

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: Urban Brands, Inc., et al., Debtors.) Chapter 11)) Case No. 10-13005 (KJC))) Jointly Administered)) Objection Deadline: 10/21/10 at 4:00 p.m. Hearing Date: 10/27/10 at 11:00 a.m.
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LIMITED OBJECTION OF GLIMCHER PROPERTIES LIMITED PARTNERSHIP TO ENTRY OF AN ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCE 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. § 364(d)(4) [RELATED TO DOCKET NOS. 34 AND 104]

Glimcher Properties Limited Partnership ("GPLP"), by its undersigned attorneys, submits this Limited Objection to 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 “Sale Motion”) (Docket No. 34). In support of this Limited Objection, GPLP respectfully states:

BACKGROUND

1. On September 21, 2010 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware.

2. Upon information and belief, since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. GPLP is the owner, or the managing agent for the owners (the “Owners”), of two (2) locations in which the Debtors lease retail space (the “Leased Premises”) from GPLP pursuant to written leases (the “GPLP Leases”). 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 Sale Motion. By the Sale Motion, the Debtors request, among other things, the entry of two orders: (1) the Bidding Procedures Order (as defined below); and (2) the Sale Order (as defined in the Sale Motion).

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*

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. Pursuant to the Bidding Procedures Order, a Sale Hearing (as defined in the Bidding Procedures Order) has been scheduled for October 27, 2010 at 11:00 a.m. (ET). In addition, pursuant to the Bidding Procedures Order, this Court has established October 21, 2010 at 4:00 p.m. (ET) as the deadline for parties to object to the relief requested by the Debtors to be granted by the Sale Order and this Court established October 19, 2010 at 4:00 p.m. (ET) as the deadline for non-debtor parties to any executory contracts and real property leases to object to the Debtors’ proposed cure amounts in connection with the potential assumption and/or assignment of such executory contracts or real property leases.

8. On October 19, 2010, GPLP filed its *Limited Objection of Glimcher Properties Limited Partnership to Debtors’ (1) Proposed Lease Cure Amounts and (2) Potential Assumption and Assignment of Certain Unexpired Leases [Related to Docket Nos. 34, 104, and 143]* (the “Cure and Assumption Objection”) (Docket No. 236). GPLP incorporates the objections raised in the Cure and Assumption Objection as if set forth fully herein.

9. For the reasons set forth below and in the Cure and Assumption Objection, GPLP objects to the relief sought in the Sale Motion and entry of the Sale Order.

LIMITED OBJECTION

A. Lease Rejection and Assumption and Assignment Procedures

10. GPLP does not object to the Debtors’ establishment of rejection procedures (“Rejection Procedures”) or assumption and/or assignment procedures (“Assumption Procedures”). GPLP does, however, object to certain aspects of the proposed Rejection Procedures and

Assumption Procedures.

11. As an initial matter, the Assumption Notice (as defined in the Sale Motion) and the Rejection Notice (as defined in the Sale Motion) should be served via facsimile, electronic mail and/or overnight mail on both GPLP and its undersigned counsel.

12. In addition, pursuant to the Debtors' proposed Assumption Procedures, an Assumption Notice for any proposed post-closing assumption and/or assignment of the GPLP Leases may possibly not be served until more than four (4) months after the Debtors' provision of the initial cure and adequate assurance information to GPLP and the filing of the Cure and Assumption Objection by GPLP. The Assumption Notice for any proposed post-closing assumption and/or assignment of the GPLP Leases should provide updated adequate assurance of future performance information and should also provide the current proposed cure amount at the time of the proposed assumption and/or assignment of the GPLP Leases.

13. GPLP should also be allowed the opportunity to finalize the cure amount with respect to any of the GPLP Leases to include any additional defaults that may have occurred during the designation rights period. Accordingly, the proposed Assumption Procedures should also provide GPLP with the opportunity to file an objection to the proposed cure amount contained in the Assumption Notice with respect to the GPLP Leases by the deadline to object to the Assumption Notice.

14. In addition, the proposed Rejection Procedures should provide that upon rejection of any of the GPLP Leases, the Debtors will return the Leased Premises to GPLP in accordance with the terms and conditions of such GPLP Lease, including but not limited to, broom clean condition. The proposed Rejection Procedures should further provide that any property remaining at the Leased Premises as of the effective date of rejection shall be deemed abandoned free and clear of all liens,

claims, interests and encumbrances and that GPLP, in its sole discretion and without further notice, may dispose of such property without any liability whatsoever to the Debtors or to any other person or entity claiming an interest in such property.

15. Finally, the proposed Rejection Procedures should provide that the effective date of rejection of any of the GPLP Leases is the later of (i) ten (10) days from the date that the applicable Rejection Notice was served on GPLP; (ii) the date that the Debtors vacate and surrender the Leased Premises to GPLP in broom clean condition and turnover the keys and/or key codes to GPLP; and (iii) the date otherwise ordered by this Court. If a party other than GPLP files an objection to the proposed rejection of any of the GPLP Leases, then the effective date of rejection of the GPLP Leases should be the later of (i) ten (10) days from the date that the applicable Rejection Notice was served on GPLP, (ii) the date that the Debtors vacate and surrender the Leased Premises to GPLP in broom clean condition and turnover the keys and/or key codes to GPLP; and (iii) the date that this Court enters an order overruling the third-party objection and authorizing the rejection of such GPLP Lease.

B. Store Closing Guidelines

16. The Debtors have requested that this Court authorize the Debtors to potentially conduct Store Closing Sales (as defined in the Sale Motion) at the Leased Premises, notwithstanding the clear and express bargained for provisions of the GPLP Leases, which preclude such Store Closing Sales. Although GPLP objects to such Store Closing Sales at the Leased Premises, since the GPLP Leases clearly prohibit such Store Closing Sales, GPLP recognizes that there is certain authority holding that lease clauses prohibiting Store Closing Sales are not strictly enforced in bankruptcy cases. *See, e.g., In re Ames Dept. Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992). However, the same authorities that generally permit Store Closing Sales also provide that bankruptcy courts have “the discretion to condition the time, place and manner of store closing sales, thereby providing adequate safeguards to protect shopping center landlords and their other tenants, while allowing the Trustee to fulfill its fiduciary obligations.” *Id.*

17. Accordingly, if this Court authorizes the Debtors to conduct Store Closing Sales at the Leased Premises, this Court should modify the proposed Store Closing Guidelines (as defined in the Sale Motion) to expressly restrict the activity of the Debtors and/or their Agent (as defined in the Sale Motion) so as to minimize any harm to GPLP and its respective tenants. When tenants, such as the Debtors, conduct Store Closing Sales, the public is often falsely led to believe that the shopping centers and the centers’ other tenants are likewise in distress. Such false impressions irreparably harm the shopping centers and their tenants.

18. As an initial matter, in order to minimize the harm to GPLP and its respective tenants, GPLP requests that this Court require that the Debtors and/or the Agent must comply with all terms of the GPLP Leases while conducting any Store Closing Sales, except as modified by any Court-approved store closing guidelines.

19. In addition, if the Debtors are authorized to conduct any Store Closing Sales at the Leased Premises, then the duration of such sales should be limited in order to minimize the irreparable harm to the respective shopping centers and their tenants.

20. GPLP requests that this Court limit the duration of any Store Closing Sales at the Leased Premises to eight weeks. In the event that the Debtors and/or the Agent are unable to conclude any Store Closing Sales within such time at the Leased Premises, then the Debtors should be required to seek an order from this Court extending the time during which they may conduct such Store Closing Sales at the Leased Premises. GPLP also objects to any attempt by the Debtors and/or the Agent to extend the term of any Store Closing Sales at the Leased Premises without GPLP's prior written consent.

21. Moreover, GPLP has reviewed the proposed Store Closing Guidelines, and although the proposed Store Closing Guidelines address certain of GPLP's concerns about the manner of any potential Store Closing Sales, the proposed Store Closing Guidelines are deficient in several areas. Accordingly, GPLP requests that any Store Closing Sales at the Debtors' stores located at the Leased Premises (the "Stores") be subject to the following modified store closing guidelines:

a. The Debtors and/or the Agent shall agree to comply in all other material respects with the terms and conditions of the GPLP Leases, including but not limited to, the prompt payment of all amounts owing by the Debtors to GPLP under the GPLP Leases.

b. GPLP shall continue to have access to the Leased Premises under the terms of the GPLP Leases. After the completion of any Store Closing Sale, GPLP shall have access to the Leased Premises not only to "dress" or barricade the windows but shall continue to have access to the Leased Premises under the

terms of the GPLP Leases.

c. Any Store Closing Sale shall be conducted so that the Stores will remain open during the normal hours of operation provided for in the GPLP Leases.

The Debtors and/or the Agent shall not conduct an auction or fire sale and shall abide by any applicable guidelines concerning, among other things, hours of operation, maintenance, and security and trash removal, set forth in the GPLP Leases.

d. Essentially the same “window dressings” shall be maintained and essentially the same “good housekeeping” standards (including providing adequate walk-ways in the Store) and operating procedures shall be observed during the course of any sale at the Store.

e. The Debtors and/or the Agent shall keep the premises of the Stores and surrounding area clear and orderly, consistent with present practices.

f. Any Store Closing Sale shall be conducted in accordance with applicable state and local “Blue Laws” and thus, where applicable, no Store Closing Sale shall be conducted on Sunday, unless the Debtors have been operating such Store on a Sunday.

g. Any Store Closing Sale should be limited in duration to no more than eight weeks.

h. All display and hanging signs used by the Debtors and/or the Agent in connection with any Store Closing Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Signs describing any sale by the Debtors and/or the Agent at any Store shall be no larger than twenty-two

(22”) inches by twenty-eight (28”) inches and shall be composed of a uniform color package comprised of no more than three colors. No neon or “day glo” colors should be used in the signage. Up to six (6) signs per 1000 square feet of retail space may be posted in the interior of the Stores. No signs should be taped, push-pinned, or otherwise affixed to the walls of the Stores.

i. Window signs should be recessed at least twelve inches (12”) from the glass. Such window signs should also be limited to one such window sign per window that does not exceed 50% of the window total area. Window signs must not be stapled, taped or otherwise affixed together to exceed the 22” by 28” limitation. Each sign shall be consistent with the form and content of the signs described herein.

j. Only one (1) banner may be hung in the interior of the Stores, and such banner shall be no larger than three (3’) feet by six (6’) feet and shall be hung in the back third of the Stores.

k. To the extent used, “toppers” should not exceed eight and one half inches (8 ½”) by eleven inches (11”) and should be limited to one per rack, counter or shelf.

l. The use of sign walkers, sandwich boards, A-frames, exterior banners, tethered, hot-air or other balloons, inflatable images, rooftop advertising or other street signage or solicitation shall not be permitted at or near the Leased Premises. The Debtors and/or the Agent shall not place any sign and/or advertising or marketing of any Store Closing Sale in any common area, parking lot, sidewalk, building façade or other shopping center property owned by GPLP.

- m. No exterior signs or banners of any kind may be used.
- n. The Debtors and/or the Agent shall not distribute handbills, leaflets or other written materials to customers outside of the premises of the Stores. Otherwise, the Debtors and/or the Agent may solicit customers in the Stores themselves. The Debtors and/or the Agent shall not use flashing lights, strobe lights, large spotlights, bullhorns or any type of amplified sound to advertise any Store Closing Sale or solicit customers.
- o. Neither the Debtors nor the Agent shall make any alterations to the storefront or exterior walls of the Stores.
- p. Neither the Debtors nor the Agent shall make any alterations to interior or exterior lighting of the Stores.
- q. Advertising and signage may indicate that the sale is a “Store Closure Sale”, a “Store Closing Sale” or use language of similar import, but shall not refer to the sale as a “going out of business sale”, a “bankruptcy sale”, a “court ordered sale” or a “liquidation sale.”
- r. No auction of furniture, fixtures, equipment or other property shall be conducted at the Stores. There shall be no auction of inventory and outside sales, sidewalk sales, tent sales, or any sale of any merchandise outside of the Stores.
- s. The Debtors and/or the Agent may not transfer inventory from any other merchant, including inventory of the Agent, to the Stores for inclusion in any Store Closing Sale. In addition, the Debtors and/or the Agent may not transfer inventory from any other store of the Debtors unless such inventory is of like

kind and quality.

t. There should be conspicuous signs stating whether gift cards issued by the Debtors and/or the shopping center will be honored during any Store Closing Sale.

u. Conspicuous signs shall be posted in the Stores to the effect that all sales are “final”.

v. The Debtors and/or the Agent shall designate a representative to be contacted by GPLP and the State Attorney General should an issue arise concerning the conduct of any Store Closing Sale.

w. At the conclusion of any Store Closing Sale, the Debtors and/or the Agent shall vacate the Stores in a broom-clean condition, and shall leave the Stores in the same condition as at the commencement of any Store Closing Sale, ordinary wear and tear excepted. No permanent fixtures may be removed without GPLP’s written consent. No property of GPLP shall be removed or sold during any Store Closing Sale.

x. Any fixtures or personal property of the Debtors left at the Stores after the earlier of (i) the completion of the Store Closing Sale at such Store; or (ii) the time that the Debtors and/or the Agent vacate such Store shall be abandoned to GPLP, and GPLP shall incur no liability whatsoever with respect to any action or actions taken in connection therewith.

22. The foregoing restrictions are reasonable in nature and consistent with guidelines entered in other retail bankruptcy cases and should be adhered to by the Debtors and the Agent.

23. GPLP is particularly concerned with the content and extent of the signage to be used

by the Debtors and/or the Agent, especially with the placement of exterior banners and other signage. In particular, GPLP objects to the use of exterior banners or any other exterior signage not otherwise permitted by the GPLP Leases.

24. The public's image of the GPLP shopping centers as premier retail shopping centers is of paramount importance to both GPLP and the other retailers operating their businesses in the shopping centers. GPLP specifically objects to any Store Closing Guidelines which would permit the use of exterior banners. The use of exterior banners and other unauthorized signage tend to cheapen the appearance of a shopping center, giving the general public the false impression that the center, or its other tenants, are financially distressed. Moreover, as this Court is well aware, these are difficult times for many retailers in this country. The benefit to GPLP and the other tenants at the shopping centers in maintaining the image of the shopping centers as premier shopping centers, greatly outweighs any detriment to the Debtors should this Court refuse to permit the Debtors and/or the Agent to maintain any exterior signage not in accordance with the express provisions of the GPLP Leases.

25. In addition, the Debtors and/or the Agent should also not be permitted to discontinue operations at the Stores and "go dark" upon the conclusion of any Store Closing Sales. The Debtors should be compelled to immediately reject the GPLP Leases and return possession of the Leased Premises to GPLP upon conclusion of any Store Closing Sales.

26. Finally, during the term of any Store Closing Sales at the Stores, the Debtors must, pursuant to section 365(d)(3) of the Bankruptcy Code, "timely perform all the obligations...under any unexpired lease of nonresidential real property until such lease is assumed or rejected . . ." Among the Debtors' various obligations under the GPLP Leases are rent, common area charges, and real estate taxes; payment of these obligations is mandatory and failure to do so has been held by at

least one court to give rise to a super priority claim. *See In re Compuadd Corp.*, 166 B.R. 862, 864-865 (Bankr. W.D. Texas 1994). Payment of rent due under the GPLP Leases must be made by the Debtors at the full contract rate. *In re Pacific Atlantic Trading Co.*, 27 F.3d 401 (9th Cir. 1994) (citing *Wingspread*, 116 B.R. 915, 925 Bankr. S.D.N.Y. 1990).

27. Should this Court permit the Debtors to conduct any Store Closing Sales at the Debtors' Stores at the GPLP shopping centers, then this Court should exercise its discretion granted by section 363(e) of the Bankruptcy Code and modify the Order in accordance with this Limited Objection, in order to protect the interests of GPLP and the other entities conducting business at the shopping centers. *See In re Ames Department Stores, Inc.*, 136 B.R. at 359 ("Section 363(e) of the Bankruptcy Code reserves for bankruptcy courts the discretion to condition the time, place and manner of store closing sales, thereby providing adequate safeguards to protect shopping center landlords and their other tenants, while allowing the Trustee to fulfill its fiduciary obligations").

JOINDER

28. GPLP joins in the objections filed by other landlords to the Sale Motion to the extent not inconsistent with the objections raised herein.

WHEREFORE, GPLP respectfully requests that this Court: (a) sustain this Limited Objection; and (b) grant GPLP such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: October 21, 2010

MONZACK MERSKY MCLAUGHLIN
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