



related thereto, (iii) the continuation of Intercompany Transactions (as defined below), (iv) administrative expense status for Intercompany Claims (as defined below), (v) the Debtors' continued use of existing checks and business forms and (vi) granting the Debtors a waiver of the bond requirement contained in section 345(b) under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Marc Beilinson in Support of Chapter 11 Petitions* [Docket No. 5] (the "**First Day Declaration**") and the *Declaration of Marc Beilinson in Support of Additional Chapter 11 Petitions and First Day Pleadings* (the "**Supplemental First Day Declaration**"),<sup>2</sup> filed contemporaneously herewith, and respectfully state as follows:

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

2. Venue of these chapter 11 cases and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

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The Debtors' corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

<sup>2</sup> Each capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declaration or the Supplemental First Day Declaration.

3. The statutory predicates for the relief sought hereby are sections 105, 345, 363(b) and 363(c) of the Bankruptcy Code, Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2015-2 of the Local Rules.

### **BACKGROUND**

4. On December 13, 2015 (the “**Initial Petition Date**”), the Original Debtors with the exception of Tag Forest, LLC (“**Tag**”) commenced a voluntary case under chapter 11 of the Bankruptcy Code. On December 14, 2015, Tag commenced its voluntary case under chapter 11 of the Bankruptcy Code. On the date hereof, (the “**Petition Date**”), each of the Additional Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner. The Original Debtors’ chapter 11 cases are being jointly administered, for procedural purposes only, pursuant to Bankruptcy Rule 1015(b). Contemporaneously herewith, the Additional Debtors filed a supplemental motion seeking joint administration of their chapter 11 cases with the Original Debtors for procedural purposes only, pursuant to Rule 1015(b) of the Bankruptcy Rules.

5. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration and the Supplemental First Day Declaration.

### **THE CASH MANAGEMENT SYSTEM**

6. The Debtors are seeking to employ a new Cash Management System. As set forth in the First Day Declaration and Supplemental First Day Declaration, the Debtors filed these chapter 11 cases given the concern surrounding the finances of the Debtors. Upon a review of the Debtors’ books and records, the Debtors have determined that prior to the Petition Date, the Debtors extensively commingled their cash receipts by utilizing a consolidating bank account

owned by Seaboard Consolidated, LLC (a company controlled by Mr. DiMenna) and making payments related to the properties and distributions to investors without regard to which property originated or otherwise supported the funds.<sup>3</sup> The Debtors believe that certain non-debtor entities under the control of Mr. DiMenna may have received funds of the Debtors from Seaboard Consolidated, LLC. Lack of prior controls to keep the funds solely within the Debtors' corporate structures required the Debtors to implement immediate changes on a go-forward basis so that the Debtors have a closed Cash Management System for only the Debtors and transactions that benefit their estates. The Debtors determined in their business judgment that it is prudent to utilize a new Cash Management System to obtain control over the Debtors' cash.

7. The new Cash Management System will operate as follows:
  - a. The Debtors intend to utilize the current Property Owner Debtors'<sup>4</sup> bank accounts maintained at TD Bank, N.A. ("**TD Bank**") to collect, deposit, and process all tenant and other incoming remittances specific to each underlying property of those respective Property Owner Debtors.
  - b. All balances in excess of the then amount of outstanding checks and wires previously issued plus any anticipated bank fees in the Property Owner Debtors' bank accounts will be transferred daily into a Newbury Common Member Associates, LLC ("**Newbury Common Member**") bank account at TD Bank (the "**Newbury Account**"). Strict management and internal controls will be in place to ensure the proper level of authorization and standardized accounting of all such deposit and transfer activity. Namely,
    - (i) Only selected accounting department personnel and senior level management including the Chief Restructuring

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<sup>3</sup> The consolidating bank account did not collect cash receipts directly from property tenants, but instead received funds from various Debtor bank accounts at the direction of Mr. DiMenna. The funds transferred from the consolidating account to the Debtors were disbursed by those entities to equity holders, to pay down loans and to make various other disbursements.

<sup>4</sup> The "**Property Owner Debtors**" are: Century Plaza Investor Associates, LLC; Seaboard Hotel Associates, LLC; Seaboard Hotel LTS Associates, LLC; Park Square West Associates, LLC; Clocktower Close Associates, LLC; One Atlantic Investor Associates, LLC; 88 Hamilton Avenue Associates, LLC; 220 Elm Street I, LLC; 300 Main Street Associates, LLC; and Seaboard Residential, LLC. Substantially all of the assets of Tag and Newbury Common Associates, LLC were sold before the Initial Petition Date.

Officer (the “**CRO**”) and his staff and advisors (the “**CRO Staff**”) will be granted authorization to access the in-place online banking system at TD Bank. Certain other personal will be given “view-only” access without ability to initiate and/or approve any online bank transaction.

- (ii) Authorized staff will log daily into the TD Bank application to ascertain the prior day’s banking activity and note the current balances in each of the Debtors’ bank accounts. After determining the level of funds to be transferred, that staff member will obtain prior approval from CRO Staff to initiate the required transfers.
  - (iii) Once the transfer has been completed, the transactions initiated will be recorded in the appropriate books and records of the Debtor transferor and at Newbury Common Member. Records will be maintained to ascertain the exact amount of all funds transferred to Newbury Common Member and from what Debtor the funds originated.
  - (iv) As part of the month-end closing process, accounting staff will reconcile the fund transfers by and between Newbury Common Member and the Debtor transferor. Such reconciliations will be reviewed by CRO Staff.
  - (v) An entity level report of that month’s transfer activity will be generated and included in that Debtor’s monthly operating report.
- c. At such time that properly documented and approved disbursements are required by a Property Owner Debtor, checks and/or wires for that underlying property expense will be initiated from the Newbury Account. Strict management and internal controls will be in place to ensure proper accounting of all such disbursement and transfer activity. Namely:
- (i) All such disbursements will be approved by senior management before the check is written or wire is initiated.
  - (ii) The only persons authorized to sign for checks will be the CRO and the CRO Staff. Once the checks have been written and attached to the underlying invoices, the CRO or the CRO Staff will review the expense documentation attached thereto and sign such checks.
  - (iii) Any disbursement sent by wire requires the approval of the CRO or the CRO Staff before the wire can be sent. Only

authorized staff will have access to the wire functions of the online system.

- (iv) All such disbursement activity by check or wire will be issued from Newbury Common Member and allocated to the applicable property to which the expense relates.<sup>5</sup>
  - (v) All such disbursements will be reported monthly on the monthly operating report of each property debtor and Newbury Common Member.
- d. Newbury Common Member will also initiate disbursements for all non-property specific expenses of the Debtors, including restructuring expenses, as well as payroll and related expenses. All of these Debtors' expenses paid directly by Newbury Common Member will be allocated to the underlying properties.<sup>6</sup>
  - e. The bank deposit and disbursement activity for the Courtyard by Marriott Stamford, CT (the "**Courtyard Marriott Property**"), owned by Seaboard Hotel Associates, LLC ("**Seaboard Hotel**"), will continue to be handled by Urgo Hotels, LLP on behalf of Seaboard Hotel. Periodically, Seaboard Hotel will transfer (or cause Urgo to transfer) cash from its TD Bank account maintained by Urgo to the Newbury Account.
  - f. The Debtors do not anticipate having to generally fund the Debtors that are not Property Owner Debtors, except for the payment of any taxes, fees and/or restructuring expenses.
  - g. Each Debtor is subject to a net \$200,000 limit for intercompany loans to Newbury Common, excluding any fees and expenses incurred by professionals, to the extent permitted by the Court to be paid (the "**Intercompany Loan Limit**").

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<sup>5</sup> As described in the *Emergency Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing* (the "**Cash Collateral Motion**"), the Debtors intend to apply the consolidated cash in the Newbury Account in a manner consistent with the waterfall set forth in Cash Collateral Motion and interim order with respect thereto (the "**Waterfall**"). At the same time, the Debtors will be able to track revenue and expenses from the prior month on a property-by-property, as well as on a tranche of debt-by-tranche of debt basis, and effect any reconciliation of prior month expenses allocated to specific entities, as necessary. Further, on a monthly basis, the Debtors intend to provide each Prepetition Secured Party with an Application Report that details, among other things, the Cash Collateral generated by the applicable Debtors within a Property Level Tranche and the amount of cash deemed to have been applied under the Waterfall to pay the costs and expenses of those same Debtors (each term as defined in the Cash Collateral Motion).

<sup>6</sup> The Debtors intend to apply all cash in a manner consistent with the Waterfall set forth in the Cash Collateral Motion and interim order granting the relief requested in the Cash Collateral Motion.

8. The Cash Management System constitutes an essential business practice and the use of existing Bank Accounts will allow for the Debtors to have an adequate cash concentration and disbursement system. The Debtors are seeking to deposit funds and manage their cash in accordance with the Cash Management System.

### **THE BANK ACCOUNTS**

9. A list of the Debtors' bank accounts (the "**Bank Accounts**") and the banking institutions that maintain the Bank Accounts (collectively, the "**Banks**") is attached hereto as **Exhibit A** and is incorporated herein by reference. Before the Petition Date, the Debtors used the Bank Accounts to fund certain expenses of the Debtors, including payments on the Debtors' prepetition financing, funding operations of the Debtors and to make distributions to members of the Debtors.

10. Most of the Bank Accounts are with TD Bank (the "**TD Bank Accounts**"). Additionally, the Debtors have Bank Accounts with Citizens Bank, N.A., People's United Bank, N.A., Webster Bank, First County Bank, First Niagara Bank, N.A., and Israel Discount Bank of New York (the "**Non TD Accounts**"). The Non TD Accounts are Bank Accounts that the Debtors were required to open as part of their prepetition financing. The Debtors anticipate only using the TD Bank Accounts as part of their Cash Management System.

11. All of the Bank Accounts are insured by the Federal Deposit Insurance Corporation (the "**FDIC**").

12. The Debtors do not currently maintain investment accounts or cash accounts other than those listed on **Exhibit A**.

13. The Debtors seek to utilize the Bank Accounts postpetition as needed and as such accounts are contemplated to be used as discussed above, in the ordinary course of the Debtors' businesses.

### **INTERCOMPANY TRANSACTIONS**

14. Through the operation of the Cash Management System, the Debtors move funds (the “**Intercompany Transactions**”) that result in intercompany receivables and payables (the “**Intercompany Claims**”). The Intercompany Transactions are made through ACH transfer to transfer funds up to the Newbury Account as part of the daily transfer.

15. As discussed above, the Newbury Account serves as the Debtors’ main operating account. The Newbury Account receives funds from the Property Owner Debtors and disburses funds, as necessary, throughout the Cash Management System. Strict management and internal controls will be in place to ensure proper accounting of all such disbursement and transfer activity through the procedures set forth herein.

16. Each of the transfers discussed above including the daily transfer into the Newbury Account is at the Debtors’ sole discretion. In connection with the daily operation of the Cash Management System, as funds are disbursed throughout the Cash Management System, at any given time there may be Intercompany Claims owing by one Debtor to another Debtor. As previously indicated, certain Intercompany Claims are reflected as journal entry receivables and payables, as applicable, in the respective Debtors’ accounting systems.

17. The Debtors track all fund transfers in their Cash Management System and can ascertain, trace, and account for all Intercompany Transactions. If the Intercompany Transactions were to be discontinued, the Cash Management System and the Debtors’ operations would be disrupted unnecessarily to the detriment of the Debtors, their creditors, and other stakeholders.

**THE BUSINESS FORMS**

18. In the ordinary course of business, the Debtors use a number of business forms, including checks, letterhead, purchase orders, and invoices. If the Debtors were required to obtain new business forms as a result of the filing of these chapter 11 cases, the Debtors would incur significant expense and attendant delay in effectuating their ordinary course, prepetition business transactions.

**RELIEF REQUESTED**

19. The Debtors seek the entry of an order approving (i) the Debtors' continued use of their Bank Accounts and Cash Management System, (ii) the payment of certain obligations related thereto, (iii) the continuation of the Intercompany Transactions, (iv) administrative expense status for Intercompany Claims, (v) the Debtors' continued use of existing checks and business forms and (v) granting the Debtors a waiver of the bond requirement contained in section 345(b) of the Bankruptcy Code.

20. In addition, the Debtors request that the Banks be enjoined from offsetting, affecting, or otherwise impeding any funds of the Debtors that are deposited by, or on behalf of, the Debtors in such accounts, by reason of any claim (as such term is defined in section 101(5) of the Bankruptcy Code), of the Banks against the Debtors that arose on or before the Petition Date. The Debtors request that the Banks' offset or similar rights be preserved for all purposes in these chapter 11 cases and not be waived or impaired, even though the Debtors will use funds deposited with the Banks pursuant to any order that may grant the relief requested herein or in other motions filed by the Debtors.

21. The Debtors request permission to pay the Banks any prepetition or postpetition service fees and other fees, costs, charges, and expenses, in accordance with the terms of applicable account agreements between the Banks and the Debtors.<sup>7</sup>

**BASIS FOR RELIEF REQUESTED**

**A. The Continued Use of the Existing Bank Accounts and New Cash Management System Are Essential to the Debtors' Ongoing Business Operations**

22. To supervise the administration of chapter 11 cases, the Office of the United States Trustee (the "U.S. Trustee") has established cash management-related operating guidelines for debtors in possession. Among other things, these guidelines require a chapter 11 debtor to (i) close all existing bank accounts and open new debtor in possession bank accounts and (ii) obtain new business forms such as checks that bear the designation "debtor in possession," the bankruptcy case number, and the type of account for each debtors in possession account. These requirements were established to demarcate prepetition and postpetition transactions and operations and to prevent the inadvertent postpetition payment of prepetition claims through the presentation of checks drawn prior to the filing of a bankruptcy petition.

23. As explained above, the Debtors' Cash Management System is an essential business practice. The use of this new system provides numerous benefits to the Debtors, including the ability to ensure cash availability and to reduce administrative expenses

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<sup>7</sup> Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Order is intended or should be construed as: (i) an admission as to the validity of any particular claim against a Debtor entity; (ii) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (iii) a promise or requirement to pay any particular claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Motion; (v) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (vi) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

by facilitating the movement of funds. The successful transition into chapter 11, as well as the preservation and enhancement of the Debtors' values as going concerns, would be markedly more difficult if the Debtors' cash management procedures are not approved.

24. The Cash Management System will facilitate the Debtors' stabilization of their postpetition business operations. A transition to new debtor in possession bank accounts could disrupt the Debtors' efforts to collect funds at this crucial juncture. Therefore, the Debtors should be permitted to manage their cash and transfer monies among the existing Bank Accounts as needed in accordance with the Cash Management System. The Debtors will continue to maintain detailed records of all transfers of cash.

25. Pursuant to Local Rule 2015-2(a), "upon motion of the debtor, this Court may, without notice and hearing, permit the debtor to . . . use its existing bank accounts." DEL. BANKR. L.R. 2015-2(a).

26. Allowing the Debtors to utilize their Bank Accounts is entirely consistent with applicable provisions of the Bankruptcy Code. Section 363(c)(1) of the Bankruptcy Code authorizes debtors in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide debtors in possession with the flexibility to engage in ordinary course transactions required to operate their business, without unneeded oversight by the Debtors' creditors or having to obtain court approval. See, e.g., In re Lavigne, 114 F.3d 379, 384 (2d Cir. 1997); In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992).

27. The Debtors' ability to continue using their Bank Accounts and engage in related "routine transactions" falls within the parameters of section 363(c) of the Bankruptcy Code. See, e.g., In re Charter Co., 778 F.2d 617, 621 (11th Cir. 1985) (holding that a debtor's

request for authority to continue using its existing cash management system is consistent with section 363(c)(1) of the Bankruptcy Code).

28. To the extent that use of the Cash Management System, including the existing Bank Accounts, is beyond the ordinary course of the Debtors' businesses, such use is permitted by sections 363(b)(1) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides that this Court may "issue any order . . . that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code] . . . ." 11 U.S.C. § 105(a).

29. Where there is a valid business justification for using property outside the ordinary course of business, the law presumes that, "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

30. The Cash Management System is exactly the type of centralized cash management system that has been employed in other real estate conglomerate chapter 11 cases. A centralized system reduces the costs and expenses involved in operating and managing properties, including costs associated with bank accounts, personnel, bookkeeping, treasury and related expenses. Furthermore, the efficiencies of having one centralized paying system not only reduces costs, but also alleviates cash flow concerns by providing regular access to capital, rather than leaving each property dependent on each month's rental income for that particular property. This same system was successfully used, without issue, in In re Innkeepers, a real estate case

with ninety-two debtors, seventy-two hotels, and nine tranches of mortgage and related mezzanine debt totaling \$1.29 billion. Case No. 10-13800 (SCC) [Docket No. 410] (Sept. 2, 2010) (cash management system for all seventy two properties operating from one master consolidated account). Moreover, similar systems were successfully used in the following real estate chapter 11 cases: In re MSR Resort Golf Course LLC, Case No. 11-10372 (SHL) [Docket No. 95] (Bankr. S.D.N.Y. Mar. 2, 2011) (case with thirty debtors, five luxury resort properties, and \$1.525 billion of prepetition debt consisting of a mortgage and four tranches of mezzanine debt); In re General Growth Properties, Inc., Case No. 09-11977 (ALG) [Docket No. 518] (Bankr. S.D.N.Y. May 14, 2009) (750 debtor and non-debtor subsidiaries which owned or managed over 200 shopping centers, commercial office buildings and five master planned communities with over \$27.3 billion of prepetition debt); In re Rubicon US Reit, Inc., Case No. 10-10160 (BLS) [Docket No. 48] (Bankr. D. Del. Jan. 26, 2010) (case with fourteen debtors and 13 commercial properties and approximately \$390 million of prepetition secured debt).

31. In light of the events leading to these chapter 11 cases, the successful transition into chapter 11, as well as the preservation and enhancement of the Debtors' values as going concerns, would be markedly more difficult if the Debtors' ability to use the Cash Management System and the Bank Accounts was denied.

32. The Court has granted debtors the authority to continue using their existing bank accounts in a number of large chapter 11 cases. See, e.g., In re Colt Holding Co., Case No. 15-11296 (LSS), [Docket No. 198] (Bankr. D. Del. July 10, 2015); In re Cal Dive Int'l, Inc., Case No. 15-10458 (CSS), [Docket No. 330] (Bankr. D. Del. May 6, 2015); In re Allied Nevada Gold Corp., Case No. 15-10503 (MFW), [Docket No. 56] (Bankr. D. Del. Mar. 11, 2015); In re Radioshack Corp., Case No. 15-10197 (BLS), [Docket No. 880] (Bankr. D. Del.

Mar. 9, 2015); In re Endeavour Operating Corp., Case No. 14-12308 (KJC), [Docket No. 149] (Bankr. D. Del. Nov. 6, 2014); In re Trump Entm't Resorts, Inc., Case No. 14-12103 (KG), [Docket No. 49] (Bankr. D. Del. Sept. 10, 2014).<sup>8</sup>

**B. Payment of Bank Fees Is Necessary and Appropriate**

33. In addition, the Debtors request that the Banks be permitted to charge back returned items, such as prepetition checks returned as unpaid, against amounts on deposit in the Bank Accounts, regardless of whether such amounts were deposited before or after the Petition Date and regardless of whether the returned checks relate to prepetition or postpetition items. The Debtors also request authority to pay both prepetition and postpetition service and other fees, costs, charges, and expenses to which such banks may be entitled under their contractual arrangements with the Debtors. The Debtors require this relief to minimize the disruption of the Cash Management System and to assist them in achieving a smooth transition to operating under chapter 11.

**C. Continuation of the Intercompany Transactions Is Necessary and Appropriate**

34. The Debtors' funds move through the Cash Management System as described above. At any given time, there may be Intercompany Claims owing by one Debtor to another. Intercompany Transactions are made between and among Debtor affiliates in the ordinary course as part of the Cash Management System. The Debtors track all fund transfers in their accounting system and can ascertain, trace, and account for all Intercompany Transactions previously described. The Debtors, moreover, will continue to maintain records of such Intercompany Transactions. If the Intercompany Transactions were to be discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors' and

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<sup>8</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

their estates' detriment. Accordingly, the Debtors respectfully submit that the continued performance of the Intercompany Transactions is in the best interest of the Debtors' estates and creditors, and, therefore, the Debtors should be permitted to continue such performance.

35. Since these transactions represent extensions of intercompany credit made in the ordinary course of business that are an essential component of the Cash Management System, the Debtors respectfully request the authority to continue conducting the Intercompany Transactions in the ordinary course of business without need for further Court order.

36. To ensure each individual Debtor will not, at the expense of its creditors, fund the operations of another entity, the Debtors respectfully request, pursuant to section 503(b)(1) and 364(b) of the Bankruptcy Code, all postpetition payments between or among a Debtor and another Debtor on account of an Intercompany Transaction be accorded administrative expense status with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, subject and subordinate only to all interests, liens, and claims of (A) the Carve-Out, (B) the Prepetition Liens, (C) the Prior Liens, and (D) the First Priority Adequate Protection Liens (each as defined in the Cash Collateral Motion). This relief will ensure that each entity receiving payments from a Debtor will continue to bear ultimate repayment responsibility for such ordinary course transactions, thereby reducing the risk that these transactions would jeopardize the recoveries available to each Debtor's respective creditors.

37. The superpriority nature of the Intercompany Claim is merely precautionary as the Debtors expect that each of their properties will typically generate enough revenue to pay all of its own operating expenses, except that the timing of payments may require the Intercompany Transactions. Each borrower Debtor should be able to repay any

Intercompany Claim to the corresponding lender Debtor immediately upon having a cash-positive month and Intercompany Claims are capped at \$200,000 per lender Debtor, excluding allowed professional fees. For the avoidance of doubt, however, the Debtors are seeking authority to grant these Intercompany Claims superpriority administrative status to ensure repayment to a lender Debtor of any Intercompany Transactions.

38. This Court has granted similar relief in other chapter 11 cases. See, e.g., In re Molycorp, Inc., Case No. 15-11357 (CSS), [Docket No. 271] (Bankr. D. Del. July 22, 2015); In re Colt Holding Co., Case No. 15-11296 (LSS), [Docket No. 198] (Bankr. D. Del. July 10, 2015); In re Allied Nevada Gold Corp., Case No. 15-10503 (MFW), [Docket No. 56] (Bankr. D. Del. Mar. 11, 2015); In re Radioshack Corp., Case No. 15-10197 (BLS), [Docket No. 880] (Bankr. D. Del. Mar. 9, 2015); In re Endeavour Operating Corp., Case No. 14-12308 (KJC), [Docket No. 149] (Bankr. D. Del. Nov. 6, 2014); In re Trump Entm't Resorts, Inc., Case No. 14-12103 (KG), [Docket No. 49] (Bankr. D. Del. Sept. 10, 2014).<sup>9</sup> Thus, the Debtors respectfully request that the Intercompany Claims be granted superpriority administrative expense status.

**D. Continued Use of Business Forms Is Necessary and Appropriate**<sup>10</sup>

39. The Debtors should be permitted to continue to use their existing business forms, including their checks. The amount of time and expense would be required to print new business forms and stationery (and to dispose of existing forms and stationery) can be put towards more critical tasks with respect to these chapter 11 cases. Rule 2015-2(a) of the Local

<sup>9</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

<sup>10</sup> Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among similar enterprises, the Debtors believe the Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code and, therefore, do not require the Court's approval. Nonetheless, out of an abundance of caution, the Debtors are seeking express authority to engage in such transactions on a postpetition basis. The continued performance of the ordinary course Intercompany Transactions is necessary to ensure the Debtors' ability to operate their business during these chapter 11 cases.

Rules provides that this Court may, without notice and a hearing, permit a debtor to use its existing checks, but shall require the designation of “Debtor in Possession” and a corresponding bankruptcy case number on checks that it reorders postpetition. See DEL. BANKR. L.R. 2015-2(a). In compliance with Rule 2015-2(a) of the Local Rules, the Debtors will use the “Debtor in Possession” designation and corresponding bankruptcy case numbers on any checks printed after their current stock is exhausted.

40. Also, the Debtors have already taken other measures to address the policies underlying the U.S. Trustee’s cash management-related operating guidelines (including alerting parties-in-interest that they are in bankruptcy and seeking to utilize a Cash Management System that protects the Debtors’ cash).

41. The Court has granted debtors the authority to continue using their existing business forms in a number of chapter 11 cases. See, e.g., In re Cal Dive Int’l, Inc., Case No. 15-10458 (CSS), [Docket No. 330] (Bankr. D. Del. May 6, 2015); In re Altegrity, Inc., Case No. 15-10226 (LSS), [Docket No. 199] (Bankr. D. Del. Mar. 15, 2015); In re Allied Nevada Gold Corp., Case No. 15-10503 (MFW), [Docket No. 56] (Bankr. D. Del. Mar. 11, 2015); In re Radioshack Corp., Case No. 15-10197 (BLS), [Docket No. 880] (Bankr. D. Del. Mar. 9, 2015); In re Endeavour Operating Corp., Case No. 14-12308 (KJC), [Docket No. 149] (Bankr. D. Del. Nov. 6, 2014); In re Trump Entm’t Resorts, Inc., Case No. 14-12103 (KG), [Docket No. 49] (Bankr. D. Del. Sept. 10, 2014).<sup>11</sup>

**E. Cause Exists for Waiver of Section 345(b) Bond Requirements**

42. The Debtors respectfully request (i) authorization to continue to deposit funds in accordance with the Cash Management System, subject to any reasonable changes to the

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<sup>11</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

Cash Management System that the Debtors may implement (the “**Deposit Practices**”) and (ii) a waiver of the investment deposit requirements of section 345(b) of the Bankruptcy Code, to the extent such requirements are inconsistent with the Deposit Practices. As indicated above, the Debtors deposit funds and manage their cash in accordance with the Cash Management System.

43. Section 345(a) of the Bankruptcy Code authorizes a debtor in possession to make deposits or investments of estate money in a manner “as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, “unless the court for cause orders otherwise.” 11 U.S.C. § 345(b).

44. As noted above, courts may waive compliance with section 345(b) of the Bankruptcy Code for “cause.” In determining whether “cause” exists, this Court should consider the “totality of the circumstances,” including the following factors:

- a. the sophistication of the debtor’s business;
- b. the size of the debtor’s business operations;
- c. the amount of the investments involved;
- d. the bank ratings (Moody’s and Standard and Poor) of the financial institutions where the debtor in possession’s funds are held;
- e. the complexity of the case;
- f. the safeguards in place within the debtor’s own business of insuring the safety of the funds;

- g. the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. the benefit to the debtor;
- i. the harm, if any, to the estate; and
- j. the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

In re Service Merchandise Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

45. Congress enacted the section 345(b) requirements primarily to apply "in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost." H.R. Rep. 103-834, 103d Cong., 2d Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994). Thus, Congress added the waiver clause in section 345(b) of the Bankruptcy Code "to allow the courts to approve investments other than those permitted by section 345(b) for just cause." Id.

46. The Debtors submit that cause exists for allowing them to maintain their cash within the Cash Management System without meeting the bond requirements of Bankruptcy Code section 345(b). The Debtors are sophisticated entities. The Bank Accounts are with financially stable banking institutions and the Bank Accounts have FDIC insurance up to the applicable limit per account. The only Bank Account that is expected to hold, from time to time, more than \$250,000 is the Newbury Account. To the extent the funds in the Newbury Account exceed the FDIC insured limit, the Debtors believe that the safety presented by TD Bank, listed as an "Authorized Depository" by the U.S. Trustee for Region 3, serving the District of Delaware, constitutes sufficient cause pursuant to section 345(b) of the Bankruptcy Code to allow the Debtors to deviate from approved investment and deposit practices established by the Bankruptcy Code.

47. Additionally, it would be overly burdensome and impractical for the Debtors to direct their limited financial personnel to open and manage multiple operating accounts to keep funds in each account under the insured limits. To force the Debtors to do so would harm the Debtors' ability to maintain its business operations, as the Debtors would have to access several operating accounts to pay payroll and accounts payable invoices that may aggregate over \$250,000 at any given time. The Bank Accounts are safe, prudent, commercially reasonable and satisfy the goal of protecting principal (even if they do not strictly comply with all of the requirements of section 345 of the Bankruptcy Code), and forcing strict compliance with section 345 of the Bankruptcy Code would be unduly burdensome and distracting to the Debtors.

48. The Court has granted requests to approve the use of deposit and investment practices that do not comply strictly with section 345(b) of the Bankruptcy Code but that, as here, are safe and prudent. See, e.g., In re Colt Holding Co., Case No. 15-11296 (LSS), [Docket No. 73] (Bankr. D. Del. June 16, 2015) (granting an initial 60 day extension to comply with section 345(b) without prejudice to seeking an additional extension or a waiver of the requirements); In re Allied Nevada Gold Corp., Case No. 15-10503 (MFW), [Docket No. 56] (Bankr. D. Del. Mar. 11, 2015) (granting an initial 60 day extension to comply with section 345(b) without prejudice to file a motion seeking authority to deviate from such requirements); In re Radioshack Corp., Case No. 15-10197 (BLS), [Docket No. 880] (Bankr. D. Del. Mar. 9, 2015) (granting an initial 45 day extension to comply with section 345(b) without prejudice to seeking an additional extension or a waiver of the requirements); In re Endeavour Operating Corp., Case No. 14-12308 (KJC), [Docket No. 149] (Bankr. D. Del. Nov. 6, 2014) (granting an initial 30 day extension to comply with section 345(b) without prejudice to seeking an additional

extension or a waiver of the requirements); In re Trump Entm't Resorts, Inc., Case No. 14-12103 (KG), [Docket No. 49] (Bankr. D. Del. Sept. 10, 2014) (granting 60 day interim waiver of section 345(b) requirements without prejudice to seek additional interim waivers or file a motion to deviate from such requirements on a final basis).<sup>12</sup>

49. Accordingly, this Court should authorize the Debtors to continue to deposit funds in accordance with the Deposit Practices and grant a 60-day waiver of the investment and deposit requirements of section 345(b) of the Bankruptcy Code to the extent that the requirements are inconsistent with the Deposit Practices, without prejudice to the Debtors' right to seek further waivers from the U.S. Trustee without further Order of this Court.

**F. Failure To Grant the Relief Requested In the First 21 Days Would Cause Immediate and Irreparable Harm**

50. Rule 6003(b) of the Bankruptcy Rules allows the use of property of the estate, or the payment of prepetition claims, within 21 days of the Petition Date if the relief would prevent "immediate and irreparable harm." FED. R. BANKR. P. 6003(b). For the reasons set forth above and in the First Day Declaration and Supplemental First Day Declaration, the Debtors submit that the relief requested in the Motion is necessary to prevent immediate and irreparable harm to the Debtors and their estates.

**WAIVER OF RULE 6004 STAY**

51. Because the use of the Cash Management System, Bank Accounts, checks, and business forms, and the payment of related expenses to the Banks are essential to prevent immediate and irreparable harm to the Debtors and their estates, the Debtors submit that cause

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<sup>12</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

exists for a waiver of the 14-day stay imposed by Rule 6004(h) of the Bankruptcy Rules, to the extent applicable.

**NOTICE**

52. Notice of this Motion will be provided by overnight delivery and/or e-mail or facsimile to: (a) the Office of the United States Trustee for Region 3, serving the District of Delaware; (b) the prepetition mortgage loan servicers, trustees, lenders and their respective counsel; (c) the mezzanine lenders and their counsel to the extent known; (d) the United States Attorney's Office for the District of Delaware; (e) the United States Attorney General; (f) the Internal Revenue Service; (g) the parties included on the Debtors' list of largest unsecured creditors; (h) each Bank identified on **Exhibit A** to this Motion; and (i) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of Page Intentionally Left Blank]*

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court enter the proposed form of Order and grant the Debtors such other and further relief as is just and proper.

Dated: February 3, 2016  
Wilmington, Delaware

Respectfully submitted,

By: /s/ Robert S. Brady  
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*Proposed Attorneys for the Debtors and  
Debtors in Possession*

**EXHIBIT A****Bank Accounts**

<b>Debtor</b>	<b>Bank</b>	<b>Last Four Digits of Account Number</b>	<b>Description</b>	<b>Address</b>
Newbury Common Associates, LLC	TD Bank, N.A.	9227	Checking Account	40 Danbury Rd. Wilton, CT 06897
	First County Bank	6810	Deposit Account	160 Atlantic Street Stamford, CT 06901
Newbury Common Member Associates	TD Bank, N.A.	9623	Checking Account	40 Danbury Rd. Wilton, CT 06897
Seaboard Realty, LLC	TD Bank, N.A.	0360	Checking Account	40 Danbury Rd. Wilton, CT 06897
	First County Bank	4510	Bank Account	160 Atlantic Street Stamford, CT 06901
600 Summer Street Stamford Associates, LLC	TD Bank, N.A.	4379	Checking Account	40 Danbury Rd. Wilton, CT 06897
Century Plaza Investor Associates, LLC	TD Bank, N.A.	6157	Checking Account	40 Danbury Rd. Wilton, CT 06897
	People's United Bank, N.A.	3861	Checking Account	350 Bedford St. Stamford, CT 06901
	People's United Bank, N.A.	3917	Deposit Account	350 Bedford St. Stamford, CT 06901
	Citizens Bank, N.A.	3962	Operating Account	P.O. Box 7000 Providence, RI 02940
	Citizens Bank, N.A.	3946	Reserve Account	P.O. Box 7000 Providence, RI 02940
Seaboard Hotel Member Associates, LLC	TD Bank, N.A.	9058	Checking Account	40 Danbury Rd. Wilton, CT 06897
Seaboard Hotel Associates, LLC	TD Bank, N.A.	9066	Checking Account	40 Danbury Rd. Wilton, CT 06897
	Webster Bank	6385	Bank Account	P.O. Box 30 Waterbury, CT 06720-0030
Seaboard Hotel LTS Member Associates, LLC	TD Bank, N.A.	1771	Checking Account	40 Danbury Rd. Wilton, CT 06897

<b>Debtor</b>	<b>Bank</b>	<b>Last Four Digits of Account Number</b>	<b>Description</b>	<b>Address</b>
Seaboard Hotel LTS Associates, LLC	TD Bank, N.A.	1797	Checking Account	40 Danbury Rd. Wilton, CT 06897
	Israel Discount Bank of New York	899-9	Bank Account	511 Fifth Avenue New York, NY 10017
Park Square West Member Associates, LLC	TD Bank, N.A.	9404	Checking Account	40 Danbury Rd. Wilton, CT 06897
	Israel Discount Bank of New York	095-3	Bank Account	511 Fifth Avenue New York, NY 10017
Park Square West Associates, LLC	TD Bank, N.A.	9412	Checking Account	40 Danbury Rd. Wilton, CT 06897
	TD Bank, N.A.	2307	Escrow Account	40 Danbury Rd. Wilton, CT 06897
	Israel Discount Bank of New York	146-2	Bank Account	511 Fifth Avenue New York, NY 10017
Seaboard Residential LLC	TD Bank, N.A.	1709	Checking Account	40 Danbury Rd. Wilton, CT 06897
	First County Bank	5251	Checking Account	160 Atlantic Street Stamford, CT 06901
Clocktower Close Associates, LLC	TD Bank, N.A.	1770	Checking Account	40 Danbury Rd. Wilton, CT 06897
One Atlantic Member Associates, LLC	TD Bank, N.A.	5445	Checking Account	40 Danbury Rd. Wilton, CT 06897
One Atlantic Investor Associates, LLC	TD Bank, N.A.	5453	Checking Account	40 Danbury Rd. Wilton, CT 06897
	Citizens Bank, N.A.	3989	Operating Account	P.O. Box 7000 Providence, RI 02940
	Citizens Bank, N.A.	3970	Reserve Account	P.O. Box 7000 Providence, RI 02940
88 Hamilton Avenue Member Associates, LLC	TD Bank, N.A.	4095	Checking Account	40 Danbury Rd. Wilton, CT 06897
88 Hamilton Avenue Associates, LLC	TD Bank, N.A.	4087	Checking Account	40 Danbury Rd. Wilton, CT 06897
	Wells Fargo	1276	Lockbox Account	P.O. Box 63020 San Francisco, CA 94163
	People's United Bank, N.A.	0445	Checking Account	350 Bedford St. Stamford, CT 06901

<b>Debtor</b>	<b>Bank</b>	<b>Last Four Digits of Account Number</b>	<b>Description</b>	<b>Address</b>
316 Courtland Avenue Associates, LLC	TD Bank, N.A.	9041	Checking Account	40 Danbury Rd. Wilton, CT 06897
300 Main Street Member Associates, LLC	TD Bank, N.A.	2276	Checking Account	40 Danbury Rd. Wilton, CT 06897
300 Main Street Associates, LLC	TD Bank, N.A.	2284	Checking Account	40 Danbury Rd. Wilton, CT 06897
	First County Bank	5483	Bank Account	160 Atlantic Street Stamford, CT 06901
Tag Forest, LLC	TD Bank, N.A.	7733	Checking Account	40 Danbury Rd. Wilton, CT 06897
	First Niagara Bank, N.A.	3298	Checking Account	726 Exchange Street Suite 700 Buffalo, NY 14210
	Israel Discount Bank of New York	154-9	Bank Account	511 Fifth Avenue New York, NY 10017
220 Elm St. Assoc. I & II, LLC	TD Bank, N.A.	4201	Checking Account	40 Danbury Rd. Wilton, CT 06897
	People's United Bank, N.A.	0648	Checking Account	350 Bedford St. Stamford, CT 06901

**Exhibit B**

**Proposed Form of Order**

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

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

**ORDER APPROVING**

**(I) THE DEBTORS’ CONTINUED MAINTENANCE OF THEIR EXISTING BANK ACCOUNTS AND USE OF THEIR CASH MANAGEMENT SYSTEM, (II) THE PAYMENT OF CERTAIN OBLIGATIONS RELATED THERETO, (III) THE CONTINUATION OF INTERCOMPANY TRANSACTIONS, (IV) ADMINISTRATIVE EXPENSE STATUS FOR INTERCOMPANY CLAIMS, (V) THE DEBTORS’ CONTINUED USE OF EXISTING CHECKS AND BUSINESS FORMS, AND (VI) GRANTING THE DEBTORS A WAIVER OF THE BOND REQUIREMENT CONTAINED IN SECTION 345(B) OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the Debtors for the entry of an order approving (i) the Debtors’ continued use of their existing Cash Management System, including the utilization of their existing Bank Accounts, (ii) the payment of certain obligations related thereto (iii) the continuation of the Intercompany Transactions, (iv) administrative expense status for Intercompany Claims, (v) the Debtors’ continued use of existing checks and business forms and (vi) granting the Debtors a waiver of the bond requirement contained in

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<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); and 300 Main Street Associates, LLC (8501). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

section 345(b) of the Bankruptcy Code; and it appearing that this Court has jurisdiction over this matter 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 as of February 29, 2012; and this Court having found that good and sufficient cause exists for granting the Motion; and upon consideration of the First Day Declaration and Supplemental First Day Declaration, and the files and records in these chapter 11 cases; and upon the arguments and statements in support of the Motion presented at the hearing before this Court; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties-in-interest; and it appearing that notice of the Motion was adequate and proper under the circumstances of these cases and that no further or other notice need be given; it is hereby

ORDERED that the Motion is GRANTED as set forth herein; and it is further

ORDERED that the Debtors are authorized and empowered to use their Cash Management System in the ordinary course of business and: (i) to designate, maintain, and continue to use all of the Bank Accounts with existing names and account numbers; (ii) to treat the Bank Accounts for all purposes as accounts of the Debtors, in their capacities as debtors in possession; and (iii) to deposit or cause funds to be deposited in or withdrawn from the Bank Accounts by all usual means including, without limitation, checks, wire transfers, electronic funds and automatic transfers, direct debits, and other debits; and it is further

ORDERED that the Banks are authorized to continue to service and administer the Bank Accounts as accounts of the Debtors, in their capacities as debtors in possession, without interruption and in the usual and ordinary course, and to receive, process, honor, and pay to the extent of available funds in the Bank Accounts any and all checks and drafts issued on the

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<sup>2</sup> Each capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

Bank Accounts postpetition, to the extent authorized by the Bankruptcy Code or Court order; and it is further

ORDERED that all outstanding checks and drafts issued prepetition shall be stopped, except as allowed by any order of this Court; and it is further

ORDERED that, except as provided below, the Banks are enjoined from offsetting, affecting, or otherwise impeding any funds of the Debtors deposited by, or on behalf of, the Debtors in the Bank Accounts, on account or by reason of any “claim” (as such term is defined in section 101(5) of the Bankruptcy Code); *provided*, that (i) such rights of offset or similar rights shall be deemed preserved for all purposes in these cases and not waived or impaired despite the release of any such funds by the Banks pursuant to this Order, and (ii) the Banks shall be deemed to hold an allowed secured claim on the Debtors’ cash under section 506(b) of the Bankruptcy Code to the extent of any such setoff or similar right; and it is further

ORDERED that the Banks entitled to receive payment of both prepetition and postpetition service and other fees, costs, charges, and expenses to which they may be entitled under the terms of and in accordance with their contractual arrangements with the Debtors; and it is further

ORDERED that the Banks shall be permitted to charge back returned items, such as prepetition checks returned as unpaid, against amounts on deposit in the Bank Accounts, regardless of whether such amounts were deposited before or after the Petition Date and regardless of whether the returned checks relate to prepetition or postpetition items; and it is further

ORDERED that this Order is without prejudice to the Debtors’ rights (i) to close any of the Bank Accounts and (ii) to open accounts other than the Bank Accounts (without

having to designate such accounts as “debtor in possession” accounts) as they may deem necessary and appropriate, provided that notice of the opening and closing of such accounts shall be given to, as soon as reasonably practicable, (i) the U.S. Trustee and (ii) counsel to any committee appointed in these cases; and it is further

ORDERED that the Debtors are authorized and empowered to continue to use their Cash Management System and are directed to maintain their Cash Management System so that all transfers and transactions are adequately documented and readily ascertainable; and it is further

ORDERED that the Debtors are authorized and empowered to continue to use their Cash Management System, including engaging in Intercompany Transactions between Debtors and are directed to maintain their Cash Management System so that all transfers and transactions are adequately documented and readily ascertainable; and it is further

ORDERED that each Debtor is subject to the Intercompany Loan Limit; and it is further

ORDERED that subject to the terms and conditions of the order approving the use of cash collateral, and pursuant to section 364(c)(1) of the Bankruptcy Code, all Intercompany Claims held by a Debtor against another Debtor shall be accorded administrative expense status in these chapter 11 cases pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code; *provided*, that the priority of such administrative expense claims shall be junior in priority to all interests, liens, and claims of (A) the Carve-Out, (B) the Prepetition Liens, (C) the Prior Liens, and (D) the First Priority Adequate Protection Liens; and it is further

ORDERED that any prepetition checks, wires, or other transfers shall be honored or made only if authorized by this Court; *provided*, that, notwithstanding anything to the contrary in this Order, the Banks shall not be liable to any party on account of (i) following the Debtors' representations, instructions, or presentations (without any duty of further inquiry), (ii) the honoring of any prepetition checks, drafts, wires, or ACH in a good faith belief or upon a representation by the Debtors that this Court has authorized such prepetition check, draft, wire, or ACH, or (iii) an inadvertent mistake made despite implementation of customary item handling procedures; and it is further

ORDERED that the Debtors are authorized to continue to use their existing correspondence and business forms, checks, and documents related to the Bank Accounts; *provided*, that the Debtors shall use the "Debtor in Possession" designation and corresponding bankruptcy case numbers on any checks printed after they exhaust their current supply of check stock; and it is further

ORDERED that any requirement that the Debtors open new bank accounts is waived and the Debtors are authorized to continue to invest and deposit funds in the Bank Accounts in accordance with their practices; *provided, however*, that prior to opening any new bank accounts or closing any of the Bank Accounts, the Debtors shall provide notice of the Debtors' intentions with respect thereto, as soon as reasonably practicable, to (i) the U.S. Trustee and (ii) counsel to any committee appointed in these cases; *provided further, however*, that the Debtors shall open any such new bank accounts at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to promptly execute such an agreement; and it is further

ORDERED that for Banks that have signed a Uniform Depository Agreement with the U.S. Trustee, all Bank Accounts with such Banks are deemed to satisfy section 345(b) of the Bankruptcy Code; and it is further

ORDERED that for Banks at which the Debtors hold accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within 15 days from the date of entry of this Order the Debtors shall (i) contact each such Bank, (ii) provide each such Bank with each of the Debtors' employer identification numbers, and (iii) identify each of their accounts held at such Banks as being held by a debtor in possession; and it is further

ORDERED that for Banks that have not signed a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall have 60 days from the Petition Date within which to comply with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the U.S. Trustee, without prejudice to the Debtors' right to seek further waivers from the U.S. Trustee without further order of this Court; and it is further

ORDERED that for banks that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the bank to execute a Uniform Depository Agreement in a form prescribed by the Office of the U.S. Trustee within 45 days of the date of entry of this Order; and it is further

ORDERED that notwithstanding the Debtors' authorized use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each particular Debtor, regardless of which Debtor remits payment for those disbursements; and it is further

ORDERED that the Debtors shall serve a copy of this Order on the Banks within 5 business days of the date this Order is entered, and it is further

ORDERED that the requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion or otherwise deemed waived; and it is further

ORDERED that Rule 6004(a) of the Bankruptcy Rules is waived for the purposes of the Motion and, notwithstanding any applicability of Rule 6004(h) of the Bankruptcy Rules, this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or relating to the interpretation, implementation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

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The Honorable Laurie Selber Silverstein  
United States Bankruptcy Judge