

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

In re:

Pumpkin Patch LLC,

Debtor.

Chapter 11

Case No. 09-12200 (BLS)

**Objection Deadline: February 3, 2010 at 4:00 p.m. (EST)¹
Related Docket No.: 210**

**OBJECTION OF GENERAL GROWTH PROPERTIES INC.
TO THE DEBTOR'S PROPOSED CURE AMOUNTS**

General Growth Properties Inc. (the "Landlord"), by and through its counsel, Kelley Drye & Warren LLP, hereby objects (the "Cure Objection") to the Debtor's Proposed Cure Amounts (defined below) for certain of the Landlord's Leases (defined below). In support of the Objection, the Landlord respectfully states as follows:

BACKGROUND

1. On June 29, 2009 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with this Court.
2. Since the Petition Date, the Debtors have continued to manage their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
3. The Landlord is the owner or managing agent for the owner of numerous shopping centers located throughout the United States. The Debtor leases retail space from the Landlord pursuant to written leases (the "Leases") at the locations (the "Leased Premises") identified in the chart annexed hereto as **Exhibit A**. 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).

4. On January 14, 2010, the Debtor filed the Motion for Order Under 11 U.S.C. §§ 105(a), 363(b), and 365(a) and Fed. R. Bankr. P. 6006 (I) Authorizing and Approving Amendments of Unexpired Leases of Nonresidential Real Property and (II) Authorizing Assumption of Leases, as Amended (the “Motion”). (Docket No. 460). The Motion does not list any cure amounts; therefore the Landlord assumes, for the purposes of this objection, that the Debtor has proposed cure amounts of \$0.00 for each of the Leases (the “Debtor’s Proposed Cure Amounts”).

CURE OBJECTION

5. The Landlord disputes the Debtor’s Proposed Cure Amounts, which the Landlord has included for reference on **Exhibit A**. The correct amounts outstanding under the Leases are set forth on **Exhibit A** in the column entitled “Landlord’s Proposed Cure Amounts” (the “Landlord’s Proposed Cure Amounts”). The Landlord’s Proposed Cure Amounts each include an estimate of attorneys’ fees incurred to date. The Landlord reserves its right to assert additional claims for attorneys’ fees if the estimates are less than actual attorneys’ fees.

6. Pursuant to the Leases, the Debtor is obligated to pay regular installments of fixed monthly rent, as well as a pro rata share of common area maintenance costs, real estate taxes, and insurance. In addition, prior to the assumption of the Leases, the Debtor is required, pursuant to section 365(b)(1) of the Bankruptcy Code, to cure all outstanding defaults under the Leases. In conjunction with this duty, the Debtor must compensate the Landlord for any actual pecuniary loss, including the payment of attorneys’ fees. *See* 11 U.S.C. §365(b)(1)(B). Attorneys’ fees due under the Leases are compensable. *See LJC Corp. v. Boyle*, 768 F.2d 1489, 1494-96 (D.C. Cir. 1985); *In re Bullock*, 17 B.R. 438, 439 (B.A.P. 9th Cir. 1982); *In re BAB Enterprises, Inc.*, 100 B.R. 982, 984 (Bankr. W.D. Tenn. 1989); *In re Westview 74th St. Drug*

¹ Extended by agreement of counsel to the Debtor and counsel to the Landlord.

Corp., 59 B.R. 747, 757 (Bankr. S.D.N.Y. 1986); *In re Ribs of Greenwich Vill., Inc.*, 57 B.R. 319, 322 (Bankr. S.D.N.Y. 1986). Accordingly, as part of its pecuniary loss, the Landlord is entitled to attorneys' fees in connection with the Debtor's obligation to cure all monetary defaults under the Leases.

7. To the extent that rent, attorneys' fees, interest, or other charges continue to accrue, and/or the Landlord suffers other pecuniary losses with respect to the Leases, the Landlord hereby reserves its right to amend the Landlord's Proposed Cure Amounts to reflect such additional amounts or to account for year-end adjustments, including without limitation, adjustments for 2008, 2009, and 2010 (the "Adjustment Amounts"), which have not yet been billed or have not yet become due under the terms of the Leases. As such, the Debtor must be responsible to satisfy the Adjustment Amounts, if any, when due in accordance with the terms of the Leases, regardless of when such Adjustment Amounts are incurred.

8. Finally, the Landlord requests that the Debtor or its successor(s) be required to comply with all contractual obligations to indemnify and hold the Landlord harmless with regard to events which may have occurred pre-assumption but which were not known to either the Landlord or the Debtor as of the date of the assumption, including, but not limited to, claims for personal injury that occurred at the Leased Premises, damage and destruction to the Leased Premises or property by the Debtor or its agents, and environmental damage or environmental clean-up.

RESERVATION OF RIGHTS

The Landlord hereby reserves its right to amend and/or supplement this cure objection, including without limitation adding any obligations that accrue, arise, or are related to the pre-assumption period that subsequently become known to the Landlord.

WHEREFORE, the Landlord requests that the Court enter an order (i) requiring the Debtor to pay the Landlord's Proposed Cure Amounts set forth on **Exhibit A**; (ii) reserving the Landlord's right to assert all postpetition cure amounts, including attorneys' fees, due under the Leases at the time of assumption; (iii) requiring the Debtor to continue to comply with the obligations under the Leases to pay indemnification obligations and the Adjustment Amounts in the regular course of business; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: February 3, 2010
New York, New York

KELLEY DRYE & WARREN LLP

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Counsel For General Growth Properties Inc.

EXHIBIT A

GENERAL GROWTH PROPERTIES INC.

Shopping Center	Location	Landlord	Debtor's Proposed Cure Amount	Landlord's Proposed Cure Amount
Alderwood Mall	Lynwood, WA	GGP/Homart II LLC	\$0.00	\$6,300.04
Clackamas Town Center	Happy Valley, OR	GGP – TRS LLC	\$0.00	\$9,552.43
Galleria at Tyler	Riverside, CA	GGP – TRS LLC	\$0.00	\$16,077.46
Glendale Galleria	Glendale, CA	GGP/Homart II LLC	\$0.00	\$49,159.49
Stonestown Galleria	San Francisco, CA	General Growth Properties Inc.	\$0.00	\$5,549.84