# TAUBMAN CENTERS INC

## FORM SC 14D9/A

(Amended Statement of Ownership: Solicitation)

Filed 02/24/03

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# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

**SCHEDULE 14D-9/A**
**SOLICITATION/RECOMMENDATION STATEMENT UNDER**
SECTION 14(D)(4) OF THE SECURITIES EXCHANGE ACT OF 1934
(AMENDMENT NO. 18)

# TAUBMAN CENTERS, INC.

(Name of Subject Company)

**TAUBMAN CENTERS, INC.**
(Name of Person(s) Filing Statement)

**COMMON STOCK, PAR VALUE $0.01 PER SHARE**
(Title of Class of Securities)

876664103
(CUSIP Number of Class of Securities)

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[ ] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 18 amends and supplements the Solicitation/ Recommendation Statement on Schedule 14D-9 initially filed with the Securities and Exchange Commission (the "Commission") on December 11, 2002 (as subsequently amended, the "Schedule 14D-9"), by Taubman Centers, Inc., a Michigan corporation (the "Company" or "Taubman Centers") relating to the tender offer made by Simon Property Acquisitions, Inc. ("Offeror"), a wholly owned subsidiary of Simon Property Group, Inc. ("Simon") and Westfield America, Inc. ("Westfield"), as set forth in a Tender Offer Statement filed by Simon on Schedule TO, dated December 5, 2002 (the "Schedule TO") and a Supplement to the Offer to Purchase, dated January 15, 2003 filed by Simon on Schedule TO-T/A (Amendment No. 6) (the "Supplement"), to pay $20.00 net to the seller in cash, without interest thereon, for each Common Share, upon the terms and subject to the conditions set forth in the Schedule TO and the Supplement. Unless otherwise indicated, all capitalized terms used but not defined herein shall have the meanings ascribed to them in the Schedule 14D-9.

**ITEM 8. ADDITIONAL INFORMATION TO BE FURNISHED**

(a) LEGAL MATTERS

On January 31, 2003, Simon Property Group, Inc., and Simon Property Acquisitions, Inc. filed a Memorandum of Law in Support of Plaintiffs' Motion For a Preliminary Injunction in the United States District Court for the Eastern District of Michigan (the "Court") (the "Memorandum of Law"). The brief and its exhibits were initially filed under seal pursuant to Court order. On February 20, 2003, the Court made the brief public, but its exhibits remain under seal.

Also on January 31, 2003, one of the shareholder plaintiffs filed an Amended Verified Class Action and Derivative Complaint with the Court. This complaint was initially filed under seal pursuant to Court order. The shareholder plaintiffs also filed on January 31, 2003 a memorandum of law in support of a preliminary injunction. On February 20, 2003, the Court made this Complaint public, but did not make public the shareholder plaintiff's memorandum of law.

On February 21, 2003, the Company filed a Defendants' Brief in Opposition to Plaintiffs' Motions for a Preliminary Injunction. Defendants also filed certain exhibits to this brief under seal pursuant to Court order.

**ITEM 9. EXHIBITS.**
**Item 9 is hereby amended and supplemented by adding thereto the following:**

| EXHIBIT NO. | DESCRIPTION |
|---|---|
| (a)(38) | Shareholder Letter |
| (a)(39) | Shareholder Letter |
| (a)(45) | Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction, filed on January 31, 2003, by Simon Property Group, Inc., and Simon Property Acquisitions, Inc. in the United States District Court for the Eastern District of Michigan |

| | |
|---|---|
| (a)(46) | Amended Verified Class Action and Derivative Complaint titled Lionel Z. Glancy v. Robert S. Taubman, William S. Taubman, Lisa A. Payne, Graham T. Allison, Peter Karmanos, Jr., Allan J. Bloostein, Jerome A. Chazen, S. Parker Gilbert and Taubman Cetners, Inc., filed on January 31, 2003 in the United States District Court for the Eastern District of Michigan |
| (a)(47) | Defendants' Brief in Opposition to Plaintiff's Motions for a Preliminary Injunction, filed by Taubman Centers on February 21, 2003 in the United States District Court for the Eastern District of Michigan |
| (a)(48) | Declaration of Alan Miller |
| (a)(49) | Declaration of James J. Hanks, Jr. |

**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

*Dated: February 24, 2003*

*Taubman Centers, Inc.*

*By: /s/ Robert S. Taubman*
*---*
*Robert S. Taubman*
*Chairman of the Board, President and*
*Chief Executive Officer*

# EXHIBIT INDEX

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February 2003

Dear Fellow Shareholder,

Thank you very much for your letter regarding Simon Property Group's and Westfield's unsolicited proposal to take over your Company. We always value feedback from our shareholders.

As you may know, Taubman Centers' Board of Directors, after careful consideration, including a thorough review with its financial and legal advisors, has unanimously rejected the Simon and Westfield offer. The Board unanimously recommends that all Taubman Centers shareholders reject the Simon and Westfield offer and not tender their shares. The Board believes that the offer is inadequate, opportunistic and does not reflect the underlying value of the Company's assets or its growth prospects. The Board's position remains clear
- the Company is not for sale.

Our collection of upscale regional mall assets cannot be replicated. They represent the most productive portfolio of regional malls in the public sector and have always been and will always be highly coveted. The Company has a strong track record, has delivered more than an 80% total return to shareholders over the past five years, and has also achieved a nearly 20 percent FFO per share growth rate for 2002, which was among the top five of the nearly 200 publicly traded REITs in America. Simon's and Westfield's hostile offer is not a logical catalyst for a sale.

A complete list of the Board's Reasons for its Recommendation are fully laid out on page 14-16 of the Schedule 14D-9, which was mailed to all shareholders on December 11, 2002 and updated in amendment No. 8 to Schedule 14D-9 which was mailed to all shareholders on January 21, 2003.

Again, we thank you for your interest in Taubman Centers. If you have questions please contact Investor Relations [at (248) 258-7367] or our Information Agent, Innisfree M&A Incorporated, at 212-750-5833.

Sincerely,

*/s/ Robert S. Taubman*

*Chairman of the Board,*
*President and Chief Executive Officer*

February 2003

Dear Fellow Shareholder,

Thank you very much for your letter regarding Simon Property Group's and Westfield's unsolicited proposal to take over your Company. We value the support of our shareholders.

The Board of Directors firmly believes that Taubman Centers has great growth prospects and that the Company's organic growth strategy of concentrating on improving the quality and consistency of its assets, along with selective development, acquisitions and divestitures, is likely to yield long term returns to shareholders superior to the Simon offer. Our collection of upscale regional mall assets cannot be replicated. They represent the most productive portfolio of regional malls in the public sector and have always been and will always be highly coveted. The Company has a strong track record, has delivered more than an 80% total return to shareholders over the past five years, and has also achieved a nearly 20 percent FFO per share growth rate for 2002, which was among the top five of the nearly 200 publicly traded REITs in America.

Again, we thank you for your interest and for your continued support of Taubman Centers.

Sincerely,

*/s/ Robert S. Taubman*
*Chairman of the Board,*
*President and Chief Executive Officer*

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**

:
**SIMON PROPERTY GROUP, INC., and**
**SIMON PROPERTY ACQUISITIONS, INC., :**

| | | |
|---|---|---|
| Plaintiffs, | : | |
| - against - | : | CIVIL ACTION NO. 02-74799 |
| TAUBMAN CENTERS, INC., A. ALFRED TAUBMAN, ROBERT S. TAUBMAN, LISA A. PAYNE, GRAHAM T. ALLISON, PETER KARMANOS, JR., WILLIAM S. TAUBMAN, ALLAN J. BLOOSTEIN, JEROME A. CHAZEN, AND S. PARKER GILBERT, | : | JUDGE VICTORIA A. ROBERTS |
| Defendants. | : | |

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**MEMORANDUM OF LAW IN SUPPORT OF SPG PLAINTIFFS'**
**MOTION FOR A PRELIMINARY INJUNCTION**

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## STATEMENT OF THE ISSUES PRESENTED

1. Whether the defendants breached and continue to breach their fiduciary duties to the public shareholders of Taubman Centers, Inc. by issuing a new series of voting preferred stock called the "Series B Preferred Stock" (the "Series B") to the Taubman family without fair consideration and for an improper purpose in 1998 and by continuing to permit the Taubman family to vote its Series B shares?

The plaintiffs' answer: yes.

2. Whether the Taubman family has formed a group within the meaning of the Michigan Control Share Act for the purpose of voting against the SPG/WestfieId offer such that the group's shares may not be voted without shareholder approval?

The plaintiffs' answer: yes.

3. Whether the Taubman family should be preliminarily enjoined from voting the Series B shares?

The plaintiffs' answer: yes.

## CONTROLLING OR MOST APPROPRIATE AUTHORITY

**Mich. Comp. Laws ss. ss. 450.1791-1799**

**15 U.S.C. ss. 78m(d)**

17 C.F.R. ss. 240.13d-5(b)(1)

**ASARCO INC. V. COURT, 611 F. Supp. 468 (D.N.J. 1985)**

**BUCKHORN, INC. V. ROPAK CORP., 656 F. Supp. 209 (S.D. Ohio 1987)**

**CAMPAU V. MCMATH, 185 Mich. App. 724 (Mich. Ct. App. 1990)**

**HILTON HOTELS CORP. V. ITT CORP., 978 F. Supp. 1342 (D. Nev.** 1997)

**MM COS., INC. V. LIQUID AUDIO, INC., 2003 WL 58969 (Del. Jan. 7,** 2003)

**MORALES V. QUINTEL ENTM'T, INC., 249 F.3d 115 (2d Cir. 2001)**

**SEILON, INC. V. LAMB, 1983 WL 1354 (N.D. Ohio July 27, 1983)**

**SIX CLINICS HOLDING CORP. V. CAFCOMP SYS., INC., 119 F.3d 393**

(6th Cir. 1997)

**UNOCAL CORP. V. MESA PETROLEUM CO., 493 A.2d 946 (Del. 1985)**

## INTRODUCTION

By this motion, the SPG plaintiffs seek relief to allow the public shareholders of Taubman Centers, Inc. ("TCI" or the "Company") to decide for themselves whether to accept a $20 per share all cash offer for their shares, representing a 50% cash premium over the Company's stock price before SPG entered the scene. Although the Taubman family owns only a 1% economic interest in TCI, while the public shareholders own the remaining 99%, TCI's public shareholders cannot take advantage of this premium offer by SPG/Westfield1 because the Taubman group is adamantly opposed to the offer and intends to vote against an amendment to the Company's Articles of Incorporation that would enable the offer to be completed. Thus, if the Taubman group is allowed to vote its blocking position, it will effectively be able to veto the offer and the economic benefits the offer has created for the shareholders will disappear.

SPG asserts two principal grounds for the preliminary injunctive relief it seeks. First, the issuance of a new series of voting preferred stock called the "Series B Preferred Stock" (the "Series B") to the Taubman family in 1998 constituted a breach of fiduciary duty by the Taubman Board of Directors because it gave effective control of the Company to the Taubman family for no fair consideration and without serving any valid corporate objective. Acting to "avoid a shareholder vote at all costs," the Taubman family knowingly took advantage of a contemporaneous transaction (the "GM Exchange") to seize effective control of TCI and effect a fundamental reallocation of power from the public to itself. By creating and allowing the Series B to be used by the family to veto offers it does not want, the Board and Taubman family have

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1 Simon Property Group, Inc. and Simon Property Acquisitions, Inc. ("SPG") and Westfield America, Inc. ("Westfield"). SEE SPG Appendix ("A") at Al (Dec. 5 offer); A56 (Jan. 15 offer). SPG's three-volume Appendix is consecutively numbered from Al-A1272.

breached and are continuing to breach their fiduciary duties to the public shareholders. Defendants' continuing rejection of the tender offer on the pretense that it is "inadequate," when the real reason is the Taubman family's adamant opposition, is but a further manifestation of their breach of duty.

Second, the voting of the Series B by the Taubman family should also be enjoined because of the formation of a group by Robert Taubman, the Taubman family and other friends of the family to vote their shares for the admitted purpose of thwarting the SPG/Westfield offer. The accumulation of this controlling block of voting shares by the Taubman group, acting in concert, constitutes a "control share acquisition" within the meaning of MCL ss. 450.1790 ET SEQ. (the "Control Share Act") (Al163). Unless and until TCI's shareholders vote to confer voting rights on the group shares, the group's 33.6% controlling voting block cannot validly be voted.

Plaintiffs will suffer irreparable harm if the injunctive relief sought is not granted. The Taubman board has repeatedly stated that, in light of the announced intention of the Taubman group to vote against the offer, it would be (in the Company's words) a "waste of time" for shareholders to tender their shares or give their proxies for an upcoming special shareholder meeting to amend the charter because "nothing can be achieved at the meeting."2 If the Taubman group's improperly acquired voting power is not enjoined, shareholders will not know whether, when or how they will have an opportunity to avail themselves of an advantageous all cash offer, SPG will lose the unique opportunity to complete its tender offer, and defendants will have succeeded in thwarting the public shareholders' right to vote to remove the impediments to the tender offer. In an era in which abuse of public shareholders by corporate insiders is all too

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**2 SEE A95, 120, 125.**

common, judicial intervention in this case has become necessary to prevent the trampling of the shareholders' rights by the self-interested Taubman family.

## FACTS

## BACKGROUND

TCI was taken public by the Taubman family in 1992. SEE A158. The new publicly-traded REIT was owned (then as today) approximately 99% by public shareholders, including at that time the General Motors Pension Trusts ("GM"), which held about 20% of the common stock. A171. TCI, in turn, conducted its regional shopping center operations (then as today) through a limited partnership known as the Taubman Realty Group Limited Partnership ("TRG"), of which TCI is the managing general partner. A165, 172. The Taubman family owned approximately 23% of the partnership units of TRG, while GM and TCI owned the remaining majority. A171.

TRG was controlled by a 13-member Partnership Committee, on which the Taubman family held a minority of four seats, GM held four seats and TCI held five seats. A941-43; A845. TCI, in turn, was governed by a Board of 10 members (later 11), of whom two were affiliated with GM, four were affiliated with the Taubman family and the rest were designated as "Independent Directors." A172; A939-41, 943. Decisions by the Partnership Committee, on behalf of TRG, and the Board, on behalf of TCI, were governed by a majority vote. A172, 250, 258. Thus, prior to 1998, the Taubman family did not have a blocking position on either the TCI Board or the TRG Partnership Committee; it had an insignificant economic and voting interest in the public REIT; and it held a minority of the TRG partnership units. A954-57, 961; A1008; A606.

TCI and TRG were (and are) separate legal entities. The two-tiered ownership and governance structure, commonly known as an "UPREIT" structure, was put in place by the family for tax advantages. A973-74; A985, 1008. However, as explained in an article by the family's own counsel, Wachtell Lipton, "The tax advantages of UPREITS do not come without costs. The UPREIT structure can create complex conflicts of interest between the directors of the REIT and the limited partners which are often heightened in the context of change of control transactions. . ."3

TCI's articles make it impossible for anyone to acquire more than 9.9% of the Company's voting power (the "Excess Share Provision"). A348, 372, 374. Unless the provision were lifted, no one would purchase shares of TCI in a tender offer because the shares would have no voting rights. A978-79; A374. However, unlike the typical REIT excess share provision, the TCI Excess Share Provision is not waivable by the board but can only be amended by a two-thirds vote of the Company's shareholders. A369-77.4

Despite the restrictions imposed by the Excess Share Provision, prior to 1998 TCI could have been sold to a third party even if the family were opposed. A968-69; A1041-43; A1017-18. The independent directors and the two GM directors constituted a majority of the REIT board and could have approved such a sale. A1041-43. The public shareholders, who held 99% of the

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3 David M. Einhorn, Adam O. Emmerich and Robin Panovka, REIT M&A TRANSACTIONS - PECULIARITIES AND COMPLICATION, 55 Bus. Lawyer 693, 695-96, 716-720 (Feb. 2000) (Al172).

4 While REITS commonly utilize excess share provisions to preserve the REIT's tax status, they typically grant the board of directors the discretion to waive the limitation with respect to particular acquirors who would not jeopardize the target REIT's tax status. SEE REIT M&A TRANSACTIONS at 698 (Al177). Because an acquisition of a REIT by another REIT or corporation (as opposed to an individual) does not threaten the target REIT's tax status, ID., the SPG/Westfield offer poses no threat to TCI's status as a REIT.

voting power in the REIT, could have amended the charter to remove the Excess Share Provision in order to receive an advantageous offer and the family alone would not have been able to block such an amendment. A1044-45.

## THE 1998 RESTRUCTURING

In 1998, this entire structure was drastically changed, and corporate power at the REIT level fundamentally reallocated to the family, by the family's taking advantage of a restructuring that ultimately became the GM Exchange. Prompted by TCI's lagging financial performance, GM sought to reduce the size of its investment. A944-47; A987-88. The parties also allegedly wanted to "simplify" and "improve" the two-tiered governance structure in some unspecified manner. A950; A995-96.

But the Taubman family had objectives of its own. Recognizing that "the Family's interests and the public's interests (i.e., the Company) will diverge" (A602), the family hired its own advisors to work closely with the strategic planning committee formed to come up with a restructuring proposal. The family's advisors -- the investment banking firm of Goldman Sachs and the law firm of Wachtell Lipton -- "were free to be biased advocates on behalf of the [Taubman] family" against the interests of other stakeholders. A600.5

One issue was critical: the Taubman family was "firm" that it would "vigorously oppose ANY proposal which includes a shareholder vote." A603 (emphasis added). Goldman advised that

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5 The planning committee was made up of Alfred Taubman, two GM representatives and two independent directors, Parker Gilbert and Jerome Chazen. A989-90; A1061. Even though Robert Taubman was not on the planning committee, the committee worked "closely" with "Bobby [Taubman] and his people" including Goldman and Wachtell. A991-93, 994. SEE ALSO A1082-83; Al149.

a "shareholder vote must be avoided at all costs." A607. Avoiding a shareholder vote was described as "key." A613.

One reason for avoiding a shareholder vote was the family's fear that it would "put the company in play," i.e., lead to "interlopers" making a bid that could result in the Company being sold. A600; A603; A1050-52; Al108-10. The "Family and Goldman Sachs stood united in not wanting to put [the Company] 'in play.'" A600. This was not just a theoretical threat, but a real one: in the course of the restructuring, another REIT, known as Rouse, sent a letter proposing to acquire the REIT's stock.6 A1066-71. The family opposed the proposal and the board of the REIT elected not to pursue the matter. A1001-03; A1066-71.

While the planning committee's independent members and the committee's financial advisor, Morgan Stanley, "always insisted that a REIT shareholder vote is necessary" (A603; A1073-74), and while GM also had a preference for a shareholder vote (A1064-65), the family remained adamantly opposed to any such suggestion. A617 (Goldman notes) ("Bobby [Taubman] told Alan7: Need certainty -- NO VOTE" (emphasis in original).

Incredibly, each and every defendant who testified in this case categorically denied that the Taubman family expressed any opposition to the concept of a shareholder vote. SEE Al137-38 (R. Taubman) ("Absolutely not;" "It was not our position."); Al139-40 (R. Taubman denied ever saying he wanted to avoid shareholder vote because it would put company in play); A95 1, 952-53 (Bloostein) (family opposition to shareholder vote "never came up"); A999-l000, 1014- 15 (Gilbert) ("No, there was no indication of that"); A1053-54 (Payne) ("No").

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6 Defendants have refused to produce this letter despite a discovery request.

7 Either Allen Reed of GM or TCI director Allan Bloostein. A1107, 1111-12.

This testimony is completely belied by painstakingly detailed contemporaneous notes and memoranda authored by a member of the Goldman Sachs team who worked on the restructuring. A610-773; A600; A602; Al105-06; 1113-1165.8 SEE, E.G., A613 ("Key is SH [shareholder] vote;" "We won't endorse plan including interlopers/SH [shareholder] vote"); A614 ("Bobby will tell Alan:
. . .we'll present structure that works -- no SH vote"); A603 ("Bobby should remain firm that Family will vigorously oppose any proposal which includes a shareholder vote"); A628 ("Bobby: status quo is not acceptable. . . --> take SH vote course w/risks (?) AND Co. WILL be put in play") (emphasis in original); A607 ("shareholder vote must be avoided at all costs"). These notes and memoranda are corroborated by the testimony of the lead Morgan Stanley investment banker on the deal, Chris Niehaus, who confirmed that the Taubman family "preferred not to have a shareholder vote" and "felt somewhat strongly about that position." A1062-63, 1072-73, 1084.

The family's position prevailed. An earlier proposal for a spin-off of malls into a separately-traded development company "for a time appeared to be the most promising" alternative, but it would have required a shareholder vote and was discarded. A851; A600; A603.94 Another alternative -- the "Family's preferred structure" -- was then agreed upon and

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8 The Goldman investment banker who authored these materials, Adam Rosenberg, had joined Goldman in 1998 after practicing law for four years at the New York law firm of Skadden Arps. A1088. He played a substantive role in the 1998 restructuring, attending numerous meetings and interacting with the Company's Chief Financial Officer, Lisa Payne in the collection and review of financial data. A1099, 1101-04. Mr. Rosenberg, who has since been promoted, is now working on the Goldman team that is representing the Company in its defense against the SPG offer. He was one of the Goldman bankers who made a presentation at the Board of Directors meeting on October 28, 2002 to consider the SPG offer. A1089-96; A923, 925-26.

9 The Goldman notes cast considerable doubt on the alleged "independence" of certain directors. Goldman described Claude Ballard (a former Goldman partner, A986; Al075) as "WAY on our

ultimately implemented; it involved a negotiated separation and redemption of GM's partnership units in exchange for ten mall properties ("malls for units"). A602; A 1097-99. The parties were advised that a shareholder vote on this exchange was not required and certainly was "not recommended." A852. Even after agreement on the basic "malls for units" structure, the family's advisors continued to insist that there be no shareholder vote. SEE A846 ("GS Objection -- Shareholder Vote --> Will put company up for sale").10 Goldman, which was paid $10 million by the family for its efforts, A1133-1134, touted the ultimate structure as "the Goldman proposed plan" which it "helped the family sell." A608. In the end, a "public shareholder vote [was] avoided." A602.

The GM Exchange resulted in achieving other important family goals. The transaction "was in fact driven by the strong desire, by the [Taubman] family" to achieve "greater relative ownership and control" (A600), through a "substantial improvement in [the] Family's governance rights." A602. PRIOR to the GM Exchange the family had "NO ABILITY to block transactions at either REIT or OP [operating partnership] level." A606 (emphasis added). Goldman and Wachtell's advice was to "take advantage" of the restructuring "to implement [a] governance package more favorable to [the] Family." ID. AFTER the GM Exchange there were "significantly better governance rights for Family than previously existed", including:

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side" (emphasis in original) and Graham Allisoin as "aligned with Dad [Albert Taubman]". Directrors Chazen and Gilbert were "with us except SH vote." A628.

10 These notes, produced from Morgan Stanley's files, are from a meeting on July 18, 1998, well after the development company proposal had been rejected and the basic "malls for units" structure had been agreed upon at the June 24 meeting. A850; Al146-47; A996-97. Thus, contrary to defendants' suggestion that the shareholder vote issue was limited to the development company proposal, these notes confirm that "avoiding a shareholder vote" remained a constant goal of the family throughout the restructuring process.

o "4 out of 9 REIT Board seats" [compared with 4 of 11 previously];

o "'Flow-through'" voting rights -- voting power of units at REIT level" [through the issuance of the Series B]

o"2/3 majority vote required for merger at REIT level (Family to own 29%, [other limited partners] to own 9%)"

o "Blocking rights at OP level for extraordinary transactions; 50% LP consent required" [SEE A383, 417; A393]

A606. Although the Taubman family's minimal economic ownership of the REIT was unaffected by the GM Exchange, as a result of obtaining the Series B (for $38,000) they obtained approximately 30 percent voting power in the REIT and a blocking position. A965-66. The Series B gave the family a veto over a sale of the company for the first time (A972), and an effective veto over any lifting of the Excess Share Provision. A976-77; A1044-45. SEE A1158 (R. Taubman) ("Practically speaking our 30 percent rough position I think was more than sufficient to have a sale turned down."). As result of the Series B, the board no longer has the effective power to effect a sale of the company even for a proposal that it favors. A982-83.

The REIT Board was not told in 1998 by any advisors that one effect of giving the Taubman family the Series B was to give them an effective veto over any sale of the REIT. A970. There was no discussion by the board of this impact. A975; Al148; A1079-80. Director Bloostein admitted he never even considered this fact although he now acknowledges it might have been important to his decision. A970-71. And of course shareholders were not allowed to vote on the matter.

GM abstained from voting on the final transaction. A1004. GM's lawyer, Dennis Block, explained that GM would "abstain on governance" because "governance is [a] real problem for

[the] REIT." A761; SEE A859 (GM notes) ("We won't vote on it [governance] - no finger prints on it").

Morgan Stanley, the planning committee's advisors, "was merely 'brokering' the overall deal" and provided a "fairness opinion" to "make everyone happy". A600. The fairness opinion did not mention the Series B. A1077-78; A1011-12. The opinion addressed the fairness, "from a financial point of view," of the "Redemption," a defined term that did not include the Series B,11 and Morgan Stanley performed no financial analysis of the Series B. A1076. The Series B was issued for a mere $38,400. SEE A1010. The Board never discussed the value of the Series B and the voting rights it conferred on the family or obtained an appraisal of such value. A1013.

The public announcement of the GM Exchange on August 18, 1998 omitted any mention of the Series B or the blocking rights that were created for the Taubman family. A448-52. A Goldman banker advised on the press release as follows:
"don't mention governance -- can of worms." A739; Al117-18. A draft of the press release left a spot for discussion of "Taubman Family vote/other governance issues" (A903), but the actual release steered clear of the topic other than to claim that governance had been "simplified."

The first mention of the Series B came in an SEC filing on October 15, 1998, in which TCI cryptically (and misleadingly) stated that it became "obligated" to issue the Series B in connection with the GM Exchange. A468-69. Defendants' witnesses could not explain the source of this alleged "obligation." SEE, E.G., A1057; A1006-07; A1085-86. In fact there was no such "obligation."

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11 A847-79. The terms and conditions of the "Redemption" were set forth in the GM Separation Agreement, which does not mention the Series B. A775.

As admitted by director Gilbert, there was no requirement that the Series B be issued. A1006-07. GM never insisted on issuance of the Series B (A1005-06; Al 100), and the separation agreement between GM and TRG did not even mention the Series B, much less require it as a term or condition. A775. The board was led to believe that the family's consent was necessary to approve the GM Exchange, and that this was some sort of "package deal" that required issuance of the Series B. That was not true. The GM Exchange, including all the material benefits, could have been accomplished without the Series B -- indeed, even without the family's consent or any changes in governance at all. A958-59, 980, 981 (Bloostein); A1006-07 (Gilbert) ("pure speculation" that family would not have done the deal without the Series B); SEE ALSO A1081 (Niehaus). For the SEC filing to call the Series B an "obligation" of the Company was grossly misleading.

Nor did the October 1998 8-K explain that the family was obtaining a 30% vote and blocking position through the Series B. Payne justified this omission on the ground that "if somebody read it and didn't understand it, they would have called" and she "never got a phone call." A1058-59. While the possibility of issuing preferred stock had earlier been disclosed,12 the fact remains that the Company did not clearly and forthrightly tell the shareholders in 1998 what it had done to them.

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12 Defendants make much of the authorization in 1996 for the Board to issue, at some future date, preferred stock "without seeking further shareholder approval." But that advance authorization did not validate in advance the improper purpose for which the Series B was ultimately issued. A1033-36 (G. William Miller). Furthermore, the disclosure in 1996 stated that the Company anticipated using the preferred stock and its "net cash proceeds" for corporate acquisitions -- a typical use of so-called "blank" or "bucket preferred" stock. SEE A1122-23 (David Simon). Neither this disclosure, nor any other disclosure prior to 1998, put shareholders on notice that the family would use preferred stock to achieve a blocking position while disenfranchising the public shareholders.

The Board never even considered any less drastic alternatives to issuance of the Series B that would have simplified governance without giving the family a blocking position. The advisors never proposed a structure that did not involve giving the Taubman family the Series B. A981-81 a; A1009-10. Nor was the option of simply exchanging the GM units for the 10 shopping centers without making any governance changes ever considered. A959-60.

While defendants tout the fact that the REIT went from a minority to majority owner of TRG as a result of the GM Exchange, that would have happened had the exchange been done without any changes in governance. A1048-49.13 Similarly, the defendants' assertion that the GM Exchange moved all key decision-making from the Partnership Committee to the REIT Board level ignores the fact that prior to the exchange, the REIT Board had the decision making authority regarding matters fundamental to the REIT's public shareholders. It was the REIT Board -- not the Partnership Committee -- that was responsible for assessing proposals to acquire the REIT (A 1007-08); it was the REIT Board that made the determination to reject the Rouse offer (Al140-41); it was the REIT Board that had to and did approve the GM Exchange on behalf of the public shareholders and it was the REIT Board that was required to, and did,

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13 Similarly, while defendants contend that the GM Exchange allowed the REIT and partnership to issue one set of consolidated financial statements, no one ever discussed whether that goal could have been accomplished if the GM Exchange had been done alone without any other changes in corporate governance. A1046-48. In fact, the REIT still would have been able to consolidate its financial statements with the partnership because it would have had majority equity ownership of TRG. SEE J.L.B. EQUITIES, INC. V. OCWEN FIN. CORP., 131 F. Supp. 2d 544, 550 (S.D.N.Y. 2001). Defendants' additional contention that as part of the deal the family gave up favorable termination provisions under the management agreement is likewise misguided. The changes to the management agreement were not significant "concessions" by the Taubman family because TCI has the "economic ownership" of the management company and the Taubman family does not earn any money from the management company. A1055-56 (Payne); SEE ALSO Al 153-55 (R. Taubman) (management contract is of "nominal" value).

authorize the issuance by the REIT of the Series B to the family. A1142-44, 1145. Defendants' effort to portray the REIT Board as an insignificant body must fail.

Finally, the defendants' refrain that the Series B aligned the voting and economic interests in the "enterprise" and guaranteed "one unit, one share, one vote" is an empty slogan and inaccurate at that. There is no such entity as the "enterprise." TRG and the Company are two separate legal entities (SEE, E.G., A912-13), and the Taubman family reaps considerable tax benefits from that separate legal structure. The fact remains that as a direct result of the Series B, the family holds 1% of the economic interest yet more than 30% of the voting power in the public REIT. As director Gilbert tellingly testified, "I don't think it is good business practice to let 30 percent of the interest decide what happens to the whole." A998. Much less should a 1% interest holder have that right.

**THE SPG OFFER AND DEFENDANTS' FLAT REJECTION OF IT**

Immediately upon receiving an unsolicited proposal from SPG in October 2002, Robert Taubman hired the FAMILY'S two trusted advisors from the 1998 GM Exchange -- Goldman and Wachtell -- to advise on behalf of the PUBLIC COMPANY with respect to the offer. Al019-23; Al151-52.14 Both Goldman and Wachtell, who had performed work on the family's behalf prior to 1998, continued to do so subsequent to 1998 and prior to the SPG offer (E.G., a Goldman "anti-raid analysis" prepared in 2001, SEE A912), and they continue to perform work separately for the family today. Al135-36, 1150-51. Goldman's current engagement by TCI on the SPG offer

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14 Robert Taubman testified that he hired Goldman and Wachtell "in consultation with my board" prior to the October 28, 2002 board meeting. Al151. Parker Gilbert testified, however, that when Taubman called him before the board meeting "he told me who he had hired" and that it was Goldman and Wachtell. A1022-23. Director Bloostein was not even aware that Goldman had advised the family in the 1998 GM Exchange. A948-49.

allows it to earn a "success fee" in which success is defined as the Company not being taken over. A1027-29; A914.

At an October 28, 2002 meeting the Board "received advice from Mr. Taubman that the Taubman family had no interest in pursuing a sale of the Company and intended to use its significant stake in the Company to oppose the proposed transaction it if were put to a vote." A486, 500. There was no discussion of whether the $17.50 price was financially inadequate. A 1024-26. The Board declared that the Company was "not for sale" and that discussions as to SPG's proposal would be "unproductive." A500. Thus continues the pattern from 1998 of preventing any third party bids, and not giving shareholders any choice in the matter.

On November 13, 2002 the Company announced that the Board had rejected SPG's proposal and that, in light of the family's position that it was "categorically opposed to the sale of the Company," any efforts to purchase TCI would be "unproductive." A502. One day later, Robert Taubman entered into the Voting Agreements described more fully in the Court's Order of January 22, 2003. On November 15 the family filed a Schedule 13D with the SEC stating that the Voting Agreements were entered into "for the purposes of preventing an unsolicited takeover of the Company." A516, 543. As the 13D stated, "Robert S. Taubman together with the Taubman Family controls 33.6% of the vote of the capital stock of the Company" (ID.), which Taubman has testified makes it "impossible" for someone to achieve a two-thirds vote to amend the articles over the family's opposition. A1158. SEE A962-64, 966-67 (Bloostein) (SPG offer is "futile" because 2/3 of shareholders must approve a sale and the family holds over 33%).

On December 5, 2002 SPG made its tender offer at $18 per share. The Board rejected this offer as well as the increased SPG/Westfield offer of $20. On January 22, 2003 Robert

Taubman said "the board's position remains clear -- the company is not for sale." A512. Taubman refused to testify, however, as to what an adequate price would be. Al131-32.

## ARGUMENT

The factors to be considered in deciding whether to grant a preliminary injunction are well established: "(1) the likelihood that the party seeking the preliminary injunction will succeed on the merits of the claim; (2) whether the party seeking the injunction will suffer irreparable harm without the grant of the extraordinary relief; (3) the probability that granting the injunction will cause substantial harm to others; and (4) whether the public interest is advanced by the issuance of the injunction." SIX CLINICS HOLDING CORP., II V. CAFCOMP SYS., INC., 119 F.3d 393, 400 (6th Cir. 1997) (citation omitted). The four considerations are factors to be balanced, not prerequisites that must be met, and no single factor is determinative. ID. at 400. As shown below, all four of these factors are met by plaintiffs.

### I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR BREACH OF FIDUCIARY DUTY AND CONTROL SHARE ACT CLAIMS

#### A. DEFENDANTS HAVE BREACHED AND CONTINUE TO BREACH THEIR FIDUCIARY DUTIES

Under Michigan law, directors and officers of a corporation owe a fiduciary duty to the corporation's shareholders. SEE GAFF V. FED. DEPOSIT INS. CORP., 828 F.2d 1145, 1151(6th Cir. 1987); MILLER V. VILL. HILL DEV. CORP., 2001 WL 754050, at *2 (Mich. Ct. App. Jul. 3, 2001) (A1214).15 Directors are required to Act on the shareholders' behalf, in good faith, "with the degree of diligence, care and skill . . . which an ordinarily prudent and loyal person would

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15 In the absence of Michigan law on a question of corporate law, Michigan courts generally refer to Delaware law. PLAZA SEC. CO. V. FRUEHAUF CORP., 643 F. Supp. 1535, 1543 n.5 (E.D. Mich. 1986).

exercise under similar circumstances in a like position." PLAZA SEC. CO. V. FRUEHAUF 643 F. Supp. 1535, 1542-43 (E.D. Mich. 1986) (citation omitted).

Outside directors cannot satisfy their duties merely by rubber stamping a decision by management or the interested directors. SEE EDELMAN V. FRUEHAUF CORP., 798 F.2d 882, 886 (6th Cir. 1986). "The exercise of fiduciary duties by a corporate board member includes more than avoiding fraud, bad faith and self-dealing. Directors must exercise their honest judgment in the lawful and legitimate furtherance of corporate purposes." ID. (citation omitted).16

Furthermore, in the context of a contest for corporate control, such as a tender offer, a heightened level of scrutiny applies to director conduct. A board may not set up defensive measures "by any Draconian measures available." UNOCAL CORP. V. MESA PETROLEUM CO., 493 A.2d 946, 955 (Del. 1985). The board must satisfy an "enhanced duty" by demonstrating both that there are reasonable grounds to believe that a danger to corporate policy and effectiveness exists, and that the defensive response was reasonable and proportionate in relation to the threat posed. SEE UNITRIN, INC. V. AM. GEN. CORP., 651 A.2d 1361, 1373 (Del. 1995). The defensive response cannot be preclusive of outside offers. ID. at 1386.

Where, as here, shareholder voting rights and the shareholder franchise are implicated, an even higher level of scrutiny applies. As the Delaware Supreme Court reaffirmed earlier this month,"[a] board's unilateral decision to adopt a defensive measure touching 'upon issues of control' that purposefully disenfranchises its shareholders is strongly suspect under UNOCAL, and

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16 Because the Taubman family exercises effective control, it also owes a fiduciary duty to the TCI shareholders. SEE KAHN V. LYNCH COMMUNICATION SYS., INC., 638 A.2d 1110, 1113-15 (Del. 1994); MAGGIORE V. BRADFORD, 310 F.2d 519, 521 (6th Cir. 1962).

cannot be sustained without a 'compelling justification.'" MM COS., INC. V. LIQUID AUDIO, INC., 2003 WL 58969, at *10 (Del. Jan. 7, 2003) (A12l7).17

In particular, it is well established that stock issued by insiders to themselves "for [the] purpose of establishing control of [the] corporation, and not having some corporate goal as its principal purpose, is fraudulent as against the other shareholders and cannot be permitted to stand." CAMPAU V. MCMATH, 185 Mich. App. 724 (Mich. Ct. App. 1990); SEE CONDEC CORP. V. LUNKENHEIMER CO., 230 A.2d 769, 775 (Del. Ch. 1967) ("shares may not be issued for an improper purpose such as a take-over of voting control from others"). An injunction may issue to prevent the voting of shares issued by insiders to obtain control for themselves or perpetuate themselves in office. CAMPAU, SUPRA; SEE PACKER V. YAMPOL, 1986 WL 4748 (Del. Ch. Apr. 18, 1986) (A1228).18 This is true even if the stock issuance was legally authorized. SEE SCHNELL V. CHRIS-CRAFT INDUS., 285 A.2d 437, 439 (Del. 1971) ("inequitable action does not become permissible simply because it is legally possible.").

Applying the above principles, plaintiffs have shown a likelihood of success on their breach of fiduciary duty claims. The issuance of the Series B to the family in 1998 was an

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17 SEE CONOCO, INC. V. SEAGRAM CO., 517 F. Supp. 1299, 1303 (S.D.N.Y. 1981) ("What is sometimes lost sight of in these tender offer controversies is that the shareholders, not the directors, have the right of franchise with respect to the shares owned by them. . . . The Directors are free to continue by proper legal means to express to the shareholders their objection and hostility to the. . . proposal, but they are not free to deny them their right to pass upon this offer or any other offer for the purchase of their shares.").

18 SEE ALSO ASARCO INC. V. COURT, 611 F. Supp. 468, 480 (D.N.J. 1985) ("[counterclaimant] holds a substantial block of Asarco common stock and evidently plans to acquire in excess of 20 percent of the total common shares outstanding. If it does so, its vote will be illegally diluted by virtue of the new preferred."); DROBBIN V. NICOLET INSTRUMENT CORP., 631 F. Supp. 860, 913 (S.D.N.Y. 1986); BEZTAK V. BANK ONE COLUMBUS, N. AM., INC., 811 F. Supp. 274, 283-84 (E.D. Mich. 1992); PHILLIPS V. INSITUFORM OF N. AM., Civ. No. 9173, 1987
WL 16285 (Del. Ch. Aug. 27, 1987) (A1240).

egregious act of corporate malfeasance that served no purpose other than to give the family an effective veto over offers it did not want. The Series B was essentially gifted to the family, was unnecessary to the attainment of any valid corporate goal, and certainly had no "compelling justification." The fact that the Series B was appended to a transaction that was deliberately structured so as to avoid a shareholder vote is further evidence that the primary purpose of the Series B was to seize control at the expense of the public shareholders. SEE HILTON HOTELS CORP. V. ITT CORP., 978 F. Supp. 1342, 1349 (D. Nev. 1997) (enjoining restructuring plan upon finding that primary purpose was entrenchment and board "offered no credible justification for not seeking shareholder approval" even though shareholder vote not legally required).

Adopted at a time when the family was concerned about actual (Rouse) and potential bidders or "interlopers" -- and kept in place today to thwart the SPG/Westfield offer -- the Series B is vastly disproportionate to any actual or imagined threat to the Company. It is draconian and completely preclusive of unsolicited third party offers, which was precisely its goal. The family can block third party offers and preclude the shareholders from considering, for themselves, whether they wish to tender for a premium. The board's passive acceptance -- a rubber stamping -- of this usurpation of power cannot be justified.

SPG has standing to assert this claim. The unique harm SPG is suffering in its capacity as a potential acquiror creates the requisite "personal stake" and "injury in fact" that is concrete, particularized, and imminent. MARKVA V. HAVEMAN, 168 F. Supp. 2d 695, 704 (E.D. Mich. 2001) (citation omitted); SEE ALSO SIERRA CLUB V. MORTON, 405 U.S. 727, 731-32 (l972).19

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19 As the SEC has stated: "'[t]he substantial efforts and expenditures necessary for a person to commence a tender offer establish a 'personal stake' in the controversy sufficient to satisfy that

Numerous courts have held that shareholder-bidders have standing to bring actions attacking defensive measures designed to thwart their tender offer. IN RE GAYLORD CONTAINER CORP. S'HOLDERS LITIG., 747 A.2d 71, 81 (Del. Ch. 1999) ("settled case law indicates that a potential acquiror may bring an individual action to challenge defensive actions impeding its bid. . . ."); CROUSE-HINDS V. INTERNORTH, INC., 518 F. Supp. 390, 403 (N.D.N.Y. 1980) (same).

Regardless of whether SPG owned shares of the Company when the Series B was issued, SPG TODAY is suffering individual harm as a potential acquiror of the Company as a result of defendants' current and continuing efforts to thwart the SPG/Westfield offer. This continuing harm, and SPG's current status as a bidder, are sufficient to give it standing. SEE TORCHMARK CORP. V. BIXBY, 708 F. Supp. 1070, 1077-78 (W.D. Mo. 1988) (bidder-plaintiff had standing to attack target's defensive efforts as a breach of fiduciary duty irrespective of when it acquired its shares); CRTF CORP., 683 F. Supp. at 428, 437 (tender offeror had standing to challenge target company's defensive "poison pill" as a breach of fiduciary duty even though plaintiff did not become shareholder until after adoption of the defensive mechanism; because plaintiff alleged "a continuing wrong with respect to at least the existence" of the poison pill, "we will not dismiss the claim on this basis [standing])").20

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standing requirement.'" CRTF CORP. V. FEDERATED DEP'T STORES, INC., 683 F. Supp. 422, 429-30 (S.D.N.Y. 1988) (quoting SEC Amicus Curiae Brief).

20 In addition, because SPG is preparing to mount a proxy solicitation to remove various obstructions that are impeding its tender offer, including the Excess Share Provision, it also has standing to attack those impediments. SEE PACKER V. YAMPOL, at *13 (A1228).

B. THE FORMATION OF A GROUP WITH RESPECT TO 33.6% OF TCI'S VOTING SHARES PRECLUDES VOTING OF THOSE SHARES WITHOUT SHAREHOLDER APPROVAL.

The Court has already ruled that it could infer from the Amended Complaint that "Robert Taubman, the Taubman Family and those persons who entered into Voting Agreements with Robert Taubman constituted a group and that their aggregation of shares was a 'control share acquisition' under the Control Share Act." Jan. 22 Order at 16. The Schedule 13D trumpets the formation of a group among Robert Taubman, the family and the family friends to vote against the SPG offer. Numerous other admissions are to the same effect. SEE, E.G., A504 ("the Taubman family and other shareholders, with combined voting power of over a third of the total voting power of the Company's capital stock, have indicated that they do not intend to tender their Common Shares and have taken the firm position that they are not interested in pursuing a sale transaction."); A570-71 ("The owners of over one-third of the outstanding Taubman Centers shares have publicly announced their opposition to Simon's hostile offer"); A120 ("holders of more than a third of the voting power HAVE ALREADY EXPRESSED THEIR AGREEMENT with the board's position that Taubman Centers is not for sale, AND WILL VOTE AGAINST the Simon proposal if the meeting is held") (emphasis added).

As the Court has held, citing the Official Comments to Indiana's control share statute, the "group" approach under the Michigan Control Share Act is similar to that under Section 13(d). SEE BREAUD V. AMATO, 657 So. 2d 1337, 1343 (La. Ct. App. 1995). The threshold determination for the existence of a group under 13(d) is whether the defendants "agreed to act together for the purpose of acquiring, holding, VOTING or disposing of" a company's shares. SCHAFFER V. CC I NV., LDC, 2002 WL 31869391, at *4 (S.D.N.Y. Dec. 20, 2002) (A1249) (emphasis added). An agreement, which may be proven by direct or circumstantial evidence, may be formal or

informal, and need not be written. SEE MORALES V. QUINTEL ENTM'T INC., 249 F.3d 115, 124 (2d Cir. 2001); WELLMAN V. DICKINSON, 682 F.2d 355, 363 (2d Cir. 1982). "All that is required is that the members of the group have combined to further a common objective with regard to" acquiring, holding, voting or disposing of securities. MORALES V. FREUND, 163 F.3d 763, 767 n.5 (2d Cir. 1999).

Courts applying these principles have found sufficient evidence of the existence of a group to grant preliminary injunctive relief on section 13 (d) claims. SEE CHAMPION PARTS REBUILDERS, INC. V. CORMIER CORP., 661 F. Supp. 825, 850 (N.D. Ill. 1987) (issuing preliminary injunction where facts indicated, INTER ALIA, "a common plan and goal" and "correlation of defendants' activities and intercommunications"); SEILON, INC. V. LAMB, No. C 83-314, 1983 WL 1354, at **13-14 (N.D. Ohio July 27, 1983) (A1257) (issuing preliminary injunction based upon, INTER ALIA statement by one member that she represented a group of shareholders and a meeting among members of the group, stating "[a]ny other outcome of a discussion among friends and former associates controlling 48% of a company who are jointly dissatisfied with current management is, in a word, unthinkable"); JEWELCOR INC. V. PEARLMAN, 397 F. Supp. 221, 250-51 (S.D.N.Y. 1975) (issuing preliminary injunction based upon evidence of target's "battle plan" to thwart attempted takeover).

SPG submits that the question here is not even close, and that there is sufficient evidence not only preliminarily to enjoin the "group" from voting but to direct a declaratory judgment in plaintiffs' favor.

Recognizing, too late, the consequences of their recent actions, defendants THREE DAYS AGO filed an "amended" 13D announcing that Robert Taubman and the parties to the Voting

Agreements had suddenly "terminated them" and that "there are no longer any agreements, arrangements or understandings" between them." A573, 592-93. Far from disproving the existence of a group, the parties' "termination agreement" merely confirms that they continue to act (in the words of the Indiana commentary) "cooperatively" and "in concert" to further the group's common objectives at the whim of Robert Taubman and his family. Defendants' self- serving claim that that their agreement is at an end cannot "unring the bell." No one can seriously believe that their "expressed agreement" to "vote against the SPG proposal" (Al20) has changed in the slightest. "It would require a degree of naivete" to believe that the admitted group activities "were not the product of an agreement" that exists to this day. SEE CITIZENS FIRST BANCORP, INC. V. HARRELD, 559 F. Supp. 867, 872 (W.D. KY. 1982).

In any event, the termination of the Voting Agreements between Robert Taubman and the family friends does not change the fact that the Taubman family members formed a group that continues to exist. The formation of that group was manifested by the filing of the 13D by the Taubman family members, including not only Robert but William Taubman and the Alfred Taubman trusts and entities, collectively holders of 30% of TCI's voting power. A516, 543-45. Had the family members not been part of the group formed to vote against the SPG offer, there would have been no reason for them to file a 13D, for the first time, in November 2002.

Robert Taubman's own testimony confirms that he was acting pursuant to an understanding with the family. Asked about the Voting Agreements, he testified that he spoke to his father and brother before entering into them and they all agreed that "WE were going to ask for them." A1161-62. He referred to the 13D filing "that WE made at the time we entered into them." Al156 (emphasis added). He continued: "[T] he statement that WE made when WE

announced these was to clearly and resolutely say to the public and the investment community that OUR -- that WE were very resolute in OUR position." 1157 (emphasis added); Al128-30 ("I had spoken to my father, spoken to my brother, spoken to my sister, and we had come to that conclusion [to vote against the transaction])."

Taubman then testified about contacting another person about entering into a voting agreement.

Q: And did Mr. Kuhn agree to enter into a voting agreement with you?

A: If, if WE decided that WE wanted to, he was prepared to do so.

Q: But you didn't.

A: WE decided not to.

**Q: WHEN YOU SAY "WE" YOU'RE REFERRING TO YOUR FAMILY?**

A: YES.

**A1159-60 (emphasis added).**

Defendants' argument that they made no "acquisition of control shares" is beside the point. The Control Share Act covers the acquisition not only of shares but also of the right, alone or as part of a group, to "exercise or direct the exercise" of VOTING POWER. MCL ss.ss. 450.1790, 1791(1) (A1164-65) (emphasis added). As stated in the Indiana commentary:

[t]he relevant inquiry is whether one or more acquiring persons have acquired SUFFICIENT PRACTICAL ABILITY IN FACT "to exercise or direct the exercise of the voting power . . . within the statutory ranges, and not simply whether a single person acquires actual record ownership of a certain percentage of shares.

IND. CODE ss.23-1-42-1, Official Comments (emphasis added). Furthermore, under
Section 13(d), each member of a group is deemed to have acquired the voting power held by the other

members upon the formation of the group "even without additional purchases of stock by any of its members." TEXASGULF, INC. V. CANADA DEV. CORP, 366 F. Supp. 374, 403 (S.D. Tex. 1973).21

II. SPG WILL SUFFER IRREPARABLE HARM.

SPG and the public stockholders will suffer irreparable injury if the requested relief is not granted. Loss of the opportunity to make a tender offer, and the loss, on the part of the shareholders, to participate in that tender offer constitute irreparable harm. SEE BUCKHORN, INC. V. ROPAK CORP., 656 F. Supp. 209, 236 (S.D. Ohio 1987) (irreparable harm to offeror and target's shareholders where target's conduct "would effectively kill the tender offer"); MINSTAR ACQUIRING CORP. V. AMF, INC., 621 F. Supp. 1252 (S.D.N.Y. 1985) (irreparable harm if plaintiff's tender offer is defeated due to illegal defensive tactics). Furthermore, shareholders suffer irreparable harm where their right to vote is frustrated or denied. SEE AHI METNALL, L.P. V. J.C. NICHOLS CO., 891 F. Supp. 1352, 1359 (W.D. Mo. 1995); ASARCO, 611 F. Supp. at 480.

III. DEFENDANTS WILL NOT SUFFER SUBSTANTIAL HARM.

The injunction requested will not cause substantial harm to the Taubman family. The family, if it wishes, may retain its partnership units and economic and voting interests in TRG. A935-36; A10-11. Furthermore, defendants cannot claim harm if they are merely prevented from voting shares which they do not have the right to vote under the Control Share Act. The group can still vote those shares if they obtain shareholder approval to do so, and there is nothing preventing the Taubmans from soliciting proxies for a shareholder resolution approving the

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21 SEE ALSO 17 C.F.R. ss. 240. 13d-5(b)(1) ("When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer, the group formed thereby shall be deemed to have acquired beneficial ownership . . . as of the date of such agreement, of all equity securities of that issuer beneficially owned by any such persons.").

group's voting rights. The family will still have its Series B stock and is not irrevocably stripped of the right to vote those shares if shareholder approval is obtained.

IV. AN INJUNCTION WILL SERVE THE PUBLIC INTEREST.

The public interest will be served by the relief requested because thousands of shareholders, including pension funds that hold shares in trust for thousands of employees, will receive the right to tender their shares in return for cash at a substantial premium. Furthermore, an injunction will serve the public interest by preventing the Taubman family from reaping the benefits of the board's breaches of its fiduciary duties and violations of Michigan law. Finally, the injunction will serve the public interest in corporate democracy by permitting the common shareholders to vote to amend the Articles without the dilutive effect of the Series B Preferred Stock. AHI METNALL, 891 F. Supp. at 1360; ASARCO, 611 F. Supp. at 480.

## CONCLUSION

For the reasons set forth above, SPG respectfully requests that the Court:
(1) preliminarily enjoin the holders of the Series B from voting those shares; and (2) grant to SPG such other and further relief as the Court deems fair and equitable.

Dated: January 31,2003

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**UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF MICHIGAN**

**X**

LIONEL Z. GLANCY, on behalf of himself and all : Civ. Action No. 02-75120 others similarly situated, :

:
Plaintiff, : AMENDED VERIFIED

**: CLASS ACTION AND**

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                    vs.                          :  DERIVATIVE COMPLAINT
                                                 :
ROBERT S. TAUBMAN, WILLIAM S. TAUBMAN,           :
LISA A. PAYNE, GRAHAM T. ALLISON, PETER          :
KARMANOS, JR., ALLAN J. BLOOSTEIN, JEROME        :
A. CHAZEN and S. PARKER GILBERT,                 :
                                                 :
                              Defendants,        :
                                                 :
                  -and-                          :  FILED UNDER SEAL
                                                 :
TAUBMAN CENTERS, INC.,                           :
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:

Nominal Defendant.:
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**X**

Plaintiff, by his attorneys, for his amended complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based, INTER ALIA, upon a review of public filings made with the Securities and Exchange Commission ("SEC"), press releases and reports, document and deposition discovery conducted by the parties, and an investigation undertaken by plaintiff's counsel, as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action as: (a) a class action on behalf of himself and all other stockholders of Taubman Centers, Inc. ("Taubman Centers" or the "Company") who are similarly situated; and (b) a derivative action on behalf of Taubman Centers, against the directors and/or senior officers and/or principal shareholders of Taubman Centers to enjoin certain actions of the Individual Defendants (as defined herein) which will, unless enjoined by the Court, thwart any

unsolicited acquisition proposal for the Company, including an existing premium takeover offer for the Company by Simon Property Group, Inc. ("Simon Property"). Simon Property has offered to purchase the Company's shares for a substantial premium over Taubman Centers' previously unaffected market price.

2. As described herein, the Individual Defendants failed and continue to fail to adequately consider and/or pursue (including the possibility of negotiating for higher value) Simon Property's premium offer for Taubman Centers. Rather, the Individual Defendants are abusing their fiduciary positions of control over Taubman Centers to thwart any legitimate attempts or interest to acquire the Company for a substantial premium. Such conduct represents an effort by the Individual Defendants to entrench themselves in office so that they may continue to receive the substantial salaries, compensation and other benefits and perquisites of their corporate offices.

3. Specifically, the Taubman defendants, through a series of tactical corporate mechanisms, improperly gave themselves a blocking voting position against unsolicited takeovers. As detailed below, these include:

a. a provision in the Company's charter, extraordinary in that it is unalterable and unwaivable by the Company's board of directors, preventing any outside party from acquiring more than 8.2% of the Company's capital stock, absent amendment of the charter by a two-thirds shareholder vote (the "Excess Share Provision");

b. providing to the Taubman defendants, for nominal consideration without shareholder approval, a new series of voting preferred stock (the "Series B Preferred Stock") that increased their purported voting power over the Company from less than 1% to just over 30%;

c. the acquisition, in direct response to Simon Property's offer, of an additional 3% of voting power by exercising options and persuading several close associates of the family to sign over voting rights of their shares directly to defendant Robert Taubman, designed to ensure the Taubman's veto power over any sale (the "New 3% Shares"); and

d. an agreement to provide financing to Gordon Group Holdings, LLC ("Gordon") and form a joint venture with Gordon to help Gordon acquire the prestigious Forum Shops in Las Vegas (the "Forum Shops Transaction"), thus squeezing out Gordon's current partner, Simon.

4. These actions, taken together, are classic indicia of unlawful entrenchment. Considering solely their own interest, the Individual Defendants are foreclosing the opportunity for the Company's public shareholders to even consider proposals which may be in their best economic interests.

5. In order to enable Taubman Centers' shareholders to rightfully exercise their shareholder franchise, relief from this Court is necessary to invalidate and/or enjoin any vote by the Taubmans of their purported blocking position.

**JURISDICTION AND VENUE**

6. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. ss. 1332, as plaintiff and defendants are citizens of different states, and the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

7. Defendants are subject to personal jurisdiction in this judicial district, and transact business in this judicial district.

8. The Court also has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. ss. 1367(a).

9. Venue is proper in this judicial district pursuant to 28 U.S.C. ss.ss. 1391(a)-(c), as a substantial part of the events and omissions giving rise to this action occurred in this district.

## THE PARTIES

10. Plaintiff Lionel Z. Glancy is, and during all relevant times has been, the owner of common stock of nominal defendant Taubman Centers.

11. Nominal defendant Taubman Centers is a Michigan corporation with its principal executive offices located at 200 East Long Lake Road, Suite 300, Bloomfield Hills, Michigan. Taubman Centers owns, develops, acquires and operates regional shopping centers.

12. Defendants Robert S. Taubman ("Robert Taubman"), William S. Taubman ("William Taubman"), Lisa A. Payne ("Lisa Payne"), Peter Karmanos Jr. ("Karmanos"), Graham T. Allison ("Allison"), S. Parker Gilbert ("Gilbert"), Allan J. Bloostein ("Bloostein") and Jerome A. Chazen ("Chazen") comprise the Board of Directors of Taubman Centers (collectively, the "Individual Defendants"). The Individual Defendants, if not members of the Taubman family, are selected, dominated and controlled by the Taubmans. The Taubman Centers' Board is staggered and consists of three classes of directors elected tri-annually.

13. Defendant Robert Taubman also serves as the Company's Chairman, President and Chief Executive Officer and the Chief Executive Officer and President of Taubman Realty Group Limited Partnership (the "Partnership"), the entity through which the Company conducts all of its operations. The Company is the managing general partner of, and has an approximate 62% interest in, the Partnership. (Approximately 30% of the remaining interest in the Partnership is owned by the Taubman family and 8% is owned by other investors). In 2001, Robert Taubman earned $1,244,414 in total compensation from the Company. In addition, he accrued $1,196,250 under the Company's Long-Term Performance Compensation Plan.

According to Company filings with the SEC, Robert Taubman owns and/or controls 158,500 shares of Taubman Centers common stock; 553,870 shares of Series B Preferred Stock; and 3,357,636 shares of common stock that Robert Taubman has the right to receive in exchange for units in the Partnership that he currently holds. Robert Taubman has been a director of the Company since its IPO in 1992.

14. Defendant William Taubman also serves as Executive Vice President of the Company and of the Partnership. William Taubman is the brother of Robert Taubman. In 2001, William Taubman earned $812,629 in bonus and salary and accrued $453,750 under the Long-Term Performance Compensation Plan. According to Company filings with the SEC, William Taubman owns and/or controls 163,500 shares of Taubman Centers common stock (including 150,000 shares which were acquired through the exercise of options on November 14, 2002 at an exercise price per share of $9.69); 5,925 shares of Series B Preferred Stock; and 734,064 shares of common stock that William Taubman has the right to receive upon the exchange of units in the Partnership that he currently holds. William Taubman has been a director of Taubman Centers since the Company's IPO in 1992.

15. Non-party A. Alfred Taubman ("Alfred Taubman"), who is the father of Robert and William Taubman, founded the Company in 1950 and served as its Chairman until his resignation in December 2001. As described herein, Alfred Taubman and his sons, William and Robert, control over 34% of the Company's voting power and have the power to dictate almost all of the Company's decisions. Alfred Taubman was also the former Chairman of Sotheby's Holdings Inc. In December 2001, he was convicted of conspiring with a rival auction house to fix commissions charged to sellers and is currently serving time in a federal prison facility. Upon his resignation from the Company's Board, in order to keep firm control of the Company in Taubman family hands during his incarceration, holders of the Company's Series B

Preferred Stock waived the nine-member Taubman Centers' Board requirement, thereby temporarily reducing the number of Company directors to eight. According to Company filings with the SEC, Alfred Taubman owns and/or controls 186,937 shares of Taubman Centers common stock and 24,669,087 shares of Series B Preferred Stock.

16. Defendant Lisa Payne also serves as Executive Vice President and Chief Financial and Administrative Officer of the Company. Ms. Payne earned approximately $1.3 million in total compensation in 2002. According to Company filings with the SEC, Lisa Payne owns and/or controls 7,500 shares of Taubman Centers common stock and 600,828 shares of common stock that she will have the right to receive in exchange for units in the Partnership that she currently holds. Lisa Payne has been a director since she joined Taubman Centers as its CFO in 1997.

17. Defendant Karmanos also serves with Alfred Taubman as a director of Detroit Renaissance, an urban renewal initiative. Karmanos owns and/or controls 40,000 shares of Taubman Centers common stock. Karmanos has been a director of the Company since 2000.

18. Defendants Allison, Bloostein, Chazen, and Gilbert have all been directors of Taubman Centers for more than the past three years and thus do not qualify as an "Independent Director" under ss.450.1107 of the Michigan Business Corporations Act.

19. By virtue of their positions as directors and/or officers of Taubman Centers and their exercise of control over the business and corporate affairs of Taubman Centers, the Individual Defendants have, and at all relevant times had, the power to control and influence, and did control and influence and cause Taubman Centers to engage in the practices complained of herein. Each Individual Defendant owed and owes Taubman Centers and its common stockholders fiduciary duties and were and are required to: (i) use their ability to control and manage Taubman Centers in a fair, just and equitable manner, (ii) act in furtherance of the best

interests of Taubman Centers and its stockholders; (iii) refrain from abusing their positions of control; and (iv) not favor their own interests at the expense of Taubman Centers and its stockholders. By reason of their fiduciary relationships, these defendants owed and owe plaintiff and other members of the Class (as herein defined) the highest obligations of good faith, fair dealing, loyalty and due care.

20. By virtue of the acts and conduct alleged herein, the Individual Defendants, who control the actions of Taubman Centers, have breached and are breaching their fiduciary duties to the common shareholders of Taubman Centers and to the Company itself.

21. Each defendant herein is sued individually as a conspirator and/or aider and abettor, or, as appropriate, in his or her capacity as a director of the Company, and the liability of each arises from the fact that he or she has engaged in all or part of the unlawful acts, plans, schemes or transactions complained of herein.

## CLASS ACTION ALLEGATIONS

22. Plaintiff brings Counts I through IV of this action individually and as a class action on behalf of all stockholders of Taubman Centers (excluding from the Class the defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any of the defendants) and their successors-in-interest, pursuant to Federal Rule of Civil Procedure 23 (the "Class").

23. This action is properly maintainable as a class action.

24. The Class is so numerous that joinder of all members is impracticable. As of March 25, 2002, there were approximately 51 million shares of Taubman Centers common stock outstanding, excluding defendants and their affiliates.

25. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common

questions include, INTER ALIA, the following:

(a) whether defendants have breached their fiduciary and other common law duties owed to plaintiff and the other members of the Class;

(b) whether plaintiff and the other members of the Class are being and will continue to be injured by the wrongful conduct alleged herein and, if so, what is the proper remedy; and

(c) whether the Series B Preferred Stock and the New 3% Shares have the right to vote and should be allowed to vote.

26. The claims of the plaintiff are typical of the claims of other members of the Class, and plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class and will fairly and adequately protect and assert the interests of the Class. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

27. Defendants have acted and are acting on grounds generally applicable to the Class, thereby making it appropriate to render final injunctive, or corresponding declaratory relief, with respect to the Class.

28. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted, and no unusual difficulties are likely to be encountered in the management of this class action. Since the damages suffered by individual class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually seek redress for the wrongful conduct alleged. Management of this action as a class action poses no manageability issues.

## SUBSTANTIVE ALLEGATIONS

A. TAUBMAN CENTERS

29. Taubman Centers is a publicly-traded Real Estate Investment Trust ("REIT") that owns, develops, acquires and operates regional shopping centers. The Company had its initial public offering in 1992. Upon completion of its IPO, Taubman Centers was installed as the managing general partner of the Partnership. The new public company was approximately 99%-owned (then as today) by public shareholders, including at that time the General Motors Pension Trust ("GM"), which held about 20% of the common stock. Prior to August 1998, Taubman Centers conducted its operations (then as today) through the Partnership, with Taubman Centers as its managing general partner.

30. Prior to August 1998, the Taubman family's voting power in the Company and economic interest in the Company were both below 1%. The remainder of the voting and economic interest in the Company were in the hands of the public shareholders. The Company and the Partnership were (and remain) separate legal entities. The two-tiered ownership and governance structure, commonly know as an "UPREIT" structure, was put in place by the Taubman Family for tax advantages. However, as explained in an article by the family's own counsel, "The tax advantages of UPREITS do not come without costs. The UPREIT structure can create complex conflicts of interest between the directors of the REIT and the limited partners which are often heightened in the context of change of control transactions..."

31. Prior to August 1998, the Partnership was controlled by a 13-member Partnership Committee, on which the Taubman family (owning 20% of the partnership units) held only a minority of four seats. GM (owning approximately 37% of the partnership units) held 4 seats, and the Company (owning approximately 40% of the partnership units) held 5 seats. Decisions of the Partnership Committee and control of the Partnership were governed by

majority vote. Thus, as of August 1998, the Taubman family did not hold a blocking position with respect to either the Company or the Partnership. At any time prior to August 1998, if an offer (such as the Simon Property offer) to acquire shares of the Company's common stock were received, the public shareholders of the Company would have been free to amend the Company's charter to repeal the Excess Share Provision and take any other actions necessary to ensure that they received the highest value for their shares without fear of a Taubman family veto.

B. THE TAUBMANS IMPROPERLY OBTAIN EFFECTIVE VETO POWER OVER ALL OF THE TAUBMAN CENTERS' MAJOR CORPORATE DECISIONS

32. Taubman Centers' capital structure at the present time includes, INTER ALIA, common stock and Series B Preferred Stock, which are the classes of shares outstanding. These classes of stock are sometimes collectively referred to as its "Capital Stock". The common stock and Series B Preferred Stock each entitle their holders to one vote per share on all matters but otherwise differ substantially with respect to their preferences, entitlements and features. The Taubman Family currently owns both Series B Preferred Stock and common stock which purportedly provide them with approximately 30% of the voting power of the Company, or slightly less than one-third of the outstanding voting power. Holders of the Series B Preferred Stock also are entitled to designate at least four board members.

33. The Taubman family obtained the aforementioned 30% voting power through a series of improper and self-serving transactions, as described below. In 1998, prompted by the Company's lagging financial performance, GM sought to reduce the size of its investment. The parties also allegedly wanted to "simplify" and "improve" the complicated two-tiered governance structure. However, the Taubman Family had its own objectives in mind.

34. Recognizing that "the Family's interests and the public's interests (e.g., the Company) will diverge," (SEE GS868 attached hereto as Exhibit A) the Taubman Family retained its own advisors - the investment banking firm Goldman, Sachs & Co. ("Goldman") and

the law firm of Wachtell, Lipton, Rosen & Katz ("Wachtell") - to work closely with the Strategic Planning Committee to come up with a restructuring proposal.

35. While the Company's independent directors and their financial advisor "always insisted that a [Taubman Centers'] shareholder vote is necessary" (Exhibit A at 869; Niehaus Tr. at 70-71 1), and while GM also had a preference for a shareholder vote, the Taubman Family was adamantly opposed to a shareholder vote. The Taubman Family was "firm" that it would "vigorously oppose ANY proposal which includes a shareholder vote." (Exhibit A at 869) (emphasis added). Goldman advised that a "shareholder vote must be avoided at all costs." (ID.)

36. One reason for avoiding a shareholder vote was the risk that it would "put the company in play," i.e., lead to "interlopers" making a bid for the Company that could result in the Company being sold. Exhibit A at 869, 873. This was no mere theoretical threat: in the course of the restructuring, another REIT, known as Rouse, sent a letter proposing to acquire the Company and the Partnership, which the Taubman Family opposed. Niehaus Tr. At 57-62. Acceding to the Taubman Family's wishes, th Board ignored Rouse's overtures.

37. Incredibly, each and every defendant who testified in this case categorically denied that the Taubman Family ever expressed any opposition to the concept of a shareholder vote. This testimony is completely contradicted by detailed contemporaneous notes and memoranda written by a member of the Goldman team who worked on the 1998 transaction.

38. In the end, as a result of the Taubman Family's desires and their advisors' efforts (for which Goldman was paid $10 miliion and Wachtell was paid $5 million), the final restructuring proposal did not include a public shareholder vote.

39. In September of 1998, the Partnership and GM entered into an agreement pursuant to which the Partnership exchanged its interests in 10 shopping centers for all of the

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1 "Niehaus Tr. at __" refers to the transcript from the January 17, 2003 deposition of Christopher J. Niehaus.

partnership units owned by GM (the "GM Exchange"). This significant transaction had several important effects on the Company's corporate structure. Among others, the Company purportedly became obligated to issue to certain non-controlling partners of the Partnership (which included the Taubmans), upon subscription, one share of Series B Preferred Stock for each of the Partnership units held by such person. At the time of the GM Exchange, the Taubman Family owned approximately 20% of the Partnership units. In connection with the GM Exchange, the Taubmans, as a group, were able to accumulate their purported 30% voting position in the Capital Stock of Taubman Centers. In connection with that exchange, the Taubmans paid only $38,400 for the Series B Preferred Stock.

40. As a result of obtaining the Series B Preferred Stock, the Taubman Family obtained an approximate 30% voting interest in the Company. The Series B Preferred Stock gave the family effective veto over a sale of the Company for the first time.

41. The results of the GM Exchange also included significantly better governance rights for the Taubman Family than previously existed, including:

(a) the power to veto any sale or merger of Taubman Centers, even if the transaction was supported by a majority of the Company's board as being in the best interests of the Company and its public shareholders;

(b) the power to prevent the consummation of any tender offer, even if 100% of the Company's public shareholders were in favor of the tender offer and wanted to tender their shares at the price offered;

(c) the power to veto any proposal to amend the Company's Articles of Incorporation;

(d) the power to prevent the sale of all, substantially all, or any of the Company's shopping centers;

(e) the power to nominate four of the nine members of the Company's board (compared with four of eleven prior to the restructuring); and

(f) an increase in the Taubman Family's percentage ownership of the partnership from about 19% to about 30%.

42. Surprisingly, the members of the Company's Board were not told in 1998 by any advisors that, by giving the Taubman Family the Series B Preferred Stock, the Taubman Family was given an effective veto over any sale of the Company. The Company's Board never even discussed the value of the Series B Preferred Stock and the voting rights it conferred on the Taubman Family, nor did they obtain an appraisal of such value. There was no fairness opinion issued with respect to the Series B Preferred Stock. In fact, none of the financial advisors involved in the 1998 transaction performed any financial analysis of the Series B Preferred Stock.

43. Glaringly, the public announcement of the GM Exchange on August 18, 1998, omitted any mention of the Series B Preferred Stock or the blocking rights that were created for the Taubman Family. The first mention of the Series B Preferred Stock came in an 8-K filing with the SEC on October 15, 1998, in which the Company cryptically and misleadingly stated that, in connection with the GM Exchange, Taubman Centers became "obligated" to issue the Series B Preferred Stock. There is no evidence, however, that there was any requirement that the Series B Preferred Stock be issued in connection with the GM Exchange. Nor was there any explanation that the Taubman Family was obtaining a 30% vote and blocking position in the Company through its receipt of Series B Preferred Stock. At no time did the Company explain to its public shareholders in 1998 how their interests in the Company had been adversely affected as a result of the GM Exchange and the issuance of the Series B Preferred Stock.

44. The receipt of Series B Preferred Stock by Taubman family members in connection with the GM Exchange was surreptitiously obtained without a necessary shareholder vote and is ULTRA VIRES. The Series B Preferred Stock was purportedly authorized in Taubman Centers' Second Amended and Restated Articles of Incorporation, effective as of August 14, 1996. The Series B Preferred Stock was first specifically identified, however, in the Company's Restated Articles of Incorporation filed with the SEC on September 30, 1998 on Form 10Q. However, there was never a shareholder meeting to vote approval of an amendment to the Company's Articles of Incorporation for the issuance of the Series B Preferred Stock, whose rights, entitlements and preferences were of an extraordinary nature and operated to revise the capital structure of the Company. The directors of Taubman Centers in 1998 could not arrogate to themselves the power to create and issue such shares without a prior two-thirds affirmative vote of the outstanding Taubman Centers shares at that time.

45. Cementing the plan to give the Taubman Family veto power over corporate governance, the Company's Articles of Incorporation ("Articles of Incorporation") and By-Laws ("By-Laws") provide that a vote of two-thirds (2/3) of the outstanding shares of Capital Stock is required to, INTER ALIA: (a) remove any of Taubman Centers' directors for, or without, cause (SEE By-Laws, Section 3.08); (b) amend the Company's Articles of Incorporation (SEE Articles of Incorporation, Section 2(b)); or (c) take any other shareholder action (including the approval of any merger) (SEE By-Laws, Section 1.08; Articles of Incorporation, Section 3.08). Thus, by virtue of the Taubman's Capital Stock holdings, they have conferred upon themselves veto power over all of the aforementioned shareholder actions; the Company cannot obtain a 2/3 vote of the Capital Stock without the Taubman Family's consent on the matter.

46. The Articles of Incorporation also provide that, so long as the Series B Preferred Stock remains outstanding, Taubman Centers shall not, without the affirmative vote or

consent of the holders of a majority of the outstanding shares of Series B Preferred Stock (voting as a separate class): (a) amend, alter or repeal the provisions of the Company's Articles of Incorporation; and (b) be a party to any material transaction, including without limitation, a merger, consolidation or share exchange (SEE Articles of Incorporation, Section II, (j)). Additionally, the holders of Series B Preferred Stock (as a separate class) are entitled to nominate up to four individuals for election as directors of the Company.

47. Notwithstanding that the Taubmans' acquisition of the Series B Preferred Stock should be deemed null and void and given no effect, the defendant directors, contrary to the governing corporate law and their fiduciary duties, deem and treat the Series B Preferred Stock as having been validly issued and include those shares in the Capital Structure for purposes of any vote. Thus, the Individual Defendants have conferred and/or purported to acquire veto power which is unlawful, preemptive and dilutive of the legitimate rights of the remaining shareholders.

48. The Series B Preferred Stock was obtained by the Taubman Family without proper disclosure and without a necessary shareholder vote. The artifice and manipulation reflected in the issuance of the Series B Preferred Stock to the Taubmans in 1998 is highlighted by their reportedly having paid the Company only $38,400 for the stock. The issuance of the Series B Preferred Stock was an unlawful entrenchment device with no valid corporate purpose and was designed simply to bestow upon the Taubman Family extraordinary powers and rights for unfair consideration, and to dilute the voting power of the public shareholders.

49. The Taubmans' veto power -- which is an even more entrenching anti-takeover defense than the well-known "poison pill" -- has the effect of making it extraordinarily difficult, expensive and/or impossible for any potential acquiror not approved by the Taubmans

to acquire Taubman Centers. As a result, the veto power has the effect of precluding successful completion of even the most attractive offer for Taubman Centers unless the Taubmans acquiesce or approve. Payne at 142-43.

50. By virtue of this self-conferred veto power, the Taubmans caused a fundamental shift of power from Taubman Centers' common shareholders to themselves. The veto power thus permits the Individual Defendants to act as the prime negotiators of -- and, in effect, totally to preclude -- any and all acquisition offers.

51. This fundamental shift of control of the Company from its common shareholders to the Taubmans results in a heightened fiduciary duty on the part of the Taubmans and the Board, which they control, to consider, in good faith, a third-party bid and further requires the directors to pursue a third-party's BONA FIDE interest in acquiring the Company and to negotiate in good faith with a bidder on behalf of the Company's shareholders.

52. As explained herein, the Individual Defendants are using their veto power to the detriment of the Company's shareholders. Indeed, in light of Alfred Taubman's conviction and imprisonment, to comport with their fiduciary duties to the Company's shareholders, the Taubmans should have immediately relinquished their stranglehold over the Company's affairs.

C. THE EXCESS SHARE PROVISION

53. Taubman Centers' Articles of Incorporation contain an "excess share provision" which prevents any outside shareholder from acquiring more than 8.23% of Taubman Centers' outstanding shares (the "Excess Share Provision"). This provision is ostensibly to ensure compliance with the so-called "50/50 rule" of the Internal Revenue Code, which prohibits five or fewer individuals from owning in the aggregate in excess of 50% of the value of the shares of a REIT during the last half of a REIT's taxable year. Any shares acquired by an individual shareholder in excess of the ownership limit become "excess shares" that are

transferred to a trust for the benefit of a charity so that the purported acquiror obtains no voting rights or right to receive dividends on the shares. Typically, a REIT's board of directors has the discretion to waive the excess share provision with respect to certain acquirors if the board is satisfied that the acquiror is not an individual for purposes of Section 542(a)(2) of the IRC. In the case of Taubman Centers, however, an amendment of the Company's Charter is required to waive the Excess Share Provision. Such action requires approval by 2/3 of the Company's shareholders. Because of the Taubmans' veto power, they have the power to block such amendments and thereby prevent any hostile takeover.

54. Despite the restrictions imposed by the Excess Share Provision, prior to 1998, the Company could have been sold to a third party even if the family were opposed, as the independent directors and the GM directors constituted a majority of the Company's board and could have approved such a sale. The public shareholders, who held 99% of the voting power in the Company, could have amended the charter to remove the Excess Share Provision in order to receive an advantageous offer, and the Taubman Family alone would not have been able to block such an amendment.

55. In addition, the Taubman Family's' receipt of their Series B Preferred Stock in 1998, representing greater than 8.23% of the value of the outstanding capital stock of Taubman Centers, constituted the acquisition of Excess Shares, and as such, these Excess Shares must be transferred to a trust and stripped of any voting rights.

D. SIMON PROPERTY MAKES A PREMIUM BID FOR THE COMPANY THAT THE TAUBMANS SUMMARILY REJECT

56. On October 16, 2002, David Simon, the CEO of Simon Property, a much larger, publicly traded REIT based in Indianapolis, called Robert Taubman to express Simon Property's interest in pursuing a business combination between Simon Property and the

Company. Later that day, Mr. Simon sent a letter to Robert Taubman containing a written proposal describing Simon Property's interest in a business combination with the Company.

57. On October 21, 2002, Robert Taubman returned Mr. Simon's phone call and indicated that he had no interest in having any discussions or meetings regarding Simon Property's proposed business combination.

58. On October 22, 2002, Simon Property sent a letter to Robert Taubman indicating his disappointment with the response to his earlier letter and setting forth an offer to purchase all of Taubman Centers' outstanding common stock for $17.50 per share in cash through a tender offer made directly to the Company's shareholders. Simon Property also offered the opportunity to the Taubmans to remain limited partners in the Operating Partnership.

59. On October 28, 2002, Robert Taubman sent a letter to Mr. Simon in response to Mr. Simon's letter of October 22, 2002, indicating that: "The Board is unanimous in concluding that the company has no interest whatsoever in pursuing a sale transaction, and that discussion as to such a transaction would not be productive." Robert Taubman also orally expressed to Mr. Simon that he would resist any attempt by Simon Property to acquire Taubman Centers.

60. On November 6, 2002, at the NAREIT national conference, Mr. Simon offered to provide Robert Taubman further details regarding Simon Property's offer to acquire the Company and reinforced Simon Property's willingness to accommodate the needs of the Taubman family. Robert Taubman refused to engage in any discussion about a possible sale of the Company to Simon Property.

61. On November 13, 2002, David Simon sent a letter to the Taubman Centers Board complaining that defendant Robert Taubman had summarily rejected, without any consideration whatsoever, Simon Property's offer to purchase each of the shares of Taubman

Centers for $17.50 in cash. That offer, which was fully financed and was not subject to further due diligence, was 18% higher than the Company's unaffected closing stock price of $14.80 on November 12, 2002, and was higher than the price at which the common stock of Taubman Centers had ever traded. The deal, which includes the assumption of debt, is valued at over $4 billion, of which approximately $1.7 billion would be for the outstanding stock.

62. Mr. Simon's letter was made public by Simon Property in a press release issued over the PR NEWSWIRE. It is clear from the letter that the Taubman Family, as well as the other Individual Defendants, have disregarded the interests of the Company's other shareholders and have flagrantly abused their control and veto power over key corporate decisions.

63. The press release states as follows in relevant part:

**Dear Members of the Board of Directors:**

As you may know, we recently made a written offer to Robert S. Taubman to pay $17.50 in cash for each share of Taubman Centers, Inc. (the "Company") common stock. Our all-cash offer would deliver to all Taubman shareholders a substantial premium -- approximately 18% above yesterday's closing price and 30% above the price on the day we initially made our offer -- and it exceeds the highest price at which Taubman shares have ever traded. Our offer represents a compelling strategic and financial transaction that would produce substantial and immediate value for all of your shareholders. We can move quickly since our offer is not subject to the receipt of financing or any due diligence investigation of the Company.

On several occasions, we have communicated our offer to Mr. Taubman and suggested that we have an opportunity to discuss it with the members of Taubman's board of directors. We wrote Mr. Taubman on October 16, 2002, to request a meeting to present our offer. He refused to meet. On October 22, 2002, we again wrote Mr. Taubman, this time setting forth the basic terms of our offer. Once again, he refused even to have a discussion, writing to us on October 28, 2002, that "the Company has no interest whatsoever in pursuing a sale transaction . . ."

We are dismayed that Mr. Taubman continues in his refusal even to discuss our offer -- or indeed any sale transaction, particularly in

light of the fact that we have expressed a willingness to be very flexible with respect to the structure of the proposed transaction. The offer is not conditioned upon any participation by the Taubman family. Instead we have agreed to accommodate any desire by the Taubman family to retain its economic interest in the Taubman Realty Group Limited Partnership, or, at their option, to participate in the transaction, and receive either cash or equivalent value for their existing partnership interests by exchanging them on a tax efficient basis for partnership interests in the Simon operating partnership.

Since the Taubman family can choose to (1) retain its current Taubman partnership units, (2) convert into Simon partnership units, or (3) sell for cash, we can only conclude that Mr. Taubman's refusal even to discuss our offer reflects the Taubman family's desire not to permit the Company to be sold under any circumstances. While it is entirely appropriate for the Taubman family to retain the right to choose between various options with respect to the treatment of its own partnership units, it is improper for these insiders to prevent public shareholders from choosing to receive a premium for their shares.

Mr. Taubman apparently believes the Taubman family is not accountable to the public shareholders because of the family's claimed blocking position -- via the Series B preferred stock -- which was surreptitiously issued in a "restructuring" transaction many years after the Company's initial public offering without either proper disclosure or a shareholder vote. We question both the propriety and validity of a transaction which attempts to transfer to the Taubman family control and a permanent veto over material decisions that rightfully belong to the public shareholders of Taubman - such as an all-cash, premium offer to acquire the Company.

The effect of the Series B preferred stock, for which the Taubman family paid a total of only $38,400.00, is to disenfranchise the public shareholders. This entrenchment device is a permanent corporate governance defect embedded in the Company's structure -- and it continues to hurt the public shareholders. Indeed, between the time the Series B shares were issued to the Taubman family in 1998 and our October 22 offer letter, the price of Taubman common shares has fallen by 4%.

We understand that the obstacles created in the governance structure by the Taubman family, at the expense of the public shareholders, are significant. However, with the cooperation of the Board of Directors, acting as fiduciaries for the common shareholders, we believe these obstacles are surmountable. We

also trust that undisclosed economic or governance burdens have not been, and will not be, imposed on Taubman in response to our offer or otherwise.

We hope the Board will agree with us that our offer provides an excellent opportunity for Taubman shareholders to realize immediate liquidity and full value for their shares to an extent not likely to be available to them in the marketplace or in any alternative transaction. At a time when good corporate governance is particularly important to investors, we seek your help in restoring the rights of the public shareholders of Taubman.

We prefer to complete this acquisition through a negotiated transaction. We stand ready to make a detailed presentation of our offer to the Board and to answer any questions you may have.

64. Simon Property's proposal and plea to the Company's Board fell on deaf ears. Within one hour of Simon Property's November 13, 2002 press release, the Company issued its own press release categorically rejecting the offer, stating that, "The Board unanimously concluded that Taubman Centers has no interest in pursuing a sale transaction and that discussions regarding such a transaction would not be productive." Defendants took no steps to reasonably inform themselves about the Initial Offer or to engage in any attempts to increase the consideration offered. In no uncertain terms, the press release sends a clear message to Simon Property and other potential bidders that the Taubman family is in charge and is only looking out for the Taubmans' interests.

E. THE COMPANY'S CONFLICTED ADVISORS

65. Immediately upon receiving Simon Property's unsolicited proposal in October 2002, Robert Taubman hired the two "biased advocates on behalf of the family" from the 1998 GM Exchange -- Goldman and Wachtell -- to advise the public company with respect to

the offer. See Gilbert Tr. at 1l8-1222 2; R. Taubman Tr. at 129-30. 3

66. Both Goldman and Wachtell, who had performed work for the Taubman Family prior to 1998, continued to do so subsequent to 1998 and prior to the Simon Property offer, and their work separately for the Taubman Family continues today.

67. Goldman's current engagement allows it to earn a "success fee" in which success is defined as the company not being taken over.

68. Not only have these conflicts of interest not been disclosed to the Taubman Centers' public shareholders, they were not even disclosed to all of the members of the Taubman Centers Board prior to their 2002 retention in connection with the Simon Property offer. In fact, Robert Taubman testified that he hired Goldman and Wachtell "in consultation with my board" prior to the October 28, 2002 board meeting. R. Taubman Tr. at 129. Parker Gilbert testified, however, that when Taubman called him before the board meeting "he told me who he had hired" and that it was Goldman and Wachtell. Gilbert Tr. at 121-22. Director Bloostein was not even aware that Goldman had advised the family in the 1998 GM Exchange. Bloostein Tr. at 30-31. 4

F. THE VOTING AGREEMENTS, THE NEW 3% SHARES AND THE STAGGERED BOARD

69. In addition to stonewalling Simon Property in its attempts to discuss the Initial Offer, the Taubman Family immediately began to further entrench itself in power over Taubman Centers by announcing various "private" transactions all designed to solidify power in the Taubman Family. These transactions all violate the Michigan Control Share Act because the

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2 "Gilbert Tr. at ___ " refers to the transcript from the January 9, 2003 deposition of Simon Parker Gilbert.

3 "R. Taubman Tr. at __" refers to the transcript from the January 16, 2003 deposition of Robert S. Taubman.

4 "Bloostein Tr. at __" refers to the transcript from the January 14, 2003 deposition of Allan J. Bloostein.

Taubman Family's acquisition of a controlling block of shares, accomplished via the formation of a group, constitutes a "control share acquisition" that is subject to a shareholder vote.

70. On November 14, 2002, Robert and William Taubman exercised options that gave them 300,000 shares of Taubman Centers common stock (the "Exercised Options").

71. Robert Larson, a former Taubman Centers Vice Chairman and close friend of Alfred Taubman, recently purchased 266,366 shares of common stock in the open market. Larson is also the record and beneficial owner of 1,161,841 units in the Partnership and 1,161,841 shares of Series B Preferred Stock of the Company (the "Larson Shares"). On November 14, 2002, Larson entered into a voting agreement with Robert Taubman which transferred his voting rights over all of the Larson Shares to Robert Taubman for two years. Despite written representation that the voting agreement was made for "good and valuable consideration," no consideration was in fact given by Robert Taubman to Larson for the voting agreement.

72. Max M. Fisher, a friend of Alfred Taubman, purchased through The Max M. Fisher Revocable Trust ("Fisher") recently purchased 150,000 shares of Taubman Centers common stock. With that purchase, Fisher owned and/or controlled 325,300 shares of common stock and 393,337 shares of the Series B Preferred Stock (the "Fisher Shares"). On November 14, 2002, Fisher entered into a voting agreement with Robert Taubman which transferred his voting rights over the Fisher Shares to Robert Taubman for one year. Despite written representation that the voting agreement was made for "good and valuable consideration," no consideration was in fact given by Robert Taubman to Fisher for the voting agreement.

73. John Rakolta, Jr. and entities or person affiliated with him ("Rakolta") owns and/or controls 293,624 shares of common stock of the Company (the "Rakolta Shares"). On November 14, 2002, Rakolta entered into a voting agreement with Robert Taubman which

transferred his voting rights over the Rakolta Shares to Robert Taubman for one year. Despite written representation that the voting agreement was made for "good and valuable consideration," no consideration was in fact given by Robert Taubman to Rakolta for the voting agreement.

74. As a result of the aforementioned voting agreements and the Exercised Options, Robert Taubman secured voting rights over an additional 2,440,762 Taubman Centers shares or approximately 3% of the outstanding Taubman Centers stock (the "New 3% Shares").

75. On January 28, 2003, the Company announced that Robert Taubman and the other persons who were parties to the Voting Agreement terminated those agreements in order to eliminate issues raised in the pending litigation against the defendants concerning those agreements.

76. However, in light of the close personal relationships between the parties to the Voting Agreements, and the Taubman Family's continued refusal to consider a sale of the Company, as a practical matter, it is all but a foregone conclusion that those individuals will continue their support of the Taubman Family in connection with the pending tender offer and any shareholder vote. Therefore, there are DE FACTO voting agreements still in place.

77. Taubman Centers also maintains a staggered board which provides no opportunity to replace a majority of directors at any single annual meeting of shareholders. The Company's staggered Board further assures the Taubman family's control by eliminating any serious challenge to the Taubman family designees on the Board of Directors.

F. THE TENDER OFFER AND SPECIAL MEETING

78. On December 5, 2002, Simon Property commenced a tender offer to acquire all of the outstanding shares of Taubman Centers at the increased price of $18.00 per share in cash. Success of the tender offer, however, is dependent on certain conditions, including

amendment of the Company's Charter in certain respects and deactivation of certain barriers imposed by Michigan law.

79. On or about December 12, 2002, the Taubman Centers Board purportedly opted-out of the Michigan Control Share Act (Chapter 7B of the Michigan Business Corporation Act (M.B.C.A. ss.ss. 450.1790 et seq.)).

80. On December 16, 2002, Simon Property filed preliminary proxy materials with the SEC with respect to the solicitation by Simon Property of proxies from shareholders of the Company to call a special meeting of the Company's shareholders. The purpose of the meeting would be to allow the Company's shareholders to vote on a proposal to amend the Company's Charter so that the purchase of shares by Simon Property in connection with its tender offer would not trigger the Excess Share Provision. Under its By-Laws, the Company is required to hold a special meeting if presented with proxies from holders of at least 25% of the Company's outstanding voting shares. Under the Company's By-Laws (As they existed on December 16, 2002), holders of 25% of the Company's outstanding voting shares were able to call a special meeting "at any time and for any purpose" upon notice to be given at least 10 and not more than 60 days prior to the meeting.

81. Four days later, on December 20, 2002, in a direct and defensive response to Simon Property's announced intention to call a special meeting, the Company announced that the board, at a meeting that day, had amended the Company's By-Laws to make more restrictive the timing and procedures that would apply to a special meeting requested by the shareholders (the "By-Laws Amendment"). Specifically, whereas the prior By-Laws permitted holders of 25% of the Company's voting shares unilaterally to call a special meeting on a date of their choosing between 10 and 60 days after providing notice thereof, the amended By-Laws eliminated this right.

82. The By-Laws Amendment provides that, upon shareholder request, it is the Company that calls the meeting and selects the date. The By-Laws Amendment further provides that, within 10 business days after receiving notice of a request by holders of 25% of the Company's voting shares for a special meeting, the board is to fix a record date and meeting date for such special meeting, "which meeting shall be set for not less than 30 nor more than 90 days after the date of such board action." Thus, by virtue of the By-Laws Amendment, the board has arrogated to itself the power to set the meeting date and to delay it by months beyond the date that could have been chosen by shareholders. The By-Laws Amendment has no valid corporate purpose and constitutes an improper interference with the shareholder franchise.

83. The Company also announced that the board had determined to recommend that shareholders reject the Simon Property's solicitation of proxies and, if a special meeting were called, to vote against Simon Property's proposals. The board also indicated that, "Holders of more than a third of the voting power ... will vote against" Simon Property's proposal to amend the charter to eliminate the Excess Share Provision, thereby serving as a reminder that the Taubman Family, if permitted to vote its Series B Preferred Stock and New 3% Shares, has veto power over the Simon Property offer.

G. THE FORUM SHOPS TRANSACTION

84. On January 13, 2002, Taubman Centers took another step forward in its fight to stop Simon from taking over the Company for $18 per share. In a complex agreement, the Company (through the Partnership) joined forces with Gordon Group Holdings, LLC ("Gordon") in another defensive effort to exert additional pressure on Simon (the "Forum Shops Transaction"). Pursuant to the Forum Shops Transaction agreement, Taubman (and its financial advisor, Goldman) will provide financing to Gordon and form a joint venture with Gordon to help Gordon acquire the prestigious Forum Shops in Las Vegas. At the time the deal was

announced, Gordon held a 42% stake in the Forum Shops, with Simon holding the rest. Under the agreement, Gordon will ask Simon to either buy his stake or sell him Simon's 58% share in the property (the "Buy/Sell"). Taubman Centers stands to benefit regardless of whether Gordon buys out its partner or sells its interest in the mall.

85. If Gordon buys out Simon, Taubman Centers will get preferred shares in the venture with a 12% coupon and the right to buy a one-third ownership stake in the Forum Shops using Taubman Centers Partnership units. This scenario arguably has the potential to boost - at least in appearance - the value of Taubman Centers' shares. Under the agreement, Taubman Centers will issue 2.42 Partnership units for a one-third ownership stake at an exchange rate of $24 per unit. Under this scenario, Taubman Centers will become the minority owner and manager of one of Simon's most prestigious malls.

86. If Gordon sells its stake to Simon, Gordon will invest $50 million of the proceeds from that sale for 2.08 million Taubman Partnership units, also at $24 per unit.

87. Morgan Stanley analyst Matt Ostrower speculates that Taubman Centers will likely try to use the pricing of the Partnership units as a way to argue that the Company is worth more than Simon's offer. He has commented on the Forum Shops Transaction as follows:

It's a very clever transaction on Taubman's part... . We view the transaction as very much a part of the Simon/Taubman (takeover) saga. ... Whenever someone offers to pay more than the market price for shares, I have to ask the question - what am I missing.

88. Thomas Weisel Partners LLC analyst Paul Morgan concurred, commenting that although the $24-a-share equity investment appears to raise the bar for Taubman Centers' valuation far above Simon Property's offer, "we believe the $24 share price is largely an artifact of the agreement's structure and does not reflect a true bid price." Mr. Morgan also said that Taubman Centers' management is "clearly doing everything possible to avoid a merger with Simon, and has been successful to date at frustrating efforts to consummate the

deal."

89. In addition to brokering the deal with Gordon as a defensive response to Simon's pending offer, Robert Taubman agreed to provide and/or arrange for necessary financing to Gordon to make the offer to buy out Simon. In fact, Gordon "needed a lot of financing. He needed a loan. It happened to come from [the Partnership]." Payne Tr. at 159-60. 5 Moreover, in a joint effort with Robert Taubman, Mr. Gordon obtained a $385 million mortgage financing commitment in connection with his exercise of the Buy/Sell from Goldman Sachs, financial advisor to the Company. ID.

H. SIMON INCREASES THE TENDER OFFER PRICE TO $20 PER SHARE

90. On January 15, 2003, Simon Property announced that Westfield America, Inc. ("Westfield") joined its tender offer for Taubman Centers and that the price of the offer had been increased to $20.00 per share (the "Revised Offer").

91. The increased price represents a premium of 50% over the price of Taubman Centers shares when Simon Property first made a written acquisition proposal and 25% above the highest closing price in Taubman Centers' 10-year history as a public company prior to Simon Property's proposal.

92. The Revised Offer is not conditioned on financing, due diligence or the participation of the limited partners of the Partnership. The tender offer is set to expire at midnight on February 14, 2003.

93. On January 21, 2003, Taubman Centers announced and disclosed in a 14D-9 filing that the board had unanimously voted to reject the revised $20.00 per share offer as inadequate. The board's position remains clear - the Company is not for sale. Robert Taubman said in an interview, "It's not the right time to sell this company." "For the third time now, the

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5 "Payne Tr. at ___" refers to the transcript of the January 17, 2003 deposition of Lisa Payne.

board clearly has said the offer is inadequate, opportunistic and not in the best interest of shareholders."

94. Many analysts disagree and are urging shareholders to accept the Revised Offer. For example,

My view is that as much as Taubman says there is no path to completion for Simon, there's no path to $20 if you continue to be an investor in Taubman Centers, short of a takeover. If Simon and Westfield walk, Taubman's stock tanks. LEGG MASON ANALYST DAVID FICK

I. DEFENDANTS MADE MISLEADING AND INCOMPLETE DISCLOSURE REGARDING THE GM EXCHANGE

95. On August 18, 1998, the Company told the public in a press release in connection with the GM Exchange:

With the [Company] now having a majority and controlling interest in
[the Partnership], we will dissolve the Partnership Committee. GM will relinquish its two seats on the [Company's] board of directors resulting in the [Company] having a majority of independent directors.

96. The press release was misleading and materially incomplete because it omitted that, in connection with the GM Exchange, the Company would give the Series B Preferred Stock to the limited partners in the Partnership, consisting primarily of the Taubman Family, and thus endow the Taubman Family with a purported 30% voting position over the Company.

97. The first mention of the Series B Preferred Stock was on October 15, 2002, nearly two months after the GM Exchange was publicly announced, in a Company filing with the SEC wherein the Company indicated that it had become "obligated" to issue the Series B Preferred Stock to the Taubman Family in connection with the GM Exchange.

98. The statements by the Company in the aforementioned SEC filing were misleadingly incomplete because they omitted any explanation or disclosure of the fact that the Series B Preferred Stock purported to give the Taubman Family virtual veto power over major transactions concerning the Company and, in particular, unsolicited takeover attempts.

99. In fact, the board of the Company was not even told in 1998 by any advisors that one effect of giving the Taubman Family the Series B Preferred Stock was to give them an effective veto over any sale of the Company. Defendant Bloostein admitted at his deposition that he never even considered this fact although he now acknowledges it might have been important to his decision at the time. And, of course, shareholders were not permitted to vote on the matter.

100. Moreover, the statement that the Company was "obligated" to issue the Series B Preferred Stock to the Taubman Family is false and/or misleading as there does not appear to be any such "obligation." There is simply no evidence of any connection between the GM Exchange and the Series B Preferred Stock.

J. DEFENDANTS MADE MISLEADING AND INCOMPLETE DISCLOSURE REGARDING THE SIMON OFFER

101. As described herein, the Company has formally rejected Simon Property's offers, reiterated the opposition of the board and the Taubman Family to the offer and recommended (in 14D-9 filings with the SEC, the "Recommendation Statements") that the Company's public shareholders reject the Simon Property offer as inadequate.

102. While claiming that each offer has been "inadequate" from a financial standpoint, the Company has failed and/or refused to give any indication of what an adequate offer would be. To the contrary, the Company continues to cite to "the fact that the Taubman Family and other shareholders, with a combined voting power of over a third of the total voting power of the Company's capital stock have indicated they do not intend to tender their Common

Shares and have taken the firm position that they are not interested in pursuing a sale transaction." In other words, regardless of the merits of any offer, including any by Simon Property, the Company is not for sale at any price due to the Taubman Family's "firm position" in which the board is hopelessly acquiescing.

103. Taubman Centers bears the burden of making complete disclosure of all material facts relevant to the public shareholders' decision whether to tender their shares to Simon Property. Among other things, in connection with the Simon Property offer, the defendants have violated their disclosure obligations by:

(a) omitting any information concerning the serious conflicts suffered by the Company's financial and legal advisors, particularly with respect to Goldman Sachs, the Company's financial advisor in connection with the Simon Property offer. Goldman was previously paid $10 million to represent the Taubman Family in connection with the GM Exchange. In addition, Goldman continued to perform services for the Taubman Family in the interim. Still further, as described herein, the same members of the Goldman "team" that are advising the Company in connection with the Simon Property offer is also providing advisory services in connection with the Forum Shops transaction. As described herein, Goldman is even providing financing to Gordon in connection with that transaction. Wachtell, the Company's legal advisor suffers from similar conflicts. Like Goldman, Wachtell represented the Taubman Family in connection with the GM Exchange and was paid $5 million for that service. Wachtell has also continued to provide legal services to the Taubman Family since that time. It belies reason that the parties somehow determined that

Goldman and Wachtell could adequately and independently represent the interests of the Company in light of their significant prior and continuing relationships with the Taubman Family. Failure to disclose these material relationships constitutes an egregious disclosure violation by the Company;

(b) omitting any information concerning Goldman's valuation of Taubman Centers. Clearly, Taubman Centers shareholders are entitled to information concerning the methods by which Goldman determined that the Simon Property $20 offer is inadequate;

(c) omitting material information concerning the Company's recent operational and/or financial developments. On January 21, 2003, in a 14D-9 filing with the SEC, the Company disclosed that, in reviewing and considering the Revised Offer, it relied upon "updates of recent operational and financial developments concerning the Company." However, none of this information has been provided to the public shareholders. Clearly, any and all material information on which the board has relied in determining that the Revised Offer is inadequate should be disclosed to the public shareholders so that they can make an informed decision whether or not to tender;

(d) omitting projections and/or forecasts provided by the Company's management. The Defendants have indicated that much of the reason why they have recommended that the Revised Offer is not in the best interest of the Company's public shareholders is because it does not reflect the inherent value of the Company's assets ("many of which are at early

stages in their development cycles and are expected to generate increasing returns over the next few years") or their growth potential. In light of the fact that the Company is recommending that its shareholders reject a premium offer for their shares based, in large part, on the Company's bright future, including development of existing properties, projections of that bright future for Taubman Centers should be provided to plaintiff and the Class;

(e) failing to disclose that the members of the Taubman Family were present at all Board meetings, and no deliberations were held without them; and

(f) failing to disclose that Goldman's current retention agreement with the Company provides a financial incentive for Goldman to offer advice in favor of rejecting Simon's $20 offer.

**COUNT I**

**FOR INJUNCTIVE AND DECLARATORY RELIEF -
INVALID ISSUANCE OF SERIES B PREFERRED STOCK**

104. Plaintiff repeats and realleges each allegation set forth herein.

105. As described herein, the receipt of Series B Preferred Stock by Taubman family members in connection with the GM Exchange in or about September 1998 was surreptitiously obtained without a necessary shareholder vote and is ULTRA VIRES.

106. In addition, the receipt of such shares constituted an improper issuance of Excess Shares in violation of the Company's Charter.

107. Accordingly, plaintiff seeks (i) a declaration that the Taubman family's Series B Preferred Stock does not have any voting rights and/or should be donated to charity and (ii) injunctive relief prohibiting the Taubman family from voting the Series B Preferred Stock.

108. Plaintiff has no adequate remedy at law.

## COUNT II

## FOR INJUNCTIVE AND DECLARATORY RELIEF - - INVALIDITY OF TAUBMAN FAMILY VOTING CONTROL

109. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

110. The Series B Preferred Stock does not have the right to vote and should not be allowed to vote because, INTER ALIA:

(a) the Board is following the dictates of the Taubman family without engaging in a searching, independent and deliberative consideration of the Simon Property offer and passively accepting the Taubman family's position that it controls a blocking voting position when, in fact, that position was obtained without the required shareholder vote;

(b) the Board has created, and continues to allow, an effective veto position for the Taubman family by giving them the Series B Preferred Stock for no fair consideration for the improper purpose of insulating the Company from third-party proposals such as the Simon Property offer;

(c) the Board has failed to take the necessary steps to strip the excess shares held by the Taubman family of their voting rights and transfer those shares to a charitable trust;

(d) the Board is depriving the public stockholders of the opportunity to consider Simon Property's offer and is effectively removing from the shareholders the choice of whether or not to tender their shares;

(e) the Board is acquiescing in the Taubman family's arbitrary, irrational, and spiteful conduct towards the public shareholders and Simon Property that is designed solely to entrench the Taubman family;

(f) the Board is permitting the Series B Preferred Stock given to the Taubman family and the New 3% Shares to effectively prevent amendment of the charter to remove the Excess Share Provision and is failing to take steps to remove this impediment; and

(g) the New 3% Shares have no voting rights under the Michigan Control Share Act.

111. Plaintiff has been damaged, and continues to be damaged, as a direct result of defendants' conduct.

112. Accordingly, plaintiff seeks a declaration that the Taubman family may not validly vote the Series B Preferred Stock under circumstances that would have the effect of foreclosing the Simon Property tender offer and disenfranchising the public shareholder body, including at any special meeting and any vote to amend the charter's Excess Share Provision.

113. Plaintiff has no adequate remedy at law.

**COUNT III**

**CLASS CLAIM FOR BREACH OF FIDUCIARY DUTY**

114. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein. This claim arises under Michigan law and is against the Individual Defendants.

115. By virtue of their positions as directors of Taubman Centers, the Individual Defendants owe duties to the Company and its stockholders. These duties include, but are not limited to, the obligation to consider and fully evaluate all offers for Taubman Centers, the obligation to exercise due care in conducting the affairs of Taubman Centers, the obligation not to put self-interest and personal or other consideration ahead of the interests of Taubman Centers' stockholders, and the obligation not to take unreasonable defensive measures that are disproportionate to any perceived threat posed to Taubman Centers.

116. Defendants, acting in concert, have violated their fiduciary duties owed to the public shareholders of Taubman Centers by putting their own personal interests ahead of the interests of the Taubman Centers public shareholders and are using their control positions as officers and directors of Taubman Centers for the purpose of retaining their positions and perquisites as Board members at the expense of Taubman Centers' public shareholders.

117. The Individual Defendants are engaged in a course of conduct which evinces their failure to: (a) evaluate the benefits to the Company's shareholders of the Simon Property offer with requisite due care and diligence;
(b) undertake an adequate evaluation of Taubman Centers' worth as a potential acquisition candidate; (c) take adequate steps to enhance Taubman Centers' value and/or attractiveness as an acquisition candidate; (d) effectively expose Taubman Centers to the marketplace in an effort to create an open auction for Taubman Centers; (e) adequately inform Taubman Centers shareholders concerning their recommendation against Simon Property's offer; or (f) act independently so that the interests of public shareholders would be protected. Instead, defendants have sought to chill or block any potential offers for Taubman Centers.

118. The Individual Defendants have improperly utilized the Company's defenses, including the Taubman's blocking position. To act consistent with their fiduciary duties, the Individual Defendants should evaluate all available alternatives, including negotiating with Simon Property and any other potential suitors, which they have failed to do.

119. The Individual Defendants are unlawfully manipulating the corporate machinery to avoid a timely and fair vote on their entrenching tactics and the Simon Property Offer. By precipitously opting-out of the provisions of the Michigan Control Act, the Individual Defendants have sought to deprive Simon Property of its ability to invoke a special meeting to address the validity of its acquisition of Control Shares. By subsequently passing a by-law to

restrict shareholders' rights to call a special meeting, the Individual Defendants have further acted to change the rules in their favor after the takeover contest had begun. Such steps, if they are to be taken at all, should have been taken before there was any change to the status quo.

120. The Individual Defendants owe fundamental fiduciary obligations under the present circumstances to take all necessary and appropriate steps to explore in good faith the Simon Property proposal and obtain all material information available. In addition, the Individual Defendants have the responsibility to act independently so that the interests of Taubman Centers' public stockholders will be protected, to seriously consider all BONA FIDE offers for the Company, and to conduct fair and active bidding procedures or implement other mechanisms to assure that the highest possible price is achieved. Further, the directors of the Company must adequately ensure that no conflict of interest exists between defendants' own interests and their fiduciary obligations to act in the shareholders' best interests or, if such conflicts exist, to ensure that they will be resolved in the best interests of the Company's public stockholders.

121. Taubman Centers represents a highly attractive acquisition candidate. The Individual Defendants' conduct has deprived and will continue to deprive the Company's public shareholders of the very substantial premium which Simon Property (or any other BONA FIDE bidder) is prepared to pay or of the enhanced premium which further exposure of the Company to the market could provide. Defendants have denied shareholders their enjoyment of the full economic value of their investment by failing to evaluate Simon Property's good faith, premium offer. In addition, defendants' actions will likely deter any other potential bidders from coming forward so long as the Taubmans retain their choke-hold over the Company.

122. Taubman Centers' Board and its top management (including the Taubmans) have frustrated Simon Property's current acquisition proposal, even though such

proposal would result in Taubman Centers' shareholders receiving a substantial premium for their shares. Indeed, the price of Taubman Centers' common stock has never traded above the $20.00 per share price offered by Simon Property. The Individual Defendants have engaged in these actions because they know that in the event that Taubman Centers was acquired by any potential bidder, most or all of the directors of Taubman Centers and its senior management would, either in connection with the acquisition or shortly thereafter, be removed from the Board of the surviving company because their services would not be necessary. They would be mere surplusage and, thus, an acquisition would bring an end to their power, prestige and profit. In so acting, Taubman Centers' directors and those in management allied with them have been aggrandizing their own personal positions and interests over those of Taubman Centers and its broader shareholder community to whom they owe fundamental fiduciary duties not to entrench themselves in office.

123. To the extent that the Individual Defendants are receiving any direction or guidance from Alfred Taubman, any such action by them would reflect unlawful and improper communications by Alfred Taubman which the Taubman family may not heed either as a manner of federal criminal law or state fiduciary law and principles.

124. By virtue of the acts and conduct alleged herein, the Individual Defendants, who control the actions of the Company, have carried out a preconceived plan and scheme to place their own personal interests ahead of the interests of the shareholders of Taubman Centers and thereby entrench themselves in their offices and positions within the Company. The Individual Defendants have violated their fiduciary duties owed to plaintiff and the Class in that they have not and are not exercising independent business judgment and have acted and are acting to the detriment of the Company's public shareholders for their own personal benefit. Defendants' actions are draconian and there is no real threat posed by Simon Property's

premium offers.

125. The decisions of the Individual Defendants with respect to the Voting Agreements and the Forum Shops Transaction demonstrate a lack of good faith, could not have been based upon a reasonable inquiry, and unreasonably preclude Simon Property or any other third party from making a premium offer to Taubman Centers' stockholders.

126. Robert Taubman, with the acquiescence and/or assistance of the Individual Defendants, has breached his duties of care and loyalty in connection with the Forum Shops Transaction and also by soliciting and entering into the Voting Agreements.

127. Plaintiff seeks preliminary and permanent injunctive relief and declaratory relief preventing defendants from inequitably and unlawfully depriving plaintiff and the Class of their rights to realize a full and fair value for their stock at a substantial premium over the market price and to compel defendants to carry out their fiduciary duties of due care and loyalty.

128. Only through the exercise of this Court's equitable powers can plaintiff be fully protected from the immediate and irreparable injury which the defendants' actions threaten to inflict.

129. Unless enjoined by the Court, defendants will continue to breach their fiduciary duties owed to plaintiff and the members of the Class, and/or aid and abet and participate in such breaches of duty, will continue to entrench themselves in office, and will prevent the sale of Taubman Centers at a substantial premium, all to the irreparable harm of plaintiff and the other members of the Class.

130. Plaintiff and the Class have no adequate remedy at law.

## COUNT IV

## CLASS CLAIM FOR BREACH OF FIDUCIARY DUTY OF CANDOR CONCERNING ISSUANCE OF SERIES B PREFERRED STOCK

131. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

132. The fiduciary duty of candor requires disclosure of all information in defendants' possession germane to the transaction at issue. Directors are under a fiduciary duty to disclose fully and fairly all material information within the Board's control.

133. As set forth above, the Defendants failed to disclose material information concerning the issuance of the Series B Preferred Stock to the Taubman Family in 1998.

134. Plaintiff and the other members of the Class have no adequate remedy at law.

## COUNT V

## CLASS CLAIM FOR BREACH OF FIDUCIARY DUTY OF CANDOR CONCERNING THE SIMON OFFER

135. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

136. As set forth above, the Defendants have failed to disclose material information concerning the Simon Offer including, but not limited to, the valuation analyses performed by the Company's financial advisor, the conflicts of interest suffered by the Company's legal and financial advisors, projections/forecasts relied upon by the Company in determining to reject the Simon $20 offer, and the recent operational and/or financial developments affecting the Company relied upon by the Company in determining to reject the Simon $20 offer.

137. Without this crucial information, Taubman Centers' shareholders cannot

possibly make an informed decision concerning the fairness and adequacy of the Simon $20 offer.

138. Defendants, in breach of their fiduciary duty of candor, have stranded Taubman Centers' shareholders without information necessary to make an informed decision concerning the fairness and adequacy of Simon's $20 offer. The Taubman Family is attempting to permanently deprive plaintiff and other members of the Class of the premium offer for their investment in the Company without presenting the Company's public shareholders with all material information necessary to make an informed decision regarding whether to tender their shares.

139. Plaintiff and the other members of the Class have no adequate remedy at law.

## COUNT VI

## DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY

140. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

141. Plaintiff brings this Count derivatively in the right and for the benefit of Taubman Centers to redress injuries suffered and to be suffered by the Company as a direct result of the violations of fiduciary duties by the Individual Defendants. In particular, plaintiff seeks redress in this Claim for the injuries suffered and to be suffered by the Company by virtue of, INTER ALIA, the actions undertaken and measures approved by defendants which were and are motivated solely or primarily for purposes of entrenchment.

142. Plaintiff has not made any demand on the present Board of Directors of Taubman Centers to institute this action because such demand would be futile and is thereby excused for the following reasons:

a. the Individual Defendants are not disinterested with respect to their approval and adoption of the Series B Preferred Shares and their summary, uninformed rejection of the recent premium offer, as these and other actions were undertaken unlawfully, in bad faith and with the primary purpose and effect of entrenchment. The design and effect of these measures, and their timing, demonstrate that a basic motive in taking these actions and implementing these measures was to secure for the Individual Defendants their positions and emoluments within the Company and to cement the Taubmans' control. Defendants' summary, uninformed rejection of the recent premium offer infringes on the voting rights of Taubman Centers' shareholders through manipulation of the corporate machinery and has clear anti-takeover purposes and consequences. Under the circumstances, the Individual Defendants -- in approving and implementing these steps -- have acted with a sole or primary motive to perpetuate themselves in their positions of control within the corporate structure and to benefit themselves and other members of Taubman Centers executive management with whom they are closely allied;

b. the Individual Defendants are further interested in these transactions because each receives substantial salaries, bonuses, payments, benefits, and/or other emoluments by virtue of service on the Board. The Individual Defendants have thus benefitted and will continue to benefit from the wrongs herein alleged and have acted to preserve their positions of dominance and control and the perquisites thereof, and are incapable of exercising independent business judgment in deciding whether to bring this action. The Board members also have close personal and business ties with each other and are consequently interested parties and cannot in good faith exercise independent business judgment to determine whether to bring this action against themselves; and

c. in addition to being unlawful and abusive, the issuance of the Series B Preferred Shares constituted waste which cannot be ratified.

143. In addition to being self-interested, the Individual Defendants -- in taking the actions and approving the measures described above -- fundamentally failed to exercise sound and proper business judgment. Defendants, INTER ALIA, failed to exercise due care and to act in the best interests of the Company in formulating and approving transactions which are ULTRA VIRES, unlawful, unnecessary, wasteful and not in the best interests of the Company and its public shareholders. ULTRA VIRES action cannot be ratified by board action.

144. The principal wrongdoers and beneficiaries of the wrongdoing complained of herein -- including the Taubmans and other members of Taubman Centers' senior management -- are in a position to, and do, dominate and control the Taubman Centers Board of Directors. Thus, the Board could not exercise independent objective judgment in deciding whether to bring this action nor vigorously prosecute this action.

145. As a result of the acts and conduct described above, the Individual Defendants are not fully informing themselves, are not acting in good faith and have deliberately and/or recklessly breached their fiduciary and other common law duties which they owe to the Company. Among other things, the unlawful and wasteful issuance of the Series B Preferred Shares and defendants' summary, uninformed rejection of the recent premium offers, have the effect of entrenching the Individual Defendants in their corporate offices against any real or perceived threat to their control and represents an ill-considered, hasty reaction which did not satisfy the directors' duty to obtain adequate information before rejecting a BONA FIDE acquisition proposal. Defendants are manipulating Taubman Centers' corporate machinery and abusing their positions of control for purposes of securing their positions of control.

146. To the extent that the conduct of the Individual Defendants is based upon what they perceive to be a threat by a third-party to take over Taubman Centers, the Individual Defendants have a heightened fiduciary duty to act in the best interest of the Company's public stockholders and to act reasonably with regard to any such perceived threat. They have recklessly and in bad faith violated such duties.

147. By virtue of the acts and conduct alleged herein, the Individual Defendants are carrying out a preconceived plan and scheme to entrench themselves in office, to thwart a fair and open auction of the Company that would maximize shareholder value, and to protect and advance their own personal financial interests at the expense of Taubman Centers and its shareholders, acting grossly disproportionately to any real or apparent threat.

148. By reason of the foregoing, Taubman Centers has sustained and will continue to sustain irreparable harm and has no adequate remedy at law.

**COUNT VII**

**FOR DECLARATORY AND INJUNCTIVE RELIEF**

149. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth herein.

150. The Court may grant the declaratory and injunctive relief sought herein pursuant to 28 U.S.C. ss. 2201 and Fed. R. Civ. P. 57 and 65. A substantial controversy presently exists, as demonstrated by: (a) the Individual Defendants' rebuff of Simon Property's premium bids; (b) the Individual Defendants' unwillingness to meet with Simon Property to consider or discuss a combination or merger with Simon Property or any other possible acquiror; (c) the Taubmans' improper acquisition and use of the Series B Preferred Shares as a defensive measure; and (d) the Company's joint venture with Gordon as a defensive measure. The public shareholders' interests in a potential sale of their Taubman Centers holdings is adverse to the

interests of the Individual Defendants in their desire to retain their positions on the Taubman Centers Board. The existence of this controversy is causing confusion and uncertainty in the market for public securities because investors do not know whether they will be able to avail themselves of an advantageous financial offer. The granting of the requested declaratory and injunctive relief will serve the public interest by affording relief from such uncertainty and by avoiding delay.

151. Moreover, such relief has become necessary not only because of the practical operation of the various procedural impediments created by the board and the Taubmans, but because the Company's board of directors is simply blindly following the dictates of the Taubman family and the stated or tacit wishes of Alfred Taubman. Without first informing themselves and then engaging in a careful, independent and deliberate consideration of the Simon Property offer, the Board has merely accepted the Taubman family line that because of the family's asserted veto power, there is nothing to talk about, and any efforts to purchase the Company would not be "productive."

152. Directors have a fiduciary duty not to allow the corporate machinery to be used in a manner injurious to the public shareholders, and controlling shareholders, such as the Taubmans, likewise have a duty to exercise their control in a fair and equitable manner. Having caused or allowed the Series B Preferred Stock to be given to the Taubman family while aware of the Excess Share Provision embedded in the Company's Charter, which, in conjunction with the New 3% Shares, operate to preclude Simon Property's all-cash offer, the Board must now act affirmatively to protect the Company's shareholders and not resign itself to domination and control by the Taubman family, whose interests directly contravene the best interests of the Company's shareholders.

WHEREFORE, plaintiff demands judgment as follows:

A. Declaring Count I through Count V of this complaint to be proper class action claims and certifying plaintiff as class representative;

B. Ordering the Individual Defendants to carry out their fiduciary duties to plaintiff, the Class and the Company by announcing their intention to:

(i) cooperate fully with any entity or person, including Simon Property, having a BONA FIDE interest in proposing any transaction which would maximize shareholder value, including, but not limited to, a buy-out or takeover of the Company;

(ii) immediately undertake an appropriate evaluation of Taubman Centers' worth as a merger or acquisition candidate;

(iii) take all appropriate steps to effectively expose Taubman Centers to the marketplace in an effort to create an active auction of the Company;

(iv) act independently and with proper candor so that the interests of the Company's public shareholders will be protected; and

(v) adequately ensure that no conflicts of interest exist between the Individual Defendants' own interest and their fiduciary obligation to maximize shareholder value or, in the event such conflicts exist, to ensure that all conflicts of interest are resolved in the best interests of the public shareholders of Taubman Centers.

C. Declaring that the Individual Defendants have violated their fiduciary duties to the Class and the Company;

D. Enjoining the Individual Defendants from abusing the corporate machinery of the Company for the purpose of entrenching themselves in office;

E. Declaring the Taubman's voting power in the Company illegal and
**ULTRA VIRES;**

F. Ordering the Individual Defendants, jointly and severally, to account to plaintiff, the Class and the Company for all damages suffered and to be suffered by them as a result of the acts and transactions alleged herein;

G. Awarding plaintiff the costs and disbursements of this action, including a reasonable allowance for plaintiff's attorneys' and experts' fees; and

H. Granting such other and further relief as may be just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury of all issues so triable.

DATED: January 31, 2003


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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**

**SIMON PROPERTY GROUP, INC., et al.,**

**Plaintiffs, File No. 02-74799**

v. The Honorable Victoria A. Roberts Magistrate Judge Virginia M. Morgan

**TAUBMAN CENTERS, INC., et al.,**

**Defendants.**

----------/

LIONEL Z. GLANCY,

Plaintiff,

v.

File No. 02-75120

The Honorable Victoria A. Roberts
Magistrate Judge Virginia M. Morgan

**ROBERT S. TAUBMAN, et al.,**

**Defendants.**

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# DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR A PRELIMINARY INJUNCTION


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## EXS.

## STATEMENT OF THE ISSUES PRESENTED

ISSUE 1 Whether the Court lacks jurisdiction over the subject matter where:

(i) There is no diversity of citizenship between plaintiffs and the real parties in interest who own Series B preferred stock ("Series B") of Taubman Centers, Inc. ("Taubman Centers").

(ii) Neither of the individual plaintiffs has an amount in controversy exceeding $75,000.

Defendants say: Yes

ISSUE 2 Whether the Court should deny plaintiffs' motions to disenfranchise by injunction 30% of the voting interests of Taubman Centers where plaintiffs have failed to establish a strong likelihood of success on the merits because:

(i) Plaintiffs' claims are barred by the statute of limitations.

(ii) Plaintiffs lack the legal standing to challenge the 1998 restructuring of the Taubman enterprise and issuance of the Series B stock because they were not shareholders of the corporation in 1998 at the time of the stock issuance.

(iii)Plaintiffs' claims must be brought derivatively on behalf of Taubman Centers, but plaintiffs have not made a written demand on the corporation, a mandatory requirement under Michigan law, and plaintiffs, hostile tender offers and a professional "strike suit" plaintiff, do not fairly and adequately represent the interests of the corporation.

(iv) Plaintiffs have not shown that defendants breached their fiduciary duties in connection with the 1998 restructuring and issuance of the Series B stock.

(v) Plaintiffs have not shown that defendants breached their fiduciary duties in connection with their consideration of the offers of the Simon Property Group, Inc.

(vi) Plaintiffs' 2002 "group" claims under the Control Share Acquisitions Act are meritless because the formation of a group is not a "control share acquisition," no group was formed in 2002, and plaintiffs lack the legal standing to assert claims under the Control Share Acquisitions Act.

Defendants say: Yes

ISSUE 3 Whether the Court should deny plaintiffs' motions to disenfranchise by injunction 30% of the voting interest of Taubman Centers where plaintiffs have failed to show that the balance of equities weighs in their favor because:

(i) Plaintiffs have no certain, imminent, or irreparable injury.

(ii) Defendants and other Series B shareholders will suffer irreparable injury if the Series B shares are not permitted to vote.

(iii)The public interest will be harmed if the Series B shareholders are not permitted to vote.

Defendants say: Yes

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## PRELIMINARY STATEMENT

Simon Property Group, Inc., and its acquisition subsidiary (together, "SPG"), and the individual plaintiffs, while posturing as champions of corporate democracy, invite this Court to take the profoundly UNdemocratic step of "preliminarily" enjoining the vote of 38% of the stock of Taubman Centers, Inc. ("Taubman Centers"). But there is no factual, legal, or equitable substance to plaintiffs' motions. For SPG's "factual" account of the 1998 restructuring of the enterprise to be accepted, massive collusion among five major law firms, two leading investment banks, and independent directors including the former Chairman of Morgan Stanley has to have occurred, and the New York Stock Exchange has to have condoned it. SPG distorts testimony and twists documents to paint a lurid and utterly false picture of director misconduct. SPG's legal discussion of the Michigan Control Share Acquisitions Act conspicuously omits case law squarely rejecting SPG's "group" contention, including a Michigan case in which SPG's present counsel condemned the very "group" argument SPG advances here. And SPG never confronts the gross INequity of exploiting its so-called preliminary motion to seek what amounts to permanent relief irrevocably altering the status quo.

The pending motions are deficient in many respects, including even so elemental a flaw as failing to establish Federal subject matter jurisdiction. They are not legitimate requests for interim judicial relief. They are simply part of SPG's relentless public relations campaign feeding trumped-up charges of illegality to credulous journalists to pressure Taubman Centers' directors into accepting a tender offer that they believe, in their good faith judgment, is inadequately priced and opportunistic. The motions do not justify the extraordinary relief they seek. They should be denied.

## STATEMENT OF FACTS

A. OVERVIEW OF THE TAUBMAN UPREIT ENTERPRISE

Taubman Centers is a Michigan corporation that is qualified as a real estate investment trust ("REIT").1 Taubman Centers was introduced as a publicly-traded REIT in 1992 by A. Alfred Taubman and by two General Motors employee pension trusts (the "GM Trusts") to raise capital for The Taubman Realty Group Limited Partnership ("TRG"). (SEE Taubman Centers Prospectus dated Nov. 20, 1992 ("Prospectus"), at 2-3 (Ex. 2).) TRG, in turn, is an operating partnership that owns 21 shopping centers and engages in the full range of activities of the regional shopping center business. TRG was formed in 1985 and run by A. Alfred Taubman (who began developing shopping malls in the early 1960's). (SEE ID. at 1-2 (Ex. 2).)

Taubman Centers and TRG have a fully integrated relationship: Taubman Centers' SOLE asset is a partnership interest in TRG. Together they comprise a single enterprise known as an umbrella partnership real estate investment trust ("UPREIT").2 As explained by Phillip J. Ward, a director of the Simon Corporation, because an UPREIT is an entity that consists of both an operating partnership and a public company, "[y]ou have to evaluate BOTH companies to evaluate the entire enterprise." (Ward at 25, 33 (emphasis added) (Ex. 3).)

B. THE PRE-1998 STRUCTURE OF THE TAUBMAN UPREIT

1. GOVERNANCE OF THE ENTERPRISE

When A. Alfred Taubman and the GM Trusts formed the Taubman UPREIT in 1992, Taubman Centers was marketed to the public as a MINORITY partner in TRG, along with the Taubman family (including certain key executives of The Taubman Company) and the GM Trusts. (SEE, E.G.,

---

1 A real estate investment trust is a passive investment vehicle (like a mutual fund) that enables large numbers of investors to pool their capital and invest in real estate projects that would otherwise be unavailable as an investment. SEE Peter M. Fass et al., REAL ESTATE INVESTMENT TRUSTS HANDBOOK 3-4 (2003 ed., West Group) (2002) (hereinafter "REIT Handbook") (Taubman Centers' Appendix at Ex. 1).

2 In fact, Taubman Centers and TRG formed the first-ever UPREIT. SEE REIT Handbook at 698 n. 2 (Ex. 1). The Taubman UPREIT gave birth to a $55 billion industry.

Prospectus at 5, 16 (Ex. 2).) TRG's partnership interests were allocated as "units" to its three groups of partners - (i) the GM Trusts, (ii) the Taubman family, and (iii) Taubman Centers. (SEE, E.G., ID. at 7 (chart) (also attached to this brief as Ex. A).)

To assure that all three groups would have a say in the management of the business and control of the operating partnership's assets, governance was established at the operating partnership level (i.e., in TRG), not at the public REIT corporation level (i.e., Taubman Centers), through a 13-member TRG partnership committee (the "Partnership Committee"), which had complete authority over the management of the business. (SEE Am. & Restated Agreement of Limited Partnership of TRG (the "Partnership Agreement") ss.6.1(b) (Ex. 4); Prospectus at 5; Taubman Centers independent director Bloostein at 35 ("That is where the action was, that is where the decisions were made.") (Ex. 5).) Each group had the right to appoint members of the Partnership Committee - the Taubman family and Taubman Centers each held four seats and the GM Trusts held five seats. (See Prospectus at 85 (Ex. 2).)

Since management decisions were made at the operating partnership level, the board of directors of Taubman Centers (the "Board") had very few functions. The only substantive action that Taubman Centers controlled (other than designating its representatives to the Partnership Committee) was the issuance of dividends to shareholders, (SEE Taubman Centers director Lisa Payne at 33 (Ex. 6); Taubman Centers independent director Gilbert at 18 (Ex. 7)), and even this decision was entirely dependent on the Partnership Committee's first allocating and distributing funds to Taubman Centers. (SEE, E.G., Prospectus at
17 (Ex. 2).) Thus, while before 1998, Taubman Centers hypothetically could have been acquired by a third party, the only thing that the third party would have acquired would have been a minority interest in an operating partnership, with NO control over the business or assets of the partnership, and no veto over Partnership Committee actions. Not surprisingly, there is no evidence that any third party was interested in acquiring anything other than the entire enterprise. (SEE SPG Merrill Lynch financial adviser Cicco at 119-20 (Ex. 8).)

2. THE OWNERSHIP LIMIT IN TAUBMAN CENTERS' ARTICLES

To qualify as a REIT under Federal tax laws, five or fewer shareholders may not own more than 50 percent in value of the corporation's outstanding stock (the "five-or-fewer rule"). SEE I.R.C. ss.ss.856(a)(6), 542(a)(2). Taubman Centers thus included in its articles of incorporation an ownership limit (the "Ownership Limit") that prohibits a person from owning more than 8.23% of Taubman Centers' outstanding common stock. (SEE Restated Articles of Incorporation of Taubman Centers (the "Articles"), art. III, ss.ss.2(d)(ii)(a), 2(d)(i) (Ex. 9).)

The Ownership Limit has been in the Articles continuously since Taubman Centers' initial public offering in 1992 and was fully disclosed in the Prospectus. (SEE Prospectus at 80-82 (Ex. 2).) In fact, the Prospectus specifically disclosed to potential shareholders that the Ownership Limit serves not only to protect Taubman Centers' status as a REIT, but it also operates to prevent takeovers of Taubman Centers: "IN ADDITION TO PRESERVING THE COMPANY'S STATUS AS A REIT, THE EFFECT OF THE OWNERSHIP LIMIT IS TO PREVENT ANY PERSON FROM ACQUIRING UNILATERAL CONTROL OF THE COMPANY." (ID. at 81 (emphasis added).)3 The Prospectus also expressly disclosed that the Ownership Limit could ONLY be eliminated or modified by an amendment to the Articles, which would require a two-thirds' vote of the shareholders. (SEE ID.)

C. THE POST-1998 STRUCTURE OF THE TAUBMAN UPREIT

1. THE BUSINESS REASONS FOR THE 1998 RESTRUCTURING

The structure of the enterprise changed in 1998 (the "1998 Restructuring") when the partners of the operating partnership agreed to accommodate the GM Trusts' desire to withdraw from the partnership. By then, the GM Trusts had a very large investment in TRG, and they wanted greater control over their real estate investment. (SEE Gilbert at 20-21 (Ex. 7); Bloostein at 25-26 (Ex. 5).) Nevertheless, the GM Trusts could not have accomplished this without the

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3 Likewise, the 1996 Proxy Statement sent to shareholders in connection with an amendment to the Articles reiterated that the Ownership Limit would "make the Company less susceptible to a hostile takeover." (SEE 1996 Proxy Statement at 19-20 (Ex. 10).)

consent of both Taubman Centers' independent directors4 and the Taubman family because the GM Trusts had no right to withdraw from TRG without their approval. (SEE Partnership Agreement ss.10.3(c) (Ex. 4).) In fact, unless all of the remaining partners agreed, the GM Trusts' withdrawal would have caused the dissolution of the partnership (with severe tax ramifications). (SEE ID. ss.10.1(b); Morgan Stanley managing director Christopher J. Niehaus at 98-99
(Ex. 11).)

At the same time, all of the partners were interested in simplifying and improving the governance of the UPREIT enterprise. (SEE, E.G., Bloostein at 26,
34 (Ex. 5); Payne at 84 (Ex. 6).) Significantly, Taubman Centers' institutional investors (who then owned, and still own, approximately 85% of Taubman Centers' common stock, (SEE Miller Decl. P. 4 (Ex. 12); MS 00350-351 (Analysis of All Shareholdings) (Ex. 13)), also wanted to see the governance of the enterprise moved to the REIT corporation (Taubman Centers) level. (SEE Payne at 37, 57 (Ex. 6).)

2. THE 1998 RESTRUCTURING WAS A FAIRLY NEGOTIATED TRANSACTION

The Partnership Committee formed a special committee, the "Strategic Planning Special Committee," to investigate possible alternatives and provide recommendations. (SEE Mins. of Meeting of Partnership Comm., Mar. 5, 1998, at 10-11 (Ex. 14).) The Special Committee was made up of two of Taubman Centers' independent directors, two representatives of the GM Trusts, and A. Alfred Taubman. (SEE ID.) It hired Morgan Stanley & Co. Incorporated ("Morgan Stanley") as its investment adviser to explore various alternatives, and Morgan Stanley, in turn, hired the law firm of Shearman & Sterling to provide advice and counsel to the Special Committee. (SEE Gilbert at 28-29 (Ex. 7).) The independent directors separately retained the

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4 A director is "independent" if he or she is neither an officer nor an employee of Taubman Centers or its subsidiaries. (SEE Articles, art. III, ss. 2
(c)(ii)(h) (Ex. 9).) In 1998, the independent directors of Taubman Centers, all distinguished in their own right, were: Graham Allison, the Douglas Dillon Professor of Government and former Dean of the John F. Kennedy School of Government, Harvard University; Claude M. Ballard, a partner of The Goldman Sachs Group, L.P.; Allan J. Bloostein, the former Vice Chairman of The May Department Stores Company; Jerome A. Chazen, the Chairman of the Board of Liz Claiborne, Inc.; and S. Parker Gilbert, the former Chairman of Morgan Stanley Group, Inc. Currently, Mr. Ballard is not on the Board, and Peter Karmanos, Jr., is. Mr. Karmanos is the Chairman and Chief Executive Officer of Compuware Corporation.

services of Goodwin, Procter & Hoar, LLP, and, in particular, William B. King, with whom they consulted frequently. (SEE ID. at 49; Bloostein at 50-51 (Ex. 5).)5

The GM Trusts already had their own investment advisers, Aldrich, Eastman & Waltch, L.P., who were also the GM Trusts' representatives on the Partnership Committee, as well as legal counsel, Weil, Gotshal & Manges LLP. (SEE Gilbert at 28; Bloostein at 27; Taubman at 43 (Ex. 15).) And on the recommendation of Morgan Stanley, the Taubman family engaged the investment firm of Goldman, Sachs & Co. ("Goldman Sachs") to advise the family as to the effect of various proposals presented to the Special Committee. (SEE Niehaus at 37-38 (Ex. 11); Taubman at 42-43.)

The Special Committee considered at least two alternative structures. Through mid-June, discussion focussed on a so-called "SaleCo/DevCo" structure, in which the business would be split into two companies, one with more mature properties ("SaleCo"), and one emphasizing development of new property ("DevCo"). (SEE Mins. of Meeting of Partnership Comm., June 24, 1998 ("June 24 Mins.") at 2 (Ex. 16); Taubman at 74-75 (Ex. 15).) This SaleCo/DevCo structure was, however, fraught with problems, notably that it was overly complex and created tax inefficiencies. (SEE June 24 Minutes at 2.) In June, the Special Committee decided that, in light of these problems, the SaleCo/DevCo structure should be abandoned. (SEE ID.) Instead, the Special Committee recommended to the Partnership Committee a concept originated by independent director S. Parker Gilbert, under which the GM Trusts would exchange their partnership units for 10 malls to be mutually agreed upon, and the governance structure would be reformed to be consistent with a peer group of REITs. (SEE ID.; Gilbert at 38-39 (Ex. 7).)6

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5 William King was one of the authors of the Real Estate Investment Trust Act of 1960, the act that created REITs.

6 SPG misleadingly quotes Mr. Gilbert's deposition testimony that "30 percent of the interest" should not control the enterprise. (SEE SPG Mem. at 13.) SPG ignores Mr. Gilbert's Deposition Errata Sheet, which explains that he meant that "one-third of a 30 percent partner [should not] decide what happens to the whole partnership." (Errata Sheet (Ex. 7).) Mr. Gilbert was simply saying that a TRG partnership transaction that would not otherwise require the approval of Taubman Centers' shareholders should not clumsily be structured so as to give a veto power to the

While the SaleCo/DevCo structure was still under consideration, the Taubman family's advisers expressed among themselves and to Robert Taubman concerns that the structure would necessitate a vote of Taubman Centers' shareholders. The advisers were concerned that a shareholder vote would invite "interlopers" and subject the company to unwanted takeover activity. (SEE Taubman at 57-58 (Ex. 15).) These concerns are reflected in contemporaneous notes taken by a junior member of the Goldman Sachs team, which are prominently quoted in SPG's memorandum.

What SPG's brief omits to mention is the undisputed evidence, in the notes themselves and elsewhere in the record, that Mr. Taubman was prepared to pursue a transaction that WAS subject to a shareholder vote if the transaction otherwise was "the best transaction to pursue." (Taubman at 75 ("I was not opposed to having a shareholder vote. If my lawyers told me there was [going] to be a shareholder vote and that was the best transaction to pursue, then we would have had a shareholder vote."); GS 01168 (Goldman Sachs "Talking Points") (Ex. 17) ("Bobby about to concede shareholder vote issue"). What SPG's brief also fails to mention is that, once SaleCo/DevCo was abandoned - for reasons unrelated to any shareholder vote requirement - no lawyer representing any party expressed the view that a shareholder vote was required on the final restructuring transaction, and the Board was advised unambiguously that the restructuring did not require such a vote. (SEE June 24 Mins. at 3 (Ex. 16); Bloostein at 50-51 (Ex. 5).)7

SPG's brief is thus fundamentally misleading: It attempts to leave the impression that the shareholder vote concern related to the final restructuring transaction, rather than to the abandoned

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holders of 1/9th of the economic interest in the partnership. Mr. Gilbert's testimony in no way suggests any impropriety in a two-thirds voting requirement, common in the American corporate landscape.

7 SPG's brief also fails to mention that, even today, SPG itself does not contend that the 1998 Restructuring transaction required a shareholder vote. Indeed, the only shareholder-vote claim that SPG made with respect to the 1998 Restructuring is its now-dismissed assertion that the issuance of the Series B preferred stock was subject to the Michigan Control Share Acquisitions Act.

SaleCo/DevCo proposal. And it disingenuously and illogically uses the notes of one associate of Goldman Sachs, representing the Taubman FAMILY, and reflecting the concerns of the FAMILY'S advisers, to impugn the integrity and good faith of the independent directors, who were in no way represented by the notetaker or his firm.8 Indeed, as these notes show, the Special Committee's financial advisers negotiated very hard against the family. (SEE Rosenberg notes at GS0997 ("Jay: Bobby should call Chris & YELL--get him on our side! Why is he f-----g us?").)

While the three groups of parties and their advisers negotiated vigorously over the course of several months, all involved "were committed to an absolutely fair process and transaction." (Special counsel King letter to Taubman dated Aug. 25, 1998 (Ex. 19)). All of the parties "proceeded from the initial premise that any separation transaction had to be both procedurally and substantively fully fair to the public shareholders of [Taubman Centers]." (King letter to Miro dated Aug. 25, 1998 (Ex. 20).)

3. THE RESTRUCTURING ITSELF - A "WIN-WIN" FOR ALL

On June 24, 1998, the Partnership Committee adopted the recommendation of the Special Committee, subject to negotiations of various issues. (SEE June 24 Mins. at 2 (Ex. 16).) There were three interrelated aspects to the proposed transaction. The first part was that TRG would redeem the GM Trusts' partnership interest in exchange for the GM Trusts' acquiring mature shopping centers to be agreed upon by the parties.

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8 With respect to the Goldman Sachs' associate's notes, it should also be observed that, on his own testimony elicited by SPG's counsel, he was a "five month associate," and he "didn't have much interaction in those days with the [Taubman] family." His notes were a collection of personal thoughts, statements passed along to him, and issues to consider. As he explained, "I was pretty new to investment banking in general . . . a lot of the things that I was hearing were things that were new to me. Some of it I didn't quite understand." The notes were not necessarily contemporaneous with any discussion or meeting, some were his thoughts, some were his interpretation, and he did not always know the sources of what he wrote. (Rosenberg at 84, 97, 106-107, 108, 109 (Ex. 18).) One thing Mr. Rosenberg made clear was that the mere fact that Goldman Sachs considered or recommended something did NOT mean that the Taubman family "shared in those views." (ID. at 117.) Indeed, on the issue of a shareholder vote, Mr. Rosenberg wrote: "Wayne: Make sure Bobby [Taubman] behind us, SH [shareholder] vote not acceptable. Get Bobby on board." (ID. at 177.)

The second aspect of the transaction, which was critical to the independent directors, was to restructure and simplify the governance of the UPREIT enterprise. As Mr. Gilbert testified, "the company wanted, Morgan Stanley wanted, everybody wanted to have a simplified and improved governance structure. And there was a sense that the rather complicated structure that had existed had not been beneficial to the company's stock in the public market." (Gilbert at 36 (Ex. 7). SEE ALSO ID. at 53; Payne at 84 (Ex. 6) ("Everybody wanted to get rid of this governance structure. It was one of the reasons we did the deal. . . . It was a driving force.").) Even the GM Trusts had a significant interest in simplifying the governance structure, as it was going to remain the largest shareholder of Taubman Centers. (SEE, E.G., Gilbert at 51-52 (Ex. 7).) Shearman & Sterling opined that the Partnership Committee and the Board could "reasonably conclude" that the recommended transaction was "the best alternative and in the best interests of all interest holders, based upon an informed judgment." (SEE June 24 Mins. at 3.) 9 Shearman & Sterling also advised that "from a legal standpoint . . . no shareholder vote is required or recommended." (ID.) This was confirmed by William King. (SEE Bloostein at 50-51 (Ex. 5).)

After two further months of negotiations between the partners and their advisers, a joint meeting of the Partnership Committee and the Board was held on August 17, 1998, to consider the proposed restructuring. In advance of the joint meeting, the independent directors met individually with their special counsel, William King, as well as with Morgan Stanley and Shearman & Sterling to review and discuss the various elements of the transaction. (SEE, E.G., Bloostein at 50-53 (Ex. 5); Mins. of Joint Meeting at 13 (Ex. 21).)

The proposed changes to the governance structure of the enterprise included:

1. The Partnership Committee would be eliminated and Taubman Centers would become the sole and exclusive managing partner of TRG, with all decision making

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9 The third aspect of the recommended transaction was a recapitalization of TRG's balance sheet by tendering for its public unsecured debt and subsequently replacing it with secured property-level financing. (SEE Mins. of Special Joint Meeting of Bd. & Partnership Comm., Aug. 17, 1998 ("Mins of Joint Meeting"), at 4-5, 11 (Ex. 21).)

responsibilities transferred to the Board (subject only to the right on the part of a majority of the other partners to approve extraordinary transactions concerning TRG only).

2. For the first time, a majority of the members of the Board would be independent directors, thus giving the Board the power to change management without the Taubman family's approval.

3. The partners of TRG would have the right to nominate (but, unlike their former right with respect to the Partnership Committee, they would not be able to appoint or "hard wire") a number of directors proportionate to their ownership interest in TRG "through a new class of preferred stock to be issued" by Taubman Centers.

4. The management and other service contracts with The Taubman Company, the manager of the shopping centers, "would be cancellable upon thirty days' notice." Previously, they had three-year terms, nonterminable during the term.

5. The enterprise would file consolidated financial statements. This was important to the investment community; previously, two sets of financial statements were reported - one for the REIT and one for the operating partnership.

(SEE ID. at 7-8.)

At the August 17th special meeting, Morgan Stanley made a detailed presentation regarding all aspects of the transaction. (SEE ID. at 4-11.) It advised that the proposed governance alterations and voting structure were consistent with those of other UPREIT enterprises that were its peers. (SEE ID. at 10.)10 Morgan Stanley and Shearman & Sterling had conducted an extensive market study of various REITs and their governance structures, including any control and blocking provisions. (SEE Morgan Stanley Board Book at 18 (Ex. 24).) "[A]t one end of the continuum [was] Simon Property Group, with the most significant rights held by the insider families, with Boston Properties and General Growth next, and Urban and Macerich having the least amount of [insider] rights." (See Mins of Joint Meeting at 10 (Ex. 21).) Morgan Stanley and Shearman & Sterling advised that they could "very clearly state that the proposed alterations in governance will place the Partnership and TCI [Taubman Centers] in the middle of these peer companies." (ID.) In Morgan Stanley's opinion, the governance changes would cause the enterprise

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10 Morgan Stanley called this "flow-through" voting. Many other UPREITs have the same kind of voting structure. (SEE Simon Corporation director Miller at 67
(Ex. 22); Hanks Decl. P. 6, 7 (Ex. 23).)

"to be better received by the public." (ID. at 8.)

Morgan Stanley further advised that, with the GM Trusts' withdrawal, Taubman Centers' interest in the operating partnership would increase proportionally to approximately 63% from approximately 39%. (SEE ID. at 5.) This increase, along with the transfer of all decision making to the Taubman Centers Board, would have left TRG's minority partners with no say over the management of TRG's assets, despite their 37% interest in the assets. The new class of preferred stock was proposed to remedy this inequity. It gave the minority partners of TRG a shareholder vote in Taubman Centers directly proportional to their ownership interest in TRG's assets, and it "enabled them to vote alongside of the shareholders on matters presented to the shareholders of [Taubman Centers] for a vote." (ID.)11 As confirmed by G. William Miller, a director of the Simon Corporation, this is a common and proper governance mechanism used by UPREIT enterprises. (SEE Miller at 67 (Ex. 22).) Inasmuch as the new preferred stock was simply being used to reallocate voting rights from the Partnership Committee (which was being eliminated) to Taubman Centers, Morgan Stanley advised that the new class of preferred stock would be of "nominal economic value." (SEE Mins. of Joint Meeting at 7 (Ex. 21).) Based on this advice, it was subsequently issued for $.001 per share.

The Board also considered whether the proposed transaction would have an impact on a

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11 The Board's authority to create and issue the preferred stock was expressly granted by an amendment to the Articles adopted by Taubman Centers' shareholders two years earlier at the 1996 annual meeting of shareholders. (SEE Second Am. & Restated Arts. of Incorp. of Taubman Centers, art. III, ss.1, filed May 22, 1996 (Ex. 25).) The Proxy Statement for the 1996 annual meeting explained that the proposed amendment would authorize the Board to issue, "without seeking further shareholder approval," 50 million shares of preferred stock "in one or more series having the relative rights, preferences, and priorities as determined by the Board of Directors," including "voting rights". (SEE 1996 Proxy Statement at 18-19 (Ex. 10).) The 1996 Proxy Statement expressly stated that, while the Board then anticipated using preferred stock to raise capital, the proposed articles "DO NOT RESTRICT THE PURPOSES FOR WHICH THE COMPANY CAN ISSUE PREFERRED STOCK," (ID. at 19 (emphasis added)), and the Proxy Statement further disclosed that "the Board of Directors anticipates that it will not seek further shareholder approval prior to authorizing the Company to issue Preferred Stock." (ID.) Shareholders obviously did not think that the Board abused this power. Two years after the 1998 Restructuring, they authorized 250 million more shares for the blank check preferred stock. (SEE 2000 Proxy Statement at 17-19 (Ex. 26).)

potential hostile takeover attempt. (SEE ID. at 9-10 (Ex. 21).) Morgan Stanley advised that the pre-1998 "governance structure is such that a change in control transaction would have to be FRIENDLY [i.e., a negotiated transaction]." (ID. at 10 (emphasis added) (Ex. 21).) The independent directors, therefore, were comfortable that the issuance of preferred stock to the minority partners of TRG (including the Taubman family) was not a "shift in power" in favor of the minority partners. (SEE Bloostein at 109-10 (Ex. 5).) As Lisa Payne, a director and Taubman Centers' chief financial officer, testified, "[T]he board was advised . . . that governance would relate to ownership and whatever ownership the unitholders had, they would get that commensurate vote, and if they got diluted over time or if they bought more shares it would change, and that was the way it was described and discussed." (Payne at 116-17 (Ex. 6).) David Simon also understood that there was no change. He had proposed mergers before and after 1998 and understood, as his investment banker testified, that no transaction could have occurred without the support of the Taubman family. (SEE Cicco at 53-54, 169-70.)

Morgan Stanley issued to BOTH TRG (to its Partnership Committee) and Taubman Centers (to its Board) a fairness opinion regarding the "entire" transaction. (SEE Morgan Stanley Fairness Opinion dated Aug. 17, 1998 (Ex. 27).) Christopher J. Niehaus, the Morgan Stanley managing director in charge of the engagement, testified at his deposition that "the fairness opinion addressed the entire redemption and all its points," including "[g]overnance." (Niehaus at 77 (Ex. 11).)

SPG (taking testimony out of context) suggests that the independent directors, and Mr. Bloostein, in particular, did not realize that the Taubman family could possibly block extraordinary transactions, (SEE SPG Mem. at. 9), but this is simply not true. As Mr. Bloostein testified:

Q. In 1998 did you give conscious consideration that [giving the Taubman family a veto over the sale of the public company] was going to be an effect of giving the Taubman's [sic] the series B preferred stock?

A. I recognized it. I did not consider it a problem.

. . . .

Q. My question to you now is, do you think that that is an important enough change that it should have been highlighted to the independent directors by their advisors?

. . . .

A. I don't think it was necessary based on the fact that these directors all took arithmetic, I mean I knew that [the Taubman family] were going up to 29.8 percent.

(SEE Bloostein at 109, 111 (Ex. 5); ACCORD Gilbert at 60 (Ex. 7) ("[W]e knew what the family ownership was, and that the preferred [stock] would give them an equivalent voice in the REIT. And that that possibly could block the sale of the REIT in the company. . . .").)

At the conclusion of the special joint meeting, the Partnership Committee and the Board, with the GM Trusts' members abstaining,12 voted unanimously to approve the entire transaction, and the Board adopted amendments to the Articles to create a series of preferred stock known as Series B Non-Participating Convertible Preferred Stock (the "Series B Stock"), with a nominal value of $.001 per share. (SEE Mins. of Joint Meeting at 14, 18-19 (Ex. 21).) 13

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12 SPG tries to make much of the fact that the GM Trusts abstained, (SEE SPG Mem. at 9-10), but they misapprehend the reason for the abstention. The GM Trusts abstained because, under the Partnership Agreement, they were required to "recuse" themselves due to their conflict of interest. They had, after all, negotiated to receive 37% of TRG's properties. SPG suggests, relying on unsubstantiated hearsay taken out of context, that the GM Trusts did not like the new governance of the UPREIT and "did not want their fingerprints" on it. (ID.) Nevertheless, this suggestion is inconsistent with the fact that the GM Trusts were to remain the largest shareholder of Taubman Centers and would engage TRG (through its Manager, The Taubman Company) to continue to manage the malls that the GM Trusts were receiving in the exchange. Their abstention was simply because they were on both sides of the transaction.

13 The parties also entered into an Interim Agreement, which obligated Taubman Centers to issue the Series B Stock and which specifically provided that if the Series B Stock could not be issued for any reason, the parties would establish another mechanism to give the Taubman family "equivalent rights as would have been provided to [them] as holders of the [Series B] Preferred Stock." (SEE Interim Agreement P.3 (Ex. 28); SEE ALSO Mins. of Joint Meeting at 18-19 (Ex. 21) ("the Corporation shall enter into that certain Interim Agreement . . . regarding . . . the alternative steps [to be] take[n[ if the Corporation is unable to issue Series B Preferred.").)

Exhibit B to this brief depicts the ownership of the enterprise, before and after the 1998 Restructuring, and Exhibit C shows the ownership and voting comparison before and after the 1998 Restructuring.

4. THE HOLDERS OF SERIES B PREFERRED STOCK

In accordance with the Articles, on October 5, 1998, Taubman Centers issued to each TRG unitholder one share of Series B Stock for each TRG unit held. The lion's share of the Taubman family's Series B Stock was issued to, and continues to be held by, several partnerships formed long before the 1998 Restructuring and controlled by A. Alfred Taubman. (SEE Decl. of Gerald R. Poissant P.3 (Ex. 29).) Shares of Series B Stock were also issued to TRG unitholders unrelated to the Taubman family.

Although SPG requests that the Court "preliminarily enjoin the holders of the Series B from voting those shares," (SPG Mem. at 25), thus making the Series B shareholders the real parties in interest, none of the shareholders who are not members of the Taubman family have been named as parties defendant![14]

D. PUBLIC REPORTING OF THE 1998 RESTRUCTURING

On October 15, 1998, Taubman Centers filed with the Securities and Exchange Commission (the "SEC") its Form 8-K, reporting events as of September 30, 1998, including (i) the 1998 Restructuring, (ii) Taubman Centers' obligation to issue to each limited partner of TRG one share of Series B Stock for each TRG unit held by the partner, and (iii) the right of the holder of each share of Series B Stock to one vote on all matters submitted to Taubman Centers' shareholders. (SEE Form 8-K dated Oct. 15, 1998, Item 2 (Ex. 30).) SPG argues that the Form 8-K did not "explain that the family was getting a 30% vote and blocking position through the Series B," (SPG Mem. at 11), but this suggestion that investors could not understand the effect of the stock issuance is contradicted by both Simon Corporation directors G. William Miller and Philip J.

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14 One of the Taubman family partnerships that holds a substantial number of Series B shares, TG Partners Limited Partnership, has partners who are citizens of the State of California, like the individual plaintiffs in this case. (SEE Poissant Decl. P.7 (Ex. 29).)

Ward. (SEE, E.G., Miller at 180-81 (Ex. 22) (shareholders informed of power of Series B Stock in 1998 and "people who have purchased shares since 1998 would have purchased those shares in a market which had information concerning the power of the Series B"); ACCORD ID. at 115-16; Ward at 151-52, 169-70, 183-84 (Ex. 3).)15

Taubman Centers then also reported to its shareholders in its 1998 Annual Report the facts of the 1998 Restructuring, including the issuance of 31,399,913 shares of Series B Stock to the TRG unitholders. (See 1998 Annual Report at 33, 47, 53, 62 (Ex. 33).) The issuance and terms of the Series B Stock were also reported to shareholders in plain English in the Proxy Statement preceding the annual meeting of shareholders held on May 12, 1999, in sections titled, "WHAT COUNTS AS VOTING STOCK?," "WHAT IS THE SERIES B STOCK?," and "Security Ownership
of Certain Beneficial Owners and Management." (SEE 1999 Proxy Statement at 1, 2-3 (Ex. 34). ACCORD Ward at 169-70 (Ex. 3) (Proxy Statement discloses issuance of Series B Stock to Taubman family and accompanying voting rights).)

Similar disclosures were included in the Proxy Statement preceding the annual meeting of shareholders held on May 16, 2000, when the shareholders were asked to approve an amendment to the Articles to increase the number of authorized shares of preferred stock from 50 million to 250 million shares. (SEE 2000 Proxy Statement at 1, 3 (Ex. 26).) The Board's description of the proposed amendment specifically referred to the issued and outstanding shares of Series B Stock. (SEE ID. at 18.)

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15 While SPG also complains that an August 18, 1998, press release did not mention the Series B stock, (SEE SPG Mem. at 10), the New York Stock Exchange ("NYSE") had not yet approved the issuance, (SEE letter from Handelsman to Longobardi dated Aug. 18, 1998 (Ex. 31); Taubman at 118-19) (Ex. 15), and Taubman Centers did not want to report to the press an issuance not yet approved by NYSE. (SEE, E.G., Taubman at 118-119.) NYSE will not approve a new class or series of stock issued by a member company if it believes that the class or series disenfranchises other shareholders. (SEE NYSE Listed Co. Man. ss.313(A)
(Ex. 32); A. Miller Decl. P.8 (Ex. 12).)

E. THE VOTING OF THE SERIES B STOCK SINCE THE 1998 RESTRUCTURING

The Series B shares have been voted alongside the common stock in every Taubman Centers shareholder vote since the 1998 Restructuring. (SEE Miller Decl. P.8 (Ex. 12).) At no time until this case began did any Taubman Centers shareholder, large or small, express any complaint about any aspect of the 1998 Restructuring. (SEE Bloostein at 123 ("Subsequently in the years that followed everybody congratulated us on this, on what had happened. We didn't get sued by anybody. We didn't get a negative public reaction. It was all positive. [T]he REIT benefited from it; and GM benefited from it; and Taubman benefited from it.")

Shareholders have had more than four years to sell their stock or request changes if they were unhappy with the governance structure set in place by the 1998 Restructuring. (SEE Miller at 180-81.) An analysis of the current shareholding base of Taubman Centers shows that the current shareholders are almost all new (i.e., shareholders who purchased their shares after the 1998 Restructuring and the public disclosures of the restructuring and of the Series B Stock). (SEE A. Miller Decl. P.6 (Ex. 12).)

F. THE SPG OFFERS

SPG is the largest retail shopping mall REIT in the United States, with 249 shopping centers. (SEE SPG 2d Am. Compl. ("SPG Compl.") P.1.) As explained by its chief executive officer (and son and nephew of its founders), David Simon, in the past five years, SPG has engaged in a strategy of acquiring retail real estate to create value for ITS shareholders. (SEE Simon at 22 (emphasis added)
(Ex. 35).)

In the autumn of 2002, David Simon once again directed his appetite toward Taubman Centers and TRG's real estate holdings. (SEE ID. at 145.) While SPG disingenuously claims that it is simply trying to benefit Taubman Centers' shareholders, (SEE SPG Mem. at 1), David Simon candidly admits, "we view TCO
[Taubman Centers] as another -- another opportunity for us to add value to OUR shareholders." (Simon at 22 (emphasis added).)

On October 16, 2002, David Simon sent a letter to Robert Taubman proposing, in general terms, "a business combination of Simon and Taubman," with SPG acquiring all of the publicly traded stock of Taubman Centers. (Letter from Simon to Taubman dated Oct. 16, 2002 (Ex. 36).) Before this, David Simon had his legal and financial advisers conduct a thorough analysis of Taubman Centers, (SEE Simon at 142-46), and he was advised by both about the Series B Stock and the Taubman family's voting position. (SEE ID. at 187; SEE ALSO Cicco at 265-66 (Ex. 8).) When Robert Taubman contacted David Simon to get an understanding of the proposal, he quickly learned that David Simon, in fact, simply wanted to negotiate an inside deal at the expense of Taubman Centers' public shareholders. (SEE Taubman at 145, 148 (Ex. 15).)16

After speaking with David Simon, Robert Taubman contacted the members of the Board to tell them of his conversation and to convene a meeting to respond to David Simon. (SEE ID. at 216.) At the suggestion of independent director S. Parker Gilbert, Mr. Taubman retained both legal and financial advisers to advise the Board. (SEE, E.G., Gilbert at 119-20 (Ex. 7).)17 Taubman Centers also engaged Cyril Moscow from the law firm of Honigman Miller Schwartz and Cohn, LLP, to advise the independent directors. (SEE Bloostein at 87 (Ex. 5).)

On October 28, 2002, the Board of Taubman Centers met to consider SPG's offer. (SEE Mins. of Special Meeting of Bd. of Directors, Oct. 28, 2002 ("Oct. 28 Mins.") (Ex. 39).)

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16 David Simon sent a second letter to Robert Taubman just two days after their discussion. In this letter, David Simon proposed an acquisition price of $17.50 per share of Taubman Centers common stock. (SEE letter from Simon to Taubman dated Oct. 22, 2002 (Ex. 37).)

17 Plaintiffs suggest that there is something improper about the fact that Robert Taubman contacted Goldman Sachs and Wachtell, Lipton, Rosen & Katz to represent Taubman Centers because they represented the Taubman family in connection with the 1998 Restructuring, but the only thing they cite to suggest any possible conflict of interest is the fact that Goldman Sachs will receive a large fee if the SPG offer is defeated. (SEE SPG Mem. at 13-14.) What the plaintiffs fail to mention is that Goldman Sachs will get an even larger fee if the SPG tender offer is consummated. (SEE letter from Goldman Sachs to Taubman dated Oct. 25, 2002, at 2 (Ex. 38).) Indeed, SPG financial adviser, Merrill Lynch & Co., with its own potential fee of between $12 million and $15 million, has a much larger vested interest since "[t]he bulk of [its] compensation does depend on the ultimate success of this transaction." (Cicco at 55, 133-34 (Ex. 8).)

Taubman Centers' legal counsel reviewed the duties of the members of the Board and specifically advised the Board that the law does not require them to negotiate with SPG or put the company up for sale simply because SPG had made a bid. (SEE ID. at 2-4.)

Goldman Sachs gave a lengthy presentation, noting that Taubman Centers had the "most productive portfolio of regional malls in the public sector," and that its shopping malls had the highest tenant sales per square foot. (Oct. 28 Mins. at 3.) Goldman Sachs also advised the Board that the SPG offer "represented a significant discount to management's estimate of the Company's net asset value."
(ID. at 4.)

The Goldman Sachs analysis confirmed the Board members' own beliefs based on their experience in the industry that the offer was "extremely low." (Bloostein at 83-84 (Ex. 5; Gilbert at 128 (Ex. 7).) After hearing the advice of Goldman Sachs and of counsel and after discussion, the Board unanimously voted to reject SPG's unsolicited offer. (SEE Oct. 28 Mins. at 4.)

Two weeks later, on November 13, 2002, David Simon sent a hostile letter to the Board, which he disclosed to the public, presenting the same $17.50 offer. (SEE letter from Simon to the Board dated Nov. 13, 2002 (Ex. 40).) In this letter, David Simon reiterated and characterized the $17.50 offer as an excellent opportunity for Taubman Centers' shareholders to realize "full value for their shares." (SEE ID. at 2.)

G. THE VOTING AGREEMENTS

On November 14, 2002, Robert Taubman, individually, entered into voting agreements (the "Voting Agreements") with three friends, Max M. Fisher, John Rakolta Jr. (and Mr. Rakolta's family members), and Robert C. Larson. (SEE Schedule 13D/A filed Nov. 15, 2002, Item 5 (Ex. 41).) Under the Voting Agreements, Robert Taubman, individually, was conferred the right to vote the shares of stock held by Messrs. Fisher, Larson, and Rakolta, roughly 3% of the outstanding shares of Taubman Centers. (SEE ID.) As a result, Robert Taubman had the right to vote a little more than 5% of the shares of common stock, and so an amended Schedule 13D/A was filed with the SEC to report that fact.

On January 28, 2003, Robert Taubman and the other parties to the Voting Agreements terminated them, and, as of that date, the Voting Agreements are no longer in force or effect. Mr. Taubman terminated the Voting Agreements to "eliminate the issues Simon has raised based on these agreements." (Schedule 13D/A filed January 28, 2003, at Item 4 (Ex. 42).)

H. SPG BUYS SHARES OF TAUBMAN CENTERS STOCK

One day after its hostile letter to the Board, on November 15, 2002, SPG purchased for the first time 1,000 shares of Taubman Centers' common stock, (SEE Tender Offer dated Dec. 5, 2002, at 32 (Ex. 43)), in an effort to give SPG "standing in dealing with Taubman." (Miller at 135-136 (Ex. 22).) SPG purchased additional shares on November 27, 2002, for a total of 11,000 shares. (SEE Tender Offer at 32.)18

I. SPG MAKES A TENDER OFFER FOR $18 PER SHARE

On December 5, 2002, SPG commenced a tender offer (the "Tender Offer") to buy all outstanding shares of common stock of Taubman Centers for the price of $18 per share, $0.50 more per share than the "full value" $17.50 offer David Simon had previously presented to the Board. (SEE ID.) The Tender Offer was subject to a number of conditions, including that this Court alter the fundamental structure of Taubman Centers and disenfranchise one-third of the voting power of the corporation. (SEE ID. at 8-9.) The same day, SPG filed the present action.

On December 10, 2002, the Board of Taubman Centers met with senior management, legal counsel, and Goldman Sachs. The Board unanimously resolved to recommend that shareholders reject the Tender Offer. (SEE Schedule 14D-9 dated Dec. 11, 2002, at 13. (Ex. 46).) In reaching the conclusion that the Tender Offer should be rejected, the Board took into account numerous factors,

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18 Plaintiff Glancy owns only 1,000 shares of Taubman Centers' common stock, which he bought in October 2000, two years after the 1998 Restructuring. (SEE Glancy at 20-23.) Newly-joined plaintiff, Randall J. Smith, has only 300 shares, which he purchased in 1993. (SEE SPG 2d Am. Compl. P.8.) Mr. Smith, an executive vice president of Westfield America, Inc. ("Westfield"), joined this lawsuit at the invitation of Westfield's president, and he is being indemnified by Westfield. (SEE Smith at 20-21 (Ex. 45).) Previously, David Simon attempted without success to get institutions that owned shares in 1998 to join the lawsuit. (SEE Miller at 204).

which are set forth in Taubman Centers' Schedule 14D-9. These include:

o The opinion of Goldman Sachs that the Tender Offer is inadequate.

o The Board's belief that a number of the company's properties are at early stages in their development cycles and are expected to generate increasing returns over the next few years, and that the current stock price does not reflect the value of these assets or their growth potential.

o The Board's belief that the Tender Offer is both inadequate and an opportunistic attempt to acquire properties after the Company has taken all of the development risks and expense, but before it has received the benefits.

o The fact that the consideration to be paid in the Tender Offer does not reflect the inherent value of the company or its assets.

(SEE ID. at 14-16 (listing factors the Board considered).) Notably, Simon's witnesses conceded that these were appropriate factors to consider. (SEE Cicco at 346-361 (Ex. 8); Miller at 112-114 (Ex. 22).)19

J. SPG AMENDS ITS TENDER OFFER

On January 15, 2003, two days before its Tender Offer was scheduled to expire, SPG announced that it had joined with another company, Westfield America, Inc. ("Westfield"), a corporation controlled by Westfield America Trust, an Australian real estate company. (SEE Supplement to Tender Offer dated Jan. 15, 2003, at 1, 8-9 (Ex. 47).) Despite David Simon's statement to the Board that his previous offers of $17.50 and $ 18 respectively represented the "full value for th[e] shares," SPG and Westfield increased the Tender Offer price to $20 per share. (SEE ID. at 7.)

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19 At this Board meeting, the Board also amended the bylaws of Taubman Centers in order to "opt out" of the Michigan Control Share Acquisitions Act, which was one of the "conditions" of SPG's Tender Offer, (SEE Tender Offer at 10 (Ex. 43)), and to add a requirement that any shareholder nomination or business proposal be submitted a reasonable period before the meeting in question. (SEE Schedule 14D-9 at 19 (Ex. 46).) The Board did not eliminate the ability of shareholders holding 25% of the votes entitled to be cast to call a special meeting of shareholders for any purpose, nor did the Board "opt in" to the Michigan Business Combination Act, which prevents a hostile acquirer from completing its acquisition with a Michigan corporation. Indeed, the Board has taken NO DEFENSIVE MEASURES in response to the Tender Offer.

On January 20, 2003, the Board of Taubman Centers met again to review the terms of the revised Tender Offer. The Board also received and considered with its financial and legal advisers updates of recent operational and financial developments concerning the company. After receiving advice from both its legal and financial advisers, the Board unanimously determined to reject the amended Tender Offer. (SEE Schedule 14D-9/A dated Jan. 20, 2003, at 2-5 (Ex. 48) (discussing reasons for rejection).)20

## ARGUMENT

I. PLAINTIFFS HAVE NOT ESTABLISHED A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

A. THE COURT LACKS SUBJECT MATTER JURISDICTION

Plaintiffs have not established that their complaints are within the subject matter jurisdiction of the federal courts. On this basis alone, their motions must be denied. The two complaints, which contain only state law claims, allege diversity of citizenship under to 28 U.S.C. ss.1332(a) as the sole basis of original federal jurisdiction. Neither complaint, however, satisfies the complete diversity or amount in controversy requirements of the statute.

Complete diversity means that every plaintiff must be diverse from every defendant. STRAWBRIDGE V. CURTISS, 7 U.S. (3 Cranch) 267 (1806) (Marshall, C.J.). The Supreme Court has squarely held that the citizenship of a partnership for diversity purposes includes the citizenship of each of its partners, including limited partners. CARDEN V. ARKOMA ASSOCS., 494 U.S. 185, 195-96

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21 On February 17, 2003, SPG announced that 84.5% of the COMMON shares outstanding have been tendered. This means that only some 52% of ALL issued and outstanding shares have been tendered, substantially short of the 66 2/3% that must approve any sale transaction or amendment to the Articles. When SPG set a February 14th deadline for its tender offer, it knew that the offer's primary condition - the invalidation of the Series B Stock - could not be met by that date or any time soon after. The tender offer was made simply to create an artificial deadline. The results of the tender offer are illusory. Some 90% of Taubman Centers' shareholders are financial institutions. (SEE A. Miller Decl. at P.4 (Ex. 12).) It costs nothing for shareholders to tender shares into an offer whose conditions cannot be met, and institutional shareholders almost always tender their shares whenever an above-market tender offer is received. Indeed, some institutions have policies that REQUIRE them to do so. (SEE ID. at P.13 (Ex. 12).)

(1990). Notably, a plaintiff cannot save diversity by simply failing to name all the limited partners in the complaint, as Smith and Glancy have done here.
HANDELSMAN V. BEDFORD VILLAGE ASSOCS., L.P., 213 F.3d 48, 54-55 (2d Cir. 2000); HALLERAN V. HOFFMAN, 966 F.2d 45, 47-48 (1st Cir. 1992). In RMP CONSULTING GROUP, INC. V. DATRONIC RENTAL CORP., 179 F.R.D. 614, 620-22 (N.D. Okla. 1998), AFF'D IN RELEVANT PART, VACATED IN PART ON OTHER GROUNDS, 189 F.3d 478, 1999 U.S. App. LEXIS 19246, at *6 (10th Cir. 1999) (Ex. 49) the court expressly held that, when a limited partnership is the real party in interest, but is not named as a party, the court nevertheless must consider the citizenship of every partner of the partnership (even if the court finds the partnership not to be an indispensable party under Fed. R. Civ. P. 19(a)).

Plaintiffs seek to "preliminarily enjoin the holders of the Series B from voting those shares." (SPG Mem. at 25). More than six million of these shares are owned by TG Partners Limited Partnership ("TG"), (SEE Poissant Decl. P.3), and thus TG is plainly a real party in interest. TG has partners that are citizens of the State of California. (SEE ID. P.7.) Glancy and Smith, the newly-joined plaintiff in the SPG case added in an attempt to cure SPG's standing deficiency, are both California citizens. (SEE Glancy at 6-7 (Ex. 44); Smith at 8 (Ex. 45).) Thus, there is not complete diversity in either case, and both must be dismissed.

Separately, neither Smith nor Glancy satisfies the $75,000 amount in controversy requirement. Each plaintiff, standing alone, must meet this requirement whether suing as an individual or as a class representative.
SCHACHNER V. BLUE CROSS & BLUE SHIELD OF OHIO, 77 F.3d 889, 896 n.8 (6th Cir. 1996).21 Smith alleges that he owns 300 Taubman Centers shares; Glancy owns 1,000. Even valuing these "claims" at the full Simon tender offer price of $20 per share,

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21 Glancy also purports to bring a single derivative claim for breach of fiduciary duty, (SEE Glancy Am. Compl. Count VI), for which the corporation's, and not his own, monetary interest is relevant. But Glancy concedes that he has not made a written demand on the corporation, (SEE ID. P.142), a mandatory prerequisite to commencing a derivative action under Michigan law. SEE Mich. Comp. Laws ss.450.1493(a).

neither plaintiff even approaches $75,000 in controversy. (SEE Smith at 40-41.)22

B. PLAINTIFFS HAVE FAILED TO ESTABLISH A STRONG LIKELIHOOD OF SUCCESS IN CHALLENGING THE 1998 RESTRUCTURING

1. PLAINTIFFS' CLAIMS THAT THE SERIES B STOCK WAS IMPROPERLY ISSUED ARE BARRED BY THE STATUTE OF LIMITATIONS

Under Michigan law, an action for breach of fiduciary duty "shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered or should reasonably have been discovered, by the complainant, whichever occurs first." Mich. Comp. Laws ss. 450.1541a(4). A claim "accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." ID. ss.600.5827. Thus, the law establishes a statute of repose for fiduciary duty claims, and "in no event can [plaintiff] file any later than 3 years from the date of the accrual, or the alleged wrong." AUSTIN V. TRANDELL, 207 F. Supp. 2d 616, 624 (E.D. Mich. 2002) (Cohn, J.).

Plaintiffs' attempt to disenfranchise the Series B shareholders by way of a preliminary injunction is based on their assertion that "the issuance of [the Series B Stock] to the Taubman family in 1998 constituted a breach of fiduciary duty by the Taubman Board of Directors." (SPG Mem. at 1.)23 Yet any alleged breach of fiduciary duty claim based on the 1998 stock issuance accrued at the time the stock was issued, and is now time barred. SEE WOLF V. THOMAS, 271 F.2d 634, 635 (6th Cir. 1959) (alleged fiduciary "delinquency" occurred at time of stock issuance.).

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22 The supplemental jurisdiction statute, 28 U.S.C. ss.1367(a), is of no avail to Glancy because supplemental jurisdiction cannot be the sole basis of jurisdiction. SEE FRANCESKIN V. CREDIT SUISSE, 214 F.3d 253, 258 (2d Cir. 2000). Likewise, Smith may not "piggy back" with SPG because, as an added party, he must individually meet the requirements for diversity jurisdiction.

23 In addition, Glancy alleges that the 1998 stock issuance violated the Ownership Limit because the value of the Series B shares issued to the Taubman family supposedly exceeded 8.23% of the value of Taubman Centers' outstanding capital stock. (SEE Glancy's Mem. at 5.) This, too, is a claim for breach of fiduciary duty because it was up to the Board to establish the market price of the Series B shares, (SEE Articles, art. III, ss.2(d)(i) (the market price of any class or series of shares not traded over any exchange or quotation system will be "determined in good faith by the Board of Directors of the Corporation")), which the Board determined to be of nominal value ($.001 per share).

Plaintiffs suggest that, by "allowing the Series B to be used by the family to veto offers it does not want, the Board and Taubman family . . . are continuing to breach their fiduciary duties." (SPG Mem. at 1-2.) But "a continuing wrong is established by continual tortious ACTS, not by continual harmful effects from an original, completed act." HORVATH V. DELIDA, 213 Mich. App. 620, 627, 540 N.W.2d 760, 763 (1995) (emphasis in original). Courts have repeatedly rejected the notion that the continued ability to control a corporation as a result of an earlier stock issuance is a continuing wrong. SEE, E.G., MCQUILLEN V. NATIONAL CASH REGISTER CO., 22 F. Supp. 867, 872-73 (D.Md. 1938), AFF'D, 112 F.2d 877 (4th Cir. 1940).

For example, in MCQUILLEN, the plaintiff challenged various stock issuances which occurred before he purchased his own stock, arguing that the defendants continuously used the stock to control the corporation. Rejecting the plaintiff's continuing wrong argument, the court explained:

The actual issuance of the "B" stock, of which plaintiffs complain, took place prior to June 20, 1928; that is to say, in January, 1926. We cannot subscribe to the theory that this issuance was a continuous transaction, on the ground as asserted that the defendants continually conspired to ruin or control the corporation through their ownership of this stock. Rather is it correct to say that the issuance of this stock was a finished transaction in 1926.

ID. at 872.24 The 1998 issuance of Series B preferred stock occurred more than four years before the plaintiffs filed suit. Accordingly, their claims to disenfranchise the Series B shareholders are barred by Michigan's three year statute of limitations.

2. SPG AND GLANCY LACK STANDING TO CHALLENGE THE 1998 RESTRUCTURING BECAUSE THE TRANSACTION OCCURRED PRIOR TO THEIR OWNERSHIP OF TAUBMAN CENTERS SHARES

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24 ACCORD LOWELL WIPER SUPPLY CO. V. HELEN SHOP, INC., 235 F. Supp. 640, 647 (S.D.N.Y. 1964) ("the wrong, if any, occurred upon the original issuance of the stock"); HENIS V. COMPANIA AGRICOLA DE GUATEMALA, 116 F. Supp. 223, 228-29 (D. Del. 1953) (stock issuance and execution of contracts "'cannot by the specious device of employing appropriate language be transferred into continuing wrongs'"), AFF'D, 210 F.2d 950 (3d Cir. 1954); NEWKIRK V. W.J. RAINEY, INC., 76
A.2d 121 (Del. Ch. 1950) ("The allegation of a [continuing] conspiracy
[resulting in a merger of the corporation] cannot obscure the hard fact that the stock purchases are the wrongs which plaintiffs want rectified.").

Neither SPG nor Glancy owned Taubman Centers shares at the time of the 1998 Restructuring. Michigan law does not permit a plaintiff to maintain claims for equitable relief for corporate actions that occurred prior to the plaintiff's purchase of shares of the corporation. In WAGNER ELEC. CORP. V. HYDRAULIC BRAKE CO., 269 Mich. 560, 566, 257 N.W. 884, 886 (1934), the Supreme Court of Michigan explained:

One who buys a minority interest in the stock of a private corporation for the sole purpose of instituting suit to interfere with or to control the internal policy of the corporation is not a particular favorite in a court of equity . . . . One who buys corporate stock in contemplation of instituting suit by reason of such stock ownership is usually left to his remedy at law and denied relief in equity.

**SEE ALSO PERGAMENT V. FRAZER, 93 F. Supp. 9, 12-13 (E.D. Mich. 1949).**

Less than four months ago, the Delaware Court of Chancery reaffirmed the contemporaneous ownership requirement, squarely holding that a bidder for corporate control who acquired shares only after the challenged transaction had no standing to sue for breaches of fiduciary duty by the target's directors.
OMNICARE, INC. V. NCS HEALTHCARE, INC., 809 A.2d 1163, 1172 (Del. Ch. 2002), APPEAL DISMISSED AS MOOT, 2002 Del. LEXIS 723 (Del. Dec. 10, 2002). The court held that "a breach of fiduciary duty claim must be based on an actual, existing fiduciary relationship between the plaintiff and the defendants AT THE TIME OF THE ALLEGED BREACH." ID. at 1169 (emphasis added) (rule applies regardless of whether lawsuit is direct or derivative). 25

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25 SPG's own cases further demonstrate that it has no standing. SPG's principal case, TORCHMARK CORP. V. BIXBY, 708 F. Supp. 1070 (W.D. Mo. 1988), cited by SPG for the proposition that a "bidder-plaintiff has standing to attack defensive efforts as a breach of fiduciary duty irrespective of when it acquired its shares," (SEE SPG Mem. at 19), actually says only that a bidder has "standing to challenge the actions of [target's] management taken IN RESPONSE to
[bidder's] offer." ID. at 1078 (emphasis added); SEE ALSO ID. at 1077 n.7 ("This Court, however, is persuaded that the more prudent rule in this situation is that of contemporaneous ownership."). The IN RE GAYLORD CONTAINER CORP. SHAREHOLDERS LITIG., 747 A.2d 71 (Del. Ch. 1999), case, as OMNICARE recognized, actually held that plaintiffs "'who buy stock and challenge the earlier adoption of [a] properly disclosed defensive measure' should be 'barred from recovery.'" OMNICARE, INC., 809 A.2d at 1170 n.16 (quoting GAYLORD). Likewise, CROUSE-HINDS CO. V. INTERNORTH, INC., 518 F. Supp. 390, 393-94 (N.D.N.Y. 1980), involved a challenge to defensive actions taken by the board AFTER the offeror had purchased shares, making the offeror a contemporaneous owner. And in CRTF CORP. V. FEDERATED DEP'T STORES, INC., 683 F. Supp. 422, 435-36 (S.D.N.Y. 1988), the plaintiff-acquiror held shares contemporaneously with the challenged board action.

3. PLAINTIFFS' CLAIMS ARE DERIVATIVE AND MUST BE DISMISSED FOR FAILURE TO COMPLY WITH THE STATUTORY REQUIREMENTS NECESSARY TO COMMENCE A DERIVATIVE ACTION

Under Michigan law, in order to challenge corporate action directly, a shareholder must establish that the shareholder "'suffers an injury separate and distinct from that suffered by other shareholders,' or the corporation as an entity." GAFF V. FEDERAL DEPOSIT INS. CORP., 814 F.2d 311, 315 (6th Cir. 1987). "Entrenchment" claims, like those pled here, are derivative and not direct. SEE, E.G., HALL V. ALIBER, 614 F. Supp. 473, 480 (E.D. Mich. 1985) (Gilmore, J.) (noting failure to make derivative claim demand where corporation's sale of stock to friendly shareholder was allegedly to "entrench existing management" and dilute would-be acquiror). In fact, plaintiffs' own pleadings establish that their claims are being brought on behalf of all of the shareholders. (SEE, E.G., SPG 2d Am. Compl. P.106 ("the holders of the Company's common stock face the prospect of immediate . . . injury should the Taubman family be permitted to vote the Series B Preferred stock"); Glancy Am. Compl. P.22.)

Since neither SPG nor Glancy "was a shareholder of the corporation at the time of the act or omission complained of," Mich. Comp. Laws ss.450.1492a(a),26 and since no plaintiff made a prior "written demand" on Taubman Center's Board as required by Michigan law, ID. 450.1493a(a) (1989 amendment eliminating ability to plead "futility"; making demand requirement mandatory), plaintiffs have not complied with the statutory requirements necessary to commence a derivative action, and their motions must be denied. SEE HALL, 614 F. Supp. at 480 (dismissing for failure to make a demand in action challenging stock issuance approved by directors).

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26 Plaintiff Smith was a shareholder at the time of the acts complained of but, as an executive officer of Westfield, SPG's tender offer partner, individually represented by SPG's counsel, he is hardly an adequate class representative. SEE Mich. Comp. Laws ss.450.1492a(b); HALL, 614 F.Supp. at 476.

4. EVEN IF THIS COURT WERE TO REACH THE "MERITS" OF THE 1998 RESTRUCTURING, IT IS CLEAR THAT PLAINTIFFS DO NOT HAVE A STRONG LIKELIHOOD OF SUCCESS

a. THE BUSINESS JUDGMENT RULE APPLIES

Under Michigan law, where directors are sued for an alleged violation of their duties of loyalty or care, the plaintiff must overcome the application of the "business judgment rule." PRIDDY V. EDELMAN, 679 F. Supp. 1425, 1434 (E.D. Mich. 1988) (Taylor, J.), AFF'D, 883 F.2d 438 (6th Cir. 1989). The business judgment rule entitles defendant directors "to the benefit of 'a presumption that [they] have acted in accordance with their fiduciary obligations "on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the company." ' " 883 F.2d at 443. A Michigan court will not "substitute its own judgment for that of the officers" of a Michigan corporation. BARROWS V. J.N. FAUVER CO., 280 Mich. 553, 558, 274 N.W.2d 325, 328 (1937).

The 1998 Restructuring - a complicated, interrelated transaction that resulted in changes to the asset composition, governance, and debt structure of the enterprise - is exactly the sort of business activity to which courts apply the business judgment rule. The issuance of stock in connection with such a transaction does not alter this analysis: "[D]ecisions whether to sell additional stock, and on what terms to do so, are matters generally committed to the discretion of the board of directors, and the board is entitled to a presumption that it acted in good faith and exercised valid business judgment." HALL, 614 F. Supp. at 480.

Plaintiffs have not pointed to any evidence suggesting that the independent directors breached their duty of loyalty in approving the 1998 restructuring. None of the independent directors has been accused of self-dealing. None had a personal or financial interest in the transaction. None was (or is) employed by or indebted to the Taubman family in any way.

Nor have plaintiffs pointed to any evidence to rebut the presumption that the Board "acted in accordance with their fiduciary obligations 'on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the company.'" PRIDDY, 883 F.2d at

443. This case is indistinguishable from PRIDDY, in which the Sixth Circuit affirmed the lower court's finding that the business judgment presumption was unrebutted where the transaction was the product of "[i]ntensive negotiations,"
ID., and "the directors had acted only on the careful and well-reasoned advice of financial advisors of the highest caliber." ID. The evidence here, as in PRIDDY, demonstrates a thorough, exemplary process. This Court should "decline[] to substitute its judgment for that of the directors." ID.

Irrespective of the business judgment rule, under Michigan law, the very fact that the 1998 Restructuring and Series B Stock issuance were approved by the disinterested directors insulates the transaction from any attack. SEE Mich. Comp. Laws ss.450.1545a(1)(b); CAMDEN V. KAUFMAN, 240 Mich. App. 389, 399, 613 N.W.2d 335, 341 (2000) (statute "give[s] autonomy to corporate transactions that are evaluated by disinterested individuals"). In CAMDEN, shareholders brought a class action against directors of a corporation that had merged into another corporation, alleging that the directors had breached their fiduciary duty by failing to obtain maximum value for the shares. The court affirmed the dismissal of the action since the disinterested directors had approved the transaction. The court specifically held that a claim of breach of fiduciary duty under Mich. Comp. Laws ss.450.1541a is precluded under Mich. Comp. Laws ss.450.1545a(1) when the material facts of the transaction were known to the independent directors, and a majority of the independent directors approved the transaction. ID. at 395-96, 613 N.W.2d at 338-39. The court said that, once approval of an interested transaction is obtained under the statute, "the type of challenges available are limited to waste, fraud, illegality, or the like." ID. at 396, 613 N.W.2d at 339.

Here, the material facts of the 1998 Restructuring were known to the independent directors. (SEE Bloostein at 109, 111 (Ex. 5); Gilbert at 60 (Ex. 7).) Accordingly, their approval precludes an action to enjoin or set aside any aspect of the 1998 Restructuring.

B. THE UNOCAL STANDARD DOES NOT APPLY

Desperate to avoid application of the business judgment rule, plaintiffs attempt to rely on UNOCAL CORP. V. MESA PETROLEUM CO., 493 A.2d 946 (Del. 1985). That case is inapposite. It holds that defensive measures adopted by a board during a contest for corporate control must be reasonable in relation to the threat posed; once the directors meet this burden of showing a threat and response proportional to that threat, their actions will be reviewed under the business judgment rule. But UNOCAL cannot be invoked where a board's actions were not taken as "defensive measures" and where "there was no threat to the board's control." STROUD V. GRACE, 606 A.2d 75, 79, 82-83 (Del. 1992). "No Delaware court has applied UNOCAL in the absence of a danger to corporate policy and effectiveness[.]" ID. at 83. With respect to the 1998 Restructuring, there was no threat to the board's control, no pending "danger to corporate policy and effectiveness," and thus no basis to characterize the transaction as a "defensive measure."27

Plaintiffs also invoke Delaware's so-called BLASIUS standard, SEE BLASIUS INDUS., INC. V ATLAS CORP., 564 A.2d 651 (Del. Ch. 1988), which is a specialized application of the UNOCAL standard that requires a board to meet a "compelling justification" standard under certain circumstances. (SEE SPG Mem. at 16-17; Glancy Mem. at 9-10.) As the Supreme Court of Delaware recently held: the "compelling justification" standard set forth in BLASIUS applies "ONLY where 'the primary purpose of the board's action is to interfere with or impede exercise of the shareholder franchise and the shareholders are not given a full and fair opportunity to vote' effectively." MM COS., INC. V. LIQUID AUDIO, INC., 813 A.2d 1118, 1130 (Del. 2003) (emphasis

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27 Plaintiffs attempt to invoke UNOCAL by relying on the fact that, AFTER the Special Committee was formed, the company received a letter from The Rouse Company proposing the friendly exploration of the possibility of a combination of the Rouse and Taubman businesses. (SEE Gilbert at 46-47 (Ex. 7); Taubman at
65 (Ex. 15).) After considering the advice of its investment bankers, the Partnership Committee and the Board decided that no response to the letter was necessary, and Rouse took no hostile steps. (SEE Gilbert at 46-47; Bloostein at 134-137 (Ex. 5).) There is no evidence whatsoever that the 1998 Restructuring, which was initiated before the Rouse letter was received, was a "defensive measure" to the overture for a negotiated transaction.

added; citations omitted).28

The undisputed facts of record make it ridiculous to suggest that the directors' primary purpose was to impede the exercise of the shareholder franchise: the 1998 Restructuring broadened the franchise. It ensured that the Board would have a majority of independent directors (as opposed to the Taubman/GM Trusts' controlled Board and Partnership Committee that preceded the restructuring); gave the independent directors the power to replace management; made voting power directly proportionate to economic ownership; gave the public shareholders control of the operating partnership; and preserved the power of the public shareholders to replace the entire Board, if that is their desire. (SEE Hanks Decl. P.8-11; A. Miller Decl. P.12.)

Plaintiffs argue that the 1998 issuance of the Series B Stock to exactly align the Taubman family's voting power with their economic interest in TRG's assets was inappropriate because the partnership and the REIT are "two separate legal entities" and the Taubman family owned only 1% of Taubman Centers' common stock. (SEE SPG Mem. at 13.) As confirmed by Simon Corporation director Miller, however, this is a common and proper governance mechanism, (SEE Miller at 67 (Ex. 22)), and it is entirely consistent with the industry practice to consider both the operating partnership, where the assets are owned, and the public company, as a single enterprise. (SEE Cicco at 223 (Ex. 8). SEE ALSO October 10, 2002, Merrill Lynch presentation, at 13 (Ex. 52); November 4, 2002, Merrill Lynch presentation, at 5 (Ex. 53); Ward at 25, 33 (Ex. 3); Hanks Decl.P. 9.

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28 The BLASIUS-type cases relied on by plaintiffs all involve situations in which sitting directors deliberately interfered with an ongoing proxy contest or other attempt to replace them. SEE, E.G., CAMPAU V. MCMATH, 185 Mich. App. 724, 730, 463 N.W. 2d 186, 189 (1990); MMS COS., SUPRA; PACKER V. YAMPOL, 1986 Del. Ch. LEXIS 413 at *45-*47 (Apr. 18, 1986) (Ex. 50); PHILIPS V. INSITUFORM OF N. AM., 1987 Del. Ch. LEXIS 474, at *11 (Aug. 27, 1987) (Ex. 51). Nothing that happened in 1998 prevents the current directors from being replaced.

C. THE 1998 RESTRUCTURING WAS FAIR TO THE PUBLIC SHAREHOLDERS

Even if this Court had the legal power under Michigan law to substitute its judgment for that of the Board, plaintiffs have not offered any reason to do so.

First, plaintiffs argue that the 1998 Restructuring caused the business to go from being wide open to a takeover to being permanently takeover-proof. (SEE SPG Mem. at 18.) But the record is clear that the business was not open to an unfriendly takeover before the 1998 Restructuring and it did not become takeover proof after the 1998 Restructuring:

o Before the 1998 Restructuring, under the old structure, in Morgan Stanley's words, "a change of control transaction WOULD HAVE TO BE FRIENDLY." (Mins. of Joint Meeting at 10 (emphasis added) (Ex.21).) SPG's own investment banker agreed: "you needed the family to do [a transaction]" ... "both before and after '98" (Cicco at 169; SEE ALSO Bloostein at 64-65, 97-98 (Ex. 5); Payne at 41-42 (Ex. 6); Gilbert at 60-61 (Ex. 7); Taubman at 126 (Ex. 15).)

o Before the 1998 Restructuring, no one would have wanted to acquire Taubman Centers standing alone because Taubman Centers only owned a minority interest in the operating partnership. (SEE Hanks Decl. P. 10-11; Taubman at 63-65.) Any potential acquiror would have wanted the power to control the real estate assets owned by the operating partnership, which Taubman Centers did not have. (SEE Simon at 77-78 (Ex. 35); Ward at. 33 (Ex. 3).)

o Likewise, before the 1998 Restructuring the public shareholders could not have sold control of the enterprise's assets and thereby gain a control premium. (SEE Hanks Decl. P. 18.) It is only as a result of that restructuring that SPG's current bid for control became possible.

o After the 1998 Restructuring, the public shareholders, which owned (and own) a majority of Taubman Centers' voting power, could vote to replace all of the directors on the Board in proxy contests. (SEE Miller Decl. P.12; Hanks Decl. P. 16.) CF. UNITRIN, INC. V. AMERICAN GENERAL CORP., 651 A.2d 1361, 1383 (Del. 1995) (proxy contest "remained a viable alternative").

o After the 1998 Restructuring, the Board could fire the Taubman family from management and could dilute the Taubman family's 30% voting power through new issuances. (SEE Payne at 116-117.) Indeed, SPG witnesses concede that a takeover is possible even if the Series B shareholders oppose it. (SEE Westfield CEO Lowy at 114-116 (Ex. 54).)

Second, drawing liberally from the hearsay notes of Adam Rosenberg, a junior investment

banker on the Goldman Sachs team, plaintiffs argue that there was a breach of fiduciary duty because the Taubman family was opposed to a shareholder vote in connection with the 1998 Restructuring. (SEE SPG Mem. at 5-8.) This argument is factually and legally baseless.

Goldman Sachs represented the family, not the independent directors, making the views of Goldman Sachs or the Taubman family with respect to a shareholder vote irrelevant to the question of whether the independent directors breached their fiduciary duty. Indeed, despite Goldman Sachs' view that a shareholder vote might risk the emergence of an "interloper," the record is clear that Robert Taubman was willing to agree to a shareholder vote if the best transaction structure required one.

Moreover, there is nothing unusual or improper about structuring a transaction to avoid the expense and uncertainty of a shareholder vote. SEE Robert C. Clark, CORPORATE LAW at 433 (Ex. 55); 1 Lou R. Kling & Eileen T.
Nugent, NEGOTIATED ACQUISITIONS OF COMPANIES, SUBSIDIARIES AND DIVISIONS SS.
2.03 (2002) (Ex. 56). SPG does not cite a single case from any jurisdiction suggesting that directors have a fiduciary duty to hold a shareholder vote when one is not expressly required, and the law is exactly the opposite. 29

D. THE ISSUANCE OF THE SERIES B STOCK DID NOT VIOLATE THE ARTICLES

Glancy argues that the issuance of the Series B Stock is void because the Board lacked the authority to issue the stock. Nevertheless, two years before the Board issued the stock, Taubman Centers' shareholders amended the Articles to authorize the Board to issue 50 million shares of preferred stock "in one or more series having such relative rights, preferences, priorities, privileges, restrictions, and limitations AS THE BOARD OF DIRECTORS MAY DETERMINE FROM TIME TO

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29 As the Delaware Chancery Court has explained, the STATUTORY test for determining whether a shareholder vote is required "is the sole test to be applied." GIMBELL V. SIGNAL COS., 316 A.2d 599, 605 (Del. Ch. 1974), AFF'D 316
A.2d 619 (Del. 1974) (rejecting the argument "that shareholder approval is required upon every 'major' restructuring of the corporation");
LOWENSCHUSS V.
OPTION CLEARING CORP., 1985 Del. Ch. LEXIS 408, at *12-*13 (Mar. 27, 1985) (looking beyond the statute "would work into our corporation law an aura of uncertainty and unpredictability which is undesirable") (Ex. 57).

TIME." (SEE 2d Am. & Restated Arts. of Incorp. of Taubman Centers, Art III, ss.1
(filed May 22, 1996) (emphasis added) (Ex. 26).)

Glancy also argues that the issuance to the Taubman family of Series B Stock violated the Ownership Limit. The sole support for this claim is a stock valuation by a witness whose previous stock valuation work was found by the court to be "seriously flawed and unpersuasive" and was rejected "entirely." SMITH V. COMMISSIONER, 78 T.C.M. (CCH) 745, 748, 750 (1999) (Ex. 58). That expert's work here is similarly flawed. (SEE Brophy Decl.P.P. 19-22 (Ex. 59).) The issuance to the Taubman family of Series B Stock was a legitimate exercise of the Board's fiduciary duty to "determine[] in good faith" the "Market Price" of the stock, (Articles, Art. III ss.2(d)(i) (definition of "Market Price"); Brophy Decl.P.P. 15-18), and the Board did so on the advice of Morgan Stanley that the Series B shares were of "nominal value." (Joint Meeting Mins. at 7.) Issuance of the Series B shares simply did not violate the Ownership Limit. (SEE Brophy Decl.P. 14.)

C. SPG 2002 "GROUP" CLAIM UNDER THE CONTROL SHARE ACQUISITIONS ACT IS MERITLESS

SPG has presented no fewer than three different "group" theories as to why the Michigan Control Share Acquisitions Act (the "Act") supposedly justifies disenfranchising the shares held by the Taubman family:

1. The issuance of the Series B preferred shares to the Taubman family in 1998, representing 30% of the voting power of Taubman Centers, exceeded the Act's 20% threshold.

2. The voting agreements from "several close associates of the family" gave the Taubman family an additional 3% of the voting power, exceeding the Act's 331/3% threshold.

3. Then, SPG amended its complaint to add a new claim that (i) the Taubman family and their "close associates" who signed over their voting rights became a "group" in 2002, (ii) the "group" allegedly ACQUIRED in a "control share acquisition" all of the shares of the Taubman family and their close associates, and (iii) this increased the "group's" holdings from zero to just over the Act's 331/3% thresholds.

SPG's first theory was rejected by the Court in its January 22nd order. Its second theory is

now moot because the voting agreements have been terminated.30 That leaves SPG with its third and most radical alternative, that the Taubman family's alleged formation of a group in 2002 was ITSELF a "control share acquisition" by the "group," and that all of the group's shares are precluded from voting under the Act.

This argument must be rejected because the formation of a group is not a "control share acquisition" under the Act. Moreover, even if the Taubman family is a "group," they have been so at least since they first acquired their Series B shares in 1998.

1. THE FORMATION OF A "GROUP" IS NOT A "CONTROL SHARE ACQUISITION"

SPG's argument that the formation of a group by the Taubman family and the friends who gave Robert Taubman the voting agreements does not preclude the Taubman family from voting stock that they ALREADY OWNED. If that were the case, every time one person received the right to vote another's shares, they would be a "group," and ALL of the shares held by the acquirer (not just the acquired shares) would be precluded from voting.

Yet it is clear from the Act that only the shares ACQUIRED in a control share acquisition, and not shares already held, lose their voting rights unless approved by the remaining shareholders. See Mich. Comp. Laws ss.450.1798(1). ACCORD Stephen H. Schulman, Cyril Moscow, Margo Rogers Lesser, MICHIGAN CORPORATION LAW & PRACTICE 297-98 (2002) (Ex. 60). Thus, as explained in the official comments of the General Corporation Law Study Commission to the Indiana Business Corporation Law (the "Indiana Comments"), on which the Michigan Act was based:

"Control shares" are NOT "all shares" owned by the acquiring person, but only the shares acquired in the "control share acquisition" . . . that, when added to the acquiring person's pre-acquisition holdings, put the person over one of the three specified thresholds of voting power.

Indiana Comments to Ind. Code 23-1-42-1 (underlined in original) (Ex. 61).
**ACCORD SCHULMAN,**

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30 In any event, because it is uncontested that there was no consideration for the voting agreements, (SEE Glancy Am. Compl. P. P. 71-73), the acquisition of the right to vote those shares was not a "control share acquisition." Mich. Comp. Laws 450.1791(4)(c) (acquisition of shares "without consideration" is not a "control share acquisition").)

**MOSCOW & LESSER 297-98.**

This very issue was addressed in ATLANTIS GROUP, INC. V. ALIZAC PARTNERS, No. 1:90-CV-937, slip op., (W.D. Mich. Dec. 5, 1991) (op. denying prelim. inj.) (Ex. 62), a case SPG never mentions in their memorandum of law even though it is the only case exactly on point, and it was argued for the defendants in that case by SPG's counsel here, Mr. von Ende. In ATLANTIS, three shareholders, each with roughly 9% of the voting power of the company, allegedly formed a group and then, as a group, acquired an additional 1.67% of the voting power. SEE ID. at
3. Rejecting the argument that the formation of the group was itself a "control share acquisition", the court explained:

The statute's provisions are only triggered by an ACQUISITION of control shares. SEE M.C.L.A. ss.ss.450.1791 and 450.1794. Since the Alizac-Coyne-Day alignment, if one exists, was not based on an acquisition of control shares, the statute probably does not apply to them. Finally, the only acquisition of control shares that has occurred is the 1.67% increase in stock defendants have purchased since April of 1991. COMPARE Comments to Section 23-1-42-1 of the Indiana Business Corporation Law (stating that control shares are only the shares acquired in the control share acquisition).

ID. at 10 (footnote omitted). ACCORD Def. Rospatch Corp.'s Br. in Opp'n to Pl.'s Mot. for a Prelim. &/or Perm. Inj. ("von Ende Br.") at 40 ("[E]ven if the shareholder defendants are deemed to be a 'group,' and even if that 'group' is deemed to have acquired control shares, the extent of that 'acquisition' is necessarily limited to the 1.67% increase in the combined holdings of the shareholder defendants.") (Ex. 63). SEE ALSO YOUNG V. GENERAL ACCEPTANCE CORP., 770 N.E.2d 298, 301 (Ind. 2002) ("The effect of the application of the statute is not to disable all shares owned by the acquirer. Rather it prevents only the voting of the shares acquired in the control share acquisition . . . .")31

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31 The only control share acquisitions act case cited by SPG, BREAUD V. AMATO, 657 So. 2d 1337 (La. Ct. App. 1995), is entirely consistent with ATLANTIS. In BREAUD, the defendants formed a group and then went out and acquired shares in the open market. SEE ID. at 1340-42. Thus, the shares at issue were acquired by the group AFTER the group was formed. As the court explained, the act is "triggered when a person or group of persons acquires over twenty percent (20%) of the stock," and in that case "more than 34.80% of the Holding Company ha[d] changed hands" after the group was formed. SEE ID. at 1344.

Defendants do not suggest that the "group" concept has no significance under the Act. The definition of "control shares" states that control shares are shares that, "when ADDED TO ALL OTHER shares" owned or controlled by that person "would entitle that person . . . directly or indirectly, alone or AS PART OF A GROUP, to exercise or direct the exercise of the voting power" of the shares within the three specified control thresholds. Mich. Comp. Laws ss. 450.1790(2). Thus, shares owned by each member of a "group" fixes the starting point, and those shares are included in determining whether an ACQUISITION of shares, when added to the group's shares, crosses one of the Act's thresholds. ACCORD Indiana Comments to 23-1-42-1 ("'Control shares' defined") (Ex. 61).

It is altogether something else to suggest that the Act also adopts from federal securities law the notion of a "deemed" acquisition by the group of all of the individual group members' shares to require shareholder approval before even previously-owned shares could be voted. SEE, E.G., YOUNG, 770 N.E.2d at 302 (Indiana act looks to the person who ACTUALLY holds "the 'power to direct' the vote").32 Indeed, even under federal securities law, the court may "enjoin the voting of shares rapidly acquired just before a contest for control . . . [but] disenfranchisement should not extend to prior holdings legally acquired." GENERAL AIRCRAFT CORP. V. LAMPERT, 556 F.2d 90, 97 (1st Cir. 1977).

SPG's proposed construction of the Act was rejected in ATLANTIS for good reason and would cause far reaching problems the Michigan Legislature could not have intended. For example, as Mr. von Ende notes in his ATLANTIS brief, since board members often have substantial shareholdings, under SPG's proposed construction (which Mr. von Ende decried in ATLANTIS), the court would "establish the BAD PRECEDENT that a company cannot engage in self defense against a would-be

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If the Taubman family were a group, they were a group at the time they first acquired their Series B shares, but, unlike the defendants in BREAUD, the Series B shares acquired were a new issuance from Taubman Centers itself, which, as this Court has already ruled, was not a "control share acquisition" under the Act. (SEE Order filed Jan. 22, 2003.)

32 In this case, there is no allegation that the Taubman family members can vote each others' shares, much less that they paid for the right to do so, a requirement under Michigan law, as well. SEE Mich. Comp. Laws ss.450.1791(4)(c).

acquirer without converting all other objecting directors into a single shareholder group." von Ende Br. at 45 (emphasis added). As Mr. von Ende explains, "Such a precedent would have the DEVASTATING consequence of promoting hostile and unfriendly takeovers of corporations and would render those corporations powerless to defend themselves. That is not the law NOR SHOULD IT BE." ID. (emphasis added) (Ex. 63).

2. IF THE TAUBMAN FAMILY IS A GROUP, IT HAS BEEN SO WITH RESPECT TO THE SERIES B SHARES SINCE 1998

Moreover, even if the formation of a group could be a "control share acquisition" in and of itself, SPG's suggestion that the Taubman family first became a group in 2002 is wholly inconsistent with the entire premise of plaintiffs' complaints that the 1998 stock issuance gave the Taubman family control over Taubman Centers.33 The Schedule 13D/A filed in 2002 does not, as SPG suggests, "trumpet[] the FORMATION of a group among Robert Taubman, the family and family friends." (SPG Mem. at 20. (emphasis added).) Nor does it in any way suggest that the family was, for the first time, FORMING a group with respect to holding and voting their Series B shares.34

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33 (SEE, E.G., SPG 2d Am. Compl. P. 42 (restructuring "increased the Taubman family's voting power in the Company"); P. 43 (issuance of "Series B Preferred Stock purported to give the Taubman family virtual veto power over major transactions concerning the Company and, in particular, unsolicited takeover attempts"); P. 44 ("Series B Preferred Stock purported to increase the Taubman family's voting power in the Company from less that 1% to 30%"); P. 48 ("acquisition of the Series B Preferred Stock by the Taubman family . . .was a 'control share acquisition'"); Glancy Compl. P. 39 ("[i]n connection with the GM Exchange, the Taubmans, as a group, were able to accumulate their purported 30% voting position").

34 There was no requirement to file a Schedule 13D with regard to the Taubman family's SERIES B shares alone because Rule 13d only requires filing with respect to "equity securities," meaning "securities of a class which is registered pursuant to Section 12 of [the Securities and Exchange Act of 1934]," SEE Rule 13d-1(i), 17 C.F.R. 240.13d-1(i), and the Series B shares are not registered securities. Robert Taubman had originally filed a Schedule 13D in the year 2000 because he received options from Taubman Centers, which, if exercised, would have exceeded 5% of Taubman Centers COMMON stock (a registered equity security). The amended Schedule 13D/A was only filed because, with the voting agreements given to Robert Taubman, his holdings exceeded 5% of the REGISTERED securities of Taubman Centers. SEE Rule 13d-2(a), 17 C.F.R. 240.13d-2(a) (requiring amendment for any material increase in the percentage of stock beneficially owned (defined as more than 1%)).

In fact, SPG alleges that, in obtaining the voting agreements, "the Taubman family was hurriedly acting to FURTHER entrench itself by ADDING to its blocking position." (SPG 2nd Am. Compl. P. 31 (emphasis added.).)35

In short, SPG's last ditch allegation that the Taubman family formed a "group" in 2002 does not create a claim under the Control Share Acquisitions Act or provide any basis to disenfranchise the Taubman family's Series B shares.

D. THE BOARD PROPERLY DISCHARGED ITS FIDUCIARY DUTIES IN REJECTING THE INADEQUATE SIMON OFFERS

Finally, plaintiffs claim that, in responding to SPG's letters and tender offer, the Board has breached its fiduciary duties by somehow not taking unspecified "steps" to preclude the Series B shareholders from voting on issues raised by SPG's (and Westfield's) takeover attempt. But it is little short of absurd to suggest that a Board is under a fiduciary obligation to upset long-established governance arrangements - even if directors possessed that power - merely because a tender offer has been made.

It is familiar law that directors need not agree to or facilitate a takeover, or enter into negotiations to sell the company, simply because a hostile tender offeror makes a bid. If directors believe that an acquisition offer is inadequate or otherwise not in the company's interest, they are

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35 SPG's control share claim must also fail because, as a hostile bidder, they have no standing to sue under the statute. The general purpose of control share statutes is to "protect businesses from certain abusive and manipulative practices of CORPORATE RAIDERS." AMP INC. V. ALLIEDSIGNAL CORP., 168 F.3d 649,
651 (3d Cir. 1999) (emphasis added). The history of the Michigan Act indicates that the Legislature was concerned about "a takeover's effect on shareholders and local economic stability" and believed that the Act would provide "a mechanism that public corporations could use against takeover attempts." House Legislative Anal., H.B. 4907 & 4936 (Mar. 18, 1988) (Ex. 64); Senate Fiscal Agency Bill Anal., H.B. 4907 (S-1) & 4936 (S-1) (Feb. 18, 1988) (Ex. 65).

Michigan law precludes standing to sue "when the statute . . . [was] not intended to benefit or protect the plaintiffs, i.e., for their especial benefit, they lack standing to sue." DETROIT FIRE FIGHTERS ASS'N V. CITY OF DETROIT, 449 Mich. 629, 645, 537 N.W.2d 436, 443 (1995) (Riley, J., concurring). SEE ALSO CITIZENS FOR PRETRIAL JUSTICE V. GOLDFARB, 415 Mich. 255, 272, 327 N.W.2d 910, 916 (1982). As a hostile tender offeror, SPG is plainly not in the class of persons for whose benefit the Act was adopted.

entitled to reject the offer, even an all-cash one at a premium to current stock price. SEE, E.G., PARAMOUNT COMMUNICATIONS, INC. V. TIME INC., 571 A.2d 1140, 1154 (Del. 1989) (board under no obligation to negotiate); TW SERVS., INC. V. WT ACQUISITION CORP., 1989 Del. Ch. LEXIS 19, at *28 (Del. Ch. 1989) (board need not negotiate merger with tender offeror to whom 88% of shareholders tendered shares) (Ex. 66); AMANDA ACQUISITION CORP. V. UNIVERSAL FOODS CORP., 708 F. Supp. 984, 1013 (E.D. Wis. 1989) (board may "just say no"; "no support in the case law that a company must negotiate with a tender offeror"). As articulated by the Supreme Court of Delaware, "[d]irectors are not obliged to abandon a deliberately conceived corporate plan for a short-term shareholder profit unless there is clearly no basis to sustain the corporate strategy." PARAMOUNT, 571
A.2d at 1154. Indeed, directors may face liability if they acquiesce in a takeover at less than a company's intrinsic value. SEE SMITH V. VAN GORKOM, 488
A.2d 858, 890 (Del. 1985).

The plaintiffs find no room in their combined 40 pages to address the Board's unanimous judgment that the initial $17.50 offer, and then the $18 offer, and now the $20 offer are inadequate, i.e., far below the company's intrinsic value. SPG merely asserts, without any supporting evidence, that the Board's judgment is "pretense." (SPG Mem. at 2.) But SPG's own actions and witnesses show that the Board's judgment is unassailable. The three different bids, each higher than the next, despite SPG labeling its first and lowest bid as "full value," confirms the Board's judgment and demonstrates that there is no reason to conclude that the $20 offer is any more "full value" than the prior two offers. Indeed, SPG's investment banker testified, "I don't know what full value is here," and he conceded that "it would be reasonable to disagree on full value." (Cicco at 285-86) (Ex. 8).)36

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36 In addition, the Taubman Centers shareholding body has an overwhelming cross-ownership with SPG shareholders. The interest of these dual holders, including some of Taubman Centers' largest institutional holders, is served by SPG tender price being low enough so as not to damage the SPG share price. (SEE
A. Miller Decl.P. 10, 11 (Ex. 12).) Such an interest is clearly in conflict with the fiduciary obligations of Taubman Centers' Board.

Moreover, David Simon conceded that the bid was opportunistic, timed to coincide with what he perceived to be Taubman Centers' depressed stock price compared with its true value. (SEE Simon at 143 (Ex. 35).) Thus it cannot be disputed that the directors properly took into account the company's extensive investment in five new development projects which have just opened over the past two years. (SEE Taubman Centers Form 14D-9 at 14, item (iii) (Ex. 46); Miller at 113-14 (Ex. 22).)

Accordingly, there is no legal or factual basis for plaintiffs' invitation to the Court to substitute its judgment for the Board's judgment as to the SPG/Westfield tender offer. Whatever sort of preliminary injunction plaintiffs seek based on the tender offer - and the moving papers are completely obscure on this point - plaintiffs have failed to show a strong likelihood of success on the merits.

II. THE BALANCE OF EQUITIES WEIGHS IN FAVOR OF DEFENDANTS

"'[T]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.'" MICHIGAN BELL TEL. CO. V. ENGLER, 257 F.3d 587, 592 (6th Cir. 2001). Nevertheless, plaintiffs seek not to preserve, but to irrevocably alter, the status quo.

A. PLAINTIFFS HAVE SUFFERED NO IRREPARABLE INJURY

As David Simon made clear at his deposition, he understood full well the governance structure of Taubman Centers established in the 1998 Restructuring and the Taubman family's voting rights before he made his offer. This is not a case where the defendants are doing anything to block SPG's tender offer, and the cases cited by plaintiffs where injunctive relief was granted with regard to defensive measures adopted to thwart a tender offer are irrelevant. Rather, this is a case where SPG made its tender offer contingent on revoking the Taubman family's voting rights established four years ago. In other words, SPG's alleged injury is one of its own making.

Moreover, plaintiffs' alleged injury is neither certain nor irreparable and hardly imminent. Plaintiffs can only be harmed by the Series B votes if and when a meeting of shareholders is called

to request a shareholder amendment of the Ownership Limit in Taubman Centers' Articles (in place since 1992). Yet, just two days ago, Peter Lowy, the president and chief executive of Westfield, SPG's tender offer partner, testified that no decision has been made to even ask for a meeting, (SEE Lowy at
203 (Ex. 54)), and he refused to disclose whether SPG and Westfield intended to do so in the next six months. (SEE ID. at 174-176.) This, despite the fact that SPG told the Court in December that it was going to issue proxy materials for a meeting in January. Plainly, there is nothing "imminent" about plaintiffs' alleged injury.

Lowy also admitted that plaintiffs, in effect, have no irreparable injury. As he testified, SPG and Westfield can, in fact, proceed with their tender offer "WITHOUT the series B shareholders' consent and WITHOUT the court ruling in Simon's favor." (ID. at 114, 115 (emphasis added).)

Even assuming SPG and Westfield ever do (i) receive agent designations from 25% of the shareholders necessary to call a meeting of shareholders,37 (ii) ask the Board to schedule a meeting to consider amending the Articles to eliminate the Ownership Limit, and (iii) hold a meeting, they can only be harmed if they receive at that meeting the votes of two-thirds of the shareholders other than the Series B shares. That is hardly a certainty much less evidence of immediate harm, and any future harm can always be remedied by adjustment of the shareholder vote at a later date. SEE, E.G., ATLANTIS, slip op. at 15 ("But no irreparable harm will result from holding the shareholders meeting as scheduled, because this court may fashion an equitable solution after the shareholder election, if necessary."); PLANT INDUS., INC. V. BREGMAN, 490 F. Supp. 265, 271 (S.D.N.Y 1980) (no irreparable injury where court can void election); AQUILA, INC. V. QUANTA SERVS., INC., 805 A.2d 196, 209 (Del. Ch. 2002) (no irreparable injury where court can determine votes post election).

B. DEFENDANTS AND OTHERS WILL SUFFER IRREPARABLE INJURY

Defendants, on the other hand, and the Taubman family and other Series B shareholders, in

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37 The fact that shareholders tendered their stock, which can always be revoked, is hardly indicative of the way those shareholders would vote either to call a meeting or at a meeting if SPG ever does solicit proxies.

particular, WILL suffer irreparable injury if the Series B shares are enjoined from voting. In fact, plaintiffs expressly agree that "shareholders suffer irreparable harm where their right to vote is frustrated or denied." (SPG Mem.
at 24.) SEE, E.G., BEZTEK CO. V. BANK ONE COLUMBUS, N.A., 811 F. Supp. 274, 283,
285 (E.D. Mich. 1992) (Edmunds, J.) ("Courts have recognized the importance of the corporate electoral process and of the shareholder's right to vote stock." "Plaintiffs will suffer irreparable harm if they are not able to exercise their franchise rights as shareholders in First of America."). This is particularly true in the context of a hostile takeover because "[o]nce the company has been taken over, courts can rarely, if ever, 'unscramble the eggs.'" HOMAC, INC. V. DSA FIN. CORP., 661 F. Supp. 776, 783 (E.D. Mich. 1987) (Cook, J).

The Taubman Centers Board, the GM Trusts, and the Taubman family negotiated and approved the 1998 Restructuring as a whole, including allowing the GM Trusts to withdraw from TRG, moving governance from TRG's Partnership Committee to the Taubman Centers Board, and issuing the Series B shares. For four years, Taubman Centers, its shareholders, its lenders, and its business partners have relied on the governance structure set up in 1998. Now, after four years of reliance on that 1998 Restructuring, SPG asks the court to UNDO one aspect of that transaction to make their hostile takeover easier. That is hardly a preservation of the status quo, and it is not a ground for a preliminary injunction.

C. THE PUBLIC INTEREST WILL BE SERVED BY THE DENIAL OF A PRELIMINARY INJUNCTION

The State has a strong public interest in seeing major business disputes decided, where possible, in a context where the risk of error is minimized and the predictability of the outcome is maximized. Plaintiffs' motions seek radical relief: disenfranchisement of 38% of the voting power of a major Michigan corporation on a truncated, paper record with limited briefing. The outcome of these proceedings could have adverse effects, not only on the publicly-traded company, but on other parties who hold Series B shares, partners of TRG, and the lives of hundreds of Taubman Centers employees and their families. There is simply no reason to grant plaintiffs the drastic and irreversible relief they seek by way of a preliminary injunction.

## CONCLUSION

Taubman Centers and its directors respectfully ask the Court (1) to deny SPG, Smith, and Glancy's motions for a preliminary injunction and (2) to dismiss their amended complaints as a matter of law for (a) lack of jurisdiction over the subject matter, (b) because their claims are barred by the statute of limitations, and (c) because they lack the legal standing to sue.

Respectfully submitted,
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**Exhibit A**

## STRUCTURE OF TRG

The following chart depicts the beneficial ownership of TRG (excluding Max M. Fisher's 0.3% interest and including, in the case of the Taubman Group, TG's interest) and the percentage ownership in each business in which TRO will have an interest (the "Managed Businesses") upon the completion of the Reconfiguration and the Offering.

(chart depicts following)

GM Trusts owns 44.0% of TRG

Taubman Centers, Inc. (the "Company") owns 32.8% of TRG

**Taubman Group owns 22.9% of TRG**

TRG owns the given percentage of the following properties:

| | | |
|---|---|---|
| Woodfield (50%) | Short Hills (50%) | Cherry Creek (50%) |
| Fairlane (25%) | Stoneridge (100%) | Stamford (50%) |
| Lakeside (50%) | Woodland (50%) | Marley Station (100%) |
| Fair Oaks (50%) | Lakeforest (100%) | Bellevue (60%) |
| Columbus (100%) | Westfarms (65%) | Meadowood (100%) |
| Twelve Oaks (50%) | Briarwood (100%) | Development Projects (100%) |
| Hilltop (100%) | Beverly Center (70%)* | The Manager (99%) |

* TRG has an option to acquire the remaining 30%

(end chart)

There initially will be 61,981 Units of Partnership Interest in TRG outstanding, of which: 27,276 will be held by the GM Trusts; 20,347 will be held by the Company; 10,953 will be held by the Taubman Group; 3,206 will be held by TG; and 199 will be held by Max M. Fisher's revocable trust. Each Unit of Partnership Interest initially will be equivalent in value to 2,000 shares of Common Stock.

There initially will be outstanding 40,694,515 shares of Common Stock. The Company will initially be owned as follows:

(chart depicts following)

Purchasers of the Common Stock Offered Hereby own 65.9% of Taubman Centers, Inc. (the "Company")

GM Trusts owns 19.8% of Taubman Centers, Inc. (the "Company")

AT&T Trust owns 13.7% of Taubman Centers, Inc. (the "Company")

Taubman Group owns 0.6% of Taubman Centers, Inc. (the "Company")

(end of Chart)

Since the Company will own 32.8% of TRG, TRG will be owned, directly and indirectly:

o 50.5% by the GM Trusts;
o 23.4% by the Taubman Group, TG, and Max M. Fisher's revocable trust;
o 21.6% by the purchasers of the Common Stock offered hereby; and
o 4.5% by the AT&T Trust.

**Exhibit B**

**PRE-1998 RESTRUCTURING**

**[Taubman Logo]**

**Enterprise was Governed by 13-Member Partnership Committee**

(chart depicts following)

37.2% 39.4% 23.4%

**REIT**
**TAUBMAN**

| GM Pension Trusts | CENTERS, INC. (TCO) 52.9 million shares (incl. 8.4 million held by GMPT) | Taubman Family & Other Unitholders |
|---|---|---|
| 4 Members | 5 Members | 4 Members |
| 50.0 Million Units | 52.9 Million Units | 31.4 Million Units |

**Above Entities own**

Operating Partnership

Governed by 13-Member Partnership Committee
**TAUBMAN REALTY GROUP L.P. (TRG)**

25 Operating Centers,
2 Centers Under Construction
& Development Pipeline

134.3 Million Total Partnership Units

**Enterprise Now Governed by REIT Board**

(chart depicts following)

GM Pension Trusts owns 10 malls (Continue to Be Managed by Taubman)

(end chart)

(chart depicts following)

```
          62.7%                                  37.3%

          REIT
   Governed by 9-Member Board
  (5 Independent Directors)(a)                  Taubman
                                                Family&

  Taubman Centers, Inc. (TCO)                    Other
    52.9 million shares                       Unitholders
(incl. 8.4 million held by GMPT)

      52.9 Million Units                    31.4 Million Units

Above Entities own

                       Operating Partnership
```

Taubman Realty Group L.P. (TRG) 15 Operating Centers, 2 Centers Under Construction & Development Pipeline

84.3 Million Total Partnership Units

(end chart)

(a) Four directors are nominated by the unitholders.

**Exhibit C**

**OWNERSHIP AND VOTING COMPARISON**

**[Taubman Logo]**

| PRE-1998 RESTRUCTURING (a) | Ownership | Voting (a) | POST-1998 RESTRUCTURING | Ownership | Voting |
|---|---|---|---|---|---|
| Taubman Family | 18.8% | | Taubman Family | 29.8% | 29.8% |
| Other Unitholders | 4.6% | | Other Unitholders | 7.5% | 7.5% |
| Taubman Family and Other Unitholders | 23.4% | 30.8% | Taubman Family and Other Unitholders | 37.3% | 37.3% |
| GM Pension Trusts Unitholders | 37.2% | 30.8% | GM Pension Trusts Unitholders | - | - |
| REIT Shareholders | 39.4%(b) | 38.4% | REIT Shareholders | 62.7%(c) | 62.7% (c) |
| | 100.0% | 100.0% | | 100.0% | 100.0% |

(a) Indicates voting rights via member seats on the Partnership Committee; Taubman family and other unitholders represented 4 members out of 13, GM Pension Trusts represented 4, and REIT Shareholders represented 5.

(b) Includes approximately 6.3% ownership held by GM Pension Trusts in REIT shares.

(c) Includes approximately 9.9% ownership held by GM Pension Trusts in REIT shares.

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF MICHIGAN**

| | |
|---|---|
| Simon Property Group, Inc. and Simon Property Acquisitions, Inc.,<br><br>Plaintiffs,<br>v.<br><br>Taubman Centers, Inc., A. Alfred Taubman, Robert S. Taubman, Lisa A. Payne, Graham T. Allison, Peter Karmanos, Jr, William S. Taubman, Allan J. Bloostein, Jerome A. Chazen, and Parker Gilbert,<br><br>Defendants. | Civil Action No. 02-74799<br>(E.D. Mich. 2002) (Judge Victoria A. Roberts)<br><br>DECLARATION OF ALAN M. MILLER |

COUNTY OF NEW YORK )

)ss.:
**STATE OF NEW YORK )**

I, ALAN M. MILLER, declare as follows:

1. I am the Co-Chairman of Innisfree M&A, Inc., a proxy solicitation firm ("Innisfree"), that is assisting Taubman Centers, Inc. ("Taubman Centers") in connection with the tender offer that Simon Property Group ("SPG" or "Simon"), now with its co-tender offeror Westfield America, Inc., has made for the common shares of Taubman Centers. SPG has also stated an intention, in connection with the tender offer, to instigate a proxy solicitation of stockholders at Taubman Centers. I have extensive experience in assisting companies faced with proxy fights and/or tender offers, having been involved in proxy solicitations for more than two decades. My firm and I personally are generally regarded as experts in the field of proxy solicitation. A description of my background is attached as Exhibit A. I make this affidavit based on my personal knowledge of the SPG tender offer for Taubman Centers and on my

experience in representing other companies involved in unsolicited takeover situations. This affidavit is submitted in support of the opposition of defendants to the motions by plaintiffs SPG, Randall Smith and the derivative/class action plaintiff Lionel Glancy for a preliminary injunction against the voting of Taubman Centers shares controlled by A. Alfred Taubman and other members of the Taubman family. Attached at Exhibit B is a list of the documents I and my firm considered in connection with the preparation of this declaration.

2. Proxy solicitors specialize in overseeing proxy voting by shareholders of public corporations on matters ranging from the election of directors to the approval of mergers. Proxy solicitors also play an important role in supervising tender offers and analyzing their likely outcome. Among the tasks of a proxy solicitor are: managing and accounting for the receipt of proxies during a proxy solicitation; tracking the tendering of shares during a tender offer; contacting shareholders in order to determine their views on matters put to a shareholder vote; and, analyzing the composition of the shareholder base of the subject company in order to provide advice on the likely outcome of contested proxy solicitations or tender offers. As part of this work, proxy solicitors regularly study shareholder lists, publicly-filed reports by institutional shareholders, speak to shareholders, and review the results of similar proxy fights or tender offers. Proxy solicitors are also expected to be familiar with the rules related to shareholder voting of the various stock exchanges, such as the New York Stock Exchange.

3. Among the particular studies we made was to analyze the ownership of institutional shareholders of Taubman Centers as of June 30, 1998 (the last reporting period before the August, 1998 restructuring the legality of which plaintiffs SPG, Smith and Glancy have challenged in these cases), September 30, 1998 (the first reporting period after the August,

1998 restructuring), and September 30, 2002 (the last reporting period before the public announcement of Simon's takeover bid). In conducting this analysis, we reviewed reports on Form 13F filed by institutional shareholders of Taubman Centers SPG with the Securities and Exchange Commission in which these holders are required to disclose their holdings in public companies.

4. As a result of that analysis I concluded that the public shareholder base of Taubman Centers at the time of the 1998 restructuring was overwhelmingly comprised of institutional investors, including money managers, mutual funds, pension funds and insurance companies. I also concluded that this continues to be so: as of June 30, 1998, the public shareholder base of Taubman Centers was 82.31 percent comprised of institutions. As of September 30, 1998, it was 83.59 percent comprised of institutions. As of September 30, 2002, it was 89.22 percent comprised of institutions. These figures represent an overwhelming representation of institutional investors and, based on my experience, indicate that the shareholder base of Taubman Centers was and continues to be comprised of highly sophisticated investors (now, in addition to these institutions, speculative traders known as arbitrageurs), not so-called "retail" investors such as individual plaintiffs Smith and Glancy. Attached at Ex. C are tables listing the institutional holdings for these time periods as well as December 31, 1998.

5. We also analyzed the reaction of institutional shareholders to the August, 1998 restructuring by comparing reported institutional holdings in Taubman Centers on June 30, 1998 with reported institutional holdings on September 30, 1998 and December 31, 1998. Our analysis revealed that institutional holders, in general, took little or no action in response to the restructuring. The top 20 institutional holders as of June 30, 1998, excluding the General Motors

pension trusts, held 31.2 million shares or approximately 60 percent of the outstanding common shares. Those same shareholders held on September 30, 1998, 31.9 million shares, and on December 31, 1998, 31.7 million shares. In fact, the overall institutional ownership of common shares increased slightly between June 30, 1998 and December 31, 1998. As a proxy solicitor, I am of the opinion that the consistent and continuous ownership of institutional shareholders in the wake of the 1998 restructuring, a group known for its sophistication and sensitivity to changes in corporate governance, indicates that institutions believed that it continued to be desirable to invest in Taubman Centers. It also indicates that the institutions believed that the 1998 restructuring had not effected a change in the company that negatively impacted its value and that they did not object to the 1998 restructuring.

6. We also studied the election results for directors of Taubman Centers in the wake of the 1998 restructuring, The incumbent directors were overwhelmingly reelected, including, at the first annual meeting following the 1998 restructuring, Robert Taubman and Alfred Taubman. (Ex. D) Notably, Institutional Shareholder Services ("ISS"), the nation's leading voting advisory service and known in my business as a staunch defender of shareholder rights as the attached page from its web site makes clear (Ex. E), recommended that its clients, including institutional investors, mutual funds, and other fiduciaries, vote for the election of Robert and Alfred Taubman at that Spring, 1999 annual meeting. As ISS's report makes clear it made that recommendation with the knowledge that the Series B shares were entitled to one vote and that Taubman family members and other insiders held more than one third of voting power in the company. Ex. F at 3. In my opinion, ISS would not have made such a recommendation if it believed that the 1998 restructuring was inappropriate or disenfranchised shareholders in anyway. At subsequent annual meetings (2000 and 2001), the independent directors of Taubman

involved in the restructuring were also overwhelming reelected. (Ex. G) Given the sophisticated nature of the institutional investors who comprise the overwhelming majority of Taubman Centers' shareholder base, and the demonstrated propensity of some of these institutions to oppose directors who make governance decisions of which those institutions disapprove, these election results indicate to me as a proxy professional that the institutional shareholders did not consider the actions by the directors in connection with the 1998 restructuring to have been improper or inappropriate.

7. We also examined the vote on proxy solicitations in 1996 and 2000 that authorized the board of Taubman Centers to issue preferred stock without seeking further shareholder approval. The Series B Preferred Stock was issued pursuant to authorization obtained by the Taubman Centers board in the 1996 proxy solicitation. In 2000, after the 1998 restructuring and issuance of the Series B to the Taubman family and others was disclosed, shareholders approved an increase in the authorization by five times -- to 250 million shares. These so-called "blank check" preferred share provisions are studied carefully by institutional shareholders as the institutions understand that they can be used by company boards to make acquisitions more difficult. In both 1996 and 2000, the authorizations were approved with substantial institutional support. Exs. G and H. In my opinion, the fact that a second authorization was approved with institutional support after the 1998 restructuring means that institutions did not believe that the Taubman Centers board abused the authorization granted in 1996.

8. In connection with the preparation of this affidavit, we also examined voting by Series B shareholders since the 1998 restructuring. The Series B holders have

regularly voted in elections for directors and on other corporate matters. Based on my review, I am aware of no situation in which a vote of shareholders was required since 1998 in which the Series B shares have not been voted. It is also significant that the Series B were issued, it is my understanding, after being reviewed by the staff of the New York Stock Exchange. The New York Stock Exchange has rules designed to protect shareholder voting rights and based on my experience the Series B would not have been approved if it was viewed as disenfranchising public shareholders. Indeed, the Exchange makes clear that failure to abide by its "Voting Rights Policy" can result in de-listing. (Ex. I).

9. Our analysis of shareholdings in Taubman Centers also allowed me to determine that the bulk of Taubman Centers' common shares currently in the hands of investors and therefore able to be tendered in response to the SPG tender offer were acquired after the 1998 restructuring was completed and publicly known. In fact, we determined that of shares held today at least 31.4 million were acquired since September 30, 1998 and of the institutional shares held today that were acquired prior to the restructuring the bulk of those shares are in the hands of institutions that are net purchasers since the restructuring and which thereby demonstrated their lack of objection to the governance structure. Excluding Taubman family owned common shares, the number of shares acquired before 1998 by holders whose positions have either stayed the same or decreased since the restructuring (and keeping in mind that they likely decreased for reasons having nothing to do with the restructuring) is no more than 10 million of the 52 million outstanding shares, and probably less.

10. We also studied the extent to which institutions that own Taubman Centers stock also own stock of SPG, i.e., the extent to which there is "cross-ownership" of

Taubman Centers' and SPG. Based on that study, we concluded that not only is there significant cross-ownership -- the holders of 81.8 percent of shares held by Taubman Centers' public shareholders and 91.6 percent of its institutional shares (as of 9/30/02) also owned Simon shares -- but most of Taubman's largest shareholders have a significantly greater economic interest in Simon. For example, the top five institutional holders of Taubman Centers as of September 30, 2002 owned 40 percent of the public shares (based on 52 million common) -- equivalent to an approximate value of $297 million (as of 9/30/02). These same institutions owned 14.2 percent of Simon, an ownership level that likely means that the views of these institutions are given great weight by Simon. Because of Simon's significantly larger market capitalization, the economic interest of these institutions equaled (as of 9/30/02) approximately $952 million, far greater than their economic interest in Taubman Centers.

11. This cross-ownership will likely influence the decision of these institutions as to whether and at what price to tender their Taubinan Centers shares. A recent article published by Dow Jones newswire quoting Bob Steers, a senior executive at Cohen & Steers, one of Taubman's largest shareholders and a significant Simon shareholder, demonstrates this point. (Ex. J) Mr. Steers said that he favored the Simon tender offer as long as the price for Taubman Centers stock was not too high. Mr. Steers and other institutional owners with significant cross-ownership balance the gain they can make via the tender offer on their Taubman Centers shares versus the potential negative effect that paying a higher price will have on the Simon stock price. The conflicting dual interests of Mr. Steers and other institutional shareholders with cross ownership puts them in conflict with Taubman Centers shareholders not significantly invested in Simon as those shareholders would benefit from Simon's paying the highest possible price for Taubman Centers' shares. In fact, I have determined that the holders

of at least a majority of common shares tendered have a greater economic interest in Simon than Taubman and would therefore not favor Simon's paying the best price for Taubman.

12. We also studied the ability of Taubrnan Centers' shareholders to elect new directors, assuming that the Taubman family will vote its approximately 30 percent voting interest in favor of all incumbent directors. I concluded that it is entirely possible that new directors (with views on the proposed SPG takeover different from the current board) could be elected by the public shareholders. In fact, a vote of only 57 percent of shares held by current institutional investors and arbitrageurs would need to vote for an alternative slate in order to ensure the slate's election. Such percentages are readily achievable. Indeed, they were achieved in two recent proxy fights in which I was involved -- Hewlett-Packard and Weyerhaeuser. Notably, in the Weyerhaeuser proxy fight, the alternative slate gained control of the Willamette Board by overcoming a more than 35 percent family voting block and obtaining 84.4 percent of the institutional vote.

13. I am familiar with the fact that, in late January 2003, SPG and its partner Westfield America, Inc. announced that, if more than two-thirds of the outstanding common shares of Taubman Centers were not tendered by February 14, they would abandon their offer. I am, of course, also familiar with the fact that the Board of Directors of Taubman Centers has concluded that the tender offer of SPG is being made at a price inadequate to reflect the change of- control value of Taubman Centers. Based on what is set forth above, and additional facts set forth below, in my opinion the fact that more than two-thirds of the outstanding common shares were tendered by February 14 does not mean that the directors' judgment about price adequacy is incorrect. In the first place, tendering shareholders understood that the conditions of the tender

offer would not be met by February 14 or any time soon after and that they would be unlikely to part with their shares at the offered price. It therefore costs them nothing to tender their shares. Moreover, based on my experience as a proxy solicitor, institutional shareholders almost always tender their shares whenever an above market tender offer is received. Indeed, some institutions have policies that require them to tender their shares whenever an above-market tender offer is made. Ex. K.

14. It is also my opinion that the February 14 deadline was coercive. By threatening to walk away if a certain number of shares were not tendered, Simon/Westfield was in essence threatening to cause a significant dislocation in the market price of Taubman Centers stock. Many institutions likely tendered so as to avoid that significant market dislocation. It is worth noting that Taubman Centers-only shareholders may also feel coerced to accept a reduced Simon bid as they too are aware of the dual interests of Taubman Centers' larger shareholders and may fear that those larger shareholders would pressure Simon from making a higher bid.

15. Based on the foregoing, it is also my opinion that the purported February 14 tender deadline announced by SPG and Westfield is part and parcel of a public relations campaign that SPG has conducted in connection with its takeover effort. This campaign has included, among other things, publicizing its claims in this litigation.

16. I declare under penalty of peijury that the above statements are true and correct to the best of my knowledge, information and belief. Executed February 20, 2003.

*/s/ Alan M. Miller*
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*ALAN M. MILLER*

**UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF MICHIGAN**

**----------X**
**LIONEL Z. GLANCY, ON BEHALF OF Civil Action No. 02-75120**
**HIMSELF AND ALL OTHER SIMILARLY :**
**SITUATED,**

:

Plaintiffs,
**: DECLARATION OF**

vs. JAMES J. HANKS, JR.

:

ROBERT S. TAUBMAN, WILLIAM S.
TAUBMAN, LISA A. PAYNE, GRAHAM T. :
ALLISON, OETER KARMANOS, JR., ALLAN J.
BLOOSTEIN, JEROME A. CHAZEN AND S. :
PARKER GILBERT,

:

Defendants,

:

-and-

:

TAUBMAN CENTERS, INC.,

:

Nominal Defendant

**----------X**

I, James J. Hanks, Jr., declare as follows:

1. I am an attorney-at-law and member in good standing of the bar of the State of Maryland. I am a partner in the Baltimore office of Ballard Spahr Andrews & Ingersoll, LLP, a law firm with approximately 450 lawyers in various cities in the United States. For the past 33 years, I have practiced general corporation and securities law, with a particular emphasis over the past ten years on real estate investment trusts ("REITs"). Maryland is the state of formation of approximately 60% of the 177 publicly traded REITs. I estimate that I have provided advice on corporation law and other issues to approximately one-half of the REITs formed under Maryland law. I have also written various articles and participated in many

seminars on the formation and governance of REITs and mergers and acquisitions involving REITs.

2. In addition to my private practice of law, for the past ten years I have taught mergers and acquisitions, securities regulation, corporate governance and related courses at Cornell and Northwestern Law Schools. I have also taught classes and lectured at several other law schools in the United States and elsewhere.

3. I respectfully submit this declaration in opposition to the motions of plaintiffs for a preliminary injunction. More specifically, I submit this declaration in response to the declaration of Lucien Bebchuk filed by plaintiff Glancy making certain criticisms of the governance structure of Taubman Centers, Inc., a Michigan corporation ("Taubman Centers"), adopted by its Board of Directors in 1998. I note that Professor Bebchuk's declaration does not state that he has any knowledge of or experience in the governance of REITs, and that in his deposition in this matter he confirms that he has no such knowledge or experience. As further explained below, in my opinion that lack of knowledge and experience is a serious defect in Professor Bebchuk's qualifications in opining on the issues discussed in his declaration.

4. By way of general background, a REIT is a form of business entity, organized under state law, that is entitled to certain tax benefits if it meets certain requirements. Under the federal Internal Revenue Code (the "Code"), a REIT, among other requirements, must be beneficially owned by 100 or more persons; must distribute annually at least 90% of its taxable income to its shareholders; and, significantly for this situation, must not have five or fewer individuals who own, directly or indirectly, more than 50% in value of its outstanding stock at any time during the last half of the taxable year. If an entity qualifies as a REIT under

the Code, the income distributed by the REIT will be deductible from the REIT's taxable income, with the result that only the shareholders are taxed on the REIT's distributed earnings.

5. An umbrella partnership real estate investment trust ("UPREIT") is a structure in which a REIT forms a limited partnership of which the REIT is the general partner. The partnership (which, in recognition of its function, is often referred to as the "operating partnership" or "OP") may then acquire real estate assets in exchange for limited partnership interests in the OP, which are often convertible into shares of stock in the REIT. The REIT may also issue its own stock and contribute the proceeds to the operating partnership, which may then use these proceeds to acquire more properties. The UPREIT structure has become increasingly popular because the Code provides that contributions of appreciated property to a REIT are generally taxable transactions, while gain is generally not recognized on contributions of property to a partnership in exchange for limited partnership distributed interests.

6. It is common for holders of OP units in an UPREIT structure to have voting or other rights to participate in the governance of the REIT general partner.

7. In preparing this declaration, I have reviewed various pleadings, depositions and exhibits filed in Glancy v. Taubman et al., Civil Action No. 02-75120, and Simon Property Group, Inc. and Simon Property Acquisitions, Inc.
v. Taubman Centers, Inc., Civil Action No. 02-74799, including the minutes of the joint meeting of the Board of Directors of Taubman Centers and the Partnership Committee of Taubman Realty Group (the "Partnership") held on August 17, 1998 and the declaration of Professor Bebchuk. In my opinion, (a) the advice given to the Board and the Partnership Committee as to the governance provisions adopted in the Restructuring approved by the Board and the Partnership Committee of the Partnership at that joint meeting, to the effect that these provisions were appropriate for a

publicly-traded REIT and "place [Taubman Centers] in the middle of [its] peer companies," was sound and generally consistent with my own experience and familiarity with the ownership and governance structures at other publicly traded REITs; and (b) Professor Bebchuk's opinion that the shareholders of Taubman Centers were subjected to unfair or inappropriate governance arrangements by virtue of the Restructuring is unsound and reflects a lack of familiarity with the REIT industry.

8. As the basis for my opinion, I have relied upon several facts which either Professor Bebchuk overlooks entirely or the significance of which he does not, in my opinion, fully appreciate, including the following:

9. First, prior to the Restructuring, the principal economic value resided in the Partnership, as it owned the interests in the real estate assets and none of the Partnership's three principal owners -- Taubman Centers, GMPTS Limited Partnership, a Delaware limited partnership ("GMPT"), and the Taubman Family -- had anywhere near a controlling voting interest in the Partnership and none of them had the right to appoint a majority of the members of the Partnership Committee. The only significant asset of Taubman Centers was its non-controlling interest in the Partnership. After the Restructuring, Taubman Centers held a significant majority interest in the Partnership and there was only one other significant partner, the Taubman Family, which continued to hold a minority interest in an entity in which Taubman Centers now held a clear majority position. In these circumstances, it was entirely reasonable to the Taubman Family to protect itself by seeking voting rights at the level of the controlling partner, Taubman Centers, which were commensurate with the Taubman Family's economic interest in the Partnership.

10. Second, because, as noted in the prior paragraph, the principal pre-Restructuring economic value resided in the Partnership and because Taubman Centers did not own a controlling interest in the Partnership, it is idle to suggest that anyone would have been interested in making a bid for control of Taubman Centers rather for the Partnership or for its assets. The parts of the record in this litigation that I have reviewed do not indicate that before the Restructuring any person ever expressed an interest in acquiring control of Taubman Centers.

11. Third, there was little or no economic reason for a prospective hostile bidder to seek control of Taubman Centers prior to the Restructuring, as Taubman Centers did not have control of the Partnership. The acquisition by Taubman Centers of control over the Partnership was a substantial benefit for all stockholders of Taubman Centers and an important factor that the Board could weigh heavily in deciding to approve the Restructuring.

12. Fourth, the Taubman Family's significant voting interest in the entity with the ultimate control over the underlying real estate interests was part of the "initial bargain," as Mr. Bebchuk puts it, as the Taubman Family's interest in the Partnership was approximately the same at the time of the initial public offering (the "IPO") of Taubman Centers' shares as it was immediately before the Restructuring. And, as shown above, the Taubman Family's post-Restructuring voting rights in Taubman Centers were designed to, and did, give to the Taubman Family substantially similar influence over the real estate assets as it had had pre-Restructuring -- indeed, since the IPO.

13. Fifth, in 1996, the stockholders of Taubman Centers approved, by a vote of nearly 33,000,000 out of almost 34,000,000 votes cast, an amendment to Taubman Centers' Articles of Incorporation giving to the Board the "blank check" power to issue up to 50,000,000 shares of preferred stock of Taubman Centers. It was this very power that the Board exercised in

approving the issuance of the Series B Preferred Stock to A. Alfred Taubman, Robert S. Taubman and William S. Taubman as a part of the Restructuring. In 2000, less than two years after the Restructuring, Taubman Centers' stockholders approved, by a vote of over 59,200,000 out of slightly less than 69,300,000 votes cast, another amendment to the Articles of Incorporation, increasing the number of authorized shares of preferred stock subject to the Board's blank check power from 50,000,000 to 250,000,000 -- a five-fold increase in the number of authorized shares of preferred stock that the Board could cause Taubman Centers to issue under the same "blank check" power that the Board had exercised in approving the issuance of the Series B Preferred Stock to the Taubman Family less than two years earlier. This substantial affirmative stockholder vote effectively ratified the principle that unit holders in the Partnership were properly given voting rights in Taubman Centers in the Restructuring.

14. Professor Bebchuk variously attacks the Restructuring in general and the issuance of the Series B Preferred Stock in particular as an "impediment" to a takeover, an obstacle to a challenger in a proxy contest, a deprivation of the "ability" of the "public investors" to "determine the fate of the assets they collectively owned" and a "transfer of substantial value" to the Taubman Family. In my opinion these criticisms are ill-founded for the following reasons:

15. First, Professor Bebchuk complains that the provision in Article III of the Articles of Incorporation of Taubman Centers that limits the ownership of shares of Taubman Centers to not more than 8.23% (the "Excess Shares Provision") can only be waived by the affirmative vote of holders of two-thirds of the shares entitled to vote on the matter. However, Professor Bebchuk fails to mention that the Excess Shares Provision was contained in the Articles of Incorporation of Taubman Centers at the time of the IPO -- I.E., it was part of the "initial bargain," in Professor Bebchuk's words, between Taubman Centers and its investors --

and it has been there ever since. Moreover, the prospectus for the IPO specifically noted -- in two places -- that, in addition to aiding Taubman Centers in maintaining its status as a REIT under the Internal Revenue Code, "the effect of the Ownership Limit is to prevent any person from acquiring unilateral control of the Company." The Prospectus also noted -- again, in two places -- that an amendment to the Articles of Incorporation would require the vote of at least two-thirds of the outstanding common stock.

16. Second, Professor Bebchuk states, in paragraph 34 of his Declaration, that the issuance of the Series B Preferred Stock has "made a proxy contest challenge to [Taubman Centers'] board exceedingly difficult." This is simply not true. A proxy contest remains completely viable. According to Articles III, Section 2(b) of the Articles of Incorporation, the election of directors requires the affirmative vote of only a plurality of the votes cast at an election. The 29.8% voting right of the Taubman Family by no means assures the election of nominees supported by the Taubman Family, especially if a proxy contest is launched in connection with an attractive tender offer. Moreover, anyone seeking to launch a proxy contest can fortify its likelihood of success by buying additional common shares in the market.

17. Third, Professor Bebchuk is apparently unwilling to accept that the Taubman Family's economic interests as unit holders of the Partnership are substantially aligned with the public stockholders' interests in Taubman Centers, which controls the Partnership. Taubman Centers is the largest single unit holder, and thus the interests of the Taubman Family and the Taubman Centers' public shareholders are substantially aligned.

18. Fourth, Professor Bebchuk appears to assume that, as part of what he calls the "initial bargain" with the Taubman Centers public shareholders, no single shareholder had the power to block a merger or a waiver of the Excess Share Provision. In fact, at the time of

Taubman Centers' initial public offering, GMPT owned 19.8% of Taubman Centers' common stock. Under the Taubman Centers charter, it takes an affirmative vote of two-thirds of the voting stock to approve a proposed merger or waive the Excess Share Provision, not just two-thirds of those voting. As a result, in votes on these issues, a non-vote has the same effect as a vote against. Professor Bebchuk assumes an 80% turn-out in a shareholder vote, i.e., that 20% of the shareholders would choose not to vote. If this is a fair assumption, GMPT, by itself, could have blocked a merger or waiver of the Excess Share Provision, even if all of the other shareholders who voted in favor. Indeed, even if the turn-out was 85%, it would still be impossible for the shareholders to overcome GMPT's objection. Thus, under Professor Bebchuk's assumptions, the "initial bargain" with the Taubman Centers shareholders at the time of the initial public offering contemplated the presence of a shareholder with an effective blocking position with respect to mergers and waivers of the Excess Share Provision.

19. The fact that I have not responded to every statement or claim by Professor Bebchuk in his Declaration should not be construed as acquiescence in or agreement with any such statement or claim. For example, in paragraph 27 of his Declaration, Professor Bebchuk states that there is "economic evidence" that "entrenchment" of a board of directors by giving the board "the absolute power to block offers...operates to reduce shareholder value." Not only does this statement ignore the fact that it is a generally accepted principle of corporate law that a board of directors may "just say no" and refrain from putting a company up for sale, even in the face of a premium offer, but also Professor Bebchuk does not cite his "economic evidence."

I declare under penalties of perjury that the foregoing statements in this Declaration are true and complete to the best of my knowledge, information and belief.

**Executed on February 20, 2003:**

*/s/ James J. Hanks, Jr.*
*----------*
*James J. Hanks, Jr.*