

MEMORANDUM OPINION

May 10, 2005

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

IN RE: :
 :
GOVERNOR'S CROSSING : Case No. 03-36809
OUTLET MALL, LLC : Chapter 11
 :
Debtor :

BEFORE THE HONORABLE RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR THE DEBTOR:

MICHAEL H. FITZPATRICK, ESQ.
2121 First Tennessee Plaza
800 S. Gay Street
Knoxville, Tennessee 37929

FOR WELLS FARGO BANK MINNESOTA, NA:

DANIEL M. LITT, ESQ.
JOEL L. PERRELL, JR., ESQ.
2101 L Street, NW
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FOR COLLIER DEVELOPMENT COMPANY, INC.:

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APPEARANCES (continued):

FOR COMMUNITY TRUST BANK, NA:

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FOR UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE:

SUZANNE H. BAUKNIGHT, ESQ.
Howard H. Baker, Jr. United States Courthouse
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FOR THE UNITED STATES TRUSTEE:

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1 THE COURT: Before the court is the confirmation of the Second Modified
2 Plan of Reorganization for Governor's Crossing Outlet Mall, LLC Submitted by Wells
3 Fargo Bank, N.A., as Trustee, filed on May 10, 2005, by Wells Fargo Bank, N.A., as
4 Trustee for the registered holders of Morgan Stanley Capital I, Inc. Commercial
5 Mortgage Pass-Through Certificates, Series 1999-FNV1, by and through Allied Capital
6 Corporation, its Special Servicer. The record before me consists of five exhibits
7 stipulated into evidence, along with the testimony of Phillip Don Collier, Vice President
8 of Collier Development Company, Inc., a 1.6 percent member of the Debtor limited
9 liability company.

10 This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

11 The Debtor filed a voluntary petition commencing its bankruptcy case under
12 Chapter 11 of the Bankruptcy Code on December 16, 2003. On March 2, 2005, Wells
13 Fargo filed a First Amended Disclosure Statement to Plan of Reorganization for
14 Governor's Crossing Outlet Mall, LLC Submitted by Wells Fargo Bank, N.A., as
15 Trustee, which the court determined was adequate and was approved by Order
16 Approving Disclosure Statement, as Amended, Fixing Time for Filing Acceptances or
17 Rejections of Plan, Fixing Time for Filing Objections to Confirmation, and Fixing Date
18 for Hearing on Confirmation, Combined with Notice Thereof entered on March 3, 2005.
19 Wells Fargo's first modified plan revised to conform to the disclosure statement as
20 approved was then filed on March 31, 2005. On April 12, 2005, Wells Fargo filed a
21 Line Disclosing Postconfirmation Ownership Pursuant to 11 U.S.C. § 1129(A)(5)
22 Under Modified Plan of Reorganization for Governor's Crossing Outlet Mall, LLC
23 Submitted by Wells Fargo Bank, N.A., as Trustee, disclosing that GC Sevierville
24 Holdings, LLC, the company that will own 100 percent of the membership interests in
25 the reorganized Debtor is owned entirely by Wells Fargo. The document further states

1 that none of the Debtor's preconfirmation equity holders will hold any membership
2 interest in or management positions with the reorganized Debtor.

3 Wells Fargo's plan, as further revised on May 6, 2005, was filed at this
4 morning's hearing as the second modified plan. The plan, as modified through today,
5 can be summarized as follows:

6 The Debtor owns the following real property:

7 (1) Approximately 18 acres improved with the outlet mall known as the
8 Governor's Crossing Outlet Mall or Phase I; and

9 (2) Approximately 2.427 acres of unimproved property, more or less
10 contiguous to the mall, known as the Phase II property.

11 Wells Fargo, as the reorganized Debtor, will take over operations of the mall
12 property. In doing so, it will assume an equity position through the reduction of its
13 secured claim by \$200,000.00.

14 The Debtor's remaining property, consisting of the Phase II property, and
15 any avoidance, preference, or other actions will be transferred to a plan trust. A plan
16 trustee will then market and sell the Phase II property. Implementation of the plan will
17 begin on the effective date, at which time the Debtor's assets will vest in the
18 reorganized Debtor and the plan trust assets will vest therein. The effective date shall
19 be no later than 120 days following confirmation.

20 On April 6, 2005, Wells Fargo filed a Line Designating Proposed Plan
21 Trustee Under Modified Plan of Reorganization for Governor's Crossing Outlet Mall,
22 LLC Submitted by Wells Fargo Bank, N.A., as Trustee, designating Michael Locraft,
23 Vice President of Allied Capital Corporation, Wells Fargo's special servicer, as plan
24 trustee.

25 The plan sets forth four classes of claims and interests. Class 1 is Wells

1 Fargo's secured claim in the amount of \$10,000,000.00. Class 1 shall be allowed in its
2 entirety and Wells Fargo will retain its lien on the mall property, including all leases
3 and rents, until it is paid in full. The reorganized Debtor will pay only interest to Wells
4 Fargo each month through September 2008, at which time the loan will mature and be
5 paid in full. The funds for these payments will come from the rents received from
6 operation of the mall property. If revenues do not allow for payment of the interest, any
7 unpaid interest will accrue as part of the principal balance up to \$200,000.00 aggregate
8 accrual.

9 Class 2 is the secured claim of Community Trust Bank, N.A. in the
10 stipulated amount of \$515,259.82, plus interest at prime rate plus 1 percent, currently 7
11 percent, and reasonable attorneys' fees of approximately \$3,000.00. The plan proposes
12 to pay only interest to Community Trust Bank, N.A. on the balance of its claim through
13 September 2008, at which time it will be paid in full any outstanding amounts.

14 Community Trust Bank, N.A.'s monthly interest payments will be derived from the
15 continued operations of the mall property and shall be paid before Wells Fargo is paid
16 its monthly interest payment. Once the Phase II property is sold, the proceeds will be
17 applied to Community Trust Bank, N.A.'s claim until paid in full. Community Trust
18 Bank, N.A. will retain its lien on the Phase II property until it is sold or Community
19 Trust Bank, N.A. is paid in full.

20 General unsecured creditors make up Class 3 under the plan. Unsecured
21 creditors will receive a pro rata distribution of any available net proceeds from the
22 liquidation of the plan trust assets.

23 Class 4 consists of the Debtor's current equity holders, who will receive no
24 distribution. Instead, their interests in the Debtor will be extinguished and Wells Fargo
25 will be vested in 100 percent of the equity interests in the reorganized Debtor. In

1 exchange for releasing the Debtor and its equity holders from liability, Wells Fargo will
2 reduce its claim by \$200,000.00 and it will use the operating revenues derived from the
3 mall property to service payments of the Wells Fargo and Community Trust Bank, N.A.
4 interest payments.

5 Following the effective date, the reorganized Debtor may pursue claims
6 objections, avoidance actions, preference actions, or any other causes of action that may
7 be pursued by the plan trustee and must consult with the reorganized Debtor with
8 respect to prosecution or settlement of any causes of action concerning the bankruptcy
9 estate. The plan also requires all administrative expense claims, other than professional
10 fees and ordinary course expenses, to be filed on or before 60 days following the
11 effective date and all postpetition tax claims must be filed on or before the latter of
12 30 days following the effective date, or 120 days after the filing of the tax return for
13 postpetition taxes.

14 Additionally, on or after the effective date, all executory contracts and
15 unexpired leases not already assumed will be rejected and the reorganized Debtor will
16 pay administrative expenses, statutory fees, professional fees, allowed priority claims,
17 and the attorneys' fees, costs, and expenses associated with the property to sell and the
18 plan trustee's recovery action from the proceeds thereof and/or the proceeds realized
19 from the sale of the Phase II property. The plan trustee, Mr. Locraft, will not accept any
20 fees for his services and will only request reimbursement of actual expenses incurred.
21 Additionally, at this morning's hearing, Wells Fargo represented to the court and was
22 directed to file an addendum to the plan to the effect that no fees from any Wells Fargo
23 entity will be charged to the plan trust to the detriment of unsecured creditors.

24 Balloting commenced, and on April 12, 2005, Wells Fargo filed its ballot
25 summary evidencing that Class 1, consisting of Wells Fargo's impaired secured claim

1 in the amount of \$10,000,000.00, and Class 2, consisting of the impaired secured claim
2 of Community Trust Bank, N.A. in the amount of \$518,259.82, accepted the plan.
3 Class 3, consisting of the unsecured nonpriority claims in the total amount of
4 \$2,292,260.08, had three ballots submitted evidencing the following: (1) two creditors,
5 or 66.7 percent of the claimants, with claims totaling \$1,449,026.82, or 63.2 percent of
6 the value, accepted the plan; and (2) one creditor, or 33.3 percent of the claimants, with
7 claims totaling \$843,233.26, or 36.8 percent of the value, rejected the plan.

8 On April 4, 2005, the United States Trustee filed the U.S. Trustee's
9 Response to the Plan Filed by Wells Fargo Bank, N.A. stating that he had no objection.
10 Collier Development Company, Inc. filed an Objection to Confirmation on April 6,
11 2005, arguing that the plan was not proposed in good faith, did not disclose the identity
12 of the plan trustee, was not in the best interests of creditors, and unfairly discriminated
13 against unsecured creditors. Additionally, the Internal Revenue Service filed its
14 Objection to Confirmation of Plan of Reorganization for Governor's Crossing Outlet
15 Mall, LLC Submitted by Wells Fargo Bank, N.A., as Trustee, on April 7, 2005,
16 contending that the plan failed to provide for payment of its administrative claim,
17 attempted to limit the liability of the plan trustee, attempted to step up the basis of
18 assets transferred to the plan trust, attempted to discharge tax claims without paying
19 them in full, and attempted to impose an injunction against the Internal Revenue
20 Service following discharge in violation of the anti-injunction provisions of 26 U.S.C.
21 § 7421.

22 Pursuant to a Stipulation and Consent Order Resolving Objection by United
23 States of America, on Behalf of the Internal Revenue Service, to Plan of Reorganization
24 Submitted by Wells Fargo Bank, N.A., as Trustee, which was entered by the court on
25 April 26, 2005, Wells Fargo agreed to delete the language stepping up the basis for the

1 assets to be transferred to the plan trust, instead including language that the basis would
2 be determined and adjusted in accordance with applicable law. Pursuant to the consent
3 order, Wells Fargo also agreed to exempt the United States Government for the liability
4 limitation for the plan trustee and to provide that any postpetition claims filed by the
5 Internal Revenue Service shall be deemed sufficient for payment in allowance of an
6 administrative claim for the Internal Revenue Service. On April 28, 2005, the Internal
7 Revenue Service filed its Notice of Withdrawal of United States's Objection to
8 Confirmation of Plan of Reorganization and the withdrawal of its objection was
9 reiterated by counsel at the evidentiary hearing and, indeed, has been incorporated into
10 the second amended plan that was filed this morning.

11 Accordingly, pursuant to the Joint Statement of (I) All Issues to be Resolved
12 by Bankruptcy Court and (II) Undisputed Facts, for Hearing on Confirmation of Plan of
13 Reorganization, as Modified, Submitted by Wells Fargo Bank, N.A., as Trustee, filed
14 on April 29, 2005, only the Collier Development Company, Inc. objection remains and
15 the issues before the court were stated by the parties as follows:

16 (1) Whether Michael Locraft, Vice President of Allied Capital Corporation,
17 a representative of the special servicer to Wells Fargo, or a local Chapter 7 panel trustee
18 should be appointed as the plan trustee; and

19 (2) Whether the provision of the plan that allows three years within which
20 to market the Phase II property is in the best interest of creditors or whether a shorter
21 marketing period should be ordered.

22 Although the parties' joint statement does not couch these issues as
23 confirmation requirements under 11 U.S.C. § 1129, counsel for Collier Development
24 Company, Inc. argued this morning that § 1129(a)(3) is in play as to the plan treatment
25 of the Phase II property and that § 1129(a)(5) is in play with regard to the appointment

1 of the plan trustee, Mr. Locraft. These two subsections of § 1129(a) provide:

2 The court shall confirm a plan only if all of the following are
3 met: . . . (3) The plan has been proposed in good faith and not by
4 any means forbidden by law. . . . (5)(A)(i) The proponent of the
5 plan has disclosed the identity and affiliations of any individual
6 proposed to serve, after confirmation of the plan, as a director,
7 officer, or voting trustee of the debtor, an affiliate of the debtor
8 participating in a joint plan with the debtor, or a successor to the
9 debtor under the plan; and (ii) the appointment to, or continuance
10 in, such office of such individual, is consistent with the interests
11 of creditors and equity security holders and with public policy;
12 and (B) the proponent of the plan has disclosed the identity of
13 any insider that will be employed or retained by the reorganized
14 debtor, and the nature of any compensation for such insider.

15 Confirmation of a Chapter 11 plan is governed by 11 U.S.C. § 1129, which
16 provides that the court shall confirm the plan if certain enumerated requirements are
17 met. Additionally, such plan must contain provisions such as designation of classes,
18 treatment of claims, and adequate means of implementation, to name a few. *See*
19 *generally*, 11 U.S.C. § 1123. Additionally, within the context of class designation and
20 treatment, a debtor is afforded the ability to impair classes of creditors pursuant to
21 11 U.S.C. § 1124.

22 After adequate disclosure of the contents and terms therein, parties provided
23 for in a plan vote whether to accept or reject it. *See* 11 U.S.C. §§ 1125 and 1126. If it
24 meets all other requirements of § 1129, the plan may be confirmed. *See* 11 U.S.C.
25 § 1129(a)(7) and (8). One such requirement is that if the plan includes impaired classes,

1 at least one class of impaired creditors must vote to accept the plan. 11 U.S.C.
2 § 1129(a)(10). Community Trust Bank, N.A. is impaired and has voted to accept the
3 plan. If there are rejections, the plan may nevertheless be confirmed if all other
4 § 1129(a) requirements are met and the plan does not unfairly discriminate and is fair
5 and equitable for each rejecting class. *See* § 1129(b). In summary, “the bankruptcy
6 court must determine whether the proposed plan meets all the statutory requirements,
7 including whether the claimants are properly classified, whether the claimants are
8 treated fairly within the class, whether the plan is proposed in good faith and whether
9 the plan is in the best interests of the creditors.” *In re Dow Corning Corporation*, 255
10 B.R. 445, 522 (E.D. Mich. 2000).

11 Here the only issues remaining before me are whether Mr. Locraft should be
12 the designated plan trustee and whether three years to market the Phase II property is
13 too long, and Collier Development Company argues that good faith is implicit in
14 these issues, as is the § 1129(a)(5) issue. I will state, as both counsel acknowledged,
15 that if the court finds that neither of these issues can be found in favor of Wells Fargo,
16 the proponent of the plan, then the plan cannot be confirmed. It is not up to the court to
17 restructure Wells Fargo’s plan. First, Collier Development argues that Mr. Locraft is
18 employed by Allied Capital, which is Wells Fargo special servicer, thus, he is not a
19 disinterested person and should not be allowed to act as plan trustee. Primarily, Collier
20 Development questions Mr. Locraft’s ability to act as a fiduciary of the plan trust rather
21 than in the interests of Wells Fargo. To alleviate this alleged conflict, Collier
22 Development suggests the appointment of a current member of the Chapter 7 trustee
23 panel as the plan trustee. Again, that is beyond the purview of the court’s authority.
24 Second, with respect to the sale of the Phase II property, Collier Development contends
25 that allowing three years will greatly reduce the distribution to unsecured creditors

1 because more administrative expenses will be incurred and more interest will be paid to
2 Community Trust Bank, N.A. on its outstanding balance. Based upon inquiries
3 received by Mr. Collier, Collier Development argues that one year is ample time to
4 market and sell the Phase II property so that there will be adequate proceeds to
5 distribute to unsecured creditors. In opposition, Wells Fargo argues that prepetition
6 efforts to market the property over five to eight years by Mr. Collier and Collier
7 Development have been unsuccessful. Mr. Collier testified that last year he received
8 one inquiry regarding the Phase II property and that this year he has received four; none
9 of those inquiries have resulted in any offer to purchase. At any rate, Wells Fargo
10 argues that the second modified plan should be confirmed.

11 Collier Development argues that the “disinterested party” standard required
12 for appointment of a trustee in a Chapter 11 case, pursuant to 11 U.S.C. § 1104, should
13 be applied to the plan trustee whereby Mr. Locraft would be disqualified based upon his
14 relationship with Wells Fargo. On the other hand, Wells Fargo argues that
15 Mr. Locraft’s relationship to it, in conjunction with its status as an unsecured creditor,
16 provides him with a greater incentive than does a panel trustee to liquidate the Phase II
17 property and pursue avoidance and other actions for the benefit of unsecured creditors.
18 Furthermore, Wells Fargo points out that Mr. Locraft has agreed to be reimbursed for
19 his expenses incurred as plan trustee, but will not accept fees for his services and,
20 indeed, this is provided for by the plan, whereas a panel trustee would require payment
21 of his fees either on an hourly basis or at the statutory rate. Wells Fargo contends that
22 the disparity in the fees would unnecessarily reduce the dividend to unsecured creditors.

23 Wells Fargo designates Mr. Locraft as plan trustee pursuant to 11 U.S.C.
24 § 1123(b)(3), which allows a plan to provide for “the retention and enforcement by the
25 debtor, or by the trustee, or by a representative of the estate appointed for such

1 purposes, of any [settlement or adjustment of any claim or interest belonging to the
2 debtor or to the estate]. 11 U.S.C. § 1123(b)(3). “[T]he appointment of a representative
3 of the estate under § 1123(b)(3)(B) must be approved by the court,” which can be
4 accomplished simply by approval of the plan. *Citicorp Acceptance Co. v. Robison (In*
5 *re Sweetwater)*, 884 F.2d 1323, 1326 (10th Cir. 1989); *accord Retail Marketing Co. v.*
6 *King (In re Mako, Inc.)*, 985 F.2d 1052, 1054 (10th Cir. 1993). Generally, such actions
7 pursued by a representative appointed under § 1123(b)(3) are for the benefit of
8 unsecured creditors, *see Official Committee of Unsecured Creditors of Maxwell*
9 *Newspapers, Inc. v. MacMillian, Inc. (In re Maxwell Newspapers, Inc.)*, 189 B.R. 282,
10 287 (Bankr. S.D.N.Y. 1995), and “the primary beneficiaries of § 1123(b)(3)(B)
11 appointments should be unsecured creditors.” *In re LaBrum & Doak, LLP*, 227 B.R.
12 372, 380 (Bankr. E.D. Penn. 1998). Accordingly, “[t]otally disinterested parties can
13 hardly be expected to undertake such difficult tasks [such as prosecuting claims
14 litigation].” *LaBrum & Doak, LLP*, 227 B.R. at 380.

15 The Bankruptcy Code defines “disinterested” persons as those who are not
16 creditors, insiders, or parties holding materially adverse interests to the estate or any
17 class of creditors. *See* 11 U.S.C. § 101(14). “By prohibiting any ‘materially adverse’
18 ‘interest’ to any party to the bankruptcy ‘for any . . . reason,’ Congress plainly
19 invited—indeed compelled—federal courts to construe ‘disinterestedness’ against the
20 backdrop of the equitable duties that apply to positions of trust.” *United States v.*
21 *Schilling (In re Big Rivers Electric Corp.)*, 355 F.3d 415, 431 (6th Cir. 2004). However,
22 once the plan is confirmed, the debtor in bankruptcy ceases to exist and the reorganized
23 debtor takes control over the former debtor’s assets. And although a liquidating trustee
24 appointed pursuant to 11 U.S.C. § 1123(b)(3)(B) is a fiduciary, he is not a bankruptcy
25 trustee. *See Holywell Corp. v. Smith*, 112 S. Ct. 1021, 1026-27 (1992); *White v.*

1 *Williams (In re White)*, 152 B.R. 123, 129 (Bankr. N.D. Tex. 1992). Therefore, there is
2 no requirement that a disinterested party to the reorganized debtor act as its agent,
3 representative, or, in this case, plan trustee.

4 It is also compelling that Mr. Locraft has agreed not to accept payment of
5 fees for his services as plan trustee, a move that will increase any distribution to
6 creditors. Additionally, Mr. Locraft, as an agent of Wells Fargo, has the incentive to
7 pursue actions that will benefit all unsecured creditors based upon Wells Fargo's
8 position as an unsecured creditor. The fact that Wells Fargo will also benefit cannot
9 serve as the basis for disqualifying Mr. Locraft's designation as plan trustee. The court
10 will, accordingly, overrule Collier Development Company's objection on the plan
11 trustee issue.

12 With respect to the Phase II property issue, Wells Fargo has modified
13 Section 9.3.2 of the plan to include the following language:

14 Transfer and Sale of the Phase II Real Property. On the Effective
15 Date, the Phase II Real Property shall be transferred to the Plan
16 Trust. Commencing on the Effective Date, the Plan Trustee, in
17 consultation with the Reorganized Debtor, shall use its
18 reasonable efforts to market and sell the Phase II Real Property in
19 a commercially reasonable manner. **The sale of the Phase II**
20 **Real Property shall not be subject to Bankruptcy Court**
21 **approval; provided, however, if the gross purchase price for**
22 **the Phase II Real Property is less than \$1,000,000.00, then**
23 **Bankruptcy Court approval shall be required after notice**
24 **and hearing.** Upon the sale of the Phase II Real Property, the
25 Community Trust Secured Claim shall be paid in full. Any Net

1 Sale Proceeds shall be distributed in accordance with the
2 provisions of this Plan and the Plan Trust. **If a sale of the**
3 **Phase II Real Property has not occurred on or before**
4 **September 30, 2008, the Reorganized Debtor or the Plan**
5 **Trustee shall file papers with the Bankruptcy Court seeking a**
6 **determination of whether (i) the Plan Trustee should**
7 **continue to market the Phase II Real Property, (ii) the**
8 **Phase II Real Property should be sold by private sale or at**
9 **public auction, or (iii) such other action should be taken with**
10 **respect to the disposition of the Phase II Real Property.**

11 This plan provision does not require the plan trustee to wait for three years
12 to market the Phase II property; instead, it allows him that time within which to do so.
13 Furthermore, as Mr. Collier testified, there is a major thoroughfare project under
14 construction to extend Collier Drive, which runs in front of both the mall property and
15 the Phase II property, to connect with the New Middle Creek road project. This
16 extension is estimated to increase traffic on Collier Drive substantially, and in turn,
17 provide new opportunities for this particular property. Allowing Wells Fargo three
18 years in which to take advantage of this situation does not diminish its ability to market
19 and sell the Phase II property sooner, if the right offer arises.

20 Furthermore, none of these issues evidence any lack of bad faith or lack of
21 creditors' best interests. "[F]or purposes of determining good faith under
22 section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such
23 a plan will fairly achieve a result consistent with the objectives and purposes of the
24 Bankruptcy Code." *In re PWS Holding Corp.*, 228 F.3d 224, 242 (3d Cir. 2000). The
25 second modified plan meets these standards.

1 In summary, the court finds that the second modified plan meets all of the
2 confirmation requirements of 11 U.S.C. § 1129(a), except § 1129(a)(9) as regard
3 Class 3 and the interests represented at Class 4. However, the court finds that the plan
4 does not discriminate unfairly and is fair and equitable with respect to the impaired
5 Class 3 claimants and Class 4 interests and that the § 1129(b) cram-down requirements
6 have accordingly
7 been fully satisfied. The court will, therefore, overrule all of the Collier Development
8 Company objections and will confirm the second modified plan. Counsel for Wells
9 Fargo
10 will please prepare a proposed confirmation order with a clean copy of the second
11 modified plan attached, either accompanied by the addendum that I suggested this
12 morning or amend the plan with a provision in the confirmation order.

13 This Memorandum constitutes findings of fact and conclusions of law as
14 required by FED. R. CIV. P. 52(a), made applicable to this contested matter by
15 Rule 9014 of the Federal Rules of Bankruptcy Procedure. I will not ask the court
16 reporter to transcribe my opinion. If any party requests its transcription, an original
17 will be filed and I will clean it up as best I can and counsel will be served. I will put
18 an order down overruling the objections and directing the plan be confirmed by
19 separate order.

20 FILED: August 29, 2005

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/s/ RICHARD STAIR, JR.
RICHARD STAIR, JR.
U.S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-36809

GOVERNOR'S CROSSING
OUTLET MALL, LLC

Debtor

ORDER

This contested matter came on for hearing on May 10, 2005, on confirmation of the Debtor's Second Modified Plan of Reorganization for Governor's Crossing Outlet Mall, LLC Submitted by Wells Fargo Bank, N.A., as Trustee, filed by Wells Fargo Bank, N.A., Trustee, on May 10, 2005, on the Objection to Confirmation filed April 6, 2005, by Collier Development Company, Inc., and on the Joint Statement of (I) All Issues to be Resolved by Bankruptcy Court and (II) Undisputed Facts, for Hearing on Confirmation of Plan of Reorganization, as Modified, Submitted by Wells Fargo Bank, N.A., as Trustee, filed by Wells Fargo Bank, N.A., Trustee, and Collier Development Company, Inc., on April 29, 2005. For the reasons stated in the memorandum opinion dictated from the bench at the close of the evidence, containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this contested matter by Rule 9014(c) of the Federal Rules of Bankruptcy Procedure, the court directs the following:

1. Collier Development Company, Inc.'s Objection to Confirmation is **OVERRULED**.
2. The court shall, by separate order, confirm the Second Modified Plan of Reorganization for Governor's Crossing Outlet Mall, LLC Submitted by Wells Fargo Bank, N.A.,

as Trustee, further modified by including additional language in Article X at section 10.5 regarding the Plan Trustee's inability to pay certain fees and expenses beneficial to the Plan proponent.

SO ORDERED.

ENTER: May 11, 2005

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE