PUBLIC

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION RECEIVED DOCUMENTS 554177 APR 22 2011 SECRETARY

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

In the Matter of	)	
	)	**Docket No. C-4307**
Simon Property Group, Inc.	)	
a real estate investment trust.	)	**File No. 101-0061**
	)	

PETITION OF SIMON PROPERTY GROUP, INC.
FOR EXPEDITED APPROVAL OF PROPOSED DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission ("FTC" or "Commission") Rules of Practice and Procedure,[1] and Paragraph II. of the Decision and Order issued by the Commission in this matter as of January 13, 2011 ("Decision and Order"), Simon Property Group, Inc. ("Simon") hereby petitions the Commission to expeditiously approve the divestiture of Prime Outlets – Jeffersonville ("Jeffersonville") to Tanger Properties Limited Partnership ("Tanger"). Jeffersonville will be sold to Tanger pursuant to a Purchase and Sale Agreement dated March 4, 2011 between Ohio Factory Shops Partnership (a subsidiary of Simon) and Tanger in a manner that fully complies with the terms of the Decision and Order.[2] For the reasons discussed in Section IV below, Simon respectfully requests that the Commission approve

1 16 C.F.R. § 2.41(f).

2 Capitalized terms used, but not otherwise defined herein, have the meaning set forth in the Decision and Order.

the proposed divestiture of Jeffersonville to Tanger as soon as possible after the expiration of the public comment period, and in particular by June 24, 2011.

I. BACKGROUND

On December 8, 2009, Simon entered into an acquisition agreement under which Simon would acquire the entire Prime Outlets ("Prime") portfolio of properties consisting of 22 outlet centers and two development projects. On June 28, 2010, Simon and Prime amended the agreement to remove Prime's St. Augustine, FL outlet center, and its development projects at Livermore, CA and Grand Prairie, TX from the schedule of properties to be acquired by Simon.

On August 27, 2010, Simon and the Commission executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Maintain Assets (collectively, the "Consent Agreement"), in order to settle the Commission's allegations that Simon's acquisition of Prime would violate Section 7 of the Clayton Act, as amended,[3] and Section 5 of the Federal Trade Commission Act, as amended.[4] Simon and Prime consummated the transaction on August 30, 2010. The Commission accepted the Consent Agreement for public comment on November 10, 2010, and issued final approval of the Consent Agreement on January 13, 2011.

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3 15 U.S.C. § 18.

4 15 U.S.C. § 45.

II. THE PROPOSED DIVESTITURE FULLY RESTORES COMPETITION[5]

Paragraph II.A. of the Decision and Order requires Simon to divest either Jeffersonville or Cincinnati Premium Outlets to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. According to the FTC's Statement on Negotiating Merger Remedies, a divestiture acquirer must be able to maintain or restore competition in the relevant market.[6] Key factors to consider include whether the buyer has: "(1) the financial capability and incentives to acquire and operate the package of assets, and (2) the competitive ability to maintain or restore competition in the market."[7]

In order to comply with Paragraph II.A. of the Decision and Order, Simon [redacted] began preparing an offering memorandum for the sale of Jeffersonville shortly after the transaction was consummated. After furnishing confidential offering materials to [redacted] parties that expressed interest in Jeffersonville, Simon negotiated and signed a Purchase and Sale Agreement with Tanger, which was [redacted] among the firms that expressed an interest in Jeffersonville to fully comply with the terms of the Decision and Order. As described in more detail below, Tanger is [redacted] acquirer of Jeffersonville from both a financial and competitive perspective, and the divestiture to Tanger will fully maintain competition in Southwest Ohio in compliance with the terms of the Consent Agreement.

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5 Although Simon disagrees with the allegations contained in the Commission's Complaint that the acquisition of Prime Outlets – Jeffersonville would lessen competition in Southwest Ohio, for the purposes of this Petition, Simon will assume the Commission's market definition and allegations of competitive effects found in the Complaint.

6 Negotiating Merger Remedies: Statement of the Bureau of Competition of the Federal Trade Commission 8–10 (Apr. 2, 2003), *available at* http://www.ftc.gov/bc/bestpractices/bestpractices030401.pdf.

7 *Id.* at 8.

A. Tanger Has the Financial Capability and Incentives to Acquire and Operate Jeffersonville

Tanger has the financial ability both to purchase and continue to operate Jeffersonville for the long term. Tanger's annual revenues rose to $276.3 million in 2010, and Tanger remains profitable even in the face of one of the worst recessions in the real estate market in recent memory.[8] Tanger ended its 2010 fiscal year with total assets of $1.22 billion after depreciation.[9]

Tanger will fund the acquisition of Jeffersonville through [redacted]. As a result, [redacted]. Tanger's strong financial position enables it to operate, maintain, and develop Jeffersonville for the foreseeable future. Tanger has performed detailed due diligence at Jeffersonville to identify all areas where repairs or infrastructure improvements will be necessary. Tanger has sufficient reserves to fund all anticipated capital expenditures at Jeffersonville. As a result, there is no question that Tanger is fully capable of purchasing Jeffersonville and continuing to operate the outlet center for the long term.

B. Tanger Has the Competitive Ability to Maintain or Restore Competition in the Relevant Market

Tanger has extensive experience in developing, operating, and leasing outlet centers. In fact, Tanger was a pioneer of the current factory outlet model when it opened one of the first outlet centers in 1981. As of December 31, 2010, Tanger owned a 100% interest in 31 outlet centers with over 9.2 million square feet of retail space spanning 22 states.[10] Tanger's outlet

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8 *See* Tanger Factory Outlet Centers, Inc., Annual Report (Form 10-K), at 30 (Feb. 28, 2011), *available at* http://www.sec.gov/Archives/edgar/data/899715/000089971511000018/0000899715-11-000018-index.htm.

9 *Id.*

10 *See id.* at 6.

centers were 98% occupied and contained over 2,000 stores representing approximately 360 store brands.[11] Tanger also operates and has a partial interest in two outlet centers totaling approximately 948,000 square feet.[12]

The members of Tanger's executive and outlet center management staffs are all highly-qualified professionals, selected for their talent, knowledge, and experience in retail and outlet management.[13] Tanger's outlet centers are noted for large selections of first-quality, in-season merchandise, and for the latest fashion trends for brand name and designer outlet stores. The Tanger outlet centers are major tourist attractions with more than 150 million customers annually. Tanger strives to assist its tenants with unique promotional opportunities, with generating brand recognition and exposure, with implementing sampling programs, and other marketing initiatives. With its national footprint, strong talent, and proven experience operating numerous high quality outlet centers, Tanger is the ideal acquirer to ensure that competition is fully maintained in Southwest Ohio.

Despite the fact that Tanger has a national presence and is the second largest U.S. outlet center developer, Tanger does not currently own or operate any outlet centers in the state of Ohio. Since Tanger has no presence in Southwest Ohio – the relevant geographic market defined in the Commission's Complaint – the proposed divestiture will not result in any increase in concentration and will not raise any new competitive concerns.

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11 *Id.*

12 *Id.*

13 *See id.* at 25–27.

III. OVERVIEW OF THE PURCHASE AND SALE AGREEMENT

On March 4, 2011, Ohio Factory Shops Partnership (a subsidiary of Simon) and Tanger entered into a Purchase and Sale Agreement ("Agreement"). Pursuant to the Agreement, Tanger will acquire all of Simon's rights, titles, and interests in Jeffersonville, in accordance with the requirements of the Consent Agreement. [redacted] The Agreement, including all exhibits and amendments, contains confidential commercial and financial business information, and should be treated as confidential pursuant to Sections 2.41(f)(4) and 4.9(c) of the FTC's Rules of Practice and Procedure.[14] Copies of the Agreement, exhibits, and amendments are included on a CD filed with this petition.

On March 24, 2011, the parties entered into a First Amendment to the Purchase and Sale Agreement ("First Amendment"). The First Amendment [redacted]

On April 19, 2011, following consultations with FTC Staff, the parties entered into a Second Amendment to the Purchase and Sale Agreement ("Second Amendment"). The Second Amendment [redacted]

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14 16 C.F.R. §§ 2.41(f)(4) and 4.9(c).

IV. REQUEST FOR EXPEDITIOUS APPROVAL

Simon requests expedited approval of the proposed divestiture of Jeffersonville to Tanger as soon as possible after the expiration of the public comment period, and in particular, no later than June 24, 2011.

Approval by June 24, 2011 is necessary in order for Simon to complete the divestiture of Jeffersonville [redacted].[15] In addition, prompt approval will ensure that Simon is able to comply with the Decision and Order and the Agreement.[16] Prior to completing the sale of Jeffersonville to Tanger, [redacted] Therefore, time is of the essence in obtaining approval for the sale of Jeffersonville to Tanger.

Finally, prompt approval and consummation of the divestiture of Jeffersonville to Tanger will further the purposes of the Decision and Order and is in the interests of tenants and consumers, [redacted]. Expeditious approval of the transaction will remove the uncertainty facing tenants, consumers, and employees over the ownership of Jeffersonville. Moreover, Tanger can realize efficiencies and other operating improvements at Jeffersonville sooner if closing occurs expeditiously. FTC Staff are already familiar with Tanger through their extensive investigation

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15 [redacted]

16 Paragraph II.A. of the Decision and Order requires Simon to divest Jeffersonville by July 19, 2011, which is 180 days after the Order Date. [redacted]

of Simon's acquisition of Prime Outlets, and Staff have also spoken with Tanger's executives after the Agreement was signed to confirm that Tanger is the ideal acquirer of Jeffersonville.

Simon and Tanger are prepared to close the transaction as soon as Commission approval is obtained, and in any case, [redacted]. For the foregoing reasons, Simon respectfully requests that the Commission approve the proposed divestiture of Jeffersonville to Tanger, as embodied in the enclosed Agreement, as soon as practicable after expiration of the public comment period, and in particular by June 24, 2011.

V. REQUEST FOR CONFIDENTIAL TREATMENT

This petition, including the enclosed Agreement, contains certain confidential and competitively-sensitive business information relating to the divestiture of Jeffersonville. Disclosure of such confidential information may prejudice Simon and Tanger, and cause harm to the ongoing competitiveness of Jeffersonville. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the FTC's Rules of Practice and Procedure,[17] Simon has redacted such information from the public version of this petition, and requests confidential treatment for such information under Section 4.10(a)(2) of the FTC's Rules of Practice and Procedure[18] and Sections 552(b)(4) and (b)(7) of the Freedom of Information Act.[19] In the event that a determination is made that any material marked as confidential is not subject to confidential treatment, Simon requests that the FTC

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[17] 16 C.F.R. §§ 2.41(f)(4) and 4.9(c).

[18] 16 C.F.R. § 4.10(a)(2).

[19] 5 U.S.C. §§ 552(b)(4) and 552(b)(7).

provide immediate notice of that determination to Bernard A. Nigro, Jr., and an adequate opportunity to appeal such a decision.

Respectfully submitted,

Bernard A N

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Dated: April 21, 2011