UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)
of theSecurities Exchange Act of 1934

Filed by the Registrant ☑ Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

☐ Definitive Proxy Statement

☑ Definitive Additional Materials

☐ Soliciting Material under §240.14a-12

TAUBMAN CENTERS, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☑ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

The following language appeared as Item 7.01 Regulation FD Disclosure on Taubman Centers, Inc.'s Form 8-K filed June 22, 2020.

Taubman Centers, Inc. ("TCO"), furnishes as Exhibit 99.1 a copy of the redacted Complaint, dated June 10, 2020, filed and redacted by Simon Property Group, Inc., a Delaware corporation ("Simon"), and Simon Property Group, L.P., a Delaware limited partnership (the "Simon Operating Partnership") (the "Simon Complaint"), and furnishes as Exhibit 99.2 a copy of the Answer, Affirmative Defenses, and Counterclaim, dated June 17, 2020, filed by TCO and The Taubman Realty Group Limited Partnership, a Delaware limited partnership (the "Taubman Operating Partnership" and, together with TCO, the "Taubman Parties"), both relating to the pending action described in 8.01 of this Current Report on Form 8-K.

The information contained in Item 7.01 of this Current Report on Form 8-K is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section. The information contained in Item 7.01 of this Current Report on Form 8-K shall not be incorporated by reference into any registration statement or other document or filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing. Item 7.01 of this Current Report on Form 8-K shall not be deemed an admission as to the materiality of any information in this report that is provided in connection with Regulation FD.

The following language appeared as Item 8.01 Other Events on Taubman Centers, Inc.'s Form 8-K filed June 22, 2020.

As previously announced, on February 9, 2020, TCO, the Taubman Operating Partnership, Simon, the Simon Operating Partnership, Silver Merger Sub 1, LLC, a Delaware limited liability company and wholly owned subsidiary of the Simon Operating Partnership ("Merger Sub 1"), and Silver Merger Sub 2, LLC, a Delaware limited liability company and wholly owned subsidiary of Merger Sub 1 ("Merger Sub 2" and, together with Simon, the Simon Operating Partnership and Merger Sub 1, the "Simon Parties"), entered into an Agreement and Plan of Merger (the "Merger Agreement") under which, subject to the satisfaction or waiver of certain conditions, Merger Sub 2 will be merged with and into the Taubman Operating Partnership (the "Partnership Merger") and TCO will be merged with and into Merger Sub 1 (the "REIT Merger" and, together with the Partnership Merger, the "Mergers"). In connection with the Merger Agreement, on May 29, 2020, TCO filed a definitive proxy statement (the "Proxy Statement") with the U.S. Securities and Exchange Commission (the "SEC").

The following supplemental disclosures should be read in conjunction with the Proxy Statement, which should be read in its entirety. To the extent that information herein differs from or updates information contained in the Proxy Statement, the information contained herein supersedes the information contained in the Proxy Statement. Defined terms used but not defined herein have the meanings set forth in the Proxy Statement.

As previously announced, on June 10, 2020, Simon delivered to the Taubman Parties a notice purporting to terminate the Merger Agreement (the "Purported Termination Notice"). In the Purported Termination Notice, Simon claimed that that the Taubman Parties had suffered a Material Adverse Effect (as defined in the Merger Agreement) and had also breached their covenant to use commercially reasonable efforts to operate in the ordinary course of business. Later on June 10, 2020, TCO issued a press release stating that the Taubman Parties believe that Simon's purported termination of the Merger Agreement is invalid and without merit, and that Simon continues to be bound to the transaction in all respects. In their press release, the Taubman Parties also stated that they intend to hold Simon to its obligations under the Merger Agreement and the agreed transaction, and to vigorously contest Simon's purported termination and legal claims, and that the Taubman Parties intend to pursue their remedies to enforce their contractual rights under the Merger Agreement, including, among other things, the right to specific performance and the right to monetary damages, including damages based on the transaction price.

Also on June 10, 2020 Simon and the Simon Operating Partnership filed a complaint (the "Simon Complaint"), styled as *Simon Property Group, Inc. and Simon Property Group, L.P.* v. *Taubman Centers, Inc. and Taubman Realty Group, L.P.*, Case No. 2020-181675-CB in the State of Michigan Circuit Court for the Sixth Judicial Circuit (Oakland County) (the "Court"), seeking a declaratory judgment that, among other things, the Taubman Parties had suffered a Material Adverse Effect and had breached their covenant in the Merger Agreement to use commercially reasonable efforts to operate in the ordinary course of business and as a result Simon's purported termination of the Merger Agreement was valid.

On June 17, 2020, the Taubman Parties filed an Answer, Affirmative Defenses, and Counterclaim (the "Taubman Answer and Counterclaim") in response to the Simon Complaint, which added Merger Sub 1 and Merger Sub 2 as counterclaim defendants. In the Taubman Answer and Counterclaim, the Taubman Parties deny that the Taubman Parties had suffered a Material Adverse Effect or that they had breached their covenant to use commercially reasonable efforts to operate in the ordinary course of business, consistent with past practices, and therefore the Merger Agreement could not be terminated by the Simon Parties. Additionally, in the Taubman Answer and Counterclaim the Taubman Parties seek to have the Court enter a judgment of specific performance, compelling the Simon Parties to comply with their obligations under the Merger Agreement and consummate the Transactions. Additionally, the Taubman Parties seek a declaratory judgment that, due to the Simon Parties' repudiation and material breach of the Merger Agreement by delivering the Purported Termination Notice and failing to use reasonable best efforts to consummate the Transactions, the Taubman Parties have the right to seek damages, including based on the loss of the premium offered to the Taubman Parties' equity holders.

Additionally, on June 17, 2020, the Taubman Parties filed with the Court a Motion for Expedited Proceedings, requesting that the Court set an expedited schedule for the proceedings in the above action, with a five-day non-jury trial beginning on August 24, 2020. The Simon Parties expect to file a response to this motion on June 22, 2020. The Court has scheduled a hearing on this motion for June 24, 2020.

As previously announced, the Special Meeting of Shareholders, at which TCO shareholders will be asked to adopt and approve the Merger Agreement, remains scheduled for June 25, 2020, at 10:00 A.M,. at Taubman's headquarters in Bloomfield Hills, Michigan. In light of Simon's Purported Termination Notice and lawsuit, it can be expected that the Simon Parties will not proceed to consummate the Mergers even if Taubman shareholder approval is received.

The following language appeared as Item 9.01 Financial Statements and Exhibits on Taubman Centers, Inc.'s Form 8-K filed June 22, 2020.

Exhibit	Description
99.1	Simon Complaint (redacted), dated June 10, 2020
99.2	Taubman Answer and Counterclaim, dated June 17, 2020

FORWARD-LOOKING STATEMENTS

This Current Report on Form 8-K may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements reflect management's current views with respect to future events and financial performance. Forward-looking statements can be identified by words such as "will", "may", "could", "expect", "anticipate", "believes", "intends", "should", "plans", "estimates", "approximate", "guidance" and similar expressions in this Current Report on Form 8-K that predict or indicate future events and trends and that do not report historical matters. The forward-looking statements included in this Current Report on Form 8-K are made as of the date hereof. Except as required by law, the Company assumes no obligation to update these forward-looking statements, even if new information becomes available in the future. Actual results may differ materially from those expected because of various risks and uncertainties, including the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement; the inability to complete the proposed transaction due to the failure to obtain, on a timely basis or otherwise, shareholder approval for the proposed transaction or the failure to satisfy other conditions to completion of the proposed merger; the outcome of any litigation between Simon and Taubman related to the transaction; the results of the Motion for Expedited Proceedings filed by the Taubman Parties on June 17, 2020; the possibility that the anticipated benefits from the transaction will not be fully realized; risks related to disruption of management's attention from the Company's ongoing business operations due to the proposed transaction; the effect of the announcement of the proposed transaction on the Company's relationships with its tenants, key personnel and other business partners, operating results and business generally; general economic conditions, and other factors. Such factors include, but are not limited to: changes in market rental rates; unscheduled closings or bankruptcies of tenants; relationships with anchor tenants; trends in the retail industry; challenges with department stores; changes in consumer shopping behavior; the liquidity of real estate investments; the Company's ability to comply with debt covenants; the availability and terms of financings; changes in market rates of interest and foreign exchange rates for foreign currencies; changes in value of investments in foreign entities; the ability to hedge interest rate and currency risk; risks related to acquiring, developing, expanding, leasing and managing properties; competitors gaining economies of scale through M&A and consolidation activity; changes in value of investments in foreign entities; risks related to joint venture properties; insurance costs and coverage; security breaches that could impact the Company's information technology, infrastructure or personal data; costs associated with response to technology breaches; the loss of key management personnel; shareholder activism costs and related diversion of management time; terrorist activities; maintaining the Company's status as a real estate investment trust; changes in the laws of states, localities, and foreign jurisdictions that may increase taxes on the Company's operations; and changes in global, national, regional and/or local economic and geopolitical climates.

You should review the Company's filings with the Securities and Exchange Commission, including "Risk Factors" in its most recent Annual Report on Form 10-K and subsequent quarterly reports, for a discussion of such risks and uncertainties.

IMPORTANT INFORMATION ABOUT THE TRANSACTION AND WHERE TO FIND IT

In connection with the proposed transaction between the Company and Simon, the Company filed with the U.S. Securities and Exchange Commission (the "SEC") a definitive Proxy Statement of the Company (the "Proxy Statement") on May 29, 2020 and commenced mailing the Proxy Statement to its shareholders. This Current Report on Form 8-K is not intended to and does not constitute the solicitation of any proxy, vote or approval. INVESTORS AND SECURITY HOLDERS OF THE COMPANY ARE URGED TO READ THE PROXY STATEMENT AND OTHER RELEVANT DOCUMENTS FILED OR TO BE FILED WITH THE SEC CAREFULLY AS THEY BECOME AVAILABLE BECAUSE THEY CONTAIN IMPORTANT INFORMATION ABOUT THE COMPANY, SIMON, THE PROPOSED TRANSACTION AND RELATED MATTERS. Investors and security holders are able to obtain free copies of the Proxy Statement and other documents filed with the SEC by the Company through the website maintained by the SEC at www.sec.gov. **In addition, investors and security holders are able to obtain free copies of the documents filed with the SEC by the Company in the Investor Relations section of the Company's website at http://investors.taubman.com/investors or by contacting Erik Wright, Manager, Investor Relations at ewright@taubman.com or (248) 258-7390.**

PARTICIPANTS IN THE SOLICITATION

The Company and certain of its directors, executive officers and employees may be considered participants in the solicitation of proxies in connection with the solicitation of proxies from shareholders of the Company in favor of the proposed transaction. Information regarding the persons who may, under the rules of the SEC, be deemed participants in the solicitation of the shareholders of the Company in connection with the proposed transaction, including a description of their respective direct or indirect interests, by security holdings or otherwise, is included in the Proxy Statement described above filed with the SEC. Additional information regarding the Company's directors and executive officers is also included in the Company's proxy statement for its 2019 Annual Meeting of Shareholders, which was filed with the SEC on April 30, 2019, and its Annual Report on Form 10-K for the year ended December 31, 2018, which was filed with the SEC on February 28, 2019. These documents are available free of charge as described above.

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/efiling.

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
OAKLAND COUNTY

SIMON PROPERTY GROUP, INC. and SIMON PROPERTY GROUP, L.P Plaintiffs, v. TAUBMAN CENTERS, INC. and TAUBMAN REALTY GROUP, L.P., Defendants.	2020-181675-CB Case No. JUDGE JAMES M. ALEXANDER Honorable

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this complaint.

This case involves a business or commercial dispute as defined in MCL 600.8031 and meets the statutory requirements to be assigned to the business court.

COMPLAINT

Plaintiffs Simon Property Group, Inc. ("SPG") and Simon Property Group L.P. ("SPG Operating Partnership") (collectively "Simon"), by and through their undersigned counsel, file this Complaint against Defendants Taubman Centers, Inc. ("TCO") and Taubman Realty Group, L.P. ("TRG") (collectively, "Taubman" or "Defendants"), upon knowledge as to matters relating to themselves and upon information and belief as to all other matters, and allege as follows:

NATURE OF THE CLAIMS

1. On February 9, 2020, after extensive negotiations, Simon agreed to acquire most of Taubman—a retail real estate company that promotes itself as having the "most productive" shopping centers in the United States—for approximately $3.6 billion. Taubman agreed that Simon could terminate the deal if Taubman suffered a Material Adverse Effect

("MAE") or if Taubman breached its covenant to operate its business in the ordinary course until closing. The parties explicitly agreed that a "pandemic" would be an MAE, if it disproportionately affected Taubman "as compared to other participants in the industries in which [it] operate[s]." On June 10, 2020, Simon properly exercised its right to terminate the acquisition agreement (the "Agreement"; Ex. A) for two independent reasons. First, the COVID-19 pandemic constitutes an MAE because it has had a uniquely devastating and disproportionate effect on Taubman compared with other participants in the retail real estate industry. Second, Taubman has repeatedly violated the ordinary course covenant in the wake of the pandemic, causing serious and irreparable damage to its business, by, among other violations, failing to make essential cuts in operating expenses and capital expenditures and financing those unnecessary expenditures by borrowing hundreds of millions of dollar [redacted]. Simon brings this action for a declaration that it validly terminated the Agreement and to recover damages caused by Taubman's breaches of contract.

2. One month after the Agreement was signed, the entire United States-and particularly Taubman—began to undergo a radical change. On March 11, COVID-19 was declared a pandemic by the World Health Organization ("WHO"). On March 13, President Trump declared a national emergency, and in the days immediately following, state and local officials across the country began issuing "stay-at-home," "shelter-in-place" and similar orders. Many retail stores were quickly forced to close and on March 19, Taubman shut almost all of its U.S. properties. While Taubman's shopping centers are now beginning to reopen, they are emerging in a fundamentally changed environment. Taubman's properties are uniquely vulnerable to the post COVID-19 retail environment for a multitude of reasons, including

because they are primarily indoor properties that many consumers will avoid, are heavily dependent on a tourism industry that has been decimated, serve wealthy consumers who are now more likely to shop online and feature high-end upscale stores that are suffering heavily from the economic effects of the pandemic.

3. The vast majority of Taubman's properties are indoor malls in densely populated areas. Indoor malls account for more than 80% of Taubman's properties and more than [redacted] of its net operating income. Taubman's competitors, in contrast, have far more openair malls, outlet centers, strip malls and outdoor "lifestyle centers" or "power centers" featuring large retailers such as Home Depot and Target. As many financial analysts have observed, and as the superior performance of outdoor shopping centers during the pandemic already clearly demonstrates, the indoor malls that Taubman owns and operates are the last types of retail real estate properties that most consumers will want to visit on a long-term basis after COVID-19.

4. Taubman has also repeatedly conceded that its business is heavily dependent on tourism. Taubman has promoted itself on the basis that "[m]any of [its] malls are conveniently located near airports and ports of entry that welcome millions of tourists." For example, according to Taubman, its Dolphin Mall in Miami— [redacted] which generates roughly [redacted] of Taubman's net operating income-draws 70% of its visitors from tourists, and tourists account for an even higher percentage of tenant sales given their higher than average spending. The number of tourists visiting Taubman's properties has dropped exponentially because of COVID-19 and will not recover any time soon.

5. Moreover, Taubman has distinguished itself from competitors based on its "premier portfolio" of upscale shopping malls that cater to a wealthy clientele, but those malls are at a severe disadvantage in the post-pandemic environment. As one would expect and

Taubman has repeatedly emphasized, its upscale malls depend upon consumers who are wealthier and better educated than those of its competitors. Those consumers are far more able and likely to use online shopping. From the beginning of the pandemic, online retailers (including the online operations of Taubman's retailer tenants) have seen an exponential growth in sales from both new and existing consumers, generating a precipitous sales decline at brick-and-mortar stores (including those in Taubman's malls). The changes in consumer behavior driven by the pandemic will be both permanent and significant—for example, Green Street Advisors, a leading real estate research firm, recently wrote that "[o]ne of the most significant disruptions to long-term demand will be caused by an accelerated shift towards e-commerce and away from physical stores."[1] Even though Taubman's centers are now slowly beginning to reopen, there is no doubt that a large proportion of its consumers, who have been shopping online in the past few months, will keep doing so. Those consumers are now even more accustomed to online transactions and are fearful of risking their health, and the health of their families, at indoor malls and brick-and-mortar shops.

6. Taubman's centers also feature a much higher percentage of high-end stores selling upscale products—such as Saks, Tiffany & Co., and now-bankrupt Neiman Marcus—compared with other retail real estate properties. With U.S. unemployment predicted to hit unprecedented levels in the second quarter of this year and to remain at critically high levels for some time, demand for the high-end goods sold by the upscale retailers on which Taubman's malls depend is, and will be, severely depressed. Conversely, Taubman has far fewer retailers selling the types of essential goods that consumers are still buying in physical stores-for example, Taubman's competitors have many properties that are anchored by grocery stores or

1 Green Street Advisors, The End of the Beginning, Apr. 16, 2020, at 5.

"big-box" stores selling essential goods, which are some of the few retailers that have experienced post-pandemic sales increases.

7. Taubman's severe financial problems, described below, will magnify the dire effects of the pandemic on its business. To survive, Taubman now must spend significant amounts redeveloping its malls to secure new tenants to replace key anchors such as Neiman Marcus and JCPenney (which are both in bankruptcy), Sears, and other core tenants. A recent Bank of America analysis isolated Taubman as the retail real estate investment trust most dependent on higher quality and specialty department stores, many of which are facing grave financial difficulty. With an excess supply of retail real estate available, property owners must offer generous incentives to attract new tenants. But Taubman is severely constrained for cash and has insufficient resources to repurpose space vacated by its failing anchors and attract new tenants, who have abundant options and significant bargaining power.

8. For all these (and other) reasons, the COVID-19 pandemic has had, and will continue to have, a particularly devastating and disproportionate effect on Taubman compared with its competitors in the retail real estate industry, and has therefore caused an MAE.

9. Beyond the occurrence of an MAE, Simon also validly terminated because Taubman has breached the Agreement and irreparably damaged its business by failing to take required ordinary course steps to cut operating expenses and capital expenditures and prudently manage its financial resources to mitigate the profound effects of the pandemic. Taubman has been financially devastated. Taubman reported that, because of the pandemic, [redacted] This is far worse than the experience of its competitors.

10. Even though they are under less pressure than Taubman, Taubman's competitors have taken responsible steps to dramatically reduce operating and corporate expenses, recognizing that such reductions are critical to the survival and long-term interests of their businesses, investors, employees and other stakeholders. Simon, for example, made significant property operating expense reductions immediately upon the onset of the pandemic. In addition, Simon reluctantly furloughed or terminated more than half of its employees. Simon's independent board directors suspended payment of their cash retainer fees. CEO David Simon deferred payment of the entirety of his 2019 cash bonus, waived his 2020 base salary, and deferred his 2020 Long-Term Incentive Plan equity award. Simon also reduced the base salaries of its executive officers by 25-30% and slashed its planned capital expenditures by more than $1 billion (a roughly 70% reduction).

11. But Taubman has taken no comparable measures. It has not announced *any* headcount or employee salary reductions. Taubman has also made only small deferrals of its capital expenditures and trivial cuts to operating expenditures. Taubman will pay a high price for decisions of company management that ignore the financial effects of the pandemic. Taubman's failure to take timely action means that its operations, its employees, and its other stakeholders will suffer far more in the future.

12. To fund its enormous and unnecessary expenditures, Taubman has borrowed hundreds of millions of dollars. With Simon's approval, Taubman drew down $350 million on its primary $1.1 billion credit line at the end of March, virtually the entire amount available,

[redacted] Responsible financial planning is a cornerstone of ordinary course business operations. [redacted] Taubman's enormous borrowing is particularly troublesome given that, even at the time of its $350 million drawdown in mid-March—at the start of the pandemic, when Taubman was in a far better financial position —[redacted]

13. As a result of Taubman's failure to operate in the ordinary course, even more extreme actions will be necessary in the future in an attempt to rescue its business. Far from preserving jobs or helping its employees, Taubman's actions will ultimately jeopardize more jobs, harm its employees, and damage the company, even as Taubman's executives maintain their lucrative compensation. Simon required Taubman to promise to act in the ordinary course, and made that promise a condition of closing, precisely to avoid inheriting a company damaged by these types of actions.

14. Because Taubman has suffered an MAE and violated its covenant to operate in the ordinary course, Simon seeks damages as well as a declaration that Simon has validly terminated the Agreement and has no further obligations thereunder.

PARTIES

15. Plaintiff SPG is a Delaware corporation with its principal place of business in Indianapolis, Indiana. SPG is a self-administered and self-managed real estate investment trust ("REIT").

16. Plaintiff SPG Operating Partnership is a Delaware limited partnership with its principal place of business in Indianapolis, Indiana. SPG is the managing general partner of

Plaintiff SPG Operating Partnership. Through SPG Operating Partnership, SPG is engaged in the ownership, operation, management, and development ofretail real estate.

17. Defendant TCO is a Michigan corporation with its principal place of business at 200 East Long Lake Road, Suite 300, Bloomfield Hills, Michigan. TCO is a self-managed and self-administered retail REIT.

18. Defendant TRG is a Delaware limited partnership with its principal place of business at 200 East Long Lake Road, Suite 300, Bloomfield Hills, Michigan. Through TRG, TCO is engaged in the ownership, operation, management, and development ofretail real estate. TCO and TRG operate 21 high-end shopping centers in the United States and 3 in Asia.

JURISDICTION AND VENUE

19. In the Agreement, TCO and TRG each "irrevocably consent[ed] to submit itself to the exclusive jurisdiction of the ... courts in the State of Michigan ... in the event any dispute, claim or cause of action arises out of or relates to this Agreement." (Ex. A§ 9.08(b).) TCO and TRG also agreed that "all claims, actions, proceedings or counterclaims (whether based on contract, tort or otherwise) arising out of or relating to this Agreement ... shall be governed by, and construed in accordance with, the laws of the State of Michigan." (Ex. A§ 9.08(a).)

20. This Court has personal jurisdiction over TCO under MCL 600.711(1)-(3) because TCO is incorporated in Michigan, TCO's primary place ofbusiness is in Michigan, and TCO has consented to jurisdiction in Michigan.

21. This Court has personal jurisdiction over TRG under MCL 600.721(2)-(3) because TRG has its primary place of business in Michigan and TRG has consented to jurisdiction in Michigan.

22. This Court has subject matter jurisdiction pursuant to MCL 600.605.

23. Venue is proper, under MCL 600.162l(a), because TCO's principal place of business is located in Oakland County.

FACTS

Simon and Taubman Execute the Agreement on February 9, 2020

24. On February 9, 2020, Simon and Taubman executed the Agreement, which contemplated Simon purchasing a majority interest in Taubman for approximately $3.6 billion in cash. The Agreement provided that, if all of its conditions to closing were met, Simon would acquire all TCO common stock for $52.50 per share in cash (and thereby acquire TCO's approximate 70% interest in TRG) and acquire approximately an additional 10% of TRG from the Taubman family (bringing Simon's effective total interest in TRG to 80%), and the Taubman family would retain a 20% interest in TRG (the "Transaction").

25. Simon agreed to pay a large premium for Taubman. The $52.50 price was a 98. 7% premium to TCO 's closing price on January 31 ($26.42), the last trading day before market rumors about the Transaction. It was a 51 % premium to TCO's closing price on February 7, 2020 ($34.67), the last trading day before the Agreement was announced.

26. In return, Simon insisted that the Agreement—a 90-page document negotiated among sophisticated commercial parties and their counsel—contain substantial protections. Because the Transaction was not expected to close for months after signing and Taubman would continue operating its business as a separate business in the meantime, Simon negotiated to protect itself against adverse changes in Taubman's business and mismanagement by Taubman during that period. Simon therefore required the Agreement to contain several significant conditions to closing.

27. One critical condition is that "[s]ince the date of[the] Agreement, there shall not have occurred and be continuing any [Taubman] Material Adverse Effect." (Ex. A § 7.02(c).) The Agreement defines Material Adverse Effect (as previously defined, "MAE") as:

> Any effect, change, event or occurrence that, individually or in the aggregate, has a material adverse effect on the business, assets, liabilities, results of operations or financial condition of a [Person] and its Subsidiaries (and its unconsolidated joint ventures), taken as a whole; provided, however, that none of the following, and no effect, change, event or occurrence arising out of, or resulting from the following, shall constitute or be taken into account, individually or in the aggregate, in determining whether a Material Adverse Effect has occurred or may occur: (ii) changes generally affecting the industries in which such Person and its Subsidiaries operate; ... (iii) ... changes in Applicable Law; ... (vi) ...pandemics, ... ; provided further, however, that any effect, change, event or occurrence referred to in clauses (i), (ii), (iii), (v) and (vi) may be taken into account in determining whether or not there has been or may be a Material Adverse Effect to the extent such effect, change, event or occurrence has a disproportionate adverse effect on such Person and its Subsidiaries, taken as a whole, as compared to other participants in the industries in which such Person and its Subsidiaries operate.

(Ex. A§ 9.03 (emphases added).)

28. Thus, the Agreement specifically provides that an MAE can be caused by, among other things, "changes in Applicable Law," a "pandemic" or "changes generally affecting the industries in which [Taubman] operates," provided that those events have a "disproportionate adverse effect on [Taubman], as compared to other participants in the industries in which [it] operate[s]." (Ex. A§ 9.03.) It is abundantly clear that Taubman has suffered disproportionately compared with other participants in the retail real estate industry and has therefore suffered an MAE and Simon has no obligation to close the transaction.

29. Another condition to closing is that "the representations and warranties of [Taubman] contained in Section 3.06(a) shall be true and correct in all respects at and as of the Closing Date as if made at and as of such time" (Ex. A§ 7.02(a)(ii)), and that Taubman's other

representations and warranties "shall be true and correct in all respects at and as of the Closing Date as if made at and as of such time ... except where the failure of such representations and warranties to be true and correct ... would not reasonably be expected to have a[n]" MAE. *(Id.* § 7.02(a).) In Section 3.06(a), Taubman represented that "[t]rom September 30, 2019 ... there has not been any effect, change, event or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a [Taubman] Material Adverse Effect." In Section 3.07, Taubman further represented that it and its subsidiaries did not have "any liabilities of any nature (whether accrued, absolute, contingent, known, unknown, direct, indirect or otherwise)," except for (among other exceptions) liabilities "that, individually or in the aggregate, have not had, or would not reasonably be expected to have," an MAE. Because Taubman has suffered an MAE since September 30, 2019 and has new liabilities that would reasonably be expected to have an MAE, Taubman's representations and warranties are no longer correct, meaning that the relevant conditions to closing have failed and Simon may terminate the Agreement. (Ex. A § 8.0l(e).)

30. A third critical condition to closing is that Taubman "shall have performed in all material respects all covenants set forth in th[e] Agreement required to be performed by [it] under th[e] Agreement at or prior to the Closing Date." (Ex. A § 7.02(b).) One such covenant, which was essential to Simon, is an "ordinary course" covenant—Taubman's promise in Section 5.0l(a) that it:

> [S]hall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to ... conduct its business in the ordinary course of business consistent with past practices and, during 2020, in accordance with its operational budget delivered by [Taubman] to [Simon] prior to the execution of this Agreement (other than immaterial deviations therefrom).

(Ex. A§ 5.0l(a).) Simon specifically required Taubman to act in the ordinary course in order to protect the value of Simon's purchase while Taubman is still under the control and management of its own officers and directors. Because Taubman did not perform this covenant "in all material respects" and irreparably violated it, Simon also validly terminated. (Ex. A§§ 7.02(b); 8.0l(e).)

After Execution of the Agreement, COVID-19 Becomes A Pandemic

31. In late December 2019, China reported to the World Health Organization ("WHO") that it had detected a novel respiratory illness—now known as COVID-19—in Wuhan, China. In mid-January, China placed Wuhan and the rest of the Hubei province under quarantine to contain global transmission. Taubman temporarily closed its two shopping centers in China around this time. On January 31, President Donald Trump announced travel restrictions from China to prevent COVID-19 spreading to the United States.

32. At that point, and throughout February, federal, state, and local government officials emphasized their belief that COVID-19 was largely contained abroad and that the public health risk in the United States remained low. As late as February 26, 2020—two weeks after the Agreement was signed—President Trump stated that "the risk to the American people remains very low," noting that only 15 people had contracted COVID-19 in the United States.

33. A few days later, on February 29, the United States reported the first COVID-19-related death on American soil, and the next day, on March 1, the first COVID-19 case in New York. New York Governor Andrew Cuomo emphasized at the time, however, that there was "no reason for undue anxiety—the general risk remains low in New York." Michigan's Chief Medical Executive similarly stated that corona virus posed a "low" risk to the public.

34. By mid-March, however, the spread of COVID-19 had become clear, and public officials began to revise their guidance. On March 11, the WHO characterized COVID-19 as a pandemic, and the White House suspended travel from most European countries. Two days later, on March 13, President Trump declared a national emergency. States, counties, and localities quickly started to issue "stay-at-home" orders—beginning with San Francisco and the Bay Area of California's order on March 16—many of which required non-essential businesses temporarily to close in-person activities. Governments across the country required the public to "social distance" by remaining six feet from each other.

35. On March 19, Taubman closed all of its U.S. properties except two outdoor centers, and it subsequently closed those centers. In many cases, these closures were mandated by state, county, and municipal orders to stay-at-home, shelter-in-place, and/or close "nonessential" businesses.

Taubman Is Disproportionately Impacted by COVID-19

36. The COVID-19 pandemic and the resulting countermeasures have stimulated profound changes in consumer behavior, which have significantly affected businesses across the country. But not all of them have been affected equally. The effect on Taubman's business has been—and will continue to be—disproportionately severe compared with other participants in the retail real estate industry. That reflects significant differences between Taubman and other participants in that industry, including those mentioned in the following discussion.

37. Enclosed Malls: Taubman's shopping centers are primarily indoors—an enormous disadvantage in the post-COVID-19 world as many consumers avoid confined interior spaces. Enclosed shopping centers comprise more than 80% of Taubman's centers—Taubman has 19 enclosed centers (16 in the U.S. and 3 in Asia) and just 5 open-air centers. Even more

significantly, enclosed centers account for more than [redacted] of Taubman's net operating incomeTaubman's open-air centers together produce less than [redacted] of net operating income. Other retail real estate owners, in contrast, have a far greater proportion of open-air properties and are therefore much better positioned to succeed after COVID-19. For example, almost half of Simon's own centers are open-air, and many other retail REITs, such as Federal Realty Investment Trust, Regency Centers, and Tanger Outlets, have no or almost no enclosed centers at all.

38. There is a clear consensus that, because consumers prefer outdoor spaces and more tenants in open-air shopping centers sell essential goods, owners of those centers will be substantially better off in the long-term. This is already proving true. For example, Taubman competitors Regency Centers, Federal Realty Investment Trust ("FRT"), and SITE Centers—all of which have a substantial proportion of open-air properties—each collected more than half of their expected April 2020 rent, [redacted] FRT's CEO emphasized during its Ql 2020 earnings call that it is well positioned for the long term because its properties are "open-air" and "not enclosed buildings," and it is "hard to imagine" that "open air versus enclosed [is] ... not an advantage."[2] He added: "it's not hard to see how the steady drumbeat of enclosed mall tenants who have been moving at least partly to open-air shopping centers over the past several years doesn't accelerate meaningfully in the wake of COVID-19."[3]

39. Financial analysts have also emphasized that enclosed malls will suffer compared with outdoor shopping centers. Bank of America analysts estimated that enclosed

2 Transcript, Ql 2020 Federal Realty Investment Trust Earnings Call, May 7, 2020, at 4, 12.

3 *Id.* at 5.

malls will be hit "twice as hard" by the pandemic.[4] Citi analysts predicted that "strip centers [will] bounce back more quickly than malls given the open-air nature of the assets as people gain comfort to venture out of their houses again."[5] Piper Sandler has echoed that enclosed malls will be "hit harder" than open-air centers for precisely this reason. [6] Coresight Research has commented, based on its analysis of survey results, that "[s]hoppers may perceive off-mall centers, such as open-air centers, as safer" than traditional malls and that the COVID-19 crisis "will have more lasting impacts for traditional malls than for other types of retail locations."[7] And Gap Inc.-which owns the Gap, Old Navy, and Banana Republic chains—has indicated that it expects its stores in open-air centers to have a significant competitive advantage.

40. Tourism Dependence: According to Taubman, its high-end malls are also more dependent on tourism—an industry that is among the worst hit by the COVID-19 pandemic and expected to suffer for many years—than those of its competitors. Taubman's website has an entire section devoted to tourism, touting that "[m]any of [its] malls are conveniently located near airports and ports of entry that welcome millions of tourists."[8] Taubman has also discussed how numerous centers in its portfolio are particularly reliant on tourism. For example:

- Taubman's Dolphin Mall in Miami, Florida—[redacted] which produces roughly [redacted] of its net operating income-is, in Taubman's words, "a top destination for international tourists and local shoppers

4 Bank of America Securities, Retail REITs: Factoring BofA's Latest Forecast for a Deeper Recession w/ Slower Rebound, Apr. 7, 2020, at 2.

5 Citi Research, Retail REITs: Rating, Target, & Estimate Changes with our 1 Q20 PMQ, Apr. 7, 2020, at 6-7.

6 Piper Sandler, Retail Broker Industry Expert Call - Let's Talk About Rents, Baby, Mar. 27, 2020, at 1.

7 Coresight Research, Coronavirus Insights: US Survey Update-Consumers' Post-Lockdown Concerns Increase Further (Full Report), May 4, 2020, at 3.

8 Taubman, Unique Shopping and Travel Experiences, available at: http://www.taubman.com/partnerships/tourism-partnerships (last accessed: May 29, 2020).

in South Florida."[9] According to Taubman, "[t]ourists account for roughly 70% of Dolphin Mall's shopper base," and "[a]pproximately 95% of tourists come from international origins (the majority from Latin America)." [10] Further, "[d]omestic and international tourists spend 1.5 times that oflocal shoppers."[11]

- For Taubman's Beverly Center in Los Angeles, California—which produces more than [redacted] of Taubman's net operating income—"[a] large portion of. .. visitors, roughly 34 percent, are tourists. Approximately 70 percent of these visitors come from international origins, with China and Australia at the forefront."[12]
- Taubman's City Creek Center in Salt Lake City, Utah, is "adjacent to top tourist destinations" that "attract nearly seven million visitors each year."[13]
- Taubman's International Market Place in Waikiki, Hawaii, is also heavily reliant on a large tourist base, including "Japanese, Korean and Chinese tourists."[14]
- Taubman's Waterside Shops Center, in Naples, Florida, is reliant on the area's "over 1.8 million tourists who spend nearly $2 billion."[15] Indeed, the impact of

9 Taubman, *Fact Sheet: Dolphin Mall,* available at: http://www.taubman.com/media/2631/factsheet2019_dol_20190701.pdf (last accessed: May 29, 2020).

10 *Id.*

11 *Id.*

12 Taubman, *Fact Sheet: The Beverly Center,* available at: http://www.taubman.com/media/2654/factsheet2019_bev_20190618.pdf (last accessed: May 29, 2020).

13 Taubman, *Fact Sheet: City Creek Center,* available at: http://www.taubman.com/media/2629/factsheet2019_ccc_20191121.pdf (last accessed: May 29, 2020).

14 Taubman, *Fact Sheet: International Marketplace,* available at: http://www.taubman.com/media/2634/factsheet2019_imp_20190509.pdf (last accessed: May 29, 2020).

15 Taubman, *Fact Sheet: Waterside Shops,* available at: http://www.taubman.com/media/2478/factsheet2019_wat_20190531.pdf (last accessed: May 29, 2020).

tourism on this center is so substantial that"[f]rom October to April, the population of the surrounding area nearly doubles."[16]

- Taubman's Gardens on El Paseo, in Palm Desert, California, similarly relies on the fact that "[b]etween November and May, Coachella Valley's population grows more than 3 7% due to the influx of seasonal residents. The population growth of the surrounding affluent communities is even more substantial."[17]

- Taubman's Mall of San Juan in San Juan, Puerto Rico, is in "a leading Caribbean tourism destination ... The shopping center is located 2.5 miles from the San Juan financial district (Hato Rey) and less than 2 miles from the Luis Mufioz Marin International Airport. The airport sees between eight to ten million passengers per year. ... San Juan's tourist hubs, Old San Juan, Condado and Isla Verde, are all within 20 minutes of the center."[18]

- Taubman has promoted its Mall at Millenia in Orlando, Florida—according to Taubman, America's top-visited city—based on its proximity to major tourist attractions like The Walt Disney World Resort, Universal Studios, and the Orange County Convention Center. [19] Similarly, Taubman has positioned its Gardens Mall in Palm Beach Gardens, Florida as catering to "the area's many tourists," including more than 8 million visitors in 2018 alone.[20]

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16 *Id.*

17 Taubman, *Fact Sheet: The Gardens on El Paseo,* available at: http://www.taubman.com/taubman-properties/the-gardens-on-el-paseo (last accessed: May 29, 2020).

18 Taubman, *Fact Sheet: The Mall of San Juan,* available at: http://www.taubman.com/media/2644/factsheet2019_msj_20190509.pdf (last accessed: Apr. 30, 2020).

19 Taubman, *Fact Sheet: The Mall at Millenia,* available at: http://www.taubman.com/media/2475/factsheet2019_mil_20190531.pdf (last accessed June 2, 2020).

20 Taubman, *The Gardens Mall,* available at: http://www.taubman.com/taubman-properties/the-gardens-mall (last accessed June 2, 2020).

41. In total, more than half of Taubman's U.S. properties—accounting for approximately [redacted] of Taubman's net operating income—are tourism centers. As Taubman told its investors earlier this year, because of the nature of its portfolio, "[t]he economic performance and value of [Taubman's] shopping centers" may be affected by, among other factors, "decreases in tourism."[21] Indeed, the economic impact is particularly severe because, as Taubman has acknowledged, tourists generally spend far more than other mall visitors, so a drop in tourism leads to a far more precipitous drop in the tenant sales generated by Taubman's centers. Taubman also acknowledged to its investors that "[t]hese changes may have a more significant impact on [its] financial performance due to the geographic concentration of some of [its] shopping centers,"[22] because Taubman has far more tourism centers than its competitors. There has undoubtedly been a severe decrease in tourism-one more severe than anyone could have ever imagined—and it is having, and will have, a disproportionate financial effect on Taubman.

42. A recent BisNow article reinforced the impact of the COVID-19 tourism decrease on high-end malls such as Taubman's, consistent with Taubman's own disclosures to investors. As the article said, "[w]hile all malls could be vulnerable, the ones potentially most affected could be large luxury malls ... that tend to attract tourists."[23] The article quoted an expert who opined that "[s]ome regional malls, particularly the higher-end ones, just have a larger contingent of tourist buyers than [] mass merchant malls," and that these higher-end malls

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21 Taubman Centers Inc., Annual Report (Form 10-K), Feb. 27, 2020, at 16.

22 *Id.*

23 Jon Banister, *Coronavirus Crisis Comes at a Bad Time for US. Shopping Malls,* (Mar. 11, 2020), available at: https://www.bisnow.com/national/news/retail/already-struggling-shopping-malls-seen-as-especially-vulnerableto-coronavirus-impacts-103361.

could be particularly impacted by COVID-19 because "[w]hen there is a negative narrative in the marketplace, expenditures on non-necessity goods like luxury just tend to lessen."[24]

43. The pandemic's disproportionate impact on tourism—and Taubman—will likely last years. Governments across the world are likely to continue travel bans and restrictions until reliable treatments or vaccines are available, and governments, employers, and universities are discouraging, and in many cases outright prohibiting, travel. Many people, severely harmed by the pandemic' s economic impact, have no funds to travel in any event. In response to the resulting precipitous drop of demand for flights,[25] airlines have drastically reduced the number of flights, routes, and employees (including pilots). For example, United Airlines—which has already "parked jets and drastically cut flight schedules in an effort to reduce costs and shore up cash until demand recovers"—plans to eliminate thousands of management positions and to "displace" 30% of its pilots by October 1, 2020.[26] Delta Air Lines and JetBlue also plan to cut employee hours significantly. The International Air Transport Association, a major airline trade association, "estimates that passenger traffic [on airlines] won't rebound to pre-crisis levels until at least 2023" and that "global passenger demand in 2021 will be 24% below 2019 levels."[27]

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24 *Id.*

25 *See, e.g.,* Gregory Wallace, *Airlines and TSA Report 96% Drop in Air Travel as Pandemic Continues,* CNN (Apr. 9, 2020), available at: https://www.cnn.com/2020/04/09/politics/airline-passengers-decline/index.html; Alan Levin & Mary Schlangenstein, *'Extraordinary' Drop in US. Flights as Virus Catches Up,* Bloomberg (Mar. 23, 2020), available at: https://www.bloomberg.com/news/articles/2020-03-23/flights-down-38-forbiggest-airlines-with-virus-cutting-travel.

26 Tracy Rucinski & David Shepardson, *United Airlines to Cut 30% of Management in October, Preparing Pilot Changes Too: Company Memos,* Reuters (May 4, 2020), available at: https://www.reuters.com/article/us-healthcoronavirus-united-arlns/united-airlines-to-cut-30-of-management-in-october-preparing-pilot-changes-toocompany-memos-idUSKBN22G308.

27 Andrea Smith, *International Air Travel May Not Return to Normal Until 2023,* Lonely Planet (May 18, 2020), https://www.lonelyplanet.com/articles/international-air-travel-2023?utm_source=facebook&utm_medium=social&utm_campaign=article.

44. Luxury Stores: Taubman's centers also feature far more high-end stores selling discretionary upscale products that are already suffering disproportionately in the COVID-19-fueled recession. Taubman promotes itself as having the "best retail assets" with the "industry's premier portfolio" and "most productive" malls in the country.[28] These statements are based in large part on Taubman's higher proportion of high-end retail stores—such as Neiman Marcus (now bankrupt), Bloomingdale's, and Tiffany & Co.—than its competitors. Indeed, because of the productivity of these high-end stores, according to Taubman, it has higher average rent per square foot than any of its competitors, and its portfolio sales per square foot are more than *20% higher than its next competitor*.[29] Conversely, Taubman's centers have a lower proportion of stores selling staples or "essential goods."

45. Taubman also promotes many of its individual malls on the basis that they feature high-end consumer goods for affluent consumers. For example:

- Taubman promotes The Mall at Short Hills, New Jersey as having over 40 "uniqueto-market" tenants, including Cartier, Christian Louboutin, David Yurman, Dior, Fendi, Jimmy Choo, Prada, Saint Laurent, Van Cleef & Arpels, and more. Taubman also advertises that luxury tenants—like Chanel, Dior, Burberry, Fendi, and Salvatore Ferragamo—have expanded their presence in the center.[30]

- Taubman advertises its Mall at Millenia, in Orlando, Florida, as "one of the most upscale and productive centers in the United States thanks to its critical mass of

28 Taubman, Investor Presentation, Taubman Centers, Inc., July 2019, at 2, 4, available at: http://s1.q4cdn.com/799408505/files/doc_presentations/2019/07/Investor-Presentation-July-2019.pdf.

29 *Id.* at 7.

30 Taubman, *Fact Sheet: The Mall at Short Hills,* available at: http://www.taubman.com/media/2642/factsheet2019_shh_20190531.pdf (last accessed June 8, 2020).

great retail, including flagship anchor stores and luxurytenants."[31] It also describes the Mall at Millenia as "anchored by unique-to-market luxury department stores," including that market's only Neiman Marcus.[32]

- Taubman promotes its International Market Place in Waikiki, Hawaii, as being "[a]nchored by an 80,000 SF Saks Fifth Avenue with exciting retail including Balenciaga, Brunello Cucinelli, Burberry, Christian Louboutin, Drybar, Free People, Oliver Peoples, Rolex, Shinola, Stuart Weitzman, Tesla and more."[33]

- Taubman boasts that its International Plaza, in Tampa, Florida, is "[a]nchored by the only Neiman Marcus and Nordstrom on the West Coast of Florida" and that its "luxury and fashion-forward retailers" include the likes of Gucci, Louis Vuitton, and Mayors/Rolex.[34]

- Taubman advertises that the Gardens on El Paseo, in Palm Desert, California, is "the upscale lifestyle center in the Coachella Valley" with an "affluent shopper base," and is anchored by Saks Fifth Avenue, "the only upscale department store within 90 miles."[35] The mall also "feature[es] Apple, Ann Taylor, Anthropologie, Brooks Brothers, Eileen Fisher, J.Jill, Johnny Was, Kate Spade New York, Louis Vuitton, Pottery Barn, Sephora, Tiffany & Co., Tommy Bahama Restaurant & Bar,

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31 Taubman, *Fact Sheet: The Mall at Millenia,* available at: http://www.taubman.com/media/2475/factsheet2019_mil_20190531.pdf (last accessed: May 29, 2020).

32 Taubman, *About The Mall at Millenia,* available at: http://www.taubman.com/taubman-properties/the-mall-at-millenia (last accessed: May 29, 2020).

33 Taubman, *About International Market Place,* available at: http://www.taubman.com/taubman-properties/international-market-place (last accessed: May 29, 2020).

34 Taubman, *About International Plaza,* available at: http://www.taubman.com/taubman-properties/international-plaza (last accessed: May 29, 2020).

35 Taubman, *About the Gardens on El Paseo,* available at: http://www.taubman.com/taubman-properties/the-gardens-on-el-paseo (last accessed: May 29, 2020).

Vince, Tumi, Williams-Sonoma, Wilma & Frieda's Cafe, and Mastro's Steakhouse."[36]

46. What was historically a strength of Taubman is now a great weakness. Amidst the economic devastation of the pandemic, consumers have significantly reduced purchases of discretionary high-end goods, as opposed to essential staples, and are likely to continue to do so for the foreseeable future. Bain & Company, for example, recently noted that "there's no doubt that luxury is highly exposed to Covid-19," and that "the pandemic will continue to reverberate through the industry in 2021."[37] Bain estimated that the luxury market for 2020 "could contract between 20-35 percent," and that "a recovery to 2019 levels will not occur until 2022 or 2023."[38] McKinsey & Company similarly projected that the luxury market will contract 35 to 39 percent in 2020.[39] And a recent Capgemini Research Institute survey indicated that 57% of consumers expect to spend less than normal on luxury products in the second half of 2020, compared with just 20% who expect to spend more on luxury products.[40]

47. Moreover, the fewer consumers who do have the money (and inclination) to purchase luxury products are likely to do so online. Cowen predicted that the "post-COVID world [in luxury] will even further accelerate online growth as consumers choose to shop online

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36 *Id.*

37 Claudia D'Arpizio et al., *Luxury After COVID-19: Changed for (the) Good?,* Bain & Co. (Mar. 26, 2020), available at: https://www.bain.com/insights/luxury-after-coronavirus.

38 Press Release, *Global Personal Luxury Goods Market Set to Contract Between 20 - 35 Percent in 2020,* Bain & Co. (May 7, 2020), available at: https://www.bain.com/about/media-center/press-releases/2020/spring-luxury-report.

39 *The State of Fashion 2020, Coronavirus Update,* McKinsey & Company, available at: https://www.mckinsey.com/~/media/mckinsey/industries/retail/our%20insights/its%20time%20to%20rewire%20the%20fashion%20system%20state%20of%20fashion%20coronavirus%20update/the-state-of-fashion-2020-coronavirus-update-vf.ashx (last accessed: May 29, 2020).

40 Capgemini Research Institute, *The Consumer and COVID-19: Global Consumer Sentiment Research in the Consumer Products and Retail Industry,* Apr. 2020, at 9, available at: https://www.capgemini.com/us-en/wp-content/uploads/sites/4/2020/04/Covid-19-Consumer-Behaviour-in-CPR-2.pdf.

vs. physically visiting stores," and that brick-and-mortar stores may lose 10% of their share of the (diminished) luxury market.[41] Indeed, the COVID-19 driven shift to online sales has already caused high-end traditional brick-and-mortar retailers to file for bankruptcy. On May 7, the 100+ year old upscale department store and key tenant and anchor of Taubman's, Neiman Marcus, declared bankruptcy, and more stores will inevitably follow.

48. As Taubman has made clear, its entire business model is predicated on attracting higher-end consumers to shop at higher-end stores that can attract higher rents then other retail real estate properties. Taubman's rents will suffer significantly when, because of COVID-19, those wealthy consumers shop online even more frequently, and the smaller number who do venture out shy away from expensive upscale products. The high-end retail tenants of Taubman' s properties that manage to stay afloat during and after the pandemic will not need (or choose) to pay the rent premium that Taubman previously enjoyed; there will be ample available space at other properties as peer retailers downsize or go out of business. Indeed, rents are already under significant pressure because of the pandemic, and Taubman—which has positioned itself as charging the highest rents of any retail real estate owner—stands to lose the most through this trend.

49. High-Income Consumer Base: Taubman's business is also especially vulnerable to the effects of COVID-19 because of the greater ability and willingness of its wealthy consumers to shop online rather than visiting physical retail stores.

50. The consumers at Taubman's retail properties are among the wealthiest—and likely the wealthiest—consumers at any retail properties. According to Taubman's own

41 Cowen, Cowen's Deep-Dive: New Rules of Luxury Drive Growth & Share, Apr. 28, 2020, at 1, 4, available at: https://cowen.bluematrix.com/sellside/EmailDocViewer?encrypt=de6caac6-f755-4b10-a0a4-40859afda821&mime=pdf&co=Cowen&id.

analyses, consumers in the trade areas of its malls have significantly higher incomes than consumers in the trade areas of any other retail mall owner.[42] In order to protect themselves and their families against the perceived health risks of visiting retail shops, Taubman's more affluent consumers are far more able and now more likely to shop online compared with consumers generally. As a Business Insider article documented, "[o]nline shoppers tend to live in households with higher-than-typical incomes and higher-than-average educations."[43] For example, a December 2017 CNBC analysis found that 62% of those making more than $100,000 a year did a large amount of shopping online, compared with just 20% of those making less than $30,000 a year. [44] Similarly, a February 2016 study found that "[t]he number of purchases, average product price, and total money spent [online] are all positively correlated with income."[45] That is in part because approximately 92% of households with incomes more than $75,000 have home broadband access, compared with just 56% of households with incomes of less than $30,000.[46]

51. Numerous analysts and commentators have observed both the significance and permanence of the shift to online retail that is disproportionately occurring in Taubman's consumers. For instance, according to Green Street:

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42 Taubman, Investor Presentation, Taubman Centers, Inc. July 2019, at 11, available at: http://s1.q4cdn.com/799408505/files/doc_presentations/2019/07/Investor-Presentation-July-2019.pdf.

43 Cooper Smith, *Discount Sites Like Amazon Are Popular Among High-Income Earners-Here's What This Means for Online Retailers,* Business Insider (Dec. 29, 2015), available at: https://www.businessinsider.com/high-income-earners-prefer-discount-sites-online-2015-10.

44 Jodi Gralnick, *There's A Wide - and Growing - Digital Divide Between High- and Low-Income Shoppers,* CNBC (Dec. 19, 2017), available at: https://www.cnbc.com/2017/12/19/theres-wide-digital-divide-between-high-and-low-income-shoppers.html.

45 Farshad Kooti et al., *Portrait of an Online Shopper: Understanding and Predicting Consumer Behavior,* Feb. 22-25, 2016, at 207-08, available at: https://dl.acm.org/doi/10.1145/2835776.2835831.

46 Pew Research Center, Internet & Technology, Internet/Broadband Fact Sheet (June 12, 2019), available at: https://www.pewresearch.org/internet/fact-sheet/internet-broadband.

> One of the most significant disruptions to long-term demand [as a result of the pandemic] will be caused by an accelerated shift towards e-commerce and away from physical stores. In part, this will be caused by a more widespread embrace of previously nascent concepts (e.g., online grocery), but the more important causative factor is that the retailer landscape - particularly in the mall sector - will likely be reeling years after Covid disappears.[47]

52. The Wall Street Journal has similarly observed:

> The new coronavirus pandemic is deepening a national digital divide, amplifying gains for businesses that cater to customers online, while businesses reliant on more traditional models fight for survival. The process is accelerating shifts already underway in parts of the U.S. economy in ways that could last long after the health crisis has passed, some analysts say ....
>
> Nowhere is this more apparent than in the retail industry, one of the largest employment sectors," where "bricks-and-mortar stores are reeling and online sellers are accelerating their dominance ....
>
> Now that consumers are more accustomed to buying such things online, they could continue to do so after the pandemic ends. [48]

53. Many other reports have echoed these sentiments. For example, McKinsey & Co. predicts that the "accelerated adoption of e-commerce" may be a "longer-lasting behavior change" given the rise of online shopping "in categories that in the past were primarily storebased (such as makeup)" and in "consumer segments that previously preferred to shop offline, such as baby boomers and GenZers."[49] In a separate analysis, reporting the results of a survey of almost 100 senior retail executives, McKinsey described how "[r]espondents expect the COVID-19-related shift to e-commerce to be 'sticky,' with online penetration remaining 6-13%

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47 Green Street Advisors, The End of the Beginning, Apr. 16, 2020, at 5 (emphasis added).

48 Harriet Torry, *Coronavirus Pandemic Widens Divide Between Online, Traditional Businesses,* Wall St. J. (Apr. 1, 2020), available at: https://www.wsj.com/articles/coronavirus-pandemic-widens-divide-between-online-traditional-businesses-11585733402 (emphasis added).

49 Praveen Adhi et al., *Reiminaging Stores for Retail's Next Normal,* McKinsey & Co. (Apr. 2020), available at: https://www.mckinsey.com/industries/retail/our-insights/reimagining-stores-for-retails-next-normal.

above pre-COVID-19 levels."[50] This long-term and permanent shift to online sales has already devastated Taubman' s business given the greater ability and propensity of its consumers to shop online and has decimated the value of its retail properties.

54. Consumer Preferences and Attitudes: Taubman's consumers are also far less likely to visit malls and other retail institutions because of COVID-19. Taubman' s malls are primarily located in urban, densely populated areas. These are the areas that have been by
far the most affected by COVID-19; the areas in which state and local governments have issued the most restrictive social distancing measures; and the areas in which consumers—because of their concern about the effects of COVID-19—are most likely to follow those measures, and stay at home whenever possible for the foreseeable future. Accordingly, even the demographics of Taubman's consumers will disproportionately impact its business.

55. Vulnerable Anchors: Finally, Taubman also has more vulnerable store anchors than other participants in the retail real estate industry, and it is worse positioned to deal with the departure of many of those anchors. Taubman's top anchors are department stores that are being severely impacted by the pandemic—Macy's, Nordstrom, Saks Fifth Avenue, Neiman Marcus (now bankrupt), JCPenney (also now bankrupt), Lord & Taylor, and Sears. Indeed, a recent Bank of America analysis isolated Taubman as the retail REIT most dependent on "higher quality department stores and specialty department stores."[51] Other retail real estate owners, in contrast, have a greater percentage of anchors selling essential goods, such as supermarkets, discount stores such as Walmart, Costco and Target, and "big box" home-improvement stores

50 Praveen Adhi, et al., *How Retailers are Preparing for the Post-coronavirus Recovery,* McKinsey & Co. (Apr. 2020), at 4, available at: https://www.mckinsey.com/industries/retail/our-insights/how-retailers-are-preparing-for-the-post-coronavirus-recovery

51 Bank of America, Global Research, 1 Q20 Retail Quarterly: COVID-19 Turns Retail Real Estate on its Head, May 26, 2020, at 10.

such as Home Depot and Lowes. For example, four of the top five anchors of Regency Centersa large retail REIT-are grocery stores, whose sales *increased* 27% in March.

56. Market observers agree that many department stores will go out of business. Indeed, Green Street recently "forecast[ed] that more than half of all mall-based department stores will close by the end of 2021."[52] Two of Taubman's largest anchors, Neiman Marcus and JCPenney, have already declared bankruptcy.

57. As Green Street observed, there are "[m]ore questions than answers on what will happen with dark anchor space" and shopping center owners will need to spend money to redevelop properties unless they "simply ride out the remaining cash flows" and allow their properties to deteriorate.[53] Redevelopment is critical because, if anchors leave and are not replaced, other tenants have "co-tenancy" provisions which give them contractual rights to pay "alternate rent" far below their contractual rent payments or even terminate their leases altogether, thereby compounding the rent loss. But Taubman does not have sufficient liquidity to redevelop its properties after anchors leave, let alone sufficient amounts to attract new anchors and revitalize its centers. Taubman already borrowed $350 million in March just to stay afloat after the COVID-19 pandemic began, [redacted] Taubman therefore has grossly insufficient funds to redevelop its malls, as it must do after significant anchors disappear to avoid its position deteriorating further.

52 Green Street Advisors, Mall Sector, Disruption Pulled Forward, Apr. 28, 2020, at 4.

53 *Id.* at 1, 4.

58. Each of the distinctive characteristics of Taubman discussed above has independently resulted in Taubman being disproportionately affected by the COVID-19 pandemic compared with other participants in the retail real estate industry and therefore
suffering an MAE. Taken together, they present an overwhelming case.

Taubman Breaches Its Obligation to Act in the Ordinary Course

59. Although the effects of the COVID-19 pandemic on Taubman's business have been profound and devastating, Taubman has made them even worse by failing to take responsible actions to mitigate the destruction, in violation of its contractual promise to Simon to act in the ordinary course to protect the value of its business. Acting in the ordinary course requires companies to respond to changing market conditions and, when faced with a crisis, to take appropriate actions. Other retail real estate owners and retail stores have recognized that, when faced with the COVID-19 pandemic, appropriate ordinary course actions—and critical actions for their survival—include reducing operating expenses and capital expenditures dramatically to maintain cash and mitigate losses. Taubman has not taken such actions, and instead has made matters far worse by borrowing hundreds of millions of dollars to fuel enormous spending (discussed below),
[redacted]

60. Both retailers and retail real estate owners have already suffered a radical loss in income because of the pandemic. Although retailers were the first to feel the decreased revenue caused by shopping center closures and radically transformed consumer behavior, most of them quickly responded by stopping rent payments,
[redacted].And Taubman's "revenues are

primarily derived from rents and recoveries from [its] shopping center tenants."[54] Accordingly, both retailers and real estate owners are already directly suffering the financial effects of the pandemic.

61. Other retail real estate owners and retailers—despite being far better situated than Taubman to weather the pandemic—have responded to the precipitous drop in income by taking difficult but necessary measures to reduce costs and maintain capital. These measures include furloughing and laying off large numbers of employees, drastically cutting property operating expenses, significantly reducing (or in some cases even eliminating) executive compensation, and dramatically reducing capital expenditures.

62. Simon knows the significant pain of these measures firsthand. Simon has made the extremely difficult but necessary decision to furlough or lay off over half of its employees. Simon has also reduced salaries of upper-level managers by up to 30%. Simon's
independent board directors agreed to suspend payment of their cash retainer fees. CEO David Simon deferred payment of the entirety of his 2019 cash bonus, waived his 2020 base salary, and deferred his 2020 Long-Term Incentive Plan equity award. Simon further cut its capital expenditure budget by over $1 billion, and cut both its property operating expenses and corporate overhead expenses by more than 30%. Simon did not want to take any of these measures-least of all to furlough or terminate its own employees—but felt compelled to do so to reduce expenses and save capital.

63. The list of retail real estate owners that have announced similar operating decisions is extensive. To take just a few examples of public announcements:

54 Taubman Centers Inc., Quarterly Report (Form 10-Q), May 5, 2020, at 35.

- CBL Properties has furloughed (in full or in part) approximately 60% of its workforce. CBL also reduced the salaries of its most senior executives by 50%, other officers by 20%, and other employees by 10%.

- Pennsylvania Real Estate Investment Trust, Inc. has furloughed over 30% of its employees, is reducing capital expenditures, and is reducing operating expenses to "enhance liquidity and strengthen its balance sheet."[55]

- Macerich has reduced its estimated 2020 redevelopment expenditures by 60%, its planned 2020 capital expenditures at its properties by 65%, and its controllable shopping center expenses by approximately 45% (during the period that its properties are substantially closed).

- Tanger has reduced its executives' salaries by 25-50% to avoid layoffs.

- RPT Realty has deferred all but essential maintenance capital expenditures.

- Regency Centers has "deferred investment of approximately $145 million [of nearly $225 million remaining to be invested] of in-process projects through phasing of its investment or by pausing construction as it continues its assessment of the pandemic impacts."[56]

- Retail Properties of America halted construction at a $200 million redevelopment project in the Washington D.C. area in order to "prudently derisk."[57]

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55 Press Release, *PREIT Takes Steps to Improve Liquidity Position,* PREIT (Mar. 31, 2020), available at: https://www.preit.com/news/preit-takes-steps-to-improve-liquidity-position.

56 News Release, *Quarterly Supplemental,* 1st Quarter 2020, Regency Centers, Mar. 31, 2020, at viii, available at: https://investors.regencycenters.com/static-files/b8bc262d-1418-4bfb-8f91-6940ff5edfe7.

57 Press Release, *Retail Properties of America, Inc. Halts Vertical Construction Plans at its Carillon Redevelopment,* (Mar. 23, 2020), available at: https://www.prnewswire.com/news-releases/retail-properties-of-america-inc-halts-vertical-construction-plans-at-its-carillon-redevelopment-301027909.html; Rebecca Cooper,

64. The list of major retailers that have made similar decisions is just as long:

- Macy's has furloughed the majority of its 130,000 strong workforce, reduced executive compensation, and its CEO is forgoing his salary.
- Kohl's furloughed about 85,000 of its approximately 122,000 employees, and its CEO is forgoing his salary.
- J.C. Penney furloughed a majority of its hourly store workers and a significant portion of workers at its corporate headquarters.
- The Gap furloughed approximately 80,000 employees (the majority of its North America store teams) and cut the pay of its top executives. The Gap also reduced 2020 capital expenditures by roughly $300 million—a 50% cut.
- Ascena Retail Group, the owner of Ann Taylor and Loft, furloughed all of its store workers and half of its corporate staff
- Urban Outfitters furloughed a substantial number of store, wholesale, and home office employees for two months.
- TJX Companies cut the salaries of its CEO and Executive Chairman by 30%, and is reducing its capital expenditures. TJX Companies has described its costsaving measures as "prudent steps we are taking to further strengthen our financial liquidity and flexibility during this uncertain environment."[58]

Construction Halts on $200M Retail Development in Prince George's, Washington Bus. J. (Mar. 25, 2020), available at: https://www.bizjournals.com/washington/news/2020/03/25/construction-halts-on-200m-retail-development-in.html.

58 Press Release, The TJX Companies, Inc. Provides COVID-19 Update Clarification, TJX (Mar. 19, 2020), available at: https://investor.tjx.com/news-releases/news-release-details/tjx-companies-inc-provides-covid-19-update-clarification.

- Nordstrom, David's Bridal, Steve Madden and Designer Brands are among many other retailers that have announced plans to furlough workers. Needless to say, many of these retailers are also suspending pay increases.

65. One company, however, is noticeably absent from this list: Taubman.

66. Taubman has failed to announce comparable measures to mitigate the enormous impact of the COVID-19 pandemic and protect the long-term interests of its business, its employees, and its investors. Taubman has not announced any furloughs or layoffs whatsoever. Nor has Taubman announced any employee or executive salary cuts. [redacted]

67. Taubman's refusal to cut salaries and bonuses that it cannot afford is even more egregious because Taubman itself has recognized the need for similar cuts during past retail market shocks, even though they were far less severe than the COVID-19 pandemic. For example, in response to the 2008 financial crisis, Taubman acted in the ordinary course of business by decreasing its bonus pool by more than half because "it was necessary to be prudent with compensation expense given the ... financial climate generally, and in the retail and regional mall industries specifically."[59] Taubman should be taking even more drastic measures given the greater financial impact of COVID-19.

68. Far from preserving jobs, Taubman's failure to take actions will, in the longrun, damage Taubman, hurt its employees, and harm its investors as its business fails in the medium to long-term, and as it suffers reputational damage. Indeed, a recent Wall Street Journal analysis, "Companies That Don't Cut Executive Pay Now Could Pay for it Later," discussed

[59] Taubman Centers Inc., Annual Proxy Statement, Apr. 14, 2009, at 24.

experts who opined that "companies whose leaders don't follow suit face reputational risks for years to come."[60] Taubman's wrongful actions at the height of the pandemic will-no matter what it does in the future—have a lasting and substantial impact on the company.

69. Taubman has also continued to make significant capital expenditures with only modest reductions, ignoring the financial devastation caused by the pandemic. Taubman apparently still plans to spend [redacted] Taubman is insisting, over Simon's repeated objections, on [redacted], ignoring that, as other companies have broadly recognized, the current emergency—in which retail mall operators and retailers are fighting for their very survival—necessitates far more effective action.

70. Not only is Taubman's failure to cut expenses meaningfully completely inconsistent with industry practice, but to finance those expenses, Taubman is incurring enormous debt [redacted]. At the end of March, Taubman drew down $350 million on its main $1.1 billion credit line, virtually the entire amount available. [redacted]

60 Nina Trentmann & Kristin Broughton, *Companies That Don't Cut Executive Pay Now Could Pay for it Later,* Wall St. J. (Apr. 21, 2020), available at: https://www.wsj.com/articles/companies-that-dont-cut-executive-pay-now-could-pay-for-it-later-11587477361.

[redacted]

[redacted]

[redacted]

61 [redacted]

62 [redacted]

73. In what can only be at best an exercise of willful neglect, [redacted]

74. Any responsible business acting in the ordinary course [redacted] Taubman's decision not to take any of these key steps represents a basic failure of essential management responsibilities and further violations of its ordinary course covenant.

75. Taubman's actions are completely contrary to industry norms and will indelibly damage the company. Taubman apparently believes that it can avoid any sense of fiscal prudence, severely deplete its cash reserves, and imprudently incur enormous debt—so that it can continue to generously reward its executives, employees, and investors, and make enormous expenditures—because it hopes to force Simon to pick up the pieces of what is left of Taubman after their deal closes. But preventing this type of conduct is precisely the purpose of the promise in the Agreement that Taubman would operate in the ordinary course. And the parties explicitly agreed that such conduct gives Simon the right to terminate the transaction.

COUNT I
(Declaratory Relief)

76. Simon repeats and realleges each of the allegations set forth above.

77. For the reasons alleged, an actual controversy exists concerning the parties' rights and obligations under the Agreement.

78. For the reasons alleged, Taubman has suffered a Material Adverse Effect.

79. For the reasons alleged, Taubman has breached its representations in Sections 3.06 and 3.07 of the Agreement.

80. For the reasons alleged, Taubman has materially breached its covenant in Section 5.01 of the Agreement to use commercially reasonable efforts to conduct its business in the ordinary course.

81. For the reasons alleged, the conditions to closing in Section 7.02(a), (b) and (c) of the Agreement are not met and cannot be met.

82. For the reasons alleged, Simon is not required to close the Transaction.

83. For the reasons alleged, Simon has validly terminated the Agreement.

COUNT II
(Breach of Contract)

84. Simon repeats and realleges each of the allegations set forth above.

85. For the reasons alleged, Taubman has breached its representations m Sections 3.06 and 3.07 of the Agreement.

86. For the reasons alleged, Taubman has breached its covenant in Section 5.01 of the Agreement to use commercially reasonable efforts to conduct its business in the ordinary course.

87. For the reasons alleged, Taubman's breaches of its covenants and representations were material and were deliberate acts and omissions.

88. As a direct and proximate result of Taubman's breaches of Section 5.01, Simon has suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Simon respectfully requests that the Court:

(a) Declare that Taubman has suffered a Material Adverse Effect;

(b) Declare that Taubman has breached its representations in Sections 3.06 and 3.07 of the Agreement;

(c) Declare that Taubman has breached Section 5.01 of the Agreement;

(d) Declare that the closing conditions in Sections 7.02(a), (b) and (c) of the Agreement have failed;

(e) Declare that Simon is not required to close the Transaction or to take any further actions under the Agreement;

(f) Declare that Simon has validly terminated the Agreement;

(g) Award Simon damages for Taubman's breaches of the Agreement in an amount to be determined at trial;

(h) Award Simon its costs and disbursements m this action, including reasonable attorneys' fees and experts' fees;

(i) Grant Simon such other and further relief as this Court may deem just, equitable, and proper.

Dated: June 10, 2020

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: */s/A. Michael Palizzi*

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Attorneys for Plaintiffs
SIMON PROPERTY GROUP INC. and
SIMON PROPERTY GROUP L.P.

Exhibit 99.2

STATE OF MICHIGAN
SIXTH JUDICIAL CIRCUIT COURT

SIMON PROPERTY GROUP, INC.,
SIMON PROPERTY GROUP, L.P.,

Plaintiffs and Counterclaim Defendants,

v.

TAUBMAN CENTERS, INC., and
THE TAUBMAN REALTY GROUP LIMITED PARTNERSHIP,

Defendants and Counterclaim Plaintiffs,

v.

SILVER MERGER SUB 1, LLC, and
SILVER MERGER SUB 2, LLC,

Counterclaim Defendants.

Case No. 2020-181675-CB

The Honorable James M. Alexander

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DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

Defendants and Counterclaim Plaintiffs, Taubman Centers, Inc. ("Taubman"), and The Taubman Realty Group Limited Partnership ("Taubman OP," and with Taubman, the "Taubman Parties"), by their attorneys, Honigman LLP and the other undersigned counsel, for their Answer, Affirmative Defenses, and Counterclaim against Plaintiffs and Counterclaim Defendants, Simon Property Group, Inc. ("SPG"), and Simon Property Group, L.P. ("Simon OP," and with SPG, "Simon"), and Counterclaim Defendants, Silver Merger Sub 1, LLC ("Merger Sub 1"), and Silver Merger Sub 2, LLC ("Merger Sub 2," and with Simon and Merger Sub 1, the "Simon Parties"), say:

Preliminary Statement

This is a classic case of buyer's remorse. The Simon Parties agreed to a series of merger transactions with the Taubman Parties, whose enterprise value is approximately $10 billion, on February 9, 2020, at a time when the parties and the world were well-aware of the risks of the novel coronavirus pandemic.[1] The parties contracted to allocate the risk of global pandemics to the Simon Parties, knowing full well that there was a pandemic raging in the world. The Simon Parties accepted this risk. Now, the Simon Parties apparently no longer like the deal they made, and they have wrongfully purported to terminate their agreement with the Taubman Parties and refuse to carry out their obligations and close the transactions, depriving the Taubman Parties of the bargained-for benefits of the transaction.

Unfortunately for the Simon Parties, the contractual terms that the parties bargained for do not permit the Simon Parties to renege on their obligation to close the transactions based on their apparent change of heart. The parties' Agreement and Plan of Merger (the "Merger Agreement") specifically excludes "pandemics" – and anything "arising out of, or resulting from" pandemics – from the Material Adverse Effects that potentially may excuse the Simon Parties from their obligation to close. The Simon Parties thus expressly assumed the risk of loss from the adverse economic effects of the pandemic.

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[1] On January 29, 2020, the President announced his formation of the President's Coronavirus Taskforce, and, on January 30, 2020, the Director-General of the World Health Organization (WHO), declared a "public health emergency of international concern over the global outbreak of novel coronavirus." Statement from the Press Secretary Regarding the President's Coronavirus Task Force, January 29, 2020, https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/.

The Simon Parties nevertheless seek to mischaracterize the Merger Agreement's definition of Material Adverse Effects by claiming that a pandemic may have a Material Adverse Effect if it has a disproportionate adverse effect on Taubman. But that is not what the Merger Agreement actually provides. Instead, the parties expressly agreed that adverse effects caused by a pandemic may be taken into account in determining whether a Material Adverse Effect has occurred only "*to the extent*" the pandemic has a "disproportionate adverse effect" on Taubman, "taken as whole, compared to other participants in the industries in which [Taubman] and its Subsidiaries operate." (Merger Agreement § 9.03 ("Material Adverse Effect") (emphasis added).) Section 9.04 of the Merger Agreement defines "to the extent" as the degree to which a subject or other thing extends, and such phrase *shall not* mean simply 'if.'" (*Id.* § 9.04 (emphasis added).) Therefore, in assessing whether a Material Adverse Effect has occurred, the relevant inquiry is whether an incremental disproportionate effect of a pandemic on Taubman, to the extent there is any, itself constitutes a Material Adverse Effect. Of course, the Simon Parties cannot credibly claim that such an incremental disproportionate effect has occurred.

While this alone precludes the Simon Parties from walking away from the deal, the events leading up to the parties' transaction further belie Simon's wrongful attempt to use the coronavirus as an excuse to scuttle the merger transactions. The Simon Parties clearly understood that the coronavirus and the deteriorating retail market would severely impact the shopping mall industry when they made their strategic judgment to acquire the Taubman Parties – despite the brewing pandemic – so as to achieve a long-term business objective they had held for many years.

The Simon Parties demanded significant price reductions during the negotiations of the transactions after initially agreeing to a significantly higher price. As the retail environment deteriorated and news of the novel coronavirus pandemic spread, the Simon Parties demanded and ultimately received a lower price, by $7.50 per share, to be paid in the mergers, which reduced the aggregate amount they would pay to the Taubman Parties' equity holders by approximately $665.9 million. Upon execution of the Merger Agreement on February 9, 2020, the Simon Parties made a strategic decision to assume the risks of deterioration in the retail environment and of the effects on business of the novel coronavirus, factoring in their long term business objectives and the multiple, significant reductions in the purchase price they had negotiated.

Simon's Complaint, and its purported justification for terminating the Merger Agreement, ignores this reality in favor of rank speculation about the supposedly incurable, disproportionate material adverse effect of the pandemic on the Taubman Parties. The infirmity of Simon's position is laid bare by Simon's own prior statements: Simon recently told its own shareholders that it is unable to predict the pandemic's impact on its own financial results. Of course, if Simon could not reasonably predict its own future results, it is hard to fathom how it can claim to predict Taubman's.

As Simon reported in its first quarter earnings release and supplemental information for the quarter ending March 31, 2020, issued on May 11, 2020, "Given the evolving nature of COVID-19 and the global economic disruption it has caused, it is not currently possible to predict with certainty the pandemic's impact on the rest of the year's financial results."[2] That same day, David Simon, Chairman of the SPG Board of Directors and President and Chief Executive Officer of SPG, told investors that over 700 public companies withdrew their full-year guidance as of May 11, 2020, because they could not make a forecast.[3] In fact, virtually all publicly-traded mall REITs have withdrawn their full-year guidance.

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[2] Simon Property Group Reports First Quarter 2020 Results and Provides Business Update, May 11, 2020, https://investors.simon.com/news-releases/news-release-details/simon-property-group-reports-first-quarter-2020-results-and; *see also* Simon Property Group, 10-Q, May 11, 2020, at 35.

[3] Simon Property Group Inc Q1 2020 Earnings Call Transcript at 4 (May 11, 2020.)

Before June 10, 2020, the Simon Parties never claimed the pandemic-related events described in the Complaint excused their performance. To the contrary, as late as May 29, 2020, Simon, along with the Taubman Parties, filed with the Securities and Exchange Commission (the "SEC") and sent to Taubman's shareholders a Schedule 13E-3 incorporating a Definitive Proxy Statement asking the shareholders to approve the Merger Agreement and the merger transactions. If, as the Simon Parties now allege, the events recounted in Simon's Complaint, all of which were known to the Simon Parties before May 29, 2020, provided grounds for the termination of the Merger Agreement, Simon would have had an obligation under the federal securities laws to advise Taubman's shareholders of that fact.

Again, on June 2, 2020, three days after filing the joint Schedule 13E-3, Simon OP sent a Confidential Election Memorandum to holders of partnership interests in Taubman OP advising them of their right to convert, in connection with the completion of the mergers, their Taubman OP interests to partnership interests in Simon OP. In this Memorandum, Simon OP told the Taubman OP interest holders, "If Taubman's stockholders vote to approve the REIT Merger and the other Transactions at the special meeting of Taubman's stockholders (which is currently scheduled to be held on June 25, 2020), and assuming that the other conditions to the Mergers are satisfied or waived, it is anticipated that the Mergers and the other Transactions will be completed in the second or third quarter of 2020." Again, the Memorandum – issued just eight days before this lawsuit was filed – said nothing of the so-called incurable, disproportionate material adverse effect of the pandemic on Taubman that supposedly had already occurred and was so material that it justified terminating of the Merger Agreement.

The reason that, even as late as May 29 and June 2, 2020, the Simon Parties repeatedly failed to assert the purportedly incurable, disproportionate material adverse effect of the pandemic on Taubman is obvious: Simon's assertion now is simply an excuse to avoid consummating the Transactions. In ostensible support of their speculation about the effects of the pandemic on Taubman's business, the Simon Parties make a fundamentally flawed comparison of Taubman's regional and superregional shopping malls to strip centers and power centers that have grocery stores and big box anchors (*e.g.*, Home Depot, Target, Wal-Mart). This is like comparing Somerset Mall to the strip centers on Telegraph Road. The Simon Parties' characterization of strip centers and power centers as industries in which Taubman operates is meritless.

Simon's Complaint is also based on knowingly false and misleading allegations about the Taubman Parties' response to the pandemic. The Simon Parties allege that the Taubman Parties have failed to take actions in response to the pandemic, such as reducing expenses and cutting compensation. These allegations are demonstrably wrong, and, equally important, they are not in any event grounds to justify termination of the Merger Agreement.

In the Merger Agreement, the Taubman Parties covenanted that, except as required by applicable law or with the Simon Parties' consent, Taubman would "use commercially reasonable efforts" to "conduct its business in the ordinary course of business consistent with past practices," and, in 2020, the operational budget that Taubman had shared with Simon prior to signing the Merger Agreement. (Merger Agreement §5.01(a).) In a feat of backwards logic, Simon's claim seeks to transform this covenant into a requirement that Taubman *not* conduct its business in the "ordinary course," but rather engage in conduct that is atypical and outside of the business plans upon which the transactions were predicated. Of course, had Taubman done that, Simon assuredly would have asserted that it was in breach of the "ordinary course" covenant. This "heads I win, tails you lose" claim is tortured on its face, but is even more egregious considering that Simon itself repeatedly consented to the very business decisions and actions that it now claims in its Complaint put Taubman in breach of this operating covenant. Indeed, since the signing of the Merger Agreement, Taubman has operated in the ordinary course of business consistent with its past practices and the operational budget that Simon received, or with the consent or acquiescence of Simon, who was apprised of all of Taubman's actions in response to the pandemic. This included its consent to the closing of Taubman's malls, its consent to Taubman's comprehensive Annual Budget in March 2020, and its consent to the revolver draw down.

Thus, contrary to the Simon Parties allegations, and as they are well aware since they consented to this action, Taubman cut its discretionary spending by almost 50%. Likewise, while the Simon Parties tout that SPG's CEO has "deferred payment of the entirety of his 2019 cash bonus, [and] waived his 2020 base salary," (Compl. ¶ 10), they are well-aware that Taubman's CEO, Robert S. Taubman, and its COO, William S. Taubman, have waived their salaries for the past three years. And, while the Simon Parties complain that "Taubman continues to pay its executives their previous compensation" and bonuses, (*id.* ¶ 11), they fail to mention that these were payments for compensation *earned in 2019*, not 2020, and specifically approved by Simon, and none of these executives are currently receiving bonuses for 2020.

In short, the Simon Parties freely and knowingly negotiated the Merger Agreement with the advice of highly sophisticated counsel, who are now trying to use speculation and mischaracterizations to justify the Simon Parties' wrongful termination of the Merger Agreement. Simon's Complaint should be dismissed.

Furthermore, the Court should enforce specifically the Simon Parties' performance of the terms and provisions of the Merger Agreement (as provided in Section 9.10 of the Agreement), and the Simon Parties should be compelled to complete the steps within their control that are necessary to consummate the merger transactions. Absent this relief, the Taubman Parties will suffer irreparable harm, as the agreed transactions represent a unique opportunity to combine two of the world's leading mall operators. The Taubman Parties' equity holders will also suffer billions of dollars of damage through the loss of the merger price that the Simon Parties agreed to pay Taubman Parties' equity holders. Accordingly, the Taubman Parties now sue for specific enforcement of the Merger Agreement or, in the alternative, a declaration that they can terminate the agreement and recover their substantial damages, including the loss of the premium offered to the Taubman Parties' equity holders.

Answer to the Simon Complaint

For their Answer to Simon's Complaint, the Taubman Parties say:

Nature of the Claims

1. The Taubman Parties admit that, on February 9, 2020, the Simon Parties signed an Agreement and Plan of Merger dated as of February 9, 2020 (the "Merger Agreement"), that imposes certain obligations on the Simon Parties. They further admit that, to the extent this paragraph alleges terms of the Merger Agreement, the Merger Agreement speaks for itself, and to the extent these allegations differ from the terms of the Agreement, the allegations are denied because they are not true. The remaining allegations are denied because they are not true. For example, the parties did not agree that a pandemic would be a material adverse effect, the parties did not agree that a pandemic would be a material adverse effect if it disproportionately affected Taubman as compared to other participants in the industry in which Taubman operates, the COVID-19 pandemic has not had a uniquely devastating and disproportionately materially adverse effect on Taubman as compared to others in the industry in which it operates, and Taubman has not violated the "ordinary course" covenant in the Merger Agreement.

2. The Taubman Parties deny the allegations because they are not true. By way of example only, the alleged "radical change" referred to in this paragraph began well before March 11, 2020, as demonstrated, in part, by the fact that, on January 29, 2020, the President announced his formation of the Coronavirus Taskforce, and on January 30, 2020, the Director-General of WHO, declared a "public health emergency of international concern over the global outbreak of novel coronavirus."

3. The Taubman Parties deny the allegations because they are not true.

4. The Taubman Parties admit the allegations in the second and third sentences and deny the remaining allegations because they are not true.

5. The Taubman Parties admit only that they have a "premier portfolio" of upscale shopping malls and deny the remaining allegations about their shopping malls because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

6. The Taubman Parties admit the allegations in the first sentence and the allegation in the third sentence that Taubman has few retailers selling the types of essential goods that consumers were buying in physical stores during the time of state-ordered store closures. The Taubman Parties deny the remaining allegations because they are not true.

7. The Taubman Parties deny the allegations because they are not true.

8. The Taubman Parties deny the allegations because they are not true.

9. The Taubman Parties deny the allegations because they are not true.

10. The Taubman Parties deny the allegations regarding themselves because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

11. The Taubman Parties deny the allegations because they are not true.

12. The Taubman Parties admit only that Taubman did, with the Simon Parties' consent, draw down $350 million on its primary $1.1 billion line of credit to ensure liquidity in the event it is needed and that the Taubman Parties still have approximately $325 million of that $350 million available as at May 31, 2020.

13. The Taubman Parties deny the allegations because they are not true.

14. The Taubman Parties deny the allegations because they are not true.

PARTIES

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

JURISDICTION AND VENUE

19. The Taubman Parties admit only that the Agreement speaks for itself, and, to the extent the allegations differ from the terms of the Agreement, the allegations are denied because they are not true. The Taubman Parties deny the remaining allegations because they are not true.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

FACTS

24. The Taubman Parties admit only that the Agreement speaks for itself, and, to the extent the allegations differ from the terms of the Agreement, the allegations are denied because they are not true. The Taubman Parties deny the remaining allegations because they are not true.

25. Admitted.

26. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations.

27. The Taubman Parties admit only that the Agreement speaks for itself, and, to the extent the allegations differ from the terms of the Agreement, the allegations are denied because they are not true. The Taubman Parties deny the remaining allegations because they are not true.

28. The Taubman Parties admit only that the Agreement speaks for itself, and, to the extent the allegations differ from the terms of the Agreement, the allegations are denied because they are not true. The Taubman Parties deny the remaining allegations because they are not true.

29. The Taubman Parties admit only that the Agreement speaks for itself, and, to the extent the allegations differ from the terms of the Agreement, the allegations are denied because they are not true. The Taubman Parties deny the remaining allegations because they are not true. In particular, the Taubman Parties deny that Taubman has suffered a Material Adverse Effect, as defined in the Merger Agreement, since September 30, 2019, deny that Taubman has new liabilities that would reasonably be expected to have a Material Adverse Effect, deny that Taubman's representations and warranties are no longer correct, deny that the relevant conditions to closing have failed, and deny that Simon may terminate the Agreement.

30. The Taubman Parties admit only that the Agreement speaks for itself, and, to the extent the allegations differ from the terms of the Agreement, the allegations are denied because they are not true. The Taubman Parties deny the remaining allegations because they are not true.

31. The Taubman Parties admit only that they temporarily closed two shopping malls in China in 2020 – CityOn.Xi'an was closed for 34 days and reopened on February 29, and CityOn.Zhengzhou was closed for 10 days and reopened on February 27.[4] The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

32. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations. In further response, on information and belief, the first sentence is denied because it was publicly reported that federal government officials did, in fact, express significant concern about the health risk of the novel coronavirus in the United States.

33. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations.

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[4] See TCO's March 19, 2020 press release: http://investors.taubman.com/news/press-releases/press-release-details/2020/Taubman-Centers-Inc-to-Temporarily-Close-Shopping-Centers-in-Response-to-COVID-19/default.aspx.

34. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations.

35. Admitted, except that Taubman did not close two of its three open air shopping malls in the United States.

36. The Taubman Parties deny the allegations because they are not true and they are based on speculation.

37. The Taubman Parties admit only that all but five of their shopping malls in the United States are enclosed malls and that none of their Asian shopping malls are open air malls. The Taubman Parties deny the remaining allegations because they are not true.

38. The Taubman Parties deny the allegations in the first and second sentences, and deny that Federal Realty Investment Trust, Regency Centers, and SITE Centers operate in the same industry as does Taubman because the allegations are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

39. The Taubman Parties deny the allegations because they are not true. More specifically, on information and belief, to the extent financial analysts have made such predictions, they were making only short-range predictions based on speculation. In further answer, as David Simon, Chairman of the SPG Board of Directors and President and Chief Executive Officer of SPG, told investors, over 700 public companies, including SPG, withdrew their full-year guidance as of May 11, 2020, because they cannot make a forecast. In fact, SPG reported in its earnings release and supplemental information for the quarter ending March 31, 2020, issued on May 11, 2020, "Given the evolving nature of COVID-19 and the global economic disruption it has caused, it is not currently possible to predict with certainty the pandemic's impact on the rest of the year's financial results." The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

40. The Taubman Parties admit only the allegations in the second sentence and the quoted language in the bullet points. The Taubman Parties deny the remaining allegations because they are not true.

41. The Taubman Parties admit only the quoted language in this paragraph and refer the Court to Taubman's February 27, 2020 10-K for its complete and accurate contents. The Taubman Parties deny the remaining allegations because they are not true.

42. The Taubman Parties deny the allegations as they relate to the Taubman Parties because the allegations are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

43. The Taubman Parties deny the allegations as to themselves because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

44. The Taubman Parties admit only the quoted language and, to the extent that it is accurately quoted, the information derived from Taubman's Investor Presentation, and refer the Court to Taubman's Investor Presentation for its complete and accurate contents. The Taubman Parties deny the remaining allegations because they are not true.

45. Admitted.

46. The Taubman Parties deny the allegations in the first sentence. The Taubman Parties lack knowledge or information sufficient to form a belief as to the remaining allegations.

47. The Taubman Parties admit only that Neiman Marcus has filed for bankruptcy protection. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and third sentences. The Taubman Parties deny the remaining allegations because they are not true.

48. The Taubman Parties deny the allegations because they are not true.

49. The Taubman Parties deny the allegations because they are not true.

50. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence. The Taubman Parties admit the allegations in the second sentence. The remaining allegations are denied because they are not true.

51. The Taubman Parties deny the allegations as to themselves because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

52. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations.

53. The Taubman Parties deny the allegations in the last sentence of this paragraph because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

54. The Taubman Parties deny the allegations in the first, second, and last sentences of this paragraph because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

55. The Taubman Parties deny the allegations in the first sentence and the characterization of "top anchors" in the second sentence of this paragraph because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the allegation in the third sentence of this paragraph. The Taubman Parties deny the fourth sentence of this paragraph to the extent that it purports to "contrast" "real estate owners" who do not operate in the industry in which Taubman operates because it is not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations and deny that the allegations in the last two sentences have any relevance to this action because they are not true.

56. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations. In further response, the Taubman Parties deny the implication that, by seeking bankruptcy protection, Neiman Marcus or JCPenney will go out of business or close their stores in Taubman's shopping malls.

57. The Taubman Parties deny the allegations about the Taubman Parties because the allegations are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

58. The Taubman Parties deny the allegations because they are not true.

59. The Taubman Parties deny the allegations because they are not true.

60. The Taubman Parties deny the allegations about the Taubman Parties because they are not true. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

61. The Taubman Parties deny the allegations because they are not true.

62. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations.

63. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations.

64. The Taubman Parties lack knowledge or information sufficient to form a belief as to the truth of the allegations.

65. The Taubman Parties admit only that Simon's Complaint does not include Taubman in its list of companies in paragraphs 62 and 63. The Taubman Parties deny that they have not taken commercially reasonable actions in response to the COVID-19 pandemic because this is not true. In further answer, the Taubman Parties have taken commercially reasonable actions in response to the COVID-19 pandemic, including actions that Simon consented to, such as cutting Taubman's discretionary spending by almost 50%.

66. The Taubman Parties deny the allegations because they are not true. In particular, while the Simon Parties tout that SPG's CEO has "deferred payment of the entirety of his 2019 cash bonus, [and] waived his 2020 base salary," (Compl. ¶ 10), they are well-aware that Taubman's CEO, Robert S. Taubman, and its COO, William S. Taubman, have waived their salaries for the past three years. And, while the Simon Parties complain that "Taubman continues to pay its executives their previous compensation" and bonuses, (*id.* ¶ 11), they conveniently fail to mention that these were payments for compensation *earned in 2019*, not 2020, and none of these executives are currently receiving bonuses for 2020.

67. The Taubman Parties deny the allegations because they are not true.

68. The Taubman Parties deny the allegations because they are not true.

69. The Taubman Parties deny the allegations because they are not true.

70. The Taubman Parties deny the allegations because they are not true.

71. The Taubman Parties deny the allegations because they are not true. In further answer, the quoted language in this paragraph is misleading because it is taken out of context.

72. The Taubman Parties admit the allegations in the second, third, and fourth sentences of this paragraph. The Taubman Parties deny the remaining allegations because they are not true. In further answer, the quoted language in this paragraph is misleading because it is taken out of context.

73. The Taubman Parties deny the allegations because they are not true. In further answer, the Taubman Parties' action is consistent with that of SPG and 700 other publicly traded companies who have withdrawn their full-year guidance as of May 11, 2020, because they cannot make a forecast. As SPG reported in its earnings release and supplemental information for the quarter ending March 31, 2020, issued on May 11, 2020, "Given the evolving nature of COVID-19 and the global economic disruption it has caused, it is not currently possible to predict with certainty the pandemic's impact on the rest of the year's financial results."

74. The Taubman Parties deny the allegations because they are not true. In further response, see paragraph 73, above.

75. The Taubman Parties deny the allegations because they are not true. In further response, see paragraph 73, above.

COUNT I

76. No response to this paragraph is required.

77. The Taubman Parties admit that there is an actual controversy between the parties, but they deny that the controversy exists for the reasons alleged because that is not true.

78. The Taubman Parties deny the allegations because they are not true.

79. The Taubman Parties deny the allegations because they are not true.

80. The Taubman Parties deny the allegations because they are not true.

81. The Taubman Parties deny the allegations because they are not true.

82. The Taubman Parties deny the allegations because they are not true.

83. The Taubman Parties deny the allegations because they are not true.

COUNT II

84. No response to this paragraph is required.

85. The Taubman Parties deny the allegations because they are not true.

86. The Taubman Parties deny the allegations because they are not true.

87. The Taubman Parties deny the allegations because they are not true.

88. The Taubman Parties deny the allegations because they are not true.

AFFIRMATIVE DEFENSES

The Taubman Parties, for their Affirmative Defenses to Simon's Complaint, say:

1. Simon has failed to state a claim on which relief can be granted.

2. Simon's claims are barred by their assumption of risk.

3. Simon's claims are barred by estoppel, laches, ratification, or waiver because, among other things, Simon knew of, and participated in or consented to, the Taubman Parties' acts.

4. Simon's claims are barred by their acquiescence in the Taubman Parties' acts.

5. Simon's claims are barred by their participation in the Taubman Parties' acts.

6. Simon's claims are barred by their continued performance after the Taubman Parties' alleged breaches of the Merger Agreement.

7. Simon's claims are barred by the terms of the Merger Agreement.

8. Simon's claims are barred by their first material breach of the Merger Agreement.

9. Simon's claims are barred by their unclean hands.

10. Simon did not suffer any legally cognizable damages and, to the extent that it did, Simon failed to mitigate its damages.

11. Simon's claims, or part of them, are barred because Simon failed to provide notice of the Taubman Parties' breach and an opportunity to cure.

WHEREFORE, the Taubman Parties request the entry of a judgment:

A. Dismissing with prejudice Simon's Complaint;

B. Declaring that Simon's purported termination of the Merger Agreement was wrongful and is void;

C. Awarding the Taubman Parties their costs and disbursements incurred in this action, including their attorneys' fees and expert fees; and

D. Awarding the Taubman Parties other and further relief that the Court considers equitable and appropriate.

COUNTERCLAIM

The Taubman Parties, for their Counterclaim against the Simon Parties, say:

PRELIMINARY STATEMENT

The Simon Parties were fully aware of the risks of COVID-19 and of changing market conditions when they entered into the Merger Agreement on February 9, 2020. In fact, they extracted significant price reductions during the Merger Agreement negotiations as the COVID-19 pandemic was unfolding.

Now, citing the economic effects of the COVID-19 pandemic, the Simon Parties have wrongfully purported to terminate the Merger Agreement and refuse to complete the actions and transactions required of them under the Merger Agreement. But the Simon Parties are now contractually bound to consummate the Transactions and their failure to do so is wrongful and necessitates this Court's intervention.

Unless the Simon Parties are ordered to complete the actions required by the Merger Agreement and close the merger transactions upon Taubman's receipt of shareholder approval, the Taubman Parties will suffer irreparable harm, in addition to billions of dollars in damages, based on the loss of the premium offered by Simon to the Taubman Parties' equity holders. Accordingly, the Taubman Parties now sue for specific enforcement of the obligations of the Simon Parties under the Merger Agreement. Alternatively, and only if the Court determines not to compel specific performance, the Taubman Parties seek a declaration that they can terminate the Merger Agreement based on the Simon Parties' wrongful actions and recover their substantial damages, including the loss of the premium offered by Simon to the Taubman Parties' equity holders.

Nature of the Action

1. This suit seeks an order of the Court enforcing specifically the performance by the Simon Parties of the terms and provisions of the parties' Agreement and Plan of Merger dated as of February 9, 2020 (the "Merger Agreement"), and compelling the Simon Parties to consummate and close (the "Closing") the transactions provided in the Merger Agreement (the "Transactions"). The parties to the Merger Agreement are SPG and Taubman – two publicly-traded corporations – and certain of their respective subsidiaries.

a. On the one side of the Transactions are SPG and its operating partnership, Simon OP, which, as of March 31, 2020, owned interests in 99 malls, 69 Premium Outlets, 14 Mills malls, 4 Lifestyle Centers and 18 other retail properties in 37 states and Puerto Rico, as well as ownership interests in 30 Premium Outlets® and Designer Outlet properties located in Asia, Europe, and Canada.

b. On the other side of the Transactions are Taubman and its operating partnership, Taubman OP, which, as of March 31, 2020, owned interests in a portfolio of 24 shopping malls in the United States, Puerto Rico, and Asia, and provided leasing or management services to two other U.S. malls.

2. The Taubman Parties sue for specific performance to enforce the Simon Parties' obligations to perform their covenants and agreements under the Merger Agreement, including their obligation to close the Transactions upon satisfaction of the applicable closing conditions on or about June 30, 2020, three business days after the Taubman shareholders' approval and adoption of the Merger Agreement.[5] A copy of the Merger Agreement is attached as Exhibit 1.

3. The Transactions include:

a. The merger of Taubman into Merger Sub 1 (the "REIT Merger"), with each public shareholder of Taubman common stock to receive $52.50 in cash per share held.

b. The merger of Merger Sub 1 into Taubman OP (the "Partnership Merger," and, together with the REIT Merger, the "Mergers"), with each partner of Taubman OP, other than Taubman Centers, Inc., and other than members of the Taubman Family (identified in the Merger Agreement), to receive, at the election of the partner, (i) $52.50 in cash for each unit of partnership interest of Taubman OP (each, a "Taubman OP Unit," and, collectively, the "Taubman OP Units") held or (ii) 0.3814 of a unit of limited partnership interest of Simon OP ("Simon OP Units") for each Taubman OP Unit held. The Taubman Family members would also receive $52.50 in cash for some of their Taubman OP units.

c. Upon completion of the Partnership Merger, the Taubman OP will survive and the separate existence of Merger Sub 2 will cease. Upon completion of the REIT Merger, Merger Sub 1 will survive ("Surviving TCO"), and the separate existence of Taubman will cease. Immediately following completion of the Partnership Merger, Taubman OP will be converted (the "LLC Conversion") into a Delaware limited liability company (the ''Joint Venture''). The enterprise value of the Taubman Parties that are the subject of the Mergers is approximately $10.22 billion.

[5] It is also a condition to both parties' obligation to close that the shares of Simon's common stock be approved for listing on the New York Stock Exchange, subject to the final notice of issuance. (Merger Agreement § 7.01(d).) That condition can only be satisfied if Simon submits the necessary (and simple) application to the New York Stock Exchange, as it is required to do under the Merger Agreement. (*Id*. § 6.07.)

d. Following the Mergers and the LLC Conversion, Simon OP will own 100% of the outstanding equity of Surviving TCO, Surviving TCO will own 80% of the limited liability company interests of the Joint Venture, and the Taubman family members will own the remaining 20% of the limited liability company interests of the Joint Venture.

e. Taubman has been headquartered in Oakland County, Michigan, for 70 years, and Surviving TCO will continue to operate the Joint Venture and manage its properties from Oakland County.

4. The Merger Agreement requires the Closing to take place on the third business day following the satisfaction of the conditions precedent to Closing (other than those conditions that by their nature were to be satisfied at the Closing).

5. The Taubman Parties' final condition precedent to effect the Closing (other than those conditions that by their nature are to be satisfied at Closing or by the Simon Parties) is scheduled to occur on June 25, 2020, at a special meeting of Taubman's shareholders, at which the shareholders are anticipated to vote to approve and adopt the Merger Agreement and the Transactions.

6. On June 10, 2020, the Simon Parties sent a letter-notice to the Taubman Parties "Re: Termination Of Agreement And Plan Of Merger" (the "Termination Notice"). A copy of the Termination Notice is attached as Exhibit 2.

7. The Termination Notice purported to terminate the Merger Agreement and stated that the Simon Parties would not consummate the Transactions.

8. The Simon Parties' Termination Notice, repudiation, and refusal to close are based on their allegations that (a) Taubman has experienced a "Material Adverse Effect," as defined in the Merger Agreement, (b) certain representations and warranties of the Taubman Parties were not true and correct, and (c) the Taubman Parties did not perform their covenant to conduct their business in the ordinary course of business consistent with past practices and, during 2020, in accordance with Taubman's operational budget delivered by Taubman to Simon before the execution of the Merger Agreement. But, in reality, the Simon Parties are just trying to use the effects of the COVID-19 pandemic, which they assumed the risk of in the Merger Agreement, as an excuse to renege on the Merger Agreement.

9. The allegations in the Simon Parties' Termination Notice are not valid justifications under the Merger Agreement for refusing to close:

a. The Simon Parties expressly assumed the risk of material adverse effects caused by the COVID-19 pandemic. The Merger Agreement, in its definition of a Material Adverse Effect, expressly excludes "pandemics" – and any "effect, change, event or occurrence arising out of, or resulting from . . . pandemics" – from the events that may be considered in determining whether there is a material adverse effect on the business, assets, liabilities, results of operations, or financial condition of Taubman and its subsidiaries, except that the "pandemic" effect, change, event, or occurrence may be taken into account "to the extent" it has a disproportionate adverse effect on Taubman and its subsidiaries, taken as a whole, as compared to other participants, in the industries in which Taubman and its subsidiaries operate. (Merger Agreement § 9.03.) Section 9.04 of the Merger Agreement further defines what "to the extent" means, as follows: "[t]he word 'extent' in the phrase 'to the extent' shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply 'if.'" Therefore, in assessing whether a Material Adverse Effect has occurred, only the incremental disproportionate effect of a pandemic on Taubman is taken into account and a Material Adverse Effect does not occur merely if Taubman has experienced a disproportionate effect. If that incremental disproportionate effect does not constitute a Material Adverse Effect, then no Material Adverse Effect has occurred.[6]

[6] Even in evaluating less seller-friendly Material Adverse Effects clauses, courts have nearly unanimously rejected attempts by buyers to declare a material adverse effect, which is not surprising given the exceedingly stringent standard necessary to meet that threshold. See, e.g., *In re IBP, Inc Shareholders Litig*, 789 A2d 14, 68 (Del Ch 2001) (applying New York law and noting that "a buyer ought to have to make a strong showing to invoke a Material Adverse Effect exception to its obligation to close"); *Project Boat Holdings, LLC v Bass Pro Grp, LLC*, 2019 WL 2295684, at *22 (Del Ch May 29, 2019) ("While frequently alleged, breaches of a MAE clause are rarely proven.") Indeed, the Delaware Court of Chancery has just once validated a buyer's termination of an agreement based on a material adverse effect and only under a unique and dissimilar set of facts. See *Akorn, Inc, v Fresenius Kabi AG*, 2018 WL 4719347 (Del Ch Oct. 1, 2018).

b. Contrary to the Simon Parties' assertion, the COVID-19 pandemic has not had a disproportionately material adverse effect on Taubman and its subsidiaries compared to the other participants in the industry in which Taubman and its subsidiaries operate, much less an incremental disproportionate adverse effect that constitutes a Material Adverse Effect. And, in any case, the adverse effect of COVID-19 on Taubman and its subsidiaries is not nearly durationally sufficient so as to give rise to a Material Adverse Effect. Furthermore, the Material Adverse Effect definition expressly excludes any "effect, change, event or occurrence arising out of, or resulting from . . ." any action that Simon has consented to in writing. (Merger Agreement § Section 9.07 ("Material Adverse Effect," clause (vii).) While Simon's Complaint fails to mention this, Simon did in fact consent to Taubman closing its malls in response to the pandemic. Thus, any effect Taubman experienced from closing of its malls cannot constitute or contribute to a Material Adverse Effect, even if Taubman experienced that effect disproportionately to other participants in the industry.

c. The Simon Parties expressly agreed that Taubman only had to "use commercially reasonable efforts" to conduct its business in the ordinary course of business consistent with past practices, and the Simon Parties have no valid basis to claim that Taubman has not satisfied this covenant. Under Section 5.01(a) of the Merger Agreement, the Taubman Parties' obligation to conduct their business in the ordinary course of business consistent with past practices is expressly limited by the phrase, "use commercially reasonable efforts," such that the Taubman Parties' covenant is to "*use commercially reasonable efforts* to (i) conduct its business in the ordinary course of business consistent with past practices and, during 2020, in accordance with its operational budget." (emphasis added). And, here, the Simon Parties cannot legitimately allege that the Taubman Parties have failed to "use commercially reasonable efforts" to conduct their business consistent with past practices or in accordance with the operational budget that they themselves received.

d. Turning the covenant on its head, the Simon Parties' grievance is not that the Taubman Parties failed to conduct their business in the ordinary course of business consistent with past practices. Rather, the Simon Parties complain that the Taubman Parties failed to deviate from the ordinary course in response to the pandemic. There is, however, no covenant in the Merger Agreement that requires Taubman to deviate from its ordinary course of business.

e. Taubman at all times acted with the consent or acquiescence of the Simon Parties, who were apprised of all of Taubman's actions in response to the pandemic. Before sending the Termination Notice on June 10, 2020, the Simon Parties never objected to Taubman's actions in response to the effects of the COVID-19 pandemic even though the Simon Parties (i) had been kept fully apprised of Taubman's conduct and participated in multiple daily and weekly meetings in the four months leading to the Simon Parties' Termination Notice, (ii) consented to Taubman's comprehensive Annual Budget in March 2020, (iii) consented to various actions taken by the Taubman Parties, including closing malls in response to the COVID-19 pandemic, (iv) reviewed and approved Taubman's Schedule 14A Definitive Proxy Statement filed with the SEC and sent to Taubman's shareholders on May 29, 2020, and (v) also on May 29, 2020, jointly, with Taubman, filed with the SEC, along with the Definitive Proxy Statement, a Schedule 13E-3 Transaction Statement that, among other things, described the Transactions. If Simon believed that facts had arisen that constituted a breach or gave it a right not to close, it was obligated to disclose those facts on May 29, 2020, to ensure that the statements that were being made to shareholders were not false or misleading.

f. Simon OP further prepared, and caused to be mailed to each holder of a Taubman OP Unit (other than Taubman Centers, Inc., and member of the Taubman Family) on or about June 2, 2020, a Confidential Election Memorandum and an Election Form Package, describing the election of each partner to receive the $52.50 cash consideration or the 0.3814 Simon OP Unit consideration. Again, if Simon OP believed that facts had arisen that constituted a breach or gave it a right not to close, it was obligated to disclose those facts on June 2, 2020, to ensure that the statements Simon was making to equity holders were not false or misleading.

g. The price per share that the Simon Parties agreed to pay to Taubman's shareholders and Taubman OP's equity holders in December 2019 was reduced by SPG by a total of $7.50 per share after SPG assessed the evolving market conditions in the wake of the uncertain and deteriorating retail environment, the critical situation with the bankruptcy of Forever 21 – an important tenant in the SPG shopping centers – the recent performance of Simon's stock and the emergence of the COVID-19 pandemic.

h. Thus, the Simon Parties had and have no legitimate basis for their purported termination of the Merger Agreement and their refusal to close the Transactions.

10. The parties expressly agreed in Section 9.10 of the Merger Agreement that "irreparable damage would occur in the event that any of the provisions of th[e Merger] Agreement were not performed in accordance with their specific terms or were otherwise breached, and that monetary damages, even if available, would not be an adequate remedy therefor." The parties accordingly agreed that they would be entitled to "enforce specifically the terms and provisions of th[e Merger] Agreement, including the right of a Party to cause the other Parties to consummate the Transactions."

11. If the Simon Parties are not compelled to consummate the Transactions, the Taubman Parties will be irreparably harmed.

a. The Taubman Parties will be deprived of the unique opportunity to combine the Simon Parties' and the Taubman Parties' businesses. Further, there may be damage to investor perception and disruption from announcing a deal that fails to be completed.

b. Likewise, Taubman OP's equity holders will be deprived of the unique opportunity to become partners in Simon OP in a tax efficient manner, which is not publicly traded and which is the operating partnership of the largest shopping-center REIT in the nation.

c. The Taubman Parties will be deprived of access to future favorable liquidity that would provide beneficial opportunities to invest in innovative real estate transactions.

d. The Taubman Parties have taken specific actions under the terms of the Merger Agreement that will result in irreparable harm if the Simon Parties are not compelled to consummate the Transactions. For example, rather than consummating the mergers as scheduled on June 30, 2020, the Simon Parties – through their substantial access to the Taubman Parties' highly confidential business information given under the terms of the Merger Agreement – are now in position, despite their willful breach, to benefit from their access to this information in competition, rather than cooperation, with the Taubman Parties.

f. Furthermore, the Titanium Family Group (as defined in Joint Venture Operating Agreement ("JVOA") among Taubman Realty Group LLC, Merger Sub 1, Simon OP, the Titanium Family Group, and SPG) will be deprived of the unique opportunity, unavailable to the public, to acquire a substantial interest in the Joint Venture. That is critical because, among other reasons, subject to the terms of the JVOA, the Titanium Family Group retains the right to exchange its units in the Joint Venture for substantial monetary consideration. Absent specific performance, the Titanium Family Group will never realize the benefit of the Joint Venture or its rights under the JVOA.

12. Moreover, if the Simon Parties are not compelled to consummate the Transactions, Taubman's and Taubman OP's common equity holders, including the owners of Taubman's publicly-traded stock who voted in favor of the Transactions, will be deprived of approximately $3.729 billion in cash or Simon OP Units that the Simon Parties agreed to pay to them as part of the Mergers.

13. In the alternative, if the Court does not grant an order of specific performance, the Taubman Parties seek a declaration and judgment that:

(a) the Simon Parties have committed a breach, including a Willful Breach (as defined in the Merger Agreement), of the Merger Agreement by repudiating their obligations under the Merger Agreement in the Termination Notice and by refusing to fulfill their obligations under the Merger Agreement, including using reasonable best efforts to cause the closing conditions to be satisfied and to consummate the Transactions;

(b) the Simon Parties could not, and have not, cured their breach;

(c) under Section 8.01(c) of the Merger Agreement, the Taubman Parties may terminate the Merger Agreement *nunc pro tunc* to the date of June 10, 2020, or, in the alterative, to the 45th day after June 12, 2020, the date that the Taubman Parties notified the Simon Parties of their Willful Breach of the Merger Agreement (see below);

(d) the Merger Agreement is terminated *nunc pro tunc* under Section 8.01(c) of the Merger Agreement, with the Taubman Parties entitled to recover damages as determined by the Court;

(e) the Taubman Parties may recover damages on behalf of Taubman's and Taubman OP's equity holders in an amount to be determined by the Court, including damages under Section 9.07(c) of the Merger Agreement based on the loss of the premium offered to those equity holders, with the loss of the premium calculated based on the $52.50 a share price, and the amounts received by Taubman or by Taubman OP on behalf of the equity holders may be retained by Taubman or Taubman OP.

14. An award of damages will not fully compensate the Taubman Parties for the irreparable damage they will suffer if the Simon Parties do not perform their obligations under the Merger Agreement and consummate the Transactions, but damages are essential, if the Court does not award specific performance, to at least partially compensate the Taubman Parties for the substantial losses caused by the Simon Parties' breach.

PARTIES, JURISDICTION, AND VENUE

15. Taubman is a Michigan corporation headquartered in Oakland County, Michigan.

16. Taubman OP is a Delaware limited partnership headquartered in Oakland County, Michigan.

17. SPG is a Delaware corporation headquartered in Indiana. On information and belief, SPG has not obtained a certificate of authority to transact business in Michigan.

18. Simon OP is a Delaware limited partnership headquartered in Indiana. On information and belief, Simon OP has not obtained a certificate of authority to transact business in Michigan.

19. Merger Sub 1 is a Delaware limited liability company and a wholly-owned subsidiary of Simon OP. On information and belief, Merger Sub 1 has not obtained a certificate of authority to transact business in Michigan.

20. Merger Sub 2 is a Delaware limited liability company and a wholly-owned subsidiary of Merger Sub 1. On information and belief, Merger Sub 2 has not obtained a certificate of authority to transact business in Michigan.

21. This Court has personal jurisdiction over the Simon parties under Mich. Comp. Laws §§ 600.711(2), 600.721(2), 600.731(2), and 600.745(2).

22. The amount in controversy, exclusive of interest and costs, exceeds $25,000, and the claims stated in these Counterclaims are within the equitable jurisdiction of the Court.

23. Venue is proper in Oakland County under Mich. Comp. Laws § 600.1621.

BACKGROUND

24. Taubman is a Michigan corporation (incorporated in 1973) that operates as a self-administered and self-managed real estate investment trust ("REIT"). Its common stock is publicly traded on the New York Stock Exchange ("NYSE"). Taubman's sole asset is an approximate 70% general partnership interest in Taubman OP, which owns direct or indirect interests in all of the Taubman Parties' shopping malls and real estate properties.

a. Together with their subsidiaries, the Taubman Parties own, manage, lease, acquire, dispose of, develop, and expand luxury retail shopping malls and interests in the shopping malls.

b. As of March 31, 2020, the Taubman Parties' owned a portfolio of operating shopping malls, which included 24 urban and suburban shopping malls operating in 11 U.S. states, Puerto Rico, South Korea, and China. Taubman also provides leasing or management services to two other U.S. shopping malls.

25. SPG is a Delaware corporation that operates as a self-administered and self-managed REIT. Its common stock is publicly traded on the NYSE. SPG is structured as an umbrella partnership REIT under which substantially all of its business is conducted through Simon OP, SPG's majority-owned partnership subsidiary, of which SPG is the general partner.

a. Simon's primary business is owning, developing, and managing shopping, dining, entertainment, and mixed-use destinations, which consist primarily of malls, Premium Outlets®, and Mills®. Simon's properties, as of December 31, 2019, comprised 191 million square feet in North America, Asia, and Europe.

b. As of December 31, 2019, Simon owned an interest in 204 income-producing properties in the United States, which consisted of 106 malls, 69 Premium Outlets®, 14 "Mills®" centers, four lifestyle centers, and 11 other retail properties in 37 states and Puerto Rico. As of December 31, 2019, Simon had ownership interests in 29 Premium Outlets® and Designer Outlet properties located in Asia, Europe, and Canada. As of December 31, 2019, Simon also owned a 22.2% equity stake in Klépierre SA, a publicly traded, Paris-based real estate company that owns, or has an interest in, shopping centers located in 15 countries in Europe.

26. In October 2019, Robert S. Taubman ("Mr. R. Taubman"), Chairman of the Taubman Board of Directors and President and Chief Executive Officer of Taubman, met for dinner with David Simon ("Mr. Simon"), Chairman of the Simon Board of Directors and President and Chief Executive Officer of Simon, to explore the possibility of a joint venture involving certain properties.

27. Following this meeting, the parties explored the possibility of a potential acquisition by Simon of all of Taubman and numerous related issues.

28. In subsequent discussions between Mr. R. Taubman and Mr. Simon, Mr. Simon confirmed that he was interested in pursuing a potential acquisition transaction and that it would be helpful for Simon to have certain nonpublic information about Taubman in order to further evaluate Simon's interest. After the parties executed a confidentiality and standstill agreement, and Simon then conducted a due diligence review of the Taubman Parties.

29. Subsequently, on November 15, 2019, Mr. Simon contacted Mr. R. Taubman and orally conveyed an indication of interest under which Simon would acquire Taubman at a price of $53.00 per Taubman common share, comprised of a to-be-determined mix of cash and shares of Simon common stock. This proposal represented a 51.3% premium above the prior day's closing price of $35.03.

30. On December 6, 2019, Messrs. R. Taubman and Simon met for lunch and discussed the potential transaction. During that meeting, Mr. Simon made a revised oral proposal to Mr. R. Taubman for Simon to acquire Taubman for $60.00 per share, again in a mix of cash and shares of Simon common stock. This proposal represented a 92.7% premium over the prior day's closing price of $31.13.

31. In early January 2020, various news outlets reported on the emergence of a novel coronavirus, COVID-19, in Wuhan, China.[7]

32. On January 9, 2020, Mr. Simon and Mr. R. Taubman met to continue discussing the proposed transaction and the current market environment.

a. During this discussion, Mr. Simon communicated that, given the uncertain and deteriorating retail environment, the critical situation with the bankruptcy of Forever 21, an important tenant in the Simon shopping centers, and the recent performance of Simon's stock, among other things, Simon was no longer willing to pursue a transaction on the economic terms proposed on December 6.

b. Simon instead submitted a revised oral proposal for Simon to acquire Taubman for $57.00 in cash per share (as opposed to cash and stock, as previously proposed), a 78.2% premium over the prior day's closing price of $31.99.

33. As of January 21, 2020, several countries, including the United States, Japan, and South Korea, all had reported cases of COVID-19.[8]

34. On January 26, 2020, Mr. Simon contacted Mr. R. Taubman and communicated that, while Simon was still interested in pursuing an acquisition, it needed to assess market conditions further and would not continue to engage in the negotiation of the transaction agreements until Simon had completed its assessment.

35. On January 30, 2020, the World Health Organization reported 7,818 worldwide cases of COVID-19, and it declared COVID-19 a public health emergency.[9]

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[7] *See* World Health Organization, WHO Timeline – COVID-19 (Site last updated Apr. 27, 2020), *available at* https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19.
[8] *See id.*
[9] *See id.*

36. The next day, the U.S. Department of Health and Human Services declared COVID-19 a public health emergency.[10]

37. Between January 23, 2020, and January 31, 2020, Taubman's stock price declined by 16.4% (from $31.59 to $26.42), and Simon's stock price declined by 9.6% (from $147.25 to $133.15).

38. On February 5, 2020, Mr. Simon contacted Mr. R. Taubman and communicated that Simon was prepared to reëngage in transaction discussions, but that Simon would not pay more than $52.00 per share. In response to Mr. R. Taubman's objection to the revised proposal, Mr. Simon offered to increase the purchase price to $52.50 in cash per share (the "February 5 Proposal"), but stated that this was Simon's best and final offer.

39. Simon's "best and final offer" of $52.50 per share reflected a reduction of $7.50 from the $60.00 per share that Simon had proposed in December 2019, and it came after Simon's assessment of the market conditions, including the uncertain and deteriorating retail environment caused by, among things, the effects of the COVID-19 pandemic.

40. Later on February 5, 2020, Simon sent revised drafts of a merger agreement and other transaction documents and schedules to Taubman.

a. These drafts included Simon's new purchase price of $52.50 per common share of Taubman stock.

b. These drafts also continued to include a provision that excluded the effects of a pandemic from the definition of a Material Adverse Effect that would excuse the Simon Parties from consummating the Transactions. This, despite publicly-reported news of the effects of the COVID-19 pandemic.

[10] *See id.*

41. From February 5, 2020, through the execution of the Merger Agreement on February 9, 2020, the parties continued to heavily negotiate the provisions of the Merger Agreement and the other transaction documents and schedules.

42. The Merger Agreement was executed by the parties as of February 9, 2020. The Merger Agreement had a purchase price of $52.50 per common share of Taubman stock and continued to exclude the effects of a pandemic from the definition of a Material Adverse Effect that would excuse the Simon Parties from consummating the Transactions, as further described below.

TERMS OF THE MERGER AGREEMENT

A. The Transactions

43. The Partnership Merger: The Merger Agreement provides that, subject to the satisfaction or waiver of certain conditions, Merger Sub 2 will be merged with and into Taubman OP (the "Partnership Merger"). Following the completion of the Partnership Merger, Taubman OP will survive, and the separate existence of Merger Sub 2 will cease. Immediately following the Partnership Merger, Taubman OP will be converted into a Delaware limited liability company, and the holders of Taubman OP Units, other than Taubman Centers, Inc., and other than members of the Taubman Family (as defined in the Merger Agreement), will receive, for each Taubman OP Unit held, at their sole election, either (a) 0.3814 of a Simon OP Unit, or (b) $52.50 in cash per Taubman OP Unit held. The Taubman Family members would also receive $52.50 in cash for some of their Taubman OP units.

44. The REIT Merger: Following the LLC Conversion, Taubman will be merged with and into Merger Sub 1 (the "REIT Merger"). Following the REIT Merger, Merger Sub 1 will survive, and the separate existence of Taubman will cease. At the effective time of the REIT Merger, each share of the Taubman common stock then issued and outstanding, other than certain shares of excluded Taubman common stock (as described in the Merger Agreement), will receive $52.50 in cash, and each share of Taubman Series B preferred stock then issued and outstanding will receive cash equal to $52.50 divided by 14,000, and each share of the Taubman Series J and Series K Preferred Stock will receive cash of $25.00 plus all accumulated and unpaid dividends up to, but not including, the redemption date of such share.

45. Effect of the Transactions: Following the Mergers and the LLC Conversion, Simon OP will own 100% of the outstanding equity of Surviving TCO, Surviving TCO will own 80% of the limited liability company interests of the Joint Venture, and the Taubman family members will own the remaining 20% of the limited liability company interests of the Joint Venture.

B. The Conditions to Closing

46. Article VII of the Merger Agreement identifies certain conditions precedent to the obligations of each of the parties to effect the Closing of the Transactions, including the approval of Taubman's and Taubman OP's equity holders.

47. Under Section 7.02 of the Merger Agreement, the obligations of the Simon Parties are subject to the following additional conditions (among others):

- the representations and warranties of the Taubman Parties must be true and correct at and as of the Closing Date, subject to the standards of materiality set forth in the Merger Agreement;

- the Taubman Parties must have performed in all material respects all covenants set forth in the Merger Agreement required to be performed by them at or prior to the Closing Date; and

- at and as of the Closing Date, there must not have occurred and be continuing any Material Adverse Effect with respect to Taubman.[11]

[11] The Simon Parties purported to terminate the Merger Agreement on the basis of a Material Adverse Effect well before the Closing Date. Given that the Merger Agreement only requires the absence of a Material Adverse Effect at and as of the Closing Date, the Simon Parties' termination is void and invalid on its face.

48. Significantly, "Material Adverse Effect" is defined in Section 9.03 of the Merger Agreement as expressly excluding "pandemics" – and any "effect, change, event or occurrence arising out of, or resulting from . . . pandemics" – from the events that may be considered in determining whether there is a material adverse effect on the business, assets, liabilities, results of operations, or financial condition of Taubman and its subsidiaries, except "to the extent" that the "pandemic" effect, change, event, or occurrence may be taken into account if it has a disproportionate adverse effect on Taubman and its subsidiaries, taken as a whole, as compared to other participants, in the industries in which Taubman and its subsidiaries operate. Specifically, the definition of Material Adverse Effect in Section 9.03 provides:

> "Material Adverse Effect" with respect to any Person means any effect, change, event or occurrence that, individually or in the aggregate, has a material adverse effect on the business, assets, liabilities, results of operations or financial condition of such Person and its Subsidiaries (and its unconsolidated joint ventures), taken as a whole; provided, however, that none of the following, and no effect, change, event or occurrence arising out of, or resulting from, the following, shall constitute or be taken into account, individually or in the aggregate, in determining whether a Material Adverse Effect has occurred or may occur: (i) changes generally affecting the economy, credit or financial or capital markets, in the United States or elsewhere in the world, including changes in interest or exchange rates; (ii) changes generally affecting the industries in which such Person and its Subsidiaries operate; (iii) changes or prospective changes in Applicable Law or GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, or any changes or prospective changes in general legal, regulatory or political conditions; . . . (vi) volcanoes, tsunamis, pandemics, earthquakes, floods, storms, hurricanes, tornados or other natural disasters; (vii) any action taken by such Person or its Subsidiaries that is required by this Agreement or with the prior written consent or at the written direction of another Person in accordance with this Agreement, or the failure to take any action by such Person or its Subsidiaries if that action is prohibited by this Agreement; . . . (ix) changes or prospective changes in such Person's or its Subsidiaries' credit ratings; (x) changes in the price or trading volume of the such Person's common stock; (xi) any failure to meet any internal or public projections, forecasts, guidance, estimates, milestones, budgets or internal or published financial or operating predictions of revenue, earnings, cash flow or cash position (it being understood that the exceptions in clauses (ix), (x) and (xi) shall not prevent or otherwise affect a determination that the underlying cause of any such change or failure referred to therein (to the extent not otherwise falling within any of the exceptions provided by clauses (i) through (xi) hereof) is, may be, contributed to or may contribute to, a Material Adverse Effect); provided further, however, that any effect, change, event or occurrence referred to in clauses (i), (ii), (iii), (v) and (vi) may be taken into account in determining whether or not there has been or may be a Material Adverse Effect to the extent such effect, change, event or occurrence has a disproportionate adverse effect on such Person and its Subsidiaries, taken as a whole, as compared to other participants in the industries in which such Person and its Subsidiaries operate.

(Merger Agreement § 9.03.) Section 9.04 of the Merger Agreement further defines what "to the extent" means, as follows: "[t]he word 'extent' in the phrase 'to the extent' shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply 'if.'" Therefore, in assessing whether a Material Adverse Effect has occurred, the incremental disproportionate effect of a pandemic on Taubman is the relevant inquiry, and not whether Taubman has experienced a disproportionate effect at all. If that incremental disproportionate effect does not constitute a Material Adverse Effect, then no Material Adverse Effect has occurred.

49. While Taubman covenanted to conduct its business in the ordinary course of business in 2020, consistent with past practices and with the 2020 operational budget approved by Simon, that covenant only obligates Taubman to "use commercially reasonable efforts" to do so. Specifically, Section 5.01(a) of the Merger Agreement provides:

> From the date of this Agreement until the earlier of the valid termination of this Agreement and the Effective Time, except (x) as prohibited or required by Applicable Law, (y) as set forth in the Titanium Disclosure Letter or (z) as otherwise expressly required or contemplated by this Agreement, unless [Simon] shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), [Taubman] shall, and shall cause each of its Subsidiaries to, *use commercially reasonable efforts* to (A) conduct its business in the ordinary course of business consistent with past practices and, during 2020, in accordance with its operational budget delivered by [Taubman] to [Simon] prior to the execution of this Agreement (other than immaterial deviations therefrom) and (B) preserve intact its goodwill, its business organization and material business relationships and keep available the services of its current officers and key employees. . . .

(*Id.* § 5.01(a) (emphasis added).)

C. Closing, Termination, and End Date

50. Under Section 1.02 of the Merger Agreement, the Closing of the Transactions "shall take place at 10:00 a.m., New York City time, on the third Business Day following the satisfaction or . . . waiver . . . of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing . . . .)."

51. Under Section 8.01(c) of the Merger Agreement, the Taubman Parties may terminate the Merger Agreement if:

a. the Simon Parties breach any representation, warranty, or covenant contained in the Merger Agreement, or if any representation or warranty has become untrue, such that if such breach or failure to be true occurs or continues on the Closing Date, the conditions in Sections 7.03(a) or 7.03(b) would not be satisfied as of the Closing Date;

b. the breach or untruth is not capable of being cured in a manner sufficient to allow the satisfaction of the conditions in sections 7.03(a) and 7.03(b) before the End Date, or has not been cured before the earlier of (i) 45 days after written notice informing Simon of the breach or untruth, or (ii) the End Date, whichever is earlier; and

c. as of the Closing Date, the Taubman Parties are not then in breach of any representation, warranty, or covenant contained in the Merger Agreement, and none of the Taubman Parties' representations or warranties have become untrue, in each case such that Simon's conditions precedent to Closing are not satisfied.

52. Under Section 8.02 of the Merger Agreement, the termination of the Merger Agreement under Section 8.01(c) does not relieve any party from any liability or damages arising out of its Willful Breach of the Merger Agreement.

53. Section 9.03 of the Merger Agreement defines "Willful Breach" as "a material breach of any covenant or agreement set forth in this [Merger] Agreement that is a consequence of a deliberate act or omission undertaken by the breaching Party, whether or not breaching this [Merger] Agreement is the conscious object of such act or omission."

54. Section 8.01(b)(i) of the Merger Agreement sets an "End Date" of February 9, 2021. If the Transactions are not consummated by February 9, 2021, either party may terminate the Merger Agreement, subject to the limitation that "the right to terminate this Agreement under this Section 8.01(b)(i) shall not be available to any Party whose failure to fulfill any obligation under this Agreement (which failure constitutes a breach by such Party of this Agreement) has been the primary cause of, or primarily resulted in, the failure of the Transactions to be consummated on or before such date . . . ."

D. Specific Performance

55. In Section 9.10 of the Merger Agreement, the parties acknowledged and agreed that "irreparable damage would occur in the event that any of the provisions of this [Merger] Agreement were not performed in accordance with their specific terms or were otherwise breached, and that monetary damages, even if available, would not be an adequate remedy therefor."

a. Accordingly, the parties agreed that "the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this [Merger] Agreement and to enforce specifically the performance of the terms and provisions of this Agreement, including the right of a Party to cause the other Parties to consummate the Transactions."

b. The parties further "agreed that the Parties are entitled to enforce specifically the performance of the terms and provisions of this [Merger] Agreement, without proof of actual damages (and each such Party hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to which they are entitled at law or in equity. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Applicable Law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy for any such breach."

E. Damages

56. In Section 9.07 of the Merger Agreement, the parties addressed the rights of third-party beneficiaries, and they expressly provided that, if the Taubman Parties terminate the Agreement under Section 8.01(c), they may pursue damages on behalf of their equity holders. As specified in Section 9.07(c):

> in the event of a termination of this Agreement pursuant to Section 8.01(c), the right of [Taubman's] and [Taubman] OP's equity holders to pursue claims for damages (*including damages based on the loss of the premium offered to such equity holders*); provided that the rights granted pursuant to clause (c) shall be enforceable on behalf of such equity holders only by [Taubman] or [Taubman] OP, in their respective sole and absolute discretion, on behalf of such equity holders, and any amounts received by [Taubman] or [Taubman] OP in connection therewith may be retained by such Party . . . .

(*Id.* § 9.07(c) (emphasis added).

The Acts Leading to the Simon Parties' Breach

57. From the date that the Merger Agreement was signed through today, the Taubman Parties have performed in all material respects all of the covenants required to be performed by them under the Merger Agreement.

58. Furthermore, the Taubman Parties have used commercially reasonable efforts to conduct their business in the ordinary course of business consistent with past practices.

59. Taubman at all times acted (a) in the ordinary course of business consistent with past practices and the 2020 operational budget accepted by Simon, (b) in compliance with Applicable Law, (c) as disclosed in the Taubman Disclosure Letter,[12] (d) as otherwise expressly required or contemplated by the Merger Agreement, or (e) as consented to by Simon.

60. The Taubman Parties have now satisfied all of the conditions precedent to Closing except for the approval and adoption of the Merger Agreement and the Transactions by Taubman's shareholders and other than those conditions that by their nature are to be satisfied at the Closing or by the Simon Parties.

61. Taubman has scheduled a special meeting of its shareholders for June 25, 2020 (the "Special Meeting"), to vote on the approval and adoption of the Merger Agreement and the Transactions.

62. Once Taubman's shareholders vote to approve and adopt the Merger Agreement and Transactions at the Special Meeting, all of the conditions precedent to Closing will have been satisfied, other than those conditions that by their nature are to be satisfied at the Closing or those that are not satisfied because the Simon Parties wrongfully repudiated and failed to perform their obligations.

63. The Simon Parties, however, have repudiated their obligation to perform their covenants and agreements in the Merger Agreement, including their covenant to use reasonable best efforts to cause the satisfaction of the conditions to Closing and to consummate the Transactions.

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[12] Defined in the Merger Agreement as the "Titanium Disclosure Letter."

64. On June 10, 2020, the Simon Parties sent a notice (the Termination Notice) to the Taubman Parties purporting to terminate the Merger Agreement under Section 8.01(e) and stating that the Simon Parties will not consummate the Transactions.

65. Until the Simon Parties sent the Termination Notice on June 10, 2020, the Simon Parties had not given any notice that the Taubman Parties had breached any covenant or that any representation and warranty was, or had become, untrue.

66. To the contrary, by their words and actions, the Simon Parties made clear that they had approved of, consented to, or acquiesced in, the manner in which the Taubman Parties conducted their business from the date of the Merger Agreement through June 10, 2020, when the Simon Parties sent the Termination Notice. By way of example,

a. Starting in February 2020, the Taubman Parties began sending to the Simon Parties drafts of a Preliminary Proxy Statement on Schedule 14A (the "Preliminary Proxy Statement") that the Taubman Parties would use to notify Taubman's shareholders of a special meeting to vote on the approval and adoption of the Merger Agreement and the Transactions and to disclose all relevant information. By March 23, 2020, the Taubman Parties had provided the Simon Parties with full drafts of both the Preliminary Proxy Statement and a joint Schedule 13E-3 Transaction Statement that the Simon Parties and Taubman Parties were required to sign and file pursuant to the SEC rules regarding "going private" transactions. Between April 10 and April 28, 2020 the Taubman Parties and the Simon Parties worked on the Preliminary Proxy Statement and a Joint Schedule 13E-3 Transaction. On April 28, 2020, the Taubman Parties, with the Simon Parties approval, filed with the SEC the Preliminary Proxy Statement, and the Taubman Parties and the Simon Parties each signed and filed with the SEC the Joint Schedule 13E-3 Transaction Statement. The Simon Parties approved the filing of the Preliminary Proxy Statement with the SEC, and they participated in the preparation of, and signed, the Joint Schedule 13E-3 Transaction Statement that was filed with the SEC along with the Preliminary Proxy Statement.

b. In May 2020, after the parties received comments to the Preliminary Proxy Statement from the SEC, the Simon Parties participated in the preparation and filing of two sets of the parties' responses to those comments.

c. In May 2020, the Simon Parties participated in the preparation of the Definitive Proxy Statement on Schedule 14A (the "Definitive Proxy Statement") that was filed with the SEC and sent to Taubman's shareholders to notify them of a special meeting of shareholders to be held on June 25, 2020, to vote on the approval and adoption of the Merger Agreement and the Transactions. The Simon Parties participated in the preparation of the Definitive Proxy Statement and signed an Amendment No. 2 to the joint Schedule 13E-3 Transaction Statement that was filed with the SEC along with the Definitive Proxy Statement.

d. Simon further prepared, and caused to be mailed to each holder of a Taubman OP Unit (other than Taubman Centers, Inc., and member of the Taubman Family) on or about June 2, 2020, a Confidential Election Memorandum and an Election Form Package, describing the election of each partner to receive the $52.50 cash consideration or the 0.3814 Simon OP Unit consideration.

e. The Simon Parties never expressed any objection to the consummation of the Transactions nor did they notify the Taubman Parties of any actual or potential breach of, or default under, the Merger Agreement during the time that (i) the Preliminary Proxy Statement was prepared and filed, (ii) the parties responded to comments from the SEC, (iii) the parties prepared and filed with the SEC, and Taubman sent to its shareholders, the Definitive Proxy Statement noticing a special meeting of shareholders to be held on June 25, 2020, or (iv) Simon prepared and caused to be mailed to the holders of Taubman OP Units the Confidential Election Memorandum and the Election Form Package. If Simon was aware of facts that constituted a breach or gave it a right not to close, it was obligated to disclose those facts to ensure the statements that were being made to shareholders were not misleading.

f. Until June 10, 2020, the Simon Parties, through their in-house and outside counsel and certain principals, have participated in multiple daily and weekly conference calls to discuss the Transactions and the steps necessary to consummate the Transactions, including obtaining specified consents (identified in the schedules to the Merger Agreement) from the Taubman Parties' lenders, ground lessors, and joint venture partners. In fact, all of the specified consents were obtained. Each week, the Taubman Parties' counsel distributed to the Simon Parties' counsel an updated Closing Checklist.

(i) The Closing Checklist distributed in advance of a June 5, 2020, conference call listed the Closing Date as June 30, 2020. At no time prior to June 10, 2020, did the Simon Parties voice any dissent or objection to the Transactions closing on June 30, 2020.

(ii) In fact, the Simon Parties never expressed any dissent or objection to the consummation of the Transactions, nor did they notify the Taubman Parties of any actual or potential breach of, or default under, the Merger Agreement during these multiple weekly conference calls.

67. The Simon Parties' Termination Notice attempts to justify its termination and refusal to close on the grounds that (a) Taubman has experienced a Material Adverse Effect, (b) certain of the Taubman Parties' representations and warranties are therefore no longer true, and (c) Taubman has not conducted its business in the ordinary course of business.

68. The Simon Parties' stated grounds do not justify the Simon Parties' purported termination of the Merger Agreement or excuse their failure and refusal to consummate the Transactions for multiple reasons, including the following:

a. The Simon Parties expressly assumed the risk of material adverse effects caused by the COVID-19 pandemic. The Merger Agreement, in its definition of a Material Adverse Effect in Section 9.03, expressly excludes "pandemics" – and any "effect, change, event or occurrence arising out of, or resulting from . . . pandemics" – that can have a material adverse effect on the business, assets, liabilities, results of operations, or financial condition of Taubman and its subsidiaries, except "to the extent" that the "pandemic" effect, change, event, or occurrence has a disproportionate effect on Taubman and its subsidiaries, taken as a whole, as compared to other participants in the industries in which Taubman and its subsidiaries operate. The COVID-19 pandemic has not had a disproportionate effect on Taubman and its subsidiaries in the industry in which they operate, much less one where the incremental disproportionate effect on Taubman constitutes a Material Adverse Effect.

b. The Simon Parties expressly agreed that Taubman only had to "use commercially reasonable efforts" to conduct its business in the ordinary course of business consistent with past practices, and the Simon Parties have no basis in fact to deny that Taubman did, in fact, use commercially reasonable efforts. Under Section 5.01(a) of the Merger Agreement, the Taubman Parties' obligation to conduct their business in the ordinary course of business consistent with past practices is expressly limited by the phrase, "use commercially reasonable efforts," such that the Taubman Parties' covenant is to "*use commercially reasonable efforts* to (A) conduct its business in the ordinary course of business consistent with past practices and, during 2020, in accordance with its operational budget." (emphasis added). And, here, the Simon Parties cannot establish that the Taubman Parties have failed to "use commercially reasonable efforts" to conduct their business in the ordinary course of business consistent with past practices or in accordance with the operational budget.

c. Taubman at all times acted with the consent or acquiescence of the Simon Parties, who were apprised of all of Taubman's actions in response to the pandemic. Before sending the Termination Notice on June 10, 2020, Simon did not object to Taubman's conduct in response to the effects of the COVID-19 pandemic even though Simon (i) reviewed and approved Taubman's budget in March 2020 and its revised budget in May 2020, (ii) has been kept fully apprised of Taubman's actions and has participated in multiple daily and weekly meetings in the four months leading to the Simon Parties' Termination Notice, and (iii) reviewed and approved Taubman's Schedule 14A Definitive Proxy Statement filed with the SEC and sent to Taubman's shareholders on May 29, 2020, and, also on May 29, 2020, jointly, with Taubman, filed with the SEC, along with the Definitive Proxy Statement, a Schedule 13E-3 Transaction Statement that, among other things, described the Transactions. If Simon believed that facts had arisen that constituted a breach or gave it a right not to close, it was obligated to disclose those facts on May 29, 2020, to ensure the statements that were being made to shareholders were not misleading.

d. In addition, Simon OP prepared, and caused to be mailed to each holder of a Taubman OP Unit (other than Taubman Centers, Inc., and member of the Taubman Family) on or about June 2, 2020, a Confidential Election Memorandum and an Election Form Package, describing the election of each partner to receive the $52.50 cash consideration or the 0.3814 Simon OP Unit consideration. Again, if Simon believed that facts had arisen that constituted a breach or gave it a right not to close, it was obligated to disclose those facts on June 2, 2020, to ensure the statements that it was making to equity holders were not misleading.

e. To the contrary, Simon OP's Memorandum told Taubman OP's unitholders that, "[i]f Taubman's stockholders vote to approve the REIT Merger and the other Transactions at the special meeting of Taubman's stockholders (which is currently scheduled to be held on June 25, 2020), and assuming that the other conditions to the Mergers are satisfied or waived, it is anticipated that the Mergers and the other Transactions will be completed in the second or third quarter of 2020."

f. The price per share that the Simon Parties agreed to pay to Taubman's shareholders and Taubman OP's equity holders in December 2019 was reduced by SPG by a total of $7.50 per share after SPG assessed the evolving market conditions in the wake of the uncertain and deteriorating retail environment, the critical situation with the bankruptcy of Forever 21 – an important tenant in the SPG shopping centers – the recent performance of Simon's stock and the emergence of the COVID-19 pandemic.

69. The Simon Parties' Termination Notice is a pretext for their attempt to renege on the Merger Agreement based on the effects of the COVID-19 pandemic, even though the Simon Parties expressly assumed the risks of the effects of the COVID-19 pandemic under the Merger Agreement.

70. The consideration to be paid by the Simon Parties was negotiated and determined in light of the adverse market conditions that existed at the time the Merger Agreement was signed and that could reasonably be expected to occur due to the effects of the COVID-19 pandemic.

71. If and to the extent Taubman breached any representation, warranty, or covenant such that a condition precedent to the Closing was allegedly not satisfied, the Simon Parties either consented to, or acquiesced in, the nonsatisfaction of that condition.

72. The Simon Parties' Termination Notice and stated refusal to consummate the Transactions on June 30, 2020, irrespective of the approval of the Merger Agreement by Taubman's shareholders, is an anticipatory breach of the Merger Agreement and is a Willful Breach under the Merger Agreement.

73. Left unremedied, the Simon Parties' refusal to consummate the Transactions will irreparably harm the Taubman Parties.

a. The Simon Parties' failure to consummate the Transactions will cause irreparable harm to the market value of Taubman's stock, to the detriment of Taubman and its shareholders. Further, there may be damage to investor perception and disruption from announcing a deal that fails to be completed.

b. The Taubman Parties will be deprived of the unique opportunity to combine the Simon Parties' and the Taubman Parties' businesses.

c. Likewise, Taubman OP's equity holders will be deprived of the unique opportunity to become partners in Simon OP, which is not publicly traded and which is the operating partnership of the largest mall and outlet center REIT in the nation.

d. Taubman will be deprived of access to future liquidity that would provide beneficial opportunities to invest in innovative real estate transactions.

f. The Titanium Family Group (as defined in the JVOA) will be deprived of the unique opportunity, unavailable to the public, to acquire a substantial interest in the Joint Venture. This is critical because, among other reasons, subject to the terms of the JVOA, the Titanium Family Group retained the right to exchange its units in the Joint Venture for substantial monetary consideration. Absent specific performance, the Titanium Family Group will never realize the benefit of the Joint Venture or its rights under the JVOA.

74. On June 12, 2020, the Taubman Parties responded to the Termination Notice and notified the Simon Parties of their Willful Breach of the Merger Agreement (the "Notice of Breach"). A copy of the Taubman Parties' Notice of Breach is attached as Exhibit 2.

COUNT I

Breach of Contract – Specific Performance

75. Paragraphs 1-74 and 85-96 are incorporated and adopted in this Count I.

76. The Merger Agreement is a valid contract.

77. The Taubman Parties have performed all of their obligations under the Merger Agreement and, upon approval of the shareholders at the Special Meeting to be held on June 25, 2020, will have satisfied all of the conditions precedent to consummating the Transactions on June 30, 2020 (other than those conditions that by their nature are to be satisfied at the Closing).

78. In breach of the Merger Agreement, the Simon Parties wrongfully purported to terminate the Merger Agreement and have refused to fulfill their obligations under the Merger Agreement, including consummating the Transactions.

79. The Simon Parties' refusal to consummate the Transactions is a material breach of the Merger Agreement.

80. The Simon Parties' refusal to consummate the Transactions is a Willful Breach of the Merger Agreement.

81. The Taubman Parties will suffer irreparable harm if the Simon Parties are not compelled to specifically perform their obligation under the Merger Agreement to consummate the Transactions.

82. Monetary damages are not an adequate remedy for the Simon Parties' breach of the Merger Agreement.

83. The Simon Parties agreed in the Merger Agreement "not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to Applicable Law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy for any such breach."

84. The Taubman Parties are entitled to a judgment enforcing specifically the performance by the Simon Parties of the terms and provisions of the Merger Agreement and compelling the Simon Parties to consummate the Transactions.

COUNT II

Breach of Contract – Declaratory Relief and Damages

85. Paragraphs 1-84 are incorporated and adopted in this Count II.

86. The Merger Agreement is a valid contract.

87. The Taubman Parties have performed all of their obligations under the Merger Agreement and, upon approval of the shareholders at the Special Meeting to be held on June 25, 2020, will have satisfied all of the conditions precedent to consummating the Transactions on June 30, 2020 (other than those conditions that by their nature are to be satisfied at the Closing).

88. In breach of the Merger Agreement, the Simon Parties wrongfully purported to terminate the Merger Agreement and have refused to consummate the Transactions.

89. The Simon Parties' refusal to consummate the Transactions is a material breach of the Merger Agreement.

90. The Simon Parties' refusal to consummate the Transactions is a Willful Breach of the Merger Agreement.

91. The Taubman Parties have notified the Simon Parties in writing of their breach of the Merger Agreement.

92. If the Simon Parties do not cure their breach by consummating the Transaction within 45 days of the Notice of Breach or because the breach is incurable, the Taubman Parties have the right to terminate the Merger Agreement.

93. There is an actual controversy between the parties because the Simon Parties have denied that their refusal to consummate the Transactions is a breach of the Merger Agreement or a Willful Breach.

94. A declaratory judgment is necessary to guide the parties' future conduct in order to declare and preserve the Taubman Parties' rights and other legal relations with respect to the Simon Parties' purported termination of the Merger Agreement.

95. The Taubman Parties have incurred damages as a consequence of the Simon Parties refusal to timely consummate the Transactions, and have, and will continue to, incur additional damages as a result of the Simon Parties' breach of the Merger Agreement.

96. Under Section 9.07(c) of the Merger Agreement, the Taubman Parties may terminate the Merger Agreement as a result of the Simon Parties' breach of the Merger Agreement, and the Taubman Parties may pursue, and do pursue, claims for damages on behalf of Taubman's and Taubman OP's equity holders in an amount to be determined by the Court, including damages based on the loss of the premium offered by Simon to those equity holders, with the loss of the premium calculated based on the $52.50 a share price of Taubman common stock, and the amounts received by Taubman or by Taubman OP on behalf of the equity holders may be retained by Taubman or Taubman OP.

Relief Requested

WHEREFORE, Counterclaim Plaintiffs, Taubman Centers, Inc., and The Taubman Realty Group Limited Partnership, request the entry of a judgment in their favor and against Counterclaim Defendants, Simon Property Group, Inc., Simon Property Group, L.P., Silver Merger Sub 1, LLC, and Silver Merger Sub 2, LLC, jointly and severally, enforcing specifically the performance by the Simon Parties of their obligations under the Merger Agreement, including their obligation to use reasonable best efforts to take actions to cause the conditions in Article VII to be satisfied and to consummate the Transactions, and awarding the Taubman Parties the damages incurred by them as a result of the Simon Parties' refusal to consummate the Transactions, plus costs, expenses, and attorneys' fees as permitted by law, and other and further relief to the Taubman Parties that the Court considers equitable and appropriate.

In the alternative, and if a judgment of specific performance is not granted by the Court, the Taubman Parties request the entry of a judgment in their favor and against the Simon Parties, jointly and severally:

A. Declaring that:

(1) the Simon Parties have breached the Merger Agreement by refusing to consummate the Transactions;

(2) the Simon Parties have not timely cured their breach;

(3) under Section 8.01(c) of the Merger Agreement, the Taubman Parties may terminate the Merger Agreement *nunc pro tunc* on June 10, 2020, or, in the alternative, to the 45th day after the date of the Notice of Breach;

(4) under Section 8.01(c) of the Merger Agreement, the Merger Agreement is terminated *nunc pro tunc* as of June 10, 2020, or, in the alternative, to the 45th day after the date of Notice of Breach; and

(5) the Taubman Parties may recover damages, including on behalf of Taubman's and Taubman OP's equity holders under Section 9.07(c) of the Merger Agreement for damages based on the loss of the premium offered by Simon to those equity holders based on the $52.50 transaction price, and the amounts received by Taubman or Taubman OP on behalf of the equity holders may be retained by Taubman or Taubman OP.

B. Awarding damages to the Taubman Parties to be paid by the Simon Parties, jointly and severally, in an amount to be determined by the Court, including damages based on the loss of the premium offered to Taubman's and Taubman OP's equity holders, with the loss of the premium calculated based on the $52.50 a share price of Taubman common stock, and with the amounts received by Taubman or Taubman OP may be retained by Taubman or Taubman OP.

(C) Awarding the Taubman Parties their costs, expenses, and attorneys' fees as permitted by law.

(D) Awarding other and further relief to the Taubman Parties that the Court considers equitable and appropriate.

Respectfully submitted,

Dated: June 17, 2020

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