

EXHIBIT 3

Proposed Interim DIP Order

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

<p>In re:</p> <p>NEWBURY COMMON ASSOCIATES, LLC, <u>et al.</u>,</p> <p style="text-align: right;">Debtors.¹</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 15-12507 (LSS)</p> <p>Jointly Administered</p> <p>Re: Docket Nos.</p>
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**THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY
PROCEDURE 2002, 4001, AND 9014 (I) AUTHORIZING THE DEBTORS TO INCUR
POST-PETITION SENIOR SECURED SUPERPRIORITY INDEBTEDNESS,
(II) GRANTING POST-PETITION SENIOR PRIORITY SECURITY INTEREST
AND SUPERPRIORITY CLAIMS; (III) GRANTING ADEQUATE PROTECTION;
(IV) MODIFYING THE AUTOMATIC STAY AND
(V) SCHEDULING A FINAL HEARING ON THE MOTION**

This matter having come before the Court upon the Motion (the “**Motion**”)² of the Debtors³ for entry of an interim order (the “**Order**”) and a final order (the “**Final Order**”),

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); 300 Main Street Associates, LLC (8501); and 220 Elm Street II, LLC (7625). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

³ For purposes of the DIP Credit Facility (as defined herein), the Debtors are: 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

pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), seeking, *inter alia*:

(a) authorization for the Debtors to obtain expedited post-petition debtor-in-possession financing on an interim basis from AREG Wedge Portfolio LLC (the “**DIP Lender**” and, together with the Debtors, the “**Parties**”), subject and pursuant to the terms of this Order, the Summary of Terms and Conditions Proposed \$4,000,000 Senior Secured SuperPriority Debtor In Possession Facility (the “**Term Sheet**”) attached hereto and incorporated by reference, and any related documents required to be delivered by or in connection with the financing described herein (the “**DIP Credit Facility**”);

(b) approval of the terms and conditions of this Order and the Final Order (collectively, the “**DIP Orders**”);

(c) authorization for the Debtors to obtain debtor-in-possession financing under this Order, which financing and indebtedness, due and owing by the Debtors to the DIP Lender, shall, pursuant to sections 364(c)(2) and (3) of the Bankruptcy Code, be secured by a first priority lien and security interest in the Collateral (as defined below) with the exception of the Permitted Liens (as defined below);

(d) modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent reasonably necessary to permit the DIP Lender and the Debtors to implement the terms of this Order;

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.

(e) authorization for the Debtors, after an expedited interim hearing on or before March 23, 2016 (the “**Interim Hearing**”) on the Motion pursuant to Bankruptcy Rule 4001(c)(2), to obtain from the DIP Lender debtor-in-possession financing up to the maximum amount of \$1,000,000, to be disbursed under the terms and conditions as set forth in this Order pending a final hearing on the Motion (the “**Final Hearing**”) at which time the Debtors will seek entry of a Final Order approving post-petition financing as follows:

A. upon the entry of this Order, \$1,000,000 to be used strictly in accordance with the Approved Budget (as defined below) and this Order until the occurrence of a “**Termination Event**,” as defined herein; and

B. upon the entry of the Final Order, up to an additional aggregate amount of \$3,000,000, for a maximum amount of \$4,000,000, strictly in accordance with the Approved DIP Budget until the occurrence of a “**Termination Event**,” as defined herein;

(f) to schedule the Final Hearing; and

(g) such other and further relief as the Court deems necessary, appropriate, equitable, proper, and consistent with the terms of this Order and the Motion;

and due deliberation having been had; and sufficient cause appearing therefore:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. On December 13, 2015, the Original Debtors⁴ with the exception of Tag Forest, LLC (“**Tag**”) each commenced its voluntary case under chapter 11 of the Bankruptcy Code. On February 3, 2016, each of the Additional Debtors with the exception of 88 Hamilton Avenue Associates, LLC (“**88 Hamilton**”) commenced a voluntary case under chapter 11 of the Bankruptcy Code. On February 4, 2016, 88 Hamilton commenced its voluntary case under

⁴ Capitalized terms used herein shall have the meanings ascribed to them in the Motion unless otherwise expressly defined herein.

chapter 11 of the Bankruptcy Code. The Original Debtors and Additional Debtors are authorized to, and continue to, operate their respective business(es) and manage their respective property(ies) as debtors in possession pursuant to section 1107(q) and 1108 of the Bankruptcy Code.

B. The Court has jurisdiction of this proceeding and the property affected hereby pursuant to 28 U.S.C. §§ 157(b) 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. The Motion is a “core” proceeding as defined in 28 U.S.C. §§ 157(b)(s)(A), (D) and (M). Pursuant to Local Rule 9013-1(f), the Original Debtors and Additional Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties. Venue of these chapter 11 proceedings and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. All findings of fact and conclusions of law set forth in this Order shall be of an interim nature, provided that such findings and conclusions shall be effective and binding to the extent of moneys used, advanced or lent pursuant to this Order.

D. Pursuant to 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* (Dkt. No. 348) (as it may be further extended or amended with the written consent of the DIP Lender, which consent shall not be unreasonably withheld, the “**Cash Collateral Order**”), the Original Debtors and the Additional Debtors previously received authority to use Cash Collateral (as defined therein) to meet the ordinary operating expenses of their businesses, minimize the disruption of the businesses as a “going concern,” and avoid irreparable harm.

E. The Original Debtors and the Additional Debtors are no longer able to sustain business operations and effect a restructuring solely from use of Cash Collateral and require additional liquidity to finance their restructuring efforts.

F. The authority granted herein, to obtain post-petition debtor-in-possession financing and funds pursuant to the DIP Credit Facility, is critical to avoid immediate and irreparable harm to the Original Debtors and the Additional Debtors and their assets, business and business relationships. The entry of this Order is in the best interests of the Original Debtors' and the Additional Debtors' estates and their creditors as its implementation will, among other things, allow their restructuring efforts to continue and avoid an immediate liquidation, as well as to preserve the going-concern value of the Original Debtors' and the Additional Debtors' assets pending such further disposition as may be appropriate.

G. The Original Debtors and the Additional Debtors are presently unable to obtain, in the ordinary course of their business or otherwise, unsecured credit allowable under sections 364(a) or 364(b) of the Bankruptcy Code, or secured credit pursuant to sections 364(c) or 364(d) of the Code, except from the DIP Lender on the terms and conditions contained in this Order. The DIP Lender has indicated a willingness to provide the Debtors with certain loans as contemplated herein, but solely on the terms and conditions set forth in this Order. After considering all of the alternatives, the Original Debtors and the Additional Debtors have concluded, in the exercise of their best and reasonable business judgment, that the interim financing to be provided by the DIP Lender under the terms of this Order represents the best financing available to the Original Debtors and the Additional Debtors under the circumstances.

H. Based on the Motion and the record of the Interim Hearing, the terms of the interim post-petition financing authorized hereby are fair and reasonable under the circumstances

involved in this case, reflect the Original Debtors' and the Additional Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

I. Based on the Motion and the record of the Interim Hearing, good cause has been shown for the entry of this Order, and the Court concludes that entry of this Order is in the best interests of the Original Debtors and the Additional Debtors and their estates, creditors and other stakeholders. Among other things, entry of this Order will, pending such disposition of the Original Debtors' and the Additional Debtors' assets as may be determined to be appropriate, minimize disruption of their businesses and operations and retain customer, service provider and supplier confidence by demonstrating an ability to maintain normal operations while undertaking the restructuring process. The financing arrangement authorized hereunder is vital to the Original Debtors' and the Additional Debtors' estates, operations and restructuring efforts. Consummation of such financing therefore is in the best interests of the Original Debtors' and the Additional Debtors' estates.

J. Based on the Motion and the record of the Interim Hearing, the Court finds that the DIP Lender and the Debtors have negotiated the terms and conditions of this Order in good faith and at arm's length, and any credit extended by the DIP Lender on or after the date of entry of this Order pursuant to the terms herein, shall be and hereby is, deemed to have been extended in "good faith" for purposes of section 364(e) of the Bankruptcy Code.

K. All of the Post-Petition Obligations (as defined below) incurred and transfers made pursuant to this Order are made for "fair consideration" and "reasonably equivalent value," as such terms are used in section 548 of the Bankruptcy Code or any applicable state Uniform

Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law.

L. The Original Debtors and the Additional Debtors have provided adequate and sufficient notice of the Interim Hearing and the relief requested in the Motion by providing notice to (a) the DIP Lender and its counsel; (b) the PrePetition Secured Parties (as defined in the Cash Collateral Order) and their counsel; (c) the United States Trustee; and (d) any parties that filed notices of appearance or requests for notice. Such notice is appropriate, adequate and proper under the circumstances involved in this case, and it complies with the requirements of sections 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(c).

BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, ORDERED AND DECREED:

1. The Motion for interim approval shall be, and hereby is, approved, subject to the terms and conditions set forth in this Order. Any objections that have not previously been withdrawn are hereby overruled. This Order shall become effective immediately upon its entry.

2. Without limiting the foregoing, subject to the terms of (i) this Order and (ii) the Cash Collateral Order, the terms of which shall remain in full force and effect other than as set forth herein and with which the Debtors shall be required to comply in all respects, the Debtors are immediately authorized to borrow money constituting the DIP Credit Facility under and pursuant to the terms of this Order, on an interim basis and to continue using Cash Collateral.

3. Should the Debtors request that any Prepetition Secured Party fund its respective Debtor-borrower so that the expenditures and overhead cost payments can be made as set forth in the budget approved as part of the Cash Collateral Order (the “**Advance**”), such

Advance shall be permitted to be senior to the DIP Credit Facility only upon written consent of AREG Wedge Portfolio LLC in its capacity as DIP Lender.

4. Advances under the DIP Credit Facility shall be made to the bank account at TD Bank, N.A. for Newbury Common Member Associates, LLC. Debtors shall be authorized to request and receive advances under the DIP Credit Facility for the purpose of satisfying expenses set forth in the Approved DIP Budget (attached hereto as Exhibit A)⁵ as follows: (a) upon entry of this Order, up to \$1,000,000 to be used strictly in accordance with the Approved DIP Budget and this Order until a “**Termination Event**,” as defined herein; and (b) upon entry of the Final Order, up to an additional aggregate amount of \$3,000,000 for a maximum aggregate amount of \$4,000,000 under the DIP Credit Facility, to be advanced strictly in accordance with the Approved DIP Budget. Notwithstanding the foregoing, the Debtors’ authority to request and receive advances under the DIP Credit Facility or use Cash Collateral shall immediately cease upon the earliest occurrence of any “**Termination Event**,” as defined herein.

5. Subject to the terms and conditions contained in this Order, the Debtors may use the DIP Credit Facility for general corporate purposes of the Debtors incurred in the ordinary course of business, payment of amounts due to the DIP Lender, certain other costs and expenses of the administration of this case (including fees of professionals), and fees and expenses in connection with the sale of the assets of the Debtors; *provided* that the proceeds shall be used strictly in accordance with and in amounts for each line item in the Approved DIP Budget that shall not exceed the allotted thresholds set forth therein.

⁵ For the avoidance of doubt, the Approved DIP Budget shall apply to the use of DIP Proceeds only and the approved budgets under the Cash Collateral Order (as they may be amended or extended with the written consent of the DIP Lender, which consent shall not be unreasonably withheld, the “Cash Collateral Budgets”) shall continue to apply to the use of cash collateral pursuant to the Cash Collateral Order to pay operating expenses for each of the Properties. Except as expressly set forth herein, nothing in this Order is intended to limit the Debtors’ right or ability to use Cash Collateral in accordance with the terms of the Cash Collateral Order or the Cash Collateral Budgets.

6. All loans made to the Debtors on or after the date of entry of this Order pursuant to the DIP Credit Facility and interest thereon, and all fees, costs, expenses, indebtedness, obligations and other liabilities arising or incurred on or after the date of the entry of this Order and owing by the Debtors to the DIP Lender under this Order shall hereinafter be referred to as the “**Post-Petition Obligations.**” Post-Petition Obligations shall: (i) bear interest at the rate of 14% per annum, which interest shall accrue and be payable upon maturity; (ii) upon the occurrence of an Event of Default (as defined in the Term Sheet), bear interest at a rate that is equal to 17% per annum; (iii) be secured in the manner specified in this Order; (iv) be payable and applied in accordance with the terms of this Order; and (v) comply with and otherwise be governed by the terms set forth in this Order and the Term Sheet.

7. A closing fee in connection with the DIP Credit Facility of \$50,000 shall be paid by the Debtors to the DIP Lender from the proceeds of the DIP Credit Facility on the date this Order is entered by the Bankruptcy Court.

8. The maturity date of the DIP Credit Facility (the “**Maturity**”) shall be 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 of the Debtor’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 in the Term Sheet). All amounts outstanding under the DIP Credit Facility shall be due and payable in full at Maturity. The occurrence of any one or more of the Events of Default, as provided in the Term Sheet shall constitute a “**Termination Event**” under this Order.

9. All loans and all other obligations under the DIP Credit Facility and the Loan Documents shall be (a) entitled to superpriority claim status pursuant to Section 364(c)(1) of the Bankruptcy Code that is senior to any superpriority claim granted as adequate protection in respect of the Prepetition Secured Parties and any other claims of any entity, including, without limitation, any claims under Sections 503, 507, 1113, and 1114 of the Bankruptcy Code, (b) secured by a first-priority perfected security interest in and first-priority lien on the Prepetition Collateral (as defined in the Cash Collateral Order) pursuant to Section 364(d) of the Bankruptcy Code, with the exception of (i) any valid, perfected, enforceable and nonavoidable liens on the Prepetition Collateral (as defined in the Cash Collateral Order) 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 Debtors prior to February 3, 2015, (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 Debtors solely with respect to and to the extent necessary to secure the repayment of loans provided to the Debtors prior to February 3, 2016 (collectively, the **“Permitted Liens”**), (c) secured by a first-priority security interest pursuant to Sections 364(c)(2) of the Bankruptcy Code in all of Debtors’ unencumbered assets, including all real and personal property, whether now owned or hereafter acquired, but excluding claims, causes of action, and recoveries arising under Chapter 5 of the Bankruptcy Code (**“Unencumbered Assets,”** together with Prepetition Collateral, the **“Collateral”**), and (d) secured by a perfected junior lien on any specific property of Debtors that is subject to valid, perfected, enforceable and non-avoidable liens, except for and expressly excluding those liens

constituting Permitted Liens, pursuant to Section 364(c)(3) of the Bankruptcy Code (collectively, the “**DIP Liens**”). The security interests and DIP Liens in favor of the DIP Lender shall not be subject to Section 551 of the Bankruptcy Code. Subject to entry of the Final Order, the Collateral shall not be charged pursuant to Section 506(c) or any other provision of the Bankruptcy Code until the Post-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.

10. The DIP Liens and security interests granted herein for the benefit of the DIP Lender are and shall be valid, perfected, enforceable, nonavoidable and effective by operation of law as of the date of this Order without any further action by the Debtors or the DIP Lender and without the execution, filing, or recordation of any financing statements, security agreements, mortgages, or other documents. If the DIP Lender hereafter requests the Debtors and/or their subsidiaries to execute and deliver to the DIP Lender financing statements, security agreements, collateral assignments, mortgages, or other instruments or documents considered by the DIP Lender to be reasonably necessary or desirable to further evidence the perfection of the liens and security interests granted in this Order, the Debtors are hereby authorized and directed to execute and deliver all such financing statements, security agreements, mortgages, collateral assignments, instruments, and documents, and the DIP Lender is hereby authorized to file or record, in its sole discretion, such documents; *provided* that all such documents shall be deemed to have been filed or recorded as of the date of this Order.

11. The obligation to provide the initial extension of credit under the DIP Credit Facility shall be subject to the satisfaction of conditions, including, without limitation, those set forth in the Term Sheet and the following:

(a) The Bankruptcy Court shall have entered this Order;

(b) There shall have occurred no material adverse change in (i) the business, condition, operations, assets or prospects of any of the Debtors since February 3, 2016 (ii) the business, condition, operations, assets or prospects of Debtors taken as a whole since February 3, 2016, (iii) the ability of the Debtors to perform their respective obligations under the DIP Credit Facility and the Loan Documents, or (iv) the ability of the DIP Lender to enforce the Loan Documents and the obligations of the Debtors thereunder; and

(c) Receipt by the DIP Lender of all fees and expenses payable in connection with the transactions contemplated hereby from the proceeds of the DIP Credit Facility.

12. The written consent of the DIP Lender shall be required for amendments and waivers with respect to the DIP Credit Facility, including, without limitation, any (1) increase in the DIP Lender's commitment; (2) decrease in interest rates or fees; (3) change in final maturity; and (4) release of any substantial portion of the Collateral (other than permitted asset sales and use of Cash Collateral strictly in accordance with the Cash Collateral Order).

13. The Debtors agree to indemnify and hold the DIP Lender and its successors, assignees and current and former shareholders, directors, agents, advisers, officers, attorneys, employees, agents, subsidiaries and affiliates harmless from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, whether known or unknown, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an indemnified party by reason of or resulting from the DIP Credit Facility, the Term Sheet, the transactions contemplated hereby or any claim, litigation, investigation or proceeding relating to any of the foregoing, whether known or unknown, whether or not any of

such indemnified persons is a party thereto, except to the extent resulting from the gross negligence or willful misconduct of the indemnified party. In no event, however, shall the DIP Lender be entitled to any special, indirect, consequential or punitive damages. In all such litigation, or the preparation therefor, the DIP Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree to pay promptly the reasonable fees and expenses of such counsel, unless such claim, damage, loss, liability or expense resulted from the DIP Lender's gross negligence or willful misconduct.

14. Upon reasonable notice (and subject to confidentiality and privilege restrictions), the Debtors shall provide the DIP Lender and its respective consultants, accountants, agents, representatives, employees, or attorneys access to: (a) all of the Debtors' books and records for the purpose of examining, inspecting, copying, and making extracts therefrom; (b) all of the Collateral for the purpose of inspecting same; (c) the Debtors' business premises for purposes of determining whether the Debtors are in compliance with the terms of this Order and the Term Sheet; and (d) the information contained in the Debtors' books and records related to their business operations. The Debtors shall cooperate, consult with, and provide to such consultants, accountants, agents, representatives, employees, or attorneys all such information as they may reasonably request for the purposes of determining or verifying compliance by the Debtors with the terms of this Order, examining and verifying the Debtors' financial reports or condition; and auditing or reviewing the Debtors' business operations or appraising and evaluating the Debtors' assets.

15. Consistent with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter modified, vacated or stayed: (a) such stay, modification or vacation shall not affect the validity of any obligation, indebtedness, liability, security interest or

lien granted or incurred by the Debtors to or for the benefit of the DIP Lender on or after the date of this Order and prior to the effective date of such stay, modification or vacation, or the validity and enforceability of any security interest, lien, priority or right authorized or created hereby; and (b) any indebtedness, obligation or liability incurred by the Debtors to the DIP Lender on or after the date of this Order and prior to the effective date of such stay, modification or vacation shall be governed in all respects by the provisions of this Order, and the DIP Lender shall be entitled to all the rights, remedies, privileges and benefits, including the priority, security interests and liens granted herein, with respect to any such indebtedness, obligation or liability.

16. The provisions of this Order shall be immediately and fully effective upon entry by the Court and any actions taken pursuant hereto shall survive entry of, and shall take precedence with respect to any conflicting order (a) which may be entered confirming any plan of reorganization or (b) which may be entered dismissing this case or converting this case under chapter 7 of the Bankruptcy Code. As provided by this Order, the priority of the liens and security interests granted to the DIP Lender and all rights of the DIP Lender and all obligations of the Debtors, shall continue after appointment of any chapter 11 trustee or a trustee in any superseding chapter 7 case under the Bankruptcy Code, and such claims, liens, security interests and rights shall maintain their priority until satisfied and discharged in accordance with the terms of this Order.

17. The Automatic Stay is hereby modified to the extent necessary to permit all acts, actions and transfers, relating to perfection of interests contemplated herein. Upon the occurrence of an Event of Default (as defined in the Term Sheet), the DIP Lender may file a motion seeking to lift the automatic stay.

18. The provisions of this Order shall be binding upon and inure to the benefit of the DIP Lender and the Original Debtors and the Additional Debtors and their respective successors and assigns (including, without limitation, any chapter 7 or 11 trustee or other fiduciary hereafter appointed for or on behalf of the Original Debtors or the Additional Debtors or with respect to any of the Original Debtors' or the Additional Debtors' property). Upon the entry of this Order: (i) the Post-Petition Obligations shall constitute allowed claims in accordance with Section 506(a) of the Bankruptcy Code for all purposes in this case and any subsequent chapter 7 cases, (ii) the DIP Lender's liens and security interests in the Collateral shall be deemed to be valid, legal, binding, perfected, not subject to avoidance or subordination, and not subject to any other further challenge by any party in interest seeking to exercise the rights of the Original Debtors' and the Additional Debtors' estates, including without limitation, any successor thereto such as a chapter 11 or chapter 7 trustee, and (iii) any past or present causes of action, claims, or liabilities arising out of or in connection with the DIP Credit Facility, this Order, the Final Order or transactions in connection with the implementation of the DIP Credit Facility shall be deemed to have been waived and released.

19. The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that it may have under this Order or otherwise.

20. In addition, to the extent any of the terms and conditions of the Term Sheet or any other necessary documents entered into in connection with this DIP Credit Facility are in conflict with the terms and conditions of this Order, the provisions and intent of this Order shall control. The Debtors and DIP Lender are hereby authorized to agree upon and enter into any written amendments or modifications to the Approved DIP Budget without further order of this Court. Notwithstanding any other provision of this Order, the DIP Lender shall not have any obligation

or commitment to extend any advances under the DIP Credit Facility pursuant to this Order until the conditions precedent provided for herein have been satisfied.

21. Within three (3) business days after the entry of this Order, the Debtors shall, by written notice, by United States mail, send a copy of this Order to the following parties: (i) the DIP Lender and its counsel; (ii) the Prepetition Secured Parties and their respective counsel; (iii) the United States Trustee; and (iv) all parties who have filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002.

(h) **NOTICE IS HEREBY GIVEN that a FINAL hearing in respect of the Motion is scheduled for April ____, 2016, at __ __.m. (the “Final Hearing”).** Any creditor or other party in interest who objects to the entry of a further order in respect to the Motion, or who objects to the terms and provisions of this Order, shall file and serve a written indication of same containing a showing of good cause therefor, upon counsel for Debtors, counsel for the DIP Lender, and the Office of the United States Trustee, not later than seven (7) days before the Final Hearing.

Dated: _____, 2016
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Restructuring Expenses Through August 15, 2016

	2016							Total
	February Forecast	March Forecast	April Forecast	May Forecast	June Forecast	July Forecast	August Forecast	
Restructuring Expenses								
Professional Fees								
CRO Fees and Expenses*	200,000	200,000	200,000	200,000	200,000	200,000	100,000	1,300,000
Committee Professionals	-	-	-	-	-	-	-	-
Debtor's Counsel*	250,000	250,000	250,000	250,000	250,000	250,000	125,000	1,625,000
Board Member Fee	17,500	17,500	17,500	17,500	17,500	17,500	17,500	122,500
Anchin	50,000	50,000	50,000	50,000	50,000	50,000	25,000	325,000
DIP Legal Fees		100,000						100,000
DIP Expenses		50,000						50,000
Other (UST, Other)	50,000	50,000	50,000	50,000	50,000	50,000	25,000	325,000
Total Restructuring Disbursements	567,500	717,500	567,500	567,500	567,500	567,500	292,500	3,847,500
Net Monthly Expenses	\$ 567,500	\$ 717,500	\$ 567,500	\$ 567,500	\$ 567,500	\$ 567,500	\$ 292,500	
Cumulative Expenses	\$ 567,500	\$ 1,285,000	\$ 1,852,500	\$ 2,420,000	\$ 2,987,500	\$ 3,555,000	\$ 3,847,500	

* These amounts represent the CAPS per month. Reserving the right to seek additional fees from unencumbered funds.

EXHIBIT B

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 of 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

UNIT #'S	BED / BATH	SQ FT	Pro Forma Rent	LAYOUT NAME
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