ZEICHNER ELLMAN & KRAUSE LLP
575 Lexington Avenue
New York, New York 10022
(212) 223-0400
Stephen F. Ellman
Nathan Schwed
Jantra Van Roy

Counsel to Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2006 2; Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006 C1 and certain noteholders, all acting by and through Helios AMC, LLC in its capacity as Special Servicer

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re GENERAL GROWTH PROPERTIES, INC., et al., Debtors.	Chapter 11 Case No. 09-11977 (ALG) (Jointly Administered)

REPLY MEMORANDUM OF LAW OF WELLS FARGO BANK, N.A., AS TRUSTEE, ET AL. IN FURTHER SUPPORT OF MOTION TO DISMISS THE CASES OF FANEUIL HALL MARKETPLACE, LLC AND SAINT LOUIS GALLERIA L.L.C.

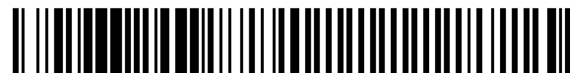

0911977090612000000000007

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

BACKGROUND 2

ARGUMENT 4

1. THE SUBSIDIARY DEBTORS ARE UNABLE TO MEET THEIR BURDEN OF ESTABLISHING THAT THEIR FILINGS WERE IN GOOD FAITH 4

2. THE SUBSIDIARY DEBTORS' RELATION TO THE GGP FAMILY OF ENTITIES DID NOT REQUIRE THEM TO BE PLACED INTO BANKRUPTCY 4

3. THE SUBSIDIARY DEBTORS' FILINGS WERE PREMATURE 5

4. REPLACEMENT OF THE INDEPENDENT MANAGERS ON THE EVE OF BANKRUPTCY IS FURTHER EVIDENCE OF BAD FAITH 9

CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Bank of America Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship, 526 U.S. 434; 119 S.Ct. 1411 (1999) 2, 6, 8

Baroda Hill Inv., Inc. v. Telegroup, Inc. (In re Telegroup, Inc.), 281 F.3d 133 (3d Cir. 2002) 1

In re Cohoes Indus. Terminal, Inc., 931 F.2d 222 (2d Cir. 1991) 7

In re Little Creek Dev. Co., 779 F.2d 1068 (5th Cir. 1986) 6

In re Lizeric Realty Corp., 188 B.R. 499 (Bankr. S.D.N.Y. 1995) 4

In re Schur Management Company, Ltd, 323 B.R. 123 (Bankr. S.D.N.Y. 2005) 6, 7

In re SGL Carbon, 200 F.3rd 6, 7

In re SGL Carbon Corp., 200 F.3d 154 (3d Cir. 1999) 6, 7, 8

In re Wynco Distribs., 126 B.R. 131 (D.Mass. 1991) 12

NMSBCP SLD HB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.), 384 F.3d 108 (3d Cir. 2004) .... passim

FEDERAL STATUTES

11 U.S.C. § 1112(b) 4, 5

Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2006-2 ("Wells Fargo-FHM"), acting by and through Helios AMC, LLC ("Helios"), in its capacity as Special Servicer, and Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-C1, and certain noteholders ("Wells Fargo-SLG"), also acting by and through Helios, in its capacity as Special Servicer (collectively, the "Mall Lenders"), as and for their reply to the oppositions by the Debtors and the Official Committee of Unsecured Creditors (the "Creditors Committee") to the Mall Lenders' motion (the "Motion") to dismiss the debtor cases of Faneuil Hall Marketplace, LLC ("FHM") (Case No. 09-12108 (ALG)) and Saint Louis Galleria L.L.C. ("SLG") (Case No. 09-12266 (ALG)) (together, the "Subsidiary Debtors"), respectfully represent as follows:

PRELIMINARY STATEMENT

> To be filed in good faith, a petition must do more than merely invoke some distributional mechanism in the Bankruptcy Code. It must seek to create or preserve some value that would otherwise be lost--not merely distributed to a different stakeholder--outside of bankruptcy. This threshold inquiry is particularly sensitive where, as here, the petition seeks to distribute value directly from a creditor to a company's shareholders.

NMSBCP SLD HB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.), 384 F.3d 108, 129 (3d Cir. 2004); see Baroda Hill Inv., Inc. v. Telegroup, Inc. (In re Telegroup, Inc.), 281 F.3d 133, 140 (3d Cir. 2002) (quoting Elizabeth Warren, *Bankruptcy Policy*, 54 U. Chi. L. Rev. 775, 792 (1987), for the proposition that "an almost axiomatic principle of business law is that, because equity owners stand to gain the most when a business succeeds, they should absorb the costs of the business's collapse--up to the

full amount of their investment"); see also Bank of America Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 453; 119 S.Ct. 1411 (1999) (characterizing one of the purposes of Chapter 11 as "maximizing property available to satisfy creditors").

The Subsidiary Debtors have no need for bankruptcy rehabilitation. The Debtors acknowledge that the Subsidiary Debtors have substantial net operating income and are financially healthy and viable entities. The bankruptcy filings by the Subsidiary Debtors were not in good faith in light of their lack of a need for bankruptcy rehabilitation. Indeed, their filings were in bad faith because they were done solely in an attempt to rewrite loan agreements for the benefit of the Subsidiary Debtors' owners.

Further evidence of the bad faith filing is the replacement of the Subsidiary Debtors' Independent Managers on the eve of the bankruptcy filings in order to facilitate a unanimous vote in favor of the filings.

BACKGROUND

The Subsidiary Debtors have stipulated to the fact that they each are projected to generate substantial net operating income during the balance of 2009 and during 2010. According to the Debtors, FHM filed for Chapter 11 because the filing by its sole member, The Rouse Company Operating Partnership LP, triggered a default under its loan agreement, and SLG filed its petition because its loan matures in July 2010 and because the loan to value ratio ("LTV") for its property is in excess of seventy percent. Ex. A, Filing Factors, Debtors' Memo at 25.

The Debtors further contend that the Subsidiary Debtors filed for bankruptcy because of the shutdown of the CMBS credit markets and the resulting concern that the

Debtors will be unable to refinance mortgages as they mature. Debtors' Memo at 32. However, FHM's loan does not mature until 2013 and SLG's loan does not mature until July 2010. Debtors' Memo at 25. Thus, the Debtors necessarily concede that there was no need to immediately refinance the Subsidiary Debtors' mortgage loans.

It is abundantly clear that the Subsidiary Debtors were placed into bankruptcy for the benefit of their parents and/or affiliates. The default triggered by the bankruptcy filing of FHM's sole member did not necessitate FHM's bankruptcy filing. If FHM's Independent Managers had considered only the interests of FHM, as required by Article XIII (o) of FHM's Limited Liability Company Agreement (the "FHM Operating Agreement"), Debtors' Ex. 30, they would have voted to request that the special servicer waive the default and the implementation of a lock box, rather than voting immediately for a Chapter 11 filing. Furthermore, even if a lock box had been implemented, FHM would have continued as a viable entity without the need for bankruptcy. Indeed, many property owners operate with a lock box without being compelled to file for bankruptcy.

The Debtors justify SLG's bankruptcy filing based on a projected inability to refinance SLG's loan when it matures in July 2010. However, even if the Debtors' prediction that no refinancing will be available in July 2010 is correct,[1] there still was no reason for SLG to file at the present time. The Debtors do not contend that SLG's financial situation or operations will deteriorate in any manner prior to July 2010. Similarly, the alleged fact that the LTV for SLG's property is greater than seventy percent pertains only to SLG's ability to

---

[1] The Debtors contend that it is virtually a certainty that the CMBS market will not be revived during the next few years. Even if correct, this does not mean that new and/or alternative sources of funding will not emerge. Similarly, the Debtors cannot predict what steps the United States Government may take to resolve the logjam in the refinancing of CMBS loans. A recent article in the Wall Street Journal indicates that the Treasury is focusing on methods of dealing with the enormous amount of CMBS loans that are scheduled to mature during the next few years. Ex. B, WSJ Article, June 10, 2009.

refinance when its loan matures, but does not in any way compel a bankruptcy filing at the present time.

ARGUMENT

1. THE SUBSIDIARY DEBTORS ARE UNABLE TO MEET THEIR BURDEN OF ESTABLISHING THAT THEIR FILINGS WERE IN GOOD FAITH

In connection with the Motion, the Mall Lenders have the initial burden to produce evidence of "cause" for dismissal under § 1112(b), and thereafter it is the Debtor's burden to establish that relief is not warranted. In re Lizeric Realty Corp., 188 B.R. 499, 503 (Bankr. S.D.N.Y. 1995).

The Mall Lenders have met their burden of presenting evidence of "cause" by establishing that (a) the Subsidiary Debtors have no need for rehabilitation and (b) the Debtors brazenly replaced their Independent Managers on the eve of their bankruptcy filing in order to obtain a unanimous vote in favor of the bankruptcy filing. The Subsidiary Debtors, on the other hand, have failed to meet their burden to establish that their filings were in "good faith." In re Integrated Telecom Express, Inc., 384 F.3d at 118 (the burden is on the debtor to establish that its petition was filed in good faith).

2. THE SUBSIDIARY DEBTORS' RELATION TO THE GGP FAMILY OF ENTITIES DID NOT REQUIRE THEM TO BE PLACED INTO BANKRUPTCY

In the Motion, the Mall Lenders contend that the Subsidiary Debtors' Chapter 11 filings were in bad faith because they were not in financial distress and had no need to file at the present time. In response, the Debtors and the Creditors Committee assert that the Subsidiary Debtors' filings were appropriate as part of the numerous GGP "family" filings.

This claim, however, is completely undercut by the fact that numerous affiliates of the Subsidiary Debtors were not placed into bankruptcy. Being a member of the GGP family is obviously not a compelling reason for filing a Chapter 11 petition; otherwise all members of the family would have filed. Clearly, the Subsidiary Debtors could have continued functioning outside of Chapter 11 in the same manner that their numerous non-debtor affiliates are presently functioning. Thus, the Debtors' arguments that the Subsidiary Debtors' bankruptcy filings were appropriate as part of the bankruptcy filings by the GGP family of entities should be rejected. In order to avoid dismissal, the Subsidiary Debtors' filings must be justified at the Subsidiary Debtor level, not based on the GGP family filings.

3. THE SUBSIDIARY DEBTORS' FILINGS WERE PREMATURE

It is well settled that "Chapter 11 bankruptcy petitions are subject to dismissal under *11 U.S.C. § 1112(b)* unless filed in good faith, and the burden is on the bankruptcy petitioner to establish that its petition has been filed in good faith." In re Integrated Telecom Express, Inc., 384 F.3d at 118.

> [A good faith standard] furthers the balancing process between the interests of debtors and creditors which characterizes so many provisions of the bankruptcy laws and is necessary to legitimize the delay and costs imposed upon parties to a bankruptcy. Requirement [sic] of good faith prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way . . . .

In re SGL Carbon Corp., 200 F.3d 154, 161-62 (3d Cir. 1999) (quoting In re Little Creek Dev. Co., 779 F.2d 1068, 1072 (5th Cir. 1986)).

The "good faith" requirement ensures that a filing is to accomplish the basic purposes of Chapter 11, which are: (1) preserving going concerns, and (2) maximizing

property for creditors. Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. at 453. Where an entity is not in financial distress, and has no present need to rehabilitate, its filing is not in good faith. In re Integrated Telecom Express, Inc., 384 F.3d at 129 ("Because Integrated was not in financial distress, its Chapter 11 petition was not filed in good faith as it could not - and did not - preserve any value for Integrated's creditors that would have been lost outside of bankruptcy."); In re SGL Carbon Corp., 200 F.3d at 166.

As outlined in the Motion and acknowledged by the Debtors, the Subsidiary Debtors are financially healthy and viable. Their bankruptcy filings were not in good faith because they were not in any financial distress and their filings were not intended to preserve any value for their creditors. In re Integrated Telecom Express, Inc., 384 F.3d at 129. The Debtors' expressed concern about a future inability to refinance mortgage loans did not justify a bankruptcy filing now. While it is theoretically possible that the Subsidiary Debtors may in the future require bankruptcy protection, it is clear that their filings were premature. In re SGL Carbon, 200 F.3rd at 164 ("The mere possibility of a future need to file, without more, does not establish that a petition was filed in good faith."); In re Schur Management Company, Ltd, 323 B.R. 123 (Bankr. S.D.N.Y. 2005).

In response to the Mall Lenders' "prematurity" argument, the Debtors contend that the Mall Lenders cannot obtain dismissal unless they establish the "objective futility of the reorganization process" and the "subjective bad faith" in filing the petition. Debtors' Memo at 28. This standard is based on the holding in In re Cohoes Indus. Terminal, Inc., 931 F.2d 222 (2d Cir. 1991). However, as this Court noted in Schur, the standard enunciated in Cohoes is not applicable to a motion to dismiss for prematurity. In re Schur Management Company, Ltd, 323 B.R. at 126. As the Court stated in Schur, "[T]he leading case on

dismissal for prematurity is In re SGL Carbon, 200 F.3rd 154 (3rd Cir. 1999)," which noted that courts "have consistently dismissed Chapter 11 petitions filed by financially healthy companies with no need to reorganize under the protection of Chapter 11." Id.

The Subsidiary Debtors here, like the Debtors in Schur and SGL Carbon, "have no present need to file, only the 'mere possibility of a future need to file.'" Id. at 127. Additionally, as in Schur, the Subsidiary Debtors can obtain any needed bankruptcy relief on, or even after, the loan maturity dates, if and when they are unable to satisfactorily extend maturity dates or refinance their loans.

With respect to SLG, it cannot be reasonably disputed that there would have been no need for SLG to file for bankruptcy prior to the loan maturity date in July 2010.[2] Indeed, even at the maturity date, there probably would be no need to file, even if SLG was unable to refinance the loan. Following the maturity date, SLG would certainly be in a

---

[2] The Debtors concede that they would have been able to commence negotiations with special servicers prior to loan maturity. (Debtors' Memo at 18). In this regard, the Debtors' citation (Debtors' Memo, footnote 27) to the transcript of Helios' Senior Vice President Allen D. Hanson is misleading. Mr. Hanson did not testify that Helios has an internal practice of not discussing loan maturity default with borrowers until 60-90 days before maturity. Rather, Mr. Hanson's testimony was that "we [Helios] don't advise the master servicer on when a default is imminent. That's the master servicer's call .... and I think that's 60 to 90 days." Ex. C, Hanson Dep., 95:4 - 96:9. In fact, Mr. Hanson testified with clarity that: "If a borrower sends in a letter saying the default is imminent, I think that changes everybody's view as to whether the default is imminent... . If one of the parties to the transaction has said we foresee a default ... that makes the default imminent." Ex. C, Hanson Dep., 108:22 – 109:9.

Similarly, Debtors incorrectly state at p. 19 of their Memo that Helios "admits" that that it has not recommended any extensions of more than 6 months on CMBS loans that have matured since September 2008. To the contrary, Mr. Hanson testified that Helios' general plan for resolving CMBS loans that have matured since September, 2008 is:

> to the extent that the underlying credit fundamentals of that loan are sound, and I think debt coverage ratio is at the top of that list, Helios will recommend the loan for an extension and I think oftentimes a rate adjustment to offset the expense of the loan having been sent in to special servicing, Helios will recommend that loan for an extension for some period of time, obviously subject to the limitation under each individual PSA.

Ex. C, Hanson Dep., 158: 5-21. Mr. Hanson further testified that the only parameters for the length of maturity date extensions are the rated termination date for the pool (which are in 2045 and 2039 for the St. Louis and Faneuil Hall pools) and "the term of any ground lease such as with -- any land lease such as with Faneuil Hall," and Helios has already endeavored twice to implement this strategy for loans that have matured since September, 2008, but those deals have not closed yet. Ex. C, Hanson Dep., 160:15 - 161:17.

position to negotiate with the special servicer regarding modifications/extensions of the loan outside of bankruptcy. Indeed, even after the commencement of a foreclosure action, SLG would still not have an immediate need to file for bankruptcy unless and until it was unable to achieve a resolution prior to the foreclosure sale of its property. Clearly, SLG had absolutely no need to file for bankruptcy at this time, just as its numerous non-debtor affiliates had no need to file for bankruptcy at this time. The decision to place SLG into bankruptcy was clearly made for the benefit of SLG's parent and/or affiliates. The filing was not intended to preserve SLG's going concern or to maximize value for SLG's creditors. Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. at 453. As such, the filing was not in good faith and warrants dismissal. In re Integrated Telecom Express, Inc., 384 F.3d at 129; In re SGL Carbon Corp., 200 F.3d at 166.

The same is true with respect with FHM's filing. The sole justification for filing FHM's Chapter 11 Petition is the default triggered by the Chapter 11 filing of FHM's sole member, The Rouse Company Operating Partnership LP. Presumably, if not for this default, FHM would have stayed out of bankruptcy, as did its many non-debtor affiliates. However, if the only consideration was the interests of FHM, the filing by its sole member would not have immediately triggered a filing by FHM. Instead, truly "independent" managers would have suggested contacting the special servicer and requesting a waiver of this default provision. Undoubtedly, the special servicer would have recommended a waiver of the default, as it is a more desirable outcome than a borrower mired in an expensive bankruptcy. FHM's parent, however, was not interested in keeping FHM out of bankruptcy. It wanted FHM's cash flow and it needed "justification" to place FHM into Chapter 11; i.e., the default triggered by the sole member's filing.

Moreover, even absent a waiver, the default triggered by the Chapter 11 filing by FHM's sole member did not give rise to a need to file for bankruptcy. The default might have triggered implementation of a lock box, but FHM certainly would have been able to continue operating and maintaining its property even if the lender had opted to exercise its lock box remedy. Indeed, numerous property owners are subject to loan agreements that provide for a lock box arrangement outside of Chapter 11.

FHM's parent, however, had no interest in seeking a waiver of any default provisions and placed FHM into Chapter 11 to benefit the parent. The Mall Lenders submit that the decision to do so is evidence of a lack of good faith.

4. REPLACEMENT OF THE INDEPENDENT MANAGERS ON THE EVE OF BANKRUPTCY IS FURTHER EVIDENCE OF BAD FAITH

Further evidence of a lack of good faith is GGP's demonstrated need to axe the Subsidiary Debtors' Independent Directors. This conclusion is even more compelling because the Subsidiary Debtors are single purpose entities ("SPE"), and the FHM Operating Agreement, (Debtors' Ex. 30), and SLG's Operating Agreement, (Debtors' Ex. 32), (collectively, the "Operating Agreements") required that the Subsidiary Debtors' managers always include 2 independent managers (the "Independent Managers") and further required that any major decision regarding the Subsidiary Debtors, including a bankruptcy filing, be by the unanimous vote of all managers, including the Independent Managers. Furthermore, the Operating Agreements specifically require that the Independent Managers consider only the interests of Subsidiary Debtors and, therefore, are precluded from considering the needs or

concerns of any entity other than the Subsidiary Debtors.[3] This is specifically intended to preclude the Independent Managers from taking into account the needs of the parents or affiliates of the Subsidiary Debtors.

The Independent Managers, thus, presented an obstacle to the parents' decision to place the Subsidiary Debtors into Chapter 11, since they would not consider the parents' interests in voting on a bankruptcy filing. That obstacle was removed when the Debtors fired the Independent Managers on the eve of the bankruptcy filing and replaced them with new "independent" managers who would not stand in the way of a bankruptcy filing. (Debtors' Memo at 21.) The Mall Lenders submit that the replacement of the Independent Managers, in and of itself, is compelling evidence of bad faith in connection with the Subsidiary Debtors' Chapter 11 filing and requires dismissal of the Subsidiary Debtors' Chapter 11 petitions.

In support of their claim that the Subsidiary Debtors needed to join in the GGP bankruptcy filing, the Debtors make an extensive presentation about the alleged numerous benefits that the Subsidiary Debtors obtain from their relationship with the GGP corporate family. However, the Debtors fail to explain how the existence of these benefits required the bankruptcy filing by the Subsidiary Debtors. The fact that numerous non-debtor affiliates did not file for bankruptcy even though they also receive the same benefits is clear evidence that the receipt of such benefits is not a compelling reason for filing a chapter 11 petition on behalf of the Subsidiary Debtors.[4]

---

[3] Article XIII (o) of each of the Operating Agreements contains the requirement for Independent Directors and states: "To the fullest extent permitted by law, including Section 18-1101(c) of the Act, the Independent Managers shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Article XIII (p)." (Debtors' Ex. 30, pp. 19-20, Debtors' Ex. 32, pp. 20-21.)

[4] Further, while the Debtors make much ado about the management services provided by GGP to the Subsidiary Debtors, General Growth Management, Inc., the entity that provides management services for the Subsidiary Debtors, is not even in bankruptcy.

Similarly, the argument that if the Subsidiary Debtors had not filed for Chapter 11, they would have been separated from the GGP group and their businesses would have been disrupted, Debtors' Memo at 23, is completely undercut by the fact that numerous affiliates of the Subsidiary Debtors did not file for Chapter 11 and have continued their relationships with the GGP group. The Debtors also argue that the filings were "done to maximize the value for all stakeholders, including the employees, lenders, vendors and equity." Debtors' Memo at 38. However, if the Debtors had been completely forthright, they would have said that the filings were solely for the purpose of maximizing the value for equity. It is equity alone that benefits from the Subsidiary Debtors' Chapter 11 filings, at the expense of the Mall Lenders.

Further, the Debtors' argument that they needed to file Chapter 11 cases now for all subsidiaries whose loans mature within the next three to four years in order to avoid serial filings over the coming months and years, is also evidence that the Subsidiary Debtors were placed into bankruptcy for the benefit of their parents. That justification is completely contrary to the requirements of the Operating Agreements, which preclude the Independent Managers from considering the needs of the Subsidiary Debtors' parents in determining whether to file a bankruptcy petition.

Similarly, the argument by the Debtors and the Creditors Committee that case law encourages early filings in order to prevent a collapse, Debtors' Memo at 34, is inapplicable to the Subsidiary Debtors. The cases that encourage early filings involve business operations that are heading downhill, mounting losses, where a prompt filing will increase the chances of successful rehabilitation including larger recoveries for creditors, and further delay may hurt those chances. For example, Debtors' reliance on <u>In re Wynco</u>

Distribs. for the proposition that they should file "sooner rather than later" is misplaced. (Debtors' Memo at 34.) Rather, in Wynco, the debtor had suffered eight years of litigation that had caused it "serious financial problems" including a 27% decline in revenues, continuing large legal expenses, imminent discontinuance of its line of credit, wariness of major suppliers due to the litigation, and if it did not file promptly, it would "soon have little equity left to fight over". In re Wynco Distribs., 126 B.R. 131 (D.Mass. 1991). In the case of the Subsidiary Debtors, there is no benefit to filing with their parent entity that is lost by waiting to file on, or even after, the maturity date, by which time such a filing may well be unnecessary.

The risk to the Subsidiary Debtors is not increased if they wait to file Chapter 11 petitions after their loans mature and after they determine that they are unable to either refinance their respective loans or negotiating satisfactory modifications and/or extensions with the Special Servicer. In these cases, the rules regarding "prematurity" apply. The Subsidiary Debtors have no present need to file and, accordingly, their cases should be dismissed.

CONCLUSION

The Subsidiary Debtors are financially healthy entities that do not need rehabilitation in bankruptcy, just like their many non-debtor affiliates. They were placed into bankruptcy to benefit their parent and/or debtor affiliates and, as such, the filings were in bad faith. Replacement of their Independent Directors on the eve of bankruptcy is further compelling evidence of bad faith.

The Mall Lenders have met their burden of presenting evidence of "cause" for dismissal. The Debtors have failed to establish good faith in the filings. Accordingly, the Motion should be granted and the Subsidiary Debtors' cases should be dismissed.

Dated: New York, New York
June 12, 2009

ZEICHNER ELLMAN & KRAUSE LLP

By: ______________________

Stephen F. Ellman
Nathan Schwed
Jantra Van Roy
575 Lexington Avenue
New York, New York 10022
(212) 223-0400

Attorneys for Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2006 2; Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006 C1 and certain noteholders, all acting by and through Helios AMC, LLC, in its capacity as Special Servicer

EXHIBIT A

FILED UNDER SEAL

EXHIBIT B

THE PROPERTY REPORT

Relief for Commercial Real-Estate Debt? It Seems Possible

Treasury Weighs Rules to Forestall CMBS Defaults

BY LINGLING WEI AND KRIS HUDSON

With the commercial real-estate industry bracing itself for the onslaught of hundreds of billions of dollars in maturing loans, the Treasury is considering issuing rules that will make it easier for property developers and investors and their loan servicers to restructure debt, according to people familiar with the matter.

Tax rules make it difficult for borrowers who are current on their payments to hold restructuring talks with the servicers of commercial mortgages that were packaged and sold as bonds. This lack of flexibility was one of the reasons cited by the management of mall giant **General Growth Properties** Inc. for its Chapter 11 bankruptcy filing in April.

At present, developers and investors complain that only those who are delinquent can talk to servicers of these bonds, named commercial-mortgage-backed securities, or CMBS. But now the Treasury is considering issuing guidance that would allow servicers to start talking about ways to avoid defaults and foreclosures sooner, possibly at least two years ahead of the maturity date of a loan, these people said. The Treasury guidance, which could be released within weeks, would essentially enable loan-modification talks to take place without triggering tax consequences, these people say.

"This issue is critical. We are hopeful that Treasury acts soon, as each day the commercial-real-estate markets deteriorate further," said Jeffrey DeBoer, chief executive of the Real Estate Roundtable, a lobbying body for the commercial-real-estate industry.

A Treasury spokeswoman declined to comment.

The possible move by the Treasury reflects the deep concern in government and industry circles of the problems looming in the $6.5 trillion market for commercial real estate. Just as the U.S. economy is struggling to regain its footing, defaults are mounting because of credit-market turmoil, along with declining property cash flows and plunging property values.

At a hearing Tuesday on the Obama administration's bank-rescue program, some lawmakers warned that commercial real estate could deal a punishing blow to lenders and the economy. "I am very concerned about the ticking time bomb we face," said congressional Joint Economic Committee Chairwoman Carolyn Maloney (D., N.Y.).

Of particular concern is $154.5 billion of CMBS loans coming due between now and 2012. About two-thirds of that likely won't qualify for refinancing, according to a recent report by Deutsche Bank. The bank projected that the default rates on the $700 billion of outstanding CMBS eventually could hit at least 30%, and loss rates, which take into account the amounts recovered by lenders, could reach as much as 13%, more than the peak seen during the commercial-real-estate collapse of the early 1990s.

CMBS delinquency rates have more than tripled in just six months, to 2.7% in May, their highest point in a decade. The likely spike in commercial-mortgage defaults and foreclosures could cost the nation's already fragile financial system hundreds of billions of dollars in losses.

But property owners and investors hoping to restructure troubled mortgages are hearing a tough message from CMBS servicers: We can't talk to you unless you first fall behind on payments. This is because when CMBS offerings are created, the underlying mortgages are le-

gally held by tax-free trusts. The trusts can be forced to pay taxes if the underlying loans are modified before they become delinquent, according to current CMBS rules.

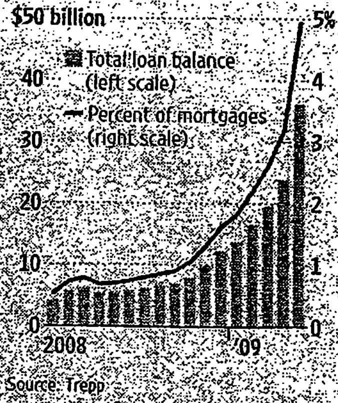
"It can be frustrating," says Monty Bennett, chief executive of **Ashford Hospitality Trust** Inc. The Dallas-based real-estate investment trust that owns 102 upscale hotels has tried to start negotiations with servicers for extensions of payment deadlines for CMBS loans coming due. They have had little success. "You're trying to be proactive and get a plan together to address [a loan maturity], but you can't get someone to talk to you."

Sunstone Hotel Investors Inc., a REIT that owns 43 hotel properties, ended up taking drastic action this month to end a negotiating stalemate with a CMBS loan servicer. Unable to get the servicer to agree to lower payments to reflect the deteriorating cash flow of the 258-room W San Diego hotel, Sunstone skipped its June 1 payment on the hotel's $65 million mortgage. Thus, Sunstone effectively invited the servicer, Centerline Servicing Inc., to foreclose on the W San Diego, which Sunstone estimates is worth less than its mortgage.

Sunstone executives say the complicated structure of CMBS deals makes it difficult for borrowers to get a servicer to discuss a loan modification in the first place. In many cases, the only way to force the servicer to come to the table is to allow the loan to go into default.

"What makes the system great is also what makes it weak," said Sunstone President and Chief Executive Arthur Buser. "It's systemized, heavily documented, heavily structured with a lot of rules that allow loans to be cut up and sold. That means there cannot be a high degree of variability and audible calls on what can be done."

—Judith Burns contributed to this article.



Shoppers walk outside General Growth Properties' Faneuil Hall Marketplace in Boston. The mall operator, now in bankruptcy protection, said a lack of flexibility with mortgage financing contributed to its troubles.

EXHIBIT C

FILED UNDER SEAL