

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
NEWBURY COMMON	)	
ASSOCIATES, LLC, <u>et al.</u> ,	)	Case No. 15-12507 (LSS)
	)	
	)	Jointly Administered
	)	
Debtors. <sup>1</sup>	)	
	)	Re: Docket Nos. 1614, 1678, 1679 & _____

**ORDER (A) APPROVING THE DISCLOSURE STATEMENT;  
(B) APPROVING FORM AND MANNER OF NOTICE OF CONFIRMATION  
HEARING; (C) APPROVING PROCEDURES FOR THE SOLICITATION AND  
TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN; (D) APPROVING  
NOTICE AND OBJECTION PROCEDURES IN RESPECT THEREOF; AND  
(E) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the Plan Debtors for the entry of an order: (i) approving the Disclosure Statement; (ii) establishing the record date for the purpose of determining which creditors are entitled to vote on the Plan; (iii) approving solicitation materials and procedures for distribution thereof; (iv) approving ballots and procedures for voting on the Plan and tabulating votes with respect thereto; and (v) scheduling a hearing and approving notice procedures relating to confirmation of the Plan; and the Court

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Newbury Common Associates, LLC (3783); Seaboard Realty, LLC (6291); 600 Summer Street Stamford Associates, LLC (6739); Seaboard Hotel Member Associates, LLC (8984); Seaboard Hotel LTS Member Associates, LLC (6005); Park Square West Member Associates, LLC (9223); Seaboard Residential, LLC (2990); One Atlantic Member Associates, LLC (4120); 88 Hamilton Avenue Member Associates, LLC (5539); 316 Courtland Avenue Associates, LLC (0290); 300 Main Management, Inc. (6365); 300 Main Street Member Associates, LLC (2334); PSWMA I, LLC (6291); PSWMA II, LLC (6291); Tag Forest, LLC (8974); Newbury Common Member Associates, LLC (3909); Century Plaza Investor Associates, LLC (1480); Seaboard Hotel Associates, LLC (2281); Seaboard Hotel LTS Associates, LLC (8811); Park Square West Associates, LLC (9781); Clocktower Close Associates, LLC (3154); One Atlantic Investor Associates, LLC (7075); 88 Hamilton Avenue Associates, LLC (5749); 220 Elm Street I, LLC (7540); 300 Main Street Associates, LLC (8501); and 220 Elm Street, II (7625). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

<sup>2</sup> All capitalized terms used herein shall have the meaning ascribed to them in the Motion.

having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion and opportunity for objection having been given; and a hearing having been held to consider the relief requested in the Motion (the “**Disclosure Statement Hearing**”); and upon the record of the Disclosure Statement Hearing and all of the proceedings had before this Court and this Court having reviewed the Motion, the papers in support thereof, and the responses thereto, if any; and this Court having found and determined that the legal and factual bases set forth in the Motion and at the Disclosure Statement Hearing establish just cause for the relief granted herein; and the relief requested in the Motion is in the best interests of the Plan Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND THAT:**

A. This Court has reviewed and approved the Disclosure Statement filed by the Plan Debtors and has determined that it contains “adequate information” and otherwise complies with section 1125 of the Bankruptcy Code.

B. The procedures set forth below for the solicitation and tabulation of votes to accept or reject the Plan provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

C. The form of Non-Voting Class Notice annexed hereto as Exhibit 1, to be sent to Holders of Claims in Classes 1, 2, 8, and 9, which Classes are deemed to accept the Plan, complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; provides

adequate notice to Holders of Claims or Equity Interests in these Classes of their non-voting status; and adequately addresses the particular needs of these Chapter 11 Cases. No further notice of their non-voting status is necessary.

D. The forms of Ballots annexed hereto as Exhibits 2 through 6 are substantially consistent with Official Form No. 14, adequately address the particular needs of these Chapter 11 Cases, and provide adequate information and instructions for each Class of Claims entitled to vote to accept or reject the Plan. No further information or instructions are necessary.

E. Pursuant to the Plan, Allowed Claims in Class 3 (Mortgage Claims), Class 4 (Settling Lender Claims), Class 5 (General Unsecured Claims), and Class 6 (Investor Claims), and Allowed Equity Interests in Class 7 (Equity Interests) (together, the “**Voting Parties**”) are impaired and entitled to receive consideration under the Plan, and accordingly, Holders of Claims and Equity Interests in these Classes are entitled to vote on account of such Claims.

F. The distribution and contents of the Solicitation Packages comply with Bankruptcy Rules 2002 and 3017 and constitute sufficient notice to all interested parties of the Record Date, Voting Deadline, Confirmation Objection Deadline, Confirmation Hearing, and all related matters.

G. The period during which the Plan Debtors may solicit acceptances to the Plan, as set forth below, is a reasonable and sufficient period of time for Voting Parties to make an informed decision regarding whether to accept or reject the Plan and timely return Ballots evidencing such decision.

H. The Confirmation Hearing Notice substantially in the form annexed hereto as Exhibit 7, and the procedures set forth below for providing notice of the time, date, and place of the hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”) and for filing

objections or responses to the Plan, provide due, proper, and adequate notice and comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and constitute sufficient notice to all interested parties.

I. All notices provided relating to confirmation of the Plan pursuant to the procedures set forth herein constitute good and sufficient notice to all parties in interest of all matters pertinent hereto and of all matters pertinent to the Confirmation Hearing, and no other or further notice need be provided.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. The Disclosure Statement appearing at [Docket No. 1679] contains adequate information in accordance with section 1125 of the Bankruptcy Code and is approved.
3. All objections or responses to the Disclosure Statement, if any, which have not been withdrawn or resolved, are overruled.
4. Donlin, Recano & Company, Inc. (the “**Voting and Balloting Agent**”) is authorized to perform all balloting and solicitation services and any services incidental thereto.
5. The Record Date shall be set as April 10, 2017.
6. The record Holders of Claims shall be determined as of the Record Date based upon the records of the Plan Debtors and the Voting and Balloting Agent. Accordingly, any documentation evidencing a transfer of a claim not received and docketed by this Court on or before the Record Date shall not be recognized for purposes of voting or receipt of the Plan confirmation materials.
7. The Solicitation Packages are approved.

8. The Solicitation Packages shall be distributed to each of the Voting Parties and the Holders of Subordinated Claims and Subordinated Interests in Class 10 by the Solicitation Date and shall contain the following materials: (i) the Confirmation Hearing Notice; (ii) a CD-ROM containing a copy of the order approving this Motion (without exhibits) and a copy of the Disclosure Statement (together with the Plan and other exhibits annexed thereto); (iii) solely for the Voting Parties, the appropriate Ballot to accept or reject the Plan and a postage prepaid, self-addressed, return envelope; and (iv) solely for the Holders of Investor Claims and Equity Interests, the letter, substantially in the form annexed hereto as Exhibit 7.

9. The Plan Debtors may distribute (or cause the Voting and Balloting Agent to distribute) the Solicitation Packages at their discretion in either paper or CD-ROM format (other than the Confirmation Hearing Notice and the Ballot, which shall be provided in paper format); *provided, however*, that, upon the request of any party in interest, the Plan Debtors shall provide a paper copy of this Order and/or the Disclosure Statement, which shall include the Plan as an exhibit, at no cost to the party within five (5) business days of such request. Parties in interest may also review this Order, the Disclosure Statement, and the Plan on the Voting and Balloting Agent's website, located at <https://www.donlinrecano.com/Clients/nca/Index>.

10. The Non-Voting Class Notice shall be distributed to each of the Non-Voting Parties.

11. The Plan Debtors are directed to distribute, or cause to be distributed, by April 13, 2017 (the "**Solicitation Date**"), the Confirmation Hearing Notice on all parties on the creditor matrix maintained by the Voting and Balloting Agent that are not otherwise entitled to receive a Solicitation Package.

12. The Plan Debtors are not required to distribute Solicitation Packages to creditors who have timely filed proofs of claim if the Claims have already been paid in the full claimed amount; provided, however, if, and to the extent that, any such creditor would be entitled to receive a Solicitation Package for any reason other than by virtue of the fact that its Claim had been scheduled by the Plan Debtors, such creditor will be sent a Solicitation Package.

13. With respect to addresses from which Disclosure Statement Hearing Notices were returned as undeliverable by the United States Postal Service, the Plan Debtors are excused from distributing a Solicitation Package, Non-Voting Class Notice, and/or the Confirmation Hearing Notice to those entities listed at such addresses unless the Plan Debtors are provided with accurate addresses for such entities at least one (1) business day prior to the Solicitation Date, and failure to distribute these documents to such entities will not constitute inadequate notice of the Confirmation Hearing, the Voting Deadline, or violation of Bankruptcy Rule 3017(d).

14. Within five (5) days after the entry of this Order (or as soon as reasonably practicable thereafter, but no later than twenty-five (25) days prior to the Confirmation Objection Deadline), the Plan Debtors will cause the Confirmation Hearing Notice, as modified for publication (the "**Publication Notice**"), to be published once in the Stamford Advocate.

15. The Plan Debtors are authorized to make non-substantive changes to the Disclosure Statement, Plan, Ballots, the Confirmation Hearing Notice, any other notice related to the Plan or Disclosure Statement, and all exhibits and appendices to any of the foregoing without further order of this Court, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package prior to their distribution.

16. The Ballots are approved.
17. The Voting Deadline is set as May 11, 2017, at 4:00 p.m. (ET).
18. Unless otherwise provided herein, all Ballots must be properly executed, completed and the original thereof shall be delivered to the Voting and Balloting Agent so as to be actually received by the Voting and Balloting Agent no later than the Voting Deadline at the following address:

If by first class mail:

Donlin, Recano & Company, Inc.  
**Re: Newbury Common Associates, LLC, et al.**  
Attn: Voting Department  
PO Box 192016 Blythebourne Station  
Brooklyn, NY 11219

If by hand delivery or overnight mail:

Donlin, Recano & Company, Inc.  
**Re: Newbury Common Associates, LLC, et al.**  
Attn: Voting Department  
6201 15<sup>th</sup> Ave  
Brooklyn, NY 11219

19. The Plan Debtors are not required to distribute Solicitation Packages, Ballots, copies of the Disclosure Statement or Plan, or any other notices other than the Confirmation Hearing Notice to Holders of Claims that have not been classified in the Plan pursuant to section 1123(a)(1) of the Bankruptcy Code.

20. The Plan Debtors shall send a Ballot substantially in the form annexed hereto as Exhibit 2 to the Holders of Mortgage Claims in Class 3.

21. The Plan Debtors shall send a Ballot substantially in the form annexed hereto as Exhibit 3 to the Holders of Settling Lender Claims in Class 4.

22. The Plan Debtors shall send a Ballot substantially in the form annexed hereto as Exhibit 4 to the Holders of General Unsecured Claims in Class 5.

23. The Plan Debtors shall send a Ballot substantially in the form annexed hereto as Exhibit 5 to the Holders of Investor Claims in Class 6.

24. The Plan Debtors shall send a Ballot substantially in the form annexed hereto as Exhibit 6 to the Holders of Equity Interests in Class 7.

25. The Plan Debtors shall send the letter, substantially in the form annexed hereto as Exhibit 7, to Holders of Investor Claims in Class 6 and Equity Interests in Class 7, along with the appropriate Ballots.

26. Solely for purposes of voting to accept or reject the Plan, and not for the purpose of the allowance of or distribution on account of a Claim, and without prejudice to the rights of the Plan Debtors in any other context, each Holder of a Claim within a Class of Claims entitled to vote to accept or reject the Plan shall be entitled to vote the amount of such Claim as set forth in the Schedules (as may be amended from time to time) unless such Holder has timely filed a proof of claim, in which event such Holder would be entitled to vote the amount of such Claim as set forth in such proof of claim; subject to the tabulation rules (the “**Tabulation Rules**”) below:

- a. If a Claim is proposed to be “Allowed” under the Plan or an order of this Court, such Claim is allowed for voting purposes in the deemed “Allowed” amount set forth in the Plan or this Court’s order;
- b. If a Holder has timely filed a Claim and subsequently filed an amended or superseded Claim, that Holder shall be entitled to vote only the amount of the Claim as set forth in the amending or superseding Claim;
- c. If a Claim for which a proof of claim has been timely filed is wholly contingent, unliquidated, or disputed, such Claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00, and the Ballot mailed to the Holder of such Claim shall be marked for voting at \$1.00;



- d. If a Claim is partially liquidated and partially unliquidated, the Claim is allowed for voting purposes only in the liquidated amount;
- e. If a Claim has been estimated or otherwise allowed for voting purposes by order of this Court, such Claim shall be temporarily allowed in the amount so estimated or allowed by this Court for voting purposes only, and not for purposes of allowance or distribution;
- f. If a Claim is listed in the Schedules as undetermined, contingent, unliquidated, or disputed, or in a zero or unknown amount, and a proof of claim was not (A) filed by the applicable bar date for the filing of proofs of claim established by this Court or (B) deemed timely filed by an order of this Court prior to the Voting Deadline, then such Claim shall be disallowed for voting purposes;
- g. If an objection to a Claim has been filed on or before the Record Date, such Claim shall be disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection; and
- h. Notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased duplicate Claims against the same Plan Debtor or holds multiple non-duplicative Claims that are classified under the Plan in the same Class, shall be provided with only one Solicitation Package and one Ballot for voting a single Claim in such Class against the same Plan Debtor, regardless of whether an objection to such duplicate claims has been filed.

27. Each Holder of an Equity Interest entitled to vote to accept or reject the Plan shall vote the amount of such Equity Interest as reflected in the Equity Holder Lists.

28. Each creditor that votes to accept or reject the Plan is deemed to have voted the full amount of its Claims thereof.

29. If any claimant or Holder of an Equity Interest seeks to challenge the allowance of its Claim or Equity Interest for voting purposes in accordance with the above procedures, such claimant is directed to file with this Court and serve on counsel for the Plan Debtors and the parties set forth in Paragraph 44 of this Order, a motion for an order pursuant to

Bankruptcy Rule 3018(a) temporarily allowing such Claim or Equity Interest in a different amount for purposes of voting to accept or reject the Plan no later than 4:00 p.m. (ET) on May 1, 2017 (the “**Rule 3018(a) Motion Deadline**”).

30. Any party filing and serving a Rule 3018(a) Motion on or prior to the Rule 3018(a) Motion Deadline shall be provided a Ballot and be permitted to cast a provisional vote to accept or reject the Plan.

31. Unless a timely objection to a Claim has been filed prior to the Record Date or a Rule 3018(a) Motion has been filed by the Rule 3018(a) Motion Deadline, Claims and Equity Interests shall be classified in the classes set forth on Schedules A, B, and C to the Disclosure Statement, in accordance with Section 6.2(c) of the Plan.

32. To the extent any Rule 3018(a) Motion is unresolved prior to the Voting Deadline, this Court shall determine at the Confirmation Hearing whether such provisional Ballot will be counted as a vote on the Plan.

33. As to any creditor filing a Rule 3018(a) Motion, such party’s Ballot shall not be provisionally counted in determining whether the Plan has been accepted or rejected if their Rule 3018(a) Motion is not timely filed and served by the Rule 3018(a) Motion Deadline.

34. If a creditor casts more than one Ballot voting the same Claim(s) or Equity Interests before the Voting Deadline, the last valid Ballot received before the Voting Deadline is deemed to reflect the voter’s intent and, thus, to supersede any prior Ballots.

35. Creditors with multiple Claims within a particular Class must vote all of their Claims within a particular Class per Plan Debtor entity under the Plan either to accept or reject the Plan and may not split their votes, and thus neither (a) any Ballot that partially rejects

and partially accepts the Plan nor (b) any Ballot filed by a creditor with multiple Claims within a Class who votes inconsistently will be counted.

36. Without further order of this Court:
  - a. Any Ballot that is properly completed, executed, and timely returned to the Voting and Balloting Agent, but does not indicate an acceptance or rejection of the Plan or indicates both an acceptance and a rejection of the Plan, shall not be counted as a vote accepting or rejecting the Plan;
  - b. Any Ballot actually received by the Voting and Balloting Agent after the Voting Deadline shall not be counted, unless the Plan Debtors granted an extension of the Voting Deadline with respect to such Ballot;
  - c. Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant shall be considered defective and shall not be counted;
  - d. Ballots postmarked prior to the Voting Deadline, but received after the Voting Deadline, shall not be counted;
  - e. Any Ballot cast by a person or entity that does not hold a Claim or Equity Interest in a Class that is entitled to vote to accept or reject the Plan shall be considered defective and shall not be counted;
  - f. Any Ballot cast for a Claim identified as unliquidated, contingent, or disputed for which no proof of claim was timely filed shall be considered defective and shall not be counted;
  - g. Any unsigned Ballot or non-originally signed Ballot shall be considered defective and shall not be counted;
  - h. Any Ballot sent directly to the Plan Debtors, their agents (other than the Voting and Balloting Agent), or their financial or legal advisors, or to any party other than the Voting and Balloting Agent, shall be considered defective and shall not be counted;
  - i. Any Ballot cast for a Claim or Equity Interest that has been disallowed (for voting purposes or otherwise) or satisfied shall be considered defective and shall not be counted; and
  - j. Any Ballot transmitted to the Voting and Balloting Agent by facsimile or other electronic means shall be considered defective and shall not be counted, unless the Plan Debtors agree in writing to accept such Ballot.

37. Neither the Plan Debtors, the Voting and Balloting Agent, nor any other person or entity shall be under any duty to provide notification of defects or irregularities with respect to delivered Ballots, and neither the Plan Debtors, the Voting and Balloting Agent, nor any other person or entity shall incur any liability for failure to provide such notification.

38. Subject to any order of this Court to the contrary, the Plan Debtors may waive any defect in any Ballot at any time, whether before or after the Voting Deadline, provided that any such waiver shall be so annotated on the Ballot Tabulation.

39. The Confirmation Hearing Notice is approved.

40. The Confirmation Hearing will commence at 10:00 a.m. (ET) on May 18, 2017; provided, however, that the Confirmation Hearing may be adjourned from time to time by this Court or the Plan Debtors without further notice to parties other than an announcement at the Confirmation Hearing or any adjourned Confirmation Hearing.

41. Objections to confirmation of the Plan may be filed no later than May 11, 2017 at 4:00 p.m. (ET) (the “**Confirmation Objection Deadline**”).

42. Objections to confirmation of the Plan, if any, must (a) be in writing, (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (c) state with particularity the basis and nature of any objection, and (d) be filed, together with proof of service, with this Court and served so that they are actually received no later than the Confirmation Objection Deadline by the following parties: (i) counsel for the Plan Debtors: Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Robert S. Brady, Esq. and Sean T. Greecher, Esq.; and (ii) the United States Trustee: 844 King Street, Room 2207, Lockbox #35, Wilmington, DE 19899, Attn: David Buchbinder, Esq.

43. Objections to confirmation of the Plan not timely filed and served in the manner set forth above shall not be considered and shall be overruled.

44. The Voting and Balloting Agent shall file the Ballot Tabulation Certification no later than May 15, 2017 at 4:00 p.m. (ET).

45. The Plan Debtors shall file the Plan Supplement on or before May 1, 2017.

46. The Plan Debtors shall file any reply to any objections to the Plan no later than May 15, 2017 at 4:00 p.m. (ET).


47. For ease of reference, the confirmation schedule set forth herein is summarized in the table below:

<b>Timeline</b>	
April 10, 2017 at 5:00 p.m. (ET)	Voting Record Date
April 13, 2017	Date of service of Solicitation Packages or Non-Voting Class Notice, as applicable
May 1, 2017 at 4:00 p.m. (ET)	Rule 3018(a) Motion Deadline
May 11, 2017 at 4:00 p.m. (ET)	Voting Deadline
May 11, 2017 at 4:00 p.m. (ET)	Confirmation Objection Deadline
May 15, 2017 at 4:00 p.m. (ET)	Deadline for filing the Ballot Tabulation
May 15, 2017 at 4:00 p.m. (ET)	Deadline for Plan Debtors' reply to Plan objections, if any
May 18, 2017 at 10:00 a.m. (ET)	Confirmation Hearing

48. The Plan Debtors are authorized to take or refrain from taking any action and expending such funds necessary or appropriate to implement the terms of and the relief granted in this Order without seeking further order of this Court.

49. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: April 10, 2017  
Wilmington, Delaware

  
Laurie Selber Silverstein  
United States Bankruptcy Judge