

**EXHIBIT A**

**Proposed Order**

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

	)	
In re:	)	Chapter 11
	)	
NEWBURY COMMON	)	Case No. 15-12507 (LSS)
ASSOCIATES, LLC, <u>et al.</u> ,	)	
	)	Jointly Administered
Debtors. <sup>1</sup>	)	220 Elm Street II, LLC ( <i>Joint Administration</i>
	)	<i>Requested</i> )
	)	
	)	<b>Re: Docket No. ____</b>

**ORDER PURSUANT TO 11 U.S.C. §§ 327 AND 328(a), FED. R. BANKR. P. 2014 AND 5002, AND LOCAL RULE 2014-1, AUTHORIZING THE RETENTION AND EMPLOYMENT OF KEEN-SUMMIT CAPITAL PARTNERS LLC, SAVILLS STUDLEY, INC., AND FTI CONSULTING REALTY LLC AS REAL ESTATE BROKER FOR THE DEBTORS, *NUNC PRO TUNC* TO MARCH 31, 2016 AND WAIVING CERTAIN REPORTING REQUIREMENTS PURSUANT TO LOCAL RULE 2016-2(H)**

Upon consideration of the application (the “**Application**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “**Debtors**”) for entry of an order under sections 327 and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 5002, and Local Rule 2014-1, (i) authorizing the employment and retention of Keen-Summit Capital Partners LLC (“**Keen-Summit**”), Savills Studley, Inc. (“**Savills Studley**”), and FTI Consulting Realty LLC (“**FTI**” and, collectively with Keen-Summit and Savills Studley, the “**Broker**”) to serve as real estate

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Newbury Common Associates, LLC (3783); Seaboard Realty, LLC (6291); 600 Summer Street Stamford Associates, LLC (6739); Seaboard Hotel Member Associates, LLC (8984); Seaboard Hotel LTS Member Associates, LLC (6005); Park Square West Member Associates, LLC (9223); Seaboard Residential, LLC (2990); One Atlantic Member Associates, LLC (4120); 88 Hamilton Avenue Member Associates, LLC (5539); 316 Courtland Avenue Associates, LLC (0290); 300 Main Management, Inc. (6365); 300 Main Street Member Associates, LLC (2334); PSWMA I, LLC (6291); PSWMA II, LLC (6291); Tag Forest, LLC (8974); Newbury Common Member Associates, LLC (3909); Century Plaza Investor Associates, LLC (1480); Seaboard Hotel Associates, LLC (2281); Seaboard Hotel LTS Associates, LLC (8811); Park Square West Associates, LLC (9781); Clocktower Close Associates, LLC (3154); One Atlantic Investor Associates, LLC (7075); 88 Hamilton Avenue Associates, LLC (5749); 220 Elm Street I, LLC (7540); and 300 Main Street Associates, LLC (8501). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

broker for the Debtors, *nunc pro tunc* to March 31, 2016, in accordance with the terms and conditions set forth in that certain retention agreement, dated as of March 31, 2016 (the “**Retention Agreement**”), with respect to the sale of those certain parcels of real properties listed in the Retention Agreement (the “**Real Properties**”); (ii) approving the terms of the Broker’s employment, including the fee and expense structure and the indemnification, reimbursement and related provisions set forth in the Retention Agreement; and (iii) approving a waiver of certain reporting requirements pursuant to Local Rule 2016-2(h); and this Court having considered the Application and the declarations of Harold Bordwin, Andrew Seidman, and Alan Tantleff in support of the Application (collectively, the “**Declarations**”); and this Court finding that (A) Keen-Summit (i) does not hold an interest adverse to the interest of the estate with respect to the matters on which it is employed; and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; and this Court finding that (B) Savills Studley (i) does not hold an interest adverse to the interest of the estate with respect to the matters on which it is employed; and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; and this Court finding that (C) FTI (i) does not hold an interest adverse to the interest of the estate with respect to the matters on which it is employed; and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; (D) the Application and the Declarations are in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; (E) the relief requested in the Application is in the best interests of the Debtors, their estates and

creditors; and (F) notice of the Application was due and proper under the circumstances; and after due deliberation, and good and sufficient cause appearing therefore, it is hereby

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

ORDERED that the Broker is hereby retained in these cases as real estate broker for the Debtors pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016, and Local Rule 2014-1 and 2016-1, *nunc pro tunc* to the March 31, 2016; and it is further

ORDERED that the terms of the Retention Agreement are reasonable and the Retention Agreement is hereby approved, and the Broker is authorized to perform the Services with respect to the Real Properties described in the Retention Agreement; and it is further

ORDERED that, subject to the provisions in this Order, the Broker's compensation as set forth in the Application is approved; and it is further

ORDERED that the Broker's compensation under the Retention Agreement with respect to the Transaction Fee shall be subject to the standard of review of section 328(a) of the Bankruptcy Code and not any other standard, including that provided in section 330 of the Bankruptcy Code. If and when the Debtors seek bankruptcy court approval for a Transaction monetizing the value of one or more of the Debtors' assets pursuant to the terms of the Retention Agreement, the Debtors shall, as part of that application to the Court, seek approval of the payment, on an interim basis, of the Broker's fees. Upon such approval by the Court, the Broker shall be paid its Transaction Fee directly from the proceeds of the Transaction, in full, off-the-top (prior to disbursements to creditors), within one (1) business day following the closing or other

consummation of such Transaction. Notwithstanding the foregoing, the Transaction Fee is subject to this Court's approval of a final fee application. In addition, the Broker shall apply for reimbursement of expenses in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, applicable Bankruptcy Rules, Local Rules, and orders of the Court, and such other procedures as may be fixed by order of this Court. Notwithstanding anything to the contrary in this Order, the Application, the Retention Agreement, or the Declarations, the U.S. Trustee shall retain the right and be entitled to object to the Broker's expenses based on the reasonableness standard provided for in section 330 of the Bankruptcy Code. The Debtors and the Broker further stipulate and agree that this Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of the Broker's reimbursement requests under sections 330 and 331 of the Bankruptcy Code. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding that U.S. Trustee on appeal or otherwise, with respect to the reasonableness of the Broker's expenses; and it is further

ORDERED that the information requirements of Local Rule 2016-2(d) are waived and the Broker shall not be required to keep or submit time records and shall file a final fee application containing a calculation of their compensation under section 328(a), and a summary of the services performed, in accordance with the procedures set forth in the Retention Agreement; and it is further

ORDERED that, for the avoidance of doubt, the rights of all parties in interest in these cases are preserved to object to the request for compensation and reimbursement of expenses requested by the Broker in its final fee application; and it is further

ORDERED that the indemnification provisions set forth in the Retention Agreement are subject to the following provisions during the pendency of the Debtors' bankruptcy cases:

- a. subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and shall indemnify, the Broker for any claims arising from, related to, or in connection with the services to be provided by the Broker as specified in the Application, but not for any claims arising from, related to, or in connection with the Broker's post-petition performance of any other services other than in connection with the engagement, unless such post-petition services and indemnification therefor are approved by this Court;
- b. notwithstanding any provisions of the Retention Agreement to the contrary, the Debtors shall have no obligation to indemnify the Broker or provide contribution or reimbursement to the Broker for any claim or expense that is either (i) judicially determined to have resulted primarily from the willful misconduct, gross negligence, bad faith, or self-dealing of the Broker, or (ii) settled prior to a judicial determination as to the Broker's willful misconduct, gross negligence, bad faith, or self-dealing, but determined by the Court, after notice and hearing, to be a claim or expenses for which the Broker should not receive indemnify, contribution or reimbursement under the terms of the Retention Agreement; and
- c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, the Broker believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Retention Agreement, including without limitation the advancement of defense costs, the Broker must file an application therefore in this Court, and the Debtors may not pay any such amounts to the Broker before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time during which the Court shall have jurisdiction over any request for indemnification, contribution, or reimbursement by

the Broker and not a provision limiting the duration of the Debtors' obligation to indemnify the Broker.

ORDERED that, in the event that, during the pendency of these cases, the Broker seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in the Broker's fee applications and such invoices and time records shall be in compliance with Local Rule 2016-2 and subject to the U.S. Trustee Guidelines and approval of the Bankruptcy Court under the standards of section 330 and 331 of the Bankruptcy Code, without regard as to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code; provided, however, that the Broker shall not seek reimbursement of any fees incurred defending any of the Broker's fee applications in these cases; and it is further

ORDERED that, notwithstanding anything to the contrary in the Retention Agreement or the Application, the Broker shall have whatever duties are imposed upon it under applicable law to the Debtors' creditors and other parties in interest in the Debtors' bankruptcy cases; and it is further

ORDERED that, notwithstanding anything to the contrary in the Retention Agreement or the Application, no trustee successor to the Debtors shall be required to maintain or continue the employment of the Broker; and it is further

ORDERED that during the course of the Debtors' bankruptcy cases, any limitation of liability provision in the Retention Agreement shall be without force or effect; and it is further

ORDERED that the terms and conditions of this Order are immediately effective and enforceable upon its entry; and it is further

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

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order and none of the Debtors or the Broker shall be required to seek authorization from any other jurisdiction with respect to the relief granted by this Order.

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

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Laurie Selber Silverstein  
United States Bankruptcy Judge