

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Marcia L. Goldstein
Gary T. Holtzer
Adam P. Strochak
Penny Reid
Stephen A. Youngman (*admitted pro hac vice*)
Sylvia A. Mayer (*admitted pro hac vice*)

KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
James H.M. Sprayregen, P.C.
Anup Sathy, P.C. (*admitted pro hac vice*)

Attorneys for Debtors and
Debtors in Possession

Co-Attorneys for Certain Subsidiary Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11 Case No.**
: **09-11977 (ALG)**
: **(Jointly Administered)**
: **Debtors.**
: **09-11977 (ALG)**
: **(Jointly Administered)**
-----X

**DEBTORS' EX PARTE MOTION FOR ENTRY OF
AN ORDER AUTHORIZING THE DEBTORS TO FILE UNDER
SEAL THE CONFIDENTIAL EXHIBIT OF DEBTORS' OPPOSITION TO
MOTION OF MOTT INC. d/b/a HUGO BOSS FOR RELIEF FROM THE
AUTOMATIC STAY TO TERMINATE THE LEASE**

TO THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE:

South Street Seaport Limited Partnership, its ultimate parent, General Growth
Properties, Inc. ("**GGP**"), and their debtor affiliates, as debtors and debtors in possession
(collectively, "**General Growth**" or the "**Debtors**"),¹ submit this motion (the "**Motion**")

¹ A list of the Debtors, along with the last four digits of each Debtor's federal tax identification number, is filed with the Court at Docket No. 593 and is also available for free online at www.kccllc.net/GeneralGrowth.



seeking entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to file under seal the Confidential Exhibit referenced in *Debtors' Opposition to the Motion of Mott d/b/a Hugo Boss to Lift the Stay to Terminate the Lease*.² In support of this Motion, the Debtors respectfully represent the following:

I.

BACKGROUND

1. Commencing on April 16, 2009 (the "**Commencement Date**") and continuing thereafter, the Debtors each commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On April 24, 2009, the United States Trustee for the Southern District of New York (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Committee**").

3. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the Declaration of Adam S. Metz (Docket No. 12) and the Declaration of James A. Mesterharm Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions (Docket No. 13).

² Concurrently herewith, the Debtors are filing the *Debtors' Opposition to the Motion of Mott d/b/a Hugo Boss to Lift the Stay to Terminate the Lease* (the "**Debtors' Opposition**"). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Debtors' Opposition.

II.

JURISDICTION

4. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory predicates for the relief requested herein are section 107 of the Bankruptcy Code and Rule 9018 of the Bankruptcy Rules.

III.

RELIEF REQUESTED

6. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing them to file Exhibit A to the Debtors' Opposition (the "**Confidential Exhibit**") under seal in accordance with section 107(b) of the Bankruptcy Code, and directing that the Confidential Exhibit shall remain under seal and confidential and not be made available to any party other than the Court and (a) the United States Trustee, (b) advisors for the Debtors, (c) the Official Committee of Unsecured Creditors (the "**Committee**"), (d) the advisors for the Committee, and (e) counsel for Hugo Boss (collectively, the "**Limited Notice Parties**"). The Debtors further request that the Court determine that the service of the Debtors' Opposition shall be sufficient without transmittal of the Confidential Exhibit.

IV.

BASIS FOR RELIEF REQUESTED

7. Section 107(b) of the Bankruptcy Code provides courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information...

11 U.S.C. § 107(b). Similarly, Bankruptcy Rule 9018, which implements section 107(b), provides as follows:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information...

Fed. R. Bankr. P. 9018.

8. Section 107(b) is designed to protect “business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *In re Global Crossing, Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003). Once the Court determines that a party in interest in seeking protection of information that falls within section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994); *see also In re Barney’s Inc.*, 201 B.R. 703, 708-09 (Bankr. S.D.N.Y. 1996) (holding that a bankruptcy court is required to seal “documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.”).

9. In *Orion*, the Second Circuit affirmed the bankruptcy court's order to seal a licensing agreement because the release of any information pertaining to the agreement's overall structure or terms and conditions would adversely affect Orion's ability to negotiate favorable promotional agreements, thereby giving Orion's competitors an unfair advantage. *Orion*, 21 F.3d at 27. The *Orion* Court further noted that an interested party only has to show that the information it wishes to seal is confidential and commercial in nature. *Id.*

10. The Debtors submit that the Court should authorize the Confidential Exhibit to be filed under seal because it contains highly sensitive information that the Debtors deem proprietary and confidential, including commercial business information and negotiated lease terms. The public disclosure of the information contained within the Confidential Exhibit would harm the Debtors by disclosing sensitive details related to the Debtors' negotiations of tenant leases. Giving the public access to the confidential and proprietary information contained in the Confidential Exhibit could adversely impact the Debtors' negotiations with existing and prospective tenants and would disadvantage the Debtors in their objectives of maximizing the value of their assets.

11. The Debtors submit this Motion on an *ex parte* basis, as opposed to notice and a hearing, because the Debtors have an immediate need to file the Debtors' Opposition, including the Confidential Exhibit. In light of the fact that the Debtors are required to file this Motion and the Debtors' Opposition simultaneously, the Debtors were unable to obtain the relief requested in this Motion with ordinary notice.

12. The granting of a sealing order is well within the discretion of this Court. See *In re Ionosphere Clubs Inc.*, 156 B.R. 414, 434 (S.D.N.Y. 1993). Under this authority, the plain language of section 107(b) of the Bankruptcy Code and Bankruptcy Rule

9018, and the Court's broad equitable powers under section 105(a) of the Bankruptcy Code to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," the Debtors respectfully submit that the relief requested herein should be granted.

V.

NOTICE

13. No trustee or examiner has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on: (i) the Office of the U.S. Trustee, Attn: Greg M. Zipes; (ii) attorneys for the Committee, Akin Gump Strauss Hauer & Feld LLP, Attn: Michael S. Stamer and James Savin; (iii) counsel for Hugo Boss; and (iv) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

14. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and enter an order authorizing the Debtors to file the Confidential Exhibit referenced in the Debtors' Opposition under seal.

Dated: July 17, 2009
New York, New York

/s/ Adam P. Stochakr
Marcia L. Goldstein
Gary T. Holtzer
Adam P. Stochak
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

and

Stephen A. Youngman (*admitted pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 746-7700
Facsimile: (214) 746-7777

and

Sylvia A. Mayer (*admitted pro hac vice*)
Melanie Gray, (*admitted pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
700 Louisiana Street, Suite 1600
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

Attorneys for Debtors
and Debtors in Possession

and

James H.M. Sprayregen, P.C
Anup Sathy, P.C. (*admitted pro hac vice*)
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Co-Attorneys for Certain Subsidiary
Debtors and Debtors in Possession

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL THE
CONFIDENTIAL EXHIBIT OF DEBTORS' OPPOSITION TO THE MOTION
OF MOTT INC. d/b/a HUGO BOSS FOR RELIEF FROM THE
AUTOMATIC STAY TO TERMINATE THE LEASE

Upon the motion, dated July 17, 2009 (the "Motion")³ of South Street Seaport Limited Partnership, its ultimate parent, General Growth Properties, Inc. ("GGP"), and their debtor affiliates, as debtors and debtors in possession (collectively, "General Growth" or the "Debtors"), pursuant to section 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), requesting entry of an order authorizing the Debtors to file under seal the Confidential Exhibit referenced in the Debtors' Opposition, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and grant the requested relief in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and

³ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1409; and the Debtors having provided notice of the Motion and Hearing (as defined below) to: (i) the Office of the United States Trustee for the Southern District of New York, Attn: Greg M. Zipes; (ii) Attorneys for the Committee, Akin Gump Strauss Hauer & Feld LLP, Attn: Michael S. Stamer and James Savin; (iii) Counsel for Hugo Boss; and (iv) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; the Court finds and determines that the requested relief is in the best interests of the Debtors, their estates, creditors, and all parties in interest; no further notice is necessary; the legal and factual bases set forth in the Motion establish just and sufficient cause to grant the requested relief herein; and therefor, it is

ORDERED that the Motion is granted to the extent set forth herein; and it is further

ORDERED that the Debtors are authorized to file the Confidential Exhibits to the Debtors' Opposition under seal. The Confidential Exhibit shall remain under seal and confidential and shall not be made available to any party other than the Court and the Limited Notice Parties. Service of the Debtors' Opposition shall be permitted and sufficient without transmittal of the Confidential Exhibit; and it is further

ORDERED that a copy of this Order and the Confidential Exhibit, along with the Debtors' Opposition, shall be served upon the Limited Notice Parties, and such notice shall be deemed good and sufficient notice of the relief requested in the Debtors' Opposition, and no further notice shall be required; and it is further

ORDERED that the Limited Notice Parties, include the parties that they represent, shall be bound by this Order and shall subject to further order of the Court, shall, at all times, keep the Confidential Exhibit strictly confidential, and shall not

disclose the contents of the Confidential Exhibit to any party whatsoever, except that parties may disclose the Confidential Exhibit to their expert witnesses and counsel to the Committee may disclose the Confidential Exhibit to members only, but to no other party notwithstanding section 1102(b)(3) of the Bankruptcy Code or otherwise, provided that any member of the Committee or expert witness who receives the Confidential Exhibit shall be bound by this order and shall at all times keep the Confidential Exhibit confidential; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: July 17, 2009
New York, New York

THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE