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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	
General Growth Properties, Inc., et al.	)	Case No. 09-11977 (ALG)
	)	
Debtors.	)	Jointly Administered
	)	

DEBTORS' MEMORANDUM OF LAW IN OPPOSITION TO THE MOTIONS OF METROPOLITAN LIFE INSURANCE COMPANY AND FRM FUNDING COMPANY, INC. TO DISMISS THE CASES OF CERTAIN DEBTORS AND DEBTORS IN POSSESSION

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INTRODUCTION

MetLife asserts, and FRM asserted,[1] the same principal argument as ING and Helios – that because certain GGP subsidiaries ("Subsidiary Debtors") are operationally sound with strong cash flows, the economic realities of the credit markets and the Subsidiary Debtors' duty to maximize value should be ignored. The Subsidiary Debtors filed for chapter 11 protection for the same overall reasons that the ING and Helios debtors filed: The collapse of the commercial real estate ("CRE") financing markets and the advantages of participating now in an integrated, consolidated restructuring of project entities, like the Subsidiary Debtors. As with the ING and Helios debtors, the entity-specific considerations for the Subsidiary Debtors' filings included loans that had cross-defaulted; loan maturities that did not give the Subsidiary Debtors a reasonable prospect of refinancing before maturity; and certain other loan characteristics that further exacerbated the need for a restructuring. (*See* Docket No. 711, Debtors' Memorandum Of Law In Opposition To The Motions Of ING Clarion Capital Loan Services LLC And Wells Fargo Bank, N.A., As Trustee, *et al.*, To Dismiss The Cases Of Certain Debtors And Debtors In Possession ("Opening Mem.")) There exists no basis in law or in fact for overriding these reasonable business judgments made by the Subsidiary Debtors on the advice of sophisticated financial, restructuring, and legal experts.

In this Circuit, dismissal for lack of good faith should be granted "sparingly, with great caution," *In re G.S. Distrib., Inc.,* 331 B.R. 552, 566 (Bankr. S.D.N.Y. 2005) (Gropper, J.) (internal quotation marks omitted), and only "if **both** [1] objective futility of the reorganization process **and** [2] subjective bad faith in filing the petition are found." *In re Kingston Square*

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[1] After reviewing the organizational documents for Fox River Shopping Center, LLC, the project entity whose bankruptcy filing FRM sought to dismiss, FRM agreed to dismiss its motion with prejudice. Nevertheless, this memorandum addresses certain arguments that FRM raised with the Court to complete the record.

Assocs., 214 B.R. 713, 725 (Bankr. S.D.N.Y. 1997) (emphasis in original). A bankruptcy petition should not be dismissed unless "it is clear that on the filing date there was no reasonable likelihood that the debtor intended to reorganize and no reasonable probability that it would eventually emerge from bankruptcy proceedings." *Baker v. Latham Sparrowbush Assocs.* (*In re Cohoes Indus. Terminal, Inc.*), 931 F.2d 222, 227 (2d Cir. 1991). In the Second Circuit, this standard applies to assertions that a bankruptcy was filed in bad faith because it was "premature." *Cohoes* itself addressed whether the debtor in that case was facing sufficient financial difficulty to seek protection under chapter 11. *Id.* at 228. Similarly, this Court in *In re Schur Management Co.*, 323 B.R. 123 (Bankr. S.D.N.Y. 2005) (Gropper, J.) considered whether a petition was "premature" and held, citing to *Cohoes*, that the "issue is whether there is a valid 'intent to reorganize' or 'reorganizational purpose' to the filing." *Id.* at 128. Intent to reorganize is the test for subjective good faith, and having a reorganizational purpose is part of the objective prong under the *Cohoes* standard. *Id. Schur* thus followed the standard in *Cohoes* and *Kingston*.

Besides the same assertions of bad faith that ING and Helios make, MetLife and FRM also make a handful of additional arguments, none of which has merit. *First*, in its now dismissed motion, FRM claimed that Fox River, an LLC, did not give proper notice to Corporation Service Company ("CSC")[2] when it removed the prior independent managers and that this somehow deprives Fox River of the corporate authority to file for chapter 11. Fox River's operating agreement controls how the independent managers can be replaced, and nothing in that agreement requires notice to CSC or anyone else before the independent managers can be removed. Further, the contract on which FRM relied explicitly states:

[2] The parties to the contract are Fox River and Entity Services (SPV), LLC, which is an affiliate of CSC. For simplicity, this memorandum includes Entity Services (SPV), LLC when referring to "CSC."

"*Nothing contained herein or omitted herefrom shall prevent the shareholder(s) of the Company from removing an Independent Manager with immediate effect at any time for any reason*." (Ex. 65,[3] Independent Manager's Contract ¶ 7 at p. 2 (emphasis added)) The two CSC-appointed independent managers were removed only after a search had been completed for new managers who were knowledgeable about the capital markets and restructuring issues, could commit significant time to the process, and would bring critical, independent thinking to the comprehensive restructuring challenges facing these project entities. The undisputed facts show that Fox River and its member adhered to the Operating Agreement in replacing the CSC-supplied independent managers.

Second, MetLife speculates that when the time comes for plan confirmation, there *might* not be any other impaired creditors and it *might* vote against a plan. These assertions are premature on their face. The Subsidiary Debtors have not yet proposed any plan of reorganization, and thus whether any plan will be approved by creditors is sheer speculation. In fact, if creditors could get a bankruptcy dismissed at the start of the case simply by claiming they may not agree to a plan of reorganization, as MetLife claims, then chapter 11 would be rendered useless as creditors can always assert they will not agree to any impairment of their claims. Courts do not dismiss bankruptcy cases based on the assertions of creditors about whether they will or will not vote for a plan of reorganization in the future. The Debtors are committed to working on a consensual plan of reorganization, and it is far too soon to predict what will happen over the course of these cases or who will vote for the plan when one is proposed.

[3] Exhibits 1-64 were filed with the Opening Memorandum.

FACTUAL BACKGROUND

There is no dispute that the GGP Group possesses vast experience in financing and refinancing mortgage debt. Nor can there be any dispute that, since the fall of 2008, the GGP Group has been unsuccessful in its efforts to refinance maturing loans. (*See* Opening Mem. at 8-10, 16-19) Likewise, the crash of the CRE credit markets is indisputable. (*Id.* at 10-16) This was the context in which the decisions to file were evaluated and made.

The boards that voted to file the ING and Helios debtors overlap with the Subsidiary Debtors' decisionmakers. Indeed, the Rouse Providence LLC ("Rouse Providence") board has the same management and independent members as the ING and Helios debtors, and followed the same process. (*Id.* at 20-24)

The remaining Subsidiary Debtors[4] do not have independent managers or directors, and thus followed a process that is customary for subsidiaries that are part of a common business enterprise. These Subsidiary Debtors made their decision to file for bankruptcy through written consents signed by Adam Metz, GGP's CEO, Thomas Nolan, GGP's President and COO, and Robert Michaels, GGP's Vice Chairman, acting as officers or partners of the Subsidiary Debtors' members and/or partners, or as managers of the Subsidiary Debtors themselves. Those decisions were substantively the same as for the project entities with independent board members. In particular, these decisionmakers considered and ultimately approved chapter 11 filings because, among other things, these entities satisfied one or more of the *same* filing factors as were applied by the project entities with independent directors. Those factors included, but were not limited

[4] These Subsidiary Debtors authorized to file for bankruptcy by written consent are White Marsh Mall, LLC; White Marsh Mall Associates; White Marsh General Partnership; White Marsh Phase II Associates; Providence Place Holdings, LLC; 10000 West Charleston Boulevard, LLC; 1120/1140 Town Center Drive, LLC; 9901-9921 Covington Cross, LLC; and Howard Hughes Properties, Limited Partnership.

to, whether the subsidiary (i) was in default or would cross-default when the parent entities filed for bankruptcy; (ii) had a loan maturing within the next few years; and (iii) had other economic circumstances that would make refinancing difficult. (Opening Mem. at 22-24)

Further, in deciding whether each of the Subsidiary Debtors should file for bankruptcy, Metz, Nolan and Michaels each drew on their extensive knowledge about the GGP Group, its project entities, and restructuring considerations, from their positions as top management for the GGP Group and their participation in countless discussions concerning restructuring planning and alternatives. All three also participated in board meetings of GGP, Inc. at which all aspects of the restructuring were discussed, including, in particular, the filing factors that the advisors had recommended. And, of course, Nolan and Michaels are board members of the project entities that participated in the extensive decisionmaking process for boards with independent directors who were less familiar with GGP, described at Opening Memorandum at 20-24 ("Independent Director Process"). All three decisionmakers were advised all along by the same group of experts: Miller Buckfire, AlixPartners, Kirkland & Ellis LLP, and Weil Gotshal & Manges LLP. The substance of the decisions to file the Subsidiary Debtors was therefore essentially the same as for all other project entities.

The nine Subsidiary Debtors relate to the following properties – Providence Place, Summerlin Properties, and White Marsh Mall:

Project Entity	Owner	Total Debt (12/31/08)	Maturity Date	Filing Factors Included:
Providence Place	Rouse Providence, LLC (mortgage borrower)	$273,600,000 (senior loan)	March 11, 2010	Maturity, other financial considerations
	Providence Place Holdings, LLC (mezzanine borrower)	104,320,207.38 (mezzanine loan)		Cross-default from Rouse Providence, LLC

Project Entity	Owner	Total Debt (12/31/08)	Maturity Date	Filing Factors Included:
Summerlin Properties	10000 West Charleston Boulevard, LLC (mortgage borrower)	$24,000,000	March 1, 2011	Maturity
	1120/1140 Town Center Drive, LLC (owner of property)			
	9901-9921 Covington Cross, LLC (owner of property)			
	Howard Hughes Properties, Limited Partnership (mortgage borrower and holding co.)			
White Marsh Mall	White Marsh Mall, LLC (mortgage borrower)	$187,000,000	September 4, 2010	Maturity; other financial considerations
	White Marsh Mall Associates (co-owner)			
	White Marsh General Partnership (co-owner)			
	White Marsh Phase II Associates (co-owner)			

Just as there is no basis to challenge the good faith of the Independent Director Process, there is no basis for challenging the filing of these Subsidiary Debtors. These filings involve overlapping decisionmakers as well as the same filing factors and other considerations that led to filing for bankruptcy as the only reasonable choice for the Subsidiary Debtors.

ARGUMENT

I. THE SUBSIDIARY DEBTORS FILED IN GOOD FAITH UNDER THE TOTALITY OF THE ECONOMIC CIRCUMSTANCES.

The standard for dismissal in this Circuit requires a movant to establish "**both** objective futility of the reorganization process **and** subjective bad faith in filing the petition." *In re Kingston Square Assocs.*, 214 B.R. 713, 725 (Bankr. S.D.N.Y. 1997) (emphasis in original); *see In re RCM Global Long Term Capital Appreciation Fund, Ltd.*, 200 B.R. 514, 520

(Bankr. S.D.N.Y. 1996) (same). A bankruptcy petition should not be dismissed unless "it is clear that on the filing date" that (1) "there was no reasonable likelihood that the debtor intended to reorganize," and (2) there was "no reasonable probability that it would eventually emerge from bankruptcy proceedings." *Cohoes*, 931 F.2d at 227.

Notably, *Cohoes* applied this standard in determining whether a debtor faced sufficient financial difficulty to warrant chapter 11 protection. After announcing the two-pronged standard set forth above, *Cohoes* held that "[a]lthough a debtor need not be *in extremis* in order to file such a petition, it must, at least, face such financial difficulty that, if it did not file at that time, it could anticipate the need to file in the future. In this case, it is clear that Cohoes was encountering financial stress at the time it filed its petition." *Id.* at 228.

Importantly, nothing in *In re Schur Management Co.*, 323 B.R. 123 (Bankr. S.D.N.Y. 2005) purports to apply a different standard than in *Cohoes*. *Schur* cites to *Cohoes* and explicitly acknowledges that it is one of "the leading cases on good faith in a Chapter 11 filing" in the Second Circuit. *Id.* at 126 & n.3. Moreover, again citing to *Cohoes*, *Schur* held that the "issue is whether there is a valid 'intent to reorganize' or 'reorganizational purpose' to the filing." *Id.* at 128. *Schur's* use of "intent to reorganize" is the test for subjective good faith under *Cohoes* and *Kingston*, and having a "reorganizational purpose" is part of the objective prong under the standard in *Cohoes* and *Kingston*. *Id.* Thus, in determining whether a bankruptcy petition should be dismissed in bad faith for being "premature," *Schur* followed the same standard as *Cohoes* and *Kingston*.

Neither FRM nor MetLife attempt to show that the Subsidiary Debtors' reorganization is objectively futile;[5] indeed, the operational soundness and strong cash flows that MetLife and

[5] To the extent MetLife's argument regarding whether a plan can be confirmed in the future can be considered an argument for objective futility, it is addressed in Section III below.

FRM rely on support a conclusion that there is a "reasonable probability" the Subsidiary Debtors will be able to successfully reorganize. (Opening Mem. at 30-34) Moreover, the CRE credit crisis and other economic realities plaguing the market generally and the specifics of the Debtors' loans in particular, demonstrate that each of the Subsidiary Debtors "face[d] such financial difficulty that, if it did not file at that time, it could anticipate the need to file in the future." *Cohoes*, 931 F.2d at 228. (Opening Mem. at 34-36) Realities such as impending mortgage maturities that could not be refinanced and other economic circumstances establish that the Subsidiary Debtors filed in subjective good faith. (*Id.* at 20-24, 38-40) FRM and MetLife also rely on the same "litigation tactics" cases as ING and Helios – cases that are distinguishable for the reasons stated in Opening Memorandum at 36-37.

FRM and MetLife's different angles on these arguments are equally unavailing. *First*, MetLife argues, for example, that chapter 11 cannot be used as a "sword" to gain a tactical advantage in negotiations with secured lenders. (MetLife Mot.[6] at 10) To begin with, the Subsidiary Debtors are not seeking to use chapter 11 as a "sword" but rather as a "shield" that protects them while they restructure their debt. Moreover, neither of the cases MetLife cites has anything to do with negotiations among secured lenders and debtors, and does not address debtors facing daunting and largely unprecedented market-wide economic circumstances like those present here. *See Shell Oil Co. v. Waldron (In re Waldron)*, 785 F.2d 936, 940-41 (11th Cir. 1986) (dismissing chapter 13 case where the debtors had no debts whatsoever, were "financially secure," and had filed for the sole purpose of rejecting an option agreement); *Braniff Int'l Airlines, Inc. v. Aeron Aviation Res. Holdings II, Inc. (In re Braniff Int'l Airlines,*

[6] MetLife filed three separate motions, which apply to separate Subsidiary Debtors but all make similar arguments. For simplicity, cites to "MetLife Mot." will refer to MetLife's motion to dismiss against the "Hughes-Summerlin Debtors," Docket No. 630.

Inc.), 159 B.R. 117, 125 (E.D.N.Y. 1993) (ruling on whether the reference to the bankruptcy court could be withdrawn in a lease agreement dispute).

Indeed, as the court in *Shell* reaffirmed, "the intended purpose of Chapter 11 [is] to facilitate the adjustment of debts through reorganization," *Shell*, 785 F.2d at 940 – precisely what the Subsidiary Debtors seek to do here. *See also N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) ("the restructuring of debtor-creditor relations [] is at the core of the federal bankruptcy power."). Unlike in *Shell*, where the debtors had literally zero debt, the Subsidiary Debtors here each have tens or hundreds of millions of mortgage debt that they have no reasonable prospect of repaying. The mere fact that these creditors may oppose the filing is not a basis for dismissal; to the contrary, the Second Circuit has expressly recognized that filing for bankruptcy may frustrate secured creditors. (Opening Mem. at 40-41) The Debtors must restructure this debt to return to financial viability, and they plan to do so through a consensual plan of reorganization or, if necessary, by using the provisions of the Bankruptcy Code to adjust their debts on a non-consensual basis. (Metz. Decl. ¶ 25) Attempting to negotiate a consensual plan with secured debtors clearly is an appropriate purpose for seeking relief under the Bankruptcy Code.

Second, MetLife claims that whether the CRE markets will remain frozen over the next few years is "sheer speculation" (MetLife Mot. at 3, 13) – but provides no evidence or expert testimony to rebut the conclusions reached by Messers. Metz, Nolan, and Michaels based on advice from the Debtors' expert financial and restructuring advisors, Miller Buckfire and AlixPartners. ING and Helios likewise agree that the financing markets have collapsed and the market for CMBS has disappeared. (Ex. 5, 6/5/09 Deposition of Steven Altman, ING's 30(b)(6) witness ("Altman Dep."), at 32:9-11, 143:12-25; Ex. 6, 6/5/09 Deposition of Allen Hanson,

Helios' 30(b)(6) deponent ("Hanson Dep."), at 140:25-141:3, 144:14-21, 150:5-8, 150:13-18) Metlife does not dispute any of the facts relating to the current economic crisis facing the Debtors. (Opening Mem. at 8-20) And, notably, MetLife does not refute the fact that loan originations for commercial and multifamily properties by life insurance companies such as MetLife fell by *73%* from the third quarter to the fourth quarter of 2008, and then fell *even further* – by another 7% – in the first quarter of 2009.[7] MetLife's own origination of such loans dropped by 40% from 2007 to 2008, and the head of its commercial mortgage operations has been reluctant to project volumes for 2009.[8]

Like ING and Helios, MetLife takes the position that, instead of proactively addressing their maturity issues to maintain their economic soundness, the Debtors should simply sit and wait while hoping that the unprecedented credit crisis sufficiently reverses itself to allow the loans to be refinanced before they mature. (MetLife Mot. at 12-13) Second Circuit law, however, does not require a debtor to sit idly by as economic conditions crumble around it, until it reaches the precipice of insolvency. *See Cohoes*, 931 F.2d at 228. Nor would such inaction be prudent or consistent with the debtor's fiduciary duty to maximize the enterprise value for all stakeholders. Given that no one – including the Movants – has presented any viable near-term solution to the CRE credit crisis, the anticipated result of waiting would have been seriatim defaults by the Subsidiary Debtors and other project entities. (Opening Mem. at 39) The Subsidiary Debtors appropriately made the decision that would best maximize stakeholder value by participating in a comprehensive restructuring that could address their own debts.

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[7] Ex. 41, Mortgage Bankers Association, *Quarterly Survey of Commercial / Multifamily Mortgage Bankers Originations: Fourth Quarter 2008* (Jan. 2009); Ex. 42, Mortgage Bankers Association, *Quarterly Survey of Commercial / Multifamily Mortgage Bankers Originations: First Quarter 2009* (Apr. 2009).

[8] Ex. 66, *Pru Tops MetLife as Insurer Lending Plunges*, Commercial Mortgage Alert, Feb. 6, 2009.

Third, FRM cited to the supposedly "bankruptcy-remote" nature of Fox River – arguments that have already been addressed in Opening Memorandum at 42-43. The loan documents do not include any legal opinion regarding whether Fox River was bankruptcy remote or unlikely to file for bankruptcy. To the contrary, the legal opinion that the lenders received at closing of the loan assumes that a bankruptcy filing could occur: The legal opinion assesses whether substantive consolidation would occur if Fox River filed for bankruptcy. In particular, the legal opinion letter the lender received concerned "whether ... should GGPLP become a debtor in a case under the Bankruptcy Code, the bankruptcy court ... would *substantively consolidate* the assets and liabilities of [Fox River] with the assets and liabilities of GGPLP ... ." (Ex. 67, 12/15/07 Loan Agreement between Fox River and U.S. Bank National Association ("Fox River Loan Agreement"), Schedule VI at 1 (emphasis added))[9] In other words, the legal opinion does not support the notion that Debtors were "not supposed" to file for bankruptcy protection.

In addition, the loan agreement expressly contemplates that Fox River may file a bankruptcy case, providing that such a filing is an event of default. (Ex. 67, Fox River Loan Agreement at 90-91) Similarly, Fox River's operating agreement contemplates that the entity may file for bankruptcy, requiring the unanimous written consent of its managers to "file or consent to filing by or against the Company, as debtor, of any bankruptcy … ." (Ex. 68, Fox River Operating Agreement at 23-24)

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[9] Even as to substantive consolidation, the letter states that attempting to predict a court's decision "is particularly unpredictable because of the discretionary and equitable nature of the remedy and the potential impact of future facts, circumstances and case law." (Ex. 67, Fox River Loan Agreement, Schedule VI at 13). And in any event, the mere commencement of a chapter 11 case does not effect substantive consolidation.

II. FOX RIVER FILED FOR BANKRUPTCY WITH FULL CORPORATE AUTHORITY.

FRM contended that the replacement of the two independent managers was improper because Fox River did not provide notice under its contract with CSC. This "corporate authority" argument fails for two independent reasons: *First*, the contract between Fox River and the CSC affiliate provides that the notice provisions in no way prevent the company from removing the independent managers at any time for any reason. *Second*, Fox River's Operating Agreement (rather than any independent contract) determines whether a manager is appropriately replaced, and Fox River fully complied with its Operating Agreement in selecting two new independent managers.[10]

A. Under The Plain Language Of The Independent Managers' Contract, Notice Is Irrelevant To Whether Managers Properly Are Replaced.

FRM's argument was premised on Fox River not giving appropriate notice to CSC under the terms of the Independent Managers' Contract ("IMC") when Fox River replaced the two independent managers supplied by CSC. (FRM Mot. at 7-8 ("FRM further believes that the termination was ineffective because insufficient notice was given"); *see also id.* at 2-3) To begin with, any alleged breach of the IMC is irrelevant. Fox River is a LLC and its powers and duties, including replacement of independent managers, is defined by its limited liability company agreement, which is the November 15, 2007 Operating Agreement of Fox River ("Operating

[10] Moreover, as a matter of bankruptcy law, creditors generally lack standing to challenge a bankruptcy petition as having been filed without the requisite corporate authority. *See, e.g., In re Gucci*, 174 B.R. 401, 412 (Bankr. S.D.N.Y. 1994) ("Generally, a creditor may not challenge a corporate filing on the ground that it was not properly authorized."); *In re Audubon Quartet, Inc.*, 275 B.R. 783, 788 (Bankr. W.D. Va. 2002) ("courts do not generally favor a creditor's motion to dismiss a corporate bankruptcy due to improper authorization by the directors"); *In re John Hicks Chrysler-Plymouth, Inc.*, 152 B.R. 503, 510 (Bankr. E.D. Tenn. 1992) ("courts do not favor a creditor's motion to dismiss a corporate bankruptcy on the ground that the filing was not properly authorized"); *In re Prof'l Success Seminars Int'l, Inc.*, 18 B.R. 75, 76 (Bankr. S.D. Fla. 1982) ("Creditors may not move to vacate a voluntary order for relief because of some irregularity in the meeting authorizing the filing of the petition, or on the ground that it was not authorized by the stockholders or corporate directors").

Agreement"). 6 Del. C. § 18-101(7); 6 Del. C. § 18-101(10); 6 Del. C. § 18-401 Nothing in the Operating Agreement requires Fox River to provide notice to its independent managers before removing them. (Ex. 68, Operating Agreement) Instead, the Operating Agreement provides that "[a]ny Manager (including without limitation any Person serving as Independent Manager) . . . may be removed, with or without cause, by the affirmative vote of the Members . . . ." (*Id.* ¶ 5.1(j) at 10)

Because the Fox River governance documents did not limit the independent directors' removal, there is no basis for challenging the board's composition or bankruptcy vote. As explained below, Fox River and its member followed the Operating Agreement. Thus, any alleged breach of the IMC could not have any effect on Fox River's corporate authority.

Moreover, by the IMC's plain language, whether Fox River provided notice is irrelevant to its authority to remove the independent managers. The section of the IMC covering notice is clear that the notice provision concerns only how much money Fox River must pay CSC, not whether Fox River can remove and replace the independent managers: "[W]ith or without cause, the Company and Entity Services may each terminate this Agreement as any time upon thirty (30) days written notice, and the Company shall be obligated to pay to Entity Services the compensation and expenses due up to the date of the termination." (Ex. 65, IMC ¶ 7 at p. 2) That same section states that "*Nothing contained herein or omitted herefrom shall prevent the shareholder(s) of the Company from removing an Independent Manager with immediate effect at any time for any reason.*" (*Id.*) Thus, the plain terms of the IMC provide that, while any alleged late notice might affect the amount of money Fox River owes CSC, it cannot affect Fox River's corporate authority.

B. Fox River's Members Properly Replaced The Independent Managers Under The Terms Of The Operating Agreement.

The replacement of the CSC-supplied directors with Mr. Cremens and Mr. Howard, for the reasons described in the Opening Memorandum at 20-22, complied with the provisions of Fox River's Operating Agreement, as well the organizational documents of other project entities such as those serviced by ING and Helios. Section 5.1(j) of the Operating Agreement provides that "[a]ny Manager (including without limitation any Person serving as Independent Manager) . . . may be removed, with or without cause, by the affirmative vote of the Members in accordance with Article IV (but the provisions . . . shall not negate any obligation under Article XIII hereof to replace any removed or resigning Independent Managers prior to the effectiveness of such removal or resignation.)" (Ex. 68, Operating Agreement at ¶ 5.1(j) at p. 10)

Article IV governs the powers and procedures for actions by Fox River's members. As of March 4, 2009, Fox River's sole member was GGP Limited Partnership ("GGPLP"). (Ex. 69, Consent) Section 4.8 authorizes that "[a]ny action required or permitted to be taken at a meeting of the Members may be taken without a meeting and without a vote if a consent in writing, setting forth the action so taken, shall be signed by" members with a sufficient number of shares. (Ex. 68, Operating Agreement ¶ 4.8 at p. 7) GGPLP as the sole member held all the shares and thus had the power to remove and replace the managers by written consent. On March 4, Mr. Metz, acting on behalf of GGPLP, signed a written consent removing Ms. Hay and Ms. Peoples as independent managers and replacing them with Mr. Cremens and Mr. Howard. (Ex. 69, Consent) Thus, Fox River complied with Article IV. Mr. Cremens and Mr. Howard likewise accepted their appointments in writing and executed counterparts to the Operating Agreement,

satisfying Article XIII. Therefore, Fox River's decision to file for bankruptcy was made with full corporate authority.

III. METLIFE'S SPECULATION ABOUT WHETHER A PLAN CAN BE CONFIRMED IS HIGHLY PREMATURE.

MetLife asserts that the Responding Debtors' chapter 11 cases should be dismissed because the Responding Debtors cannot successfully confirm a plan of reorganization over MetLife's dissent. This argument is incorrect as well as premature, raising confirmation issues just two months after the Petition Date, and before each of the Subsidiary Debtors has even filed a proposed plan of reorganization. Put simply, there "is no requirement in the Bankruptcy Code that the [debtor] prove it can confirm a plan in order to file a petition." *In re Century / ML Cable Venture*, 294 B.R. 9, 36 (Bankr. S.D.N.Y. 2003)

MetLife seeks to circumvent the chapter 11 process by raising plan confirmation objections as a basis for the Court to grant their Motions to Dismiss. Dismissal at this early stage, however, contravenes the well-settled principle that chapter 11 is meant to provide a breathing spell for debtors to reorganize their businesses through a plan of reorganization for the benefit of *all* stakeholders. *See In re Ngan Gung Rest.*, 254 B.R. 566, 571 (Bankr S.D.N.Y. 2000) ("A clear purpose of Chapter 11 is to benefit all parties, including the debtor and its creditors, by providing a breathing space to enable a debtor to reorganize … [in which] the debtor proposes a plan … to maximize value for the general benefit of all creditors, thus avoiding a mad scramble for assets.") (internal citations omitted). For this reason, this court has consistently denied motions to dismiss in the early stages of chapter 11 cases where no plan has been filed. *See*, *e.g.*, *In re RCM Global Long Term Capital Appreciation Fund, Ltd.*, 200 B.R. 514, 524 (Bankr. S.D.N.Y. 1996) (denying motion to dismiss a chapter 11 case on grounds that the debtor would be unable to propose a confirmable plan of reorganization, where debtor had

not yet proposed a plan of reorganization); *In re Lizeric Realty Corp.*, 188 B.R. 499, 503-04 (Bankr. S.D.N.Y. 1995) (denying motion to dismiss a chapter 11 case where the debtor had yet to propose any plan, let alone a plan that intended to cram down the claims of the moving creditor); *In re Hempstead Realty Assocs.*, 38 B.R. 287, 290 (Bankr. S.D.N.Y. 1984) (stating that "it is premature to apply at this stage [nine months into the case] a confirmation standard under 11 U.S.C. § 1129 in the context of a motion under 11 U.S.C. § 1112(b) to dismiss or convert this case when no plan has been filed and when various possibilities [for a plan] might occur between now and any proposed confirmation."). The Subsidiary Debtors' cases should be no exception.

Similarly, each of the cases cited by MetLife for the proposition that "Courts have dismissed chapter 11 cases based on the unlikelihood of the debtor being able to confirm a plan over the objection of a creditor," actually supports denial of MetLife's Motions to Dismiss as premature. (*E.g.*, MetLife Mot. at 15) In *In re 266 Washington Assocs.*, 141 B.R. 275, 288 (Bankr. E.D.N.Y. 1992), for example, the court dismissed the debtor's chapter 11 case only after the debtor filed both a plan of reorganization and a disclosure statement (as well as an amended plan), and only after the court determined that more than sufficient time had elapsed without the opposing parties reaching an agreement that would be essential to achieving confirmation of a plan. Likewise, in *In re 499 W. Warren St. Assocs. Ltd. P'ship*, 151 B.R. 307, 309 (Bankr. N.D.N.Y. 1992), the debtor's chapter 11 case was dismissed only after the debtor filed a plan and disclosure statement, and had completed the voting and solicitation process. Only after voting on the plan was completed – and the debtor did not receive the requisite approvals needed for confirmation – did the court make a determination that the debtor had no prospect for an effective reorganization, and thereby dismissed the debtor's case. *Id*. at 314; s*ee also In re Lumbar Exch. Ltd. P'ship*, 125 B.R. 1000, 1002 (Bankr. D. Minn. 1991) (dismissing the

debtor's chapter 11 case only after the debtor had filed a proposed plan of reorganization, and the court determined that such plan could not be confirmed).

Here, unlike in the cases MetLife cites, it is too early to know whether creditors will vote for the Subsidiary Debtors' plans of reorganization. Accordingly, the arguments raised by MetLife relating to the confirmation of a chapter 11 plan should not be addressed in connection with a motion to dismiss – especially at such an early stage in these chapter 11 cases – and certainly not before each of the Subsidiary Debtors has had a meaningful chance to file a plan of reorganization.

CONCLUSION

The Movants have no basis for seeking dismissal of the bankruptcy petitions of the Subsidiary Debtors. Like ING and Helios, MetLife and FRM seek to impose a requirement that debtors face imminent collapse before seeking chapter 11 protection. But no such requirement appears in the actual text of the Bankruptcy Code. Congress did not enact a bright-line test for determining when a debtor could file, but rather left the decision to governing bodies in the exercise of their business judgment. None of the secured lenders provide a basis for challenging that judgment, which was made based on expert advice and was intended to maximize value for all stakeholders. The determinations to file for bankruptcy protection and pursue an orderly process for the restructuring of debts clearly meet all applicable standards for good faith. The motions to dismiss should be denied.

Date: June 15, 2009

Respectfully submitted,

/s/ James H.M. Sprayregen

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Co-Counsel to the Jointly Represented Debtors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	
General Growth Properties, Inc., et al.	)	Case No. 09-11977 (ALG)
	)	
Debtors.	)	Jointly Administered
	)	

APPENDIX OF EXHIBITS IN SUPPORT OF DEBTORS' MEMORANDUM OF LAW IN OPPOSITION TO THE MOTIONS OF METROPOLITAN LIFE INSURANCE COMPANY AND FRM FUNDING COMPANY, INC. TO DISMISS THE CASES OF CERTAIN DEBTORS AND DEBTORS IN POSSESSION

VOLUME I OF I

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Exhibit 65

INDEPENDENT MANAGER'S CONTRACT

THIS AGREEMENT (the "Agreement") is made as of the 15th day of November 2007 and is by and between Fox River Shopping Center, LLC, a Delaware limited liability company (hereinafter referred to as "Company"), and Entity Services (SPV), LLC (hereinafter referred to as "Entity Services").

BACKGROUND

Company desires to retain for the duties of Independent Manager, Entity Services to provide the services of two (2) "Independent Managers" and Entity Services desires to provide the personnel to perform the duties required of such position in accordance with the terms and conditions of this Agreement.

AGREEMENT

In consideration for the above recited promises and the mutual promises contained herein, the adequacy and sufficiency of which are hereby acknowledged, Company and Entity Services hereby agree as follows:

1. **DUTIES.** The Company hereby requires that the Independent Managers be available to perform such duties as Independent Manager as may be determined and assigned by the Board of Managers of the Company and its Operating Agreement. Entity Services agrees to identify and refer up to two (2) individuals to serve as Independent Managers of the Company in accordance with the terms of this Agreement. The Independent Managers shall each be an employee of Entity Services or an affiliate and each shall serve on the Company's Board of Managers in his or her individual capacity subject to approval of the Company. In the event an Independent Manager referred by Entity Services is not acceptable to the Company for any reason or is at any time unable to serve on the Board of Managers (including termination of employment with Entity Services), Entity Services will identify and refer a substitute Independent Manager subject to the term and conditions of this Agreement. Independent Manager agrees to devote as much time as is necessary to perform completely the duties as Independent Manager of the Company.

2. **TERM.** Except in the case of early termination, as hereinafter specifically provided, the term of this Agreement shall commence as of *Date Above* and shall continue for an indefinite period.

3. **COMPENSATION.** For all services to be rendered by Independent Manager in any capacity hereunder, the Company agrees to pay Entity Services an annual base fee indicated on Exhibit A. The initial year's payment of November 15, 2007 to March 31, 2008 is due upon execution of this Agreement; thereafter; payment shall be due on or before April 1st of each succeeding year. Such fee may be adjusted

from time to time as agreed by the parties. Independent Manager attendance at any meetings outside of Delaware area will be compensated at a mutually agreed upon rate.

4. **EXPENSES.** In addition to the compensation provided in paragraph 3 hereof, the Company will reimburse Entity Services or Independent Manager for pre-approved reasonable business related expenses incurred in good faith in the performance of Entity Services or Independent Manager duties for the Company. Such payments shall be made by the Company upon submission by Entity Services or Independent Manager of a signed statement itemizing the expenses incurred. Such statement shall be accompanied by sufficient documentary matter to support the expenditures.

5. **CONFIDENTIALITY.** The Company and Entity Services each acknowledge that, in order for the intents and purposes of this Agreement to be accomplished, Entity Services shall necessarily be obtaining access to certain confidential information concerning the Company and its affairs, including, but not limited to business methods, information systems, financial data and strategic plans which are unique assets of the Company ("Confidential Information"). Entity Services covenants that neither Entity Services nor any Independent Manager appointed pursuant to this Agreement shall not, either directly or indirectly, in any manner, utilize or disclose to any person, firm, corporation, association or other entity any Confidential Information.

6. **NOTICE OF MATERIAL ADVERSE CHANGE IN FINANCIAL CONDITION OF THE COMPANY.** The Company shall notify Entity Services in writing, at the earliest practicable time, of any material adverse change in the financial condition of the Company.

7. **TERMINATION.** With or without cause, the Company and Entity Services may each terminate this Agreement at any time upon thirty (30) days written notice, and the Company shall be obligated to pay to Entity Services the compensation and expenses due up to the date of the termination. If termination occurs prior to April1st of any year after the first year of this agreement, the Company shall be entitled to receive, upon written request by the Company, a prorated refund of the portion of the base fee that relates to the period after the termination date. Such written request must be submitted within ninety (90) days of the termination date. Nothing contained herein or omitted herefrom shall prevent the shareholder(s) of the Company from removing an Independent Manager with immediate effect at any time for any reason.

8. **INDEMNIFICATION.** The Company shall indemnify, defend and hold harmless Entity Services and Independent Manager appointed pursuant to this Agreement, to the full extent allowed by the law of the State of Delaware, and as provided by, or granted pursuant to, any charter provision, operating agreement provision, agreement (including, without limitation, the Indemnification Agreement executed herewith), vote of members or disinterested managers or otherwise, as to any action taken in Independent Manager's official capacity and as to action in another

capacity other than in connection with the willful misconduct of Entity Services or the Independent Managers while holding such office. Company agrees to provide, at its own expense, Directors and Officers liability insurance covering the Independent Manager in an amount of not less than $15,000,000. Annually and upon the Independent Manager's request, on the anniversary date of this Agreement, Company shall provide Entity Services, on behalf of Independent Manager, with written evidence of such insurance coverage. In lieu of the above-referenced insurance, the Company may elect to provide a guaranty of Company's obligations contained in this Section 8 from an entity having a net worth of not less than $250,000,000.00. Such election shall be made in writing to Entity Services at least 90 days prior to the termination or expiration of Directors and Officers liability insurance coverage.

9. **EFFECT OF WAIVER.** The waiver by either party of the breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach thereof.

10. **NOTICE.** Any and all notices referred to herein shall be sufficient if furnished in writing at the following addresses:

To the Company: Fox River Shopping Center, LLC
110 North Wacker Drive
Chicago, IL 60606
Attention: General Counsel

To Entity Services: Entity Services (SPV), LLC
2711 Centerville Road, 3rd Floor
Wilmington, DE 19808

11. **ARBITRATION.** Any dispute or claim arising out of, or relating to, this Agreement or any breach thereof, with the sole exception of any dispute or claim arising out of, or relating to, indemnification and advancement rights of Entity Services or any Independent Manager, appointed pursuant to this Agreement shall be submitted to binding arbitration which shall take place at Wilmington, Delaware, in accordance with the Rules of the American Arbitration Association; and judgment upon the award rendered may be entered in any court having jurisdiction over the dispute. The agreement to arbitrate herein recited is based upon mutual consideration exchanged between the parties hereto, and is irrevocable. The award of the arbitrators shall be rendered by majority agreement and shall constitute a final resolution of the dispute or claim on questions of both law and fact pertaining to the dispute or claim submitted hereunder.

12. **GOVERNING LAW.** This Agreement shall be interpreted in accordance with, and the rights of the parties hereto shall be determined by, the laws of the State of Delaware without reference to that state's conflicts of laws principles.

13. **ASSIGNMENT.** The rights and benefits of the Company under this Agreement shall be transferable, and all the covenants and agreements hereunder shall inure to the benefit of, and be enforceable by or against, its successors and assigns. The duties and obligations of Entity Services under this Agreement are personal and therefore Entity Services may not assign any right or duty under this Agreement without the prior written consent of the Company.

14. **MISCELLANEOUS.** (a) If any provision of this Agreement shall be declared invalid or illegal, for any reason whatsoever, then, notwithstanding such invalidity or illegality, the remaining terms and provisions of the within Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein; (b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

15. **ARTICLE HEADINGS.** The article headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument.

The parties hereto have caused this Agreement to be executed the 15th day of November, 2007.

FOX RIVER SHOPPING CENTER, LLC

By:_____
Linda J. Wight, Vice President

ENTITY SERVICES (SPV), LLC

By:_____
Suzanne M. Hay, Director

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Linda J. Wight; Vice President

ENTITY SERVICES (SPV), LLC

By:_____
Suzanne M. Hay, Director

Exhibit 66

www.CMAlert.com

Commercial Mortgage ALERT

THE WEEKLY UPDATE ON REAL ESTATE FINANCE AND SECURITIZATION

JUNE 5, 2009

THE GRAPEVINE

Research firms **Markit** and **Realpoint** have teamed up with asset manager **Cairn Capital** to apply for the position of collateral administrator under a **Federal Reserve** program aimed at reviving the commercial MBS market. The collateral administrator would play a key role in determining which CMBS bonds are eligible for financing through the Term Asset-Backed Securities Loan Facility. Other firms said to be seeking the TALF role include **Trepp** and **Helix.**

Registration for the **Commercial Mortgage Securities Association's** annual convention in New York next week stands at 615. With walk-ins, attendance is expected to

See GRAPEVINE on Page 23

End of an Era: Mazzei Is Leaving Barclays

Mike Mazzei, the dean of commercial MBS executives, is moving on.

Mazzei has resigned as co-head of global real estate capital markets at **Barclays,** effective in late August. His fellow co-head and longtime colleague, **Haejin Baek,** will assume sole responsibility for the operation.

The exit of Mazzei, one of the best-known commercial real estate dealmakers on Wall Street, adds an exclamation point to what has been a wholesale turnover of the CMBS industry's senior management and the complete dismantling of many major operations.

While he declined to comment on his resignation, Mazzei isn't expected to remain on the sidelines for long. He's believed to be in the growing camp of executives who think the best opportunities lie outside of large financial institutions, which are likely to be hamstrung by capital constraints and increased regulatory scrutiny in the years ahead.

Some other senior CMBS executives have turned to smaller, more nimble

See MAZZEI on Page 15

Pru Tops MetLife as Insurer Lending Plunges

Prudential dethroned **MetLife** last year as the most-active originator among insurance companies, a victory that came amid a sharp decline in industry activity that has accelerated this year

Originations by the 30 insurance organizations with the largest mortgage portfolios plunged by 35% last year, to $36.7 billion from $56.8 billion in 2007, according to **Commercial Mortgage Alert's** annual survey of lending by life insurers (see ranking on page 18).

And six months into the new year, all signs indicate activity has taken another big drop. "I think 2009 is going to be a record low year," said one senior executive at an insurer.

Pru's volume fell by 20% last year, but the two other top-ranked players — MetLife and **Northwestern Mutual** — posted decreases that were twice as high. That enabled Pru, which ranked second in 2007, to catapult ahead of MetLife, ending

See PRU on Page 18

TALF Filing Backlog Could Hinder Investors

Red tape could slow the expansion of the **Federal Reserve's** TALF program to the commercial MBS sector.

More than 50 buy-side shops have already gotten the green light to leverage purchases of asset-backed securities via the Term Asset-Backed Securities Loan Facility. But market players say the line of additional bondbuyers still awaiting approval is already too long for most dealers to handle on a timely basis.

The logjam could be a problem for CMBS investors that plan to participate in the TALF program, which seeks to jumpstart lending by providing low-cost financing to bondbuyers. TALF will be broadened to include CMBS next month.

The Fed is relying on Wall Street dealers to administer the program. So far, it has authorized about 10 dealers to arrange loans to buyers of TALF-eligible securities. However, the dealers are liable if they fail to properly vet borrowers and make them

See TALF on Page 13

Top Mortgage Originators Among Insurance Companies

Based on commercial and multi-family loans made by the 30 insurers with the largest mortgage portfolios

		Originated 2008 ($Mil.)	Originated 2007 ($Mil.)	Chg. (%)	Holdings 12/31/2008 ($Mil.)	Holdings 12/31/2007 ($Mil.)	Chg. (%)
1	Prudential	$4,663.8	$5,793.1	-19.5	$23,027.1	$20,358.0	13.1
2	MetLife	4,151.9	6,851.9	-39.4	30,658.6	30,308.2	1.2
3	Northwestern Mutual	2,659.5	4,421.6	-39.9	21,677.1	20,832.4	4.1
4	John Hancock	2,432.6	2,959.9	-17.8	10,563.5	9,860.6	7.1
5	New York Life	2,391.0	2,962.1	-19.3	14,018.7	12,703.7	10.4
6	TIAA-CREF	2,322.3	2,140.1	8.5	19,749.0	20,530.4	-3.8
7	Principal Life	1,815.1	2,456.5	-26.1	10,178.9	9,424.6	8.0
8	Pacific Life	1,625.5	1,404.2	15.8	5,697.1	4,662.2	22.2
9	ING	1,606.2	1,813.9	-11.5	9,858.2	9,589.2	2.8
10	MassMutual	1,549.3	2,546.2	-39.2	10,109.5	9,633.2	4.9
11	Standard Insurance	1,502.5	1,342.0	12.0	4,065.5	3,642.0	11.6
12	Jackson National	1,310.9	1,031.6	27.1	6,392.5	5,489.0	16.5
13	Thrivent Financial for Lutherans	858.6	1,008.8	-14.9	7,237.6	7,039.3	2.8
14	Lincoln National	847.1	1,106.6	-23.5	7,591.9	7,291.8	4.1
15	Hartford Life	769.1	2,186.3	-64.8	3,947.7	3,461.0	14.1
16	Allstate	729.8	2,556.6	-71.5	7,917.0	9,070.5	-12.7
17	Allianz	570.9	1,296.1	-56.0	4,884.8	4,442.9	9.9
18	American Equity	502.1	468.1	7.3	2,329.8	1,953.9	19.2
19	Guardian	499.4	688.5	-27.5	3,801.8	3,419.7	11.2
20	Nationwide	468.3	2,163.5	-78.4	8,319.3	8,876.3	-6.3
21	Conseco	464.2	472.0	-1.6	1,616.7	1,238.3	30.6
22	State Farm	458.8	1,080.1	-57.5	5,660.2	5,603.4	1.0
23	Protective Life	382.9	315.2	21.5	2,225.8	2,091.4	6.4
24	CIGNA	371.8	450.4	-17.4	2,378.7	2,102.3	13.1
25	Sun Life	355.2	764.1	-53.5	4,603.5	4,723.0	-2.5
26	AIG	346.2	1,138.5	-69.6	6,389.0	6,654.7	-4.0
27	Aegon	335.3	2,253.0	-85.1	11,369.1	11,158.3	1.9
28	Genworth	315.2	1,842.9	-82.9	8,192.7	8,801.5	-6.9
29	Axa Financial	296.6	809.6	-63.4	3,619.1	3,610.0	0.3
30	Riversource	109.4	503.8	-78.3	2,753.5	2,907.8	-5.3
	TOTAL	**36,711.5**	**56,827.1**	**-35.4**	**260,833.9**	**251,479.6**	**3.7**

Pru ... From Page 1

that company's 4-year reign at the top of the lending league table. Northwestern retained third place. Next came **John Hancock** and **New York Life,** which flip-flopped their positions from the year before.

Several insurers had outsized declines in originations, including **Aegon** (down 85%), **Genworth** (down 83%) and **Nationwide** (down 78%). Only six of the Top 30 bucked the trend by stepping up originations, including **Jackson National** (up 27%), **Pacific Life** (up 16%), **Standard Insurance** (up 12%) and **TIAA-CREF** (up 9%).

Insurance executives said that things have only gotten worse this year. "There's just a lot of apprehensiveness," said **Steven Graves,** head of Principal Financial's mortgage lending units. "We don't think the values have bottomed out yet. We're keeping our eyes on the amount of forced selling going on through foreclosures, because that will bring values down even lower."

Graves said Principal, which ranked seventh last year with $1.8 billion of originations, closed barely $120 million of commercial mortgages in the first four months of this year. "When the management turns us loose, we'll start doing business," he said. "So far, they haven't turned us loose. They don't like the market."

David Durning, senior managing director and head of Pru's mortgage originations, predicted that his company's volume would reach as high as $3.5 billion in 2009. But that would still

See PRU on Page 19

Pru ... From Page 18

represent a 25% decline from last year.

Mark Wilsmann, head of MetLife's commercial mortgage operation, was reluctant to project this year's volume. With property sales down and borrowers less apt to refinance, MetLife's portfolio — like that of other insurers — is seeing very little loan roll off, which has reduced demand for originations. On the other hand, he said, MetLife is ready to capitalize on the opportunity to pursue loans with more attractive pricing.

"Lending on the bottom of the market is safer than lending on the top," Wilsmann said. "Plus, MetLife underwriting already assumes a 30-40% decline in property value. We're building in conservatism."

For many insurers, REITs have been one of the few sources of lending activity in the first half of this year. However, there are signs that REITs are starting to turn back to the thawing corporate-bond market. "Things are really starting to slow down because the REITs can do better with unsecured bonds," said **Michael Robb,** head of the mortgage lending operation at **Pacific Life,** which this year expects to match or fall slightly below its 2008 volume of $1.6 billion.

While activity remains depressed, many insurers still covet conservative loans on premier properties. "On the high-quality transactions, it continues to be very competitive," said managing director **David Brown** of TIAA, which originated $2.3 billion last year and could end up with $2 billion to $2.5 billion this year.

A potential silver lining is the **Federal Reserve's** new TALF program, which is aimed at jumpstarting the lending market. TALF, which stands for Term Asset-Backed Securities Loan Facility, will provide low-cost financing to buyers of bonds backed by commercial mortgages and other assets. The hope is that if lenders have a clear exit strategy, they will resume originating mortgages for securitization.

As previously reported, Pru and MetLife are exploring the possibility of originating loans for TALF-eligible commercial MBS issues. Graves acknowledged this week that the TALF program is also prompting Principal to consider a return to securitization.

"We're looking over how we would get back into that business," Graves said. "We think it's needed. The pricing is coming down, and if it keeps coming down it could become competitive."

The ranking is based on regulatory filings by insurance companies. Volumes reflect consolidated data for each insurance organization, rather than totals for individual affiliates. Farm mortgages and single-family loans were excluded. The figures reflect only loans that were closed and funded. Forward commitments were excluded. ❖

Exhibit 67

LOAN AGREEMENT

Dated as of November 15, 2007

between

FOX RIVER SHOPPING CENTER, LLC,
as Borrower

and

U.S. BANK NATIONAL ASSOCIATION,
as Lender

Property: Fox River Mall, Plaza North, and Fox River Plaza
Grand Chute, Wisconsin

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Schedules

VIII. DEFAULTS

Section 8.1. **Event of Default**. (a) Each of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

(i) if (A) any payment of principal or interest due pursuant to the Note, this Agreement or any of the other Loan Documents is not paid on or prior to the date when due; provided, however, Borrower shall be entitled to a grace period of two (2) Business Days once every twelve (12) months; (B) if the payment due on the Maturity Date is not paid when due or (C) any other portion of the Debt, including any deposit to a Reserve Account (unless the Cash Management Account contains sufficient funds therefor, and Lender fails to apply said funds thereto) is not paid on or within five (5) days after the same is due;

(ii) if any of the Taxes or Other Charges are not paid on or prior to the date when the same become delinquent except as otherwise permitted by the terms of this Agreement;

(iii) if the Policies are not kept in full force and effect, and evidence thereof is not delivered to Lender upon request;

(iv) if, in violation of any of the provisions hereof, Borrower transfers or encumbers any portion of the Property without Lender's prior written consent or otherwise violates the provisions of Article 6 of the Mortgage;

(v) if any representation or warranty made by Borrower herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document prepared and furnished to Lender by Borrower as required hereunder, shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower or, at any time that the Indemnity (if any) is in effect, the indemnitor or guarantor (as applicable) thereunder shall make an assignment for the benefit of creditors; *provided* that Borrower may cure any Event of Default described in this clause (vi) by causing a replacement indemnitor or guarantor (as the case may be) to deliver to hereunder a replacement Indemnity (if any) within ten (10) Business Days of the occurrence of the event described herein which constitutes the Event of Default together with a "bring down" of the Nonconsolidation Opinion;

(vii) (a) if a receiver, liquidator or trustee shall be appointed for Borrower or, (b) at any time that the Indemnity (if any) is in effect, the indemnitor or guarantor (as applicable) thereunder or if Borrower or, at any time that the Indemnity (if any) is in effect, indemnitor or guarantor (as applicable) thereunder shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or, at any time that the Indemnity (if any) is in effect, indemnitor or guarantor (as applicable) thereunder, or if any proceeding for the dissolution or liquidation of Borrower or, at any time that the Indemnity (if any) is in effect, indemnitor or guarantor (as applicable) thereunder shall be instituted; *provided, however*, if such appointment, adjudication, petition or

proceeding was involuntary and not consented to by Borrower or such indemnitor or guarantor (as applicable), upon the same not being discharged, stayed or dismissed within sixty (60) days; and *provided further* that Borrower may cure any Event of Default described in this clause (vii)(b) by causing a replacement indemnitor or guarantor (as the case may be) to deliver to hereunder a replacement Indemnity (if any) (as the case may be) within ten (10) Business Days of the occurrence of the event described herein which constitutes the Event of Default together a "bring down" of the Nonconsolidation Opinion;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any of its negative covenants contained in Section 5.2 hereof or any covenant contained in Section 4.1.30 or Section 4.1.37 hereof;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the "Nonconsolidation Opinion", or any "Nonconsolidation Opinion" delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) intentionally deleted;

(xiii) if Borrower shall continue to be in default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) through and including (xii) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non monetary Default is susceptible of cure but cannot reasonably be cured within such 30 day period and provided further that Borrower shall have commenced to cure such Default within such 30-day period and thereafter diligently and expeditiously proceeds to cure the same, such 30-day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default such additional period not to exceed ninety (90) days; or

(xiv) if there shall be a Default under any of the other Loan Documents beyond any applicable notice and cure periods contained in such documents, whether as to Borrower or the Property.

(b) Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above), in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand except as expressly set forth herein or in the other Loan Documents, that Lender deems advisable to protect and enforce its rights against Borrower and in and to all of the Property, including,

without limitation, declaring by notice to Borrower the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and all other obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2. **Remedies**. (a) To the extent permitted by applicable law and to the extent not otherwise provided in this Agreement or the other Loan Documents, upon the occurrence of an Event of Default which is continuing, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing, to the extent permitted by applicable law, (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to any portion of the Property for the satisfaction of any of the Debt in preference or priority to any other portion of the Property, and Lender may seek satisfaction out of all of the Property or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right, to the extent permitted by applicable law, from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time during an Event of Default to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the "**Severed Loan Documents**") in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall not be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents, and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3. Remedies Cumulative; Waivers. To the extent permitted by applicable law and the terms of this Agreement and the other Loan Documents, the rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

IX. SPECIAL PROVISIONS

Section 9.1. Sale of Notes and Securitization. At the request of the holder of the Note and, to the extent not already required to be provided by Borrower under this Agreement, at Lender's expense and subject to the provisions on exculpation set forth herein and in the other Loan Documents, Borrower shall use reasonable efforts to assist Lender in satisfying the standards applicable to Borrower or the Property which may be reasonably required in the marketplace or by the applicable Rating Agencies in connection with the sale of the Note or participations therein or the first successful securitization (such sale and/or securitization, the "**Securitization**") of rated single or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in the Note and the Mortgage, including, without limitation, to:

(a) provide updated financial and other information with respect to the Property, Borrower and Manager, if any, (the "**Provided Information**"), together, if customary,

SCHEDULE VI

NONCONSOLIDATION OPINION ASSUMPTIONS

(see assumptions in attached opinion)

NEAL • GERBER • EISENBERG

November 15, 2007

U.S. Bank National Association
c/o Principal Real Estate Investors, LLC
801 Grand Avenue
Des Moines, IA 50392-1450

Re: **Loan in the Original Principal Amount of $195,000,000 to Fox River Shopping Center, LLC**

Ladies and Gentlemen:

Pursuant to the terms of that certain Loan Agreement dated as of even date (the "Loan Agreement"), executed between Fox River Shopping Center, LLC, as borrower ("Borrower"), and U.S. Bank National Association, as lender ("U.S. Bank"), U.S. Bank has made, and Borrower has accepted, a loan in the original principal amount of $195,000,000 (the "Loan") evidenced and secured by, and subject to the terms of, the Loan Documents (as such term and other capitalized terms not otherwise defined herein are defined in the Loan Agreement). This opinion letter is delivered at the request of Borrower and constitutes the Nonconsolidation Opinion required to be delivered as of the Closing Date pursuant to the Loan Agreement.

We have acted as special counsel for Borrower for purposes of issuing this Nonconsolidation Opinion. We understand that Borrower is a Delaware limited liability company in which GGP Limited Partnership, a Delaware limited partnership ("GGPLP"), is the sole member. Based solely on the Title Insurance Policy, we understand that Borrower is the holder of the fee interest in property comprising the retail shopping center commonly known as Fox River Mall and Plaza North located in Appleton, Wisconsin (the "Property"). The Property is self-managed by Borrower.

You have asked for our opinion as to whether, under present reported case law and the federal Bankruptcy Code, 11 U.S.C. §§101, et seq. (the "Bankruptcy Code"), should GGPLP become a debtor in a case under the Bankruptcy Code, the bankruptcy court having jurisdiction over the case, without the consent of all interested parties (including, if among such interested parties, U.S. Bank and its successors or assigns of an interest in the Loan (collectively, "Lender")), would substantively consolidate the assets and liabilities of Borrower with the assets and liabilities of GGPLP, so that the separate existences of GGPLP, on the one hand, and Borrower, on the other hand, would be disregarded and their respective assets and liabilities would be dealt with as if such assets were held and such liabilities were incurred by a single consolidated entity.

ASSUMPTIONS

We have examined the documents which we have deemed necessary to render this opinion letter, which consist of the following: (a) the Loan Documents and (b) the certificate of formation and operating agreement of Borrower (such organizational documents, collectively, the "Organizational Documents") and as certified for the benefit of Lender, as a basis for the opinions expressed below. All factual matters described herein are based upon such examined documents, including upon factual representations therein of Borrower and GGPLP, as applicable, which are material to this opinion letter, and we have not independently investigated or verified any of such factual matters. We have assumed, without any independent investigation, that the facts outlined herein are correct in all material respects.

We have assumed that, as set forth in the Loan Agreement, the proceeds received by Borrower from the Loan have been used solely to pay to the holder of the mortgage encumbering the Property immediately prior to the Closing Date the amounts due on the loan secured thereby and for other general business purposes of Borrower, and that such proceeds were disbursed solely to Borrower and to no other Person. We understand, based on the terms of the Loan Documents, that the Note has been made and is payable solely by Borrower and is secured by the Mortgage and certain of the other Loan Documents, which will encumber (a) Borrower's interests in the Property, (b) other collateral specified in the Mortgage with respect to the Property, and the other Loan Documents and (c) all proceeds, revenue and income from any of the foregoing.

The Note and the other Loan Documents expressly provide that, subject to certain exclusions applicable to Borrower (but not its member, or Borrower's or such member's affiliates), the Loan, together with all Debt and other obligations of Borrower under the Loan Documents, will represent nonrecourse obligations of Borrower payable solely out of the Property and the other collateral subject to the Loan Documents. We understand, therefore, that the Note and the other Loan Documents to which Borrower is a party will not represent recourse obligations of Borrower, GGPLP or any other affiliate of Borrower or GGPLP or their respective successors or assigns, partners, shareholders, members, officers, directors, trustees, beneficiaries, controlling persons, employees or agents or any other Person and that none of such Persons (other than Borrower) will have any liability for the Loan or any Debt or other obligations of Borrower under any Loan Document.

We assume, based on the terms of (a) the Loan Agreement and the other Loan Documents and (b) the Organizational Documents, that Borrower, so long as Borrower has any interest in the Property and the other collateral for the Loan and is the obligor under the Loan Documents, is and will continue to be operated in accordance with the following assumptions (collectively, the "Separateness Assumptions"):

(a) (i) the purpose for which Borrower is organized is and will be limited solely to (A) owning, holding, leasing, transferring, operating and managing the Property and all business incidental thereto, (B) entering into or assuming the obligations of Borrower under the Loan Agreement, (C) refinancing the Property in connection with a permitted repayment of the Loan and (D) transacting any and all lawful business for which Borrower may be organized under its constitutive law that is incidental, necessary or appropriate to accomplish the foregoing;

(b) Borrower does not own and will not own or acquire any asset or property other than the Property and incidental personal property necessary for and used or to be used in connection with the ownership, management or operation of the Property;

(c) Borrower does not and will not engage in any business other than the ownership, management and operation of the Property and business incidental thereto (including as described in clause (a) above);

(d) Borrower is not a party to nor will Borrower enter into any contract or agreement with any of its affiliates, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties not so affiliated with it;

(e) Borrower is not liable for and will not incur any Indebtedness other than (i) the Loan, (ii) Trade Debt and (iii) the costs of on-going Capital Expenditures provided, however, in no event shall the sum of unpaid Capital Expenditures outstanding at any one time exceed the Alteration Threshold Amount unless Borrower has delivered to Lender the security required by Section 5.1.21, and no Indebtedness other than the Debt may be secured (senior, subordinate or pari passu) by the Property (other than Indebtedness, if any, secured by Permitted Encumbrances);

(f) Borrower has not made nor will Borrower make any advance payments other than in the ordinary course of its business or any loans to any Person nor does Borrower hold nor will Borrower acquire any obligations or securities of any of its affiliates;

(g) Borrower is paying and will continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same become due (to the extent it has funds to do so) (unless the same is subject to good faith dispute by it in appropriate proceedings therefor and for which adequate reserves have been established in accordance with the Loan Documents);

(h) Borrower has done and will continue to do or cause to be done all things necessary to observe organizational formalities pertaining to its separate existence, does and will continue to preserve its separate existence and Borrower will not, nor will Borrower permit any of its affiliates to, amend, modify or otherwise change its Organizational Documents in any

material respect which adversely affects its existence as a Special Purpose Entity or its other obligations with respect to the Loan;

(i) Borrower maintains and will continue to maintain all of its books, records, financial statements and bank accounts separate from those of any other Person and, except as permitted or required under GAAP, its assets are not and will not be listed as assets on the financial statement of any other Person, and Borrower files and will file its own tax returns (if required to file tax returns under applicable law) and will not file a consolidated federal tax return with any other Person (provided that it may be part of a consolidated federal tax return to the extent permitted or required by applicable law, so long as there is an appropriate notation indicating the separate existence of Borrower and its assets and liabilities) and Borrower maintains and will continue to maintain its own books, records, resolutions and agreements as official records;

(j) Borrower is and will continue to be and, at all times, does and will continue to hold itself out to the public as, a legal entity separate and distinct from any other Person (including any of its affiliates), does and will continue to correct any known misunderstanding regarding its status as a separate entity, does and will continue to conduct business solely in its own name, does not and will not identify itself as a division or part of any other Person and does and will continue to maintain and utilize a separate telephone number and separate stationery, invoices and checks;

(k) Borrower does and will continue to operate its business with the goal of maintaining capital which is adequate for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(l) no dissolution, winding up, liquidation, consolidation or merger of Borrower, in whole or in part, or the sale of any material assets of Borrower will be sought;

(m) Borrower does not commingle nor will Borrower commingle its assets with those of any other Person, Borrower holds and will continue to hold all of its assets in its own name, and Borrower does and will maintain and account for its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(n) Borrower does not presently guarantee nor will Borrower guarantee or become obligated for the debts of any other Person or hold itself out as being responsible for the debts or obligations of any other Person;

(o) at all times, there are and will continue to be at least two duly appointed managers (each, an "Independent Manager") of Borrower, each of whom shall satisfy the terms set forth in Borrower's Organizational Documents and the Loan Agreement with respect to "Independent Managers", including the requirements that such individual shall not have been at the time of

such individual's initial appointment, will not be while serving as an Independent Manager and has not been at any time during the preceding five years, (i) a stockholder, director, manager or trustee (other than as a similar independent director, manager or trustee, subject to the terms of the Loan Agreement), officer, employee, member, partner, attorney or counsel of Borrower or any of their affiliates; (ii) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with Borrower or any of their affiliates (provided that this clause shall not be deemed to prevent or prohibit an Independent Manager from receiving compensation or payment for its services as a board member, manager or trustee, subject to the terms of the Loan Agreement); (iii) a Person controlling or under common control (as such term is defined in the Loan Agreement) with Borrower or any of their affiliates or any such stockholder, director, manager, trustee, member, partner, creditor, customer, supplier or other Person; or (iv) a member of the immediate family by blood or marriage of any such stockholder, director, manager, trustee, officer, employee, member, partner, creditor, customer, supplier or other Person;

(p) the prior unanimous written consent of all managers of Borrower, including both Independent Managers thereof, shall be required (provided, however, that Borrower shall not accept any such consent or authorize the taking of any of the actions set forth below, unless there are at least two Independent Managers then serving in such capacity) for Borrower to:

(i) file or consent to the filing by or against Borrower, as debtor, of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings by Borrower, as debtor, under any applicable insolvency law; or otherwise seek relief for Borrower, as debtor, under any laws relating to the relief from debts or the protection of debtors generally;

(ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower or a substantial portion of Borrower's properties;

(iii) make any assignment for the benefit of Borrower's creditors; or

(iv) take any action in furtherance of any of the foregoing;

(q) Borrower does and will continue to allocate fairly and reasonably any overhead expenses that are shared with any of its affiliates, including paying for office space and services performed by any employee of any of its affiliates;

(r) Borrower does not nor will Borrower pledge its assets to secure obligations of any other Person;

(s) Borrower does and will pay the salaries of its own employees from its own funds;

(t) no transfer of any direct or indirect ownership interest in Borrower will be made to the extent that such transfer is prohibited by the Loan Agreement; and

(u) Borrower is and will remain (i) a Special Purpose Entity, satisfying in all respects the criteria applicable to it as such Special Purpose Entity set forth in the Loan Agreement and this Nonconsolidation Opinion (except that no assumption hereby is made regarding the solvency of Borrower or the adequacy of its capitalization other than as expressly set forth herein) and (ii) a Delaware limited liability company, without change to its organizational structure in any respect that would result in the opinions of in-house counsel, dated as of even date, issued in connection with the Loan, as to certain matters of law of the State of Delaware, being inapplicable to Borrower or void,

(provided that none of such undertakings (a) obligates any equity holder in Borrower to make additional capital contributions to it or to return dividends or distributions paid by it (but nothing contained in such undertakings shall negate any obligation under applicable law to return any dividend or distribution) or (b) otherwise confers any benefits on third parties).

DISCUSSION

Cases decided under the Bankruptcy Code and its predecessor, the Bankruptcy Act, establish that a bankruptcy court has the power, in the exercise of its equitable jurisdiction, to disregard the separate existences of individual estates, partnerships or corporate entities and to effect substantive consolidation in appropriate cases. It is often to the benefit of a debtor's creditors to seek the substantive consolidation of the debtor's assets and liabilities with those of related, but financially healthier, entities. Substantive consolidation is not generally favored, however, and the party seeking this result has the burden of establishing the necessity for it.[1]

The courts have stated that substantive consolidation, because it may significantly alter the relative recoveries of different creditors, is a measure which "vitally affect[s] substantive rights," In re Flora Mir Candy Corp., 432 F.2d 1060, 1062 (2d Cir. 1970), and should not be lightly employed, In re Continental Vending Machine Corp., 517 F.2d 997, 1001 (2d Cir. 1975), cert. denied, 424 U.S. 913 (1976). It is particularly uncommon for a court to substantively consolidate a profitable subsidiary with its insolvent parent since to do so would not advantage

[1] Eastgroup Properties v. Southern Motel Assoc., Ltd., 935 F.2d 245 (11th Cir. 1991).

the subsidiary's creditors and likely would be to their detriment.[2] The court in American Protein Corp. v. AB Volvo, 844 F.2d 56, 60 (2d Cir. 1988), cert. denied, 488 U.S. 852 (1988), stated, "A corporation is an entity that is created by law and endowed with a separate and distinct existence from that of its owners. [T]here is a presumption of separateness between a corporation and its owners . . . which is entitled to substantial weight."

The United States Court of Appeals for the Second Circuit addressed the issue of substantive consolidation in Union Savings Bank v. Augie/Restivo Baking Co., Ltd., (In re Augie/Restivo Baking Co.), 860 F.2d 515 (2d Cir. 1988). The court in Augie/Restivo considered a long list of factors justifying substantive consolidation which had been articulated in various cases and condensed these factors down to two critical considerations:

> "(i) [W]hether creditors dealt with the entities as a single economic unit and 'did not rely on their separate identity in extending credit' [citations omitted]; or
>
> (ii) [W]hether the affairs of the debtors are so entangled that consolidation will benefit all creditors [citations omitted]."

860 F.2d at 518. The Ninth Circuit adopted the Augie/Restivo test in Bonham, 229 F.3d at 766. The Third Circuit adopted a test very much like the Augie/Restivo test in In re Owens Corning, 419 F.3d 195 (3rd Cir. 2005).

The sole purpose of substantive consolidation, according to Augie/Restivo, is "to ensure the equitable treatment of all creditors." After finding that the secured lenders to the subject corporations dealt with them as separate entities, the court in Augie/Restivo refused to allow substantive consolidation of the corporations despite finding that certain trade creditors may have believed that they were dealing with a single entity.

The Separateness Assumptions require, among other things, that Borrower (which expressly has undertaken the Separateness Assumptions) holds itself out to the public as an entity separate and distinct from every other Person, including without limitation, its equity holder, principals and affiliates (and their respective equity holders, principals and affiliates). Provided

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[2] See, e.g., In re Lease-A-Fleet, Inc., 141 B.R. 869, 872 (Bankr. E.D. Pa. 1992) ("caution must be multiplied exponentially in a situation where a consolidation of a debtor's case with a non-debtor is attempted"); see also In re Fas Mart Convenience Stores, Inc., 2004 WL 3186844 (Bankr. E.D. Va. 2004). This does not mean, however, that a bankruptcy court necessarily would lack legal authority to substantively consolidate an entity that is not a debtor in formal bankruptcy proceedings with a filed debtor upon the proper factual showing. To the contrary, a majority of the cases addressing this issue have stated that such consolidation is permissible. See, e.g., In re Bonham, 229 F.3d 750 (9th Cir. 2000); First Nat'l Bank v. Rafoth, 974 F.2d 712 (6th Cir. 1992); In re Munford, Inc., 115 B.R. 390 (Bankr. N.D. Ga. 1990).

that Borrower is operated in all material respects in compliance with the Separateness Assumptions, any creditor who deals with GGPLP should be aware that GGPLP is separate and distinct from Borrower and no such creditor should have any reason to rely on the separate assets or the credit of Borrower when extending credit to or transacting business with GGPLP. It is also clear that Lender, having required that the terms of the Loan Documents and Organizational Documents include the Separateness Assumptions and having further required that Borrower complies with them, should be relying on the separateness of Borrower and not relying on the assets or credit of GGPLP.

In Augie/Restivo, the court denied substantive consolidation despite its finding that certain trade creditors truly believed they were dealing with a single entity. The Augie/Restivo court denied substantive consolidation because it would have been inconsistent with the reasonable expectations of the major creditors of each entity and because the expectations of the major creditors of each entity should be the guiding principle:

> "[C]reditors who make loans on the basis of the financial status of a separate entity expect to be able to look to the assets of their particular borrower for satisfaction of that loan. Such lenders structure their loans according to their expectations regarding that borrower and do not anticipate either having the assets of a more sound company available in the case of insolvency or having the creditors of a less sound debtor compete for the borrower's assets. Such expectations create significant equities. Moreover, lenders' expectations are central to the calculation of interest rates and other terms of loans, and fulfilling those expectations is therefore important to the efficiency of credit markets. Such efficiency will be undermined by imposing substantive consolidation in circumstances in which creditors believed they were dealing with separate entities." 860 F.2d at 518-9.

Therefore, once major creditors have established their relationships with debtors based on their beliefs that the entities involved are separate, the contrary belief of a few other creditors that the entities are not separate or that another entity is also liable for a portion of a debt should not justify substantive consolidation. Substantive consolidation in such a case would result in either a windfall to those creditors who did not believe they could reach the assets of a more financially sound entity or prejudice to the rights of those creditors who did not expect other creditors of a less sound entity to reach the assets of a separate debtor. Either alternative would violate the "significant equities" that the Augie/Restivo factors seek to protect. Accordingly, and as noted above, so long as Borrower is operated in all material respects in compliance with the Separateness Assumptions, most if not all creditors, especially any major creditors, including Lender, if applicable, should be aware of the separateness of Borrower from GGPLP and should not reasonably believe that they are dealing with a single entity.

The second factor cited in Augie/Restivo involves cases in which there has been a commingling of the consolidated entities' assets, liabilities and/or business functions. A mere commingling is not a sufficient ground under the Augie/Restivo decision for substantive consolidation, however. Instead, the court in Augie/Restivo stated:

> "[S]ubstantive consolidation should be used only after it has been determined that all creditors will benefit because untangling is either impossible or so costly as to consume the assets.... Commingling, therefore, can justify substantive consolidation only where 'the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors,' [citations omitted] or where no accurate identification and allocation of assets is possible." 860 F.2d at 519.

Therefore, substantive consolidation should be allowed only when there is very extensive commingling of the assets and liabilities resulting from complex and obscured interrelationships between the otherwise separate entities and "all creditors [would be] better off with substantive consolidation." 860 F.2d at 519; see also Fas Mart, 2004 WL 3186844 at *6("substantive consolidation is not appropriate because the affairs of [the affiliated entities] were not so entangled that consolidation would benefit all creditors.").

So long as Borrower is operated in all material respects in compliance with the Separateness Assumptions, no commingling of assets, liabilities or business functions should result in any entanglement that is impossible or prohibitively expensive to unwind.

In Eastgroup, the United States Court of Appeals for the Eleventh Circuit distilled the factors cited by other courts into a two-part standard under which a proponent of substantive consolidation must show that (a) there is substantial identity between the entities to be consolidated and (b) consolidation is necessary to avoid some harm or to realize some benefit. Once evidence is presented that this standard is met, a rebuttable presumption arises that creditors have not relied on the credit of just one of the entities involved. A party opposing consolidation then can rebut this presumption by showing (a) its reliance on the separate credit of one of the entities involved and (b) prejudice to it if substantive consolidation is allowed.[3]

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[3] Eastgroup, 935 F.2d at 249. See also In re Auto-Train Corp., 810 F.2d 270, 276 (D.C. Cir. 1987) (where the D.C. Circuit articulated the rebuttable presumption formula for substantive consolidation that was adopted by the Eastgroup court) , and In re Giller, 962 F.2d 796, 799 (8th Cir. 1992) (analysis of whether to substantively consolidate should include: (1) the necessity of consolidation due to the interrelationship among the debtors; (2) whether the benefits of consolidation outweigh the harm to creditors; and (3) prejudice resulting from not consolidating the debtors).

Certainly, there are some significant affiliations between Borrower and GGPLP. As a result, a creditor seeking to consolidate Borrower with GGPLP may try to meet the first part of the Eastgroup test and prove substantial identity between the entities. It should be noted, however, that the court in In re Beck Industries, Inc., 479 F.2d 410, 415 (2d Cir. 1973), cert. denied, 414 U.S. 858 (1973), stated that the "[o]wnership of all of the outstanding stock of a corporation . . . is not the equivalent of ownership of the subsidiary's property or assets." See also In re Huntco Inc., 302 B.R. 35, 39 (Bankr. E.D. Mo. 2003) ("[T]he analysis . . . should not only focus upon [the] interrelationship [between entities], . . . but also . . . on whether the creditors of the various debtors actually relied on that interrelationship and treated the debtors as a single entity. [citations omitted]"). Consequently, the existence of affiliations between Borrower and GGPLP should not satisfy the Eastgroup test if creditors (as contemplated in the Separateness Assumptions) treat each entity as separate and distinct.

Furthermore, it should be difficult for a proponent of substantive consolidation of Borrower with GGPLP to meet the second part of the Eastgroup test under which some harm or benefit must be shown that can be avoided or realized only through substantive consolidation. This is because the business and operations of Borrower, when conducted in all material respects in compliance with the Separateness Assumptions, should not lead to confusion among creditors or commingling of assets and liabilities in a manner such that harm to the creditors of one of the entities would result absent substantive consolidation. To the contrary, with respect to Borrower, Lender, as well as any other creditors of Borrower, should be able to show that they would suffer prejudice if Borrower were substantively consolidated with GGPLP because they relied on, among other things, the separate credit of Borrower in extending credit to it and would be denied the full benefits of the separate credit upon substantive consolidation.

While the Augie/Restivo factors provide guidance on the general law of substantive consolidation, it should be pointed out that each of the Augie/Restivo factors was a distillation of many specific factors that other courts had deemed sufficient to justify substantive consolidation. Examination of cases from outside of the Second and Eleventh Circuits, as well as pre-Augie/Restivo cases in those circuits, shows that the cases on substantive consolidation are to a great degree sui generis because of the special attention paid by each court to the particular factual situation of the case before it.[4]

For example, the court in In re Vecco Construction Industries, Inc., 4 B.R. 407 (Bankr. E.D. Va. 1980), drew from prior decisions seven criteria used by bankruptcy and appellate courts in analyzing the equities of each situation:

1. The degree of difficulty in segregating and ascertaining individual assets and liabilities;

2. The presence of consolidated financial statements;

[4] Munford, 115 B.R. 390 (Bankr. N.D. Ga. 1990).

3. The economic efficiency of consolidation at a single physical location;

4. The commingling of assets and business functions;

5. The unity of interests and ownership between the various corporate entities;

6. The existence of parent and intercorporate guarantees on loans; and

7. The transfer of assets without formal observance of corporate formalities.[5]

Analysis shows that Vecco factors 1, 4 and 7 are variants or subcategories of the second Augie/Restivo factor and Vecco factors 2, 5 and 6 are variants of the first factor. Vecco factor 5 is also a variant of the first Eastgroup test, and the other Vecco factors are variants of both Eastgroup's identity of interest test and its avoidance of harm or realization of benefit test.

Vecco factor 3 relates to the question of whether, in a reorganization of GGPLP, it would be more economically efficient to operate Borrower and GGPLP as a single entity. One of the factual findings cited by the court as significant in Vecco in ordering substantive consolidation of a construction firm with its four wholly-owned subsidiaries was that all five of the corporations were operating at the same location and shared overhead, management, accounting and other related expenses. Thus, the operation of the corporations already was consolidated and separating the entities would have resulted in a substantial increase in overhead and inefficient use of personnel. Although Vecco factor 3 might be cited in an attempt to substantively consolidate Borrower with GGPLP, to the extent that they share business offices, that one factor alone should not in itself justify substantive consolidation in the absence of evidence that consolidation would be necessary to provide effective relief or would be justified because creditors of GGPLP relied on the credit of Borrower or the Property.

Some other factors courts have considered in determining whether to order substantive consolidation are:

— Whether creditors unknowingly dealt with different corporations as the same unit, In re Continental Vending

[5] This approach has been cited with approval in various courts. See, e.g., In re Creditors Service Corp., 195 B.R. 680 (Bankr. S.D. Ohio 1996); In re Murray Industries, Inc., 119 B.R. 820 (Bankr. M.D. Fla. 1990); In re DRW Property Co., 54 B.R. 489 (Bankr. N.D. Tex. 1985); In re Donut Queen, Ltd., 41 B.R. 706 (Bankr. E.D.N.Y. 1984); In re Manzey Land and Cattle Co., 17 B.R. 332 (Bankr. D.S.D. 1982).

Machine Corp., 517 F.2d 997 (2d Cir. 1975), cert. denied sub nom. James Talcott, Inc. v. Wharton, 424 U.S. 913 (1976);

— Whether one debtor was independent of another debtor when certain securities were issued, whether the creditors dealt only with one debtor and lacked knowledge of its relationships with others, and whether interrelationships of a group of corporations were closely entangled, In re Flora Mir Candy Corp., 432 F.2d 1060 (2d Cir. 1970);

— Whether entanglement of the business affairs of related corporations was so extensive that the cost of untangling would outweigh any benefit to creditors, Chemical Bank New York Trust Co. v. Kheel (In re Seatrade Corp.), 369 F.2d 845 (2d Cir. 1966);

— Whether the creditors dealt with separate entities as a single economic unit, whether the affairs of the debtors were so entangled that consolidation would benefit all creditors, and whether consolidation would impact adversely on the chances for successful reorganization, In re Munford, supra; and

— Whether great economic prejudice would result from continued corporate separation, while only "minimal" prejudice would result from consolidation, In re Snider Bros., Inc., 18 B.R. 230 (Bankr. D. Mass. 1982); In re Steury, 94 B.R. 553 (Bankr. N.D. Ind. 1988).

These statements are variants or subcategories of the Augie/Restivo or Eastgroup factors or a restatement of the Vecco factors.

The court in In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 764 (Bankr. S.D.N.Y. 1992), listed the following additional factors in ascertaining whether the interrelationship between the entities warrants consolidation:

1. The parent assuming the contractual obligations of its subsidiaries.

2. The existence of intercompany guarantees on loans.

3. The parent paying salaries of the subsidiary's employees.

4. The parent or its affiliates financing the subsidiary.

5. The parent shifting people on and off the subsidiary's board of directors.

6. The parent referring to the subsidiary as a department or division.

7. The directors of the subsidiary not acting independently in the interest of the subsidiary but taking direction from the parent.

Assuming that Borrower is operated in all material respects in compliance with the Separateness Assumptions, these additional Drexel criteria would not appear to apply in the circumstances surrounding the Loan.

OPINION

The outcome of an attempt to obtain substantive consolidation is particularly unpredictable because of the discretionary and equitable nature of the remedy and the potential impact of future facts, circumstances and case law. In reliance upon the assumptions and qualifications contained herein, however, and assuming that Borrower is operated in all material respects in compliance with the Separateness Assumptions, and further assuming that any bankruptcy court having jurisdiction in any case involving GGPLP follows the precedents currently in force, it is our opinion that in the event that GGPLP were to become a debtor in a case under the Bankruptcy Code, a bankruptcy court, without the consent of all interested parties (including, if among such interested parties, Lender), would not substantively consolidate the assets and liabilities of Borrower with the assets and liabilities of GGPLP, as such debtor, and would not deal with the respective assets and liabilities of GGPLP, on the one hand, and Borrower, on the other hand, as if such assets were held and such liabilities were incurred by a single entity.

The opinions expressed herein are not a guaranty as to what any particular court would actually hold, but only opinions as to the decision a court would reach if the issues are properly presented to it and the court follows presently existing precedent as to legal and equitable principles applicable in bankruptcy cases. In this regard, we note that legal opinions on bankruptcy law matters unavoidably have inherent limitations that generally do not exist in respect of other issues on which opinions to third parties typically are given. These inherent limitations exist primarily because of the pervasive equity powers of bankruptcy courts, the overriding goal of reorganization to which other legal rights and policies may be subordinated, the potential relevance to the exercise of judicial discretion of future arising facts and circumstances and the nature of the bankruptcy process. Each recipient of this opinion should take these limitations into account in analyzing the bankruptcy risks associated with the transactions described herein.

ADDITIONAL QUALIFICATIONS

Members of this firm are admitted to the Bar of the State of Illinois and we express no opinion as to the law of any jurisdiction other than the bankruptcy law of the United States and the law of the State of Illinois.

Please be advised that certain of the attorneys in our firm are (a) equity holders in General Growth Properties, Inc. ("General Growth"), which is affiliated with Borrower and GGPLP, (b) officers of General Growth or (c) trustees or officers, directors or stockholders of trustees of certain trusts which directly or indirectly own equity securities or other interests therein.

This opinion letter is limited to the matters stated herein. We disavow any obligation to update this letter or advise any Person relying on it of any changes in our opinions in the event of changes in applicable law or facts or if additional or newly discovered information is brought to our attention. No opinion may be inferred or implied beyond the matters expressly stated herein.

This opinion letter is rendered to and for the benefit of U.S. Bank and may be relied upon (a) by it or its successors or assigns of an interest in the Loan, in the context of the Loan, and (b) in the event of a Securitization, by the Rating Agency or Agencies rating the Securities. Without our prior written consent, this opinion letter may not be relied upon by any other Person, or by U.S. Bank, a successor Lender or any Rating Agency in any other context, quoted in whole or in part or otherwise referred to in any other report or document, or furnished to any other Person except in connection with the enforcement of rights of Lender related to the Loan Documents or in response to a subpoena or other valid legal process.

Very truly yours,

Neal, Gerber Eisenberg LLP/tcw

NEAL, GERBER & EISENBERG LLP

Exhibit 68

OPERATING AGREEMENT
OF
FOX RIVER SHOPPING CENTER, LLC

OPERATING AGREEMENT, dated as of November 15, 2007, among GGP Limited Partnership, a Delaware limited partnership ("GGPLP"), any other Persons who may be admitted to the Company as Members, and Beth L. Peoples and Suzanne M. Hay, as Independent Managers (each capitalized term as defined herein).

RECITALS

WHEREAS, a Wisconsin limited liability partnership known as Fox River Shopping Center L.L.P. (the "Partnership") previously existed pursuant to that certain Second Amended and Restated Agreement of Partnership of Fox River Shopping Center L.L.P. dated as of November 4, 1997 between General Growth Finance SPE, Inc., a Delaware corporation ("Finance SPE") and GGPLP, as amended (the "Original Agreement") and the Uniform Partnership Act of the State of Wisconsin, as amended from time to time;

WHEREAS, on May 24, 2000, GGPLP assigned its 99.999% membership interest in the Partnership to GGPLP L.L.C., a Delaware limited liability company ("GGPLP LLC");

WHEREAS, on November 10, 2004, GGPLP LLC assigned its 99.999% membership interest in the Company to GGP Mezzanine One L.L.C., a Delaware limited liability company ("Mezz One");

WHEREAS, prior hereto Mezz One was merged with and into GGPLP and as a result of such merger transferred its 99.999% partnership interest in the Partnership to GGPLP;

WHEREAS, prior hereto Finance SPE was merged with and into General Growth Properties, Inc., a Delaware corporation ("GGPI") and as a result of such merger transferred its .001% partnership interest in the Partnership to GGPI;

WHEREAS, immediately following the merger of Finance SPE into GGPI, GGPI contributed its partnership interest pursuant to that certain Contribution Agreement dated November 15, 2007 to GGPLP;

WHEREAS, concurrently with such contribution GGPLP, as the sole economic interest holder in the Partnership, converted the Partnership to a Delaware limited liability company under the name Fox River Shopping Center, LLC (the "Company");

WHEREAS, immediately following such conversion Fox River Plaza North L.L.C., a Delaware limited liability company, merged with and into the Company effecting a transfer of its property to the Company; and

WHEREAS, the parties hereto desire to supersede the Original Agreement with an operating agreement which conforms to the Delaware Limited Liability Company Act, as the same may be amended from time to time (the "Act"), to add certain provisions that are required in connection with a contemplated financing of the Company, and otherwise set forth their understandings regarding the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do agree as follows:

ARTICLE I

Definitions

The following are definitions of certain terms capitalized and used throughout this Operating Agreement:

"Act" shall have the meaning set forth in the recitals.

"Affiliate" shall mean, as to any Member (or as to any other Person the affiliates of whom are relevant for purposes of any of the provisions of this Agreement), any Person controlled by, under common control with or controlling, directly or indirectly through one or more intermediaries, such Member (or such other Person).

"Agreement" shall mean this Operating Agreement as originally executed and as amended in writing from time to time. This Agreement shall constitute the limited liability company agreement of the Company, within the meaning of the Act.

"Bankruptcy" shall mean, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"Capital Contribution" shall mean, as to any Member, the amount of cash or property contributed to the capital of the Company by such Member.

"Certificate" shall mean the certificate of conversion and certificate of formation of the Company, as the same is amended from time to time.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time (or the corresponding provisions of succeeding law).

"Committee" shall mean the Company's management committee described in Section 5.1.

"Company" shall have the meaning set forth in the recitals.

"Entity" shall mean any partnership, corporation, trust, limited liability company, business association, court, governmental agency or other entity.

"Fair Market Value" or "Fair Market Value of the Company" shall mean the maximum amount that a single buyer would reasonably be expected to pay to acquire the Company, an asset of the Company or a Unit in the Company, as the case may be, on the date of determination, free and clear of all liens and encumbrances, in a single cash purchase, taking into account the current condition and use of the asset or all of the assets and business of the Company, as the case may be.

In situations under this Agreement in which it is necessary to determine Fair Market Value, such determination shall be made in good faith by the Committee.

"Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year, unless the Committee designates an alternative period as the Company's fiscal year pursuant to Section 9.1.

"Independent Managers" shall have the meaning set forth in Article XIII.

"Lender" shall have the meaning set forth in Article XIII.

"Loan" shall have the meaning set forth in Article XIII.

"Loan Agreement" shall have the meaning set forth in Article XIII.

"Loan Documents" shall have the meaning set forth in the Loan Agreement.

"Managers" shall mean the Persons selected to serve on the Committee pursuant to Article V, including without limitation the Independent Managers of the Company, as described in Article XIII. Each Manager shall be deemed to be a manager within the meaning of the Act.

"Member" shall mean each of the Persons listed on Schedule A and each Person who may hereafter become an additional or substituted Member in accordance with this

Agreement, each in its capacity as a member of the Company (but shall not include any Special Member).

"Member Cessation Event" shall have the meaning set forth in Section 4.11.

"Mortgage" shall have the meaning set forth in Article XIII.

"Officers" shall have the meaning set forth in Section 5.2.

"Person" shall mean any individual or Entity.

"Property" shall mean the retail shopping center and related property located in Appleton, Wisconsin and commonly known as Fox River Mall and Plaza North.

"Special Member" shall mean, upon such Person's admission to the Company as a member of the Company pursuant to Section 4.11, a Person acting as Independent Manager, in such Person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

"State" shall mean the State of Delaware.

"Transfer" shall mean any assignment, sale, transfer, conveyance, pledge, grant of an option or other disposition or act of alienation, whether voluntary or involuntary or by operation of law.

"Unit(s)" shall mean a unit of a Member's limited liability company interest as a Member of the Company entitling the holder to an equal share, with every other holder of a Unit, in the allocations and distributions of the Company pursuant to Article VIII, and the rights of management, consent, approval or participation, if any, granted to holders of Units as provided in this Agreement. Such interests shall be deemed "securities" under Article 8 of the Uniform Commercial Code and shall be governed by Article 8 of the Uniform Commercial Code as in effect from time to time within the State.

Except as provided in Article XIII, all other capitalized terms not specifically defined in this Agreement shall have the meanings ascribed to them in the Act.

ARTICLE II

Organization

2.1 Continuation of the Company. The Company was converted to a limited liability company under the Act by filing the Certificate of Formation and Certificate of Conversion with the Delaware Secretary of State effective on November 15, 2007 and entering into this Agreement. The rights and liabilities of the Members, except as expressly stated herein shall be as provided in the Act.

A Certificate of Formation and a Certificate of Conversion of the Company were filed in the office of the Secretary of State of the State of Delaware. Ann M. Spitler, on

behalf of the Company, is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation and the Certificate of Conversion, on behalf of the Company, with the Secretary of State of the State of Delaware. The filing of the Certificate of Formation and the Certificate of Conversion is hereby ratified and confirmed in all respects. Upon the filing of the Certificate of Formation and the Certificate of Conversion on November 15, 2007 with the Secretary of State of the State of Delaware, Ann M. Spitler's powers as an "authorized person" ceased, and the Member thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act. The Member or an Officer shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate as provided in the Act.

2.2 Name. "Fox River Shopping Center, LLC" is the name of the Company.

2.3 Principal Office. The principal office of the Company shall be located at 110 North Wacker Drive, Chicago, Illinois 60606. The location of the Company's office may be changed from time to time by the Committee.

2.4 Registered Agent and Registered Office. The Company shall at all times maintain a registered agent and a registered office in the State as provided in the Act. The name and address of the registered office and registered agent of the Company are listed on the Certificate.

2.5 Tax Status of Company. The parties intend that the Company shall be disregarded for Federal and state income tax purposes.

ARTICLE III

Purposes and Powers

3.1 Purposes. Subject to the provisions of Article XIII hereof, the purposes of the Company are to, directly or indirectly, acquire, develop, redevelop, hold, operate, manage, finance, sell, dispose of or otherwise deal with real property and engage in any other lawful transaction or conduct any other lawful business for which limited liability companies may be formed under the Act.

3.2 General Powers. Subject to the provisions of Article XIII hereof, the Company shall have all powers granted to limited liability companies under the Act.

ARTICLE IV

Members

4.1 Limited Liability Company Interests. The names and addresses of the Members and the number of Unit(s) owned by each are set forth on attached Schedule A, which Schedule shall be revised by the Committee from time to time as necessary to reflect the admission of additional or substitute Members and the withdrawal of Members in accordance with Article X.

4.2 Meetings. Meetings of the Members may be called at any time by any Member. The Member calling a meeting shall cause notice of such meeting to be given to the Members.

4.3 Place of Meeting. Unless otherwise agreed by all Members, the place of meeting shall be the principal office of the Company in the State of Illinois.

4.4 Notice of Meetings. Notice stating the place, day and hour of any meeting of Members and the purpose(s) of the meeting shall be given to each Member not less than five (5) days before the meeting. A waiver of notice in writing, signed at any time by a Member entitled to such notice, shall be deemed equivalent to the giving of such notice.

4.5 Closing of Transfer Books or Fixing of Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members or payment of distributions or for any other purpose, the Members may provide that the records relating to Transfers of Units shall be closed for a stated period not to exceed sixty (60) days. In lieu of closing such Transfer records, the Members may fix, in advance, a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days prior to the date of such meeting or the payment of such distributions. If such Transfer records are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members or to receive payment of a distribution, the date on which notice of the meeting is mailed or on which the Members adopt a resolution to pay such distribution, as the case may be, shall be the record date for such determination of Members.

4.6 Quorum. The holders of a majority of the Units, present in person or represented by proxy, shall constitute a quorum of the Members for all purposes except in those instances where a larger number shall be required by law. If a quorum of Members is not present at any meeting, such meeting may be adjourned by those present to any day, not exceeding thirty (30) days thereafter, and no further call or notice of such adjourned meeting shall be necessary.

4.7 Voting. Each outstanding Unit shall be entitled to one vote upon each matter submitted to a vote of the Members. A Member may vote in person or by proxy appointed in writing by such Member or its duly authorized attorney-in-fact. Such proxy shall be filed with the Company prior to the vote in question. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. The affirmative vote of the holders of a majority of the Units present in person or represented by proxy at any meeting at which there is a quorum shall be the act of the

Members, unless the vote of a greater number or class thereof is required by law or this Agreement, including without limitation the provisions of Article XIII hereof.

4.8 Action by Written Consent. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding Units having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Units entitled to vote thereon were present and voting.

4.9 Telephone Meetings. Any meeting of the Members may be held, or any Member may participate in any meeting of the Members, by conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other.

4.10 Other Activities. Notwithstanding any provision at law or in equity, a Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in other investments or activities of any Member or to the income or proceeds derived therefrom.

4.11 Special Member. Upon the occurrence of any event that causes the last remaining Member to cease to be a member of the Company (other than upon an assignment by such last Member of all of its Units and the admission of the transferee pursuant to Sections 10.1 and 10.3) (a "Member Cessation Event"), the Independent Manager whose name is first set forth on the signature page hereto shall, without any action of any Person and simultaneously with such Member Cessation Event, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. If, however, at the time of a Member Cessation Event, such Independent Manager has died or is otherwise no longer able to step into the role of Special Member, in such event, the other Independent Manager shall, concurrently with the Member Cessation Event, and without any action of any Person and simultaneously with the Member Cessation Event, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. It is the intent of these provisions that the Company never have more than one Special Member at any particular point in time. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Manager pursuant to Article XIII; provided, however, that the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member (which the last Member or its personal representative may cause to occur). The Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. A Special Member shall not be required to make any capital contributions to the Company and shall not receive Units or any other limited liability company interest in the Company. A Special

Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, the Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including without limitation the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of the Special Member, each person acting as an Independent Manager pursuant to Article XIII shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each person acting as an Independent Manager pursuant to Article XIII shall not be a member of the Company. By signing this Agreement, each person acting as an Independent Manager pursuant to Article XIII agrees that, should such person become a Special Member, such Special Member will be subject to and bound by the provisions of this Agreement applicable to a Special Member.

ARTICLE V

Management

5.1 The Committee.

(a) Managers. Except as specifically provided herein, the management and control of the Company shall be vested exclusively in the Managers, who shall exercise their authority as a committee (the "Committee"). The Committee may exercise all such powers of the Company and do all such lawful acts and things as are not by the Act or by this Agreement directed or required to be exercised or done by the Members. Without limiting the foregoing, the Committee shall be responsible for the establishment of policy and operating procedures respecting the business affairs of the Company and the appointment of Officers and delegation of duties thereto as herein contemplated. The Committee shall consist of one or more Managers selected from time to time by the Members as provided in Article IV. The Managers shall be elected at the annual meeting or by written consent of the Members, and each Manager elected shall hold office until his or her successor is elected and qualified, or until his or her resignation or removal. Managers need not be Members but must be at least 18 years of age. In furtherance of the foregoing, the sole Member on the date of the Agreement hereby elects each of John Bucksbaum, Robert A. Michaels, Bernard Freibaum, Beth L. Peoples and Suzanne M. Hay as a Manager to serve until the next annual meeting of the Members and his or her successor is duly elected and qualified or until his or her earlier resignation or removal.

(b) Meetings. The Committee may hold meetings, both regular and special, either within or without the State. The first meeting of each newly elected Committee shall be held at such time and place as shall be fixed by the vote of the Members at the annual meeting and no notice of such meeting shall be necessary to the newly elected Managers in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the Members to fix the time or place of such first meeting of the newly elected

Committee, or in the event such meeting is not held at the time and place so fixed by the Members, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Committee, or as shall be specified in a written waiver signed by all of the Managers. Regular meetings of the Committee may be held without notice at such time and at such places as shall from time to time be determined by the Committee. Special meetings of the Committee may be called by the President upon at least two (2) days notice to each Manager; special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of two Managers unless the Committee consists of only one Manager, in which case special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of the sole Manager. The Committee shall cause written minutes to be prepared of all action taken by the Committee at a meeting and shall deliver a copy thereof to each Manager within thirty (30) days thereafter.

(c) Quorum and Voting. At all meetings of the Committee, a majority of the Managers shall constitute a quorum for the transaction of business and the act of a majority of the Managers present at any meeting at which there is a quorum shall be the act of the Committee, except as may be otherwise specifically provided in this Agreement or by the Act. If a quorum shall not be present at any meeting of the Committee, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(d) Telephonic Meetings. Any meeting of the Committee may be held, or any Manager may participate in any meeting of the Committee, by conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other.

(e) Decision of Managers by Written Consent. Any action required or permitted to be taken at any meeting of the Committee may be taken without a meeting, if all members of the Committee consent thereto in writing, *provided, however*, that no such written consent of any Independent Manager shall be required for the validity of such action by the Committee unless, pursuant to the provisions of Article XIII, such action would be invalid in the absence of the consent of such Independent Manager. Such writing or writings shall be filed with the minutes of the proceedings of the Committee.

(f) Notice. Notice of Committee meetings shall be in writing and may be given personally (including delivery by messenger or courier service), by mail, by telegram or by facsimile, and shall be deemed given when received, except that notice sent by mail shall be deemed to be given two (2) days after deposited in the United States mail. Whenever any notice is required to be given under the provisions of this Agreement, a waiver thereof in writing, signed by the Person or Persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

(g) Delegation of Powers. The Committee may delegate its powers, but not its responsibilities, to the Officers, or to any other Person.

(h) Compensation. No Manager (other than the Independent Managers) shall receive compensation for its services to the Company in such capacity, a fee for attendance at meetings or reimbursement of expenses of attendance at meetings.

(i) Resignation. Any Manager (including without limitation any Person serving as Independent Manager) may resign at any time by giving written notice to the Committee.

(j) Removal. Any Manager (including without limitation any Person serving as Independent Manager) or the entire Committee may be removed, with or without cause, by the affirmative vote of the Members in accordance with Article IV (but the provisions of clause (i) of this Section 5.1 and this clause (j) shall not negate any obligation under Article XIII hereof to replace any removed or resigning Independent Manager prior to the effectiveness of such removal or resignation).

(k) Vacancies and New Positions. Vacancies and newly created Manager positions resulting from any increase in the authorized number of Managers may be filled by a majority of the Managers then in office or by a sole remaining Manager, and the Managers so chosen shall hold office until the next annual election and until their successors are duly elected and shall have qualified, or until his or her earlier death, resignation or removal. Any such vacancy or newly created Manager position may also be filled at any time by a vote of the Members as provided in Article IV.

5.2 Officers.

(a) Election and Term of Office. The officers of the Company (the "Officers") shall be elected by the Committee and shall be a Chief Executive Officer, a President, a Vice President (which includes any Executive Vice President, Senior Vice President or any variation thereof for all purposes of this Agreement), a Secretary and a Treasurer. The Committee may also elect a Chairman, additional Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other Officers as it shall deem necessary or desirable; provided, however, that the initial Officers are listed on Schedule B and such Persons are deemed to have been elected to the offices set forth opposite their respective names thereon without any Committee or other action. The Officers of the Company shall hold office until their successors are elected and qualified, or until they resign or are removed. Each Officer shall perform such duties as may be prescribed by the Committee or specified in this Agreement.

(b) Duties of the Chief Executive Officer. The Chief Executive Officer shall be responsible for formulating general policies and programs for the Company for submission to the Committee and for carrying out the programs and policies approved by the Committee. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(c) Duties of the President. The President shall be the chief operating officer of the Company and shall be responsible for the administration and operation of the business and affairs of the Company. The President shall cause to be called special meetings of the Committee in accordance herewith. The President shall perform such other duties and have such other powers as the Chief Executive Officer or the Committee may from time to time prescribe. In the absence or disability of the Chief Executive Officer, the President shall perform the duties and exercise all the powers of the Chief Executive Officer, and shall be subject to all the restrictions upon the Chief Executive Officer. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(d) Duties of the Vice President. In the absence of the President or in the event of his or her inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Committee, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as may be prescribed by the Committee, the Chief Executive Officer or the President, under whose supervision he or she shall serve. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(e) Duties of the Secretary. The Secretary shall attend all meetings of the Committee and all meetings of the Members and record all the proceedings of the meetings of the Members and of the Committee in a book to be kept for that purpose. The Secretary shall give or cause to be given notice of all meetings of the Members and special meetings of the Committee and shall perform such other duties as may be prescribed by the Committee from time to time. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(f) Duties of the Treasurer. The Treasurer shall have the custody of the funds and securities of the Company and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Committee. The Treasurer shall disburse the funds of the Company as may be ordered by the Committee, taking proper vouchers for such disbursements, and shall render to the President and the Committee, at its regular meetings, or when the Committee so requires, an account of all of his or her transactions as Treasurer

and of the financial condition of the Company. The Treasurer shall perform, in general, all the duties incident to the office of Treasurer and such other duties as may be prescribed by the Committee from time to time. If required by the Committee, the Treasurer shall give the Company a bond in such sum and with such surety or sureties as shall be satisfactory to the Committee for the faithful performance of the duties of the Office of Treasurer and for the restoration to the Committee, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Company. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(g) Duties of the Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Committee (or if there be no such determination, then in the order of their election), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Committee may from time to time prescribe. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(h) Duties of the Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Committee (or if there shall be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Committee may from time to time prescribe. He or she shall have the power to sign and deliver on behalf of the Company all documents and agreements.

(i) Compensation. No Officer shall receive compensation for his or her services to the Company in such capacity.

(j) Resignations. Any Officer may resign at any time by giving written notice to the Committee.

(k) Removal. Any Officer may be removed, with or without cause, at any time by the affirmative vote of the Managers in accordance with Section 5.1.

(l) Vacancies. Any vacancy occurring in any office of the Company may be filled by the Committee.

5.3 No Exclusive Duty to the Company. Notwithstanding any provision at law or in equity, no Manager or Officer shall be required to manage the Company as its sole and exclusive function. Notwithstanding any provision at law or in equity, a Manager or Officer may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any

right, by virtue of this Agreement, to share or participate in other investments or activities of any Manager or Officer or to the income or proceeds derived therefrom.

ARTICLE VI

Limitation on Liability and Indemnification

6.1 Limitation on Liability. To the fullest extent permitted by law, no Member, Manager or Officer shall be liable to the Company or any other Member for any act or omission in connection with the management of the business or affairs of the Company unless such act or omission was taken or made in bad faith or constitutes gross negligence or willful misconduct.

6.2 Indemnification of Members. The Company shall, to the fullest extent permitted by law, indemnify and hold harmless each Member, Manager and Officer against any losses, judgments, liabilities or expenses incurred in settling any claim or incurred in any finally adjudicated legal proceeding, including reasonable attorneys' fees and costs of removing any liens affecting property of the indemnitee, and/or amounts paid in settlement of any claims sustained by it arising from or relating to the Company, provided that the same were not the result of (a) actions or omissions of such Member, Manager or Officer taken or made in bad faith or which constitute gross negligence or willful misconduct or (b) actions or claims instituted by such Member, Manager or Officer (other than claims or actions seeking to enforce the indemnification obligations hereunder).

6.3 Payment of Expenses in Advance. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Company in advance of the final disposition of such action, suit or proceeding, as authorized by the Members in the specific case, upon receipt of an undertaking by a Member, Manager or Officer, as the case may be, to repay such amount unless it shall ultimately be determined that such Member, Manager or Officer is entitled to be indemnified by the Company.

6.4 Provisions Not Exclusive. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of Members or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

6.5 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of the Members, Managers and/or Officers against any liability asserted against them or incurred by them in such capacity or capacities or arising out of their status as such, whether or not the Company would have the power to indemnify them against such liability under the provisions of this Article.

6.6 Continuation. The provisions of this Article shall continue as to a Person who has ceased to be a Member, Manager or Officer as to claims arising out of activities related to its prior capacity and shall inure to the benefit of its successors and

obligors. The provisions of this Article also shall survive the liquidation, dissolution and termination of the Company and the termination of this Agreement and shall, to the fullest extent permitted by law, be binding on the Company's successors and assigns.

6.7 Notice of Indemnification and/or Advancement of Expenses. If the Company has indemnified and/or advanced any expenses to any Person pursuant to this Article VI, the Company shall, within 30 days of such indemnification or advancement or sooner as required by the Act, provide the Members with written notice thereof.

6.8 Recognition of Liens in Favor of Lender. The obligations of the Company to Lender in respect of the Loan described in Article XIII hereof are secured to the extent provided in and by the Mortgage and the other Loan Documents. To the extent that payment in respect of claims for indemnification under this Article VI is sought from assets of the Company which collaterally secure the obligations of the Company to Lender in respect of the Loan, such claims for indemnification are subordinate in right of payment to such obligations of the Company in respect of the Loan.

ARTICLE VII

Contributions and Capital Accounts

7.1 Capital Contributions.

(a) Each Member has made, or is deemed to have made, a Capital Contribution to the Company in the amount set forth in the records of the Company.

(b) No further contributions of capital to, or financial accommodations for the benefit of, the Company shall be required.

7.2 Member Loans.

(a) Subject to the provisions of Article XIII hereof, the Company may borrow funds from any Member for proper business purposes at any time and from time to time on such terms and conditions, including, without limitation, the rate of interest, any participation rights and any security, as the Committee deems appropriate. Any such loan shall not increase such Member's capital account, if any, but shall be a debt due from the Company to such Member payable in accordance with its terms. In the event of default, such Member, as lender, shall be entitled to exercise and pursue all rights and remedies available to it in accordance with such terms or applicable law.

(b) Notwithstanding the foregoing, no Member shall be required to loan funds to the Company.

7.3 Interest; Priority; Return of Capital; Etc. No interest shall be paid by the Company on Capital Contributions. No Member shall be entitled to priority over any

other Member, either as to a return of its Capital Contribution or as to allocations of profits, losses or distributions. No Member shall be entitled to the return of its Capital Contributions except (a) as provided for herein, (b) as required by law, (c) to the extent, if any, that distributions made pursuant to the express terms of this Agreement may be considered as such by law, or (d) upon dissolution of the Company, and then only to the extent expressly provided for in this Agreement. No Member shall have any right to demand or receive property other than cash in return for its Capital Contribution, and no Member shall have the right to withdraw or resign from the Company except as expressly provided herein.

7.4 Negative Capital Accounts. No Member shall have an obligation to the Company to restore to zero any negative balance in its capital account.

ARTICLE VIII

Allocations; Distributions

8.1 Allocation of Net Profits and Net Losses. In the event that the Company is treated as a partnership for federal and/or state income tax purposes, the profits and losses of the Company shall be allocated among the Members pro rata in accordance with the number of Units then owned by each Member in relation to the total number of Units then outstanding.

8.2 Computation and Determination. To the fullest extent permitted by law, the Members, Managers and Officers may rely upon, and shall have no liability to the Members or the Company if they rely upon, the advice of the independent public accountants retained by the Company from time to time with respect to all matters (including disputes with respect thereto) relating to computations and determinations required to be made under this Article.

8.3 Distributions. The timing and amount of distributions to the Members shall be determined by the Committee. All distributions shall be made pro rata to the Members in accordance with the number of Units then owned by each Member in relation to the total number of Units then outstanding. Notwithstanding any provision to the contrary contained in this Agreement, the Committee, on behalf of the Company, shall not be permitted to make any distribution to a Member in respect of its interest in the Company in violation of Section 18-607 of the Act or any other applicable law or for so long as the Loan is outstanding, if such distribution would constitute a default under the Loan Agreement.

ARTICLE IX

Accounting and Tax Matters

9.1 Fiscal Year. The Company's Fiscal Year shall be the calendar year or such other period as the Committee shall determine.

9.2 Tax Assessed or Amounts Withheld. Any tax assessed on the Company with respect to any Member's allocable share of the income of the Company and/or all amounts required to be withheld with respect to the income of the Company allocable to any payment or distribution to the Company or the Members pursuant to the Code or any provision of any state or local tax law, shall be treated as amounts distributed to the Members for all purposes under this Agreement. The Company may allocate any such amounts among the Members in any manner so that the capital accounts, if any, of the Member whose status gives rise to such assessment or withholding is properly debited or credited.

9.3 Books of Account and Records. The Committee shall cause proper and complete records and books of account of the Company to be kept in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is required by the Act and is customary and usual for businesses of the type engaged in by the Company. The books and records at all times shall be maintained at the principal office of the Company (and, to the extent required to be kept at the registered office, also maintained at the registered office) and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives during reasonable business hours.

9.4 Financial and Tax Information. Within ninety (90) days after the end of each Fiscal Year, the Company shall furnish to each Person who was a Member during such period financial statements of the Company and all other information necessary for the preparation of such Person's federal income tax return.

ARTICLE X

Restrictions on Transfer of Units

10.1 Transfer of Units. Subject to the provisions of Article XIII hereof, no Member may sell, assign, pledge or otherwise transfer or encumber any of its Units or any beneficial interest therein to any other person without the prior written consent of the other Members, if any; provided however that any Member shall have the right at any time or from time to time to assign some or all of its Units to an Affiliate or to a successor by sale, merger or consolidation. To the fullest extent permitted by law, any purported Transfer in violation of this Agreement shall be null and void and shall not be recognized by the Company.

10.2 Withdrawal. No Member shall have the right to withdraw from the Company except with the consent of the Committee and upon such terms and conditions as may be specifically agreed upon between the Committee and the withdrawing Member. The provisions of Article VIII with respect to distributions upon withdrawal are exclusive and no Member shall be entitled to claim any further or different distribution upon withdrawal.

10.3 Additional Members. The Committee shall have the sole right to admit additional Members upon such terms and conditions, at such time or times, and for such

capital contributions as the Committee shall in its sole discretion determine. In connection with any such admission, the Committee shall amend Schedule A hereof to reflect the name, address, capital contribution and number of Units of the additional Member.

10.4 Record Owner of Unit. The Company shall be entitled to treat the Person whose name appears on the records of the Company as the absolute owner of a Unit in the Company in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such record owner, until such time as a written assignment of such Unit has been received and accepted by the Committee and recorded on the books of the Company.

ARTICLE XI

Dissolution and Termination, Final Accounting and Distributions

11.1 Dissolution and Termination of the Company.

(a) Subject to the provisions of Article XIII hereof, the term of the Company shall end, and the Company shall be immediately dissolved, upon the occurrence of any of the following:

(i) The termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act;

(ii) the sale of all or substantially all assets of the Company;

(iii) the decision of the holders of a majority of the outstanding Units to dissolve; or

(iv) a decree of judicial dissolution under Section 18-802 of the Act.

(b) Upon the occurrence of any event that causes the last remaining member of the Company or the Member to cease to be a member of the Company (other than upon an assignment by such member of its entire limited liability company interest and the admission of the transferee as a member pursuant to Sections 10.1 and 10.3), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company with the rights (and only the rights) of such member, effective as of the occurrence of

the event that terminated the continued membership of the last remaining member or the Member in the Company.

(c) Upon the dissolution of the Company, no further business shall be conducted by the Company except the taking of action necessary for the winding up of the affairs of the Company and the liquidation and distribution of its assets. Actions taken by the Company to effectuate or facilitate the orderly winding up of the Company's affairs shall not be construed to involve a continuation of the Company.

11.2 Distributions After Dissolution and Termination.

(a) Upon the dissolution of the Company, the Committee shall proceed to wind-up the business of the Company. The Committee shall first determine or have determined the Fair Market Value of the Company. The Committee shall use its best efforts to sell such Company assets (except cash and current receivables) as are necessary to satisfy the claims of creditors or as cannot be readily divided among the Members at such prices, and on such terms, as the Committee, in the exercise of its best judgment under the circumstances then presented, deems in the best interest of the creditors or the Members, as the circumstances require. To the fullest extent permitted by law, the Committee is specifically authorized to accept an installment obligation in connection with the sale of any assets of the Company if the Committee, in its sole discretion, deems it to be in the best interest of the creditors or the Members, as the circumstances require. To the fullest extent permitted by law, any Member shall have the right to purchase any Company property to be sold on liquidation, provided that the terms on which such sale is made are no less favorable than would otherwise be available from third parties.

(b) In settling accounts after dissolution of the Company, the assets of the Company shall be paid to creditors of the Company and to the Members in the following order:

(i) to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof) in the order of priority as provided by law, including to the establishment of reserves for payment of creditors; and

(ii) to the Members, pro rata in accordance with the number of Units owned by them.

(c) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the

manner provided for in this Agreement and (ii) the Certificate shall have been canceled in the manner required by the Act.

11.3 Additional Understandings.

Notwithstanding any other provision of this Agreement,

(a) the Company shall continue as a separate legal entity until the cancellation of the Certificate in accordance with the Act,

(b) the Bankruptcy of a Member or a Special Member shall not cause such Member or Special Member, as the case may be, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution, and,

(c) each of the Member and the Special Member waives any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of a Member or a Special Member, or the occurrence of an event that causes a Member or a Special Member to cease to be a member of the Company.

ARTICLE XII

Amendment of Agreement

Notwithstanding anything to the contrary contained herein (but subject to the provisions of Article XIII hereof), this Agreement may be amended only upon the approval of the holders of all outstanding Units (and the consent of no Manager, Officer, or other Person shall be required); provided, however, that any amendment that materially and adversely affects any right, power or liability of any Manager or Officer shall be prospective only unless the Person affected consents in writing thereto.

ARTICLE XIII

Provisions Relating to Financing

This Article XIII is being adopted in connection with a loan in the original principal amount of up to $195,000,000 (the "Loan") pursuant to that certain Loan Agreement to be dated on or about November 15, 2007, (as the same may be amended from time to time, the "Loan Agreement"), between the Company, and U.S. Bank National Association, a national banking association, as lender (together with its successors and assigns, "Lender") and shall become effective upon closing of the Loan. Capitalized terms used in this Article XIII and not otherwise defined herein shall have the meanings set forth in the Loan Agreement or in the mortgage or deed of trust securing repayment of the Loan (as the same may be amended from time to time, the "Mortgage"). Effective as of the closing of the Loan and for so long as (i) the Company owns the Property and (ii) the Loan is an outstanding obligation of the Company, and notwithstanding anything to the contrary contained in any other Article hereof, the Company shall, except as may

be permitted or required by the Loan Agreement, the Mortgage or any other Loan Documents or with the written consent of the Lender (or a servicer, on behalf of the Lender), operate in accordance with each of the following:

(a) The purpose for which the Company is organized is and shall be limited solely to (i) owning, holding, leasing, transferring, operating and managing the Property and all business incidental thereto, (ii) entering into or assuming the obligations of the Company under the Loan Agreement with the Lender, (iii) refinancing the Property in connection with a permitted repayment of the Loan and (iv) transacting any and all lawful business for which the Company may be organized under the laws of the State that is incidental, necessary or appropriate to accomplish the foregoing.

(b) The Company will not own or acquire any asset or property other than (i) the Property, and (ii) incidental personal property necessary for and used or to be used in connection with the ownership, management or operation of the Property.

(c) The Company will not engage in any business other than the ownership, management and operation of the Property or business incidental thereto (including as described in clause (a) of this Article).

(d) The Company will not enter into any contract or agreement with any Affiliate of the Company, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties not so affiliated with the Company.

(e) The Company will not incur any Indebtedness other than (i) the Loan, (ii) trade and operational debt (collectively, "Trade Debt") incurred in the ordinary course of business with trade creditors in amounts as are normal and reasonable under the circumstances, provided such Trade Debt does not exceed the Threshold Amount, is not evidenced by a note and is not in excess of sixty (60) days past due (unless the same is subject to good faith dispute by the Company, in appropriate proceedings therefore, and for which adequate reserves have been established in accordance with GAAP), and (iii) Capital Expenditures that are expressly permitted pursuant to the Loan Agreement.

(f) The Company will not make any advance payments other than in the ordinary course of its business or loans to any Person and shall not acquire obligations or securities of any Affiliate of the Company.

(g) The Company will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due (unless the same is subject to good faith dispute by the Company, in appropriate proceedings therefore, and for which adequate reserves have been established in accordance with GAAP).

(h) The Company will do all things necessary to observe organizational formalities and preserve its separate existence, and will not, nor will it permit any Affiliate of the Company to, amend, modify or otherwise change the Certificate (except as required by law), this Agreement (including this Article XIII), or other organizational documents of the Company in any material respect which adversely affects its existence as a Special Purpose Entity (as defined below) or its other obligations with respect to the Loan.

(i) The Company will maintain all of its books, records, financial statements and bank accounts separate from those of any other Person and, except as required or permitted under GAAP, its assets will not be listed as assets on the financial statement of any other Person. The Company will file its own tax returns and will not file a consolidated federal income tax return with any other Person (except that the Company may file or may be part of a consolidated federal tax return to the extent required or permitted by applicable law); provided, however, that there shall be an appropriate notation indicating the separate existence of the Company and its assets and liabilities. The Company shall maintain its books, records, resolutions and agreements as official records.

(j) The Company will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself as a division or part of any other Person and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(k) The Company will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(l) To the fullest extent permitted by law, neither the Company nor any Affiliate of the Company will seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, or the sale of material assets of the Company.

(m) The Company will not commingle its assets with those of any other Person and will hold all of its assets in its own name. The Company will maintain and account for its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

(n) The Company will not guarantee or become obligated for the debts of any other Person and does not and will not hold itself out as being responsible for the debts or obligations of any other Person.

(o) At all times (except during such periods when the position temporarily is vacant) there shall be at least two (2) duly appointed Managers (each an "Independent Manager") of the Company, each of whom is a natural person who is not at the time of initial appointment, or at any time while serving as manager, and has not been at any time during the preceding five (5) years: (i) a stockholder, director, manager (with the exception of serving as an Independent Manager of the Company), trustee, officer, employee, partner, member, attorney or counsel of the Company or any Affiliate of the Company; (ii) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Company or any Affiliate of the Company; (iii) a Person or other entity controlling or under common control with any such stockholder, partner, member, creditor, customer, supplier or other Person; or (iv) a member of the immediate family of any such stockholder, director, manager, officer, employee, partner, member, creditor, customer, supplier or other Person. A natural person who satisfies the foregoing definition other than subparagraph (ii) shall not be disqualified from serving as an Independent Manager of the Company if such individual is an independent manager provided by a nationally-recognized company that provides professional independent directors, managers or trustees and that also may provide other corporate services in the ordinary course of its business to the Company and/or its Affiliates or if such individual receives customary director, manager or trustee's fees for so serving, subject to the limitation on such fees set forth below. A natural person who otherwise satisfies the foregoing definition except for serving as an independent director, manager or trustee of one or more Affiliates of the Company that are special purpose entities (other than any entity that owns a direct or indirect equity interest in the Company) shall not be disqualified from serving as Independent Manager of the Company if such individual is, at the time of initial appointment or at any time while serving as an Independent Manager of the Company, an independent director, manager or trustee provided by a nationally recognized company that provides professional independent directors, managers and trustees or such individual does not derive in any given year more than 5% of his or her annual income for that year from serving as director, manager or trustee of affiliates of the Company and other Affiliates. 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 the penultimate paragraph at the end of this Article XIII. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Manager by a written instrument, and (ii) shall have executed a counterpart to this Agreement. In the event of a vacancy in the position of Independent Manager, a successor Independent Manager or Independent Managers shall, as soon as practicable, be appointed. Except as provided in the fourth sentence of this subsection (o), in exercising their rights and performing their duties under this Agreement, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business

corporation organized under the General Corporation Law of the State. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. For purposes of this paragraph, a "Special Purpose Entity" is an entity whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness in compliance with rating agency standards.

(p) The Company shall allocate fairly and reasonably any overhead expenses that are shared with an Affiliate of the Company, including paying for office space and services performed by any employee of an Affiliate of the Company.

(q) The Company shall not pledge its assets to secure the obligations of any other Person other than with respect to the Loan.

(r) The Company will pay the salaries of its employees from its own funds.

(s) To the fullest extent permitted by law, the Company shall conduct its business so that the assumptions made with respect to it in the Nonconsolidation Opinion shall be true and correct in all respects.

(t) No transfer of any direct or indirect ownership interest in the Company may be made.

Failure of the Company, or a Member or Committee on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of a Member or the Managers.

Notwithstanding any provision of this Agreement to the contrary, the prior unanimous written consent of the Managers of the Company, including both of the Independent Managers, shall be required (provided, however, the Company shall not take any such consent or authorize the taking of any of the actions set forth in this paragraph below, unless there are at least two Independent Managers then serving in such capacity) for the Company, or any other Person on behalf of the Company, to:

(i) file or consent to the filing by or against the Company, as debtor, of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings by the Company, as debtor, under any applicable insolvency law; or otherwise seek relief for the Company, as debtor, under any laws relating to the relief from debts or the protection of debtors generally;

(ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Company, as debtor, or a substantial portion of the Company's property;

(iii) make any assignment for the benefit of the creditors of the Company; or

(iv) take any action in furtherance of any of the foregoing.

Notwithstanding anything to the contrary contained herein, none of the provisions of this Article XIII or other provisions hereof shall (a) obligate any Member or any equity holder in any Member to make additional capital contributions to the Company or such Member, as applicable, or return dividends or distributions paid by the Company or such Member (but nothing contained herein shall negate any obligation under applicable law to return any dividend or distribution), as applicable, or (b) confer any benefits on third parties, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto and their respective successors and assigns.

ARTICLE XIV

Miscellaneous

14.1 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given when deposited in the United States mail, first class postage prepaid, addressed to the Members at their address as it appears in the records of the Company or when delivered personally (including delivery by messenger or courier service) to the Members at such address.

14.2 Law Governing. The construction and enforcement of this Agreement shall be governed by the laws of the State (without regard to the conflicts of law principles thereof).

14.3 Representatives and Assigns. Subject to the other provisions hereof, this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, personal or legal representatives, successors and assigns.

14.4 Entire Agreement. This Agreement contains the entire understanding among the parties with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements among them, or any of them, respecting the subject matter contained herein.

14.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one document.

14.6 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance is, for any reason and to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or

circumstances shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

14.7 Construction. The Article and Section titles used in this Agreement are solely for convenience and neither modify nor limit the provisions of this Agreement. Any references herein to Articles and Sections shall be deemed to refer to the Articles and Sections hereof, as the case may be, unless otherwise specified. If the context so requires, the masculine shall include the feminine and the neuter, and the singular shall include the plural, and vice versa.

14.8 Third Party Beneficiary. No Person other than a Member shall have any legal or equitable right, remedy or claim under or in respect of this Agreement or be entitled to status as a third party beneficiary of any obligation arising under this Agreement or to enforce the obligation of any Member or the Company under this Agreement (but the Managers and Officers may enforce the provisions of Article VI as to indemnification). Notwithstanding the foregoing, or any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Managers, in accordance with its terms. In addition (but subject to the provisions of Article XIII), the Independent Managers shall be intended beneficiaries of this Agreement.

14.9 Waiver of Action for Partition. To the fullest extent permitted by law, each Member irrevocably waives any right that it may have to maintain any action for partition with respect to the property of the Company.

14.10 Attorneys' Fees. To the fullest extent permitted by law, if any legal action, including an action for declaratory relief, is brought to enforce any provision of this Agreement, the prevailing party or parties, as the case may be, shall be entitled to recover his, its or their respective reasonable attorneys' fees from the non-prevailing party or parties, as the case may be. These fees, which may be set by the court in the same action or in a separate action brought for that purpose, are in addition to any other relief to which any prevailing party may be entitled.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have executed this Operating Agreement on the date first above written.

MEMBER:

GGP LIMITED PARTNERSHIP

By: General Growth Properties, Inc.,
its general partner

By: _____
Bernard Freibaum
Executive Vice President

INDEPENDENT MANAGERS:

_____
Beth L. Peoples

_____
Suzanne M. Hay

IN WITNESS WHEREOF, the undersigned have executed this Operating Agreement on the date first above written.

MEMBER:

GGP LIMITED PARTNERSHIP

By: General Growth Properties, Inc.,
its general partner

By: _____
Bernard Freibaum
Executive Vice President

INDEPENDENT MANAGERS:

_____
Beth L. Peoples

_____
Suzanne M. Hay

SCHEDULE A
TO
OPERATING AGREEMENT
OF
FOX RIVER SHOPPING CENTER, LLC

Member	Number of Units Owned
GGP Limited Partnership 110 North Wacker Drive Chicago, Illinois 60606	100

SCHEDULE B
TO
OPERATING AGREEMENT
OF
FOX RIVER SHOPPING CENTER, LLC

Name	Office
John Bucksbaum	Chief Executive Officer
Robert A. Michaels	President
Bernard Freibaum	Executive Vice President and Treasurer
Ronald L. Gern	Senior Vice President and Secretary
Jean C. Schlemmer	Senior Vice President
Kathleen M. Courtis	Vice President
Linda J. Wight	Vice President and Assistant Secretary
Michael Chimitris	Assistant Secretary
James D. Lano	Assistant Secretary
Jeffrey C. Palkovitz	Assistant Secretary
Howard A. Sigal	Assistant Secretary
Carol A. Williams	Assistant Secretary
John W. Steele, III	Assistant Secretary

Exhibit 69

CONSENT OF THE SOLE MEMBER
OF
CERTAIN ENTITIES

The undersigned, being the sole member of each of the entities listed on Schedule A attached hereto and made a part hereof (each, an "Entity"), in lieu of a meeting, hereby consents to, authorizes and adopts the following resolutions:

WHEREAS, Ronald L. Gern has resigned as a manager of the entities listed on Schedule A effective February 27, 2009; and

WHEREAS, the sole member of the Entity desires to remove and replace certain managers as this time.

NOW, THEREFORE, BE IT RESOLVED, that the Independent Manager(s) listed on Schedule B are hereby removed as Independent Manager(s) of the Entities indicated on Schedule B; and

FURTHER RESOLVED, that the individuals listed on Schedule B are hereby elected as Independent Manager(s) of the Entities indicated on Schedule B, to serve until their successors are duly elected and qualified or until their earlier death, resignation or removal.

Dated: March 4, 2009

GGP LIMITED PARTNERSHIP

By: General Growth Properties, Inc.,
its general partner

By: _____
Adam S. Metz
Chief Executive Officer

BEING THE SOLE MEMBER OF EACH
ENTITY LISTED ON SCHEDULE A

SCHEDULE A

Champaign Market Place L.L.C.
Colony Square Mall L.L.C.
Columbia Mall L.L.C.
Coral Ridge Mall, LLC
Fallbrook Square Partners L.L.C.
Fallen Timbers Shops, LLC
Fox River Shopping Center, LLC
GGP-Foothills L.L.C.
GGP-Four Seasons L.L.C.
GGP Jordan Creek L.L.C.
GGP Village at Jordan Creek L.L.C.
GGP-Newgate Mall, LLC
GGP-Tucson Mall L.L.C.
Lakeland Square Mall, LLC
Lincolnshire Commons, LLC
Phase II Mall Subsidiary, LLC
River Hills Mall, LLC
Sooner Fashion Mall L.L.C.
Southlake Mall L.L.C.
Town East Mall, LLC
Vista Ridge Mall, LLC
Westwood Mall, LLC

SCHEDULE B

Entity Name	Independent Manager(s) Being Removed	Independent Manager(s) Being Appointed
Champaign Marketplace L.L.C.	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
Colony Square Mall L.L.C.	Michelle A. Dreyer	John V. Howard Charles H. Cremens
Columbia Mall L.L.C.	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
Coral Ridge Mall, LLC	Michelle A. Dreyer	John V. Howard Charles H. Cremens
Fallbrook Square Partners L.L.C.	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
Fallen Timbers Shops, LLC	Michelle A. Dreyer	John V. Howard Charles H. Cremens
Fox River Shopping Center, LLC	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
GGP-Foothills L.L.C.	Michelle A. Dreyer	John V. Howard Charles H. Cremens
GGP-Four Seasons L.L.C.	Mary S. Stawikey Suzanne M. Hay	John V. Howard Charles H. Cremens
GGP Jordan Creek L.L.C.	Mary S. Stawikey Suzanne M. Hay	John V. Howard Charles H. Cremens
GGP Village at Jordan Creek L.L.C.	Mary S. Stawikey Suzanne M. Hay	John V. Howard Charles H. Cremens
GGP-Newgate Mall, LLC	Cheryl A. Tussie Michelle A. Dreyer	John V. Howard Charles H. Cremens
GGP-Tucson Mall L.L.C.	Mary S. Stawikey Suzanne M. Hay	John V. Howard Charles H. Cremens

Entity Name	Independent Manager(s) Being Removed	Independent Manager(s) Being Appointed
Lakeland Square Mall, LLC	Cheryl A. Tussie Michelle A. Dreyer	John V. Howard Charles H. Cremens
Lincolnshire Commons, LLC	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
Phase II Mall Subsidiary, LLC	Michelle A. Dreyer Suzanne M. Hay	John V. Howard Charles H. Cremens
River Hills Mall, LLC	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
Sooner Fashion Mall L.L.C.	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
Southlake Mall L.L.C.	Beth L. Peoples Suzanne M. Hay	John V. Howard Charles H. Cremens
Town East Mall, LLC	Mary S. Stawikey Suzanne M. Hay	John V. Howard Charles H. Cremens
Vista Ridge Mall, LLC	Mary S. Stawikey	John V. Howard Charles H. Cremens
Westwood Mall, LLC	Michelle A. Dreyer	John V. Howard Charles H. Cremens