

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

In re

NEWBURY COMMON ASSOCIATES, LLC,
et al.,

Debtors.¹

Chapter 11

Case No. 15-12507 (LSS)

Jointly Administered

Requested Hearing Date:
February 29, 2016 at 10:00 a.m.
Requested Objection Deadline:
February 26, 2016 at 4:00 p.m.

**MOTION OF CERTAIN INVESTORS TO FILE UNDER SEAL CERTAIN
EXHIBITS AND PORTIONS OF THE MOTION FOR AN ORDER
APPOINTING AN OFFICIAL COMMITTEE OF INVESTORS**

The Investors,² by and through their undersigned counsel, hereby move (the “Motion to Seal”) this Court for entry of an order, pursuant to section 107(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for 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 The Investors are identified on Exhibit A to the Motion (defined below).

District of Delaware (the “Local Rules”), (a) authorizing the Investors to file a redacted version of the *Motion of Certain Investors for an Order Appointing an Official Committee of Investors* (the “Motion”), filed contemporaneously herewith, (b) authorizing the Investors to file under seal (i) an unredacted version of the Motion and (ii) unredacted versions of the confidential portions of Exhibit B to the Motion (the “Confidential Exhibits”), and (c) granting such other and further relief as the Court deems just and proper. In support of this Motion to Seal, the Investors respectfully represent as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The 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 February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is section 107(b)(1) of the Bankruptcy Code, as supplemented by Bankruptcy Rule 9018 and Local Rule 9018-1(b).

FACTS RELEVANT TO THIS MOTION

3. The Investors are individuals and entities representing a broad cross-section of investors in the Debtors’ properties. The Investors include, for example, individuals and entities with large and small investments, investors in a single Debtor entity and investors in numerous Debtor entities, and investors who invested at different times—both early on and immediately prior to the Petition Date.

4. Between January 13, 2016, and February 4, 2016, investors representing approximately \$25,747,598.00 of investments across fifteen (15) Debtor entities and five (5)

non-Debtor affiliates sought the appointment of an Investors Committee from the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”).

5. Contemporaneously with the filing of this Motion to Seal, the Investors have also filed the Motion seeking appointment of an Investors Committee. The Confidential Exhibits comprise exhibits to the investors’ letter requests to the U.S. Trustee, copies of which are attached to and referenced in the Motion. The Motion also contains information concerning the Debtors’ potential strategies in this case that was provided to the Investors in confidence.

RELIEF REQUESTED

6. By this Motion to Seal, the Investors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Investor to file a redacted version of the Motion, (b) authorizing the Investors to file under seal (i) an unredacted version of the Motion and (ii) the Confidential Exhibits, and (c) granting such other and further relief as the Court deems just and proper.

7. The Investors will provide unredacted copies of the Motion and the Confidential Exhibits on a confidential basis to counsel to the Debtors and U.S. Trustee.

BASIS FOR RELIEF REQUESTED

8. The relief requested by the Investors is authorized under sections 105(a) and 107(b) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders to protect entities from potential harm that may result from the disclosure of certain confidential, commercial or proprietary information. Section 107(b) reads, in relevant part: “On request of a party in interest, the bankruptcy court shall . . .

protect an entity with respect to a trade secret or confidential research, development, or commercial information” 11 U.S.C. § 107(b).

9. Furthermore, Bankruptcy Rule 9018 sets forth the procedure by which a party may move for relief under section 107(b), providing that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” Fed. R. Bankr. P. 9018. This Court has previously described “commercial information” as “information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)).

10. In addition, Local Rule 9018-1(b) requires any party who seeks to file documents under seal to file a motion to that effect. Del. Bankr. L.R. 9018-1(b). Nonetheless, a party filing such a motion is not required to demonstrate “good cause” to file the document under seal. Rather, if the material sought to be filed under seal falls within one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting party and has no discretion to deny the application.” *Orion Pictures*, 21 F.3d at 27.

11. As noted above, the Confidential Exhibits contain information provided in confidence to the U.S. Trustee in connection with requesting appointment of an Investors Committee. These exhibits contain confidential information concerning the Investors, which the Investors consider commercially sensitive information covered under section 107(b)(1) of the Bankruptcy Code. The letters may also contain personally identifiable information of certain of the Investors.

12. Additionally, portions of the Motion contain commercially sensitive information and non-public information related to the Debtors' potential strategies in these cases. This information was provided to the Investors in confidence, and its disclosure may prejudice the Debtors.

13. Accordingly, the Investors seek to file an unredacted version of the Motion and the Confidential Exhibits under seal to comply with its obligations under the Local Rules and to protect the Investors' and the Debtors' commercially sensitive or personally identifiable information.

NOTICE

14. Notice of this Motion to Seal will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Debtors; and (iii) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Investors submit that no other or further notice is necessary or need be given.

CONCLUSION

WHEREFORE, the Investors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (i) granting the relief requested in this Motion to Seal and (ii) granting such other and further relief as may be just and proper.

Dated: February 19, 2016
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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