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Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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GRUBB & ELLIS COMPANY, <i>et al.</i> ,	:	Case No. 12-10685 [MG]
	:	
Debtors.	:	(Jointly Administered)
	:	
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**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER  
PURSUANT TO, *INTER ALIA*, SECTION 327(a) OF THE BANKRUPTCY  
CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF  
TOGUT, SEGAL & SEGAL LLP AS COUNSEL TO THE DEBTORS AND  
DEBTORS IN POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE**

The debtors and debtors in possession in the above-captioned cases (collectively, "Grubb & Ellis " or the "Debtors")<sup>1</sup> file this application (the "Application") seeking entry of an order, in substantially the form attached hereto as Exhibit "A," authorizing the employment and retention of Togut, Segal & Segal LLP (the "Togut Firm") as general bankruptcy counsel for the Debtors *nunc pro tunc* to the date of commencement of the Debtors' cases. In support of this Application, the Debtors rely on the Declaration of Frank A. Oswald a member of the Togut Firm (the "Oswald Declaration"), a copy of which is attached hereto as Exhibit "B" and incorporated herein

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<sup>1</sup> The Debtors consist of the entities identified in the Rispoli Declaration.

by reference. In further support of this Application, the Debtors respectfully state as follows:

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 327(a) and 330 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2014(a), 2016 and 6003 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 Bankruptcy Rules”).

**Background**

4. On the date hereof, (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Declaration of Michael J. Rispoli filed under Local Bankruptcy Rule 1007-2 in support of the Debtors’ Chapter 11 petitions (the “Declaration”) filed on the Petition Date and fully incorporated herein by reference.<sup>2</sup>

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Rispoli Declaration.

The Debtors continue to manage and operate their businesses as debtors in possession under Bankruptcy Code sections 1107 and 1108.

**Relief Requested**

5. By this application, the Debtors seek the entry of an order pursuant to section 327(a) of the Bankruptcy Code, and Bankruptcy Rules 2014(a), 2016 and 6003, authorizing the employment and retention of the Togut Firm as general bankruptcy counsel to the Debtors in these Chapter 11 cases effective as of the Petition Date.

6. Pursuant to section 327(a) of the Bankruptcy Code, the Debtors request that the Court approve the retention of the Togut Firm under a general retainer to perform services that will be necessary during these Chapter 11 cases in accordance with the Togut Firm's normal hourly rates and policies in effect when the Togut Firm renders the services or incurs the expenses.

7. The Debtors have been informed that the members of the Togut Firm, as well as counsel to, and associates of the Togut Firm, who will be employed in these Chapter 11 cases, are members in good standing of the Bar of the State of New York and the United States District Court for the Southern District of New York.

8. The Debtors have selected the Togut Firm as their attorneys because for more than 30 years it has specialized, almost exclusively, in the field of debtors' protections and creditors' rights and complex business reorganizations under Chapter 11 of the Bankruptcy Code. In addition, the Togut Firm possesses extensive expertise, experience and knowledge practicing before this and other bankruptcy courts.

9. The Togut Firm has been actively involved in major Chapter 11 cases, and has represented debtors as lead counsel, co-counsel or conflicts counsel in many cases in this Court and others including, without limitation: In re Loehmann's

Holdings, Inc., et al., Case No. 10-16077 (REG); In re Neff Corp., et al., Case No. 10-12610 (SCC); In re AbitibiBowater Inc., et al., Case No. 09-11296 (KJC); In re Saint Vincents Catholic Medical Centers of New York, et al., Case No. 10-11963 (CGM); In re Finlay Enterprises, Inc., et al., Case No. 09-14873 (JMP); In re Motors Liquidation Company, f/k/a General Motors Corp., et al., Case No. 09-50026 (REG); In re Old Carco LLC (f/k/a Chrysler LLC), et al., Case No. 09-50002 (AJG); In re Charter Communications, Inc., et al., Case No. 09-11435 (JMP); In re Tronox Inc., et al., Case No. 09-10156 (ALG); In re Fortunoff Fine Jewelry and Silverware, LLC; Case No. 08-10353 (JMP); In re Frontier Airlines Holdings, Inc. et al., Case No. 08-11298 (RDD); In re Delphi Corp., et al., Case No. 05-44481 (RDD); In re Enron Corp., et al., Case No. 01-16034 (AJG); In re Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers, et al., Case No. 05-14945 (PCB); In re Tower Auto., Inc., Case No. 05-10578 (ALG); In re Allegiance Telecom, Inc., Case No. Case No. 03-13057 (RDD); In re Ames Department Stores, Case No. 01-42217 (REG); In re Loews Cineplex Entertainment Corp., Case No. 01-40346 (ALG); and Rockefeller Center Properties, Case No. 95-420789 (PCB).

10. The employment of the Togut Firm under a general retainer is appropriate and necessary to enable the Debtors to faithfully execute their duties as debtors and debtors in possession, and to implement the restructuring and reorganization of the Debtors.

#### **Scope of Services**

11. Subject to the Court's approval, the Togut Firm will render professional services to the Debtors, which may include, but are not limited to the following:

- (a) advise the Debtors regarding their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- (b) attend meetings and negotiate with representatives of creditors and other parties in interest;
- (c) take necessary action to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors and representing the Debtors' interests in negotiations concerning litigation in which the Debtors are involved, including, but not limited to, objections to claims filed against the estates;
- (d) prepare on the Debtors' behalf motions, applications, adversary proceedings, answers, orders, reports and papers necessary to the administration of the estates;
- (e) advise the Debtors in connection with their proposed chapter 11 sale and/or any alternative restructuring transaction;
- (f) appear before this Court and any appellate courts and protect the interests of the Debtors' estates before these Courts; and
- (g) perform other necessary bankruptcy-related legal services and provide other necessary legal advice to the Debtors in connection with these Chapter 11 cases.

The Togut Firm has indicated its willingness to render the necessary professional services described above.

#### Compensation

12. In accordance with sections 330(a) and 331 of the Bankruptcy Code, the Debtors propose to compensate the Togut Firm on an hourly basis at its customary hourly rates for services rendered, plus reimbursement of actual, necessary expenses incurred by the Togut Firm. The current standard hourly rates for the Togut Firm are (i) partners \$800 to \$935; (ii) associates and counsel \$185 to \$715; (iii) paralegals and law clerks \$145 to \$285.

13. As set forth in the Oswald Declaration filed in support of the Application, the hourly rates described above are subject to annual adjustments in January to reflect economic and other conditions. The Togut Firm's rates are set at a level designed to compensate the firm fairly for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. It is the Togut Firm's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case and in accordance with the guidelines established by the United States Trustee. The expenses charged to clients include, among other things, telecopier toll and other charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for "working meals," computerized research, messengers, couriers, postage, witness fees and other fees related to trials and hearings, transcription costs, and non-ordinary overhead expenses such as secretarial and other overtime. The Togut Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges generally made to the Togut Firm's other clients and in compliance with the guidelines set forth by the office of the United States Trustee. The Togut Firm believes that it is fairer to charge these expenses to the client incurring them than to increase the hourly rates and spread the expenses among all clients.

14. The Togut Firm will submit monthly statements as well as interim and final applications for compensation and reimbursement of expenses in accordance with the Bankruptcy Code and Rules, the Local Rules of this Court, and such other and further orders as the Court may direct.

**Disinterestedness**

15. To the best of the Debtors' knowledge, and based upon the Oswald Declaration, the Togut Firm does not represent or hold any interest adverse to the

Debtors or their estates with respect to the matters on which the firm is to be employed. Further, to the best of the Debtors' knowledge and based on the Oswald Declaration, the Togut Firm does not have any connection with any creditors or other parties in interest, or their respective attorneys or accountants, or the United States Trustee or any of its employees, except as set forth in the Oswald Declaration.

**Basis for Relief**

16. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to Court approval:

Except as otherwise provided in this section, the trustee, with the Court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(e).

17. Moreover, Bankruptcy Rule 2014 requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

18. For the reasons stated above, the Debtors seek to employ and retain the Togut Firm as general bankruptcy counsel pursuant to, *inter alia*, section 327(a) of the Bankruptcy Code. As discussed herein, the Debtors submit that the retention of the

Togut Firm is necessary and in the best interests of the Debtors' estates, and that the Togut Firm neither holds nor represents interests adverse to the Debtors or their estates.

**Notice**

19. The Debtors have provided notice of this Application to: (i) the United States Trustee for the Southern District of New York; (ii) the entities listed on the Debtors' Consolidated List of Creditors Holding the 50 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (iii) the entities listed on the Debtors' Consolidated List of Prepetition Secured Creditors; (iv) counsel to the agent for the Debtors' prepetition credit facility; (v) counsel for the Debtors' proposed DIP Lenders; (vi) the Office of the United States Attorney for the Southern District of New York; (vii) the Office of the Attorney General of the State of New York; (viii) the Internal Revenue Service; (ix) the Securities and Exchange Commission; (x) any parties required to be served under any applicable Bankruptcy Rule or Local Rule; and (xi) any party in interest having filed a notice of appearance. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

**[concluded on the following page]**

**WHEREFORE**, the Debtors respectfully request the entry of an Order, substantially in the form attached hereto as Exhibit "A," (a) authorizing the Debtors to employ and retain the Togut Firm as their bankruptcy counsel effective as of the Petition Date, and (b) granting such other and further relief as the Court deems appropriate.

DATED: New York, New York  
February 22, 2012

GRUBB & ELLIS COMPANY  
AND ITS SUBSIDIARIES  
Debtors and Debtors in Possession

/s/ Michael J. Rispoli  
Name: MICHAEL J. RISPOLI  
Title: Chief Financial Officer  
and Executive Vice President