

EXHIBIT B

Proposed Form of Order

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

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

**ORDER AUTHORIZING EMPLOYMENT AND RETENTION OF
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

Upon consideration of the motion (the “**Motion**”)² of the Debtors for entry an order authorizing the employment and retention of the Ordinary Course Professionals; 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

¹ 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.

² Each capitalized term used but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

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, pursuant to sections 105, 327, 328, 330, and 331 of the Bankruptcy Code, to the extent deemed necessary or appropriate by the Debtors, the Debtors are authorized to employ the Ordinary Course Professionals in the ordinary course of business, and it is further

ORDERED that the retention of the Ordinary Course Professionals shall be effective as of the date of the commencement of the Debtors' chapter 11 cases or the date that an Ordinary Course Professional commenced work for the Debtors, as the case may be; and it is further

ORDERED that the following procedures for the retention and compensation of the Ordinary Course Professionals are hereby approved (the "**OCP Procedures**"):

- i. Each Ordinary Course Professional shall file with this Court and serve upon: (i) Newbury Common Associates, LLC, 1 Atlantic Street, Stamford, CT, 06901 (Attn: Marc Beilinson); (ii) proposed counsel to the Debtors, Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036 (Attn: Brian E. Greer), and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801 (Attn: Robert S. Brady and Sean T. Greecher); (iii) U.S. Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: David Gerardi); and (iv) counsel for any official committee appointed in these chapter 11 cases (collectively, the "**Notice Parties**") a declaration of disinterestedness (a "**Declaration of Disinterestedness**"), a copy of which is attached as Exhibit 1 hereto.
- ii. The Notice Parties shall have 15 days after service of each Ordinary Course Professional's Declaration of Disinterestedness (the "**Objection Deadline**") to object to the retention of such Ordinary Course Professional. The objecting party shall file such

objection with this Court and serve any such objections upon the Notice Parties and the respective Ordinary Course Professional on or before the Objection Deadline. If any such objection cannot be resolved within 15 days of its receipt, the matter shall be scheduled for hearing before this Court at the next regularly scheduled omnibus hearing date or other date otherwise agreeable to the parties thereto. If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular Ordinary Course Professional, the Debtors shall be authorized on a final basis to retain and pay such Ordinary Course Professional, *nunc pro tunc* to the date of the commencement of the work performed on behalf of the Debtors by an Ordinary Course Professional; *provided*, that such employment, retention, and compensation complies with the terms of this Order.

- iii. The Debtors shall be authorized to pay, without formal application to this Court by any Ordinary Course Professional, 100% of the fees and expenses incurred by each of the Ordinary Course Professionals retained pursuant to this Order, and upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, *provided, however*, that the Debtors shall not pay any individual Ordinary Course Professional in excess of \$25,000 per month (the “**Monthly Cap**”), for postpetition compensation and reimbursement of postpetition expenses.
- iv. Any payments made in excess of the Monthly Cap shall be subject to prior approval of this Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court.
- v. Within 30 days of the close of every three-month interval starting from the Petition Date (each a “**Quarter**”), the Debtors shall file with this Court and serve on (a) the Office of the United States Trustee and (b) counsel to any official committee appointed in these chapter 11 cases, a statement identifying the aggregate amounts paid to each Ordinary Course Professional in the reported Quarter. Such statement shall include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the reported Quarter; and (c) a general description of the services rendered by each Ordinary Course Professional.
- vi. The Debtors reserve the right to supplement the list of Ordinary Course Professionals, in their discretion, from time to time as

necessary to add or remove Ordinary Course Professionals without the need for any further hearing and without the need to file individual retention applications for each. In such event, the Debtors shall file a supplemental list with this Court along with Declarations of Disinterestedness and serve it on the Notice Parties, at which point the Notice Parties shall have 15 days from the date of service to object to the proposed amendment to the OCP List.

and it is further

ORDERED that, to the extent that any agreement between the Debtors and an Ordinary Course Professional provides for the indemnification by the Debtors of such Ordinary Course Professional in connection with the services that are the subject of the Motion (each such agreement, an “**OCP Agreement**”), the OCP shall attach the OCP Agreement to the Declaration of Disinterestedness and, upon the retention of the Ordinary Course Professional in accordance with the OCP Procedures, the indemnification provisions set forth in the OCP Agreement are approved, subject to the following modifications during the pendency of the chapter 11 cases:

- i. The Ordinary Course Professional shall not be entitled to indemnification, contribution, or reimbursement for services provided under the OCP Agreement other than those described in such OCP Agreement, unless such services and indemnification therefor are approved by this Court.
- ii. Notwithstanding anything to the contrary in the OCP Agreement, the Debtors shall have no obligation to indemnify the Ordinary Course Professional, or provide contribution or reimbursement to the Ordinary Course Professional, for any claim or expense related to such OCP Agreement that is: (a) judicially determined (the determination having become final) to have arisen from the Ordinary Course Professional’s gross negligence or willful misconduct; (b) for a contractual dispute in which the Debtors allege the breach of the Ordinary Course Professional’s contractual obligations under the OCP Agreement unless this Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (a) and (b) above, but determined by this Court, after notice and a hearing to be a claim or expense for which the Ordinary Course Professional should not

receive indemnity, contribution, or reimbursement under the terms of the OCP Agreement as modified by this Order.

- iii. If, before the earlier of (a) entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (b) the entry of an order closing the Chapter 11 Cases, the Ordinary Course Professional believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the OCP Agreement (as defined by this Order), including without limitation the advancement of defense costs, the Ordinary Course Professional must file an application therefor in this Court, and the Debtors may not pay any such amounts to the Ordinary Course Professional before the entry of an order by this Court approving the payment. This subparagraph (iii) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by the OCP for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify the Ordinary Course Professional. All parties in interest in the Chapter 11 Cases shall retain the right to object to any demand by the Ordinary Course Professional for indemnification, contribution, or reimbursement.

and it is further

ORDERED that this Order shall not apply to any professional retained by the Debtors pursuant to a separate order of this Court; 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

The Honorable Laurie Selber Silverstein
United States Bankruptcy Judge

EXHIBIT 1

Declaration of Disinterestedness

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

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

PROFESSIONAL DECLARATION OF DISINTERESTEDNESS

I, [**Declarant**], do hereby declare under penalty of perjury:

1. I am a [position] of [Company], located at [Street, City, State Zip Code] (the “**Company**”).

2. The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) have requested that the Company provide legal or other professional services to the Debtors, and the Company has agreed to provide such services.

3. The Company may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties-in-interest in these chapter 11 cases. The Company does not and will not perform services for any such person in connection with these chapter 11 cases. In addition, the Company does not

¹ 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.

have any relationship with any such person, their attorneys, or accountants that would render it adverse to the Debtors or their estates.

4. The Company [has/has not] provided services to the Debtors prior to the commencement of these chapter 11 cases.

5. As part of its customary practice, the Company is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants and parties-in-interest in these chapter 11 cases.

6. Neither I nor any principal, partner, director or officer of, or professional employed by, the Company has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Company.

7. Neither I nor any principal, partner, director or officer of, or professional employed by, the Company, insofar as I have been able to ascertain, holds, or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Company is to be employed.

8. The Debtors owe the Company [\$_____] for prepetition services, the payment of which is subject to limitations contained in title 11 of the United States Code (the “**Bankruptcy Code**”).

9. As of the date the chapter 11 cases were commenced (the “**Petition Date**”), the Company [was/was not] party to an agreement for indemnification with certain of the Debtors. [If there is such an agreement, a copy of such agreement is attached as Exhibit A to this Declaration. I have reviewed the OCP Order and understand that the indemnification provisions

set forth in the Agreement are subject, during the pendency of the Debtors' chapter 11 cases, to the modifications set forth therein].

10. *[For Non-Legal Ordinary Course Professionals]* To the extent the Company has a prepetition claim against the Debtors, the Company has waived such claim.

11. The Company is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration.

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

Executed on [_____], 201_

By: _____