

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

	)	
<b>In re:</b>	)	
	)	
<b>SW BOSTON HOTEL VENTURE LLC,</b>	)	<b>Chapter 11</b>
<i>et al.,</i>	)	<b>Case No. 10-14535-JNF</b>
	)	
<b>Debtors.</b>	)	
	)	<i>(Jointly Administered)</i>

**APPLICATION TO EMPLOY GILMARTIN, MAGENCE & ROSS AS SPECIAL  
CONVEYANCING COUNSEL TO THE DEBTOR AND DEBTOR-IN-POSSESSION**

Pursuant to Section 327(e) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and MLBR 2014-1, SW Boston Hotel Venture LLC (the “Debtor”), the debtor and debtor-in-possession in the above captioned jointly administered cases, respectfully requests that this Court enter an order authorizing the Debtor to retain Gilmartin, Magence & Ross LLP (“GMR”) as special conveyancing counsel in its Chapter 11 case. The Debtor seeks to retain GMR to provide the legal services necessary to sell and close the sales of condominium units by the Debtor. In further support of this application, the Debtor respectfully avers as follows:

**JURISDICTION**

1. The Court has jurisdiction to consider and determine this application pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief requested herein are Section 327(e) of the Bankruptcy Code and Rule 2014 and 2016 of the Federal Rules of Bankruptcy Procedure.

**BACKGROUND**

3. On April 28, 2010 (the “Petition Date”), the Debtor and its affiliates, General Trading Company, Frank Sawyer Corporation, 100 Stuart Street LLC and Auto Sales & Service, Inc. (collectively the “Debtors”), each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (“Code”) in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

4. The Debtors continue to operate as debtors in possession pursuant to Sections 1107 and 1108 of the Code. As of the date of this application, no official committee of creditors has been appointed in any of the Debtors’ cases.

5. The W Boston Hotel and Residences project (the “Project”) opened on October 29, 2009, and comprises a 350,650 square foot, 26-story building located at 100 Stuart Street in the heart of Boston’s Theatre District. The Project contains the 235–room, four-star Hotel, the 122 condominium units, and a two-level underground parking garage with capacity for 142 vehicles (the “Garage”).

6. The Project was designed by the internationally-known architectural firm of William Rawn and Associates Architects, together with the architect of record TRO/Jung Brannen, Inc.

7. The Hotel is branded as a “W” Hotel – the only W Hotel in New England – and serves Boston’s many national and international business travelers and tourists. The Hotel is operated by Starwood Hotels and Resorts Worldwide, Inc. (“Starwood”) through its affiliate, W Hotel Management, Inc. (the “Hotel Operator”). The Hotel includes a retail store operated by Wink Retail Group, Inc., an affiliate of Starwood, a signature restaurant operated by Cullinary Concepts (Boston) LLC (the “Restaurant Operator”) at a prominent location along Tremont

Street, and will also include a second floor spa with a first floor entrance and related retail space on the Stuart Street side of the Project (the “Spa”). The Hotel is also planned to include a below-grade theme bar/lounge with an entrance adjacent to the spa entrance on Stuart Street (the “Theme Lounge”). The Spa is in the final stages of construction and the Theme Lounge is planned to open in the fall. The Hotel Operator will operate the Spa and the Theme Lounge.

8. The Hotel restaurant, Market by Jean-Georges Vongrichen, is a 6,000 square foot, first-class, full-service restaurant that occupies the entire first floor of the Hotel along Tremont Street. Market is an important amenity for the city’s visitors and theatre-goers.

9. The condominium units consist of 122 studio, one (1), two (2) or three (3) bedroom luxury condominium units. The list prices for the condominium units range from \$600,000 to over \$4,000,000.

10. The Debtors filed these cases in order to preserve the value of their assets and their opportunity to reorganize.

#### **RETENTION OF GMR**

11. The Debtor seeks an order of this Court authorizing the employment and retention of GMR for the limited purpose of performing the legal services necessary to assist the Debtor to sell and close sales of condominium units.

12. Under Section 327(e) of the Bankruptcy Code, a debtor-in-possession is authorized to employ special counsel, even if special counsel has a claims against the debtor, so long as special counsel does not hold any interest adverse to the debtor-in-possession or its estate with respect to the matter on which special counsel is employed. See 11 U.S.C. § 327(e).

13. GMR has extensive experience representing sellers of residential condominiums. GMR served as the Debtor’s conveyancing attorneys prior to the Petition Date and is intimately

familiar with the Project and the condominium units. The Debtor believes that GMR is well qualified to provide conveyancing services in its Chapter 11 case.

14. The Debtors have, contemporaneously with the filing of this application, filed an application to employ Hanify & King, P.C. as their general bankruptcy counsel. The limited professional services that GMR will render as Section 327(e) conveyancing counsel will not overlap with services provided by Hanify & King. Every effort will be taken to avoid duplicating services in this regard.

15. GMR has requested compensation of \$975.00 to be paid at the time of the closing of each condominium unit for the normal and customary seller representation in connection with unit sales (the "Unit Sales Services"). GMR will seek additional compensation for legal fees and expenses charged for its necessary services on an hourly basis that exceed customary seller representation as discussed above and for necessary services performed in addition to unit sales (the "Hourly Services"). From time to time, GMR adjusts its usual hourly billing rates in the ordinary course of its business. In the event of such an adjustment, GMR will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

16. GMR will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the Hourly Services described above by category and nature of services rendered. GMR reserves its right to seek an enhancement of its fees or a lodestar award greater than its normal hourly time charges, subject to this Court's approval in accordance with applicable law.

17. During the case GMR requests that it receive compensation for Hourly Services rendered to the Debtor upon approval of this Court in accordance with any applicable interim compensation procedures established by the Court. All compensation and expense

reimbursement for Hourly Services shall be subject to allowance by this Court upon appropriate application pursuant to Sections 330 and 331 of the Bankruptcy Code and any orders of this Court.

18. The Debtor requests, in accordance with MLBR 2014(1)(d), that GMR's retention be effective as of the Petition Date.

**DISINTERESTEDNESS OF GMR**

19. GMR has filed the affidavit of Craig P. Gilmartin in connection with this application and in accordance with Federal Rules of Bankruptcy Procedure 2014 and 2016, and MLBR 2014-1 (the "Affidavit").

20. While GMR holds a prepetition, unsecured claim against the Debtor's estate, such claim does not disqualify GMR from serving as special counsel pursuant to Section 327(e) and is not adverse to the conveyancing services to be provided. To the best of the Debtor's knowledge, GMR has not represented, nor does it now represent, any interest adverse to the Debtor with respect to the matters on which GMR is to be employed. GMR and its principals and employees are otherwise disinterested persons with respect to the Debtor, as that term is defined in the Bankruptcy Code.

21. GMR will further amend or supplement the Affidavit to any extent necessary.

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**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order (a) authorizing the retention of Gilmartin, Magence & Ross (“GMR”) as special real estate counsel to the Debtor under the terms and conditions set forth in this application; (b) authorizing the Debtor to pay GMR for the Unit Sales Services on the terms, and in the amount, set forth above; and (c) granting to the Debtor such other and further relief as the Court deems just and proper in the circumstances.

Respectfully Submitted,  
SW BOSTON HOTEL VENTURE LLC,

By its proposed counsel,

/s/ Natalie B. Sawyer  
Harold B. Murphy (BBO #362610)  
D. Ethan Jeffery (BBO #631941)  
Natalie B. Sawyer (BBO #660072)  
HANIFY & KING, P.C.  
One Beacon Street  
Boston, MA 02108-3107  
Tel: (617) 423-0400  
Fax: (617) 556-8985  
nbs@hanify.com

Dated: May 12, 2010

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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IN RE: )  
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SW BOSTON HOTEL VENTURE LLC, )  
et al., )  
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Debtors. )  
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Chapter 11  
Case No. 10-14535-JNF

*(Jointly Administered)*

**AFFIDAVIT OF CRAIG P. GILMARTIN IN SUPPORT OF  
APPLICATION TO EMPLOY GILMARTIN, MAGENCE & ROSS AS SPECIAL  
CONVEYANCING COUNSEL TO THE DEBTOR AND DEBTOR-IN-POSSESSION**

Pursuant to Fed. R. Bankr. P. 2014(a) and 2016, MLBR 2014-1, and 28 U.S.C. § 1746, I, Craig P. Gilmartin, hereby state as follows:

1. I am a partner and founding member of Gilmartin, Magence & Ross LLP, 376 Boylston Street, Boston, Massachusetts 02116 (“GMR”). I make this affidavit (the “Affidavit”) in support of the *Application to Employ Gilmartin, Magence & Ross as Special Conveyancing Counsel to the Debtor and Debtor-in-Possession* (the “Application”) filed by SW Boston Hotel Venture LLC (the “Debtor”). I am generally familiar with the business of GMR and have made inquiry concerning the facts set forth herein prior to making this Affidavit.

2. GMR maintains records of all of its clients, the matters on which it represents its clients, and the other parties which have a substantial role in such matters. GMR has reviewed such records and documents to determine GMR’s connections with the Debtor and its affiliates, General Trading Company, Frank Sawyer Corporation, 100 Stuart Street LLC and Auto Sales & Service, Inc. (collectively the “Debtors”), and those entities listed by the Debtor as being creditors.

3. Based upon the review, described above, in accordance with Bankruptcy Rule 2014(a), neither I nor any shareholder or associate of GMR, insofar as I have been able to ascertain, has any connections or relationships with the Debtors, their creditors or any other parties-in-interest, or their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee.

4. Based upon the review as described above, I am not presently aware of any representation by GMR of any creditors of the Debtors or other parties-in-interest. Because of the size and diversity of GMR's practice, it is possible that GMR may represent or may have represented other creditors, equity security holders, or parties-in-interest or their respective attorneys and accountants, but does not represent any such entity in connection with the Debtors. With respect to the parties listed above, GMR has not and will not represent such parties in any matters related to the Debtor's bankruptcy case.

5. While GMR holds a prepetition, unsecured claim against the Debtor's estate, such claim does not disqualify GMR from serving as special counsel pursuant to Section 327(e) and is not adverse to the conveyancing services to be provided.

6. GMR does not represent, nor is it represented by, any other authorized professional specifically in connection with this case or on a regular basis or in connection with a substantial matter in another case.

7. The Debtors may retain various professionals during the pendency of this case. GMR will take steps not to unnecessarily duplicate the efforts of any other professional retained in these cases. In that regard, GMR will coordinate with all other professionals retained in these cases to ensure that GMR does not unnecessarily duplicate work being performed by other professionals.

8. Insofar as I have been able to ascertain, based on the review as described above, GMR, the shareholders and consultants thereof do not hold or represent any interest adverse to that of the Debtors' estates. Notwithstanding the disclosures contained in paragraph three, I believe that I and each shareholder and consultant of GMR is a "disinterested person" as that term is defined in 11 U.S.C. § 101(14). Furthermore, insofar as I have been able to ascertain, neither GMR nor any shareholder or associate thereof is connected with any Bankruptcy Judge in the District of Massachusetts, or the United States Trustee or any person employed in the office of the United States Trustee, so as to render the appointment of GMR as counsel for the Debtors inappropriate under Fed. R. Bankr. P. 5002(b).

9. GMR and I have conducted, and will continue to conduct, research into any relationships we may have with the Debtors and their creditors, any accountants, attorneys or other professionals of the foregoing, and any other parties interested in this case. Although GMR has undertaken, and will continue to undertake, an investigation to identify any contacts with the Debtors or parties-in-interest, it is possible that such contacts have not been revealed. To the extent any such contacts are discovered, GMR will notify the Court by filing and serving a supplemental affidavit.

10. Any compensation, fee or allowance which may be claimed by me or by GMR will belong wholly to the law firm and will not be divided, shared or pooled, directly or indirectly, with any other person or firm.

11. GMR requests compensation of \$975.00 to be paid at the time of the closing of each condominium unit for the normal and customary seller representation in connection with unit sales. GMR will seek additional compensation for legal fees and expenses charged for its necessary services on an hourly basis that exceed customary seller representation as discussed

above and for necessary services performed in addition to unit sales. From time to time, GMR adjusts its usual hourly billing rates in the ordinary course of its business. In the event of such an adjustment, GMR will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

12. GMR has not been provided with a security retainer for services rendered or to be rendered in connection with its representation of the Debtor.

13. I shall amend this statement immediately upon my learning that (A) any of the within representations are incorrect or (B) there is any change of circumstances relating thereto.

14. I have reviewed the provisions of MLBR 2016-1.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

/s/ Craig P. Gilmartin  
Craig P. Gilmartin

Dated: May 11, 2010

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re: )  
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SW BOSTON HOTEL VENTURE LLC, )  
et al., )  
)  
Debtors. )

Chapter 11  
Case No. 10-14535-JNF

(Jointly Administered)

DECLARATION REGARDING ELECTRONIC FILING

**PART I - DECLARATION OF PETITIONER**

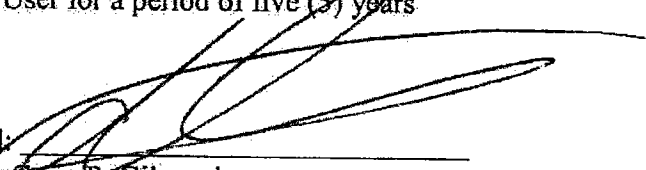
I, Craig P. Gilmartin, hereby declare under penalty of perjury that the information contained in the *Affidavit of Craig P. Gilmartin in Support of Application to Employ Gilmartin, Magence & Ross as Special Conveyancing Counsel to the Debtor and Debtor-in-Possession* (the "Document") filed electronically is true and correct.

I understand that this DECLARATION is to be filed with the Clerk of Court electronically with the electronic filing of the Documents. I understand that failure to file this DECLARATION may cause the Documents to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that pursuant to the Massachusetts Electronic Filing Local Rule (MEFLR)-7(a) all paper documents containing original signatures executed under the penalties of perjury and filed electronically with the Court are the property of the bankruptcy estate and shall be maintained by the authorized CM/ECF Registered User for a period of five (5) years after the closing of this case.

Dated: May 11, 2010

Signed:

  
Craig P. Gilmartin

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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	)	
<b>Debtors.</b>	)	
	)	<i>(Jointly Administered)</i>

**ORDER GRANTING APPLICATION TO EMPLOY  
GILMARTIN, MAGENCE & ROSS AS SPECIAL CONVEYANCING  
COUNSEL TO THE DEBTOR AND DEBTOR-IN-POSSESSION**

Upon the application (the “Application”) of the above-referenced debtor and debtor-in-possession (the “Debtor”) for entry of an order pursuant to Section 327(e) of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure and MLBR 2014-1, authorizing the Debtor’s retention of Gilmartin, Magence & Ross (“GMR”) as its special conveyancing counsel; and the Court having considered the Application and the *Affidavit of Craig Gilmartin in Support of Application to Employ Gilmartin, Magence & Ross as Special Conveyancing Counsel to the Debtor and Debtor-in-Possession*; and the Court being satisfied that GMR holds no interest adverse to the Debtors or their estates as to the matters upon which it is to be engaged and is disinterested under Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy Code; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that the relief requested by the Application is necessary and in the best interests of the Debtor, its estate and its creditors; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary or required; and after

due deliberation and good and sufficient cause appearing therefore, it is hereby **DETERMINED, ORDERED AND ADJUDGED**, that:

1. The Application is hereby approved and granted in its entirety.
2. The Debtor is hereby authorized to retain Gilmartin, Magence & Ross on the terms and conditions set forth in the Application.
3. The retention of Gilmartin, Magence & Ross is approved as of the Petition Date.
4. The Debtor is authorized to pay GMR for the Unit Sales Services on the terms, and in the amount, set forth in the application.
5. All other fees to be paid to Gilmartin, Magence & Ross, and expenses to be reimbursed, shall be as allowed and determined by this Court.

Dated: \_\_\_\_\_, 2010

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Joan N. Feeney  
United States Bankruptcy Judge

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