

**EXHIBIT "B"**

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)
	: :
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**DECLARATION OF FRANK A. OSWALD IN SUPPORT OF APPLICATION FOR ORDER UNDER 11 U.S.C. § 327(a) AND RULE 2014(a) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING THE EMPLOYMENT AND RETENTION OF TOGUT, SEGAL & SEGAL LLP AS COUNSEL FOR THE DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

Frank A. Oswald, being duly sworn, states the following under penalty of perjury:

1. I am a member of Togut, Segal & Segal LLP (the "Togut Firm") located at One Penn Plaza, New York, New York 10119. I am a member in good standing of the Bar of the State of New York, and am admitted to practice in the Southern District of New York and the Eastern District of New York.

2. I am in all respects competent to make this Declaration in support of the application (the "Application") to retain the Togut Firm as counsel for Grubb & Ellis Company (the "Company") and the other above-captioned debtors and debtors in possession (the "Debtors")<sup>1</sup> pursuant to section 327(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), effective as of the date of the commencement of

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

these Chapter 11 cases (the "Petition Date"). Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.

**DISINTERESTEDNESS**

3. Based on the conflicts search conducted to date by the Togut Firm and described herein, to the best of my knowledge, neither the Togut Firm, nor any partner, including myself, counsel or associate thereof, insofar as I have been able to ascertain, has any connection with the Debtors, their creditors or any other parties in interest, or their respective attorneys and accountants, nor with the United States Trustee for the Southern District of New York (the "United States Trustee") or any person employed by the United States Trustee, except as disclosed herein.

4. The Togut Firm is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that the Togut Firm, its partners, counsel and associates, except as disclosed herein:

- (a) are not creditors, equity security holders or insiders of the Debtors;
- (b) are not and were not within two years before the date of the filing of the petition, a director, officer or employee of any of the Debtors; and
- (c) do not have an interest materially adverse to the interest of the estates 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 Debtors, or for any other reason.

5. I am not related, and to the best of my knowledge, no attorney at the Togut Firm, aside from a junior associate, admission pending, who joined the Togut Firm in September 2011 and the granddaughter of the Honorable Burton R. Lifland,

Bankruptcy Judge, is related to any United States Bankruptcy Judge in the Southern District of New York or any employee thereof.

6. I am not related, and to the best of my knowledge, no attorney at the Togut Firm is related to the United States Trustee or any employee thereof.

7. Pursuant to section 327(c) of the Bankruptcy Code, the Togut Firm is not disqualified from acting as the Debtors' counsel merely because it represents creditors, equity security holders and/or other parties in interest in matters unrelated to these Chapter 11 cases.

8. The Togut Firm will periodically review its files during the pendency of these Chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, the Togut Firm will use its reasonable efforts to identify any such further developments and will promptly file a supplemental affidavit as required by Bankruptcy Rule 2014(a).

9. The Togut Firm was engaged on or about January 31, 2012 to assist the Debtors with evaluating its restructuring options and to prepare for a chapter 11 case should a filing become necessary or desirable. To date, the Company has paid an aggregate of \$850,000 as a retainer to the Togut Firm. The retainer will first be applied to the Togut Firm's fees and expenses up through the Petition Date. The balance of the retainer will be held and applied to post-Petition Date fees and expenses of the Togut Firm as allowed by the Bankruptcy Court.

**THE TOGUT FIRM'S CONNECTIONS  
WITH PARTIES IN INTEREST IN MATTERS  
UNRELATED TO THESE CHAPTER 11 CASES**

10. The Togut Firm and certain of its partners, counsel, and associates may have in the past represented, and may likely in the future represent, parties-in-interest of the Debtors in connection with matters unrelated to the Debtors and these Chapter 11 cases. The Togut Firm has reviewed the list of significant interested parties furnished by the Debtors, which list included: (i) the Debtors' officers and directors; (ii) the secured lenders; (iii) holders of convertible notes; (iv) holders of preferred shares; (v) the Debtors' depository and disbursement banks; (vi) the Debtors' major customers; (vii) fifty largest unsecured creditors; (viii) attorneys for the United States Trustee for the Southern District of New York (and key staff members); and (ix) significant contract counterparties, and it has found none. In the event any new facts or relationships are subsequently discovered during the pendency of these Chapter 11 cases, the Togut Firm will supplement this Declaration and file the same with the Court.

**SERVICES TO BE RENDERED**

11. The Debtors seek court approval, pursuant to, *inter alia*, sections 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a), to employ and retain the Togut Firm as their bankruptcy counsel in connection with these Chapter 11 cases to perform such services as generally described in the Application. Pursuant to section 327(a) of the Bankruptcy Code, the Debtors, as debtors in possession, request that the Court approve the retention of the Togut Firm, under a general retainer, as their attorneys, 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.

### PROFESSIONAL COMPENSATION

12. Subject to annual adjustment in January, in accordance with the firm's billing practices, the rates to be charged by the Togut Firm for services to be rendered to the Debtors shall be the same rates charged to other clients, which are currently (i) partners \$800 to \$935; (ii) associates and counsel \$185 to \$715; and (iii) paralegals and law clerks \$145 to \$285. The Togut Firm intends to apply for compensation for professional services rendered in connection with these Chapter 11 cases, subject to this Court's approval and in compliance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), further Orders of this Court, and guidelines established by the United States Trustee, on an hourly basis, plus reimbursement of actual and necessary expenses and other charges that the Togut Firm incurs. The Togut Firm will charge the Debtors hourly rates consistent with the rates it charges in other matters of this type.

13. It is the Togut Firm's policy to charge its clients for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, photocopying, witness fees, travel expenses, filing and recordation fees, long distance telephone calls, postage, express mail and messenger charges, computerized legal research charges and other computer services, expenses for "working meals" and telecopier charges. The Togut Firm will charge the Debtors for these expenses in a manner and at rates consistent with those it generally charges its other clients and in accordance with the Local Rules and United States Trustee

guidelines. The Togut firm believes that it is fairer to charge these expenses to the particular client on whose behalf they are incurred rather than to increase its hourly rates and spread these expenses among all of its clients.

14. No promises have been received by the Togut Firm nor by any partner, counsel or associate thereof as to compensation in connection with these Chapter 11 cases other than in accordance with the provisions of the Bankruptcy Code. The Togut Firm has no agreement with any other entity to share with such entity any compensation received by the Togut Firm in connection with these Chapter 11 cases.

15. The Togut Firm further states pursuant to Bankruptcy Rule 2016(b) that it has not shared, nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, counsel and associates of the Togut Firm or (b) any compensation another person or party has received or may receive.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: New York, New York  
February 22, 2012

/s/ Frank A. Oswald  
FRANK A. OSWALD