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In re:	)	Chapter 11
	)	
NEWBURY COMMON	)	Case No. 15-12507 (LSS)
ASSOCIATES, LLC, <u>et al.</u> ,	)	
	)	Jointly Administered
	)	
Debtors. <sup>1</sup>	)	
	)	<b>Re: Docket Nos. 176, 240, 348 &amp; 455, 540</b>

CORRECTED

**RE MOTION (I) AUTHORIZING THE USE OF CASH COLLATERAL;  
(II) GRANTING ADEQUATE PROTECTION TO ISRAEL DISCOUNT  
BANK OF NEW YORK; AND (III) GRANTING OTHER RELIEF** (S

(SUPERSEDING  
D.I. 540)

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the Debtors for the entry an order (i) authorizing the use of Cash Collateral,<sup>3</sup> and (ii) granting adequate protection to the Prepetition Secured Parties with respect to the diminution in value, if any, of the interests of the Prepetition Secured Parties as may result from the use of the Cash Collateral, and (iii) scheduling

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.

<sup>2</sup> Each capitalized term used but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

3 The term “Cash Collateral” as used in this Order does not include the funds in the following bank accounts at Israel Discount Bank of New York (“IDB”): (1) account number \*\*-\*146-2 in the name Park Square West Associates LLC, (2) account number \*\*-\*095-3 in the name Park Square West Member Associates LLC and (3) account number \*\*-\*151-8 in the name Israel Discount Bank FBO Park Square West Member Associates LLC (collectively, the “IDB Excluded Accounts”).

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the Final Hearing; and upon consideration of the First Day Declaration, the Supplemental First Day Declaration, and the Cash Collateral Declaration; and the initial hearing on the Motion (the “**First Interim Hearing**”) having been held by this Court on February 5, 2016; and this Court having entered the *Interim Order (I) Authorizing the Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing* [Docket No. 240] (the “**First Interim Order**”); and a further Interim Hearing (the “**Second Interim Hearing**”) having been held by this Court on February 29, 2016; and this Court having entered the *Further Interim Order (I) Authorizing the Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing* [Docket No. 339] (as amended by Docket No. 348, the “**Second Interim Order**”); and a further Interim Hearing (the “**Third Interim Hearing**”) having been held by this Court on March 23, 2016; and this Court having entered the *Third Interim Order (I) Authorizing the Use of Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; and (III) Scheduling a Final Hearing* [D.E. 455] (the “**Third Interim Cash Collateral Order**”) on March 28, 2016; and this Court having held a final hearing on the Motion (the “**Final Hearing**”) on April 4, 2016; and it appearing that due and appropriate notice of the Motion, the relief requested therein, and the Final Hearing (the “**Notice**”) has been given by the Debtors in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014 and all applicable Local Rules; and all objections, if any, to the interim and final relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the final relief requested is fair and reasonable, in the best interests of the Debtors, their estates, and their creditors, and equity holders, and essential for the continued operation of the business of Seaboard Hotel LTS Associates, LLC (the “**Debtor**”); and it appearing that the Court has

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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; and it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>**

A. Petition. On December 13, 2015, the Original Debtors 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. On February 3, 2016, each of the Additional Debtors with the exception of 88 Hamilton Avenue Associates, LLC (“**88 Hamilton**”) and 220 Elm Street II, LLC (“**220 Elm II**”) 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. On March 17, 2016, 220 Elm II commenced a voluntary case under chapter 11 of the Bankruptcy Code. Each of the Debtors is authorized to, and continues to, operate its business(es) and manage its property(ies) as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. The Court has jurisdiction of this proceeding and the property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. The Motion is a “core” proceeding as defined in 28 U.S.C. §§

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<sup>4</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052.

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157(b) (2) (A), (D) and (M). Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties. Venue of the Debtors' chapter 11 cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Official Committee. As of the date hereof, the United States Trustee for the District of Delaware (the "U.S. Trustee") has not yet appointed any official committees in the cases pursuant to section 1102 of the Bankruptcy Code (each, an "Official Committee").

D. Notice. Notice of the Motion, the relief requested therein, the First Interim Hearing, the Second Interim Hearing, the Third Interim Hearing and the Final Hearing was served on (a) the Office of the United States Trustee for Region 3, serving the District of Delaware; (b) the Prepetition Secured Parties and their counsel; (c) the other prepetition lenders and their counsel; (d) the United States Attorney's Office for the District of Delaware; (e) the United States Attorney General; (f) the Internal Revenue Service; (g) the parties included on the Debtors' list of largest unsecured creditors; and (h) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice has been given of the Motion, the relief requested therein, the First Interim Hearing, the Second Interim Hearing, the Third Interim Hearing and the Final Hearing pursuant to Bankruptcy Rules 2002, 4001(b) and (d) and the Local Rules.

E. Need For Cash. The Debtor has an immediate need for cash to, among other things, preserve and maintain the going concern value of the Debtor, absent which immediate and irreparable harm will result to the Debtor, its estate, and its creditors. The preservation and maintenance of the Debtor's assets and business is necessary to maximize

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value. Absent the Debtor's ability obtain cash, the Debtor would not have sufficient available sources of working capital or financing and would be unable to pay its operating expenses or maintain its assets, to the severe detriment of its estate, creditors and members. Accordingly, the relief granted herein is (i) critical to the Debtor's ability to maximize the value of its chapter 11 estate, (ii) in the best interests of the Debtor and its estate, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtor and its creditors, and its assets, remaining business, goodwill, and reputation.

F. Good Cause. Good cause has been shown for entry of this Order, and the entry of this Order is in the best interests of the Debtor and its estate and creditors. Among other things, the relief granted herein will minimize disruption of the Debtor's business and permit the Debtor to preserve and maintain its going concern value. The terms of this Order are fair and reasonable under the circumstances, and reflect the Debtor's exercise of prudent business judgment consistent with the Debtor's fiduciary duties.

G. The Prepetition Secured Party. IDB has consented to the relief set forth in this Order. For the avoidance of doubt, the funds in the IDB Excluded Accounts are not "Cash Collateral" or "Prepetition Collateral" for purposes of this Order. The Debtors and IDB expressly reserve all claims, rights and remedies related to the IDB Excluded Accounts and nothing in this Order shall be an admission or waiver with respect to such claims, rights and remedies with respect thereto.

H. Relief Essential; Best Interest. The relief requested by the Debtor (and as provided in this Order) is necessary, essential, and appropriate for the continued operation of the Debtor's businesses and the management and preservation of the Debtor's assets and the

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property of its estate during the Period. The Debtor has demonstrated good and sufficient cause for the relief granted herein.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The Motion is GRANTED in accordance with Bankruptcy Rule 4001(c)(2) to the extent provided in this Order. All objections to the relief sought in the Motion, to the extent not withdrawn or resolved, are overruled on their merits.
2. Authorization to Use Advances. Pursuant to the terms and conditions of this Order, the Debtor is authorized to use any cash provided by IDB in the form of an Advance (as defined below) as set forth in the budget attached hereto as Exhibit A (the “Budget”) relating to the Residence Inn Property, and in accordance with the terms herein, through and including August 15, 2016 (the “Period”). For the avoidance of doubt, (a) the Debtors shall not withdraw any funds from or take any other action with respect to the IDB Excluded Accounts, (b) the IDB Excluded Accounts shall remain frozen pending further order of this Court and (c) all claims, rights and remedies of IDB with respect to the IDB Excluded Accounts are preserved and nothing in this Order shall be an admission or waiver with respect to such claims, rights and remedies.
3. Segregated Accounts to be Maintained. During the Period, the Debtors shall continue to maintain a separate, segregated account (the “Segregated Account”) for the Residence Inn Property. All Advances shall be deposited in the Segregated Account for the Residence Inn Property and except to the extent otherwise set forth herein, all expenses relating to the Residence Inn Property set forth in the Budget shall be paid, during the Period, out of the Segregated Account maintained in connection with the Residence Inn Property pending further order of this Court. IDB shall permit its allocable share of payroll expenses, as set forth

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in the Budget in the line item "Overhead Costs," to be funded from the Segregated Account for the Residence Inn Property to the Newbury Account in order for the Debtors to fund payroll during the Period.

4. Actual Expenses. During the Period, the Debtor is authorized to use Advances received for actual expenses for the Residence Inn Property not to exceed the amounts set forth in accordance with the Budget for the Residence Inn Property. To the extent not used for actual expenses, all Advances for the Residence Inn Property shall remain in the Segregated Account pending further order of this Court.

5. Protective Advances. IDB may, but shall not be obligated to make advances of funds to the Debtor so that the expenditures and overhead cost payments can be paid as set forth in the Budget (each an "Advance" and collectively, the "Advances"). Each Advance shall be deemed a protective advance under the Seaboard LTS Mortgage Agreement and shall have the same security and priority as the prepetition mortgage liens of IDB. For the avoidance of doubt, nothing in this Order shall obligate or require IDB to make any Advances in any amount whatsoever.

6. IDB Reporting. The Debtor shall deliver to IDB, the Office of the United States Trustee for the District of Delaware, and counsel to any official committee appointed in these chapter 11 cases a weekly report showing, in reasonable detail, a comparison of actual receipts and disbursements against the receipts and disbursements projected in the Budget (the "Variance Report"). The Variance Report shall be delivered within fourteen days following the week subject to the Variance Report.

7. Lien. To secure the repayment of the amount of the Advances by the Debtor to IDB, IDB shall receive a valid and perfected lien (the "First Priority Lien") on all

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property, whether now owned or hereafter acquired or existing and wherever located, including, any property level bank account at TD Bank into which rents are paid, transferred or held, that constitutes Prepetition Collateral of IDB (had the bankruptcy cases not been filed), subject to all valid, enforceable and non-avoidable liens and security interests in the Prepetition Collateral that were perfected prior to the Petition Date (or perfected thereafter to the extent permitted by section 546(c) of the Bankruptcy Code), which are not subject to avoidance, disallowance, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and which are senior to IDB's pre-petition liens, as of the Petition Date, in such Prepetition Collateral; provided, however, that the First Priority Lien shall not attach to causes of action arising under chapter 5 of the Bankruptcy Code or the proceeds thereof.

8. Enforceability. The First Priority Lien shall be enforceable against and binding upon the Debtor, its creditors, any third parties, its estate, and any successors thereto.

9. Postpetition Lien Perfection. This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the First Priority Lien without the necessity of filing or recording any financing statement, deed of trust, mortgage, security agreement, notice of lien, or other instrument or document that may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect the First Priority Lien or entitle the First Priority Lien to the priorities granted herein.

10. Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is modified solely to the extent necessary to permit the Debtors to grant the First Priority Lien under this Order.



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11. No Third Party Rights. Except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

12. Survival of Order. This Order and any actions taken pursuant hereto shall survive entry of any order that may be entered: (i) confirming any plan of reorganization in the Debtor's chapter 11 case; (ii) converting the Debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code; (iii) to the extent authorized by applicable law, dismissing the Debtor's chapter 11 case; or (iv) withdrawing the reference of the Debtor's chapter 11 case from this Court.

13. The terms and provisions of this Order shall continue in full force and effect until all of the prepetition and postpetition obligations of the Debtor to IDB have been irrevocably paid in full and discharged.

14. Successors and Assigns. The provisions of this Order shall be binding upon and inure to the benefit of IDB, the Debtor and its estate, and their respective successors and assigns, including, without limitation, any trustee, committee, or other fiduciary hereafter appointed as a legal representative of the Debtor or its estate in this chapter 11 case or in any subsequent chapter 7 case.

15. Enforceability. This Order shall take effect and be fully enforceable immediately upon entry.

16. Waiver of Any Applicable Stay. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Order.

17. Rights Preserved. The Debtor and IDB expressly reserve and preserve all of their rights (including the right of IDB to move for relief from the automatic stay at any time

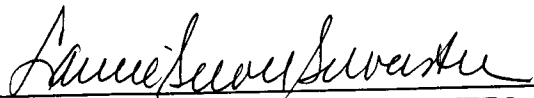
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on any basis whatsoever), claims, and defenses including, without limitation, under sections 361, 362, 506, 510, and 552 of the Bankruptcy Code, and the right to seek or oppose substantive consolidation of the Debtors, and nothing in this Order shall constitute an admission or a waiver of such rights, claims and defenses.

18. Headings. The headings in this Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Order.

19. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Order according to its terms.

Dated: April 13, 2016  
Wilmington, Delaware

  
HON. LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE