

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

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

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

In re:	:	Chapter 11
	:	
Dvorkin Holdings, LLC,	:	Case No. 12-31336-JBS
	:	
Debtor.	:	
	:	

**DISCLOSURE STATEMENT IN RESPECT OF
CHAPTER 11 PLAN OF LIQUIDATION**

IMPORTANT DATES

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

Dated: January __, 2015

Peter A. Siddiqui, Esquire
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661-3693
Telephone: (312) 902-5455
Facsimile: (312) 902-1061

Jeffrey R. Waxman, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Telephone: (302) 888-6800
Facsimile: (302) 571-1750

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

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I. PREFATORY STATEMENT AND DEFINITIONS

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

II. INTRODUCTION AND OVERVIEW

A. Introduction

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

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

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

B. Disclaimers

The information contained in this Disclosure Statement has been obtained from the pleadings filed in the Debtor's bankruptcy case, and ASM Capital has made every reasonable

effort has been made to present accurate information and such information is believed to be correct as of the date hereof. Any value given as to the Assets is based upon the Debtor's estimation of such value. You are strongly urged to consult with your financial, legal and tax advisors to understand fully the Plan and Disclosure Statement.

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

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

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

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

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

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

THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH CREDITOR AND INTEREST HOLDER SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND ACCOUNTANT WITH RESPECT TO ALL LEGAL, TAX AND CONSEQUENCES CONCERNING HIS OR HER CLAIM OR INTEREST.

C. An Overview of the Chapter 11 Process

Chapter 11 of the Bankruptcy Code contains numerous provisions, the general effect of which is to provide the debtor with “breathing space” within which to propose a restructuring of its obligations to third parties. The filing of a chapter 11 bankruptcy petition creates a bankruptcy “estate” comprising all of the property interests of the debtor. Unless a trustee is appointed by the Bankruptcy Court for cause (no trustee has been appointed in the Chapter 11 Case), a debtor remains in possession and control of all its assets as a “debtor in possession.”

In bankruptcy, the filing of the bankruptcy petition gives rise to what is known as the “automatic stay” which, generally speaking, enjoins creditors from taking any action to collect or recover obligations owed by a debtor prior to the commencement of a chapter 11 case, unless the creditor gets relief from the court for cause after notice and an opportunity for hearing. Further, in bankruptcy, Debtors may continue to operate their business in the ordinary course on a day-to-day basis without bankruptcy Court approval, unless a trustee is appointed to administer the debtor’s estate. Bankruptcy Court approval is only required for certain kinds of transactions (such as certain financing transactions) and transactions out of the ordinary course of a debtor’s business.

A chapter 11 debtor emerges from bankruptcy by successfully confirming a plan of reorganization. Alternatively, the assets of a debtor may be sold and the proceeds distributed to creditors through a plan of liquidation. A plan may be either consensual or non-consensual and provide, among other things, for the treatment of the claims of creditors and interests of shareholders and holders of options or warrants.

A summary of the facts of the Debtor’s bankruptcy case, and the proposed terms of the Plan are summarized below.

D. Plan Overview

As more fully described below, on the Petition Date, the Debtor filed a voluntary bankruptcy petition by and through which it sought chapter 11 bankruptcy protection. The purpose of a chapter 11 bankruptcy case is to resolve the affairs of a debtor and distribute the proceeds of the debtor’s estate pursuant to a confirmed chapter 11 plan. To that end, on January 23, 2015, ASM Capital, one of the largest creditors in the Debtor’s bankruptcy case, filed the Plan, the terms of which are more fully described herein.

On the Effective Date of the Plan, a Liquidating Trustee will be appointed to, among other things, sell the remaining assets of the Debtor’s bankruptcy estate, review and object to

claims, makes distributions to creditors and interest holders, and undertake such other actions as necessary to fully administer the Debtor's estate. On the Effective Date of the Plan, a Oversight Committee will be appointed to oversee the Liquidating Trustee. Until Unsecured Claims are paid in full, the Oversight Committee comprised of three people, two of which shall be designated by ASM Capital and one of which shall be designated by Francine Dvorkin, an interest holder. Once Unsecured Claims have been paid in full, the two designees by ASM Capital shall resign, leaving the designee of Francine Dvorkin as the only member of the Oversight Committee.

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

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

The following chart briefly summarizes the treatment of Creditors and Interest Holders under the Plan. Amounts listed below are estimated. Actual Claims and distributions will vary depending upon, among other things, recoveries on the sale of the estate's remaining assets and the costs of the Liquidating Trustee in administering the estate after the Effective Date.

Description	Estimated Allowed Claims ¹	Estimated Recovery Percentage	Claims Treatment
Administrative Expenses	Unknown	100%	Paid in full in Cash on the Effective Date or as soon thereafter as the Administrative Expense is Allowed <u>except</u> if an Administrative Expense represents an obligation incurred in the ordinary course of business, such Administrative Expense will be paid in the ordinary course by the

¹ The amounts of the claims are based upon the Debtors' Schedules and the filed proofs of claim. A chart detailing the claims is attached hereto as Exhibit B.

			applicable Liquidating Trustee in accordance with the terms of the particular transaction and/or applicable agreement.
Priority Claims	None	100%	Paid in full in Cash on the Effective Date or as soon thereafter as the Priority Expense is Allowed, <u>except</u> if a Priority Claim is not yet due, such claim shall be paid in the ordinary course by the Liquidating Trustee
Secured Claims	Unknown	100%, plus all contract rights	<p>Holders of Secured Claims, including Persons holding a security interest in the assets of the Debtor and Persons holding a security interest in the assets of the Dvorkin Related Entities, may elect either of the following treatments on account of its claim: (i) retention of their security interest in the collateral, including the right to receive all payments due pursuant to any agreement until such time as the collateral is sold or; (ii) electing to be treated as a Holder of a Class 4 General Unsecured Claim in any amount that remains unpaid as of the Effective Date and releasing all security interests in property owned by the Debtor or the Dvorkin Related Entities; or (iii) such other treatment as the Liquidating Trustee and the Secured Creditor agree to in writing, after consultation and agreement by the Oversight Committee.</p> <p>In the event that the Holder of Secured Claim elects option (i), and the sale of the collateral securing the Class 2 Secured Claim is insufficient to pay the Class 2 Secured Claim in full, the Holder of the Secured Claim will receive a deficiency claim effective upon the date of the sale of the Collateral, and such deficiency claim shall be treated as Class 4 General Unsecured Claim, with interest accruing at the rate of nine percent (9%) from the date of the sale of the collateral.</p>

Convenience Class Claims	\$450,000-\$550,000	100%, plus all contract rights	All Allowed General Unsecured Claims in an amount less than \$250,000 as of the Petition Date shall be included as Convenience Claims in Class 3, and shall be paid in full on the Effective Date, plus 9% interest from the Petition Date. This Claim is unimpaired under the Plan and is deemed to have accepted this Plan pursuant to section 1126(1) of the Bankruptcy Code. In the event that any Convenience Claim has already been paid in full, it shall not receive any further distribution under the Plan.
General Unsecured Claims	Unknown ²	100%, plus interest	<p>Holders of Allowed Class 4 General Unsecured Claims shall receive their Pro Rata share of distributions to be made from time to time by the Liquidating Trustee from (a) the proceeds of the liquidation of the Estate assets, after payment of all Allowed Administrative Claims, including all Allowed Professional Fee Claims, all allowed Priority Claims, and All Allowed Secured Claims, taking into account a reasonable reserve for and payment of post-Effective Date fees and expenses of the Liquidating Trustee and the Liquidating Trustee's professionals.</p> <p>All Allowed General Unsecured Claims shall be entitled to interest from the Petition Date through the Effective Date at a rate of the higher of (i) either the contract rate, if applicable, or (ii) nine percent (9%). From the Effective Date through the date that such claims are satisfied, all Allowed Class 4 General Unsecured Claims shall be entitled to payment of interest of nine percent (9%).</p>
Interest Holders	N/A	N/A	All Interest Holders shall be beneficiaries under the Liquidating Trust and shall be entitled to payment from all proceeds of the Trust after the payment in full of all Allowed Claims and expenses for administering the Liquidating Trust

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

E. Voting on the Plan

1. Impaired Claims or Interests. Pursuant to section 1126 of the Bankruptcy Code, only the holders of Claims or Interests in Classes “Impaired” by the Plan may vote on the Plan. Pursuant to section 1124 of the Bankruptcy Code, a Class of Claims or Interests may be “Impaired” if the Plan alters the legal, equitable or contractual rights of the holders of such Claims or Interests treated in such Class. The holders of Claims or Interests not Impaired by the Plan are deemed to accept the Plan and do not have the right to vote on the Plan. This Disclosure Statement is being distributed for informational purposes to all Creditors, the Debtor's Interest holders and parties in interest without regard to any such party's right to vote.

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

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

4. Procedure. Class 1 (Priority Claims) and Class 2 (Secured Claims), Class 3 (Convenience Claims), and Class 5 Claims (Interests) are not Impaired by the Plan and are deemed, therefore, to accept the Plan and may not vote except a holder of a Secured Claims may elect treatment of its claim as a General Unsecured Claim, in which case, it may vote its General Unsecured Claim as a member of Class 4. Members of Class 4 - General Unsecured Claims are Impaired and may vote to accept or reject the Plan.

In order for a vote in Class 4 to count, the Holder of the Claim must complete, date, sign and properly mail the enclosed Ballot (Please note that envelopes have been included with the Ballot) to:

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

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

Pursuant to Bankruptcy Rule 3017, the Bankruptcy Court has ordered that Ballots with

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

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

- (a) Ballots received that do not evidence the amount or evidence an incorrect amount of a creditor's Claim shall be completed or corrected, as the case may be, based upon the Schedule filed by the Debtor if no proof of Claim has been filed by such Creditor, or based upon timely filed proofs of Claim, and counted as a vote to accept or reject the Plan;
- (b) Ballots received that do not identify the Creditor or Interest Holder or that do not indicate acceptance or rejection, whether or not signed by the Creditor, shall not be counted as a vote to accept or reject the Plan;
- (c) Ballots received that are otherwise properly completed shall be completed or corrected, as the case may be, based upon the Schedule filed by the Debtor if no proof of Claim has been filed by such Creditor, or based upon timely filed proofs of Claim, and counted as a vote to accept or reject the Plan.

F. Requirements for Acceptance of the Plan

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

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

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

- 1. The Plan complies with the applicable provisions of the Code.
- 2. The Plan Proponent has complied with the applicable provisions of the Code.
- 3. The Plan has been proposed in good faith and not by any means forbidden by law.
- 4. Any payment made or to be made from property of the estate by the Debtor or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with the case, or in connection with the Plan and incident to the case, has been disclosed to the Court, and if such payment is made prior to confirmation of the Plan, is reasonable, or if such payment is to

be fixed after Confirmation of the Plan, is subject to the approval of the Court as reasonable.

5. The Plan Proponent has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee of the Debtor, officer or voting trustee of the Debtor, of an affiliate of the Debtor participating in a joint plan with the Debtor, or of a successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of such Debtor's creditors and with public policy, and the Debtor has disclosed the identity of any insider of the Debtor that will be employed or retained by the reorganized Debtor and the nature of any compensation for such insider.
6. With respect to each impaired Class of Claims or interests under the Plan, either each holder of a claim or interest of such class has accepted the Plan, or will receive or retain under the Plan on account of such claim or interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor against which they hold a claim were liquidated on such date under chapter 7 of the Bankruptcy Code, or if § 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.
7. Each Class of Claims or Interests under the Plan has either accepted the Plan or is not impaired under the Plan. (Alternatively, the Plan may be confirmed over the dissent of a Class of claims or interests if the "cramdown" requirements of the Code are met. See "Acceptance and Confirmation of the Plan-Cramdown-Confirmation without Acceptance by All Impaired Classes.")
8. Except to the extent that the holder of a particular claim against the Debtor has agreed to a different treatment of such claim, the Plan provides that administrative expenses and priority claims (other than tax claims) will be paid in full on the Effective Date of the Plan, and that priority tax claims will receive on account of such claims deferred cash payments, over a period not exceeding five (5) years after the Petition Date or such longer prior to which such holders agree, of a value, as of such Effective date, equal to the allowed amount of such claim.
9. Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that - (A) with respect to a Claim of a kind specified in § 507(a)(2) or 507(a)(3) of this title, on the Effective Date of the Plan, the holder of such Claim will receive on account of such Claim cash equal to the allowed amount of such Claim; (B) with respect to a Class of Claims of a kind specified in § 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a Claim of such class will receive - (i) if such class has

accepted the Plan, deferred cash payments of a value, as of the Effective Date of the Plan, equal to the allowed amount of such Claim; or (ii) if such class has not accepted the Plan, cash on the Effective Date of the Plan equal to the allowed amount of such Claim; (C) with respect to a Claim of a kind specified in § 507(a)(8) of this title, the holder of such Claim will receive on account of such Claim regular installment payments in cash - (i) of a total value, as of the Effective Date of the Plan, equal to the allowed amount of such Claim; (ii) over a period ending not later than 5 years after the date of the order for relief under § 301, 302, or 303; and (iii) in a manner not less favorable than the most favored nonpriority unsecured Claim provided for by the Plan (other than cash payments made to a class of creditors under § 1122(b)); and (D) with respect to a secured Claim which would otherwise meet the description of an unsecured Claim of a governmental unit under § 507(a)(8), but for the secured status of that Claim, the holder of that Claim will receive on account of that Claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

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

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

G. Classification of Claims

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

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

The Plan contains five classes: Class 1 – Priority Claims; Class 2 – Secured Claims; Class 3 Convenience Claims; Class 4 – General Unsecured Claims; and Class 5 – Equity Interests

H. Objections to Confirmation and Confirmation Hearing

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

By Order of the Court, THE DEADLINE TO OBJECT TO CONFIRMATION OF THE PLAN IS _____, 2015 AT _____ .M. (Central Time). A copy of any objection must be filed with the Bankruptcy Court and served upon the following: (i) counsel for the Debtor, Davis Greene Law LLC, 1500 Eisenhower Ln. #800, Lisle, IL 60532, Attn: Michael J. Davis, Esquire; (ii) counsel for ASM Capital, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, IL 60661-3693, Attn: Peter A. Siddiqui, Esquire and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman, Esquire; (iii) The Chapter 11 Trustee, Seyfarth, Shaw LLP 131 South Dearborn Street, Suite 2400, Chicago, IL 60606, Attn: Gus A. Paloian, Chapter 11 Trustee (iv) Counsel for the Chapter 11 Trustee, Seyfarth, Shaw LLP, 131 South Dearborn Street, Suite 2400, Chicago, IL 60606 Attn: James B. Sowka, Esquire; and (v) Office of the United States Trustee, 219 South Dearborn St., Room 873, Chicago, Illinois 60604, Attn: Stephen G Wolfe, Esquire.

I. Effect of Confirmation.

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

III. HISTORY OF THE DEBTOR AND THE BANKRUPTCY CASE

A. Debtor's Bankruptcy Case

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

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

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

1. The Debtor’s Schedules and Statement of Financial Affairs

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

2. Appointment of the Chapter 11 Trustee

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

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

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

3. Liquidation of Assets During the Bankruptcy Case

Since the Petition Date, certain creditors of the Debtor or of entities in which the Debtor owned an interest moved for, and were granted relief from the automatic stay in order to foreclose upon real property. Specifically, the property for which relief from stay was granted is

(i) 4949, 4957, 4959 and 5001 W. Oakton Street, Skokie, IL; (ii) 1055 W. 175th Street, Homewood, IL; (iii) 2357 Nichols, Lynwood, IL, 2171 Vista, Lombard, IL, 2605 Rosemont, Chicago, IL, and 2611 Rosemont, Chicago, IL; (iv) 246 Janata Blvd., Lombard, IL; and (iv) as 700 W Grand Ave., Unit 5, Chicago, IL. ASM is unaware of the status of the underlying state court actions for which relief has been granted. The chart attached hereto as **Exhibit A** that details each of the properties of the Debtor or the Dvorkin Related Entities reflects the relief from stay, including the date of the motion for which relief from the automatic stay was granted, and the date that the relief granted.

Since his appointment, the Chapter 11 Trustee has filed numerous motions for the approval of the sale of real property, whether owned directly by the Debtor or by the Dvorkin Related Entities. The chart attached hereto as **Exhibit A** that details each of the properties of the Debtor or the Dvorkin Related Entities reflects the relief from stay, including the date of the motion for which relief from the automatic stay was granted, and the date that the relief granted.

According to the most recent monthly operating report filed with the Bankruptcy Court on December 5, 2014, as of November 30, 2014, the Chapter 11 Trustee was in possession of \$19,427,658.35 in cash [Docket No. 552].

4. Litigation by the Chapter 11 Trustee

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

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

On May 20, 2013, the Trustee filed a motion in the Bankruptcy Court to approve a settlement with the defendant [Docket No. 263]. By the settlement, (i) all funds of the Blue Star Gearing would be transferred to the Debtor, (ii) certain promissory notes, mortgages and related loans would be transferred to DH Mortgage Holder, LLC, an affiliate of the Debtor, (iii) certain specific Craig Golden and Blue Star Properties related to the allegations in the Complaint would be transferred to the Debtor, and (iv) at the Trustee's option, certain membership interests in Blue Star Gearing would be transferred to the Debtor. In the motion, the Chapter 11 Trustee estimated that the settlement would provide the estate with a recovery of approximately \$1,360,000 in cash as well as notes and mortgages with an outstanding balance of approximately \$6,500,000.

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

b. Paloian v. against Beverly Dvorkin and After-Words, Incorporated; Adv. Pro. 13-00686 and Paloian v. Dvorkin, as Trustee of Dvorkin Childrens Trust et al.; Adv. Nos. 12-00771, 13-00772, and 13-00777. On May 10, 2013, the Debtor commenced an adversary proceeding against Beverly Dvorkin, the daughter of Daniel and Francine Dvorkin and After-Words, Incorporated, a bookstore owned by Ms. Dvorkin. By the complaint, the Trustee alleged that the Ms. Dvorkin's parents caused the Debtor to pay approximately \$72,000 for Ms. Dvorkin's health

insurance during the four years preceding the filing of the complaint. The Trustee further alleged that estate assets were also fraudulently transferred to Ms. Dvorkin through the execution and performance of two below-market leases that allowed the defendants to lease real property for a price more than \$268,675 below market value during the four years preceding the filing of the complaint, and that such transfers were intentional and direct transfers of value from the estate to Ms. Dvorkin.

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

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

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

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

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

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

- Proof of Claim 12 filed by FirstMerit Bank, N.A., in which First Merit asserted a claim in the amount of \$15,693,038.21 secured by nine pieces of real property. The Chapter 11 Trustee alleged that FirstMerit's collateral was undersecured with

respect to six of the properties. On July 2, 2013, the Chapter 11 Trustee filed a motion to approve a settlement with FirstMerit that, among other things, granted sole authority to the Chapter 11 Trustee to list and sell the property, and permit payment of certain costs at closing from the sale proceeds from each of the properties, permit an interim distribution to FirstMerit on account of its claims on account of a deficiency claim, provide to FirstMerit with copies of monthly operating reports for each entity owning the real property that is subject to the collateral, and exculpating the Chapter 11 Trustee. [Docket 299]. An order approving this settlement was entered by the Bankruptcy Court on July 23, 2013 [Docket No. 313].

- On January 28, 2014, the Chapter 11 Trustee filed a motion to approve a settlement with RiverSource Life Insurance Company [Docket 433]. Plaza (Arlington Heights) Office, L.L.C., an Illinois limited liability company (the owner of 115-125 South Wilke Rd., Arlington Heights, IL and 1920 S. Highland (Lombard), L.L.C., an Illinois limited liability company (the owner of 1920 S. Highland, Lombard, IL) are two Dvorkin related entities who borrowed money from RiverSource Life Insurance Company (“RiverSource”). Each of the Dvorkin related entities was obligated to RiverSource and was obligated to Lender to repay mortgage loans secured by the real property. The Debtor guarantied of each the borrower's obligations to RiverSource. On November 16, 2012, RiverSource filed a proof of claim in the Debtor's bankruptcy case asserting a claim in the amount of \$11,037,499.12 arising from Debtor's guaranty of RiverSource's obligations. The Trustee evaluated the underlying properties and determined that RiverSource was undersecured with respect to the properties. The Trustee and RiverSource reached a settlement which transferred to RiverSource the right, title, and interest in the two properties in exchange for a release of RiverSource's claims against the Debtor and each of the borrowers. An order approving this settlement was entered by the Bankruptcy Court on January 20, 2014 [Docket No. 442].
- Proof of Claim No. 13 filed by BMO Harris Bank, N.A. in which BMO Harris, as successor-in-interest to Amcore Bank, N.A., asserted a claim in the total amount of \$3,793,265.24 allegedly secured by mortgage liens on the following parcels of real property: (i) 812 East Chicago Avenue, Elgin, Illinois; (ii) 925 East St. Charles Road, Lombard, Illinois; and (iii) 1111 East Ogden Road, Naperville, Illinois. BMO Harris' Proof of Claim asserted, among other things, secured claims against Debtor arising from that alleged promissory note made by Debtor and a certain Land Trust 966811 in favor of Amcore, dated January 18, 2002, and in the original principal amount of \$2,800,000, with an outstanding amount of \$2,647,830.94 due under a note as of the Petition Date. BMO Harris further asserted that it held an additional security interest against a certain parcel of real property located at 925 East St. Charles Road, Lombard, IL and a certain property located at 1111 East Ogden Road, Naperville, IL by virtue of a collateral assignment of the beneficial interest in Land Trust 94674 (the “CABI”), which BMO Harris asserts cross-collateralizes the balance due under the note in an unlimited amount, and as a result of the note, BMO asserted that it was entitled to all proceeds from the sales of the two parcels of real property. The Trustee

contended that the mortgage that allegedly secured the St. Charles and the Ogden Road properties was released post-petition and was therefore unenforceable, while BMO Harris contended the mortgage that secured the St. Charles and the Ogden Road properties was released in error and therefore still secured the proceeds from the sales of the St. Charles property and the Ogden Road property by virtue of said mortgage's cross-collateralization of the balance due under the note up to the face amount of said mortgage plus fees and costs. Further, the Trustee asserted that the note was not asserted in the BMO Harris' proof of claim and was therefore time-barred. On September 2, 2014, the Chapter 11 Trustee filed a motion to approve a settlement with Settlement Amount which sought to authorize the Trustee to remit payment of \$530,000 from the net proceeds of the sales of the St. Charles Property and the Ogden Road Property and applying the Settlement Amount against the balance due and owing under the note in exchange for BMO Harris' would release any claim of a security interest in the St. Charles Property and the Ogden Road Property, including but not limited to the St. Charles-Ogden Mortgage, the 2014 Claim, and the CABI, and BMO Harris would execute appropriate documents to cause the proceeds of the sales of the St. Charles Property and the Ogden Road Property to be released from escrow, including but not limited to release of the mortgage and the CABI. Further, BMO Harris would amend its claim to reduce all pre and post-petition recoveries made by BMO Harris under the notes, mortgages and other financial instruments either asserted in the its proof of claim or enforced by BMO, whether such recoveries were from the Debtor or other third parties. An order approving this settlement was entered by the Bankruptcy Court on September 26, 2014 [Docket No. 538].

- Prior to their respective bankruptcy filings, the Debtor and Bruce Teitelbaum jointly invested in at least ten real estate development entities. On November 30, 2012, the Bankruptcy Court entered an Order in Mr. Teitelbaum's Chapter 7 bankruptcy case approving a settlement by which Ilene F. Goldstein, the Chapter 7 trustee for Mr. Teitelbaum's bankruptcy estate, acquired all of the assets listed in Mr. Teitelbaum's schedules and statements of financial affairs, including but not limited to all membership interests in BT Holdings, LLC. Prior to their respective bankruptcy filings, the Debtor and Mr. Teitelbaum asserted a right of setoffs based upon alleged defaults by either BT Holdings, LLC or Mr. Teitelbaum, and pursuant to the setoff rights, the Debtor may have transferred ownership of the interests of Mr. Teitelbaum or BT Holdings, LLC in certain of the joint investments. Ilene F. Goldstein, in her capacity as the Chapter 7 trustee for the bankruptcy estate of Bruce Teitelbaum, raised issue with respect to the validity of such transfers of ownership. On October 30, 2014, the Chapter 11 Trustee filed a motion to approve a settlement with Ilene F. Goldstein, the Chapter 7 trustee for the bankruptcy estate of Bruce Teitelbaum, the terms of which, including the following: (i) Prior to the bankruptcy filings, Mr. Teitelbaum and BT Holdings, LLC transferred their interests in the following entities to the Debtor (a) prior to the bankruptcy filings, Teitelbaum and BT transferred their interests in the following Joint Investments: (a) 956 N. Neltnor (West Chicago), LLC, an Illinois limited liability company, which owns the real property commonly known as 956 N. Neltnor, West Chicago, IL 60185; (b)

11824 S.W. Highway (Palos Heights), LLC, an Illinois limited liability company, which owns the real property commonly known as 11824 Southwest Highway, Palos Heights, IL 60463, (c) Flossmoor Commons (Professional), LLC, an Illinois limited liability company, which owned the real property commonly known as 3235 W. Vollmer Road, Flossmoor, IL 60422, and (d) Flossmoor Commons (Retail), LLC, an Illinois limited liability company, which owned the real property commonly known as 3301-47 W. Vollmer Road, Flossmoor, IL 60422; (ii) Teitelbaum estate possesses the following undisputed interests in the following Joint Investments: (a) a 20% interest in 246 E. Janata (Lombard), LLC, an Illinois limited liability company (which owns or owned real property commonly known as 246 E. Janata Blvd., Lombard, IL 60148) (b) a 40% beneficial interest in Land Trust 1636-Y (which owns the real property commonly known as 2200 South Main Street, Lombard, IL 60148); (c) a 7.5% beneficial interest in Land Trust 96-6875 (which owned the real property commonly known as 811 West Evergreen, Chicago, IL 60642); and (d) a 15.02 membership interest in 1 Transam Plaza (Oakbrook Terrace), LLC, an Illinois limited liability company (which owns the real property commonly known as One Trans Am Plaza Drive, Suite 240, Oakbrook Terrace, Illinois 60181); and (iii), to resolve any disputes among the Dvorkin estate and the Teitelbaum estate relating to a 10% interest in 444 N. Wabash (Chicago), LLC, an Illinois limited liability company (owner of real property commonly known as 444 N. Wabash, Chicago, IL 60611), 11.25% membership interest in 1203 Maple (Lisle), LLC, an Illinois limited liability company (owner of the real property commonly known as 1203-1231 W. Maple Ave., Lisle, IL 60532), 50% interest in Lynwood DT Investors, LLC, an Illinois limited liability company (owner of 50% of the membership interests in Lynwood Land Company, LLC, an Illinois limited liability company, which owns 50% of the membership interests in Ambry Estates Joint Venture (Lynwood), LLC), and a 30% interest in Matteson, LLC, an Illinois limited liability company (owner of real property commonly known as 21141 Governors Hwy, Matteson, IL 60443), the Chapter 11 Trustee agreed to remit payment of \$300,000. [Docket No. 544]. An order approving this settlement was entered by the Bankruptcy Court on November 21, 2014 [Docket No. 548]. According to the Summary Cash Receipts and Cash Disbursements for the Period of November 1, 2014 through November 30, 2014 filed by the Chapter 11 Trustee on December 5, 2014, the payment of \$300,000 was tendered to Ms. Goldstein, in her capacity as Chapter 7 Trustee for Mr. Teitelbaum's estate, on November 25, 2014 [Docket No. 552].

IV. DESCRIPTION OF TREATMENT UNDER THE PLAN

A. Brief Overview of Treatment of Claims.

A DISCUSSION OF THE PRINCIPAL PROVISIONS OF THE PLAN AS THEY RELATE TO THE TREATMENT OF CLASSES OF ALLOWED CLAIMS AND INTERESTS IS SET FORTH IN THE FOLLOWING SECTIONS. THE DISCUSSION OF THE PLAN THAT FOLLOWS CONSTITUTES A SUMMARY ONLY, AND SHOULD NOT BE RELIED UPON

FOR VOTING PURPOSES. YOU ARE URGED TO READ THE PLAN IN FULL IN EVALUATING WHETHER TO ACCEPT OR REJECT ASM CAPITAL'S PROPOSED PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THIS SUMMARY AND THE PLAN, THE TERMS OF THE PLAN CONTROL. ALL CAPITALIZED TERMS NOT OTHERWISE DEFINED HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN.

1. Administrative Expense Claims. As more fully set forth in the Plan, all Allowed Administrative Claims, other than Professional Fee Claims, shall be paid, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim: (a) in accordance with the terms and conditions under which such Administrative Claims arose, (b) pursuant to any agreement between the Creditor and either the Chapter 11 Trustee, the Liquidating Trustee 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.

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

2. Class 1 Priority Claims. As more fully set forth in the Plan, on the Effective Date, or as soon thereafter as practicable, the Allowed Priority Claims, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Priority Claim, shall either (a) be paid in full in Cash or (b) receive such other treatment as the Liquidating Trustee and such Creditor agree to in writing. In the event that a Priority Claim is a Disputed Claim, the Liquidating Trustee 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 Liquidating Trustee shall remit payment to the Holder of a Priority Claim no later than ten (10) days after the entry of Final Order determining that the Priority Claim is an Allowed Claim.

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

3. Class 2 - Secured Claims. Holders of Secured Claims include Persons holding a security interest in the assets of the Debtor and Persons holding a security interest in the assets of the Dvorkin Related Entities. At any time prior to the hearing to consider confirmation of the Plan, the Holder of a Secured Claim may elect either of the following treatments on account of its claim: (i) retention of their security interest in the collateral, including the right to receive all payments due pursuant to any agreement until such time as the collateral is sold; (ii) electing to be treated as Class 4 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 Liquidating Trustee 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 4 General Unsecured Claim, with interest accruing at the rate of nine percent (9%) from the date of the sale of the collateral.

4. Class 3 – Convenience Claims. Holders of Allowed Claims

Holders of Allowed General Unsecured Claims in an amount less than \$250,000 as of the Petition Date shall be paid in full on the Effective Date, plus 9% interest from the Petition Date. Class 3 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 Convenience Claim has already been paid in full, it shall not receive any further distribution under the Plan

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

All Class 4 General Unsecured Claims shall be entitled to interest from the Petition Date through the Effective Date at a rate of the higher of (i) either the contract rate, if applicable, or (ii) nine percent (9%). From the Effective Date through the date that such claims are satisfied, all Class 4 General Unsecured Claims shall be entitled to payment of interest of nine percent (9%).

6. Class 5 - Interests. Class 5 consists of Interests in the Debtor. Once all Allowed Claims have been paid in full, and subject to the payment of expenses of the Liquidating Trust and his or her professionals, Holders of Interests shall receive a Pro Rata distribution from the liquidation of all remaining Estate assets on account of their Interests.

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

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

- CLASS 1:** Allowed Secured Claims.
- CLASS 2:** Allowed Priority Claims
- CLASS 3:** Allowed Convenience Claims
- CLASS 4:** Interests in the Debtor

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

CLASS 4: Allowed General Unsecured Claims

C. Effect of Non-Voting

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

D. Nonconsensual Confirmation

In the event any Class of Claims votes to reject the Plan, ASM Capital requests that the Bankruptcy Court confirm the Plan notwithstanding such rejection pursuant to section 1129(b) of the Bankruptcy Code on the basis that the Plan is fair and equitable and does not discriminate unfairly as to the Holders of any Class of Claims or Interests

V. MEANS OF IMPLEMENTATION OF THE PLAN

A. Vesting of Assets.

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

B. Litigation Claims, Avoidance Actions and Other Actions.

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

C. Recoveries.

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

D. Appointment of the Liquidating Trustee.

On the Effective Date, the Liquidating Trustee shall be appointed in accordance with the Liquidating Trustee Agreement attached hereto as Exhibit "A" to wind up the affairs of the Debtor and make distributions under the Plan.

E. The Liquidating Trustee.

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

F. Responsibilities of the Liquidating Trustee.

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

G. Powers of the Liquidating Trustee.

Subject to the Liquidating Trustee Agreement and the rights of the Oversight, on and after the Effective Date, the Liquidating Trustee 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 Liquidating Trustee;
- (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 Liquidating Trustee Agreement;
- (e) Make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants and to pay the fees and charges incurred by the Liquidating Trustee on or after the Effective Date for fees and expenses of the Liquidating Trustee's professionals, disbursements, expenses or related support services relating to the winding down of the Debtor and implementation of the Plan without application to the Bankruptcy Court;
- (f) Seek, a determination of tax liability under section 505 of the Bankruptcy Code, paying taxes, if any, related to the Debtor or the sale of non-Cash Assets of the Debtor, filing, if necessary, any and all required tax and information returns, making tax elections by and on behalf of the post-Effective Date Estate, and paying taxes, if any, due from the post-Effective Date Estate;
- (g) Invest Cash as deemed appropriate by the Liquidating Trustee, as further set forth in the Liquidating Trustee Agreement;
- (h) Collect any accounts receivable or other claims of the Debtor or the Estate not otherwise disposed of pursuant to the Plan or the Confirmation Order;
- (i) Implement and/or enforce all provisions of this Plan, including entering into any agreement or executing any document required by or consistent with the Plan, the Confirmation Order and the Liquidating Trustee Agreement and perform all of the Debtor's obligations thereunder;
- (j) Abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of his or her choice, any Assets if the Liquidating Trustee concludes that they are of no benefit to the Estate;
- (k) Prosecute and/or settle Claims, without approval of the Bankruptcy Court, including,

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

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

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

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

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

Further, subject to the Liquidating Trustee Agreement and the rights of the Oversight Committee, the Liquidating Trustee has the authority and power to take all other actions and exercise such other powers that the Liquidating Trustee 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 Liquidating Trustee Agreement, other orders of the Bankruptcy Court.

H. Notice Requirement.

Notwithstanding the foregoing, the Liquidating Trustee shall be required to provide ten (10) days' notice to the United States Trustee, the Oversight Committee, and any Person requesting notice pursuant to Section 14.4 of the Plan of the following actions: (a) the retention of professionals by the Liquidating Trustee; (b) the settlement of objections to Claims where the Claim as asserted exceeds \$200,000; (c) the settlement of any Litigation Claim or Avoidance Action, or other litigation where the amount demanded exceeds \$100,000; (d) the sale of any Asset of the Estate, including any asset of any Dvorkin Related Entities, where the sale price or book value exceeds \$50,000; and (e) the abandonment of any Asset of the Estate where the book value exceeds \$25,000.

I. Succeeding to Rights of Privilege/Work Product.

The Liquidating Trustee 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 Liquidating Trustee shall succeed to all of the Debtor's and Chapter 11 Trustee's rights to preserve, assert or waive any such privilege.

J. Unclaimed Property.

The Liquidating Trustee 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 Liquidating Trustee 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 Liquidating Trustee Agreement. Such funds shall not be subject to the escheat laws of any state, and in the event that any Holder of an Allowed Claims does not timely assert its entitlement to such distribution, such funds shall revert to the Estate.

K. Compensation of the Liquidating Trustee.

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

L. Sale Free and Clear of Liens.

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

M. Transfer Taxes.

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

N. Litigation Claims and Avoidance Actions.

The Liquidating Trustee 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 Liquidating Trustee shall succeed as plaintiff or defendant in any adversary proceeding commenced by or against the Debtor that is pending on the Confirmation Date.

O. Records.

On or prior to the Effective Date, the Chapter 11 Trustee shall transfer to the Liquidating Trustee 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 Liquidating Trustee 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 Liquidating Trustee in accordance with applicable law. If the Liquidating Trustee seeks to destroy or otherwise dispose of any records of the Debtor's estate prior to the time periods set forth herein, such Liquidating Trustee shall be entitled to do so upon Order of the Bankruptcy Court obtained on motion on 20 days' notice upon any person requesting notice pursuant to Section 14.4 of the Plan.

P. Resignation of Officers and Directors.

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

Q. Oversight Committee.

As more fully set forth in the Liquidating Trustee 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, and the third shall be Francine Dvorkin or her designee. Upon the receipt of payment of all Class 4 General Unsecured Claims, the designees of ASM Capital shall be deemed to have resigned, and Francine Dvorkin or her designee shall be the sole member of the Oversight Committee. ASM Capital or Francine Dvorkin may change their designee at any time without notice.

b. Service Upon the Oversight Committee. Consistent with the Liquidating Trustee Agreement, the Liquidating Trustee 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 Liquidating Trustee to the members of the Oversight Committee by electronic mail.

c. Duties of the Oversight Committee. Consistent with the Liquidating Trustee Agreement, the Oversight Committee shall review and evaluate the actions of the Liquidating Trustee, and in the event that the majority of the

members of the Oversight Committee disagree with any action (or inaction) by the Liquidating Trustee, they have the right to veto any decision by the Liquidating Trustee. 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 Liquidating Trustee or any matter in the Chapter 11 Case before the Bankruptcy Court.

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

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

At any time after the Appointment of the Liquidating Trustee, 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 Liquidating Trustee 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 Liquidating Trustee and all Oversight Committee agree to convene sooner. No minutes need be maintained at the meeting.

f. Payment to the Liquidating Trustee and His Professionals. Consistent with the Liquidating Trustee Agreement, the Liquidating Trustee 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 Liquidating Trustee and his or her professionals do not need to file an application with the Bankruptcy Court; copies of all invoices by the Trustee and his or her professionals shall be remitted to the members of the Oversight Committee. In the event that any member of the Oversight Committee contests whether the fees and expenses of the Trustee or his Professionals are not reasonable or necessary, the Bankruptcy Court shall retain jurisdiction to determine whether fees or expenses should be allowed.

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

h. Successor Liquidating Trustee. Consistent with the Liquidating Trustee Agreement, in the event that the Liquidating Trustee 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 Liquidating Trustee. The Successor Liquidating Trustee shall succeed to all rights and obligations of the Liquidating Trustee under the Liquidating Trustee Agreement.

R. Termination of Liquidating Trustee.

From his or her appointment on the Effective Date, the Liquidating Trust 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 Liquidating Trustee in accordance with the terms of the Liquidating Trustee Agreement and as set forth herein.

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

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

As more fully set forth in the Plan, all applications for the request for the final allowance of Professional Fee Claims shall be filed with the Bankruptcy Court and served upon former counsel to the Debtor, the Chapter 11 Trustee, counsel to the Chapter 11 Trustee, the U.S. Trustee, and counsel to the Liquidating Trustee, and all parties having requesting notice pursuant to Section 14.4 of the Plan on or before the date which is no later than the first business day thirty (30) days after the Effective Date (the "Professional Fee Claim Bar Date"). Further, any party asserting a claim for substantial contribution pursuant to Section 503(b)(3) shall file a motion seeking allowance of a claim for substantial contribution with the Bankruptcy Court on

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

T. Retention of Jurisdiction

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

- (a) To determine the allowability, classification or priority of Claims upon objection by the Debtor, the Liquidating Trustee 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 Liquidating Trustee, 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 Liquidating Trustee;
- (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 Liquidating Trustee 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 Liquidating Trustee 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;
- (p) To resolve any dispute or matter arising under or in connection with any Order of the Bankruptcy Court entered in the Chapter 11 Case;
- (q) To authorize sales of Assets as necessary or desirable and resolve objections, if any, to such sales;
- (r) To hear and resolve the Litigation Claims and Avoidance Actions;
- (s) 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;
- (t) To approve any distributions, or objections thereto, under the Plan;
- (u) To approve any Claims settlement entered into or offset exercised by the Debtor or the Liquidating Trustee;
- (v) To oversee any dispute concerning improper or excessive draws under letters of credit issued for the account of the Debtor; and
- (w) To enter a final decree closing the Chapter 11 Case; and
- (y) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code.

VI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts and Unexpired Leases.

Except as otherwise provided in the Plan or the Confirmation Order, upon the Effective Date, all Executory Contracts which have not otherwise been 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 Liquidating Trustee believes is not an Executory Contract that is later determined by the Bankruptcy Court to be an Executory Contract that is subject to assumption or rejection under section 365 of the Bankruptcy Code, which agreements shall be subject to assumption or rejection within 30 days of any such determination. Any order entered after the date on which the Plan is confirmed by the Bankruptcy Court, after notice and hearing, authorizing the rejection of an Executory Contract shall cause such rejection to be a pre-petition breach under sections 365(g) and 502(g) of the Bankruptcy Code, as if such relief were granted and such order were entered prior to the Confirmation Date.

B. Rejection Damage Claims.

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

C. Objections to Rejection Damage Claims.

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

D. Indemnification Obligations.

Except as otherwise provided in the Plan, the Confirmation Order or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, any and all indemnification obligations that the Debtor has pursuant to a contract, instrument,

agreement, certificate of incorporation, by-law, comparable organizational document or other document or applicable law, to the extent executory, shall be rejected as of the Effective Date.

E. Insurance Policies.

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

F. Bond or Surety.

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

VII. FUNDING AND DISBURSEMENTS

A. Distribution on Account of Allowed Claims.

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

B. No Disbursing Agent.

The Liquidating Trustee, pursuant to the Liquidating Trustee 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 Liquidating Trustee, pursuant to the Liquidating Trustee Agreement, shall make distributions on account of Allowed Administrative Claims, Allowed Priority Claims, and Allowed Convenience Claims directly to the holders of such Claims. All other distributions or payments under the Plan shall be made by the Liquidating Trustee pursuant to the terms of the Plan, the Confirmation Order, and the Liquidating Trustee Agreement.

C. Sources of Cash for Plan Distributions.

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Liquidating Trustee 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 Liquidating Trustee Assets, including, without limitation, any Litigation Claims, Avoidance Actions, or tax refunds.

D. Fractional Dollars: De Minimis Distributions.

Notwithstanding any other provision of the Plan, the Liquidating Trustee 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 Liquidating Trustee 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 Liquidating Trustee 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 Liquidating Trustee 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 Liquidating Trustee Agreement.

E. Delivery of Distributions to Holders of Allowed Claims.

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

F. Reserves - Payment of Disputed Claims.

The Reserved Funds, including the Administrative Claim Reserve and the Disputed Claim Reserve, shall be segregated and held by the Liquidating Trustee 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 Liquidating Trustee 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 8 with respect to Allowed Administrative Claims within ten (10) days after, and to the extent that, such Disputed Claim becomes an

Allowed Administrative Claim.

G. Cash Payments.

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

VIII. EFFECT OF PLAN CONFIRMATION

A. Binding Effect.

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

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

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

C. Exculpation and Limitation of Liability.

Except as otherwise set forth in the Plan or in the Confirmation Order, none of the Exculpated Persons shall have or incur any liability to any holder of a Claim or Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 case, the pursuit of confirmation of the Plan, the Consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan and the Liquidating Trustee Agreement, except for willful misconduct or gross

negligence, and, in all respects, the Debtor, the Chapter 11 Trustee, the Liquidating Trustee, and the Exculpated Persons shall be entitled to rely upon the advice of Counsel with respect to their duties and responsibilities under the Plan.

D. Injunction Related to Exculpation.

Except as otherwise set forth in the Plan or in the Confirmation Order, all Persons that have held, hold or may hold any claims against the any Exculpated Persons exculpated pursuant to Section 13.2 of the Plan are (a) permanently enjoined from taking any of the following actions, except in the Bankruptcy Court, against the Debtor's Estate, or any of their property on account of any such Claims or Interests and (b) preliminarily enjoined from taking any of the following actions, except in the Bankruptcy Court, against the Debtor, or the Liquidating Trustee, or their property on account of such Claims or Interests: (i) commencing or continuing, in any manlier or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting or recovering ill any manner 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, in any manner or in any place, any action that does not comply with or is ill consistent 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 and shall not effect a discharge of the Debtor under section 1141(d) of the Bankruptcy Code.

E. Survival of Indemnification Obligations.

Except as otherwise set forth in the 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 discharged or impaired by, and shall survive, confirmation or consummation of this Plan. To the extent not already obtained, Liquidating Trustee shall purchase and maintain a tail policy for the director and officer insurance providing coverage for Debtor's directors and officers, including the Chapter 11 Trustee for a period of six (6) years after the Effective Date insuring such parties in respect of any claims, demands, suits, causes of action, or proceedings against such directors and officers based upon any act or omission related to such directors' and officers' service with, for, or on behalf of the Debtor in at least the amount and scope as currently maintained by the Debtor.

F. Satisfaction of Claims and Termination of Interests.

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

IX. RISK FACTORS

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

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

X. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.

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

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

THE DEBTOR HAS NOT REQUESTED A RULING FROM THE IRS OR AN OPINION OF COUNSEL WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THUS, NO ASSURANCE CAN BE GIVEN AS TO THE INTERPRETATION THAT THE IRS WILL ADOPT AND WHETHER THE IRS WILL CHALLENGE ONE OR MORE OF THE TAX CONSEQUENCES OF THE PLAN DESCRIBED ABOVE. IN ADDITION, THIS SUMMARY DOES NOT ADDRESS FOREIGN, STATE, OR LOCAL TAX CONSEQUENCES OF THE PLAN, AND IT DOES NOT PURPORT TO ADDRESS THE FEDERAL INCOME TAX

CONSEQUENCES OF THE PLAN TO SPECIAL CLASSES OF TAXPAYERS (INCLUDING, BUT NOT LIMITED TO, FOREIGN TAXPAYERS, BROKER-DEALERS, BANKS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, TAX-EXEMPT ORGANIZATIONS, AND INVESTORS IN PASS-THROUGH ENTITIES). MOREOVER, THIS SUMMARY DOES NOT PURPORT TO COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY APPLY TO HOLDERS OF CLAIMS OR INTERESTS.

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

A. Regular Federal Income Tax.

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

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

1. Holders of Claims and Interests should generally recognize gain (or loss) to the extent the amount realized under the Plan in respect of their Claims or Interests exceeds (or is exceeded) by their respective tax bases in their Claims or Interests, as applicable. The amount realized for this purpose will generally equal the sum of the amount of cash and the fair market value of any property received under the Plan with respect to their respective Claims or Interests, as applicable. The holders of Allowed Class 4 — General Unsecured Claims are expected to receive a full distribution, plus interest, with respect to their Allowed Claims it is expected that Holders of Class 5 — Equity Interests will receive some distribution under the Plan after all Claims are paid in full. Whether a Holder of a Claim or an Interest will recognize loss, a deduction for worthless securities or any other tax treatment will depend upon the facts and circumstances specific to the nature of the holder and its Claim or Interest. Accordingly all holders Holder of Claims and Interests should consult their own tax advisors.

2. The tax treatment of holders of Claims or Interests and the character and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provide for by the Plan will depend upon, among other things, (a) the manner in which a holder acquired a Claim or Interest; (b) the length of time a Claim or Interest has been held; (c) whether the Claim was acquired at a discount; (d) whether the holder has taken a bad debt deduction with respect to a Claim in the current or any prior year; (e) whether the holder has previously included accrued but unpaid interest with respect to a Claim; (f) the method of tax accounting of a holder; and (g)

whether a Claim is an installment obligation for federal income tax purposes. Therefore, holders of Claims or Interests should consult their own tax advisor for information that may be relevant to their particular situation and circumstances and the particular tax consequences to such holders as a result thereof.

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

C. Information Reporting and Backup Withholding.

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

D. Importance of Obtaining Professional Tax Assistance.

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

XI ALTERNATIVES TO PLAN AND MISCELLANEOUS MATTERS

ASM Capital believes that if the Plan is not confirmed, or is not confirmable, the alternatives to the Plan include: (a) conversion of the Chapter 11 Case to chapter 7; (b) dismissal

of the Debtor's case; or (c) an alternative plan of reorganization or liquidation which, in ASM Capital's view, would offer less favorable treatment to creditors than that proposed under the Plan.

A. Liquidation Under Chapter 7

If no plan can be confirmed, the Debtor's Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed to liquidate the Debtor's assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. For the reasons previously discussed above, ASM Capital believes that Confirmation of the Plan will provide Creditors with a recovery that is expected to be substantially more than could be achieved in a liquidation under chapter 7 of the Bankruptcy Code.

B. Dismissal

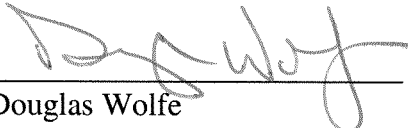
Dismissal of the Chapter 11 Case would result in each individual creditor having to protect its own rights through legal action, likely resulting in, among other things, numerous suits and other proceedings being commenced and actions being taken by secured creditors to protect or foreclose upon their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

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XII. CONCLUSION

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

ASM CAPITAL RECOMMENDS THAT YOU VOTE IN FAVOR OF THE PLAN



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