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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
GENERAL GROWTH PROPERTIES INC., <i>et al.</i>	: Case No. 09-11977 (ALG)
Debtors.	: (Jointly Administered)
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**MOTION OF METROPOLITAN LIFE INSURANCE
COMPANY AND KBC BANK N.V. TO DISMISS THE CASES
OF WHITE MARSH MALL, LLC, WHITE MARSH MALL ASSOCIATES,
WHITE MARSH PHASE II ASSOCIATES AND WHITE MARSH GENERAL
PARTNERSHIP PURSUANT TO SECTION 1112(b) OF THE BANKRUPTCY CODE**

Metropolitan Life Insurance Company (“MetLife”) and KBC Bank N.V. (“KBC” and together with MetLife, the “Lenders”), hereby submit this motion (the “Motion”), by and through their undersigned counsel, to dismiss the chapter 11 cases filed by White Marsh Mall LLC (Chapter 11 Case No. 09-12317 (ALG)) (the “White Marsh Mall Debtor” or “Borrower”), White Marsh Mall Associates (Chapter 11 Case No. 09-12001 (ALG)) (the “WMMA Debtor”), White Marsh Phase II Associates (Chapter 11 Case No. 09-12002 (ALG)) (the “WMPA Debtor”) and White Marsh General Partnership (Chapter 11 Case No. 09-12000 (ALG)) (the “WMGP Debtor”



and together with the White Marsh Mall Debtor, the WMMA Debtor, the WMGP Debtor, the “White Marsh Debtors”) pursuant to section 1112(b) of the Bankruptcy Code and respectfully represent as follows:

PRELIMINARY STATEMENT

1. The White Marsh Debtors’ chapter 11 cases should be dismissed because they were not filed in good faith. At the time the White Marsh Debtors’ cases were filed, the White Marsh Debtors were current on all of their obligations and were not experiencing any immediate or imminent financial problems. The actual net operating income (“NOI”) for 2008 was \$20,248,133 with total debt service of \$10,509,401. (NOI is the standard metric for evaluating cash flow from real estate, similar to EBITDA for a business.) The Net Operating Income Debt Service Coverage Ratio (which measures how many dollars of NOI are available to pay debt service) for the White Marsh Mall property was $1.93x^1$ (i.e., there is \$1.93 of NOI to pay every \$1.00 of debt service). Net free cash flow after payment of operating expenses and debt service for 2008 was \$9,738,732 (i.e., \$20,248,133 of NOI minus \$10,509,401 of debt service).

2. The outstanding loans on the White Marsh Mall property do not mature until September 4, 2010, approximately one year and a half from the date the chapter 11 petitions were filed, and were not in default prior to the commencement of the White Marsh Debtors’ chapter 11 cases. In addition, even though MetLife is the holder of the Loan and familiar with the Property, is one of the largest insurance company providers of real estate capital and is currently making loans, the White Marsh Debtors made no attempt to approach MetLife about a refinancing or extension of the Loan prior to the time the chapter 11 petitions were filed. Accordingly, there was no present need for the White Marsh Debtors to file for relief under chapter 11 of the Bankruptcy

¹ “Net Operating Income Debt Service Coverage Ratio” means the ratio of net operating income (excluding depreciation and amortization expense) to debt service (interest and principal) over the same period of time.

Code; the petitions were filed solely due to the unrelated financial problems of General Growth Properties, Inc. (“GGP”), the ultimate parent of the White Marsh Debtors, and the sheer speculation that the financial markets would not thaw by September 2010 to enable the White Marsh Debtors to refinance their existing loan obligations and that the existing Lenders would not voluntarily extend the existing loan.

3. The White Marsh Debtors’ chapter 11 case also should be dismissed because other than MetLife, it is highly unlikely that there are any other significant creditors. Because any plan would have to pay any such creditors in full so as to leave them unimpaired, the White Marsh Debtors will not be able to cramdown a plan over the Lenders’ objections.

4. Accordingly, it is clear that the petitions of the White Marsh Debtors were not filed with any reorganizational purpose; they were filed solely to obtain leverage and a tactical advantage in any future efforts to extend the maturity of the Loan. For the reasons discussed in this Motion, the Court should dismiss the chapter 11 cases of the White Marsh Debtors.

JURISDICTION

5. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(d)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested is section 1112(b) of the Bankruptcy Code.

BACKGROUND

A. The Chapter 11 Filings

6. On April 16, 2009 (the “Petition Date”), GGP and its subsidiaries and affiliates (the “Debtors”), including the White Marsh Debtors, each filed a voluntary petition under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. The Debtors are authorized to operate their

businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. GGP is a publicly-traded real estate investment trust which through various subsidiaries and affiliates owns or manages over 200 regional shopping centers in 44 states. GGP is the general partner of GGP Limited Partnership, which is the entity through which substantially all of the Debtors' business is conducted.

8. According to the Declaration of Adam S. Metz, the Chief Executive Officer of GGP, dated April 16, 2009 (the "Metz Dec."), GGP filed for relief under chapter 11 "to restructure its finances and de-leverage its balance sheet because the collapse of the credit markets have made it impossible to refinance its maturing debt outside of chapter 11." *See Metz Dec.* at ¶ 10, p. 5. *See also* Declaration of James A. Mesterharm pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions, dated April 16, 2009 at ¶ 6, p. 22 (the inability to repay, refinance and extend approximately \$18.4 billion of outstanding debt obligations that have matured or will mature between now and the end of 2012 "was the primary catalyst for the commencement of these chapter 11 cases").

9. Notwithstanding the Debtors' claims that the disruption in the credit markets has made it impossible to refinance their corporate and mortgage loans coming due over the next several years, the Debtors' concede that their core business of operating shopping centers is performing well with stable cash flows. *See Metz Dec.* at 1.

10. Indeed, the Debtors do not anticipate the current economic weakness "to have a materially negative effect on [their] properties over the long term" as the Debtors' retail shopping centers "perform well even when the general economy does not." *Metz Dec.* at ¶¶ 8-9.

11. Given the fact that the loans for the White Marsh Mall do not mature until September 2010, GGP's reasons for commencing bankruptcy proceedings – the inability to refinance maturing debt outside of chapter 11 and the pure speculation that the financial markets would remain frozen – do not apply to the White Marsh Debtors. As stated above, the White Marsh Debtors did not contact MetLife, one of the largest insurance company providers of real estate capital, about a loan extension prior to the Petition Date. The Debtors assume that the credit markets will not improve by 2010. The Debtors' position is pure speculation. The Debtors filed bankruptcy to improve their negotiating position by increasing the pressure on the lenders to accept refinancing terms.

B. White Marsh Mall Capital and Debt Structure and Financial Performance

1. SPE Structure

12. The White Marsh Mall Debtor is a special purpose entity ("SPE") that holds 50% of the partnership interests in each of the WMMA Debtor and the WMPA Debtor. The WMMA Debtor and the WMPA Debtor, each an SPE, in turn, each own a 50% interest in the WMGP Debtor, also an SPE. The WMMA Debtor, the WMPA Debtor and the WMGP Debtor, (collectively, the "White Marsh Owners") own the real property known as the White Marsh Mall in Baltimore, Maryland (the "Property").² In determining to underwrite the loan, MetLife and KBC relied on the separateness and credit worthiness of the Borrower and the underlying Property, especially because no parent company repayment guaranty was required. The Borrower benefited from this structure by not having to provide a guaranty. Accordingly, the Operating Agreement of the Borrower dated August 27, 2007 (as amended), require, among other

² Because Maryland imposes a recordation tax on deeds of trust based upon the amount of the obligation secured by the deed of trust, practitioners in Maryland have commonly used a so-called indemnity deed of trust or "IDOT" structure to avoid payment of the recordation tax. Under the typical IDOT structure, the borrower (debtor) and the property owner are not the same person or entity. The lender makes a loan to the debtor and the property owner guarantees the borrower's obligations under the loan documents. The property owner executes an IDOT, encumbering the property, to secure its guaranty obligations.

things, that (i) the Borrower will not own any property other than owning and operating the general partnership interests in the WMMA Debtor and the WMPA Debtor, (ii) the Borrower will not incur any indebtedness other than trade payables, (iii) the Borrower will maintain its records, accounts and bank accounts separate and apart from those of any other person, (iv) the Borrower will not commingle its assets with those of any other person, and (v) the Borrower will not fail to hold itself out to the public as a legal entity separate from any other. Similar SPE provisions are contained in the loan and organizational documents of the White Marsh Owners, including a provision that each will not engage in any business other than the ownership and management of the Property.

13. The chief purpose of the SPE structure is to induce lenders to make real estate loans where the operations of the borrower is isolated from business affairs of the borrower's affiliates so that the financing of each property stands alone on its own merits, creditworthiness and value – a concept GGP required, agreed to, utilized and received substantial benefit from by not having to provide a guaranty. Thus, in deciding this Motion, the Court should only consider the financial circumstances of the White Marsh Debtors that led to the filing of their respective chapter 11 petitions. The financial problems of GGP or GGP Limited Partnership are irrelevant, and any consideration of the parent company's financial problems would violate the very purposes of the SPE structure relied upon by MetLife to make the Loan and the principle that each chapter 11 case must be treated separately on its own merits.

2. Debt Structure

14. On September 4, 2007, MetLife, made a \$187,000,000 mortgage loan (the "Loan") to the Borrower, secured by, among other things, (i) an Indemnity Deed of Trust, Security Agreement and Fixture Filing executed by the White Marsh Owners, and (ii) an Assignment of

Leases, dated September 4, 2007, executed by the White Marsh Owners which assigns their right, title and interest in and to the leases and rents from the Property.

15. Prior to the filing of these cases, the Loan was split and is now evidenced by two promissory notes. MetLife is the holder of Note A-1 which has an unpaid principal balance of approximately \$137,000,000. KBC is the holder of Note A-2 which has an unpaid principal balance of approximately \$50,000,000. MetLife is the lead lender and servicer of the Loan pursuant to a co-lender servicing agreement between MetLife and KBC.

3. Financial Performance of White Marsh Mall

16. The financial performance of the White Marsh Mall is consistent with the Debtors' robust assessment of the performance of their shopping centers. Prior to the Petition Date, the White Marsh Debtors were current with all payments due under the Loan to both MetLife and KBC as co-lender.

17. As stated above, for the year ending 2008, the White Marsh Mall had NOI of \$20,248,133 with total debt service of \$10,509,401. Accordingly, in 2008, the White Marsh Mall had a debt service coverage ratio of 1.93x and net free cash flow after payment of operating expenses and debt service in excess of \$9.7 million.³ The portion of the Property controlled by the Debtors is 94% leased at the present time.

18. The Loan for the White Marsh Mall was not part of a securitization and does not mature until September 4, 2010. At the time chapter 11 petitions were filed for the White Marsh Debtors, each debtor was not in default on its loan obligations or in any financial difficulty. Consistent with the financial health of the White Marsh Debtors, no efforts were ever made by the Debtors to contact MetLife or KBC to refinance or extend the Loan. The reasons are simple. The White Marsh Debtors were profitable and were not under any financial stress or difficulty.

³ Results for 2008 were only slightly below 2007 figures.

Accordingly, there was no need for the White Marsh Debtors to file for relief under chapter 11 of the Bankruptcy Code. The chapter 11 petitions were filed solely due to the unrelated financial difficulties of GGP and the sheer speculation that the financial markets would remain frozen. However, this purported explanation rings hollow because the Loan is not due for almost a year and a half after the Petition Date, so there was no reason to file. Although the Debtors speculate about what financial markets will look like in a year or more, the truth is that nobody can predict the state of the financial markets in three months, much less a year and a half, and there was no reason to file now based on speculation. The explanation of the Debtors lacks credibility.⁴

19. The chapter 11 petitions of the White Marsh Debtors were filed without any reorganizational purpose and without regard to the specifics of the Loan or the financial condition of the White Marsh Debtors. Because the White Marsh Debtors are likely to have very few creditors other than MetLife, the White Marsh Debtors cannot confirm a plan over the Lenders' objections.

20. In order for the White Marsh Debtors to restructure the Loan over the dissent of MetLife by utilizing the cramdown provisions in section 1129(b) of the Bankruptcy Code, section 1129(a)(10) requires the acceptance by at least one class of claims that is impaired under the plan, determined without including the acceptance by any insider. Inasmuch as the Property is generating more than sufficient funds to pay all of its creditors and that the White Marsh Debtors likely will have very few unsecured creditors, the White Marsh Debtors will have to pay such creditors 100% of their claims with interest. Accordingly, such creditors will be unimpaired, and the White Marsh Debtors will not be able to obtain the acceptance of an impaired class of creditors in order to try to cramdown a restructuring of the Loan over the Lenders' objections. This fact further demonstrates that the chapter 11 petitions for the White Marsh Debtors were

⁴ Indeed, special servicers are extending maturity dates and MetLife is still providing financing.

filed in bad faith. As the chapter 11 petitions of the White Marsh Debtors were not filed in good faith, the chapter 11 cases of the White Marsh Debtors should be dismissed.

ARGUMENT

A. The Chapter 11 Cases of the White Marsh Debtors Should be Dismissed as Bad Faith Filings

21. Under section 1112(b) of the Bankruptcy Code, a court *shall* dismiss a chapter 11 case if “cause” is established. 11 U.S.C. § 1112(b)(1). Section 1112(b)(1) provides in pertinent part:

[O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establishes that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court *shall* convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

Id. (emphasis added).

22. While section 1112(b)(4) provides certain examples of cause to warrant dismissal, these examples are not exclusive. See *In re SGL Carbon Corp.*, 200 F.3d 154, 160 (3d Cir. 1999); *C-TC 9th Ave. P’ship v. Norton Co. (In re C-TC 9th Ave. P’ship)*, 113 F.3d 1304, 1311 (2d Cir. 1997). It also is well established that cause for dismissal exists when a petition is not filed in good faith. See *In re SGL Carbon Corp.*, 200 F.3d 160 (petitions may be dismissed unless filed in good faith); *In re C-TC 9th Ave. P’ship*, 113 F.3d at 1310 (good faith standard applies to bankruptcy petitions); *In re Schur Mgmt. Co., Ltd.*, 323 B.R. 123, 126 (Bankr. S.D.N.Y. 2005) (Gropper, J.) (a general good faith requirement exists under which chapter 11 petitions can be dismissed for having been filed in bad faith).

23. The good faith requirement for the filing of a chapter 11 petition is rooted in equity. As one court noted:

Review and analysis . . . disclose a common theme and objective: avoidance of the consequences of economic dismemberment and liquidation, and the preservation of ongoing values in a manner which does equity and is fair to rights and interests of the parties affected. But the perimeters of this potential mark the borderline between fulfillment and perversion; between accomplishing the objectives of rehabilitation and reorganization, and the use of these statutory provisions to destroy and undermine the legitimate rights and interests of those intended to benefit by this statutory policy. That borderline is patrolled by courts of equity armed with the doctrine of ‘good faith’

Hadley v. Victory Construction Co., Inc. (In re Victory Construction Co. Inc.), 9 B.R. 549, 558 (Bankr. C.D. Cal. 1981).

24. The good faith requirement also serves to balance the interests of debtors and creditors. As the Fifth Circuit noted:

[The good faith requirement] furthers the balancing process between the interests of debtors and creditors which characterizes so many provisions of the bankruptcy laws and is necessary to legitimize the delay and costs imposed upon parties to a bankruptcy. Requirement of good faith prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way

In re Little Creek Development Co., 779 F. 2d 1068, 1072 (5th Cir. 1986). Just as in *Little Creek*, the filing by the White Marsh Debtors is an abuse of the bankruptcy process, which provides no benefit to MetLife, when there is ample cash flow to pay full debt service and any other creditors in full.

25. In the instant cases, the need to balance the interests of creditors is heightened given the fact that based on the Debtors’ own projections for 2009, there is approximately \$8.4 million of net free cash flow after full payment of debt service to the Lenders. Given the fact that the White Marsh Mall has ample cash flow, there was no need for each of the White Marsh Debtors to file chapter 11 petitions, particularly when the Loan does not mature until September 2010, and

no effort was made by the White Marsh Debtors to contact MetLife or KBC to refinance or extend the maturity dates of the Loan. Thus, in balancing the interests of the White Marsh Debtors and their creditors, there is no reason to impose delay and other costs upon the Lenders when the White Marsh Debtors clearly are not facing any financial problems.

26. The Debtors' use of chapter 11 as a sword to obtain a tactical advantage in any negotiations to extend the Loan, when such Loan was not in default and does not mature until a year and five months after the Petition Date, is an abuse of chapter 11 that the good faith requirement is designed to prevent. Courts have long recognized that the protections offered to a debtor by the Bankruptcy Code were intended as shield and not a sword. *See Shell Oil Co., v. Waldron (In re Waldon)*, 785 F.2d 936, 940 (11th Cir. 1986) (citation omitted) ("The bankruptcy laws were simply not intended to be used as a sword by the rapacious."); *Braniff Int'l Airlines, Inc. v. Aeron Aviation Resources Holdings II, Inc. (In re Braniff Int'l Airlines, Inc.)*, 159 B.R. 117, 125 (E.D.N.Y. 1993) ("The protections for the debtor under the Bankruptcy Code operate as a shield, not a sword.").

27. While a company does not have to be insolvent before filing for bankruptcy relief, there must be serious financial and/or managerial difficulties at the time of filing. *See In re SGL Carbon Corp.*, 200 F.3d at 164. *See also Baker v. Latham Sparrowbush Assocs. (In re Cohoes Indus. Terminal Inc.)*, 931 F.2d 222, 228 (2d Cir. 1991) (filing was in good faith because the debtor was under financial stress at the time it filed); *In re The Bible Speaks*, 65 B.R. 415, 426 (Bankr. D. Mass. 1986) (debtor was experiencing cash flow problems which prevented it from meeting its obligations); *In re John's Manville*, 36 B.R. 727 (Bankr. S.D.N.Y. 1984) (company faced a growing number of asbestos-related claims which would have required the debtor to either book a \$1.9 billion reserve, thereby triggering a potential default on its debt obligations

which, in turn, could have forced partial liquidation). In sharp contrast to these cases, none of the White Marsh Debtors experienced any serious financial difficulties at the time of their filings. Nor was there any threat to their long-term viability. The White Marsh Debtors were current in all of their financial obligations and were not in default of any of their loan obligations or covenants, notwithstanding the difficulties faced by their ultimate parent, GGP.

28. “Courts . . . have consistently dismissed Chapter 11 petitions filed by financially healthy companies with no need to reorganize under the protection of Chapter 11.” *SLG Carbon Corp.*, 200 F.3d at 166 (citations omitted). The rationale for dismissing financially healthy companies is that the filing of a chapter 11 petition by a profitable enterprise that does not need to rehabilitate or reorganize serves no valid reorganizational purpose. *Id.* Further, given the enormous powers a chapter 11 debtor is given by virtue of the automatic stay, the exclusive right to file a plan, and the ability to discharge debts, these powers should be limited only to those facing financial stress. *Id.* at 165-66. *See also In re Winshall Settler’s Trust*, 758 F.2d 1136, 1137 (6th Cir. 1985) (“The purpose of Chapter 11 reorganization is to assist financially distressed business enterprises by providing them with breathing space in which to return to a viable state.”).

29. In *In re Schur Mgmt. Co.*, 33 B.R. 123, this Court examined whether chapter 11 petitions filed by the debtors, consisting of a real estate management company and the entity owning an apartment complex, should be dismissed because the petitions were filed prematurely and not in good faith. In *Schur*, the debtors were defendants in a personal injury action where the plaintiff claimed damages of \$10 million. At the time of the injury, the debtors believed that they had sufficient insurance to cover any liability. However, the debtors’ insurance company was subsequently placed in liquidation, resulting in the debtors having only limited insurance coverage. Facing a state court trial, each of the debtors filed voluntary petitions for relief under

chapter 11 to protect their assets. In their schedules of assets and liabilities, each debtor listed the plaintiff as a contingent disputed and unliquidated claimant in the amount of \$1 million. This claim was the debtors only substantial debt.

30. In dismissing the debtors' chapter 11 cases as not filed in good faith, the Court concluded that the debtors had no present need to file and that there was only the "mere possibility of a future need to file." 323 B.R. at 127 (quoting *In re SGL Carbon*, 200 F.3d at 164). The Court noted that the *mere possibility of a future need to file, without more*, does not establish that a petition was filed in "good faith." *Id.* (quoting *In re SGL Carbon*, 200 F.3d at 164) (emphasis added).

31. The court also found that the debtors did not face serious financial difficulties warranting a chapter 11 filing. The court stated:

[T]he State Court Litigation has had absolutely no effect on these debtors' present financial position or viability. They do not need a litigation respite, as do many chapter 11 debtors. On the contrary, they do not dispute that the litigation should be resolved in the State courts. Nor are they financially troubled debtors that seek in good faith to avoid a preclusive judgment in State court that would prejudice legitimate efforts to preserve value for the benefit of all of their creditors.

Id. at 128. Similarly, none of the White Marsh Debtors are financially troubled debtors who need the protection of chapter 11 to restructure their obligations. The cash flow from the Property is more than adequate to pay all operating expenses plus debt service to MetLife and KBC. In fact, the White Marsh Mall produces net cash flow after payment of all operating expenses and debt service of approximately \$8.4 million based on GGP's 2009 projections. Given the fact that the Loan does not mature until September 2010, it would be sheer speculation on the part of the White Marsh Debtors to guess that they could not refinance or extend their loans in September 2010.

32. In addressing the absence of an immediate need to file for bankruptcy relief, the Court in *Schur* stated:

In addition to an absence of an immediate need for bankruptcy protection, there is no reason to believe these Debtors could not obtain all needed bankruptcy relief if and when an adverse jury verdict is entered against them – or one of them – in a known amount. If a judgment impaired their ability to survive or if there were a need for Chapter 11 relief, these Debtors would have time to file.

Id. at 128 (citations omitted). As in *Schur*, the White Marsh Debtors had no immediate need to file for bankruptcy relief on April 16, 2009. The White Marsh Debtors were current with all of their obligations, were not in default and had ample cash flow to pay all of their future obligations currently. The White Marsh Debtors also made no effort to negotiate with MetLife or KBC to refinance or extend the maturity date for the Loan, and it is pure speculation on the part of the White Marsh Debtors that they would not be able to refinance in September 2010 or negotiate an extension of the maturity of the Loan. If the White Marsh Debtors do not have sufficient time to refinance, they will have sufficient time to file.

33. As financially healthy entities with stable cash flows, no financial difficulties and sufficient time to refinance or negotiate an extension of the Loan, the chapter 11 petitions filed by the White Marsh Debtors were not filed in good faith and should be dismissed.

B. The Chapter 11 Cases Also Should Be Dismissed Because the White Marsh Debtors Cannot Implement a Plan Over the Lenders' Objections

34. No reorganizational purpose is served by allowing each of the White Marsh Debtors to have the benefits and powers of chapter 11. Other than MetLife and KBC, the White Marsh Debtors, as SPEs, should have very few creditors. Accordingly, the White Marsh Debtors will have to provide for 100% plus interest to all creditors, thereby leaving such creditors unimpaired.

35. In order for the White Marsh Debtors to utilize the cramdown provisions in section 1129(b) of the Bankruptcy Code, the White Marsh Debtors would have to propose a plan that contains an impaired class of claims other than MetLife's secured claim. *See* 11 U.S.C. § 1129(a)(10). In addition, the White Marsh Debtors would have to obtain the acceptance of at least one class of claims that is impaired under the plan, determined without including the acceptance of any insider. *See id.* The purpose of section 1129(a)(10) is to protect the interests of impaired classes by requiring "some indicia of creditor support for the debtor's schemes," so that the debtor is incentivized to negotiate with impaired creditors on a consensual plan. *See* P. Murphy, *Creditors' Rights in Bankruptcy* § 17.11 at 17-19 (2d ed. 1989). *See also Boston Post Road Ltd. P'ship v. Federal Deposit Ins. Corp. (In re Boston Post Road Ltd. P'ship)*, 21 F.3d 477 (2d Cir. 1994) (confirmation was properly denied for failure to obtain the acceptance of an impaired non-insider class of creditors where debtor tried to gerrymander the voting classes by separately classifying the secured lender's unsecured deficiency claim from other unsecured creditors and where debtor sought to impair claims of holders of security deposits by increasing the interest rate).

36. Here, given the financial soundness of the White Marsh Debtors and the strong cash flow the Property generates, the only treatment the White Marsh Debtors can propose for any creditors other than the Lenders is one that pays such other creditors 100% plus interest. Accordingly, there will not be an impaired class of claims to accept the plan so the White Marsh Debtors can try to utilize the cramdown provisions to modify the Loan. It therefore will be impossible for the White Marsh Debtors to confirm a plan that makes any modifications to the Loan over the Lenders' objection.

37. Courts have dismissed chapter 11 cases based on the unlikelihood of the debtor being able to confirm a plan over the objection of a creditor. *See In re 266 Washington Assocs.*, 141 B.R. 275 (Bankr. E.D.N.Y. 1992) (dismissing debtor's chapter 11 case based on improper classification of lender's deficiency claim and debtor's inability to effectuate a confirmable plan); *In re 499 W. Warren Street Assocs. Ltd. P'ship*, 151 B.R. 307 (Bankr. N.D.N.Y. 1992) (same); *In re Lumbar Exch. Ltd. P'ship*, 125 B.R. 1000 (Bankr. D. Minn. 1991) (same). Because the White Marsh Debtors cannot effectuate a plan, there is no purpose that would be served to allow the White Marsh Debtors to remain in chapter 11.

WHEREFORE, MetLife and KBC respectfully request that an order be entered dismissing the chapter 11 cases of White Marsh Mall LLC (Chapter 11 Case No. 09-12317 (ALG)), White Marsh Mall Associates (Chapter 11 Case No. 09-12001 (ALG)), White Marsh Phase II Associates (Chapter 11 Case No. 09-12002 (ALG)) and White Marsh General Partnership (Chapter 11 Case No. 09-12000 (ALG)), and granting MetLife and KBC such further relief as is proper.

Dated: New York, New York
May 29, 2009

Respectfully submitted,
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