

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

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

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**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 be 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 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.