

**THIS DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE  
BANKRUPTCY COURT**

**This proposed Disclosure Statement is not a solicitation of acceptance or rejection of the Plan. Acceptances or rejections may not be solicited until the Bankruptcy Court has approved this Disclosure Statement under Bankruptcy Code § 1125. This proposed Disclosure Statement is being submitted for approval only, and has not yet been approved by the Bankruptcy Court.**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHER DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	:	Chapter 11
	:	
Dvorkin Holdings, LLC,	:	Case No. 12-31336-JPC
	:	
Debtor.	:	Hon. Jacqueline P. Cox
	:	

**DISCLOSURE STATEMENT IN RESPECT OF AMENDED CHAPTER 11 PLAN  
PROPOSED BY ASM CAPITAL IV, LP AND ASM CAPITAL V, LP**

**IMPORTANT DATES**

- Date by which Ballots must be received: \_\_\_\_\_, 2015
- Date by which objections to Confirmation of the Plan must be filed and served:  
\_\_\_\_\_, 2015
- Hearing on Confirmation of the Plan: \_\_\_\_\_, 2015 at \_\_:\_\_\_.m. (prevailing Eastern time)

Dated: March 27, 2015

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## EXHIBITS

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Exhibit B – Order Approving Disclosure Statement

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Exhibit F – Liquidation Analysis

Exhibit G – Claims Register

## **I. PREFATORY STATEMENT AND DEFINITIONS**

Pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), ASM Capital IV, LP and ASM Capital V, LP (together, “ASM Capital”) hereby submit this disclosure statement (the “Disclosure Statement”) in support of the *Amended Chapter 11 Plan* (as may be amended, supplemented, or modified, the “Plan”) in the bankruptcy case of Dvorkin Holdings, LLC (the “Debtor”). The definitions contained in the Bankruptcy Code are incorporated herein by this reference. The definitions set forth in Article I of the Plan will also apply to capitalized terms used herein that are not otherwise defined.

## **II. INTRODUCTION AND OVERVIEW**

### **A. Introduction**

This Disclosure Statement, submitted in accordance with section 1125 of the Bankruptcy Code, contains information regarding the Plan proposed by ASM Capital. A copy of the Plan is attached hereto as **Exhibit A**. This Disclosure Statement is being distributed to you for the purpose of enabling you to make an informed judgment about the Plan. The Disclosure Statement contains information concerning, among other matters: (1) the Debtor’s background; (2) the assets available for distribution under the Plan; and (3) a summary of the Plan, including the proposed treatment of claims and interests under the Plan. ASM Capital strongly urges you to review carefully the contents of this Disclosure Statement and the Plan (including the exhibits to each) before deciding whether to accept or reject the Plan. Particular attention should be paid to the provisions affecting or impairing your rights as a Creditor or Interest Holder.

Following a hearing on \_\_\_\_\_, 2015, the Bankruptcy Court approved this Disclosure Statement as containing sufficient information to enable a hypothetical reasonable investor to make an informed judgment about the Plan. A copy of the Order approving the Disclosure Statement is attached hereto as **Exhibit B** (the “Disclosure Statement Order”). Under section 1125 of the Bankruptcy Code, this approval authorized ASM Capital to send you this Disclosure Statement and solicit your acceptance of the Plan. The Bankruptcy Court has not considered for approval the Plan itself or conducted a detailed investigation into the contents of this Disclosure Statement.

Your vote on the Plan is important. Absent acceptance of the Plan, there may be protracted delays or a chapter 7 liquidation, which may cause additional administrative expenses. These alternatives may not provide for distribution of as much value to Holders of Allowed Claims or Interests as does the Plan. Accordingly, ASM Capital urges you to accept the Plan by completing and returning the enclosed ballot(s) no later than \_\_\_\_\_, 2015.

### **B. Disclaimers**

The information contained in this Disclosure Statement has been obtained from the pleadings filed in the Debtor’s bankruptcy case, and ASM Capital has made every reasonable effort has been made to present accurate information and such information is believed to be correct as of the date hereof. Any value given as to the Assets is based upon the Debtor’s estimation of such value. You are strongly urged to consult with your financial, legal and tax advisors to understand fully the Plan and Disclosure Statement.

The financial information contained in this Disclosure Statement is given as of the date hereof, unless otherwise specified. The delivery of this Disclosure Statement does not, under any circumstance, imply that there has been no change in the facts set forth herein since such date. This Disclosure Statement is intended, among other things, to summarize the Plan and must be read in conjunction with the Plan and its exhibits, if any. If any conflicts exist between the Plan and Disclosure Statement, the terms of the Plan shall control.

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PROPOSED PLAN. PLEASE READ THIS DOCUMENT WITH CARE. THE PURPOSE OF THE DISCLOSURE STATEMENT IS TO PROVIDE "ADEQUATE INFORMATION" OF A KIND, AND IN SUFFICIENT DETAIL, AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE NATURE AND HISTORY OF THE DEBTORS AND THE DEBTOR'S BOOKS AND RECORDS, THAT WOULD ENABLE A HYPOTHETICAL REASONABLE INVESTOR TYPICAL OF HOLDERS OF CLAIMS OR INTERESTS OF THE RELEVANT CLASS TO MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN.

FOR THE CONVENIENCE OF CREDITORS AND INTEREST HOLDERS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ANY SUMMARY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

NO REPRESENTATIONS CONCERNING THE DEBTOR'S FINANCIAL CONDITION OR ANY ASPECT OF THE PLAN ARE AUTHORIZED BY THE DEBTOR, THE CHAPTER 11 TRUSTEE, OR ASM CAPITAL, OTHER THAN AS EXPRESSLY SET FORTH IN THIS DISCLOSURE STATEMENT.

YOU SHOULD NOT RELY UPON ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION THAT THOSE CONTAINED IN OR INCLUDED WITH THIS DISCLOSURE STATEMENT IN ARRIVING AT YOUR DECISION.

ASM CAPITAL IS NOT AFFILIATED WITH OR EMPLOYED BY THE DEBTOR OR THE CHAPTER 11 TRUSTEE AND DOES NOT HAVE ACCESS TO THE DEBTOR'S BOOKS AND RECORDS. THE FINANCIAL INFORMATION CONTAINED HEREIN, UNLESS OTHERWISE INDICATED, IS UNAUDITED AND BASED SOLELY UPON PLEADINGS FILED IN THE DEBTOR'S BANKRUPTCY CASE. ASM CAPITAL HAS MADE ALL REASONABLE EFFORTS TO ENSURE THAT ALL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS FAIRLY PRESENTED, HOWEVER ASM CAPITAL CANNOT GUARANTEE THAT FINANCIAL INFORMATION IS COMPLETE OR ACCURATE.

THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH CREDITOR AND INTEREST HOLDER SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND

ACCOUNTANT WITH RESPECT TO ALL LEGAL, TAX AND CONSEQUENCES CONCERNING HIS OR HER CLAIM OR INTEREST.

**C. Plan Overview**

As more fully described below, on the Petition Date, the Debtor filed a voluntary bankruptcy petition by and through which it sought chapter 11 bankruptcy protection. The purpose of a chapter 11 bankruptcy case is to resolve the affairs of a debtor and distribute the proceeds of the debtor's estate pursuant to a confirmed chapter 11 plan. To that end, on March 24, 2015, ASM Capital, one of the largest creditors in the Debtor's bankruptcy case, filed the Plan, the terms of which are more fully described herein.

On the Effective Date of the Plan, the Plan Administrator will be appointed to, among other things, sell certain of the remaining assets of the Debtor's bankruptcy estate, review and object to claims, makes distributions to creditors and interest holders, and undertake such other actions as necessary to fully administer the Debtor's estate. On the Effective Date of the Plan, an Oversight Committee will be appointed to oversee the Plan Administrator. Until Unsecured Claims are paid in full, the Oversight Committee comprised of three people, two of which shall be designated by ASM Capital – initially to be Jared Muroff and Douglas Wolfe – and the third shall be Francine Dvorkin, an interest holder. Once Unsecured Claims have been paid in full, the two designees by ASM Capital shall resign, leaving the designee of Francine Dvorkin as the only member of the Oversight Committee. As set forth in the Plan, upon the payment of the Unsecured Claims in full, the Trustee will file a motion to close of the Bankruptcy Case; upon the entry of the order closing the Bankruptcy Case, the Oversight Committee will be terminated.

Holders of Allowed Administrative Claims and Allowed Priority Claims will be paid in full on the Effective Date of the Plan or as soon thereafter as practicable, and Allowed General Unsecured Claims will be paid in full over time, including interest. Holders of Allowed Secured Claims will have the right to elect to maintain their lien on the property and have their rights unaltered by the Plan or they can elect to have their claims treated as general unsecured claims. After payment of all expenses of the Plan Administrator and payment of all claims in full and, the remaining assets of the estate shall be paid to the Holders of Interests on a pro rata basis.

ASM Capital believes that Confirmation of the Plan will avoid the lengthy delay and significant cost of liquidation under chapter 7 of the Bankruptcy Code. Further, ASM believes that the Plan, including the liquidation of the remaining assets of the Debtor and the Dvorkin Related Entities, will maximize the value of recoveries to all Holders of Allowed Claims and Allowed Interests by authorizing the Plan Administrator to promptly distribute money to creditors on account of Allowed Claims, thereby reducing the amount of interest due on account of those Claims. Additionally, by the terms of the Plan, after the Effective Date, the Plan Administrator will be authorized to liquidate the assets and otherwise administer the estate with more modest supervision by the Bankruptcy Court which will, in turn, minimize the administrative costs to the estate.

The following chart briefly summarizes the treatment of Creditors and Interest Holders under the Plan. Amounts listed below are estimated. Actual Claims and distributions will vary



depending upon, among other things, recoveries on the sale of the estate's remaining assets and the costs of the Plan Administrator in administering the estate after the Effective Date.

Description	Estimated Allowed Claims <sup>1</sup>	Estimated Recovery Percentage	Claims Treatment
Administrative Expenses	Unknown	100%	Allowed Administrative Expenses shall be paid in full in Cash on the Effective Date or as soon thereafter as possible, <u>except</u> if an Administrative Expense represents an obligation incurred in the ordinary course of business, such Administrative Expense will be paid in the ordinary course by the applicable Plan Administrator in accordance with the terms of the particular transaction and/or applicable agreement. Administrative Expenses that are not Allowed Administrative Expenses on the Effective Date, including Professional Fees, shall be paid upon entry of a final order allowing such Administrative Expense.
Class 1 - Priority Claims	None	100%	Paid in full in Cash on the Effective Date or as soon thereafter as the Priority Expense is Allowed, <u>except</u> if a Priority Claim is not yet due, such claim shall be paid in the ordinary course by the Plan Administrator.
Class 2 - Secured Claims	Unknown	100%, including all contract rights	Holders of Secured Claims, including Persons holding a security interest in the assets of the Debtor and Persons holding a security interest in the assets of the Dvorkin Related Entities, may elect either of the following treatments on account of its claim: (i) retention of their security interest in the collateral, including the right to receive all payments due pursuant to any agreement until such time as the collateral is sold or; (ii) electing to be treated as a Holder of a Class 3 General Unsecured Claim in any amount that remains unpaid as of the Effective Date and releasing all security interests in property owned by the Debtor or the Dvorkin Related Entities; or (iii) such other treatment as the Plan Administrator and the Secured Creditor agree to in writing, after consultation and agreement by the Oversight

<sup>1</sup> The amounts of the claims are based upon the Debtors' Schedules and the filed proofs of claim. A chart detailing the claims is attached hereto as **Exhibit F**.

			<p>Committee.</p> <p>In the event that the Holder of Secured Claim elects option (i), and the sale of the collateral securing the Class 2 Secured Claim is insufficient to pay the Class 2 Secured Claim in full, the Holder of the Secured Claim will receive a deficiency claim effective upon the date of the sale of the Collateral, and such deficiency claim shall be treated as Class 3 General Unsecured Claim, with interest accruing from the date of the sale of the collateral.</p>
Class 3 - General Unsecured Claims	\$30 million - \$40 million <sup>2</sup>	69.9% - 100%, plus interest	<p>Holders of Allowed Class 3 General Unsecured Claims shall receive their Pro Rata share of distributions to be made from time to time by the Plan Administrator from (a) the proceeds of the liquidation of the Estate assets, after payment of all Allowed Administrative Claims, including all Allowed Professional Fee Claims, all allowed Priority Claims, and All Allowed Secured Claims, taking into account a reasonable reserve for and payment of post-Effective Date fees and expenses of the Plan Administrator and the Plan Administrator's professionals.</p> <p>All Allowed General Unsecured Claims shall be entitled to interest from the Petition Date through the Effective Date. As more fully set forth in Section 11.6 of the Plan, the amount of interest and applicable interest rate(s) to be received on account of each Class 3 General Unsecured Claim will be determined after confirmation.</p>
Class 4 - Interest Holders	N/A	N/A	<p>Upon the payment of all Allowed Claims in full, including interest as allowed by the Bankruptcy Court, all Holders of Equity Interests shall retain their Interests in the Debtor.</p>

**D. Voting on the Plan**

1. **Impaired Claims or Interests.** Pursuant to section 1126 of the Bankruptcy Code, only the holders of Claims or Interests in Classes "Impaired" by the Plan may vote on the Plan. Pursuant to section 1124 of the Bankruptcy Code, a Class of Claims or Interests may be

<sup>2</sup> This amount may change based upon the number of creditors holding a security interest in the Debtor's assets or a security interest in the Dvorkin Related Entities' assets, who may elect to have their claim treated as an unsecured claim.

“Impaired” if the Plan alters the legal, equitable or contractual rights of the holders of such Claims or Interests treated in such Class. The holders of Claims or Interests not Impaired by the Plan are deemed to accept the Plan and do not have the right to vote on the Plan. This Disclosure Statement is being distributed for informational purposes to all Creditors, the Debtor’s Interest holders and parties in interest without regard to any such party’s right to vote.

2. **Eligibility.** In order to vote on the Plan, a Creditor must have timely filed or been assigned a timely filed proof of Claim, unless its Claim is scheduled by the Debtor and is not identified as disputed, unliquidated or contingent on the Debtor’s Schedules of Assets and Liabilities (as amended, the “Schedule”). Creditors having a Claim in more than one Class that is entitled to vote may vote in each Class in which they hold a separate Claim by casting a Ballot in each Class.

3. **Binding Effect.** Whether a Creditor or Interest holder votes on the Plan or not, such Person will be bound by the terms of the Plan if the Plan is confirmed by the Bankruptcy Court. Absent some affirmative act constituting a vote, a Creditor will not be included in the vote: (a) for purposes of accepting or rejecting the Plan or (b) for purposes of determining the number of Persons voting on the Plan.

4. **Procedure.** Class 1 (Priority Claims) and Class 2 (Secured Claims), and Class 4 (Interests) are not Impaired by the Plan and are deemed, therefore, to accept the Plan and may not vote except a holder of a Secured Claims may elect treatment of its claim as a General Unsecured Claim, in which case, it may vote its General Unsecured Claim as a member of Class 3. Members of Class 3 – General Unsecured Claims – are Impaired and may vote to accept or reject the Plan.

In order for a vote in Class 3 to count, the Holder of the Claim must complete, date, sign and properly mail the enclosed Ballot (Please note that envelopes have been included with the Ballot) to:

If by first class mail:	If by hand delivery or overnight courier:
Dvorkin Holdings, LLC c/o GCG, Inc. PO Box 10150 Dublin, Ohio 43017-3150	Dvorkin Holdings, LLC c/o GCG, Inc. 190 S. LaSalle St., Ste 1925 Chicago, Illinois 60603

BALLOTS SENT BY TELECOPIER, FACSIMILE OR OTHER ELECTRONIC MEANS ARE NOT ALLOWED AND WILL NOT BE COUNTED.

Pursuant to Bankruptcy Rule 3017, the Bankruptcy Court has ordered that Ballots with original signatures for the acceptance or rejection of the Plan must be received by mail or overnight delivery by Garden City Group, Inc. at one of the addresses set forth above **on or before 5:00 p.m. (Prevailing Central Time)** on \_\_\_\_\_, 2015. Once you have delivered your Ballot, you may not change your vote, except for cause shown to the Bankruptcy Court after notice and hearing.

Any Ballot received that is incomplete in any way shall be deemed to be cast as follows:

(a) Ballots received that do not evidence the amount or evidence an incorrect amount of a creditor's Claim shall be completed or corrected, as the case may be, based upon the Schedule filed by the Debtor if no proof of Claim has been filed by such Creditor, or based upon timely filed proofs of Claim, and counted as a vote to accept or reject the Plan;

(b) Ballots received that do not identify the Creditor or Interest Holder or that do not indicate acceptance or rejection, whether or not signed by the Creditor, shall not be counted as a vote to accept or reject the Plan;

(c) Ballots received that are otherwise properly completed shall be completed or corrected, as the case may be, based upon the Schedule filed by the Debtor if no proof of Claim has been filed by such Creditor, or based upon timely filed proofs of Claim, and counted as a vote to accept or reject the Plan.

**E. Requirements for Acceptance of the Plan**

A summary of certain requirements of the Bankruptcy Code with respect to acceptance and confirmation of the Plan is set forth below.

At the Confirmation Hearing (as defined below), in order to confirm the Plan, the Court will determine whether the requirements of Section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan. If the requirements of Section 1129 of the Bankruptcy Code have been met, the Court shall enter an order confirming the Plan.

The requirements of Section 1129 relevant to this Plan are as follows:

1. The Plan complies with the applicable provisions of the Code.
2. The Plan Proponent has complied with the applicable provisions of the 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 from property of the estate by the Debtor 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 disclosed to the Court, and if such payment is made prior to confirmation of the Plan, is reasonable, or if such payment is to be fixed after Confirmation of the Plan, is subject to the approval of the Court as reasonable.
5. The Plan Proponent 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, officer or voting trustee of the Debtor, of an affiliate of the Debtor participating in a joint plan with the Debtor, or of 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 such Debtor's creditors and with

public policy, and the Debtor has disclosed the identity of any insider of the Debtor that will be employed or retained by the reorganized Debtor and the nature of any compensation for such insider.

6. With respect to each impaired Class of Claims or interests under the Plan, either each holder of a claim or interest of such class has accepted the Plan, or 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 Debtor against which they hold a claim were liquidated on such date under chapter 7 of the Bankruptcy Code, or if § 1111(b)(2) of this title applies to the claims of such class, each 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 secures such claims.
7. Each Class of Claims or Interests under the Plan has either accepted the Plan or is not impaired under the Plan. (Alternatively, the Plan may be confirmed over the dissent of a Class of claims or interests if the "cramdown" requirements of the Code are met. See "Acceptance and Confirmation of the Plan-Cramdown-Confirmation without Acceptance by All Impaired Classes.")
8. Except to the extent that the holder of a particular claim against the Debtor has agreed to a different treatment of such claim, the Plan provides that administrative expenses and priority claims (other than tax claims) will be paid in full on the Effective Date of the Plan, and that priority tax claims will receive on account of such claims deferred cash payments, over a period not exceeding five (5) years after the Petition Date or such longer prior to which such holders agree, of a value, as of such Effective date, equal to the allowed amount of such claim.
9. Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that - (A) with respect to a Claim of a kind specified in § 507(a)(2) or 507(a)(3) of this title, 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)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, 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; (C) with respect to a Claim of a kind specified in § 507(a)(8) of this title, the holder of such Claim will receive on account of such Claim regular installment payments in cash - (i) of a total value, as of the Effective Date of the Plan, equal to the allowed amount of such Claim; (ii) over a period ending not later than 5 years after the date of the order for relief under § 301, 302, or 303; and (iii) in a manner not less favorable than the most favored nonpriority unsecured Claim provided for by the Plan (other than cash payments

made to a class of creditors under § 1122(b)); and (D) with respect to a secured Claim which would otherwise meet the description of an unsecured Claim of a governmental unit under § 507(a)(8), but for the secured status of that Claim, the holder of that Claim will receive on account of that Claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

10. At least one (1) impaired class of claims has accepted the Plan, determined without including any acceptance of the Plan by any insider of the Debtor holding a claim of such class.
11. Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.
12. All fees payable under § 1930 of title 28, as determined by the Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

ASM Capital believes the Plan satisfies all the statutory requirements of Chapter 11 of the Code, the Plan complies with all of the requirements of Chapter 11 of the Code, and the proposal of the Plan is made in good faith.

**F. Classification of Claims**

Section 1123 of the Bankruptcy Code requires that a plan of reorganization designate classes of claims (other than certain priority claims). Section 1122 of the Bankruptcy Code provides that a creditor's claim may be placed in a class with other claims only if such claims are "substantially similar" in any such class. ASM Capital believes that the classification system in the Plan satisfies the Bankruptcy Code's standards.

The Plan divides claims against the Debtors into classes. A single claim may be divided into different parts for classification and treatment under the Plan, in that a claim is in a particular class only to the extent that it fits within the description of such other class.

The Plan contains four classes: Class 1 – Priority Claims; Class 2 – Secured Claims; Class 3 – General Unsecured Claims; and Class 4 – Equity Interests

**G. Objections to Confirmation and Confirmation Hearing**

Section 1128(a) of the Code requires the Court, after notice, to hold a hearing on confirmation of the Plan. THE CONFIRMATION HEARING FOR THIS PLAN IS SCHEDULED TO BEGIN ON \_\_\_\_\_, 2015 AT \_\_\_\_\_ .M. (Central Time)

By Order of the Court, THE DEADLINE TO OBJECT TO CONFIRMATION OF THE PLAN IS \_\_\_\_\_, 2015 AT \_\_\_\_\_ .M. (Central Time). A copy of any objection must be filed with the Bankruptcy Court and served upon the following: (i) counsel for ASM Capital, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, IL 60661-3693, Attn: Peter A. Siddiqui, and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington,

DE 19801, Attn: Jeffrey R. Waxman; (iii) the Chapter 11 Trustee, Seyfarth Shaw LLP 131 South Dearborn Street, Suite 2400, Chicago, IL 60606, Attn: Gus A. Paloian, Chapter 11 Trustee; (iv) counsel for the Chapter 11 Trustee, Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, IL 60606 Attn: James B. Sowka; and (v) Office of the United States Trustee, 219 South Dearborn St., Room 873, Chicago, Illinois 60604, Attn: Stephen G Wolfe, Esquire.

#### **H. Effect of Confirmation.**

Except as otherwise provided in the Plan or in the Confirmation Order, Confirmation vests title to property of the Debtor's Estate in the post-Effective Date Debtor under the control of the Plan Administrator free and clear of all Claims and Liens of Creditors and Interest Holders, subject to the provisions of the Plan. Confirmation serves to make the Plan binding upon the Debtor, all Creditors, Interest holders and other parties in interest, regardless of whether they cast a ballot to accept or reject the Plan.

### **III. HISTORY OF THE DEBTOR AND THE BANKRUPTCY CASE**

#### **A. Debtor's Bankruptcy Case**

The Debtor, Dvorkin Holdings, LLC, is an Illinois limited liability company, that through its affiliates or related entities (collectively, the "Dvorkin Related Entities"), is primarily involved in real estate investment and management. Prior to August 7, 2012, the Debtor and the Dvorkin Related Entities, possessed ownership interests in approximately seventy (70) parcels of real property. A list of the properties owned by the Debtor and the Dvorkin Related Entities on the Petition Date, including the amount of the Debtor's interests in those properties and the Debtor's valuation of the properties, is attached hereto as **Exhibit C**.

On August 3, 2012, Daniel Dvorkin, the (now former) managing member of Dvorkin Holdings, LLC, was charged with soliciting the murder of a creditor in the United States District Court for the Northern District of Illinois, case no. 12-CR-0500. Mr. Dvorkin was subsequently convicted and sentenced to eight years in federal prison.

On August 7, 2012 (the "Petition Date"), filed a voluntary petition under chapter 11 of the Bankruptcy Code. Loran Eatman ("Mr. Eatman"), vice president of DH-EK Management Corp., a non-debtor affiliate of the Debtor, signed the petition as the Debtor's authorized individual.

#### **1. The Debtor's Schedules and Statement of Financial Affairs**

On August 17, 2012, the Debtor filed its schedules of assets and liabilities (as amended, the "Schedules") and its statement of financial affairs (as amended, the "Statement of Financial Affairs") [Docket Nos. 20, 21, and 22]. On August 22, 2012, the Debtor filed amended schedules and an amended statement of financial affairs [Docket Nos. 66 and 67]. According to the Debtor's Schedules, as of the Petition Date, the Debtor had assets aggregating \$70,743,822.00 and liabilities totaling \$9,296,750.00.

#### **2. Appointment of the Chapter 11 Trustee**

On August 24, 2012, Patrick S. Layng, the United States Trustee for the Northern District of Illinois (the “UST”) filed a motion for the appointment of a Chapter 11 Trustee and for other relief [Docket No. 29] (the “UST Trustee Motion”). On August 29, 2012, FirstMerit Bank, N.A. (“FirstMerit”) separately filed a motion to appoint a Chapter 11 Trustee [Docket No. 32] (the “FirstMerit Trustee Motion,” and together with the UST Trustee Motion, the “Trustee Motions”).

On September 17, 2012, the Debtor filed a response to the FirstMerit Trustee Motion and the UST Trustee Motion and a memorandum in support of its responses [Docket Nos. 52, 53, and 54]. On September 20, 2012, the UST filed a reply in support of the UST Trustee Motion [Docket No. 59] and on September 22, 2012, FirstMerit filed a reply in support of FirstMerit Trustee Motion [Docket No. 60].

On October 1, 2012, the Court conducted a hearing to consider the Trustee Motions, and at the conclusion of the hearing, the Court granted the UST Trustee Motion. Following the hearing to consider the Motions, the Court entered an Order granting the UST Trustee Motion that authorized and directed the UST to appoint a Chapter 11 trustee for the Debtor’s case [Docket No. 80]. On November 3, 2012, the UST filed a motion for approval of Gus Paloian as the Chapter 11 trustee [Docket No. 83]. On October 16, 2012, the Court entered an Order granting the UST’s motion for approval of the appointment of Gus Paloian as the Chapter 11 trustee (the “Chapter 11 Trustee”).

**3. Legal Fees and Expenses of Chapter 11 Trustee**

Since his appointment, and through October 31, 2014, the Trustee’s counsel, Seyfarth, Shaw LLP sought payment from the estate totaling \$2,665,636.93. This amount includes legal fees in the aggregate amount of \$2,599,739.00 and reimbursement of expenses in the aggregate amount of \$65,897.93. ASM is unaware of and cannot estimate the amount of legal fees and expenses incurred by the Chapter 11 Trustee since November 1, 2014. All fees and expenses remain subject to the Bankruptcy Court’s final allowance, and pursuant to the Plan Administrator Agreement, the Plan Administrator has the authority to review the legal fees and expenses sought by Chapter 11 Trustee prior to the final hearing to approve Seyfarth Shaw LLP’s legal fees and expenses, and may file an objection to such fees and expenses if he believes that such an objection is appropriate.

**4. Liquidation of Assets During the Bankruptcy Case**

Since the Petition Date, certain creditors of the Debtor or of entities in which the Debtor owned an interest moved for, and were granted relief from the automatic stay in order to foreclose upon real property. Specifically, the property for which relief from stay was granted is (i) 4949, 4957, 4959 and 5001 W. Oakton Street, Skokie, IL; (ii) 1055 W. 175th Street, Homewood, IL; (iii) 2357 Nichols, Lynwood, IL, 2171 Vista, Lombard, IL, 2605 Rosemont, Chicago, IL, and 2611 Rosemont, Chicago, IL; (iv) 246 Janata Blvd., Lombard, IL; and (iv) as 700 W Grand Ave., Unit 5, Chicago, IL. ASM is unaware of the status of the underlying state court actions for which relief has been granted. The chart attached hereto as **Exhibit C** that details each of the properties of the Debtor or the Dvorkin Related Entities reflects the relief from stay, including the date of the motion for which relief from the automatic stay was granted, and the date that the relief granted.



Since his appointment, the Chapter 11 Trustee has filed numerous motions for the approval of the sale of real property, whether owned directly by the Debtor or by the Dvorkin Related Entities. On September 11, 2012, the Chapter 11 Trustee filed a document titled “Periodic Report of Regarding Value, Operations and Profitability of Entities in which the Estate of Dvorkin Holdings Inc. Hold as Substantial or Controlling Interest” [Docket No. 51]. During the intervening 30 months, the Trustee has not filed another such report. Further, in connection with the filing of this Disclosure Statement and the Plan, ASM Capital served discovery upon the Chapter 11 Trustee for the purpose of providing information creditors with respect to the expected values to be received from the sale of the remaining properties. The Chapter 11 Trustee refused to respond to ASM Capital’s discovery requests, and on March 9, 2015, ASM Capital filed a motion to compel the Chapter 11 Trustee to respond. ASM Capital’s motion to compel is pending, and ASM Capital will supplement this Disclosure Statement in the event that it receives additional information or information that conflicts with the facts set forth herein. On March 12, 2015, the Trustee filed a motion for a protective order seeking to eliminate or limit the Trustee’s obligations to respond to ASM Capital’s discovery requests.

The information on **Exhibit C** was taken from the Debtors’ Schedules and other pleadings addressing the values and mortgages upon each of the Debtor’s interest in real properties, including Dvorkin Related Entities. Further, **Exhibit C** attempts to summarize the status of each of the properties, including whether the Chapter 11 Trustee has sold or otherwise disposed of each of the properties. **Exhibit C** reflects the best efforts of ASM Capital to disclose all facts in light of the Chapter 11 Trustee refusal to respond to ASM Capital’s requests for information.

On February 9, 2015, the Chapter 11 Trustee filed his most recent report filed with the Bankruptcy Court which stated that, as of January 31, 2015, the Chapter 11 Trustee was in possession of \$27,113,722.49 in cash [Docket No. 576].

##### 5. **Litigation by the Chapter 11 Trustee**

Since his appointment, the Chapter 11 Trustee has commenced the five adversary proceedings and resolved certain proofs of claim as set forth below:

(a) Paloian v. Blue Star Gearing LLC; Adv. Pro. 12-01437. On September 17, 2012, the Debtor commenced an adversary against Blue Star Gearing LLC seeking to, among other things, the avoid and recover of more than \$5,000,000 of prepetition transfers. After his appointment, Chapter 11 Trustee, settled the claims in the complaint.

On May 20, 2013, the Trustee filed a motion in the Bankruptcy Court to approve a settlement with the defendant [Docket No. 263]. By the settlement, (i) all funds of the Blue Star Gearing would be transferred to the Debtor, (ii) certain promissory notes, mortgages and related loans would be transferred to DH Mortgage Holder, LLC, an affiliate of the Debtor, (iii) certain specific Craig Golden and Blue Star Properties related to the allegations in the Complaint would be transferred to the Debtor, and (iv) at the Trustee’s option, certain membership interests in Blue Star Gearing would be transferred to the Debtor. In the motion, the Chapter 11 Trustee estimated that the settlement would provide the estate with a recovery of approximately

\$1,360,000 in cash as well as notes and mortgages with an outstanding balance of approximately \$6,500,000.

On June 17, 2013, the Bankruptcy Court approved the Trustee's motion to approve the settlement [Docket No. 288].

(b) Paloian v. Beverly Dvorkin and After-Words, Incorporated; Adv. Pro. 13-00686 and Paloian v. Dvorkin, as Trustee of Dvorkin Childrens Trust et al.; Adv. Nos. 12-00771, 13-00772, and 13-00777. On May 10, 2013, the Debtor commenced an adversary proceeding against Beverly Dvorkin, the daughter of Daniel and Francine Dvorkin, and After-Words, Incorporated, a bookstore owned by Ms. Dvorkin. By the complaint, the Trustee alleged that the Ms. Dvorkin's parents caused the Debtor to pay approximately \$72,000 for Ms. Dvorkin's health insurance during the four years preceding the filing of the complaint. The Trustee further alleged that estate assets were also fraudulently transferred to Ms. Dvorkin through the execution and performance of two below-market leases that allowed the defendants to lease real property for a price more than \$268,675 below market value during the four years preceding the filing of the complaint, and that such transfers were intentional and direct transfers of value from the estate to Ms. Dvorkin.

On May 20, 2013, the Trustee filed three separate adversary proceedings by the filing of complaints seeking to sell property co-owned by Debtor and certain of the Dvorkin family members and family trusts pursuant to 11 U.S.C. § 363(h) at the following properties: (i) 696 E. Roosevelt Rd., Glen Ellyn, IL (Adv. No. 13-777); (ii) 3330-3332 N. Clark St., Chicago, IL (Adv. No. 13-771); and (iii) 3336-3342 N. Clark St., Chicago, IL (Adv. No. 13-772). Further, the Trustee alleged that the Debtor and the Dvorkin Related Entities also held certain other claims against the defendants and other insiders for receipt of fraudulent transfers, fraud, conspiracy to defraud, and unjust enrichment.

On August 30, 2013, the Trustee filed a motion to approve a settlement resolving all of the claims in these adversary proceedings [Docket No. 339], by which, among other things, the Estate would receive: (i) transfer of all funds of Goldfarb Properties, LLC to the Debtor; (ii) reconveyance of ownership of certain land trusts and entities which own real property from Goldfarb Properties, LLC to the Debtor; (iii) cancellation of the lease of real property to After-Words in favor of a new lease; (iv) conveyance of the right to sell the real properties subject to the complaints to the Trustee; and (v) dismissal with prejudice of all proofs of claim filed by the Dvorkins. The Settlement Agreement will, in part, provide the Estate with a recovery of approximately \$1,700,000 in cash, as well as ownership interests in six (6) land trusts and limited liability companies whose net value, the Trustee estimated, could exceed \$3,000,000, permit the Trustee to sell the properties at issue in the Complaints [Docket No. 339].

On September 30, 2013, the Bankruptcy Court approved the Trustee's motion to approve the settlement [Docket No. 354].

(c) Paloian v. Asset Liquidators, LLC; Adv. No. 14-486. On July 21, 2014, the Trustee commenced an adversary by seeking: (i) declaratory judgment that Defendant's purported judgment lien recorded on February 28, 2012, in Cook County, IL is void as unenforceable; (ii) to avoid as a preferential transfer Defendant's July 2012 recordation of a

judgment lien in Cook County, Illinois; and (iii) to avoid as a preferential transfer Defendant's July 2012 recordation of judgment liens in DuPage County, Illinois and Cook County, Illinois.

On September 10, 2014, the Trustee filed an amended complaint against the Defendant and on September 22, 2014 filed an answer to the amended complaint. The adversary proceeding is still pending.

(d) Various Claims Resolutions. Separately from the claims resolutions contained in the settlement of the adversary proceedings addressed above, the Chapter 11 Trustee either formally or informally objected to claims against the estate, including without limitation:

- Proof of Claim 12 filed by FirstMerit Bank, N.A., in which First Merit asserted a claim in the amount of \$15,693,038.21 secured by nine pieces of real property. The Chapter 11 Trustee alleged that FirstMerit's collateral was undersecured with respect to six of the properties. On July 2, 2013, the Chapter 11 Trustee filed a motion to approve a settlement with FirstMerit that, among other things, granted sole authority to the Chapter 11 Trustee to list and sell the property, and permit payment of certain costs at closing from the sale proceeds from each of the properties, permit an interim distribution to FirstMerit on account of its claims on account of a deficiency claim, provide to FirstMerit with copies of monthly operating reports for each entity owning the real property that is subject to the collateral, and exculpating the Chapter 11 Trustee. [Docket 299]. An order approving this settlement was entered by the Bankruptcy Court on July 23, 2013 [Docket No. 313].
- On January 28, 2014, the Chapter 11 Trustee filed a motion to approve a settlement with RiverSource Life Insurance Company [Docket 433]. Plaza (Arlington Heights) Office, L.L.C., an Illinois limited liability company (the owner of 115-125 South Wilke Rd., Arlington Heights, IL and 1920 S. Highland (Lombard), L.L.C., an Illinois limited liability company (the owner of 1920 S. Highland, Lombard, IL) are two Dvorkin related entities who borrowed money from RiverSource Life Insurance Company ("RiverSource"). Each of the Dvorkin related entities was obligated to RiverSource and was obligated to Lender to repay mortgage loans secured by the real property. The Debtor guaranteed of each the borrower's obligations to RiverSource. On November 16, 2012, RiverSource filed a proof of claim in the Debtor's bankruptcy case asserting a claim in the amount of \$11,037,499.12 arising from Debtor's guaranty of RiverSource's obligations. The Trustee evaluated the underlying properties and determined that RiverSource was undersecured with respect to the properties. The Trustee and RiverSource reached a settlement which transferred to RiverSource the right, title, and interest in the two properties in exchange for a release of RiverSource's claims against the Debtor and each of the borrowers. An order approving this settlement was entered by the Bankruptcy Court on January 20, 2014 [Docket No. 442].
- Proof of Claim No. 13 filed by BMO Harris Bank, N.A. in which BMO Harris, as successor-in-interest to Amcore Bank, N.A., asserted a claim in the total amount

of \$3,793,265.24 allegedly secured by mortgage liens on the following parcels of real property: (i) 812 East Chicago Avenue, Elgin, Illinois; (ii) 925 East St. Charles Road, Lombard, Illinois; and (iii) 1111 East Ogden Road, Naperville, Illinois. BMO Harris' Proof of Claim asserted, among other things, secured claims against Debtor arising from that alleged promissory note made by Debtor and a certain Land Trust 966811 in favor of Amcore, dated January 18, 2002, and in the original principal amount of \$2,800,000, with an outstanding amount of \$2,647,830.94 due under a note as of the Petition Date. BMO Harris further asserted that it held an additional security interest against a certain parcel of real property located at 925 East St. Charles Road, Lombard, IL and a certain property located at 1111 East Ogden Road, Naperville, IL by virtue of a collateral assignment of the beneficial interest in Land Trust 94674 (the "CABI"), which BMO Harris asserts cross-collateralizes the balance due under the note in an unlimited amount, and as a result of the note, BMO asserted that it was entitled to all proceeds from the sales of the two parcels of real property. The Trustee contended that the mortgage that allegedly secured the St. Charles and the Ogden Road properties was released post-petition and was therefore unenforceable, while BMO Harris contended the mortgage that secured the St. Charles and the Ogden Road properties was released in error and therefore still secured the proceeds from the sales of the St. Charles property and the Ogden Road property by virtue of said mortgage's cross-collateralization of the balance due under the note up to the face amount of said mortgage plus fees and costs. Further, the Trustee asserted that the note was not asserted in the BMO Harris' proof of claim and was therefore time-barred. On September 2, 2014, the Chapter 11 Trustee filed a motion to approve a settlement with Settlement Amount which sought to authorize the Trustee to remit payment of \$530,000 from the net proceeds of the sales of the St. Charles Property and the Ogden Road Property and applying the Settlement Amount against the balance due and owing under the note in exchange for BMO Harris' would release any claim of a security interest in the St. Charles Property and the Ogden Road Property, including, but not limited to, the St. Charles-Ogden Mortgage, the 2014 Claim, and the CABI, and BMO Harris would execute appropriate documents to cause the proceeds of the sales of the St. Charles Property and the Ogden Road Property to be released from escrow, including but not limited to release of the mortgage and the CABI. Further, BMO Harris would amend its claim to reduce all pre and post-petition recoveries made by BMO Harris under the notes, mortgages and other financial instruments either asserted in the its proof of claim or enforced by BMO, whether such recoveries were from the Debtor or other third parties. An order approving this settlement was entered by the Bankruptcy Court on September 26, 2014 [Docket No. 538].

- Prior to their respective bankruptcy filings, the Debtor and Bruce Teitelbaum jointly invested in at least ten real estate development entities. On November 30, 2012, the Bankruptcy Court entered an Order in Mr. Teitelbaum's chapter 7 bankruptcy case approving a settlement by which Ilene F. Goldstein, the Chapter 7 trustee for Mr. Teitelbaum's bankruptcy estate, acquired all of the assets listed in Mr. Teitelbaum's schedules and statements of financial affairs, including but not limited to all membership interests in BT Holdings, LLC. Prior

to their respective bankruptcy filings, the Debtor and Mr. Teitelbaum asserted a right of setoffs based upon alleged defaults by either BT Holdings, LLC or Mr. Teitelbaum, and pursuant to the setoff rights, the Debtor may have transferred ownership of the interests of Mr. Teitelbaum or BT Holdings, LLC in certain of the joint investments. Ms. Goldstein raised issues with respect to the validity of such transfers of ownership. On October 30, 2014, the Chapter 11 Trustee filed a motion to approve a settlement with Ms. Goldstein, the terms of which, including the following: (i) Prior to the bankruptcy filings, Mr. Teitelbaum and BT Holdings, LLC transferred their interests in the following entities to the Debtor (a) prior to the bankruptcy filings, Teitelbaum and BT transferred their interests in the following Joint Investments: (a) 956 N. Neltor (West Chicago), LLC, an Illinois limited liability company, which owns the real property commonly known as 956 N. Neltor, West Chicago, IL 60185; (b) 11824 S.W. Highway (Palos Heights), LLC, an Illinois limited liability company, which owns the real property commonly known as 11824 Southwest Highway, Palos Heights, IL 60463, (c) Flossmoor Commons (Professional), LLC, an Illinois limited liability company, which owned the real property commonly known as 3235 W. Vollmer Road, Flossmoor, IL 60422, and (d) Flossmoor Commons (Retail), LLC, an Illinois limited liability company, which owned the real property commonly known as 3301-47 W. Vollmer Road, Flossmoor, IL 60422; (ii) the Teitelbaum estate possessed the following undisputed interests in the following Joint Investments: (a) a 20% interest in 246 E. Janata (Lombard), LLC, an Illinois limited liability company (which owns or owned real property commonly known as 246 E. Janata Blvd., Lombard, IL 60148) (b) a 40% beneficial interest in Land Trust 1636-Y (which owns the real property commonly known as 2200 South Main Street, Lombard, IL 60148); (c) a 7.5% beneficial interest in Land Trust 96-6875 (which owned the real property commonly known as 811 West Evergreen, Chicago, IL 60642); and (d) a 15.02 membership interest in 1 Transam Plaza (Oakbrook Terrace), LLC, an Illinois limited liability company (which owns the real property commonly known as One Trans Am Plaza Drive, Suite 240, Oakbrook Terrace, Illinois 60181); and (iii), to resolve any disputes among the Dvorkin estate and the Teitelbaum estate relating to a 10% interest in 444 N. Wabash (Chicago), LLC, an Illinois limited liability company (owner of real property commonly known as 444 N. Wabash, Chicago, IL 60611), 11.25% membership interest in 1203 Maple (Lisle), LLC, an Illinois limited liability company (owner of the real property commonly known as 1203-1231 W. Maple Ave., Lisle, IL 60532), 50% interest in Lynwood DT Investors, LLC, an Illinois limited liability company (owner of 50% of the membership interests in Lynwood Land Company, LLC, an Illinois limited liability company, which owns 50% of the membership interests in Ambry Estates Joint Venture (Lynwood), LLC), and a 30% interest in Matteson, LLC, an Illinois limited liability company (owner of real property commonly known as 21141 Governors Hywy, Matteson, IL 60443), the Chapter 11 Trustee agreed to remit payment of \$300,000. [Docket No. 544]. An order approving this settlement was entered by the Bankruptcy Court on November 21, 2014 [Docket No. 548]. According to the Summary Cash Receipts and Cash Disbursements for the Period of November 1, 2014 through November 30, 2014 filed by the

Chapter 11 Trustee on December 5, 2014, the payment of \$300,000 was tendered to Ms. Goldstein, in her capacity as Chapter 7 Trustee for Mr. Teitelbaum's estate, on November 25, 2014 [Docket No. 552].

- On February 25, 2015, the Trustee filed the following objections to proofs of claim: (i) Claim 7 filed Asset Liquidators, LLC [Docket No. 587]; (ii) Claim 17 filed by First Nations Bank [Docket No. 588]; (iii) Claim 14 filed by Colfin Bulls Funding A, LLC [Docket No. 589]; and (iv) Claim 9 of ASM Capital [Docket No. 593]. The Trustee's objections are pending.

#### **IV. DESCRIPTION OF TREATMENT UNDER THE PLAN**

##### **A. Brief Overview of Treatment of Claims.**

A DISCUSSION OF THE PRINCIPAL PROVISIONS OF THE PLAN AS THEY RELATE TO THE TREATMENT OF CLASSES OF ALLOWED CLAIMS AND INTERESTS IS SET FORTH IN THE FOLLOWING SECTIONS. THE DISCUSSION OF THE PLAN THAT FOLLOWS CONSTITUTES A SUMMARY ONLY, AND SHOULD NOT BE RELIED UPON FOR VOTING PURPOSES. YOU ARE URGED TO READ THE PLAN IN FULL IN EVALUATING WHETHER TO ACCEPT OR REJECT ASM CAPITAL'S PROPOSED PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THIS SUMMARY AND THE PLAN, THE TERMS OF THE PLAN CONTROL. ALL CAPITALIZED TERMS NOT OTHERWISE DEFINED HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

1. **Administrative Expense Claims.** As more fully set forth in the Plan, all Allowed Administrative Claims, other than Professional Fee Claims, shall be paid, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim: (a) in accordance with the terms and conditions under which such Administrative Claims arose, (b) pursuant to any agreement between the Creditor and either the Chapter 11 Trustee, the Plan Administrator or the Debtor, (c) as otherwise provided by this Plan, or (d) in full in Cash on the Effective Date, or as soon thereafter as practicable. In the event that an Administrative Expense Claim is a Disputed Claim, the Plan Administrator shall maintain sufficient funds in the Initial Plan Administrator Reserve to pay all unpaid Administrative Expense Claims until entry of a Final Order pursuant to which such Administrative Expense Claim is either disallowed or becomes an Allowed Claim. The Plan Administrator shall remit payment to the Holder of a Administrative Expense Claim no later than ten (10) days after the entry of Final Order determining that the Administrative Expense Claim is an Allowed Claim.

No Administrative Claim shall be entitled to payment of more than one hundred percent, of such Allowed Administrative Claim. Accordingly, in the event that any Administrative Claim has already been paid in full, it shall not receive any further distribution under the Plan, and if any Administrative Claim has already been paid in part, it shall receive only such distribution under the Plan necessary to pay such Administrative Claim in full.

2. **Class 1 – Priority Claims.** As more fully set forth in the Plan, on the Effective Date, or as soon thereafter as practicable, the Allowed Priority Claims, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Priority Claim, shall

either (a) be paid in full in Cash or (b) receive such other treatment as the Plan Administrator and such Creditor agree to in writing. In the event that a Priority Claim is a Disputed Claim, the Plan Administrator shall maintain sufficient funds in the Initial Plan Administrator Reserve to pay all unpaid Priority Claims until entry of a Final Order pursuant to which such Priority Claim is either disallowed or becomes an Allowed Claim. The Plan Administrator shall remit payment to the Holder of a Priority Claim no later than ten (10) days after the entry of Final Order determining that the Priority Claim is an Allowed Claim.

No Priority Claim shall be entitled to payment of more than one hundred percent of such Allowed Priority Claim. Accordingly, in the event that any Priority Claim has already been paid in full, it shall not receive any further distribution under the Plan, and if any Priority Claim has already been paid in part, it shall receive only such distribution under the Plan necessary to pay such Priority Claim in full.

3. **Class 2 – Secured Claims.** Holders of Secured Claims include Persons holding a security interest in the assets of the Debtor and Persons holding a security interest in the assets of the Dvorkin Related Entities. At any time prior to the hearing to consider confirmation of the Plan, the Holder of a Secured Claim may elect either of the following treatments on account of its claim: (i) retention of their security interest in the collateral, including the right to receive all payments due pursuant to any agreement until such time as the collateral is sold; (ii) electing to be treated as Class 3 Holders of Unsecured Claims in any amount that remains unpaid as of the Effective Date and releasing all security interests in property owned by the Debtor or the Dvorkin Related Entities; or (iii) such other treatment as the Plan Administrator and the Secured Creditor agree to in writing, after consultation and agreement by the Oversight Committee.

In the event that the Holder of Secured Claim elects option (i), and the sale of the collateral securing the Class 2 Secured Claim is insufficient to pay the Class 2 Secured Claim in full, the Holder of the Secured Claim will receive a deficiency claim effective upon the date of the sale of the Collateral, and such deficiency claim shall be treated as Class 3 General Unsecured Claim, with interest accruing from the date of the sale of the collateral.

4. **Class 3 – General Unsecured Claims.** Holders of Allowed Class 3 General Unsecured Claims shall receive their Pro Rata share of distributions to be made from time to time by the Plan Administrator from (a) the proceeds of the liquidation of the Estate assets, after payment of all Allowed Administrative Claims, including all Allowed Professional Fee Claims, all allowed Priority Claims, and All Allowed Secured Claims, taking into account a reasonable reserve for and payment of post-Effective Date fees and expenses of the Plan Administrator and the Plan Administrator's professionals.

All Class 3 General Unsecured Claims shall be entitled to interest from the Petition Date through the Effective Date. Any interest to be paid on account of any Class 3 Allowed General Unsecured Claim shall be determined after the Effective Date as set forth in Section 11.6 of the Plan.

5. **Class 4 – Equity Interests.** Class 4 consists of Interests in the Debtor. Such interests shall be unimpaired by the Plan, and upon the payment of all Allowed Claims in full, including interest as allowed by the Bankruptcy Court, all Holders of Equity Interests shall retain

their Interests in the Debtor. Following the payment of all Allowed Claims in full, the Plan Administrator shall file and serve a motion for entry of an order closing the Bankruptcy Case. Such motion shall be served upon all creditors, equity holders, and parties in interest seeking: (i) to close the Bankruptcy Case, (ii) for authority to immediately resign as Plan Administrator. Immediately after entry of the Order closing the Bankruptcy Case or as soon thereafter as practicable, the Plan Administrator shall resign as Plan Administrator and cede control of the Debtor and its remaining assets to Holders of Equity Interests.

**B. Identification of Impaired and Unimpaired Classes; Acceptance or Rejection**

THE FOLLOWING CLASSES ARE UNIMPAIRED UNDER THE PLAN, AND EACH HOLDER OF AN ALLOWED CLAIM OR INTEREST THEREIN IS CONCLUSIVELY PRESUMED TO HAVE ACCEPTED THE PLAN AND SOLICITATION THEREOF WITH RESPECT TO ACCEPTANCE OF THE PLAN IS NOT REQUIRED. THE FOLLOWING CLASSES ARE UNIMPAIRED UNDER THE PLAN:

**CLASS 1:** Allowed Secured Claims.

**CLASS 2:** Allowed Priority Claims.

**CLASS 4:** Interests in the Debtor.

THE FOLLOWING CLASSES OF CLAIMS ARE IMPAIRED UNDER THE PLAN, AND HOLDERS OF ALLOWED CLAIM IN EACH CLASS ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN:

**CLASS 3:** Allowed General Unsecured Claims.

**C. Effect of Non-Voting**

If no Holder of a Claim eligible to vote in a particular Class timely votes to accept or reject the Plan, ASM Capital may seek to have the Plan deemed **accepted** by the Holders of such Claims in such Class for purposes of section 1129(b) of the Bankruptcy Code.

**V. MEANS OF IMPLEMENTATION OF THE PLAN**

**A. Vesting of Assets.**

Except as otherwise explicitly provided in the Plan, on the Effective Date all rights and property comprising the Estate (including, without limitation, the Estate's Interest in the Dvorkin Related Entities) shall remain in the assets of the Debtor's Estate after the Effective Date to the same extent such Assets were held by the Debtor, free and clear of all Claims, Liens, charges, encumbrances, rights and Interests of creditors and Interest holders (other than as expressly provided in this Plan). As of the Effective Date, the Plan Administrator may use, acquire, and dispose of property and settle and compromise Claims subject only to those restrictions expressly imposed by this Plan, the Plan Administrator Agreement and the Confirmation Order.

**B. Litigation Claims, Avoidance Actions and Other Actions.**



Except as otherwise expressly provided in the Plan, all Claims relating to post-Petition Date transactions under section 549 of the Bankruptcy Code, all transfers recoverable under section 550 of the Bankruptcy Code, all causes of action against any Person on account of indebtedness and any other causes of action in favor of the Debtor or the Estate, and all Litigation Claims and Avoidance Actions, except as otherwise set forth in this Plan or the Confirmation Order, are hereby preserved and retained for enforcement subsequent to the Effective Date exclusively by the Plan Administrator.

**C. Recoveries.**

To the extent that any proceeds are recovered from any Litigation Claim, Avoidance Action, or any other cause of action reserved for prosecution by the Plan Administrator pursuant to this Plan, such proceeds shall become Estate Assets.

**D. Appointment of the Plan Administrator.**

On the Effective Date, Ronald Glass, principal of GlassRatner Advisory & Capital Group, LLC and its wholly owned subsidiary, GlassRatner Management & Realty Advisors LLC (collectively "GlassRatner"), will be appointed as Plan Administrator in accordance with the Plan Administrator Agreement attached hereto as **Exhibit D** to wind up the affairs of the Debtor and make distributions under the Plan. Mr. Glass' resume and relevant information about GlassRatner is attached hereto as **Exhibit E**. As more fully set forth therein, Mr. Glass and GlassRatner have extensive experience acting as receiver and trustee, including full-service property management.

Since founding GlassRatner, Mr. Glass has led hundreds of complex matters in a variety of industries including various sectors within the real estate industry where he is a recognized expert. Over the past 30 years, he has worked in almost every aspect of the real estate industry from lending to hotel management, multi-family, commercial and large planned unit developments. Over the last few years, Mr. Glass has been ranked quarterly as one of the country's top crisis managers and financial advisors by the Bankruptcy Insider and The Deal Magazine

Since 2003, GlassRatner has managed over \$5 billion of real estate assets throughout the country, including office, retail and industrial properties, and GlassRatner specializes in maximizing the value of such real estate properties. Among other clients, GlassRatner has represented BB&T, CHH Capital Partners, CW Capital, EverBank, Fannie Mae, GE Capital Services, Key Bank, Matrix Real Estate Advisors, Midland Loan Services, OCWEN, Regions Bank, Sovereign Bank, Textron Financial Business Partners, Trimont Real Estate Advisors, and Wells Fargo in real estate engagements. GlassRatner has regional directors, CPAs, and property management staff located in regional and satellite offices throughout the country, including an office in Chicago.

**E. The Plan Administrator.**

From and after the Effective Date, the Plan Administrator shall have the rights and powers set forth herein in order to carry out and implement the purposes and intent of this Plan subject to the Plan Administrator Agreement, the Plan and the Confirmation Order. Except as

expressly set forth in the Plan Administrator Agreement, the Plan and the Confirmation Order, the Plan Administrator shall be the exclusive agent of the Debtor's Estate under Title 11 for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3).

**F. Responsibilities of the Plan Administrator**

Subject to the rights of the Oversight Committee as set forth herein and in the Plan Administrator Agreement, the responsibilities of the Plan Administrator under and this Plan shall include those set forth in the Plan Administrator Agreement, including, without limitation, the following: (a) the establishment and maintenance of such operating, reserve and trust account(s) as are necessary and appropriate to wind up the affairs of the Debtor; (b) the appropriate investment of the Cash; (c) the pursuit of objections to, estimations of and settlements of Claims, regardless of whether such Claim is listed in the Debtor's Schedule; (d) the prosecution of any cause of action of the Debtor's Estate not otherwise released under the Plan, including, without limitation, the Litigation Claims and Avoidance Actions; (e) the calculation and distribution of all distributions to be made under this Plan to holders of Allowed Claims; (f) the filing of all required tax returns and operating report and paying of taxes and all other obligations on behalf of the post-Effective Date Estate, if any; (g) the payment of fees pursuant to 28 U.S.C. § 1930 incurred after the Effective Date until the closing of the Chapter 11 Case; and (h) such other responsibilities as may be vested in the Plan Administrator pursuant to this Plan, the Plan Administrator Agreement, the Confirmation Order, other Bankruptcy Court Orders, or as otherwise may be necessary and proper to carry out the provisions of this Plan, wind up the Debtor's affairs and close this Chapter 11 Case.

**G. Powers of the Plan Administrator**

Subject to the Plan Administrator Agreement and the rights of the Oversight, on and after the Effective Date, the Plan Administrator shall have the exclusive right to undertake each of the following:

(a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any officer, director or shareholder of the Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including, without limitation, amendment of the certificates of incorporation and by-laws of the Debtor and the dissolution of the Debtor;

(b) Succeeds to all rights of the Debtor and Chapter 11 Trustee to manage and liquidate the Debtor's assets and the assets of the Dvorkin Related Entities;

(c) Maintain accounts to make distributions to Holders of Allowed Claims and Interest provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves, in the name of the Plan Administrator;

(d) Object to any Claims (whether Disputed Claims or otherwise), compromise or settle any Claims prior to objection without supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of the

Bankruptcy Court, and the guidelines and requirements of the United States Trustee, other than those restrictions expressly imposed by the Plan, the Confirmation Order or the Plan Administrator Agreement;

(e) Make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants and to pay the fees and charges incurred by the Plan Administrator on or after the Effective Date for fees and expenses of the Plan Administrator's professionals, disbursements, expenses or related support services relating to the winding down of the Debtor and implementation of the Plan without application to the Bankruptcy Court;

(f) Seek, a determination of tax liability under section 505 of the Bankruptcy Code, paying taxes, if any, related to the Debtor or the sale of non-Cash Assets of the Debtor, filing, if necessary, any and all required tax and information returns, making tax elections by and on behalf of the post-Effective Date Estate, and paying taxes, if any, due from the post-Effective Date Estate;

(g) Invest Cash as deemed appropriate by the Plan Administrator, as further set forth in the Plan Administrator Agreement;

(h) Collect any accounts receivable or other claims of the Debtor or the Estate not otherwise disposed of pursuant to the Plan or the Confirmation Order;

(i) Implement and/or enforce all provisions of this Plan, including entering into any agreement or executing any document required by or consistent with the Plan, the Confirmation Order and the Plan Administrator Agreement and perform all of the Debtor's obligations thereunder;

(j) Abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of his or her choice, any Assets if the Plan Administrator concludes that they are of no benefit to the Estate;

(k) Prosecute and/or settle Claims, without approval of the Bankruptcy Court, including, without limitation, Litigation Claims, Avoidance Actions, and other causes of action and exercise, participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitative or other non-judicial proceeding and pursue to settlement or judgment such actions;

(l) Purchase or create and carry all insurance policies and pay all insurance premiums and costs the Plan Administrator deems necessary or advisable;

(m) Maintain any and all insurance policies of the Debtor providing coverage with respect to Claims;

(n) Distribute all Assets of the Estate and proceeds therefrom pursuant to the Plan, the Confirmation Order and the Plan Administrator Agreement; and

(o) Administer the winding up of the affairs of the Debtor, including filing a motion to close the Debtor's bankruptcy case.

Further, subject to the Plan Administrator Agreement and the rights of the Oversight Committee, the Plan Administrator has the authority and power to take all other actions and exercise such other powers that the Plan Administrator deems reasonably necessary or desirable with respect to administering the Plan so long as such actions and powers are not inconsistent the Plan, Confirmation Order, the Plan Administrator Agreement, other orders of the Bankruptcy Court.

**H. Notice Requirement.**

Except as more fully set forth in the Plan, the Plan Administrator shall be required to provide seven (7) days' notice to the United States Trustee, the Oversight Committee, any person directly affected by any the following actions, and any person requesting notice pursuant to Section 14.4 of the Plan: (i) prosecution, compromise, or settlement of any objections to Claims in which the asserted amount of the Claim does not exceed \$100,000; (ii) settlement of any Litigation Claim or Avoidance Action, or other litigation where the amount demanded exceeds \$100,000; (iii) the sale of any Asset of the Estate, including any asset of any Dvorkin Related Entities, where the sale price or book value exceeds \$100,000; and (iv) the abandonment of any Asset of the Estate where the book value exceeds \$25,000. In the event that no objection is filed within seven days of the filing and service of the notice, the Plan Administrator shall be allowed to undertake such actions without need for further order of the Court. Where the value for any of the actions above exceed the amounts set forth herein, the Plan Administrator shall file a motion or objection seeking entry of an order approving such action, and serve such motion and notice of motion upon the United States Trustee, the Oversight Committee, any person directly affected by any the following actions, and any person requesting notice pursuant to Section 14.4 of the Plan.

**I. Succeeding to Rights of Privilege/Work Product.**

The Plan Administrator shall stand in the same position as the Debtor and Chapter 11 Trustee with respect to any claim to an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Plan Administrator shall succeed to all of the Debtor's and Chapter 11 Trustee's rights to preserve, assert or waive any such privilege.

**J. Unclaimed Property.**

The Plan Administrator shall establish the Unclaimed Property Reserve for all Unclaimed Property. Such Unclaimed Property shall be held in a reserve, for a period of ninety (90) days, for the holders of Allowed Claims entitled thereto under the terms of this Plan and Confirmation Order. Once the distribution to Creditors under this Plan becomes Unclaimed Property, the Plan Administrator shall, subject to the limitations set forth herein, (a) hold such Unclaimed Property in the Unclaimed Property Reserve solely for the benefit of such Holder or Holders which have failed to claim such Unclaimed Property; and (b) release the Unclaimed Property from the Unclaimed Property Reserve and deliver to the Holder entitled thereto upon presentation of proper proof by such Holder of its entitlement thereto. After the expiration of ninety (90) days, the Holders of Allowed Claims theretofore entitled to such Unclaimed Property shall cease to be

entitled thereto and shall be entitled to no further distribution under this Plan, and such Claims to the Unclaimed Property shall be deemed disallowed and expunged in their entirety and the funds shall be redistributed to the other Holders of Allowed Claims in accordance with the terms of this Plan, the Confirmation Order and the Plan Administrator Agreement. Such funds shall not be subject to the escheat laws of any state, and in the event that any Holder of an Allowed Claims does not timely assert its entitlement to such distribution, such funds shall revert to the Estate.

**K. Compensation of the Plan Administrator.**

The Plan Administrator shall be compensated as set forth in the Plan Administrator Agreement. Any professionals retained by the Plan Administrator shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred, subject to approval by the Plan Administrator. The payment of fees and expenses of the Plan Administrator and its professionals shall be made in the ordinary course of business and shall not be subject to Bankruptcy Court approval, however such .

**L. Sale Free and Clear of Liens.**

The sale or other disposition of any Estate assets or assets of the Dvorkin Related Entities by the Plan Administrator in accordance with this Plan and the Plan Administrator Agreement shall be free and clear of any and all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code, after notice and an opportunity for hearing, subject to notice pursuant to Section 14.4 of the Plan.

**M. Transfer Taxes.**

Any transfer of all or any portion of the Estate assets or assets of the Dvorkin Related Entities pursuant to this Plan, including, without limitation, the transfer of Assets of the Estate or of the Dvorkin Related Parties shall constitute a “transfer under a plan” within the purview of section 1146(c) of the Bankruptcy Code and shall not be subject to any stamp tax or similar tax.

**N. Litigation Claims and Avoidance Actions.**

The Plan Administrator shall have the sole right to pursue any Litigation Claims and Avoidance Actions, except those previously waived or released by the Debtor pursuant to any Final Order of the Bankruptcy Court, by informal demand and/or by the commencement of litigation. The Plan Administrator shall succeed as plaintiff or defendant in any adversary proceeding commenced by or against the Debtor that is pending on the Confirmation Date.

**O. Records.**

On or prior to the Effective Date, the Chapter 11 Trustee shall transfer to the Plan Administrator all originals and/or copies of available documents and business records of the Debtor, to the extent they exist and are in the Chapter 11 Trustee’s actual or constructive possession. The Plan Administrator shall maintain such records until the earlier of: (a) the entry of a Final Decree; or (b) five years from the filing of the Debtor’s final tax returns. Thereafter, said records may be destroyed or otherwise disposed of by the Plan Administrator in accordance with applicable law. If the Plan Administrator seeks to destroy or otherwise dispose of any

records of the Debtor's estate prior to the time periods set forth herein, such Plan Administrator shall be entitled to do so upon Order of the Bankruptcy Court obtained on motion on 20 days' notice upon any person requesting notice pursuant to Section 14.4 of the Plan.

**P. Resignation of Officers and Directors.**

On the Effective Date, the members of the board of directors and officers of the Debtor shall be deemed to have resigned.

**Q. Oversight Committee.**

As more fully set forth in the Plan Administrator Agreement, on the Effective Date, the Oversight Committee shall be appointed.

(a) Constitution of Oversight Committee. On the Effective Date, the Oversight Committee shall be constituted of three persons, two (2) of which shall be designated by ASM Capital, who shall initially be Jared Muroff and Douglas Wolfe, and the third shall be Francine Dvorkin or her designee. Upon the receipt of payment of all Class 3 General Unsecured Claims, the designees of ASM Capital shall be deemed to have resigned, and Francine Dvorkin or her designee shall be the sole member of the Oversight Committee. ASM Capital or Francine Dvorkin may change their designee at any time without notice.

(b) Service Upon the Oversight Committee. Consistent with the Plan Administrator Agreement, the Plan Administrator shall provide copies of all pleadings to all members of the Oversight Committee no less than three (3) days prior to filing such pleading with the Bankruptcy Court, unless either (i) the Oversight Committee waives such requirement or (ii) the timing for action reasonably necessitates the filing of an pleading without providing the Oversight Committee with three days' notice. All notice may be provided by the Plan Administrator to the members of the Oversight Committee by electronic mail.

(c) Duties of the Oversight Committee. Consistent with the Plan Administrator Agreement, the Oversight Committee shall review and evaluate the actions of the Plan Administrator, and in the event that the majority of the members of the Oversight Committee disagree with any action (or inaction) by the Plan Administrator, they have the right to veto any decision by the Plan Administrator. Any veto by members of the Oversight Committee shall not be subject to review by any court, including the Bankruptcy Court. Every member of the Oversight Committee shall have standing to object to any action taken by the Plan Administrator or any matter in the Chapter 11 Case before the Bankruptcy Court.

(d) Responsibilities of the Oversight Committee. Consistent with the Plan Administrator Agreement, the responsibilities of the members of the Oversight Committee shall be limited to exercising their business judgment in overseeing the Plan Administrator. The Oversight Committee shall have no fiduciary duties to the Estate or Plan Administrator, and shall no liability in connection with its duties herein, except for willful misconduct or gross negligence, and, in all respects, the Oversight Committee shall be entitled to rely upon the information provided by the Plan Administrator.

(e) Status Reports and Meetings. At least once every six months, the Plan Administrator shall provide Oversight Committee with a status report detailing the following: (i) all Cash held by the Estate, (ii) all Cash held in escrow for Administrative Claims Reserve, Priority Claims Reserve, and General Unsecured Claims Reserve; (iii) all sales of Estate assets and assets of the Dvorkin Related Entities conducted since the Effective Date and since the last status report; (iv) all remaining amounts to be paid on account of Allowed Claims; (v) all costs for administering the estate; and (vi) any other matters materially affecting distribution on account of Allowed General Unsecured Claims and Interests.

At any time after the Appointment of the Plan Administrator, any member of the Oversight Committee can call a meeting of the Oversight Committee to address any questions or issues with respect to the administration of the Estate. Such requests for a meeting shall be in writing and sent to the Plan Administrator and all other members of the Oversight Committee. The meeting shall be held telephonically and shall be no less than seven (7) days after the written request for a meeting, unless the Plan Administrator and all Oversight Committee agree to convene sooner. No minutes need be maintained at the meeting.

(f) Payment to the Plan Administrator and His Professionals. Consistent with the Plan Administrator Agreement, the Plan Administrator and his or her professionals shall be entitled to payment on a monthly basis on account of their reasonable, necessary fees and expenses for services rendered and expenses incurred after the Effective Date. The Plan Administrator and his or her professionals do not need to file an application with the Bankruptcy Court; copies of all invoices by the Trustee and his or her professionals shall be remitted to the members of the Oversight Committee. In the event that any member of the Oversight Committee contests whether the fees and expenses of the Trustee or his Professionals are not reasonable or necessary, the Bankruptcy Court shall retain jurisdiction to determine whether fees or expenses should be allowed.

(g) Removal of the Plan Administrator. Consistent with the Plan Administrator Agreement, at any time, a majority of the members of Oversight Committee may elect to terminate the Plan Administrator for any reason. Such termination shall not require a meeting between the Plan Administrator and the Oversight Committee. Such termination shall be in writing and served upon the Plan Administrator and the Plan Administrator's counsel, if any. Unless stated otherwise in writing, such termination shall be immediate and shall be without recourse. The Plan Administrator and his or her professionals shall be entitled for all fees earned and expenses incurred prior to his or her termination.

(h) Successor Plan Administrator. Consistent with the Plan Administrator Agreement, in the event that the Plan Administrator is terminated for any reason other than the conclusion of the Chapter 11 Case after the distribution of all property in the Estate accordance with the terms of the Plan and Confirmation Order, the Majority of the Oversight Committee shall select a successor Plan Administrator. The Successor Plan Administrator shall succeed to all rights and obligations of the Plan Administrator under the Plan Administrator Agreement.

**R. Termination of Plan Administrator.**

From his or her appointment on the Effective Date, the Plan Administrator shall continue to serve until death, resignation, termination by the Oversight Committee, or the distribution of all property in accordance with the terms of the Plan and Confirmation Order and the entry of a final decree by the Bankruptcy Court closing this Chapter 11 Case. In the event that of death, resignation, or termination by the Oversight Committee, the Oversight Committee shall appoint a successor Plan Administrator in accordance with the terms of the Plan Administrator Agreement and as set forth herein.

**S. Bar Date for Administrative Expenses and Professional Fee Claims and Substantial Contribution Claims**

As more fully set forth in the Plan, any person asserting an Administrative Expense shall file with the Bankruptcy Court no later than thirty (30) days after the Effective Date, a request for allowance of an administrative expense, and serve a copy of the request for allowance of an administrative expense upon counsel for the Plan Administrator and the Office of the United States Trustee. **Any administrative claim that is not timely filed shall be denied and barred as untimely.**

As more fully set forth in the Plan, all applications for the request for the final allowance of Professional Fee Claims shall be filed with the Bankruptcy Court and served upon former counsel to the Debtor, the Chapter 11 Trustee, counsel to the Chapter 11 Trustee, the U.S. Trustee, and counsel to the Plan Administrator, and all parties having requesting notice pursuant to Section 14.4 of the Plan on or before the date which is no later than the first business day thirty (30) days after the Effective Date (the “Professional Fee Claim Bar Date”). Further, any party asserting a claim for substantial contribution pursuant to Section 503(b)(3) shall file a motion seeking allowance of a claim for substantial contribution with the Bankruptcy Court on or before the Professional Fee Claim Bar Date and serve the motion upon the Professional Fee Service List. A hearing (the “Final Fee Hearing”) to consider the final allowance of all Professional Fee Claims and all Substantial Contribution Claims will be held as soon as practicable after the Professional Fee Claim Bar Date. The Plan Administrator shall file a notice of the Final Fee Hearing with the Court and serve a copy of the notice upon the Professional Fee Service List, which shall also include all parties that filed an application for a Professional Fee Claim or Substantial Contribution Claims.

**T. Retention of Jurisdiction**

Notwithstanding Confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, without limitation, for the following purposes:

(a) To determine the allowability, classification or priority of Claims upon objection by the Debtor, the Plan Administrator or any other party in interest entitled to file an objection, and the validity, extent, priority and nonavoidability of consensual and nonconsensual Liens and other encumbrances;

(b) To issue injunctions or take such other actions or make such other Orders as may be necessary or appropriate to restrain interference with the Plan or its execution or



implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order or any other Order of the Bankruptcy Court, to issue such Orders as may be necessary for the implementation, execution, performance and consummation of the Plan and all matters referred to herein;

(c) To protect the property of the Debtor and the Plan Administrator, including the Litigation Claims and the Avoidance Actions, from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens, security interests or encumbrances on any property of the Debtor or the Plan Administrator;

(d) To determine any and all applications for allowance of Professional Fee Claims;

(e) To determine any Priority Employee Benefit Claims, Priority Tax Claims, Priority Wage Claims, Administrative Claims or any other request for payment of Claims or expenses entitled to priority under section 507(a) of the Bankruptcy Code;

(f) To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan, the Confirmation Order, the Plan Administrator Agreement and the making of distributions hereunder;

(g) To determine any and all motions related to the rejection, assumption or assignment of Executory Contracts;

(h) To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of the Chapter II Case, including any remands;

(i) To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out its intent and purposes;

(j) To issue such Orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person, to the full extent authorized by the Bankruptcy Code;

(k) To enable the Debtor or the Plan Administrator to prosecute any and all proceedings to set aside Liens or encumbrances to prosecute and/or settle any and all Litigation Claims, Avoidance Actions and preference claims and to recover any transfers, assets, properties or damages to which the Debtor may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws except as may be waived pursuant to the Plan;

(l) To determine any state, local and federal tax liability pursuant to sections 346,505 and 1146 of the Bankruptcy Code;

(m) To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(n) To resolve any disputes concerning whether a Person had sufficient notice of the Chapter 11 Case, the Bar Date Order, the Administrative Bar Date Order, the Administrative Bar Date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing or for any other purpose;

(o) To resolve any dispute or matter arising under or in connection with any Order of the Bankruptcy Court entered in the Chapter 11 Case;

(p) To authorize sales of Assets as necessary or desirable and resolve objections, if any, to such sales;

(q) To hear and resolve the Litigation Claims and Avoidance Actions;

(r) To resolve any disputes concerning any release of a non-debtor hereunder or the injunction against acts, employment of process or actions against such non-debtor arising hereunder;

(s) To approve any distributions, or objections thereto, under the Plan;

(t) To approve any Claims settlement entered into or offset exercised by the Debtor or the Plan Administrator;

(u) To oversee any dispute concerning improper or excessive draws under letters of credit issued for the account of the Debtor; and

(v) To enter a final decree closing the Chapter 11 Case; and

(w) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code.

## **VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **A. Executory Contracts and Unexpired Leases.**

Except as otherwise provided in the Plan or the Confirmation Order, upon the Effective Date, all Executory Contracts which have not otherwise been assumed or rejected by the Debtor or Chapter 11 Trustee prior to the date on which the Plan is confirmed are hereby rejected under this Plan as of the date on which the Plan is confirmed, except: (a) any Executory Contract that is the subject of a separate motion to assume or assume and assign filed pursuant to section 365 of the Bankruptcy Code by the Debtor before the entry of the Confirmation Order, provided, however, that upon denial or withdrawal of any such motion, such Executory Contract shall automatically be rejected as if rejected hereunder as of the date on which the Plan is confirmed; (b) all Executory Contracts assumed under this Plan, if any, or by order of the Bankruptcy Court entered before the date on which the Plan is confirmed and not subsequently rejected pursuant to an order of the Bankruptcy Court; and (c) any agreement, obligation, security interest, transaction or similar undertaking that the Plan Administrator believes is not an Executory Contract that is later determined by the Bankruptcy Court to be an Executory Contract that is subject to assumption or rejection under section 365 of the Bankruptcy Code, which agreements

shall be subject to assumption or rejection within 30 days of any such determination. Any order entered after the date on which the Plan is confirmed by the Bankruptcy Court, after notice and hearing, authorizing the rejection of an Executory Contract shall cause such rejection to be a pre-petition breach under sections 365(g) and 502(g) of the Bankruptcy Code, as if such relief were granted and such order were entered prior to the Confirmation Date.

**B. Rejection Damage Claims.**

Persons who are parties to Executory Contracts that are rejected pursuant to this Plan and who claim damages by reason of such rejection shall become Class 3 – General Unsecured Creditors and shall be treated in the same manner as other Class 3 – General Unsecured Creditors. ALL SUCH REJECTION DAMAGE CLAIMS SHALL BE FILED ON OR BEFORE THE EARLIER OF THIRTY (30) DAYS AFTER (A) THE EFFECTIVE DATE OR (B) THE ENTRY OF A FINAL ORDER REJECTING SUCH EXECUTORY CONTRACT, OR SHALL BE FOREVER BARRED.

**C. Objections to Rejection Damage Claims.**

Objections to Rejection Damage Claims shall be filed by the Plan Administrator with the Bankruptcy Court prior to the later of (i) the Claims Objection Deadline or (ii) ninety (90) days after the filing of a claim for rejection damages. All objections to Rejection Damage Claims shall be served upon the holder of the Claim to which such objection is made.

**D. Indemnification Obligations.**

Except as otherwise provided in the Plan, the Confirmation Order or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtor has pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or other document or applicable law, to the extent executory, shall be rejected as of the Effective Date.

**E. Insurance Policies.**

Notwithstanding anything to the contrary in the Plan, any insurance policy in effect as of the date of the Confirmation Hearing that provides insurance coverage to the Debtor or its officers, directors and employees, including the Chapter 11 Trustee shall remain in effect through its expiration in accordance with the terms and conditions of such policy. To the extent that any such policies are deemed to be an Executory Contract, then the Plan shall be deemed a motion to assume such policy with a cure amount of \$0.00 and the Confirmation of the Plan shall be deemed Bankruptcy Court approval of such assumption and a finding of a cure amount of \$0.00 with respect thereto.

**F. Bond or Surety.**

As soon after the Effective Date as practicable, and subject to the Plan Administrator Agreement, the Plan Administrator shall obtain a bond or other insurance, the cost of which shall be paid from the Estate Assets, for the Plan Administrator, the members of the Oversight

Committee, or any employees, agents, representatives, or independent contractors employed by the Plan Administrator, including, without limitation, any tail coverage or other similar coverage.

## **VII. FUNDING AND DISBURSEMENTS**

### **A. Distribution on Account of Allowed Claims.**

Except as otherwise provided in the Plan, the Confirmation Order, the Plan Administrator Agreement or as otherwise ordered by the Bankruptcy Court, distributions on account of Allowed Claims shall be made on the Initial Distribution Date, or as soon as practicable thereafter, or if Allowed after the Effective Date, on the next Distribution Date. Any payment or distribution required to be made under the Plan shall be made on the next succeeding Business Day. The Plan Administrator shall not be obligated to make a distribution that would impair the ability of the Plan Administrator to pay the expenses incurred by the Plan Administrator.

### **B. No Disbursing Agent.**

The Plan Administrator, pursuant to the Plan Administrator Agreement, shall make all distributions under the Plan on account of Allowed Claims against the Debtor. On the Effective Date, or as soon thereafter as practicable, the Plan Administrator, pursuant to the Plan Administrator Agreement, shall make distributions on account of Allowed Administrative Claims, and Allowed Priority Claims directly to the holders of such Claims. All other distributions or payments under the Plan shall be made by the Plan Administrator pursuant to the terms of the Plan, the Confirmation Order, and the Plan Administrator Agreement.

### **C. Sources of Cash for Plan Distributions.**

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Plan Administrator to make payments pursuant to the Plan to holders of Allowed Claims against the Debtor shall be obtained from (a) Cash balances of the Estate or (b) Cash proceeds from the liquidation of the remaining non-Cash Estate Assets, including, without limitation, any Litigation Claims, Avoidance Actions, or tax refunds.

### **D. Fractional Dollars: De Minimis Distributions.**

Notwithstanding any other provision of the Plan, the Plan Administrator shall not be required to make distributions or payments of fractions of dollars, and whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made shall reflect a rounding down of such fraction to the nearest whole dollar. In addition, the Plan Administrator shall not be required to make any distribution in an amount less than \$10.00. To the extent that such a distribution shall be called for as part of any interim distribution, the Plan Administrator shall establish a reserve for all distributions in the amount of less than \$10.00 and shall, when and if the holder of a Claim is entitled to a distribution of \$10.00 or more, make such a distribution at such time. The Plan Administrator shall not be required to make any Final Distribution of less than \$10.00, and all monies otherwise payable in such amount shall be paid to the other holders of Allowed Claims, in accordance with the terms of the Plan, the Confirmation Order and Plan Administrator Agreement.

**E. Delivery of Distributions to Holders of Allowed Claims.**

Distributions to Holders of Allowed Claims shall be made at the address set forth in the Schedules unless such addresses are superseded by proofs of claim or transfers of claim filed pursuant to Bankruptcy Rule 3001 or at the last known address of such holders if the Plan Administrator has been notified in writing of a change of address. If the distribution to any holder of an Allowed Claim is returned to the Plan Administrator as undeliverable or otherwise unclaimed, such Unclaimed Property shall be held in a reserve as set forth in the Plan.

**F. Reserves – Payment of Disputed Claims.**

On the Effective Date, the Plan Administrator will establish and segregate the Initial Plan Administrator Reserve in an amount of no less than \$500,000 which shall be held in reserve by the Plan Administrator. The amount of the Initial Plan Administrator Reserve shall be in an amount sufficient to pay: (i) all Administrative Expenses in full, including estimated fees and expenses for counsel for the Chapter 11 Trustee for which payment has not been tendered; (ii) payment of all Secured Claims in full, except where the Holder of a Secured Claim has elected to have its claim treated as Class 3 General Unsecured Claim; (iii) the Initial Class 3 Pro Rata Distribution for all Class 3 General Unsecured Claims which have not yet been disallowed or Allowed; and (iv) a reserve of \$350,000 for payment of post-Effective Date expenses which shall be maintained until the Bankruptcy Case is closed.

If an Administrative Claim or Professional Fee Claim for which allowance is pending becomes an Allowed Claim, such Claim shall be paid by the Plan Administrator from the Reserved Funds within ten (10) days after, and to the extent that, any such pending Administrative Claim becomes an Allowed Claim.

**G. Cash Payments.**

Cash payments made pursuant to the Plan shall be in U.S. funds. Unless otherwise agreed to by the payor and payee, distributions under the Plan shall be made by check or such other commercially reasonable manner as the Plan Administrator shall determine in its sole discretion in accordance with applicable law.

**H. Turnover of Assets to Equity Holders**

No later than three (3) days after remitting payment of all Allowed Claims in full, including interest as allowed by the Bankruptcy Court, the Plan Administrator shall file and serve a motion for entry of an order closing the Bankruptcy Case. Such motion shall be served upon all creditors, equity holders, and parties in interest. No later than five (5) business days after the filing of the motion for entry of an order closing Bankruptcy Case, the Plan Administrator shall attempt to confer with the Holders of Equity Interests to effectuate the transfer of all remaining assets of the Debtor to the Holders of Equity Interests, including control of all real property and bank accounts. Immediately after entry of the Order closing the Bankruptcy Case, the Plan Administrator shall transfer all control over the Debtor and its assets, including the Dvorkin Related Entities, to Holders of Equity Interests.

In the event that there are insufficient assets to pay all Class 3 General Unsecured Claims in full, including interest, the Plan Administrator shall file a motion for entry of an order closing Bankruptcy Case upon liquidation of all estate assets and the distribution of the proceeds therefrom to Claimants in accordance with the terms of the Plan.

## **VIII. EFFECT OF PLAN CONFIRMATION**

### **A. Binding Effect.**

Except as expressly stated in the Plan, the terms and conditions of the Plan shall be binding upon and inure to the benefit of the Debtor, all present and former holders of Claims and Interests, and their respective successors and assigns. Unless otherwise provided in the Plan or the Confirmation Order, all injunctions and stays provided for in the Chapter 11 Case pursuant to sections 105 and 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date, will remain in full force and effect until the Effective Date. From and after the Effective Date, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action or other proceeding, or otherwise asserting any claim or interest, seeking to hold (i) the Plan Administrator or the Debtor's Estate, or (ii) the property of the Debtor or its Estate, liable for any Claim, obligation, right, interest, debt or liability that has been released pursuant to the Plan.

### **B. Injunction Related to Rights of Action and Claims, Administrative Expenses and Interests.**

Except as provided in the Plan or in the Confirmation Order, as of the Confirmation Date, all Entities that have held, currently hold or may hold a Claim, Administrative Expense, Interest or other debt or liability against or in the Debtor are permanently enjoined from taking any of the following actions against property of the Debtor or its Estate or the Plan Administrator on account of all or such portion of any such Claims, Administrative Expenses, Interests, debts or liabilities: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, (c) creating, perfecting or enforcing any lien or encumbrance; and (d) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan.

### **C. Exculpation and Limitation of Liability.**

Except as otherwise set forth in the Plan or in the Confirmation Order, none of the Exculpated Persons shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 case, the pursuit of confirmation of the Plan, the Consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan and the Plan Administrator Agreement, except for willful misconduct or gross negligence, and, in all respects, the Exculpated Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

### **D. Injunction Related to Exculpation.**

Except as otherwise set forth in the Plan or in the Confirmation Order, All Persons that have held, hold or may hold any claims against the any Exculpated Persons exculpated pursuant to Section 13.3 are enjoined from taking any of the following actions against the Debtor's Estate: (i) commencing or continuing any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor; and (c) commencing or continuing any action that does not comply with or is inconsistent with the provisions of the Plan through the entry of a final decree in this Chapter 11 Case; provided, however, that nothing contained herein shall preclude such persons from exercising their rights pursuant to and consistent with the terms of the Plan; provided, further, however, except as expressly provided for in this Plan, the Plan does not release or otherwise affect any pre- or post- Effective Date Claim that any person may have against any non-Debtor party.

**E. Survival of Indemnification Obligations.**

Except as otherwise set forth in the Plan or in the Confirmation Order, Except as set forth in this Plan or in the Confirmation Order, the obligations of the Debtor or the Debtor's Estate to indemnify any past and present directors, officers, agents, employees and representatives, pursuant to certificates or articles of incorporation, by-laws, contracts and/or applicable statutes, in respect of all actions, suits and proceedings against any of such officers, directors, agents, employees, and representatives, shall not be impaired by, and shall survive, confirmation or consummation of this Plan. To the extent not already obtained, Plan Administrator shall purchase and maintain a tail policy for the director and officer insurance providing coverage for Debtor's directors and officers, including the Chapter 11 Trustee for a period of six (6) years after the Effective Date insuring such parties in respect of any claims, demands, suits, causes of action, or proceedings against such directors and officers based upon any act or omission related to such directors' and officers' service with, for, or on behalf of the Debtor in at least the amount and scope as currently maintained by the Debtor.

**F. Satisfaction of Claims and Termination of Interests.**

Except as otherwise set forth in the Plan or in the Confirmation Order, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, and release of, all Claims and Interests of any nature whatsoever against the Debtor or its Estate, assets, properties or interest in property, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims and Interests.

**IX. RISK FACTORS**

There is a risk under the Plan that Allowed Administrative Expenses and Priority Claims will materially exceed the Debtor's estimates. The process of reconciling all such Claims has not been completed and outstanding disputes remain that will need to be litigated or otherwise resolved. Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated. Further, there is a risk that the Plan may not be

confirmed by the Bankruptcy Court, either because the requisite votes in favor of the Plan are not received or the Bankruptcy Court decides not to confirm the Plan on some other basis.

Further, ASM Capital makes no guarantees that as to the value of the Debtor's assets. Notwithstanding the risks, however, the Debtor believes that the same risks described herein are present in and greater to Creditors and Interest Holders in a chapter 7 case. Although ASM Capital believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Finally, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not necessitate the resolicitation of votes.

#### **X. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.**

THE FOLLOWING DISCUSSION SUMMARIZES CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE IMPLEMENTATION OF THE PLAN.

THE FOLLOWING SUMMARY IS BASED ON THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "INTERNAL REVENUE CODE"), TREASURY REGULATIONS PROMULGATED AND PROPOSED THEREUNDER, JUDICIAL DECISIONS, AND PUBLISHED ADMINISTRATIVE RULES AND PRONOUNCEMENTS OF THE INTERNAL REVENUE SERVICE ("IRS") IN EFFECT ON THE DATE HEREOF. CHANGES IN, OR NEW INTERPRETATIONS OF, SUCH AUTHORITIES MAY HAVE RETROACTIVE EFFECT AND COULD SIGNIFICANTLY AFFECT THE FEDERAL INCOME TAX CONSEQUENCES DESCRIBED BELOW.

THE DEBTOR HAS NOT REQUESTED A RULING FROM THE IRS OR AN OPINION OF COUNSEL WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THUS, NO ASSURANCE CAN BE GIVEN AS TO THE INTERPRETATION THAT THE IRS WILL ADOPT AND WHETHER THE IRS WILL CHALLENGE ONE OR MORE OF THE TAX CONSEQUENCES OF THE PLAN DESCRIBED ABOVE. IN ADDITION, THIS SUMMARY DOES NOT ADDRESS FOREIGN, STATE, OR LOCAL TAX CONSEQUENCES OF THE PLAN, AND IT DOES NOT PURPORT TO ADDRESS THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO SPECIAL CLASSES OF TAXPAYERS (INCLUDING, BUT NOT LIMITED TO, FOREIGN TAXPAYERS, BROKER-DEALERS, BANKS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, TAX-EXEMPT ORGANIZATIONS, AND INVESTORS IN PASS-THROUGH ENTITIES). MOREOVER, THIS SUMMARY DOES NOT PURPORT TO COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY APPLY TO HOLDERS OF CLAIMS OR INTERESTS.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF A HOLDER OF A CLAIM OR EQUITY INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT ITS



OWN TAX ADVISOR FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

**A. Regular Federal Income Tax**

Federal income taxes, like many other taxes, are priority claims. Accordingly, such claims must be satisfied before most other claims may be paid. With the possible exception of the alternative minimum tax, the Debtor does not believe that any federal income taxes will be incurred with respect to taxable years ending after the Petition Date because the Debtor has not had positive taxable income for this period.

**B. Federal Income Tax Consequences to Holders of Claims and Interests**

1. Holders of Claims and Interests should generally recognize gain (or loss) to the extent the amount realized under the Plan in respect of their Claims or Interests exceeds (or is exceeded) by their respective tax bases in their Claims or Interests, as applicable. The amount realized for this purpose will generally equal the sum of the amount of cash and the fair market value of any property received under the Plan with respect to their respective Claims or Interests, as applicable. The holders of Allowed Class 3 — General Unsecured Claims are expected to receive a full distribution, plus interest, with respect to their Allowed Claims it is expected that Holders of Class 4 — Equity Interests will retain their Interests in the Debtor under the Plan after all Claims are paid in full. Whether a Holder of a Claim or an Interest will recognize loss, a deduction for worthless securities or any other tax treatment will depend upon the facts and circumstances specific to the nature of the holder and its Claim or Interest. Accordingly all holders Holder of Claims and Interests should consult their own tax advisors.

2. The tax treatment of holders of Claims or Interests and the character and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provide for by the Plan will depend upon, among other things, (a) the manner in which a holder acquired a Claim or Interest; (b) the length of time a Claim or Interest has been held; (c) whether the Claim was acquired at a discount; (d) whether the holder has taken a bad debt deduction with respect to a Claim in the current or any prior year; (e) whether the holder has previously included accrued but unpaid interest with respect to a Claim; (f) the method of tax accounting of a holder; and (g) whether a Claim is an installment obligation for federal income tax purposes. Therefore, holders of Claims or Interests should consult their own tax advisor for information that may be relevant to their particular situation and circumstances and the particular tax consequences to such holders as a result thereof.

3. The extent to which the consideration received under the Plan by a holder of Claims will be attributable to accrued interest on the debts constituting the Claims is unclear. Treasury Regulations generally treat a payment under a debt instrument as a payment of accrued and unpaid interest, determined under the Treasury Regulations, and then as a payment of principal. If, however, an allocation between payment of interest and repayment of principal is reflected in the plan of reorganization, the Report of the House Ways and Means Committee on the Bankruptcy Tax Act of 1980 in discussing bankruptcy reorganizations under section 368 of the Internal Revenue Code indicates that both the debtor and creditor must utilize such allocation for federal tax purposes. However, the IRS could take the view that consideration received

pursuant to a plan of reorganization must be allocated proportionately between the portion of a claim representing principal and the portion of the claim representing interest.

**C. Information Reporting and Backup Withholding**

Certain payments, including the payments of Claims pursuant to the Plan, are generally subject to information reporting by the payor (the Debtor) to the IRS. Moreover, because such reportable payments are subject to backup withholding rules, a holder of a Claim may be subject to withholding of certain portion of the amounts to be distributed under to the Plan, unless the holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax. Any amounts withheld from a payment under the backup withholding rules will be allowed as a credit against such holder's federal income tax liability and may entitle such holder to a refund, provided that the required information is timely furnished to the IRS.

**D. Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING UPON A HOLDER'S INDIVIDUAL INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**XI. ALTERNATIVES TO THE PLAN**

On January 23, 2015, ASM Capital filed a Chapter 11 plan of liquidation (the "Original Plan") and disclosure statement [Docket Nos. 564 and 563, respectively] which sought to pay creditors in full, plus interest at the greater of 9% and the contract rate. Prior to filing the Original Plan, ASM Capital attempted to confer with counsel for the Chapter 11 Trustee and the counsel for the Equity Holders to propose a consensual plan, but those efforts were not successful.

On January 30, 2015, the Chapter 11 Trustee and Equity Holders filed a joint plan of reorganization [Docket No. 566] which proposed to pay creditors 100% plus interest at the federal judgment rate (28 U.S.C. § 1961), which ASM Capital anticipates would constitute an annual interest rate of less than .2%. Substantially contemporaneously with the filing of the joint plan, the Chapter 11 Trustee and Equity Holders filed a motion to excuse filing a disclosure statement. The Chapter 11 Trustee and Equity Holders sought to disenfranchise unsecured creditors from voting to accept or reject the joint plan. On February 19, 2015, the Chapter 11 Trustee filed objections to the Original Plan and the disclosure statement filed in support of the Original Plan [Docket Nos. 581 and 582, respectively].

On February 26, 2015, at a hearing before the Bankruptcy Court, the Chapter 11 Trustee withdrew his motion to proceed without a disclosure statement and advised the Court that the Chapter 11 Trustee and Equity Holders do not intend to pursue confirmation of the joint plan at this time.

ASM Capital believes that its Plan is most effective and efficient means by which Holders of Claims and Equity Interests will receive a distribution on account of their Claims and Interests.

ASM Capital believes that if the Plan is not confirmed, or is not confirmable, the alternatives to the Plan include: (a) waiting indefinitely for the Chapter 11 Trustee to pursue confirmation of a plan; (b) conversion of the Chapter 11 Case to chapter 7; (c) dismissal of the Debtor's case; or (d) an alternative plan of reorganization or liquidation which, in ASM Capital's view, would offer less favorable treatment to creditors than that proposed under the Plan.

**A. The Chapter 11 Trustee's and Equity Holders' Joint Plan**

On February 26, 2015, the Chapter 11 Trustee advised the Court that he was withdrawing his motion to proceed without a disclosure statement and that the Chapter 11 Trustee and Equity Holders do not intend to pursue confirmation of the joint plan immediately. Even if the Chapter 11 Trustee and Equity Holders were to proceed with the Plan, it would come after delay and not resolve the issues regarding the interest rate to be paid on account of Allowed Claims. Additionally, the delay in confirmation of any plan ultimately pursued by the Chapter 11 Trustee would cause the Estate to incur greater obligations to holders of Allowed Claims as the interest would continue to accrue prior to payment.

Additionally, failure to confirm ASM Capital's Plan would continue to cause the estate to accrue significant administrative expense as the Chapter 11 Trustee administers the estate. As more fully set forth in the Plan Administrator Agreement attached as **Exhibit D**, the Plan Administrator will be Ronald Glass, principal of GlassRatner Advisory & Capital Group, LLC. As of January 1, 2015 (and subject to the limitation of raising his rate by no more than 3% per annum), Mr. Glass' hourly rate is \$550.00. GlassRatner has an office in Chicago staffed by professionals, and as set forth in the Plan Administrator Agreement, and Mr. Glass will limit travel to Chicago by appropriately using employees and agents who are based in Chicago.

By contrast, as of October 31, 2014, the hourly rate of the Chapter 11 Trustee was \$650.00.

**B. Liquidation Under Chapter 7**

If a plan cannot be confirmed, the Debtor's Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code, pursuant to which a Chapter 7 trustee would be appointed to liquidate the Debtor's assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. For the reasons previously discussed above, ASM Capital believes that Confirmation of the Plan will provide Creditors with a recovery that is expected to be substantially more than could be achieved in a liquidation under Chapter 7 of the Bankruptcy Code. Attached hereto as **Exhibit E** is a liquidation analysis based upon the Debtor's values of assets set forth in the Schedules and the expected costs.

As more fully set forth in the liquidation analysis, ASM Capital believes that the Plan is a better option for Holders of Claims and Equity in two material ways. First, ASM Capital has no reason to believe that the conversion of the case to Chapter 7 would eliminate the issue of the appropriate rate of interest to be paid on account of Allowed Claims. Rather, the Plan provides for an immediate partial payment to be received by Holders of Allowed Claims on the Effective Date. In addition to Claim Holders receiving the benefit of having received a partial payment on account of their claims on the Effective Date, the partial payment will benefit Equity Holders because the partial payment will minimize interest to accrue on account of such Claims.

Second, by appointing the Plan Administrator, rather than converting the case to Chapter 7, the estate will avoid fees to be paid to the chapter 7 trustee pursuant to 11 U.S.C. § 326(a). Section 326 of the Bankruptcy Code, titled "Limitation on Compensation of Trustee," provides, in relevant part, as follows:

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

Accordingly, if a Chapter 7 or (Chapter 11) trustee were to make a distribution on account of \$25,000,000 in claims, the trustee would receive compensation of \$773,250.00. That would be in addition to any legal fees or other post-confirmation administrative expenses incurred in connection with the liquidation of the estate.

As set forth in the liquidation analysis, the Plan Administrator will not take a percentage fee, but will be paid on an hourly basis (and as set forth in Section XI.A) at a rate that is significantly lower than the hourly rate of the Chapter 11 Trustee).

**C. Dismissal**

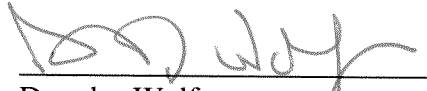
Dismissal of the Chapter 11 Case would result in each individual creditor having to protect its own rights through legal action, likely resulting in, among other things, numerous suits and other proceedings being commenced and actions being taken by secured creditors to protect or foreclose upon their collateral, requiring the Debtor to expend substantial time and resources to respond to and address such matters. ASM Capital believes that dismissal of the Chapter 11 Case would result in disparate, delayed and potentially smaller recoveries by creditors.

**[Remainder of Page Left Intentionally Blank]**

## **XII. CONCLUSION**

It is important that you exercise your right to vote on the Plan. It is ASM Capital's belief and recommendation that the Plan fairly and equitably provides for the treatment of all Claims against and Interests in the Debtor through the prompt marshalling and disposition of estate assets for the benefit of Claim and Interest Holders, while maximizing the value of the estate by minimizing the costs of administration.

**ASM CAPITAL RECOMMENDS THAT YOU VOTE IN FAVOR OF THE PLAN**

A handwritten signature in dark ink, appearing to read 'Douglas Wolfe', is written over a horizontal line.

Douglas Wolfe  
General Counsel of ASM Capital IV, LP  
and ASM Capital V, LP, Plan Proponents

List of Exhibits

EXHIBIT A – Plan

EXHIBIT B – Order Approving Disclosure Statement

EXHIBIT C – Chart of Properties

EXHIBIT D – Plan Administrator Agreement

EXHIBIT E – Ron Glass’ Resume and GlassRatner Materials

EXHIBIT F – Liquidation Analysis

EXHIBIT G – Claims Register

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

In re:	:	Chapter 11
	:	
Dvorkin Holdings, LLC,	:	Case No. 12-31336-JPC
	:	
Debtor.	:	Judge Jacqueline P. Cox
	:	

**AMENDED CHAPTER 11 PLAN PROPOSED BY  
ASM CAPITAL IV, LP AND ASM CAPITAL V, LP**

Dated: March 27, 2015

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## **INTRODUCTION**

ASM Capital IV, LP and ASM Capital V, LP, each creditors of Dvorkin Holdings, LLC (the “Debtor”) hereby proposes the following plan (as amended, modified or supplemented, the “Plan”) to its Creditors and Interest holders. Reference is made to the Disclosure Statement Regarding ASM Capital’s Plan (as may be amended, modified or supplemented, the “Disclosure Statement”) for a discussion of the Debtor’s history and business and for a summary and analysis of the Plan.

All creditors entitled to vote on the Plan should review the Disclosure Statement before voting to accept or reject the Plan. In addition, there are other agreements and documents which have been filed which are referenced in the Plan and/or the Disclosure Statement and which are available for review. No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith and approved by the Bankruptcy Court, have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

## **ARTICLE I - DEFINITIONS**

Except as otherwise specifically set forth in this Article I, definitions and rules of construction contained in sections 101 and 102 of the Bankruptcy Code shall be applicable. As used in this Plan, the following terms shall have the respective meanings specified below, unless the context requires otherwise.

**1.1 “Administrative Bar Date”** means the date that is thirty (30) days after the Effective Date for all Administrative Claims against the Debtor that accrued between August 7, 2012 and the Effective Date.

**1.2 “Administrative Claim”** means any Claim, timely filed, for payment of an administrative expense of a kind specified in sections 503(b) or 1114 (e )(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code, including, but not limited to, (a) the actual, necessary, costs expenses, incurred after the Petition Date, of preserving the Estate and operating the business of the Debtor, including wages, salaries or commissions for services rendered after the Petition Date; (b) Professional Fee Claims; and (c) any fees or charges assessed against the Debtor’s estate under Chapter 123 of Title 28 of the United States Code.

**1.3 “Administrative Claims Reserve”** means the reserve established and maintained pursuant to the Plan and the Confirmation Order to pay Administrative Claims which are not Allowed Claims on the Effective Date.

**1.4 “Allowed”** means, with respect to any Claim (including any Administrative Claim), (a) any Claim against the Debtor, proof of which was filed prior to the Bar Date (i) as to which no objection to the allowance thereof, or action to equitably subordinate or otherwise limit recovery with respect thereto, has been interposed prior to the Claims Objection Deadline, (ii) as to which no action has been commenced to avoid such Claim within the applicable period of limitation fixed by the Plan, or (iii) as to which an objection has been interposed, to the extent such Claim has been Allowed (whether in whole or in part) by a Final Order, (b) if no proof of Claim was so filed, any Claim against the Debtor that has been listed by the Debtor in its

Schedule, as such Schedule was or may be amended from time to time in accordance with Rule 1009 of the Bankruptcy Rules prior to the closing of this Chapter 11 Case, as liquidated in amount and not disputed or contingent (or as to which the applicable proof of Claim has been withdrawn or disallowed) and not objected to by Debtor, the Plan Administrator, or other party-in-interest; (c) any Claim allowed under or pursuant to the terms of the Plan, or (d) any Claim to the extent that it has been allowed by a Final Order.

**1.5 “Allowed Amount”** means, with respect to a particular Claim: (a) if the holder of such Claim has not filed a proof of Claim by the Bar Date, the Scheduled Claim Amount; (b) if the holder of such Claim has filed a proof of Claim as prescribed by the Bar Date: (i) the amount stated in such proof of Claim if no objection to or motion pursuant to section 502(c)(1) of the Bankruptcy Code for estimation of such proof of Claim has been interposed within the Claims Objection Deadline; or (ii) such amount as shall be fixed, or estimated, as the case may be, by a Final Order of the Bankruptcy Court if an objection to or motion pursuant to section 502(c)(1) of the Bankruptcy Code for estimation of such proof of Claim has been interposed within the Claims Objection Deadline; or (c) with respect to an Administrative Claim, the amount of such Claim or such amount as shall be fixed by a Final Order of the Bankruptcy Court.

**1.6 “Allowed ... Claim”** means any Claim for which an Allowed Amount has been determined or which is otherwise Allowed pursuant to this Plan. Unless otherwise expressly provided in the Plan, the Confirmation Order or a Final Order, the term “Allowed ... Claim” shall not for the purposes of computation of distributions under the Plan, include (a) any non-compensatory penalties, fines, punitive damages, exemplary damages, multiple damages, treble damages or any other claims or obligations that do not compensate for actual losses incurred or (b) any other amounts not allowable under the Bankruptcy Code or applicable law.

**1.7 “Assets”** means any and all of the right, title and interest of the Debtor in and to property of whatever type or nature, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, claims, causes of action and any other general intangibles of the Debtor, as the case may be, including, without limitation, property of the Debtor’s estate, as defined in section 541 of the Bankruptcy Code.

**1.8 “ASM Capital”** means ASM Capital IV, LP and ASM Capital V, LP, collectively.

**1.9 “Avoidance Action”** means any cause of action to avoid or recover a transfer of property of the Debtor’s Estate or an interest of the Debtor in property, including, without limitation, actions arising under sections 506, 510, 541, 542, 544, 545, 549, 550 and 553 of the Bankruptcy Code and any other applicable federal or common law, including fraudulent transfers, whether or not litigation has been commenced with respect to such causes of action as of the Effective Date, except those Avoidance Actions previously waived by the Debtor or Chapter 11 Trustee pursuant to any Final Order of the Bankruptcy Court. Avoidance Actions shall not include any action to recover any transfers made during the 90 days immediately prior

to bankruptcy pursuant to Section 547 of the Bankruptcy Code or to avoid any transfers as fraudulent conveyances pursuant to Section 548.

**1.10 “Bankruptcy Code”** means sections 101 et seq. of Title 11 of the United States Code, as now in effect or hereafter amended.

**1.11 “Bankruptcy Court”** means the United States Bankruptcy Court for the Northern District of Illinois, or such other Court that may have jurisdiction over the Chapter 11 Case, including any United States District Court that may withdraw the statutory reference of the Debtor’s Chapter 11 Case or any related proceedings pursuant to section 157( d) of Title 28 of the United States Code.

**1.12 “Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure prescribed pursuant to section 2075 of Title 28 of the United States Code, as amended from time to time, including the local rules of the Bankruptcy Court, all as now in effect or hereafter amended.

**1.13 “Bar Date”** means February 27, 2013, or such other date fixed by the Bar Date Order.

**1.14 “Bar Date Order”** means the Order dated December 20, 2012, establishing: February 27, 2013 as the deadline for filing proofs of claim [D.I 171].

**1.15 “Business Day”** means any day except Saturday, Sunday or other day on which commercial banks in Chicago, IL are authorized by law to close.

**1.16 “Cash”** means cash and cash equivalents, including, but not limited, to bank deposits, wire funds, checks and legal tender of the United States.

**1.17 “Chapter 11 Case”** means the Chapter 11 case of the Debtor, bearing the case number 12-31336-JBS pending in the Bankruptcy Court for the Northern District of Illinois, Eastern Division.

**1.18 “Chapter 11 Trustee”** means Gus A. Paloian, not individually but solely in his capacity as a Chapter 11 trustee for the Debtor’s estate.

**1.19 “Claim”** means a claim, as set forth in section 101(5) of the Bankruptcy Code, against the Debtor or Debtor’s Estate, whether or not asserted, known or unknown, contingent or non-contingent, whether arising before, on or after the Petition Date.

**1.20 “Claim Objection Deadline”** means the last day for filing objections to Claims or Interests, which day shall be (i) 120 days from the Effective Date, or (ii) such other date as the Bankruptcy Court may order.

**1.21 “Class”** means a group of Claims or Interests that are substantially similar to each other within the meaning of the Bankruptcy Code, as classified pursuant to Article 3 of this Plan.

**1.22 “Collateral”** means any property or interest in property in the Debtor’s Estate or a Dvorkin Related Entity subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state laws.

**1.23 “Confirmation”** means entry of the Confirmation Order by the Bankruptcy Court.

**1.24 “Confirmation Date”** means the date that the Confirmation Order becomes a Final Order.

**1.25 “Confirmation Hearing”** means the hearing to consider the confirmation of the Plan under section 1128 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

**1.26 “Confirmation Order”** means the Order confirming this Plan in accordance with Chapter 11 of the Bankruptcy Code.

**1.27 “Creditor”** has the same meaning as set forth in section 101(10) of the Bankruptcy Code.

**1.28 “Debtor”** means Dvorkin Holdings, LLC which filed a petition under Chapter 11 of the Bankruptcy Code on the Petition Date.

**1.29 “Disclosure Statement”** means the Disclosure Statement Regarding Chapter 11 Plan Proposed by ASM Capital

**1.30 “Disputed Claim”** means any Claim which is not an Allowed Claim, including, but not limited to, a Claim that is the subject of a pending application, motion, complaint or any other legal proceeding seeking to disallow, reduce, subordinate or estimate such Claim.

**1.31 “Disputed Claims Reserve”** means the reserve established and maintained pursuant to the terms of this Plan and the Confirmation Order which, on the date of the Initial Distribution, shall contain the amount of Cash or other property estimated for distribution on the Initial Distribution Date to holders of (a) Disputed Claims or contingent Claims, if such Claims had been undisputed or noncontingent Claims on the Initial Distribution Date, pending (i) the allowance of such Claims, (ii) the estimation of such Claims for purposes of distribution or (iii) the realization of the contingencies, and (b) unliquidated Claims, if such Claims had been liquidated on the Initial Distribution Date, such amount to be estimated by the Bankruptcy Court for distribution purposes or agreed upon, in absence of such estimation, by the Plan Administrator as sufficient to satisfy such unliquidated Claim upon such Claim’s (x) allowance, (y) estimation for purposes of distribution, or (z) liquidation, pending the occurrence of such estimation, allowance, or liquidation.

**1.32 “Distribution Date”** means any date on which distributions are to be made pursuant to the terms of the Plan and the Confirmation Order.



**1.33 “Dvorkin Guaranty”** shall mean any guaranty by the Debtor to any holder of a secured claim on account of any obligation of a in any Dvorkin Related Entity.

**1.34 “Dvorkin Related Entities”** means the following entities, all of which the Debtor owned an interest on the Petition Date: 1055 W 175th (Homewood) LLC; 1101 Tower Road (Schaumburg) LLC; Plaza (Arlington Heights) Office LLC; 1230 S. Highland (Lombard) LLC; Farnsworth (Aurora) Landco LLC; 2200 South Main (Lombard) LLC; Trust 44203; Dan Holdings; 4949-5001 W. Oakton Retail (Skokie) LLC; 6200 N. Rockwell (Chicago) LLC; 700 Grand Ave, Chicago; Trust 94043; Caveman Vegas LLC; DTE Venture LLC; Kinman Enterprises LLC; Lynwood Land Co LLC; Sierra Office Solutions LLC; 11824 SW Highway (Palos Heights) LLC; 1941 Selmartin (Aurora) LLC; 975 Nerge (Roselle) LLC; Matteson LLC; 1920 S. Highland (Lombard) LLC; Flossmoor Commons (Retail) LLC; Flossmoor-Plaza DH Holdings LLC; Trust 43995; Trust 44202l Trust 97-7440; 1275 Davis (Elgin) LLC; 444 N. Wabash (Chicago) LLC; Trust 95-6296; 125-165 Dundee Road (Buffalo Grove) LLC; Trust 96-6875; 956 N. Neltnor (West Chicago) LLC; 2150 N. Clybourn (Chicago) LLC; 1000 N. Halstead LLC; Trust 95-6457; Trust 98-6811; 25210 W. Reed (Channahon) LLC; Trust 95-6249; 606 W. Roosevelt (Chicago) LLC; Trust 37330; Trust 42454; 920 Roosevelt (Chicago) LLC; Chicago Commercial LLC; 640-650 Lake St. LLC; Sterling 18th Street LLC; 560 West Washington (Chicago) LLC; Glenwood Residential LLC; Channahon Plaza LLC; 1611 Stewart (Chicago) LLC; and 328 S. Jefferson Chicago LLC.

**1.35 “Dvorkin Related Entities Property”** means any property owned by any of the Dvorkin Related Entities until the Debtor’s interest in the Dvorkin Related Entity owning that property is sold.

**1.36 “Effective Date”** means the first Business Day after the Confirmation Date on which all conditions to effectiveness set forth in Article 14 of this Plan have been satisfied.

**1.37 “Entity”** means entity as defined in section 101(15) of the Bankruptcy Code.

**1.38 “Equity”** means any membership interest in the Debtor.

**1.39 “Escrow Fund”** means money held in escrow by the Plan Administrator for distribution to holders of Allowed Claims in Class 3 - General Unsecured Claims.

**1.40 “Estate”** means the estate of the Debtor created by section 541 of the Bankruptcy Code upon commencement of the Chapter 11 Case.

**1.41 “Exculpated Person”** means the Plan Administrator, ASM Capital, and any Professional retained by the Plan Administrator or ASM Capital in this Chapter 11 Case.

**1.42 “Executory Contract”** means any executory contract or unexpired lease subject to section 365 of the Bankruptcy Code, between the Debtor and any other Person.

**1.43 “Final Distribution”** means the distribution under this Plan which sells all or substantially all of the remaining assets held by the Plan Administrator, including cash, of a value of less than \$5,000 or (ii) the Bankruptcy Court determines, upon motion of the Plan Administrator, that such distribution is the Final Distribution.

**1.44 “Final Distribution Date”** means the date of the Final Distribution by the Plan Administrator.

**1.45 “Final Order”** means an Order or a judgment which is not the subject of a pending appeal or petition for review, reconsideration or rehearing, and which has not been reversed, stayed, modified or amended and with respect to which the time to appeal from or to seek review, reconsideration or rehearing of such Order or judgment shall have expired.

**1.46 “General Unsecured Claim”** means any unsecured claim that is not a Priority Claim.

**1.47 “Impaired”** means, when used with reference to a Claim, a Claim that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.48 “Initial Class 3 Pro Rata Distribution”** means the distribution to be made on or immediately after the Effective Date as practicable on account of Allowed Class 3 General Unsecured Claims. The amount of the Initial Class 3 Pro Rata Distribution shall be determined based upon the amount of cash held by the Plan Administrator

**1.49 “Initial Distribution Date”** means the date upon which the Plan Administrator makes the first distribution to creditors pursuant to the terms of the Plan and the Confirmation Order.

**1.50 “Initial Plan Administrator Reserve”** means the cash in an amount of no less than \$500,000 which shall be segregated and held in reserve by the Plan Administrator. The amount of the Initial Plan Administrator Reserve shall be in an amount sufficient to pay: (i) all Administrative Expenses in full, including estimated fees and expenses for counsel for the Chapter 11 Trustee for which payment has not been tendered; (ii) payment of all Secured Claims in full, except where the Holder of a Secured Claim has elected to have its claim treated as Class 3 General Unsecured Claim; (iii) the Initial Class 3 Pro Rata Distribution for all Class 3 General Unsecured Claims which have not yet been disallowed or Allowed; and (iv) a reserve of \$350,000 for payment of post-Effective Date expenses which shall be maintained until the Bankruptcy Case is closed.

**1.51 “Interest”** means (a) the legal, equitable, contractual or other rights of any Person with respect to stock of Dvorkin Holdings LLC, or any other equity membership interest in the Debtor and (b) the legal, equitable, contractual or other right of any Person to acquire or receive any of the foregoing.

**1.52 “Lien”** means any charge against or interest in property owned by the Debtor or any of the Dvorkin Related Entities to secure payment or performance of a claim, debt, or obligation.

**1.53 “Litigation Claims”** means the Claims, rights of action, suits or proceedings, whether in law or equity, whether known or unknown, that the Debtor or its Estate may hold against any Person, or that is deemed property of the Estate under the Plan or applicable bankruptcy law, which are retained by the Plan Administrator, including, but not limited to, the claims described in Exhibit A to this Plan, but excluding Claims released in the

**1.54 “Plan Administrator”** means Ronald Glass, principal of GlassRatner Advisory & Capital Group, LLC and its wholly owned subsidiary, GlassRatner Management & Realty Advisors LLC, and any successor thereto to wind up the Debtor’s affairs from and after the Effective Date.

**1.55 “Plan Administrator Agreement”** means the agreement in substantially the form attached to the Plan as Exhibit A, as may be modified from time to time.

**1.56 “Plan Administrator Assets”** means all Assets of the Estate as of the Effective Date, including Litigation Claims and Avoidance Actions, which assets and any proceeds thereof shall be administered by the Plan Administrator pursuant to this Plan for the purpose of distribution in accordance with this Plan and the Confirmation Order.

**1.57 “Oversight Committee”** means the committee of three Persons appointed on the Effective Date to oversee the Plan Administrator, as may be modified pursuant to the terms of the Plan.

**1.58 “Person”** means an individual, limited liability company, corporation, partnership, association, trust or unincorporated organization, joint venture or other entity or a government or any agency or political subdivision thereof.

**1.59 “Petition Date”** means August 7, 2012.

**1.60 “Plan”** means this Amended Chapter 11 Plan Proposed and all exhibits hereto, either in its present form or as it may be amended, modified or supplemented from time to time.

**1.61 “Priority Claim”** means any Claim that is entitled to priority under section 507(a) of the Bankruptcy Code, but excluding Administrative Claims.

**1.62 “Priority Claim Reserve”** means the reserve established and maintained pursuant to the Plan and the Confirmation Order to pay Priority Claims which are not Allowed Claims on the Effective Date.

**1.63 “Priority Employee Benefit Claim”** means a Claim that is entitled to priority under section 507(a)(4) of the Bankruptcy Code.

**1.64 “Priority Tax Claim”** means a Claim other than a claim secured by any Lien on property of the Debtor’s Estate and which otherwise is entitled to priority under section 507(a)(8) of the Bankruptcy Code.

**1.65 “Priority Wage Claim”** means a Claim that is entitled to priority under section 507(a)(3) of the Bankruptcy Code.

**1.66 “Professional”** means any professional employed in the Chapter 11 Case pursuant to sections 327 or 328 or 1104 of the Bankruptcy Code or otherwise and any professional seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 328, 330 or 503(b)(4) of the Bankruptcy Code.

**1.67 “Professional Fee Claim”** means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred after the Petition Date and prior to or on the Effective Date.

**1.68 “Professional Fee Claim Bar Date”** means that day which is thirty (30) days after the Effective Date.

**1.69 “Pro Rata”** means, with respect to an Allowed Claim, the same proportion that the Allowed Amount of such Allowed Claim in any Class bears to: (a) the aggregate Allowed Amounts of all Allowed Claims of that particular Class; plus (b) the aggregate face amount of all Disputed Claims of that particular Class, as reduced from time to time as and to the extent that the Allowed Amounts, if any, of such Disputed Claims are determined.

**1.70 “Rejection Damage Claims”** means any proof of Claim filed in accordance with the Bar Date Order, this Plan or Confirmation Order, resulting from the rejection of an Executory Contract.

**1.71 “Reserved Funds”** means such amounts reserved pursuant to this Plan and the Confirmation Order for the purpose of providing a Distribution to Disputed Claims that become Allowed after the Effective Date, including the Administrative Claim Reserve, the Priority Claim Reserve, and the Disputed Claims Reserve, in such amounts as may be determined by the Plan Administrator.

**1.72 “Schedules”** means the Debtor’s schedules of assets, liabilities, executory contracts and unexpired leases [Docket Nos. 20, 26], as may be amended, modified or supplemented from time to time, filed by the Debtor pursuant to section 521(1) of the Bankruptcy Code and Bankruptcy Rule 3003(b).

**1.73 “Scheduled Claim Amount”** means the amount of the Claim of a Creditor, as of the Petition Date, listed on the Debtor’s Schedule, and not characterized therein as disputed, contingent or unliquidated.

**1.74 “Secured Claim”** means any Claim against the Debtor to the extent such Claim constitutes a Secured Claim under sections 506(a) or 1111(b) of the Bankruptcy Code.

**1.75 “Secured Creditor”** means any Creditor that holds a Secured Claim against the Debtor or any of the Dvorkin Related Entities.

**1.76 “Solicitation Procedures Order”** means the order dated \_\_\_\_\_, 2015 setting forth the terms and procedures of the solicitation of votes on the Plan and other related procedures.

**1.77 “Taxes”** means all taxes, charges, fees, levies or other assessments by any federal, state, local or foreign taxing authority, including, without limitation, income, excise, property, sales, transfer, use and occupancy, business privilege, net profits, occupation and withholding taxes, including any interest, penalties or additions attributable to or imposed on or with respect to such taxes, charges, fees, levies or other assessments.

**1.78 “Unclaimed Property”** means any distribution made on account of Claims or Interests that are unclaimed 90 days following the date of such distribution under this Plan.

**1.79 “Unclaimed Property Reserve”** means any Unclaimed Property of thirty (30) days by the Plan Administrator on behalf of holders of reserved for a period Unclaimed Property.

**1.80 “Unimpaired Claim”** means a Claim that is not Impaired under this Plan.

**1.81 “Unsecured Claim”** means a Claim against the Debtor, other than a Secured Claim, that is not (a) entitled to priority under section 507( a) of the Bankruptcy Code, including an Administrative Claim, or (b) subordinated pursuant to section 510 of the Bankruptcy Code.

**1.82 “Unsecured Creditor”** means any Creditor that holds an Unsecured Claim.

## **ARTICLE II - SUMMARY OF THIS PLAN**

**2.1 Plan Summary.** This Plan provides for the liquidation and distribution of all of the Debtor’s Assets to Holders of Allowed Claims and, if applicable, Interests. Specifically, all Allowed Priority Claims, and all Allowed Administrative Claims, other than Professional Fee Claims, will be paid in full on the Effective Date or as soon thereafter as practicable, and all Professional Fee Claims will be paid in full upon entry of a final order allowing such Allowed Professional Fee Claims.

All Holders of Class 2 Allowed Secured Claims against the Debtor or holding Secured Claims against the Dvorkin Related Entities will have the option of either (i) retaining their property interests in the collateral, including the right to receive all payments due pursuant to any agreement until such time as the collateral is sold or (ii) electing to be treated as Class 3 Holders of Unsecured Claims based upon guaranties of the Debtor, and releasing all security interests in property owned by the Debtor and the Dvorkin Related Entities.

In the event that the Holder of a Secured Claim elects option (i) above and the sale of the collateral securing the Class 2 Secured Claim is insufficient to pay the Class 2 Secured Claim in full, the Holder of the Secured Claim will receive a deficiency claim effective upon the date of the sale of the Collateral, and such deficiency claim shall be treated as Class 3 General Unsecured Claim, plus interest accruing from the sale of the Collateral.

After payment of all Allowed Priority Claims and all Allowed Administrative Claims have been paid in full, and after establishing the Initial Plan Administrator Reserve, all Holders of Class 3 Allowed General Unsecured Claims will receive the Initial Class 3 Pro Rata Distribution on the Effective Date or as soon thereafter as practicable. In no event will the Initial Pro Rata Distribution include interest on account of any Class 3 Allowed General Unsecured Claim, and any interest to be paid on account of any Class 3 Allowed General Unsecured Claim shall be determined after the Effective Date as set forth in Section 11.6 herein.

Class 4 Interests shall not be impaired. Immediately after payment of all Class 3 Allowed General Unsecured Claims are paid in full, including interest as set forth in in Section 11.6 herein, and after payment all expenses of the Plan Administrator and his professionals, the Plan Administrator shall file a motion with the Bankruptcy Court seeking: (i) to close the Bankruptcy

Case, (ii) for authority to immediately resign as Plan Administrator. Immediately upon the entry of a final order closing the Bankruptcy Case the Holders of Class 4 Interests shall on account of their retained Interests, shall assume control of the Debtor and its remaining assets.

### **ARTICLE III - CLASSIFICATION OF CLAIMS AND INTERESTS**

**3.1 Class 1: Priority Claims.** This Class consists of Claims entitled to priority under section 507(a) of the Bankruptcy Code, including, without limitation, Priority Wage Claims, Priority Employee Benefit Claims and Priority Tax Claims but excluding Administrative Claims. Class 1 is Unimpaired by this Plan and is deemed to have accepted this Plan pursuant to section 1126(1) of the Bankruptcy Code. In the event that any Priority Claim has already been paid in full, it shall not receive any further distribution under the Plan

**3.2 Class 2: Secured Claims.** This Class consists of all Secured Claims that are held by Persons with duly filed and perfected Liens, including Liens which are perfected by possession, against (a) any part of the Debtor's Assets or (b) any Asset of a Dvorkin Related Entity as of the Petition Date while also having a claim against the Debtor on account of the Debtor's guarantee of the Dvorkin Related Entity's obligations to such Creditor, subject to the requirements of Section 14.7 of this Plan regarding setoff, but excludes any claim that would otherwise qualify for inclusion in this Class and which is rendered an unsecured claim by virtue of section 506(a) of the Bankruptcy Code. Class 2 is Unimpaired by this Plan and is deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code.

**3.3 Class 3: General Unsecured Claims.** This Class consists of Allowed General Unsecured Claims, including all Allowed Rejection Damages Claims, and all Persons who otherwise would be entitled to Class 2 Secured Claims, but who have elected for their Allowed Claim to be treated as a Class 3 General Unsecured Claim. Class 3 is Impaired by this Plan and is entitled to vote on the Plan.

**3.4 Class 4: Equity Interests.** This Class consists of the Equity Interests in the Debtor. Class 4 is Unimpaired by this Plan and is deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code, and is not entitled to vote on this Plan.

### **ARTICLE IV - TREATMENT OF UNIMPAIRED CLAIMS AND CLASSES**

**4.1 Administrative Claims.** Allowed Administrative Claims, other than Professional Fee Claims, shall be paid, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim: (a) in accordance with the terms and conditions under which such Administrative Claims arose, (b) pursuant to any agreement between the Creditor and either the Chapter 11 Trustee, the Plan Administrator or the Debtor, (c) as otherwise provided by this Plan, or (d) in full in Cash on the Effective Date or as soon thereafter as practicable.

In the event that an Administrative Claim is a Disputed Claim, the Plan Administrator shall establish an Administrative Claims Reserve which shall be held in escrow until entry of a Final Order pursuant to which such Claim is either disallowed or becomes an Allowed Claim. The Plan Administrator shall remit payment to the Holder of an Administrative Claim no later

than ten (10) days after the entry of Final Order determining that the Holder's Administrative Claim is an Allowed Administrative Claim.

Allowed Professional Fee Claims shall be paid in full in Cash, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Professional Fee Claim, within ten (10) days after such Professional Fee Claims are approved by Final Order of the Bankruptcy Court. Allowed Professional Fee Claims shall be paid first from any retainer held by the applicable Professional, and second from the Assets of the Estate. In the event that any Professional is in possession of any portion of a retainer that exceeds that amount of the Allowed Professional Fee Claims, any remaining balance shall become Assets of the Estate, and the professional shall remit such excess amount to the Plan Administrator within ten (10) Business Days after entry of a Final Order allowing or disallowing the Professional Fee Claim.

No Administrative Claim shall be entitled to payment of more than one hundred percent, of such Allowed Administrative Claim. Accordingly, in the event that any Administrative Claim has already been paid in full, it shall not receive any further distribution under the Plan, and if any Administrative Claim has already been paid in part, it shall receive only such distribution under the Plan necessary to pay such Administrative Claim in full.

**4.2 Class 1 Priority Claims.** On the Effective Date or as soon thereafter as practicable, the Allowed Priority Claims, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Priority Claim, shall either (a) be paid in full in Cash or (b) receive such other treatment as the Plan Administrator and such Creditor agree to in writing. In the event that a Priority Claim is a Disputed Claim, the Plan Administrator shall establish a Priority Claims Reserve which shall be held in escrow until entry of a Final Order pursuant to which such Claim is either disallowed or becomes an Allowed Claim. The Plan Administrator shall remit payment to the Holder of a Priority Claim no later than ten (10) days after the entry of Final Order determining that the Priority Claim is an Allowed Claim.

No Priority Claim shall be entitled to payment of more than one hundred percent of such Allowed Priority Claim. Accordingly, in the event that any Priority Claim has already been paid in full, it shall not receive any further distribution under the Plan, and if any Priority Claim has already been paid in part, it shall receive only such distribution under the Plan necessary to pay such Priority Claim in full.

**4.3 Class 2 - Secured Claims.** Holders of Secured Claims include Persons holding a security interest in the assets of the Debtor and Persons holding a security interest in (a) any part of the Debtor's Assets or (b) any Asset of a Dvorkin Related Entity as of the Petition Date while also having a claim against the Debtor on account of the Debtor's guarantee of the Dvorkin Related Entity's obligations to such Creditor. At any time prior to the hearing to consider confirmation of the Plan, the Holder of a Secured Claim may elect either of the following treatments on account of its claim: (i) retention of their security interest in the collateral, including the right to receive all payments due pursuant to any agreement until such time as the collateral is sold; (ii) electing to be treated as Class 3 Holders of Unsecured Claims in any amount that remains unpaid as of the Effective Date and releasing all security interests in property owned by the Debtor or the Dvorkin Related Entities; or (iii) such other treatment as the

Plan Administrator and the Secured Creditor agree to in writing, after consultation and agreement by the Oversight Committee.

In the event that the Holder of Secured Claim elects option (i), and the sale of the collateral securing the Class 2 Secured Claim is insufficient to pay the Class 2 Secured Claim in full, the Holder of the Secured Claim will receive a deficiency claim effective upon the date of the sale of the Collateral, and such deficiency claim shall be treated as Class 3 General Unsecured Claim, with interest from the date of the sale of the collateral at the rate determined after the Effective Date as set forth in Section 11.6 herein.

**4.4 Class 4 - Interests.** Class 4 consists of Interests in the Debtor. Such interests shall be unimpaired by the Plan, and upon the payment of all Allowed Claims in full, including interest as allowed by the Bankruptcy Court, all Holders of Equity Interests shall retain their Interests in the Debtor. Following the payment of all Allowed Claims in full, the Plan Administrator shall file and serve a motion for entry of an order closing the Bankruptcy Case. Such motion shall be served upon all creditors, equity holders, and parties in interest seeking: (i) to close the Bankruptcy Case, (ii) for authority to immediately resign as Plan Administrator. Immediately after entry of the Order closing the Bankruptcy Case or as soon thereafter as practicable, the Plan Administrator shall resign as Plan Administrator and cede control of the Debtor and its remaining assets to Holders of Equity Interests.

In the event that there are insufficient assets to pay all Class 3 General Unsecured Claims in full, including interest, the Plan Administrator shall file a motion for entry of an order closing Bankruptcy Case upon liquidation of all estate assets and the distribution of the proceeds therefrom to Claimants in accordance with the terms of this Plan.

## **ARTICLE V - TREATMENT OF IMPAIRED CLASSES**

**5.1 Class 3 - General Unsecured Claims.** On the Effective Date or as soon thereafter as practicable, and after payment of all Allowed Administrative Claims, all Allowed Priority Claims, and after establishing a reserve for the Plan Administrator and his or her professionals, all Holders of Class 3 Allowed General Unsecured Claims will receive the Initial Class 3 Pro Rata Distribution on the Effective Date. The Initial Class 3 Pro Rata Distribution shall paid from all Cash held by the Plan Administrator, less the Initial Plan Administrator Reserve. In no event will the Initial Pro Rata Distribution include interest on account of any Class 3 Allowed General Unsecured Claim. Any interest to be paid on account of any Class 3 Allowed General Unsecured Claim shall be determined after the Effective Date as set forth in Section 11.6 herein.

Holders of Allowed Class 3 General Unsecured Claims shall receive the balance of their claims, including any interest allowed on account of the Initial Class 3 Pro Rata Distribution, on a pro rata basis as the Plan Administrator makes distributions of cash from the proceeds of the liquidation of the Estate assets, after taking into account a reasonable reserve for and payment of post-Effective Date fees and expenses of the Plan Administrator and the Plan Administrator's professionals.



## **ARTICLE VI - IMPLEMENTATION OF THIS PLAN**

**6.1 Appointment of the Plan Administrator.** The Plan Administrator shall be appointed on the Effective Date in accordance with the Plan Administrator Agreement attached as Exhibit D to the Disclosure Statement to wind up the affairs of the Debtor and make distributions under the Plan.

**6.2 The Plan Administrator.** From and after the Effective Date, the Plan Administrator shall have the rights and powers set forth herein in order to carry out and implement the purposes and intent of this Plan subject to the Plan Administrator Agreement and the Confirmation Order. Except as expressly set forth in the Plan Administrator Agreement, the Plan and the Confirmation Order, the Plan Administrator shall be the exclusive agent of the Debtor's Estate under Title 11 for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3). The Plan Administrator shall be the Debtor's sole officer and director for so long as he serves as the Plan Administrator pursuant to the terms of the Plan, the Confirmation Order, and Plan Administrator Agreement.

**6.3 Responsibilities of the Plan Administrator.** Subject to the rights of the Oversight Committee as set forth herein and in the Plan Administrator Agreement, the responsibilities of the Plan Administrator under and this Plan shall include those set forth in the Plan Administrator Agreement, including, without limitation, the following: (a) the establishment and maintenance of such operating, reserve and trust account(s) as are necessary and appropriate to wind up the affairs of the Debtor; (b) the appropriate investment of the Cash; (c) the pursuit of objections to, estimations of and settlements of any Claims; (d) the prosecution of any cause of action of the Debtor's Estate not otherwise released under the Plan, including, without limitation, the Litigation Claims and Avoidance Actions; (e) the calculation and distribution of all distributions to be made under this Plan to holders of Allowed Claims; (f) the filing of all required tax returns and operating report and paying of taxes and all other obligations on behalf of the post-Effective Date Estate, if any; (g) the payment of fees pursuant to 28 U.S.C. § 1930 incurred after the Effective Date until the closing of the Chapter 11 Case; and (h) such other responsibilities as may be vested in the Plan Administrator pursuant to this Plan, the Plan Administrator Agreement, the Confirmation Order, other Bankruptcy Court Orders, or as otherwise may be necessary and proper to carry out the provisions of this Plan, wind up the Debtor's affairs and close this Chapter 11 Case.

**6.4 Powers of the Plan Administrator.** Subject to the terms herein, the Plan Administrator Agreement and the rights of the Oversight Committee, on and after the Effective Date, the Plan Administrator shall have the exclusive right to undertake each of the following:

- (a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any officer, director or shareholder of the Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including, without limitation, amendment of the certificates of incorporation and by-laws of the Debtor and the dissolution of the Debtor;

(b) Succeeds to all rights of the Debtor and Chapter 11 Trustee to manage and liquidate the Debtor's assets and the assets of the Dvorkin Related Entities;

(c) Maintain accounts to make distributions to Holders of Allowed Claims and Interest provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves, in the name of the Plan Administrator;

(d) Object to any Claims (whether Disputed Claims or otherwise), compromise or settle any Claims prior to objection without supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court, and the guidelines and requirements of the United States Trustee, other than those restrictions expressly imposed by the Plan, the Confirmation Order or the Plan Administrator Agreement;

(e) Review all fee applications filed in the Bankruptcy Case prior to the hearing for final allowance of fees and expense and may object to the final allowance of any fees and expenses that are not actual, reasonable, or necessary, and in connection therewith retain without need for approval of the Bankruptcy Court, a fee auditor to review all applications for compensation and reimbursement of expenses, and file any objections to such applications as the Plan Administrator deems appropriate.

(f) Make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants and to pay the fees and charges incurred by the Plan Administrator on or after the Effective Date for fees and expenses of the Plan Administrator's professionals, disbursements, expenses or related support services relating to the winding down of the Debtor and implementation of the Plan without application to the Bankruptcy Court;

(g) Seek, a determination of tax liability under section 505 of the Bankruptcy Code, paying taxes, if any, related to the Debtor or the sale of non-Cash Assets of the Debtor, filing, if necessary, any and all required tax and information returns, making tax elections by and on behalf of the post-Effective Date Estate, and paying taxes, if any, due from the post-Effective Date Estate;

(h) Invest Cash as deemed appropriate by the Plan Administrator, as further set forth in the Plan Administrator Agreement;

(i) Collect any accounts receivable or other claims of the Debtor or the Estate not otherwise disposed of pursuant to the Plan or the Confirmation Order;

(j) Implement and/or enforce all provisions of this Plan, including entering into any agreement or executing any document required by or consistent with the Plan,

the Confirmation Order and the Plan Administrator Agreement and perform all of the Debtor's obligations thereunder;

(k) Abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of his or her choice, any Assets if the Plan Administrator concludes that they are of no benefit to the Estate;

(l) Prosecute and/or settle Claims, without approval of the Bankruptcy Court, including, without limitation, Litigation Claims, Avoidance Actions, and other causes of action and exercise, participate in or initiate any proceeding before the Bankruptcy Court or any other court of appropriate jurisdiction and participate as a party or otherwise in any administrative, arbitrate or other non-judicial proceeding and pursue to settlement or judgment such actions;

(m) Purchase or create and carry all insurance policies and pay all insurance premiums and costs the Plan Administrator deems necessary or advisable;

(n) Maintain any and all insurance policies of the Debtor providing coverage with respect to Claims;

(o) Distribute all Assets of the Estate and proceeds therefrom pursuant to the Plan, the Confirmation Order and the Plan Administrator Agreement; and

(p) Administer the winding up of the affairs of the Debtor, including filing a motion to close the Debtor's bankruptcy case as set forth in Section 6.16 herein.

Further, subject to the Plan Administrator Agreement and the rights of the Oversight Committee, the Plan Administrator has the authority and power to take all other actions and exercise such other powers that the Plan Administrator deems reasonably necessary or desirable with respect to administering the Plan so long as such actions and powers are not inconsistent the Plan, Confirmation Order, the Plan Administrator Agreement, other orders of the Bankruptcy Court.

**6.5 Limited Notice Requirement.** Except as more fully set forth herein, the Plan Administrator shall be required to provide seven (7) days' notice to the United States Trustee, the Oversight Committee, any person directly affected by any the following actions, and any person requesting notice pursuant to Section 14.4 of the Plan: (i) prosecution, compromise, or settlement of any objections to Claims in which the asserted amount of the Claim does not exceed \$100,000; (ii) settlement of any Litigation Claim or Avoidance Action, or other litigation where the amount demanded exceeds \$100,000; (iii) the sale of any Asset of the Estate, including any asset of any Dvorkin Related Entities, where the sale price or book value exceeds \$100,000; and (iv) the abandonment of any Asset of the Estate where the book value exceeds \$25,000. In the event that no objection is filed within seven days of the filing and service of the notice, the Plan Administrator shall be allowed to undertake such actions without need for further order of the Court. Where the value for any of the actions above exceed the amounts set forth herein, the Plan Administrator shall file a motion or objection seeking entry of an order approving such action, and serve such motion and notice of motion upon the United States Trustee, the Oversight Committee, any person directly affected by any the following actions, and any person requesting notice pursuant to Section 14.4 of the Plan.

**6.6 Succeeding to Rights of Privilege/Work Product and Turnover of Documents by the Chapter 11 Trustee.** The Plan Administrator shall stand in the same position as the Debtor and Chapter 11 Trustee with respect to any claim to an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Plan Administrator shall succeed to all of the Debtor's and Chapter 11 Trustee's rights to preserve, assert or waive any such privilege. On the Effective Date or as soon thereafter as practicable, but, in no event, more than 21 days after the Effective Date, the Chapter 11 Trustee and his counsel shall turn over all correspondence and documents, including privileged correspondence and work product, in the Chapter 11 Trustee's possession, to the Plan Administrator. The Chapter 11 Trustee and his counsel shall be entitled to all actual and reasonable out of pocket expenses incurred in the connection with the turnover of all correspondence and documents in their possession.

**6.7 Unclaimed Property.** The Plan Administrator shall establish the Unclaimed Property Reserve for all Unclaimed Property. Such Unclaimed Property shall be held in a reserve, for a period of ninety (90) days, for the holders of Allowed Claims entitled thereto under the terms of this Plan and Confirmation Order. Once the distribution to Creditors under this Plan becomes Unclaimed Property, the Plan Administrator shall, subject to the limitations set forth herein, (a) hold such Unclaimed Property in the Unclaimed Property Reserve solely for the benefit of such Holder or Holders which have failed to claim such Unclaimed Property; and (b) release the Unclaimed Property from the Unclaimed Property Reserve and deliver to the Holder entitled thereto upon presentation of proper proof by such Holder of its entitlement thereto. After the expiration of ninety (90) days, the Holders of Allowed Claims theretofore entitled to such Unclaimed Property shall cease to be entitled thereto and shall be entitled to no further distribution under this Plan, and such Claims to the Unclaimed Property shall be deemed disallowed and expunged in their entirety and the funds shall be redistributed to the other Holders of Allowed Claims in accordance with the terms of this Plan, the Confirmation Order and the Plan Administrator Agreement. Such funds shall not be subject to the escheat laws of any state, and in the event that any Holder of an Allowed Claims does not timely assert its entitlement to such distribution, such funds shall revert to the Estate.

**6.8 Compensation of the Plan Administrator.** The Plan Administrator shall be compensated as set forth in the Plan Administrator Agreement. The Plan Administrator shall be entitled to remit payment to any professional retained as set forth herein on account of such professional's reasonable, necessary fees and expenses for services rendered and expenses incurred after the Effective Date. The Plan Administrator's professionals do not need to file an application with the Bankruptcy Court; copies of all invoices from the Plan Administrator's professionals shall be remitted to the members of the Oversight Committee. In the event that any member of the Oversight Committee contests whether the fees and expenses of the Plan Administrator or his Professionals are not reasonable or necessary, the Bankruptcy Court shall retain jurisdiction to determine whether fees or expenses should be disallowed based solely upon whether the fees and expenses were actual and reasonable.

**6.9 Sale Free and Clear of Liens.** The sale or other disposition of any Estate assets or assets of the Dvorkin Related Entities by the Plan Administrator in accordance with this Plan and the Plan Administrator Agreement shall be free and clear of any and all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code, after notice and an opportunity for hearing, subject to notice pursuant to Section 14.4 of the Plan.

**6.10 Reserved.**

**6.11 Litigation Claims and Avoidance Actions.** The Plan Administrator shall have the sole right to pursue any Litigation Claims and Avoidance Actions, except those previously waived or released by the Debtor pursuant to any Final Order of the Bankruptcy Court, by informal demand and/or by the commencement of litigation. The Plan Administrator shall succeed as plaintiff or defendant in any adversary proceeding commenced by or against the Debtor that is pending on the Confirmation Date.

**6.12 Records.** On or prior to the Effective Date, the Chapter 11 Trustee shall transfer to the Plan Administrator all originals and/or copies of available documents and business records of the Debtor, to the extent they exist and are in the Chapter 11 Trustee's actual or constructive possession. The Plan Administrator shall maintain such records until the earlier of: (a) the entry of a Final Decree; or (b) five years from the filing of the Debtor's final tax returns. Thereafter, said records may be destroyed or otherwise disposed of by the Plan Administrator in accordance with applicable law. If the Plan Administrator seeks to destroy or otherwise dispose of any records of the Debtor's estate prior to the time periods set forth herein, such Plan Administrator shall be entitled to do so upon Order of the Bankruptcy Court obtained on motion on 20 days' notice upon any person requesting notice pursuant to Section 14.4 of the Plan.

**6.13 Resignation of Officers and Directors.** On the Effective Date, the members of the board of directors and executive officers of the Debtor shall be deemed to have resigned.

**6.14 Oversight Committee.** As more fully set forth in the Plan Administrator Agreement, on the Effective Date, the Oversight Committee shall be appointed.

a. **Constitution of Oversight Committee.** On the Effective Date, the Oversight Committee shall be constituted of three persons, two (2) of which shall be designated by ASM Capital, who shall initially be Jared Muroff and Douglas Wolfe, and the third shall be Francine Dvorkin or her designee. Upon the receipt of payment of all Class 3 General Unsecured Claims, the designees of ASM Capital shall be deemed to have resigned, and Francine Dvorkin or her designee shall be the sole member of the Oversight Committee. ASM Capital or Francine Dvorkin may change their designee at any time without notice. As set forth herein, upon the payment of the Class 3 General Unsecured Claims in full, the Trustee will file a motion to close of the Bankruptcy Case; upon the entry of the order closing the Bankruptcy Case, the Oversight Committee will be terminated.

b. **Service Upon the Oversight Committee.** Consistent with the Plan Administrator Agreement, the Plan Administrator shall provide copies of all pleadings to all members of the Oversight Committee no less than three (3) days prior to filing such pleading with the Bankruptcy Court, unless either (i) the Oversight Committee waives such requirement or (ii) the timing for action reasonably necessitates the filing of an pleading without providing the Oversight Committee with three days' notice. All notice may be provided by the Plan Administrator to the members of the Oversight Committee by electronic mail.

c. Duties of the Oversight Committee. Consistent with the Plan Administrator Agreement, the Oversight Committee shall review and evaluate the actions of the Plan Administrator, and in the event that the majority of the members of the Oversight Committee disagree with any action (or inaction) by the Plan Administrator, they have the right to veto any decision by the Plan Administrator. Any veto by members of the Oversight Committee shall not be subject to review by any court, including the Bankruptcy Court. Every member of the Oversight Committee shall have standing to object to any action taken by the Plan Administrator or any matter in the Chapter 11 Case before the Bankruptcy Court.

d. Responsibilities of the Oversight Committee. Consistent with the Plan Administrator Agreement, the responsibilities of the members of the Oversight Committee shall be limited to exercising their business judgment in overseeing the Plan Administrator. The Oversight Committee shall have no fiduciary duties to the Estate, and shall have no liability in connection with its duties herein, except for willful misconduct or gross negligence, and, in all respects, the Oversight Committee shall be entitled to rely upon the information provided by the Plan Administrator.

e. Status Reports and Meetings. At least monthly, the Plan Administrator shall provide Oversight Committee with a status report detailing the following: (i) all Cash held by the Estate, (ii) all Cash held in any reserve contemplated by the Plan; (iii) all sales of Estate Assets and Assets of the Dvorkin Related Entities conducted since the Effective Date and since the last status report; (iv) all remaining amounts to be paid on account of Allowed Claims; (v) all costs for administering the Estate; and (vi) any other matters materially affecting distribution on account of Allowed General Unsecured Claims and Interests.

At any time after the Appointment of the Plan Administrator, any member of the Oversight Committee can call a meeting of the Oversight Committee to address any questions or issues with respect to the administration of the Estate. Such requests for a meeting shall be in writing and sent to the Plan Administrator and all other members of the Oversight Committee. The meeting shall be held telephonically and shall be no less than seven (7) days after the written request for a meeting, unless the Plan Administrator and all Oversight Committee agree to convene sooner. No minutes need be maintained at the meeting.

f. Payment to the Plan Administrator and His Professionals. Consistent with the Plan Administrator Agreement, the Plan Administrator and his or her professionals shall be entitled to payment on a monthly basis on account of their reasonable, necessary fees and expenses for services rendered and expenses incurred after the Effective Date. The Plan Administrator and his or her professionals do not need to file an application with the Bankruptcy Court; copies of all invoices by the Plan Administrator and his or her professionals shall be remitted to the members of the Oversight Committee. In the event that any member of the Oversight Committee contests whether the fees and expenses of

the Plan Administrator or his Professionals are not reasonable or necessary, the Bankruptcy Court shall retain jurisdiction to determine whether fees or expenses should be allowed.

g. Removal of the Plan Administrator. Consistent with the Plan Administrator Agreement, at any time, a majority of the members of Oversight Committee may elect to terminate the Plan Administrator for any reason. Such termination shall not require a meeting between the Plan Administrator and the Oversight Committee. Such termination shall be in writing and served upon the Plan Administrator and the Plan Administrator's counsel, if any. Unless stated otherwise in writing, such termination shall be immediate and shall be without recourse. The Plan Administrator and his or her professionals shall be entitled for all fees earned and expenses incurred prior to his or her termination.

h. Successor Plan Administrator. Consistent with the Plan Administrator Agreement, in the event that the Plan Administrator is terminated for any reason other than the conclusion of the Chapter 11 Case after the distribution of all property in the Estate accordance with the terms of the Plan and Confirmation Order, the Majority of the Oversight Committee shall select a successor Plan Administrator. The Successor Plan Administrator shall succeed to all rights and obligations of the Plan Administrator under the Plan Administrator Agreement.

**6.15 Termination of Plan Administrator.** From his appointment on the Effective Date, the Plan Administrator shall continue to serve until death, resignation, termination by the Oversight Committee, or the distribution of all property in accordance with the terms of the Plan and Confirmation Order and the entry of a final decree by the Bankruptcy Court closing this Chapter 11 Case. In the event that of death, resignation, or termination by the Oversight Committee, the Oversight Committee shall appoint a successor Plan Administrator in accordance with the terms of the Plan Administrator Agreement and as set forth herein.

**6.16 Closing of the Bankruptcy Case.** Following payment of all Allowed Claims in full, including interest, the Plan Administrator shall file and serve a motion for entry of an order closing the Bankruptcy Case. Such motion shall be served upon all creditors, equity holders, and parties in interest.

In the event that there are insufficient assets to pay all Class 3 General Unsecured Claims in full, including interest, the Plan Administrator shall file a motion for entry of an order closing Bankruptcy Case after liquidating of all estate assets and distributing the proceeds therefrom to Claimants in accordance with the terms of this Plan.

## **ARTICLE VII - FUNDING AND DISBURSEMENTS**

**7.1 Turnover of all Estate Assets on or Prior to Effective Date.** On or prior to the Effective Date, the Chapter 11 Trustee shall effectuate the turnover of all assets of the estate to the Plan Administrator, including without limitation, exclusive access to all bank accounts.

**7.2 No Disbursing Agent.** The Plan Administrator, pursuant to the Plan Administrator Agreement, shall make all distributions under the Plan on account of Allowed

Claims against the Debtor. On the Effective Date or as soon thereafter as practicable, the Plan Administrator, pursuant to the Plan Administrator Agreement, shall make distributions on account of Allowed Administrative Claims and Allowed Class 1 Priority Claims directly to the holders of such Claims. All other distributions or payments under the Plan shall be made by the Plan Administrator pursuant to the terms of the Plan, the Confirmation Order, and the Plan Administrator Agreement.

**7.3 Bond or Surety.** As soon after the Effective Date as practicable, and subject to the Plan Administrator Agreement, the Plan Administrator shall obtain a bond or other insurance, the cost of which shall be paid from the Estate Assets, for the Plan Administrator, the members of the Oversight Committee, or any employees, agents, representatives, or independent contractors employed by the Plan Administrator, including, without limitation, any tail coverage or other similar coverage.

**7.4 Reserves - Payment of Disputed Claims.** The Reserved Funds, including the Administrative Claim Reserve and the Disputed Claim Reserve, shall be segregated and held by the Plan Administrator on and after the Effective Date for, among other things, the payment of the portion of the Allowed Administrative Claims and Allowed Professional Fee Claims for which allowance by the Bankruptcy Court is pending or which are Disputed Claims. If an Administrative Claim or Professional Fee Claim for which allowance is pending becomes an Allowed Claim, such Claim shall be paid by the Plan Administrator from the Reserved Funds within ten (10) days after, and to the extent that, any such pending Administrative Claim becomes an Allowed Claim. If a portion of an Administrative Claim is a Disputed Claim, the disputed portion of such Administrative Claim shall be paid in full in the same manner as provided in this Article 7 with respect to Allowed Administrative Claims within ten (10) days after, and to the extent that, such Disputed Claim becomes an Allowed Administrative Claim.

**7.5 Cash Payments.** Cash payments made pursuant to the Plan shall be in U.S. funds. Unless otherwise agreed to by the payor and payee, distributions under the Plan shall be made by check or such other commercially reasonable manner as the Plan Administrator shall determine in its sole discretion in accordance with applicable law.

**7.6 Sources of Cash for Plan Distributions.** Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Plan Administrator to make payments pursuant to the Plan to holders of Allowed Claims against the Debtor shall be obtained from (a) Cash balances of the Estate or (b) Cash proceeds from the liquidation of the remaining non-Cash Plan Administrator Assets, including, without limitation, any Litigation Claims, Avoidance Actions, or tax refunds.

**7.7 Distribution on Account of Allowed Claims.** Except as otherwise provided herein, the Confirmation Order, the Plan Administrator Agreement, or as otherwise ordered by the Bankruptcy Court, distributions on account of Allowed Claims shall be made on the Initial Distribution Date, or as soon as practicable thereafter, or if Allowed after the Effective Date, on the next Distribution Date. Any payment or distribution required to be made under the Plan shall be made on the next succeeding Business Day.



**7.8 Fractional Dollars: De Minimis Distributions.** Notwithstanding any other provision of the Plan, the Plan Administrator shall not be required to make distributions or payments of fractions of dollars, and whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made shall reflect a rounding down of such fraction to the nearest whole dollar. In addition, the Plan Administrator shall not be required to make any distribution in an amount less than \$10.00. To the extent that such a distribution shall be called for as part of any interim distribution, the Plan Administrator shall establish a reserve for all distributions in the amount of less than \$10.00 and shall, when and if the holder of a Claim is entitled to a distribution of \$10.00 or more, make such a distribution at such time. The Plan Administrator shall not be required to make any Final Distribution of less than \$10.00, and all monies otherwise payable in such amount shall be paid to the other holders of Allowed Claims, in accordance with the terms of the Plan, the Confirmation Order and Plan Administrator Agreement.

**7.9 Delivery of Distributions to Holders of Allowed Claims.** Distributions to holders of Allowed Claims shall be made at the address set forth in the Schedules unless such addresses are superseded by proofs of claim or transfers of claim filed pursuant to Bankruptcy Rule 3001 or at the last known address of such holders if the Plan Administrator has been notified in writing of a change of address. If the distribution to any holder of an Allowed Claim is returned to the Plan Administrator as undeliverable or otherwise unclaimed, such Unclaimed Property shall be held in a reserve as set forth in the Plan.

**7.10 Post-Final Distribution Reversion to Equity Interests.** Following the filing of the motion for entry of an order closing Bankruptcy Case, the Plan Administrator shall attempt to confer with the Holders of Equity Interests to effectuate the transfer of all remaining assets of the Debtor to the Holders of Equity Interests, including control of all real property and bank accounts. Immediately after entry of the Order closing the Bankruptcy Case, the Plan Administrator shall resign and cede control of the Debtor and its remaining assets to Holders of Equity Interests.

**7.11 Limits Upon Interim Distributions by the Plan Administrator.** The Plan Administrator shall not be obligated to make any distribution that would impair the ability of the Plan Administrator to pay the expenses incurred by the Plan Administrator.

## **ARTICLE VIII - CONDITIONS TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

**8.1 Conditions to Confirmation.** The following shall be the only condition to confirmation: the Confirmation Order is entered by the Bankruptcy Court and is in form and substance reasonably satisfactory to ASM Capital.

**8.2 Conditions to the Effective Date.** The Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived pursuant to Section 8.3 of the Plan: (i) the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to ASM Capital, (ii) the Plan Administrator shall have been duly appointed and approved by the Bankruptcy Court, and entered into the Plan Administrator Agreement, (iii) all other actions, documents, and

agreements reasonably determined by ASM Capital to be necessary to implement the Plan shall have been effected or executed, and (iv) the Confirmation Order shall have become a Final Order.

**8.3 Waiver of Conditions to the Effective Date.** The conditions to the Effective Date set forth in Section 8.2 of the Plan may be waived in whole or part in writing by ASM Capital at any time without further Order.

## **ARTICLE IX - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**9.1 Executory Contracts and Unexpired Leases.** Except as otherwise provided in the Plan or the Confirmation Order, upon the Effective Date, all Executory Contracts which have not otherwise been rejected by the Debtor or Chapter 11 Trustee prior to the date on which the Plan is confirmed are hereby rejected under this Plan as of the date on which the Plan is confirmed, except: (a) any Executory Contract that is the subject of a separate motion to assume or assume and assign filed pursuant to section 365 of the Bankruptcy Code by the Debtor before the entry of the Confirmation Order, provided, however, that upon denial or withdrawal of any such motion, such Executory Contract shall automatically be rejected as if rejected hereunder as of the date on which the Plan is confirmed; (b) all Executory Contracts assumed under this Plan, if any, or by order of the Bankruptcy Court entered before the date on which the Plan is confirmed and not subsequently rejected pursuant to an order of the Bankruptcy Court; and (c) any agreement, obligation, security interest, transaction or similar undertaking that the Plan Administrator believes is not an Executory Contract that is later determined by the Bankruptcy Court to be an Executory Contract that is subject to assumption or rejection under section 365 of the Bankruptcy Code, which agreements shall be subject to assumption or rejection within 30 days of any such determination. Any order entered after the date on which the Plan is confirmed by the Bankruptcy Court, after notice and hearing, authorizing the rejection of an Executory Contract shall cause such rejection to be a pre-petition breach under sections 365(g) and 502(g) of the Bankruptcy Code, as if such relief were granted and such order were entered prior to the Confirmation Date.

**9.2 Rejection Damage Claims.** Persons who are parties to Executory Contracts that are rejected pursuant to this Plan and who claim damages by reason of such rejection shall become holders of Class 4 - General Unsecured Claims and shall be treated in the same manner as other Class 4 - General Unsecured Claims. ALL SUCH REJECTION DAMAGE CLAIMS SHALL BE FILED ON OR BEFORE THE EARLIER OF THIRTY (30) DAYS AFTER (A) THE EFFECTIVE DATE OR (B) THE ENTRY OF A FINAL ORDER REJECTING SUCH EXECUTORY CONTRACT, OR SHALL BE FOREVER BARRED.

**9.3 Objections to Rejection Damage Claims.** Objections to Rejection Damage Claims shall be filed by the Plan Administrator with the Bankruptcy Court prior to the later of (i) the Claims Objection Deadline or (ii) ninety (90) days after the filing of a claim for rejection damages. All objections to Rejection Damage Claims shall be served upon the holder of the Claim to which such objection is made.

**9.4 Indemnification Obligations.** Except as otherwise provided in the Plan, the Confirmation Order or in any contract, instrument, release, or other agreement or document

entered into in connection with the Plan, any and all indemnification obligations that the Debtor has pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or other document or applicable law, to the extent executory, shall be rejected as of the Effective Date.

**9.5 Insurance Policies.** Notwithstanding anything to the contrary in the Plan, any insurance policy in effect as of the date of the Confirmation Hearing that provides insurance coverage to the Debtor or its officers, directors and employees, including the Chapter 11 Trustee, shall remain in effect through its expiration in accordance with the terms and conditions of such policy. To the extent that any such policies are deemed to be an Executory Contract, then the Plan shall be deemed a motion to assume such policy with a cure amount of \$0.00 and the Confirmation of the Plan shall be deemed Bankruptcy Court approval of such assumption and a finding of a cure amount of \$0.00 with respect thereto.

#### **ARTICLE X - DEBTOR'S CONTINUED EXISTENCE AFTER CONFIRMATION**

**10.1 Continued Existence.** The Debtor shall continue to exist after the Effective Date as the Plan Administrator liquidates the assets and makes distribution. Following the Final Distribution, the Plan Administrator shall resign and cede control of the Debtor and its assets to the Holders of the Equity Interests. In the event that there are insufficient assets to pay all Class 3 General Unsecured Claims in full, including interest, the Plan Administrator shall file a motion for entry of an order closing Bankruptcy Case upon liquidation of all estate assets and the distribution of the proceeds therefrom to Claimants in accordance with the terms of this Plan.

#### **ARTICLE XI - RESOLUTION OF CLAIMS**

**11.1 Objections to Claims.** As of the Effective Date, the Plan Administrator shall have the exclusive right to object to the allowance of any Claim. Except as otherwise provided in Section 11.3 hereof, objections to Claims shall be filed with the Bankruptcy Court not later than the Claims Objection Deadline, and served upon the holder of such Claim. Unless otherwise ordered by the Bankruptcy Court, objections to Claims may be litigated to judgment, settled or withdrawn. After the Effective Date, the Debtor shall not have any duty to review or investigate claims or prosecute any objections to the allowance of any Claim.

**11.2 Disputed Claims.** Distributions shall not be made with respect to any Disputed Claim until Allowed by a Final Order. The Plan Administrator may establish the Disputed Claims Reserve upon the availability of funds, by reserving a percentage in cash (the "Reserve Percentage") of the amount of all such Disputed Claims. The Plan Administrator may eliminate the reserve for any Claim upon its disallowance or other resolution. Distributions with respect to Disputed Claims shall be made within ten (10) days after the Disputed Claim becomes an Allowed Claim or as soon thereafter as is practicable.

**11.3 Failure to File Proof of Claim.** **EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, THE HOLDER OF ANY CLAIM THAT DID OR DOES NOT COMPLY WITH THE BAR DATE ORDER, THE ADMINISTRATIVE BAR DATE ORDER PREVIOUSLY ENTERED IN THIS CHAPTER 11 CASE AND/OR THE ADMINISTRATIVE BAR DATE FIXED BY THE**

**PLAN SHALL BE BARRED FROM PARTICIPATING IN THE PLAN OR OBTAINING A DISTRIBUTION HEREUNDER UNLESS THE CLAIM IS A SCHEDULED CLAIM WHICH IS NOT LISTED AS DISPUTED, CONTINGENT OR DISPUTED.**

**11.4 Release of Liens Securing Disputed Claims.** If a Secured Claim is a Disputed Claim, the Creditor holding such Claim shall be deemed to have released any Lien on its collateral, if any, pending allowance or disallowance of its Allowed Secured Claim, upon: (a) payment to the holder of such Disputed Claim the undisputed portion of such Secured Claim; and (b) the placement of the disputed portion thereof into escrow.

**11.5 Preservation of Rights of Actions; Settlement of Litigation Claims and Avoidance Actions.** Except as otherwise provided in the Plan, the Confirmation Order or in any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Estate shall retain the Litigation Claims and Avoidance Actions, which shall be transferred to the Plan Administrator on the Effective Date. The Plan Administrator may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Litigation Claims or Avoidance Actions. The failure of the Debtor to list a claim, right of action, suit or proceeding shall not constitute a waiver or release by the Debtor or its Estate of such claim, right of action, suit or proceeding.

**11.6 Interest to be received on account of Allowed Class 3 General Unsecured Claims.** No later than thirty (30) days after the Effective Date, the Plan Administrator will file and serve a motion on all Holders of Claims (whether Allowed or not Allowed), Equity Holders, and parties in interest seeking a determination as to the appropriate interest due on account of all Allowed Secured Claims and Allowed General Unsecured Claims. By the Plan Administrator's motion, he will seek allowance of interest from the Petition Date at a rate of the lower of 9% and the amount allowed under applicable nonbankruptcy law, which may be the contract rate through the Effective Date. Attached to that motion, the Plan Administrator will attach a schedule stating the amounts of interest he believes due on all Claims and the corresponding amount of interest due from on account of each Claim from the Petition Date through the Effective Date. All Holders of Claims and Equity Interests may file a response in support or in opposition to the motion no later than 21 days after the filing of the motion. The Plan Administrator may file an omnibus reply to all responses in opposition to all responses no later than seven (7) days after the objection deadline. The Bankruptcy Court reserves jurisdiction to adjudicate the issue of the appropriate interest rate.

**ARTICLE XII - VESTING OF ASSETS AND  
RETENTION OF CLAIMS BELONGING TO THE DEBTOR**

**12.1 Vesting of Assets.** Except as otherwise explicitly provided in this Plan, on the Effective Date all rights and property comprising the Estate (including, without limitation, the Estate's Interest in the Dvorkin Related Entities) shall remain in the assets of the Debtor's Estate after the Effective Date to the same extent such Assets were held by the Debtor, free and clear of all Claims, Liens, charges, encumbrances, rights and Interests of creditors and Interest holders (other than as expressly provided in this Plan). As of the Effective Date, the Plan Administrator may use, acquire, and dispose of property and settle and compromise Claims subject only to

those restrictions expressly imposed by this Plan, the Plan Administrator Agreement and the Confirmation Order.

**12.2 Litigation Claims, Avoidance Actions and Other Actions.** Except as otherwise expressly provided herein, all Claims relating to post-Petition Date transactions under section 549 of the Bankruptcy Code, all transfers recoverable under section 550 of the Bankruptcy Code, all causes of action against any Person on account of indebtedness and any other causes of action in favor of the Debtor or the Estate, and all Litigation Claims and Avoidance Actions, except as otherwise set forth in this Plan or the Confirmation Order, are hereby preserved and retained for enforcement subsequent to the Effective Date exclusively by the Plan Administrator.

**12.3 Recoveries.** To the extent that any proceeds are recovered from any Litigation Claim, Avoidance Action, or any other cause of action reserved for prosecution by the Plan Administrator pursuant to this Plan, such proceeds shall become Assets of the Estate.

### **ARTICLE XIII - EFFECT OF PLAN CONFIRMATION**

**13.1 Binding Effect.** The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former holders of Claims and Interests, and their respective successors and assigns. Unless otherwise provided in the Plan or the Confirmation Order, all injunctions and stays provided for in the Chapter 11 Case pursuant to sections 105 and 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date, will remain in full force and effect until the Effective Date. From and after the Effective Date, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action or other proceeding, or otherwise asserting any claim or interest, seeking to hold (i) the Plan Administrator or the Debtor's Estate, or (ii) the property of the Debtor or its Estate, liable for any Claim, obligation, right, interest, debt or liability that has been released pursuant to the Plan.

**13.2 Injunction Related to Rights of Action and Claims, Administrative Expenses and Interests.** Except as provided herein, as of the Confirmation Date, all Entities that have held, currently hold or may hold a Claim, Administrative Expense, Interest or other debt or liability against or in the Debtor are permanently enjoined from taking any of the following actions against property of the Debtor or its Estate or the Plan Administrator on account of all or such portion of any such Claims, Administrative Expenses, Interests, debts or liabilities: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, (c) creating, perfecting or enforcing any lien or encumbrance; and (d) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan.

**13.3 Exculpation and Limitation of Liability.** None of the Exculpated Persons shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 case, the pursuit of confirmation of the Plan, the Consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan and the Plan Administrator Agreement, except for willful misconduct or gross negligence, and, in all respects, the Exculpated

Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

**13.4 Injunction Related to Exculpation.** All Persons that have held, hold or may hold any claims against the any Exculpated Persons exculpated pursuant to Section 13.3 are enjoined from taking any of the following actions against the Debtor's Estate: (i) commencing or continuing any action or other proceeding; (ii) enforcing, attaching, collecting, or recovering any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor; and (c) commencing or continuing any action that does not comply with or is inconsistent with the provisions of the Plan through the entry of a final decree in this Chapter 11 Case; provided, however, that nothing contained herein shall preclude such persons from exercising their rights pursuant to and consistent with the terms of the Plan; provided, further, however, except as expressly provided for in this Plan, the Plan does not release or otherwise affect any pre- or post- Effective Date Claim that any person may have against any non-Debtor party.

**13.5 Survival of Indemnification Obligations.** Except as set forth in this Plan or in the Confirmation Order, the obligations of the Debtor or the Debtor's Estate to indemnify any past and present directors, officers, agents, employees and representatives, pursuant to certificates or articles of incorporation, by-laws, contracts and/or applicable statutes, in respect of all actions, suits and proceedings against any of such officers, directors, agents, employees, and representatives, shall not be impaired by, and shall survive, confirmation or consummation of this Plan. To the extent not already obtained, Plan Administrator shall purchase and maintain a tail policy for the director and officer insurance providing coverage for Debtor's directors and officers, including the Chapter 11 Trustee for a period of six (6) years after the Effective Date insuring such parties in respect of any claims, demands, suits, causes of action, or proceedings against such directors and officers based upon any act or omission related to such directors' and officers' service with, for, or on behalf of the Debtor in at least the amount and scope as currently maintained by the Debtor.

**13.6 Satisfaction of Claims and Termination of Interests.** Except as otherwise provided herein or in the Confirmation Order, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, and release of, all Claims and Interests of any nature whatsoever against the Debtor or its Estate, assets, properties or interest in property, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims and Interests.

#### **ARTICLE XIV - MISCELLANEOUS**

**14.1 Payment of United States Trustee's Fees.** All fees payable pursuant to 28 U.S.C. § 1930 incurred after the Effective Date shall be paid by the Plan Administrator when due until the closing of the Chapter 11 Case.

**14.2 No Admission Against Interest.** Neither the filing of this Plan, the Disclosure Statement, nor any statement contained therein, is or shall be deemed an admission against interest. In the event that this Plan is not consummated, neither this Plan, the Disclosure Statement nor any statement contained therein may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside the Bankruptcy Court involving the Debtor or any of its former or present officers, directors or Interest holders.

**14.3 No Waiver.** Except as otherwise specifically provided herein, nothing set forth in this Plan or the Disclosure Statement shall be deemed a waiver or release of any claims, rights or causes of action against any Person other than the Debtor.

**14.4 Post-Confirmation Notice.** With the exception of the Debtor, the United States Trustee, and the members of the Oversight Committee, any Person desiring to remain on the Debtor's Bankruptcy Rule 2002 service list. Persons who do not wish to receive notices may request to be removed from the Rule 2002 list in writing to the Plan Administrator.

Pursuant to Bankruptcy Rule 2002 and any applicable local Bankruptcy Rules, notice of all post-Confirmation matters for which notice is required to be given shall be deemed sufficient if served upon counsel for the United States Trustee's Office, counsel to the Debtor, counsel to the Plan Administrator and all persons on the Debtor's Bankruptcy Rule 2002 service list. Further, for any sale of Estate asset or any asset of a Dvorkin Related Entity, notice shall be provided to all persons holding a security interest in the asset to be sold. Where an action is for the settlement of objections to a Claim, a Litigation Claim or Avoidance Action, or other litigation, notice shall be provided to the non-Debtor party.

**14.5 Plan Modification.** This Plan may be altered, amended or modified before or after the Confirmation Date in accordance with section 1127 of the Bankruptcy Code.

**14.6 Revocation, Withdrawal or Non-Consummation.** ASM Capital expressly reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans. If ASM Capital revokes or withdraws the Plan or if Confirmation or consummation does not occur, then (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain Claims or Class of Claims), assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interest in the Debtor, the Chapter 11 Trustee or ASM Capital or any other person; (ii) prejudice in any manner the rights of the Debtor, the Chapter 11 Trustee or ASM Capital; or (iii) constitute an admission of any sort by the Debtor, the Chapter 11 Trustee, ASM Capital, or any other such Person.

**14.7 Setoff Against Claims.** The Plan Administrator may setoff against any Claim, and the payments made or to be made pursuant to this Plan in respect of such Claim, any claims or causes of action of any nature whatsoever that such Plan Administrator or the Debtor may have against the holder of the Claim, but neither the failure to do so nor the allowance of such Claim shall constitute a waiver or release by the Plan Administrator or the Debtor of any claims, rights or causes of actions against the holder of the Claim. Any payment in respect of a disputed,

unliquidated or contingent Claim shall be returned promptly to the Plan Administrator in the event and to the extent such Claims are determined by the Bankruptcy Court or any other court of competent jurisdiction not to be Allowed Claims. Confirmation of this Plan shall bar any right of setoff claimed by a Creditor unless such Creditor filed, prior to the Confirmation Date, a motion for relief from the automatic stay seeking the authority to effectuate such a setoff right. All defenses of the Plan Administrator with respect to any such motion are hereby preserved.

**14.8 Further Action.** The Plan Administrator and the Debtor are authorized to take any action necessary or appropriate to execute the provisions of this Plan.

**14.9 Headings.** The article and section headings used in this Plan are inserted for convenience and reference only and neither constitutes a part of this Plan nor in any manner affects the terms, provisions or interpretation of this Plan.

**14.10 Administrative Expense Bar Date.** No later than thirty (30) days after the Effective Date, any person asserting an Administrative Expense shall file with the Bankruptcy Court a request for allowance of an administrative expense, and serve a copy of the request for allowance of an administrative expense upon counsel for the Plan Administrator and the Office of the United States Trustee. **Any administrative claim that is not timely filed shall be denied and barred as untimely.**

**14.11 Bar Date for Professional Fee Claims and Substantial Contribution Claims.** All applications for the request for the final allowance of Professional Fee Claims shall be filed with the Bankruptcy Court and served upon former counsel to the Debtor, the Chapter 11 Trustee, counsel to the Chapter 11 Trustee, the United States Trustee, and counsel to the Plan Administrator, and all notice parties pursuant to Section 14.4 of the Plan (the “Professional Fee Service List”) on or before the date which is no later than the first business day thirty (30) days after the Effective Date (the “Professional Fee Claim Bar Date”).

Any party asserting a claim for substantial contribution pursuant to Section 503(b)(3) (a “Substantial Contribution Claim”), including without limitation, Garden City Group, for its role as balloting agent, or ASM Capital for its legal fees and expenses incurred in connection with the plan and disclosure statement process, shall file a motion seeking allowance of a claim for substantial contribution with the Bankruptcy Court on or before the Professional Fee Claim Bar Date and serve the motion upon the Professional Fee Service List.

A hearing (the “Final Fee Hearing”) to consider the final allowance of all Professional Fee Claims and all Substantial Contribution Claims will be held as soon as practicable after the Professional Fee Claim Bar Date. The Plan Administrator shall file a notice of the Final Fee Hearing with the Court and serve a copy of the notice upon the Professional Fee Service List, which shall also include all parties that filed an application for a Professional Fee Claim or Substantial Contribution Claims.

**14.12 Severability of Plan Provisions.** If, prior to the Confirmation Date, any term of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent



with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**14.13 Governing Law.** Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent otherwise provided in the Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with the laws of Illinois, without giving any effect to the principles of conflicts of law of such jurisdiction.

#### **ARTICLE XV - RETENTION OF JURISDICTION**

**15.1 Retention of Jurisdiction.** Notwithstanding Confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, without limitation, for the following purposes:

- (a) To determine the allowability, classification or priority of Claims upon objection by the Debtor, the Plan Administrator or any other party in interest entitled to file an objection, and the validity, extent, priority and nonavoidability of consensual and nonconsensual Liens and other encumbrances;
- (b) To issue injunctions or take such other actions or make such other Orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order or any other Order of the Bankruptcy Court, to issue such Orders as may be necessary for the implementation, execution, performance and consummation of the Plan and all matters referred to herein;
- (c) To protect the property of the Debtor and the Plan Administrator, including the Litigation Claims and the Avoidance Actions, from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens, security interests or encumbrances on any property of the Debtor or the Plan Administrator;
- (d) To determine any and all applications for allowance of Professional Fee Claims;
- (e) To determine any Priority Employee Benefit Claims, Priority Tax Claims, Priority Wage Claims, Administrative Claims or any other request for payment of Claims or expenses entitled to priority under section 507(a) of the Bankruptcy Code;

- (f) To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan, the Confirmation Order, the Plan Administrator Agreement and the making of distributions hereunder;
- (g) To determine any and all motions related to the rejection, assumption or assignment of Executory Contracts;
- (h) To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of the Chapter II Case, including any remands;
- (i) To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out its intent and purposes;
- (j) To issue such Orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person, to the full extent authorized by the Bankruptcy Code;
- (k) To enable the Debtor or the Plan Administrator to prosecute any and all proceedings to set aside Liens or encumbrances to prosecute and/or settle any and all Litigation Claims, Avoidance Actions and preference claims and to recover any transfers, assets, properties or damages to which the Debtor may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws except as may be waived pursuant to the Plan;
- (l) To determine any state, local and federal tax liability pursuant to sections 346, 505 and 1146 of the Bankruptcy Code;
- (m) To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- (n) To resolve any disputes concerning whether a Person had sufficient notice of the Chapter 11 Case, the Bar Date Order, the Administrative Bar Date Order, the Administrative Bar Date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing or for any other purpose;
- (o) To resolve any dispute or matter arising under or in connection with any Order of the Bankruptcy Court entered in the Chapter 11 Case;
- (p) To authorize sales of Assets as necessary or desirable and resolve objections, if any, to such sales;
- (q) To hear and resolve the Litigation Claims and Avoidance Actions;

(r) To resolve any disputes concerning any release of a non-debtor hereunder or the injunction against acts, employment of process or actions against such non-debtor arising hereunder;

(s) To approve any distributions, or objections thereto, under the Plan;

(t) To approve any Claims settlement entered into or offset exercised by the Debtor or the Plan Administrator;

(u) To oversee any dispute concerning improper or excessive draws under letters of credit issued for the account of the Debtor; and

(v) To enter a final decree closing the Chapter 11 Case; and


(w) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code.

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**ARTICLE XVI - REQUEST FOR CONFIRMATION**

The Plan Proponents respectfully request confirmation of this Plan in accordance with Section 1129(a) and/or Section 1129(b) of the Bankruptcy Code.

**IN WITNESS WHEREOF**, ASM has executed this Chapter 11 Plan dated March 27, 2015.

By:   
Name: Douglas Wolfe  
Title: General Counsel for ASM Capital IV,  
LP and ASM Capital V, LP

**EXHIBIT A**

**PLAN ADMINISTRATOR AGREEMENT**

## **PLAN ADMINISTRATOR AGREEMENT**

THIS AGREEMENT is made this \_\_ day of \_\_\_\_, 2015, by and between Ronald Glass of GlassRatner Advisory & Capital Group, LLC (“Mr. Glass”) and ASM Capital IV LP and ASM Capital V, LP (together, ASM Capital”), solely in its capacity as plan proponent, pursuant to the Amended Liquidating Chapter 11 Plan dated March 27, 2015, (the “Plan”),<sup>1</sup> as may be subsequently amended or modified.

### **RECITALS**

WHEREAS, on February 27, 2013, the Debtor filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois; and

WHEREAS, ASM filed the Plan on March 27, 2015; and

WHEREAS, the Plan was confirmed by the Bankruptcy Court by Final Order dated \_\_\_\_, 2015; and

WHEREAS, pursuant to the terms of the Plan and Confirmation Order, the rights and powers of the Debtor shall be exercised by a Plan Administrator in his capacity as the Debtor’s sole officer and sole director; and

WHEREAS, the Plan provides that, subject to the rights of the Oversight Committee, the Plan Administrator may bring or otherwise pursue all rights, claims and Causes of Action on behalf of the Debtor, the Post-Effective Date Debtor, and the Estate, that could otherwise be brought by a trustee or an examiner appointed under the Bankruptcy Code and that are not otherwise released by the Plan or Confirmation Order; and

WHEREAS, the Plan Administrator intends to exercise the rights, powers, and duties of the Plan Administrator, as set forth in the Plan and Confirmation Order, subject to the rights of the Oversight Committee; and

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties hereto agree as follows:

### **ARTICLE I- PLAN ADMINISTRATOR’S ACCEPTANCE OF POSITION**

1.1 Acceptance. Mr. Glass accepts employment as Plan Administrator and agrees to observe and perform all duties and obligations imposed upon him by this Agreement and under the Plan and Confirmation Order.

1.2 Continuity. Unless otherwise ordered by the Bankruptcy Court, the death, resignation, incompetence or removal of the Plan Administrator shall not operate to terminate or to remove any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Plan Administrator. In the event of the resignation or removal of

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

the Plan Administrator, the Plan Administrator shall promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Oversight Committee or the successor Plan Administrator.

1.3 Independent Contractor. The parties agree that during the term of this Agreement, the Plan Administrator shall be an independent contractor, and not the Debtor's employee, within the meaning of all federal, state and local laws and regulations governing employment insurance, workers' compensation, industrial accident, labor and taxes. In addition, the Plan Administrator shall not, by reason of this Agreement, acquire any rights under any benefit plan operated by the Debtor or its affiliates for the benefit of their employees, including, without limitation, (a) any pension or profit-sharing plans or (b) any "employee welfare plans" (as defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended.)

1.4 Part-Time Position. The parties anticipate that the Plan Administrator will be able to fulfill his obligations under this Agreement by devoting a portion of each work-day or workweek to performing the services set forth herein. Accordingly, the Plan Administrator is being retained only on a part-time basis. The parties agree that the Plan Administrator may accept employment elsewhere during the period in which the Plan Administrator is performing services pursuant to this Agreement, provided, such additional employment does not result in a conflict of interest with his obligations hereunder. The Parties acknowledge that Plan Administrator shall also serve as the disbursing agent under the Plan.

## **ARTICLE II- GENERAL OBLIGATIONS OF THE PLAN ADMINISTRATOR**

2.1 General. As of the Effective Date and subject to the supervision of the Oversight Committee, the Plan Administrator shall have all powers and rights enumerated herein or in the Plan. The enumeration of the following powers or those listed in the Plan shall not be considered in any way to limit or control the power of the Plan Administrator to act as specifically authorized by any other section or provision of this Agreement, the Plan, or Order of the Bankruptcy Court.

2.2 Standard of Care, Indemnification and Exculpation. The Plan Administrator, his professionals, and his employees shall not be personally liable to the Estate or to the holder of any Claim or Interest in connection with, related to, or arising out of, the Chapter 11 Case, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Plan Administrator shall be entitled to rely upon the advice of counsel with respect to his duties and responsibilities under the Plan and Confirmation Order.

2.3 Duty of Care. The Plan Administrator shall act for the Estate in a fiduciary capacity as applicable to a board of directors, subject to the provisions hereof.

2.4 Reliance by Plan Administrator. The Plan Administrator may conclusively rely, and shall be fully protected personally in acting upon, any statement, instrument, opinion, report, notice, request, consent, order or other instrument or document which he believes to be genuine and to have been signed or presented by the proper party or parties. The Plan Administrator may also conclusively rely on information provided to him by agents and employees of the Debtor.

The Plan Administrator may consult with legal counsel and shall be fully protected from any liability except as set forth in Section 2.4 above in respect of any action taken or suffered by him in accordance with the opinion of legal counsel. The Plan Administrator shall have the right at any time to seek instructions from the Bankruptcy Court concerning the acquisition, management or disposition of the Estate's assets.

2.5 Compensation. The Plan Administrator shall be entitled to receive compensation and reimbursement as set forth in Schedule A hereto.

2.6 Bond or Insurance. As soon after the Effective Date as practicable, the Plan Administrator shall obtain a bond or other insurance, the cost of which shall be paid from the Estate Assets, for the Plan Administrator, the members of the Oversight Committee, or any employees, agents, representatives, or independent contractors employed by the Plan Administrator, including, without limitation, any tail coverage or other similar coverage.

### **ARTICLE III- POWERS AND RIGHTS OF THE PLAN ADMINISTRATOR**

3.1 Establish Accounts. On the Effective Date or as soon thereafter as practicable, the Plan Administrator shall, in accordance with the Plan, establish one or more accounts into which the Plan Administrator shall deposit all funds not required or permitted to be deposited into any other account, reserve or escrow.

3.2 Reserves. As more fully set forth in the Plan, the Plan Administrator shall establish and maintain appropriate reserves, including without limitation, a reserve for unclaimed property as set forth in Section 6.7 of the Plan, a reserve for the payment of Disputed Claims as set forth in Section 7.4 of the Plan, and the Initial Plan Administrator Reserve pursuant to section 2.1 of the Plan.

3.3 Distributions. Subject to the establishment and maintenance of the reserves, the Plan Administrator shall make distributions on account of and to pay Allowed Claims in accordance with and subject to the conditions set forth in the Plan and Confirmation Order

3.4 Investments. Pursuant to the Plan, all cash of the Estate held by Plan Administrator, shall be invested in accordance with 11 U.S.C. § 345 or as otherwise permitted by an Order of the Bankruptcy Court.

3.5 Books and Records. On the Effective Date, the Plan Administrator shall take possession of the books and records of the Debtor. The Plan Administrator may destroy books and records as and when he deems it appropriate in accordance with the Plan.

3.6 Liquidation of Assets. In accordance with the Plan, the Plan Administrator shall liquidate or otherwise dispose of the Estate's assets, including the assets of the Dvorkin Related Entities, in a manner reasonably calculated to maximize value for distribution to holders of Allowed Claims and Interests.

3.7 Employees and Agents. The Plan Administrator is empowered to, engage, retain and employ any persons as agents, representatives, employees, or independent contractors in one or more capacities as is reasonably necessary to enable the Plan Administrator to implement this



Agreement and the Plan. Further, in an effort to minimize expense to the estate, the Plan Administrator will endeavor to limit travel to Chicago by appropriately using employees and agents (including employees of GlassRatner Advisory & Capital Group, LLC) who are based in Chicago, and the Plan Administrator will endeavor to minimize travel to Chicago to only those situations where the Plan Administrator believes in his business judgment that such travel will provide a benefit to the estate after applying a cost/benefit analysis.

(a) To the extent that the Plan Administrator seeks to retain professionals, the Plan Administrator will provide ten days' notice of the proposed retention to the Oversight Committee, without need for filing any motion or application with the Court.

(b) The Plan Administrator shall be entitled to remit payment to any professional retained as set forth herein on account of such professional's reasonable, necessary fees and expenses for services rendered and expenses incurred after the Effective Date. The Trustee's professionals shall not be required to file an application with the Bankruptcy Court; copies of all invoices from the Trustee's professionals shall be remitted to the members of the Oversight Committee. In the event that any member of the Oversight Committee contests whether the fees and expenses of the Trustee or his professionals are not reasonable or necessary, the Bankruptcy Court shall retain jurisdiction to determine whether fees or expenses should be allowed.

3.8 Determination of Interest to Be Paid to Unsecured Claims. In accordance with the terms of the Plan, no later than thirty (30) days after the Effective Date, the Plan Administrator will file and serve a motion on all Holders of Claims (whether Secured or Unsecured or Allowed or not Allowed) and Holders of Equity, and parties in interest seeking a determination as to appropriate interest due on account of all Allowed Secured Claims and all Allowed General Unsecured Claims (the "Interest Motion"). By the Interest Motion, and consistent with the Plan, the Plan Administrator will seek allowance of interest from the Petition Date at a rate of the lesser of 9% and the amount allowed under applicable nonbankruptcy law, which may be the contract rate through the Effective Date. Attached to the Interest Motion, the Plan Administrator will attach a schedule stating the amounts of interest he believes due on all Claims and the corresponding amount of interest due from on account of each Claim from the Petition Date through the Effective Date. Per the Plan, any Holder of Claims and Equity Interests may file a response in support or in opposition to the Interest Motion no later than 21 days after the filing of the Interest Motion. The Plan Administrator may file an omnibus reply to all responses in opposition to the Interest Motion no later than seven (7) days after the objection deadline.

3.9 Resolution of Disputed Claims. As set forth in the Plan, the Plan Administrator shall, as of the Effective Date, have authority to prosecute, compromise or settle objections to Claims against the Estate, and all Disputed Claims shall be resolved by the Plan Administrator in accordance with the Plan or the procedures established by Order of the Bankruptcy Court after ten days' notice to the Oversight Committee. Any member of the Oversight Committee who objects to the resolution of a disputed claim shall have five (5) business days to file an objection to the settlement of a Disputed Claim. To the extent that the Plan Administrator objects to any Claim filed in an amount in excess of \$250,000, the Plan Administrator shall file a notice with the Bankruptcy Court, serve a copy of such notice of settlement upon the Bankruptcy Rule 2002 service list, including the Oversight Committee, and the United States Trustee. Any party

objecting to the proposed resolution of such Claim may file an objection to the proposed settlement within fourteen (14) days of filing and service of the notice of settlement. Upon the filing of an objection, the Plan Administrator shall file a notice setting the matter for hearing by the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Civil Procedure.

3.10 Abandonment of Property. As of the Effective Date, the Plan Administrator may, in a manner consistent with the Plan, abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of his choice any assets of the estate that the Plan Administrator concludes are of no benefit to the estate. The Plan Administrator may abandon any asset of the Estate without providing notice where the book value is equal to or less than \$25,000. Where the Plan Administrator seeks to abandon an asset of the Estate with a book value greater than \$25,000, he shall file and serve a notice of the proposed abandonment, which shall include the description of the assets to be abandoned, as well as the location and estimated value of the assets to be abandoned, to the Bankruptcy Rule 2002 service list, including the Oversight Committee, and the United States Trustee. If any party timely objects to such sale, the Plan Administrator may seek resolution by the Bankruptcy Court; if no timely objection is received, the Plan Administrator may abandon the asset without an Order of the Bankruptcy Court.

3.11 Authority to Prosecute and Settle Litigation. As set forth in the Plan, the Plan Administrator shall be empowered, but shall have no obligation, to commence litigation, in the name of the Debtor, the Estate, or the Plan Administrator, including Litigation Claims and Avoidance Actions, as may be necessary, appropriate, or incident to implementing the Plan or this Agreement. All recoveries obtained by the Plan Administrator from such actions shall be distributed pursuant to the terms of the Plan and the Confirmation Order.

3.12 Determination of Tax Liability. In accordance with the Plan, the Plan Administrator shall be authorized to: (a) seek a determination of tax liability under section 505 of the Bankruptcy Code, (b) pay taxes, if any, related to the Debtor or the sale of non-Cash Assets of the Debtor, (c) file, if necessary, any and all required tax and information returns, (d) make tax elections by and on behalf of the post-Effective Date Estate and (e) pay taxes, if any, payable by the post-Effective Date Estate.

3.13 Reviewing and Objecting to Fee Applications. The Trustee shall review all fee applications filed in the Bankruptcy Case prior to the hearing for final allowance of fees and expense and shall object to the final allowance of any fees and expenses that are not actual, reasonable, or necessary.

3.14 Fees. The Plan Administrator shall be obligated to pay timely fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until such time as a final decree is entered closing this bankruptcy case, the bankruptcy case is converted or dismissed, or the Bankruptcy Court orders otherwise.

3.15 Succeeding to Rights of Privilege/Work Product. Pursuant to the Plan, the Plan Administrator shall stand in the same position as the Debtor and Chapter 11 Trustee with respect to any claim to an attorney-client privilege, the work product doctrine, or any other privilege

against production, and the Plan Administrator shall succeed to all of the Debtor's and Chapter 11 Trustee's rights to preserve, assert or waive any such privilege.

3.16 Additional Powers. The Plan Administrator may do all other acts and things that are not inconsistent with the provisions of the Plan and Confirmation Order that the Plan Administrator deems reasonably necessary or desirable with respect to implementing the Plan and this Agreement.

#### **ARTICLE IV-- THE PLAN ADMINISTRATOR AND THE OVERSIGHT COMMITTEE**

4.1 Appointment of Oversight Committee. Pursuant to the Plan and Confirmation Order, on the Effective Date, the Oversight Committee shall be constituted of three persons, two (2) of which shall be designated by ASM Capital, who shall initially be Jared Muroff and Douglas Wolfe, and the third shall be Beverly Dvorkin or her designee. Upon the receipt of payment of all Class 3 General Unsecured Claims, the designees of ASM Capital shall be deemed to have resigned, and Francine Dvorkin or her designee shall be the sole member of the Oversight Committee. ASM Capital or Francine Dvorkin may change their designee at any time without notice. The Oversight Committee shall have no fiduciary duties to the Estate or Liquidating Trust, and shall have no liability in connection with its duties herein, except for willful misconduct or gross negligence, and, in all respects, the Oversight Committee shall be entitled to rely upon the information provided by the Plan Administrator.

4.2 Duties of the Oversight Committee. Subject to the limitations set forth in the Plan, the Plan Administrator's rights and authority shall be subject to the review and evaluate of the Oversight Committee, and in the event that the majority of the members of the Oversight Committee disagree with any action (or inaction) by the Plan Administrator, the majority shall have the right to veto any decision by the Plan Administrator. Any veto by members of the Oversight Committee shall not be subject to review by any court, including the Bankruptcy Court. Every member of the Oversight Committee shall have standing to object to any action by the Plan Administrator or any matter in the Chapter 11 Case before the Bankruptcy Court.

4.3 Oversight, Supervision, and Direction of the Oversight Committee. The Plan Administrator agrees to be bound by the general oversight, supervision, and direction of the Oversight Committee, including, without limitation, the right of the by majority of the Oversight Committee to veto any action (or inaction) by the Plan Administrator. The responsibilities of the members of the Oversight Committee shall be limited to exercising their business judgment in overseeing the Plan Administrator.

4.4 Meetings with the Oversight Committee. At any time after the Appointment of the Plan Administrator, any member of the Oversight Committee can call a meeting of the Oversight Committee to address any questions or issues with respect to the administration of the Estate. Such requests for a meeting shall be in writing and sent to the Plan Administrator and all other members of the Oversight Committee. The meeting shall be held telephonically and shall be no less than seven (7) days after the written request for a meeting, unless the Plan Administrator and all Oversight Committee agree to convene sooner. No minutes need be maintained at the meeting.

4.5 Status Reports. At least monthly, the Plan Administrator shall provide the Oversight Committee with a status report detailing the following: (i) all Cash held by the Estate, (ii) all Cash held in any reserve contemplated by the Plan; (iii) all sales of Estate Assets and Assets of the Dvorkin Related Entities conducted since the Effective Date and since the last status report; (iv) all remaining amounts to be paid on account of Allowed Claims; (v) all costs for administering the Estate; and (vi) any other matters materially affecting distribution on account of Allowed General Unsecured Claims and Interests.

4.6 Service Upon the Oversight Committee Prior to Filing. Consistent with the Plan Administrator Agreement, the Plan Administrator shall provide copies of all pleadings to all members of the Oversight Committee no less than three (3) days prior to filing such pleading with the Bankruptcy Court, unless either (i) the Oversight Committee waives such requirement or (ii) the timing for action reasonably necessitates the filing of an pleading without providing the Oversight Committee with three days' notice. All notice may be provided by the Plan Administrator to the members of the Oversight Committee by electronic mail.

## **ARTICLE V-- TERMINATION AND SUCCESSOR**

5.1 Termination. In accordance with the terms of this Agreement and the Plan, the Plan Administrator's appointment shall terminate upon the earliest of any of the following: (i) resignation, (ii) death, (iii) removal, or (iv) entry of an Order terminating the Bankruptcy Case.

5.2 Termination of Bankruptcy Case. Following the payment of all Allowed Claims in full, including interest, the Plan Administrator shall file and serve a motion for entry of an order closing the Bankruptcy Case. Such motion shall be served upon all creditors, equity holders, and parties in interest. Following the entry of the final Order closing Bankruptcy Case, the Plan Administrator shall attempt to confer with the Holders of Equity Interests to effectuate the transfer of all remaining assets of the Debtor to the Holders of Equity Interests, including control of all real property and bank accounts.

5.3 Resignation. The Plan Administrator may resign on fourteen (14) days' notice to the Court, the Bankruptcy Rule 2002 service list, including the Oversight Committee, and the United States Trustee.

5.4 Termination by the Oversight Committee. At any time, a majority of the members of Oversight Committee may elect to terminate the Plan Administrator for any reason. Such termination shall not require a meeting between the Plan Administrator and the Oversight Committee. Such termination shall be in writing and served upon the Plan Administrator and his counsel. Unless stated otherwise in writing, such termination shall be immediate and shall be without recourse. The Plan Administrator and his professionals shall be entitled for all fees earned and expenses incurred prior to his termination.

5.5 Successor Plan Administrator. Consistent with the Plan Administrator Agreement, in the event that the Plan Administrator is terminated for any reason other than the conclusion of the Chapter 11 Case after the distribution of all property in the Estate accordance with the terms of the Plan and Confirmation Order, the Majority of the Oversight Committee

shall select a successor Plan Administrator. The Successor Plan Administrator shall succeed to all rights and obligations of the Plan Administrator under the Plan Administrator Agreement.

#### **ARTICLE VI-- MISCELLANEOUS**

6.1 Change of Address. Any entity may change the address at which it is to receive notices under this Agreement by furnishing written notice to the Plan Administrator. Such change of address shall be effective ten business days after service of such notice.

6.2 Effectiveness. This Agreement shall become effective as of the Effective Date.

6.3 Governing Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Illinois.

6.4 Headings. Sections, subheadings and other headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

6.5 Amendments. This Agreement may be amended from time to time by the Plan Administrator with the approval of the Bankruptcy Court after ten (10) days' notice to the Bankruptcy Rule 2002 service list and the United States Trustee and such hearing (if any) as the Bankruptcy Court may hold.

6.6 Conflict. In the event of a conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan shall govern.

6.7 Severability; Validity. If any provisions of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable.

6.8 Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to hear and determine all conflicts concerning this Agreement and all matters related to the interpretation and implementation of this Agreement.

**ASM Capital IV, LP, Plan Proponent**  
**ASM Capital V, LP, Plan Proponent**

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Name: Douglas Wolfe  
Title: General Counsel

**Plan Administrator**

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Ronald Glass

**SCHEDULE A**  
**TERMS OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**  
**OF PLAN ADMINISTRATOR UNDER THE PLAN ADMINISTRATOR AGREEMENT**

**1. COMPENSATION**

Beginning on the Effective Date, the Plan Administrator shall be compensated at the hourly rate of \$550.00, subject to annual increases effective January 1 of each year, which increases shall not exceed 3% per annum.

**2. TIMEKEEPING**

The Plan Administrator shall be entitled to payment on account of his reasonable, actual, and necessary services rendered after the Effective Date.

(a) For the purposes of calculating the dates and hours in respect of which the Plan Administrator may receive compensation, travel times shall be included in the number of hours expended only if such travel is for the purpose of conducting the activities necessary for the administration of the Estate.

(b) The Plan Administrator shall maintain a record of his time expended in his capacity as the Plan Administrator which must include a brief description for such activities, and all time entries must include a time allotment and be billed in tenths of an hour (six (6) minutes).

**3. REIMBURSEMENT OF EXPENSES**

The Plan Administrator shall be entitled to reimbursement for all actual, reasonable, and necessary expenses incurred in the performance of his duties as the Plan Administrator, and shall include a detailed list of all expenses in each invoice.

**4. PROCESS FOR PAYMENT OF FEES AND EXPENSES**

The Plan Administrator does not need to file an application for compensation and reimbursement of expenses with the Bankruptcy Court; rather, the Plan Administrator need only send monthly invoices to each member of the Oversight Committee via electronic mail, and absent any comments in writing within fourteen (14) days of service, the Plan Administrator can withdraw payment from the Estate's bank account.

In the event that any member of the Oversight Committee informally objects to the Plan Administrator's invoice in writing asserting that some or all of the fees and expenses of the Trustee are not reasonable, actual, and necessary, the Plan Administrator and the member(s) of the Oversight Committee who informally objected to the invoice shall attempt to resolve all issues with respect to the fees and expenses sought by the Plan Administrator. In the event that the member(s) of the Oversight Committee object to some, but not all, of the Plan Administrator's invoice, the Plan Administrator can withdraw payment from the Estate's bank account for those fees and expenses that are not the subject of the member(s) informal objection.

If the parties are unable to resolve all of the issues, the Plan Administrator shall file a motion with the Court for allowance of the contested fees and expenses. In order to preserve privileged records or other work product which may adversely affect the estate, the Plan Administrator and any party filing a response to the Plan Administrator's motion shall seek authority to redact or seal the time entries at issue.

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

In re:	:	Chapter 11
	:	
Dvorkin Holdings, LLC,	:	Case No. 12-31336
	:	
Debtor.	:	Hon. Jacqueline P. Cox
	:	

**ORDER GRANTING MOTION OF  
ASM CAPITAL IV, LP AND ASM CAPITAL V, LP FOR ORDER  
(I) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT,  
(II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION  
OF VOTES TO ACCEPT OR REJECT THE PLAN OF LIQUIDATION, (III) FIXING  
THE BAR DATE FOR CERTAIN PROFESSIONAL FEE CLAIMS, (IV) FIXING  
THE DATE, TIME, AND PLACE FOR THE CONFIRMATION HEARING, AND  
(V) ESTABLISHING PROCEDURES FOR REJECTION DAMAGES CLAIMS**

Upon consideration of the motion (the “Motion”)<sup>1</sup> of ASM Capital IV, LP and ASM Capital V, LP (collectively, “ASM Capital”) for Order in the above referenced chapter 11 cases, pursuant to sections 105, 502, 1125 and 1128 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3017, 3020, 9013, 9014, and 9021 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Illinois (the “Local Rules”), for an order (i) approving the Disclosure Statement under section 1125 of the Bankruptcy Code (Docket No. \_\_); (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan of Liquidation, (iii) Fixing the Bar Date for Certain Professional Fee Claims, (iv) Fixing the Date, Time, and Place for Confirmation Hearing, and (v) Establishing Procedures for Rejection Damages Claims; the Court having jurisdiction to consider

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<sup>1</sup> Capitalized terms utilized but not otherwise defined herein have the meanings ascribed to such terms in the Motion.



the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (a) the U.S. Trustee; (b) the Chapter 11 Trustee, (c) counsel to the Chapter 11 Trustee; and (d) all other parties who have filed requests for notice under Bankruptcy Rule 2002; and a hearing having been held before the Court with respect to the Motion on \_\_\_\_\_, 2015 (the “Hearing”); and upon the record of such Hearing; and the Court having determined that the relief sought by the Motion is in the best interests of the Debtor, its creditors and interest holders, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY FOUND THAT:

A. The Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code.

B. The form of the ballots with respect to the Plan (the “Ballots”), substantially in the forms annexed hereto as Exhibit 1, respectively, are sufficiently consistent with Official Form No. 14 and adequately address the particular needs of this Chapter 11 case and are appropriate for each Class of Claims entitled under the Plan to vote to accept or reject the Plan.

C. The form of Support Letter attached hereto as Exhibit 2 is consistent with the information contained in the Disclosure Statement and is appropriate to send as part of the Solicitation Package to holders of Claims.

D. The classification of claims and interests set forth in the Disclosure Statement for voting on the Plan is appropriate and consistent with section 1122 of the Bankruptcy Code.

E. The period, set forth below, during which ASM Capital may solicit acceptances to the Plan is a reasonable period of time for holder of Claims entitled to vote on the Plan to make an informed decision with respect to whether to accept or reject the Plan.

E. The procedures for the solicitation and tabulation of votes to accept or reject the Plan (as more fully set forth in the Motion) provide for a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

F. The procedures set forth below regarding notice to all parties in interest of the time, date, and place of the hearing to consider confirmation of the Plan (the “Confirmation Hearing”) and the distribution and contents of the Solicitation Packages comply with Bankruptcy Rules 2002 and 3017 and constitute sufficient notice to all interested parties.

NOW, THEREFORE

1. The Motion is GRANTED, as set forth herein.
2. The Disclosure Statement is APPROVED.
3. All objections to the Disclosure Statement are hereby OVERRULED.
4. The Ballots are APPROVED.
5. Garden City Group, Inc. (“Garden City Group”) is authorized to serve as the balloting agent, and is authorized to inspect, monitor, and supervise the solicitation process, to serve as the tabulator of the Ballots, to certify to the Court the results of the balloting, and to serve and distribute other notices and materials in connection with Plan and Disclosure Statement.
6. The record date (the “Voting Record Date”) for purposes of determining creditors entitled to vote on the Plan or, in the case of non-voting classes to receive the Notice of Non-

Voting Status - Unimpaired Classes (as defined below) or the Notice of Non-Voting Statuses - Impaired Classes (as defined below), as applicable, is \_\_\_\_\_, 2015.

7. Garden City Group shall complete, by no later than \_\_\_\_\_, 2015 (the “Solicitation Date”), the mailing of the Solicitation Packages to all known holders (as of the Voting Record Date) of claims in Class 3 (General Unsecured Claims) (the “Voting Class”), which Solicitation Packages will contain a copy of (i) this Order (without the exhibits hereto); (ii) the Confirmation Hearing Notice; (iii) the Support Letter; (iv) a copy of the Disclosure Statement and the Plan; and (v) the form of Ballot to accept or reject the Plan with instructions and with a return envelope.

8. The Support Letter of ASM Capital is APPROVED and Garden City Group is authorized to serve same as part of the Solicitation packages to be served upon Holders of Claims and Interests.

9. Garden City Group shall complete, by no later than \_\_\_\_\_, 2015, the service by mail of (i) the Confirmation Hearing Notice, substantially in the form attached hereto as Exhibit 3 to all parties set forth in paragraph 10 below (ii) a Notice of Non-Voting Status substantially in the form attached hereto as Exhibit 4 to all known Holders (as of the Voting Record Date) of Claims in Class 1 (Priority Claims), Class 2 (Secured Claims), and Class 4 (Interests).

10. The Confirmation Hearing Notice shall be served on the following parties: counsel for the Debtor, the Chapter 11 Trustee, counsel for the Chapter 11 Trustee, the Office of the United States Trustee, all Entities known to hold a Claim against or Interest in the Debtor as of the Voting Record Date, including all Holders of Claims or Interests in Classes 1 through 4 of the Plan, all Entities holding Administrative Claims, Professional Fee Claims, or Priority Claims

in these cases, all Entities which have filed Proofs of Claim, as reflected on the official claims register maintained by the Claims Agent on the Voting Record Date, and the assignee of any transferred and assigned Claim, if the transfer and assignment has been noted on the Court's docket and is effective pursuant to Bankruptcy Rule 3001(e) as of, or prior to, the Voting Record Date; all Entities which have filed requests for notice in these cases pursuant to Bankruptcy Rule 2002.

11. The Confirmation Hearing will be held on \_\_\_\_, 2015 at \_\_:00 \_\_m. (prevailing Central time); provided, however, that the Confirmation Hearing may be continued from time to time by the Court or ASM Capital, without further notice or through adjournments announced in open court or as indicated in any notice of agenda of matters scheduled for hearing filed with the Court.

12. Based upon the nature of the Debtor's business, the limited pool of Claims, and the costs attendant to publication, the notice of confirmation as contemplated herein shall constitute good service, and neither ASM Capital nor Garden City Group need to publish notice of the Confirmation Hearing.

13. Any objections to confirmation of the Plan must (a) be in writing; (b) state the name and address of the objecting party and the nature of the claim or interest of such party; (c) state with particularity the basis and nature of any objection; and (d) be filed, together with proof of service, with the Court and served so that they are actually filed and received by the following parties no later than 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_, 2015 (the "Confirmation Objection Deadline"): (i) counsel for ASM Capital, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, IL 60661-3693, Attn: Peter A. Siddiqui and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R.

Waxman; (ii) The Chapter 11 Trustee, Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, IL 60606, Attn: Gus A. Paloian, Chapter 11 Trustee; (iii) Counsel for the Chapter 11 Trustee, Seyfarth Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, IL 60606 Attn: James B. Sowka; and (iv) Office of the United States Trustee, 219 South Dearborn St., Room 873, Chicago, Illinois 60604, Attn: Stephen G Wolfe.

14. Objections to confirmation of the Plan that are not timely filed, served, and actually received in the manner set forth above may not be considered and may be deemed overruled.

15. ASM Capital is authorized to file replies or responses to any such objections no later than 5:00 p.m. (prevailing Central. Time) on \_\_\_\_\_, 2015.

16. ASM Capital shall not be required to send Solicitation Packages to (i) any holder of an unimpaired claim under the Plan, (ii) any holder of a Claim or Equity Interest in a Class under the Plan that is deemed to reject the Plan, (iii) any party who holds a Claim that has been disallowed, or which was not filed or scheduled in the Debtor's schedules of assets and liabilities and the statements of financial affairs filed by the Debtor pursuant to section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be amended (the "Schedules") in an amount greater than \$0, and (iv) a creditor that has a claim that already has been paid in full; provided, however, that if, and to the extent that, any such creditor would be entitled to receive a Solicitation Package for any reason other than by virtue of the fact that its claim had been scheduled by the Debtor, then such creditor shall be sent a Solicitation Package in accordance with the procedures set forth herein.

17. With respect to addresses from which Disclosure Statement Notices were returned as undeliverable by the United States Postal Service, ASM Capital and Garden City Group are excused from mailing Solicitation Packages or any other materials related to voting or confirmation of the Plan to those entities listed at such addresses unless and until the Liquidating Trustee is provided with accurate addresses for such entities before the Solicitation Date, and failure to mail Solicitation Packages or any other materials related to voting or confirmation of the Plan to such entities will not constitute inadequate notice of the Confirmation Hearing or the Voting Deadline (as defined below) nor constitute a violation of Bankruptcy Rule 3017(d).

18. Each Ballot must be properly executed, completed, and delivered to Garden City Group (i) by first-class mail, in the return envelope provided with each Ballot, (ii) by overnight courier, or (iii) by hand delivery, so that they are received by Garden City Group no later than 5:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2015 (the "Voting Deadline").

19. Solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, a claim, and without prejudice to the rights of any party in any other context, any timely received Ballot that contains sufficient information to permit the identification of the claimant and is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan. The foregoing general procedures will be subject to the following exceptions:

i. If no proof of claim is filed then the vote amount shall be the noncontingent, liquidated, undisputed amount as set forth in the Debtor's filed Schedules, less any reduction to such claim evidenced by the Debtor's Amended Schedules;

ii. If a Claim is listed in the Schedules as contingent, unliquidated, or disputed and a proof of claim was not (a) filed by the Bar Date or (b) deemed timely filed by an order of the Bankruptcy Court prior to the Voting Deadline, then such Claim will be disallowed for voting purposes (and for purposes of

allowance and distribution under the Plan, unless otherwise ordered by this Court in accordance with the Bar Date Order);

iii. If a Claim is deemed Allowed in accordance with the Plan, such Claim will be Allowed for voting purposes in the deemed Allowed amount set forth in the Plan;

iv. If a Claim for which a proof of claim has been timely filed is marked as contingent or unliquidated, then such Claim will be temporarily Allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00;

v. If a Claim has been estimated or otherwise Allowed for voting purposes by order of the Court, such Claim will be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution; and

vi. Notwithstanding anything to the contrary contained herein, a creditor who has filed or purchased duplicate claims will be provided with only one set of Solicitation Materials and one Ballot and be permitted to vote only a single claim, regardless of whether such duplicate claims have been objected to.

20. Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected for any of the following:

i. Any Ballot received after the Voting Deadline (unless ASM Capital has granted an extension in writing of the Voting Deadline with respect to such Ballot);

ii. Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;

iii. Any Ballot cast in a manner that neither indicates an acceptance nor rejection of the Plan or that indicates both an acceptance and rejection of the Plan;

iv. Any Ballot submitted by facsimile or electronic transmission;

v. Any unsigned Ballot or Ballot not bearing an original signature;

vi. Any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan; or

vii. Any Ballot cast for a claim in which the Court has, pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure, determined that the claim shall not be allowed to vote.

21. Bankruptcy Rule 3018(a) provides, in relevant part, that, “notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.”

22. Pursuant to section 105(a) of the Bankruptcy Code, all timely claims filed shall be allowed to vote unless the Debtor, the Chapter 11 Trustee or ASM Capital files a motion to disallow the claim (the “Rule 3018(a) Motion”) no later than fourteen (14) days prior to the Confirmation Hearing (the “Rule 3018(a) Motion Deadline”), and the Court enters an Order disallowing the claim for voting purposes. Until such time as the Court has entered an Order, all Claims in Class 3 shall be entitled to submit a ballot, and in the event that the objecting party and the holder of the Claim that is the subject to an objection under Rule 3018(a) are unable to resolve any issues raised by prior to the Voting Deadline, (i) Garden City Group shall inform the Court at or before the Confirmation Hearing whether including the relevant provisional Ballot would affect the outcome of the voting to accept or reject the Plan in the relevant class in which the provisional Ballot was cast, and (ii) the Court then shall determine whether the provisional Ballot should be counted as a vote on the Plan. Such a procedure will help ensure an efficient tabulation of Ballots to be completed accurately by the Confirmation Hearing. Moreover, setting the date of the Confirmation Hearing as the date for hearing Rule 3018(a) Motions also permits the Court to avoid holding separate hearings on such motions. Nothing in these procedures is intended to affect any party’s right to object to any proof of claim.

23. As to any Holder of a Claim filing a motion pursuant to Bankruptcy Rule 3018(a), such claimant’s Ballot shall not be counted unless temporarily allowed by an order entered by the Court prior to the Voting Deadline.



24. Each Holder of a Claim that votes to accept or reject the Plan is deemed to have voted the full amount of its claim.

25. If a Holder of a Claim casts more than one Ballot voting the same Claim(s) before the Voting Deadline, the last Ballot received before the Voting Deadline be deemed to reflect the voter's intent, and thus, to supersede any prior Ballots. If a Holder of a Claim casts a Ballot that is properly completed, executed, and timely returned to Garden City Group, but does not indicate either an acceptance or rejection of the Plan, the Ballot shall not be counted. If a Holder of a Claim casts a Ballot that is properly completed, executed, and timely returned to Garden City Group, but indicates both an acceptance and a rejection of the Plan shall not be counted.

26. Any entity that holds a claim in more than one class that is entitled to vote must use separate Ballots for each such claim.

27. ASM Capital is authorized, in its sole discretion, to take or refrain from taking any action necessary or appropriate to implement the terms of and the relief granted in this Order without seeking further order of the Court.

32. All notices to be provided pursuant to the procedures set forth herein are good and sufficient notice to all parties in interest of all matters pertinent hereto and of all matters pertinent to the Confirmation Hearing and no other or further notice need to be provided.

Dated: \_\_\_\_\_, 2015

ENTER

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U.S. Bankruptcy Court Judge

EXHIBIT 1

Ballot

**Form of Ballot for Class 3 Unsecured Claims**

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

In re:	:	Chapter 11
	:	
Dvorkin Holdings, LLC,	:	Case No. 12-31336
	:	
Debtor.	:	Hon. Jacqueline P. Cox
	:	

**CLASS 3 - GENERAL UNSECURED CLAIMS, BALLOT FOR  
ACCEPTING OR REJECTING PLAN**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR  
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THE BALLOT**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY \_\_\_\_\_, 2015, BY  
5:00 P.M. (PREVAILING CENTRAL TIME) (THE “VOTING DEADLINE”)**

ASM Capital IV, LP and ASM Capital V, LP (collectively, “ASM Capital”)<sup>2</sup> has sent this Ballot to you because the records of Dvorkin Holdings, LLC (the “Debtor”) indicate that you are a holder of a Class 3 – General Unsecured Claim, and accordingly, you have a right to vote to accept or reject the Amended Chapter 11 Plan [Docket No. \_\_\_\_] (as may be amended or supplemented from time to time and including all exhibits or supplements thereto, the “Plan”).<sup>2</sup>

Your rights are described in the Amended Disclosure Statement for the Chapter 11 Plan and all exhibits related thereto (as may be amended or supplemented from time to time and including all exhibits or supplements thereto, the “Disclosure Statement”) and the Order approving the Disclosure Statement (the “Disclosure Statement Order”). The Disclosure Statement, the Plan, the Disclosure Statement Order, and certain other materials contained in the Solicitation Package are included in the packet you are receiving with this Ballot. If you need to obtain an additional ballot or other solicitation materials, you may contact the Voting and Balloting Agent, Garden City Group, Inc. (the “Voting and Balloting Agent”) by accessing Voting and Balloting Agent’s website at <http://www.gcginc.com/cases-info/DvorkinHoldings>. You may also obtain copies of any pleadings filed in the Chapter 11 Cases for a fee via PACER at: <http://www.ilnb.uscourts.gov>.

The Court has approved the Disclosure Statement as containing adequate information, as required under section 1125 of the Bankruptcy Code. Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court. This Ballot may not be used for any purpose other than to vote to accept or reject the Plan. If you believe you have received this Ballot in error, please contact the Voting and Balloting Agent at the address or telephone number set forth above.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan, Disclosure Statement

**You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan's classification and treatment of your Claim. Your Claim has been placed in Class 3 - General Unsecured Claims under the Plan.**

If the Voting and Balloting Agent **does not receive** your Ballot on or before the **Voting Deadline, which is \_\_\_\_\_, 2015, at 5:00 p.m.** (prevailing Eastern Time), and if the Voting Deadline is not extended, your vote will not count. All ballots must be executed by an appropriately authorized person on behalf of the holder of the claim (if the holder of the claim is an individual, the execution of the ballot by such individual is acceptable). **If the Court confirms the Plan, it will bind you regardless of whether you vote. You must return your Ballot, with an original signature, either by first class mail, overnight mail or hand delivery to the Voting and Balloting Agent at the address below so that it is RECEIVED BY IT no later than \_\_\_\_\_, 2015 at 5:00 p.m., (prevailing Central Time):**

If by first class mail:	If by hand delivery or overnight courier:
Dvorkin Holdings, LLC c/o GCG, Inc. PO Box 10150 Dublin, Ohio 43017-3150	Dvorkin Holdings, LLC c/o GCG, Inc. 190 S. LaSalle St., Ste 1925 Chicago, Illinois 60603

**You may use the return envelope provided in your package to mail your ballot by first class mail. Please note that ballots may NOT be sent by fax or email and any ballots sent by fax or email will not be counted.**

**Item 1. Principal Amount of Class 3 Claim**

The undersigned hereby certifies that as of the Voting Record Date, \_\_\_\_\_, 2015, the undersigned Holder was the beneficial owner of Class 3 (General Unsecured Claims) in the following principal amount (insert amount in box below):

Amount of Claim: \$

**Item 2. Vote on Plan**

Any Ballot that is executed by the Holder of a Claim, but that indicates both an acceptance and a rejection of the Plan or does not indicate either an acceptance or rejection of the Plan, will not be counted.

☐ Vote to Accept Plan

or

☐ Vote to Reject Plan

### Item 3. Certifications

By signing this Ballot, the undersigned certifies to the Court and the Debtors that:

either: (a) the Entity is the holder of the Class 3 Claim(s) being voted; or (b) the Entity is an authorized signatory for an Entity that is a holder of the Class 3 Claim(s) being voted;

the Entity has received a copy of the Disclosure Statement, the Plan, and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;

the Entity has cast the same vote with respect to all of its Class 3 Claims;

no other Ballots with respect to the amount of the Class 3 Claim(s) identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Claim(s), then any such Ballots dated earlier are hereby revoked;

the Entity acknowledges that a vote to accept the Plan constitutes an acceptance of the treatment of such Entity's Class 3 Claim(s);

the Entity understands and, if accepting the Plan, agrees with the treatment provided for its Claim(s) under the Plan; and

the Entity acknowledges and agrees that the Debtors may make conforming changes to the Plan to the extent provided by Bankruptcy Rule 3019 as may be reasonably necessary; provided, that the Debtors will not re-solicit acceptances or rejections of the Plan in the event of such conforming changes.

Name of Holder:

\_\_\_\_\_  
(Please print or type)

Name of Signatory:

\_\_\_\_\_  
(if other than Holder)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT 2

Support Letter

To: Holders of Class 1 (Priority Claims), Class 2 (Secured Claims), Class 3 Claims (General Unsecured Claims), Class 4 (Equity Interests) in the case of In re Dvorkin Holdings, LLC

Re: Recommendation of ASM Capital IV, LP and ASM Capital V, LP (collectively, "ASM Capital"); Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Plan.

Dear Creditor or Interest Holder:

ASM Capital is one of the largest creditors in the bankruptcy case of In re Dvorkin Holdings, LLC (the "Debtor"). I am writing to you urge you to vote in favor of the Plan by so indicating on the enclosed ballot.

On August 7, 2012 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code, and on October 16, 2012, the Court entered an Order granting the UST's motion for approval of the appointment of Gus Paloian as the Chapter 11 trustee (the "Chapter 11 Trustee"). Upon information and belief, since his appointment, the Chapter 11 Trustee, has sold real estate assets owned by the Debtor, real estate assets owned by entities in which the Debtor had a whole or partial interest, or the Debtor's interest in other entities. Upon information and belief, after payment of secured debt upon those properties and interests, as of January 31, 2015, the Trustee is currently in possession of more than \$27,000,000, and upon information and belief, there remains numerous parcels of real property owned by the Debtor or entities in which the Debtor had a whole or partial interest to be liquidated or otherwise disposed of before the estate is fully administered.

ASM Capital is not critical of the actions taken by the Chapter 11 Trustee, except that, as of January 31, 2015, the estate was in possession of more than \$27,000,000 in cash while unsecured claims remained unpaid. Accordingly, ASM Capital believes that the interests of the estate are best served by the confirmation of a plan that vests the Debtor's assets with a plan administrator (the "Plan Administrator"), and authorizes the Plan Administrator to make prompt distributions to creditors. Additionally, under the Plan, the Plan Administrator will make interim distributions on account of Allowed General Unsecured Claims prior to the liquidation of all estate assets. Because Allowed General Unsecured Claims will be paid prior to the estate is fully administered, it will minimize the interest to be paid on account of Allowed Unsecured Claims, thereby maximizing the value of the estate for Interest Holders. Importantly, ASM Capital anticipates that, under the Plan, ALL ALLOWED UNSECURED WILL BE PAID IN FULL, PLUS INTEREST FROM THE PETITION DATE UNTIL THE DATE OF PAYMENT AT A RATE TO BE DETERMINED BY PLAN ADMINISTRATOR AND THE BANKRUPTCY COURT.

ASM Capital believes confirmation of the Plan is in the best interests of the estate because it will allow the Plan Administrator to sell assets and undertake other matters necessary for the administration of the estate without need for the same level of supervision by the Bankruptcy Court and subject to reduced notice requirements, both of which will minimize costs to the estate.

Copies of the Chapter 11 Plan (the “Plan”) and related disclosure statement (the “Disclosure Statement”) are being distributed to you, along with a ballot with which to cast your vote. The Disclosure Statement contains extensive information with respect to the Plan and we strongly encourage you to carefully review it before you cast a vote(s) to accept or reject the Plan and to consult with an attorney to the extent you deem that necessary.

ASM Capital believes that, under no circumstance will confirmation of the Plan cause creditors or interest holders to receive less on account of their Claims and Interests than they would if the Plan was not confirmed or in a liquidation under chapter 7 of the Bankruptcy Code.

The description in this letter of the terms of the Plan is qualified by and subject to the discussion and provisions contained in the Plan and Disclosure Statement. The Disclosure Statement contains extensive information with respect to the Plan that you should review.

ASM Capital recommends that you vote in favor of the Plan by so indicating on the enclosed ballot, and timely delivering your ballot by first class mail, overnight courier, or hand delivery to Garden City Group, Inc.

If you have any questions, please contact the undersigned.

Very truly yours,

Adam S. Moskowitz



EXHIBIT 3

Confirmation Hearing Notice

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

In re:	)	Chapter 11
	)	
Dvorkin Holdings, LLC	)	Case No. 12-3133
	)	
Debtors.	)	Hon. Jacqueline P. Cox
	)	

**NOTICE OF HEARING TO CONSIDER CONFIRMATION OF CHAPTER 11 PLAN  
PROPOSED BY ASM CAPITAL IV, LP AND ASM CAPITAL V, LP**

PLEASE TAKE NOTICE THAT:

1. On August 7, 2012, the Debtor referenced above filed a voluntary petition for relief with this Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. 101-1532 (the “Bankruptcy Code”). The petition initiated the above-captioned bankruptcy case (this “Case”). On October 6, 2012, Gus A. Paloian was appointed chapter 11 trustee for the Case. No committee or examiner has been appointed in these cases.

2. ASM Capital IV, LP and ASM Capital V, LP (collectively, “ASM Capital”) filed the Chapter 11 Plan (as may be amended, the “Plan”) and an accompanying Disclosure Statement (as may be amended, the “Disclosure Statement”) providing information with respect to the Plan.

3. On \_\_\_\_\_, 2015, the United States Bankruptcy Court for the Northern District of New Illinois (the “Court”) entered an order (the “Solicitation Procedures Order”), among other things, (a) approving the adequacy of the Disclosure Statement, (b) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, and (c) fixing the date, time and place for the confirmation hearing.

**CONFIRMATION HEARING**

4. The Confirmation Hearing Date. A hearing to consider confirmation of the Plan will be held before the Honorable Jacqueline P. Cox, Bankruptcy Judge, in Courtroom 680, Dirksen Federal Courthouse, 219 South Dearborn Street, Chicago, Illinois on \_\_\_\_\_, 2015 at \_\_\_\_:\_\_\_\_.m. This hearing may be adjourned from time to time without further notice, other than an announcement of the adjournment date or dates at the hearing or by filing with the Bankruptcy Court an agenda for the hearing(s) or other notice that indicates adjournment.

**CRITICAL INFORMATION REGARDING VOTING ON THE PLAN**

5. Record Date. The Record Date is \_\_\_\_\_, 2015, which is the date for determining which holders of Claims in Class 3 are entitled to vote on the Plan.

6. Voting Deadline. If you hold a claim against one of the Debtors as of the Record Date, and are entitled to vote to accept or reject the Plan, you have received a ballot and voting instructions appropriate for your claim(s). The deadline for voting on the Plan is 5:00 p.m. prevailing Central Time on [\_\_\_\_\_] the “Voting Deadline”). If you received a ballot and intend to vote on the Plan, in order for your vote to be counted you must: (a) follow the instructions carefully, (b) complete all the required information on the ballot; and (c) execute and return your completed ballot so that it is actually received by the balloting agent, Garden City Group, Inc., according to and as set forth in detail in the voting instructions with the applicable ballot on or before the Voting Deadline. A failure to follow such instructions may disqualify your vote.

7. Parties in Interest Not Entitled to Vote. Please note that not all parties receiving this notice are entitled to vote to approve or reject the Plan. Holders of claims or interests who are unimpaired are not entitled to vote on the Plan and will receive a Notice of Non-Voting Status rather than a ballot.

8. Allowance of a Claim for Voting Purposes. If you disagree with the classification of your claim or believe that you should be entitled to vote on the Plan, then you must serve on counsel to ASM Capital and file with the Bankruptcy Court a motion pursuant to Federal Rule of Bankruptcy Procedure 3018(a) (a “Rule 3018(a) Motion”) seeking an order from the Bankruptcy Court temporarily allowing your claim in a different amount or in a different class for purposes of voting to accept or reject the Plan. Any Rule 3018(a) Motion, and all evidence in support thereof, must be filed on or before [\_\_\_\_\_]. As to any claimant/creditor filing a Rule 3018(a) Motion, such claimant/creditor’s ballot will not be counted except as may be otherwise ordered by the Bankruptcy Court. Rule 3018(a) Motions that are not timely filed and served will not be considered by the Court.

### **CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN**

9. Confirmation Objection Deadline. Any objections to confirmation of the Plan (including any supporting memoranda) (a) shall be in writing, (b) shall comply with the Bankruptcy Code, Bankruptcy Rules and any Local Rules or orders of the Bankruptcy Court, (c) shall set forth the name and contact information of the objector and the nature and amount of any claim or interest asserted by the objector against the estates or property of the Debtors, (d) shall state with particularity the legal and factual basis for such objection, and (e) shall be filed with the Bankruptcy Court, together with proof of service thereof, and served upon the following persons so as to be received no later than 5:00 p.m., prevailing Central Time, on [\_\_\_\_\_]:

Counsel for ASM Capital  
Peter A. Siddiqui, Esquire  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661-3693

The Chapter 11 Trustee  
Gus A. Paloian, Chapter 11 Trustee  
Seyfarth, Shaw LLP  
131 South Dearborn Street, Suite 2400  
Chicago, IL 60606

-and-

Counsel for the Chapter 11 Trustee

Jeffrey R. Waxman, Esquire  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801

James B. Sowka, Esquire  
Bret M. Harper, Esquire  
Seyfarth, Shaw LLP  
131 South Dearborn Street, Suite 2400  
Chicago, IL 60606

United States Trustee  
Office of the United States Trustee  
219 South Dearborn St., Room 873  
Chicago, Illinois 60604  
Attn: Stephen G Wolfe, Esquire

**PURSUANT TO THE ORDER APPROVING THE DISCLOSURE STATEMENT, UNLESS A CONFIRMATION OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

**ADDITIONAL INFORMATION**

10. Inquiries. Any party in interest wishing to obtain a copy of the Disclosure Statement and Plan may obtain copies on the website of the balloting agent, Garden City Group, Inc. at <http://www.gcginc.com/cases-info/DvorkinHoldings> for no charge or, for a fee, at the Bankruptcy Court's website at: [www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov). Please be advised that the Garden City Group is authorized to answer questions about, and provide additional copies of, solicitation materials (other than ballots) but may not advise you as to whether you should vote to accept or reject the Plan. In addition, the Disclosure Statement and the Plan are on file with the Bankruptcy Court and may be examined by accessing the Bankruptcy Court's website at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov). Note that a PACER password and login are needed to access documents on the Bankruptcy Court's website. A PACER password can be obtained at: [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov).

Dated: [\_\_\_\_\_, 2015]

By: /s/ Peter A. Siddiqui  
Peter A. Siddiqui (ARDC No. 6278445)  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661-3693  
Telephone: (312) 902-5200

-and-

Jeffrey R. Waxman  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801  
Telephone: (302) 888-6800

Counsel to ASM Capital IV, LP and ASM  
Capital V, LP

EXHIBIT 4

Notice of Non-Voting Status

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

In re:	:	Chapter 11
	:	
Dvorkin Holdings, LLC,	:	Case No. 12-31336
	:	
Debtor.	:	Hon. Jacqueline P. Cox
	:	

**NOTICE OF NON-VOTING STATUS TO UNIMPAIRED CLAIMS**

PLEASE TAKE NOTICE THAT on \_\_\_\_\_, 2015, the United States Bankruptcy Court for the Northern District of Illinois approved the Disclosure Statement with Respect to Chapter 11 Plan (the “Disclosure Statement”) dated \_\_\_\_\_, 2015, in the above-captioned bankruptcy case of Dvorkin Holdings, LLC (the “Debtor”) filed by ASM Capital IV, LP and ASM Capital V, LP (collectively, “ASM Capital”) for use in soliciting acceptances or rejections of the Chapter 11 Plan (“Plan”) dated \_\_\_\_\_, 2015, from holders of impaired claims who are (or may be) entitled to receive distributions under the Plan.

Under the terms of the Plan, your Claim(s) against the Debtor is/are not impaired and, therefore, pursuant to section 1126(f) of Title 11 of the United States Code, you are deemed to have accepted the Plan and are not entitled to vote on the Plan. If you have any questions about the status of your Claim(s), or if you want to request a copy of the Plan and Disclosure Statement, you may contact the undersigned counsel. The Plan and Disclosure Statement may be viewed without charge by accessing the website of the Garden City Group at <http://www.gcginc.com/cases-info/DvorkinHoldings>. Copies of documents filed in these cases may also be obtained for a fee from the Bankruptcy Court's website: [www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov). Please note that a pacer (<http://www.pacer.psc.uscourts.gov>) password and login are needed to access documents on the Bankruptcy Court's website.

Dated: \_\_\_\_\_, 2015

Peter A. Siddiqui, Esquire  
Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661-3693  
Telephone: (312) 902-5455

-and-

Jeffrey R. Waxman, Esquire  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801  
Telephone: (302) 888-6800

Counsel to ASM Capital IV, LP and ASM Capital V, LP

## Property Interest of Dvorkin Holdings, LLC and Dvorking Related Entities

Property	% own	Property Scheduled Value <sup>1</sup>	Schedule Mortgage <sup>1</sup>	Property Equity <sup>1</sup>	Debtor Equity <sup>1</sup>	Sale or Other Disposition <sup>7</sup>	Order Date; Docket No.
4553 Vincennes, Chicago, Ill	100% <sup>2</sup>	\$ 300,000		\$ 300,000	\$ 300,000	Sold - \$327,000	9/6/2013; 343
520 E. 46th St, Chicago, Ill	100% <sup>2</sup>	\$ 300,000	\$ 290,000	\$ 10,000	\$ 10,000		
4423 S. Vincennese, Chicago, Ill	100% <sup>2</sup>	\$ 50,000	\$ -	\$ 50,000	\$ 50,000	Sold - \$40,000	4/26/2013; 256
1055 W 175th (Homewood) LLC	100%	\$ -	\$ -	foreclosed	\$ -	foreclosed	
1101 Tower Road (Schaumburg) LLC	100%	\$ 3,735,000	\$ 2,824,775	\$ 910,225	\$ 910,225	Sold \$3,425,000	11/14/13; 387
Plaza (Arlington Heights) Office LLC	100%	\$ 5,740,000	\$ 6,202,650	\$ (462,650)	\$ (462,650)	Returned to Lender	2/20/14; 442
1230 S. Highland (Lombard) LLC	100%	\$ 1,000,000	\$ 393,804	\$ 606,196	\$ 606,196	Sold - \$1,15,0000	6/17/13; 291
Farnsworth (Aurora) Landco LLC	100%	\$ 1,125,000	\$ -	\$ 1,125,000	\$ 1,125,000		
2200 South Main (Lombard) LLC	100%	\$ -	\$ -	foreclosed	\$ -	foreclosed	
1 Trasnarn Plaza (Oakbrook Terrace)	100%	\$ -	\$ -	foreclosed	\$ -	foreclosed	
Trust 44203	100%	\$ 1,105,000	\$ 739,821	\$ 365,179	\$ 365,179	foreclosed	
Dan Holdings						Transferred as part of settlement to Goldfarb Entities	9/30/13; 354
4949-5001 W. Oakton Residential Financing LLC <sup>3</sup>	100%	\$ 1,300,000	\$ 1,300,000	\$ -	\$ -		
4949-5001 W. Oakton Retail (Skokie) LLC Mortgage <sup>3</sup>	100%	\$ 1,200,000	\$ 1,750,000	\$ (550,000)	\$ (550,000)	foreclosed	
6200 N. Rockwell (Chicago) LLC	100%	\$ 1,425,000	\$ 1,500,000	\$ (75,000)	\$ (75,000)	Sold- \$650,000	07/08/14; 500
700 Grand Ave, Chicago <sup>6</sup>	100%	\$ 125,000	\$ 181,683	\$ (56,683)	\$ (56,683)		
Trust 94043	100%	\$ 400,000	\$ 550,756	\$ (150,756)	\$ (150,756)	Sold - Payment of \$600,000 note	03/05/15; 605
Caveman Vegas LLC	100%	\$ 460,000	\$ 228,286	\$ 231,714	\$ 231,714	Sold - \$515,000	7/23/2013; 312
DTE Venture LLC	100%	\$ -	\$ -	\$ -	\$ -		
Kinman Enterprises LLC	100%	\$ -	\$ -	\$ -	\$ -		
Lynwood Land Co LLC	100%	\$ 420,000	\$ 307,317	\$ 112,683	\$ 112,683		
Beneficial interest in Trust 44203	100%	\$ -	\$ -	\$ -	\$ -		
25210 W. Reed (Channahon) LLC	100%	\$ 1,105,000	\$ 739,821	\$ 365,179	\$ 365,179		
11824 SW Highway (Palos Heights) LLC	95%	\$ 1,100,000	\$ 900,000	\$ 200,000	\$ 200,000		
1941 Selmartin (Aurora) LLC	95%	\$ 2,425,000	\$ 2,450,000	\$ (25,000)	\$ (23,750)	foreclosed	
975 Nerge (Roselle) LLC	95%	\$ 920,000	\$ 656,831	\$ 263,169	\$ 250,011	Sold - \$790,000	05/08/14; 472
	95%	\$ 2,945,000	\$ 2,549,000	\$ 396,000	\$ 376,200	Sold - \$868,500	03/10/15; 611



Property	% own	Property Scheduled Value <sup>1</sup>	Schedule Mortgage <sup>1</sup>	Property Equity <sup>1</sup>	Debtor Equity <sup>1</sup>	Sale or Other Disposition <sup>7</sup>	Order Date; Docket No.
Matteson LLC	95%	\$ 403,750	\$ 926,470	\$ (522,720)	\$ (496,584)	foreclosed	
1920 S. Highland (Lombard) LLC	93%	\$ 2,525,000	\$ 2,181,715	\$ 343,285	\$ 319,255	Returned to Lender	
Flossmoor Commons (Retail) LLC	93%	\$ 3,590,000	\$ 2,391,450	\$ 1,198,550	\$ 1,114,652	Sold - \$1,325,000	06/24/14; 495
Flossmoor-Commons (Professional) LLC	93%	\$ 5,075,000	\$ 2,391,000	\$ 2,684,000	\$ 2,496,120	Sold - \$3,295,000	06/24/14; 494
Trust 43995	88%	\$ 940,000	\$ 443,994	\$ 496,006	\$ 436,485	Sold - \$1,000,000	6/17/13; 289
Trust 44204	85%	\$ 1,300,000	\$ 739,821	\$ 560,179	\$ 476,152		
Trust 97-7440	80%	\$ 1,106,000	\$ 589,362	\$ 516,638	\$ 413,310	Sold - \$985,000	5/10/13; 259
1275 Davis (Elgin) LLC	66%	\$ 495,000	\$ -	\$ 495,000	\$ 326,700	Sold - \$515,000	03/04/14; 444
444 N. Wabash (Chicago) LLC	60%	\$ 3,800,000	\$ 1,239,315	\$ 2,560,685	\$ 1,536,411	Sold - \$8,150,000	10/22/2013; 376
Trust 95-6296	60%	\$ 850,000	\$ -	\$ 850,000	\$ 510,000		
125-165 Dundee Road (Buffalo Grove) LLC	55%	\$ 2,350,000	\$ 491,748	\$ 1,858,252	\$ 1,022,039		
Trust 96-6875	55%	\$ 1,300,000	\$ 1,270,000	\$ 30,000	\$ 16,500	Sold - \$3,100,000	8/22/13; 329
956 N. Neltnor (West Chicago) LLC	55%	\$ 2,400,000	\$ 1,157,848	\$ 1,242,152	\$ 683,184	Sold - \$2,340,000	12/03/13; 407
2150 N. Clybourn (Chicago) LLC	52%	\$ 1,590,000	\$ 1,282,008	\$ 307,992	\$ 160,156	Sold - \$3,100,000	4/5/2013; 248
606 W. Roosevelt (Chicago) LLC	52%	\$ 3,630,000	\$ 2,100,000	\$ 1,530,000	\$ 795,600	Part of Sale to Craig Golden <sup>4</sup>	9/26/2014; 533
1000 N. Halstead LLC	50%	\$ 1,500,000	\$ 846,220	\$ 653,780	\$ 326,890	Sold - \$3,400,000	12/11/14; 556
Trust 95-6457 <sup>5</sup>	50%	\$ 2,000,000	\$ 643,609	\$ 1,356,391	\$ 678,196		
Trust 98-6811	50%	\$ 2,150,000	\$ 2,613,895	\$ (463,895)	\$ (231,948)		
Trust 95-6249	50%	\$ 1,480,000	\$ 410,000	\$ 1,070,000	\$ 535,000	Sold - \$964,000.00	7/18/2013; 309
Sierra Office Solutions LLC	50%	\$ -	\$ -	\$ -	\$ -		
Trust 37330	50%	\$ 2,000,000	\$ -	\$ 2,000,000	\$ 1,000,000	Sold - \$1,567,000	12/5/13 - 409
Trust 42454	50%	\$ 1,600,000	\$ 393,800	\$ 1,206,200	\$ 603,100	Sold - \$1,571,668.75	6/24/13; 297
920 Roosevelt (Chicago) LLC	50%	\$ 1,650,000	\$ 1,300,000	\$ 350,000	\$ 175,000	Sold for credit bid of \$700,000	03/10/15; 610
Chicago Commercial LLC	50%	\$ 650,000	\$ 480,589	\$ 169,411	\$ 84,706		
640-650 Lake St. LLC	48%	\$ 1,924,000	\$ 991,202	\$ 932,798	\$ 447,743	Part of Sale to Craig Golden <sup>4</sup>	9/26/2014; 533
Sterling 18th Street LLC	45%	\$ 19,100,000	\$ 10,000,000	\$ 9,100,000	\$ 4,095,000	Part of Sale to Craig Golden <sup>4</sup>	9/26/2014; 533
560 West Washington (Chicago) LLC	40%	\$ 1,320,000	\$ 990,000	\$ 330,000	\$ 132,000	Part of Sale to Craig Golden <sup>4</sup>	9/26/2014; 533

Property	% own	Property Scheduled Value <sup>1</sup>	Schedule Mortgage <sup>1</sup>	Property Equity <sup>1</sup>	Debtor Equity <sup>1</sup>	Sale or Other Disposition <sup>7</sup>	Order Date; Docket No.
Glenwood Residential LLC	40%	\$ 220,000	\$ 280,328	\$ (60,328)	\$ (24,131)		
Channahon Plaza LLC	35%	\$ 3,428,571	\$ 2,507,562	\$ 921,009	\$ 322,353		
1611 Stewart (Chicago) LLC	20%	\$ 505,390	\$ 505,390	\$ -	\$ -		
328 S. Jefferson Chicago LLC	12%	\$ 28,500,000	\$ 24,000,000	\$ 4,500,000	\$ 540,000	Part of Sale to Craig Golden <sup>4</sup>	9/26/2014; 533
Land Trust 94674 <sup>8</sup>	Unknown	Unknown	\$ 477,927	\$ 605,000	Unknown	Sold - \$605,000	6/17/14; 290
Land Trust 94674 <sup>8</sup>	Unknown	Unknown	\$ 530,000 <sup>9</sup>	\$ 340,000	Unknown	Sold - \$340,000	5/16/14; 474
Land Trust 94674 <sup>8</sup>	Unknown	Unknown	\$ 530,000 <sup>9</sup>	\$ 620,000	Unknown	Sold - \$620,000	05/27/14; 477
Oak West (Oakbrook Terrace) Office LLC <sup>8</sup>	Unknown	Unknown	\$ 477,927	\$ 2,000,000	Unknown	Sold - \$2,000,000	9/6/13; 341
522 E. 46th Place (Chicago) <sup>8</sup>	Unknown	Unknown	\$ 650,000	\$ 315,000	Unknown	Sold - \$315,000	04/25/14; 464
Land Trust 43314 801-849 E Roosevelt Rd, Lombard IL) <sup>8</sup>	Unknown	Unknown	1359560	\$ 2,230,000	Unknown	Sold - \$2,230,000	09/11/14; 525

1. Taken from Debtor's Schedules

2. Properties owned by the Debtor

3. Three entries for 4949-5001 Oakton Retail

4. Sold as package to Craig Golden and related entities, which sale generated approx. \$8,2500,000

5. Listed twice in schedules (B20)

6. Listed as an Equitable Interest (B19)

7. Price does not include costs such as broker's fees

8. Not listed on schedules and all information contained herein reflect information contained in the motion for approval of the sale

9. Properties secured by same collateral

## **PLAN ADMINISTRATOR AGREEMENT**

THIS AGREEMENT is made this \_\_ day of \_\_\_\_, 2015, by and between Ronald Glass of GlassRatner Advisory & Capital Group, LLC (“Mr. Glass”) and ASM Capital IV LP and ASM Capital V, LP (together, ASM Capital”), solely in its capacity as plan proponent, pursuant to the Amended Liquidating Chapter 11 Plan dated March 27, 2015, (the “Plan”),<sup>1</sup> as may be subsequently amended or modified.

### **RECITALS**

WHEREAS, on February 27, 2013, the Debtor filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois; and

WHEREAS, ASM filed the Plan on March 27, 2015; and

WHEREAS, the Plan was confirmed by the Bankruptcy Court by Final Order dated \_\_\_\_, 2015; and

WHEREAS, pursuant to the terms of the Plan and Confirmation Order, the rights and powers of the Debtor shall be exercised by a Plan Administrator in his capacity as the Debtor’s sole officer and sole director; and

WHEREAS, the Plan provides that, subject to the rights of the Oversight Committee, the Plan Administrator may bring or otherwise pursue all rights, claims and Causes of Action on behalf of the Debtor, the Post-Effective Date Debtor, and the Estate, that could otherwise be brought by a trustee or an examiner appointed under the Bankruptcy Code and that are not otherwise released by the Plan or Confirmation Order; and

WHEREAS, the Plan Administrator intends to exercise the rights, powers, and duties of the Plan Administrator, as set forth in the Plan and Confirmation Order, subject to the rights of the Oversight Committee; and

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties hereto agree as follows:

### **ARTICLE I- PLAN ADMINISTRATOR’S ACCEPTANCE OF POSITION**

1.1 Acceptance. Mr. Glass accepts employment as Plan Administrator and agrees to observe and perform all duties and obligations imposed upon him by this Agreement and under the Plan and Confirmation Order.

1.2 Continuity. Unless otherwise ordered by the Bankruptcy Court, the death, resignation, incompetence or removal of the Plan Administrator shall not operate to terminate or to remove any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Plan Administrator. In the event of the resignation or removal of

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

the Plan Administrator, the Plan Administrator shall promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Oversight Committee or the successor Plan Administrator.

1.3 Independent Contractor. The parties agree that during the term of this Agreement, the Plan Administrator shall be an independent contractor, and not the Debtor's employee, within the meaning of all federal, state and local laws and regulations governing employment insurance, workers' compensation, industrial accident, labor and taxes. In addition, the Plan Administrator shall not, by reason of this Agreement, acquire any rights under any benefit plan operated by the Debtor or its affiliates for the benefit of their employees, including, without limitation, (a) any pension or profit-sharing plans or (b) any "employee welfare plans" (as defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended.)

1.4 Part-Time Position. The parties anticipate that the Plan Administrator will be able to fulfill his obligations under this Agreement by devoting a portion of each work-day or workweek to performing the services set forth herein. Accordingly, the Plan Administrator is being retained only on a part-time basis. The parties agree that the Plan Administrator may accept employment elsewhere during the period in which the Plan Administrator is performing services pursuant to this Agreement, provided, such additional employment does not result in a conflict of interest with his obligations hereunder. The Parties acknowledge that Plan Administrator shall also serve as the disbursing agent under the Plan.

## **ARTICLE II- GENERAL OBLIGATIONS OF THE PLAN ADMINISTRATOR**

2.1 General. As of the Effective Date and subject to the supervision of the Oversight Committee, the Plan Administrator shall have all powers and rights enumerated herein or in the Plan. The enumeration of the following powers or those listed in the Plan shall not be considered in any way to limit or control the power of the Plan Administrator to act as specifically authorized by any other section or provision of this Agreement, the Plan, or Order of the Bankruptcy Court.

2.2 Standard of Care, Indemnification and Exculpation. The Plan Administrator, his professionals, and his employees shall not be personally liable to the Estate or to the holder of any Claim or Interest in connection with, related to, or arising out of, the Chapter 11 Case, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence, and, in all respects, the Plan Administrator shall be entitled to rely upon the advice of counsel with respect to his duties and responsibilities under the Plan and Confirmation Order.

2.3 Duty of Care. The Plan Administrator shall act for the Estate in a fiduciary capacity as applicable to a board of directors, subject to the provisions hereof.

2.4 Reliance by Plan Administrator. The Plan Administrator may conclusively rely, and shall be fully protected personally in acting upon, any statement, instrument, opinion, report, notice, request, consent, order or other instrument or document which he believes to be genuine and to have been signed or presented by the proper party or parties. The Plan Administrator may also conclusively rely on information provided to him by agents and employees of the Debtor.

The Plan Administrator may consult with legal counsel and shall be fully protected from any liability except as set forth in Section 2.4 above in respect of any action taken or suffered by him in accordance with the opinion of legal counsel. The Plan Administrator shall have the right at any time to seek instructions from the Bankruptcy Court concerning the acquisition, management or disposition of the Estate's assets.

2.5 Compensation. The Plan Administrator shall be entitled to receive compensation and reimbursement as set forth in Schedule A hereto.

2.6 Bond or Insurance. As soon after the Effective Date as practicable, the Plan Administrator shall obtain a bond or other insurance, the cost of which shall be paid from the Estate Assets, for the Plan Administrator, the members of the Oversight Committee, or any employees, agents, representatives, or independent contractors employed by the Plan Administrator, including, without limitation, any tail coverage or other similar coverage.

### **ARTICLE III- POWERS AND RIGHTS OF THE PLAN ADMINISTRATOR**

3.1 Establish Accounts. On the Effective Date or as soon thereafter as practicable, the Plan Administrator shall, in accordance with the Plan, establish one or more accounts into which the Plan Administrator shall deposit all funds not required or permitted to be deposited into any other account, reserve or escrow.

3.2 Reserves. As more fully set forth in the Plan, the Plan Administrator shall establish and maintain appropriate reserves, including without limitation, a reserve for unclaimed property as set forth in Section 6.7 of the Plan, a reserve for the payment of Disputed Claims as set forth in Section 7.4 of the Plan, and the Initial Plan Administrator Reserve pursuant to section 2.1 of the Plan.

3.3 Distributions. Subject to the establishment and maintenance of the reserves, the Plan Administrator shall make distributions on account of and to pay Allowed Claims in accordance with and subject to the conditions set forth in the Plan and Confirmation Order

3.4 Investments. Pursuant to the Plan, all cash of the Estate held by Plan Administrator, shall be invested in accordance with 11 U.S.C. § 345 or as otherwise permitted by an Order of the Bankruptcy Court.

3.5 Books and Records. On the Effective Date, the Plan Administrator shall take possession of the books and records of the Debtor. The Plan Administrator may destroy books and records as and when he deems it appropriate in accordance with the Plan.

3.6 Liquidation of Assets. In accordance with the Plan, the Plan Administrator shall liquidate or otherwise dispose of the Estate's assets, including the assets of the Dvorkin Related Entities, in a manner reasonably calculated to maximize value for distribution to holders of Allowed Claims and Interests.

3.7 Employees and Agents. The Plan Administrator is empowered to, engage, retain and employ any persons as agents, representatives, employees, or independent contractors in one or more capacities as is reasonably necessary to enable the Plan Administrator to implement this

Agreement and the Plan. Further, in an effort to minimize expense to the estate, the Plan Administrator will endeavor to limit travel to Chicago by appropriately using employees and agents (including employees of GlassRatner Advisory & Capital Group, LLC) who are based in Chicago, and the Plan Administrator will endeavor to minimize travel to Chicago to only those situations where the Plan Administrator believes in his business judgment that such travel will provide a benefit to the estate after applying a cost/benefit analysis.

(a) To the extent that the Plan Administrator seeks to retain professionals, the Plan Administrator will provide ten days' notice of the proposed retention to the Oversight Committee, without need for filing any motion or application with the Court.

(b) The Plan Administrator shall be entitled to remit payment to any professional retained as set forth herein on account of such professional's reasonable, necessary fees and expenses for services rendered and expenses incurred after the Effective Date. The Trustee's professionals shall not be required to file an application with the Bankruptcy Court; copies of all invoices from the Trustee's professionals shall be remitted to the members of the Oversight Committee. In the event that any member of the Oversight Committee contests whether the fees and expenses of the Trustee or his professionals are not reasonable or necessary, the Bankruptcy Court shall retain jurisdiction to determine whether fees or expenses should be allowed.

3.8 Determination of Interest to Be Paid to Unsecured Claims. In accordance with the terms of the Plan, no later than thirty (30) days after the Effective Date, the Plan Administrator will file and serve a motion on all Holders of Claims (whether Secured or Unsecured or Allowed or not Allowed) and Holders of Equity, and parties in interest seeking a determination as to appropriate interest due on account of all Allowed Secured Claims and all Allowed General Unsecured Claims (the "Interest Motion"). By the Interest Motion, and consistent with the Plan, the Plan Administrator will seek allowance of interest from the Petition Date at a rate of the lesser of 9% and the amount allowed under applicable nonbankruptcy law, which may be the contract rate through the Effective Date. Attached to the Interest Motion, the Plan Administrator will attach a schedule stating the amounts of interest he believes due on all Claims and the corresponding amount of interest due from on account of each Claim from the Petition Date through the Effective Date. Per the Plan, any Holder of Claims and Equity Interests may file a response in support or in opposition to the Interest Motion no later than 21 days after the filing of the Interest Motion. The Plan Administrator may file an omnibus reply to all responses in opposition to the Interest Motion no later than seven (7) days after the objection deadline.

3.9 Resolution of Disputed Claims. As set forth in the Plan, the Plan Administrator shall, as of the Effective Date, have authority to prosecute, compromise or settle objections to Claims against the Estate, and all Disputed Claims shall be resolved by the Plan Administrator in accordance with the Plan or the procedures established by Order of the Bankruptcy Court after ten days' notice to the Oversight Committee. Any member of the Oversight Committee who objects to the resolution of a disputed claim shall have five (5) business days to file an objection to the settlement of a Disputed Claim. To the extent that the Plan Administrator objects to any Claim filed in an amount in excess of \$250,000, the Plan Administrator shall file a notice with the Bankruptcy Court, serve a copy of such notice of settlement upon the Bankruptcy Rule 2002 service list, including the Oversight Committee, and the United States Trustee. Any party

objecting to the proposed resolution of such Claim may file an objection to the proposed settlement within fourteen (14) days of filing and service of the notice of settlement. Upon the filing of an objection, the Plan Administrator shall file a notice setting the matter for hearing by the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Civil Procedure.

3.10 Abandonment of Property. As of the Effective Date, the Plan Administrator may, in a manner consistent with the Plan, abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of his choice any assets of the estate that the Plan Administrator concludes are of no benefit to the estate. The Plan Administrator may abandon any asset of the Estate without providing notice where the book value is equal to or less than \$25,000. Where the Plan Administrator seeks to abandon an asset of the Estate with a book value greater than \$25,000, he shall file and serve a notice of the proposed abandonment, which shall include the description of the assets to be abandoned, as well as the location and estimated value of the assets to be abandoned, to the Bankruptcy Rule 2002 service list, including the Oversight Committee, and the United States Trustee. If any party timely objects to such sale, the Plan Administrator may seek resolution by the Bankruptcy Court; if no timely objection is received, the Plan Administrator may abandon the asset without an Order of the Bankruptcy Court.

3.11 Authority to Prosecute and Settle Litigation. As set forth in the Plan, the Plan Administrator shall be empowered, but shall have no obligation, to commence litigation, in the name of the Debtor, the Estate, or the Plan Administrator, including Litigation Claims and Avoidance Actions, as may be necessary, appropriate, or incident to implementing the Plan or this Agreement. All recoveries obtained by the Plan Administrator from such actions shall be distributed pursuant to the terms of the Plan and the Confirmation Order.

3.12 Determination of Tax Liability. In accordance with the Plan, the Plan Administrator shall be authorized to: (a) seek a determination of tax liability under section 505 of the Bankruptcy Code, (b) pay taxes, if any, related to the Debtor or the sale of non-Cash Assets of the Debtor, (c) file, if necessary, any and all required tax and information returns, (d) make tax elections by and on behalf of the post-Effective Date Estate and (e) pay taxes, if any, payable by the post-Effective Date Estate.

3.13 Reviewing and Objecting to Fee Applications. The Trustee shall review all fee applications filed in the Bankruptcy Case prior to the hearing for final allowance of fees and expense and shall object to the final allowance of any fees and expenses that are not actual, reasonable, or necessary.

3.14 Fees. The Plan Administrator shall be obligated to pay timely fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until such time as a final decree is entered closing this bankruptcy case, the bankruptcy case is converted or dismissed, or the Bankruptcy Court orders otherwise.

3.15 Succeeding to Rights of Privilege/Work Product. Pursuant to the Plan, the Plan Administrator shall stand in the same position as the Debtor and Chapter 11 Trustee with respect to any claim to an attorney-client privilege, the work product doctrine, or any other privilege

against production, and the Plan Administrator shall succeed to all of the Debtor's and Chapter 11 Trustee's rights to preserve, assert or waive any such privilege.

3.16 Additional Powers. The Plan Administrator may do all other acts and things that are not inconsistent with the provisions of the Plan and Confirmation Order that the Plan Administrator deems reasonably necessary or desirable with respect to implementing the Plan and this Agreement.

#### **ARTICLE IV-- THE PLAN ADMINISTRATOR AND THE OVERSIGHT COMMITTEE**

4.1 Appointment of Oversight Committee. Pursuant to the Plan and Confirmation Order, on the Effective Date, the Oversight Committee shall be constituted of three persons, two (2) of which shall be designated by ASM Capital, who shall initially be Jared Muroff and Douglas Wolfe, and the third shall be Beverly Dvorkin or her designee. Upon the receipt of payment of all Class 3 General Unsecured Claims, the designees of ASM Capital shall be deemed to have resigned, and Francine Dvorkin or her designee shall be the sole member of the Oversight Committee. ASM Capital or Francine Dvorkin may change their designee at any time without notice. The Oversight Committee shall have no fiduciary duties to the Estate or Liquidating Trust, and shall have no liability in connection with its duties herein, except for willful misconduct or gross negligence, and, in all respects, the Oversight Committee shall be entitled to rely upon the information provided by the Plan Administrator.

4.2 Duties of the Oversight Committee. Subject to the limitations set forth in the Plan, the Plan Administrator's rights and authority shall be subject to the review and evaluate of the Oversight Committee, and in the event that the majority of the members of the Oversight Committee disagree with any action (or inaction) by the Plan Administrator, the majority shall have the right to veto any decision by the Plan Administrator. Any veto by members of the Oversight Committee shall not be subject to review by any court, including the Bankruptcy Court. Every member of the Oversight Committee shall have standing to object to any action by the Plan Administrator or any matter in the Chapter 11 Case before the Bankruptcy Court.

4.3 Oversight, Supervision, and Direction of the Oversight Committee. The Plan Administrator agrees to be bound by the general oversight, supervision, and direction of the Oversight Committee, including, without limitation, the right of the by majority of the Oversight Committee to veto any action (or inaction) by the Plan Administrator. The responsibilities of the members of the Oversight Committee shall be limited to exercising their business judgment in overseeing the Plan Administrator.

4.4 Meetings with the Oversight Committee. At any time after the Appointment of the Plan Administrator, any member of the Oversight Committee can call a meeting of the Oversight Committee to address any questions or issues with respect to the administration of the Estate. Such requests for a meeting shall be in writing and sent to the Plan Administrator and all other members of the Oversight Committee. The meeting shall be held telephonically and shall be no less than seven (7) days after the written request for a meeting, unless the Plan Administrator and all Oversight Committee agree to convene sooner. No minutes need be maintained at the meeting.



4.5 Status Reports. At least monthly, the Plan Administrator shall provide the Oversight Committee with a status report detailing the following: (i) all Cash held by the Estate, (ii) all Cash held in any reserve contemplated by the Plan; (iii) all sales of Estate Assets and Assets of the Dvorkin Related Entities conducted since the Effective Date and since the last status report; (iv) all remaining amounts to be paid on account of Allowed Claims; (v) all costs for administering the Estate; and (vi) any other matters materially affecting distribution on account of Allowed General Unsecured Claims and Interests.

4.6 Service Upon the Oversight Committee Prior to Filing. Consistent with the Plan Administrator Agreement, the Plan Administrator shall provide copies of all pleadings to all members of the Oversight Committee no less than three (3) days prior to filing such pleading with the Bankruptcy Court, unless either (i) the Oversight Committee waives such requirement or (ii) the timing for action reasonably necessitates the filing of an pleading without providing the Oversight Committee with three days' notice. All notice may be provided by the Plan Administrator to the members of the Oversight Committee by electronic mail.

## **ARTICLE V-- TERMINATION AND SUCCESSOR**

5.1 Termination. In accordance with the terms of this Agreement and the Plan, the Plan Administrator's appointment shall terminate upon the earliest of any of the following: (i) resignation, (ii) death, (iii) removal, or (iv) entry of an Order terminating the Bankruptcy Case.

5.2 Termination of Bankruptcy Case. Following the payment of all Allowed Claims in full, including interest, the Plan Administrator shall file and serve a motion for entry of an order closing the Bankruptcy Case. Such motion shall be served upon all creditors, equity holders, and parties in interest. Following the entry of the final Order closing Bankruptcy Case, the Plan Administrator shall attempt to confer with the Holders of Equity Interests to effectuate the transfer of all remaining assets of the Debtor to the Holders of Equity Interests, including control of all real property and bank accounts.

5.3 Resignation. The Plan Administrator may resign on fourteen (14) days' notice to the Court, the Bankruptcy Rule 2002 service list, including the Oversight Committee, and the United States Trustee.

5.4 Termination by the Oversight Committee. At any time, a majority of the members of Oversight Committee may elect to terminate the Plan Administrator for any reason. Such termination shall not require a meeting between the Plan Administrator and the Oversight Committee. Such termination shall be in writing and served upon the Plan Administrator and his counsel. Unless stated otherwise in writing, such termination shall be immediate and shall be without recourse. The Plan Administrator and his professionals shall be entitled for all fees earned and expenses incurred prior to his termination.

5.5 Successor Plan Administrator. Consistent with the Plan Administrator Agreement, in the event that the Plan Administrator is terminated for any reason other than the conclusion of the Chapter 11 Case after the distribution of all property in the Estate accordance with the terms of the Plan and Confirmation Order, the Majority of the Oversight Committee

shall select a successor Plan Administrator. The Successor Plan Administrator shall succeed to all rights and obligations of the Plan Administrator under the Plan Administrator Agreement.

#### **ARTICLE VI-- MISCELLANEOUS**

6.1 Change of Address. Any entity may change the address at which it is to receive notices under this Agreement by furnishing written notice to the Plan Administrator. Such change of address shall be effective ten business days after service of such notice.

6.2 Effectiveness. This Agreement shall become effective as of the Effective Date.

6.3 Governing Law. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Illinois.

6.4 Headings. Sections, subheadings and other headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

6.5 Amendments. This Agreement may be amended from time to time by the Plan Administrator with the approval of the Bankruptcy Court after ten (10) days' notice to the Bankruptcy Rule 2002 service list and the United States Trustee and such hearing (if any) as the Bankruptcy Court may hold.

6.6 Conflict. In the event of a conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan shall govern.

6.7 Severability; Validity. If any provisions of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable.

6.8 Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to hear and determine all conflicts concerning this Agreement and all matters related to the interpretation and implementation of this Agreement.

**ASM Capital IV, LP, Plan Proponent**  
**ASM Capital V, LP, Plan Proponent**

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Name: Douglas Wolfe  
Title: General Counsel

**Plan Administrator**

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Ronald Glass

**SCHEDULE A**  
**TERMS OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**  
**OF PLAN ADMINISTRATOR UNDER THE PLAN ADMINISTRATOR AGREEMENT**

**1. COMPENSATION**

Beginning on the Effective Date, the Plan Administrator shall be compensated at the hourly rate of \$550.00, subject to annual increases effective January 1 of each year, which increases shall not exceed 3% per annum.

**2. TIMEKEEPING**

The Plan Administrator shall be entitled to payment on account of his reasonable, actual, and necessary services rendered after the Effective Date.

(a) For the purposes of calculating the dates and hours in respect of which the Plan Administrator may receive compensation, travel times shall be included in the number of hours expended only if such travel is for the purpose of conducting the activities necessary for the administration of the Estate.

(b) The Plan Administrator shall maintain a record of his time expended in his capacity as the Plan Administrator which must include a brief description for such activities, and all time entries must include a time allotment and be billed in tenths of an hour (six (6) minutes).

**3. REIMBURSEMENT OF EXPENSES**

The Plan Administrator shall be entitled to reimbursement for all actual, reasonable, and necessary expenses incurred in the performance of his duties as the Plan Administrator, and shall include a detailed list of all expenses in each invoice.

**4. PROCESS FOR PAYMENT OF FEES AND EXPENSES**

The Plan Administrator does not need to file an application for compensation and reimbursement of expenses with the Bankruptcy Court; rather, the Plan Administrator need only send monthly invoices to each member of the Oversight Committee via electronic mail, and absent any comments in writing within fourteen (14) days of service, the Plan Administrator can withdraw payment from the Estate's bank account.

In the event that any member of the Oversight Committee informally objects to the Plan Administrator's invoice in writing asserting that some or all of the fees and expenses of the Trustee are not reasonable, actual, and necessary, the Plan Administrator and the member(s) of the Oversight Committee who informally objected to the invoice shall attempt to resolve all issues with respect to the fees and expenses sought by the Plan Administrator. In the event that the member(s) of the Oversight Committee object to some, but not all, of the Plan Administrator's invoice, the Plan Administrator can withdraw payment from the Estate's bank account for those fees and expenses that are not the subject of the member(s) informal objection.

If the parties are unable to resolve all of the issues, the Plan Administrator shall file a motion with the Court for allowance of the contested fees and expenses. In order to preserve privileged records or other work product which may adversely affect the estate, the Plan Administrator and any party filing a response to the Plan Administrator's motion shall seek authority to redact or seal the time entries at issue.

Ronald Glass  
Direct: 404.835.8830  
Email: rglass@glassratner.com

GLASSRATNER

## ***Summary***

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Ron Glass is a nationally recognized crisis manager, Chapter 11 Trustee, Chief Restructuring Officer and Financial Advisor. Since founding GlassRatner in 2001 with Ian Ratner, Ron has led hundreds of complex matters in a variety of industries including various sectors within the real estate industry where he is a recognized expert. Over the past 30 years, he has worked in almost every aspect of the real estate industry from lending to hotel management, multi-family, commercial and large planned unit developments. Over the last few years, Mr. Glass has been ranked quarterly as one of the country's top crisis managers and financial advisors by the Bankruptcy Insider and The Deal Magazine.

Mr. Glass was appointed Chief Restructuring Officer for the holding company of AmTrust Bank in Cleveland, Ohio. In this role, he evaluated numerous real estate investments and continues to liquefy the assets. In addition, he was appointed CRO in a major multi-family management company and was appointed CRO in one of the largest condominium conversion companies in South Florida.

As Plan Administrator in the Cornerstone Ministries Chapter 11, Mr. Glass has liquidated dozens of properties around the country.

In addition, Mr. Glass was an advisor to the Official Creditor's Committee in the Sea Island Chapter 11 and Trustee for Reynolds Lodging Trust a part of the Reynolds Plantation development.

In 1981, at the request of Sam Zell, Mr. Glass became COO of Great American Management & Investment, a publicly traded diversified real estate holding company. During his initial eighteen months as COO, the company's general and administrative expenses were reduced by more than 50%, the company was stabilized and the stock price increased by three fold from \$6.50 to \$18.50 per share. Mr. Glass continued with Great American as it became a diversified holding company. The company was ultimately sold for \$55.00/share.

From 1981 until 1998, Mr. Glass held positions as COO and/or Executive Vice President of numerous entities controlled by Sam Zell, one of the most successful turnaround and deal in America.

During Mr. Glass's employment with the Zell Organization, some of the more notable transactions that he participated in included the:

Valuation and liquidation of a multi-location hotel operating portfolio with assets in excess of \$100 million  
Valuation and liquidation of a \$175 multi-family portfolio, a \$225 million shopping center portfolio, a \$220 million office portfolio, and numerous land development properties



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3424 Peachtree Road  
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Atlanta, GA 30326  
404-904-1990

[WWW.GLASSRATNER.COM](http://WWW.GLASSRATNER.COM)

# ABOUT THE COMPANY



## Who We Are

**GlassRatner Management & Realty Advisors LLC** is a **full-service property management company** with expertise in disputed, distressed or difficult-to-manage property. Our management company and professionals have acted as Receiver, Manager, Chief Restructuring Officer (“CRO”) or Fiduciary for troubled real estate development projects where “parachute-style” management is required. Since 2003, GlassRatner has managed over **\$5 billion** of real estate across a broad spectrum of asset classes including multifamily, student housing, office, retail, industrial, mobile home, hotel and resort, golf communities, mixed-use, and fractured condominium projects.

GlassRatner currently manages or acts as fiduciary for **more than 4,000 multifamily units across the country and in excess of one million square feet of retail, office and industrial space in 15 states.**

**GlassRatner Management & Realty Advisors LLC** is a wholly-owned subsidiary of **GlassRatner Advisory & Capital Group LLC**, one of the nation’s leading financial advisory and restructuring firms.

## Services

### RECEIVER & TRUSTEE SERVICES

*In our role as Receiver or Trustee, GlassRatner:*

- Serves as Court-appointed Receiver on behalf of lenders, servicers or note buyers.
- Operates as fiduciary, free of conflicts.
- Coordinates and controls all activities associated with the respective asset.
- Determines the appropriate sell/hold strategy to maximize principal recovery while minimizing additional exposure.
- Engages qualified investment sales brokers to assist with valuing and disposing of an asset, as appropriate.

### PROPERTY MANAGEMENT

*As a full-service property management company with a national presence, GlassRatner’s team:*

- Specializes in maximizing asset value, risk mitigation and high-level reporting.
- Understands the potential short-term nature of these assignments and can mobilize quickly to resolve issues.
- Provides comprehensive, in-depth monthly financial reports customized to client specifications.
- Handles core back-office operations, including accounting and reporting functions, based out of our Atlanta headquarters. We have regional directors, CPAs, and property management staff located in regional and satellite offices throughout the country.

### CONSTRUCTION MANAGEMENT

*Our construction management team serves as owner’s representative overseeing construction projects ranging from a roof replacement to a value-add renovation at an entire apartment community. Our services include:*

- Property condition assessment, site security solutions, permitting, resolution of code violations, cost-to-complete analysis, contract negotiations, and management of construction activities.
- Working with you to develop a plan that maximizes an asset’s value while minimizing capital outlays.



# ASSETS & RECEIVERSHIP



## Types of Assets

**GlassRatner Management & Realty Advisors** has extensive experience as Receiver, CRO and property manager throughout the country, representing hundreds of assets and several billion dollars of real estate. Our knowledge and expertise extends to the following asset classes:

- Multifamily Apartment Communities
- Condominium Projects
- Condominium Conversions
- Student Housing
- Hotels/Motels
- Single-Family Subdivisions
- Townhome Projects
- Mobile Home Communities
- Retail Strip Centers
- Multi-Anchored Retail Centers
- Convenience Stores & Gas Stations
- Restaurants
- Office Buildings
- Golf Courses
- Resorts
- Churches
- Vacant Land
- Mixed-Use Projects

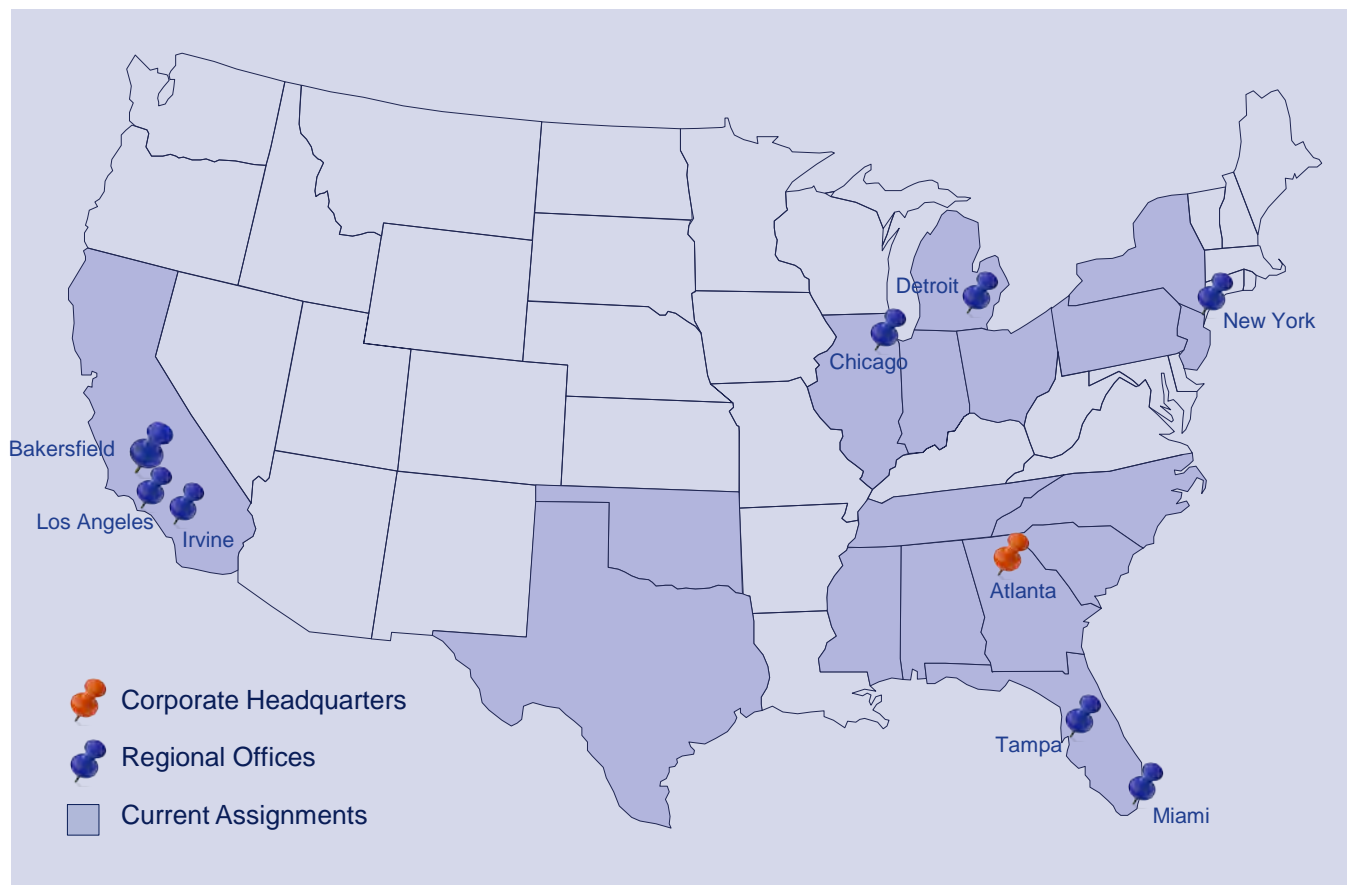
## Benefits of Receivership

- Lender gains swift control of operations and funds.
- State or federal courts react to a movant's application or petition for the appointment of a Receiver in a short period of time, as opposed to lengthy foreclosure proceedings.
- Lender has a vehicle to sell real estate properties without having been part of the chain of ownership, which reduces liability issues.
- Lender is able to understand more clearly any collateral issue before taking further action.
- Even if a foreclosure is inevitable, Receivership gives Lender a chance to "look before it leaps," including evaluating areas such as: environmental conditions, life safety issues, and inflexible payables (including utility bills).
- Lender avoids exposing itself to persistent or aggressive creditors as an available "deep pocket," which could accompany foreclosure.
- Move for Receivership does not require Lender to give up its foreclosure rights.





# A NATIONAL PLATFORM



## Clients include:

BB&T • CHH Capital Partners • CW Capital • EverBank • Fannie Mae • GE Capital Services • Key Bank • Matrix Real Estate Advisors • Midland Loan Services • OCWEN • Regions Bank • Sovereign Bank • Textron Financial Business Partners • Trimont Real Estate Advisors • Wells Fargo

## Contact Information

*Please contact a senior member of our team for more information, a detailed brochure, or a quote.*

**Ron Glass, Principal**  
404-835-8830  
[rglass@glassratner.com](mailto:rglass@glassratner.com)

**Todd Beresin, CFO**  
404-835-8859  
[tberesin@glassratner.com](mailto:tberesin@glassratner.com)

**Julia Noel, VP of Multifamily Operations**  
813-323-7111  
[jnoel@glassratner.com](mailto:jnoel@glassratner.com)

**Joel Murovitz, Director of Commercial Real Estate**  
404-835-8838  
[jmurovitz@glassratner.com](mailto:jmurovitz@glassratner.com)

## Liquidation Analysis

Properties remaining unsold

					Low Case				High Case			
Property/Owner	% of Debtor Ownership	Property Scheduled Value <sup>1</sup>	Schedule Mortgage <sup>1</sup>		Sale Price <sup>2</sup>	Cost of Sale <sup>3</sup>	Amount Realized for Debtor After Sale	Deficiency Claim	Sale Price <sup>4</sup>	Cost of Sale <sup>3</sup>	Amount Realized for Debtor After Sale	Deficiency Claim
520 E. 46th St, Chicago, Ill	100% <sup>2</sup>	\$ 300,000	\$ 290,000		\$ 225,000.00	\$ 11,250.00	\$ -	\$ (76,250.00)	\$ 375,000.00	\$ 18,750.00	\$ 66,250.00	\$ -
Farnsworth (Aurora) Landco LLC	100%	\$ 1,125,000	\$ -		\$ 843,750.00	\$ 42,187.50	\$ 801,562.50	\$ -	\$ 1,406,250.00	\$ 66,250.00	\$ 1,340,000.00	\$ -
6200 N. Rockwell (Chicago) LLC	100%	\$ 125,000	\$ 181,683		\$ 93,750.00	\$ 4,687.50	\$ -	\$ (92,620.50)	\$ 156,250.00	\$ 7,812.50	\$ -	\$ (33,245.50)
Caveman Vegas LLC	100%	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DTE Venture LLC	100%	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Kinman Enterprises LLC	100%	\$ 420,000	\$ 307,317		\$ 315,000.00	\$ 15,750.00	\$ -	\$ (8,067.00)	\$ 525,000.00	\$ 26,250.00	\$ 191,433.00	\$ -
Lynwood Land Co LLC	100%	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Beneficial interest in Trust 44203	100%	\$ 1,105,000	\$ 739,821		\$ 828,750.00	\$ 41,437.50	\$ 47,491.50	\$ -	\$ 1,381,250.00	\$ 65,250.00	\$ 576,179.00	\$ -
25210 W. Reed (Channahon) LLC	100%	\$ 1,100,000	\$ 900,000		\$ 825,000.00	\$ 41,250.00	\$ -	\$ (116,250.00)	\$ 1,375,000.00	\$ 65,000.00	\$ 410,000.00	\$ -
Trust 44204	85%	\$ 1,300,000	\$ 739,821		\$ 975,000.00	\$ 48,750.00	\$ 158,464.65	\$ -	\$ 1,625,000.00	\$ 75,000.00	\$ 688,652.15	\$ -
Trust 95-6296	60%	\$ 850,000	\$ -		\$ 637,500.00	\$ 31,875.00	\$ 363,375.00	\$ -	\$ 1,062,500.00	\$ 52,500.00	\$ 606,000.00	\$ -
125-165 Dundee Road (Buffalo Grove) LLC	55%	\$ 2,350,000	\$ 491,748		\$ 1,762,500.00	\$ 80,500.00	\$ 654,638.60	\$ -	\$ 2,937,500.00	\$ 127,500.00	\$ 1,275,038.60	\$ -
Trust 95-6457	50%	\$ 2,000,000	\$ 643,609		\$ 1,500,000.00	\$ 70,000.00	\$ 393,195.50	\$ -	\$ 2,500,000.00	\$ 110,000.00	\$ 873,195.50	\$ -
Trust 98-6811	50%	\$ 2,150,000	\$ 2,613,895		\$ 1,612,500.00	\$ 74,500.00	\$ -	\$ (1,075,895.00)	\$ 2,687,500.00	\$ 117,500.00	\$ -	\$ (43,895.00)
Sierra Office Solutions LLC	50%	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Chicago Commercial LLC	50%	\$ 650,000	\$ 480,589		\$ 487,500.00	\$ 24,375.00	\$ -	\$ (17,464.00)	\$ 812,500.00	\$ 40,625.00	\$ 145,643.00	\$ -
Glenwood Residential LLC	40%	\$ 220,000	\$ 280,328		\$ 165,000.00	\$ 8,250.00	\$ -	\$ (123,578.00)	\$ 275,000.00	\$ 13,750.00	\$ -	\$ (19,078.00)
Channahon Plaza LLC	35%	\$ 3,428,571	\$ 2,507,562		\$ 2,571,428.25	\$ 112,857.13	\$ -	\$ (48,990.88)	\$ 4,285,713.75	\$ 181,428.55	\$ 558,853.12	\$ -

Property/Owner	% of Debtor Ownership	Property Scheduled Value <sup>1</sup>	Schedule Mortgage <sup>1</sup>	Low Case				High Case			
				Sale Price <sup>2</sup>	Cost of Sale <sup>3</sup>	Amount Realized for Debtor After Sale	Deficiency Claim	Sale Price <sup>4</sup>	Cost of Sale <sup>3</sup>	Amount Realized for Debtor After Sale	Deficiency Claim
1611 Stewart (Chicago) LLC	20%	\$ 505,390	\$ 505,390	\$ 379,042.50	\$ 18,952.13	\$ -	\$ (145,299.63)	\$ 631,737.50	\$ 31,586.88	\$ 18,952.13	\$ -
		\$ 17,628,961	\$ 10,681,763		\$ 626,622	\$ 2,418,728	\$ (1,704,415)		\$ 999,203	\$ 6,750,196.50	\$ (96,218.50)

1. Taken from Debtor's Schedules
2. Low case scenario based on forced liquidation at value 25% below scheduled amount
3. Based upon costs for brokers calculated at 5% for first \$1,000,000 and 4% over \$1,000,000
4. High case scenario assumes receipt of 25% above scheduled amount

## Liquidation Analysis

	Chapter 7		Chapter 11	
	Low	High	Low	High
<b>Assets</b>				
Cash On Hand (as of February 28, 2015)	\$ 28,282,482	\$ 28,282,482	\$ 28,282,482	\$ 28,282,482
Cash generated by sales	\$ 13,221,721	\$ 22,036,201	\$ 13,221,721	\$ 22,036,201
Ordinary (Operating) income	Unknown	Unknown	Unknown	Unknown
<b>Total</b>	\$ 41,504,203	\$ 50,318,683	\$ 41,504,203	\$ 50,318,683
<b>Costs</b>				
Operating costs	Unknown	Unknown	Unknown	Unknown
Seyfarth Shaw legal fees <sup>1</sup>	\$ 652,809	\$ 652,809	\$ 652,809	\$ 652,809
Brokerage commissions	\$ 626,622	\$ 999,203	\$ 626,622	\$ 999,203
Attorneys fees	\$ 2,000,000	\$ 750,000	\$ 2,000,000	\$ 750,000
Mortgage payoffs	\$ 8,977,348	\$ 10,585,545	\$ 8,977,348	\$ 10,585,545
U.S. Trustee Fees	\$ 100,000	\$ 50,000	\$ 100,000	\$ 50,000
Trustee Compensation Under 11 U.S.C. 326 <sup>2</sup>	\$ 1,268,376	\$ 1,532,810	\$ -	\$ -
Plan Administrator compensation	\$ -	\$ -	\$ 750,000	\$ 150,000
<b>Total Costs</b>	\$ 13,625,155	\$ 14,570,367	\$ 12,356,779	\$ 13,037,556
<b>Net amount</b>	\$ 27,879,048	\$ 35,748,316	\$ 29,147,424	\$ 37,281,127
<b>Unsecured Claims</b>				
Current Estimate <sup>3</sup>	\$ 40,000,000	\$ 30,000,000	\$ 40,000,000	\$ 30,000,000
Additional Deficiency Claims	\$ 1,704,415	\$ 96,219	\$ 1,704,415	\$ 96,219
<b>Total</b>	\$ 41,704,415	\$ 30,096,219	\$ 41,704,415	\$ 30,096,219
Percentage recovery on principal <sup>4</sup>	66.8%	100.0%	69.9%	100.0%
Interest on Unsecured Claims <sup>5</sup>	N/A <sup>6</sup>	\$122,353 – \$8,544,819	N/A <sup>6</sup>	\$122,353 – \$8,544,819
Recovery to Equity	\$ -	\$5,529,744 – \$0	\$ -	\$7,062,555 – \$0

1. Estimated legal fees from November 1, 2014 to May 1, 2015 based upon fees of \$2.6mm for prior 24.5 months.
2. Estimate based upon length of time to close case under plan.
3. See transcript of hearing on February 5, 2015, p11.
4. Total recovery for unsecured claims dependant upon future resolution of appropriate interest rate under the plan.
5. Range of potential interest rate to be paid on account of GUCs between 0.14% and 9% compounded annually for 2.9 years.
6. No interest to be paid unless and until unsecured claims are paid in full.

# Northern District of Illinois Claims Register

[12-31336 Dvorkin Holdings, LLC](#)

**Honorable Judge:** Jacqueline P. Cox

**Chapter:** 11

**Office:** Chicago

**Last Date to file claims:** 02/27/2013

**Trustee:** Gus A Paloian

**Last Date to file (Govt):**

<b>Creditor:</b> (19354960) <a href="#">History</a> Department of the Treasury Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101-7346		<b>Claim No: 1</b> <i>Original Filed Date:</i> 08/24/2012 <i>Original Entered Date:</i> 08/24/2012 <i>Last Amendment Filed:</i> 08/14/2014 <i>Last Amendment Entered:</i> 08/14/2014		<b>Status:</b> <i>Filed by:</i> CR <i>Entered by:</i> Bruce Hayes <i>Modified:</i> 05/03/2013	
Amount	claimed:	\$0.00			
Secured	claimed:	\$0.00			
Priority	claimed:	\$0.00			
<b>History:</b>					
<a href="#">Details</a>	<a href="#">1-1</a>	08/24/2012	Claim #1 filed by Department of the Treasury, Amount claimed: \$1500.00 (Hayes, Bruce )		
<a href="#">Details</a>	<a href="#">1-2</a>	05/02/2013	Amended Claim #1 filed by Department of the Treasury, Amount claimed: \$500.00 (Hayes, Bruce )		
<a href="#">Details</a>	<a href="#">1-3</a>	08/14/2014	Amended Claim #1 filed by Department of the Treasury, Amount claimed: \$0.00 (Hayes, Bruce )		
<b>Description:</b>					
<b>Remarks:</b> (1-2) Modified on 05/03/2013 to correct creditor name (LTK)					

<b>Creditor:</b> (22967445) Pioneer Funding Group II, LLC Greeley Square Station P.O. Box 20188 New York, NY 10001 <a href="#">Claimant</a> <a href="#">History</a>		<b>Claim No: 2</b> <i>Original Filed Date:</i> 09/27/2012 <i>Original Entered Date:</i> 09/27/2012		<b>Status:</b> <i>Filed by:</i> CR <i>Entered by:</i> Samantha Babcock <i>Modified:</i> 06/23/2014	
Amount	claimed:	\$836054.81			
Secured	claimed:	\$752000.00			
<b>History:</b>					
<a href="#">Details</a>	<a href="#">2-1</a>	09/27/2012	Claim #2 filed by Schaumburg Bank & Trust Company, Amount claimed: \$836054.81 (Babcock, Samantha )		
<a href="#">Details</a>	<a href="#">584</a>	02/24/2015	Transfer of Claim. Transferor: <a href="#">Schaumburg Bank &amp; Trust Company</a> (Claim No. 2, Amount 136,684.10) To Pioneer Funding Group II, LLC Fee Amount \$25 Filed by Pioneer Funding Group, LLC. Objections due by 03/17/2015. (Stein-Sapir, Adam)		
<b>Description:</b> (2-1) investment real estate, breach of promissory note					
<b>Remarks:</b> (2-1) Modified on 09/28/2012 to correct creditor address (LTK) - Claim #2 has been modified as a general unsecured claim per order entry #452 - lw					

<b>Creditor:</b> (19519282) Toyota Motor Credit Corporation		<b>Claim No: 3</b> <i>Original Filed Date:</i> 10/02/2012		<b>Status:</b> <i>Filed by:</i> CR	
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(TMCC)  
PO BOX 8026  
Cedar Rapids, Iowa 52408-8026

G - Claims Register Part 1 of 5  
Original Filed Date: 11/02/2012

Entered by: Brittny N Martinson  
Modified:

Amount claimed: \$26030.00

## History:

[Details](#) [3-1](#) 10/02/2012 Claim #3 filed by Toyota Motor Credit Corporation (TMCC), Amount claimed: \$26030.00 (Martinson, Brittny )

## Description:

## Remarks:

Creditor: (19652796)  
Ascher Brothers Company, Inc.  
c/o George E. Sang  
Schoenberg Finkel Newman &  
Rosenberg LLC  
222 S. Riverside Plaza, Suite 2100  
Chicago, IL 60606

## Claim No: 4

Original Filed Date: 11/02/2012  
Original Entered Date: 11/02/2012

## Status:

Filed by: CR  
Entered by: David S. Makarski  
Modified:

Amount claimed: \$55993.85

Secured claimed: \$27696.33

## History:

[Details](#) [4-1](#) 11/02/2012 Claim #4 filed by Ascher Brothers Company, Inc., Amount claimed: \$55993.85 (Makarski, David )

[367](#) 10/15/2013 Notice of Hearing and Objection to Claim(s) 4 of Ascher Brothers Company, Inc. Filed by James B. Sowka on behalf of Gus A Paloian. Hearing scheduled for 11/15/2013 at 10:30 AM at 219 South Dearborn, Courtroom 682, Chicago, Illinois 60604. (Attachments: # [1](#) Exhibit A)(Sowka, James) Modified on 10/16/2013  
**Missing Proposed Order Filer Notified to Refile**(Mendoza, Catherine).

[388](#) 11/15/2013 Order Disallowing Objection to Claim 4. (RE: [367](#) Objection to Claim). Signed on 11/15/2013 (Korotko, Leon)

## Description: (4-1) Services Performed

## Remarks:

Creditor: (19288982) [History](#)  
Centier Bank  
Deutsch, Levy & Engel, Chartered  
225 W Washington Street  
Suite 1700  
Chicago, IL 60606

## Claim No: 5

Original Filed Date: 11/09/2012  
Original Entered Date: 11/09/2012

## Status:

Filed by: CR  
Entered by: Emily N Masalski  
Modified: 11/13/2012

Amount claimed: \$979574.51

## History:

[Details](#) [5-1](#) 11/09/2012 Claim #5 filed by Centier Bank, Amount claimed: \$979574.51 (Masalski, Emily )

## Description: (5-1) Guaranty of 2150 Loan

## Remarks: (5-1) Modified on 11/13/2012 to correct creditor address (LTK)

Creditor: (19288982) [History](#)  
Centier Bank  
Deutsch, Levy & Engel, Chartered

## Claim No: 6

Original Filed Date: 11/09/2012  
Original Entered Date: 11/09/2012

## Status:

Filed by: CR  
Entered by: Emily N Masalski

225 W Washington Street  
Suite 1700  
Chicago, IL 60606

G - Claims Register Part I Page 3 of 5 Modified: 11/13/2012

Amount claimed: \$979574.51

## History:

<a href="#">Details</a>	<a href="#">6-1</a>	11/09/2012	Claim #6 filed by Centier Bank, Amount claimed: \$979574.51 (Masalski, Emily )
	<a href="#">145</a>	11/19/2012	Withdrawal of Claim(s): 6 Filed by Emily N Masalski on behalf of Centier Bank. (Masalski, Emily)

Description: (6-1) Guaranty of 2150 Loan

Remarks: (6-1) Modified on 11/13/2012 to correct creditor address (LTK)

Creditor: (19680799)  
Asset Liquidators, LLC, as assignee  
of Texas  
1845, LLC, as successor to Key  
Equipment  
Finance, Inc.  
c/o Michael Waters and William  
Thorsness  
Vedder Price, 222 N. LaSalle St.  
Chicago, IL 60601

Claim No: 7  
Original Filed Date: 11/12/2012  
Original Entered Date: 11/12/2012

Status:  
Filed by: CR  
Entered by: William W Thorsness  
Modified: 11/13/2012

Amount claimed: \$8259292.09

## History:

<a href="#">Details</a>	<a href="#">7-1</a>	11/12/2012	Claim #7 filed by Asset Liquidators, LLC, as assignee of Texas, Amount claimed: \$8259292.09 (Thorsness, William )
	<a href="#">587</a>	02/25/2015	Notice of Hearing and Objection to Claim(s) 7 of Asset Liquidators, LLC Filed by Bret Harper on behalf of Gus A Paloian. Hearing scheduled for 3/31/2015 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Proposed Order)(Harper, Bret)

Description:

Remarks: (7-1) Modified on 11/13/2012 to correct claim amount (LTK)

Creditor: (19448506)  
BMO Harris Bank, N.A.  
311 West Monroe  
Chicago, IL 60690

Claim No: 8  
Original Filed Date: 11/12/2012  
Original Entered Date: 11/12/2012

Status:  
Filed by: CR  
Entered by: Colleen E McManus  
Modified: 11/13/2012

Amount claimed: \$0.00

## History:

<a href="#">Details</a>	<a href="#">8-1</a>	11/12/2012	Claim #8 filed by BMO Harris Bank, N.A., Amount claimed: \$0.00 (McManus, Colleen )
	<a href="#">473</a>	05/16/2014	Withdrawal of Claim(s): 8 Filed by Colleen E McManus on behalf of BMO Harris Bank, N.A.. (McManus, Colleen)

Description:

Remarks: (8-1) Docketed on Wrong Case, Filer Notified to Refile (Modified on 11/13/12dp)

Creditor: (21371996)  
ASM Capital IV, L.P.  
7600 Jericho Turnpike, Suite 302

Claim No: 9  
Original Filed Date: 11/14/2012  
Original Entered Date: 11/14/2012

Status:  
Filed by: CR  
Entered by: Brenda Porter Helms,

Woodbury, NY

G Claims Register Part 11/15/2012 Page 4 of 5

11797

[Claimant History](#)

Last Amendment Entered: 11/15/2012

Modified: 11/15/2012

Amount	claimed:	\$5582520.29		
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**History:**

<a href="#">Details</a>	<a href="#">9-1</a>	11/14/2012	Claim #9 filed by Albany Bank, Amount claimed: \$5582520.29 (Helms, Brenda )
<a href="#">Details</a>	<a href="#">9-2</a>	11/15/2012	Amended Claim #9 filed by Albany Bank, Amount claimed: \$5582520.29 (Helms, Brenda )
	<a href="#">415</a>	12/30/2013	Transfer of Claim. Transferor: <a href="#">Albany Bank</a> (Claim No. 9, Amount 5,582,520.29) To ASM Capital IV, L.P. Fee Amount \$25 Filed by ASM Capital IV, L.P.. Objections due by 01/21/2014. (Wolfe, Douglas)
	<a href="#">427</a>	01/21/2014	<b>Incorrect Event, Filer Notified to ReFile</b> Amended Transfer of Claim 9 to correct purchase agreement Filed by ASM Capital IV, L.P. (RE: <a href="#">415</a> Transfer of Claim). (Wolfe, Douglas) Modified on 1/22/2014 (Pruitt, Debra).
	<a href="#">593</a>	02/25/2015	Notice of Hearing and Objection to Claim(s) 9 of ASM Capital IV, L.P. Filed by Bret Harper on behalf of Gus A Paloian. Hearing scheduled for 3/31/2015 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C # <a href="#">4</a> Exhibit D # <a href="#">5</a> Exhibit E # <a href="#">6</a> Exhibit F # <a href="#">7</a> Exhibit G # <a href="#">8</a> Exhibit H # <a href="#">9</a> Proposed Order)(Harper, Bret)

**Description:** (9-1) 3 guarantees

(9-2) BUSINESS LOAN GUARANTEES

**Remarks:** (9-1) Incomplete PDF, filer notified to file an amended claim (Modified on 11/15/12)dp

**Creditor:** (19691372)  
R.G. Construction Services, Inc.  
c/o David J. Chroust  
Ice Miller LLP  
2300 Cabot Drive, Ste. 455  
Lisle, IL 60532

**Claim No: 10***Original Filed Date:* 11/14/2012*Original Entered Date:* 11/14/2012**Status:***Filed by:* AT*Entered by:* John D. Burke*Modified:* 06/23/2014

Amount	claimed:	\$0.00		
Secured	claimed:	\$0.00		
Priority	claimed:	\$0.00		

**History:**

<a href="#">Details</a>	<a href="#">10-1</a>	11/14/2012	Claim #10 filed by R.G. Construction Services, Inc., Amount claimed: \$0.00 (Burke, John )
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**Description:** (10-1) claim for labor and materials supplied**Remarks:** (10-1) Modified Claim Amount 11/15/12dp - Claim #10 is withdrawn per order entry #423 - lw

**Creditor:** (19289002) [History](#)  
North Shore Community Bank & Trust  
c/o Robert J Huguelet Jr, PC  
10749 Winterset Drive  
Orland Park, IL 60467

**Claim No: 11***Original Filed Date:* 11/15/2012*Original Entered Date:* 11/15/2012**Status:***Filed by:* CR*Entered by:* Robert J Huguelet, Jr*Modified:* 11/16/2012

Amount	claimed:	\$222934.95		
Secured	claimed:	\$0.00		
Priority	claimed:	\$0.00		

**History:**

<a href="#">Details</a>	<a href="#">11-1</a>	11/15/2012	Claim #11 filed by North Shore Community Bank & Trust, Amount claimed: \$222934.95 (Huguelet, Robert )
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Description:

Remarks: (11-1) Modified on 11/16/2012 to correct creditor address (LTK)

Creditor: (19697700)

FirstMerit Bank, N.A.

c/o Meltzer, Purtil &amp; Stelle LLC

Attn: Steven R. Rogovin

300 S. Wacker Drive, Suite 3500

Chicago, IL 60606

Claim No: 12

Original Filed Date: 11/15/2012

Original Entered Date: 11/15/2012

Status:

Filed by: CR

Entered by: Forrest B Lammiman

Modified:

Amount claimed: \$15693038.21

History:

[Details](#)[12-1](#)

11/15/2012

Claim #12 filed by FirstMerit Bank, N.A., Amount claimed: \$15693038.21  
(Lammiman, Forrest )

Description: (12-1) Guaranties of monies loaned

Remarks: (12-1) See attached back-up

Creditor: (19698024)

BMO Harris Bank N.A.

c/o Carlson Dash LLC

216 S. Jefferson, Suite 504

Chicago, IL 60661

Claim No: 13

Original Filed Date: 11/15/2012

Original Entered Date: 11/15/2012

Status:

Filed by: CR

Entered by: Colleen E McManus

Modified:

Amount claimed: \$3793265.24

History:

[Details](#)[13-1](#)

11/15/2012

Claim #13 filed by BMO Harris Bank N.A., Amount claimed: \$3793265.24  
(McManus, Colleen )

Description:

Remarks:

Creditor: (22696647)

ASM Capital V, L.P.

7600 Jericho Turnpike, Suite 302

Woodbury, NY 11797

[Claimant](#)[History](#)

Claim No: 14

Original Filed Date: 11/15/2012

Original Entered Date: 11/15/2012

Status:

Filed by: CR

Entered by: Jerry L Switzer

Modified:

Amount claimed: \$3504767.25

History:

[Details](#)[14-1](#)

11/15/2012

Claim #14 filed by ColFin Bulls Funding A, LLC, Amount claimed: \$3504767.25  
(Switzer, Jerry )[550](#)

12/04/2014

Transfer of Claim. Transferor: [ColFin Bulls Funding A, LLC](#) (Claim No. 14, Amount 1,250,000.00) To ASM Capital V, L.P. Fee Amount \$25 Filed by ASM Capital V, L.P.. Objections due by 12/26/2014. (Wolfe, Douglas)[589](#)

02/25/2015

Notice of Hearing and Objection to Claim(s) 14 of Colfin Bulls Funding A, LLC Filed by Bret Harper on behalf of Gus A Paloian. Hearing scheduled for 3/31/2015 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Attachments: # [1](#) Exhibit A, Part 1 # [2](#) Exhibit A, Part 2 # [3](#) Exhibit B # [4](#) Proposed Order)(Harper, Bret)

Description:

Remarks:

<b>Creditor:</b> (19700619) Focus VI, LLC Gunderson & Tharp, LLC 308 W Erie Street, Suite 300 Chicago, IL 60654	<b>Claim No: 15</b> <i>Original Filed Date:</i> 11/15/2012 <i>Original Entered Date:</i> 11/16/2012	<b>Status:</b> <i>Filed by:</i> CR <i>Entered by:</i> Leon Korotko <i>Modified:</i>
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Amount	claimed:	\$7000000.00		
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**History:**

<a href="#">Details</a>	<a href="#">15-1</a>	11/15/2012	Claim #15 filed by Focus VI, LLC, Amount claimed: \$7000000.00 (Korotko, Leon )
	<a href="#">439</a>	02/12/2014	Notice of Hearing and Objection to Claim(s) 15 of Focus VI, LLC Filed by Bret Harper on behalf of Gus A Paloian. Hearing scheduled for 3/14/2014 at 10:30 AM at 219 South Dearborn, Courtroom 682, Chicago, Illinois 60604. (Attachments: # <a href="#">1</a> Proposed Order)(Harper, Bret)
	<a href="#">455</a>	03/28/2014	Order Disallowing Claim(s) 15 (RE: <a href="#">439</a> Objection to Claim). Signed on 3/28/2014 (Korotko, Leon)

**Description:****Remarks:**

<b>Creditor:</b> (19702893) <a href="#">History</a> Oxford Bank & Trust Freeborn & Peters LLP Attn: Devon J Eggert 311 South Wacker Dr, Suite 3000 Chicago, IL 60606	<b>Claim No: 16</b> <i>Original Filed Date:</i> 11/16/2012 <i>Original Entered Date:</i> 11/16/2012	<b>Status:</b> <i>Filed by:</i> AT <i>Entered by:</i> Devon J Eggert <i>Modified:</i> 11/20/2012
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Amount	claimed:	\$584143.32		
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**History:**

<a href="#">Details</a>	<a href="#">16-1</a>	11/16/2012	Claim #16 filed by Oxford Bank & Trust, Amount claimed: \$584143.32 (Eggert, Devon )
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**Description:** (16-1) Guaranty of indebtedness**Remarks:** (16-1) Modified on 11/20/2012 to correct creditor address (LTK)

<b>Creditor:</b> (19288990) <a href="#">History</a> First Nations Bank David A Kallick Tishler & Wald Ltd 200 S Wacker Dr, Suite 3000 Chicago, IL 60606	<b>Claim No: 17</b> <i>Original Filed Date:</i> 11/16/2012 <i>Original Entered Date:</i> 11/16/2012	<b>Status:</b> <i>Filed by:</i> CR <i>Entered by:</i> David A. Kallick <i>Modified:</i> 11/20/2012
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Amount	claimed:	\$2507562.97		
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**History:**

<a href="#">Details</a>	<a href="#">17-1</a>	11/16/2012	Claim #17 filed by First Nations Bank, Amount claimed: \$2507562.97 (Kallick, David )
	<a href="#">588</a>	02/25/2015	Notice of Hearing and Objection to Claim(s) 17 of First Nations Bank Filed by Bret Harper on behalf of Gus A Paloian. Hearing scheduled for 3/31/2015 at 10:00 AM at 219 South Dearborn, Courtroom 644, Chicago, Illinois 60604. (Attachments: # <a href="#">1</a> Proposed Order)(Harper, Bret)

**Description:** (17-1) Personal guaranty on loan to Original Plaza, LLC

**Remarks:** (17-1) Modified on 11/20/2012 to correct creditor address (LTK)

**Creditor:** (19705882)  
Huck Bouma PC  
1755 South Naperville Road  
Wheaton, Illinois 60189

**Claim No: 18**  
*Original Filed Date:* 11/16/2012  
*Original Entered Date:* 11/16/2012

**Status:**  
*Filed by:* CR  
*Entered by:* Lawrence A. Stein  
*Modified:*

**Amount** **claimed:** \$35000.00

**History:**

[Details](#) [18-1](#) 11/16/2012 Claim #18 filed by Huck Bouma PC, Amount claimed: \$35000.00 (Stein, Lawrence )

**Description:** (18-1) Legal fees and expenses.

**Remarks:** (18-1) Approximated amount.

**Creditor:** (19706106)  
RiverSource Life Insurance Company  
RELM  
25540 Ameriprise Financial Center  
Minneapolis, MN 55474

**Claim No: 19**  
*Original Filed Date:* 11/16/2012  
*Original Entered Date:* 11/16/2012

**Status:**  
*Filed by:* CR  
*Entered by:* Rebecca D. Rosenthal  
*Modified:*

**Amount** **claimed:** \$11037499.12

**History:**

[Details](#) [19-1](#) 11/16/2012 Claim #19 filed by RiverSource Life Insurance Company, Amount claimed: \$11037499.12 (Rosenthal, Rebecca )

[492](#) 06/20/2014 Withdrawal of Claim(s): 19 Filed by RiverSource Life Insurance Company . (Huley, Linda)

**Description:**

**Remarks:**

**Creditor:** (20028761)  
Eatman Holdings LLC  
One Transam Plaza Drive  
Suite 120  
Oakbrook, Terrace, IL 60181

**Claim No: 20**  
*Original Filed Date:* 02/11/2013  
*Original Entered Date:* 02/12/2013

**Status:**  
*Filed by:* CR  
*Entered by:* Linda Huley  
*Modified:*

**Amount** **claimed:** \$22500.00

**History:**

[Details](#) [20-1](#) 02/11/2013 Claim #20 filed by Eatman Holdings LLC, Amount claimed: \$22500.00 (Huley, Linda )

[535](#) 09/26/2014 Order Modifying Claim(s) 20 (RE: [521](#) Agreed Order). Signed on 9/26/2014 (Myers, Melissa)

**Description:**

**Remarks:**

**Creditor:** (20092497) [History](#)  
Aaron Dvorkin  
c/o Gina B. Krol

**Claim No: 21**  
*Original Filed Date:* 02/26/2013  
*Original Entered Date:* 02/26/2013

**Status:**  
*Filed by:* CR  
*Entered by:* E. Philip Groben

105 W. Madison St. Ste. 1100 G - Claims Register Part II Page 3 of 6  
 Chicago, IL 60602 Modified: 02/27/2013

Amount	claimed:	\$0.00		
Secured	claimed:	\$0.00		

**History:**

<a href="#">Details</a>	<a href="#">21-1</a>	02/26/2013	Claim #21 filed by Aaron Dvorkin, Amount claimed: \$0.00 (Groben, E. Philip )
	<a href="#">490</a>	06/18/2014	Withdrawal of Claim(s): 21 Filed by Gina B Krol ESQ on behalf of Aaron Dvorkin. (Krol, Gina)

**Description:** (21-1) Unknown, Contingent, and Unliquidated

**Remarks:** (21-1) Modified to include address (Modified on 2/27/13) lw

**Creditor:** (20092498) [History](#)  
 Francine Dvorkin  
 c/o Gina B. Krol  
 105 W. Madison St. Ste 1100  
 Chicago, IL 60602

**Claim No: 22**  
*Original Filed Date:* 02/26/2013  
*Original Entered Date:* 02/26/2013

**Status:**  
*Filed by:* CR  
*Entered by:* E. Philip Groben  
*Modified:* 02/27/2013

Amount	claimed:	\$0.00		
Secured	claimed:	\$0.00		

**History:**

<a href="#">Details</a>	<a href="#">22-1</a>	02/26/2013	Claim #22 filed by Francine Dvorkin, Amount claimed: \$0.00 (Groben, E. Philip )
	<a href="#">489</a>	06/18/2014	Withdrawal of Claim(s): 22 Filed by Gina B Krol ESQ on behalf of Francine R Dvorkin. (Krol, Gina)

**Description:** (22-1) Unknown, Contingent, and Unliquidated

**Remarks:** (22-1) Modified to include address (Modified on 2/27/13) lw

**Creditor:** (20092499) [History](#)  
 Beverly Dvorkin  
 c/o Gina B. Krol  
 105 W. Madison St. Ste 1100  
 Chicago, IL 60602

**Claim No: 23**  
*Original Filed Date:* 02/26/2013  
*Original Entered Date:* 02/26/2013

**Status:**  
*Filed by:* CR  
*Entered by:* E. Philip Groben  
*Modified:* 02/27/2013

Amount	claimed:	\$0.00		
Secured	claimed:	\$0.00		

**History:**

<a href="#">Details</a>	<a href="#">23-1</a>	02/26/2013	Claim #23 filed by Beverly Dvorkin, Amount claimed: \$0.00 (Groben, E. Philip )
	<a href="#">488</a>	06/18/2014	Withdrawal of Claim(s): 23 Filed by Gina B Krol ESQ on behalf of Beverly Dvorkin. (Krol, Gina)

**Description:** (23-1) Unknown, Contingent, and Unliquidated

**Remarks:** (23-1) Modified to include address (Modified on 2/27/13) lw

**Creditor:** (20095660)  
 SLSF/SS&G Inc.  
 SS&G Inc.  
 8707 Skokie Blvd. Ste 400  
 Skokie, IL 60077

**Claim No: 24**  
*Original Filed Date:* 02/26/2013  
*Original Entered Date:* 02/27/2013

**Status:**  
*Filed by:* CR  
*Entered by:* Linda Huley  
*Modified:*

Amount	claimed:	\$19482.36		
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## G - Claims Register Part II Page 4 of 6

## History:

<a href="#">Details</a>	<a href="#">24-1</a>	02/26/2013	Claim #24 filed by SLSF/SS&G Inc., Amount claimed: \$19482.36 (Huley, Linda )
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## Description:

## Remarks:

Creditor: (20099160)

Frank La Vere and Bette Lynne La Vere  
53 W. Jackson Blvd, Ste 1610  
Chicago, IL 60604

Claim No: 25

Original Filed Date: 02/27/2013

Original Entered Date: 02/27/2013

Status:

Filed by: CR

Entered by: Jonathan T Brand

Modified:

Amount	claimed:	\$228000.00		
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## History:

<a href="#">Details</a>	<a href="#">25-1</a>	02/27/2013	Claim #25 filed by Frank La Vere and Bette Lynne La Vere, Amount claimed: \$228000.00 (Brand, Jonathan )
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Description: (25-1) Filed by attorney for creditor.

## Remarks:

Creditor: (20099160)

Frank La Vere and Bette Lynne La Vere  
53 W. Jackson Blvd, Ste 1610  
Chicago, IL 60604

Claim No: 26

Original Filed Date: 02/27/2013

Original Entered Date: 02/27/2013

Status:

Filed by: CR

Entered by: Jonathan T Brand

Modified:

Amount	claimed:	\$0.00		
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## History:

<a href="#">Details</a>	<a href="#">26-1</a>	02/27/2013	Claim #26 filed by Frank La Vere and Bette Lynne La Vere, Amount claimed: \$0.00 (Brand, Jonathan )
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Description: (26-1) unknown amount

Remarks: (26-1) Filed by attorney for creditor.

Creditor: (20101785)

1426 Washington Avenue LLC  
C/o Richard Goldwasser  
Schoenberg, Finkel, Newman & Rosenberg,  
222 S. Riverside Plaza, Suite 2100  
Chicago, IL 60606

Claim No: 27

Original Filed Date: 02/27/2013

Original Entered Date: 02/27/2013

Status:

Filed by: CR

Entered by: David S. Makarski

Modified: 02/28/2013

Amount	claimed:	\$88349.25		
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Secured	claimed:	\$91662.31		
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## History:

<a href="#">Details</a>	<a href="#">27-1</a>	02/27/2013	Claim #27 filed by 1426 Washington Avenue LLC, Amount claimed: \$88349.25 (Makarski, David )
	<a href="#">414</a>	12/20/2013	Notice of Hearing and Objection to Claim(s) 27 of 1426 Washington Avenue, LLC Filed by James B. Sowka on behalf of Gus A Paloian. Hearing scheduled for 1/24/2014 at 10:30 AM at 219 South Dearborn, Courtroom 682, Chicago, Illinois

		60604. (Attachments: # <a href="#">1</a> Proposed Order)(Sowka, James)	
	<a href="#">429</a>	01/24/2014	Order Sustaining Objection to Claim 27 (RE: <a href="#">414</a> Objection to Claim). Signed on 1/24/2014 (Korotko, Leon)
<i>Description:</i> (27-1) See Attached			
<i>Remarks:</i> (27-1) Modified to correct claim amount (Modified on 2/28/13) lw			

<b>Creditor:</b> (20101789) Daniel J. Hyman c/o Michael M. Eidelman, Esq. Vedder Price P.C. 222 N. LaSalle St., #2600 Chicago, IL 60601		<b>Claim No: 28</b> <i>Original Filed Date:</i> 02/27/2013 <i>Original Entered Date:</i> 02/27/2013	<b>Status:</b> <i>Filed by:</i> CR <i>Entered by:</i> Michael M. Eidelman, ESQ <i>Modified:</i>
<i>No amounts claimed</i>			
<i>History:</i>			
<a href="#">Details</a>	<a href="#">28-1</a>	02/27/2013	Claim #28 filed by Daniel J. Hyman, Amount claimed: (Eidelman, Michael )
	<a href="#">534</a>	09/26/2014	Order Modifying Claim(s) 28 (RE: <a href="#">522</a> Agreed Order). Signed on 9/26/2014 (Myers, Melissa)
	<a href="#">601</a>	03/03/2015	Withdrawal of Claim(s): 28 Filed by Daniel J. Hyman . (Myers, Melissa)
<i>Description:</i>			
<i>Remarks:</i>			

<b>Creditor:</b> (20101829) Star Park LLC C/o Richard M. Goldwasser Schoenberg, Finkel, Newman & Rosenberg, 222 Riverside Plaza, Suite 2100 Chicago, IL 60606		<b>Claim No: 29</b> <i>Original Filed Date:</i> 02/27/2013 <i>Original Entered Date:</i> 02/27/2013	<b>Status:</b> <i>Filed by:</i> CR <i>Entered by:</i> David S. Makarski <i>Modified:</i> 02/28/2013
Amount	claimed:	\$3225328.30	
Secured	claimed:	\$3225328.30	
Priority	claimed:	\$0.00	
<i>History:</i>			
<a href="#">Details</a>	<a href="#">29-1</a>	02/27/2013	Claim #29 filed by Star Park LLC, Amount claimed: \$3225328.30 (Makarski, David )
	<a href="#">413</a>	12/20/2013	Notice of Hearing and Objection to Claim(s) 29 of Star Park LLC Filed by James B. Sowka on behalf of Gus A Paloian. Hearing scheduled for 1/24/2014 at 10:30 AM at 219 South Dearborn, Courtroom 682, Chicago, Illinois 60604. (Attachments: # <a href="#">1</a> Proposed Order)(Sowka, James)
	<a href="#">430</a>	01/24/2014	Order Sustaining Objection to Claim 29 (RE: <a href="#">413</a> Objection to Claim). Signed on 1/24/2014 (Korotko, Leon)
<i>Description:</i> (29-1) See Attached			
<i>Remarks:</i> (29-1) Modified to entered secured amount, instead of priority (Modified on 2/28/13) lw			

## Claims Register Summary

**Case Name:** Dvorkin Holdings, LLC  
**Case Number:** 12-31336

**Date Filed:** 08/07/2012**Total Number Of Claims:** 29

<b>Total Amount Claimed*</b>	\$64680911.03
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	<b>Claimed</b>	<b>Allowed</b>
<b>Secured</b>	\$4096686.94	
<b>Priority</b>	\$0.00	
<b>Administrative</b>		

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
03/27/2015 08:38:55			
<b>PACER Login:</b>	km3279:3519103:0	<b>Client Code:</b>	384795-00001
<b>Description:</b>	Claims Register	<b>Search Criteria:</b>	12-31336 Filed or Entered From: 11/26/2010 Filed or Entered To: 3/27/2015
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30