

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 this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, 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. “Decision and Order” means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- D. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph IV of the Decision and Order.
- E. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

A. Until the Closing Date, Respondent shall:

1. take such actions as are necessary to:

- a. maintain the full economic viability, marketability and competitiveness of each of the respective Southwest Ohio Outlet Center Assets and Businesses;
- b. minimize any risk of loss of competitive potential for each of the respective Southwest Ohio Outlet Center Assets and Businesses, and
- c. prevent the destruction, removal, wasting, deterioration, or impairment of each of the respective Southwest Ohio Outlet Center Assets and Businesses except for ordinary wear and tear; and

2. 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 the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of each of the respective Southwest Ohio Outlet Center Assets and Businesses.

B. Until the Closing Date, Respondent shall maintain the operations of each of the respective Southwest Ohio Outlet Center Assets and Businesses in the regular and ordinary course of business and consistent with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of each of the respective Southwest Ohio Outlet Center Assets and Businesses and shall use its best efforts to preserve goodwill and appropriate business relationships with the following: retailers, Tenants, prospective tenants, suppliers; vendors and distributors; consumers; Agencies; employees; and others having business relations with the Southwest Ohio Outlet Center Assets and Businesses. Respondent's responsibilities shall include, but are not limited to, the following:

1. providing each of the respective Southwest Ohio Outlet Center Assets and Businesses with sufficient working capital to operate at least at current rates of operation and to meet all capital calls with respect to such business in order to carry on, at least at their scheduled pace, all critical infrastructure replacement and repair projects and all ordinary course activities for each of the respective Southwest Ohio Outlet Center Assets and Businesses;
2. providing such resources (including, without limitation, personnel) and funding as may be reasonably necessary to respond to competition and/or to prevent any diminution in

occupancy and/or retail sales at each of the respective Southwest Ohio Outlet Center Assets and Businesses after the Acquisition process and prior to the Closing Date;

3. providing such resources (including, without limitation, personnel) and funding as may be necessary to maintain the competitive strength and positioning of each of the respective Southwest Ohio Outlet Center Assets and Businesses including such funds as are sufficient to:
 - a. maintain Tenants (including to negotiate the renewal of Leases that may expire at any time prior to divestiture) and attract prospective tenants, including without limitation, complete all lease negotiations and occupancy plans that were planned or in progress prior to the Acquisition in a timely manner;
 - b. perform all routine maintenance and all other maintenance as may be necessary to maintain or replace the assets related to each of the respective Southwest Ohio Outlet Center Assets and Businesses; and
 - c. provide appropriate levels of marketing, advertising and promotion expenditures for each of the respective Southwest Ohio Outlet Center Assets and Businesses;
4. providing such support services to each of the respective Southwest Ohio Outlet Center Assets and Businesses as were being provided to such business as of the date the Consent Agreement was signed by Respondent;
5. maintaining a work force at least as equivalent in size, training, and expertise to what has been associated with each of the respective Southwest Ohio Outlet Center Assets and Businesses for the relevant location's last fiscal year including, without limitation, maintaining at current levels all full time equivalent employee hours, and where necessary, increasing such full time equivalent employee hours at each of the respective Southwest Ohio Outlet Center Assets and Businesses;
6. maintaining the trademarks, trade dress, service marks, or trade names associated with each of the respective Southwest Ohio Outlet Center Assets and Businesses that are owned by Respondent after the Acquisition;
7. keeping the organization and properties of each of the respective Southwest Ohio Outlet Center Assets and Businesses intact, including current business operations (including regular hours of operation of the Outlet Center and services for Tenants), physical facilities, and working conditions;
8. maintaining all operations, programs (including customer loyalty and continuity, gift cards, reward coupons, discounts, or such similar programs) and departments at each of

the respective Southwest Ohio Outlet Center Assets and Businesses as were in existence as of the date the Consent Agreement was signed by the Respondent, or in a manner equivalent to those Outlet Centers owned or operated by Respondent that are not subject to divestiture pursuant to the Decision and Order;

9. making any payment required to be paid under any contract or lease when due, and otherwise paying all liabilities and satisfy all obligations, for each of the respective Southwest Ohio Outlet Center Assets and Businesses, in each case in a manner consistent with the practices for those Outlet Centers owned or operated by Respondent that are not subject to divestiture pursuant to the Decision and Order;
 10. maintaining the books and records (including customer loyalty data) of each of the respective Southwest Ohio Outlet Center Assets and Businesses;
 11. not displaying any signs or conducting any advertising (*e.g.*, direct mailing, point-of-purchase coupons) inconsistent with the regular and ordinary course of business and past practice, and that would have the purpose and/or effect of diverting consumer traffic away from either of the Southwest Ohio Outlet Center Assets and Businesses; and
 12. not terminating the operation of either of the Southwest Ohio Outlet Center Assets and Businesses.
- C. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Southwest Ohio Outlet Center Assets and Businesses through their divestiture to an Acquirer as required in the Decision and Order, to minimize any risk of loss of competitive potential for the Southwest Ohio Outlet Center Assets and Businesses and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Southwest Ohio Outlet Center Assets and Businesses except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after the 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 the

Respondent of the identity of any proposed Interim Monitor, 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 the Respondent of the divestiture of one of the Southwest Ohio Outlet Center Assets and Businesses in a manner that fully satisfies the requirements of the Decision and Order; *provided further*, 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 Order to Maintain Assets may be the same Entity appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that not later than thirty (30) days after the Respondent signs the Agreement Containing Consent Order, and every thirty (30) days thereafter until the Respondent has fully complied with its obligations to divest, assign, grant, license, transfer, deliver or otherwise convey one of the Southwest Ohio Outlet Center Assets and Businesses as required by Paragraph II.A. of the Decision and Order, the Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by the Respondent pursuant to Paragraph IX of the Decision and Order.

V.

IT IS FURTHER ORDERED that the 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.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, 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.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The later of:
 - 1. The day after the divestiture of one of the Southwest Ohio Outlet Center Assets and Businesses, as required by and described in the Decision and Order, has been completed and the Interim Monitor, in consultation with Commission staff and the Acquirer, notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or
 - 2. Three (3) days after the related Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: November 10, 2010