IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DISCLOSURE STATEMENT FOR JOINT PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PROPCO DEBTORS AND HOLDCO DEBTORS

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Dated: February 27, 2017

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[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 (7625). The Debtors' corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

TABLE OF CONTENTS

Page

I. PRELIMINARY STATEMENT AND DISCLAIMERS 1
II. BACKGROUND 4
A. General Background 4
B. History of the Debtors 6
1. Overview 6
2. The Properties. 6
3. Organizational Structure of the Debtors 8
4. Prepetition Capital Structure 10
5. Employees 19
III. EVENTS LEADING UP TO THE COMMENCEMENT OF THE CHAPTER 11 CASES 20
A. The Formation of Seaboard Realty, LLC and the Initial Business Relationship Between Messrs. Kelly, Merritt, and DiMenna 20
B. Seaboard Realty, LLC's Investment in Newbury Common Associates, LLC and the Creation of Seaboard Consolidated, LLC 20
C. Messrs. Kelly and Merritt's Investigation Into DiMenna's Actions and the Commencement of these Chapter 11 Cases 24
IV. THE CHAPTER 11 CASES 26
A. Significant "First Day" Motions 27
B. Retention of Professionals 28
C. Cash Collateral 28
D. Assumption/Rejection of Executory Contracts 28
E. The Claims Process 29
F. The Sale Process 29
G. The Work Plan 30
H. The Plan Settlement 31
1. Settlement of the Settling Lender Claims. 31
2. Settlement of Causes of Action and Releases among the Settling Lenders and the Holders of Investor Claims and Equity Interests 32
3. Settlement of Disputes regarding Professional Fee Claims. 33
4. Settlement of Substantial Contribution Claims 34

5. Establishment of Distribution Escrow Account to Satisfy Other Claims of Plan Debtors; Settlement of Claims among Plan Debtors Through Establishment of Distribution Escrow Sub-Accounts. 35

6. Settlement of Dechert Claims. 36

V. THE PLAN 36

A. General Overview of the Plan 36

B. Classification and Treatment of Claims and Equity Interests 37

1. Classification Generally 37

2. Unclassified Claims 39

3. Classified Claims 39

4. Manner of Classifying Claims and Interests 44

5. Other Issues Effected Classification and Voting 45

C. Distributions Under the Plan 45

D. Procedures for Resolving Contingent, Unliquidated, and Disputed Claims Under the Plan 46

1. Claims Administration Responsibilities. 46

2. Claims Objections. 46

3. Estimation of Claims 47

4. Adjustment to Claims or Equity Interests Without Objection. 47

5. No Distributions Pending Allowance. 47

6. Distributions After Allowance. 48

7. Disallowance of Certain Claims. 48

8. Amendments to Claims. 48

9. Claims Paid and Payable by Third Parties. 48

E. Executory Contracts 48

1. Rejection of Executory Contracts 48

2. Approval by Confirmation Order 49

3. Rejection Damages Bar Date 49

4. Cure Amounts and Objection to Assumption 49

F. Effect of Confirmation 50

1. Binding Effect 50

2. Reservation of Causes of Action/Reservation of Rights 50

3. Releases by the Plan Debtors of Certain Parties 50

4. Releases by Non-Debtors 51

5. Exculpation 51
6. Plan Injunction 52
7. Term of Bankruptcy Injunction or Stays 53
8. Setoff 53
9. Preservation of Insurance 53

G. Conditions Precedent to Confirmation and the Effective Date; Effect of Failure of Conditions 53
1. Conditions Precedent to Confirmation 53
2. Conditions Precedent to the Effective Date 53
3. Satisfaction of Conditions 54

H. Retention of Jurisdiction 55

I. Miscellaneous Plan Provisions 56
1. Effectuating Documents and Further Transactions 56
2. Corporate Action 57
3. Plan Supplement 57
4. Payment of Statutory Fees 57
5. Exemption from Transfer Taxes 57
6. Expedited Tax Determination 57
7. Exhibits/ Schedules 58
8. Substantial Consummation 58
9. Severability of Plan Provisions 58
10. Governing Law 58
11. Conflicts 58
12. Reservation of Rights 58
13. Limiting Notices 59

VI. IMPLEMENTATION OF THE PLAN 59

A. Settlements Implemented Under the Plan 59
1. Global Plan Settlement 59
2. Settlement of the Dechert Claims 61
3. Settlement of Certain Substantial Contribution Claims 61

B. Establishment, Funding, and Distribution of Escrow Accounts 62
1. Settling Lender Escrow Account 62
2. Professional Claims Escrow Account 62
3. Distribution Escrow Account; Payment Waterfall 63

C. The Investor Trust 63
1. Establishment of the Investor Trust 63
2. Appointment of Investor Trustee 64
3. The Investor Trust Committee 64
4. Beneficiaries of the Investor Trust; Beneficial Interests in the Trust 65
5. Responsibilities of the Investor Trustee 65
6. Transfer of Investor Trust Assets 66
7. Treatment of Investor Trust for Federal Income Tax Purposes; No Successor-in-Interest 66
8. Expenses of Investor Trustee; Retention of Advisors 67
9. Insurance; Bond 67
10. Fiduciary Duties of the Investor Trustee 67
11. Termination of the Investor Trust 67
12. Liability of Investor Trustee; Indemnification 68
13. Full and Final Satisfaction Against Investor Trust 69
D. Wind-Down of the Plan Debtors; Wind-Down Administrator 69
1. Appointment and Authority of Wind-Down Administrator 69
2. Duties of Wind-Down Administrator 69
3. Expenses of the Wind-Down Administrator 70
4. Corporate Existence and Dissolution or Cancellation of Plan Debtors 70
E. Effectuating Documents; Further Transactions 70
F. Cancellation of Instruments and Stock 71
G. Disposition of Books and Records 71
H. Closing the Chapter 11 Cases 71
VII. ACCEPTANCE OR REJECTION OF THE PLAN 72
A. Voting 72
B. Voting Instructions 73
C. Confirmation Hearing 75
D. Other Important Information 76
VIII. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN 76
A. Binding Effect 76
B. Modification of the Plan 76
C. Revocation or Withdrawal of the Plan 77

IX. EFFECT OF NO CONFIRMATION 77
X. CONFIRMATION AND CONSUMMATION PROCEDURE 78
A. Confirmation Hearing 78
B. Requirements of section 1129(a) of the Bankruptcy Code 78
1. Best Interests Test 78
2. Feasibility 79
3. Acceptance by Impaired Classes 80
4. Confirmation Without Acceptance by All Impaired Classes 80
XI. RISK FACTORS 81
A. General 81
B. Allowed Claims May Exceed Estimates 82
C. Claims or Equity Interests May Be Subordinated or Reassigned 82
D. Plan May Not Be Accepted or Confirmed 82
XII. ALTERNATIVES TO THE PLAN 82
A. Liquidation under Chapter 7 82
B. Alternative Plan 83
XIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN 83
A. Federal Income Tax Consequences to the Plan Debtors 84
B. Classification, Reporting, and Taxation of the Investor Trust and Beneficiaries 85
C. Federal Income Tax Consequences to Holders of Claims 85
XIV. CONCLUSION 87

DISCLOSURE STATEMENT SCHEDULES AND EXHIBITS

Schedule A – Mortgage Claims

Schedule B – Investor Claims

Schedule C – Holders of Equity Interests

Schedule D – Distribution Escrow Sub-Account Funding

Exhibit 1: Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code for Propco Debtors and Holdco Debtors, dated February 27, 2017

Exhibit 2: Liquidation Analysis

NOTHING CONTAINED IN THIS DOCUMENT SHALL CONSTITUTE AN OFFER, ACCEPTANCE OR A LEGALLY BINDING OBLIGATION OF THE PLAN DEBTORS OR ANY OTHER PARTY IN INTEREST AS THE PLAN[2] TO WHICH THIS DISCLOSURE STATEMENT RELATES REMAINS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THE PLAN TO WHICH THIS DISCLOSURE STATEMENT RELATES IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES OR SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. ANY SOLICITATION WILL BE MADE ONLY IN COMPLIANCE WITH APPLICABLE LAW INCLUDING THE BANKRUPTCY CODE. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED HEREIN OR THE TERMS OF THE PLAN TO WHICH THIS DISCLOSURE STATEMENT RELATES FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED HEREIN IS PRELIMINARY AND DEVELOPMENTS MAY OCCUR THAT REQUIRE MODIFICATIONS OR ADDITIONS TO, OR DELETIONS FROM, THIS DISCLOSURE STATEMENT AND/OR TO THE PLAN TO WHICH THIS DISCLOSURE STATEMENT RELATES.

I. PRELIMINARY STATEMENT AND DISCLAIMERS

THIS DISCLOSURE STATEMENT RELATES TO THE PLAN FILED BY THE PLAN DEBTORS WITH THE BANKRUPTCY COURT ON FEBRUARY 27, 2017.

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT THAT CREDITORS, HOLDERS OF EQUITY INTERESTS AND OTHER PARTIES IN INTEREST SHOULD CONSIDER IN CONNECTION WITH THE PLAN INCLUDING, WITHOUT LIMITATION, THE SOLICITATION OF VOTES WITH RESPECT TO THE PLAN. NO REPRESENTATIONS HAVE BEEN AUTHORIZED CONCERNING THE PLAN DEBTORS, THEIR ASSETS, CLAIMS AGAINST THE PLAN DEBTORS, OR EQUITY INTERESTS IN THE PLAN DEBTORS, EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE PLAN. ACCORDINGLY, CREDITORS, HOLDERS OF EQUITY INTERESTS AND OTHER PARTIES IN INTEREST SHOULD NOT RELY ON ANYTHING OTHER THAN THIS DISCLOSURE STATEMENT AND THE PLAN, AND IN THE EXHIBITS ATTACHED TO THE DISCLOSURE STATEMENT AND THE PLAN (INCLUDING THE PLAN SUPPLEMENT), IN CONSIDERING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. ALL INFORMATION IN THIS DISCLOSURE STATEMENT IS FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN.

THE PLAN DEBTORS URGE YOU TO READ THIS DISCLOSURE STATEMENT CAREFULLY. IT CONTAINS A SUMMARY OF THE PLAN, IMPORTANT INFORMATION CONCERNING THE PLAN DEBTORS, INCLUDING THEIR HISTORY AND BUSINESS OPERATIONS, CLAIMS AGAINST AND EQUITY

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[2] Unless otherwise defined in this Disclosure Statement, all capitalized terms used and not defined herein have the meanings given to them in the *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code for Propco Debtors and Holdco Debtors,* dated February 27, 2017 (the "Plan").

INTERESTS IN THE PLAN DEBTORS, AND HOW CLAIMS AND EQUITY INTERESTS WILL BE TREATED IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT ALSO PROVIDES INFORMATION REGARDING ALTERNATIVES TO THE PLAN.

THE DESCRIPTION OF THE PLAN IN THIS DISCLOSURE STATEMENT SUMMARIZES CERTAIN TERMS, PROVISIONS AND CONDITIONS SET FORTH IN THE PLAN AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OF ALL THE TERMS, PROVISIONS AND CONDITIONS SET FORTH IN THE PLAN. THE PLAN ITSELF ALSO SHOULD BE READ CAREFULLY AND INDEPENDENTLY OF THIS DISCLOSURE STATEMENT.

IF THERE ARE ANY INCONSISTENCIES BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

YOU ALSO SHOULD CONSIDER CONSULTING WITH YOUR OWN COUNSEL AND/OR OTHER ADVISORS IN CONNECTION WITH YOUR CLAIM(S) AGAINST, AND/OR EQUITY INTEREST(S) IN, THE PLAN DEBTORS, THE TREATMENT TO BE AFFORDED TO YOUR CLAIM(S) AND/OR EQUITY INTEREST(S) UNDER THE PLAN, AND ANY TAX CONSEQUENCES TO YOU, IF ANY, ATTENDANT TO CONFIRMATION OF THE PLAN.

THE PLAN DEBTORS CANNOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT INACCURACY OR ERROR BUT THEY DO BELIEVE THAT THE INFORMATION CONTAINED HEREIN IS THE MOST ACCURATE INFORMATION AVAILABLE TO THEM AT THIS TIME. NOTHING CONTAINED HEREIN IS AN ADMISSION OF ANY FACT OR LIABILITY NOR SHALL IT BE ADMISSIBLE IN ANY MATTER OR PROCEEDING ARISING IN OR RELATED TO THIS BANKRUPTCY CASE OR IN ANY OTHER ACTION, PROCEEDING OR LITIGATION INVOLVING THE PROPONENTS.

NO REPRESENTATIONS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT ARE AUTHORIZED WITH RESPECT TO THE PLAN AND ANY SUCH REPRESENTATIONS ARE NOT ADOPTED BY THE PLAN DEBTORS AND SHOULD NOT BE RELIED ON IN MAKING YOUR DECISION WHETHER TO ACCEPT OR TO REJECT THE PLAN.

THIS DISCLOSURE STATEMENT IS BEING DISTRIBUTED TO ALL RECORD HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN EACH OF THE PLAN DEBTORS PURSUANT TO 11 U.S.C. § 1125.

THE DEADLINE TO CAST BALLOTS EVIDENCING VOTES EITHER TO ACCEPT OR TO REJECT THE PLAN IS [_________], 2017, BY [___] P.M. (PREVAILING EASTERN TIME).

THE BANKRUPTCY CODE PROVIDES THAT ONLY THE BALLOTS OF CREDITORS AND HOLDERS OF EQUITY INTERESTS THAT ACTUALLY VOTE ON THE PLAN WILL BE COUNTED FOR PURPOSES OF DETERMINING WHETHER THE ACCEPTANCES REQUIRED FOR CONFIRMATION OF THE PLAN HAVE BEEN ATTAINED. FAILURE TO DELIVER A PROPERLY COMPLETED BALLOT BY THE VOTING DEADLINE WILL CONSTITUTE AN ABSTENTION (I.E., WILL NOT BE COUNTED AS EITHER AN ACCEPTANCE OR A REJECTION), AND ANY IMPROPERLY COMPLETED OR LATE BALLOT WILL NOT BE COUNTED.

THE PLAN DEBTORS BELIEVE THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF THE PLAN DEBTORS, THE PLAN DEBTORS' CREDITORS, HOLDERS OF EQUITY INTERESTS IN THE PLAN DEBTORS AND ALL OTHER PARTIES IN INTEREST. ACCORDINGLY, THE PLAN DEBTORS URGE YOU, FOR THE REASONS WHICH FOLLOW, TO VOTE IN FAVOR OF THE PLAN.

TREATMENT AND CLASSIFICATION OF CLAIMS AND INTERESTS; IMPAIRMENT

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

Class	Description	Impairment	Entitled to Vote	Estimated Recovery
1	Other Secured Claims	Unimpaired	No (conclusively presumed to accept)	100%
2	Other Priority Claims	Unimpaired	No (conclusively presumed to accept)	100%
3	Mortgage Claims	Impaired	Yes	Limited to proceeds of sale of respective Property, in addition to value of Plan Releases
4	Settling Lender Claims	Impaired	Yes	34%
5	General Unsecured Claims	Impaired	Yes	**Investor Trust Debtors**: 35%-65% **Seaboard Hotel LTS and Seaboard Hotel LTS Member:** 0% **Other Plan Debtors:** 10%-40%

6	Investor Claims	Impaired	Yes	**Investor Trust Debtors**: To be determined based on proceeds of Investor Trust **Other Plan Debtors:** Limited to value of Plan Releases
7	Equity Interests	Impaired	Yes	**Investor Trust Debtors**: To be determined based on proceeds of Investor Trust **Other Plan Debtors:** Limited to value of Plan Releases
8	Intercompany Claims	Impaired	No (deemed to accept pursuant to the Plan Settlement)	N/A
9	Intercompany Interests	Impaired	No (deemed to accept pursuant to the Plan Settlement)	N/A
10	Subordinated Claims and Subordinated Interests	Impaired	No (deemed to reject the Plan)	0%

II. BACKGROUND

A. General Background

On December 13, 2015, the Original Debtors,[3] with the exception of Tag Forest, LLC ("Tag Forest"), each filed a voluntary petition (the "Original Debtor Petitions") for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). On December 14, 2015, Tag Forest filed a voluntary petition (the "Tag Forest Petition") for relief under chapter 11 of the Bankruptcy Code.

[3] The Original 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; and Tag Forest, LLC.

On February 3, 2016, the Additional Debtors,[4] with the exception of 88 Hamilton Avenue Associates, LLC ("88 Hamilton"), each filed a voluntary petition for relief (the "Additional Debtor Petitions") under chapter 11 of the Bankruptcy Code. On February 4, 2016, 88 Hamilton filed a voluntary petition (the "88 Hamilton Petition") for relief under chapter 11 of the Bankruptcy Code.

On March 17, 2016, 220 Elm II, LLC ("220 Elm II" and, collectively with the Original Debtors and the Additional Debtors, the "Debtors") filed a voluntary petition (collectively with the Original Debtor Petitions, the Tag Forest Petition, the Additional Debtor Petitions, and the 88 Hamilton Petition, the "Petitions") for relief under chapter 11 of the Bankruptcy Code.

Upon the filing of the Petitions, the Debtors' respective cases under the Bankruptcy Code (the "Chapter 11 Cases") commenced. As described in greater detail below, on December 18, 2015, the Bankruptcy Court ordered that the Chapter 11 Cases of the Original Debtors be consolidated for administrative purposes only. This order was supplemented on February 5, 2016 and April 8, 2016 to provide for the consolidation for administrative purposes only of all of the Debtors' Chapter 11 Cases.

Contemporaneously herewith, 220 Elm Street I, LLC ("220 Elm I"); 220 Elm Street II; 300 Main Management, Inc. ("300 Main Management"); 300 Main Street Associates, LLC ("300 Main"); 300 Main Street Member Associates, LLC ("300 Main Street Member"); 316 Courtland Avenue Associates, LLC ("316 Courtland Avenue"); 600 Summer Street Stamford Associates, LLC ("600 Summer Street"); 88 Hamilton; 88 Hamilton Avenue Member Associates, LLC ("88 Hamilton Avenue Member"); Century Plaza Investor Associates, LLC ("Century Plaza"); Clocktower Close Associates, LLC ("Clocktower Close"); One Atlantic Investor Associates, LLC ("One Atlantic"); One Atlantic Member Associates, LLC ("One Atlantic Member"); Park Square West Associates, LLC ("Park Square West"); Park Square West Member Associates, LLC ("Park Square West Member"); PSWMA I, LLC ("PSWMA I"); PSWMA II, LLC ("PSWMA II"); Seaboard Hotel Associates, LLC ("Seaboard Hotel"); Seaboard Hotel Member Associates, LLC ("Seaboard Hotel Member"); Seaboard Hotel LTS Associates, LLC ("Seaboard Hotel LTS"); Seaboard Hotel LTS Member Associates, LLC ("Seaboard Hotel LTS Member"); Seaboard Residential, LLC ("Seaboard Residential"); and Tag Forest (subject to Section 12.3 of the Plan, each, a "Plan Debtor," and collectively, the "Plan Debtors") filed with the Bankruptcy Court the Plan.

While they are co-Debtors with the Plan Debtors in the Chapter 11 Cases, the Plan is not a chapter 11 plan for Newbury Common Associates, LLC ("Newbury Common Associates"), Newbury Common Member Associates, LLC ("Newbury Common Member"), or Seaboard Realty, LLC ("Seaboard Realty"). The Plan Debtors expect that the Chapter 11 Cases of Newbury Common Associates, Newbury Common Member and Seaboard Realty will either be converted to cases under chapter 7 or dismissed.

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[4] The Additional Debtors are: Newbury Common Member Associates, LLC; Century Plaza Investor Associates, LLC; Seaboard Hotel Associates, LLC; Seaboard Hotel LTS Associates, LLC; Park Square West Associates, LLC; Clocktower Close Associates, LLC; One Atlantic Investor Associates, LLC; 88 Hamilton Avenue Associates, LLC; 220 Elm Street I, LLC; and 300 Main Street Associates, LLC.

B. History of the Debtors

1. Overview

Prior to the sale process, discussed in more detail in section IV.F below, the Debtors owned pieces of property that, when viewed collectively, comprised a diverse portfolio of high quality, distinctive commercial, hospitality, and residential properties with an aggregate of approximately 800,000 square feet (SF) located primarily in Stamford, Connecticut. Stamford is the largest financial district in the New York Metro area outside of New York City itself, and has one of the largest concentrations of corporations in the nation.

2. The Properties.[5]

Each of the Properties owned by the Plan Debtors as of the Petition Date is discussed in more detail below.

The Hotel Properties:

Seaboard Hotel had a ground lease for the Courtyard Marriott Property. The Courtyard Marriott Property is a 9-story 63,085 SF hotel comprised of 115 guest rooms in the heart of downtown Stamford. Its amenities include an indoor pool, business center/library, valet garage parking for 125 cars, fitness center, hardwired and wireless internet access, shuttle service, and a full service restaurant/lounge, Napa & Co., on the ground floor.

Seaboard LTS owns an under construction property that was intended to be operated as an extended-stay hotel under the Residence Inn by Marriott brand. The Hotel Development Property is located in downtown Stamford, adjacent to the Courtyard Marriott Property.

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[5] The Commercial Properties include: (i) the property located at 300 Main Street, Stamford, CT (the "300 Main Property"), formerly owned by 300 Main; (ii) the property located at 1 Atlantic Street, Stamford, CT (the "1 Atlantic Property"), formerly owned by One Atlantic; (iii) the property located at 88 Hamilton Avenue, Stamford, CT (the "88 Hamilton Property"), formerly owned by 88 Hamilton; and (iv) the property located at 220 Elm Street, New Canaan, CT (the "220 Elm Property"), formerly owned by 220 Elm Street I and 220 Elm Street II. The Debtors who owned the Commercial Properties are hereinafter referred to as the "Commercial Property Debtors."

The Residential Properties include: (i) the property located at Park Square West, Stamford, CT (the "Park Square West Property"), formerly owned by Park Square West; (ii) the property located at 100 Prospect Street, Stamford, CT (the "100 Prospect Property"), formerly owned by Century Plaza and Seaboard Residential; and (iii) the property located at 25 Grant Street, Norwalk, CT (the "Clocktower Property"), formerly owned by Clocktower Close. The Debtors who owned the Residential Properties are hereinafter referred to as the "Residential Property Debtors."

The Hotel Properties include: (i) the ground lease for the Courtyard by Marriott Stamford, CT (the "Courtyard Marriott Property"), formerly owned by Seaboard Hotel; and (ii) the under construction Residence Inn, Stamford, CT (the "Hotel Development Property"), [formerly owned by Seaboard LTS]. The Debtors who owned the Hotel Properties are hereinafter referred to as the "Hotel Debtors." The Hotel Debtors, Commercial Property Debtors, and Residential Property Debtors are collectively referred to herein as the "Property Owner Debtors." The Hotel Properties, Commercial Properties, and Residential Properties are collectively referred to herein as the "Properties."

Seaboard LTS believes that the construction is approximately 50% complete. Construction ceased in early December 2015, as a result of a lack of further funding to complete the development. On January 31, 2017, the Bankruptcy Court approved procedures for the sale of the Hotel Development Property. A hearing to approve the sale of the Hotel Development Property is scheduled for March 21, 2017.

The Commercial Properties:

300 Main owned the 300 Main Property. The 300 Main Property, also known as the former First Union National Bank building, consists of an eight-story 130,645 SF multi-tenanted building which contains office space with street level retail and a 147 space parking garage. The property, located in the downtown Stamford Historic District, was constructed in 1927 and renovated in 2002 and again in 2010-2011.

One Atlantic owned the 1 Atlantic Property. The 1 Atlantic Property consists of a nine-story 81,941 SF multi-tenanted building which contains office space with street level retail. This 1929 landmark downtown office building is located in Stamford's central business district.

88 Hamilton owned the 88 Hamilton Property. The 88 Hamilton Property is a 154,533 SF mixed-use office/flex warehouse building in Stamford. Originally built in 1942, the property was expanded in the 1960s and completely renovated in 2002.

220 Elm I and 220 Elm II each owned 50% of the 220 Elm Property as tenants in common. The 220 Elm Property is a two story 18,370 SF Class A office building in the most active commercial corridor of New Canaan, Connecticut.

The Residential Properties:

Park Square West owned the Park Square West Property. The Park Square West Property is a 9-story Class A apartment property comprised of 143 apartments and approximately 10,000 SF of ground floor retail space. The property was constructed in 2001 and is located in the Stamford Downtown Special Services District. The Park Square West Property is comprised of one, two, and three bedroom apartments ranging from 547 SF to 1,250 SF and provides an amenity package including a 2-story granite finished lobby, structured parking, a fitness center, a community room, 24 hour security, and a fully equipped business center.

Century Plaza and Seaboard Residential owned the 100 Prospect Property, 75% and 25% respectively, as tenants in common. The 100 Prospect Property consists of two luxury residential towers comprised of a total of 82 one-bedroom apartments with unique floor to ceiling windows, offering views of downtown Stamford. The apartments range in size from 600 SF to 923 SF based on the location in the building. There is also a vacant former office space of 11,040 SF, which Century Plaza and Seaboard Residential believe could be converted into 12 additional apartments ranging in size from 644 SF to 833 SF. This 79,722 SF downtown property is situated within walking distance of Stamford's Bedford Street corridor, home to many of the most popular restaurants, movie theaters, and commercial establishments. In addition, the 100 Prospect Property offers amenities and services including a 24-Hour attended front desk with

concierge services, 24-Hour emergency maintenance, controlled access garage parking, a fitness center, penthouse level residents' lounge, granite kitchen countertops with stainless steel Energy Star appliances, full-size stacked washers and dryers, air conditioning, hardwood floors, marble and tile bathrooms, and a security system in every unit, all pre-wired for internet and cable.

Clocktower Close owned six units totaling 5,500 SF in the Clocktower Property. The Clocktower Property of 129 units is a former hat manufacturing facility in Norwalk, Connecticut. The majority of the units at the Clocktower Property are one-bedroom lofts with 20' to 21' ceilings, many of which were recently renovated and upgraded. The site features abundant parking, excellent visibility, and convenient access to the area's business centers, retail, and nightlife.

3. Organizational Structure of the Debtors

The Debtors are all privately owned and no debt or equity securities of any Debtor are currently listed or traded on any public securities exchange or market.

Seaboard Realty, its principals, or entities it manages serve as the manager under the operating agreements for each of the Debtors. However, from shortly after the original Petition Date, Seaboard Realty has been managed by Waterbridge Advisors LLC (acting through its President and member Howard Alstchul) as independent Managing Member and by extension, Waterbridge/Mr. Altschul, along with Marc Beilinson as Chief Restructuring Officer, have supplanted the other Insiders that were responsible for overseeing and managing the Debtors prior to the Petition Date.

Seaboard Realty is owned 50% by John J. DiMenna, Jr., 25% by Thomas L. Kelly, Jr., and 25% by William A. Merritt, Jr. Seaboard Realty is not a Plan Debtor, as the entity holds no assets other than those it might receive as a Holder of Equity Interests in the Plan Debtors and potential Causes of Action. As stated above, it is anticipated that Seaboard Realty's Chapter 11 Case will be converted to a chapter 7 proceeding or dismissed.

(a) Management of the Commercial Properties and the Residential Properties.

Prior to the Petition Dates, Seaboard Property Management, Inc. ("Seaboard Property Management"), a property management company owned by Mr. DiMenna, provided day-to-day management of the Commercial Properties and the Residential Properties. Through Seaboard Property Management, Mr. DiMenna actively managed, and was responsible for, the day-to-day operations of the Debtors. Among other things, Seaboard Property Management, on behalf of the Commercial Property Debtors and Residential Property Debtors, collected all rents, marketed and leased space, paid all operating expenses, filed tax returns, procured insurance, provided for maintenance, repairs, and alterations, contracted with service providers, and purchased all goods and materials utilized in the operation of the business. Most property expenses were to be paid directly by the Debtor entity owning the property, though Seaboard Property Management employees would process payment on behalf of such entity.

Following the Petition Dates, Marc Beilinson and Beilinson Advisory Group began managing the Commercial Properties and Residential Properties, including the day-to-day operations of each property, and transitioned the remaining employees of Seaboard Property Management to Newbury Common Member, one of the Debtors. Beilinson Advisory Group imposed careful controls to ensure that the Debtors did not fund any expenses of entities in the Seaboard enterprise that were not Debtors (including Seaboard Property Management). Among other things, these controls included a review of all property-level and other overhead expenses by Mr. Beilinson and his staff and limiting persons authorized to sign checks to Mr. Beilinson and Beilinson Advisory Group personnel.

After the Petition Dates, but prior to the complete transition of the property management function away from Seaboard Property Management, when Seaboard Property Management had to fund expenses directly (such as for payroll directly related to management of the Debtors' properties), the Property Debtors advanced Seaboard Property Management those funds.

(b) Management of the Hotel Properties

Prior to and subsequent to the Petition Dates, the Courtyard Marriott Property, which was formerly owned by Seaboard Hotel, was managed day to day by Urgo Hotels, LLP ("Urgo" or the "Hotel Manager"), an unaffiliated third party. The Hotel Manager was generally required to perform or provide for all operational and management functions necessary to operate the Courtyard Marriott Property. Seaboard LTS signed an agreement with the Hotel Manager for similar services to commence for the Hotel Development Property, subject to completion. The Hotel Manager's services at the Hotel Development Property were to commence four to six months prior to the property's opening. Urgo's services under the agreement had not commenced prior to the sale of the Hotel Development Property.[6]

Seaboard Hotel and Seaboard LTS (together, the "Hotel Debtors") affiliated (or in the case of the Hotel Development Property, intended to affiliate) their hotels with well-recognized brands offered by Marriott International, Inc. (including its subsidiaries, the "Franchisor"). The franchise licenses for the Courtyard Marriott Property and the Hotel Development Property were held by the respective Hotel Debtors and governed by franchise agreements between the respective Hotel Debtors and the Franchisor. Although signed, the effectiveness of the Residence Inn by Marriott franchise agreement for the Hotel Development Property was subject to a number of customary conditions, including completion of construction and furnishing of the property on a schedule and in a manner acceptable to Franchisor; the agreement had not become effective prior to the sale of the Hotel Development Property.

[6] The term of the management agreement between Urgo and Seaboard Hotel (the "Courtyard Management Agreement") would have expired on May 3, 2021. The term of the management agreement between Urgo and Seaboard LTS (the "Residence Inn Management Agreement") would have expired ten years following the opening date of the Hotel Development Property. The Courtyard Management Agreement was assumed in connection with the sale of the Courtyard Marriott Property. *See* Docket No. 915.

4. Prepetition Capital Structure

As of January 7, 2016, the Debtors had incurred purported aggregate funded secured indebtedness of approximately $177.2 million in principal, including approximately $150.4 million of property-level secured debt, approximately $34.5 million of which was securitized and sold in the commercial mortgage-backed security ("CMBS") market, and approximately $26.8 million of purported mezzanine debt. Each secured loan was secured by one or more mortgages on a specific property and each mezzanine loan is allegedly secured by pledges of equity interests in one or more Property Owner Debtor(s). Certain of the holders of mezzanine loans additionally assert claims and security interests in the assets of certain of the Property Owner Debtors themselves, including through mortgages, guarantees, or UCC filings against certain Properties. The Debtors' prepetition financing is separated into eleven general groups, each of which is discussed below. Additionally, the Debtors appear to have received unsecured debt or equity funding from many individual parties, which also is discussed below.

(a) The Courtyard Marriott Property

The Commercial Loan Agreement, dated April 29, 2011, for the Courtyard Marriott Property was made between Seaboard Hotel, as borrower, and Webster Bank, National Association ("Webster Bank"), as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "Seaboard Hotel Loan Agreement"). The Seaboard Hotel Loan Agreement provided for a mortgage loan to Seaboard Hotel in the aggregate principal amount of $18,500,000 (the "Seaboard Hotel Mortgage Obligation"), which amount was collateralized by the Courtyard Marriott Property.

The collateral securing the Seaboard Hotel Mortgage Obligation included, among other things: a first leasehold mortgage on Seaboard Hotel's leasehold interest in the Courtyard Marriott Property, the building and improvements on the Courtyard Marriott Property, personal property, furniture, equipment, and fixtures related to the operation of the Courtyard Marriott Property, subleases, rents, income, and profits arising from the property, licenses, permits, approvals, and contracts (collectively, the "Seaboard Hotel Collateral").

The Seaboard Hotel Mortgage Obligation matured on May 1, 2016. The Seaboard Hotel Mortgage Obligation was paid in full when the Courtyard Marriott Property was sold by Seaboard Hotel.

Additionally, Seaboard Hotel Member, the 100% owner of Seaboard Hotel, as borrower, and UCF I Trust 1 ("UCF I"), as mezzanine lender, are parties to that certain Mezzanine Loan Agreement, dated November 30, 2012 (as amended, the "Seaboard Hotel Member Mezzanine Loan Agreement"). The Seaboard Hotel Member Mezzanine Loan Agreement provides for a senior mezzanine loan in the original principal amount of $3,500,000 (the "Seaboard Hotel Member Mezzanine Loan Obligation"), which amount was purportedly collateralized by Seaboard Hotel Member's equity interests in Seaboard Hotel. Additionally, Seaboard LTS Member allegedly guaranteed payment of the Seaboard Hotel Member Mezzanine Loan Obligation and secured its guarantee obligation by pledging its equity interests in Seaboard LTS.

The Seaboard Hotel Member Mezzanine Loan Obligation was originally scheduled to mature on December 1, 2013. A letter between Mr. DiMenna and UCF I dated November 13, 2013 indicates that the maturity date was extended to June 1, 2014.

Further, allegedly, on November 30, 2012, in connection with the execution and delivery of the Seaboard Hotel Member Mezzanine Loan Agreement, Seaboard Hotel, Park Square West Member, Seaboard LTS Associates, and PSWMA I, executed and delivered to UCF I a Cross-Collateralization and Cross-Default Agreement whereby the parties allegedly agreed, inter alia, that all of the obligations and collateral issued in favor of UCF I, would be cross-defaulted.

Seaboard Hotel was also a grantor under a Leasehold Open-End Mortgage Deed, dated May 14, 2015, in favor of Cedar Hill Capital, LLC ("Cedar Hill"), as lender, in connection with a $1,000,000 Promissory Note, dated May 14, 2015 ("$1M Promissory Note") borrowed by Seaboard Realty.

The collateral securing the $1M Promissory Note included, among other things: all rights in the Courtyard Marriott Property, together with all other fixtures of the premises, and all building materials, supplies, machinery, furniture, fixtures, rents, equipment and personal property owned by Seaboard Hotel located on the premises.

The $1M Promissory Note matured on March 31, 2016. The $1M Promissory Note was paid in full after the Courtyard Marriott Property was sold by Seaboard Hotel.

(b) The Hotel Development Property

The Open-End Mortgage Deed Modification Agreement, dated July 18, 2014, for the Hotel Development Property was made between Seaboard LTS, as borrower, and Israel Discount Bank of New York ("IDB"), as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "Seaboard LTS Mortgage Agreement").[7] Seaboard LTS and IDB were also party to a Subordinate Mortgage Deed, dated April 15, 2015 for the Hotel Development Property (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "Seaboard LTS Subordinate Mortgage Agreement"). The Seaboard LTS Mortgage Agreement provided for a mortgage loan to Seaboard LTS in the aggregate principal amount of $11,000,000 (the "Seaboard LTS Senior Mortgage Obligation"), which amount was collateralized by the Hotel Development Property. The Seaboard LTS Subordinate Mortgage Agreement provided for a subordinate mortgage loan to Seaboard LTS in the aggregate principal amount of $7,000,000 (the "Seaboard LTS Subordinate Mortgage Obligation" and with the Seaboard LTS Senior Mortgage Obligation, the "Seaboard LTS Mortgage Obligations"), which amount was also collateralized by the Hotel Development Property. The Seaboard LTS Mortgage Obligations had a maturity date of October

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[7] Seaboard LTS and IDB originally entered into an Open-End Mortgage Deed, dated December 28, 2012, providing for a mortgage loan to Seaboard LTS in the aggregate principal amount of $6,000,000. This mortgage was modified by the Seaboard LTS Mortgage Agreement, which increased the loan by $5,000,000 for a total of $11,000,000.

31, 2015. IDB assigned its rights and interest in and related to the Seaboard LTS Mortgage Obligations to Annemid RI Note Holder, LLC ("Annemid RI") in January 2017.

The collateral securing the Seaboard LTS Mortgage Obligations includes, among other things: all rights in the Hotel Development Property, with all structures, buildings, fixtures, personal property, easements, rents and profits of the premises (collectively, the "Seaboard LTS Collateral").

Additionally, Seaboard LTS Member, the 100% owner of Seaboard LTS, as borrower, and CPR Money LLC ("CPR"), as mezzanine lender, are parties to that certain Mezzanine Loan Agreement, dated September 30, 2014 (as amended, the "Seaboard LTS Member Mezzanine Loan Agreement"). The Seaboard LTS Member Mezzanine Loan Agreement provides for a junior mezzanine loan in the original principal amount of $3,000,000 (the "Seaboard LTS Member Mezzanine Loan Obligation"), which amount is purportedly collateralized by Seaboard LTS Member's equity interests in Seaboard LTS. Additionally, Seaboard Hotel Member guaranteed payment of the Seaboard LTS Member Mezzanine Loan Obligation and secured its guarantee obligation by allegedly pledging its equity interests in Seaboard Hotel. Further, One Atlantic Member allegedly guaranteed payment of the Seaboard LTS Member Mezzanine Loan Obligation and secured its guarantee obligation by pledging its equity interests in One Atlantic.[8] The Seaboard LTS Member Mezzanine Loan Obligation was originally scheduled to mature on March 15, 2015. A modification agreement dated February 2015 indicates that the maturity date may have been extended by six months to September 15, 2015. Further, on or about November 1, 2015, Seaboard LTS Member and CPR purportedly agreed to the refinancing of the Seaboard LTS Member Mezzanine Loan Obligation into a new loan in the original principal amount of $7,040,019, which matured on February 1, 2016 (the "Seaboard LTS Member Upsize Loan Agreement"). The Seaboard LTS Member Upsize Loan Agreement was also allegedly guaranteed by Seaboard Hotel Member, One Atlantic Member, and other Debtors, with the parties purportedly entering into, among other documents, indemnity agreements, UCC financing statements, pledge agreements and, later on, security agreements.

(c) The 300 Main Property

The Loan Agreement, dated January 19, 2007, for the 300 Main Property was made between 300 Main, as borrower, and U.S. Bank, National Association ("U.S. Bank"), as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "300 Main Loan Agreement").[9] The 300 Main Loan Agreement provides for a mortgage loan to 300 Main in the original aggregate principal amount of $11,500,000 (the "300 Main Mortgage Obligation"), which amount was

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[8] The Seaboard LTS Member Mezzanine Loan Obligation is junior to the obligations under the Seaboard Hotel Member Mezzanine Loan Obligation pursuant to that certain Post-Closing and Further Assurances Agreement, dated September 30, 2014, by and between Seaboard LTS, Seaboard Hotel, One Atlantic and CPR.

[9] The original borrower under the 300 Main Loan Agreement was 300 Main Owner LLC (which is unrelated to the Debtors) and the original lender was Goldman Sachs Commercial Mortgage Capital, L.P. Pursuant to that certain Note and Mortgage Assumption Agreement, dated September 10, 2013, 300 Main assumed the loan.

collateralized by the 300 Main Property. The 300 Main Mortgage Obligation was to mature on February 6, 2017.

The 300 Main Loan Agreement mortgage loan was securitized and sold into the CMBS market. The 300 Main Mortgage Obligation is part of a mortgage loan pool known as Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust 2007-GG9, Commercial Mortgage Pass-Through Certificates, Series 2007-GG9, for which LNR Partners, LLC serves as the special servicer.

The collateral securing the 300 Main Mortgage Obligation included, among other things: all the rights of 300 Main in the 300 Main Property, all easements, all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures, inventory, materials, supplies and other articles of personal property and accessions thereof, all leases, subleases and other agreements or arrangements affecting the use of the 300 Main property, all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, and all proceeds, products, offspring, rents and profits from any of the foregoing.

Additionally, another loan was allegedly secured by the 300 Main Property. 300 Main, as borrower, and First County Bank ("FCB"), as lender, are purported parties to a Mortgage Deed, dated September 9, 2013 (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "300 Main FCB Agreement"). The 300 Main FCB Agreement purports to provide for a loan to 300 Main in the aggregate principal amount of $2,000,000 (the "300 Main FCB Obligation"), which amount was collateralized by the 300 Main Property. Pursuant to the 300 Main FCB Agreement, the 300 Main FCB Obligation is junior to the 300 Main Mortgage Obligation. The 300 Main FCB Agreement states that the 300 Main FCB Obligation was to mature on February 15, 2016.

The collateral securing the 300 Main FCB Obligation allegedly includes, among other things: the 300 Main Property, with the buildings and improvements thereon, with the appurtenances, all the estate and rights of 300 Main to the premises, and all rents, issues and profits of the premises. Additionally, 300 Main Inc., Seaboard Residential and 300 Main Member each allegedly guaranteed payment of the 300 Main FCB Obligation by pledging their respective equity interests in 300 Main.

No third-party buyer submitted a qualifying bid for the 300 Main Property, and the 300 Main Property was transferred to a designee of U.S. Bank pursuant to a credit bid of $11.65 million of the 300 Main Mortgage Obligation.

(d) The 1 Atlantic Property

The Open-End Mortgage Deed and Security Agreement, dated October 11, 2013, for the 1 Atlantic Property was made between One Atlantic, as borrower, and Citizens Bank, N.A. ("Citizens Bank") f/k/a RBS Citizens, National Association, as lender (as amended, restated,

supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "1 Atlantic Mortgage Agreement"). The 1 Atlantic Mortgage Agreement provides for a mortgage loan to One Atlantic in the aggregate principal amount of $20,500,000 (the "1 Atlantic Mortgage Obligation"), which amount was collateralized by the 1 Atlantic Property. The 1 Atlantic Mortgage Obligation was to mature on October 11, 2018.

The collateral securing the 1 Atlantic Mortgage Obligation included, among other things: all rights in the 1 Atlantic Property, all rights in all buildings, improvements, fixtures and service equipment, and all unearned premiums, awards or payments, which may be made with respect to the 1 Atlantic Property, all accounts, rents, chattel paper and instruments, all inventory used or consumed, all securities entitlements, investment property, financial assets and documents evidencing that the persons in possession of them are entitled to dispose of the goods they cover; all equipment, all general intangibles held or granted to One Atlantic and all of the rights of One Atlantic under all contracts, agreements, or leases to which One Atlantic is or may become a party, all monies, securities and other property held or received by or in transit to the bank, and all products and proceeds of the foregoing, including, without limitation, proceeds of any insurance policies insuring any of the foregoing.

As discussed *infra*, One Atlantic Member guaranteed payment of the Seaboard LTS Member Mezzanine Loan Obligation by pledging its equity interests in One Atlantic.

No third-party buyer submitted a qualifying bid for the 1 Atlantic Property, and the 1 Atlantic Property was transferred to a designee of Citizens Bank pursuant to a credit bid of $18 million of the 1 Atlantic Mortgage Obligation, *provided* that Citizens Bank expressly preserved its right to any deficiency claim it may have with respect thereto.

(e) The 88 Hamilton Property

The Loan Agreement, dated June 8, 2015, for the 88 Hamilton Property was made between 88 Hamilton, as borrower, and Natixis Real Estate Capital, LLC ("Natixis"), as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "88 Hamilton Loan Agreement"). The 88 Hamilton Loan Agreement provides for a mortgage loan to 88 Hamilton in the aggregate principal amount of $23,000,000 (the "88 Hamilton Mortgage Obligation"), which amount was collateralized by the 88 Hamilton Property. The 88 Hamilton Mortgage Obligation was to mature on July 5, 2025.

The 88 Hamilton Loan Agreement mortgage loan was securitized and sold into the CMBS market. The 88 Hamilton Mortgage Obligation was part of a mortgage loan pool known as Wells Fargo Commercial Mortgage Trust 2015-NXS2, Commercial Mortgage Pass-Through Certificates, Series 2015-NXS2, for which Wilmington Trust, N.A., acted as trustee and for which Rialto Capital Management, LLC ("Rialto") served as the special servicer.

The collateral securing the 88 Hamilton Mortgage Obligation included, among other things: both real and personal property and all other rights and interests, whether tangible or intangible in nature, of 88 Hamilton in the 88 Hamilton Property, fixtures, all easements, all

machinery, furniture, furnishings, equipment, computer software and hardware, fixtures, inventory, materials, supplies and other articles of personal property and accessions thereof, all leases, all rents, all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, and all proceeds, products, offspring, rents and profits from any of the foregoing.

The buyer of the 88 Hamilton Property assumed the 88 Hamilton Mortgage Obligation and, in connection therefore, 88 Hamilton received a release of such obligation from the mortgage holder.

As discussed in further detail in subsection II.B.4.j below, a loan from Cedar Hill to Seaboard Realty was also purportedly secured by a mortgage on the 88 Hamilton Property. There remains a dispute regarding the relative priority between the 88 Hamilton Mortgage Obligation and 88 Hamilton's purported obligation to Cedar Hill.

(f) The 220 Elm Property

First Leasehold Mortgage. The Leasehold Mortgage Deed and Security Agreement, dated October 14, 2008, for the 220 Elm Property was made between 220 Elm and 220 Elm Street II, LLC (a non-debtor), as borrowers, and People's United Bank ("People's United"), as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "220 Elm Mortgage Agreement"). The 220 Elm Mortgage Agreement provides for a mortgage loan to 220 Elm in the aggregate principal amount of $7,000,000 (the "220 Elm Mortgage Obligation"), which amount was collateralized by the 220 Elm Property. The 220 Elm Mortgage Agreement is evidenced by a certain Index Term Note. The 220 Elm Mortgage Obligation was to mature on November 1, 2018.

The collateral securing the 220 Elm Mortgage Obligation included, among other things: all of 220 Elm's and 220 Elm Street II, LLC's leasehold estate and interest under the leases, which cover the 220 Elm Property, improvements, service equipment: including fixtures, appliances, machinery, equipment, goods, accounts, chattel paper, instruments, general intangibles, letter-of-credit rights, documents, and deposit accounts, easements, condemnation proceeds, leases, property income, tax refunds, inventory and proceeds thereof (collectively, the "220 Elm Collateral").

Second Leasehold Mortgage. The Leasehold Mortgage Deed and Security Agreement, dated January 24, 2014, for the 220 Elm Property was made between 220 Elm I and 220 Elm Street II, as borrowers, and People's United, as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "Second 220 Elm Mortgage Agreement"), which amount was also collateralized by the 220 Elm Property. The Second 220 Elm Mortgage Agreement provides for a mortgage loan to 220 Elm in the aggregate principal amount of $1,200,000 (the "Second 220

Elm Mortgage Obligation"). The Second 220 Elm Mortgage Obligation was to mature on November 1, 2018.

The collateral securing the Second 220 Elm Mortgage Obligation included, among other things, the 220 Elm Collateral.

No third-party buyer submitted a qualifying bid for the 220 Elm Property, and the 220 Elm Property was transferred to People's United pursuant to a credit bid of approximately $6.95 million of the 220 Elm Mortgage Obligation.

(g) The Park Square West Property

The Building Loan Agreement, dated November 19, 1998, for the Park Square West Property was made between Park Square West, as borrower, and Connecticut Housing Finance Authority, as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "PSW Building Loan Agreement").[10] The PSW Building Loan Agreement provided for a mortgage loan to Park Square West in the aggregate principal amount of $26,000,000 (the "PSW Mortgage Obligation"), which amount was collateralized by the Park Square West Property. The PSW Mortgage Obligation was to mature on January 1, 2036.

The collateral securing the PSW Mortgage Obligation included, among other things: the Park Square West Property, with all buildings, structures and improvements, all rights to the streets abutting to the land, all equipment in which Park Square West has a title interest, all equipment, fittings, furniture, furnishings, appliances, apparatus, and machinery, all accounts, chattel paper, general intangibles, all contract rights, franchises, books, records, permits, licenses, all leases, all rents, income to which Park Square West may be entitled from property, and all proceeds received in connection with the premises. The PSW Mortgage Obligation was paid in full after the PSW Property was sold to Park Square West.

Park Square West Member, the 100% owner of Park Square West, purportedly was the borrower, and IDB purportedly was the lender, under a $5,000,000 Promissory Note, dated September 24, 2013 ("PSW IDB Promissory Note"). The PSW IDB Promissory Note states a maturity of March 24, 2016. PSW Member allegedly guaranteed payment under the PSW IDB Promissory Note by pledging its equity interests in Park Square West. IDB assigned its rights and interest in and related to the PSW IDB Promissory Note to Annemid RI in January 2017.

Additionally, Park Square West Member, as mezzanine borrower, and UCF I, as mezzanine lender, allegedly are parties to that certain Mezzanine Loan Agreement, dated November 1, 2012 in the original principal amount of $12 Million (as amended, the "PSW Member Mezzanine Loan Agreement"). Thereafter, on March 25, 2014, Park Square West Member, UCF I and others allegedly entered into a certain Modification Agreement, pursuant to which UCF I provided Park Square West Member with an additional advance of $3.3 Million,

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[10] The original borrower under the Park Square West Building Loan Agreement was Park Square West I Limited Partnership (unrelated to the Debtors). It was assumed by Park Square West in 2011.

increasing the principal amount of the mezzanine loan to $15,300,000 (the "PSW Member Mezzanine Loan Obligation"), which amount is allegedly collateralized by Park Square West Member's equity interests in Park Square West and a Guaranty of Payment from Park Square West in favor of UCF I. Additionally, PSWMA I purportedly guaranteed payment of the PSW Member Mezzanine Loan Obligation by pledging equity interests in Park Square West Member. The PSW Member Mezzanine Loan Agreement states a maturity of November 1, 2014.

(h) The 100 Prospect Property

The Open-End Mortgage Deed and Security Agreement, dated December 4, 2013, for the 100 Prospect Property was made between Century Plaza and Seaboard Residential, as borrowers, and Citizens Bank, f/k/a RBS Citizens, National Association, as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "100 Prospect Mortgage Agreement"). The 100 Prospect Mortgage Agreement provides for a mortgage loan to Century Plaza and Seaboard Residential in the aggregate principal amount of $21,090,000 (the "100 Prospect Mortgage Obligation"), which amount was collateralized by the 100 Prospect Property. The 100 Prospect Mortgage Obligation was to mature on December 4, 2018.

The collateral securing the 100 Prospect Mortgage Obligation included, among other things: certain pieces or parcels of land, with any buildings and improvements at the 100 Prospect Property, all the right, title and interest of Century Plaza and Seaboard Residential in any way appertaining to the premises, all right in all buildings, improvements, structures, equipment, machinery, apparatus, appliances, fittings, fixtures attached to the premises, rents, all unearned premiums, all awards made with respect to the premises, all account, chattel paper and instruments, all inventory used or consumed, all securities entitlements, investment property, financial assets and documents evidencing that the persons in possession of them are entitled to dispose of the goods they cover; all equipment, all general intangibles held or granted to Century Plaza or Seaboard Residential and all of the rights under all contracts, agreements, or leases to which the Century Plaza or Seaboard Residential are or may become a party, all monies, securities and other property held or received by or in transit to the bank, and all products and proceeds of the foregoing, including, without limitation, proceeds of any insurance policies insuring any of the foregoing.

No third-party buyer submitted a qualifying bid for the 100 Prospect Property, and the 100 Prospect Property was transferred to a designee of Citizens Bank pursuant to a credit bid of $18.25 million of the 100 Prospect Mortgage Obligation, *provided* that Citizens Bank expressly preserved its right to any deficiency claim it may have with respect thereto.

(i) The Clocktower Property

The Mortgage Deed, dated November 13, 2008, for the Clocktower Property was made between Clocktower Close, as borrower, and FCB as lender (as amended, restated, supplemented, or otherwise modified from time to time, and together with such supporting and ancillary documents thereto, the "Clocktower Mortgage Agreement"). The Clocktower Mortgage Agreement provided for a loan to Clocktower Close which, after repayment on

account of sales of various condominiums that occurred before the Petition Date, remained unpaid in the aggregate principal amount of $1,125,000 (the "Clocktower Mortgage Obligation"), and was collateralized by the Clocktower Property. The Clocktower Mortgage Obligation was to mature on December 1, 2033.

The collateral securing the Clocktower Mortgage Obligation included, among other things: certain pieces or parcels of land, with any buildings and improvements at the Clocktower Property with the appurtenances, and all the estate and rights of Clocktower Close to the Clocktower Property, together with the buildings, improvements, appertaining to the premises, and all rents, issues and profits of the premises.

The Clocktower Mortgage Obligation was paid in full after the Clocktower Property was sold by Clocktower Close.

(j) The Cedar Hill $4M Promissory Note

Seaboard Realty, as borrower, and Cedar Hill, as lender, are purportedly parties to that certain $4,000,000 Promissory Note, dated March 25, 2015 ("$4M Promissory Note"). In order to secure the $4M Promissory Note, Cedar Hill required, among other things, that 88 Hamilton, Century Plaza and Seaboard Residential (with respect to the 100 Prospect Property), One Atlantic, Park Square West, and Tag Forest each enter into a guaranty and an Open-End Mortgage Deed, Security Agreement and UCC-1 Financing Statement (Fixture Filing) to Secure Guaranty. The $4M Promissory Note does not contain any subordination provisions and states a maturity of March 31, 2016.

Based on mortgage search results, Cedar Hill recorded a mortgage on the 88 Hamilton Property purportedly securing the $4M Promissory Note and that mortgage was recorded earlier in time than the filed mortgage securing the 88 Hamilton Mortgage Obligation. Additionally, Cedar Hill recorded a mortgage on the Park Square West Property purportedly securing the $4M Promissory Note, but that filing was made subsequent to recordation of the mortgage securing the PSW Building Loan Agreement. Park Square West agreed to reserve $5 million in proceeds from the sale of the Park Square West Property, and 88 Hamilton agreed to reserve $2 million in proceeds from the sale of the 88 Hamilton Property, pending a final determination regarding the extent, validity, amount, and priority of the obligations under and liens securing the $4M Promissory Note. No distribution has otherwise been made on the $4M Promissory Note.

(k) Patriot Loan

Seaboard Realty is purportedly a party to a certain Commercial Revolving Line of Credit Promissory Note between Seaboard Realty and non-debtor Seaboard Property Management, as borrowers, and Patriot National Bank, as lender, dated December 29, 2014, for $3,000,000 as evidenced by a certain Amended and Restated Commercial Revolving Note (the "$3M Seaboard Realty Revolving Note"). The $3M Seaboard Realty Revolving Note states a maturity of November 1, 2015.

The collateral securing the $3M Seaboard Realty Revolving Note allegedly includes, among other things:

- A first lien on all assets of Seaboard Realty and Seaboard Property Management;
- A pledge of Seaboard Realty's membership interests in 88 Hamilton Avenue Member and Seaboard Hotel Member; and
- A mortgage on 25 Bank Street, Stamford, Connecticut, which was property owned by a non-debtor.

(l) Members of the Debtors

As disclosed in the *Notes Regarding Lists of Debtors' Equity Security Holders in Accordance with Bankruptcy Rule 1007* [Docket No. 26] (the "Lists of Equity Holders"), the Holdco Debtors have members that are not Debtor entities. Additionally, Debtor Seaboard Realty is a member of most of the other Holdco Debtors (other than One Atlantic Member). As disclosed in each of the petitions of the Propco Debtors, all of the Propco Debtors' membership interests are solely held by other Debtors, except for Newbury Common Member, whose membership interests are held by Debtor Seaboard Realty and non-debtors. However, at this time, the rights among the different Holders of Equity Interests and other putative investors in the Debtors are not clear. For example, it is apparent that Mr. DiMenna obtained investments for the Debtors or their Properties that were already fully subscribed. In addition, Mr. DiMenna obtained significant amounts of money through his controlled entity Seaboard Stamford Investment Group, LLC ("SSIG"), with the stated goal of acquiring the Debtors' assets. The Plan contemplates a settlement that compromises and resolves the claims asserted by SSIG (and its own investors) against the Plan Debtors, as well as other entities asserting claims related to putative investments in the Plan Debtors.

5. Employees

As of the Petition Dates, non-Debtor Seaboard Property Management employed approximately 13 employees (the "Employees"), 11 of which were salaried and 2 of which were paid hourly. The Employees (after the Petition Dates, directed by Beilinson Advisory Group) oversaw all leasing activity, operations, and facilities management for the Commercial Properties and the Residential Properties, and asset managed the Hotel Properties. Additionally, the Employees provided accounting and administrative services for the Debtors. The number of Employees was reduced over the course of the cases as circumstances warranted and allowed. On or around March 1, 2016, the then-remaining employees were transitioned to be employees of Newbury Common Member.

III. EVENTS LEADING UP TO THE COMMENCEMENT OF THE CHAPTER 11 CASES[11]

A. The Formation of Seaboard Realty, LLC and the Initial Business Relationship Between Messrs. Kelly, Merritt, and DiMenna

Messrs. Kelly, Merritt, and DiMenna initially commenced their business relationship in the early 1990s, when Seaboard Realty was formed. Seaboard Realty's business model centered on investing in real estate in the Stamford, Connecticut region. DiMenna, who had experience buying and flipping distressed properties from financial institutions, contacted Merritt, who he had previously known, and Merritt introduced Kelly to DiMenna. The parties' general understanding was that DiMenna would be responsible for obtaining financing and overseeing the day-to-day operations of the company's business, while Merritt and Kelly were primarily tasked with raising capital through investors.

Throughout the parties' business relationship, each property acquired was intended to be set up in a silo with separate lenders and separate groups of investors (each of which understood that they were investing in a specific property and not the overall enterprise), with Seaboard Realty generally holding a sizable stake in the equity of any project and serving as the manager under the operating agreements for the various properties. The mortgage documents were set up in a manner that required separateness by legal entity. The properties were managed by Seaboard Property Management, an entity owned by DiMenna alone, pursuant to management agreements that provided for management fees to be paid from the properties to Seaboard Property Management.

The business relationship was a successful one for over a decade, resulting in the acquisition of a significant portfolio of properties and yielding healthy returns to investors. The partners sold substantially all of their properties in 2007.

B. Seaboard Realty, LLC's Investment in Newbury Common Associates, LLC and the Creation of Seaboard Consolidated, LLC

After seeing new opportunities for investment after the start of the financial recession in 2007, and having maintained a staff of individuals at Seaboard Property Management who were able to continue to run a property management business, DiMenna, Merritt, and Kelly decided to pursue new properties for investment in 2008, starting with Newbury Common, as well as other properties. Unlike most other investments that the group had pursued, the companies began to pursue many properties that required various levels of redevelopment. On the whole, the redevelopment projects were more difficult than anticipated, and cash became very tight.

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[11] Much of the information provided in this section is derived from an interview of John J. DiMenna, Jr., which was conducted on April 27, 2016, in the offices of the United States Attorney in Bridgeport, Connecticut. Present at this interview were Mr. DiMenna, his counsel, representatives of Beilinson Advisory Group, counsel to the Debtors, and Assistant United States Attorney Christopher Schmeisser, who the Debtors understand is pursuing criminal charges against Mr. DiMenna on behalf of the US government.

In order to satisfy present obligations at one property, DiMenna began transferring funds from one property's account to the other through non-Debtor Seaboard Consolidated, LLC ("Seaboard Consolidated"), a consolidation vehicle set up by, and controlled completely by, DiMenna. Excess funds from one property or multiple Properties (whether generated from property operations or equity or debt issuances) would be swept from those Properties' accounts to a Seaboard Consolidated bank account and would then be transferred into the account for the Property that had the immediate cash need. In some cases, funds would be transferred directly from one DiMenna-controlled entity that had cash to another DiMenna-controlled entity that needed it (including between Debtors), notwithstanding that the accounting records would reflect those funds as having been transferred into and out of a Seaboard Consolidated account. DiMenna would make such transfers in order to satisfy tax obligations, pay for spiraling redevelopment costs, pay trade debts, pay debt service or make preferred dividend payments to investors. Continuing to make distribution payments at financially struggling property silos by way of transfers from other Properties helped DiMenna to avoid scrutiny of his activities by investors and others.

The Seaboard Consolidated account never held a significant amount of money at any time; it was simply used as a pass-through to accomplish the transfer of funds to properties in need of cash. The company's accountants tracked the intercompany activity into and out of Seaboard Consolidated, but simply reflected "intercompany loans" in the aggregate as part of the entities' tax returns. Neither DiMenna nor Seaboard Consolidated maintained detailed accounting ledgers that would show with certainty what Seaboard entity was the real source of funds borrowed by another Seaboard entity. The records only indicated the amount of funds that an entity actually or nominally contributed to Seaboard Consolidated and the amount of funds that an entity actually or nominally received from Seaboard Consolidated.

The companies' various mortgage lenders appear to have generally received the specific tax returns related to the Properties to which they provided loans, and they also received "operating statements" prepared by DiMenna. According to DiMenna, these parties did not ask questions about the tax returns or the intercompany loans set forth therein. DiMenna obscured his conduct from investors and creditors by manipulating the financial statements that he presented to such parties. He accomplished this by limiting information access of Seaboard Property Management's employees and ensuring all financial reporting that any of the companies provided to any third party flowed through him. DiMenna has advised the Debtors that he often intentionally did not provide any reporting to the Debtors' lenders even if such reporting was required. He only forwarded information to such parties after the parties would make threats about calling events of default on account of the lack of reporting; even then, in most cases, the information that he did provide was incomplete or misleading.

Generally speaking, Seaboard Realty's accounting staff would provide financial reporting templates based on actual operating results, and according to DiMenna he would "scrub" such reports in order to obscure actual results, or in some cases, would materially alter the reports to misrepresent results in their entirety. Most of the reports DiMenna provided to investors, lenders, potential purchasers and appraisers after 2008 were falsified in one way or another, whether to inaccurately report operating income, to incorrectly state financial projections, to omit debt obligtions, and/or to overstate revenue projections.

DiMenna has admitted that he also provided similar false information to Merritt and Kelly in his meetings with them. At meetings of the managers, DiMenna typically would provide Merritt and Kelly with a one-page financial template that offered a general overview of the financial condition of the companies, but the overview was often based on an overly aggressive assessment of values and substantially inaccurate reporting of debt obligations, revenues, and expenses. Mr. DiMenna advises that Kelly and Merritt would ask questions about operations, but that they generally appeared to be satisfied with the financial reporting he provided. In such meetings, DiMenna stated that he kept the information he provided as positive as possible in order to minimize comments/questions from the other managers.

In addition, particularly as interest rates continued to increase, DiMenna actively pursued refinancing of the companies' debt that would free up additional available cash that could be funneled into Seaboard Consolidated for other Properties and to make distributions to Investors in various Properties. Many lenders required personal guarantees of the managers. DiMenna granted personal guarantees on his own behalf, but according to Messrs. DiMenna, Kelly and Merritt, he also forged the signatures on personal guarantees purporting to have been granted by Kelly and Merritt. DiMenna states that he never advised Kelly or Merritt of these guarantees and never obtained their consent to give such guarantees, as Kelly and Merritt testified consistently on the record before the Bankruptcy Court.

Faced with an ever-increasing cash crisis, in 2010, DiMenna determined that, in order to protect the value of the other assets in the Seaboard Realty portfolio, the Newbury Common property could be sold to obtain the necessary cash. After the Newbury Common property was sold, DiMenna gave investors an opportunity to invest in other Properties that Seaboard Realty was acquiring (the Courtyard Marriott Property and the Park Square West Property), but apparently did not truthfully report to investors the proceeds to which they were entitled and used the remainder of the proceeds, after making distributions to investors, to prop up the flagging redevelopment Properties.

This cash infusion proved to be only a short-term fix, and in order to bring additional cash into the enterprise, DiMenna continued to aggressively solicit investments in the Properties based on his embellished projections. In addition, it appears that DiMenna sold interests in investments that were already sold to others or oversubscribed investments in various Properties (including the 88 Hamilton Property, the Park Square West Property, and the Courtyard Marriott Property), taking the proceeds of these subscription agreements and placing them into Seaboard Consolidated for purposes of funding other Properties with pressing cash needs (either on account of bank debt, trade debt, or delayed investor distributions). In addition to misleading investors as to the performance of the Properties, DiMenna misled investors into believing that they were guaranteed to receive returns on their investments. DiMenna continued to provide returns to investors (roughly a 10% cumulative annual return) in order to perpetuate this falsehood, but cash pressures resulted in occasional delays in scheduled investor distribution payments.

These delays in promised investor payments resulted in numerous inquiries from investors in 2013 and 2014, either to DiMenna directly or through Merritt and Kelly. DiMenna blamed such delays on either external factors or administrative challenges. In 2014, after

continued investor distribution delays and reports of vendors not being timely paid, Merritt and Kelly insisted that DiMenna hire a controller in late 2014 or early 2015 to resolve the perceived administrative issues. However, even after the controller was hired, DiMenna still ensured that all information would flow through him and continued to manipulate the information provided by the controller in providing presentations to Merritt, Kelly, and third parties.

In the two to three years prior to the filing of the Chapter 11 Cases, DiMenna was facing a near-daily cash crisis. As there was simply not enough cash to satisfy investor distributions as well as to pay debt and operating expenses and to keep the Hotel Development Property and 100 Prospect redevelopment projects moving forward, DiMenna looked for other sources of funding in order to maintain the status quo, thinking that the problems could ultimately be rectified by either recapitalizing the portfolio or selling the portfolio at higher valuations. To this end, DiMenna negotiated the terms of mezzanine financing with UCF I (in 2012) and CPR (in 2014), notwithstanding purported contravening provisions of the mortgage loan documents at the Properties. These financing agreements are discussed in further detail above.

DiMenna also negotiated loans between Seaboard Realty and Cedar Hill in 2015. The Cedar Hill loans were made between Cedar Hill and Seaboard Realty, the manager and holder of 25% of the equity of most of the mezzanine entities. In order to secure Seaboard Realty's debts, Cedar Hill required that 88 Hamilton, Century Plaza, Seaboard Residential, One Atlantic, and Seaboard Hotel each enter into a second mortgage on their Properties. DiMenna said he executed these mortgages on behalf of the Property Debtors despite the fact that (1) he did not advise the other managers of these entities of these mortgages, (2) Seaboard Realty was only an indirect 25% owner of the Property Debtors by virtue of its ownership of a portion of the equity of the corresponding Holding Company Debtors, (3) these mortgages violated covenants in connection with the first-lien mortgages and constituted events of default, and (4) the amounts received in connection with the Cedar Hill loans went to the account of Seaboard Consolidated in order to pay debts of struggling properties, primarily the Hotel Development Property.

The mezzanine loans, however, were only short-term relief for DiMenna's cash flow problems, as the high interest rates on the loans only raised the stakes and required greater cash demands to satisfy the increased monthly debt-service obligations on top of the other operating expenses and increasingly over-budget construction costs at the Hotel Development Property. Thus, DiMenna continued to attempt to find a buyer for the Properties. Starting in early 2014, DiMenna advised that he began working with an investment banking firm, Sandler O'Neill, to find a joint venture party interested in a transaction that would recapitalize the portfolio or to buy out the investors and acquire the portfolio.

At the same time, DiMenna established another entity, SSIG, with the intention of attracting investors who could provide capital to the portfolio as a mezzanine lender to provide bridge financing through a marketing process. The SSIG group ultimately shifted its focus, as DiMenna and the SSIG investors began considering a straight purchase of the Properties, and then a proposed recapitalization as part of an acquisition by a third party. DiMenna, SSIG, and Sandler O'Neill spent approximately one year actively, but unsuccessfully, seeking an acquirer. In the meantime, a substantial portion of the capital raised through SSIG apparently went into the

Properties through transfers of cash into Seaboard Consolidated, and the funds transferred were booked as intercompany loans.

The other managers were acutely pressuring DiMenna during this period to find an acquisition partner. In hopes of stopping the burden of answering the questions of the other managers, DiMenna suggested to the managers that Sandler O'Neill had found a buyer for the Properties, and that this buyer had provided the Companies with a $10 million deposit in connection with their acquisition. None of this, however, was true. Sandler O'Neill had not found a buyer, and there was no $10 million deposit.

Having failed to obtain an actual buyer for all the properties, DiMenna began to look to sell off each property individually in mid- to late-2015. The first property sold was the property located at 11 Forest Street, Stamford, Connecticut (the "11 Forest Street Property") (owned by Tag Forest) (the "Tag Forest Sale"). DiMenna advised Merritt and Kelly of this transaction. DiMenna believed that the sale could yield enough cash for DiMenna to make a distribution to investors at that property while still holding back enough cash proceeds to help prop up the floundering construction project at the Hotel Development Property. After the sale contract was signed, in the fall of 2015, the parties discovered that they had overlooked an affordable housing covenant attached to the 11 Forest Street Property, which resulted in a dramatic loss of income to the buyer of the property and delayed the anticipated date of closing. Desperate at this point for cash flow, however, DiMenna agreed to a renegotiation with the buyer. The sale price was reduced by $500,000, in exchange for the buyer agreeing to release the deposit to DiMenna in advance of closing. The released deposit money was promptly deployed in the Seaboard Consolidated enterprise.

The Tag Forest Sale closed in late November. DiMenna swept the net sale proceeds paid (already reduced by the purchase price reduction, as well as a loan against the purchase price DiMenna obtained from the buyer of the 11 Forest Street Property in advance of closing) into Seaboard Consolidated in order to fund cash needs at the Hotel Development Property. Just prior to the Petition Date for the Original Debtors, DiMenna sent to certain Tag Forest investors checks purporting to represent their share of the Tag Forest Sale proceeds. He apparently anticipated certain revenues coming into the business in the next week on other Properties, which he intended to use to fund these distribution checks. However, the revenues did not come in. Left without funds from Seaboard Consolidated or elsewhere to fully fund the Tag Forest account, there was a resulting shortfall in the Tag Forest account and numerous Tag Forest investors' checks were returned for insufficient funds.

C. Messrs. Kelly and Merritt's Investigation Into DiMenna's Actions and the Commencement of these Chapter 11 Cases

On or about November 20, 2015, Messrs. Kelly and Merritt became concerned that the operations and finances of the Debtors were not as had been represented to them by Mr. DiMenna. Specifically, Messrs. Kelly and Merritt became aware that certain of the Debtors were having substantial difficulty meeting their financial obligations.

In light of this concern, Messrs. Kelly and Merritt began to investigate. *First*, they undertook a deeper analysis and investigation into the accounting and finances of the Debtors. *Second*, they caused the Debtors to retain Dechert LLP ("Dechert") as restructuring counsel and Anchin Block & Anchin, LLP ("Anchin") as forensic accountants. *Third,* they caused Mr. DiMenna to resign his active management of the Debtors and to relinquish his control of the Debtors to Messrs. Kelly and Merritt effective as of December 2, 2015. *Fourth*, they caused the Debtors to retain Marc Beilinson as Chief Restructuring Officer for each of the Debtors to lead an independent investigation of the Debtors' assets and liabilities together with Dechert and Anchin and to develop a plan to maximize the value of the Debtors' enterprise for all stakeholders. Shortly thereafter, the Debtors retained Young Conaway Stargatt & Taylor, LLP ("Young Conaway") as restructuring co-counsel to work in conjunction with Dechert, Anchin, and Beilinson Advisory Group.[12] These professionals ultimately determined that it was necessary for certain of the Debtors to commence chapter 11 proceedings under the Bankruptcy Code.

Accordingly, on December 13, 2015, the Original Debtors, with the exception of Tag Forest, each commenced a voluntary case under chapter 11 of the Bankruptcy Code. On December 14, 2015, Tag Forest commenced its voluntary case under chapter 11 of the Bankruptcy Code.

On December 17, 2015, Seaboard Realty appointed Waterbridge Advisors LLC, acting through its President and member Howard Altschul, to serve as an independent Managing Member of Seaboard Realty.

As the investigation into the Debtors' finances continued, it became readily apparent that there were significant questions related to the Debtors' assets and liabilities and that the protection afforded by the Bankruptcy Code was essential to preserve the value of the Debtors' enterprise and to permit the Debtors to continue their independent investigation. It also became evident to the Debtors that DiMenna may have obtained mezzanine financing for certain of the Debtors without corporate authorization (namely majority member approval, which would have required the affirmative vote of either or both of Messrs. Kelly and Merritt), may have obtained certain mezzanine and other loans for certain of the Debtors by purporting to provide personal guarantees from Messrs. Kelly and Merritt, and induced new investments in certain Debtor entities whose membership was already fully subscribed.

Following these revelations, it became apparent, based on the positions of certain lenders, the number of parties involved, and the uncertainties surrounding cash flows, that the Debtors would be unable to reach interim agreements with each of the mortgage lenders, and thus, it became necessary for the Additional Debtors to commence chapter 11 cases. Additionally, as outlined in the *Verified Complaint of the Debtors* [Docket Nos. 81 & 82] (the "Verified Complaints"), it was clear that certain of the purported prepetition lenders were in the process of

[12] On February 16, 2016, the Court entered an order denying Dechert's retention and Young Conaway became sole restructuring counsel.

taking action and/or prejudgment self-help remedies against certain of the Debtors with respect to the Debtors' assets.[13]

Accordingly, the Additional Debtors, with the exception of 88 Hamilton, each commenced a voluntary case under chapter 11 of the Bankruptcy Code on February 3, 2016. 88 Hamilton commenced its voluntary case under chapter 11 of the Bankruptcy Code on February 4, 2016. On March 17, 2016, 220 Elm II commenced its voluntary case under chapter 11 of the Bankruptcy Code.

While the Debtors believed that their respective Properties were well located and that significant opportunities for future business remained, the application of the proceeds of the prepetition financing, which was done without any concern for separate entities or the profitability of the enterprise, left the Debtors with an unmanageable debt load and unable to service their funded debt obligations as they became due. As of the Petition Dates, the Debtors were in payment default under all of the loan agreements, except for the Seaboard Hotel Loan Agreement.

IV. THE CHAPTER 11 CASES

The Debtors filed these Chapter 11 Cases in order to provide transparency and to use certain provisions of the Bankruptcy Code to further their ongoing investigation into the Debtors' finances in order to maximize value for all stakeholders. The Debtors discovered that prior to the Petition Dates there was limited internal and external financial and accounting reporting. There were insufficient internal controls, financial reporting to management, and accounting process in place, and the Debtors had minimal formal or systematic processes for maintaining the accounting books and records. Over the course of the Chapter 11 Cases, the Debtors (under new management) imposed discipline into the accounting process and timeline.

The Debtors utilized legal, accounting, auditing, computer, and investigative skills to conduct a two phase forensic investigation, looking back over 2015, 2014, and 2013. The first phase of the investigation involved a comprehensive review of the available general ledgers from non-debtor Seaboard Property Management (and to a lesser extent account payable ledgers and bank statements) to determine the cash flows for the Debtors on an entity by entity basis. During this phase of the investigation, the Debtors determined (a) the scope and magnitude of cash flows

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[13] As more fully described in the Verified Complaints, the following legal action had already been taken against the Debtors:

a. On December 18, 2015, MCK 15, LLC and Samuel B. Fuller brought suit against Park Square, Seaboard Hotel and Messrs. DiMenna, Kelly and Merritt in Connecticut Superior Court.

b. On December 28, 2015, FCB brought suit against 300 Main and Messrs. DiMenna, Kelly and Merritt. Additionally FCB took certain self-help remedies, including serving writs of attachment, freezing certain of the Debtors' bank accounts.

c. On January 5, 2016, Cedar Hill sent a letter notifying certain Debtors that the $4M Promissory Note was now fully due and payable and if payment was not received in fully by January 15, 2016, Cedar Hill would take legal action.

from each entity's operations and financing activities and (b) where each entity disbursed funds, be it to pay for operational expenses, construction and capital improvements, pay distributions to equity holders, to pay down debt, or to pay off intercompany loans. The second phase of the investigation involved a detailed examination of the sources and uses of cash based on a forensic analysis of the companies' bank statements, copies of cancelled checks, deposit records, and to the extent there was missing information, from the general ledger or a similar type of internal record.

Prepetition, the Properties were not operated as they should have been, on a silo basis. However, since Beilinson Advisory Group's involvement, the Debtors' funds were used for property-level operating costs including security, utilities, insurance, repairs and other necessary operating costs of each Property on a silo-by-silo basis. Moreover, as outlined in the *Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing* [Docket No. 165], the Debtors implemented multiple safeguards to ensure that all parties in interest are able to trace the funds on a property-by-property basis.

A. Significant "First Day" Motions

Upon the commencement of a case under chapter 11 of the Bankruptcy Code, the Bankruptcy Code imposes an automatic stay on creditors and others in dealing with the debtor, and also imposes strict limitations on actions that may be taken by the debtor absent authorization by the bankruptcy court. For that reason, a debtor typically files a number of so-called "first day" motions, either on the actual petition date itself or within the first few business days thereafter, seeking bankruptcy court approval to continue to operate its business and to facilitate its bankruptcy reorganization.

To facilitate a smooth and efficient administration of the Chapter 11 Cases and minimize the impact to daily business operations, the Court entered certain procedural orders by which it (a) approved the joint administration of the Chapter 11 Cases [Docket Nos. 19, 204 & 533]; (b) authorized the appointment of Donlin, Recano & Company, Inc. ("Donlin") as claims and noticing agent [Docket No. 206]; and (c) prohibited utilities from altering, refusing or discontinuing service on an interim basis [Docket No. 323].

Recognizing that any interruption to the Debtors' business, even for a brief period of time, would negatively impact their operations, tenant relationships, revenue, and profits while seeking to facilitate the stabilization of their business and effectuate a smooth transition into operating as debtors in possession, the Debtors sought and obtained orders authorizing them to:

- Pay prepetition wages, salaries and other compensation, reimbursable employee expenses, and employee benefits and other obligations, as discussed in more detail below [Docket Nos. 171 & 202];

- Pay certain prepetition taxes and fees [Docket Nos. 172 & 203];

- Continue prepetition insurance programs and pay all obligations in respect of those programs [Docket Nos. 173 & 336]; and
- Maintain their existing cash management systems [Docket Nos. 175, 239, 338 & 456].

B. Retention of Professionals

The Debtors also sought and obtained orders authorizing the retention of certain professionals needed by the Debtors in connection with the Chapter 11 Cases, including the retention of: (i) Young Conaway, as restructuring counsel [Docket Nos. 45 & 133]; (ii) Beilinson Advisory Group, as restructuring advisors and to provide Marc Beilinson as Chief Restructuring Officer [Docket Nos. 46 & 244]; (iii) Anchin, as forensic accountants [Docket Nos. 44, 335. 916 & 1117]; (iv) Diserio Martin O'Connor & Castiglioni LLP, as special real estate counsel [Docket No. 722 & 794] and (v) Donlin, as administrative advisor [Docket No. 223 & 322].[14]

In addition, the Debtors filed a motion with the Court seeking authority to employ and compensate certain professionals utilized by the Debtors in the ordinary course of their business (*nunc pro tunc* to the Petition Date) [Docket No. 222], which was approved on February 29, 2016 [Docket No. 334].

C. Cash Collateral

Over the course of the first few months of the Chapter 11 Cases, the Debtors engaged in complex, sometimes contentious, and good-faith negotiations with the mortgage lenders for the consensual use of cash collateral. As a result of these negotiations, the Debtors first reached several interim agreements and ultimately reached final resolutions with the Debtors' prepetition mortgage lenders regarding the consensual use of cash collateral. *See* Docket Nos. 560, 554, 562, 563, 687, 684 & 1336. This allowed the Debtors to maintain operations and the value of their assets as they pursued the sale process.

D. Assumption/Rejection of Executory Contracts

Under the Bankruptcy Code, the Debtors have until confirmation of the Plan to assume or reject executory contracts.

On September 1, 2016, the Debtors filed the Debtors' First Omnibus Motion for Order, Pursuant to Sections 105(a) and 365(a) of the Bankruptcy Code, Authorizing the Rejection of Certain Executory Contracts [Docket No. 1123] (the "<u>First Omnibus Rejection Motion</u>"). On September 16, 2016, the Court entered an order authorizing the relief sought in the First Omnibus Rejection Motion [Docket No. 1161].

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[14] As noted above, the Court denied the Debtors' application to retain Dechert.

E. The Claims Process

On January 13, 2016, each Original Debtor filed its Schedules of Assets and Liabilities and its Statement of Financial Affairs. On April 4, 2016, each Additional Debtor filed its Schedules of Assets and Liabilities and its Statement of Financial Affairs. On April 15, 2016, 220 Elm Street II filed its Schedules of Assets and Liabilities and its Statement of Financial Affairs and each Original Debtor filed amended versions of its Schedules of Assets and Liabilities and its Statement of Financial Affairs.

On August 25, 2016, the Debtors filed a motion (the "Bar Date Motion") [Docket No. 1092] requesting that the Court establish deadlines for the filing of proofs of claim against the Debtors in the Chapter 11 Cases (the "Bar Dates"). The Court entered an order (the "Bar Date Order") [Docket No. 1137] approving the Bar Date Motion on September 14, 2016. Any person or entity (with certain exceptions, as further set forth in the Bar Date Motion) that fails to timely file a Proof of Claim by the applicable Bar Date will not be permitted to vote to accept or reject the Plan, or any other plan filed in the Chapter 11 Cases, or to receive any distribution in the Chapter 11 Cases on account of such claim.

The Plan provides that, unless a Claim is expressly described as an Allowed Claim pursuant to or under the Plan, or otherwise becomes an Allowed Claim, upon the Effective Date, the applicable Distribution Agent shall be deemed to have a reservation of any and all objections of the Estates to any and all Claims and motions or requests for the payment of Claims, whether administrative expense, priority, secured or unsecured, including any and all objections to the validity or amount of any and all Claims, Liens and security interests, whether under the Bankruptcy Code, other applicable law or contract.

The Plan further provides except as otherwise specifically provided in the Plan and the Investor Trust Agreement, after the Effective Date, the applicable Distribution Agent shall have the sole authority (a) to file, withdraw, or litigate to judgment objections to Claims or Equity Interests, (b) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, (c) to amend the Bankruptcy Schedules in accordance with the Bankruptcy Code, and (d) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

F. The Sale Process

During the Chapter 11 Cases, the Debtors successfully sold substantially all of the real estate in their real estate portfolio, with the exception of the still uncompleted Hotel Development Property, over the course of the summer of 2016. In furtherance of these efforts, the Debtors' professionals (1) gathered information to populate a data room, (2) negotiated non-disclosure agreements with 262 interested purchasers, (3) prepared, and provided interested purchasers with, a confidential information memorandum, (4) conducted over 75 tours of the Properties, (5) responded to countless due diligence requests from interested purchasers, (6) had numerous discussions with potential purchasers regarding the unique nuances of each of the Properties, (7) conducted two auctions, (8) negotiated multiple purchase and sale agreements

with several different purchasing entities, (9) contracted to sell or effectuate the transfer of all eight of the Properties offered for sale, (10) closed the sales of the Properties and transitioned the Properties to their respective purchasers, and (11) negotiated settlements to facilitate the closing of certain sales.

With respect to the Hotel Development Property, Debtor Seaboard LTS secured an agreement (the "Letter Agreement") [*see* Docket No. 1336, Exhibit B] with IDB to fund a process whereby Seaboard LTS agreed to reasonably cooperate with IDB's efforts to transfer the Hotel Development Property to a person or entity designated by IDB, or failing such efforts, to conduct an auction and sale process. IDB elected not to transfer the Hotel Development Property to a designee, and Seaboard LTS undertook a court-approved sale process. The Letter Agreement provides that after the Hotel Development Property is transferred, the Loan Documents (as defined in the Letter Agreement) will remain in full force and effect and Seaboard's obligations to IDB will be reduced to the extent of the value of the Hotel Development Property. After entry into the Letter Agreement, IDB sold its rights under the Seaboard LTS Mortgage Agreement to Annemid RI, which is deemed to be a qualifying bidder for the sale of the Hotel Development Property in accordance with the sale procedures approved by the Bankruptcy Court. Under the terms of the Letter Agreement and bidding procedures order for the Hotel Development Property, Annemid RI is deemed to have submitted a credit bid for the Hotel Development Property in the amount of $19,007,548.64, which shall remain subject to any higher bids submitted in accordance with the applicable bidding procedures.

G. The Work Plan

Following the completion of the sale process, which itself was contentious and difficult, the Debtors proposed a work plan (the "Work Plan") [Docket No. 1202] which set forth the steps the Debtors needed take to negotiate a consensual resolution of these Chapter 11 Cases. The Work Plan contemplated seven distinct steps, including: (1) re-engaging the forensic accounting process; (2) commencing claims review and reconciliation; (3) evaluating potential causes of action; (4) identifying and recording receivable balances; (5) formally deposing John DiMenna, Jr.; (6) identifying working group parties; and (7) holding one or more plan settlement conferences with parties in interest. The Debtors developed the Work Plan with the understanding that the litigation required to fully unwind the prepetition fraudulent conduct, potential claims against lenders, claims asserted against the various Debtors, intercompany claims, and potential distribution claw-back litigation with investors would be extremely complex, protracted, and costly, and that, accordingly, it would be in the best interests of all parties to reach a consensual chapter 11 plan.

In furtherance of their goal of developing a consensual chapter 11 plan, the Debtors and their professionals expedited an extensive review of potential intercompany claims and developed and prepared other critical information necessary for parties in interest to evaluate potential plan structures. The Debtors then convened a settlement conference on November 17, 2016 in New York which included participants from UCF I, CPR, Cedar Hill, and many investors either individually or through counsel and lasted more than six hours. As a result of the progress made at the settlement conference, the Debtors circulated additional information requested by the participants and a draft term sheet to outline the parameters of a consensual

chapter 11 plan. Another settlement conference was held on December 9, 2016. As a result of these settlement conferences and good faith negotiations by all parties in interest, the Debtors developed the Plan, which the Debtors submit provides the highest and best recovery for all creditors and parties in interest.

The Participant Investors, who participated in these settlement discussions and advocated on behalf of the investor community, are (i) James Cabrera, (ii) John Callagy, (iii) Robert Musumeci, (iv) Thomas O'Connor, and (v) Arrowhead Trust f/b/o Christopher O'Connor.

H. The Plan Settlement

The Plan is based upon, and depends on, a multi-pronged global settlement (the "Plan Settlement") that, in the Plan Debtors' view, is fair, equitable, and reasonable, and is in the best interests of all of the Plan Debtors' stakeholders. After extensive negotiations with the major stakeholders in the Plan Debtors, the Plan Debtors believe that the Plan Settlement results in meaningful distributions being made throughout the capital structure of the various Plan Debtors. Additionally, the Plan Settlement avoids the value erosion that would occur if the Plan Debtors were forced to litigate with, among others, the Settling Lenders, regarding the extent, validity, priority and amount of the Claims and Intercompany Claims against each Plan Debtor. Further, the Plan Settlement avoids the possibility that Holders of Claims and Equity Interests would be subject to litigation brought under chapter 5 of the Bankruptcy Code and applicable state law to recover, among other things, preferential transfers made in the 90-day or one-year periods prior to the Petition Dates or distributions made over even longer periods that could be deemed actual or constructively fraudulent transfers. Such litigation, if successfully brought, could render certain Holders of Claims and Equity Interests far worse off. Having been informed by the events and actions that have unfolded in the more than one year that the Chapter 11 Cases have been pending, the Plan Debtors believe the Plan Settlement provides the only structure by which a chapter 11 plan can be confirmed and meaningful distributions can be made to stakeholders, and, importantly, it depends on contributions and concessions from the largest stakeholders in these cases that resulted from good-faith, arm's-length negotiations. The key elements of the Plan Settlement are as follows:

1. Settlement of the Settling Lender Claims.

As noted above, DiMenna entered into, among other agreements, the Seaboard Hotel Member Mezzanine Loan Agreement and the PSW Member Mezzanine Loan Agreement with UCF I, the Seaboard LTS Member Mezzanine Loan Agreement with CPR, an agreement with IDB that gave rise to the PSW IDB Promissory Note (the "IDB-PSW Loan Agreement"), and an agreement with Cedar Hill that gave rise to the $4M Promissory Note (together with the Seaboard Hotel Member Mezzanine Loan Agreement, the PSW Member Mezzanine Loan Agreement, the Seaboard LTS Member Mezzanine Loan Agreement, and the IDB-PSW Loan Agreement, the "Settling Lender Agreements"). The Settling Lender Agreements appear to have been executed by DiMenna in contravention of, among other things, several of the first lien mortgage agreements and subscription agreements entered into by the Debtors and holders of Equity Interests in the Debtors. Further, DiMenna falsified the Debtors' financial reports as they related to the existence of the Settling Lender Agreements. In the case of at least Cedar Hill,

however, public filings of UCC statements were made on the assets of PropCo Debtors Century Plaza, Seaboard Residential, One Atlantic, 88 Hamilton, Tag Forest, Seaboard Hotel, and Park Square West.

In order to avoid the exercise of remedies by the counterparties to the Settling Lender Agreements, which threatened to expose his scheme, DiMenna executed several extension agreements that contemplated the grant of additional security to certain of the Settling Lender s on account of the Settling Lender Claims. UCF I and CPR assert that, pursuant to certain Security Agreements executed by the PropCo Debtors dated on or about October 30, 2015, UCF I and CPR hold secured claims against the assets of the PropCo Debtors and the proceeds of the sales of the Properties. While the Plan Debtors believe that certain defenses exist to the enforceability and asserted priorities of the claims asserted on account of such alleged Security Agreements, litigation regarding such matters would be protracted and costly, and the result is far from certain. If the Settling Lenders were successful in asserting the Settling Lender Claims, the full amount of the proceeds of the sales of the Properties would be available to them to satisfy such claims, leaving no recovery for any other stakeholders in the Chapter 11 Cases and potentially leaving those stakeholders as targets of claw-back litigation on account of payments or distributions received prior to the Petition Dates, including actions to avoid preferential transfers and fraudulent conveyances.

Accordingly, the Plan Debtors propose through the Plan a full and final settlement of the Settling Lender Claims by establishing a Settling Lender Escrow Account, which will be the sole source of recovery available to Holders of the Settling Lender Claims. After two in-person settlement conferences conducted by the Debtors with the Settling Lenders and Participant Investors, as well as numerous follow-on sets of calls and written correspondence, the Settling Lenders agreed that the amount to be funded into the Settling Lender Escrow Account would be limited to $9.4 million, and an additional $1,000,000 would be directed to fund the Investor Trust, with the remaining amount of the Plan Debtors' funds used to wind-down their Estates and make distributions to holders of Allowed Claims (other than Investor Claims and Subordinated Claims).

2. Settlement of Causes of Action and Releases among the Settling Lenders and the Holders of Investor Claims and Equity Interests.

As a condition to their consent to the Plan Settlement, the Settling Lenders require that their settlement include a release from all Claims and Causes of Action that could be raised by the Plan Debtors as well as the Holders of Investor Claims and Equity Interests. Accordingly, the Settling Lenders, Debtors, and Participant Investors negotiated in good faith and at arms' length regarding consideration to be provided to such parties in exchange for the grant of the Third Party Releases, which, among other things, benefit the Settling Lenders as required as a condition of the settlement with the Settling Lenders. The result of these negotiations was an agreement to establish an Investor Trust, funded by $1,000,000 in Cash and being vested with the Investor Trust Causes of Action, which includes the assignment of all the rights being prosecuted by UCF I against all defendants in the action styled as *UCF I Trust 1 et al. v. John J. DiMenna, Jr. et al.*, Civ. No. 16-156 (VAB) (D. Conn.). The Holders of Investor Claims and Equity Interests in all Plan Debtors also receive releases of any potential Causes of Action that

could be brought against them to claw back distribution payments made to them prior to the Petition Dates that could arguably be avoidable as fraudulent conveyances or otherwise unauthorized distributions.

3. Settlement of Disputes regarding Professional Fee Claims.

Throughout these Chapter 11 Cases, certain parties, including the Court, have raised questions as to how Professional Fee Claims should be allocated among the Plan Debtors' various estates. UCF I and CPR, for example, have requested throughout the cases that the Court impose a strict allocation methodology requiring the Debtors' Professionals to divide all professional fee amounts among each of the Plan Debtors' estates.

The Debtors have opposed the imposition of such a strict allocation methodology at various stages of the case for a variety of reasons. Primarily, much of the work completed in these cases was necessary to undertake a sale of any one of the Properties and, therefore, was a necessary expense, and actual benefit, to each of the Plan Debtors (other than Tag Forest), which either directly or indirectly had an ownership interest in each of the Properties. Much of the work completed by the Debtors' Professionals was necessary for any of the Debtors to operate in bankruptcy and was necessary to sell any of the Debtors' properties. The vast majority of the work done was to maintain the value of the properties for the benefit of all creditors and stakeholders, including, for example, stabilizing the Debtors' assets and finances, investigating the identities of their creditors and equity holders, reviewing contracts and leases, maintaining the Properties, and the like, all of which would have been necessary to insure effective management of the Properties, facilitate the population of the data room, for the Debtors' Professionals to familiarize themselves with the Debtors' assets, and ultimately, to facilitate the marketing, auction, and sale of any of the Properties. Even for those few HoldCo Debtors that do not have a companion PropCo Debtor, it is possible that those entities have assets in the form of funds to be recovered through fraudulent transfer actions and/or claims against other Debtors and/or non-Debtors. Because the vast majority of the time and effort spent to date in these cases by the Professionals has been time and effort that advanced all of the Debtors' cases, each of the Debtors is responsible for satisfaction of those obligations. Simply because there are multiple debtors that benefited from the services provided, therefore providing an economy of scale, does not mean that each Plan Debtor should not be responsible for bearing the costs incurred for services that it actually received and from which it actually benefited.

Additionally, to the extent that discrete tasks were performed on behalf of specific PropCo Debtors, the Debtors believe that the funds approved in the various cash collateral orders satisfied those amounts. Certainly the negotiations with certain Mortgage Lenders or with creditors of specific Debtors were not undertaken for all Debtors' benefit; however, all of the PropCo Debtors' Mortgage Lenders consented to the use of their cash collateral up to certain amounts to satisfy Professional Fee Claims. The Debtors believe that these balances are more than sufficient to satisfy those Professional Fee Claims that strictly relate to certain of the PropCo Debtors.

In order to resolve the potentially time-consuming and costly disputes regarding allocation of Professional Fee Claims, the Professionals have agreed to reduce their recoveries

with respect to currently unpaid fees and fees incurred in the future so that the overall amount of payments they receive for post-petition services do not exceed the applicable Professional Fee Maximum Amount. The Professional Fee Maximum Amount reflects a reduction of at least 15% of the full amount that would be owed to them on account of Professional Fee Claims. The Professionals believe that between the reductions contemplated by the Professional Fee Maximum Account and the amounts set aside from the Cash Collateral Orders to satisfy Professional Fee Claims that strictly relate to certain PropCo Debtors, there is no Plan Debtor that will bear more of the costs of the Professional Fee Claims than could be strictly to apportioned to it under any fair professional fee allocation process.

4. Settlement of Substantial Contribution Claims.

The Plan Settlement also contemplates the resolution of Substantial Contribution Claims that have been filed and informally asserted against the Debtors. On October 28, OnBoard Investors, LLC ("OnBoard") filed its *Application Pursuant To 11 U.S.C. §§ 503(b)(3) And 503(b)(4) For Allowance Of Fees And Expenses Incurred In Making A Substantial Contribution As An Administrative Expense Claim* [Docket No. 1262] seeking $350,000 in compensation and $3,893.42 in expenses against the Debtors in connection with its participation in the Debtors' cases. Further, Ares Management LLC ("Ares," and together with OnBoard, the "Applicants") filed Proof of Claim numbers 409-418 asserting an administrative expense claim in the amount of $152,058.98 against the Debtors in connection with their participation in the Debtors' cases.

The Debtors formally filed a limited objection to the OnBoard application, as did UCF I and CPR, and informally raised similar concerns with respect to the Ares claims. The Debtors agree that the Applicants provided a benefit to their estates that transcended the Applicants' personal interests in these chapter 11 cases, particularly those efforts undertaken by OnBoard to organize a committee of investors and the efforts of both Applicants to propose alternative DIP loans at the Debtors' request. While the Debtors' view is that the Applicants should be entitled to compensation for some portion of these efforts, there were certain elements of the Substantial Contribution Claims that relate to fees incurred pursuing parochial interests of the Applicants that should not be compensable. As a resolution and compromise of these matters, the Plan Debtors propose the resolution of the Applicants' substantial contribution claims in the manner set forth in Section 7.1(c) of the Plan.

Additionally, the Plan proposes the establishment of a Participant Investor Expense Fund to compensate the Participant Investors for the costs incurred by their counsel in connection with the negotiation of the Plan. The Plan Debtors believe that establishment of such fund is fair and reasonable to compensate for actual and necessary costs incurred by the Participant Investors that inure to the benefit of all parties in interest, in that such Participant Investors' participation in the settlement discussions were critical to the success of the negotiations and to the Plan Debtors' ability to reach the Plan Settlement and propose the Plan.

The Plan Debtors believe that the resolutions provided for in the Plan, which constitute compromises of the Substantial Contribution Claims, represent fair resolutions of the potential disputes regarding such claims and are in the best interests of the estates.

5. Establishment of Distribution Escrow Account to Satisfy Other Claims of Plan Debtors; Settlement of Claims among Plan Debtors Through Establishment of Distribution Escrow Sub-Accounts.

The balance of remaining Cash in the Plan Debtors' estates will be used to satisfy Claims in accordance with the Payment Waterfall. This Cash balance represents the balance of the Cash available to the estates after (i) settlement of the Settling Lender Claims (some of which are asserted to be secured claims against the PropCo Debtors) by funding the Settling Lender Escrow Account, (ii) the Settlement of Causes of Action and Releases among the Settling Lenders and the Holders of Investor Claims and Equity Interests by funding the Investor Trust, (iii) settlement of the Professional Fee Claims (which are to be capped at the Professional Fee Maximum Amount), and (iv) settlement of the Substantial Contribution Claims and funding the Participant Investor Expense Fund. All of these remaining funds will be placed in the Distribution Escrow Account. These funds are estimated to be approximately $__________, subject to increase to the extent that actual Professional Fee Claims are less than the Professional Fee Maximum Amount.

The Plan Settlement provides that the Distribution Escrow Account is divided among the various Plan Debtors as a compromise and settlement of intercompany debts that may be owed by and between various Plan Debtors. As noted above, much, if not all, of the funds that former management transferred between entities was filtered through or, at a minimum, recorded in the accounting records as having filtered through, non-Debtor Seaboard Consolidated. To take one entity as an example, the balance sheet of Park Square West Associates, LLC, the entity that owned the Park Square West property, shows a payable to Seaboard Consolidated in the amount of approximately $14 million. Thus, the Debtors' books and records would suggest that the proceeds from the sale of the Park Square West property should go to satisfy claims (a) owed to parties that transferred funds directly to Park Square West Associates, LLC despite those transaction having been recorded as filtering through Seaboard Consolidated, or (b) owed to Seaboard Consolidated (against which the various entities shown to be net lenders into Seaboard Consolidated would have the ability to make claims). Anchin found, as one would expect, that the Debtors' prepetition books and records do not accurately reflect the flow of funds. While the Debtors do not have confidence that the prepetition books and records can be relied upon as a basis to allow claims among the various Plan Debtors, it does seem clear that many of the Debtors are either net intercompany borrowers or lenders. Thus, there is a question as to what claims, if any, various Plan Debtors might have against other Plan Debtors holding proceeds of Property sales; and then recursively, what Plan Debtors might have claims against other Plan Debtors that can be satisfied from those initial intercompany claim distributions, and so on.

To resolve this complicated, costly, and potentially intractable claim dispute, the Plan Settlement calls for division of the Distribution Escrow Account into Distribution Escrow Sub-Accounts for each PropCo Debtor and each HoldCo Debtor. Holders of Claims at each of the Plan Debtors can look to their entity's Distribution Escrow Sub-Account for satisfaction of their Claims pursuant to the Payment Waterfall. Based on the Debtors' review of the information available to it and the preliminary analysis from Anchin, the Debtors believe that the allocation of the Distribution Escrow Account into the Distribution Escrow Sub-Accounts of the applicable Plan Debtors is fair and reasonable given the potential intercompany claims that could exist as a result of the use of the Seaboard Consolidated scheme prepetition.

6. Settlement of Dechert Claims.

The largest General Unsecured Claims filed by parties that are not Holders of Investor Claims are the Dechert Claims. The Dechert Claims assert amounts owed by all of the Propco Debtors for services provided to them during the period from inception of Dechert's representation of the Propco Debtors until the applicable Petition Dates for the Propco Debtors, including negotiations with the Propco Debtors' various first-lien mortgage holders, assistance to the Chief Restructuring Officer in connection with investigation of the Propco Debtors' operations and business practices under DiMenna, and preparation for the filing of the Chapter 11 Cases of the Propco Debtors.

The Court denied the Debtors' application to retain Dechert as their counsel during these Chapter 11 Cases; however, Dechert asserts that the fees asserted in the Dechert Claims relate entirely to services rendered to the PropCo Debtors prior to the PropCo Debtors' Petition Dates, and therefore Dechert's rights to payment on account of the Dechert Claims are not impacted by the Court's denial of their retention for purposes of representation of the PropCo Debtors during the Chapter 11 Cases. After numerous discussions with Dechert, the Debtors believe that the settlement of the Dechert Claims in the manner set forth in Section 7.1(b) of the Plan and Plan Settlement is fair, reasonable, and in the best interest of the Debtors and their estates, as it eliminates potential litigation costs surrounding these large non-investor, non-Insider General Unsecured Claims and significantly reduces and caps the amounts, both overall as to Dechert and based on the respective share of each PropCo Debtor, that might otherwise have been payable to Dechert as a holder of Claims against all of the PropCo Debtors, providing more certain recoveries to holders of other General Unsecured Claims in the Payment Waterfall.

V. THE PLAN

A. General Overview of the Plan

The Plan represents a good faith compromise of certain claims and controversies pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019. Under Bankruptcy Rule 9019, a bankruptcy court can approve a compromise or settlement if it is in the best interests of the debtor's estate. *See Law Debenture Trust Co. of New York v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.)*, 339 B.R. 91, 95–96 (D. Del. 2006) ("Pursuant to Bankruptcy Rule 9019, the Bankruptcy Court must determine whether a proposed settlement is in the best interest of the debtor's estate before such a settlement is approved."). In evaluating a settlement, the bankruptcy court must exercise its discretion and make an independent determination that the settlement is fair and reasonable. *See In re Marvel Entm't Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) ("This court has described the ultimate inquiry to be whether 'the compromise is fair, reasonable, and in the interest of the estate.'" (quoting *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)). In addition, a court must: "'assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal' in light of four factors: (1) the probability of success in the litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interests of the creditors. [collectively, the '*Martin* Factors')]" *In re Kaiser Aluminum Corp.*, 339 B.R. at 96 (*quoting In re Martin*, 91 F.3d

389, 392 (3d Cir. 1996)). As demonstrated throughout the Disclosure Statement and the Plan, and as may be supplemented through the evidence adduced in connection with Confirmation, the Plan and Plan Settlement are fair and reasonable to all stakeholders and satisfy the Martin Factors.

As discussed above and in more detail below, the principal features of the Plan are: (i) the settlement of the Settling Lender Claims, including the establishment of the Settling Lender Escrow Account; (ii) the settlement of Causes of Action and Plan Releases among the Settling Lenders and the Holders of Investor Claims and Equity Interests, including the establishment of the Investor Trust; (ii) the settlement of Professional Fees Claims; (iii) the settlement of the Substantial Contribution Claims and the establishment of the Participant Investor Expense Fund; (iv) the establishment of the Distribution Escrow Account, which will be sub-divided into the Distribution Escrow Sub Accounts, include the balance of the remaining Cash in the Plan Debtors' estates, and be used to satisfy the remaining Claims against the Plan Debtors in accordance with the Payment Waterfall; (v) the settlement of the Dechert Claims; and (vi) the Plan Debtor Release in favor of the Released Parties in exchange for the compromises of the Released Parties effected through the Plan's treatment of their Claims and Equity Interests.

Pursuant to the Plan, the Wind-Down Administrator will be responsible for, among other things, administering the Plan, winding up the Plan Debtors' affairs, resolving any Claim (other than Investor Claims) filed against a Plan Debtor that is not Allowed as of the Effective Date, and administering Distributions to Holders of Allowed Claims (other than Investor Claims and Subordinated Claims) from the Distribution Escrow Account in accordance with the Plan. Immediately following the Effective Date of the Plan, the Wind-Down Administrator shall be authorized to take, in his or her sole and absolute discretion, all actions reasonably necessary to dissolve or cancel the limited liability company existence of the Plan Debtors under applicable laws.

In addition, upon the Effective Date, the Chapter 11 Cases for each Plan Debtor, except for Seaboard Hotel, shall be deemed closed, and the Wind-Down Administrator shall submit an order to the Bankruptcy Court under certification of counsel closing each such Chapter 11 Case, and all matters related to the Chapter 11 Cases of the Plan Debtors shall continue to be administered and addressed in the Chapter 11 Case of Seaboard Hotel. After all Investor Causes of Action and Disputed Claims and Equity Interests have been resolved, the U.S. Trustee Fees have been paid, all of the funds in the Investor Trust have been distributed in accordance with the Plan, or at such earlier time as the Wind-Down Administrator deems appropriate, the Wind-Down Administrator shall seek authority from the Bankruptcy Court to close the Chapter 11 Case for Seaboard Hotel, in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

B. Classification and Treatment of Claims and Equity Interests

1. Classification Generally

In general, the Bankruptcy Code only permits distributions to be made, under a debtor's chapter 11 plan, on account of "allowed" expenses relating to the administration of the debtor's

bankruptcy estate, as well as "allowed" prepetition claims against the debtor and "allowed" prepetition equity interests in the debtor. "Allowance" simply means that the debtor has agreed (or, in the event of a dispute, that the Bankruptcy Court has determined) the particular administrative expense, claim or equity interest, including the amount thereof, in fact is a valid obligation of (or Equity Interest in) that debtor. Bankruptcy Code section 502(a) provides that a timely filed administrative expense, claim or equity Interest is "allowed" automatically unless the debtor (or another party in interest) objects to its allowance. Bankruptcy Code section 502(b), however, specifies certain types of claims (including, among other things, claims for unmatured interest on unsecured or undersecured obligations, and nonresidential real property lease and employment contract rejection damage claims above specified thresholds) that cannot be "allowed" in the bankruptcy case even where a valid proof of claim has been timely filed in the debtor's bankruptcy case.

The Bankruptcy Code requires that, for purposes of treatment and voting, and subject to certain exceptions, a chapter 11 reorganization plan must divide the different "allowed" claims against, and equity interest in, the debtor into separate "classes" based upon the nature of such claims and equity interests. Generally, claims of a substantially similar legal nature would be classified together. The same is true for equity interests having a substantially similar legal nature. This classification process focuses on the legal nature of the particular claims and equity interests, rather than on the holders of those claims and equity interests, making it common for holders of multiple claims and/or equity interests to find themselves as members of multiple classes for purposes of treatment and voting with respect to a debtor's chapter 11 reorganization plan.

The Bankruptcy Code further requires, in this classification process, that classes of claims and equity interests must be designated either as "impaired" (if altered by the reorganization plan in some way) or "unimpaired" (if not). The Bankruptcy Code then provides the holders of impaired claims and impaired equity interests with certain additional rights (such as the right to vote to accept or reject the plan), and the right to receive not less than the value the holder would have received were the debtor instead to liquidate under chapter 7 of the Bankruptcy Code), with certain limited exceptions. The Bankruptcy Code establishes the criteria for determining whether or not a class of claims or equity interests is "impaired" or "unimpaired" for purposes of treatment and voting under the plan.

The classification, treatment, question of impairment, and entitlement to vote of the Allowed Claims against the Plan Debtors and Allowed Equity Interests in the Plan Debtors, were summarized briefly in Article I of this Disclosure Statement, and are described in greater detail below. As provided in the Plan, a Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

2. Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Claims, and Priority Tax Claims have not been classified and are excluded from the Classes of Claims set forth in Article V of the Plan. Article IV of the Plan governs the treatment and payment of all such unclassified Claims.

3. Classified Claims

The Plan divides the Claims against and Equity Interests in the Plan Debtors into ten (10) separate Classes and identifies which Classes are entitled to vote on the Plan. All of the potential Classes for the Plan Debtors are set forth therein.

The following table (a) designates the Classes of Claims against, and Equity Interests in, the Plan Debtors, (b) specifies the Classes of Claims and Equity Interests that are Impaired by the Plan and are either (i) deemed to reject the Plan, (ii) are entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, or (iii) have consensually agreed to accept the Plan under the Plan Settlement, and (c) specifies the Classes of Claims and Equity Interests that are Unimpaired by the Plan and therefore are conclusively presumed to accept the Plan in accordance with section 1126 of the Bankruptcy Code. Each class is a separate Class for each applicable Plan Debtor.

Class	Description	Impairment	Entitled to Vote
1	Other Secured Claims	Unimpaired	No (conclusively presumed to accept)
2	Other Priority Claims	Unimpaired	No (conclusively presumed to accept)
3	Mortgage Claims	Impaired	Yes
4	Settling Lender Claims	Impaired	Yes
5	General Unsecured Claims	Impaired	Yes
6	Investor Claims	Impaired	Yes
7	Equity Interests	Impaired	Yes
8	Intercompany Claims	Impaired	No (deemed to accept pursuant to the Plan Settlement)
9	Intercompany Interest	Impaired	No (deemed to accept pursuant to the Plan Settlement)
10	Subordinated Claims and Subordinated Interests	Impaired	No (deemed to reject the Plan)

Class 1 – Other Secured Claims

i. Classification: Class 1 consists of Other Secured Claims against the applicable Plan Debtor.

ii. Treatment: Subject to the Payment Waterfall, each Holder of an Allowed Other Secured Claim shall receive, in full satisfaction thereof, a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Priority Tax Claims and Other Secured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

iii. Voting: Class 1 is Unimpaired and Holders of Other Secured Claims are conclusively presumed to have accepted the Plan.

Class 2 – Other Priority Claims

i. Classification: Class 2 consists of Other Priority Claims against the applicable Plan Debtor.

ii. Treatment: Subject to the Payment Waterfall, each Holder of an Allowed Other Priority Claim shall receive, in full satisfaction thereof, a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Allowed Other Priority Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

iii. Voting: Class 2 is Unimpaired and Holders of Other Priority Claims are conclusively presumed to have accepted the Plan.

Class 3 – Mortgage Claims

i. Classification: Class 3 consists of Mortgage Claims against the applicable Plan Debtor.

ii. Treatment:

1) If Class 3 accepts the Plan, each Holder of a Mortgage Claim shall receive, in full satisfaction thereof, treatment as a Released Party under the Plan.

2) If Class 3 rejects the Plan, each Holder of a Mortgage Claim shall receive nothing on account of its Claim.

iii. Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the acceptance by Class 3 at each Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

iv. Voting: Class 3 is Impaired and Holders of Mortgage Claims are entitled to vote to accept or reject the Plan.

Class 4 – Settling Lender Claims

i. Classification: Class 4 consists of Settling Lender Claims against the applicable Plan Debtor.

ii. Treatment: Each Holder of a Settling Lender Claim shall receive, in full satisfaction thereof, (i) treatment as a Released Party under the Plan, and (ii) its interest in the Settling Lender Escrow Account, as determined in accordance with the Settling Lender Escrow Account Agreement.

iii. Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the acceptance by Class 4 at each applicable Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

iv. Voting: Class 4 is Impaired and Holders of Settling Lender Claims are entitled to vote to accept or reject the Plan.

Class 5 – General Unsecured Claims

i. Classification: Class 5 consists of General Unsecured Claims against the applicable Plan Debtor.

ii. Treatment: Each Holder of a General Unsecured Claim shall receive, in full satisfaction thereof, its *pro rata* share of the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim it allowed, that remains after all payments are made to senior Classes of Claims (excluding Class 4, Settling Lender Claims) against such Plan Debtor in accordance with the Payment Waterfall, until such Holder has received payment in full of its Allowed Claim. Payment to Holders of Claims in Class 5 will be made: (i) at such time as all Allowed Other General Unsecured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

iii. Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the acceptance by Class 5 at each Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

iv. Voting: Class 5 is Impaired and Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

Class 6 – Investor Claims

i. Classification: Class 6 consists of Investor Claims against the applicable Plan Debtor.

ii. Treatment:

1) If Class 6 accepts the Plan, each Holder of an Investor Claim in Class 6 shall receive, in full satisfaction and discharge thereof, treatment as a Released Party under the Plan. Further, each Holder of an Investor Claim in Class 6 against one of the Investor Trust Debtors shall receive a beneficial interest in the Investor Trust, as determined in accordance with the Investor Trust Agreement.

2) If Class 6 rejects the Plan, each Holder of an Investor Claim in Class 6 shall receive nothing on account of its Claim.

Notwithstanding the foregoing, regardless of whether Class 6 accepts or rejects the Plan, if there are funds remaining in the Distribution Escrow Sub-Account of a Plan Debtor after each Allowed Claim in Classes 1 through 5 (to the extent applicable) for that Plan Debtor have been paid in full, then the Holders of Investor Claims against that Plan Debtor shall share *pro rata* in such remaining amount up to the full Allowed amounts of such Investor Claims.

iii. Voting: Class 6 is Impaired and Holders of Investor Claims are entitled to vote to accept or reject the Plan.

Class 7 – Equity Interests

i. Classification: Class 7 consists of Equity Interests in the applicable Plan Debtor, other than (i) Intercompany Interests, and (ii) Equity Interests that are subordinated by the Bankruptcy Court which shall be placed in Class 10.

ii. Treatment:

1) If Class 7 accepts the Plan, each Holder of an Equity Interest in Class 7 shall receive, in full satisfaction and discharge thereof, treatment as a Released Party under the Plan. Further, each Holder of an Equity Interest in Class 7 against one of the Investor Trust Debtors shall receive a beneficial interest in the Investor Trust, as determined in accordance with the Investor Trust Agreement.

2) If Class 7 rejects the Plan, each Holder of an Equity Interest in Class 7 shall receive nothing on account of its Equity Interest.

Notwithstanding the foregoing, regardless of whether Class 7 accepts or reject the Plan, if there are funds remaining in the Distribution Escrow Sub-Account of a Plan Debtor after each

Allowed Claim in Classes 1 through 6 (to the extent applicable) at that Plan Debtor have been paid in full, then the Holders of Equity Interests against that Plan Debtor shall share *pro rata* in such remaining amounts.

iii. Voting: Class 7 is Impaired and Holders of Equity Interests are entitled to vote to accept or reject the Plan.

Class 8 – Intercompany Claims

i. Classification: Class 8 consists of Intercompany Claims by other Plan Debtors against the applicable Plan Debtor.

ii. Treatment: All Intercompany Claims shall be deemed compromised and satisfied as a result of the intercompany settlements and allocations of Cash among the Plan Debtors effectuated under the Plan and, after the Effective Date, all Intercompany Claims shall be deemed compromised and satisfied and there shall be no Distributions on account of Intercompany Claims except as expressly provided for in the Plan.

iii. Voting: Class 8 is deemed to accept the Plan pursuant to the Plan Settlement.

Class 9 – Intercompany Interests

i. Classification: Class 9 consists of Intercompany Interests.

ii. Treatment: All Intercompany Interests shall be deemed compromised and cancelled as a result of the intercompany settlements and allocations of Cash among the Plan Debtors effectuated under the Plan, and after the Effective Date, all Intercompany Interests shall be deemed cancelled and there shall be no Distributions on account of Intercompany Interests except as expressly provided for in the Plan; *provided, however*, that if there are funds remaining in the Distribution Escrow Sub-Account of a Plan Debtor after each Allowed Claim in Classes 1 through 7 (to the extent applicable) for that Plan Debtor have been paid in full, then the remaining amount shall be transferred to the Distribution Escrow Sub-Account for the Plan Debtor(s) holding the Intercompany Interests in the Plan Debtor with such excess funds.

iii. Voting: Class 9 is deemed to accept the Plan pursuant to the Plan Settlement.

Class 10 – Subordinated Claims and Subordinated Interests

i. Classification: Class 10 consists of Subordinated Claims against, and Subordinated Interests in, the applicable Plan Debtor.

ii. Treatment: Each Holder of a Subordinated Claim or Subordinated Interest in Class 10 shall receive nothing on account of its Subordinated Claim or Subordinated Interest.

iii. Voting: Class 10 will not receive or retain any property on account of such Subordinated Claims and Subordinated Interests and is deemed to reject the Plan.

4. Manner of Classifying Claims and Interests

(a) Classification for Voting Purposes

Section 6.2(a) of the Plan provides that, except as provided for to the contrary in the Disclosure Statement Order or another order of the Bankruptcy Court entered prior to Confirmation, (i) the classification set forth in Section 6.2(c) of the Plan shall apply to each Claim or Interest identified and addressed in Section 6.2(c) of the Plan for purposes of voting to accept or reject the Plan, and (ii) each Claim or Interest identified and addressed in Section 6.2(c) of the Plan either (x) to which no objection to the allowance thereof, motion to estimate, or action to equitably subordinate or otherwise limit recovery with respect thereto, has been interposed and remains unresolved or (y) for which the Holder has obtained an order of the Bankruptcy Court temporarily allowing such Claim or Interest for voting purposes under Bankruptcy Rule 3018(a), shall be entitled to vote to accept or reject the Plan.

(b) Classification for All Other Purposes

Section 6.2(b) of the Plan provides that the Plan shall serve as a motion by each Plan Debtor to classify the Claims and Interests identified and addressed in Section 6.2(c) of the Plan in the manner set forth therein. Confirmation of the Plan, but expressly subject to the occurrence of the Effective Date, shall effect the classifications set forth in Section 6.2(c) of the Plan for each Claim and Equity Interest identified and addressed therein on a final basis, subject only to the following: (i) the Plan Debtors or Wind-Down Administrator shall have the right to object to further reclassify any Administrative Claim, Priority Tax Claim, Other Priority Claim or Other Secured Claim to General Unsecured Claim status or to have a General Unsecured Claim reassigned to another Debtor; and (ii) the Plan Debtors, Investor Trustee, or the Holder of an Investor Claim may file a motion or objection that seeks to re-assign such Holder's Investor Claim to another Debtor, to have such Holder's Investor Claim reclassified to an Equity Interest, or to do both of the foregoing.

For the avoidance of doubt, nothing in Section 6.2 of the Plan (but subject to any other controlling provisions of the Plan) precludes any party from filing a motion or objection that seeks to modify the amount of any Claim identified and addressed in Section 6.2(c) of the Plan (including to reduce the claim to zero) or to subordinate any Claim or Equity Interest.

(c) Proposed Classifications

The Plan Debtors have proposed the following classifications: (i) each Proof of Claim identified in Schedule A to the Disclosure Statement as a Mortgage Claim shall be placed in the respective Class 3 (Mortgage Claims) of the Plan Debtor against which it is currently pending; (ii) any Proof of Claim asserted by a Settling Lender shall be placed into the respective Class 4 (Settling Lender Claims) of the Plan Debtor against which it is currently pending; (iii) each Proof of Claim identified in Schedule B to the Disclosure Statement as an Investor Claim shall be

placed in the respective Class 6 (Investor Claims) of the Plan Debtor against which it is currently pending; (iv) each remaining Proof of Claim that is not addressed in the foregoing clauses (i) through (iii) that asserts an unsecured, non-priority, non-administrative expense amount shall be placed in the respective Class 5 (General Unsecured Claims) of the Plan Debtor against which it is currently pending; and (v) each Holder identified in Schedule C to the Disclosure Statement as the Holder of an Equity Interest shall be placed in Class 7 (Equity Interests) for the respective Plan Debtor in which it has been identified as holding an Equity Interest.

5. Other Issues Related to Classification and Voting

(a) Treatment of Vacant Classes

Any Class of Claims or Equity Interests that does not contain a Holder of an Allowed Claim or Allowed Equity Interest shall be deemed deleted from the Plan for all purposes; *provided*, *however*, that Section 6.3 of the Plan shall not serve to restrict or preclude the ability of the Plan Debtors or applicable Distribution Agent from seeking to subordinate any Claim or Equity Interest and placing such Claim or Equity Interest into Class 10 so long as such action is timely brought, notwithstanding the fact Class 10 may have been vacant at any point in time prior to the commencement of such an action.

Additionally, if as of the Voting Deadline, any Class of Claims or Equity Interests does not contain a Holder of a Claim or Equity Interest that has been Allowed or temporarily allowed for purposes of voting on the Plan, such Class shall be deemed deleted from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

(b) Deemed Acceptance of Classes that do not Vote

If there are Classes that contain Holders of Claims or Interests, but no Holder timely and properly votes to accept or reject the Plan, the Plan will be deemed accepted by such Class.

(c) Nonconsensual Confirmation

If any Class of Claims or Interests entitled to vote shall not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, the Plan Debtors reserve the right to amend the Plan in accordance with Section 15.5 of the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to Impaired Classes of Claims that are deemed to reject the Plan, the Plan Debtors shall request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

C. Distributions Under the Plan

Article VIII of the Plan sets forth the procedures for making Distributions under the Plan, which include, among other things, provisions for the timing and manner of delivering Distributions of Claims, the treatment of undeliverable and unclaimed Distributions, the treatment of the transfer of Claims, the time bar to Cash payments by Check, the treatment of

interest on Claims, the rights of the Plan Debtors to effectuate setoffs and recoupment against distribution, the allocation of Plan Distributions between principal and Interest, and certain tax and withholding information.

D. Procedures for Resolving Contingent, Unliquidated, and Disputed Claims Under the Plan

1. Claims Administration Responsibilities.

The Plan provides that, except as otherwise specifically provided in the Plan and the Investor Trust Agreement, after the Effective Date, the applicable Distribution Agent shall have the sole authority (a) to file, withdraw, or litigate to judgment objections to Claims or Equity Interests, (b) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, (c) to amend the Bankruptcy Schedules in accordance with the Bankruptcy Code, and (d) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

The applicable Distribution Agents are: (a) with respect to the Professional Claims Escrow Account, the Distribution Escrow Account, and all Claims, other than Investor Claims and Settling Lender Claims, the Wind-Down Administrator; and (b) with respect to the Investor Trust, Investor Trust Assets, Investor Claims and Equity Interests, the Investor Trustee.

2. Claims Objections.

Pursuant to Section 9.2 of the Plan, unless a Claim is expressly described as an Allowed Claim pursuant to or under the Plan, or otherwise becomes an Allowed Claim, upon the Effective Date, the applicable Distribution Agent shall be deemed to have a reservation of any and all objections of the Estates to any and all Claims and motions or requests for the payment of Claims, whether administrative expense, priority, secured or unsecured, including any and all objections to the validity or amount of any and all Claims, Liens and security interests, whether under the Bankruptcy Code, other applicable law or contract. The Plan Debtors', the Investor Trustee's, or the Wind-Down Administrator's failure to object to any Claim or Equity Interest in the Chapter 11 Cases that shall be without prejudice to the Investor Trustee's or the Wind-Down Administrator's rights to contest or otherwise defend against such Claim or Equity Interest in the Bankruptcy Court when and if such Claim or Equity Interest is sought to be enforced by the Holder thereof. For the avoidance of doubt, nothing included in Section 9.1 of the Plan limits the standing or rights that any party may have to object to Professional Claims.

Unless otherwise provided in the Plan or by order of the Bankruptcy Court, any objections to Claims (including Administrative Claims and Priority Tax Claims but excluding Professional Claims) or Equity Interests by the applicable Distribution Agent shall be Filed not later than 180 days after the later of (i) the Effective Date or (ii) the date such Claim is Filed (the "Claims Objection Deadline"), *provided* that the applicable Distribution Agent may request (and the Bankruptcy Court may grant) an extension of such deadline by Filing a motion with the Bankruptcy Court, based upon a reasonable exercise of the applicable Distribution Agent's

business judgment; *provided further* that with respect to Claims that, as of the Claims Objection Deadline, are subject to a pending objection (an "Initial Objection") wherein the objection to such Claim or Equity Interest is ultimately denied, the Claims Objection Deadline shall be extended to the later of sixty (60) calendar days from the date on which (a) the Bankruptcy Court enters an order denying such Initial Objection or (b) any appellate court enters a Final Order reversing or vacating an order of the Bankruptcy Court granting such Initial Objection. A motion seeking to extend the deadline to object to any Claim shall not be deemed an amendment to the Plan.

3. Estimation of Claims.

The Plan provides that the applicable Distribution Agent may (but is not required to) at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Plan Debtors or the applicable Distribution Agent previously objected to such Claim or Equity Interest or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim or Equity Interest at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent Claim, unliquidated Claim, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the applicable Distribution Agent may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

4. Adjustment to Claims or Equity Interests Without Objection.

The Plan provides that any Claim or Equity Interest that has been paid, satisfied, amended, settled or superseded may be adjusted or expunged on the Claims Register by the Claims Agent at the direction of the applicable Distribution Agent without the need for any application, motion, complaint, claim objection, or any other legal proceeding seeking to object to such Claim or Equity Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

5. No Distributions Pending Allowance.

The Plan provides that, notwithstanding any other provision of the Plan, if any portion of a Claim or Equity Interest is Disputed, no payment or Distribution provided under the Plan will be made on account of such Claim or Equity Interest unless and until such Disputed Claim or Equity Interest becomes Allowed.

6. Distributions After Allowance.

The Plan provides that, to the extent that a Disputed Claim or Equity Interest ultimately becomes an Allowed Claim or Equity Interest, Distributions (if any) will be made to the Holder of such Allowed Claim or Equity Interest in accordance with the provisions of the Plan.

7. Disallowance of Certain Claims.

The Plan provides that any Claims or Equity Interests held by Persons from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or by a Person that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and such Persons may not receive any Distributions on account of their Claims or Equity Interest until such time as such Causes of Action against such Persons have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Plan Debtors by such Person have been turned over or paid to the Investor Trust.

8. Amendments to Claims.

The Plan provides that, pursuant to Section 9.8 of the Plan, on or after the Effective Date, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court the applicable Distribution agent and any such new or amended Claim filed without prior authorization shall be deemed Disallowed in full and expunged without any further action; *provided*, *however*, that Section 9.8 of the Plan shall not prohibit or restrict the applicable Distribution Agent from seeking to establish any additional or supplemental bar dates for filing Investor Claims or proofs of Equity Interests.

9. Claims Paid and Payable by Third Parties.

Section 9.9 of the Plan provides that a Claim shall be Disallowed without a Claim Objection thereto having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a source other than the Distribution Escrow Account or the Investor Trust. Distributions under the Plan shall be made on account of any Allowed Claim that is payable pursuant to one of the Plan Debtors' insurance policies solely up to the amount of, and in full and complete satisfaction of, the portion of such Allowed Claim that is within the deductible or self-insured retention under such insurance policy. Except as provided in Section 9.9 of the Plan, no Person shall have any other recourse against the Plan Debtors, the Estates, the Investor Trust, or any of their respective properties or assets on account of such deductible or self-insured retention under an insurance policy.

E. Executory Contracts

1. Rejection of Executory Contracts

Section 10.1 of the Plan provides that, on the Effective Date, all of the Plan Debtors' executory contracts and unexpired leases will be deemed rejected as of the Effective Date in

accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except to the extent that (a) the Plan Debtors previously have assumed, assumed and assigned, or rejected such executory contract or unexpired lease, (b) prior to the Effective Date, the Plan Debtors have Filed a motion to assume, assume and assign, or reject an executory contract or unexpired lease on which the Bankruptcy Court has not ruled, or (c) an executory contract and unexpired lease is specifically identified in the Plan Supplement as an executory contract or unexpired lease to be assumed pursuant to the Plan, in which case such executory contract or unexpired lease shall be assumed by the applicable Plan Debtor(s) and assigned to the Investor Trust. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections, assumptions and assignments of executory contracts and unexpired leases pursuant to Section 10.1 of the Plan and sections 365(a) and 1123 of the Bankruptcy Code.

2. Approval by Confirmation Order

The Plan provides that entry of the Confirmation Order by the Bankruptcy Court will constitute approval of all rejections, assumptions and assignments of executory contracts and unexpired leases pursuant to Section 10.1 of the Plan and sections 365(a) and 1123 of the Bankruptcy Code.

3. Rejection Damages Bar Date

The Plan provides that if the rejection by the Plan Debtors of an executory contract or an unexpired lease pursuant to Section 10.1 of the Plan results in damages to the other party or parties to such executory contract or unexpired lease, a Proof of Claim asserting those damages that arise from such rejection (a "Rejection Claim") must be submitted to the Claims Agent so as to actually be received on or before the date that is the thirty (30) days after the occurrence of the Effective Date. Nothing set forth in the Plan shall extend the deadline to file a Rejection Claim if an earlier deadline was established under the Bar Date Order.

Any Person that is required to file a Proof of Claim for a Rejection Claim and that fails to timely do so shall be forever barred, estopped, and enjoined from asserting such Claim, and such Claim shall not be enforceable against the Investor Trust, the Investor Trustee, the Plan Debtors, the Estates, the Investor Trust Assets and the Distribution Escrow Account and funds therein unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan.

4. Cure Amounts and Objection to Assumption

The Plan provides that in the event that the Plan Debtors elect to assume an executory contract or unexpired lease pursuant to clause (c) of Section 10.1 of the Plan, the Plan Debtors will include in the Plan Supplement the amount that they believe is required to be paid under section 365(b) of the Bankruptcy Code as cure in connection with the assumption of such executory contract or unexpired lease (a "Cure Amount"), and they will contemporaneously with such filing (or amendment) of the Plan Supplement, serve a notice of such Cure Amount on each affected counterparty contemporaneous with the filing of the Plan Supplement (each such notice a "Contract Notice"). The Plan Debtors will have the right to revise the Cure Amount through

the commencement of the Confirmation Hearing. The affected counterparties will have (14) fourteen days from the service of the last-served Contract Notice to object to the proposed Cure Amount or the proposed assumption and assignment (the "Contract Objection Period"). If no objection is timely-Filed during the Contract Objection Period, than the Cure Amount will be fixed as set forth in the Plan Supplement, such Cure Amount shall promptly be paid by the Investor Trustee as an Investor Trust Expense, and such executory contract will be deemed assumed as of the later of the Effective Date and the expiration of the Contract Objection Period. If an objection is timely-Filed within the Contract Objection Period, such executory contract and lease shall neither be assumed or rejected until (i) the Plan Debtors (or Investor Trustee if such objection is not resolved prior to the Effective Date) enter into a written agreement resolving the Cure Amount, (ii) the Plan Debtors file a notice that they are withdrawing their request to assume the executory contract or unexpired lease that is subject to the objection, or (iii) a Final Order is entered by the Bankruptcy Court resolving the objection.

F. Effect of Confirmation

1. Binding Effect

The Plan provides that, subject to the occurrence of the Effective Date, the provisions of the Plan, the Plan Supplement, and the Confirmation Order shall bind (a) any Holder of a Claim against, or Equity Interest in, the Plan Debtors and such Holder's respective successors and assigns (whether or not the Claim or Equity Interests are Impaired under the Plan, whether or not such Holder has voted to accept the Plan, and whether or not such Holder is entitled to a Distribution under the Plan), (b) all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, (c) each Person acquiring property under the Plan or the Confirmation Order, and (d) any and all non-Debtor parties to executory contracts and unexpired leases with the Plan Debtors. All Claims and debts against Plan Debtors shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

2. Reservation of Causes of Action/Reservation of Rights

The Plan provides that, except where expressly released or exculpated in the Plan, nothing contained in the Plan shall be deemed to be a waiver or the relinquishment of any claim or cause of action that the Plan Debtors or the Investor Trust, as applicable, may have or may choose to assert against any Person, including but not limited to the Investor Trust Causes of Action.

3. Releases by the Plan Debtors of Certain Parties

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE ACTIONS OF THE RELEASED PARTIES TO FACILITATE THE PLAN SETTLEMENT AND THE IMPLEMENTATION OF THE PLAN, EFFECTIVE AS OF THE EFFECTIVE DATE, EACH PLAN DEBTOR, IN ITS INDIVIDUAL CAPACITY AND AS A DEBTOR IN

POSSESSION FOR ITSELF AND ON BEHALF OF ITS ESTATE, AND ANY PERSON CLAIMING THROUGH, ON BEHALF OF, OR FOR THE BENEFIT OF EACH PLAN DEBTOR AND ITS ESTATE, SHALL RELEASE AND DISCHARGE AND BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED ALL RELEASED PARTIES FOR AND FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED TO ANY ACTIONS, TRANSACTIONS, EVENTS OR OMISSIONS OCCURRING ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE PLAN DEBTORS AND THE CHAPTER 11 CASES. THE INVESTOR TRUST, INVESTOR TRUSTEE AND WIND-DOWN ADMINISTRATOR, SHALL BE BOUND, TO THE SAME EXTENT THAT THE PLAN DEBTORS ARE BOUND, BY THE RELEASES AND DISCHARGES SET FORTH ABOVE.

4. Releases by Non-Debtors

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE ACTIONS OF THE RELEASED PARTIES TO FACILITATE THE PLAN SETTLEMENT AND THE IMPLEMENTATION OF THE PLAN, EFFECTIVE AS OF THE EFFECTIVE DATE, EACH RELEASING PARTY SHALL RELEASE AND DISCHARGE AND BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED ALL RELEASED PARTIES FOR AND FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED TO ANY ACTIONS, TRANSACTIONS, EVENTS OR OMISSIONS OCCURRING ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE PLAN DEBTORS AND THE CHAPTER 11 CASES. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING RELEASE SHALL NOT WAIVE OR RELEASE ANY RIGHT THAT A RELEASING PARTY HAS UNDER THE PLAN TO RECEIVE A DISTRIBUTION UNDER THE PLAN, INCLUDING FROM THE INVESTOR TRUST, THE DISTRIBUTION ESCROW ACCOUNT, OR THE SETTLING LENDER ESCROW ACCOUNT.

5. Exculpation

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, NO EXCULPATED PARTY SHALL HAVE OR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE FILING OF THE CHAPTER 11 CASES, THE FORMULATION, PREPARATION, NEGOTIATION, DISSEMINATION, FILING, IMPLANTATION, ADMINISTRATION, CONFIRMATION OR CONSUMMATION OF THE PLAN, THE

DISCLOSURE STATEMENT, THE EXHIBITS TO THE PLAN AND THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT DOCUMENTS, ANY INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED, MODIFIED, AMENDED OR ENTERED INTO IN CONNECTION WITH THE PLAN, EXCEPT FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER AND EXCEPT WITH RESPECT TO OBLIGATIONS ARISING UNDER CONFIDENTIALITY AGREEMENTS, JOINT INTEREST AGREEMENTS, OR PROTECTIVE ORDERS, IF ANY, ENTERED DURING THE CHAPTER 11 CASES; PROVIDED, HOWEVER, THAT EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES PURSUANT TO, OR IN CONNECTION WITH, THE ABOVE REFERENCED DOCUMENTS, ACTIONS, OR INACTIONS.

6. Plan Injunction

THE SATISFACTION AND RELEASE PURSUANT TO ARTICLES VII AND XI OF THE PLAN SHALL ACT AS A PERMANENT INJUNCTION AGAINST ANY ENTITY COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS, OR ACT TO COLLECT, OFFSET OR RECOVER ANY CLAIM, INTEREST, OR CAUSE OF ACTION SATISFIED OR RELEASED UNDER THE PLAN TO THE FULLEST EXTENT AUTHORIZED OR PROVIDED BY THE BANKRUPTCY CODE.

WITHOUT LIMITING THE FOREGOING, FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES THAT HAVE HELD, HOLD, OR MAY HOLD CLAIMS AND INTERESTS THAT HAVE BEEN RELEASED PURSUANT OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE XI OF THE PLAN, SHALL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST, AS APPLICABLE, THE INVESTOR TRUST, INVESTOR TRUSTEE, WIND-DOWN ADMINISTRATOR, RELEASED PARTIES OR EXCULPATED PARTIES: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY SUCH CLAIMS OR INTERESTS; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (C) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (D) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, EXCULPATED, OR SETTLED PURSUANT TO THE PLAN.

7. Term of Bankruptcy Injunction or Stays

The Plan provides that all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect following Confirmation of the Plan, for the maximum period permitted under the Bankruptcy Code, Bankruptcy Rules and the Local Bankruptcy Rules.

8. Setoff

The Plan provides that, notwithstanding anything in the Plan, in no event shall any Holder of a Claim be entitled to setoff any Claim against any claim, right, or cause of action of the Plan Debtors, unless such Holder preserves its right to setoff by (i) including in a timely-filed Proof of Claim that it intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise or (ii) filing a motion for authority to effect such setoff on or before the Confirmation Date (regardless of whether such motion is heard prior to or after the Confirmation Date).

9. Preservation of Insurance

The Plan provides that, except as otherwise provided in the Plan, Confirmation of the Plan shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Plan Debtors, including their officers and current and former directors, or any other person or entity.

G. Conditions Precedent to Confirmation and the Effective Date; Effect of Failure of Conditions

1. Conditions Precedent to Confirmation

Section 12.1 of the Plan contains the following condition precedent to confirmation, which must either be satisfied, or waived in accordance with the terms of the Plan:

> Acceptance of the Plan by each of Class 3 (Mortgage Claims), Class 4 (Settling Lender Claims), and Class 5 (General Unsecured Claims), *provided* that if one of those Classes is vacant, then that Class shall be treated as having accepted the Plan for purposes of determining if the condition to Confirmation in Section 12.1 of the Plan has been satisfied.
>
> A Plan Debtor, in its sole discretion, may waive this condition to Confirmation solely with respect to itself.

2. Conditions Precedent to the Effective Date

The Plan also contains several conditions to the effectiveness of the Plan that, notwithstanding confirmation of the Plan, could prevent consummation of the Plan if not satisfied or waived in accordance with the terms of the Plan. The "substantial consummation," as defined in section 1101 of the Bankruptcy Code, shall not occur, and the Plan shall be of no

force and effect, until the Effective Date. The occurrence of the Effective Date is subject to satisfaction of each of the following conditions precedent, each of which may be waived by the Plan Debtors in their sole discretion except that: (1) condition (g) may not be waived; (2) conditions (b), (c), and (d) may not be waived without the consent of the Participant Investors; and (3) condition (f) may not be waived without the prior written consent of the Settling Lenders:

(a) The Confirmation Order shall have been entered with respect to such Plan Debtor, without any material modification that would require re-solicitation, and shall not be subject to any stay or appeal period;

(b) The Investor Trust Agreement shall have been executed and delivered consistent with the Plan;

(c) The Investor Trust shall been funded in the amount of $1,000,000;

(d) The Wind-Down Administrator shall have received $50,000 to fund the expenses of the Wind-Down Administrator;

(e) The Distribution Escrow Account and Professional Claims Escrow Account shall have been funded in the amounts identified in the Plan;

(f) The Settling Lender Escrow Account shall have been funded in the amount of $9,400,000; and

(g) The Plan shall have been confirmed with respect to the Investor Trust Debtors.

3. Satisfaction of Conditions

The Plan provides that in the event that the conditions specified in Section 12.1 of the Plan or Section 12.2 of the Plan shall not have occurred or otherwise been waived as permitted under the Plan with respect to any Plan Debtor that is not an Investor Trust Debtor, (a) the Plan shall be deemed withdrawn with respect to that specific Plan Debtor and such entity shall no longer be treated as a Plan Debtor for purposes of the Plan and (if applicable) the Confirmation Order shall be vacated with respect to that specific Plan Debtor, (b) all Holders of Claims and Equity Interests against that specific Plan Debtor shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered as to that specific Plan Debtor, and (c) that specific Plan Debtor's obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against that specific Plan Debtor or any other Person or prejudice in any manner the rights of that specific Plan Debtor or any Person in any further proceedings involving that specific Plan Debtor.

In the event that the conditions specified in Section 12.1 and 12.2 of the Plan shall not have occurred or otherwise been waived as permitted under the Plan with respect to any Investor Trust Debtor, (a) the Plan shall be deemed withdrawn and (if applicable) the Confirmation Order

shall be vacated, (b) all Holders of Claims and Equity Interests against the Plan Debtors shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered, and (c) the Plan Debtors' obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Plan Debtors or any other Person or prejudice in any manner the rights of the Plan Debtors or any Person in any further proceedings involving the Plan Debtors.

If a condition to Confirmation or the Effective Date is not satisfied or waived with respect to an entity identified as a Plan Debtor, such entity shall be deemed revised to exclude that entity from (i) the definition of Plan Debtor and (ii) the Plan.

H. Retention of Jurisdiction

Pursuant to the Plan, the Bankruptcy Court shall have exclusive jurisdiction of all matters in connection with, arising out of, or related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including to:

(a) hear and determine pending motions for the assumption or rejection of executory contracts or unexpired leases and the allowance of cure amounts and Claims resulting therefrom;

(b) hear and determine any and all adversary proceedings, applications and contested matters;

(c) hear and determine all applications for compensation and reimbursement of expenses under sections 330, 331 and 503(b) of the Bankruptcy Code;

(d) hear and determine any objections (including requests for estimation) in connection with Disputed Claims or Equity Interests, in whole or in part;

(e) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(f) issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

(g) consider any amendments to or modifications of the Plan or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including the Confirmation Order;

(h) hear and determine disputes or issues arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, the Investor Trust Agreement, any transactions or payments contemplated hereby or thereby, any agreement, instrument, or

other document governing or relating to any of the foregoing or any settlement approved by the Bankruptcy Court;

(i) hear and determine (i) matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any request by the Plan Debtors), prior to the Effective Date or (ii) requests by the Investor Trustee after the Effective Date for an expedited determination of tax issues under section 505(b) of the Bankruptcy Code;

(j) issue injunctions and effect any other actions that may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court;

(k) hear and determine such other matters as may be provided in the Confirmation Order;

(l) hear and determine any rights, Claims or Causes of Action, including, for the avoidance of doubt, the Investor Trust Causes of Action, held by or accruing to the Plan Debtors or Investor Trust pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory;

(m) recover all assets of the Plan Debtors and property of the Plan Debtors' Estates, wherever located;

(n) enforce the terms of the Investor Trust Agreement;

(o) hear and determine any disputes arising out of the allocation of the Settling Lender Escrow Account or the Settling Lender Escrow Agreement;

(p) enforce the releases granted and injunctions issued pursuant to the Plan and the Confirmation Order;

(q) enter a final decree closing the Chapter 11 Cases; and

(r) hear and determine any other matter not inconsistent with the Bankruptcy Code.

I. Miscellaneous Plan Provisions

1. Effectuating Documents and Further Transactions

The Plan provides that the appropriate officers or directors of the Plan Debtors, the Investor Trustee, or the Wind-Down Administrator, as applicable, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures,

certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

2. Corporate Action

The Plan provides that on the Effective Date, all matters provided for under the Plan that would otherwise require approval of shareholders, directors, members, or managers of one or more of the Plan Debtors shall be in effect from and after the Effective Date pursuant to the applicable general business, corporation or limited liability company law of the states in which the Plan Debtors are incorporated or organized, without any requirement of further action by the shareholders, directors, members, or managers of the Plan Debtors.

3. Plan Supplement

The Plan Supplement and the documents contained therein will be filed with the Bankruptcy Court no later than seven (7) calendar days before the deadline for voting to accept or reject the Plan; provided, that the documents included therein may thereafter be amended and supplemented, prior to execution, so long as such amendment or supplement does not materially and adversely change the treatment of Holders of Claims. The Plan Supplement and the documents contained therein are incorporated into and made a part of the Plan as if set forth in full in the Plan.

4. Payment of Statutory Fees

The Plan provides that on or before the Effective Date, all fees payable under section 1930 of chapter 123 of title 28 of the United States Code shall be paid in Cash. Following the Effective Date, all such fees shall be paid by the Investor Trustee until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code, or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code. For the avoidance of doubt, the U.S. Trustee Fees shall be deemed part of the Investor Trustee Expenses.

5. Exemption from Transfer Taxes

The Plan provides that, pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including the issuance of any stock, any merger agreements, or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

6. Expedited Tax Determination

The Plan Debtors, Investor Trustee and Wind-Down Administrator (as applicable) are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy

Code for any or all returns filed for, or on behalf of, the Plan Debtors for any and all taxable periods (or portions thereof) ending after the Petition Date through and including the Effective Date.

7. Exhibits/ Schedules

All exhibits and schedules to the Plan, including the Plan Supplement, and Schedules A through D to the Disclosure Statement, are incorporated into and are a part of the Plan as if set forth in full therein.

8. Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101(2) and 1127(b) of the Bankruptcy Code.

9. Severability of Plan Provisions

The Plan provides that in the event that, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall, at the request of the Plan Debtors have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

10. Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without giving effect to its principles of conflict of law.

11. Conflicts

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement conflicts with or is in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

12. Reservation of Rights

If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not

become effective, the rights of all parties-in-interest in the Chapter 11 Cases are and will be reserved in full. Any concessions or settlements reflected in the Plan, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Chapter 11 Cases shall be bound or deemed prejudiced by any such concession or settlement.

13. Limiting Notices

Only Persons that file renewed requests to receive documents pursuant to Bankruptcy Rule 2002 on or after the Effective Date shall be entitled to receive notice under Bankruptcy Rule 2002. After the Effective Date, the Wind-Down Administrator and Investor Trustee are authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to those Persons who have filed such renewed requests.

VI. IMPLEMENTATION OF THE PLAN

The Plan provides for certain actions to be taken, in addition to those set forth and described above in the nature of assisting in or otherwise providing for implementation of the Plan and its various terms and provisions, some of which are set forth in more detail below.

A. Settlements Implemented Under the Plan

1. Global Plan Settlement

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates the "Plan Settlement," which is a compromise and settlement of numerous debtor-creditor issues designed to achieve an economic resolution of Claims against and Interests in the Plan Debtors (including Intercompany Claims and Intercompany Interests), Claims that may be asserted against the Released Parties, and an efficient resolution of these Chapter 11 Cases. The Plan Settlement effects the following:

- The allowance, compromise, treatment, and satisfaction of (i) all claims asserted or which may be asserted against the Plan Debtors and the other Released Parties by the Settling Lenders and (ii) all claims asserted or which may be asserted against the Settling Lenders by the Plan Debtors and the other Releasing Parties;

- The compromise, treatment, and satisfaction of (i) all claims asserted or which may be asserted against the Plan Debtors and the other Released Parties by the Holders of Investor Claims and Equity Interests (other than Subordinated Interests) and (ii) all claims asserted or which may be asserted against the Holders of Investor Claims and Equity Interests (other than Subordinated Interests) by the Plan Debtors and the other Releasing Parties;

- The compromise, treatment, and satisfaction of all Intercompany Claims that could be asserted by any Plan Debtor against another Plan Debtor, through the allocation of the cash in the various Estates of the Plan Debtors to the various Distribution Escrow Sub-Account of the Plan Debtors;

- The allowance, compromise, treatment and satisfaction of the Dechert Claims, as described in Section 7.1(b) of the Plan;

- The compromise, treatment, and satisfaction of all Mortgage Claims , including the ability of the Holder of a Mortgage Claim to be included as a Released Party, as provided for in the definition of Released Party;

- The compromise, treatment, and satisfaction of all Professional Claims, subject only to approval of such Professional Claims and allowance of such Claims by the Bankruptcy Court pursuant to sections 330 and 363 of the Bankruptcy Code after notice and a hearing;

- The allowance, compromise, treatment, and satisfaction of the Substantial Contribution Claims described in Section 7.1(c) of the Plan;

- Funding (i) the Distribution Escrow Sub-Account of each Plan Debtor, as set forth in Schedule D to this Disclosure Statement, (ii) the Settling Lender Escrow Account in the amount of $9,400,000, (iii) $1,000,000 to the Investor Trust, and (iv) funding the Professional Claim Escrow Account in the amount of the Professional Claims Escrow Amount, all from the cash of the various Estates of the Plan Debtors and as an express condition of the Plan Settlement;

- The cancellation of all equity interests in each Plan Debtor;

- The creation of the Investor Trust, primarily, to evaluate and pursue the Investor Trust Causes of Action; and

- The grant and effectuation of the Plan Releases and an injunction against any action that would violate the Plan Releases and exculpation provisions of the Plan to implement the foregoing.

The Plan Settlement constitutes a settlement of a number of potential litigation issues, including the determination of (i) the priority, classification, and amount of, and the obligors for, the Settling Lender Claims, (ii) the Intercompany Claims (including the nature and amount of any contribution among the Plan Debtors for the Settling Lender Claims) and resulting allocation of Assets among the Estates, and (iv) the potential claims and causes of action held by and against the Released Parties and Releasing Parties, including the Plan Debtors, the Settling Lenders, certain Holders of Mortgage Claims, and certain Holders of Investor Claims and Equity Interests (excluding Holders of Subordinated Interests).

Confirmation will constitute the Bankruptcy Court's approval of the Plan Settlement under Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code, and shall constitute a finding that the compromises and settlements under the Plan Settlement are in the best interests of the Plan Debtors, their Estates, their creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness. Each provision of the Plan Settlement is considered non-severable from each other and from the remaining terms of the Plan. The failure

of the Bankruptcy Court to confirm the Plan or for the Effective Date of Plan to occur shall return the parties to the *status quo ante* and pending the occurrence of the Effective Date of the Plan, all parties' rights are expressly reserved and preserved and shall not be affected by the proposed Plan Settlement; *provided* that upon the occurrence of the Effective Date of the Plan, the Plan Settlement (and all other provisions of the Plan) shall be binding on all creditors and equityholders of the Plan Debtors.

2. Settlement of the Dechert Claims

On the Effective Date, in full and final satisfaction of the Dechert Claims, Dechert shall be (i) included as a Released Party under the Plan and (ii) granted (A) an Allowed Other Secured Claim in the amount of $224,968.20, which shall be paid solely from the retainer funds currently held by Dechert, and (B) an Allowed General Unsecured Claim in the amount of $1,015,526.34 against each of the PropCo Debtors, which pursuant to the Plan Settlement shall be reduced for purposes of determining Distributions under the Plan to $500,000. Dechert shall be entitled to Distributions on account of the Allowed General Unsecured Claim portion of the Dechert Claims as follows: *first,* a *pro rata* Distribution from the Distribution Escrow Sub-Account of Park Square West up to the amount of $200,000 as a Holder of a General Unsecured Claim against Park Square West; *second*, a *pro rata* Distribution from the Distribution Escrow Sub-Account of Seaboard Hotel up to the amount of $200,000 as a Holder of a General Unsecured Claim against Seaboard Hotel; and *third*, Distributions from the other PropCo Debtors, equitably allocated among the remaining PropCo Debtors in the sole discretion of the Wind-Down Administrator; *provided* that Dechert shall not receive in excess of $500,000 in the aggregate on account of its General Unsecured Claims against the Plan Debtors.

3. Settlement of Certain Substantial Contribution Claims

On the Effective Date, (i) OnBoard Investors, LLC shall be granted and paid, to its counsel, an Allowed Administrative Claim in the amount of $175,000 on account of the *Application Pursuant To 11 U.S.C. §§ 503(b)(3) And 503(b)(4) For Allowance Of Fees And Expenses Incurred In Making A Substantial Contribution As An Administrative Expense Claim* [Docket No. 1262] in full and final satisfaction of OnBoard Investors, LLC's application; (ii) Ares Management LLC shall be granted and paid an Allowed Administrative Claim in the amount of $85,000 on account of any claim that has been or could have been asserted against the Debtors, including Proofs of Claim numbered 409-418; and (iii) the Plan Debtors shall distribute to the Investor Trustee an additional $50,000 (the "Participant Investor Expense Fund") for purposes of paying the actual and documented expenses of counsel to the Participant Investors in connection with the negotiation of the Plan. Any portion of the Participant Investor Expense Fund remaining after satisfaction of such expenses shall be available generally for the benefit of the beneficiaries of the Investor Trust.

B. Establishment, Funding, and Distribution of Escrow Accounts

1. Settling Lender Escrow Account

(a) On the Effective Date, the Settling Lender Escrow Account shall be established in the legal name of Seaboard Hotel and funded with the aggregate amount of $9,400,000 from the Cash available at all of the Plan Debtors. The Settling Lender Escrow Account shall be governed by the Settling Lender Escrow Account Agreement and the funds therein shall be disbursed in accordance with its terms.

(b) The Settling Lender Escrow Account Agreement shall be in a form acceptable to, and agreed upon by, each of the Settling Lenders and the Plan Debtors in their reasonable discretion; *provided* that if, as of the Effective Date, the Settling Lenders and the Plan Debtors have not agreed upon the terms of a Settling Lender Escrow Account Agreement, a short form Settling Lender Escrow Account Agreement shall be entered into on the Effective Date, which shall contain customary terms for escrow agreements of this type but shall expressly provide that the funds in the Settling Lender Escrow Account will only be distributed either (i) by unanimous agreement among the Settling Lenders or (ii) by order of the Bankruptcy Court. Any subsequent amendment to such short form agreement shall only be made upon express prior written consent of each Settling Lender.

(c) The Bankruptcy Court shall retain subject matter jurisdiction to hear any dispute over the allocation of the funds in the Settling Lender Escrow Account.

2. Professional Claims Escrow Account

On the Effective Date, the Professional Claims Escrow Account shall be established by Seaboard Hotel and funded with the Professional Claims Escrow Amount; *provided* that at the election of the Professionals, the Professional Claims Escrow Account can be maintained by counsel to the Plan Debtors in its client trust account. The funds in the Professional Claims Escrow Account shall be used solely for the purpose of funding Professional Claims and shall be distributed *pro rata* based on the Professional Claim Maximum Amount of each Professional. Marc Beilinson shall have responsibility for directing the distribution of the funds in the Distribution Escrow Account in accordance with the terms of the Plan.

From and after the Effective Date, pending the final Allowance of their Professional Claims, each retained Professional shall be paid from the Professional Claims Escrow Account the interim amount permitted to be paid under the Interim Compensation Order on account of its Professional Claims, not to exceed the Professional Claim Maximum Amount for such Professional. If there are any funds in the Professional Claims Escrow Account after each Holder of an Allowed Professional Claim has received its Professional Claim Maximum

Amount, the balance of such funds shall be transferred to the Investor Trust, *first*, for payment of any unpaid expenses of the Wind-Down Administrator that constitute Investor Trust Expenses, and *second*, to be used as general Investor Trust Assets in accordance with the terms of the Investor Trust Agreement.

3. Distribution Escrow Account; Payment Waterfall

On the Effective Date, the Distribution Escrow Account shall be established by Seaboard Hotel and divided into Distribution Escrow Sub-Accounts for each PropCo Debtor and each HoldCo Debtor. The Wind-Down Administrator shall have responsibility for directing the distribution of the funds in the Distribution Escrow Account in accordance with the terms of the Plan. The Distribution Escrow Sub-Account for each Plan Debtor shall be funded in the amounts set forth on Schedule D to the Disclosure Statement; *provided* that if the amount set forth on Schedule D to the Disclosure Statement, is zero, there shall be no Distribution Escrow Sub-Account for such Plan Debtor. If the Plan is not confirmed or does not become effective for any Plan Debtor, the amount allocated to the Distribution Escrow Sub-Account for such Plan Debtor shall be reallocated on a *pro rata* basis to the other Plan Debtors, based on the amounts set forth on Schedule D to the Disclosure Statement.

The funds in the Distribution Escrow Sub-Account shall be distributed on a *pro rata* basis to Holders of Claims against that Plan Debtor as follows (the "Payment Waterfall"): *first*, to satisfy all Allowed Other Secured Claims against that Plan Debtor and Priority Tax Claims until the Holders of such Claims are paid the full Allowed amount of their Claims; *second*, to satisfy all Allowed Administrative Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *third*, to satisfy all Priority Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *fourth*, to satisfy all Allowed General Unsecured Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *fifth*, to satisfy all Allowed Investor Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims. Once all Allowed Claims (other than Subordinated Claims) against a Plan Debtor have been satisfied in full, any excess funds in that Plan Debtors' Distribution Escrow Sub-Account, shall be paid on a *pro rata* basis to the Holders of Allowed Equity Interests (but excluding Subordinated Interests) in that Plan Debtor; *provided* that if such Plan Debtor is owned by another Plan Debtor, such excess funds shall be transferred to the Distribution Escrow Sub-Account for the Plan Debtor holding the Intercompany Interests in that Plan Debtor.

C. The Investor Trust

1. Establishment of the Investor Trust

On the Effective Date, the Investor Trust will be created, and the Investor Trust Assets will be transferred to and vest in the Investor Trust as of the Effective Date. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, from and after the Effective Date, only the Investor Trust and the Investor Trustee shall have the right to pursue or not to pursue, or, subject to the terms of the Plan and the Investor Trust Agreement, compromise or settle any Investor Trust Causes of

Action. From and after the Effective Date, the Investor Trust and the Investor Trustee may commence, litigate, and settle any Causes of Action or Claims relating to the Investor Trust Assets or rights to payment or Claims that belong to the Plan Debtors as of the Effective Date or are instituted by the Investor Trust and Investor Trustee on or after the Effective Date, except as otherwise expressly provided in the Plan and the Investor Trust Agreement. The Investor Trust shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Plan Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

2. Appointment of Investor Trustee

On the Effective Date, the Investor Trustee shall be appointed and shall constitute a representative of the Plan Debtors' estates under section 1123 of the Bankruptcy Code. The Investor Trustee shall be nominated by the Participant Investors in consultation with the Investor Trust Debtors, disclosed in the Plan Supplement, and subject to approval by the Bankruptcy Court at the Confirmation Hearing. The Investor Trustee shall serve in such capacity through the earlier of (i) the date that the Investor Trust is dissolved in accordance with the Investor Trust Agreement and (ii) the date such Investor Trustee resigns, is removed by order of the Bankruptcy Court, is terminated, or is otherwise unable to serve; *provided*, *however*, that, in the event that the Investor Trustee resigns, is terminated, or is otherwise unable to serve, the Investor Trust Committee shall appoint a successor to serve as the Investor Trustee in accordance with the Investor Trust Agreement. Any successor Investor Trustee shall serve in such capacity for the duration set forth in the prior sentence. To the extent that the Investor Trust Committee does not appoint a successor within the time periods specified in the Investor Trust Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Investor Trust, shall approve a successor to serve as the Investor Trustee.

3. The Investor Trust Committee

The initial members of the Investor Trust Committee shall be nominated by the Participant Investors in consultation with the Investor Trust Debtors, disclosed in the Plan Supplement, and subject to approval by the Bankruptcy Court at the Confirmation Hearing. The Investor Trust Committee shall have the responsibilities set forth in the Investor Trust Agreement. Vacancies on the Investor Trust Committee shall be filled by a Trust Beneficiary designated by the remaining member or members of the Investor Trust Committee. The Investor Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing any member of the Investor Trust Committee for cause. Any successor Investor Trustee appointed pursuant to Section 7.3(c) of the Plan shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor. For the avoidance of doubt, no member of the Investor Trust Committee shall be compensated for serving as a member of the Investor Trust Committee, *provided*, *however*, that such members may be reimbursed from the Investor Trust for reasonable out of pocket expenses.

4. Beneficiaries of the Investor Trust; Beneficial Interests in the Trust

The beneficiaries of the Investor Trust (each a "Trust Beneficiary") shall be the Holders of Equity Interests in, and Allowed Investor Claims against, the Investor Trust Debtors. The initial Trust Beneficiaries shall be determined based on the classification provided for in Section 6.2 of the Plan. The Investor Trustee shall have the ability to seek an order of the Bankruptcy Court that Allows, Disallows, or subordinates any Equity Interest in, or Investor Claim against, an Investor Trust Debtor or establishes a supplemental bar date for purposes of determining whether any additional Equity Interests in, or Investor Claims against, the Investor Trust Debtors exist.

Beneficial interests in the Investor Trust shall be allocated among the Trust Beneficiaries by the Investor Trustee based upon the procedures set forth in the Investor Trust Agreement.

5. Responsibilities of the Investor Trustee

The Investor Trust's primary responsibilities shall be as follows, but shall additionally include any other matters set forth in the Investor Trust Agreement:

(a) Investigate, commence, decline or refrain from commencing, prosecute and/or compromise all Investor Trust Causes of Action;

(b) Resolve any disputes over the status of any party as a Trust Beneficiary, including whether an Investor Claim filed against an Investor Trust Debtor has been properly asserted and/or should be allowed against that Debtor;

(c) Determine the amount of beneficial interests in the Investor Trust to which each Trust Beneficiary is entitled;

(d) Determine the amount and timing of the Distributions of the Cash proceeds of the Investor Trust Assets, including the Investor Trust Causes of Action, to the Trust Beneficiaries;

(e) If the Investor Trust, in consultation with the Investor Trust Committee, deems necessary or advisable, establishing a bar date to determine all Holders of Equity Interests in and/or a supplemental bar date for Investor Claims against the Investor Trust Debtors; and

(f) Filing periodic reports apprising Trust Beneficiaries and other parties in interest in the Plan Debtors' cases of the activities and expenses of the Investor Trust and Wind-Down Administrator, the assets and liabilities of the Investor Trust, and the progress of making Distributions under the Plan.

6. Transfer of Investor Trust Assets

Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date, the Plan Debtors shall be deemed, subject to the Investor Trust Agreement, to have automatically transferred to the Investor Trust all of their right, title, and interest in and to all of the Investor Trust Assets in accordance with section 1141 of the Bankruptcy Code, including the Plan Debtors' attorney-client privilege solely to the extent related thereto. All such assets shall automatically vest in the Investor Trust free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims as set forth in the Plan and the expenses of the Investor Trust as set forth in the Plan and in the Investor Trust Agreement. Thereupon, the Plan Debtors shall have no interest in or with respect to the Investor Trust Assets or the Investor Trust.

7. Treatment of Investor Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Investor Trust shall be established for the primary purpose of liquidating and distributing the assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Investor Trust. Accordingly, the Investor Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Investor Trust Assets, make timely Distributions to the Trust Beneficiaries and not unduly prolong its duration. The Investor Trust shall not be deemed a successor-in-interest of the Plan Debtors for any purpose other than as specifically set forth in the Plan or in the Investor Trust Agreement. The record Holders of beneficial interests shall be recorded and set forth in a register maintained by the Investor Trustee expressly for such purpose.

The Investor Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Trust Beneficiaries treated as grantors and owners of the Investor Trust. For all federal income tax purposes, all parties (including the Plan Debtors, the Investor Trustee, and the Investor Trust Beneficiaries) shall treat the transfer of the Investor Trust Assets by the Plan Debtors to the Investor Trust, as set forth in the Investor Trust Agreement, as a transfer of such assets by the Plan Debtors to the Trust Beneficiaries entitled to Distributions from the Investor Trust Assets, followed by a transfer by such Holders to the Investor Trust. Thus, the Investor Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

As soon as practicable after the Effective Date, the Investor Trustee shall make a good faith determination of the fair market value of the Investor Trust Assets as of the Effective Date, provided, however, that the Investor Trustee shall not be required to hire an expert to make such a valuation. This valuation shall be used consistently by all parties (including the Plan Debtors, the Investor Trustee, and the Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Investor Trust Assets.

The right and power of the Investor Trustee to invest the Investor Trust Assets, the proceeds thereof, or any income earned by the Investor Trust, shall be limited to the right and

power that an investor trust, within the meaning of section 301.7701-4(d) of the Treasury Regulations, is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings or other IRS pronouncements, and to the investment guidelines of section 345 of the Bankruptcy Code. The Investor Trustee may expend the Cash of the Investor Trust (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the Investor Trust Assets during liquidation, (ii) to pay the respective reasonable administrative expenses (including any taxes imposed on the Investor Trust) and (iii) to satisfy other respective liabilities incurred by the Investor Trust in accordance with the Plan and the Investor Trust Agreement (including the payment of any taxes).

8. Expenses of Investor Trustee; Retention of Advisors

The Investor Trust Expenses, including the fees and expenses of any professionals retained by the Investor Trustee, shall be paid from the Investor Trust Assets.

The Investor Trustee shall have the authority to retain professionals to assist it in carrying out the purposes of the Investor Trust and discharging the trustee's obligations, which shall be paid from the Investor Trust Assets

9. Insurance; Bond

The Investor Trustee, in his or her sole discretion, may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Investor Trustee and the Investor Trust Committee under the Investor Trust Agreement. Unless otherwise agreed to by the Investor Trust Committee, the Investor Trustee shall serve with a bond, the terms of which shall be agreed to by the Investor Trust Committee, and the cost and expense of which shall be deemed an Investor Trust Expense.

10. Fiduciary Duties of the Investor Trustee

Pursuant to the Plan and the Investor Trust Agreement, the Investor Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Equity Interest that will receive Distributions pursuant to the terms of the Plan and Investor Trust Agreement.

11. Termination of the Investor Trust

The Investor Trust will terminate on the earlier of: (a) final liquidation, administration and distribution of the Investor Trust Assets in accordance with the terms of the Investor Trust Agreement and the Plan, and its full performance of all other duties and functions as set forth in the Investor Trust Agreement or the Plan; and (b) the fifth (5th) anniversary of the Effective Date. Notwithstanding the foregoing, multiple fixed-term extensions can be obtained so long as Bankruptcy Court approval is obtained within six (6) months before the expiration of the term of the Investor Trust and each extended term provided that any further extension would not adversely affect the status of the Investor Trust as an Investor Trust within the meaning of section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. After (x) the final Distributions pursuant to the Plan, (y) the filing by or on behalf of the Investor Trust of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed

appropriate by the Investor Trustee, the Investor Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.

12. Liability of Investor Trustee; Indemnification

Neither the Investor Trustee, the Investor Trust Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a "Trust Exculpation Party" and collectively, the "Trust Exculpation Parties") shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Investor Trust or for the act or omission of any other Trust Exculpation Party, nor shall the Trust Exculpation Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed by to be conferred by the Investor Trust Agreement or the Plan other than for specific acts or omissions resulting from such Trust Exculpation Party's willful misconduct, gross negligence or fraud. The Investor Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee and the Investor Trust Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Investor Trustee, or the Investor Trust Committee, may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Investor Trustee nor the Investor Trust Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Investor Trustee or Investor Trust Committee or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. The Investor Trust shall indemnify and hold harmless the Trust Exculpation Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and related expenses) which such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Investor Trust or the Plan or the discharge of their duties under the Plan; *provided*, *however*, that no such indemnification will be made to such persons for actions or omissions as a result of willful misconduct, gross negligence, or fraud. Persons dealing or having any relationship with the Investor Trustee shall have recourse only to the Investor Trust Assets and shall look only to the Investor Trust Assets to satisfy any liability or other obligations incurred by the Investor Trustee or the Investor Trust Committee to such person in carrying out the terms of the Investor Trust Agreement, and neither the Investor Trustee nor the Investor Trust Committee shall have any personal obligation to satisfy any such liability. Neither the Investor Trustee nor the Investor Trust Committee shall be liable whatsoever except for the performance of such duties and obligations as are specifically set forth in the Plan, and no implied covenants or obligations shall be read into the Investor Trust Agreement against any of them. The Investor Trust shall promptly pay expenses reasonably incurred by any Trust Exculpation Party in defending, participating in, or settling any action,

proceeding or investigation in which such Trust Exculpation Party is a party or is threatened to be made a party or otherwise is participating in connection with the Investor Trust Agreement or the duties, acts or omissions of the Investor Trustee or otherwise in connection with the affairs of the Investor Trust, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Trust Exculpation Party hereby undertakes, and the Investor Trust hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Exculpated Party is not entitled to be indemnified therefor under the Investor Trust Agreement. The foregoing indemnity in respect of any Trust Exculpation Party shall survive the termination of such Trust Exculpation Party from the capacity for which they are indemnified.

13. Full and Final Satisfaction Against Investor Trust

On and after the Effective Date, the Investor Trust shall have no liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Investor Trust Agreement. All payments and all Distributions made by the Investor Trustee under the Plan shall be in full and final satisfaction, settlement, and release of and in exchange for all Claims or Equity Interests against the Plan Debtors.

D. Wind-Down of the Plan Debtors; Wind-Down Administrator

1. Appointment and Authority of Wind-Down Administrator

Each Plan Debtor shall be deemed to have appointed a Wind-Down Administrator. The Wind-Down Administrator shall have all power and authority that may be or could have been exercised, with respect to the Plan Debtors, by any officer, director, shareholder, member, manager or other party acting in the name of such Plan Debtor or its Estate with like effect as if duly authorized, exercised and taken by action of such officer, director, shareholder, member, manager or other party.

The identity of the Wind-Down Administrator will be disclosed in the Plan Supplement and the appointment of the Wind-Down Administrator shall be approved in the Confirmation Order. The position of Wind-Down Administrator may be filled by the Investor Trustee (including any successor Investor Trustee), and the Investor Trust Agreement will permit the Investor Trustee to fulfil the role of and discharge the duties of the Wind-Down Administrator.

2. Duties of Wind-Down Administrator

The Wind-Down Administrator will be responsible for:

(a) Winding up the Plan Debtors' affairs as is appropriate under the circumstances;

(b) Administering the Plan and taking such actions as are necessary to effectuate the Plan;

(c) Effecting the dissolution and cancellation of each of the Plan Debtors;

(d) Filing all appropriate (including final) tax returns;

(e) Ensuring that all reports required by the United States Trustee through the date each Plan Debtor's chapter 11 case is closed are Filed;

(f) Resolving any Claim filed against a Plan Debtor that is not Allowed as of the Effective Date, including prosecuting any objections to claims pending as of the Effective Date; and

(g) Administering Distributions to Holders of Allowed Claims (other than Investor Claims and Subordinated Claims) from the Distribution Escrow Account in accordance with the Plan.

3. Expenses of the Wind-Down Administrator

The Wind-Down Administrator will be provided $50,000 to carry out the duties of the Wind-Down Administrator. Any amount that remains after the Wind-Down Administrator has fully discharged its duties shall be contributed to the Investor Trust as Investor Trust Assets. In the event that such amount is insufficient to satisfy the compensation and expenses of the Wind-Down Administrator, such shortfall shall be treated as an Investor Trust Expenses and shall be paid *first*, from any excess amounts in the Professional Claim Escrow Account after all Professionals have received their respective Professional Claim Maximum Amount, and *second*, from the general Investor Trust Assets.

The Wind-Down Administrator shall have the authority to retain professionals or employ individuals to assist it in carrying out its duties as Wind-Down Administrator or, alternatively, may utilize the professionals or individuals employed by the Investor Trustee with the Investor Trustee's consent.

4. Corporate Existence and Dissolution or Cancellation of Plan Debtors

Immediately after the Effective Date, the Wind-Down Administrator shall be authorized to take, in his or her sole and absolute discretion, all actions reasonably necessary to dissolve or cancel the limited liability company existence of the Plan Debtors under applicable laws, including under the laws of the jurisdictions in which they may be organized or registered, and to pay all reasonable costs and expenses in connection with such dissolutions, including the costs of preparing or filing any necessary paperwork or documentation. The Wind-Down Administrator shall be authorized to file any certificate of dissolution or cancellation or other documents as may be necessary or desirable to terminate the legal existence of the Plan Debtors. The Wind-Down Administrator and Plan Debtors shall not be required to pay any tax, fee or assessment to any governmental unit in connection with or as a condition to effecting the dissolution or cancellation of the Plan Debtors.

E. Effectuating Documents; Further Transactions

The Plan provides that the appropriate officer or director of the Plan Debtors, the Investor Trustee, or the Wind-Down Administrator, as applicable, will be authorized to execute, deliver,

file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, and Confirmation of the Plan shall constitute all necessary corporate or limited liability company authorizations necessary to carry out such actions.

F. Cancellation of Instruments and Stock

The Plan provides that on the Effective Date, all instruments evidencing or creating any indebtedness or obligation of the Plan Debtors, except such instruments that are authorized or issued under the Plan, shall be canceled and extinguished. Additionally, as of the Effective Date, all Equity Interests in all of the Plan Debtors, and any and all warrants, options, rights, or interests with respect to such Equity Interests that have been issued, could be issued, or that have been authorized to be issued but that have not been issued, shall be deemed cancelled and extinguished without any further action of any party; *provided*, *however*, that each Plan Debtor shall be deemed to have issued one (1) share of common stock or 100% of its membership interests, as the case may be, to the Wind-Down Administrator to be held and exercised solely for purposes of the Wind-Down Administrator carrying out its duties as set forth in Section 7.4 of the Plan.

The holders of, or parties to, the cancelled notes, membership interests, share certificates, and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan and Investor Trust Agreement.

G. Disposition of Books and Records

The Plan provides that after the Effective Date, the Plan Debtors shall transfer the Plan Debtors' books and records in the Plan Debtors' actual possession and otherwise assign their rights and interest in such books and records to the to the Investor Trustee. From and after the Effective Date, the Investor Trustee shall continue to preserve and maintain all documents and electronic data transferred to the Investor Trustee by the Plan Debtors, and the Investor Trustee shall not destroy or otherwise abandon any such documents and records (in electronic or paper format) absent further order of the Bankruptcy Court after a hearing upon notice to parties-in-interest; *provided*, *however*, that the Investor Trustee may destroy or abandon such books and records upon dissolution of the Investor Trust.

H. Closing the Chapter 11 Cases

The Plan provides that upon the Effective Date, the Chapter 11 Cases for each Plan Debtor, except for Seaboard Hotel, shall be deemed closed, and the Wind-Down Administrator shall submit an order to the Bankruptcy Court under certification of counsel closing each such Chapter 11 Case, and all matters related to the Chapter 11 Cases of the Plan Debtors shall continue to be administered and addressed in the Chapter 11 Case of Seaboard Hotel.

After all Investor Causes of Action and Disputed Claims and Equity Interests have been resolved, the U.S. Trustee Fees have been paid, all of the funds in the Investor Trust have been distributed in accordance with the Plan, or at such earlier time as the Investor Trustee deems appropriate, the Investor Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Case for Seaboard Hotel, in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

VII. ACCEPTANCE OR REJECTION OF THE PLAN

A. Voting

The Plan is being distributed, with Ballots, to Holders of Claims and Equity Interests in Classes 3, 4, 5, 6, and 7, which are the Classes of Claims and Equity Interests that are potentially, or are, impaired under the Plan and will receive a Distribution under the Plan. Accordingly, Holders of Claims and Equity Interests in Classes 3, 4, 5, 6, and 7 are entitled to vote **either to accept or to reject** the Plan. Holders of Claims in Classes 1 and 2 are deemed to have **accepted** the Plan because their respective Claims are not impaired, and are therefore not entitled to vote on the Plan. Holders of Claims in Classes 8 and 9 are deemed to have accepted the Plan pursuant to the Plan Settlement. Holders of Subordinated Claims and Subordinated Interests in Class 10 are deemed to have **rejected** the Plan because they will neither receive nor retain any property under the Plan. Accordingly, the Holders of Claims and Equity Interests in Classes 1, 2, 8, 9 and 10 **cannot** vote on the Plan (although they are free to file a written objection to the Plan with the Bankruptcy Court, in accordance with the procedures set forth below). For a more detailed description of the Classes of Claims and Equity Interests and their treatment under the Plan, see Article V of this Disclosure Statement.

The Plan Debtors have prepared this Disclosure Statement in connection with their solicitation of votes from Holders of Claims and Equity Interests in Classes 3, 4, 5, 6, and 7. On [___________], the Bankruptcy Court entered an order (the "Disclosure Statement Order"), approving this Disclosure Statement as containing information of a kind and in sufficient detail to enable a hypothetical, reasonable investor, typical of each of the Holders of Claims and Equity Interests in Classes 3, 4, 5, 6, and 7 to make an informed judgment whether to accept or reject the Plan. Such approval by the Bankruptcy Court does not constitute a recommendation of the Plan by the Bankruptcy Court.

Section 1129(a) of the Bankruptcy Code allows the Bankruptcy Court to confirm a plan if certain conditions have been met and, with certain exceptions, if each class of claims or interests that is impaired under the plan has voted to accept the plan. As stated above, the Class of Subordinated Claims and Subordinated Interests will be deemed to have rejected the Plan, and therefore the Plan Debtors will seek to confirm the Plan, subject to Bankruptcy Court approval, over that Class's rejection pursuant to section 1129(b) of the Bankruptcy Code, on the grounds that (i) at least one impaired class of Claims is expected to accept the Plan and (ii) the Plan does not discriminate unfairly and is fair and equitable with respect to Class 10 Subordinated Claims and Intercompany Interests.

Under section 1126(c) of the Bankruptcy Code, a class of claims has accepted a plan if such plan has been accepted by claimholders in that class that hold at least two-thirds in dollar amount and more than one-half in number of the allowed claims of such class, excluding Holders whose acceptances or rejections were found not to be in good faith. Under the Bankruptcy Code, only parties that actually vote will be counted for purposes of determining acceptance or rejection by any impaired class. Therefore, the Plan could be approved by Holders of Claims and Equity Interests in Classes 3, 4, 5, 6, and 7 with the affirmative vote of significantly less than two-thirds in total dollar amount and one-half in total number of the Claims or Equity Interests of each Class. However, it should also be noted that even if the Holders of all Claims or Equity Interests in Classes impaired under the Plan accept or are deemed to have accepted the Plan, the Plan is subject to certain other requirements under section 1129(a) of the Bankruptcy Code and might not be confirmed by the Bankruptcy Court. The Plan Debtors are confident, however, that the Plan satisfies those requirements of section 1129(a), and can be confirmed by the Bankruptcy Court.

Any Holder of an impaired Claim (i) whose Claim has been scheduled by the Plan Debtors in the Schedules (provided that such Claim has not been scheduled as disputed, contingent or unliquidated), (ii) who has timely filed a proof of Claim, on or prior to the Bar Date, with respect to which the Plan Debtors have not filed an objection, or (iii) whose claim has been determined or estimated for voting purposes by the Bankruptcy Court, is entitled to accept or reject the Plan (unless such Claim has been disallowed by the Bankruptcy Court for purposes of accepting or rejecting the Plan). Further, any Holder of an Equity Interest listed on the Lists of Debtors' Equity Security Holders in Accordance With Bankruptcy Rule 1007 [Docket No. 26] is entitled to accept or reject the Plan as a potential holder of a Class 7 Equity Interest (subject to any subsequent action to seek to reclassify such Equity Interest as a Class 10 Subordinated Interest).

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, NO DISPUTED CLAIM WILL BE COUNTED FOR ANY PURPOSE IN DETERMINING WHETHER THE REQUIREMENTS OF SECTION 1126(C) OF THE BANKRUPTCY CODE HAVE BEEN MET, UNLESS A CLAIMANT WHOSE CLAIM IS DISPUTED HAS FILED A MOTION FOR TEMPORARY ALLOWANCE FOR VOTING PURPOSES UNDER BANKRUPTCY RULE 3018(a), AND THE BANKRUPTCY COURT GRANTS SUCH MOTION FOR TEMPORARY ALLOWANCE PRIOR TO THE VOTING DEADLINE.

B. Voting Instructions

This Disclosure Statement and other documents described herein are being furnished by the Plan Debtors to certain Holders of Claims against the Plan Debtors and Equity Interests in the Plan Debtors pursuant to the Disclosure Statement Order for the purpose of soliciting votes on the Plan. The Plan Debtors are seeking the acceptance of the Plan by Holders of Mortgage Claims (Class 3), Settling Lender Claims (Class 4), General Unsecured Claims (Class 5), Investor Claims (Class 6), and Equity Interests (Class 7).

A Ballot to be used to accept or to reject the Plan has been enclosed with all copies of this Disclosure Statement mailed to Holders of Claims and Equity Interests that are impaired by the

Plan and entitled to vote. A copy of the Disclosure Statement Order and a notice of, among other things, voting procedures and the dates set for objections to and the hearing on confirmation of the Plan (the "Notice of the Confirmation Hearing") are also being transmitted with this Disclosure Statement. The Disclosure Statement Order and the Notice of the Confirmation Hearing set forth in detail the deadlines, procedures, and instructions for casting votes to accept or reject the Plan, for filing objections to confirmation of the Plan, the treatment for balloting purposes of certain types of Claims and Equity Interests, and the assumptions for tabulating ballots. In addition, detailed voting instructions accompany each Ballot for each Class. Each Holder of a Claim or Equity Interest within a Class entitled to vote should read the Disclosure Statement, the Plan, the Disclosure Statement Order, the Notice of Confirmation Hearing, and the instructions accompanying the Ballots in their entirety before voting on the Plan. These documents contain important information concerning how Claims and Equity Interests are classified for voting purposes and how votes will be tabulated.

If you hold Claims in more than one Class and are entitled to vote Claims in more than one Class, you must use separate Ballots for each separate Class. Please vote and return your Ballot(s) in accordance with the instructions set forth herein and the instructions accompanying your Ballot(s). PLEASE CAREFULLY FOLLOW THE DIRECTIONS CONTAINED ON EACH ENCLOSED BALLOT. To be counted, your vote indicating acceptance or rejection of the Plan must be properly completed in accordance with the instruction on the Ballot.

To be counted, your vote indicating acceptance or rejection of the Plan must actually be received by the Claims and Balloting Agent, Donlin, Recano & Company, Inc. (the "Claims Agent"), no later than [______], prevailing Eastern Time, on [________] (the "Voting Deadline"). Ballots received after that time will not be counted, except to the extent the Plan Debtors so determine or as permitted by the Bankruptcy Court pursuant to Bankruptcy Rule 3018.

All Ballots must be sent to the Claims Agent at the following address:

If by First Class Mail:

Donlin, Recano & Company, Inc.
Re: Newbury Common Associates, LLC, et al.
Attn: Voting Department
PO Box 192016 Blythebourne Station
Brooklyn, NY 11219

If by Hand Delivery or Overnight Mail:

Donlin, Recano & Company, Inc.
Re: Newbury Common Associates, LLC, et al.
Attn: Voting Department
6201 15th Ave
Brooklyn, NY 11219

Consistent with the provisions of Bankruptcy Rule 3018, the Bankruptcy Court has fixed a Record Date of [___________] (the "Record Date"). This is the date for the determination of Holders of record of Claims who are entitled to vote on the Plan. All votes to accept or reject the Plan must be cast by using a Ballot. Votes which are cast in any manner other than by using a Ballot will not be counted.

If your Ballot is damaged or lost, or if you do not receive a Ballot, you may request a replacement by contacting the Claims Agent at 212.771.1128 or Balloting@DonlinRecano.com. THIS EMAIL ADDRESS SHOULD NOT BE USED TO SUBMIT BALLOTS.

After carefully reviewing the Plan, including all schedules thereto, and this Disclosure Statement and its exhibits, please indicate your vote on the enclosed Ballot, sign it, and then return it in the envelope provided. In voting to accept or to reject the Plan, please use only a Ballot sent to you with this Disclosure Statement or by the Claims Agent.

A Ballot may be withdrawn by delivering a written notice of withdrawal to the Claims Agent, so that the Claims Agent actually receives such notice prior to the Voting Deadline. Thereafter, withdrawal may be effected only with the approval of the Bankruptcy Court by filing a motion in accordance with Bankruptcy Rule 3018(a).

C. Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing (the "Confirmation Hearing") with respect to the Plan. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the applicable requirements of section 1129 of the Bankruptcy Code are met. The Confirmation Hearing has been scheduled to commence at [______] (prevailing Eastern Time) on [___________] before the Honorable Judge Laurie Selber Silverstein, United States Bankruptcy Court, District of Delaware, 824 Market Street, 6th Floor, Courtroom #2, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice other than an announcement of the adjourned date made at the Confirmation Hearing.

Any party-in-interest may object to Confirmation of the Plan and appear at the Confirmation Hearing to pursue such objection. The Bankruptcy Court has set **[_____________] (prevailing Eastern Time)**, as the deadline for filing and serving objections to Confirmation of the Plan. Objections to Confirmation must be timely filed with the Clerk of the Bankruptcy Court and served upon counsel for the Plan Debtors at the addresses specified on the first page of this Disclosure Statement, and:

To the Office of the United States Trustee

Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801

Attn: David Gerardi, Esq. and David Buchbinder, Esq.

D. Other Important Information

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN OFFER OR SOLICITATION IN ANY STATE OR OTHER JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.

THIS DISCLOSURE STATEMENT IS PROVIDED FOR USE SOLELY BY HOLDERS OF CLAIMS AND EQUITY INTERESTS IN CLASSES 3, 4, 5, 6, AND 7 AND THEIR ADVISORS, IN CONNECTION WITH THEIR DETERMINATION TO ACCEPT OR TO REJECT THE PLAN, OR TO OBJECT TO THE PLAN. THIS DISCLOSURE STATEMENT, UPON WRITTEN REQUEST, WILL ALSO BE PROVIDED TO OTHER HOLDERS OF CLAIMS AND EQUITY INTERESTS (TO THE EXTENT KNOWN BY THE PLAN DEBTORS) IN ORDER FOR SUCH PARTIES TO DETERMINE WHETHER TO OBJECT TO THE PLAN.

HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH SUCH HOLDER SHOULD THEREFORE CONSULT WITH HIS, HER, OR ITS OWN LEGAL, BUSINESS, FINANCIAL AND/OR TAX ADVISORS AS TO ANY MATTER CONCERNING THE BANKRUPTCY CASES, THE PLAN, AND THE TRANSACTIONS CONTEMPLATED THEREBY.

VIII. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Binding Effect

Pursuant to the Plan, subject to the occurrence of the Effective Date, the provisions of the Plan, the Plan Supplement, and the Confirmation Order shall bind (a) any Holder of a Claim against, or Equity Interest in, the Plan Debtors and such Holder's respective successors and assigns (whether or not the Claim or Equity Interests are Impaired under the Plan, whether or not such Holder has voted to accept the Plan, and whether or not such Holder is entitled to a Distribution under the Plan), (b) all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, (c) each Person acquiring property under the Plan or the Confirmation Order, and (d) any and all non-Debtor parties to executory contracts and unexpired leases with the Plan Debtors. All Claims and debts against Plan Debtors shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

B. Modification of the Plan

Pursuant to the Plan, alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Plan Debtors at any time prior to the Confirmation Date; *provided*, that the Plan, as altered, amended, or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code and the Plan Debtors have complied with section 1125 of the

Bankruptcy Code. The Plan may be altered, amended, or modified at any time after the Confirmation Date and before substantial consummation; provided, that the Plan, as altered, amended, or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended, or modified, under section 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments, or modifications. A Holder of a Claim or Equity Interest that has accepted the Plan prior to any alteration, amendment, or modification will be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Holders of the Claims.

Prior to the Effective Date, the Plan Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not materially change the treatment of Holders of Claims or Equity Interests.

C. Revocation or Withdrawal of the Plan

Pursuant to the Plan, any of the Plan Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. Subject to the foregoing sentence, if any of the Plan Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void solely as to such Plan Debtors. In such event, nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Plan Debtors or any other Person or to prejudice in any manner the rights of the Plan Debtors or any Person in any further proceedings involving the Plan Debtors.

IX. EFFECT OF NO CONFIRMATION

Except as expressly set forth therein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order and the Effective Date shall have occurred. Neither the filing of the Plan, nor any statement or provision contained therein, nor the taking of any action by the Plan Debtors with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of the Plan Debtors prior to the Effective Date. If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties in interest in the Bankruptcy Cases are and shall be reserved in full. Any concessions or settlements reflected in the Plan, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Bankruptcy Cases shall be bound or deemed prejudiced by any such concession or settlement.

The Plan Debtors anticipate that the chapter 11 case of a Plan Debtor for which the Plan cannot be confirmed or for which the Plan cannot be made effective will either be converted or dismissed.

X. CONFIRMATION AND CONSUMMATION PROCEDURE

A. Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing with respect to the Plan. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code described below are met.

B. Requirements of section 1129(a) of the Bankruptcy Code

The Bankruptcy Court will confirm the Plan only if it finds that all of the applicable requirements enumerated in section 1129(a) of the Bankruptcy Code have been met or, if all of the requirements of section 1129(a) other than the requirements of section 1129(a)(8) have been met (i.e., that all impaired classes have accepted the plan), that all of the applicable requirements enumerated in section 1129(b) of the Bankruptcy Code have been met.

Among other things, sections 1129(a) and (b) require that the Plan be (i) accepted by all impaired Classes of Claims and Equity Interests or, if rejected by an impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Class, (ii) feasible, and (iii) in the "best interests" of Holders of Claims and Equity Interests that are impaired under the Plan.

Article V of the Plan provides that Class 10 is not receiving any Distribution under the Plan and is deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, as to such Class and any other Class that votes to reject the Plan, the Plan Debtors are seeking confirmation of the Plan in accordance with sections 1129(a) and (b) of the Bankruptcy Code either under the terms provided in the Plan or upon such terms as may exist if the Plan is modified in accordance with section 1127(d) of the Bankruptcy Code.

THE PLAN DEBTORS BELIEVE THAT THE PLAN SATISFIES OR WILL SATISFY, AS OF THE CONFIRMATION DATE, ALL OF THE REQUIREMENTS FOR CONFIRMATION.

1. Best Interests Test

To confirm the Plan, the Bankruptcy Court must, pursuant to section 1129(a)(7) of the Bankruptcy Code, independently determine that the Plan is in the best interests of each Holder of a Claim or Equity Interest in any impaired Class who has not voted to accept the Plan. This is often called the "best interests" test. Accordingly, if an impaired Class does not unanimously accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such impaired Class a recovery on account of the Class member's Claim or Equity Interest that has a value, as of the Effective Date, at least equal to the value of the Distribution that each such member would receive if the Plan Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

To determine the value that a Holder of a Claim or Equity Interest in an impaired Class would receive if the Plan Debtors were liquidated under chapter 7, the Bankruptcy Court must determine the aggregate dollar amount that would be generated from the liquidation of the assets if any or all of the Bankruptcy Cases were converted to a chapter 7 liquidation case and such Assets were liquidated by a chapter 7 trustee ("Liquidation Value"). The Liquidation Value would consist of the net proceeds from the disposition of the Plan Debtors' remaining assets, which consists of claims and causes of action against third parties, augmented by Cash held by the Plan Debtor and reduced by certain increased costs and Claims that arise in a chapter 7 liquidation case that do not arise in a chapter 11 case. Any such liquidation would necessarily take place in the future under circumstances that cannot be predicted; the amount of such proceeds is therefore highly speculative and could be significantly impacted as a result of the uncertainty that exists as to whether a chapter 7 trustee could successfully prosecute the claims and causes of action held by the Plan Debtors. The amount of proceeds available from the liquidation of assets is an estimate that assumes conditions that may not be present at the time of the chapter 7 liquidation.

The Plan Debtors believe the best interests test is satisfied here, because the Plan itself provides for the disposition of the assets and the payment of Claims against the Plan Debtors without the delay and the additional overlay of administrative expense that would occur in a chapter 7 liquidation. Additionally, the Plan Settlement provides for a compromise of certain claims and Causes of Action that would not be available absent confirmation of the Plan.

As more fully set forth in the liquidation analysis attached hereto as Exhibit 2, it is likely that only Settling Lender Claims and (if at all) Administrative Claims and Professional Claims will receive any distribution in a chapter 7 liquidation.

For all of the foregoing reasons, and as more fully set forth in the liquidation analysis attached hereto as Exhibit 2, the Plan Debtors believe that the Plan satisfies the best interests test.

2. Feasibility

The Plan Debtors will not conduct business after the Effective Date. The Plan provides that the Wind-Down Administrator will be responsible for, among other things, administering the Plan, winding up the Plan Debtors' affairs, resolving any Claim filed against a Plan Debtor that is not Allowed as of the Effective Date, and administering Distributions to Holders of Allowed Claims (other than Investor Claims and Subordinated Claims) from the Distribution Escrow Account in accordance with the Plan. Immediately following the Effective Date of the Plan, the Wind-Down Administrator shall be authorized to take, in his or her sole and absolute discretion, all actions reasonably necessary to dissolve or cancel the limited liability company existence of the Plan Debtors under applicable laws. The ability to make the Distributions described in the Plan does not depend on future earnings or operations of the Plan Debtors. Accordingly, the Plan Debtors believe that the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

3. Acceptance by Impaired Classes

By this Disclosure Statement, the Plan Debtors are seeking the affirmative vote of each impaired Class of Claims under the Plan that is proposed to receive a Distribution under the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, a class that is not "impaired" under a plan will be conclusively presumed to have accepted such plan; solicitation of acceptances with respect to any such class is not required. Pursuant to section 1126(g) of the Bankruptcy Code, a class of claims or interests that does not receive or retain any property under a plan of liquidation is deemed not to have accepted the plan, although members of that class are permitted to consent, or waive objections, to its confirmation.

Pursuant to section 1124 of the Bankruptcy Code, a class is "impaired" unless a plan (i) leaves unaltered the legal, equitable and contractual rights to which the claim or interest entitles the holder thereof, or (ii) (a) cures any default (other than defaults resulting from the breach of an insolvency or financial condition provision), (b) reinstates the maturity of such claim or interest, (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on any contractual provision or applicable law entitling such holder to demand or receive accelerated payments after the occurrence of a default, and (d) does not otherwise alter the legal, equitable or contractual rights to which the holder of such claim or interest is entitled.

Pursuant to section 1126(c) of the Bankruptcy Code, a class of impaired claims has accepted a plan when such plan has been accepted by claimholders (other than an entity designated under section 1126(e) of the Bankruptcy Code) that hold at least two thirds in dollar amount and more than one half in number of the allowed claims of such class held by claimholders (other than any entity designated under section 1126(e) of the Bankruptcy Code) that have actually voted to accept or reject the plan. A class of interests has accepted a plan if the plan has been accepted by holders of interests (other than any entity designated under section 1126(e) of the Bankruptcy Code) that hold at least two thirds in amount of the allowed interests of such class held by interest holders (other than any entity designated under section 1126(e) of the Bankruptcy Code) that have actually voted to accept or reject the plan. Section 1126(e) of the Bankruptcy Code allows the Bankruptcy Court to designate the votes of any party that did not vote in good faith or whose vote was not solicited or procured in good faith or in accordance with the Bankruptcy Code. Holders of claims or interests who fail to vote are not counted as either accepting or rejecting the plan.

4. Confirmation Without Acceptance by All Impaired Classes

Because Class 10 (Subordinated Claims and Subordinated Interests) is deemed not to have accepted the Plan, the Plan Debtors are seeking confirmation of the Plan as to such Class, and as to any other Class that votes to reject the Plan, pursuant to section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may still confirm a plan at the request of a debtor if, as to each impaired class that has not accepted the plan, the plan "does not discriminate unfairly" and is "fair and equitable."

Section 1129(b)(2)(A) of the Bankruptcy Code provides that with respect to a non-accepting class of impaired secured claims, "fair and equitable" includes the requirement that the plan provides (i) that each holder of a claim in such class (a) retains the liens securing its claim to the extent of the allowed amount of such claim and (b) receives deferred cash payments at least equal to the allowed amount of its claim with a present value as of the effective date of such plan at least equal to the value of such creditor's interest in the debtor's interest in the property securing the creditor's claim, (ii) for the sale, subject to section 363(k) of the Bankruptcy Code, of the property securing the creditor's claim, free and clear of the creditor's liens, with those liens attaching to the proceeds of the sale, and such liens on the proceeds will be treated in accordance with clauses (i) or (iii) thereof, or (iii) for the realization by the creditor of the "indubitable equivalent" of its claim.

Section 1129(b)(2)(B) of the Bankruptcy Code provides that with respect to a non-accepting class of impaired unsecured claims, "fair and equitable" includes the requirement that (i) the plan provide that each holder of a claim in such class receives or retains property of a value as of the effective date equal to the allowed amount of its claim, or (ii) the holders of claims or interests in classes that are junior to the claims of the dissenting class will not receive or retain any property under the plan on account of such junior claim or interest. Under the Plan the Subordinated Claims in Class 10 are subordinated to all other Claims and Interests. Thus, from the perspective of the Holders of Subordinated Claims, there are no junior classes so junior classes will not be receiving or retaining on account of such junior interest any property under the Plan.

Section 1129(b)(2)(C) of the Bankruptcy Code provides that with respect to a non-accepting class of impaired equity interests, "fair and equitable" includes the requirement that (i) the plan provides that each holder of an impaired interest in such class receives or retains property of a value as of the effective date equal to the greatest of (a) the allowed amount of any fixed liquidation preference to which such holder is entitled, (b) any fixed redemption price to which such holder is entitled, and (c) the value of such interest, or (ii) the holders of all interests that are junior to the interests of the dissenting class will not receive or retain any property under the plan on account of such junior interest. Under the Plan, the Subordinated Interests are subordinated to all other Interests pursuant to the Bankruptcy Code and senior Classes of Claims are not being paid more than the full amount of their Claims.

Based on the foregoing, the Plan Debtors believe that the Plan does not discriminate unfairly against, and is fair and equitable as to, each impaired Class under the Plan.

XI. RISK FACTORS

A. General

Even if an Impaired Class votes to accept the Plan and, with respect to any Impaired Class deemed to have rejected the Plan, the requirements for "cramdown" under section 1129(b) of the Bankruptcy Code are met, the Bankruptcy Court may exercise substantial discretion and may choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, that the value of Distributions to dissenting Holders of Claims or Equity Interests

may not be less than the value such Holders would receive if the Plan Debtors were liquidated under Chapter 7 of the Bankruptcy Code. Although the Plan Debtors believe that the Plan will meet such requirement, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

B. Allowed Claims May Exceed Estimates

Approximately 439 proofs of claim were filed against the Debtors as of the Bar Date. Objections to certain Claims may be filed by the Plan Debtors or applicable Distribution Agent as the claims resolution process continues. However, the aggregate amount of Claims that will ultimately be Allowed is not determinable at this time, and the claims resolution process will not be completed until after the Effective Date. Individual Distributions to Holders of Claims will depend on the actual amount of Claims that are ultimately Allowed. This amount may differ substantially from the Plan Debtors' estimates. Any increase in the amount of anticipated Allowed Claims versus the Plan Debtors' estimates could result in decreased recoveries for Holders of Claims.

C. Claims or Equity Interests May Be Subordinated or Reassigned

Section 6.2 of the Plan provides for a preliminary classification of Claims and Equity Interests and, generally, provides that Claims classified under the Plan may not be re-classified into senior classes. However, the Plan preserve the ability to, among other things, (i) reassign Claims or Equity Interests asserted against one Plan Debtor to another Plan Debtor, (ii) subordinate into Class 10 any Claim or Equity Interest, and (iii) to reclassify Investor Claims to Equity Interests and vice versa. As a result, a Holder's recovery under the Plan may be effected by any such action that takes place after the initial classifications are established under the Plan.

D. Plan May Not Be Accepted or Confirmed

While the Plan Debtors believe the Plan is confirmable under the standards set forth in section 1129 of the Bankruptcy Code, there can be no guarantee that the Bankruptcy Court will agree. In the event that a Plan Debtor is unable to obtain Confirmation of the Plan or to make the Plan effective for itself, it is anticipated that such Plan Debtor will have its chapter 11 case converted to a case under chapter 7 or dismissed.

XII. ALTERNATIVES TO THE PLAN

A. Liquidation under Chapter 7

If no chapter 11 plan can be confirmed, then some or all of the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code. In a chapter 7 case, a trustee would be elected or appointed to liquidate the assets of the Plan Debtor in the converted case and for the proceeds of such liquidation to be distributed in accordance with the priorities established by the Bankruptcy Code.

B. Alternative Plan

If the Plan is not confirmed, the Plan Debtors and/or other parties in interest could attempt to formulate a different plan under chapter 11 of the Bankruptcy Code. However, the Plan Debtors have concluded that the Plan enables Holders of Claims and Equity Interests to realize the most value under the circumstances. If the Plan is rejected, it is possible that an alternative chapter 11 plan could be proposed, but the Plan Debtors anticipate that either a conversion to chapter 7 or a dismissal of the applicable Plan Debtor's case are the two most likely outcomes. A discussion with respect to chapter 7 liquidation proceedings appears above. In an alternative plan scenario, it is likely that the Plan Settlement would be invalidated, and any such alternative plan would involve extensive further negotiation, formulation and drafting, and, in addition, possible litigation over its confirmability, thereby increasing administrative expenses and likely reducing, and possibly eliminating, distributions to most Classes of Creditors, and causing further delay in the resolution of the Bankruptcy Cases and in the making of distributions to Creditors.

In any event, if the Plan is not confirmed, the statements contained herein or otherwise in the Plan or any of the other Plan Documents may not be deemed to have been admissions by the Plan Debtors that may be introduced into evidence against them in the Bankruptcy Cases, any proceedings arising in or related to the Bankruptcy Cases, or any other proceedings.

XIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion summarizes certain United States federal income tax consequences of the Plan to the Plan Debtors and to certain Holders of Claims. This discussion is based on the Internal Revenue Code, the Treasury regulations thereunder (the "Regulations"), judicial decisions, and published administrative rulings and pronouncements of the IRS, all as in effect on the date hereof. Legislative, judicial, or administrative changes in law or its interpretation, as well as other events occurring after the date of this Disclosure Statement, and which may be retroactive, could materially alter the tax treatment described below. Furthermore, this discussion is not binding on the IRS or any other tax authority. There is no assurance that a tax authority will not take, or that a court will not sustain, a position with respect to the tax consequences of the Plan that differs from the tax consequences described below. No ruling has been or will be sought from the IRS, no opinion of counsel has been or will be obtained, and no representations are made regarding any tax aspect of the Plan.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder in light of such Holder's facts and circumstances, or to certain types of Holders subject to special treatment under the Tax Code (for example, governmental entities and entities exercising governmental authority, non-U.S. taxpayers, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim as part of a hedge, straddle, constructive sale, conversion transaction, or other integrated transaction, Holders that are or hold their Claims through a partnership or other pass-through entity, and persons that have a functional currency other than the U.S. dollar). This summary does not address state, local, or non-United States tax consequences of the Plan, nor does this summary address federal

taxes other than income taxes. Furthermore, this discussion generally does not address U.S. federal income tax consequences to Holders that are Unimpaired under the Plan or that are not entitled to receive or retain any property under the Plan or to persons who are deemed to have rejected the Plan.

References to a Holder of a Claim refer to such Holder in its capacity as a Holder of a Claim, even if such Holder also holds an Equity Interest.

THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND ARE SUBJECT TO SIGNIFICANT UNCERTAINTIES. THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE AND IS NOT A TAX OPINION. THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO HOLDERS DEPEND UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. THIS SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE FROM THE HOLDER'S TAX ADVISOR BASED UPON THE HOLDER'S PARTICULAR CIRCUMSTANCES. EACH HOLDER IS URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES OF THE PLAN TO THEM.

TO ENSURE COMPLIANCE WITH INTERNAL REVENUE SERVICE CIRCULAR 230, YOU ARE HEREBY NOTIFIED THAT: (1) ANY DISCUSSION OF UNITED STATES FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE TAX CODE; (2) ANY SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE SOLICITATION OF VOTES IN FAVOR OF THE PLAN; AND (III) EACH TAXPAYER SHOULD SEEK ADVICE BASED ON SUCH TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. Federal Income Tax Consequences to the Plan Debtors

For U.S. federal income tax purposes, gross income generally includes income from cancellation of indebtedness ("COD"). In general, the Plan Debtors will have COD income equal to the excess of the amount of debt discharged pursuant to the Plan over the adjusted issue price of the debt, less the amount of cash and the fair market value of property distributed to holders of the debt. Various statutory or judicial exceptions limit the incurrence of COD income (such as where payment of the cancelled debt would have given rise to a tax deduction). COD income also includes interest accrued on obligations of the Plan Debtors but unpaid at the time of discharge. An exception to the recognition of COD income applies to a debtor in a chapter 11 bankruptcy proceeding. Bankrupt debtors generally do not include COD in taxable income, but must instead reduce certain tax benefits (such as NOLs, capital losses, certain credits, and the excess of the tax basis of the debtor's property over the amount of liabilities outstanding after discharge) by the amount of COD income that was excluded under the bankruptcy exception. Tax benefits are reduced after the tax is determined for the year of discharge. NOLs will

therefore be available to offset gains on asset sales in the year of the discharge regardless of the amount by which NOLs are reduced due to COD income.

B. Classification, Reporting, and Taxation of the Investor Trust and Beneficiaries

The Plan provides for the Investor Trust Assets to be transferred to and vest in the Investor Trust as of the Effective Date. It is intended that the Investor Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d). For U.S. federal income tax purposes, it is thus intended that the Holders of Equity Interests in, and Allowed Investor Claims against, the Investor Trust Debtors will be treated as the grantors of the Investor Trust and therefore the beneficiaries of the Investor Trust Assets.

The above discussion assumes that the Investor Trust will be respected as a grantor trust for U.S. federal income tax purposes. The Plan Debtors are not requesting an IRS ruling or an opinion of counsel regarding such treatment and there is no assurance that the IRS will agree that the trust should be so treated. If the IRS were to challenge such treatment, the Investor Trust may be treated as a different type of taxable entity for U.S. federal income tax purposes and the treatment of the Plan Debtors, the Investor Trust, and its beneficiaries may be materially different than the treatment discussed above. BENEFICIARIES OF THE INVESTOR TRUST ARE URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE U.S. FEDERAL INCOME TAX TREATMENT OF THE INVESTOR TRUST AND OF THEIR INTERESTS IN THE INVESTOR TRUST.

C. Federal Income Tax Consequences to Holders of Claims

The tax treatment of Holders of Claims, and the character, amount and timing of income, gain, or loss recognized as a consequence of the Plan and Distributions pursuant to the Plan may vary, depending upon, among other things: (i) whether the Claim (or a portion of the Claim) is for principal or interest; (ii) the type of consideration the Holder receives for the Claim, (iii) whether the Holder receives Distributions under the Plan in more than one taxable year; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction with respect to part or all of the Claim; (viii) whether the Holder has previously included in income accrued but unpaid interest on the Claim; (ix) the Holder's method of tax accounting; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; (xi) whether the Claim, and any instrument received in exchange for the Claim, is a "security" for U.S. federal income tax purposes; and (xii) whether and the manner in which the "market discount" rules of the Internal Revenue Code apply to the Holder.

Holders of Claims that receive cash and property other than stock and securities for their Claim will recognize gain or loss for U.S. federal income tax purposes equal to the difference between their "amount realized" and their tax basis in the Claim. The "amount realized" is the sum of the amount of cash and the fair market value of any other property received under the Plan in respect of the Claim (other than amounts received in respect of a Claim for accrued unpaid interest). The Holder's tax basis in the Claim (other than a Claim for accrued unpaid

interest) is generally the Holder's cost, though tax basis could be more or less than cost depending on the specific facts of the Holder. Any gain or loss realized may be capital gain or loss or ordinary gain or loss, depending on the circumstances of the Holder.

Holders that previously included in income accrued but unpaid interest on a Claim may be entitled to a deductible loss to the extent such interest is not satisfied under the Plan. Conversely, a Holder has ordinary income to the extent of the amount of cash or the fair market value of property received in respect of a Claim for (or the portion of a Claim treated as allocable to) accrued unpaid interest that was not previously included in income by the Holder. The Plan treats all amounts payable to a Holder as principal until the principal amount of the Claim has been paid in full. The Wind-Down Administrator will file the Plan Debtors' tax returns consistent with this allocation, but it is uncertain whether this allocation will be respected by the IRS. The IRS may take the position that payments should be allocated first to interest or should be pro-rated between principal and interest. If the IRS prevails in this assertion, Holders may be required to recognize ordinary interest income even though they have an overall loss (and possibly a capital loss, the deductibility of which may be limited) with respect to their Claims. Each Holder is urged to consult its own tax advisor regarding the amount of its Claim allocable to accrued unpaid interest and the character of any loss with respect to accrued but unpaid interest that the Holder previously included in income.

A Holder of a Claim who receives, in respect of its Claim, an amount that is less than its tax basis in the Claim may be entitled to a bad debt or worthless securities deduction. The rules governing the character, timing, and amount of these deductions depend upon the facts and circumstances of the Holder, the obligor, and the instrument with respect to which the deduction is claimed, including whether (i) the Holder is a corporation, or (ii) the Claim constituted (a) a debt created or acquired (as the case may be) in connection with the Holder's trade or business, or (b) a debt, the loss from worthlessness of which is incurred in the Holder's trade or business. A Holder that has previously recognized a loss or deduction in respect of its Claim may be required to include in income amounts received under the Plan that exceed the Holder's adjusted basis in its Claim.

A Holder of a Claim that is an installment obligation for U.S. federal income tax purposes may be required to recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold, or otherwise disposed of within the meaning of section 453B of the Internal Revenue Code.

A Holder that acquires a Claim at a market discount generally is required to treat any gain realized on the disposition of the Claim as ordinary income to the extent of the market discount that accrued during the period the Claim was held by the Holder and that was not previously included in income by the Holder.

Amounts paid to Holders are subject to generally applicable withholding, information and backup withholding rules. The Plan authorizes the Distribution Agents, as applicable, to withhold and report amounts required by law to be withheld and reported. Amounts properly withheld from Distributions to a Holder and paid over to the applicable taxing authority for the

account of the Holder will be treated as amounts distributed to the Holder. Holders are required to provide the Distribution Agents, as applicable, with the information necessary to effect information reporting and withholding as required by law. Notwithstanding any other provision of the Plan, Holders that receive a Distribution pursuant to the Plan are responsible for the payment and satisfaction of all tax obligations, including income, withholding, and other tax obligations imposed with respect to the Distribution, and no Distribution shall be made until the Holder has made arrangements satisfactory to the Wind-Down Administrator for the payment and satisfaction of such obligations.

Holders may be subject to backup withholding on payments pursuant to the Plan unless the Holder (i) is not a corporation and is not otherwise exempt from backup withholding and, when required, demonstrates that or (ii) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of previous failure to report dividend and interest income. Amounts withheld due to backup withholding will be credited against the Holder's federal income tax liability and excess withholding may be refunded if a timely claim for refund (generally, a U.S. federal income tax return) is filed with the IRS.

Treasury regulations require tax return disclosure of certain types of transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Holders are urged to consult their own tax advisor regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and would require such disclosure.

THE FOREGOING SUMMARY IS BEEN PROVIDED FOR INFORMATIONAL PURPOSES ONLY. HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES OF THE PLAN.]

XIV. CONCLUSION

It is important that you exercise your right to vote on the Plan. It is the Plan Debtors' belief that the Plan fairly and equitably provides for the treatment of all Claims against and Equity Interests in the Plan Debtors. In addition, any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses, resulting in smaller distributions to the Holders of Claims and Equity Interests. Accordingly, the Plan Debtors recommend that Holders of Claims and Equity Interests entitled to vote to accept or reject the Plan support Confirmation of the Plan and vote to accept the Plan by returning their Ballots to the Claims Agent so that they will be received not later than [____________] (ET).

(Signature Page Follows)

IN WITNESS WHEREOF, each Plan Debtor has executed the Disclosure Statement this 27th day of February, 2017.

220 ELM STREET I, LLC
220 ELM STREET II, LLC
300 MAIN MANAGEMENT, INC.
300 MAIN STREET ASSOCIATES, LLC
300 MAIN STREET MEMBER ASSOCIATES, LLC
316 COURTLAND AVENUE ASSOCIATES, LLC
600 SUMMER STREET STAMFORD ASSOCIATES, LLC
88 HAMILTON AVENUE ASSOCIATES, LLC
88 HAMILTON AVENUE MEMBER ASSOCIATES, LLC
CENTURY PLAZA INVESTOR ASSOCIATES, LLC
CLOCKTOWER CLOSE ASSOCIATES, LLC
ONE ATLANTIC INVESTOR ASSOCIATES, LLC
ONE ATLANTIC MEMBER ASSOCIATES, LLC
PARK SQUARE WEST ASSOCIATES, LLC
PARK SQUARE WEST MEMBER ASSOCIATES, LLC
PSWMA I, LLC
PSWMA II, LLC
SEABOARD HOTEL ASSOCIATES, LLC
SEABOARD HOTEL MEMBER ASSOCIATES, LLC
SEABOARD HOTEL LTS ASSOCIATES, LLC
SEABOARD HOTEL LTS MEMBER ASSOCIATES, LLC
SEABOARD RESIDENTIAL, LLC
TAG FOREST, LLC

By: *_/s/ Marc Beilinson_*
Name: Marc Beilinson
Title: Chief Restructuring Officer

SCHEDULE A

Mortgage Claims

[To be filed separately]

SCHEDULE B

Investor Claims

[To be filed separately]

SCHEDULE C

Holders of Equity Interests

[To be filed separately]

SCHEDULE D

Distribution Escrow Sub-Account Funding

[To be filed separately]

EXHIBIT 1

Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

JOINT PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE FOR PROPCO DEBTORS AND HOLDCO DEBTORS

THIS PROPOSED CHAPTER 11 PLAN IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES OR SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL BE MADE ONLY IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE.

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Robert S. Brady (No. 2847)
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Facsimile: (302) 571-1253

Attorneys for the Plan Debtors

Dated: February 27, 2017

[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 (7625). The Debtors' corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

Table of Contents

Page

INTRODUCTION 1
Article I DEFINED TERMS 1
Article II INTERPRETATION OF PLAN 10
2.1. Application of Definitions; Rules of Construction; 10
2.2. Date of Distributions and Other Actions; Computation of Time 10
Article III CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS 10
3.1. Classification 10
Article IV PAYMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL CLAIMS, PRIORITY TAX CLAIMS, AND OTHER UNCLASSIFIED CLAIMS 11
4.1. Administrative Claims 11
4.2. Professional Claims 13
4.3. Priority Tax Claims 13
Article V TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS 14
5.1. Class 1 – Other Secured Claims 14
5.2. Class 2 – Other Priority Claims 14
5.3. Class 3 – Mortgage Claims 14
5.4. Class 4 – Settling Lender Claims 15
5.5. Class 5 – General Unsecured Claims 15
5.6. Class 6 – Investor Claims 15
5.7. Class 7 – Equity Interests 16
5.8. Class 8 – Intercompany Claims 16
5.9. Class 9 – Intercompany Interests 16
5.10. Class 10 – Subordinated Claims and Subordinated Interests 17
Article VI ACCEPTANCE OR REJECTION OF THE PLAN; CLASSIFICATION OF CLAIMS 17
6.1. Voting of Claims 17
6.2. Manner of Classifying Claims and Interests 17
6.3. Treatment of Vacant Classes 18
6.4. Deemed Acceptance of Classes that do not Vote 19
6.5. Nonconsensual Confirmation 19
Article VII MEANS OF IMPLEMENTATION OF THE PLAN 19
7.1. Settlements Implemented under the Plan 19
7.2. Establishment, Funding and Distribution of Escrow Accounts 21
7.3. The Investor Trust 22

7.4. Wind-Down of the Plan Debtors; Wind-Down Administrator 27
7.5. Effectuating Documents; Further Transactions 29
7.6. Cancellation of Instruments and Stock 29
7.7. Disposition of Books and Records 29
7.8. Closing the Chapter 11 Cases 29
Article VIII DISTRIBUTIONS UNDER THE PLAN 30
8.1. Timing of Distributions 30
8.2. Delivery of Distributions 30
8.3. Undeliverable and Unclaimed Distributions 30
8.4. Transfer of Claims 31
8.5. Manner of Payment 31
8.6. Time Bar to Cash Payments by Check 31
8.7. Setoffs and Recoupment 31
8.8. Allocation of Plan Distributions Between Principal and Interest 32
8.9. Interest on Claims 32
8.10. No Distribution in Excess of Allowed Amount of Claim 32
8.11. Reserves 32
8.12. Payment of Taxes on Distributions Received Pursuant to the Plan; Required Compliance with Withholding and Reporting Obligations 32
8.13. Minimum Distribution Amounts; Rounding 33
Article IX PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS 34
9.1. Claims Administration Responsibilities 34
9.2. Claims Objections 34
9.3. Estimation of Claims 34
9.4. Adjustment to Claims or Equity Interests Without Objection 35
9.5. No Distributions Pending Allowance 35
9.6. Distributions After Allowance 35
9.7. Disallowance of Certain Claims 35
9.8. Amendments to Claims 35
9.9. Claims Paid and Payable by Third Parties 36
Article X EXECUTORY CONTRACTS AND LEASES 36
10.1. Executory Contracts and Unexpired Leases Deemed Rejected 36
10.2. Bar Date For Rejection Damages 36
10.3. Cure Amounts and Objection to Assumption 36
Article XI Effect of confirmation 37
11.1. Binding Effect 37

11.2. Reservation of Causes of Action/Reservation of Rights 37
11.3. Releases by the Plan Debtors of Certain Parties 37
11.4. Releases by Non-Debtors 38
11.5. Exculpation 38
11.6. Plan Injunction 39
11.7. Term of Bankruptcy Injunction or Stays 39
11.8. Setoff 39
11.9. Preservation of Insurance 40
Article XII CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE; effect of failure of conditions 40
12.1. Conditions Precedent to Confirmation 40
12.2. Conditions Precedent to the Effective Date 40
12.3. Satisfaction of Conditions 41
Article XIII RETENTION OF JURISDICTION 41
Article XIV MISCELLANEOUS PROVISIONS 43
14.1. Effectuating Documents and Further Transactions 43
14.2. Corporate Action 43
14.3. Modification of Plan 43
14.4. Revocation or Withdrawal of the Plan 43
14.5. Plan Supplement 44
14.6. Payment of Statutory Fees 44
14.7. Exemption from Transfer Taxes 44
14.8. Expedited Tax Determination 44
14.9. Exhibits/Schedules 44
14.10. Substantial Consummation 44
14.11. Severability of Plan Provisions 45
14.12. Governing Law 45
14.13. Conflicts 45
14.14. Reservation of Rights 45
14.15. Limiting Notices 45

INTRODUCTION

220 Elm Street I, LLC; 220 Elm Street II, LLC; 300 Main Management, Inc.; 300 Main Street Associates, LLC; 300 Main Street Member Associates, LLC; 316 Courtland Avenue Associates, LLC; 600 Summer Street Stamford Associates, LLC; 88 Hamilton Avenue Associates, LLC; 88 Hamilton Avenue Member Associates, LLC; Century Plaza Investor Associates, LLC; Clocktower Close Associates, LLC; One Atlantic Investor Associates, LLC; One Atlantic Member Associates, LLC; Park Square West Associates, LLC; Park Square West Member Associates, LLC; PSWMA I, LLC; PSWMA II, LLC; Seaboard Hotel Associates, LLC; Seaboard Hotel Member Associates, LLC; Seaboard Hotel LTS Associates, LLC; Seaboard Hotel LTS Member Associates, LLC; Seaboard Residential, LLC; and Tag Forest, LLC (subject to Section 12.3 of the Plan, each, a "Plan Debtor," and collectively, the "Plan Debtors") hereby propose the following joint plan of liquidation under chapter 11 of the Bankruptcy Code (the "Plan"). While they are co-Debtors with the Plan Debtors in the Chapter 11 Cases, the Plan is not a chapter 11 plan for Newbury Common Associates, LLC, Newbury Common Member Associates, LLC or Seaboard Realty, LLC.

Reference is made to the Disclosure Statement accompanying the Plan, including the exhibits thereto, for a discussion of the Debtors' history, business, properties, and risk factors, together with a summary and analysis of the Plan. All Holders of Claims and Interests entitled to vote on the Plan are encouraged to review the Disclosure Statement and to read the Plan carefully before voting to accept or reject the Plan.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE BANKRUPTCY COURT, HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

Subject to certain restrictions and requirements set forth herein and section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan prior to its substantial consummation (as such term is defined in section 1101 of the Bankruptcy Code).

ARTICLE I

DEFINED TERMS

Unless otherwise defined herein, or the context otherwise requires, the following terms shall have the respective meaning set forth below.

1.1. "Administrative Claim" means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including (i) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the businesses of the Plan Debtors and (ii) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code. Administrative Claims do not include Professional Claims, which are separately classified.

1.2. "Allow" and derivations thereof means, except as otherwise provided in the Plan, with respect to any Claim or Equity Interest: (i) a Claim or Equity Interest that has been scheduled by the Plan Debtors in their Bankruptcy Schedules, as may be amended by the Plan Debtors or (following the Effective Date) the Wind-Down Administrator, as other than disputed, contingent, or unliquidated and as

to which no timely Proof of Claim or interest has been Filed; (ii) a filed Claim or Equity Interest that is not Disputed; (iii) a Claim or Equity Interest that is allowed (a) by a Final Order; (b) in any stipulation with the Wind-Down Administrator of amount and nature of Claim or Equity Interest executed on or after the Effective Date; or (c) in or pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith; and (iv) a Claim or Equity Interest that is allowed pursuant to the terms hereof; *provided*, *however*, that Claims or Equity Interests temporarily allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered Allowed Claims; *provided*, *further*, that any Claim subject to disallowance in accordance with section 502(d) of the Bankruptcy Code shall not be considered an Allowed Claim.

1.3. "Bankruptcy Code" means 11 U.S.C. §§ 101-1532.

1.4. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware, or in the event such court ceases to exercise jurisdiction over any Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over such Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

1.5. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075.

1.6. "Bankruptcy Schedules" means the schedules of assets and liabilities Filed by each Debtor pursuant to Bankruptcy Rule 1007.

1.7. "Bar Date" means October 21, 2016 at 4:00 p.m. unless an order of the Bankruptcy Court fixes a later date, by which a Person, including governmental units, asserting a Claim against any Debtor is required to file a Claim against such Debtor or be forever barred from asserting such Claim, which, for the avoidance of doubt, shall include: (w) the Supplemental Administrative Claims Bar Date for Administrative Claims arising on or after September 1, 2016; (x) the Professional Claims Bar Date for all Professional Claims; (y) for any claim relating to a Plan Debtor's rejection of an executory contract or unexpired lease pursuant to a Court order, the date that is thirty (30) days after the effective date of such Court order if that date is later than October 21, 2016; and (z) for any creditor listed in the Bankruptcy Schedules for which the Plan Debtors have filed an amendment or supplement to the Bankruptcy Schedules to modify the undisputed, noncontingent, or liquidated amount of a claim, change the nature or characterization of a claim, or to add a new claim to the Bankruptcy Schedules, twenty-one (21) days after the claimant is served with notice of the applicable amendment or supplement to the Bankruptcy Schedules.

1.8. "Brokerage Firms" means Keen-Summit Capital Partners LLC, Savills Studley, Inc. and FTI Consulting Realty LLC, in their capacity as real estate broker for the Debtors.

1.9. "Business Day" means any day, other than a Saturday, Sunday, or a legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).

1.10. "Cash" means the legal tender of the United States or the equivalent thereof.

1.11. "Chapter 11 Cases" means, with respect to each Debtor, the case initiated under chapter 11 of the Bankruptcy Code by such Debtor's Filing on the Petition Date of a voluntary petition for relief in the Bankruptcy Court.

1.12. "Claim" means a claim, as defined in section 101(5) of the Bankruptcy Code, against one of the Plan Debtors (or all or some of them) whether or not asserted or Allowed.

1.13. "Claims Agent" means Donlin, Recano & Company, Inc., in its capacity as claims agent approved in the Chapter 11 Cases.

1.14. "Confirmation" means the Bankruptcy Court's confirmation of the Plan pursuant to the Confirmation Order.

1.15. "Confirmation Date" means the date on which the Bankruptcy Court enter the Confirmation Order.

1.16. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan.

1.17. "Debtors" means each of 220 Elm Street I, LLC; 220 Elm Street II, LLC; 300 Main Management, Inc.; 300 Main Street Associates, LLC; 300 Main Street Member Associates, LLC; 316 Courtland Avenue Associates, LLC; 600 Summer Street Stamford Associates, LLC; 88 Hamilton Avenue Associates, LLC; 88 Hamilton Avenue Member Associates, LLC; Century Plaza Investor Associates, LLC; Clocktower Close Associates, LLC; Newbury Common Associates, LLC; Newbury Common Member Associates, LLC; One Atlantic Investor Associates, LLC; One Atlantic Member Associates, LLC; Park Square West Associates, LLC; Park Square West Member Associates, LLC; PSWMA I, LLC; PSWMA II, LLC; Seaboard Hotel Associates, LLC; Seaboard Hotel Member Associates, LLC; Seaboard Hotel LTS Associates, LLC; Seaboard Hotel LTS Member Associates, LLC; Seaboard Realty, LLC; Seaboard Residential, LLC; and Tag Forest, LLC.

1.18. "Dechert" means Dechert LLP.

1.19. "Dechert Claims" means any and all Claims that were filed or could have been filed by Dechert against the Plan Debtors, including without limitation proof of claim numbers 326, 237, 238, 239, 330, 287, 389, 390, and 391.

1.20. "Disallowed" means any Claim that has either been withdrawn by the Holder, disallowed or expunged by an order of the Bankruptcy Court, or for which the Holder has agreed will be treated as a Disallowed Claim for purposes of the Bankruptcy Case.

1.21. "Disclosure Statement Order" means an order of the Bankruptcy Court approving the Disclosure Statement, authorizing the commencement of solicitation of acceptances and rejections of the Plan, establishing the schedule and deadlines in connection with Confirmation, and establishing related procedures.

1.22. "Disclosure Statement" means the disclosure statement related to the Plan, as such disclosure statement may be amended, modified, or supplemented (including all exhibits and schedules annexed thereto or referenced in the Disclosure Statement).

1.23. "Diserio" means Diserio Martin O'Connor & Castiglioni LLP.

1.24. "Disputed" means, with respect to any Claim or Equity Interest, any Claim or Equity Interest: (i) listed on the Bankruptcy Schedules as unliquidated, disputed, or contingent, unless a Proof of Claim has been timely Filed; (ii) included in a Proof of Claim for which the Plan Debtors or Wind-Down Administrator retain the ability to interpose a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the Plan; or (iii) which is otherwise disputed by the Plan Debtors or the Wind-Down Administrator in accordance

with applicable law and for which the objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order.

1.25. "Distribution" means a delivery of Cash by the Investor Trustee or Wind-Down Administrator to the Holder of an Allowed Claim or Allowed Equity Interest pursuant to the Plan

1.26. "Distribution Agent" means: (a) with respect to the Professional Claims Escrow Account, the Distribution Escrow Account, and all Claims, other than Investor Claims and Settling Lender Claims, the Wind-Down Administrator; and (b) with respect to the Investor Trust, Investor Trust Assets, Investor Claims and Equity Interests, the Investor Trustee.

1.27. "Distribution Escrow Account" means the account that will hold the funds in each Distribution Escrow Sub-Account, as described in Section 7.2(c) of the Plan.

1.28. "Distribution Escrow Sub-Account" means the sub-accounts within the Distribution Escrow Account that will be funded in the amounts set forth on Schedule D to the Disclosure Statement on the Effective Date and utilized as described in Section 7.2(c) of the Plan.

1.29. "Effective Date" means the first business day after the entry of the Confirmation Order on which all conditions precedent to effectiveness of the Plan shall have been satisfied or waived.

1.30. "Entity" means an entity (as that term is defined in section 101(15) of the Bankruptcy Code).

1.31. "Equity Interests" means either (i) the legal, equitable, contractual, or other rights of any Entity with respect to the preferred or common stock, membership interests or any other direct or indirect equity interest in any of the Plan Debtors, including any options, warrants or other securities or other interest in or right to convert or exchange into such equity interest or (ii) the legal, equitable, contractual, or other right of any Entity to acquire or receive any of the foregoing.

1.32. "Escrow Accounts" means the Settling Lender Escrow Account, Distribution Escrow Account and Professional Claims Escrow Account.

1.33. "Estate" means each estate created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

1.34. "File" and derivations thereof means, with respect to any pleading, entered on the docket of the Chapter 11 Cases and properly served in accordance with the Bankruptcy Rules and Local Bankruptcy Rules.

1.35. "Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice.

1.36. "General Unsecured Claim" means an unsecured non-priority Claim against a Plan Debtor that is not an Administrative Claim, a Priority Tax Claim, a Professional Claim, a Settling

Lender Claim, an Other Priority Claim, an Other Secured Claim, a Mortgage Claim, an Investor Claim, a Subordinated Claim, or an Intercompany Claim.

1.37. "HoldCo Debtors" means 300 Main Management, Inc.; 300 Main Street Member Associates, LLC; 316 Courtland Avenue Associates, LLC; 600 Summer Street Stamford Associates, LLC; 88 Hamilton Avenue Member Associates, LLC; One Atlantic Member Associates, LLC; Park Square West Member Associates, LLC; PSWMA I, LLC; PSWMA II, LLC; Seaboard Hotel Member Associates, LLC; Seaboard Hotel LTS Member Associates, LLC; and Seaboard Residential, LLC.

1.38. "Holder" means an Entity holding a Claim or an Equity Interest.

1.39. "Insider" has the meaning set forth in section 101(31) of the Bankruptcy Code.

1.40. "Intercompany Claim" means any Claim, of whatever nature and arising at whatever time, held by one Plan Debtor against another Plan Debtor.

1.41. "Intercompany Interests" means any Equity Interest held by another Plan Debtor.

1.42. "Interim Compensation Order" means that certain *Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 123], entered by the Bankruptcy Court on January 29, 2016.

1.43. "Investor Claim" means any claim on account of funds received by a Plan Debtor from a non-Debtor entity or person (i) on account of a funded debt obligation undertaken by a Plan Debtor, (ii) on account of a putative equity investment in a Plan Debtor, or (iii) received from an entity controlled by John J. DiMenna or any equityholder or creditor claiming through such a DiMenna-controlled entity. For the avoidance of doubt, Investor Claims exclude any claim or interest that is classified under the Plan as an Equity Interest, Intercompany Claim, Settling Lender Claim, or Mortgage Claim, and additionally excludes any Claim that would constitute an Investor Claim except for the fact that the Bankruptcy Court has determined that such claims is a Subordinated Claim or Interest in Class 10 pursuant to a Final Order.

1.44. "Investor Trust Agreement" means the trust agreement pursuant to which the Investor Trust shall be formed and administered and which will be included in the Plan Supplement and shall be (i) subject to initial approval of the Bankruptcy Court, and (ii) reasonably satisfactory to the Plan Debtors and the Participant Investors.

1.45. "Investor Trust Assets" means (a) the initial cash in the amount of $1,000,000 transferred to the Investor Trust on the Effective Date, (b) the Investor Trust Causes of Action, (c) any residual funds in the Professional Fee Claim Escrow distributed to the Investor Trust in accordance with Section 7.2(b) of the Plan, and (d) the proceeds, product and offspring of each of the foregoing.

1.46. "Investor Trust Causes of Action" means (a) any claim or cause of action held by any Plan Debtor against any third party (other than a Released Party), including claims and causes of action against (i) John J. DiMenna, Jr., William A. Merritt, Jr., and Thomas Kelly, Jr., or (ii) any Insider of the individuals identified in (i) other than a Plan Debtor, and (iii) accounting, legal, and other advisory firms that were retained by the Debtors; (b) those certain claims being prosecuted by UCF Trust I, LLC in the action styled as *UCF I Trust 1 et al. v. John J. DiMenna, Jr. et al.*, Civ. No. 16-156 (VAB) (D. Conn.); and (c) any direct claim or cause of action held by a Trust Beneficiary that arises out of or is related to an Investor Claim or Equity Interest that is contributed to the Investor Trust.

1.47. "Investor Trust Committee" shall be the five (5) member committee responsible for overseeing the administration and operations of the Investor Trust as set forth in the Investor Trust Agreement.

1.48. "Investor Trust Debtors" means 88 Hamilton Avenue Associates, LLC, 88 Hamilton Avenue Member Associates, LLC, Park Square West Associates, LLC, Park Square West Member Associates, LLC, PSWMA I, LLC, PSWMA II, LLC, Seaboard Hotel Associates, LLC and Seaboard Hotel Member Associates, LLC.

1.49. "Investor Trust Expenses" means all actual and necessary costs and expenses incurred by the Investor Trust in connection with carrying out the obligations of the Investor Trust pursuant to the terms of the Plan and the Investor Trust Agreement.

1.50. "Investor Trust" means the trust established by the Plan and described in Section 7.2 of the Plan and in the Investor Trust Agreement.

1.51. "Investor Trustee" means the Person appointed to act as trustee of the Investor Trust in accordance with the terms of the Plan, the Confirmation Order, and the Investor Trust Agreement, or any successor appointed in accordance with the terms of the Plan and the Investor Trust Agreement.

1.52. "Lien" has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.53. "Local Bankruptcy Rules" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware in effect at the relevant time.

1.54. "Mortgage Claim" means any Claim other than the Settling Lender Claims, to the extent not satisfied by previous order of the Bankruptcy Court approving the sale of the assets of the Plan Debtors, held by any Entity that asserted a claim for money loaned to a Debtor that was allegedly secured by a lien on the real property of the Plan Debtors. For the avoidance of doubt, Mortgage Claims includes any remaining asserted and unpaid Claims, regardless of the asserted priority of such Claims, and whether such claims be in the nature of secured, unsecured deficiency, or adequate protection, that may be asserted by the following entities or any assignees thereof: People's United Bank; Citizens Bank, N.A., f/k/a RBS Citizens, N.A.; Natixis Real Estate Capital, LLC, the WFCMT 2015-NXS2 Trust (Wilmington Trust, N.A., as Trustee); Webster Bank, N.A.; the Connecticut Housing Finance Authority; First County Bank; and U.S. Bank, National Association, as Trustee for the Registered Holders of Greenwich Capital Commercial Funding Corp., Commercial Mortgage Trust 2007-GG9, Commercial Mortgage Pass-Through Certificates, Series 2007-GG9.

1.55. "Other Priority Claim" means priority Claims against the Plan Debtors under section 507(a), other than Administrative Claims, Professional Claims and Priority Tax Claims.

1.56. "Other Secured Claim" means Claims against any Debtor that are secured by a lien on property in which the Estate of any Debtor has an interest, which liens are valid, perfected, and enforceable under applicable law or by reason of a Final Order, or that are subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code. For the avoidance of doubt, Settling Lender Claims and Mortgage Claims are not Other Secured Claims.

1.57. "Park Square West" means Park Square West Associates, LLC.

1.58. "Participant Investor Expense Fund" has the meaning set forth in Section 7.1(c) of the Plan.

1.59. "Participant Investors" means (i) James Cabrera, (ii) John Callagy, (iii) Robert Musumeci, (iv) Thomas O'Connor, and (v) Arrowhead Trust f/b/o Christopher O'Connor.

1.60. "Payment Waterfall" has the meaning set forth in Section 7.2(c) of the Plan.

1.61. "Petition Date" means the respective dates on which the Plan Debtors Filed the Chapter 11 Cases.

1.62. "Plan" has the meaning provided in the Introduction.

1.63. "Plan Debtor Release" means the release described in Section 11.3 of the Plan.

1.64. "Plan Debtors" has the meaning provided in the Introduction, and, as set forth in Section 12.3 of the Plan, following the Effective Date, shall mean only those entities identified as Plan Debtors for which the Plan has been confirmed and become effective.

1.65. "Plan Releases" means the Plan Debtor Release and Third Party Release.

1.66. "Plan Settlement" is the settlement described in Section 7.1(a) of the Plan.

1.67. "Plan Supplement" means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, which shall be filed by the Plan Debtors no later than seven (7) days prior to the deadline for voting on the Plan or such later date as may be approved by the Bankruptcy Court, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement.

1.68. "Plan" has the meaning given to it in the recital in the Plan Term Sheet.

1.69. "Priority Tax Claim" means a Claim against the Plan Debtors under section 507(a)(8) of the Bankruptcy Code; *provided* that any Claims asserted by a governmental unit on account of any penalties and assessments shall not be treated as a Priority Tax Claim and shall be a General Unsecured Claim.

1.70. "Professional Claim Maximum Amount" means 100% of all expenses authorized and approved by the Bankruptcy Court and 85% of fees authorized and approved by the Bankruptcy Court on a final basis; *provided* that for Diserio this amount shall mean 100% of all expenses and fees authorized and approved by the Bankruptcy Court on a final basis.

1.71. "Professional Claim" means a Claim for fees and expenses (including, without limitation, fees or expenses allowed or awarded by the Bankruptcy Court or any other court of competent jurisdiction) for legal, financial advisory, accounting, and other services that are provided by a Professional (other than the Brokerage Firms) and reimbursement of expenses related thereto awardable and allowable under sections 328, 330(a), 331, 363, 503(b), or 1103(a) of the Bankruptcy Code or otherwise and that are incurred prior to the Effective Date or thereafter in connection with (a) applications Filed pursuant to section 330, 331, 363, 503(b), or 1103(a) of the Bankruptcy Code and (b) motions seeking the enforcement of the provisions of the Plan or Confirmation Order with respect to Professional

Claims, or appeals relating thereto, by all Professionals retained in the Chapter 11 Cases, except to the extent that (x) the Bankruptcy Court has Disallowed or denied authority to pay or reimburse such fees and expenses by a Final Order or (y) any such fees and expenses have previously been paid, regardless of whether a fee application has been Filed for any such amount. To the extent that any amount of a Professional's fees or expenses are denied approval and Allowance by a Final Order, then those amounts shall no longer constitute Professional Claims.

1.72. "Professional Claims Bar Date" has the meaning set forth in Section 4.2 of the Plan.

1.73. "Professional Claims Escrow Account" means the escrow account created and funded on the Effective Date to be used for the payment of Professional Claims, as described in Section 7.2(b) of the Plan.

1.74. "Professional Claims Escrow Amount" means the amount determined by subtracting the dollar amount of all payments made to Holders of Professional Claims for fees and expenses incurred from the Petition Date through the Effective Date from $[TBD].

1.75. "Professional" means any Entity employed by a Debtor or official committee in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code, and to be compensated for services rendered prior to and including the Effective Date pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

1.76. "Proof of Claim" means a proof of Claim Filed against a Debtor in the Chapter 11 Cases.

1.77. "PropCo Debtors" means 220 Elm Street I, LLC; 220 Elm Street II, LLC; 300 Main Street Associates, LLC; 88 Hamilton Avenue Associates, LLC; Century Plaza Investor Associates, LLC; Clocktower Close Associates, LLC; One Atlantic Investor Associates, LLC; and Park Square West Associates, LLC; Seaboard Hotel Associates, LLC; Seaboard Hotel LTS Associates, LLC; and Tag Forest, LLC.

1.78. "Released Parties" means each of, and solely in its capacity as such, (a) the Settling Lenders, (b) Each Holder of a Mortgage Claim that does not reject the Plan, (c) Holders of Investor Claims in each Class 6 that accepts the Plan, (d) Holders of Equity Interests in each Class 7 that accepts the Plan, (e) Dechert, to the extent provided for in Section 7.1(b) of the Plan, (f) each Professional retained by the Plan Debtors after the Petition Date, *provided* that references to retention by the Plan Debtors after the Petition Date in this definition is intended solely to limit who the respective Professionals are and is not intended (and shall not be deemed) to limit the scope of the Plan Releases to postpetition matters with respect to such Entities, (g) the respective officers, directors, members, employees, partners, managers, shareholders and owners of the parties listed in clauses (a) through (f), (h) the individuals employed by the Plan Debtors after the Petition Date, and (i) for the avoidance of doubt, Marc Beilinson, Mark Murphy, Richard Kapko, and Howard Altschul. Notwithstanding the foregoing, no Insiders of the Debtors, other than Marc Beilinson, Howard Altschul, Mark Murphy (to the extent qualifying as an Insider), and Richard Kapko (to the extent qualifying as an Insider), shall be Released Parties.

1.79. "Releasing Parties" means each of, and solely in its capacity as such, (a) the Settling Lenders, (b) Holders of Mortgage Claims in each Class 3 that accepted the Plan; (c) Holders of Mortgage Claims in each Class 3 that rejected the Plan, except for those who rejected the Plan and affirmatively opted not to grant the Third Party Releases on their ballots, (d) all Holders of General

Unsecured Claim, except for those who rejected the Plan and affirmatively opted not to grant the Third Party Releases on their ballots; (e) all Holders of Investor Claims; and (f) all Holders of Equity Interests.

1.80. "Seaboard Hotel" means Seaboard Hotel Investor Associates, LLC.

1.81. "Settling Lender Claims" means any Claim held by [Cedar Hill Capital, LLC,][2] CPR Money, LLC, Annemid Noteholder RI, LLC (as successor in interest to Israel Discount Bank of New York), and UCF I Trust 1 or their successors and assigns arising out of loans made to the Plan Debtors, regardless of whether such claim is secured or unsecured.

1.82. "Settling Lender Escrow Account" means the escrow account described in Section 7.2(a) of the Plan.

1.83. "Settling Lenders" means [Cedar Hill Capital, LLC,] CPR Money, LLC, Annemid Noteholder RI, LLC (as successor in interest to Israel Discount Bank of New York), and UCF I Trust 1, solely in their capacities as lenders to the Plan Debtors.

1.84. "Subordinated Claim" or "Subordinated Interest" means any Claim or Equity Interest that has been subordinated pursuant to a Final Order of the Bankruptcy Court.

1.85. "Supplemental Administrative Claims Bar Date" has the meaning provided in Section 4.1(b) of the Plan.

1.86. "Third Party Releases" means the release described in Section 11.4 of the Plan.

1.87. "Trust Beneficiary" has the meaning provided in Section 7.3(b) of the Plan.

1.88. "Trust Exculpation Party" has the meaning provided in Section 7.3(*l*) of the Plan.

1.89. "U.S. Trustee Fees" means fees arising under 28 U.S.C. § 1930(a)(6) and any accrued interest thereon arising under 31 U.S.C. § 3717.

1.90. "Unimpaired" means, with respect to a Class of Claims or Equity Interests, a Claim or an Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

1.91. "United States Trustee" means the United States Trustee appointed under Article 591 of title 28 of the United States Code to serve in the District of Delaware.

1.92. "Voting Deadline" shall mean the deadline for voting to accept or reject the Plan as established by the Disclosure Statement Order.

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[2] [NOTE: While CPR Money, LLC, Annemid Noteholder RI, LLC, and UCF I Trust 1 have agreed to the economic terms, structure and mechanics of the Plan as set forth in a prior plan term sheet (including the $9.4 million funding into the Settling Lender Escrow Account), as of the filing of this Plan, Cedar Hill Capital, LLC has not consented to the treatment that would be afforded to its claims under the Settling Lender Claims Class. The Debtors reserve the right to modify the terms of the Plan, including to provide for separate classification and treatment of Cedar Hill Capital, LLC and its claims apart from the other parties identified as Settling Lenders herein, and to make other modifications of the Plan as result of such separate treatment or as otherwise required in connection with further negotiations or litigation.]

1.93. "Wind-Down Administrator" means the person or Entity appointed to carry out the duties and actions set forth in Section 7.4 of the Plan.

ARTICLE II
INTERPRETATION OF PLAN

2.1. Application of Definitions; Rules of Construction;

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender. For purposes of the Plan, (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented. The words "herein," "hereof," "hereto," "hereunder," and other words of similar meaning refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. A capitalized term that is used but not defined in the Plan shall have the meaning assigned to that term in the Bankruptcy Code or in the Exhibits to the Plan. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan. Unless otherwise indicated herein, all references to dollars means United States dollars.

2.2. Date of Distributions and Other Actions; Computation of Time

In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006 shall apply

ARTICLE III
CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

3.1. Classification

The following table (a) designates the Classes of Claims against, and Equity Interests in, the Plan Debtors, (b) specifies the Classes of Claims and Equity Interests that are Impaired by the Plan and are either (i) deemed to reject the Plan, (ii) are entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, or (iii) have consensually agreed to accept the Plan under the Plan Settlement, and (c) specifies the Classes of Claims and Equity Interests that are Unimpaired by the Plan and therefore are conclusively presumed to accept the Plan in accordance with section 1126 of the Bankruptcy Code. Each class is a separate Class for each applicable Plan Debtor.

Class	Description	Impairment	Entitled to Vote
1	Other Secured Claims	Unimpaired	No (conclusively presumed to accept)
2	Other Priority Claims	Unimpaired	No (conclusively presumed to accept)
3	Mortgage Claims	Impaired	Yes
4	Settling Lender Claims	Impaired	Yes
5	General Unsecured Claims	Impaired	Yes
6	Investor Claims	Impaired	Yes
7	Equity Interests	Impaired	Yes
8	Intercompany Claims	Impaired	No (deemed to accept pursuant to the Plan Settlement)
9	Intercompany Interest	Impaired	No (deemed to accept pursuant to the Plan Settlement)
10	Subordinated Claims and Subordinated Interests	Impaired	No

ARTICLE IV

PAYMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL CLAIMS, PRIORITY TAX CLAIMS, AND OTHER UNCLASSIFIED CLAIMS

4.1. Administrative Claims

(a) Treatment of Administrative Claims

Subject to the Payment Waterfall, unless the Holder has agreed otherwise, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction thereof, a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Allowed Administrative Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

(b) Supplemental Administrative Claims Bar Date

Holders of Administrative Claims arising during the period from September 1, 2016 through the Effective Date must file requests for payment of Administrative Claims so as to be actually received on or before 4:00 p.m. (prevailing Eastern Time) on the day that is thirty (30) calendar days after the Effective Date (the "**Supplemental Administrative Claims Bar Date**") by the Claims Agent at the following address:

If sent by first-class mail:
Donlin, Recano & Company, Inc.
Re: Newbury Common Associates, LLC, et al.
P.O. Box 192328
Blythebourne Station
Brooklyn, NY 11219

If sent by overnight courier or hand delivery:

Donlin, Recano & Company, Inc.
Re: Newbury Common Associates, LLC, et al.
6201 15th Avenue
Brooklyn, NY 11219

All such requests for payment must: (i) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (ii) be written in the English language; (iii) denominate the claim in lawful currency of the United States as of the Supplemental Administrative Claims Bar Date; (iv) indicate the particular Debtor against which the claim is asserted; and (v) include supporting documentation (or, if such documentation is voluminous, include a summary of such documentation) or an explanation as to why such documentation is not available The notice of the Effective Date delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f), substantially in the form included in the Plan Supplement, shall set forth the Supplemental Administrative Claims Bar Date and shall constitute notice of such bar date.

The following claims are not required to be Filed on or before the Supplemental Administrative Claims Bar Date:

(1) Professional Claims;

(2) any Administrative Claims that (i) have been previously paid by the Debtors in the ordinary course of business or otherwise or (ii) have otherwise been satisfied;

(3) any Administrative Claims previously Filed with the Claims Agent or the Bankruptcy Court;

(4) any Administrative Claim that has been Allowed by prior order of the Bankruptcy Court;

(5) any claims held by any Plan Debtor;

(6) any claims for fees payable to the Clerk of the Bankruptcy Court; and

(7) any U.S. Trustee Fees.

Any Person that is required to File a request for payment of an Administrative Claim (other than Professional Claims) under the Plan and fails to do so by the Supplemental Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claim, and such Administrative Claim shall not be enforceable against the

Investor Trust, the Investor Trustee, the Plan Debtors, the Estates, and their respective properties, and the Investor Trust, the Investor Trustee, the Plan Debtors, the Estates, and shall not be entitled to any Distribution under the Plan with respect to such Administrative Claim.

For the avoidance of doubt, the establishment of the Supplemental Administrative Claims Bar Date does not extend the time for parties to file any Administrative Claim (other than Professional Claims) arising prior to September 1, 2016, and any Administrative Claim related to such period shall be subject to the Bar Dates or other orders of the Bankruptcy Court establishing the time period within which parties may file such claims.

4.2. Professional Claims

All Persons seeking Allowance of Professional Claims under the Plan shall File, on or before the date that is thirty (30) days after the Effective Date (the "Professional Claims Bar Date"), their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred.

Each Holder of an Allowed Professional Claim shall receive pro-rata Distributions from the Professional Claims Escrow Account up to the Professional Claim Maximum Amount, determined based on the Professional Claim Maximum Amount and not solely with regard to Distributions made from the Professional Claims Escrow Account; *provided* that Diserio will be entitled to payment in full of its Professional Claim Maximum Amount and shall not be subject to any limitation on payment that would arise as a result of Diserio sharing in Distributions from the Professional Claims Escrow Account on a pro rata basis. Conditioned upon the occurrence of the Effective Date of the Plan, Holders of Professional Claims shall not have recourse to any other assets of the Plan Debtors for satisfaction of the Professional Claims.

Upon the occurrence of the Effective Date, in addition to the transaction fees and credit bid fees previously approved by the Bankruptcy Court on a final basis, the $52,118.29 previously paid to the Brokerage Firms for reimbursement of expenses shall be deemed allowed and approved, including with respect to allocation, on a final basis and all amounts owing to the Brokerage Firms by the Debtors shall be deemed satisfied. For the avoidance of doubt, the Brokerage Firms shall have no recourse to the Professional Claims Escrow Account.

4.3. Priority Tax Claims

Subject to the Payment Waterfall, unless the Holder has agreed otherwise, each Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction thereof, a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Priority Tax Claims and Other Secured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Any Claim that is asserted as a secured claim, but would also constitute a Priority Tax Claim, shall be classified and treated as a Priority Tax Claim under the Plan; *provided*, that any

lien or security interest securing such claims shall attach to the applicable Distribution Escrow Sub-Account from which such claim will be paid and shall only be discharged and released in accordance with the Plan at the time such claim is paid in full.

ARTICLE V

TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

The Plan provides for the treatment of Claims and Equity Interests as set forth below. Each Class of Claims shall be a separate Class for each Plan Debtor.

5.1. Class 1 – Other Secured Claims

(a) Classification: Class 1 shall consist of Other Secured Claims against the applicable Plan Debtor.

(b) Treatment: Subject to the Payment Waterfall, each Holder of an Allowed Other Secured Claim shall receive, in full satisfaction thereof, a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Priority Tax Claims and Other Secured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

5.2. Class 2 – Other Priority Claims

(a) Classification: Class 2 shall consist of Other Priority Claims against the applicable Plan Debtor.

(b) Treatment: Subject to the Payment Waterfall, each Holder of an Allowed Other Priority Claim shall receive, in full satisfaction thereof, a Cash payment equal to the Allowed Amount of such claim from the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim is Allowed. Such payment will be made: (i) at such time as all Allowed Other Priority Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

5.3. Class 3 – Mortgage Claims

(a) Classification: Class 3 shall consist of Mortgage Claims against the applicable Plan Debtor.

(b) Treatment:

(1) If Class 3 accepts the Plan, each Holder of a Mortgage Claim shall receive, in full satisfaction thereof, treatment as a Released Party under the Plan.

(2) If Class 3 rejects the Plan, each Holder of a Mortgage Claim shall receive nothing on account of its Claim.

(c) Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the Acceptance by Class 3 at each Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

5.4. Class 4 – Settling Lender Claims

(a) Classification: Class 4 shall consist of Settling Lender Claims against the applicable Plan Debtor.

(b) Treatment: Each Holder of a Settling Lender Claim shall receive, in full satisfaction thereof, (i) treatment as a Released Party under the Plan, and (ii) its interest in the Settling Lender Escrow Account, as determined in accordance with the Settling Lender Escrow Account Agreement.

(c) Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the Acceptance by Class 4 at each applicable Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

5.5. Class 5 – General Unsecured Claims

(a) Classification: Class 5 shall consist of General Unsecured Claims against the applicable Plan Debtor.

(b) Treatment: Each Holder of a General Unsecured Claim shall receive, in full satisfaction thereof, its *pro rata* share of the applicable Distribution Escrow Sub-Account of the Plan Debtor against whom its claim it allowed, that remains after all payments are made to senior Classes of Claims (excluding Class 4, Settling Lender Claims) against such Plan Debtor in accordance with the Payment Waterfall, until such Holder has received payment in full of its Allowed Claim. Payment to Holders of Claims in Class 5 will be made: (i) at such time as all Allowed Other General Unsecured Claims against the applicable Plan Debtor are Allowed; (ii) at such time and upon such terms as may be agreed upon by such Holder and the Wind-Down Administrator; or (iii) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

(c) Acceptance as Condition to Confirmation: Pursuant to, and as set forth in, Section 12.1 of the Plan, the Acceptance by Class at each Plan Debtor is a condition precedent to Confirmation of the Plan for that Plan Debtor, subject to that Plan Debtor's right to waive such condition under Section 12.3 of the Plan.

5.6. Class 6 – Investor Claims

(a) Classification: Class 6 shall consist of Investor Claims against the applicable Plan Debtor.

(b) Treatment:

(1) If Class 6 accepts the Plan, each Holder of an Investor Claim in Class 6 shall receive, in full satisfaction and discharge thereof, treatment as a Released Party under the Plan. Further, each Holder of an Investor Claim in Class 6 against one of the Investor Trust Debtors shall

receive a beneficial interest in the Investor Trust, as determined in accordance with the Investor Trust Agreement.

(2) If Class 6 rejects the Plan, each Holder of an Investor Claim in Class 6 shall receive nothing on account of its Claim.

Notwithstanding the foregoing, regardless of whether Class 6 accepts or rejects the Plan, if there are funds remaining in the Distribution Escrow Sub-Account of a Plan Debtor after each Allowed Claim in Classes 1 through 5 (to the extent applicable) for that Plan Debtor have been paid in full, then the Holders of Investor Claims against that Plan Debtor shall share *pro rata* in such remaining amount up to the full Allowed amounts of such Investor Claims.

5.7. Class 7 – Equity Interests

(a) Classification: Class 7 shall consist of Equity Interests in the applicable Plan Debtor, other than (i) Intercompany Interests, and (ii) Equity Interests that are subordinated by the Bankruptcy Court which shall be placed in Class 10.

(b) Treatment:

(1) If Class 7 accepts the Plan, each Holder of an Equity Interest in Class 7 shall receive, in full satisfaction and discharge thereof, treatment as a Released Party under the Plan. Further, each Holder of an Equity Interest in Class 7 against one of the Investor Trust Debtors shall receive a beneficial interest in the Investor Trust, as determined in accordance with the Investor Trust Agreement.

(2) If Class 7 rejects the Plan, each Holder of an Equity Interest in Class 7 shall receive nothing on account of its Equity Interest.

Notwithstanding the foregoing, regardless of whether Class 7 accepts or reject the Plan, if there are funds remaining in the Distribution Escrow Sub-Account of a Plan Debtor after each Allowed Claim in Classes 1 through 6 (to the extent applicable) at that Plan Debtor have been paid in full, then the Holders of Equity Interests against that Plan Debtor shall share *pro rata* in such remaining amounts.

5.8. Class 8 – Intercompany Claims

(a) Classification: Class 8 shall consist of Intercompany Claims by other Plan Debtors against the applicable Plan Debtor.

(b) Treatment: All Intercompany Claims shall be deemed compromised and satisfied as a result of the intercompany settlements and allocations of Cash among the Plan Debtors effectuated under the Plan, and after the Effective Date, all Intercompany Claims shall be deemed compromised and satisfied and there shall be no Distributions on account of Intercompany Claims except as expressly provided for in the Plan.

5.9. Class 9 – Intercompany Interests

(a) Classification: Class 9 shall consist of Intercompany Interests.

(b) Treatment: All Intercompany Interests shall be deemed compromised and cancelled as a result of the intercompany settlements and allocations of Cash among the Plan Debtors effectuated under the Plan, and after the Effective Date, all Intercompany Interests shall be deemed cancelled and there shall be no Distributions on account of Intercompany Interests except as expressly provided for in the Plan; *provided, however*, that if there are funds remaining in the Distribution Escrow Sub-Account of a Plan Debtor after each Allowed Claim in Classes 1 through 7 (to the extent applicable) for that Plan Debtor have been paid in full, than the remaining amount shall be transferred to the Distribution Escrow Sub-Account for the Plan Debtor(s) holding the Intercompany Interests in the Plan Debtor with such excess funds.

5.10. Class 10 – Subordinated Claims and Subordinated Interests

(a) Classification: Class 10 shall consist of Subordinated Claims against, and Subordinated Interests in, the applicable Plan Debtor.

(b) Treatment: Each Holder of a Subordinated Claim or Subordinated Interest in Class 10 shall receive nothing on account of its Subordinated Claim or Subordinated Interest.

ARTICLE VI

ACCEPTANCE OR REJECTION OF THE PLAN; CLASSIFICATION OF CLAIMS

6.1. Voting of Claims

(a) Classes Entitled to Vote: Each Claim or Interest in Classes 3 through 7 for each Plan Debtor shall be entitled to vote separately to accept or reject the Plan, as provided in the Disclosure Statement Order or any other applicable order of the Bankruptcy Court.

(b) Classes Conclusively Presumed to Accept: Each of Classes 1 and 2 for each Plan Debtor is Unimpaired under the Plan, and each such Class is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Intercompany Claims and Intercompany Interests in Classes 8 and 9 are being consensually resolved pursuant to the Plan and, as part of the approval of that settlement, they are deemed to accept the Plan.

(c) Classes Deemed to Reject: Subordinated Claims and Subordinated Interests in Class 10 will not receive or retain any property on account of such Subordinated Claim or Subordinated Interest under the Plan. In accordance with section 1126(g) of the Bankruptcy Code, Class 10 is deemed to have rejected the Plan.

6.2. Manner of Classifying Claims and Interests

(a) Classification for Voting Purposes

Except as provided for to the contrary in the Disclosure Statement Order or another order of the Bankruptcy Court entered prior to Confirmation, (i) the classification set forth in Section 6.2(c) of the Plan shall apply to each Claim or Interest identified and addressed in Section 6.2(c) of the Plan for purposes of voting to accept or reject the Plan, and (ii) each Claim or Interest identified and addressed in Section 6.2(c) of the Plan either (x) to which no objection to the allowance thereof, motion to estimate, or action to equitably subordinate or otherwise limit recovery with respect thereto, has been interposed and remains unresolved or (y) for which the Holder has obtained an order of the Bankruptcy Court

temporarily allowing such Claim or Interest for voting purposes under Bankruptcy Rule 3018(a), shall be entitled to vote to accept or reject the Plan.

(b) Classification for All Other Purposes

The Plan shall serve as a motion by each Plan Debtor to classify the Claims and Interests identified and addressed in Section 6.2(c) of the Plan in the manner set forth therein. Confirmation of the Plan, but expressly subject to the occurrence of the Effective Date, shall effect the classifications set forth in Section 6.2(c) of the Plan for each Claim and Equity Interest identified and addressed therein on a final basis, subject only to the following: (i) the Plan Debtors or Wind-Down Administrator shall have the right to object to further reclassify any Administrative Claim, Priority Tax Claim, Other Priority Claim or Other Secured Claim to General Unsecured Claim status or to have a General Unsecured Claim reassigned to another Debtor; and (ii) the Plan Debtors, Investor Trustee, or the Holder of an Investor Claim may file a motion or objection that seeks to re-assign such Holder's Investor Claim to another Debtor, to have such Holder's Investor Claim reclassified to an Equity Interest, or to do both of the foregoing.

For the avoidance of doubt, nothing in Section 6.2 of the Plan (but subject to any other controlling provisions of the Plan) precludes any party from filing a motion or objection that seeks to modify the amount of any Claim identified and addressed in Section 6.2(c) of the Plan (including to reduce the claim to zero) or to subordinate any Claim or Equity Interest.

(c) Proposed Classifications

The Plan Debtors have proposed the following classifications: (i) each Proof of Claim identified in Schedule A to the Disclosure Statement as a Mortgage Claim shall be placed in the respective Class 3 (Mortgage Claims) of the Plan Debtor against which it is currently pending; (ii) any Proof of Claim asserted by a Settling Lender shall be placed into the respective Class 4 (Settling Lender Claims) of the Plan Debtor against which it is currently pending; (iii) each Proof of Claim identified in Schedule B to the Disclosure Statement as an Investor Claim shall be placed in the respective Class 6 (Investor Claims) of the Plan Debtor against which it is currently pending; (iv) each remaining Proof of Claim that is not addressed in the foregoing clauses (i) through (iii) that asserts an unsecured, non-priority, non-administrative expense amount shall be placed in the respective Class 5 (General Unsecured Claims) of the Plan Debtor against which it is currently pending; and (v) each Holder identified in Schedule C to the Disclosure Statement as the Holder of an Equity Interest shall be placed in Class 7 (Equity Interests) for the respective Plan Debtor in which it has been identified as holding an Equity Interest.

6.3. Treatment of Vacant Classes

Any Class of Claims or Equity Interests that does not contain a Holder of an Allowed Claim or Allowed Equity Interest shall be deemed deleted from the Plan for all purposes; *provided*, *however*, that Section 6.3 of the Plan shall not serve to restrict or preclude the ability of the Plan Debtors or applicable Distribution Agent from seeking to subordinate any Claim or Equity Interest and placing such Claim or Equity Interest into Class 10 so long as such action is timely brought, notwithstanding the fact Class 10 may have been vacant at any point in time prior to the commencement of such an action.

Additionally, if as of the Voting Deadline, any Class of Claims or Equity Interests does not contain a Holder of a Claim or Equity Interest that has been Allowed or temporarily allowed for purposes of voting on the Plan, such Class shall be deemed deleted from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

6.4. Deemed Acceptance of Classes that do not Vote

If there are Classes that contain Holders of Claims or Interests, but no Holder timely and properly votes to accept or reject the Plan, the Plan will be deemed accepted by such Class.

6.5. Nonconsensual Confirmation

If any Class of Claims or Interests entitled to vote shall not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, the Plan Debtors reserve the right to amend the Plan in accordance with Section 15.5 of the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to Impaired Classes of Claims that are deemed to reject the Plan, the Plan Debtors shall request that the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

ARTICLE VII

MEANS OF IMPLEMENTATION OF THE PLAN

7.1. Settlements Implemented under the Plan

(a) Global Plan Settlement

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan incorporates the "Plan Settlement," which is a compromise and settlement of numerous debtor-creditor issues designed to achieve an economic resolution of Claims against and Interests in the Plan Debtors (including Intercompany Claims and Intercompany Interests), Claims that may be asserted against the Released Parties, and an efficient resolution of these Chapter 11 Cases. The Plan Settlement effects the following:

- The allowance, compromise, treatment and satisfaction of (i) all claims asserted or which may be asserted against the Plan Debtors and the other Released Parties by the Settling Lenders and (ii) all claims asserted or which may be asserted against the Settling Lenders by the Plan Debtors and the other Releasing Parties;
- The compromise, treatment and satisfaction of (i) all claims asserted or which may be asserted against the Plan Debtors and the other Released Parties by the Holders of Investor Claims and Equity Interests (other than Subordinated Interests) and (ii) all claims asserted or which may be asserted against the Holders of Investor Claims and Equity Interests (other than Subordinated Interests) by the Plan Debtors and the other Releasing Parties;
- The compromise, treatment, and satisfaction of all Intercompany Claims that could be asserted by any Plan Debtor against another Plan Debtor, through the allocation of the cash in the various Estates of the Plan Debtors to the various Distribution Escrow Sub-Account of the Plan Debtors;
- The allowance, compromise, treatment and satisfaction of the Dechert Claims, as described in Section 7.1(b) of the Plan;
- The compromise, treatment, and satisfaction of all Mortgage Claims, including the ability of the Holder of a Mortgage Claim to be included as a Released Party, as provided for in the definition of Released Party;
- The compromise, treatment, and satisfaction of all Professional Claims, subject only to approval of such Professional Claims and allowance of such Claims by the Bankruptcy

Court pursuant to sections 330 and 363 of the Bankruptcy Code after notice and a hearing;

- The allowance, compromise, treatment, and satisfaction of the Substantial Contribution Claims described in Section 7.1(c) of the Plan;
- Funding (i) the Distribution Escrow Sub-Account of each Plan Debtor, as set forth in Schedule D to the Disclosure Statement, (ii) the Settling Lender Escrow Account in the amount of $9,400,000, (iii) $1,000,000 to the Investor Trust, and (iv) funding the Professional Claims Escrow Account in the amount of the Processional Claims Escrow Amount, all from the cash of the various Estates of the Plan Debtors and as an express condition of the Plan Settlement;
- The cancellation of all equity interests in each Plan Debtor;
- The creation of the Investor Trust, primarily, to evaluate and pursue the Investor Trust Causes of Action; and
- The grant and effectuation of the Plan Releases and an injunction against any action that would violate the Plan Releases and exculpation provisions of the Plan to implement the foregoing.

The Plan Settlement constitutes a settlement of a number of potential litigation issues, including the determination of (i) the priority, classification, and amount of, and the obligors for, the Settling Lender Claims, (ii) the Intercompany Claims (including the nature and amount of any contribution among the Plan Debtors for the Settling Lender Claims) and resulting allocation of Assets among the Estates, and (iv) the potential claims and causes of action held by and against the Released Parties and Releasing Parties, including the Plan Debtors, the Settling Lenders, certain Holders of Mortgage Claims, and certain Holders of Investor Claims and Equity Interests (excluding Holders of Subordinated Interests).

Confirmation will constitute the Bankruptcy Court's approval of the Plan Settlement under Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code, and shall constitute a finding that the compromises and settlements under the Plan Settlement are in the best interests of the Plan Debtors, their Estates, their creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness. Each provision of the Plan Settlement is considered non-severable from each other and from the remaining terms of the Plan. The failure of the Bankruptcy Court to confirm the Plan or for the Effective Date of Plan to occur shall return the parties to the *status quo ante* and pending the occurrence of the Effective Date of the Plan, all parties' rights are expressly reserved and preserved and shall not be affected by the proposed Plan Settlement; *provided* that upon the occurrence of the Effective Date of the Plan, the Plan Settlement (and all other provisions of the Plan) shall be binding on all creditors and equityholders of the Plan Debtors.

(b) Settlement of the Dechert Claims

On the Effective Date, in full and final satisfaction of the Dechert Claims, Dechert shall be (i) included as a Released Party under the Plan and (ii) granted (A) an Allowed Other Secured Claim in the amount of $224,968.20, which shall be paid solely from the retainer funds currently held by Dechert, and (B) an Allowed General Unsecured Claim in the amount of $1,015,526.34 against each of the PropCo Debtors, which pursuant to the Plan Settlement shall be reduced for purposes of determining Distributions under the Plan to $500,000. Dechert shall be entitled to Distributions on account of the Allowed General Unsecured Claim portion of the Dechert Claims as follows: *first,* a *pro rata* Distribution from the Distribution Escrow Sub-Account of Park Square West up to the amount of $200,000 as a Holder of a General Unsecured Claim against Park Square West; *second*, a *pro rata* Distribution from the Distribution Escrow Sub-Account of Seaboard Hotel up to the amount of $200,000 as a Holder of a General Unsecured Claim against Courtyard PropCo; and *third*, Distributions from the other PropCo Debtors, equitably allocated among the remaining PropCo Debtors in the sole discretion of the Wind-Down

Administrator; provided that Dechert shall not receive in excess of $500,000 in the aggregate on account of all of its General Unsecured Claims against the Plan Debtors.

(c) Settlement of Certain Substantial Contribution Claims

On the Effective Date, (i) OnBoard Investors, LLC shall be granted and paid, to its counsel, an Allowed Administrative Claim in the amount of $175,000 on account of the *Application Pursuant To 11 U.S.C. §§ 503(b)(3) And 503(b)(4) For Allowance Of Fees And Expenses Incurred In Making A Substantial Contribution As An Administrative Expense Claim* [Docket No. 1262] in full and final satisfaction of OnBoard Investors, LLC's application; (ii) Ares Management LLC shall be granted and paid an Allowed Administrative Claim in the amount of $85,000 on account of any claim that has been or could have been asserted against the Debtors, including Proofs of Claim numbered 409-418; and (iii) the Plan Debtors shall distribute to the Investor Trustee an additional $50,000 (the "Participant Investor Expense Fund") for purposes of paying the actual and documented expenses of counsel to the Participant Investors in connection with the negotiation of the Plan. Any portion of the Participant Investor Expense Fund remaining after satisfaction of such expenses shall be available generally for the benefit of the beneficiaries of the Investor Trust.

7.2. Establishment, Funding and Distribution of Escrow Accounts

(a) Settling Lender Escrow Account

(1) On the Effective Date, the Settling Lender Escrow Account shall be established in the legal name of Seaboard Hotel and funded with the aggregate amount of $9,400,000 from the Cash available at all of the Plan Debtors. The Settling Lender Escrow Account shall be governed by the Settling Lender Escrow Account Agreement and the funds therein shall be disbursed in accordance with its terms.

(2) The Settling Lender Escrow Account Agreement shall be in a form acceptable to, and agreed upon by, each of the Settling Lenders and the Plan Debtors in their reasonable discretion; *provided* that if, as of the Effective Date, the Settling Lenders and the Plan Debtors have not agreed upon the terms of a Settling Lender Escrow Account Agreement, a short form Settling Lender Escrow Account Agreement shall be entered into on the Effective Date, which shall contain customary terms for escrow agreements of this type but shall expressly provide that the funds in the Settling Lender Escrow Account will only be distributed either (i) by unanimous agreement among the Settling Lenders or (ii) by order of the Bankruptcy Court. Any subsequent amendment to such short form agreement shall only be made upon express prior written consent of each Settling Lender.

(3) The Bankruptcy Court shall retain subject matter jurisdiction to hear any dispute over the allocation of the funds in the Settling Lender Escrow Account.

(b) Professional Claims Escrow Account

On the Effective Date, the Professional Claims Escrow Account shall be established by Seaboard Hotel and funded with the Professional Claims Escrow Amount; *provided* that at the election of the Professionals, the Professional Claims Escrow Account can be maintained by counsel to the Plan Debtors in its client trust account. The funds in the Professional Claims Escrow Account shall be used solely for the purpose of funding Professional Claims and shall be distributed *pro rata* based on the Professional Claim Maximum Amount of each Professional. Marc Beilinson shall have responsibility for directing the distribution of the funds in the Distribution Escrow Account in accordance with the terms of the Plan.

From and after the Effective Date, pending the final Allowance of their Professional Claims, each retained Professional shall be paid from the Professional Claims Escrow Account the interim amount permitted to be paid under the Interim Compensation Order on account of its Professional Claims, not to exceed the Professional Claim Maximum Amount for such Professional. If there are any funds in the Professional Claims Escrow Account after each Holder of an Allowed Professional Claim has received its Professional Claim Maximum Amount, the balance of such funds shall be transferred to the Investor Trust, *first*, for payment of any unpaid expenses of the Wind-Down Administrator that constitute Investor Trust Expenses, and *second*, to be used as general Investor Trust Assets in accordance with the terms of the Investor Trust Agreement.

(c) Distribution Escrow Account; Payment Waterfall

On the Effective Date, the Distribution Escrow Account shall be established by Seaboard Hotel and divided into Distribution Escrow Sub-Accounts for each PropCo Debtor and each HoldCo Debtor. The Wind-Down Administrator shall have responsibility for directing the distribution of the funds in the Distribution Escrow Account in accordance with the terms of the Plan. The Distribution Escrow Sub-Account for each Plan Debtor shall be funded in the amounts set forth on Schedule D to the Disclosure Statement; *provided* that if the amount set forth on Schedule D to the Disclosure Statement, is zero, there shall be no Distribution Escrow Sub-Account for such Plan Debtor. If the Plan is not confirmed or does not become effective for any Plan Debtor, the amount allocated to the Distribution Escrow Sub-Account for such Plan Debtor shall be reallocated on a *pro rata* basis to the other Plan Debtors, based on the amounts set forth on Schedule D to the Disclosure Statement.

The funds in the Distribution Escrow Sub-Account shall be distributed on a *pro rata* basis to Holders of Claims against that Plan Debtor as follows (the "Payment Waterfall"): *first*, to satisfy all Allowed Other Secured Claims against that Plan Debtor and Priority Tax Claims until the Holders of such Claims are paid the full Allowed amount of their Claims; *second*, to satisfy all Allowed Administrative Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *third*, to satisfy all Priority Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *fourth*, to satisfy all Allowed General Unsecured Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims; *fifth*, to satisfy all Allowed Investor Claims against that Plan Debtor until the Holders of such Claims are paid the full Allowed amount of their Claims. Once all Allowed Claims (other than Subordinated Claims) against a Plan Debtor have been satisfied in full, any excess funds in that Plan Debtors' Distribution Escrow Sub-Account, shall be paid on a *pro rata* basis to the Holders of Allowed Equity Interests (but excluding Subordinated Interests) in that Plan Debtor; *provided* that if such Plan Debtor is owned by another Plan Debtor, such excess funds shall be transferred to the Distribution Escrow Sub-Account for the Plan Debtor holding the Intercompany Interests in that Plan Debtor.

7.3. The Investor Trust

(a) Establishment of the Investor Trust

On the Effective Date, the Investor Trust will be created, and the Investor Trust Assets will be transferred to and vest in the Investor Trust as of the Effective Date. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, from and after the Effective Date, only the Investor Trust and the Investor Trustee shall have the right to pursue or not to pursue, or, subject to the terms of the Plan and the Investor Trust Agreement, compromise or settle any Investor Trust Causes of Action. From and after the Effective Date, the Investor Trust and the Investor Trustee may commence, litigate, and settle any Causes of Action or Claims relating to the Investor Trust Assets or rights to payment or Claims that belong to the Plan Debtors as of the Effective Date or are instituted by the Investor Trust and Investor Trustee on or after the

Effective Date, except as otherwise expressly provided in the Plan and the Investor Trust Agreement. The Investor Trust shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Plan Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

(b) Appointment of Investor Trustee

On the Effective Date, the Investor Trustee shall be appointed and shall constitute a representative of the Plan Debtors' estates under section 1123 of the Bankruptcy Code. The Investor Trustee shall be nominated by the Participant Investors in consultation with the Investor Trust Debtors, disclosed in the Plan Supplement, and subject to approval by the Bankruptcy Court at the Confirmation Hearing. The Investor Trustee shall serve in such capacity through the earlier of (i) the date that the Investor Trust is dissolved in accordance with the Investor Trust Agreement and (ii) the date such Investor Trustee resigns, is removed by order of the Bankruptcy Court, is terminated, or is otherwise unable to serve; *provided*, *however*, that, in the event that the Investor Trustee resigns, is terminated, or is otherwise unable to serve, the Investor Trust Committee shall appoint a successor to serve as the Investor Trustee in accordance with the Investor Trust Agreement. Any successor Investor Trustee shall serve in such capacity for the duration set forth in the prior sentence. To the extent that the Investor Trust Committee does not appoint a successor within the time periods specified in the Investor Trust Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Investor Trust, shall approve a successor to serve as the Investor Trustee.

(c) The Investor Trust Committee

The initial members of the Investor Trust Committee shall be nominated by the Participant Investors in consultation with the Investor Trust Debtors, disclosed in the Plan Supplement, and subject to approval by the Bankruptcy Court at the Confirmation Hearing. The Investor Trust Committee shall have the responsibilities set forth in the Investor Trust Agreement. Vacancies on the Investor Trust Committee shall be filled by a Trust Beneficiary designated by the remaining member or members of the Investor Trust Committee. The Investor Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing any member of the Investor Trust Committee for cause. Any successor Investor Trustee appointed pursuant to Section 7.3(c) of the Plan shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor. For the avoidance of doubt, no member of the Investor Trust Committee shall be compensated for serving as a member of the Investor Trust Committee, *provided*, *however*, that such members may be reimbursed from the Investor Trust for reasonable out of pocket expenses.

(d) Beneficiaries of the Investor Trust; Beneficial Interests in the Trust

The beneficiaries of the Investor Trust (each a "Trust Beneficiary") shall be the Holders of Equity Interests in, and Allowed Investor Claims against, the Investor Trust Debtors. The initial Trust Beneficiaries shall be determined based on the classification provided for in Section 6.2 of the Plan. The Investor Trustee shall have the ability to seek an order of the Bankruptcy Court that Allows, Disallows, or subordinates any Equity Interest in, or Investor Claim against, an Investor Trust Debtor or establishes a supplemental bar date for purposes of determining whether any additional Equity Interests in, or Investor Claims against, the Investor Trust Debtors exist.

Beneficial interests in the Investor Trust shall be allocated among the Trust Beneficiaries by the Investor Trustee based upon the procedures set forth in the Investor Trust Agreement.

(e) Responsibilities of the Investor Trustee

The Investor Trust's primary responsibilities shall be as follows, but shall additionally include any other matters set forth in the Investor Trust Agreement:

(1) Investigate, commence, decline or refrain from commencing, prosecute and/or compromise all Investor Trust Causes of Action;

(2) Resolve any disputes over the status of any party as a Trust Beneficiary, including whether an Investor Claim filed against an Investor Trust Debtor has been properly asserted and/or should be allowed against that Debtor;

(3) Determine the amount of beneficial interests in the Investor Trust to which each Trust Beneficiary is entitled;

(4) Determine the amount and timing of the Distributions of the Cash proceeds of the Investor Trust Assets, including the Investor Trust Causes of Action, to the Trust Beneficiaries;

(5) If the Investor Trust, in consultation with the Investor Trust Committee, deems necessary or advisable, establishing a bar date to determine all Holders of Equity Interests in and/or a supplemental bar date for Investor Claims against the Investor Trust Debtors; and

(6) Filing periodic reports apprising Trust Beneficiaries and other parties in interest in the Plan Debtors' cases of the activities and expenses of the Investor Trust and Wind-Down Administrator, the assets and liabilities of the Investor Trust, and the progress of making Distributions under the Plan.

(f) Transfer of Investor Trust Assets

Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date, the Plan Debtors shall be deemed, subject to the Investor Trust Agreement, to have automatically transferred to the Investor Trust all of their right, title, and interest in and to all of the Investor Trust Assets in accordance with section 1141 of the Bankruptcy Code, including the Plan Debtors' attorney-client privilege solely to the extent related thereto. All such assets shall automatically vest in the Investor Trust free and clear of all Claims, Liens, and other interests, subject only to the Allowed Claims as set forth in the Plan and the expenses of the Investor Trust as set forth herein and in the Investor Trust Agreement. Thereupon, the Plan Debtors shall have no interest in or with respect to the Investor Trust Assets or the Investor Trust.

(g) Treatment of Investor Trust for Federal Income Tax Purposes; No Successor-in-Interest

The Investor Trust shall be established for the primary purpose of liquidating and distributing the assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Investor Trust. Accordingly, the Investor Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Investor Trust Assets, make timely Distributions to the Trust Beneficiaries and not unduly prolong its duration. The Investor Trust shall not be deemed a successor-in-interest of the Plan Debtors for any purpose other than as specifically set forth

herein or in the Investor Trust Agreement. The record Holders of beneficial interests shall be recorded and set forth in a register maintained by the Investor Trustee expressly for such purpose.

The Investor Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the Trust Beneficiaries treated as grantors and owners of the Investor Trust. For all federal income tax purposes, all parties (including the Plan Debtors, the Investor Trustee, and the Investor Trust Beneficiaries) shall treat the transfer of the Investor Trust Assets by the Plan Debtors to the Investor Trust, as set forth in the Investor Trust Agreement, as a transfer of such assets by the Plan Debtors to the Trust Beneficiaries entitled to Distributions from the Investor Trust Assets, followed by a transfer by such Holders to the Investor Trust. Thus, the Investor Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

As soon as practicable after the Effective Date, the Investor Trustee shall make a good faith determination of the fair market value of the Investor Trust Assets as of the Effective Date, provided, however, that the Investor Trustee shall not be required to hire an expert to make such a valuation. This valuation shall be used consistently by all parties (including the Plan Debtors, the Investor Trustee, and the Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Investor Trust Assets.

The right and power of the Investor Trustee to invest the Investor Trust Assets, the proceeds thereof, or any income earned by the Investor Trust, shall be limited to the right and power that an investor trust, within the meaning of section 301.7701-4(d) of the Treasury Regulations, is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings or other IRS pronouncements, and to the investment guidelines of section 345 of the Bankruptcy Code. The Investor Trustee may expend the Cash of the Investor Trust (i) as reasonably necessary to meet contingent liabilities and to maintain the value of the Investor Trust Assets during liquidation, (ii) to pay the respective reasonable administrative expenses (including any taxes imposed on the Investor Trust) and (iii) to satisfy other respective liabilities incurred by the Investor Trust in accordance with the Plan and the Investor Trust Agreement (including the payment of any taxes).

(h) Expenses of Investor Trustee; Retention of Advisors

The Investor Trust Expenses, including the fees and expenses of any professionals retained by the Investor Trustee, shall be paid from the Investor Trust Assets.

The Investor Trustee shall have the authority to retain professionals to assist it in carrying out the purposes of the Investor Trust and discharging the trustee's obligations, which shall be paid from the Investor Trust Assets.

(i) Insurance; Bond

The Investor Trustee, in his or her sole discretion, may obtain insurance coverage (in the form of an errors and omissions policy or otherwise) with respect to the liabilities and obligations of the Investor Trustee and the Investor Trust Committee under the Investor Trust Agreement. Unless otherwise agreed to by the Investor Trust Committee, the Investor Trustee shall serve with a bond, the terms of which shall be agreed to by the Investor Trust Committee, and the cost and expense of which shall be deemed an Investor Trust Expense.

(j) Fiduciary Duties of the Investor Trustee

Pursuant to the Plan and the Investor Trust Agreement, the Investor Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims and Equity Interest that will receive Distributions pursuant to the terms of the Plan and Investor Trust Agreement.

(k) Termination of the Investor Trust

The Investor Trust will terminate on the earlier of: (a) final liquidation, administration and distribution of the Investor Trust Assets in accordance with the terms of the Investor Trust Agreement and the Plan, and its full performance of all other duties and functions as set forth in the Investor Trust Agreement or the Plan; and (b) the fifth (5th) anniversary of the Effective Date. Notwithstanding the foregoing, multiple fixed-term extensions can be obtained so long as Bankruptcy Court approval is obtained within six (6) months before the expiration of the term of the Investor Trust and each extended term provided that any further extension would not adversely affect the status of the Investor Trust as an Investor Trust within the meaning of section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. After (x) the final Distributions pursuant to the Plan, (y) the filing by or on behalf of the Investor Trust of a certification of dissolution with the Bankruptcy Court, and (z) any other action deemed appropriate by the Investor Trustee, the Investor Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.

(l) Liability of Investor Trustee; Indemnification

Neither the Investor Trustee, the Investor Trust Committee, their respective members, employees, employers, designees or professionals, or any of their duly designated agents or representatives (each, a "Trust Exculpation Party" and collectively, the "Trust Exculpation Parties") shall be liable for losses, claims, damages, liabilities or expenses in connection with the affairs of the Investor Trust or for the act or omission of any other Trust Exculpation Party, nor shall the Trust Exculpation Parties be liable for any act or omission taken or omitted to be taken pursuant to the discretion, powers and authority conferred, or in good faith believed by to be conferred by the Investor Trust Agreement or the Plan other than for specific acts or omissions resulting from such Trust Exculpation Party's willful misconduct, gross negligence or fraud. The Investor Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee and the Investor Trust Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Investor Trustee, or the Investor Trust Committee, may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Investor Trustee nor the Investor Trust Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Investor Trustee or Investor Trust Committee or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. The Investor Trust shall indemnify and hold harmless the Trust Exculpation Parties (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and related expenses) which such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Investor Trust or the Plan or the discharge of their duties under the Plan; *provided*, *however*, that no such indemnification will be made to such persons for actions or omissions as a result of willful misconduct,

gross negligence, or fraud. Persons dealing or having any relationship with the Investor Trustee shall have recourse only to the Investor Trust Assets and shall look only to the Investor Trust Assets to satisfy any liability or other obligations incurred by the Investor Trustee or the Investor Trust Committee to such person in carrying out the terms of the Investor Trust Agreement, and neither the Investor Trustee nor the Investor Trust Committee shall have any personal obligation to satisfy any such liability. Neither the Investor Trustee nor the Investor Trust Committee shall be liable whatsoever except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into the Investor Trust Agreement against any of them. The Investor Trust shall promptly pay expenses reasonably incurred by any Trust Exculpation Party in defending, participating in, or settling any action, proceeding or investigation in which such Trust Exculpation Party is a party or is threatened to be made a party or otherwise is participating in connection with the Investor Trust Agreement or the duties, acts or omissions of the Investor Trustee or otherwise in connection with the affairs of the Investor Trust, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Trust Exculpation Party hereby undertakes, and the Investor Trust hereby accepts his or her undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Exculpated Party is not entitled to be indemnified therefor under the Investor Trust Agreement. The foregoing indemnity in respect of any Trust Exculpation Party shall survive the termination of such Trust Exculpation Party from the capacity for which they are indemnified.

(m) Full and Final Satisfaction Against Investor Trust

On and after the Effective Date, the Investor Trust shall have no liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Investor Trust Agreement. All payments and all Distributions made by the Investor Trustee under the Plan shall be in full and final satisfaction, settlement, and release of and in exchange for all Claims or Equity Interests against the Plan Debtors.

7.4. Wind-Down of the Plan Debtors; Wind-Down Administrator

(a) Appointment and Authority of Wind-Down Administrator

Each Plan Debtor shall be deemed to have appointed a Wind-Down Administrator. The Wind-Down Administrator shall have all power and authority that may be or could have been exercised, with respect to the Plan Debtors, by any officer, director, shareholder, member, manager or other party acting in the name of such Plan Debtor or its Estate with like effect as if duly authorized, exercised and taken by action of such officer, director, shareholder, member, manager or other party.

The identity of the Wind-Down Administrator will be disclosed in the Plan Supplement and the appointment of the Wind-Down Administrator shall be approved in the Confirmation Order. The position of Wind-Down Administrator may be filled by the Investor Trustee (including any successor Investor Trustee), and the Investor Trust Agreement will permit the Investor Trustee to fulfil the role of and discharge the duties of the Wind-Down Administrator.

(b) Duties of Wind-Down Administrator

The Wind-Down Administrator will be responsible for:

(1) Winding up the Plan Debtors' affairs as is appropriate under the circumstances;

(2) Administering the Plan and taking such actions as are necessary to effectuate the Plan;

(3) Effecting the dissolution and cancellation of each of the Plan Debtors;

(4) Filing all appropriate (including final) tax returns;

(5) Ensuring that all reports required by the United States Trustee through the date each Plan Debtor's chapter 11 case is closed are Filed;

(6) Resolving any Claim filed against a Plan Debtor that is not Allowed as of the Effective Date, including prosecuting any objections to claims pending as of the Effective Date; and

(7) Administering Distributions to Holders of Allowed Claims (other than Investor Claims and Subordinated Claims) from the Distribution Escrow Account in accordance with the Plan.

(c) Expenses of the Wind-Down Administrator

The Wind-Down Administrator will be provided $50,000 to carry out the duties of the Wind-Down Administrator. Any amount that remains after the Wind-Down Administrator has fully discharged its duties shall be contributed to the Investor Trust as Investor Trust Assets. In the event that such amount is insufficient to satisfy the compensation and expenses of the Wind-Down Administrator, such shortfall shall be treated as an Investor Trust Expenses and shall be paid *first*, from any excess amounts in the Professional Claim Escrow Account after all Professionals have received their respective Professional Claim Maximum Amount, and *second*, from the general Investor Trust Assets.

The Wind-Down Administrator shall have the authority to retain professionals or employ individuals to assist it in carrying out its duties as Wind-Down Administrator or, alternatively, may utilize the professionals or individuals employed by the Investor Trustee with the Investor Trustee's consent.

(d) Corporate Existence and Dissolution or Cancellation of Plan Debtors

Immediately after the Effective Date, the Wind-Down Administrator shall be authorized to take, in his or her sole and absolute discretion, all actions reasonably necessary to dissolve or cancel the limited liability company existence of the Plan Debtors under applicable laws, including under the laws of the jurisdictions in which they may be organized or registered, and to pay all reasonable costs and expenses in connection with such dissolutions, including the costs of preparing or filing any necessary paperwork or documentation. The Wind-Down Administrator shall be authorized to file any certificate of dissolution or cancellation or other documents as may be necessary or desirable to terminate the legal existence of the Plan Debtors.

The Wind-Down Administrator and Plan Debtors shall not be required to pay any tax, fee or assessment to any governmental unit in connection with or as a condition to effecting the dissolution or cancellation of the Plan Debtors.

7.5. Effectuating Documents; Further Transactions

The appropriate officer or director of the Plan Debtors, the Investor Trustee, or the Wind-Down Administrator, as applicable, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, and Confirmation of the Plan shall constitute all necessary corporate or limited liability company authorizations necessary to carry out such actions.

7.6. Cancellation of Instruments and Stock

On the Effective Date, all instruments evidencing or creating any indebtedness or obligation of the Plan Debtors, except such instruments that are authorized or issued under the Plan, shall be canceled and extinguished. Additionally, as of the Effective Date, all Equity Interests in all of the Plan Debtors, and any and all warrants, options, rights, or interests with respect to such Equity Interests that have been issued, could be issued, or that have been authorized to be issued but that have not been issued, shall be deemed cancelled and extinguished without any further action of any party; *provided*, *however*, that each Plan Debtor shall be deemed to have issued one (1) share of common stock or 100% of its membership interests, as the case may be, to the Wind-Down Administrator to be held and exercised solely for purposes of the Wind-Down Administrator carrying out its duties as set forth in Section 7.4 of the Plan.

The holders of, or parties to, the cancelled notes, membership interests, share certificates, and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan and Investor Trust Agreement.

7.7. Disposition of Books and Records

After the Effective Date, the Plan Debtors shall transfer the Plan Debtors' books and records in the Plan Debtors' actual possession and otherwise assign their rights and interest in such books and records to the Investor Trustee. From and after the Effective Date, the Investor Trustee shall continue to preserve and maintain all documents and electronic data transferred to the Investor Trustee by the Plan Debtors, and the Investor Trustee shall not destroy or otherwise abandon any such documents and records (in electronic or paper format) absent further order of the Bankruptcy Court after a hearing upon notice to parties-in-interest; *provided*, *however*, that the Investor Trustee may destroy or abandon such books and records upon dissolution of the Investor Trust.

7.8. Closing the Chapter 11 Cases

Upon the Effective Date, the Chapter 11 Cases for each Plan Debtor, except for Seaboard Hotel Associates, LLC, shall be deemed closed, and the Wind-Down Administrator shall submit an order to the Bankruptcy Court under certification of counsel closing each such Chapter 11 Case, and all matters related to the Chapter 11 Cases of the Plan Debtors shall continue to be administered and addressed in the Chapter 11 Case of Seaboard Hotel.

After all Investor Causes of Action and Disputed Claims and Equity Interests have been resolved, the U.S. Trustee Fees have been paid, all of the funds in the Investor Trust have been distributed in accordance with the Plan, or at such earlier time as the Investor Trustee deems appropriate, the Investor Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Case for Seaboard Hotel, in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

ARTICLE VIII

DISTRIBUTIONS UNDER THE PLAN

8.1. Timing of Distributions

(a) Distributions on Account of Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims.

Subject to the Payment Waterfall, the Wind-Down Administrator shall make Distributions on account of Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims against each Plan Debtor from its respective Distribution Escrow Sub-Account on the later of (i) the Effective Date, or as soon as reasonably practicable thereafter, and (ii) the date such Claims become Allowed.

(b) Distributions on Account of Allowed General Unsecured Claims.

Subject to the Payment Waterfall, the Wind-Down Administrator shall make Distributions on account of Allowed General Unsecured Claims against each Plan Debtor from its respective Distribution Escrow Sub-Account, as soon as practicable after all General Unsecured Claims asserted against such Plan Debtor have either been Allowed or Disallowed.

(c) Distributions on Account of Allowed Investor Claims and Equity Interests.

Distributions to Holders of Allowed Investor Claims and Equity Interests shall be made as set forth in the Investor Trust Agreement.

8.2. Delivery of Distributions

Subject to Bankruptcy Rule 9010, all Distributions to any Holder of an Allowed Claim or Equity Interest shall be made at the address of such Holder as set forth on the Bankruptcy Schedules filed with the Bankruptcy Court if no Proof of Claim has been filed and otherwise at the address of such Holder as set forth in the most-recently filed Proof of Claim; *provided* that the applicable Distribution Agent shall use any address identified to it in writing, including by a filing with the Bankruptcy Court, by the Holder of a Claim or Equity Interest. Nothing in the Plan shall require the Plan Debtors or applicable Distribution Agent to attempt to locate any Holder of an Allowed Claim or Equity Interest.

8.3. Undeliverable and Unclaimed Distributions

(a) Holding Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim or Equity Interest is returned as undeliverable or is otherwise unclaimed, no additional Distributions shall be made to such Holder unless and until the applicable Distribution Agent is notified in writing of such Holder’s then-current address. Nothing contained in the Plan shall require the applicable Distribution Agent to attempt to locate any Holder of an Allowed Claim.

(b) Failure to Claim Unclaimed/Undeliverable Distributions

Subject to Sections 8.6 and 8.12 of the Plan, any Holder of an Allowed Claim that does not contact the applicable Distribution Agent to claim an undeliverable or unclaimed Distribution within one hundred twenty (120) days after the Distribution is made shall be deemed to have its Claim expunged and shall have forfeited its right to such undeliverable or unclaimed Distribution and any subsequent Distribution on account of such Allowed Claim and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed Distribution or any subsequent Distribution on account of its Allowed Claims against the Plan Debtors, their Estates, their property, the Distribution Escrow Account, the Investor Trust, or the respective assets of or in any of the foregoing. In such cases, such unclaimed/undeliverable Distributions shall be redistributed and paid to Holders of Allowed Claims and Equity Interests in accordance with the Plan, free of any restrictions thereon and notwithstanding any federal or state escheatment laws to the contrary.

8.4. Transfer of Claims

The claims register shall remain open after the Effective Date and the applicable Distribution Agent shall recognize any transfer of Claims in accordance with Bankruptcy Rules 3001(e) at any time thereafter, provided that for purposes of each Distribution, the applicable Distribution Agent is not obligated to recognize (and will have no liability if it does not recognize) any transfer during the period commencing thirty (30) calendar days prior to making any Distribution. Except as otherwise provided in the Plan, any transfer of a Claim, whether occurring prior to or after the Confirmation Date, shall not affect or alter the classification and treatment of such Claim under the Plan and any such transferred Claim shall be subject to classification and treatment under the Plan as if such Claim were held by the transferor who held such Claim on the Petition Date.

8.5. Manner of Payment

At the option of the applicable Distribution Agent, any Cash payment to be made under the Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements.

8.6. Time Bar to Cash Payments by Check

Checks issued pursuant to the Plan on account of Allowed Claims or Equity Interests shall be null and void if not negotiated within one hundred twenty (120) days after the date of issuance thereof. After such date, all Claims and Equity Interests in respect of void checks shall be expunged, extinguished, and forever barred, and the proceeds of such checks shall re-vest in the applicable Distribution Escrow Sub-Account or Investor Trust (as applicable), without further Order of the Bankruptcy Court.

8.7. Setoffs and Recoupment

The applicable Distribution Agent may, but shall not be required to, set off against or recoup from any Distribution on account of an Allowed Claim or Equity Interest, any rights to payment of any nature whatsoever that the Plan Debtors may have against the claimant, except where expressly released by the Plan Releases; *provided*, *however*, neither the failure to do so nor the allowance of any Claim or Equity Interest under the Plan shall constitute a waiver or release by the Plan Debtors, Wind-Down Administrator or Investor Trust of any such right to payment they may have against such claimant.

8.8. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such Distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

8.9. Interest on Claims

Except as specifically provided for in the Plan, the Confirmation Order or a Final Order of the Bankruptcy Court, interest shall not accrue on Claims, Equity Interests or Distributions to be made under the Plan, and no Holder of a Claim or Equity Interest shall be entitled to interest accruing on or after the Petition Date on any Claim or Equity Interest, and no Claim shall be Allowed to the extent that it is for post-petition interest or other similar charges.

8.10. No Distribution in Excess of Allowed Amount of Claim

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the Allowed amount of such Claim.

8.11. Reserves

Subject to the Payment Waterfall, if at a time that Distribution may be made, there exists one or more Disputed Claims or Equity Interests within the Class of Claims or Equity Interests to which such Distribution will be made, the applicable Distribution Agent shall establish and maintain reserves for the benefit of Holders of Disputed Claims or Equity Interest within that Class, which reserves shall include an amount of Cash equal to the Distributions that would have been made to the Holder of such Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (a) the amount of the Disputed Claim, (b) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (c) such other amount as may be agreed upon by the Holder of such Disputed Claim and the applicable Distribution Agent.

8.12. Payment of Taxes on Distributions Received Pursuant to the Plan; Required Compliance with Withholding and Reporting Obligations

In connection with the Plan and all Distributions under the Plan, the applicable Distribution Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under the Plan shall be subject to any such withholding or reporting requirements. The applicable Distribution Agent may withhold from amounts distributable to any Person any and all amounts, determined in the applicable Distribution Agent's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. Notwithstanding the above, each Holder of an Allowed Claim or Equity Interest that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution. The applicable Distribution Agent has the right, but not the obligation, to refrain from making a Distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

As an express condition to receiving a Distribution, each Holder of an Allowed Claim or Equity Interest must furnish any information that the applicable Distribution Agent believes, in good faith, it is required to obtain prior to making a Distribution in order to allow the applicable Distribution Agent to comply with tax-reporting and other regulatory obligations, including furnishing a Taxpayer Identification Number or Employer Identification Number (*i.e.*, social security number for an individual and employer identification number for a business) and a completed Form W-9 or, if not a US company, Form W-8, which may be obtained from the Internal Revenue Service.

The applicable Distribution Agent shall make an initial request for the information required under Section 8.12 of the Plan as soon as reasonably practicable after the Effective Date and shall specify a period of 120 days to respond, and such request shall specify that the information is being requested for purposes of potential Distributions under the Plan and that the failure to respond will result in disallowance of the Claim or Equity Interest in accordance with Section 8.12 of the Plan. A second request shall be made (i) for Claims other than General Unsecured Claims or Investor Claims, after the expiration of the initial 120 day period, and (ii) for General Unsecured Claims, Investor Claims or Equity Interests, at the time that the applicable Distribution Agent proposes to make initial Distributions to Holders of Claims or Equity Interests within such Class, and such request shall specify that the information is being requested for purposes of potential Distributions under the Plan and that the failure to respond will result in disallowance of the Claim or Equity Interest in accordance with Section 8.12 of the Plan. Any party that fails to respond a second request within sixty (60) days of the applicable Distribution Agent mailing such request, shall have their Claim or Equity Interest Disallowed and expunged and shall not be entitled to receive any further Distributions under the Plan on account of such Claim or Equity Interest.

8.13. Minimum Distribution Amounts; Rounding

The applicable Distribution Agent shall not be required to make any distribution that is less than $50.00 ("De Minimis Distribution"). Any De Minimis Distribution shall continue to be held for the benefit of the Holders of Allowed Claims or Equity Interests entitled to such De Minimis Distributions until such time that the aggregate amount of De Minimis Distributions held by the applicable Distribution Agent for the benefit of a Holder of a Claim or Equity Interest equals or exceeds $50.00, at which time the applicable Distribution Agent will distribute such De Minimis Distributions to such Holder. If, at the time that the final Distribution under the Plan is to be made to a particular Class of Claims or Equity Interests, the De Minimis Distributions held by the applicable Distribution Agent for the benefit of a Holder of a Claim or Equity Interest totals less than $50.00, such funds shall not be distributed to such Holder, but rather, such Claim or Equity Interest shall be deemed expunged and such Distribution shall be reallocated for Distribution to the other Holders of Allowed Claims or Equity Interests in such affected Class.

On or about the time that a final Distribution to is made to a Class and upon the applicable Distribution Agent determining that there are insufficient funds remaining to cost-effectively make any further Distribution to Holders of Claims or Equity Interests in that Class, the applicable Distribution Agent may donate any undistributed funds to the American Bankruptcy Institute Endowment Fund.

Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down) with amounts equal to or greater than $0.50 being rounded up and fractions less than $0.50 being rounded down.

ARTICLE IX

PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

9.1. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan and the Investor Trust Agreement, after the Effective Date, the applicable Distribution Agent shall have the sole authority (a) to file, withdraw, or litigate to judgment objections to Claims or Equity Interests, (b) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court, (c) to amend the Bankruptcy Schedules in accordance with the Bankruptcy Code, and (d) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

9.2. Claims Objections

Unless a Claim is expressly described as an Allowed Claim pursuant to or under the Plan, or otherwise becomes an Allowed Claim, upon the Effective Date, the applicable Distribution Agent shall be deemed to have a reservation of any and all objections of the Estates to any and all Claims and motions or requests for the payment of Claims, whether administrative expense, priority, secured or unsecured, including any and all objections to the validity or amount of any and all Claims, Liens and security interests, whether under the Bankruptcy Code, other applicable law or contract. The Debtors', the Investor Trustee's, or the Wind-Down Administrator's failure to object to any Claim or Equity Interest in the Chapter 11 Cases that shall be without prejudice to the Investor Trustee's or the Wind-Down Administrator's rights to contest or otherwise defend against such Claim or Equity Interest in the Bankruptcy Court when and if such Claim or Equity Interest is sought to be enforced by the Holder thereof. For the avoidance of doubt, nothing included in Section 9.1 of the Plan limits the standing or rights that any party may have to object to Professional Claims.

Unless otherwise provided in the Plan or by order of the Bankruptcy Court, any objections to Claims (including Administrative Claims and Priority Tax Claims but excluding Professional Claims) or Equity Interests by the applicable Distribution Agent shall be Filed not later than 180 days after the later of (i) the Effective Date or (ii) the date such Claim is Filed (the "Claims Objection Deadline"), *provided* that the applicable Distribution Agent may request (and the Bankruptcy Court may grant) an extension of such deadline by Filing a motion with the Bankruptcy Court, based upon a reasonable exercise of the applicable Distribution Agent's business judgment; *provided further* that with respect to Claims that, as of the Claims Objection Deadline, are subject to a pending objection (an "Initial Objection") wherein the objection to such Claim or Equity Interest is ultimately denied, the Claims Objection Deadline shall be extended to the later of sixty (60) calendar days from the date on which (a) the Bankruptcy Court enters an order denying such Initial Objection or (b) any appellate court enters a Final Order reversing or vacating an order of the Bankruptcy Court granting such Initial Objection. A motion seeking to extend the deadline to object to any Claim shall not be deemed an amendment to the Plan.

9.3. Estimation of Claims

The applicable Distribution Agent may (but is not required to) at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Plan Debtors or the applicable Distribution Agent previously objected to such Claim or Equity Interest or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim or

Equity Interest at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent Claim, unliquidated Claim, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the applicable Distribution Agent may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

9.4. Adjustment to Claims or Equity Interests Without Objection

Any Claim or Equity Interest that has been paid, satisfied, amended, settled or superseded may be adjusted or expunged on the Claims Register by the Claims Agent at the direction of the applicable Distribution Agent without the need for any application, motion, complaint, claim objection, or any other legal proceeding seeking to object to such Claim or Equity Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

9.5. No Distributions Pending Allowance

Notwithstanding any other provision hereof, if any portion of a Claim or Equity Interest is Disputed, no payment or Distribution provided under the Plan shall be made on account of such Claim or Equity Interest unless and until such Disputed Claim or Equity Interest becomes Allowed.

9.6. Distributions After Allowance

To the extent that a Disputed Claim or Equity Interest ultimately becomes an Allowed Claim or Equity Interest, Distributions (if any) shall be made to the Holder of such Allowed Claim or Equity Interest in accordance with the provisions of the Plan.

9.7. Disallowance of Certain Claims

Any Claims or Equity Interests held by Persons from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or by a Person that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and such Persons may not receive any Distributions on account of their Claims or Equity Interest until such time as such Causes of Action against such Persons have been settled or a Final Order with respect thereto has been entered and all sums due, if any, to the Plan Debtors by such Person have been turned over or paid to the Investor Trust.

9.8. Amendments to Claims

On or after the Effective Date, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court or the applicable Distribution Agent and any such new or amended Claim filed without prior authorization shall be deemed Disallowed in full and expunged without any further action; *provided*, *however*, that Section 9.8 of the Plan shall not prohibit or restrict the applicable Distribution Agent from seeking to establish any additional or supplemental bar dates for filing Investor Claims or proofs of Equity Interests.

9.9. Claims Paid and Payable by Third Parties

A Claim shall be Disallowed without a Claim Objection thereto having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a source other than the Distribution Escrow Account or the Investor Trust. Distributions under the Plan shall be made on account of any Allowed Claim that is payable pursuant to one of the Plan Debtors' insurance policies solely up to the amount of, and in full and complete satisfaction of, the portion of such Allowed Claim that is within the deductible or self-insured retention under such insurance policy. Except as provided in Section 9.9 of the Plan, no Person shall have any other recourse against the Plan Debtors, the Estates, the Investor Trust, or any of their respective properties or assets on account of such deductible or self-insured retention under an insurance policy.

ARTICLE X

EXECUTORY CONTRACTS AND LEASES

10.1. Executory Contracts and Unexpired Leases Deemed Rejected

On the Effective Date, all of the Plan Debtors' executory contracts and unexpired leases will be deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except to the extent that (a) the Plan Debtors previously have assumed, assumed and assigned, or rejected such executory contract or unexpired lease, (b) prior to the Effective Date, the Plan Debtors have Filed a motion to assume, assume and assign, or reject an executory contract or unexpired lease on which the Bankruptcy Court has not ruled, (c) an executory contract and unexpired lease is specifically identified in the Plan Supplement as an executory contract or unexpired lease to be assumed pursuant to the Plan, in which case such executory contract or unexpired lease shall be assumed by the applicable Plan Debtor(s) and assigned to the Investor Trust. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections, assumptions and assignments of executory contracts and unexpired leases pursuant to Section 10.1 of the Plan and sections 365(a) and 1123 of the Bankruptcy Code.

10.2. Bar Date For Rejection Damages

If the rejection by the Plan Debtors of an executory contract or an unexpired lease pursuant to Section 10.1 of the Plan results in damages to the other party or parties to such executory contract or unexpired lease, a Proof of Claim asserting those damages that arise from such rejection (a "Rejection Claim") must be submitted to the Claims Agent so as to actually be received on or before the date that is the thirty (30) days after the occurrence of the Effective Date. Nothing set forth in the Plan shall extend the deadline to file a Rejection Claim if an earlier deadline was established under the Bar Date Order.

Any Person that is required to file a Proof of Claim for a Rejection Claim and that fails to timely do so shall be forever barred, estopped, and enjoined from asserting such Claim, and such Claim shall not be enforceable against the Investor Trust, the Investor Trustee, the Plan Debtors, the Estates, the Investor Trust Assets and the Distribution Escrow Account and funds therein unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein.

10.3. Cure Amounts and Objection to Assumption

In the event that the Plan Debtors elect to assume an executory contract or unexpired lease pursuant to clause (c) of Section 10.1 of the Plan, the Plan Debtors shall include in the Plan Supplement

the amount that they believe is required to be paid under section 365(b) of the Bankruptcy Code as cure in connection with the assumption of such executory contract or unexpired lease (a "Cure Amount"), and they shall contemporaneously with such filing (or amendment) of the Plan Supplement, serve a notice of such Cure Amount on each affected counterparty contemporaneous with the filing of the Plan Supplement (each such notice a "Contract Notice"). The Plan Debtors shall have the right to revise the Cure Amount through the commencement of the Confirmation Hearing. The affected counterparties shall have (14) fourteen days from the service of the last-served Contract Notice to object to the proposed Cure Amount or the proposed assumption and assignment (the "Contract Objection Period"). If no objection is timely-Filed during the Contract Objection Period, than the Cure Amount shall be fixed as set forth in the Plan Supplement, such Cure Amount shall promptly be paid by the Investor Trustee as an Investor Trust Expense, and such executory contract shall be deemed assumed as of the later of the Effective Date and the expiration of the Contract Objection Period. If an objection is timely-Filed within the Contract Objection Period, such executory contract and lease shall neither be assumed or rejected until (i) the Plan Debtors (or Investor Trustee if such objection is not resolved prior to the Effective Date) enter into a written agreement resolving the Cure Amount, (ii) the Plan Debtors file a notice that they are withdrawing their request to assume the executory contract or unexpired lease that is subject to the objection, or (iii) a Final Order is entered by the Bankruptcy Court resolving the objection.

ARTICLE XI

EFFECT OF CONFIRMATION

11.1. Binding Effect

Subject to the occurrence of the Effective Date, the provisions of the Plan, the Plan Supplement, and the Confirmation Order shall bind (a) any Holder of a Claim against, or Equity Interest in, the Plan Debtors and such Holder's respective successors and assigns (whether or not the Claim or Equity Interests are Impaired under the Plan, whether or not such Holder has voted to accept the Plan, and whether or not such Holder is entitled to a Distribution under the Plan), (b) all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, (c) each Person acquiring property under the Plan or the Confirmation Order, and (d) any and all non-Debtor parties to executory contracts and unexpired leases with the Plan Debtors. All Claims and debts against Plan Debtors shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

11.2. Reservation of Causes of Action/Reservation of Rights

Except where expressly released or exculpated in the Plan, nothing contained in the Plan shall be deemed to be a waiver or the relinquishment of any claim or cause of action that the Plan Debtors or the Investor Trust, as applicable, may have or may choose to assert against any Person, including but not limited to the Investor Trust Causes of Action.

11.3. Releases by the Plan Debtors of Certain Parties

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE ACTIONS OF THE RELEASED PARTIES TO FACILITATE THE PLAN SETTLEMENT AND THE IMPLEMENTATION OF THE PLAN, EFFECTIVE AS OF THE EFFECTIVE DATE, EACH PLAN DEBTOR, IN ITS INDIVIDUAL CAPACITY AND AS A DEBTOR IN POSSESSION FOR ITSELF AND ON BEHALF OF ITS ESTATE, AND ANY PERSON CLAIMING THROUGH, ON BEHALF OF, OR FOR THE

BENEFIT OF EACH PLAN DEBTOR AND ITS ESTATE, SHALL RELEASE AND DISCHARGE AND BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED ALL RELEASED PARTIES FOR AND FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED TO ANY ACTIONS, TRANSACTIONS, EVENTS OR OMISSIONS OCCURRING ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTORS AND THE CHAPTER 11 CASES. THE INVESTOR TRUST, INVESTOR TRUSTEE AND WIND-DOWN ADMINISTRATOR, SHALL BE BOUND, TO THE SAME EXTENT THAT THE DEBTORS ARE BOUND, BY THE RELEASES AND DISCHARGES SET FORTH ABOVE.

11.4. Releases by Non-Debtors

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE ACTIONS OF THE RELEASED PARTIES TO FACILITATE THE PLAN SETTLEMENT AND THE IMPLEMENTATION OF THE PLAN, EFFECTIVE AS OF THE EFFECTIVE DATE, EACH RELEASING PARTY SHALL RELEASE AND DISCHARGE AND BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED ALL RELEASED PARTIES FOR AND FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED TO ANY ACTIONS, TRANSACTIONS, EVENTS OR OMISSIONS OCCURRING ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTORS AND THE CHAPTER 11 CASES. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING RELEASE SHALL NOT WAIVE OR RELEASE ANY RIGHT THAT A RELEASING PARTY HAS UNDER THE PLAN TO RECEIVE A DISTRIBUTION UNDER THE PLAN, INCLUDING FROM THE INVESTOR TRUST, THE DISTRIBUTION ESCROW ACCOUNT, OR THE SETTLING LENDER ESCROW ACCOUNT.

11.5. Exculpation

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, NO EXCULPATED PARTY SHALL HAVE OR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE FILING OF THE CHAPTER 11 CASES, THE FORMULATION, PREPARATION, NEGOTIATION, DISSEMINATION, FILING, IMPLANTATION, ADMINISTRATION, CONFIRMATION OR CONSUMMATION OF THE PLAN, THE DISCLOSURE STATEMENT, THE EXHIBITS TO THE PLAN AND THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT DOCUMENTS, ANY INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED, MODIFIED, AMENDED OR ENTERED INTO IN CONNECTION WITH THE PLAN, EXCEPT FOR THEIR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER AND EXCEPT WITH RESPECT TO OBLIGATIONS ARISING UNDER CONFIDENTIALITY AGREEMENTS, JOINT INTEREST AGREEMENTS, OR PROTECTIVE ORDERS, IF ANY, ENTERED DURING THE CHAPTER 11 CASES; *PROVIDED*, *HOWEVER*, THAT EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES PURSUANT TO, OR IN

CONNECTION WITH, THE ABOVE REFERENCED DOCUMENTS, ACTIONS, OR INACTIONS.

11.6. Plan Injunction

THE SATISFACTION AND RELEASE PURSUANT TO ARTICLES VII AND XI OF THE PLAN SHALL ACT AS A PERMANENT INJUNCTION AGAINST ANY ENTITY COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS, OR ACT TO COLLECT, OFFSET OR RECOVER ANY CLAIM, INTEREST, OR CAUSE OF ACTION SATISFIED OR RELEASED UNDER THE PLAN TO THE FULLEST EXTENT AUTHORIZED OR PROVIDED BY THE BANKRUPTCY CODE.

WITHOUT LIMITING THE FOREGOING, FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES THAT HAVE HELD, HOLD, OR MAY HOLD CLAIMS AND INTERESTS THAT HAVE BEEN RELEASED PURSUANT OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE XI OF THE PLAN, SHALL BE PERMANENTLY ENJOINED FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST, AS APPLICABLE, THE INVESTOR TRUST, INVESTOR TRUSTEE, WIND-DOWN ADMINISTRATOR, RELEASED PARTIES OR EXCULPATED PARTIES: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY SUCH CLAIMS OR INTERESTS; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (C) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (D) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, EXCULPATED, OR SETTLED PURSUANT TO THE PLAN.

11.7. Term of Bankruptcy Injunction or Stays

All injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect following Confirmation of the Plan, for the maximum period permitted under the Bankruptcy Code, Bankruptcy Rules and the Local Bankruptcy Rules.

11.8. Setoff

Notwithstanding anything herein, in no event shall any Holder of a Claim be entitled to setoff any Claim against any claim, right, or cause of action of the Plan Debtors, unless such Holder preserves its right to setoff by (i) including in a timely-filed Proof of Claim that it intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise or (ii) filing a motion for authority to effect such setoff on or before the Confirmation Date (regardless of whether such motion is heard prior to or after the Confirmation Date).

11.9. Preservation of Insurance

Except as otherwise provided herein, Confirmation of the Plan shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Plan Debtors, including their officers and current and former directors, or any other person or entity.

ARTICLE XII

CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE; EFFECT OF FAILURE OF CONDITIONS

12.1. Conditions Precedent to Confirmation

Acceptance of the Plan by each of Class 3 (Mortgage Claims), Class 4 (Settling Lender Claims), and Class 5 (General Unsecured Claims) shall be a condition for each Plan Debtor to seek Confirmation of the Plan with respect to itself, *provided* that if one of those Classes is vacant, than that Class shall be treated as having accepted the Plan for purposes of determining if the condition to Confirmation in Section 12.1 of the Plan has been satisfied.

A Plan Debtor, in its sole discretion, may waive this condition to Confirmation solely with respect to itself.

12.2. Conditions Precedent to the Effective Date

The Effective Date shall not occur, and the Plan shall not become effective with respect to each Plan Debtor, unless and until the following conditions are satisfied in full or waived in accordance with Section 12.2 of the Plan:

(a) the Confirmation Order shall have been entered with respect to such Plan Debtor, without any material modification that would require re-solicitation, and shall not be subject to any stay or appeal period;

(b) the Investor Trust Agreement shall have been executed and delivered consistent with the Plan;

(c) the Investor Trust shall been funded in the amount of $1,000,000;

(d) the Wind-Down Administrator shall have received $50,000 to fund the expenses of the Wind-Down Administrator;

(e) the Distribution Escrow Account and Professional Claims Escrow Account shall have been funded in the amounts identified in the Plan;

(f) The Settling Lender Escrow Account shall have been funded in the amount of $9,400,000; and

(g) The Plan shall have been confirmed with respect to the Investor Trust Debtors.

The Plan Debtors may waive any of the conditions to the occurrence of the Effective Date in their sole discretion except that: (1) condition (g) may not be waived; (2) conditions (b), (c), and (d) may not

be waived without the consent of the Participant Investors; and (3) condition (f) may not be waived without the prior written consent of the Settling Lenders.

12.3. Satisfaction of Conditions

Except as expressly provided or permitted in the Plan, any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

In the event that the condition specified in Section 12.1 of the Plan or Section 12.2 of the Plan shall not have occurred or otherwise been waived as permitted under the Plan with respect to any Plan Debtor that is not an Investor Trust Debtor, (a) the Plan shall be deemed withdrawn with respect to that specific Plan Debtor and such entity shall no longer be treated as a Plan Debtor for purposes of the Plan and (if applicable) the Confirmation Order shall be vacated with respect to that specific Plan Debtor, (b) all Holders of Claims and Equity Interests against that specific Plan Debtor shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered as to that specific Plan Debtor, and (c) that specific Plan Debtor's obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against that specific Plan Debtor or any other Person or prejudice in any manner the rights of that specific Plan Debtor or any Person in any further proceedings involving that specific Plan Debtor.

In the event that the conditions specified in Sections 12.1 and 12.2 of the Plan shall not have occurred or otherwise been waived as permitted under the Plan with respect to any Investor Trust Debtor, (a) the Plan shall be deemed withdrawn and (if applicable) the Confirmation Order shall be vacated, (b) all Holders of Claims and Equity Interests against the Plan Debtors shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered, and (c) the Plan Debtors' obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Plan Debtors or any other Person or prejudice in any manner the rights of the Plan Debtors or any Person in any further proceedings involving the Plan Debtors.

If a condition to Confirmation or the Effective Date is not satisfied or waived with respect to an entity identified as a Plan Debtor, such entity shall be deemed revised to exclude that entity from (i) the definition of Plan Debtor and (ii) the Plan.

ARTICLE XIII

RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters in connection with, arising out of, or related to the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including to:

(a) hear and determine pending motions for the assumption or rejection of executory contracts or unexpired leases and the allowance of cure amounts and Claims resulting therefrom;

(b) hear and determine any and all adversary proceedings, applications and contested matters;

(c) hear and determine all applications for compensation and reimbursement of expenses under sections 330, 331 and 503(b) of the Bankruptcy Code;

(d) hear and determine any objections (including requests for estimation) in connection with Disputed Claims or Equity Interests, in whole or in part;

(e) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(f) issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

(g) consider any amendments to or modifications of the Plan or to cure any defect or omission, or reconcile any inconsistency, in any order of the Bankruptcy Court, including the Confirmation Order;

(h) hear and determine disputes or issues arising in connection with the interpretation, implementation or enforcement of the Plan, the Confirmation Order, the Investor Trust Agreement, any transactions or payments contemplated hereby or thereby, any agreement, instrument, or other document governing or relating to any of the foregoing or any settlement approved by the Bankruptcy Court;

(i) hear and determine (i) matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any request by the Plan Debtors), prior to the Effective Date or (ii) requests by the Investor Trustee after the Effective Date for an expedited determination of tax issues under section 505(b) of the Bankruptcy Code;

(j) issue injunctions and effect any other actions that may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order or any other order of the Bankruptcy Court;

(k) hear and determine such other matters as may be provided in the Confirmation Order;

(l) hear and determine any rights, Claims or Causes of Action, including, for the avoidance of doubt, the Investor Trust Causes of Action, held by or accruing to the Plan Debtors or Investor Trust pursuant to the Bankruptcy Code or pursuant to any federal or state statute or legal theory;

(m) recover all assets of the Plan Debtors and property of the Plan Debtors' Estates, wherever located;

(n) enforce the terms of the Investor Trust Agreement;

(o) hear and determine any disputes arising out of the allocation of the Settling Lender Escrow Account or the Settling Lender Escrow Agreement;

(p) enforce the releases granted and injunctions issued pursuant to the Plan and the Confirmation Order;

(q) enter a final decree closing the Chapter 11 Cases; and

(r) hear and determine any other matter not inconsistent with the Bankruptcy Code.

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ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1. Effectuating Documents and Further Transactions

The appropriate officers or directors of the Plan Debtors, the Investor Trustee, or the Wind-Down Administrator, as applicable, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

14.2. Corporate Action

On the Effective Date, all matters provided for under the Plan that would otherwise require approval of shareholders, directors, members, or managers of one or more of the Plan Debtors shall be in effect from and after the Effective Date pursuant to the applicable general business, corporation or limited liability company law of the states in which the Plan Debtors are incorporated or organized, without any requirement of further action by the shareholders, directors, members, or managers of the Plan Debtors.

14.3. Modification of Plan

Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Plan Debtors at any time prior to the Confirmation Date; *provided*, that the Plan, as altered, amended, or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code and the Plan Debtors have complied with section 1125 of the Bankruptcy Code. The Plan may be altered, amended, or modified at any time after the Confirmation Date and before substantial consummation; provided, that the Plan, as altered, amended, or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended, or modified, under section 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments, or modifications. A Holder of a Claim or Equity Interest that has accepted the Plan prior to any alteration, amendment, or modification will be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Holders of the Claims.

Prior to the Effective Date, the Plan Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court, provided that such technical adjustments and modifications do not materially change the treatment of Holders of Claims or Equity Interests.

14.4. Revocation or Withdrawal of the Plan

The Plan Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. Subject to the foregoing sentence, if the Plan Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Plan

Debtors or any other Person or to prejudice in any manner the rights of the Plan Debtors or any Person in any further proceedings involving the Plan Debtors.

14.5. Plan Supplement

The Plan Supplement and the documents contained therein shall be filed with the Bankruptcy Court no later than seven (7) calendar days before the deadline for voting to accept or reject the Plan; *provided*, that the documents included therein may thereafter be amended and supplemented, prior to execution, so long as such amendment or supplement does not materially and adversely change the treatment of Holders of Claims. The Plan Supplement and the documents contained therein are incorporated into and made a part of the Plan as if set forth in full herein.

14.6. Payment of Statutory Fees

On or before the Effective Date, all fees payable under section 1930 of chapter 123 of title 28 of the United States Code shall be paid in Cash. Following the Effective Date, all such fees shall be paid by the Investor Trustee until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under section 1112 of the Bankruptcy Code, or the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code. For the avoidance of doubt, the U.S. Trustee Fees shall be deemed part of the Investor Trustee Expenses.

14.7. Exemption from Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including the issuance of any stock, any merger agreements, or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

14.8. Expedited Tax Determination

The Plan Debtors, Investor Trustee and Wind-Down Administrator (as applicable) are authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Plan Debtors for any and all taxable periods (or portions thereof) ending after the Petition Date through and including the Effective Date.

14.9. Exhibits/Schedules

All exhibits and schedules to the Plan, including the Plan Supplement, and Schedules A through D to the Disclosure Statement are incorporated into and are a part of the Plan as if set forth in full herein.

14.10. Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101(2) and 1127(b) of the Bankruptcy Code.

14.11. Severability of Plan Provisions

In the event that, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall, at the request of the Plan Debtors have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable in accordance with its terms.

14.12. Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan or Plan Supplement provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without giving effect to its principles of conflict of law.

14.13. Conflicts

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement conflicts with or is in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

14.14. Reservation of Rights

If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties-in-interest in the Chapter 11 Cases are and will be reserved in full. Any concessions or settlements reflected herein, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Chapter 11 Cases shall be bound or deemed prejudiced by any such concession or settlement.

14.15. Limiting Notices

Only Persons that file renewed requests to receive documents pursuant to Bankruptcy Rule 2002 on or after the Effective Date shall be entitled to receive notice under Bankruptcy Rule 2002. After the Effective Date, the Wind-Down Administrator and Investor Trustee are authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to those Persons who have Filed such renewed requests.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, each Plan Debtor has executed the Plan this 27th day of February, 2017.

220 ELM STREET I, LLC
220 ELM STREET II, LLC
300 MAIN MANAGEMENT, INC.
300 MAIN STREET ASSOCIATES, LLC
300 MAIN STREET MEMBER ASSOCIATES, LLC
316 COURTLAND AVENUE ASSOCIATES, LLC
600 SUMMER STREET STAMFORD ASSOCIATES, LLC
88 HAMILTON AVENUE ASSOCIATES, LLC
88 HAMILTON AVENUE MEMBER ASSOCIATES, LLC
CENTURY PLAZA INVESTOR ASSOCIATES, LLC
CLOCKTOWER CLOSE ASSOCIATES, LLC
ONE ATLANTIC INVESTOR ASSOCIATES, LLC
ONE ATLANTIC MEMBER ASSOCIATES, LLC
PARK SQUARE WEST ASSOCIATES, LLC
PARK SQUARE WEST MEMBER ASSOCIATES, LLC
PSWMA I, LLC
PSWMA II, LLC
SEABOARD HOTEL ASSOCIATES, LLC
SEABOARD HOTEL MEMBER ASSOCIATES, LLC
SEABOARD HOTEL LTS ASSOCIATES, LLC
SEABOARD HOTEL LTS MEMBER ASSOCIATES, LLC
SEABOARD RESIDENTIAL, LLC
TAG FOREST, LLC

By: *'/s/ Marc Beilinson*
Name: Marc Beilinson
Title: Chief Restructuring Officer

EXHIBIT 2

Liquidation Analysis

[To be filed separately]