



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 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 Culinary

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 EAPD**

11. The Debtor seeks an order of this Court authorizing the employment and retention of EAPD for the limited purpose of performing the legal services necessary with respect to real estate matters pertaining to the Project, including but not limited to, permitting matters relating to construction completion of certain spaces within the Project.

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. EAPD has extensive experience representing developers of real estate. EAPD served as the Debtor's real estate attorneys prior to the Petition Date and is intimately familiar with the Project and the associated permitting issues. The Debtor believes that EAPD is well qualified to provide services as special real estate counsel in its Chapter 11 case.

14. The Debtors have filed applications to employ Hanify & King, P.C. as their general bankruptcy counsel and Gilmartin, Magence & Ross as their special conveyancing counsel for the sale of condominium units. The limited professional services that EAPD will render as Section 327(e) real estate counsel will not overlap with services provided by Hanify & King or Gilmartin, Magence & Ross. Every effort will be taken to avoid duplicating services in this regard.

15. From time to time, EAPD adjusts its usual hourly billing rates in the ordinary course of its business. In the event of such an adjustment, EAPD will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

16. EAPD 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. EAPD 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 EAPD 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 EAPD's retention be effective as of May 3, 2010.

**DISINTERESTEDNESS OF EAPD**

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

21. EAPD 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 Edwards Angell Palmer & Dodge LLP ("EAPD") as special real estate counsel to the Debtor under the terms and conditions set forth in this application; and (b) 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

Dated: May \_\_, 2010

By:   
President and authorized signatory

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creditors, other parties in interest, their respective attorneys and accountants, the U.S. Trustee or any person employed by the U.S. Trustee.

3. Based upon the review, described above, in accordance with Bankruptcy Rule 2014(a), neither I nor any partner or associate of EAPD, 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, except that I have ascertained that EAPD represents certain of the creditors of the Debtors (*i.e.*, Sovereign Bank, the City of Boston, Bovis LendLease LMB, Duff & Phelps, and NStar) in unrelated matters. EAPD has not and will not represent such parties in any matters related to the Debtors' bankruptcy case.

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

5. EAPD 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.

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

7. To the best of my knowledge and belief, insofar as I have been able to ascertain after reasonable inquiry, neither I, nor EAPD, nor any partner or associate thereof, holds or

represents an interest adverse to the Debtors or their estates, in that: (a) EAPD has no connection with the Debtors, their creditors, the Court, the U.S. Trustee, any person employed by the U.S. Trustee or any other party with an actual or potential interest in this Chapter 11 case or their respective attorneys or accountants, except as set forth in this affidavit; (b) EAPD is not a equity security holder or insider of any of the Debtors; (c) EAPD is not and was not, within two years of the petition date, a director, officer or employee of any of the Debtors; and (d) EAPD does not have nor represent 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. Furthermore, insofar as I have been able to ascertain, neither EAPD nor any partner 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 EAPD as special counsel for the Debtors inappropriate under Fed. R. Bankr. P. 5002(b).

8. EAPD 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 EAPD 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, EAPD will notify the Court by filing and serving a supplemental affidavit.

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

10. EAPD requests compensation at its usual billing rates for the normal and customary representation of the Debtors with respect to real estate matters pertaining to the W Boston Hotel and Residences ("Project"), including but not limited to, permitting matters relating to construction completion of certain spaces within the Project. From time to time, EAPD adjusts its usual hourly billing rates in the ordinary course of its business. In the event of such an adjustment, EAPD will seek compensation at the adjusted hourly rate from and after the date of the adjustment.

11. EAPD has not been provided with a security retainer for services rendered or to be rendered in connection with its representation of the Debtors.

12. 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.

13. 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/ Rebecca Lee  
Rebecca A. Lee

Dated: May 14, 2010

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

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)  
**In re:** )  
)  
**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, Rebecca A. Lee, hereby declare under penalty of perjury that the information contained in the *Affidavit of Rebecca A. Lee in Support of Application to Employ Edwards Angell Palmer & Dodge LLP as Special Real Estate and Permitting 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 14, 2010

Signed: *Rebecca A. Lee*  
Rebecca A. Lee

UNITED STATES BANKRUPTCY COURT  
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>

**ORDER GRANTING APPLICATION TO EMPLOY EDWARDS  
ANGELL PALMER & DODGE LLP AS SPECIAL REAL ESTATE  
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 Edwards Angell Palmer & Dodge (“EAPD”) as its special real estate counsel; and the Court having considered the Application and the *Affidavit of Rebecca A. Lee in Support of Application to Employ Edwards Angell Palmer & Dodge as Special Real Estate Counsel to the Debtor and Debtor-in-Possession*; and the Court being satisfied that EAPD 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 Edwards Angell Palmer & Dodge on the terms and conditions set forth in the Application.
3. The retention of Edwards Angell Palmer & Dodge is approved as of May 3, 2010.
4. The fees to be paid to Edwards Angell Palmer & Dodge, and expenses to be reimbursed, shall be as allowed and determined by this Court.

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

\_\_\_\_\_  
Joan N. Feeney  
United States Bankruptcy Judge

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