

pursuant to written leases (the “GPLP Leases”).¹ Specifically the Debtors lease retail space from GPLP at: Jersey Gardens Mall, Elizabeth, New Jersey; and Eastland Mall, Columbus, Ohio.

4. The Leased Premises are located in “shopping centers” as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

5. On September 22, 2010, the Debtors filed the *Debtors’ Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to Be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Assumption and Rejection Procedures for Certain Additional Executory Contracts and Unexpired Leases; (D) Approving Guidelines for Conducting Store Closing Sales; (E) Approving Agency Agreement; and (F) Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. § 365(d)(4)* (the “Motion”) (Docket No. 34).

6. On October 4, 2010, this Court entered an *Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain*

¹ The GPLP Leases and related documentation are voluminous and therefore have not been attached to this Limited Objection, however, GPLP will provide such additional documentation upon request.

Notice Procedures for Determining Cure Amounts for Executory Contracts and Leases to Be Assigned; and (E) Granting Certain Related Relief (the “Bidding Procedures Order”) (Docket No. 143).

7. On September 30, 2010, the Debtors filed the Cure Notice. The Cure Notice sets forth the Debtors’ stated cure amounts for certain leases (the “Proposed Cure Amounts”) that the Debtors may potentially assume and assign, including the GPLP Leases.

8. GPLP objects to any assumption and/or assignment of the GPLP Leases absent compliance by the Debtors and/or any proposed assignee with the requirements of section 365 of the Bankruptcy Code. Any assumption and/or assignment of the GPLP Leases must be conditioned on the Debtors first paying all amounts due and owing under the GPLP Leases through the effective date of assumption and/or assignment of the GPLP Leases, in accordance with section 365 of the Bankruptcy Code.

9. Currently, the Debtors are in default of the terms of the GPLP Leases by failing, among other things, to make pre and post-petition rental payments and other related charges when due. The total amount currently due and owing by the Debtors to GPLP under the GPLP Leases (collectively, the “Cure Amounts”) is:

Location	Pre-Petition	Post-Petition	Attorneys’ Fees²	Total
Eastland Mall	\$8,384.10	\$7,164.09	\$2,500	\$18,048.19
Jersey Gardens Mall	\$9,277.61	\$6,896.64	\$2,500	\$18,674.25

Copies of GPLP’s itemizations of the pre and post-petition rents and other related charges due are annexed hereto as Exhibit “A”.

² The amounts listed represent estimated attorneys’ fees, which are required to be paid by the Debtors under the GPLP Leases and should be paid by the Debtors in connection with any proposed assumption or assumption and assignment of the GPLP Leases. *In re Westview 74th Street Drug Corp.*, 59 B.R. 747, 757 (Bankr. S.D.N.Y. 1986) (payment of attorneys’ fees required as condition to lease assumption).

10. The Cure Amounts represent the amounts currently due and owing to GPLP under the GPLP Leases. These amounts may change prior to any actual date of assumption or assumption and assignment of the GPLP Leases. Accordingly, GPLP expressly reserves the right to amend and/or supplement the Cure Amounts from time to time and at any time, and requests that the Debtors remains liable for, among other things: (a) post-petition rent and other charges under the GPLP Leases which become due after the date hereof, (b) certain amounts due and owing under the GPLP Leases, but which may be unbilled as of the date hereof, including but not limited to year-end adjustments for common area maintenance, taxes and similar charges, (c) any regular or periodic adjustment of charges under the GPLP Leases which were not due or had not been determined as of the date hereof, (d) any percentage rent that may be due under the GPLP Leases, (e) any non-monetary defaults, and/or (f) insurance and indemnification obligations under the GPLP Leases.

11. In addition, GPLP requests that any order approving the assumption and/or assignment of the GPLP Leases provide that the proposed assignee will be responsible for all accrued, but unbilled charges under the GPLP Leases, including unpaid year-end adjustments and reconciliations, whether accruing prior to or after the effective date of assumption and/or assignment of the GPLP Leases, when such charges become due in accordance with the terms of the GPLP Leases. This result is mandated by the requirement that the Debtors cure all arrears and that the Debtors provide adequate assurance of future performance under the terms of the GPLP Leases. *See* 11 U.S.C. § 365(b)(1)(A) and 365(f)(2). Section 365(b)(3) of the Bankruptcy Code specifically provides that, for purposes of section 365(f) of the Bankruptcy Code, adequate assurance of future performance with regard to a lease of real property in a shopping center includes adequate assurance “of the source of rent and other consideration due under the lease.” 11 U.S.C. § 365(b)(3)(A)

12. GPLP is also entitled to attorneys' fees as part of the Cure Amounts for the GPLP Leases. *In re Westview 74th Street Drug Corp.*, 59 B.R. 747, 757 (Bankr. S.D.N.Y. 1986) (payment of attorneys' fees required as condition to lease assumption).

13. GPLP further objects to any potential assumption and/or assignment of the GPLP Leases absent the proposed assignee providing GPLP with sufficient information with respect to adequate assurance of future performance in accordance with section 365 of the Bankruptcy Code. Because the Successful Bidder for the GPLP Leases is not yet known, the Debtors cannot provide evidence of adequate assurance of future performance at this time and therefore cannot satisfy section 365 of the Bankruptcy Code at this time. At a minimum, any proposed assignee must provide GPLP with sufficient information to demonstrate that the proposed assignee is capable of satisfying all lease obligations (monetary and non-monetary) when required under the GPLP Leases.

14. Adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance: (A) of the source of rent and other consideration due under the GPLP Leases, and that the financial condition and operating performance of the proposed assignee and any guarantor shall be similar to the financial condition and operating performance of the Debtors and any guarantor of the Debtors at the time the Debtors entered into the GPLP Leases with GPLP; (B) that any percentage rent due under the GPLP Leases will not decline substantially; (C) that assumption and assignment of the GPLP Leases is subject to all provisions of the GPLP Leases, including but not limited to radius, location, use or exclusivity provisions, and will not breach any such provision contained in another lease; and (D) that assumption or assignment of the GPLP Leases will not disrupt any tenant mix in the Leased Premises. *See* 11 U.S.C. § 365(b)(3).

15. GPLP objects to the potential assumption and/or assignment of the GPLP Leases to the extent the Debtors and/or the proposed assignee fail to satisfy the requirements set forth in section 365(b) and (f) of the Bankruptcy Code.

16. GPLP expressly reserves the right to supplement and/or amend this Limited Objection and to otherwise object to the Motion.

WHEREFORE, GPLP respectfully requests that this Court: (a) sustain this Limited Objection; (b) require that any order authorizing the assumption and/or assignment of the GPLP Leases affirmatively require the Debtors to pay all amounts owing to GPLP under the GPLP Leases through the effective date of any assumption and/or assignment of the GPLP Leases and to provide sufficient adequate assurance of future performance and the payment of attorneys' fees; and (c) grant GPLP such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: October 19, 2010

**MONZACK, MERSKY, MCLAUGHLIN
AND BROWDER, P.A.**

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