

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

	)	Chapter 11
In re:	)	
NEWBURY COMMON	)	Case No. 15-12507 (LSS)
ASSOCIATES, LLC <u>et al.</u> ,	)	Jointly Administered
	)	
	)	Hearing Date: June 29, 2017 at 2:00 p.m. (ET)
	)	Obj. Deadline: June 22, 2017 at 4:00 p.m. (ET)

**MOTION OF SEABOARD REALTY, LLC FOR ENTRY OF AN ORDER  
CONVERTING THE SEABOARD REALTY, LLC CASE FROM CHAPTER 11 TO  
CHAPTER 7 OF THE BANKRUPTCY CODE**

Seaboard Realty, LLC (“**Seaboard Realty**”), one of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), hereby submits this motion (the “**Motion**”), pursuant to sections 105(a) and 1112 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 1017, 1019, and 9013 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “**Order**”), to convert its chapter 11 case to a case under chapter 7 of the Bankruptcy Code. In support of this Motion, Seaboard Realty respectfully states as follows:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Newbury Common Associates, LLC (3783); Seaboard Realty, LLC (6291); 600 Summer Street Stamford Associates, LLC (6739); Seaboard Hotel Member Associates, LLC (8984); Seaboard Hotel LTS Member Associates, LLC (6005); Park Square West Member Associates, LLC (9223); Seaboard Residential, LLC (2990); One Atlantic Member Associates, LLC (4120); 88 Hamilton Avenue Member Associates, LLC (5539); 316 Courtland Avenue Associates, LLC (0290); 300 Main Management, Inc. (6365); 300 Main Street Member Associates, LLC (2334); PSWMA I, LLC (6291); PSWMA II, LLC (6291); Tag Forest, LLC (8974); Newbury Common Member Associates, LLC (3909); Century Plaza Investor Associates, LLC (1480); Seaboard Hotel Associates, LLC (2281); Seaboard Hotel LTS Associates, LLC (8811); Park Square West Associates, LLC (9781); Clocktower Close Associates, LLC (3154); One Atlantic Investor Associates, LLC (7075); 88 Hamilton Avenue Associates, LLC (5749); 220 Elm Street I, LLC (7540); 300 Main Street Associates, LLC (8501); and 220 Elm Street II, LLC (7625). The Debtors’ corporate headquarters is located at, and the mailing address for each Debtor is, 1 Atlantic Street, Stamford, CT 06901.

### JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 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 under 28 U.S.C. § 157(b).

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. Seaboard Realty consents to the entry of a final order on this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory and legal predicates for the relief requested herein are sections 105(a) and 1112 of the Bankruptcy Code and Bankruptcy Rules 1017, 1019, and 9013.

### BACKGROUND

5. On December 13, 2015, the Original Debtors,<sup>2</sup> 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.

6. On February 3, 2016, the Additional Debtors,<sup>3</sup> with the exception of 88 Hamilton Avenue Associates, LLC (“**88 Hamilton**”), each commenced a voluntary case under chapter 11

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<sup>2</sup> 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.

<sup>3</sup> 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.

of the Bankruptcy Code. On February 4, 2016, 88 Hamilton commenced its voluntary case under chapter 11 of the Bankruptcy Code.

7. On March 17, 2016, 220 Elm Street II, LLC commenced a voluntary case under chapter 11 of the Bankruptcy Code.

8. Upon the filing of the Petitions, the Debtors' respective cases under the Bankruptcy Code (the "**Chapter 11 Cases**") commenced.

9. Additional information regarding the Debtors' businesses, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Marc Beilinson in Support of Chapter 11 Petitions* [Docket No. 5] and the *Declaration of Marc Beilinson in Support of Additional Chapter 11 Petitions and First Day Pleadings* [Docket No. 177].

10. On April 10, 2017, the Plan Debtors (as defined below) filed the *Amended Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code for PropCo and HoldCo Debtors* [Docket No. 1680], which was amended on May 17, 2017 [Docket No. 1808] (as confirmed, the "**Plan**").<sup>4</sup> The Plan was proposed by all of the Debtors with the exception of Newbury Common Associates, LLC, Newbury Common Member Associates, LLC (together, the "**Newbury Debtors**") and Seaboard Realty (such proponents, the "**Plan Debtors**"). As more fully set forth in the Plan, the Plan Debtors' potential causes of action against various parties will be assigned to an Investor Trust,<sup>5</sup> which will pursue such causes of action and make distributions to holders of Investor Claims and Equity Interests in the Investor Trust Debtors. As a holder of 25% of the

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<sup>4</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan.

<sup>5</sup> The Investor Trust is also being assigned certain causes of action held by certain Settling Lenders and will be funded with \$1 million of cash from the Plan Debtors pursuant to the Plan Settlement.

equity in the Investor Trust Debtors, Seaboard Realty will potentially be entitled to receive some recovery from the Investor Trust.

11. On May 18, 2017, the Court entered the *Order Confirming Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code for PropCo Debtors and HoldCo Debtors (with Technical Modifications)* [Docket No. 1805]. The Effective Date of the Plan occurred on June 8, 2017.

12. The Disclosure Statement for the Plan disclosed that the Newbury Debtors and Seaboard Realty would likely seek to convert or dismiss their respective chapter 11 cases. They are now doing so through this Motion and the motion to dismiss the chapter 11 cases of the Newbury Debtors, which is being filed contemporaneously with this Motion.

#### **RELIEF REQUESTED**

13. Seaboard Realty seeks entry of an order, pursuant to sections 105(a) and 1112 of the Bankruptcy Code and Bankruptcy Rules 1017, 1019, and 9013 to convert its chapter 11 case to a case under chapter 7 of the Bankruptcy Code.

14. Additionally, Seaboard Realty has proposed in the Order certain provisions protecting the privileges and immunities of parties other than Seaboard Realty, including any Debtor other than Seaboard Realty (each a “**Non-Seaboard Realty Debtor**”), from inadvertent waiver resulting from the turnover of documents pursuant to Bankruptcy Rule 1019(4) to the chapter 7 trustee appointed for Seaboard Realty (the “**Seaboard Chapter 7 Trustee**”).

#### **BASIS FOR RELIEF**

15. Section 1112(a) of the Bankruptcy Code governs the conversion of chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. Section 1112(a) provides that:

- (a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

- (1) the debtor is not a debtor in possession;
- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a case under this chapter other than on the debtor's request.

11 U.S.C. § 1112(a). Because subdivisions (i), (ii) and (iii) of section 1112(a) of the Bankruptcy Code are inapplicable here, Seaboard Realty may convert its case to a case under chapter 7 of the Bankruptcy Code as a matter of right. *See In re Dieckhaus Stationers of King of Prussia Inc.*, 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) (“[Section 1112(a)] by its terms gives the debtor an absolute right to convert, unless the case is governed by one of the enumerated exceptions.”); *In re Schuler*, 119 B.R. 191, 192 (Bankr. W.D. Mo. 1990) (same).

16. Seaboard Realty is not a Plan Debtor, and the Plan does not impair Seaboard Realty's substantive rights vis a vis the Plan Debtors, other than removing Seaboard Realty as the manager of the Plan Debtors. Seaboard Realty's only assets are the equity interests it holds in the Plan Debtors (certain of which may result in distribution under the Plan and certain of which have been cancelled with no distributions under the Plan) and potential causes of action. Seaboard Realty has no cash assets and no business to reorganize, nor does it have the means to implement a liquidating chapter 11 plan for itself. Based on these circumstances, Seaboard Realty submits that timely conversion of this case to chapter 7 of the Bankruptcy Code is warranted and in the best interests of its estate and creditors and other parties in interest.

17. Accordingly, Seaboard Realty requests that the Court grant the Motion to convert this case as soon as possible and appoint a Seaboard Chapter 7 Trustee to complete the wind-down and liquidation of Seaboard Realty's assets.

**NOTICE**

18. This Motion has been served upon: (a) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); and (b) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Additionally, Seaboard Realty will serve notice of this Motion, but not the Motion itself, on all parties listed in the creditors and parties in interest matrix used in the Chapter 11 Cases. Seaboard Realty submits that good and sufficient notice of this Motion has been provided and no other or further notice need be provided.

WHEREFORE, for the reasons set forth herein, Seaboard Realty respectfully requests the Court enter the Proposed Order, in substantially the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: June 8, 2017  
Wilmington, Delaware

Respectfully submitted,

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