

1 John J. Hebert (#010633)
2 Arturo A. Thompson (#025070)
3 **POLSINELLI SHUGHART PC**
4 3636 North Central Avenue, Suite 1200
5 Phoenix, AZ 85012
6 Telephone: (602) 650-2000
7 Facsimile: (602) 264-7033
8 E-Mail: jhebert@polsinelli.com
9 E-Mail: athompson@polsinelli.com

10 Attorneys for the Debtor

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **THE DISTRICT OF ARIZONA**

13 In re:
14 EMPIRE CENTER AT COLDWATER SPRINGS,
15 LLC,
16 Debtor.

17 Address: 6617 N. Scottsdale Road, Suite 101
18 Scottsdale, AZ 85250

19 Tax EIN: xx-xxx2075

Chapter 11 Proceedings

Case No. 2:09-bk-32728-SSC

20 **DEBTOR'S DISCLOSURE**
21 **STATEMENT FOR PLAN OF**
22 **REORGANIZATION DATED**
23 **MARCH 26, 2010**

24 **I. INTRODUCTION.**

25 This document is the Disclosure Statement of Empire Center at Coldwater Springs, LLC, an
26 Arizona limited liability company (the "Debtor"), the debtor in the above-entitled Chapter 11
27 bankruptcy proceeding. This disclosure statement is submitted by the Debtor pursuant to 11 U.S.C.
28 § 1125.

11 U.S.C. § 1125(b) prohibits the solicitation of acceptances or rejections of a plan of
reorganization unless such plan is accompanied by a copy of the Disclosure Statement which has
been approved by the Bankruptcy Court.

The purpose of this Disclosure Statement is to provide creditors and interested parties in this
bankruptcy proceeding with such information as may reasonably be deemed sufficient to allow
creditors and interested parties to make an informed decision regarding the Debtor's Plan of
Reorganization dated March 26, 2010 (the "Plan").

1 Unless otherwise noted, those portions of the Plan and this Disclosure Statement providing
2 factual information concerning the Debtor, its assets and liabilities, have been prepared from
3 information submitted by the Debtor and its retained professionals. The Debtor and other
4 professionals employed by the Debtor have utilized all relevant, non-privileged information
5 provided by the Debtor in preparing this Disclosure Statement and the Plan.

6 This Disclosure Statement contains information that may influence your decision to accept
7 or reject the Debtor's proposed Plan. Please read this document with care.

8 The financial information contained in this Disclosure Statement has not been subjected to
9 an audit by an independent certified public accountant. For that reason, the Debtor is not able to
10 warrant or represent that the information contained in this Disclosure Statement is without any
11 inaccuracy. To the extent practicable, the information has been prepared from the Debtor's
12 financial books and records and great effort has been made to ensure that all such information is
13 fairly represented.

14 This Disclosure Statement and the Plan will classify all creditors into Classes. The
15 treatment of each Class of creditors will be set forth in this Disclosure Statement and in the Plan.
16 You should carefully examine the treatment of the Class to which your Claim will be assigned.

17 This Disclosure Statement requires approval by the Bankruptcy Court after notice and a
18 hearing pursuant to 11 U.S.C. §1125(b). Once approved, the Disclosure Statement will be
19 distributed with the Debtor's proposed Plan for voting. Approval of the Disclosure Statement by
20 the Bankruptcy Court does not constitute either certification or approval of the Debtor's Plan by the
21 Bankruptcy Court or that the Disclosure Statement is without any inaccuracy.

22 The Bankruptcy Court will confirm the Plan if the requirements of § 1129 of the
23 Bankruptcy Code are satisfied. The Bankruptcy Court must determine whether the Plan has been
24 accepted by each impaired Class entitled to vote on the Plan. Impaired Classes entitled to vote on
25 the Plan are those Classes of claims whose legal, equitable, or contractual rights are altered, as
26 defined under § 1124 of the Bankruptcy Code. An impaired Class of claims is deemed to have
27 accepted the Plan if at least two-thirds (2/3) in amount of those claims who vote and more than
28 one-half (1/2) in number of those claims who vote have accepted the Plan. An impaired Class of

1 interests is deemed to have accepted the Plan if the Plan has been accepted by at least two-thirds
2 (2/3) in amount of the allowed interests who vote on the Plan.

3 Even if each Class of creditors does not accept the Plan, the Plan can be confirmed under
4 § 1129(b) of the Bankruptcy Code, so long as one impaired Class of creditors accepts the Plan.
5 This is referred to as the “cram down” provision. The failure of each Class to accept the Plan could
6 very well result in a conversion of this case to a Chapter 7 or dismissal of the Chapter 11, and the
7 secured creditors repossessing their collateral and disposing of it in a commercially reasonable
8 manner with no obligation to unsecured creditors.

9 Only the votes of those creditors or interested parties whose ballots are timely received will
10 be counted in determining whether a Class has accepted the Plan.

11 **II. DEFINITIONS.**

12 The definitions set forth in Article I of the Plan apply in this Disclosure Statement except to
13 the extent other definitions are set forth in this Disclosure Statement.

14 **III. THE DEBTOR, BACKGROUND, AND EVENTS PRECIPITATING THE 15 CHAPTER 11.**

16 **A. Background**

17 On December 18, 2009 (the “Petition Date”), the Debtor filed a voluntary petition for relief
18 under Chapter 11 of the Bankruptcy Code (the “Code”) in the United States Bankruptcy Court for
19 the District of Arizona.

20 The Debtor is an Arizona limited liability company founded on January 31, 2005, and
21 engaged in the business of developing a commercial property located in Maricopa County, Arizona
22 (the “Development”) at Avondale Boulevard and Van Buren Street, in Avondale, Arizona. The
23 Debtor is owned by its members, ECD, LLC (“ECD”), and Meritage Investments, LLC
24 (“Meritage”), and managed by ECD.

25 **1. Funding of the Development**

26 The acquisition and construction of the Development was funded through a loan (the
27 “Loan”) from JP Morgan Chase Bank (the “Chase Bank”). The Loan was entered into on April 30,
28

1 2007, with a principal sum of \$21,669,000, an interest rate of 8.25%, and a maturity date of
2 April 30, 2009 (the "Maturity Date"). The current principal owing on the Loan is \$15,595,957.84.

3 The Debtor used the Loan to construct the Development. Several buildings are now
4 occupied by tenants such as Staples, Fresh & Easy, and Jack in the Box. Other portions of the
5 facility are in "grey shell" condition, merely awaiting tenants before final improvements are made.
6 The current list of tenants in the Development and the square footage they occupy of the buildings
7 is set forth in Debtor's plan of reorganization (the "Plan"), and is incorporated herein by reference.

8 **2. Events That Precipitated the Bankruptcy Filing**

9 The Debtor's original intent was to have fully developed and tenanted the property long
10 before the Loan's maturity date; thereby enabling it to obtain operating financing that would pay
11 the Loan off and allow the Debtor to continue operating. Due to the extraordinary and
12 unforeseeable collapse of the global credit markets, Debtor was unable to tenant the property
13 because potential tenants could not obtain the funding they needed to open or expand. Likewise,
14 despite its diligent efforts, the Debtor was also unable to obtain financing to support its payoff of
15 the Loan by the Maturity Date.

16 As a result of the forgoing circumstances, and in an effort to preserve the value of the
17 Debtor in the face of imminent foreclosure, the Debtor filed for protection under Chapter 11 of the
18 Code.

19 **B. Business Plan and Projections**

20 As set forth above, the sums from the Loan were used to construct the Development, and as
21 a result, the facility is partially tenanted. Moreover, the tenanted space is generating income
22 consistent with the budget set forth in the Debtor's cash collateral motion that was filed with this
23 Court on December 31, 2009. As set forth in that budget, the Debtor receives approximately
24 \$50,169.67 in gross income each month from rents. After the payment of expenses, including a
25 management fee to the Debtor, the Development generates net revenues that allow it to pay its
26 operating costs and still realize a profit.

27 The Debtor is also actively seeking to tenant or sell the remainder of the space in the
28 Development. To this end, and as also described in the Debtor's cash collateral motion, the Debtor

1 is actively engaged in negotiations for the sale of a portion of the property in the Development to
2 CVS Pharmacy (the "CVS Sale"). And, importantly, the CVS Sale is currently in escrow.
3 Completion of the CVS Sale will result in considerable value to the estate, likely to be equal to or
4 in excess of \$2.15 million. Thus, the consummation of the CVS Sale, even after expenditures for
5 dealing with the related development and zoning issues (the "CVS Costs"), is in the best interests of
6 all creditors, including the Bank. Additionally, the Debtor anticipates that CVS Pharmacy will
7 reimburse it for some portion of the CVS Costs, thereby further increasing the overall value of the
8 CVS Sale. The CVS Sale is anticipated to close by no later than September 2010, but may close as
9 soon as July 2010.

10 With the foregoing in mind, the Debtor intends to continue to actively market the property
11 to potential tenants or buyers as the market recovers. This approach will essentially mirror the
12 original Development plans of the Debtor, but will now be adjusted to reflect the present market
13 conditions, including appropriate adjustments to rates at which leases and sales will occur and the
14 pricing thereof.

15 In the immediate term, the Interest Holders, as described herein, intend to infuse a
16 substantial new value into the Debtor to both ensure that the return to creditors is maximized, and
17 that the Debtor has sufficient funds on hand to deal with its operational needs following
18 confirmation. The Debtor is in negotiations with a variety of sources, one or more of which will
19 fund the Development going forward (the "Funder"). The Funder will fund the Plan, as necessary,
20 through a loan for the benefit of the Interest Holders in the Debtor as set forth in a commitment
21 letter (the "Commitment Letter") the Debtor will file with the Court once this issue is finalized.
22 This infusion of New Value will pay the administrative Priority Claims in full, thereby relieving the
23 Debtor of significant debt and bringing it current with any tax claims in those classes.

24 The infusion will also help ensure the payment of interest on the Allowed Secured Claims
25 of Chase Bank, through the funding of a Reserve Account (described in greater detail below). As
26 such, the New Value infused on behalf of the Interest Holders will help give the Debtor the
27 mid-term relief it needs to complete the sale and tenanting of the Development while also
28 mitigating any concern of Chase Bank that its Allowed Secured Claim will not be paid in full.

1 The Plan and accompanying infusion from the Interest Holders will also give the variety of
2 unsecured creditors a maximum return on their Allowed Unsecured Claims. Maximizing these
3 payments is integral to the Plan because it will help preserve the relationship of the Debtor to key
4 vendors and service providers necessary to the future of the Development. It will also ease the
5 ability of the Debtor to obtain favorable terms on trade credit going forward as it will demonstrate
6 the good faith interest of the Debtor in mitigating the risk to trade vendors.

7 Finally, no later than 15 days prior to the Effective Date, the Interest Holders will place
8 \$50,000 of the funds to be infused into the Debtor as a part of this Plan into the trust account of its
9 bankruptcy counsel. These “escrowed” funds will demonstrate the financial commitment of the
10 Interest Holders and their funding source to the Plan. These funds will only become part of the
11 Estate when the Plan is confirmed. If the Plan is not confirmed, these funds will be remitted to the
12 funding source.

13 In sum, under the Plan all creditors will be paid in full on their Allowed Secured Claims,
14 whereas, in a liquidation under Chapter 7 of the Bankruptcy Code, the Secured Creditors would
15 receive less than under the Plan, and Unsecured Creditors would receive nothing.

16 **C. Operations**

17 In order to provide for efficient and productive operations and to keep the Debtor’s business
18 competitive, the Debtor intends to retain the same management structure that existed pre-petition.
19 The issues confronted by the Debtor that lead to the petition were the product of market changes,
20 not the management of the Debtor or its structure. Thus, a change in management structure is not
21 in the interests of the Debtor or its creditors because the existing structure is appropriate to the
22 needs of the Debtor.

23 **D. Preferences and Fraudulent Conveyances**

24 To the extent that a preference or fraudulent conveyance occurred before the bankruptcy
25 filings, such transfer may be recoverable by the bankruptcy estate for the benefit of the estate under
26 Sections 544, 547, or 548 of the Bankruptcy Code. To date, no complaints have been filed under
27 any of these theories. To the extent any such claims exist, they are specifically preserved for the
28

1 benefit of the bankruptcy estate. Any recovery that is obtained will be obtained for the benefit of
2 the estate.

3 **E. Conclusion**

4 The Debtor filed its Bankruptcy case to stop a pending foreclosure that was an attempt by
5 Chase Bank to wrest control of the Development from the Debtor. And the Debtor believes that the
6 foreclosure would have resulted in a diminution of the value of the estate to all creditors, as the
7 relationship between the Debtor and its existing and potential tenants would have been severed, and
8 sales like the one to CVS Pharmacy would have evaporated.

9 Under the Plan, the Debtor proposes to pay the Priority Claims in full. It also proposes to
10 give Secured Creditors with an interest in the Real Property of the Development the opportunity to
11 realize a full return on the value of their Allowed Secured Claims. In addition, the Plan will result
12 in the unsecured creditors receiving a substantial payout.

13 In a Chapter 7 liquidation, conversely, the value of the Debtor and its assets would be
14 substantially less because a liquidation sale would result in an immense discount in the price paid
15 for the Debtor's assets. Thus, Secured Creditors would receive far less and Unsecured Creditors
16 would receive nothing in a liquidation scenario.

17 **IV. SIGNIFICANT EVENTS DURING THE CHAPTER 11.**

18 **A. Administrative Proceedings**

19 The Debtor filed its Petition for Relief under Chapter 11 on December 18, 2009, and a first
20 meeting of creditors was held on February 2, 2010.

21 **B. Cash Collateral**

22 On December 31, 2009, the Debtor filed a motion seeking the permission of the Court to
23 use funds the Bank believed to be its cash collateral. The Debtor also sought and received an
24 expedited hearing on its motion, which resulted in a hearing before the Court on January 4, 2010.
25 Just prior to the hearing, the Debtor and Chase Bank arrived at a tentative agreement regarding cash
26 collateral. Prior to a final hearing on the use of cash collateral set for February 11, 2010, the
27 Debtor and Chase Bank filed a stipulated motion for the use of cash collateral, which was approved
28

1 by the Court at the final hearing. A stipulated order on the use of cash collateral was signed by the
2 Court on March 11, 2010.

3 **C. Retention of Professionals**

4 On January 6, 2010, Polsinelli Shughart PC (“PS”) filed its application for employment as
5 counsel for the Debtor, along with its verified statement under 2014 and unsworn declaration under
6 2016. PS amended the petition on January 14, 2010.

7 At a hearing held on February 18, 2010, the Court indicated the need for certain additional
8 information to be disclosed in the verified statement under 2014 and the Debtor’s schedules, and PS
9 complied, filing an amended 2014 statement and schedules on March 1, 2010.

10 **D. Appointment of Unsecured Creditors Committee**

11 On January 26, 2010, the United States Trustee’s Office filed a statement asserting that,
12 despite its efforts to contact unsecured creditors, it was unable to appoint a Committee of
13 Unsecured Creditors.

14 **V. DESCRIPTION OF ASSETS AND LIABILITIES OF THE DEBTOR.**

15 The values ascribed to the assets below are based on the Debtor’s best estimate and other
16 factors such as the purchase price, comparable sales, and tax assessments.

17 **A. Assets**

18 1. **Real Property** – The Development is comprised of approximately 23.47
19 acres of land. There are six separate buildings on the Development, comprising
20 59,398 square feet under roof. Of this, approximately 46,098 square feet are
21 occupied. There are also an additional 12 buildings not yet constructed (that will
22 add another 90,071 square feet under roof) that are projected to be a part of the final
23 Development. According to the Debtor’s bankruptcy schedules, the alleged value of
24 the secured claims on this property is \$15,608,062.91 An appraisal of the
25 Development conducted by Chase Bank in April of 2009, indicated the Real
26 Property had a value of \$16,700,000.
27
28

1 2. **Bank Accounts** – At the time of the filing of the petition for relief herein, the
2 Debtor had the following bank accounts:

3 a. Checking Account - \$28.85

4 3. **Equipment and other Property** – \$2,518.09.

5 **B. Liabilities**

6 1. **Priority Claims**

7 a. **Arizona Department of Revenue** – The Debtor was current on taxes
8 owed to the Arizona Department of Revenue (“ADOR”) and does not expect
9 ADOR to have a claim.

10 b. **Taxes to the Internal Revenue Service or Others** – The Debtor was
11 current on taxes owed to the Internal Revenue Service (“IRS”) and does not
12 expect the IRS to have a claim. However, the Debtor’s statements and
13 schedules list one unsecured priority claim allegedly owed to the City of
14 Avondale totaling \$48,998.18 for taxes owed to the city.

15 2. **Secured Claims**

16 a. **Chase Bank** - The Bank asserts a Secured Claim in the Debtor’s Real
17 Property related to the Loan. According to the Debtor’s statements and
18 schedules, the Bank is owed \$15,595,957.84 on its claim.

19 b. **Maricopa County** - The Debtor’s statements and schedules list the
20 Maricopa County Treasurer as a secured creditor with a Claim in the
21 approximate amount of \$12,105.07, related to property taxes and secured by
22 statute on the Real Property. The Debtor believes that this Claim is fully
23 secured.

24 3. **Unsecured Claims** – The Debtor’s statements and schedules list unsecured
25 claims totaling \$ 966,460.67.
26
27
28

1 **C. Financial Reports**

2 The Debtor's monthly operating reports are current and copies can be obtained from the
3 Court's electronic docket.

4 **D. Administrative Expenses**

5 The Debtor anticipates its administrative expenses will consist primarily of attorneys' fees
6 for PS. PS received a pre-petition retainer in the amount of \$20,000 from the Debtor. By
7 agreement with ECD, including a guarantee, the balance of the retainer necessary to fund PS's legal
8 fees and costs is to be paid by ECD in the amount of \$80,000. The Debtor anticipates that the
9 attorneys' fees will be less than \$100,000. There may be additional administrative expenses for
10 related costs such as accountants, management companies, experts, and appraisal fees.

11 **VI. PLAN SUMMARY.**

12 The following statements concerning the Plan are merely a summary of the Plan and are not
13 complete. The statements are qualified entirely by express reference to the Plan. Creditors are
14 urged to consult with counsel or each other in order to fully understand the Plan. The Plan is
15 complete, inasmuch as it proposes a legally binding agreement by the Debtor, and an intelligent
16 judgment cannot be made without reading it in full.

17 **VII. TREATMENT OF CLASSES UNDER THE PLAN.**

18 **A. Priority Claims: Class 1**

19 **1. Administrative Claims: 1-A**

20 Unless they agree to an alternative form of treatment, the Allowed Claims of Class 1-A
21 shall be paid in full, in cash, on or before the Effective Date or as the same are Allowed and
22 ordered paid by the Court. Any Class 1-A Claim not allowed as of the Effective Date shall be paid
23 as soon thereafter as it is allowed by the Court according to the terms of this Class.

24 This Class is not impaired.

25 **2. Tax Claims: 1-B**

26 This Class consists of Allowed Priority Claims under 11 U.S.C. §507(a)(8) – Tax Claims
27 which are not otherwise treated as Secured Claims herein. As provided in 11 U.S.C.
28 §1129(a)(9)(C), unless they agree to an alternative form of treatment, the Allowed Priority Claims

1 of Class 1-B shall be paid in full, in cash, on or before the Effective Date, or, at the Debtor's option,
2 such Allowed Claims shall be paid, on account of such Allowed Claim, deferred cash payments,
3 over a period not exceeding six years after the date of assessment of such Claim, of a value, as of
4 the Effective Date of the Plan, equal to the allowed amount of such Claim. Any Class 1-B Claims
5 not allowed as of the Effective Date shall be paid as soon thereafter as they are allowed by the
6 Court according to the terms of this Class.

7 This Class is not impaired.

8 **B. Secured Claims:**

9 **1. JP Morgan Chase Bank: Class 2-A – The Allowed Secured Claim of JP Morgan**
10 **Chase Bank in the Debtor's Bankruptcy Case.**

11 This Class is comprised of the Allowed Secured Claim of JP Morgan Chase Bank, secured
12 in the Real Property of the Development. This Class is an Impaired Class.

13 The Debtor will execute a promissory note (the "New Chase Note") in favor of Chase Bank
14 for the amount which the Court determines is the amount of the Claimant's Allowed Secured
15 Claim. The term of the New Chase Note will be seven years commencing on the Effective Date.
16 During the term of the New Chase Note, the Debtor will make interest-only payments at the Plan
17 Rate, unless the Bankruptcy Court determines that another rate is more appropriate, in which case
18 the Debtor shall make interest-only payments at the rate determined by the Bankruptcy Court. The
19 first interest payment will be due on the Effective Date, and on the same date every month
20 thereafter for the term of the New Chase Note. The remaining principal and any interest owing on
21 the New Chase Note will be paid to Chase Bank in a balloon payment on the last day of the New
22 Chase Note's term. Chase Bank will retain its existing lien on the Real Property.

23 At any time prior to the end of the term, the Debtor may pay the balance of the New Chase
24 Note without penalty.

25 The Debtor will continue to promote and develop the Development. Chase Bank will
26 receive a release price for the sale of any property in the development in an amount proportional
27 value of its Allowed Secured Claim in that portion of the Real Property to be sold, less any
28 sale/closing costs, including any taxes and commissions, as well as any development obligations

1 imposed on the Debtor as a condition of completing any lease or sale. Such release prices will be
2 applied against and reduce the principal owed under the New Chase Note.

3 To help ensure that interest payments on the New Chase Note are made in a timely manner,
4 the Interest Holders will arrange for the infusion of \$100,000 in funds to be deposited into the
5 Debtor's reserve account (the "Reserve Account") as of the Effective Date of the Plan that will, if
6 necessary, be used to pay interest payments due under New Chase Note during the first 12 months
7 following the Effective Date. The Debtor intends to make all interest payments from the operating
8 profits it is and will continue to generate, thus, the \$100,000 represents a substantial additional
9 assurance of performance.

10 If any portion of the \$100,000 has been used in the first 12 months, the Interest holders will
11 arrange for those sums to be replenished by the end of the 12th month from the Effective Date of the
12 Plan. The \$100,000 shall be held in reserve to ensure interest payments for the subsequent 12
13 months of the New Chase Note. This same procedure for ensuring that there will be \$100,000 in
14 the Reserve Account to ensure payments under the New Chase Note shall be repeated at the end of
15 the 36th, 48th, 60th and 72nd months.

16 If the sums infused into the Reserve Account for interest payments under the New Chase
17 Note exceed the sum of the interest payments due under the New Chase Note for any 12 month
18 period, the Debtor, at its discretion, may leave the excess sums in the Reserve Account or direct
19 that the excess sums be made available to the Debtor for any business purpose including, but not
20 limited to, the operations of the Debtor or the reduction of the Debtor's debt obligations.

21 **2. Maricopa County: Class 2-B - The Allowed Secured Claims of Maricopa**
22 **County in the Debtor's Bankruptcy Case.**

23 This Class consists of the Allowed Secured Claim of the County of Maricopa, Arizona (the
24 "County"), that is secured by a Senior Secured Claim in the Real Property comprising the
25 Development. As set forth herein, this is an impaired class.

26 Commencing on the Effective Date, this Claim will be paid in equal quarterly payments of
27 principal and interest over a term of one (1) year. Interest will be charged at the statutory rate plus
28

1 2%. The County will retain its existing Secured Interest in the Real Property until this claim has
2 been satisfied in full.

3 **C. Unsecured Priority Claims: Class 3**

4 This Class consists of all the Allowed Unsecured, Non-Contingent, and Liquidated Claims
5 of Unsecured Creditors in this case that are not specifically dealt with elsewhere in this Plan. As
6 set forth herein, this Class is an Impaired Class. The Claims in this Class will share pro-rata in the
7 sum of \$50,000. The Interest Holders will arrange for the infusion of the \$50,000 into the Reserve
8 Account for the payment of this Class.

9 **D. Interest Holders: Class 4**

10 The Interest Holders in the Debtor will retain their interests in consideration of the New
11 Value they contribute to the Plan funding. This New Value includes all the amounts set forth
12 herein to be contributed by or for the benefit of the Interest Holders, including the \$50,000 to be
13 placed in “escrow” in the trust account of the Debtor’s counsel. If the Court determines that under
14 these circumstances, the New Value is insufficient, or that others should be allowed to “bid for the
15 interests in the Reorganized Debtor,” then the others may “bid for” the interest in the Reorganized
16 Debtor by meeting all these terms and conditions:

- 17 1. Any bidder must match the financial commitment of the present Interest
18 Holders;
- 19 2. Any bidder must post a cash bond equal to the anticipated amount of the
20 allowed administrative claims in the case (estimated at \$100,000).
- 21 3. Any bidder must assume any guarantee liability of any guarantors; and
- 22 4. Competing bids will be assessed by the Court for their relative merits
23 including, but not limited to, the amount of the bid and the expertise of the would-be
24 Interest Holder to manage and guide the Debtor after the Effective Date.

25 **VIII. RETAINED CAUSES OF ACTION.**

26 The Debtor specifically retains all causes of action. Any retained causes of action include,
27 but are not limited to, all avoidance actions, fraudulent conveyance actions, preference actions, and
28 other claims and causes of action of every kind and nature whatsoever, arising before the Effective

1 Date which have not been resolved or disposed of prior to the Effective Date, whether or not such
2 claims or causes of action are specifically identified in the Disclosure Statement.

3 Any recovery obtained from retained causes of action shall become an additional asset of
4 the Debtor, unless otherwise ordered by the Court, and shall be available for distribution on a pro-
5 rata basis in accordance with the terms of this Plan.

6 **IX. MANAGEMENT.**

7 The Debtor will be managed by its existing management. The management of the existing
8 managers of the Debtor was not a cause of the Debtor's financial difficulties. The Debtor's
9 difficulties are the result of the present precipitous downturn in the markets, a downturn whose
10 depth and severity could not have been predicted. By retaining its existing management, the
11 Debtor will benefit from the specific knowledge the existing management has of the Debtor and
12 the planned development of the Real Property.

13 **X. DISBURSING AGENT.**

14 The Reorganized Debtor shall act as the Disbursing Agent under the Plan.

15 **XI. DOCUMENTATION OF PLAN IMPLEMENTATION.**

16 In the event any entity which possesses an Allowed Secured Claim or any other lien in any
17 of the Debtor's property for which the Plan requires the execution of any documents to incorporate
18 the terms of the Plan fails to provide a release of its lien or execute the necessary documents to
19 satisfy the requirements of the Plan, the Debtor may record a copy of this Plan or the Confirmation
20 Order with the appropriate governmental agency and such recordation shall constitute the lien
21 release and creation of any necessary new liens to satisfy the terms of the Plan. If the Debtor
22 deems advisable, it may obtain a further Order from the Court that may be recorded in order to
23 implement the terms of the Plan.

24 **XII. LIQUIDATION ANALYSIS.**

25 The following is a Liquidation Analysis indicating what the Debtor believes its creditors
26 would receive in the event of a liquidation. In the event of a liquidation, the Debtor believes that
27 Chase Bank would attempt to sell the Real Property at a fire sale. The Debtor believes that a fire
28 sale would result in sale values substantially below the amount of those claims secured by the

1 Real Property. As a result, the Debtor believes that Secured Creditors would receive less on
2 account of their claims that under the Plan, and that Unsecured Creditors would receive nothing.

3 Based upon the foregoing, the Debtor does not believe that a liquidation under Chapter 7 of
4 the Code is in the best interests of Creditors as a whole.

5 **XIII. EFFECT OF CONFIRMATION.**

6 Except as otherwise provided in the Plan or the Court's order confirming the Plan, the
7 Confirmation Order acts as a discharge, effective as of the Effective Date, of any and all debts of
8 the Debtor that arose at any time before the entry of the Confirmation Order, including but not
9 limited to, all principal and any and all interest accrued thereon, pursuant to §1141(d)(1) of the
10 Bankruptcy Code. The discharge of the Debtor shall be effective as to each claim regardless of
11 whether a proof of claim was filed, whether the claim is an allowed claim, or whether the holder
12 thereof votes to accept the Plan.

13 **XIV. IMPLEMENTATION AND FUNDING OF DEBTOR'S PLAN.**

14 The Plan will be implemented by the retention of its existing management. This
15 implementation will also include the management and disbursement of the funds infused by the
16 Interest Holders as set forth above and in accordance with the terms of this Disclosure Statement,
17 and as more specifically described in the Plan. As a showing of good faith and commitment to the
18 Plan, the Interest Holders, through a payment from their funding source made for their benefit, will
19 place \$50,000 in "escrow" in the trust account of the Debtor's bankruptcy counsel by within 15
20 days prior to the final hearing on confirmation of the Debtor's Plan. These funds will become a
21 part of the estate and fund the obligations set forth herein, including the Reserve Account, at
22 confirmation. These funds will only be available to, and become a part of, the estate as of
23 confirmation.

24 **XV. TAX CONSEQUENCES.**

25 Pursuant to §1125(a)(1) of the Bankruptcy Code, the Debtor is to provide a discussion of
26 the potential material federal tax consequences of the Plan to the Debtor, any successor to the
27 Debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that
28 would enable such a hypothetical investor of the Relevant Class to make an informed judgment

1 about the Plan, but adequate information need not include such information about any other
2 possible or proposed plan, and in determining whether the Disclosure Statement provides adequate
3 information, the Court shall consider the complexity of the case, the benefit of additional
4 information to creditors and other parties in interest, and the cost of providing additional
5 information.

6 Neither the Debtor nor its lawyers can make any statements with regard to the tax
7 consequences of the Plan on any of the creditors. Although they would note that, to the extent the
8 creditor is not paid in full their Allowed Claim, they should consult with their tax advisor
9 concerning the possibility of writing off for tax purposes that portion of their Allowed Claim that is
10 not paid. Each creditor in this case, when analyzing the Plan, should consult with its own
11 professional advisors to determine whether or not acceptance of the Plan by the creditor will result
12 in any adverse tax consequences to the creditor.

13 The Bankruptcy Tax Act generally provides that the Debtor does not have to recognize
14 income from the discharge of indebtedness. The Plan contemplates significant discharge of
15 indebtedness; however, because the Debtor is in bankruptcy, it will not have to recognize the
16 discharge of indebtedness as income for tax purposes.

17 **XVI. NON-ALLOWANCE OF PENALTIES AND FINES.**

18 No distribution shall be made under this Plan on account of, and no allowed claim, whether
19 secured, unsecured, priority, or administrative, shall include any fine, penalty, exemplary or
20 punitive damages, late charges, or other monetary charge relating to or arising from any default or
21 breach by the Debtor, and any claim on account thereof shall be deemed disallowed whether or not
22 an objection thereto is filed.

23 **XVII. EXECUTORY CONTRACTS.**

24 The Debtor rejects all executory contracts and unexpired leases not otherwise assumed
25 herein or assumed by separate order of the Court. *See* Exhibit "A". Claims for any executory
26 contracts or unexpired leases rejected by the Debtor shall be filed no later than ten (10) days after
27 the earlier of Confirmation or the date the executory contract or unexpired lease is specifically
28 rejected. Any such Claims not timely filed and served shall be disallowed.

1 **XVIII. VOTING PROCEDURE.**

2 The Plan divides the claims of creditors and interest holders into separate classes. All
3 classes of claimants are encouraged to vote; however, only the vote of holders of claims that are
4 impaired by the Plan will have a significant impact on the confirmation process. Generally, this
5 includes creditors who, under the Plan, will receive less than full payment of their claims on the
6 Effective Date of the Plan.

7 All creditors entitled to vote on the Plan must cast their vote by completing, dating, and
8 signing the ballot which has been mailed to them, together with the Disclosure Statement. The
9 ballot contains instructions concerning the deadline for submitting the ballot and to what address
10 the ballot should be mailed.

11 This Disclosure Statement has been approved by the Bankruptcy Court in accordance with
12 § 1125 of the Bankruptcy Code, and is provided to each person whose claim or interest has been
13 scheduled by the Debtor, or who has filed a proof of claim or interest with respect to the Debtor or
14 its property, each known equity interest holder and other parties-in-interest known to the Debtor.
15 The Disclosure Statement is intended to assist creditors in evaluating the Plan and in determining
16 whether to accept the Plan. In determining acceptance of the Plan, votes of creditors will only be
17 counted if submitted by a creditor whose claim is duly scheduled by the Debtor as undisputed,
18 non-contingent and liquidated, or who has timely filed with the Court a proof of claim or proof of
19 interest.

20 The Bankruptcy Court will schedule a hearing to determine whether the requirements for
21 confirmation under the Bankruptcy Code have been met and whether the Plan has been accepted by
22 each Impaired Class and by the requisite number of creditors in such class. Under § 1126 of the
23 Code, an Impaired Class is deemed to have accepted the Plan upon a favorable vote of at least two-
24 thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of class
25 members voting on the Plan. Further, unless there is unanimous acceptance of the Plan by an
26 Impaired Class, the Court must also determine that class members will receive at least as much as
27 they would if the Debtor were liquidated under Chapter 7 of the Code.
28

1 Even if each class of creditors does not accept the Plan, the Plan can be confirmed under
2 § 1129(b) of the Code, so long as one impaired class of creditors accepts the Plan. The failure of
3 each class to accept the Plan could very well result in a conversion of this case to a Chapter 7 or
4 dismissal of the Chapter 11, and the secured creditors repossessing their collateral and disposing of
5 it in a commercially reasonable manner with no obligation to unsecured creditors.

6 **XIX. MODIFICATION OF PLAN.**

7 In addition to its modification rights under § 1127 of the Bankruptcy Code, the Debtor may
8 amend or modify its Plan at any time prior to Confirmation without leave of the Court. The Debtor
9 or the Reorganized Debtor may propose amendments and/or modifications of its Plan at any time
10 subsequent to Confirmation with leave of the Court and upon notice to Creditors. After
11 Confirmation of the Plan, the Debtor or the Reorganized Debtor may, with approval of the Court, as
12 long as it does not materially or adversely affect the interests of Creditors, remedy any defect or
13 omission or reconcile any inconsistencies of the Plan, or in the Confirmation Order, if any may be
14 necessary to carry out the purposes and intent of their Plan.

15 **XX. CLOSING OF THE CASE.**

16 If the Court does not close this case on its own motion, the Reorganized Debtor will move
17 the Court to close this case once the Plan is deemed substantially consummated. Until substantial
18 consummation, the Reorganized Debtor will be responsible for filing pre- and post-confirmation
19 reports required by the United States Trustee and paying the quarterly post-confirmation fees of the
20 United States Trustee, in cash, pursuant to 28 U.S.C. § 1930, as amended. Pursuant to 11 U.S.C.
21 § 1129(a)(12), all fees payable under § 1930 of Title 28, as determined by the Court at the hearing
22 on confirmation of the Plan, will be paid, in cash, on the Effective Date.

23 **XXI. RETENTION OF JURISDICTION.**

24 The Court will retain jurisdiction until the Plan has been fully consummated for, including
25 but not limited to, the following purposes:

26 A. The classification of the Claims of any Creditors and the re-examination of any
27 Claims which have been allowed for the purposes of voting, and for the determination of such
28 objections as may be filed to the Creditor's Claims. The failure by the Debtor to object to or

1 examine any Claim for the purpose of voting shall not be deemed to be a waiver of the Debtor's
2 rights to object to or to re-examine the Claim in whole or in part.

3 B. To determine any Claims which are disputed by the Debtor, whether such objections
4 are filed before or after Confirmation, to estimate any Unliquidated or Contingent Claims pursuant
5 to 11 U.S.C. § 502(c)(1) upon request of the Debtor or any holder of a Contingent or Unliquidated
6 Claim, and to make determinations on any objection to such a Claim.

7 C. To determine all questions and disputes regarding title to the assets of the estate, and
8 determination of all causes of action, controversies, disputes, or conflicts, whether or not subject to
9 action pending as of the date of Confirmation, between the Debtor and any other party, including
10 but not limited to, any rights of the Debtor to recover assets pursuant to the provisions of the
11 Bankruptcy Code.

12 D. The correction of any defect, the curing of any omission or any reconciliation of any
13 inconsistencies in the Plan, or the Confirmation Order, as may be necessary to carry out the
14 purposes and intent of the Plan.

15 E. The modification of the Plan after Confirmation, pursuant to the Bankruptcy Rules
16 and the Bankruptcy Code.

17 F. To enforce and interpret the terms and conditions of the Plan.

18 G. To enter orders, including injunctions, necessary to enforce the title, rights, and
19 powers of the Debtor, and to impose such limitations, restrictions, terms, and conditions of such
20 title, right, and power as this Court may deem necessary.

21 H. To enter an order concluding and terminating this case.

22 **XXII. DISCLAIMER.**

23 Court approval of this Disclosure Statement and the accompanying Plan of Reorganization,
24 including the exhibit attached hereto, is not a certification of the accuracy of the contents thereof.
25 Furthermore, Court approval of these documents does not constitute the Court's opinion as to
26 whether the Plan should be approved or disapproved.

1 **XXIII. RISKS.**

2 The risk of the Plan lies with the Debtor's ability to fund the Plan and ultimately to
3 refinance or sell the Real Property to pay off its creditors. If the funds to be infused by the Interest
4 Holders are infused, this will lessen the risk accordingly. However, as explained herein and in the
5 Plan, the success of the Debtor depends in large part on the recovery of the national economy over
6 the 12 to 24 months following confirmation.

7 **XXIV. PROPONENTS RECOMMENDATION/ALTERNATIVES TO THE PLAN.**

8 The Debtor recommends that all Creditors entitled to vote for the Plan do so. The Debtor's
9 Plan would pay Secured Creditors in full on the amount of their Allowed Secured Claims and
10 provide funds to pay Unsecured Creditors. The alternatives to confirmation of the Plan would be
11 either conversion of this case to a case under Chapter 7 of the Bankruptcy Code or its dismissal.

12 Dismissal of this case would result in the foreclosure of the Real Property by Chase Bank.

13 Conversion will result in the appointment of a Chapter 7 Trustee and, most likely, the hiring
14 of an attorney by the Trustee. Expenses incurred in administering the Chapter 7 case would take
15 priority in the right to payment over allowed, administrative expenses incurred in the Chapter 11
16 case. Both Chapter 7 and Chapter 11 administrative expenses take priority over the payment of
17 unsecured claims without priority. In other words, conversion would likely decrease the net
18 amount available to pay currently existing Creditors.

19 The most likely effect of conversion of the case to a Chapter 7 would be a foreclosure on
20 the Development by Chase Bank, and, as a result, Unsecured Creditors would receive nothing.

21 For all these reasons, the Debtor urges you to vote to accept the Plan and to return your
22 ballots in time to be counted.

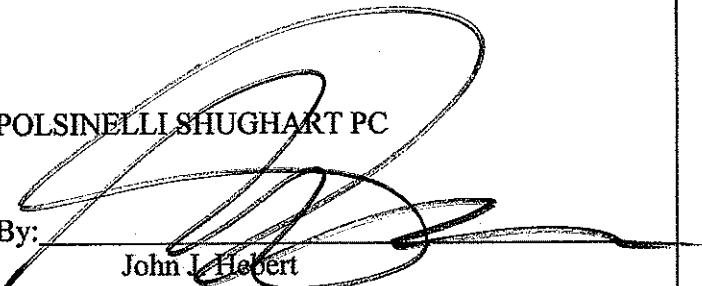
23
24 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: March 26, 2010.

POLSINELLI SHUGHART PC

By:


John J. Hebert
Arturo A. Thompson
Security Title Plaza
3636 North Central Avenue, Suite 1200
Phoenix, AZ 85012

Attorneys for the Debtor

EMPIRE CENTER AT COLDWATER SPRINGS,
LLC

By: ECD, LLC
Its Manager

By:

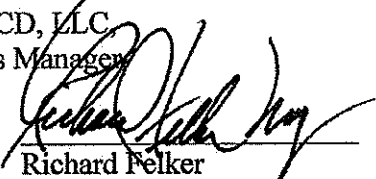

Richard Felker
Manager

EXHIBIT A

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. Fresh & Easy Neighborhood Market Inc.
c/o McKenna Long & Aldridge LLP
444 S. Flower Street, Suite 800
Los Angeles, CA 90071

2. Staples the Office Superstore, LLC
Attn: Lease Administrator
P.O. Box 9271
Framingham, MA 01701-9271

3. Stine Development, LLC
Attn: Steve Stine
7811 N. Arroyo Drive
Paradise Valley, AZ 85253