

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

ASR 2401 FOUNTAINVIEW, LP,  
  
DEBTOR.

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Case No. 14-35322-H3-11  
(Chapter 11)  
(Jointly Administered)

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ASR 2401 FOUNTAINVIEW, LLC,  
  
DEBTOR.

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Case No. 14-35323-H3-11  
(Chapter 11)  
(Jointly Administered)

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DISCLOSURE STATEMENT UNDER 11 U.S.C. § 1125 IN SUPPORT OF PLAN OF  
REORGANIZATION OF DEBTORS

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THIS DISCLOSURE STATEMENT IS SUBMITTED TO ALL CREDITORS OF THE DEBTORS ENTITLED TO VOTE ON THE PLAN OF REORGANIZATION HEREIN DESCRIBED AND CONTAINS INFORMATION THAT MAY AFFECT YOUR DECISION TO ACCEPT OR REJECT THE DEBTORS' PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATE BANKRUPTCY CODE. THIS DISCLOSURE STATEMENT IS INTENDED TO PROVIDE ADEQUATE INFORMATION AS REQUIRED BY THE BANKRUPTCY CODE AS TO THE DEBTORS' PLAN OF REORGANIZATION. ALL CREDITORS AND INTEREST HOLDERS ARE URGED TO READ THE DISCLOSURE STATEMENT ATTACHMENTS WITH CARE AND IN THEIR ENTIRETY.

ARTICLE 1  
INTRODUCTION

1.1 General Information Concerning Disclosure Statement and Plan.

ASR Fountainview, LP (the "LP Debtor") and ASR Fountainview, LLC (the "LLC Debtor") submit this Disclosure Statement under section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 to all of its known Creditors. The purpose of this Disclosure Statement is to disclose information adequate to enable Creditors who are entitled to vote to arrive at a

reasonably informed decision in exercising their rights to vote on the Plan of Reorganization (the "Plan"). A copy of the Plan is attached hereto as *Exhibit "A"* and incorporated by reference. Capitalized terms used but not defined in this Disclosure Statement shall have the meanings assigned to them in Article I of the Plan or in the Bankruptcy Code and Bankruptcy Rules. All section references in this Disclosure Statement are to the Bankruptcy Code unless otherwise indicated.

The Debtors have promulgated the Plan consistent with the provisions of the Bankruptcy Code. The purpose of the plan is to provide an opportunity for the Debtors to remain in business.

This Disclosure Statement contains property valuation information derived from the Harris County Appraisal District as well as information on the total amount of debt owed by the Debtors from the claims filed by the Debtors' creditors, and information on the Debtors' current financial condition from the financial records maintained by the Debtors. This Disclosure Statement is not intended to replace a careful review and analysis of the Plan, including the specific treatment of Claims under the Plan. It is submitted as an aid and supplement to your review of the Plan to explain the terms of the Plan. Every effort has been made to explain fully various aspects of the Plan as they affect the Creditors. If any questions arise, the Debtors urges you to contact the Debtors' counsel and they will attempt to resolve your questions. You may, of course, wish to consult with your own counsel.

## 1.2 Disclaimers.

**NO SOLICITATION OF VOTES HAS BEEN OR MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT AND SECTION 1125 OF THE BANKRUPTCY CODE, AND NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTORS TO SOLICIT ACCEPTANCE OR REJECTIONS OF THE PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. CREDITORS AND EQUITY INTEREST HOLDERS SHOULD NOT RELY ON ANY INFORMATION RELATING TO THE DEBTORS OTHER THAN THAT CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS AND SCHEDULES ATTACHED.**

**EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS, NO REPRESENTATION CONCERNING THE DEBTORS, THEIR ASSETS, PAST OR FUTURE OPERATIONS, OR CONCERNING THE PLAN IS AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT THE DECISION WITH RESPECT TO THE PLAN. ANY REPRESENTATIONS MADE TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD BE REPORTED TO COUNSEL FOR THE DEBTORS.**

**UNLESS ANOTHER TIME IS SPECIFIED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF.**

**NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE CONCERNING THE DISCLOSURE STATEMENT AND THE PLAN SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE OF THE DISCLOSURE STATEMENT AND THE MATERIALS RELIED UPON IN PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.**

**WHILE THE INFORMATION PROVIDED HEREIN IS BELIEVED RELIABLE, THE DEBTORS HAVE NOT UNDERTAKEN TO VERIFY OR INVESTIGATE SUCH INFORMATION, AND MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION.**

**DISTRIBUTION OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS ANY REPRESENTATION OR WARRANTY AT ALL, EITHER EXPRESS OR IMPLIED, BY THE DEBTORS OR THEIR RESPECTIVE PROFESSIONAL CONSULTANTS THAT THE PLAN IS FREE FROM RISK, THAT THE ACCEPTANCE OF THE PLAN WILL RESULT IN A RISK-FREE RESTRUCTURING OF THE DEBTORS' OBLIGATIONS OR THAT THE DEBTORS' OBLIGATIONS AS RESTRUCTURED BY THE PLAN WILL BE FULLY PERFORMED IN THE FUTURE WITHOUT RISK OF FURTHER DEFAULT.**

**THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR THE COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.**

**THIS DISCLOSURE STATEMENT AND THE PLAN ATTACHED SHOULD BE READ IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS, THE TERMS OF THE PLAN ARE SUMMARIZED IN THIS DISCLOSURE STATEMENT, BUT ALL SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY BY THE PLAN, WHICH CONTROLS IN THE CASE OF ANY INCONSISTENCY.**

### **1.3 Answers to Commonly Asked Questions.**

As part of the Debtors' effort to inform Creditors regarding the Plan and the Plan confirmation process, the following summary provides answers to questions which parties who receive a disclosure statement often as.

#### **1.3.1 Who are the Debtors?**

The LP Debtor is a Delaware limited partnership formed for the purpose of owning a commercial building located at 2401 Fountainview Drive, Houston, Texas 77057 and has no

other business interest. The LLC Debtor is a Delaware limited liability company and operates as a general partner of the LP Debtor, with no other business interest.

### **1.3.2 What is Chapter 11 bankruptcy?**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code that allows financially distressed businesses to reorganize their debts. The commencement of a Chapter 11 case creates an estate containing all the legal and equitable interests of the debtor in property as of the date the Petition is filed. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate the debtor's business as a debtor-in-possession. The debtor remains in possession of its properties and assets. When a Chapter 11 bankruptcy case is filed, creditors are prohibited from attempting to collect debts or enforce liens against the debtor or its assets without first obtaining approval from the Bankruptcy Court.

### **1.3.3 If the Plan governs how my claim is treated, what is this Disclosure Statement?**

The Bankruptcy Code requires that a debtor solicit acceptances or rejections of a proposed plan from creditors and shareholders whose claims and interests are impaired before the plan can be confirmed by the bankruptcy court. Before the debtor may solicit acceptances of a plan, however, the bankruptcy court must approve a disclosure statement and determine that the disclosure statement contains information adequate to allow creditors and shareholders to make an informed judgment about the plan.

### **1.3.4 Do I have to attend the hearing on the Disclosure Statement and Plan?**

If you do not believe that the disclosure statement contains adequate information or if you believe that there is a problem with the debtor's plan and you want to either get additional information from the debtor or object to the plan, you need to file a written objection stating your position and come the hearing. Debtor's counsel can discuss your concerns from the debtor's perspective, but cannot give you legal advice and you may wish to consult with your own counsel.

### **1.3.5 How do I determine how my Claim or Interest is classified?**

To determine the classification of your Claim, you must determine the nature of your claim or interest. Under the Plan, claims and interests are classified into a series of Classes. The pertinent sections of the Disclosure Statement and Plan disclose, among other things, the treatment that each class of Claims or Interests will receive if the Plan is confirmed.

### **1.3.6 Why is confirmation of the Plan important?**

The Bankruptcy Court's confirmation of the Plan is a condition to the Debtors' right to carry out the treatment of creditors and shareholders under the Plan. Unless the Plan is confirmed, and any other conditions to confirmation or to the effectiveness of the Plan

are satisfied, the Debtors are legally prohibited from satisfying Claims or Equity Interests as provided in the Plan.

### 1.3.7 What is necessary to confirm the Plan?

**Under applicable provisions of the Bankruptcy Code, confirmation of the Plan requires, among other things that at least one class of impaired Claims or Interests vote to accept the Plan. Acceptance by a class of claims means that at least two-thirds in the total dollar amount and more than one-half in number of the allowed claims actually voting in the class vote in favor of the Plan.** Because only those claims or interests who vote on a Plan will be counted for purposes of determining acceptance or rejection of a Plan by an impaired class, a Plan can be approved with the affirmative vote of members of an impaired class who own less than two-thirds in amount and one-half in number of the claims. Besides acceptance of the plan by each class of impaired creditors or interests, a bankruptcy court also must find that a Plan meets a number of statutory tests before it may confirm the Plan. These requirements and statutory tests generally are designed to protect the interests of holders of impaired claims or interest show do not vote to accept a Plan but who will nonetheless be bound by the Plan's provisions if a bankruptcy court confirms the Plan. If one or more classes vote to reject a Plan, a debtor may still request that the bankruptcy court confirm a Plan under section 1129(b). To confirm a Plan not accepted by all classes, a debtor must demonstrate that the Plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under, and that has not accepted, the Plan. This method of confirming a Plan is commonly called a "cramdown". In addition to the statutory requirements imposed by the Bankruptcy Code, the Plan itself also provides for certain conditions that must be satisfied as conditions to confirmation.

### 1.3.8 Is there a Creditors' Committee?

In this case, no Creditors' Committee was formed.

### 1.3.9 When is the deadline for returning my ballot?

The Bankruptcy Court has directed that, to be counted for voting purposes, your ballot must be received by the Debtors' counsel, Christopher Adams, Okin & Adams LLP, 1113 Vine Street, Suite 201, Houston, Texas 77002 or fax (888) 865-2118 by the date and time set forth on the Order Approving Disclosure Statement that is included in this Packet.

**IT IS IMPORTANT THAT ALL IMPAIRED CREDITORS VOTE ON THE PLAN. THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST POSSIBLE RECOVERY TO CREDITORS. THE DEBTORS, THEREFORE, BELIEVE THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTEREST OF CREDITORS AND RECOMMENDS THAT ALL IMPAIRED CREDITORS VOTE TO ACCEPT THE PLAN.**

## ARTICLE II OVERVIEW OF PLAN

An overview of the Plan is set forth below. This overview is qualified in its entirety by reference to the Plan, a copy of which is attached hereto as *Exhibit "A"* to this Disclosure Statement. If the Court confirms the Plan, and in the absence of the applicable stay, and all other conditions set forth in the Plan are satisfied, the Plan will take effect on the Effective Date – i.e., on the first business day after the date on which the Confirmation Order becomes a Final Order.

On the Effective Date, all property of the Debtors' bankruptcy estates will vest in the Debtors, as the Reorganized Debtors, free and clear of all liens, claims and encumbrances, except as may be provided in the Plan. The Reorganized Debtors will thereupon be authorized to continue to conduct their business and to pay all of their debts as set forth in the Plan. The Plan does not propose to modify or supplant any federal or state laws or regulations that may be applicable to the Reorganized Debtors.

As of the Effective Date of the Plan, the Reorganized Debtors will be responsible for all payments, distributions to be made under the Plan to the holders of Allowed Claims, together with any payments that become due under any executory contract or unexpired lease assumed by the Debtors or the Reorganized Debtors. Each executory contract and unexpired lease to which the Debtors are determined to be a party shall be deemed rejected unless the Debtors expressly assume a particular executory contract or lease before the Effective Date.

## ARTICLE III THE DEBTORS

### 3.1.1 Capital Structure

The LP Debtor is a Delaware limited partnership formed in the State of Delaware. The LP Debtor had the following members on the date this case was filed:

|  |         |                 |
|--|---------|-----------------|
| ASR 2401 Fountainview, LLC                         | 1.0%    | General Partner |
| Preferred Income Partners IV, LLC ("PIP")          | Class A | Limited Partner |
| American Spectrum Realty Operating Partnership, LP | Class B | Limited Partner |

The LLC Debtor is a Delaware limited liability company formed in the State of Delaware. The LLC Debtor had the following members on the date this case was filed:

|  |        |        |
|--|--------|--------|
| American Spectrum Realty Operating Partnership, LP | 100.0% | Member |
|--|--------|--------|

### **3.1.2 Debtor's Financial Condition**

Since the filing of this case, the Debtors have continued to operate its business and has generated a steady monthly income from leasing office space in the commercial property to the Houston, Texas metropolitan community. The Debtor has not liquidated any of its scheduled assets. The LP Debtor and LLC Debtor have filed monthly operating reports with the Bankruptcy court which are available for inspection at the office of the Clerk of the Court. The LLC Debtor has no operations other than acting as the General Partner of the LP Debtor.

The purchase of 2401 Fountainview was financed by a loan, as reflected by a promissory note in the amount of \$12,750,000, from GMAC Commercial Mortgage Bank in February 2006. The loan is secured by a first lien Deed of Trust on 2401 Fountainview. The note and deed of trust were subsequently assigned by GMCA Commercial Mortgage Bank to Wells Fargo Bank, N.A. as Trustee for the registered holders of JP Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-LDP7. The note and deed of trust were again assigned in 2009 to U.S. Bank National Association, and again in 2013 to JPMCC 2006-LDP7 Office, 2401, LLC ("JPMCC"), the current owner and holder of the Note. According to the Schedule D, filed by the Debtors, the outstanding balance of this debt is \$11,100,000.00. This debt was used as purchase money for the 2401 Fountainview Property. The final balance is yet to be determined and the Debtors reserve the right to dispute the final calculation of the balance prior to allowance of JPMCC's claim.

On or around May 1, 2014, ASR Corporate and/or its related entities, including the LP Debtor, entered into a financing agreement with Petrochem and Dansk. ASR Corporate and/or its related entities, including the LP Debtor, allegedly borrowed approximately \$2,000,000.00 from Petrochem in March 2012 and approximately \$1,750,000.00 from Dansk. It is undetermined how much of the financial loan went to the Debtors, if any. ASR Corporate used the assets of the LP Debtor to secure the loans, regardless of the amount of funds Debtors received. The LP's assets are the only asset allegedly securing approximately \$5,937,578.32 in financial loans from Dansk and Petrochem. The Reorganized Debtors object to the Dansk and Petrochem Claim, and have listed it as a Disputed Claim in the Plan. It is the Reorganized Debtors' position that previous management did not have the authority to encumber the assets of the LP Debtor.

The LP Debtor intends to sell the Property to Fountainview Partners, LLC to generate revenue for payment to secured and unsecured creditors. The interest of all current equity owners of the business will be terminated. The Reorganized Debtors will use the cash from the sale to pay the secured and unsecured debts to the best of its ability. The Reorganized Debtors do not currently believe any offer to acquire its ownership interest will be sufficient to pay all outstanding obligations owed to its creditors through the Plan.

### **3.1.3 Events Leading to Bankruptcy**

The Debtors were formed in 2006 for the purpose of owning and operating a ten story commercial building located at 2401 Fountainview Drive, Houston Texas 77057. Before

filing bankruptcy, the LP Debtor was part of a larger corporate structure, identified as ASR Corporate. ASR Corporate cross-collateralized debt and used cash from each entity to pay the expenses of other ASR-controlled entities, resulting in an increased level of financing and trade debt, and draining capital from the LP Debtor.

Filing this bankruptcy has permitted new management to take control of the LP Debtor, infuse additional capital, reorganize its debts, and determine a way to satisfy the debts owed to the best of its ability.

### 3.1.4 Debtor's Assets

The Debtors filed with the Bankruptcy Court its Schedules of Assets and Liabilities and Statement of Financial Affairs (collectively referred to as the "Schedules"). The Schedules contain a listing of the Debtors' assets and liabilities, together with the estimated fair market value of the Debtors' assets and the amounts owed to its Creditors. The value of the Debtors' main tangible asset, the Property, was derived by using a liquidation value after factoring the age, depreciation, and functionality of the building. In connection with this Disclosure Statement, Creditors are referred to the Debtors' Schedules, copies of which are attached hereto as *Exhibit "B"*. The information contained in the Schedules was compiled by the Debtors to the best of their ability. These assets remain basically the same.

### 3.1.5 Liabilities and Claims against the Debtors.

The Debtors' Schedules contain a detailed listing of creditors, together with the alleged amount of Claims. The Debtors' Schedules generally organize creditors into three general groupings: (i) Schedule D – Secured Claims; (ii) Schedule E – Unsecured Priority Claims; and Schedule F – Unsecured Nonpriority Claims. Under the Bankruptcy Code, the Debtors may amend or supplement the Schedules as needed to ensure accuracy, completeness and fairness of disclosure.

### 3.1.6 Secured Claims

Pursuant to the Bankruptcy Code, Claims which are secured by a lien or other security interest may be categorized into a secured and an unsecured component. In general, Claims are Secured Claims to the extent of the value of the collateral that secures the Claims and they are Unsecured Claims to the extent of any deficiency in the value of the collateral. As of the commencement of this case, the following secured claims have been brought against the Debtors:

- JP Morgan Secured Claim, owed the sum of \$11,100,000.00<sup>1</sup>.
- Petrochem, owed the sum of \$1,778,033.33 (Disputed)<sup>2</sup>
- Dansk, owed the sum of \$4,159,544.99 (Disputed)<sup>3</sup>

<sup>1</sup> The final balance is yet to be determined and the Debtors reserve the right to dispute the final calculation of the balance prior to allowance of JPMCC's claim.

<sup>2</sup> Petrochem has failed to file a proof of claim by the February 2, 2015 bar date and its claim is fully disputed.

<sup>3</sup> Dansk has failed to file a proof of claim by the February 2, 2015 bar date and its claim is fully disputed.



### **3.1.7 Unsecured Claims**

The Debtors' Schedules contain a list of general non-priority unsecured claims. Copies of the Schedules are available for review at the office of the Clerk of the Court and are attached hereto and Creditors should consult the Schedules. Debtors believe the total general unsecured claims in this case are approximately \$3,677,646.77. However, \$2,918,767.40 of this amount is an unsecured claim brought by ASR Corporate, or its related entities.

### **3.1.8 Executory Contracts and Unexpired Leases**

The LP Debtor is the landlord on numerous commercial office leases which were executed in their ordinary course and scope of its business. A list of all executory contracts is attached as Schedule 1 of the Plan.

## **3.2 Significant Events during the Chapter 11 Case.**

Pursuant to cash collateral orders entered by the Bankruptcy Court, the LP Debtor has been authorized to use the cash collateral of JPMCC to manage and operate 2401 Fountainview, in accordance with terms of the cash collateral orders. An Agreed Sixth Interim Order Approving Use of Cash Collateral and Granting Partial Adequate Protection was entered by the Court on March 31, 2015.

On December 16, 2014, Debtors filed an Expedited Motion for Order (I) Authorizing Preferred Income Partners IV, LLC to Exercise its Contractual Right to Assume Control of ASR 2401 Fountainview, LLC and (II) Approve the Debtors' Employment of Jetall Real Estate Development as Property Manager. The Debtors asked the Bankruptcy Court for PIP to assume control of the LLC Debtor. Thereafter, the Debtors sought to replace the current management company with locally-based Jetall Companies, Inc. ("Jetall"). By Agreed Order between the Debtors, PIP, and JPMCC, entered January 6, 2015, PIP was allowed to assume operational control with respect to the operation and management of 2401 Fountainview, and the LP Debtor was authorized to retain Jetall Companies, Inc. to manage the Property. After new management stepped in, substantial changes have been made to ensure the tenants are cared for and the terms of the leases are met.

On February 13, 2015, JPMCC, the holder of the JP Morgan Secured Claim filed a Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362(d) in which JPMCC asked that the stay be lifted so that it could foreclose on 2401 Fountainview. By Agreed Order Regarding the Automatic Stay entered March 12, 2015, the automatic stay was modified such that JPMCC is allowed to post for foreclosure. In the event that a plan of reorganization and disclosure statement are not filed and approved in accordance with the terms and time table of the Agreed Order ("Stay Relief Events"), JPMCC may petition the Bankruptcy Court to lift the stay and allow JPMCC to foreclose. Stay Relief Events include failure of the Debtors or any other party to obtain approval of a Disclosure Statement by April 30, 2015, and failure to obtain confirmation of a plan of reorganization by May 29, 2015.

Dansk and Petrochem failed to file their Proofs of Claims by the February 2, 2015 bar date. On March 11, 2015, Dansk and Petrochem filed a Motion to Extend Time for Filing Proof of Claims, asking the Bankruptcy Court to allow Dansk and Petrochem to late file their claims. The Motion is pending.

On March 20, 2015, Dansk and Petrochem filed a Limited Objection to JPMCC's Proof of Claim. The Limited Objection remains pending. An initial hearing on the Objection is set for May 10, 2015.

The Holders of the JP Morgan Secured Claim have increased their pressure to pay the 2401 Fountainview Note by seeking a lift of the automatic stay in order to foreclose on the building. The Holders of the JP Morgan Secured Claim have agreed to permit the Debtors time to submit this Plan and Disclosure Statement.

Debtors have sought a purchaser for the 2401 Fountainview Property. Fountainview Partners, LP have offered to purchase the Property for \$15,500,000.00. This Purchase Money will be the funds used to fulfil the terms of the Plan.

### **3.3 Legal Proceedings**

#### **3.3.1 Post-Petition Legal Proceedings**

The Debtor has not commenced any post-petition lawsuits. There is no pending litigation.

#### **3.3.2 Pre-Petition Legal Proceedings**

As of the commencement of the case, the Debtors were a party to the following pre-petition legal proceedings:

- *Preferred Income Partners IV, LLC v. ASR 2401 Fountainview, LP, et al.*, Cause No. DC-14-02281, 44th Judicial District Court, Dallas County, Texas (the "Dallas Lawsuit"). The Dallas Lawsuit is still pending.

## **ARTICLE IV SUMMARY OF THE PLAN**

The following is a summary of the Plan and the treatment to be provided to Creditors under the respective Classes of Claims. The Plan is attached as *Exhibit "A"* and should be reviewed carefully because the terms of the Plan control to the extent there is any discrepancy between the summary description provided in this Disclosure Statement and the Plan.

The Bankruptcy Code requires that Claims be treated as either Impaired or as Unimpaired under the Plan. Unimpaired Claims are Claims that are satisfied in accordance

with non- bankruptcy law. Impaired Claims are Claims that are satisfied in a manner other than in accordance with non-bankruptcy law.

#### **4.1 Identification and Treatment of Classes of Claims**

##### **4.1.1 Class 1- JP Morgan Secured Class- Unimpaired**

Class 1 Allowed Secured Claim of JP Morgan. This Secured claim shall either be paid in full in cash from the Purchase Amount, assumed by the Purchaser, or paid in an amount otherwise agreed on the Effective Date, the date on which such claims become and Allowed Claim or on such later date as the Debtor and the Holders of any Class 1 Administrative Claim shall agree.

##### **4.1.2 Class 2- Secured Claim of Dansk- Impaired**

Class 2 consists of a secured claim raised by Dank. The amount, validity and status as a Secured Claim is disputed by the Debtors. Unless the Bankruptcy Court makes a finding that this is an Allowed Claim, in whole or in part, then Class 2 shall not receive any distribution of funds under the Plan. If the Bankruptcy Court determines that this claim is an Allowed Claim, in whole or in part, the Debtors shall pay Class 2 in accordance with such ruling.

##### **4.1.3 Class 3- Secured Claim of Petrochem- Impaired**

Class 3 consists of a secured claim raised by Petrochem. The amount, validity and status as a Secured Claim is disputed by the Debtors. Unless the Bankruptcy Court makes a finding that this is an Allowed Claim, in whole or in part, then Class 3 shall not receive any distribution of funds under the Plan. If the Bankruptcy Court determines that this claim is an Allowed Claim, in whole or in part, the Debtors shall pay Class 3 in accordance with such ruling.

##### **4.1.4 Class 4- General Unsecured Claims- Impaired**

On the Distribution Date, the Allowed General Unsecured Claims shall be paid, Pro Rata, to the extent there is any Purchase Amount remaining, if any, after fully satisfying all classes preceding Class 4.

##### **4.1.5 Class 5- ASR Related Claims- Impaired**

This class consists of the ASR Corporate, and or its affiliates claiming an interest as creditors to the Debtor(s). On the Effective Date, shall not be paid any amount, regardless of the whether there is any remaining Purchase Amount after fully satisfying all classes preceding Class 5.

##### **4.1.6 Class 6- PIP Equity Interest-- Impaired**

On the Distribution Date, the PIP Equity Interest shall be paid Four Million Fifty Nine Thousand Four Hundred Dollars and 00/100 (\$4,059,400.00) and its reasonable accrued

attorneys' fees as of the Confirmation Date, unless PIP otherwise agrees to accept less, from the Purchase Amount remaining, if any, after fully satisfying all classes preceding Class 6.

#### **4.1.7 Class 7- Remaining Equity Interests- Impaired**

This Class consists of the equity interests in the Debtors, other than the PIP Equity Interest. On the Effective Date, the Remaining Equity Interests shall receive, Pro Rata unless otherwise entitled to preference, any remaining amount under the Purchase Amount, if any, after fully satisfying all classes preceding Class 7. Upon distribution of the remaining Purchase Amount, all equity interests shall be cancelled.

#### **4.2 Treatment of Executory Contracts and Unexpired Leases**

The Tenant Leases and other executory contracts and unexpired leases set forth on Schedule 1 of the Plan are to be assumed under the Plan. All other executory contracts and unexpired leases will be rejected, unless otherwise dealt with by the Plan or the Confirmation Order, or any other Order of the Court entered prior to the Effective Date, or which is the subject of a motion to assume pending on the Effective Date. Each executory contract and unexpired lease that is assumed will include (a) all amendments, modifications, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease; and (b) with respect to any executory contract or unexpired lease that relates to the use, ability to acquire, or occupancy of real property, all executory contracts or unexpired leases and other rights appurtenant to the property, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements or franchises, and any other equity interests in real estate or rights in rem related to such premises, unless any of the foregoing agreements have been rejected pursuant to an order of the Bankruptcy Court or are the subject of a motion to reject filed on or before the Confirmation Date. Amendments, modifications, supplements, and restatements to prepetition executory contracts and unexpired leases that have been executed by the Debtors during this Chapter 11 Case shall not be deemed to alter the prepetition nature of the executory contract or unexpired lease, or the validity, priority, or amount of any Claims that may arise in connection therewith. Damages arising from the rejection of an executory contract or unexpired lease shall be a General Unsecured Claim against the Debtors unless subordinated under applicable law. Any Claim for damages arising from the rejection of an executory contract or unexpired lease must be asserted in a proof of claim filed with the Bankruptcy Court no later than 20 days following the earlier of: (a) the date of entry of an order of the Bankruptcy Court approving such rejection, or (b) the Effective Date of the Plan. Any Claims not filed within such times shall be discharged and forever barred. The Liquidating Trustee shall mail a notice to all known affected parties of (i) the rejection of executory contracts and unexpired leases and (i) the deadline for asserting claims for damages arising from the rejection of such executory contracts and unexpired leases.

#### **4.3 Implementation of the Plan**

##### **4.3.1 The Reorganized Debtors**

Pursuant to the provisions of sections 1141(b) and 1141(c) of the Bankruptcy Code, the 2401 Fountainview Property will vest in the Purchaser on the Effective Date free and clear of all Claims, Liens, encumbrances, charges and other interest of the holders of Claims and Equity Interests, except as otherwise provided in the Plan.

#### **4.3.2 The Purchaser**

The Purchaser is Fountainview Partners, LP, an entity affiliated with Preferred Income Partners IV, LLC. The Purchaser shall purchase the building for \$15,500,000.00 in cash on the Effective Date.

#### **4.3.3 The Plan Agent**

The Debtors shall appoint, subject to Bankruptcy Court approval, a Plan Agent. The Plan Agent shall take control of the Reorganized Debtors for the sole purpose of acting in accordance with the terms of the Plan, collecting and distributing any accounts receivable, and winding up the Reorganized Debtors. The Plan Agent will distribute the proceeds from the sale of the Property to fund the terms of the Plan.

#### **4.4 Directors and Officers of the Reorganized Debtors**

The Reorganized Debtors will be managed by the Plan Agent, who will be chosen by the Debtor, and approved by the Bankruptcy Court. The Plan Agent shall be charged with collecting all accounts receivable and filing to close the Bankruptcy Case.

#### **4.5 Business Operations of the Reorganized Debtors**

The Plan Agent is charged with, and authorized to, wind up the business of the Reorganized Debtors and terminate the corporate existence of the Reorganized Debtors.

#### **4.6 Discharge of Debtors**

Except as otherwise provided in the Plan, the entry of the Confirmation Order, as of the Effective Date, will act as a complete discharge of all Claims against the Debtors of any nature at all, including, without limitation, any liability of a kind specified in sections 502(g), 502(h) or 501(I) of the Bankruptcy Code, that arose, or have been asserted against the Debtors at any time before the Effective Date or that arise from any pre-confirmation conduct of the Debtors whether or not the Claim is known to or knowable by the current or former holder of the Claim. The discharge of the Debtors will be effective as to each Claim whether or not the Claim constituted an Allowed Claim and whether or not the holder of the Claim voted to accept the Plan. In addition, the Confirmation Order will operate as a general resolution with prejudice, as of the Effective Date, of all pending legal proceedings, if any, against the Debtors and their assets and properties and any proceedings not yet instituted against the Debtors and their assets and properties, except as otherwise provided in the Plan. As provided in section 524 of the Bankruptcy Code, the discharge operates as an injunction against the prosecution of any Claim so discharged. Except as

otherwise expressly provided in the Plan or Confirmation Order, all Persons who have held, hold or may hold Claims against the Debtors or who have held, hold or may hold a Claim against any person or entity who is covered under any policy of insurance with respect to which the Debtors are also covered, are permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors, or the Reorganized Debtors, or any entity who is covered under any policy of insurance with respect to which a Debtors is also covered, or their property, with respect to any such Claim or Equity Interest, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any such Claim against the Debtors, or the Reorganized Debtors, or any entity who is covered under any policy of insurance with respect to which the Debtors are also covered, or their property, (c) creating, perfecting or enforcing any encumbrance of any kind against the Debtors, or the Reorganized Debtors, or any entity who is covered under any policy of insurance with respect to such Claim, and (d) asserting any right of subrogation of any kind against any obligation due the Debtors, or the Reorganized Debtors, or the property of the Debtors or the Reorganized Debtors or any equity who is covered under any policy of insurance with respect to which a Debtor is also covered with respect to any such Claim. Unless otherwise provided in the Plan or by order of the Bankruptcy Court, all injunction or automatic stays provided for in this case pursuant to section 105, if any, or section 362 of Bankruptcy Code or otherwise, and in existence on the Confirmation Date will remain in full force and effect until the Effective Date. Any claims against the Debtors' current or former officers, directors, employees and agents shall not be affected by the foregoing and shall not be discharged. In addition, the foregoing shall not in any way affect any causes of action available under Chapter 5 of the Bankruptcy Code.

#### **4.7 Plan Distributions**

The Plan sets forth the amount and timing of distributions that are to be made to holders of Claims.

#### **4.8 Effectuating Documents and Necessary Authorizations**

The Plan Documents, which consist of all documents and exhibits that aid in effectuating the Plan will be executed and, if appropriate, filed with the appropriate governmental authorities on or before the Effective Date, and they will become effective on the Effective Date.

The Plan Agent, will have authority to execute, deliver, file or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

#### **4.9 Regulatory Approvals**

The Debtors or the Reorganized Debtors will obtain all regulatory approvals, if any, required in connection with the Plan.

#### **4.10 Objection Procedures and Treatment of Disputed Claims**

The Reorganized Debtors shall have the exclusive right to object to the allowance of any Claims. All Claim objections and requests for determination under 11 U.S.C. §505 must be filed within 120 days after the Effective date of the Plan.

#### **4.11 Statutory Requirements for Confirmation of Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Bankruptcy Code's requirements for confirmation of the Plan have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. As set forth in section 1129 of the Bankruptcy Code, these requirements are as follows:

1. The Plan complies with the applicable provisions of the Bankruptcy Code.
2. The proponent of the Plan complies with the applicable provisions of the Bankruptcy Code.
3. The Plan has been proposed in good faith and not by any means forbidden by law.
4. Any payment made or to be made by the Plan proponent, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with the case, or in connection with the Plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.
5. The proponent of the Plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a joint Plan with the Debtor, or a successor to the Debtor under the Plan; and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and the proponent of the Plan has disclosed the identity of any insider that will be employed or retained by the Reorganized Debtor, and the nature of any compensation for such.
6. Any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Plan Proponent has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval.
7. With respect to each class of impaired claims or equity interests:
  - (a) each holder of a claim or interest of such class:

- (i) has accepted the Plan; or
    - (ii) will receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Plan Proponent were liquidated under Chapter 7 of the Bankruptcy Code on such date; or
  - (b) if section 111(b)(2) of the Bankruptcy Code is applied to the claims of such class, the holder of a claim of such class will receive or retain under the Plan on account of such claim property of a value, as of the effective date of the Plan, that is not less than the value of such holder's interest in the estate's interest in the property that secured such claims.
8. With respect to each class of claims or interest:
- (a) such class has accepted the Plan; or
  - (b) such class is not impaired under the Plan;
9. Except to the extent that the holder of a particular claim has agreed to a different treatment of the claim, the Plan provides:
- (a) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such claim will receive on account of such claim cash equal to the Allowed Amount of such Claim;
  - (b) with respect to a class of Claims of a kind specified in 507(a)(3), 507(a)(4), 507(a)(5), or 507(a)(6) of the Bankruptcy Code, each holder of a claim of such class will receive:
    - (i) if such class has accepted the Plan, deferred cash payments of a value, as of the Effective Date of the Plan, equal to the Allowed Amount of such Claim; or
    - (ii) if such class has not accepted the Plan, cash on the Effective Date of the Plan equal to the Allowed Amount of such Claim; and
  - (c) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of a claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim of a value, as of the Effective Date of the Plan, equal to the Allowed Amount of such Claim.



10. If a class is impaired under the Plan, at least one class of claims that is impaired has accepted the Plan, determined without including any acceptance of the Plan by any insider.
11. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Plan Proponent or any successor to the Plan Proponent under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Debtors believe that the Plan satisfies all the statutory requirements of Chapter 11 of the Bankruptcy Code, that it has complied or will have complied with the all the requirements of Chapter 11, and that the proposal of the Plan is made in good faith.

The Debtors further believe that the holders of all Claims and Equity Interests impaired under the Plan will receive payments or distributions under the Plan having a present value as of the Effective Date in amounts not less than the amounts likely to be received by such holders if the Debtors were liquidated in a case under Chapter 7 of the Bankruptcy Code.

Finally, the Debtors believe that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtors.

#### **4.12 Cramdown**

In the event that any impaired class of Claims and Equity Interests does not accept the Plan, the Bankruptcy Court may still confirm the Plan if, as to each impaired class which has not accepted the Plan, the Plan does not discriminate unfairly and is "fair and equitable." A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or equity interests.

"Fair and equitable" has different meanings with respect to the treatment of secured and unsecured claims. As set forth in section 1129(b)(2) of the Bankruptcy Code, those meanings are as follows:

1. With respect to a class of secured claims, the Plan provides:
  - (a) (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the Plan Proponent or transferred to another entity, to the extent of the Allowed Amount of such Claims; and

- (ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim of a value, as of the Effective Date of the Plan, of at least the value of such holder's interest in the estate's interest in such property;
  - (b) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the Liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) and (b) of this subparagraph; or
  - (c) for the realization by such holders of the indubitable equivalent of such claims.
2. With respect to a class of unsecured claims, the Plan provides;
- (a) that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the Effective Date of the Plan, equal to the Allowed Amount of the Claim; or
  - (b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.
3. With respect to a class of interests, the Plan provides:
- (a) that each holder of any interest of such class receive or retain on account of such interest property of a value, as of the Effective Date of the Plan, equal to the greatest of the Allowed Amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or
  - (b) the holder of any interest that is junior to the interests of such class will not receive or retain under the Plan on account of such junior interest any property.

The Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable with respect to, and does not discriminate unfairly against, any rejecting impaired class of Claims and Equity Interests. The Debtors believe that the Bankruptcy Court will find these requirements satisfactory and will confirm the Plan.

#### **4.13 Conditions Precedent to Effectiveness of Confirmation Order and Plan**

The Plan will not be effective unless (a) the Confirmation Order becomes a Final

Order; and (b) all Plan Documents and other applicable corporate documents necessary or appropriate to the implementation of the Plan have been executed, delivered, and where applicable, filed with the appropriate governmental authorities. The Debtors reserve the right to waive any of the conditions precedent to the effectiveness of either the Confirmation Order or the Plan. If any of the conditions precedent are not waived, and are not satisfied within the specified time periods or can no longer occur, the Confirmation Order will be annulled and the Debtors and all parties in interest will return to the *status quo ante* immediately before the entry of the Confirmation Order.

#### **4.14 Retention of Jurisdiction by Bankruptcy Court**

After the Effective Date of the Plan, the Bankruptcy Court will continue to have jurisdiction over all matters arising under, arising out of or relating to this Case. Such jurisdiction will be exercised to (a) insure that the purpose and intent of the Plan are carried out; (b) consider any modification of the Plan under section 1127 of the Bankruptcy Code before substantial consummation as defined in section 1101(s) of the Bankruptcy Code; (c) hear and determine all Claim, controversies, suits, and disputes against the Debtors; (d) hear and determine all Objection to Claims, controversies, motions, applications, suits and disputes that maybe pending at or initiated after the Effective Date; (e) classify the Claims of any creditor and to re-examine Claims which have been allowed for purposes of voting, and to determine all Objections which may be filed to Claims; (f) hear, determine and enforce all claims and causes of action which may exist on behalf of the Debtors or their Estate; (g) consider and act on the compromise and settlement of any Claim against or cause of action on behalf of the Debtors or the Estate; (h) hear and determine all controversies, suits, and disputes that may arise in connection with the interpretation, execution or enforcement of the Plan; (i) hear and determine all requests for compensation and/or reimbursement of expenses for services rendered or expenses incurred prior to the Confirmation Date; (j) enforce and interpret by injunction or otherwise the terms and conditions of the Plan; (k) enter an order closing the Chapter 11 Case; (l) correct any defect, cure any omission, or reconcile any inconsistency in the Plan or Confirmation Order which may be necessary or helpful to carry out he purposes and intent of the Plan; (m) consider and act on such other matters consistent with the Plan as may be provided in the Confirmation Order; (n) issue orders in aid of execution of implementation of this Plan to the extent authorized by 11 U.S.C. §1142 or provided by the terms of this Plan; and (o) decide issues concerning the Federal or State Tax Liability of the Debtors or Reorganized Debtors which may arise in connection with the confirmation or consummation of this Plan.

### **ARTICLE V MISCELLANEOUS PROVISIONS**

#### **5.1 Compliance with Law**

The Plan mandates compliance by the Reorganized Debtors and any other person charged with carrying out any provisions of the Plan with all withholding and reporting requirements imposed by federal, state, and local taxing authorities, and all distributions under the Plan will be subject to such withholding and reporting requirements. In addition, the

Plan requires that the Reorganized Debtors, if notified by any governmental authority that it is in violation of any applicable rule, law, regulation, or order of such governmental authority relating to its business, comply with such law, rule, regulation or order unless the legality or applicability of such requirement is being contested in good faith in an appropriate proceeding and, if appropriate, an adequate reserve has been set aside. Finally, all fees payable pursuant to section 1930 of Title 28 of the United States Code will be paid on or before the Effective Date.

## **5.2 Modification, Revocation and Severability Rights**

The Debtors may modify the Plan at any time before confirmation, provided that the requirements of sections 1122, 1123 and 1125 are satisfied with respect to the modification. After confirmation and before substantial confirmation of the Plan, the Reorganized Debtors may make modifications to the Plan to the extent permitted by sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, may confirm the Plan under section 1129 of the Bankruptcy Code as modified.

The Debtors may revoke and/or withdraw the Plan at any time before entry of the Confirmation Order. If the Debtors revokes and/or withdraws the Plan, or if confirmation of the Plan does not occur, then the Plan will be deemed null and void and nothing contained therein will be deemed (a) to constitute a waive or release of any Claims by the Debtors or any other Person, (b) to prejudice in any manner the rights of the Debtors or any other Persons, or (c) to constitute an omission by the Debtors or any other Persons.

## **5.3 Other Considerations**

The Plan affords holders of Claims the potential for the greatest realization on the Debtors' assets and, therefore, is in the best interest of the holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) continuation of the Chapter 11 Case; (b) alternative plans of reorganization; (c) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code; and (d) dismissal of the Chapter 11 case.

## **5.4 Feasibility of the Plan**

The plan is the Debtors' best effort to reorganize its debts in a manner that will result in payment to all creditors. The Debtors believe the Plan is feasible. The current equity owners' interest will be terminated and the Reorganized Debtor will collect its accounts receivable in an attempt to provide additional payment to unsecured creditors and addressing all secured obligations. The sale of the 2401 Fountainview Property will provide capital to pay the debts to the best of their ability.

## **5.5 Alternative Plans of Reorganization**

If the Plan is not confirmed, another party in interest in this case could attempt to formulate and propose a different plan or plans. Such plans might, theoretically, involve either reorganization or an orderly liquidation of all of Debtors' property. The Debtors have

not received any suggestions for an alternative plan. The Debtors believe the proposed plan maximizes the potential recovery for unsecured creditors.

## **5.6 Liquidation Under Chapter 7**

At this date, the Debtors do not believe that the case should be converted to Chapter 7. If a conversion of the case were to occur, then a trustee would be elected or appointed to liquidate the Debtors' assets. If converted, the proceeds of the liquidation would be distributed to the respective holders of Claim against and Equity Interests in the Debtor according to the priorities established under the Bankruptcy Code.

Under Chapter 7, a secured creditor whose claim is fully secured would be entitled to full payment, including interest, from the proceeds of the sale of its collateral. Unless its claim is nonrecourse, a secured creditor's collateral is insufficient to pay its claim in full would be entitled to assert an unsecured claim for its deficiency. Claims entitled to priority under the Bankruptcy Code would be paid in full before any distribution to general unsecured creditors. Funds, if any, remaining after payment of secured claims and priority claims would be distributed pro rata to general unsecured creditors. A comparison between a chapter 11 and chapter 7 bankruptcy is attached hereto as Exhibit C, and incorporated by reference. At this time, the Debtors believe that the assets are fully encumbered and a liquidation under Chapter 7 would result in no distribution to the general unsecured creditors. The Debtor believes the proposed plan is in the best interest of all parties.

## **5.7 Risk Factors**

Both failure to achieve confirmation of the Plan, and consummation of the Plan, are subject to a number of risks. In addition, there are certain risks inherent in the reorganization process under the Bankruptcy Code. If certain standards set forth in the Bankruptcy Code are not met, the Bankruptcy Court will not confirm the Plan even if Creditors accept the Plan. Although the Debtors believe that the Plan meets such standards, there can be no assurances that the Bankruptcy Court will reach the same conclusion. If the Bankruptcy Court were to determine that such requirements were not met, it could require the Debtors to re-solicit acceptances, which could delay and/or jeopardize confirmation of the Plan. In this case, the same is true if the Bankruptcy Court determines that the contents of this Disclosure Statement are not sufficient or do not meet the standards of 11 U.S.C. §1125.

As to the consummation of the Plan, if this Plan is confirmed, the Debtors believe it can perform as set forth in the proposed Plan. The Debtors are confident they can perform under the Plan as proposed.

## **5.8 Taxation**

### **5.8.1 Introduction**

The following discussion summarizes certain of the important federal income tax

consequences of the transactions described herein and in the Plan. This discussion is for information purposes only and does not constitute tax advice. This summary is based upon the Internal Revenue Code and the treasury Regulations promulgated thereunder, including judicial authority and current administrative rulings and practice. Neither the impact on foreign holders of claims and equity in or the tax consequences of these transactions under state and local law is discussed. Also, special tax considerations not discussed herein may be applicable to certain classes of taxpayers, such as financial institutions, broker-dealers, life insurance companies, and tax-exempt organizations. Furthermore, due to the complexity of the transactions contemplated in the Plan, and the unsettled status of many of the tax issues involved, the tax consequences described below are subject to significant uncertainties. No opinion of counsel has been obtained and no ruling has been requested from the Internal Revenue Service ("IRS") on these or any other tax issues. There can be no assurances that the IRS will not challenge any or all of the tax consequences of the Plan, or that such a challenge, if asserted, would not be sustained. **HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR ARE, THEREFORE, URGED TO CONSULT WITH THEIR TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

### 5.8.2 Tax Consequences to the Debtor

Generally, under the terms of the Plan, Creditors' claims are to be discharged. Any income corresponding to the satisfaction of claims at a discount should not constitute taxable income to the Debtors since the debt forgiveness arises in connection with a case under Title 11 of the United States Code.

### 5.8.3 Tax Consequences to Creditors

**In General.** The federal income tax consequences of implementation of the Plan to a holder of a Claim will depend, among other things, on: (a) whether its Claim constitutes a debt or security for federal income tax purposes; (b) whether the Claimant receives consideration in more than one tax year; (c) whether the Claimant is a resident of the United States; (d) whether all the consideration by the Claimant is deemed to be received by that Claimant as part of an integrated transaction; (e) whether the Claimant reports income using the accrual or cash method of accounting; and (f) whether the holder has previously taken a bad debt deduction or worthless security deduction with respect to the Claim.

**Gain or Loss on Exchange.** Generally, a holder of an Allowed Claim will realize a gain or loss on the exchange under the Plan of his Allowed Claim for cash and other property in an amount equal to the difference between (i) the sum of the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the Allowed Claim), and (ii) the adjusted basis of the allowed claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized will generally be a capital gain (except the extent the gain is attributable to accrued but

unpaid interest or accrued market discount, as described below) if the Claim was capital asset in the hand of an exchanging holder, and such gain would be a long term capital gain if the holder's holding period for the Claim surrendered exceeded one (1) year at the time of the exchange.

Any loss recognized by a holder of an Allowed Claim will be a capital loss if the claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form.

#### 5.8.4 Information Report and Backup Withholding

Under the backup withholding rules of the Internal Revenue Code, holders of Claims may be subject to backup withholding at the rate of 31 percent with respect to payments made pursuant to the Plan unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a correct taxpayer identification number and certifies under penalties of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividends and interest income. Any amount withheld under the rules will be credited against the holder's federal income tax liability. Holders of Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

#### 5.8.5 Importance of Obtaining Professional Assistance

**THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING SUCH TAX CONSEQUENCES.**

### ARTICLE VI CAUSES OF ACTION

#### 6.1 Preferences

Under the Bankruptcy Code, a Debtors may recover certain preferential transfers of property, including cash, made while insolvent during the 90 days immediately prior to the filing of its bankruptcy petition with respect to pre-existing debts, to the extent the transferee received more than it would have in respect of the pre-existing debt had the Debtors been liquidated under Chapter 7 of the Bankruptcy Code. In the case of "insiders", the Bankruptcy Code provides for a one year preference period. There are certain defenses to such recoveries. Transfers made in the ordinary course of the Debtors' and transferee's business according to the ordinary business terms in respect of debts less than 90 days before the filing of a

bankruptcy are not recoverable.

Additionally, if the transferee extended credit subsequent to the transfer (and prior to the commencement of the bankruptcy case), such extension of credit may constitute a defense to recovery, to the extent of any new value, against an otherwise recoverable transfer of property. If a transfer is recovered by the Debtors, the transferee has an Unsecured Claim against the Debtors to the extent of the recovery. In this case, the Debtors have carefully reviewed all of its records for the past year and has determined that there were no preferences paid.

## **6.2 Fraudulent Transfers**

Under the Bankruptcy Code and various state laws, the Debtors may recover certain transfers of property, including the granting of a security interest in property, made while insolvent or which rendered the Debtors insolvent. The Debtors reserve the right to bring any fraudulent conveyance claims although it does not believe at this time that any exist. The Debtors have reviewed its books and records and determined that, as with preferences, there were no fraudulent conveyances.

## **6.3 Preservation of Claims**

All claims and causes of action, including but not limited to claims recoverable under section 550 of the Bankruptcy Code and claims for the collection of amounts due from any third party, are hereby preserved and retained for enforcement by the Reorganized Debtors after the Effective Date.

# **ARTICLE VII VOTING PROCEDURE AND REQUIREMENTS**

## **7.1 Ballots and Voting Deadline**

A ballot to be used to vote to accept or reject the Plan is enclosed with this Disclosure Statement. A Creditor who is voting must (1) carefully review the ballot and instructions thereon, (2) complete and execute the ballot indicating the Creditor's vote to either accept or reject the Plan and (3) return the executed ballot to the address indicated thereon by the deadline specified by the Bankruptcy Court.

If you hold an impaired Claim against the Debtors PLEASE return your ballot to:

Christopher Adams  
Okin & Adams LLP  
1113 Vine Street, Suite 201  
Houston, Texas 77002

## **7.2 Creditors Entitled to Vote**



Any Creditor whose Claim is impaired under the Plan is entitled to vote, if either (i) the Debtors have scheduled its Claim on its Statement of Liabilities and such Claim is not scheduled as disputed, contingent, or unliquidated, or (ii) such Creditor has filed a Proof of Claim on or before the last date set by the Bankruptcy Court for filing Proofs of Claim and no objection has been filed to such Claim.

Holders of Disputed Claims are not entitled to vote on the Plan. Any Claim to which an objection has been filed and remains pending, is not entitled to vote unless the Bankruptcy Court, upon motion by the Creditor who holds the Disputed Claim temporarily allows the claim in an amount that it deems proper for accepting or rejecting the Plan. Any such motion must be heard and determined by the Bankruptcy Court before the date established by the Bankruptcy Court as the final date to vote on the Plan. In addition, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection of the Plan by the creditor was not solicited or obtained in good faith or according to the provisions of the Bankruptcy Code.

Classes of Claims that are not impaired are deemed to have accepted the plan or reorganization pursuant to 11 U.S.C. §1126(f) and, therefore, are not entitled to vote on the Plan. Pursuant to 11 U.S.C. §1126(f), only classes of claims or interests which are "impaired" are entitled to vote on a plan of reorganization. Generally, a claim is impaired if the plan or reorganization alters the legal, equitable, or contractual rights to which the holder of the claim is otherwise entitled.

### **7.3 Voting Procedures**

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, revocation or withdrawal of Ballots will be determined by the Debtors, in their sole discretion, and the Debtors' determination will be final and binding. The Debtors also reserve the right to reject any Ballot not in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, be unlawful. The Debtors further reserve the right to waive any defects or irregularities or conditions to delivery as to any particular Ballot. The interpretation by the Debtors of the provisions of this Disclosure Statement and the Ballots will be final and binding on its parties in interest unless otherwise directed by the Bankruptcy Court. Unless waived, any defects or irregularities concerning deliveries of Ballots must be cured within such time as the Debtors (or the Bankruptcy Court) determine. Neither the Debtors nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of Ballots will not be deemed to have been made and will be invalidated unless or until all defects and irregularities have been timely cured or waived.

### **7.4 Vote Required for Class Acceptance**

The Bankruptcy Code defines acceptance of a plan of reorganization by a class of Claims as the acceptance by holders of at least two-thirds (2/3) in dollar amount and more

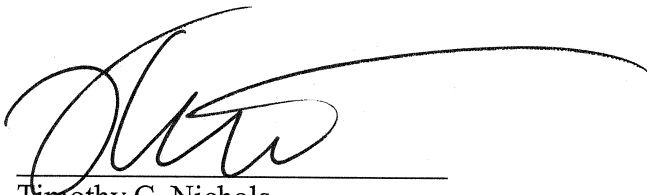
than one-half (1/2) in number of the Allowed Claims of the Class actually voting to accept or reject the proposed plan of reorganization.

**7.5 Cramdown and Withdrawal of Plan**

If the Plan is not accepted by all classes of impaired Creditors, the Debtors reserve the right to withdraw the Plan. If the Plan is accepted by one or more Classes of Impaired Creditors of the Debtors, the Debtors reserve the right to request the Bankruptcy Court to approve the Plan under 11 U.S.C. §1129(b).

**THE DEBTORS STRONGLY URGE ALL IMPAIRED CREDITORS TO VOTE TO ACCEPT THE PLAN.**

Dated April 22, 2015.



Timothy C. Nichols  
Preferred Income Partners IV, LLC  
Authorized representative of the Debtors

**OKIN & ADAMS LLP**

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