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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re: | : | Chapter 11 |
| | : | |
| GRUBB & ELLIS COMPANY, <i>et al.</i> , | : | Case No. 12-10685 (MG) |
| | : | |
| Debtors. | : | (Jointly Administered) |
| -----X | : | |

**APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO SECTION 327(E)
OF THE BANKRUPTCY CODE AND RULE 2014 OF THE BANKRUPTCY RULES
AUTHORIZING THE EMPLOYMENT AND RETENTION OF ZUKERMAN GORE
BRANDEIS & CROSSMAN, LLP AS CORPORATE COUNSEL FOR THE DEBTORS**

The debtors and debtors-in-possession in the above-captioned cases (collectively, “Grubb & Ellis” or the “Debtors”)¹ hereby move (the “Motion”) for entry of an order pursuant to section 327(e) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014, 2016 and 6003 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), authorizing the employment and retention of Zukerman Gore Brandeis & Crossman, LLP (the “Zukerman Firm”), as corporate counsel to the Debtors, *nunc pro tunc* to the Petition Date (defined below). In support of the Motion, the Debtors rely upon and incorporate by reference the declaration of

¹ The Debtors consist of the following entities: Grubb & Ellis Company; Grubb & Ellis New York, Inc.; Grubb & Ellis Affiliates, Inc.; Grubb & Ellis of Arizona, Inc.; Grubb & Ellis of Michigan, Inc.; Grubb & Ellis of Nevada, Inc.; Las Vegas Commercial Brokerage, LLC; Grubb & Ellis Consulting Services Company; Grubb & Ellis Capital Corporation; Grubb & Ellis Equity Advisors, LLC; Grubb & Ellis Landauer Valuation Advisory Services, LLC; GBE Alesco Corp.; Grubb & Ellis Securities, Inc.; Grubb & Ellis Management Services, Inc.; Grubb & Ellis Management Services Michigan, Inc.; Grubb & Ellis Apartment REIT Advisor, LLC; and Grubb & Ellis Healthcare REIT II Advisor, LLC.

Michael J. Rispoli filed under Rule 1007-2 of the Local Rules for the Southern District of New York (the “Local Bankruptcy Rules”) and in support of the Debtors’ chapter 11 petitions (the “Declaration”), filed with the Court on the Petition Date (defined below).

In support of the Application, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief sought in this Application is based upon sections 327(e) and 330 of the Bankruptcy Code and Bankruptcy Rule 2014(a).

BACKGROUND

3. On February 20, 2012 (the “Petition Date”), the Debtors filed voluntary petitions for reorganization 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, filed on the Petition Date and fully incorporated herein by reference.²

4. The Debtors remain in possession of their assets and continue to manage their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

² Capitalized terms not otherwise defined herein shall have the meaning as ascribed to them in the Declaration.

RELIEF REQUESTED

5. By this Application, the Debtors respectfully request entry of an order authorizing them to employ and retain the Zukerman Firm as its corporate counsel to perform such services as will be necessary during these Chapter 11 cases, *nunc pro tunc* to the Petition Date. Simultaneously herewith, the Debtors have filed an application for an order authorizing it to retain Togut, Segal & Segal LLP (the “Togut Firm”) as its bankruptcy and restructuring counsel. The Togut Firm is a bankruptcy boutique whose practice is exclusively limited to bankruptcy and creditors rights matters. The Zukerman Firm will coordinate with the Togut Firm, such that the services provided by both the Zukerman Firm and the Togut Firm are complimentary of each other and not duplicative.

BASIS FOR RELIEF

6. Section 327(e) of the Bankruptcy Code states, in pertinent part:

The trustee . . . may employ . . . an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

7. By regulating the trustee’s (or pursuant to section 1107, the debtor in possession’s) ability to retain professionals, section 327 “serve[s] the important policy of ensuring that all professionals appointed tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities.” In re Leslie Fay Companies, 175 B.R. 525, 532 (Bankr. S.D.N.Y. 1994). When evaluating a proposed retention, a bankruptcy court “should exercise its discretionary powers over the approval of professionals in a manner which takes into account the particular facts

and circumstances surrounding each case and the proposed retention before making a decision.” In re Arochem Corp., 176 F.3d 610, 621 (2d Cir. 1999).

8. The Zukerman Firm has served as the Debtors’ general corporate counsel for over 10 years, performing a breadth of legal services relating to the Debtors’ business affairs. Over that period, the Zukerman Firm has represented the Debtors in connection with, among other things,

- (a) general corporate services;
- (b) mergers and acquisitions, financing and capital raising transactions; and
- (c) Securities and Exchange Commission and New York Stock Exchange filings and disclosures.

9. As a consequence, the Zukerman Firm is thoroughly versed in the details of the Debtors’ businesses and financial affairs and is aware of the scope of the Debtors’ existing financial commitments. Such knowledge will result in a substantial savings to the Debtors and their estates.

10. Simply put, the continued retention of the Zukerman Firm to work with the Togut Firm representing the Debtors is essential to the effective and efficient administration of these estates and the successful outcome of these cases. Indeed, the substitution of other corporate counsel that does not share the perspective and historical knowledge and information that the Zukerman Firm does, would add unnecessarily to the costs of administration in these cases. It is thus in the best interests of these estates that the continued representation by the Zukerman Firm as corporate counsel be approved.

11. Clifford A. Brandeis, a member of the Zukerman Firm, has been primarily responsible for the Debtors’ pre-petition representation, and he will continue

to oversee the services to be provided to the Debtors. He will be assisted by Kyle Foley, Agnes Park, Aaron Menzi and David Correa, attorneys in the Zukerman Firm, as necessary and appropriate. Each of these attorneys has been involved in the Zukerman Firm's representation of the Debtors' business.

12. In connection with the preparation of the Debtors' Chapter 11 cases, on February 16, 2012, the Zukerman Firm received a retainer of \$50,000 which shall first be applied to pre-petition fees and disbursements, and the balance of which shall be applied to post-petition fees and disbursements in connection with the Debtors' Chapter 11 cases. In addition, the Zukerman Firm has also received an aggregate of \$514,789.60 within the past ninety (90) days pursuant to invoices rendered in the ordinary course for legal services. At the time of the filing, the Zukerman Firm did not have any claim against the Debtors for unpaid prepetition services.

13. Annexed hereto as Exhibit "A" in support of the Application, is the affidavit of Clifford A. Brandeis (the "Brandeis Affidavit"). Except as stated in the Brandeis Affidavit, the Zukerman Firm is not otherwise connected with the Debtors, their creditors, other parties in interest, the United States Trustee, or any person employed by the Office of the United States Trustee, and that, to the best of Mr. Brandeis's knowledge, after due inquiry, the Zukerman Firm does not, by reason of any direct or indirect relationship to, connection with or interest in the Debtors or other parties in interest, hold or represent any interest adverse to the Debtors or to these estates with respect to the matters upon which it is to be engaged.

SCOPE OF SERVICES

14. As their corporate counsel, the Debtors seeks the Zukerman Firm to, *inter alia*:

- (a) assist the Debtors in negotiating and documenting arrangements and agreements with their pre-petition and DIP lender relating to general corporate, and other non-bankruptcy related matters;
- (b) assist in providing non-bankruptcy, corporate assistance as may relate to the sale, lease or other disposition of the Debtors' assets; and
- (c) provide continuing legal advice in connection with corporate related issues;
- (d) provide support to object to claims, if necessary;
- (e) perform such other non-bankruptcy related legal services and assistance desirable and necessary to the efficient and economic administration of these estates.

COMPENSATION AND BILLING PRACTICES

15. During these Chapter 11 cases, the Zukerman Firm will apply to the Court for allowance of compensation and reimbursement of actual and necessary expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules for the United States Bankruptcy Court for the Southern District of New York, as amended (the "Local Rules"), guidelines established by the U.S. Trustee, and orders of this Court for all services performed and expenses incurred after the Petition Date of the Chapter 11 cases.

16. Pursuant to section 328(a) of the Bankruptcy Code, the Debtors may retain the Zukerman Firm on any reasonable terms and conditions. The Debtors submit that the most reasonable terms and conditions are those charged by the Zukerman Firm to the Debtors and other clients on a daily basis in a competitive market for legal services. It is anticipated that the Zukerman Firm's compensation, fees and expenses will be subject to approval of this Court upon application therefor in accordance with the provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy

Procedure, the United States Trustee's Guidelines for Fees and Disbursements and in accordance with any other order establishing procedures for the payment of professionals in these Chapter 11 cases.

17. The Zukerman Firm's hourly rates at present for professionals who will work on this matter range from \$525 to \$625 per hour for partners, \$450 to \$575 for of-counsels, and \$325 to \$425 for associates. The current hourly billing rates of the attorneys primarily working on this matter will be as follows:

- (i) Clifford A. Brandeis (partner) -- \$625;
- (ii) Kyle Foley (counsel) -- \$475;
- (iii) Agnes Park (associate) -- \$425;
- (iv) Aaron Menzi (associate)-- \$425; and
- (v) David Correa (associate) -- \$375.

These rates are subject to periodic increase in the normal course of the Zukerman Firm's business. The hourly rates set forth above are Zukerman Firm's standard hourly rates and are charged to bankruptcy and non-bankruptcy clients for all types of services to be performed herein. These rates are set at a level designed to fairly compensate the Zukerman Firm for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses.

18. It is the Zukerman Firm's standard policy not to charge its clients for certain expenses normally charged by other firms, including telephone, facsimile photocopying and first class mail charges. It is the Zukerman Firm's standard policy to charge its clients for all out-of-pocket expenses incurred in connection with a client's case, including overnight mail or special mail charges, computer research charges, travel expenses, and non-ordinary course overhead expenses such as secretarial

overtime. The amounts charged by the Zukerman Firm for such expenses are consistent with charges billed to other similar clients.

19. The Zukerman Firm has indicated its willingness to act as corporate counsel on behalf of the Debtors and to perform such other types of services delineated above as the Debtors may request.

NOTICE

20. 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.

21. No previous application for the relief sought herein has been made by the Debtors to this or any other Court.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the forms annexed hereto as Exhibit "B," authorizing the retention of the Zukerman Firm as corporate counsel in connection with the prosecution of these Chapter 11 cases and granting such other and further relief as is just and proper.

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