

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re:	)	
	)	Chapter 11
CASTLETON PLAZA, LP,	)	
	)	Case No. 11-01444-BHL-11
Debtor.	)	
	)	
Appeal of Secured Creditor EL-SNPR	)	
NOTES HOLDINGS, LLC	)	
_____	)	

**JOINT MOTION FOR STAY OF  
CONFIRMATION ORDER PENDING APPEAL**

Debtor, Castleton Plaza, LP (the “Debtor”), and EL-SNPR Notes Holdings, LLC (“EL-SNPR,” and together with the Debtor, the “Parties”), by and through their respective counsel, submit this *Joint Motion for Stay of Confirmation Order Pending Appeal* (the “Joint Motion”). The Parties respectfully request this court to stay the Order Confirming the Debtor’s Plan of Reorganization [Docket No. 285] (the “Order”) pending the resolution of any and all appeals relating to the Plan. In support of this Joint Motion, the Parties state as follows:

1. On December 12, 2011, the Debtor filed the Amended Chapter 11 Plan of Reorganization [Docket No. 188] (the “Plan”).
2. Pursuant to the Plan, the Plan’s Effective Date (as defined in the Plan) (the “Effective Date”) is the date the Order becomes a “Final Order” (as defined in the Plan) (the “Final Order”). (*Plan* § 1.19.) A Final Order is defined as an order of the Court as to which the time, *inter alia*, to appeal has expired and as to which no appeal is then pending. (*Id.* § 1.26.)
3. The Distribution Date (as defined in the Plan) (the “Distribution Date”) is defined as the sixth business day following the Effective Date. (*Id.* § 1.18.)

4. Pursuant to the Plan, no distributions will be made to creditors until the Distribution Date, or thereafter. (*See id.* §§ 3.1–3.4.)

5. Pursuant to the Plan, those certain loan documents attached as Exhibits A through C to the Plan will not be executed until the Effective Date. (*See id.* § 3.1.)

6. Pursuant to the Plan, the Executory Contracts (as defined in the Plan) (individually, an “Executory Contract”) will not be assumed until the Effective Date. (*See id.* § 4.1.)

7. Pursuant to the Plan, the Equity Interests (as defined in the Plan) (the “Equity Interests”) will not be cancelled and new Equity Interests will not be issued until the Effective Date. (*See id.* § 5.1.)

8. On January 27, 2012, EL-SNPR filed the Objection to Confirmation of Plan [Docket No. 221] (the “Objection”).

9. On March 8, 9, and 30, the Court held hearings (collectively, the “Confirmation Hearing”) related to confirmation of the Plan.

10. On April 16, 2012, EL-SNPR filed the Brief in Support of Objection to Confirmation of Plan [Docket No. 275] (the “Brief”).

11. On May 31, 2012, the Court entered the Order, confirming the Plan.

12. EL-SNPR now seeks to appeal the Order.

13. The Parties have agreed to stay the Order and postpone the enforcement and substantial consummation of the Plan until any and all appeals relating to the Order have been fully and finally resolved pursuant to the following conditions:

- (i) EL-SNPR’s secured claim, for purposes of 11 U.S.C. § 506(a), shall be fixed as of May 31, 2012 unless the Order is overturned or reversed;

- (ii) the Debtor shall be authorized to immediately complete the mall access project (as that term is used in § 5.2 of the Plan) (the “MAP”) in accordance with the Plan;
- (iii) the Debtor shall be authorized to immediately spend up to \$30,000.00 to demolish the improvements located on the Outlot Parcel (as that term is defined in the Amended Chapter 11 Disclosure Statement [Doc. 187]) (the “Outlot Parcel”);
- (iv) the Debtor shall continue to comply with the Final Order Authorizing Debtor’s Use of Cash Collateral and Modifying the Automatic Stay [Docket No. 75];
- (v) the Debtor shall not file any motion to modify the Plan; and
- (vi) the Debtor shall not take any step, beyond those specifically authorized above, to consummate or enforce the Plan, including, but not limited to, making distributions to creditors, assuming any executory contracts, canceling the Equity Interests, and/or issuing new Equity Interests.

14. Pursuant to Fed. R. Bankr. P. 3020(e), the Order is stayed until June 14, 2012.

15. As of the filing of this Joint Motion, substantial consummation (as that term is defined in 11 U.S.C. § 1101(2)) of the Plan has not occurred.

16. By allowing the Debtor to complete the MAP and demolish the improvements located on the Outlot Parcel, the Plan will not be substantially consummated.

WHEREFORE, the Debtor and EL-SNPR respectfully request that this Court:

- A. enter an order staying the Order until any and all appeals relating to the Order have been fully and finally resolved subject to the following conditions:
  - (i) EL-SNPR’s secured claim, for purposes of 11 U.S.C. § 506(a), shall be fixed as of May 31, 2012 unless the Order is overturned or reversed;
  - (ii) the Debtor shall be authorized to immediately complete the MAP in accordance with the Plan;
  - (iii) the Debtor shall be authorized to immediately spend up to \$30,000.00 to demolish the improvements located on the Outlot Parcel;
  - (iv) the Debtor shall continue to be in compliance with the Final Order Authorizing Debtor’s Use of Cash Collateral and Modifying the Automatic Stay [Docket No. 75];

- (v) the Debtor shall not file any motion to modify the Plan; and
  - (vi) the Debtor shall not take any step, beyond those specifically authorized above, to consummate or enforce the Plan, including, but not limited to, making distributions to creditors, assuming any executory contracts, canceling the Equity Interests, and/or issuing new Equity Interests;
- B. enter an order affirmatively stating that substantial consummation of the Plan has not occurred and cannot occur until any and all appeals relating to the Order have been fully and finally resolved;
- C. enter an order affirmatively stating that the completion of the MAP and the demolition of the improvements located on the Outlot Parcel do not constitute substantial consummation of the Plan; and
- D. grant any other and further relief this Court deems appropriate.

*[SIGNATURE PAGE FOLLOWS]*

Date: June 13, 2012

Respectfully Submitted,

/s/ Alan K. Mills

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically this 13th day of June, 2012. I hereby certify that I caused a copy of the foregoing to be served via U.S. Mail, First Class, Postage Prepaid upon parties that are not registered to receive notice by operation of the Court's electronic filing system at their respective addresses listed on the electronic filing receipt.

/s/ Jonathan D. Sundheimer  
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