

Holders of Wells Fargo Commercial Mortgage Trust 2015-NXS2, Commercial Mortgage Pass-Through Certificates (“Wilmington Trust”), Chicago Title Insurance Company (“Chicago Title”), First American Title Insurance Company (“First American”) and Cedar Hill Capital, LLC (“Cedar Hill,” and together with the Debtors, UCF, CPR, Annemid, Wilmington Trust, Chicago Title, and First American, the “Parties”), substantially in the form attached hereto as **Exhibit A**.² In support of this motion (this “Motion”), the Debtors respectfully state as follows:

PRELIMINARY STATEMENT³

The Plan will unlock substantial cash within the Plan Debtors’ chapter 11 estates and provides a mechanism to distribute that cash to creditors and, in certain instances, equityholders. Further, the Debtors believe that the Plan may be the only path for the Plan Debtors to successfully conclude their chapter 11 cases. The Plan Debtors, which consist of all but three of the Debtors, believe they are on the cusp of confirmation of the Plan other than the opposition of Cedar Hill.⁴

The Settlement Agreement breaks an impasse with Cedar Hill, on the one hand, and the other Settling Lenders and Plan Debtors, on the other hand, and paves the way for a largely consensual and prompt hearing on confirmation of the Plan. Approval of the Settlement Agreement would result in all of the Settling Lenders (including Cedar Hill) supporting the Plan

² The Parties have reached agreement on the principal terms of the Settlement Agreement but are finalizing documentation of the Settlement Agreement. As a result, the form of Settlement Agreement attached hereto remains subject to negotiation and final approval by all of the Parties. The Debtors will file the executed Settlement Agreement with the Court once final, and this Motion seeks approval of the Settlement Agreement as executed by the Parties.

³ Unless otherwise defined herein, all capitalized terms have the meaning ascribed to them in the *Amended Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code for Propco Plan Debtors and Holdco Plan Debtors*, dated as of April 10, 2017 [D.I. 1678] (as modified, amended, or supplemented from time to time, the “**Plan**”).

⁴ While certain parties have objected to confirmation of the Plan, namely with respect to the third-party release and exculpation provisions, the Plan Debtors believe that the Plan may be confirmed notwithstanding those objections.

and, thereby, put in place one of the keys to unlocking the value in the Plan Debtors. Given the paramount importance of the Plan, each of the Debtors, including Seaboard Realty (defined below), which is not itself a Plan Debtor but a substantial equityholder in many of the HoldCo Debtors and, therefore, a potential beneficiary of confirmation of the Plan, believes that proceeding with the Plan is in the best interest of their estates and creditors and that approving the Settlement Agreement is a proper means to advance (and hopefully accomplish) the goal of confirming the Plan.

The Debtors each submit that the Settlement Agreement should be approved.

JURISDICTION ND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Application if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

2. Venue of these chapter 11 cases and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Bankruptcy Rule 9019(a) and section 105(a) of the Bankruptcy Code.

BACKGROUND

A. General Background

4. On December 13, 2015 (the “Petition Date”), the Original Debtors,⁵ with the exception of Tag Forest, LLC (“Tag”), each commenced a voluntary case under chapter 11 of the Bankruptcy Code. On December 14, 2015, Tag commenced its voluntary case under chapter 11 of the Bankruptcy Code.

5. On February 3, 2016, the Additional Debtors,⁶ excluding 88 Hamilton Avenue Associates, LLC, each commenced a voluntary case under chapter 11 of the Bankruptcy Code. On February 4, 2016, 88 Hamilton commenced its voluntary case under chapter 11 of the Bankruptcy Code.

6. On March 17, 2016, 220 Elm Street II, LLC commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases are referred to herein as the “Chapter 11 Cases.”

7. On February 27, 2017 certain of the Debtors (referred to as the Plan Debtors) filed an initial chapter 11 plan [D.I. 1588] and on April 10, 2017, the Plan Debtors filed the Plan. A hearing to consider confirmation of the Plan is currently scheduled for May 18, 2017. Under the Plan, Cedar Hill, CPR, Annemid and UCF are the Settling Lenders, and the Plan includes a proposed settlement with the Settling Lenders.

⁵ 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.

⁶ 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. The Parties and their Prepetition Claims

8. In 2012 and 2014, UCF provided loans to Debtors Park Square West Member Associates, LLC (“PSW Member”) and Seaboard Hotel Member Associates, LLC (“Seaboard Hotel Member”) in the aggregate original principal amount of approximately \$19,000,000.00 (the “UCF Loans”). The UCF Loans were collateralized by, among other things, PSW Member’s equity interests in Park Square West Associates, LLC (“Park Square West”), as well as Seaboard Hotel Member’s equity interests in Seaboard Hotel Associates, LLC (“Seaboard Hotel”), and the UCF Loans were subject to cross-collateralization and cross-default provisions. Moreover, Park Square West and Seaboard Hotel LTS Member Associates, LLC (“Seaboard Hotel LTS Member”) executed payment guaranties of certain repayment obligations under the UCF Loans in favor of UCF. In the Chapter 11 Cases, UCF asserted secured claims (Claim Nos. 206-212) on account of the UCF Loan against certain of the Debtors, including Park Square West and Seaboard Hotel and the proceeds from the sale of its property located at 275 Summer Street, Stamford, CT (the “Seaboard Hotel Property” and the “UCF Claim”). UCF claims an interest in and lien on the Park Square West Property, the Seaboard Hotel Property, and any proceeds therefrom, as well as in the membership interests of Seaboard Hotel and Seaboard Hotel LTS, among other items of collateral, and also asserted rights pursuant to guaranties from Park Square West, Seaboard Hotel LTS Member, among others, all as more fully set out in the UCF Claim documents.

9. On or about September 24, 2013, Israel Discount Bank of New York (as predecessor to Annemid) provided a loan to PSW Member in the original principal amount of \$5,000,000.00, evidenced by that certain promissory note dated September 24, 2013 (the “IDB Loan”). The IDB Loan was secured by, among other things, a pledge of PSW Member’s one hundred percent (100%) equity interest in Park Square West and a security interest in certain

collateral, and a guaranty issued by Debtor Seaboard Realty, LLC (“Seaboard Realty”). IDB assigned its rights and interest in and related to the IDB Loan to Annemid in January, 2017. In the Chapter 11 Cases, Annemid asserts secured claims (Claim Nos. 265, 266) on account of the IDB Loan against certain of the Debtors (the “Annemid Claim”). Annemid claims an interest in and lien on the Park Square West Property and any proceeds therefrom on account of PSW Member’s equity interest in Park Square West.

10. Among other loans, in 2015 Cedar Hill loaned funds to Seaboard Realty in the original principal amount of \$4,000,000.00 (the “Cedar Hill Secured Loan”), which was evidenced by a promissory note dated March 25, 2015 and secured by, among other things, payment and performance guarantees executed by, among others, Seaboard’s Debtor affiliates 88 Hamilton Avenue Associates, LLC (“88 Hamilton”) and Park Square West. the obligations of Seaboard Realty, 88 Hamilton, and Park Square West to Cedar Hill were secured by, among other things, a security interest in and lien on 88 Hamilton’s sole asset—a commercial property located at 88-112 Hamilton Avenue, Stamford, Connecticut 06906 (the “88 Hamilton Property”)—and a security interest in and lien on Park Square West’s sole asset—a multifamily apartment property located at 101 Summer Street, Stamford, Connecticut 06906 (the “Park Square West Property,” and together with the 88 Hamilton Property, the “Properties”). Cedar Hill contends that the Cedar Hill Secured Loan was secured by valid, enforceable and properly perfected liens on the Properties as of the Petition Date, including a first priority lien on the 88 Hamilton Property. In the Chapter 11 Cases, Cedar Hill asserted secured claims (Claim Nos. 224-232) on account of the Cedar Hill Secured Loan against certain of the Debtors, including 88 Hamilton and Park Square West (the “Cedar Hill Claim”). Cedar Hill claims security interests in and liens on the proceeds from the sale of the Properties.

11. In June 2015, Natixis Real Estate Capital LLC (“Natixis”) provided a mortgage loan in the original principal amount of \$23,000,000.00 to 88 Hamilton, which was evidenced by a promissory note dated June 8, 2015 executed by 88 Hamilton, and secured by, among other things, an Open-End Mortgage, Assignment of Leases and Rents, and Security Agreement dated June 8, 2015, granted by 88 Hamilton to Natixis and recorded as Instrument No. 2015011168, in Volume 11265, Page 265 in the Recorder’s Office of the Town of Stamford, Connecticut (the “Natixis Mortgage”) (collectively, the “Natixis Loan”). The Natixis Loan was subsequently assigned to, and is currently held by, Wilmington Trust (the “WT Loan”). The Natixis Mortgage was recorded on the 88 Hamilton Property after Cedar Hill recorded its mortgage; however, Wilmington Trust and Cedar Hill both claim first priority of mortgage liens on the 88 Hamilton Property as of the Petition Date.

12. On or about November 1, 2015, CPR provided a loan to Debtor Seaboard Hotel LTS Member in the original principal amount of \$7,040,019.00 (the “CPR Loan”). CPR contends that as a condition to the CPR Loan, Seaboard Realty agreed that upon the sale of certain of the Debtors’ properties, including the Properties, Seaboard Realty would cause the net proceeds of such sale to first pay off any remaining portion of the UCF Loan and then apply the proceeds to repay the CPR Loan. In the Chapter 11 Cases, CPR asserted secured claims (Claim Nos. 277-289) on account of the CPR Loan against certain of the Debtors, including Park Square West (the “CPR Claim”). CPR claims an interest in and lien on the Park Square West Property and any proceeds therefrom.

C. The Properties are Sold; Treatment of the Proceeds

13. During the Chapter 11 Cases, the Debtors marketed all of their real estate and improvements for sale, including the Properties, and the Court entered an order approving bidding procedures for the sales on April 29, 2016 [D.I. 688] (the “Bidding Procedures Order”).

Among other things, the Bidding Procedures Order provided for a lien security deposit (the “Lien Security”) in the event the 88 Hamilton Property was sold in order to preserve all rights and claims between Wilmington Trust and Cedar Hill, in light of the priority dispute between them.

14. On June 29, 2016, the Court entered an order approving the sale of the 88 Hamilton Property [D.I. 906] (the “88 Hamilton Sale Order”). Under the 88 Hamilton Sale Order, Wilmington Trust’s loan and mortgage were assumed by the purchaser of the 88 Hamilton Property, and Cedar Hill agreed to modify the Lien Security in order for the sale of the 88 Hamilton Property to go forward. On August 12, 2016, the Court entered an order approving the sale of the Park Square West Property [D.I. 1054] (together with the 88 Hamilton Sale Order, the “Sale Orders”). Pursuant to the Sale Orders, the Lien Security was reduced to a \$2,000,000.00 deposit from the sale proceeds of the 88 Hamilton Property. Additionally, the Sale Orders established a \$5,000,000.00 escrow account from the sale proceeds of the Park Square West Property (the “Park Square Escrow”) pending resolution of the Cedar Hill Claim. Currently, the Debtors’ bankruptcy counsel is holding the Lien Security and the Park Square Escrow as proceeds from the liquidation of the Debtors’ collateral in its IOLTA Account (the “Debtor Escrow”).

15. With all of their real estate holdings either sold or subject to an agreement for disposition as of October 2016, the Debtors set about negotiating with their stakeholders beginning in November 2016 to build a consensus to bring these chapter 11 cases to a conclusion.

D. The Plan Negotiations, Mediation and Settlement Agreement

16. The Settlement Agreement is the result of months of lengthy, hard-fought and often contentious negotiations, including a mediation conducted over several weeks in the spring

of 2017 with former United States Bankruptcy Judge Melanie L. Cyganowski. The initial round of discussions culminated in a structure for the Plan which, among other things, (a) provided for the settlement with the Settling Lenders for a fixed the amount of estate assets to be distributed to them, and (b) important to the Plan Debtors, left substantial assets in the Plan Debtors' estates for distribution to post-petition and pre-petition creditors. The Plan also provided for the creation of the Investor Trust as part of a settlement with the Settling Lenders and the holders of certain Investor Claim and Equity Interests, which provided an avenue for Holders of Investor Claims against and Equity Interests in the Investor Trust Debtors, which includes non-Plan Debtor Seaboard Realty, to realize value from those claim and interests and provided for non-Insiders to receive releases, including from potential claw-back litigation, if they supported the Plan.

17. The second round of negotiations took place after the Plan was filed and focused on the manner in which the \$9.4 million available to the Settling Lenders under the Plan would be allocated, as well as sought to resolve the remaining inter-creditor lien priority dispute between Cedar Hill and Wilmington Trust regarding the 88 Hamilton Property. With the assistance of former Judge Cyganowski, all of the Parties engaged in further good faith, and arm's-length negotiations, and the Parties (plus certain Professionals to the Plan Debtors) agreed to a compromise of the Disputes (as defined in the Settlement Agreement), the material terms of which are embodied in the form Settlement Agreement annexed hereto. Among other things, Wilmington Trust/Chicago Title agreed to contribute funds and certain Professionals to the Debtors agreed to forego funds to which they will be entitled in an effort to bring the Disputes to a conclusion.

18. A summary of the material terms of the Settlement Agreement are set forth below, but such summary is qualified in its entirety by the actual terms of the Settlement Agreement (which, once executed, will control in the event of any conflict) and parties are encouraged to review the Settlement Agreement in its entirety:⁷

- a. **Payments.** Under the Settlement Agreement, the Settling Lenders will receive the following Settlement Payments⁸ on the Effective Date of the Plan:
- Cedar Hill shall be paid the aggregate amount of \$2,979,000.00 in full satisfaction of the Cedar Hill Claim; and
 - UCF, CPR, and Annemid, collectively, shall be paid \$6,871,000 in full satisfaction of the UCF Claim, the CPR Claim, and the Annemid Claim.
- b. **Source of Funds.** The Settlement Payments will be funded by (i) the \$9,400,000 that would have been contributed to the Settling Lender Escrow on the Effective Date of the Plan, (ii) a \$300,000 payment from Chicago Title, for the benefit of Cedar Hill, and (iii) \$150,000 for the benefit of Cedar Hill that will be withheld from the cash that would otherwise have been funded into the Professional Claims Escrow Account, with a corresponding reduction in the Professional Claim Maximum Amount.
- c. **Wilmington Trust Mortgage Claim.** As of the Effective Date of the Settlement Agreement, and in consideration of its payment under the Settlement Agreement, Wilmington Trust shall be deemed to have voted to accept the Plan, by consent of the Debtors, and, accordingly, the Wilmington Trust Mortgage Claim shall be treated as a Class 3 Claim under the Plan, entitling Wilmington Trust to be a Released Party under the Plan.
- d. **Plan Modification.** The Plan shall be modified to incorporate the terms of the Settlement Agreement.
- e. **Mutual Releases.** The Settlement Agreement includes releases being granted by each Party (other than Chicago Title), including releases being granted by and for the benefit of the Debtors, which generally providing that on the effective date of the Settlement Agreement each Party (the “**Releasing Party**”), on behalf of itself and its affiliates, subsidiaries, successors and assigns hereby fully releases, acquits and discharges the other Parties granting the releases in paragraph 6 of the Settlement Agreement (including, where applicable, the Debtors’ bankruptcy estates), and each

⁷ First American and Cedar Hill will enter into a separate agreement among themselves contemporaneously with the execution of the Settlement Agreement.

⁸ Capitalized terms used but not defined in this summary of the Settlement Agreement shall have the meaning ascribed to them in the Settlement Agreement.

of their past, present and future affiliates (including, but not limited to, direct or indirect parent entities), subsidiaries, directors, officers, employees, managers, shareholders, members, partners, (other than with respect to Wilmington Trust) servicers (including Rialto Capital Advisors LLC) representatives, agents, attorneys, insurers, accountants, heirs, executors, administrators, conservators, predecessors (including, other than with respect to Wilmington Trust, Natixis), and successors and assigns, of and from any and all manner of action or actions, cause or causes of action, in law or equity, suits, debts, liens, contracts, agreements, insurance policies, promises, liabilities, claims (including, but not limited to, claims for attorneys' fees, costs, and sanctions), counterclaims, damages, demands, losses, costs, or expenses of any nature, currently existing or arising in the future, whether known or unknown, suspected or unsuspected, fixed or contingent, concealed or hidden, latent or patent, that the Releasing Party asserted or could have asserted against such parties (whether derivatively or directly), related in any way to the Properties, the Mortgage Claims, the 88 Hamilton Lien Priority Dispute, the Disputes, the Claims of All Parties, and/or the Bankruptcy Proceedings; provided that the foregoing release shall not release any person or entity that is or was an Insider (as defined in the Plan) of the Debtors at any time prior to the Effective Date, 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) (collectively, the "Non-Released Parties") and shall not limit or be deemed to limit Cedar Hill's rights to enforce this Settlement in accordance with its terms; provided further that for purposes of the exceptions to Releases set forth in this paragraph, it is acknowledged and agreed that none of the Parties signatory hereto shall be considered "Insiders."

The releases in the Settlement Agreement have certain exclusions relating to specific relationships between the Releasing Parties.

- f. **Effectiveness of Settlement Agreement.** The Settlement Agreement shall become effective upon the first day on which each and all of the following conditions shall have occurred: (i) the Settlement Agreement shall have been executed by each of the Parties thereto; (ii) the Court shall have entered an order approving this Settlement (and authorizing the Debtors to make the Settlement Payments; (iii) Chicago Title shall have deposited \$300,000 with the Debtors' bankruptcy counsel to be added to the Debtor Escrow; and (iv) the Settlement Order shall be final and no longer subject to appeal.

Notably, under the Settlement Agreement, Cedar Hill is paid from the proceeds of the Properties—the collateral that it asserts secures its claims against Plan Debtors 88 Hamilton and Park Square—and will not be paid from, but will release claims against, Seaboard Realty and its assets.

RELIEF REQUESTED

19. By this Motion, the Debtors seeks entry of an order pursuant to Bankruptcy Rule 9019 approving the Settlement Agreement substantially in the form attached hereto as **Exhibit A**. The Debtors, including the Plan Debtors and Seaboard Realty, have weighed the costs, risks, disruption, and delay that would arise from litigating the numerous matters that have been compromised by the Settlement Agreement. In the Debtors' reasonable business judgment, the terms and conditions of the Settlement Agreement are fair and equitable and serve the best interests of each of the Debtors' estates and creditors and, in the Debtors' assessment, are necessary to obtaining confirmation of the Plan. Accordingly, the Debtors respectfully request that the Court grant the relief requested in the Motion and approve the Settlement Agreement.

BASIS FOR RELIEF REQUESTED

20. Bankruptcy Rule 9019, which governs the approval of compromises and settlements by a debtor, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019. The analysis of any proposed settlement starts with the general policy of encouraging settlements and favoring compromises. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). To approve a settlement, a bankruptcy court must determine that the settlement is in the best interest of a debtor's estate. *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). 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.

Id. at 96 (quoting *Martin*, 91 F.3d at 393). The United States District Court for the District of Delaware has explained that a court's ultimate inquiry is whether a settlement is fair, reasonable and in the best interest of a debtor's estate. *In re Marvel Entm't Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (citing *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)).

21. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). In exercising its discretion, the bankruptcy court must make an independent determination that the settlement is fair and equitable. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry Inc., v. Anderson*, 390 U.S. 414, 424 (1968). A court need not decide the numerous issues of law and fact raised by the settlement and it need not be convinced that the proposed settlement is the best possible outcome, rather "[t]he court need only conclude that the settlement falls within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness." *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008) (quoting *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004)).

22. The Debtors submit that ample factors support a finding that the Settlement Agreement is reasonable, fair and equitable, and in the best interest of the Debtors and their creditors, estates, and other parties in interest. As discussed above, the Debtors believe that the Plan is likely the only way to conclude the Chapter 11 Cases in a value-maximizing manner. One of the critical elements of the Plan is a settlement with the Settling Lenders (UCF, CPR, Annemid RI, and Cedar Hill) whereby the Settling Lenders agree to accept \$10,400,000 from the cash proceeds of the sales of the Debtors' real estate in satisfaction of their Settling Lender Claims (\$1,000,000 of which will be provided to the Investor Trust) and will release their claims on the remaining cash in the Plan Debtors' estates. The cash remaining in the Plan Debtors'

estates will then be allocated pursuant to an inter-company settlement among the Plan Debtors set forth in the Plan and ultimately used to fund the distributions to other creditors under the Plan. Until now, Cedar Hill had not been prepared to support the Plan and the Plan Settlement included therein; however, under the Settlement Agreement (but subject to its terms), Cedar Hill has agreed to accept an amount certain in satisfaction in full of the claims it asserts against the Debtors and support the Plan. In exchange, Cedar Hill will release its asserted claims, which include primary obligations owed by Seaboard Realty, as well as guarantees originally secured by mortgages against the property formerly owned by certain Plan Debtors and now secured by the cash proceeds of those properties—specifically \$7,000,000 held in escrow from the sale of the Properties owed by Park Square West and 88 Hamilton.

23. For the Plan Debtors, this is a critical breakthrough as it removes what may otherwise have been an impediment to confirmation of the Plan and resolves what likely would have been time-consuming and expensive litigation that both substantially clouded and may have delayed the exit of the Plan Debtors from chapter 11. For Seaboard Realty, two principal salutary benefits arise out of the Settlement Agreement: Cedar Hill's claim will be satisfied and released without expenditure by Seaboard Realty and Seaboard Realty's ability to recover value on account of its Equity Interests in the HoldCo Debtors through the Plan is cleared of a substantial hurdle—Cedar Hill's opposition to confirmation. The other two Debtors (Newbury Common Associates and Newbury Common Member Associates) had substantially concluded their affairs well prior to the occurrence of the matters giving rise to the Disputes and, accordingly, should not be impacted by the Settlement Agreement.

24. Finally, the payment to Cedar Hill contemplated by the Settlement Agreement results from a series of compromises by various parties in interest to pave the way to

confirmation of the Plan: certain Professionals have agreed to fund \$150,000 from the Professional Claim Maximum Amount; Chicago Title, insurer to Wilmington Trust, has agreed to fund \$300,000, resulting in a Mortgage Claim at 88 Hamilton; and the other Settling Lenders have agreed to allow Cedar Hill to receive \$2,529,000 from the \$9,400,000 that is already set aside for the Settling Lenders under the Plan. Importantly, nothing in the Settlement Agreement modifies the allocation of assets proposed in the Plan to the detriment of creditors, other than those that have affirmatively agreed to such treatment in connection with the Settlement Agreement. As is customary, each of the Parties (including all the Debtors in these chapter 11 cases, but excluding Chicago Title) have agreed to grant releases under the Settlement Agreement to the other releasing Parties; the releases in the Settlement Agreement are substantially the same as the proposed Plan Releases.

25. The terms of the Settlement Agreement lie well above the lowest point in the range of reasonableness, and the applicable factors weigh in favor of approval.⁹

A. Probability of Success in Litigation

26. As discussed extensively in the Disclosure Statement for the Plan, the outcome of litigation with the Settling Lenders is far from certain. The Disputes include, among other things, legal and equitable questions concerning lien priority and the application of common collateral and allocation of common debt to that collateral. There are also underlying issues regarding the validity and enforceability of the debts and security interests themselves. All of this is further complicated by the fraudulent activities of John DiMenna who entered into these myriad loan transaction.

⁹ The Debtors do not believe that the Settlement Agreement requires the Debtors to forego collection of any matters that are not already dealt with in the Plan and, accordingly, do not believe that the “difficulty in collection” factor is applicable to approval of the Settlement Agreement.

27. Throughout the Parties' negotiations, each Settling Lender, Wilmington Trust, and Chicago Title and First American, on behalf of their respective insured persons, have vociferously asserted their entitlement to first-priority treatment with respect to their liens and claims. The Plan Debtors have also asserted, with respect to the Settling Lenders, potential infirmities with respect to their liens and claims. However, given the multitude of issues in play, "wins" may not be worth much, particularly given the fact that the Debtors have limited resources and, as discussed below, litigating the various issues could fully deplete the assets available and the subject of the Disputes.

B. Complexity, Expense, Inconvenience, and Delay

28. The Disputes that are resolved by the Settlement Agreement have permeated throughout the Chapter 11 Cases. The Debtors, the Settling Lenders, and Wilmington Trust, have devoted hundreds (if not thousands) of hours and hundreds of thousands (if not millions) of dollars over the last several month trying to resolve the Disputes on a consensual basis, *without litigation*—absent the compromises in the Plan and Settlement Agreement, the Parties would be forced to litigate the Disputes, at great cost and delay, and proceeding to litigation with the Settling Lenders may also require the Debtors to restart negotiations with the various investors in the Debtors—a process that also required the devotion of hundreds (if not thousands) of hours and hundreds of thousands (if not millions) of dollars to achieve a consensual resolution of the Chapter 11 Cases. The resolution of the Settling Lender Claims and the Disputes facilitates Plan confirmation and results in the ability to proceed to an immediate hearing on confirmation of the Plan to address narrow and discrete issues and, what the Debtors hope will be, a prompt confirmation and exit from chapter 11 for the Plan Debtors. For Seaboard Realty, in the absence of approval of the Settlement Agreement, it is possible that Seaboard Realty would need to

litigate with Cedar Hill over its claims; but the Settlement Agreement results in resolution of any liability that Seaboard Realty.

C. The Paramount Interest of Creditors

29. The Settlement Agreement largely serves to implement the existing terms of the Plan that were negotiated with various stakeholders of the Plan Debtors. And more importantly, the Settlement Agreement will allow for a more consensual path towards confirmation of the Plan—a result that the Debtors firmly believe is in the best interest of their creditors, estates, and stakeholders. Notably, the Settlement Agreement does not alter the distributions being provided to any Holders of Claims or Equity Interests under the Plan except for certain Professionals and the Settling Lenders, all of whom participated in the negotiation of and are supportive of the Settlement Agreement. Further, the mutual releases included in the Settlement Agreement are substantively the same as the Plan Releases already proposed. As a result, creditors and equityholders of the Plan Debtors will not be adversely impacted by approval of the Settlement Agreement. Seaboard Realty (and its creditors, estates and other stakeholders) receives the benefit of having the remaining claims against it asserted by any of the other Parties, including the Cedar Hill Secured Loan, resolved without expenditure of any Seaboard Realty funds, while only providing its own release to the Parties of claims that it does not believe have much (if any) value. Further, Seaboard Realty (and its creditors, estates and other stakeholders) indirectly benefits from confirmation of the Plan as a result of its holding Equity Interests in many of the HoldCo Debtors.

30. In sum, the Settlement Agreement is the result of substantial, hard-fought, arm's-length and good faith settlement negotiation. It clears the way for the Plan Debtors to move

toward confirmation of the Plan (benefitting them and Seaboard Realty) and resolves potential remaining claims that may have been asserted against Seaboard Realty in the absence of the Settlement Agreement. Moreover, the Settlement Agreement avoids litigation that would have been costly and time-consuming, would have substantially delayed (and possibly jeopardized) the recoveries of various parties in the Debtors' capital structure, and is subject to much uncertainty in outcome. For all these reasons, the Debtors submit that approval of the Settlement Agreement is warranted and should be granted.

NOTICE

31. The Debtors will serve notice of this Motion on: (a) the Office of The United States Trustee for the District of Delaware; (b) the prepetition mortgage loan servicers, trustees, lenders and their respective counsel; (c) the parties included on the Debtors' list of largest unsecured creditors; and (d) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the relief requested, the Debtors submit that no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtors respectfully requests that this Court (i) enter the proposed order, attached hereto as **Exhibit B**, approving the Settlement Agreement and (ii) grant such other and further relief as is just and proper.

Dated: May 12, 2017
Wilmington, Delaware

Respectfully submitted,

By: /s/ Ryan M. Bartley
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