions, lease term modifications, and other leasehold concessions.
  3. KPMGCF contacted and continues to negotiate with each landlord in an effort to achieve rent reductions and/or other lease modifications in accordance with the parameters established by the Debtor.
  4. KPMGCF continues to work with the landlords, Debtor and Debtor's real estate counsel to document accurately all lease modification proposals.

IV. RESULTS OF KPMGCF'S RENEGOTIATION EFFORTS TO DATE

- A. Debtor requested KPMGCF'S involvement in lease renegotiations with respect to eighty-one (81) Properties. To date, lease modification terms have been reached with respect to fifty-three (53) Properties. Of those 53 and during the Application Period, lease modification agreements have been executed on seven (7) Properties (the "Consummated Transaction Properties"), while agreements on four (4) Properties had been executed after the Application Period and agreements on forty-two (42) Properties remain subject to documentation and execution.
- B. As a result of KPMGCF'S renegotiation efforts in connection with the Consummated Transaction Properties, the Debtor will realize savings in excess of four hundred ten thousand dollars (\$410,000) resulting from lease rental reductions and an additional one hundred thirty thousand dollars (\$130,000) resulting from the shortening or extending of lease terms on various Properties.

V. FEES FOR RENEGOTIATION OF LEASES

- A. 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.
1. Pursuant to the terms of the KPMGCF Agreement, KPMGCF is to be compensated as follows:
    - 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.

- B. In accordance with the above and pursuant to the KPMGCF Agreement, KPMGCF is seeking approval of fees earned in the amount of thirty one thousand sixty-eight dollars (\$31,068.00) for its lease renegotiation services rendered in connection with the Consummated Transaction Properties.

## VI. EXPENSES

- A. Pursuant to the terms of the KPMGCF Agreement, Debtor shall reimburse KPMGCF promptly upon request from time to time for all reasonable (including, without limitation, travel, communication and document production expenses, the fees and expenses of counsel) incurred by KPMGCF pursuant to its engagement hereunder.
- B. During the Application Period, KPMGCF incurred expenses of forty-four dollars and sixty-five cents (\$44.65). Attached hereto as Exhibit "C" is a Schedule of Expenses incurred by KPMGCF.
- C. In accordance with the above statements and pursuant to the KPMGCF Agreement, KPMGCF is seeking approval of the expenses incurred in the amount of forty-four dollars and sixty-five cents (\$44.65).

## VII. CONCLUSION

- A. The Order provides that KPMGCF will be paid a fee for its services rendered in accordance with the KPMGCF Agreement and the Order. The compensation

sought pursuant to the KPMGCF Agreement is based on customary compensation sought by comparably skilled practitioners in transactions of this nature.

- B. KPMGCF respectfully submits that the compensation was earned in accordance with the terms and conditions of the KPMGCF Agreement, and is fair and reasonable in light of its efforts.
- C. Based upon the foregoing, KPMGCF respectfully submits that its fees earned and expenses incurred as set forth herein are fair and reasonable and should be approved.

WHEREFORE, KPMGCF prays for the entry of an Order:

- a. Approving fees earned for restructuring and renegotiation of Debtor's leases in the amount of thirty one thousand sixty-eight dollars (\$31,068.00),
- b. Approving expenses incurred during the Application Period in the amount of forty-four dollars and sixty-five cents (\$44.65),
- c. Granting such further relief as this Court may deem just and equitable.

Dated: November 16, 2009  
Melville, New York

KPMG CORPORATE FINANCE LLC

By: 

Matthew Bordwin  
Managing Director

# Exhibit A



**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”)<sup>1</sup> of the above-captioned debtor and debtor in possession (the “Debtor”),<sup>2</sup> 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

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application or the KPMGCF Agreement, as applicable.

<sup>2</sup> 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**

# Exhibit B



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

Telephone (631) 351-7800  
Fax (631) 794-2491  
Internet [www.kpmgcorporaterefinance.com/us](http://www.kpmgcorporaterefinance.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 KPMGCF. 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



Crabtree & Evelyn, Ltd.

March 20, 2009

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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 fourth 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 fourth 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  
1305 Walt Whitman Road, Suite 200  
Melville, NY 11747  
Attn: Matthew Bordwin  
(t) 631-351-7800  
(f) 631-794-2448  
(e) mbordwin@kpmg.com

with a copy to: KPMG Corporate Finance LLC  
1 East Pratt Street  
Baltimore, MD 21202  
Attn: Dennis W. O'Neill  
(t) 410.949.8990  
(f) 410.949.2827  
(e) dwoneill@kpmg.com

If to Company: CRABTREE & EVELYN, LTD.  
102 Peake Brook Road  
PO Box 167  
Woodstock, CT 06281  
Attn: Colleen Cording  
(t) (860) 928-2761  
(f) (860) 928-5685  
(e) ccording@crabtree-evelyn.com

with a copy to: Cooley Godward Kronish LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Attn: Lawrence C. Gottlieb, Esq.  
(t) (212) 479-6140  
(f) (212) 479-6275  
(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



Crabtree & Evelyn, Ltd.

March 20, 2009

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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 its employees and representatives and none of KPMGCF's employees or representatives is entitled to any employee benefits offered by Company.

~~KPMG~~


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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. Sullivan  
Title: MD

Accepted as of the date  
first written above:

**CRABTREE & EVELYN, LTD.**

By: \_\_\_\_\_  
Name:  
Title:

MB : JB

明華商務

Crabtree & Evelyn, Ltd.

March 20, 2009

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Very truly yours,

KPMG CORPORATE FINANCE L.L.C

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





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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

<u>Store No.</u>	<u>Store Name</u>
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



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## **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 C

# Crabtree Evelyn

## Schedule of Expenses

Description	Date	Expense Amount	Sub-Total
Teresa's Gourmet Café (H. Bordwin / C. Tufo)	7/21/2009	\$ 44.65	
			\$ 44.65
<b>Total Expenses Incurred During Application Period</b>		<b>\$ 44.65</b>	<b>\$ 44.65</b>