

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of Simon Property Group, Inc., a real estate investment trust.))))))))	Docket No. C-
---	--------------------------------------	----------------------

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Prime Outlets Acquisition Company LLC by Simon Property Group, Inc. (“Simon” or “Respondent”), and Respondent having been furnished with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such

Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Simon is a real estate investment trust organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 225 West Washington Street, Indianapolis, Indiana 46204.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. “Simon” or “Respondent” means Simon Property Group, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Simon Property Group, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, the terms “Simon” or “Respondent” shall include Prime Retail.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means an Entity that receives the prior approval of the Commission to acquire one of the Southwest Ohio Outlet Center Assets and Businesses required to be divested pursuant to this Order.
- D. “Acquisition” means the acquisition of Prime Retail by Simon contemplated by the Acquisition Agreement.
- E. “Acquisition Agreement” means the Contribution Agreement by and among, *inter alia*, Simon, on the one hand, and David Lichtenstein and Lightstone Group, on the other hand, dated as of December 8, 2009, and all amendments, exhibits, attachments, agreements, and schedules thereto, including, but not limited to, Amendment No. 2 to the Contribution Agreement, dated June 28, 2010.
- F. “Acquisition Date” means the date on which the Respondent closes on the Acquisition pursuant to the Acquisition Agreement.

- G. "Agency(ies)" means any government regulatory authority or authorities responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the operations of an Outlet Center.
- H. "Appurtenances" means all rights, titles and interests of Respondent in and to the following:
1. All land lying in the bed of any street, highway, road or avenue, open or proposed, public or private, in front of or adjoining the Land, to the center line thereof; and
 2. All rights of way, highways, public places, easements, appendages, appurtenances, sidewalks, alleys, strips and gores of land adjoining or appurtenant to the Land which are now or hereafter used in connection with the relevant Southwest Ohio Outlet Center Assets and Business.
- I. "Cincinnati Premium Outlets" means the Outlet Center Assets and Business relating to or necessary for the operation of the Outlet Center located at 400 Premium Outlets Drive, Monroe, OH 45050.
- J. "Closing Date" means the date on which the Respondent (or a Divestiture Trustee) consummates a transaction to divest, assign, grant, license, transfer, deliver, or otherwise convey the relevant Southwest Ohio Outlet Center Assets and Business to an Acquirer pursuant to this Order.
- K. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- L. "Entity(ies)" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business, or Government Entity or Agency, and any subsidiaries, divisions, groups or affiliates thereof.
- M. "Excepted items" means:
1. All items of personal property owned by Tenants, subtenants, independent contractors, business invitees or utilities;
 2. All items of personal property used in connection with the Southwest Ohio Outlet Center Assets and Businesses that are not owned but are leased by the Respondent;
 3. All cash on hand, checks, money orders, accounts receivable, and prepaid postage in postage meters, and other prepaid items such as real estate taxes, utility charges and other costs and expenses to be prorated as of closing; and
 4. Any software, hardware or similar items of personal property which contain proprietary computer programs, marketing programs, and other similar information proprietary to the Respondent or its affiliates.

- N. “Governmental Approval(s)” mean any approvals, registrations, permits, licenses, consents, authorizations, or certificates issued, granted, given or otherwise made available by or under the authority of any Government Entity or Agency, or pursuant to any Law, and all pending applications therefor or renewals thereof, required by applicable Government Entities or Agencies related to the operation of an Outlet Center.
- O. “Government Entity(ies)” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- P. “Improvements” means all buildings, facilities, structures, and improvements located as of the Acquisition Date or thereafter erected on the Land, and all fixtures constituting a part thereof, excluding those improvements, facilities and fixtures installed by Tenants and that remain the property of Tenants pursuant to their respective Leases.
- Q. “Intangible Personal Property” means all rights, titles, and interests of the Respondent in and to all intangible personal property used in connection with the operation of the relevant Southwest Ohio Outlet Center Assets and Business and including, without limitation:
1. Good will, going concern value, Radius Restrictions, and operating agreements of Tenants;
 2. All telephone numbers listed after the name of the relevant Southwest Ohio Outlet Center Assets and Business;
 3. All names, trade names, designations, logos and service marks, and the appurtenant good will, used in connection with the operation of the relevant Southwest Ohio Outlet Center Assets and Business (but specifically excluding all Simon, Simon Property Group, Premium Outlets and Prime Outlets names, trade names, trademarks, service marks, websites, and logos);
 4. All warranties and guarantees associated with the relevant Southwest Ohio Outlet Center Assets and Business;
 5. The right to own, develop, Lease, and manage the relevant Southwest Ohio Outlet Center Assets and Business; and
 6. All similar items of intangible personal property owned by Respondent and utilized in connection with the operation of the relevant Southwest Ohio Outlet Center Assets and Business (excluding items that would constitute Excepted Items).
- R. “Interim Monitor” means any monitor appointed pursuant to Paragraph IV of this Order or Paragraph III of the related Order to Maintain Assets.

- S. "Land" means all those certain lots, pieces, or parcels of land situate, lying, and being at:
1. For Cincinnati Premium Outlets: 400 Premium Outlets Drive, Monroe, OH 45050, more particularly described in Appendix A of this Order; and
 2. For Prime Outlets - Jeffersonville: 8000 Factory Shops Blvd., Jeffersonville, OH 43128, more particularly described in Appendix B of this Order.
- T. "Law" means all laws, statutes, rules, regulations, legal requirements, ordinances, and other pronouncements by any Government Entity having the effect of law.
- U. "Lease" means any lease, license, concession or other form of agreement, written or oral, however denominated, wherein Respondent (as the party named therein or successor thereto) grants to any Third Party(ies), the right of exclusive use or occupancy of any portion of Improvements or other retail space in an Outlet Center, and all renewals, modifications, amendments, guaranties and Other Agreements affecting the same.
- V. "MSA" means Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget (OMB) and updated as of November 2008 pursuant to OMB Bulletin No. 09-01.
- W. "Order Date" means the date on which this Decision and Order becomes final.
- X. "Orders" means this Decision and Order and the Order to Maintain Assets.
- Y. "Orlando Outlet Centers" means the Outlet Centers owned prior to the Acquisition Date by:
1. Prime Retail, operating as:
 - a. Prime Outlets - Orlando, located at 4951 International Drive, Orlando, FL 32819; and
 - b. Prime Outlets - Orlando Marketplace, located at 5269 International Drive, Orlando, FL 32819; and
 2. Simon, operating as Orlando Premium Outlets, located at 8200 Vineland Avenue, Orlando, FL 32821.
- Z. "Other Agreements" means all contracts, agreements, and documents pertaining to an Outlet Center to which Respondent or its predecessors in interest are a party and by which Respondent is bound, other than Leases, and including without limitation, all service contracts, construction contracts, leases of personal property, and utility agreements.
- AA. "Outlet Center" means a commercial retail center that features Outlet Stores with gross leasable area that exceeds 200,000 square feet.

BB. “Outlet Center Assets and Business” means all of Respondent’s rights, titles, and interests in and to all Land, Improvements, Appurtenances, Leases, Other Agreements, Personal Property, Intangible Personal Property, and any other property and assets, tangible or intangible, of every kind and description, and any improvements or additions thereto, relating to the business of operating the relevant Southwest Ohio Outlet Center Assets and Business(es) at the specified location(s), and including, but not limited to:

1. All Government Approvals; and
2. All books and records; Tenant and customer files, lists and records; vendor files, lists and records; cost files and records; credit information; distribution records; business records and plans; studies; surveys; and all files related to the foregoing;

provided however, that where documents or other materials included in the relevant assets to be divested contain information: (1) that relates both to the relevant Southwest Ohio Outlet Center Assets and Business and to other businesses of the Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the relevant Southwest Ohio Outlet Center Assets and Business; or (2) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that the Respondent provides the Acquirer with the above-described information without requiring the Respondent completely to divest itself of information which, in content, also relates to businesses that Respondent is not required to divest pursuant to this Order;

3. *Provided, however*, the term “Outlet Center Assets and Business” shall not include the Excepted Items.

CC. “Outlet Stores” means retail stores, shops and other establishments in which manufacturers sell their stock and other merchandise directly to the public through factory-direct-to-consumer branded store locations at discounted prices, and which are often used by manufacturers to liquidate stock.

DD. “Personal Property” means all apparatus, machinery, devices, appurtenances, equipment, furniture, furnishings, promotional and marketing fund accounts, and other items of personal property (other than Intangible Personal Property and the Excepted Items) owned by the Respondent and located and used in connection with the ownership, operation, or maintenance of the relevant Southwest Ohio Outlet Center Assets and Business.

- EE. “Prime Outlets - Jeffersonville” means the Outlet Center Assets and Business relating to or necessary for the operation of the Outlet Center located at 8000 Factory Shops Blvd., Jeffersonville, OH 43128.
- FF. “Prime Retail” means Prime Outlets Acquisition Company LLC, a Delaware limited liability company, which is the general partner and 99% limited partner of Prime Retail, L.P., a Delaware limited partnership, with its office and principal place of business located at 217 East Redwood Street, 20th Floor, Baltimore, Maryland 21202.
- GG. “Radius Restriction” means any clause or provision of any kind (including but not limited to absolute bans, financial penalties, forfeitures or other charges) in a Lease relating to the use and/or occupancy of retail space in an Outlet Center that prevents or has the effect of preventing a Tenant from, or otherwise increases the Tenant’s cost of, operating or opening additional locations within a specified distance of a Tenant’s existing Outlet Store.
- HH. “Relevant Chicago Area” means the Chicago-Naperville-Joliet, IL-IN-WI MSA.
- II. “Relevant Geographic Areas” means the Relevant Chicago Area and the Relevant Orlando Area.
- JJ. “Relevant Orlando Area” means the Orlando-Kissimmee, FL MSA.
- KK. “Remedial Agreement(s)” means the following:
1. any agreement between the Respondent and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant Southwest Ohio Outlet Center Assets and Business to be divested, assigned, granted, licensed, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of this Order; and/or
 2. any agreement between the Respondent and a Third Party to effect the assignment of assets or rights related to the relevant Southwest Ohio Outlet Center Assets and Business for the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.
- LL. “Southwest Ohio Outlet Center Assets and Business(es)” means Cincinnati Premium Outlets and Prime Outlets - Jeffersonville, individually or collectively.
- MM. “Tenant(s)” means any tenant, licensee, concessionaire, or other user or occupant of Improvements or other retail space in an Outlet Center pursuant to a Lease.
- NN. “Third Party(ies)” means any Entity other than the Respondent or the Acquirer.

II.

IT IS FURTHER ORDERED that:

- A. Not later than one hundred eighty (180) days after the Order Date, Respondent shall divest, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, one of the Southwest Ohio Outlet Center Assets and Businesses, specifically, either:
1. Prime Outlets - Jeffersonville; or
 2. Cincinnati Premium Outlets.
- B. Respondent shall secure all consents and waivers from all Third Parties that are necessary to permit the Respondent to divest the relevant Southwest Ohio Outlet Center Assets and Business to an Acquirer, and/or to permit such Acquirer to continue the operations of such Southwest Ohio Outlet Center Assets and Business at the relevant location;
- provided, however,* that the Respondent may satisfy this requirement by certifying that the Acquirer has executed all such agreements directly with each of the relevant Third Parties.
- C. The purpose of the divestiture of one of the Southwest Ohio Outlet Center Assets and Businesses and the related obligations imposed on the Respondent by this Order is to ensure the continued use of the relevant Southwest Ohio Outlet Center Assets and Business in the operation of an Outlet Center at that location, to maintain a viable and effective competitor that is independent of the Respondent, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that, until the Closing Date for divestiture of one of the Southwest Ohio Outlet Center Assets and Businesses, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of both of the Southwest Ohio Outlet Center Assets and Businesses, to minimize any risk of loss of their competitive potential, and to prevent the destruction, removal, wasting, deterioration, or impairment of such assets and businesses except for ordinary wear and tear. Respondent shall not sell, transfer, encumber or otherwise impair either of the Southwest Ohio Outlet Center Assets and Businesses (other than to facilitate the divestiture contemplated by this Order) nor take any action that lessens their full economic viability, marketability or competitiveness.

Respondent's responsibilities shall include each of the responsibilities enumerated in the Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that the Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of the Respondent, which consent shall not be unreasonably withheld. If the Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after receipt of written notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, then the Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, the Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor the Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, the Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 1. the Interim Monitor shall have the power and authority to monitor the Respondent's compliance with the asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;
 2. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission; and
 3. the Interim Monitor shall serve until the date of completion by Respondent of the divestiture of the relevant Southwest Ohio Outlet Center Assets and Business in a manner that fully satisfies the requirements of the Decision and Order; *provided, however,* that the Commission may shorten or extend this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to the Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to the Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. The Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor the Respondent's compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of the Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. The Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. The Respondent shall report to the Interim Monitor in accordance with the requirements of the Orders and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by the Respondent, and any reports submitted by the Acquirer with respect to the performance of the Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by the Respondent of its obligations under the Orders.
- I. The Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Paragraph and/or the Order to Maintain Assets may be the same Entity appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If the Respondent has not fully complied with its obligation to divest, assign, grant, license, transfer, deliver or otherwise convey the relevant Southwest Ohio Outlet Center Assets and Business as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to divest, assign, grant, license, transfer, deliver or otherwise convey one of the Southwest Ohio Outlet Center Assets and Businesses required to be divested pursuant to Paragraph II. of this Order in a manner that satisfies the requirements of such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, the Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be an Entity with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest, assign, grant, license, transfer, deliver or otherwise convey the assets that are required by this Order to be divested, assigned, granted, licensed, transferred, delivered or otherwise conveyed;
 2. the Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times;
 3. subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
 4. the Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring Entity selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such Entity within five (5) days after receiving notification of the Commission's approval;
 5. the Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys,

investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee;
 7. the Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Entity appointed as Interim Monitor pursuant to the relevant provisions of the Order to Maintain Assets in this matter;
 8. the Divestiture Trustee shall report in writing to the Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
 9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that Respondent:

- A. Shall not, for a period of four (4) years from the Order Date, directly or indirectly, through subsidiaries, partnerships, or otherwise, enforce any Radius Restriction regardless of when entered into within the Relevant Geographic Areas with respect to any Lease with any Tenant; and
- B. Shall send written notification to all Tenants with Leases in Outlet Centers within the Relevant Geographic Areas of the prohibitions and requirements set forth in Paragraph VI.A of this Order, together with a copy of this Order and the Commission's Complaint, by certified mail with return receipt requested, as follows:
1. To all Tenants as of the Order Date, no later than ten (10) days after the Order Date; and
 2. To all Tenants with whom Respondent enters into a Lease at any time within four (4) years after the Order Date, no later than ten (10) days prior to entering into such Lease; and
- C. Shall send the written notifications to Tenants required by Paragraph VI.B of this Order to either: (i) the person designated in the Lease to receive notices from the Respondent, or (ii) the Chief Executive Officer and General Counsel of the Tenant. Respondent shall keep a file of such return receipts for five (5) years after the Order Date.

VII.

IT IS FURTHER ORDERED that Respondent shall:

- A. For a period of time commencing on the Order Date and continuing through January 1, 2015 (the "Optional Lease Renewal Period"), offer all Tenants at the Orlando Outlet Centers who are parties to existing Leases as of the Order Date, whose Leases expire prior to the end of the Optional Lease Renewal Period, and who do not currently have options to renew, a one-time option to extend any applicable Lease(s) at any one or all of the Orlando Outlet Centers, unilaterally and without penalty, forfeiture or other charge, on the same terms and conditions as exist in each such Tenant's existing Lease, from the current expiration date through to a specified time period within or coextensive with the end of the Optional Lease Renewal Period; *provided, however*, that the Respondent may require: (i) Tenants whose

Leases expire more than two hundred ten (210) days after the Order Date to provide the Respondent with not more than one hundred eighty (180) days prior written notice of their intent to exercise their unilateral option; and (ii) Tenants whose Leases expire two hundred ten (210) days or less after the Order Date to provide the Respondent with written notice of their intent to exercise their unilateral option within sixty (60) days of their receipt of the notification required by Paragraph VII.B of this Order; and

- B. No later than ten (10) days after the Order Date, send written notification to all Tenants at the Orlando Outlet Centers who are parties to existing Leases as of the Order Date of their unilateral option rights and Respondent's obligations pursuant to Paragraph VII.A of this Order, together with a copy of this Order and the Commission's Complaint, by certified mail with return receipt requested, to: (i) the person designated in the Lease to receive notices from the Respondent, or (ii) the Chief Executive Officer and General Counsel of the Tenant. Respondent shall keep a file of such return receipts for five (5) years after the Order Date.

VIII.

IT IS FURTHER ORDERED that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by the Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondent shall include in each Remedial Agreement related to the relevant Southwest Ohio Outlet Center Assets and Business a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of the Respondent's obligations to the Acquirer pursuant to this Order.
- D. Respondent shall also include in each Remedial Agreement a representation that it shall use commercially reasonable efforts to assist the Acquirer to secure any Governmental Approval(s) necessary to operate the relevant Southwest Ohio Outlet Center Assets and Business.
- E. Respondent shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to the Southwest Ohio Outlet Center Assets and Businesses, a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.
- F. Respondent shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

IX.

IT IS FURTHER ORDERED that:

- A. Not later than thirty (30) days after the Order Date, and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II.A. and B., VI.B.1, and VII.B of this Order, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II.A. and B., VI.B.1, and VII.B of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II.A and B of this Order, including a description of all substantive contacts or negotiations for divestitures and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.
- B. One (1) year from the Order Date, annually for the next four (4) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

X.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of the Respondent;
- B. any proposed acquisition, merger or consolidation of the Respondent; or
- C. any other change in the Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Decision and Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the Respondent made to its principal offices or headquarters address, the Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with the Orders, which copying services shall be provided by the Respondent at the request authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED that this Order shall terminate five (5) years from the Order Date.

By the Commission.

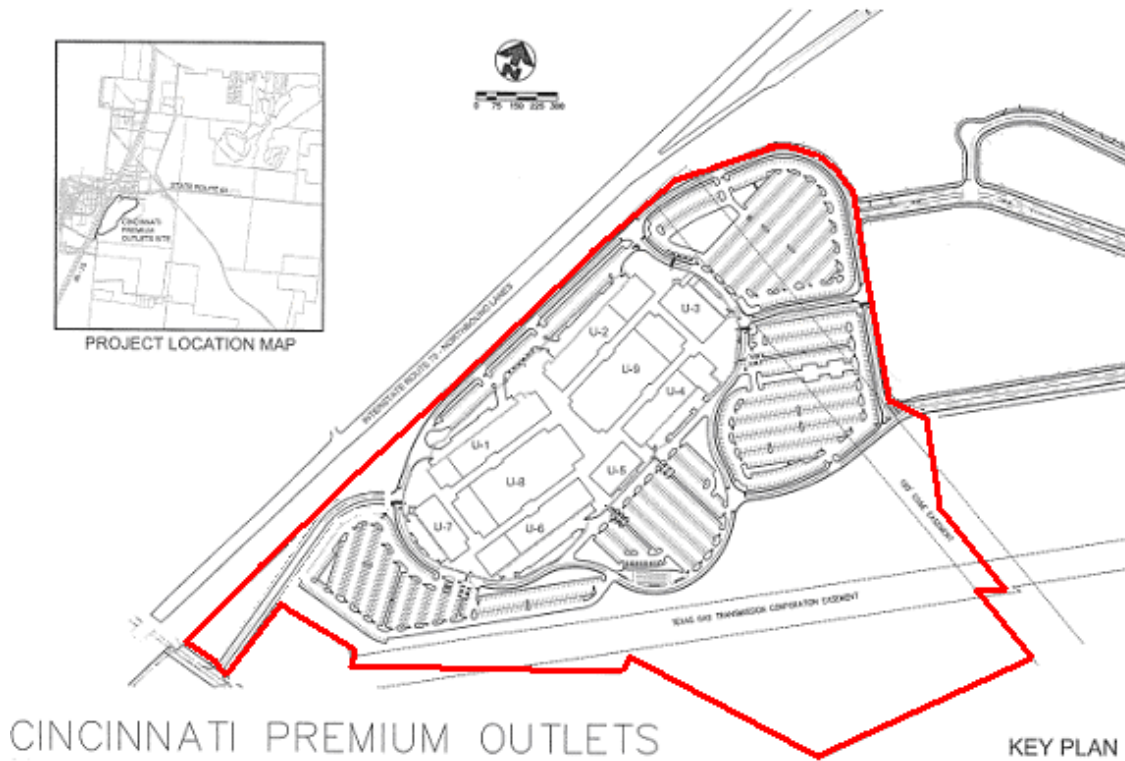
Donald S. Clark
Secretary

SEAL:
ISSUED:

APPENDIX A

Description of Cincinnati Premium Outlets, Monroe, Ohio

That certain lot known as lot 4 (82.502 acres) in the Cincinnati Premium Outlets Subdivision situated in the Township of Monroe, Butler & Warren Counties, State of Ohio at the intersection of U.S. Route 63 and Interstate 75 and shown bounded by a solid red line below:



APPENDIX B

Description of Prime Outlets, Jeffersonville, Ohio

That certain 49.566 acres of land situated in the Township of Jefferson, County of Fayette, State of Ohio at the intersection of U.S. Route 35 and Interstate 71 and shown bounded by a solid red line below:

