

EXHIBIT 1

Term Sheet

NEWBURY COMMON ASSOCIATES, LLC, *et al.*

**SUMMARY OF TERMS AND CONDITIONS
PROPOSED \$4,000,000 SENIOR SECURED SUPER PRIORITY
DEBTOR IN POSSESSION FACILITY**

March 18, 2016

Borrowers:

Newbury Common Associates, LLC; Seaboard Realty, LLC; 600 Summer Street Stamford Associates, LLC; Seaboard Hotel Member Associates, LLC; Seaboard Hotel LTS Member Associates, LLC; Park Square West Member Associates, LLC; Seaboard Residential, LLC; One Atlantic Member Associates, LLC; 88 Hamilton Avenue Member Associates, LLC; 316 Courtland Avenue Associates, LLC; 300 Main Management, Inc.; 300 Main Street Member Associates, LLC; PSWMA I, LLC; PSWMA II, LLC; Tag Forest, LLC; Newbury Common Member Associates, LLC; Century Plaza Investor Associates, LLC; Seaboard Hotel Associates, LLC; Clocktower Close Associates, LLC; One Atlantic Investor Associates, LLC; 88 Hamilton Avenue Associates, LLC; 220 Elm Street I, LLC; 220 Elm Street II, LLC; and 300 Main Street Associates, LLC (collectively, the "*Borrowers*"), as debtors and debtors in possession in cases filed under Chapter 11 of the Bankruptcy Code (collectively, the "*Case*") in the United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Court*"), which are being jointly administered in the case styled as *In re: Newbury Common Associates, LLC, et al.*, Case No. 15-12507 (the "*Chapter 11 Case*"). "*Administrative Borrower*" shall mean Newbury Common Associates, LLC.

DIP Lender:

AREG Wedge Portfolio LLC (the "*DIP Lender*")

Credit Facility:

A senior secured multiple draw term facility (the "*DIP Credit Facility*") in the total amount of \$4,000,000 (the "*DIP Commitment*"). For the avoidance of doubt, the Borrowers shall not be permitted to repay and re-borrower under the DIP Credit Facility.

Interest Rate:

Borrowings under the DIP Credit Facility shall bear interest at a rate per annum at all times equal to 14%.

Interest will accrue and shall be due and payable at Maturity. All interest and other fee calculations shall be based on a 360-day year and actual days elapsed.

Default Pricing:

3.00% above the otherwise applicable rate.

Fees:

A closing fee in connection with the DIP Credit Facility of \$50,000 shall be paid in cash by the Borrowers to the DIP Lender, from proceeds of the DIP Credit Facility, on the date the Interim Order (as hereinafter defined) is entered by the Bankruptcy Court.

DIP Credit Facility Initial Availability:

During the period commencing on the date (the "*Interim Order Entry Date*") of the Bankruptcy Court's entry of the Interim Order (as defined in Annex I hereto) and ending on the date the Bankruptcy Court enters the Final Order (as defined in Annex I hereto) (such period, the "*Interim Period*"), a portion of the DIP Commitment shall be available to the Borrowers, subject to (i) delivery by the Debtors of the Approved DIP Budget and (ii) compliance with the terms, conditions and covenants described in this Summary of Terms and Conditions (this "*Term Sheet*") (the "*Initial Availability*") in an amount equal to the lesser of \$1,000,000 and such other amount as may be approved by order of the Bankruptcy Court, to be made available during the Interim Period in accordance with the Approved DIP Budget.

DIP Credit Facility Full Availability:

Upon the Bankruptcy Court's entry of the Final Order (the "*Final Order Entry Date*"), the full remaining amount of the DIP Commitment shall be available to the Borrowers, subject to the execution and delivery of definitive documents relating to the DIP Credit Facility, collectively the "*Loan Documents*"), and compliance with the terms, conditions and covenants described in this Term Sheet and the Loan Documents (the "*Full Availability*"). Subject to the terms hereof, the balance of the DIP Credit Facility may be borrowed in amounts, and at intervals, to be set forth in the Definitive Documentation (as defined in Annex I hereto) and the Approved DIP Budget.

Borrowing Procedure:

Borrowing requests under DIP Credit Facility shall be submitted by the Administrative Borrower to the DIP Lender on a form signed by the Restructuring Advisor and otherwise reasonably acceptable to the DIP Lender.

Use of Proceeds:

To fund the post-petition operating expenses of Borrowers incurred in the ordinary course of business, the payment of amounts due to the DIP Lender under the below section entitled "*Conditions to Initial Extension of Credit*", certain other costs and expenses of the administration of the Chapter 11 Case (including fees of professionals), and fees and expenses in connection with the sale of the assets of the Borrowers; *provided*, that the proceeds shall be used strictly in accordance with the Approved DIP Budget; *provided* that Borrowers shall be permitted to use any unused amount

for each specific line item in the applicable period for future expenses for the same specific lien item so long as the total amount disbursed during the subject period for such specific lien item does not exceed the sum of the unused amount from the prior period(s) and the budgeted amount for the current period, subject to Permitted Variances. For the avoidance of doubt, continued use of cash collateral pursuant to the Cash Collateral Order and budgets applicable thereto will be used to fund operating expenses. The DIP Credit Facility and the Approved DIP Budget will apply to the funding of the Chapter 11 administrative expenses, such as professional fees, and the costs of conducting the sale process¹.

Maturity:

The earliest of (a) July 29, 2016, (b) thirty (30) days after the date a sale of all or substantially all of any one or more Borrower's assets is consummated under Section 363 of the Bankruptcy Code, and (c) the acceleration of the loans or termination of the DIP Commitment under the DIP Credit Facility, including, without limitation, as a result of the occurrence of an Event of Default (as defined herein). All amounts outstanding under the DIP Credit Facility shall be due and payable in full at Maturity.

Approved DIP Budget:

As used in this Term Sheet and in Annex I hereto, "*Approved DIP Budget*" means the five-month statement of sources and uses broken down by month, including the anticipated uses of the DIP Credit Facility for such period attached hereto, and which shall provide, among other things, for the payment of the fees and expenses relating to the DIP Credit Facility, ordinary course administrative expenses, bankruptcy-related expenses and working capital and other general corporate needs. The Debtors shall also provide monthly an Approved DIP Budget variance report/reconciliation on the first business day that is 10 days after the end of each monthly period (i) showing actual cash receipts and disbursements for the immediately preceding month, noting therein all variances, on a line-item basis, from values set forth for such period in the Approved DIP Budget, and shall include explanations for all material variances, and (ii) certified by the Restructuring Advisor.

Security:

All loans and all other obligations under the DIP Credit Facility will, in each case subject to the Carve-Out and Fee Escrow (as defined below) under the express terms and

¹ Out of an abundance of caution, up to \$150,000 of the Full Availability will be reserved for the purpose of potentially funding any operating cash shortfall for any of the operating Borrowers that cannot be resolved by other means acceptable to the DIP Lender, provided that such funds will not be utilized for such purpose absent notice and an order of the Court specifically authorizing such use.

conditions set forth below, be (a) entitled to superpriority claim status pursuant to Section 364(c)(1) of the Bankruptcy Code senior to any superpriority claim granted as adequate protection in respect of the Prepetition Secured Parties (as defined below) and any other claims of any entity, including, without limitation, any claims under Sections 503, 507, 1113, and 1114 of the Bankruptcy Code, and (b) secured by a first priority perfected security interest in and lien on all of the assets of the Borrowers, including, without limitation, all goods (including, without limitation, equipment and inventory), deposit accounts, investment property, accounts, chattel paper, instruments, documents, letter-of-credit rights, commercial tort claims, insurance claims, supporting obligations and liens, real estate interests (including, without limitation, the Seaboard Hotel Collateral, 300 Main Collateral, 1 Atlantic Collateral, 100 Prospect Collateral, 88 Hamilton Collateral, 220 Elm Collateral, Park Square West Collateral, 300 Main FCB Collateral Clocktower Collateral, \$1M Collateral and \$4M Collateral, as such terms are defined below) and general intangibles of the Borrowers of any nature, whether now owned or hereafter acquired, excluding avoidance actions under Chapter 5 of the Bankruptcy Code (the "*Collateral*"), pursuant to Sections 364(c)(2) and (3) and (d) of the Bankruptcy Code, senior in priority to all other security interests and liens with the exception of (i) any valid, perfected, enforceable and nonavoidable liens on the Prepetition Collateral (as defined in the Cash Collateral Order, as defined herein) of the Prepetition Secured Parties solely with respect to and to the extent necessary to secure the repayment of loans, advances, financing and other financial accommodations provided to the Borrowers by the Prepetition Secured Parties prior to February 3, 2016, (ii) the First Priority Adequate Protection Liens granted to the Prepetition Secured Parties in the Cash Collateral Order solely to the extent of any actual diminution in value of the Prepetition Collateral, and (iii) any valid, perfected, enforceable and nonavoidable liens on the equity interests in the Borrowers solely with respect to and to the extent necessary to secure the repayment of loans provided to the Borrowers prior to February 3, 2016 (collectively, the "*Permitted Liens*"). The security interests granted to the DIP Lender will not be subject to Section 551 of the Bankruptcy Code. The Collateral will not be charged pursuant to Section 506(c) of the Bankruptcy Code until the Post-Petition Obligations have been paid in full. For greater certainty, the foregoing waiver shall be for the sole and exclusive benefit of the DIP Lender and no other party shall be a beneficiary of or have the right to enforce the waiver.

Notwithstanding anything to the contrary herein, subject to and only upon entry of the Final Order, the superpriority claims and security interests granted to the DIP Lender shall be subject and subordinate in all respects to the payment of the Carve-Out, and the Fee Escrow. As used herein, "Carve-Out" means the sum of all unpaid fees required to be paid (a) to the Clerk of this Court and (b) to the Office of the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(c) together with interest payable thereon. As used herein, "Fee Escrow" means a segregated account to be held by counsel for the Debtors that shall, prior to any Event of Default, be funded from borrowings under the DIP Credit Facility, on a monthly basis, in amounts equal to the amounts of Professional Fees provided for in the Approved DIP Budget, which funds will then be used to pay professional fees and disbursements of the Debtors' Professionals as and when permitted by the Court; provided that nothing herein shall be construed to impair the ability of the DIP Lender or any other party to object to the fees, expenses, reimbursement or compensation of any Professional, whether or not in excess of the Fee Escrow. All payments to Professionals made from the Fee Escrow shall be made in accordance with, and in no event in excess of, the allocations for such payments in the Approved DIP Budget. Amounts remaining in the Fee Escrow, if any, after all payments have been made to the Professionals in accordance with orders of the Court authorizing payment of allowed fees and expenses shall then be first used to satisfy any unpaid amounts owed to the DIP Lender. In no event shall the Fee Escrow, or the use of proceeds to satisfy the Fee Escrow, result in any reduction in the amount of the obligations to the DIP Lender.

Capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the *Amended Further Interim Order (I) Authorizing the Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing* (Doc. 348) (as it may be further amended or extended with the written consent of the DIP Lender, which consent shall not be unreasonably withheld, the "*Cash Collateral Order*") entered by the Bankruptcy Court in the Chapter 11 Case.

All of the liens in favor of the DIP Lender described herein shall be effective and perfected as of the Interim Order Entry Date and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements; provided, that Borrowers shall promptly execute and deliver all such instruments and agreements reasonably requested by the

DIP Lender.

Any confirmation order entered in the Borrowers' bankruptcy proceedings shall not discharge or otherwise affect in any way any of the joint and several obligations of the Borrowers to the DIP Lender under the DIP Credit Facility and the Loan Documents, other than after the payment in full and in cash, to the DIP Lender of all obligations under the DIP Credit Facility and the Loan Documents on or before the effective date of a plan of reorganization and the termination of the DIP Commitment under the DIP Credit Facility.

Representations and Warranties:

Each of the Borrowers under the DIP Credit Facility represents and warrants that: there are no defaults under material agreements entered into after the date of commencement of each of the Borrowers' Chapter 11 proceedings; all material supplier and service provider contracts have been continued; orders of the Bankruptcy Court shall continue to be effective; and the Borrowers have not failed to disclose any material assumptions with respect to the Approved DIP Budget and affirm the accuracy of the Approved DIP Budget in all material respects.

Covenants:

- financial covenants:

Each of the Borrowers under the DIP Credit Facility agrees to the following financial covenants: (a) compliance with certain specifically identified line items in the Approved DIP Budget (*provided* that for each performance metric reflected through the line items set forth therein, the Borrowers shall be permitted a variance of 10% (the "*Permitted Variances*") for such performance metric, inclusive of any unused carryover amounts for such lien item, in each case, from prior months, with regard to the subject monthly testing period), reported monthly, tested monthly, and (b) compliance with certain specifically identified line items set forth in the "Budget," as such term is defined in the Cash Collateral Order, subject to Permitted Variances, tested weekly and provided to the DIP Lender at the same time they are provided to the Prepetition Secured Parties entitled to receive them under the Cash Collateral Order. The Approved DIP Budget shall be presented on both a consolidated and consolidating basis for the Borrowers and revenue will be presented at the property level.

The Definitive Documentation will contain additional financial covenants as reasonably determined by the DIP

Lender and reasonably acceptable to the Borrowers.

- affirmative covenants:

Each of the Borrowers under the DIP Credit Facility agrees to the following affirmative covenants:

(a) delivery of monthly variance reports illustrating actual versus projected performance under the Approved DIP Budget;

(b) delivery of all variance reports and other information prescribed in the Cash Collateral Order and this Term Sheet, in each case, at the same time that they are furnished to any one or more of the Prepetition Secured Parties pursuant to the Cash Collateral Order;

(c) delivery of monthly reports by the Restructuring Advisor with respect to asset sales, cost savings, and other matters reasonably requested by the DIP Lender;

(d) delivery to the DIP Lender as soon as practicable in advance of filing with the Bankruptcy Court the Interim Order and the Final Order (which must be in form and substance satisfactory to the DIP Lender), all other proposed orders and pleadings related to the DIP Credit Facility (all of which must be in form and substance reasonably satisfactory to the DIP Lender), any sale of assets outside the ordinary course of business, any plan of reorganization or liquidation, and/or any disclosure statement related to such plan;

(e) compliance with the milestones with respect to the Chapter 11 Case as set forth in the "Events of Default" section of this Term Sheet; and

(f) access to information (including historical information) and personnel, contractors and other service providers, including, without limitation, regularly scheduled meetings as mutually agreed with management and the Restructuring Advisor and other company advisors and the DIP Lender, subject to reasonable confidentiality and valid attorney-client privilege exceptions.

- negative covenants:

Each of the Borrowers under the DIP Credit Facility agrees that the following are prohibited (except to the extent otherwise permitted in this Term Sheet or the Definitive Documentation):

(a) creating or permitting to exist any liens or encumbrances on any assets, other than liens securing the DIP Credit Facility and the Permitted Liens; *provided* that senior or pari passu liens may be granted to secure loans

used to immediately remit to the DIP Lender payment in full of all obligations under the DIP Credit Facility and the DIP Commitment is terminated;

(b) creating or permitting to exist any other superpriority claim which is pari passu with or senior to the claim of the DIP Lender under the DIP Credit Facility;

(c) disposing of assets (including, without limitation, any sale and leaseback transaction and any disposition under Bankruptcy Code section 363) in respect of a transaction for total consideration of more than \$100,000 in the aggregate without the prior written consent of the DIP Lender unless the sale proceeds will be used to immediately remit to the DIP Lender payment in full of all obligations under the DIP Credit Facility and the DIP Commitment is terminated;

(d) for all residential properties, each Borrower shall not, without the prior written approval of DIP Lender enter into, amend, modify or extend (a) any lease for space of 1,000 square feet or more; (b) any lease which materially deviates from the standard lease form approved by the DIP Lender; (c) any lease with a rental rate less than 10% of proforma rents, as shown on Exhibit A; and (d) any lease with a term less than 1 year (or 2 years in connection with a lease of commercial space). DIP Lender agrees not to unreasonably withhold, condition or delay its consent to any leases, amendments, modifications or extensions for which DIP Lender's approval is required; *provided* that any such consent requests are submitted to DIP Lender in an envelope clearly marked "URGENT BUSINESS MATTER – OPEN IMMEDIATELY";

(e) for all commercial properties, each Borrower shall not, without the prior written approval of DIP Lender enter into, amend, modify or extend (a) any lease for space of 1,000 square feet or more; (b) any lease which materially deviates from the standard lease form approved by the DIP Lender; (c) any lease with a rental rate less than (1) 10% below the current rental rate per square foot for any currently leased space or (2) \$50 per square foot for the currently vacant space at 220 Elm Street or \$25 per square foot for the currently vacant spaces at 300 Main Street or One Atlantic Street; and (d) any lease with a term less than 2 years. DIP Lender agrees not to unreasonably withhold, condition or delay its consent to any leases, amendments, modifications or extensions for which DIP Lender's approval is required; *provided* that any such consent requests are submitted to DIP Lender in an envelope clearly marked "URGENT BUSINESS MATTER –

OPEN IMMEDIATELY”;

(f) modifying or altering (i) in any material manner the nature and type of its business or the manner in which such business is conducted or (ii) its organizational documents, except as required by the Bankruptcy Code;

(g) prepaying pre-petition indebtedness, except as expressly provided for herein or pursuant to "first day" or other orders entered upon pleadings in form and substance satisfactory to the DIP Lender;

(h) using the proceeds of the DIP Loan or any post-petition income or other revenue of the Borrowers for construction or capital expenditures except as provided for in the Approved DIP Budget or in the budgets applicable under the Cash Collateral Order; and

(i) asserting any right of subrogation or contribution against any other Borrower until all borrowings under the DIP Credit Facility are paid in full and the DIP Commitment is terminated.

Conditions Precedent to Initial Borrowings:

The obligation of the DIP Lender to make loans under the DIP Credit Facility will be subject to customary closing conditions, including, without limitation, the applicable conditions precedent listed on Annex I attached hereto, and such other conditions as set forth herein.

Conditions Precedent to Full Availability:

The obligation to provide extensions of credit up to the full amount of the DIP Commitment under the DIP Credit Facility shall be subject to the satisfaction of the applicable conditions precedent listed on Annex I attached hereto.

Conditions to All Borrowings:

The conditions to all borrowings will include requirements relating to prior written notice of borrowing, the accuracy of representations and warranties, the absence of any Event of Default, and will otherwise be customary and appropriate for financings of this type and reasonably acceptable to the DIP Lender. Such conditions shall include, without limitation, the following:

(a) As a result of such extension of credit, usage of the DIP Commitment shall not exceed (i) the applicable DIP Commitment then in effect, (ii) the aggregate amount authorized by the Interim Order or the Final Order, as the case may be, and (iii) the maximum amount of net borrowings contemplated to be outstanding as reflected in the Approved DIP Budget (subject to the (A) express terms set forth in the "Use of Proceeds" section of this Term

Sheet and (B) Permitted Variances) and other Approved DIP Budget milestones to be agreed to by the parties;

(b) The Interim Order or Final Order, as the case may be, shall be in full force and effect, and shall not have been reversed, modified, amended, stayed for a period of five business days or longer, vacated or subject to a stay pending appeal, in the case of any modification, amendment or stay pending appeal, in a manner, or relating to a matter, that is materially adverse to the interests of the DIP Lender;

(c) The Borrowers shall maintain Beilinson Advisory Group as restructuring advisor (the "*Restructuring Advisor*"); and

(d) The Borrowers shall have paid the balance of all fees then due and payable as referenced herein.

Events of Default:

The DIP Credit Facility shall be subject to the following events of default (each an "*Event of Default*"):

(a) The Final Order Entry Date shall not have been occurred within 45 days after the Interim Order Entry Date;

(b) Any of the Borrowers' Chapter 11 proceedings shall be dismissed or converted to a Chapter 7 case; a trustee, receiver, interim receiver or receiver and manager shall be appointed in any of the Borrowers' Chapter 11 proceedings, or a responsible officer or an examiner with enlarged powers shall be appointed in any of the Borrowers' Chapter 11 proceedings (having powers beyond those set forth in Bankruptcy Code sections 1106(a)(3) and (4)); or any other superpriority administrative expense claim or lien which is pari passu with or senior to the claims or liens of the DIP Lender under the DIP Credit Facility shall be granted in any of the Borrowers' Chapter 11 proceedings without the prior written consent of the DIP Lender;

(c) Other than payments authorized by the Bankruptcy Court in respect of "first day" or other orders entered upon pleadings in form and substance satisfactory to the DIP Lender, as required by the Bankruptcy Code, or as may be permitted in the Loan Documents or herein, the Borrowers shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition indebtedness or payables;

(d) The Bankruptcy Court shall enter an order granting relief from the automatic stay or any creditor or party in

interest (i) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Borrowers which have an aggregate value in excess of \$100,000 or (ii) to permit other actions that would have a material adverse effect on the Borrowers or their bankruptcy estates;

(e) An order shall be entered reversing, amending, supplementing, staying for a period of five days or more, vacating or otherwise modifying the Interim Order or the Final Order, or any of the Borrowers or any of their affiliates shall apply for authority to do so, without the prior written consent of the DIP Lender, or the Interim Order or Final Order with respect to the DIP Credit Facility shall cease to be in full force and effect;

(f) Any judgments which are in the aggregate in excess of \$100,000 as to any post-petition obligation shall be rendered against the Borrowers or any of their affiliates and the enforcement thereof shall not be stayed (by operation of law, the rules or orders of a court with jurisdiction over the matter or by consent of the party litigants); or there shall be rendered against the Borrowers or their affiliates a non-monetary judgment with respect to a post-petition event which causes or would reasonably be expected to cause a material adverse change or a material adverse effect on the ability of the Borrowers or any of their affiliates taken as a whole to perform their obligations under this Term Sheet and/or the Loan Documents;

(g) A plan shall be confirmed in any of the Borrowers' Chapter 11 proceedings that does not provide for termination of the DIP Commitment under the DIP Credit Facility and payment in full in cash of the Borrowers' obligations under the DIP Credit Facility, this Term Sheet and the Loan Documents on the effective date of such plan of reorganization or liquidation or any order shall be entered which dismisses any of the Borrowers' Chapter 11 proceedings and which order does not provide for termination of the DIP Commitment under the DIP Credit Facility and payment in full in cash of the Borrowers' obligations under the DIP Credit Facility, this Term Sheet and the Loan Documents, or any of the Borrowers' shall seek, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order;

(h) The Borrowers or any subsidiaries shall take any action in support of any of the foregoing or any person other than the Borrowers or any of their affiliates shall do so and such application is not contested in good faith by the Borrowers or any of their affiliates and the relief requested

is granted in an order that is not stayed pending appeal;

(i) Any Loan Document shall cease to be effective or shall be contested by Borrowers or any of their affiliates;

(j) Any of the Borrowers or their affiliates shall fail to comply with the Interim Order or Final Order;

(k) The filing of a motion, pleading or proceeding by any of the Borrowers or their affiliates which could reasonably be expected to result in a material impairment of the rights or interests of the DIP Lender or a determination by a court with respect to a motion, pleading or proceeding brought by another party which results in a material impairment;

(l) The breach of any covenant set forth in this Term Sheet;

(m) The failure of the Borrowers to file a motion seeking approval of bidding procedures for the sale of substantially all of their assets (the "Bidding Procedures Motion") on or before March 21, 2016;

(n) The failure of the Borrowers to obtain approval of the Bidding Procedures Motion by entry of an appropriate order by the Bankruptcy Court on or before May 3, 2016;

(o) The failure of the Borrowers to obtain approval of the sale of substantially all of their assets by entry of an appropriate order of the Bankruptcy Court on or before June 30, 2016;

(p) The failure of the Borrowers to close and consummate the sale(s) of substantially all of their assets on or before July 29, 2016;

(q) (q) Any Borrower having a negative cash position equal to or greater than \$150,000 for any consecutive two weekly periods calculated in accordance with the "Budget" under the Cash Collateral Order and as reflected by the "Ending Cash" position set forth therein; provided that, any Borrower's failure to timely remit (as determined by such Borrower's payment history to such creditor during the Borrower's bankruptcy proceeding) payments to service providers, vendors or other parties necessary to the operation of the Borrower's respective businesses for services rendered and products delivered post-petition shall serve as an independent "Event of Default" under

this Term Sheet; and

(r) Such other usual and customary events of default that are reasonably requested by the DIP Lender.

For purposes of this Term Sheet, “material adverse change” and “material adverse effect” mean, unless the context provides otherwise, if, in the DIP Lender's reasonable judgment, the business, operations or financial condition of a person, entity or property has changed in a manner which would materially impair the value of the DIP Lender's security for the obligations of the Borrowers under the DIP Credit Facility, prevent timely payment of the obligations of the Borrowers under the DIP Credit Facility or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the DIP Credit Facility. For the avoidance of doubt, the termination without cause of either one or both of the members of existing senior management responsible for, in each case, leasing and property management of the commercial office and multi-family properties shall constitute a material adverse effect.

Remedies:

In addition to other customary remedies, upon the occurrence of an Event of Default or a breach of any covenant set forth in the Interim Order or the Final Order, absent further order of the Bankruptcy Court, the DIP Lender (after giving Borrowers five (5) days' notice) shall be entitled to exercise the rights and remedies set forth in the Interim Order or the Final Order, as applicable.

Indemnity; Expenses:

The Borrowers shall indemnify, pay and hold harmless the DIP Lender and its affiliates (and their respective directors, officers, employees, agents and advisors) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence or willful misconduct of the indemnified party) including the expenses incurred by the DIP Lender and in connection with the negotiation, documentation and administration of the DIP Credit Facility (including reasonable fees and expenses of counsel and other advisors), and expenses incurred by the DIP Lender in connection with any default in respect of the DIP Credit Facility and any exercise of remedies in respect thereof.

Governing Law and Jurisdiction:

Each of the Borrowers submit to the exclusive jurisdiction and venue of the Bankruptcy Court, or in the event that the Bankruptcy Court does not have or does not exercise jurisdiction, then in any state or federal court of competent

jurisdiction in the state, county and city of New York, borough of Manhattan; and shall waive any right to trial by jury. New York shall govern this Term Sheet and the Loan Documents (other than security documents to be governed by local law to be determined by the DIP Lender.

ANNEX I

Newbury Common Associates, LLC, et al.

SUMMARY OF CONDITIONS PRECEDENT TO THE FACILITIES

This Summary of Conditions Precedent outlines certain of the conditions precedent to the DIP Credit Facility referred to in the Summary of Terms and Conditions.

A. **CONDITIONS TO INITIAL AVAILABILITY**

1. **Interim Order/Bankruptcy Matters.**

- (a) The Bankruptcy Court shall have entered, upon motion in form and substance satisfactory to the DIP Lender, on such prior notice as may be satisfactory to the DIP Lender, an interim order (the "*Interim Order*") as to the Initial Availability no later than March 24, 2016, approving and authorizing the DIP Credit Facility, all provisions thereof and the priorities and liens granted to the DIP Lender under Bankruptcy Code section 364(c) and (d), as applicable, in form and substance reasonably satisfactory to the DIP Lender and its counsel, and including without limitation provisions (i) modifying the automatic stay to permit the creation and perfection of the liens of the DIP Lender on the Collateral; (ii) prohibiting the assertion of claims arising under Bankruptcy Code section 506(c) against the DIP Lender or the commencement of other actions adverse to the DIP Lender or its rights and remedies under the DIP Credit Facility or the Interim Order or the Final Order; (iii) prohibiting the incurrence of debt with priority equal to or greater than the DIP Lender's under the DIP Credit Facility, except as expressly provided in the Summary of Terms and Conditions; (iv) prohibiting any granting or imposition of liens other than liens acceptable to the DIP Lender except as expressly provided in the Summary of Terms and Conditions; (v) authorizing and approving the DIP Credit Facility and the transactions contemplated hereby, including without limitation the granting of the superpriority claims, the first-priority security interests and liens of the DIP Lender upon the Collateral (subject only to the Permitted Liens) and the payment of all fees and expenses due to the DIP Lender; (vi) finding that the DIP Lender is extending credit to the Borrowers in good faith within the meaning of Section 364(e) of the Bankruptcy Code; and (vii) the mechanics effecting the DIP Credit Facility shall be as reasonably determined by the Administrative Borrower and the DIP Lender.
- (b) The Bankruptcy Court shall have entered a final order, in form and substance satisfactory to the DIP Lender, authorizing the Borrowers' and other debtors' use of Cash Collateral (as defined in the Cash Collateral Order) (the "*Final Cash Collateral Order*").
- (c) Neither the Interim Order nor the Final Cash Collateral Order shall have been reversed, modified, amended, stayed or vacated, in the case of any modification or amendment, in a manner, or relating to a matter, without the written consent of the DIP Lender.
- (d) The Borrowers shall be in compliance in all respects with the Interim Order and the Final Cash Collateral Order.
- (e) No trustee or examiner shall have been appointed with respect to the Borrowers or their respective properties.

- (f) A cash management order satisfactory to the DIP Lender shall be in full force and effect.
- (g) No material adverse change in the operations, assets, revenues, financial condition, profits or prospects of Borrowers (other than by virtue of the commencement of the Chapter 11 Case) shall have occurred.

2. Financial Statements, Budgets and Reports.

The DIP Lender shall have received such information (financial or otherwise) as may be reasonably requested by the DIP Lender.

3. Performance of Obligations.

- (a) All costs, fees, expenses (including, without limitation, reasonable legal fees) and other compensation contemplated by the Term Sheet and the Loan Documents to be payable to the DIP Lender shall have been paid to the extent due and the Borrowers shall have complied in all material respects with all of their other obligations to the DIP Lender;
- (b) No Event of Default shall exist; and
- (c) Representations and warranties shall be true and correct in all material respects.

4. Customary Closing Documents.

- (a) The DIP Lender shall be satisfied that the Borrowers have complied with all other customary closing conditions, including, without limitation: (i) evidence of authority; and (ii) obtaining of any material third party and governmental consents necessary in connection with the DIP Credit Facility, the financing thereunder and related transactions.
- (b) Execution and delivery by the Borrowers of this Term Sheet and promissory notes evidencing the loans made and to be made under the DIP Credit Facility, in each case reasonably satisfactory in all respects to the DIP Lender; the parties hereto acknowledging that funding of the Initial Availability shall be made, as to loan documentation, solely on the basis of this Term Sheet and such promissory notes, and that funding of the Full Availability is subject to the parties entering into definitive loan documentation ("*Definitive Documentation*") consistent with the terms of this Term Sheet and otherwise reasonably acceptable to the DIP Lender.
- (c) All corporate and judicial proceedings and all instruments and agreements in connection with the loan transactions among the Borrowers and the DIP Lender contemplated by the Term Sheet and the Loan Documents shall be reasonably satisfactory in form and substance to the DIP Lender, and the Borrowers shall have received all information and copies of all documents or papers requested by the DIP Lender.

5. Other Conditions. Such other usual and customary conditions as are reasonably requested by the DIP Lender shall have been satisfied by the Borrowers.

B. CONDITIONS TO FULL AVAILABILITY

1. Final Order.

- (a) Not later than 45 days following the Interim Order Entry Date, a final order shall have been entered by the Bankruptcy Court (the "*Final Order*") in form and substance satisfactory to the DIP Lender on a motion by the Borrowers that is in form and substance satisfactory to the DIP Lender, which Final Order shall have been entered on such prior notice to such parties as may be satisfactory to the DIP Lender, approving and authorizing on a final basis the matters and containing the provisions described in A.1. above.
- (b) Neither the Final Order nor the Final Cash Collateral Order shall have been reversed, modified, amended, stayed or vacated.
- (c) The Borrowers shall be in compliance with the Final Order and the Final Cash Collateral Order.

2. Other Conditions.

- (a) The Bankruptcy Court shall have entered an order, in form and substance satisfactory to the DIP Lender, approving the DIP Lender (or its designee) as the stalking horse bidder for substantially all of the Borrowers' assets pursuant to an asset purchase agreement in form and substance satisfactory to the DIP Lender.¹
- (b) Unless waived by the DIP Lender, the Definitive Documentation, in form and substance reasonably satisfactory to the DIP Lender acting in good faith shall have been entered into and the DIP Lender shall have perfection of liens and security interests on the UCC collateral securing the DIP Credit Facility.
- (c) The DIP Lender shall have received the required periodic updates of the Approved DIP Budget, the Cash Collateral Budgets and monthly variance reports, each in form and substance satisfactory to the DIP Lender, and the Borrowers shall be in compliance with the Approved DIP Budget and the Cash Collateral Budgets;
- (d) No Event of Default shall exist under the DIP Credit Facility;
- (e) Representations and warranties shall be true and correct in all material respects at the date of each extension of credit except to the extent such representations and warranties relate to an earlier date;
- (f) The Borrowers shall have paid, from the proceeds of the DIP Credit Facility, the balance of all fees then payable as referenced herein;
- (g) Perfection of mortgages (which mortgages, in the discretion of the DIP Lender, may be delivered after the date of Full Availability) on the real property collateral securing the DIP Credit Facility; and

¹ For the avoidance of doubt, this is only a condition to the availability of the additional \$3 million of borrowing under the DIP Credit Facility and the failure to obtain such an order is not an Event of Default that would result in the maturity or termination of the \$1 million of availability under the DIP Credit Facility.

- (h) Such other usual and customary conditions as are reasonably requested by the DIP Lender shall have been satisfied by the Borrowers.

EXHIBIT A

100 Prospect Market Rents 15/16

<u>Apt. Type</u>	<u>Units</u>	<u>Bed/Bath</u>	<u># of Each</u>	<u>Square Footage</u>	<u>Pro Forma Rent</u>
STU	N106	0/1	1	583	\$1,800
A	N101 N111 N201 N212 N301/312 S101/S111 S201/212 S301/312 S401/412	1/1	14	718	\$2,040
B	N102/105/110 N202/211 N302/311 S102/110 S202/211 S302/311 S402/411	1/1	13	644	\$1,880
C	N103/104/106/109 N203/204/209/210 N303/304/309/310 S103/108/109 S203/204/209/210 S303/304/309/310 S403/404/409/410	1/1	26	757/758	\$1,950
D	N108-S104-S107 (680) N205/208 N305/308 S205/208 S305/S308 S405/S408	1/1	13	680/703	\$1,955
E	N107-N206/207 N306/307 S105/106 S206/207 S306/307 S406/407	1/1	13	833	\$2,100
F	N110-S102	1/1	2	923	\$2,400

RENTAL PRICES 2015/2016

<u>UNIT #'S</u>	<u>BED / BATH</u>	<u>SQ FT</u>	<u>Pro Forma Rent</u>		<u>LAYOUT NAME</u>
314-714	0/1	500	\$1,750		Astor
311-711	0/1	536	\$1,800		Essex
809 - 909	1/1	667-749	\$2,090		Nolita
310-710	1/1	705	\$2,000		Amsterdam
309-709	1/1	707	\$1,950		Montague
202-802, 320-720, 316-716, 317-717, 810-910, 811-911	1/1	715	\$2,000		Chelsea
318-718, 812-912	1/1	736	\$2,050		Fulton
407-907	1/1	747	\$2,125		Lenox
308-708	1/1	785	\$2,050		Houston
207-307	1/1	817	\$2,115		Bleeker
313-713 Corner	1/1	826	\$2,200		Soho
201-301, 901	2/1	894	\$2,475		Hanover I
813, 913	2/1	919	\$2,450		Mulberry
401-801	2/1	920	\$2,450		Hanover II
806-906	2/2	971	\$2,575		Delancy
203-903	2/2	996	\$2,450		Madison
206-706	2/2	1001	\$2,600		Stuyvesant
814-914	2/2	1006	\$2,600		Hudson
204-904 Corner	2/2	1010	\$2,499		Lexington
312-712 Corner	2/2	1026	\$2,650		Varick
205-705	2/2	1050	\$2,550		Broadway
805-905	2/2	1050	\$2,650		Pierrepont
321-721, 815-915	2/2	1050	\$2,499		Vanderbilt
315-715	2/2	1115	\$2,700		Bowery

208, 808-908	2/2	1132	\$2,700		Tribeca
319-719	3/2	1227	\$3,000		Gramercy