

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)**

In re:	)	
	)	
SMITTY’S BUILDING SUPPLY, INC., et al. <sup>1</sup>	)	Case No. 09-10040
	)	Jointly Administered
Debtors.	)	(Chapter 11)
	)	

**SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION  
OF SMITTY’S BUILDING SUPPLY, INC., AND ITS AFFILIATED DEBTORS**

Andrew J. Currie (Admitted *Pro Hac*)  
Kristen E. Burgers  
VENABLE LLP  
8010 Towers Crescent Drive  
Suite 300  
Vienna, VA 22182  
Phone: (703) 760-1600  
Fax: (703) 821-8949

Andrew J. Currie  
Abby W. Clifton  
VENABLE LLP  
750 E. Pratt Street  
Suite 900  
Baltimore, MD 21202  
Telephone: (410) 244-7400  
Facsimile: (410) 244-7742

COUNSEL TO THE DEBTORS

Dated: May 4, 2009

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<sup>1</sup> The Debtors in these cases include Smitty’s Building Supply, Inc., SBS Acquisition Corp., SBS Window Division Corp., and WindowSmith, Inc.  
MC1 # 277975  
43927-261124

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
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In re:	)	
	)	Case No. 09-10040
SMITTY’S BUILDING SUPPLY, INC., et al. <sup>1</sup>	)	Jointly Administered
	)	(Chapter 11)
Debtors.	)	
	)	

**FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION  
OF SMITTY’S BUILDING SUPPLY, INC., AND ITS AFFILIATED DEBTORS**

**INTRODUCTION**

Smitty’s Building Supply, Inc., and its affiliated entities, SBS Acquisition Corporation, SBS Window Corporation, and WindowSmith, Inc. (collectively, “Smitty’s” or the “Debtors”), each a corporation organized and existing under the laws of the Commonwealth of Virginia, proposes the following First Amended Chapter 11 Plan of Reorganization (the “Plan”) pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Plan provides for the reorganization of the Debtors’ obligations, the resolution of the allowance of claims and equity interests, and the distribution to creditors in accordance with the priorities of the Bankruptcy Code.

**ARTICLE I**

**DEFINITIONS**

1.1 *Scope of Definitions.* For purposes of this Plan, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules. The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Plan as a whole, not to any particular section, subsection or clause, unless the context requires otherwise. Whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and the neuter.

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<sup>1</sup> The Debtors in these cases include Smitty’s Building Supply, Inc., SBS Acquisition Corp., SBS Window Division Corp., and WindowSmith, Inc.

1.2 *Definitions.*

“Administrative Bar Date” means that date established by the Administrative Bar Date Order by which all Persons asserting certain Administrative Expense Claims must have filed proofs of such Administrative Expense Claims or requests for payment of such Administrative Expense Claims or be forever barred from asserting such Claims against the Debtors, the Estates, or the Reorganized Debtor or their property.

“Administrative Bar Date Order” means the order which will be entered by the Bankruptcy Court upon the Debtor’s motion to establish a bar date for the filing of Administrative Expense Claims, except for administrative expenses previously allowed by order of the Bankruptcy Court or administrative expenses arising in the ordinary course of the Debtors’ businesses.

“Administrative Expense Claim” means a Claim for payment of an administrative expense of a kind specified in Section 503(b) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(2) of the Bankruptcy Code, including, but not limited to, the actual, necessary costs and expenses, incurred after the Petition Date, of preserving the Debtors’ Estates and operating the business of the Debtors, including wages, salaries, directors fees, or commissions for services rendered after the commencement of the Chapter 11 Case, Professional Claims, Claims arising under Section 365(g)(2)(A) or Section 503(b)(3) of the Bankruptcy Code, all fees and charges assessed against the Debtors’ Estates under Chapter 123 of title 28, United States Code, Administrative Tax Claims, and all Allowed Claims with respect to reclamation of goods delivered before the Petition Date that are entitled to be treated as Administrative Expense Claims pursuant to a Final Order of the Bankruptcy Court under Section 546(c)(2)(A) of the Bankruptcy Code.

“Administrative Tax Claim” means a Claim by a governmental unit with respect to a tax or duty incurred after the Petition Date that is entitled to be paid as an administrative expense pursuant to Section 507(a)(8) of the Bankruptcy Code.

“Affiliated Debtors” shall mean SBS Acquisition Corp., SBS Window Division Corp., and WindowSmith, Inc.

“Alexandria Property” shall mean that certain 8.17 acre parcel of commercial land located at 8457 Richmond Highway, Alexandria, Virginia 22309.

“Allowed Claim” means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Bankruptcy Court, (b) as to which, on or by the Effective Date, (i) no proof of claim has been filed with the Bankruptcy Court and (ii) the liquidated and noncontingent amount of which is Scheduled, other than a Claim that is Scheduled at zero or as disputed, or (c) for which a proof of claim in a liquidated amount has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and as to which either (i) no objection to its allowance has been filed within the periods of limitation fixed by the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its

allowance has been settled or withdrawn, or has been denied by a Final Order of the Bankruptcy Court, or (d) that is expressly allowed in a liquidated amount in the Plan.

“Allowed . . . Claim” means an Allowed Claim of the type described.

“Allowed Pre-Effective Date Lender Claim” means the total amount outstanding under the Pre-Petition Credit Facility and DIP Financing as of the Effective Date, and all accrued interest, fees, expenses and other amounts payable thereunder.

“Assets” means all assets of the consolidated Debtors (including, without limitation, ownership interests in other entities, whether in the form of stock ownership, ownership of partnership interests, participations in joint ventures or otherwise) other than the Bankruptcy Causes of Action referred to below and the collection of or proceeds from the Contingent Assets.

“Ballot” means each of the ballot forms that are distributed with the Disclosure Statement to holders of Claims in Classes that are Impaired under the Plan and entitled to vote under Article VII hereof in connection with the solicitation of acceptances of the Plan.

“Bankruptcy Cause of Action” means any Cause of Action the Debtors may have under Sections 502, 510, 541, 542, 544, 545, 547 through 551 and 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation has been commenced to prosecute such Causes of Action. Bankruptcy Causes of Action shall not include (i) Causes of Action released pursuant to a prior order of the Bankruptcy Court, (ii) Causes of Action against Bank of America and (iii) Causes of Action against any Insiders other than those arising out of funding obligations established pursuant to the provisions of Section 8.3.

“Bankruptcy Cause of Action Proceeds” means the gross proceeds realized from a Bankruptcy Cause of Action, net of all fees and expenses payable by the Reorganized Debtor or the Distribution Trust to professionals under contingent-fee or other arrangements in connection with the Distribution Trust’s efforts to analyze or prosecute such Bankruptcy Cause of Action or to collect such proceeds.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

“Bankruptcy Court” means the Bankruptcy Court of the United States District Court for the Eastern District of Virginia, Alexandria Division.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Cases or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

“Bar Date” means March 31, 2009, the deadline for filing all proofs of claims established by the Bankruptcy Court, except Claims of governmental units for which proofs of claim are filed in accordance with Section 502(b)(9) of the Bankruptcy Code and are due on July 6, 2009.

“BofA” means Bank of America and its affiliates.

“Business Day” means any day other than a Saturday or Sunday, or any legal holiday as defined in Bankruptcy Rule 9006(a).

“Carve Out” shall mean that amount reserved for professional fees in the interim order and final order entered by the Bankruptcy Court on January 8, 2009 and on February 2, 2009, respectively, approving the DIP Financing and in the Exit Financing Lender’s Term Sheet for Exit Financing.

“Carve Out Account” shall mean the segregated depository account established by Reorganized Smitty’s for the receipt of the Carve Out for distribution to holders of Allowed Professional Fee Claims.

“Cash” means legal tender of the United States of America or a cash equivalent.

“Chapter 11 Cases” mean the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors on January 5, 2009, in the Bankruptcy Court and styled *In re Smitty’s Building Supply, Inc., et al.*, Case No. 09-10040-SSM.

“Claim” means “claim” as defined in Section 101(5) of the Bankruptcy Code, whether or not asserted or Allowed.

“Class” means any group of Claims or Equity Interests classified by the Plan pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

“Commencement Date” means January 5, 2009.

“Committee” means the Official Committee of Unsecured Creditors appointed pursuant to Section 1102 by the Office of the U.S. Trustee on January 15, 2009.

“Confirmation Date” means the date of entry of the Confirmation Order.

“Confirmation Hearing” means the hearing, pursuant to Section 1129 of the Bankruptcy Code, to consider confirmation of the Plan.

“Confirmation Order” means the order, in form and substance reasonably satisfactory to the Debtors, the Committee and the Exit Financing Lender, entered by the Bankruptcy Court, confirming the Plan.

“Contingent Assets” means, as of any date, all claims and causes of action other than Bankruptcy Causes of Action as described in Section 8.4 hereof that remain outstanding and subject to recovery by and for the benefit of the Distribution Trust, specifically

excluding any asset which is subject to the liens and security interests amended and restated pursuant to the Exit Financing Documents.

“Cure” means the distribution prior to or within a reasonable period of time following the Effective Date of Cash or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption of an executory contract or unexpired lease pursuant to Section 365(b) of the Bankruptcy Code, in an amount agreed upon by the parties or ordered by the Bankruptcy Court, in payment of all unpaid monetary obligations, without interest, under such executory contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law.

“Debtor Claims” means all Bankruptcy Causes of Action and other claims and causes of action that the Debtors may have against any Person other than a Debtor that arise prior to the Effective Date and that, as of the Effective Date, have not been waived, settled, released or denied by Final Order of the court having jurisdiction over a proceeding in which such Cause of Action or Avoidance Claim was asserted.

“Debtor” means Smitty’s Building Supply, Inc., or any individual Affiliated Debtor, and “Debtors” means Smitty’s Building Supply, Inc., and all Affiliated Debtors.

“DIP Financing” means the Post-Petition Credit and Security Agreement (dated as of January 5, 2009) among Smitty’s Building Supply, Inc., and each of the Affiliated Debtors, as borrowers, and BofA, as lender, and the Loan Documents, as defined therein, and as approved by the Bankruptcy Court in an interim order entered on January 8, 2009 and a final order entered on February 2, 2009.

“Disallowed Claim” means a Claim, or any portion thereof, that (a) has been disallowed by a Final Order of the Bankruptcy Court, or (b) has not been scheduled by the Debtor or is Scheduled at zero or as contingent, disputed or unliquidated and as to which the Bar Date has passed but no proof of claim has been filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

“Disclosure Statement” means the written disclosure statement that relates to this Plan, as approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017, as such disclosure statement may be amended, modified or supplemented from time to time.

“Disputed . . . Claim” means a Claim, or any portion thereof, of the type described, that is neither an Allowed Claim nor a Disallowed Claim, and includes, without limitation, Claims that (a) (i) have not been Scheduled by the Debtor or have been Scheduled at zero, as unknown or as contingent, unliquidated or disputed and are the subject of a timely filed proof of claim, or (ii) are the subject of an objection by the Debtor or as to which the time for the Debtor to object has not yet expired, and (b) the allowance or disallowance of which is not yet the subject of a Final Order of the Bankruptcy Court.

“Distribution Date” means, with respect to any Class of Claims, each date after the Effective Date on which the Reorganized Debtor or the Distribution Trust makes a distribution to a designated Class under the Plan.

“Distribution Trust” has the meaning set forth in Section 8.4 hereof.

“Distribution Trust Agent” has the meaning set forth in Section 8.4 hereof.

“D&O Indemnification Rights” has the meaning given to such term in Section 13.9.

“Effective Date” means the first (1<sup>st</sup>) Business Day on or after the Confirmation Date specified by the Debtors on which (i) no stay of the Confirmation Order is in effect and (ii) all conditions to the effectiveness of the Plan specified in Section 12.2 hereof have been satisfied or waived in accordance with Section 12.3 hereof and is the day upon which this Plan is substantially consummated.

“Equipment Sale Proceeds” means the proceeds of the sale of certain miscellaneous computers, phones, copiers, furniture, office supplies, equipment and vehicles as authorized by order of the Bankruptcy Court entered on April 9, 2009.

“Equity Interest” means, as of the Commencement Date, any rights of any Person attributable to any ownership interest in any of the Debtors.

“Estate” means, with respect to any Debtor, the bankruptcy estate of such Debtor pursuant to Section 541 of the Bankruptcy Code.

“Exhibit” means an exhibit annexed either to this Plan or as an appendix to the Disclosure Statement.

“Exit Financing” means the credit agreement(s) to be entered into by the Exit Financing Lender and Reorganized Smitty’s on the Effective Date with respect to the Exit Financing Loans, described in Section 8.1 hereof.

“Exit Financing Lender” means the Lender as set forth in Exhibit “1”.

“Expense Reserve” means those funds from the Smith Family Cash Contribution and other sources reserved for the payment of costs and expenses of the Distribution Trust and Post-Effective Date Professional Fee Claims pursuant to Section 3.4 hereof.

“Expense Reserve Account” means the account established to hold those funds from the Smith Family Cash Contribution and other sources reserved for the payment of costs and expenses of the Distribution Trust and Post-Effective Date Professional Fee Claims pursuant to Section 3.4 hereof.

“Face Amount” means, (a) with respect to a Disputed or Disallowed Claim, the full stated amount claimed by the holder of such Claim in any proof of Claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the

Bankruptcy Court or other applicable bankruptcy law; and (b) with respect to an Allowed Claim, the allowed amount of such Claim.

“File” or “Filed” means filed with the Bankruptcy Court in the Chapter 11 Cases.

“Final DIP Order” means the Final Order (I) Authorizing Post-Petition Secured Financing, (II) Authorizing Use of Cash Collateral and (II) Granting Adequate Protection, which was entered by the Bankruptcy Court in the Chapter 11 Cases on February 2, 2009.

“Final Order” means an order or judgment, the operation or effect of which has not been stayed, reversed or amended and as to which order or judgment (or any revision, modification or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

“General Unsecured Claim” means a claim against any Debtor that is not a Secured Claim, Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, Pre-Petition Secured Deficiency Claim, or Equity Interest.

“Impaired” refers to any Claim or Equity Interest that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

“Indemnification Rights” means any obligations or rights of the Debtors to indemnify or contribute to the losses, liabilities or expenses of an Indemnitee pursuant to the Debtors’ certificate of incorporation, bylaws or policy of providing employee indemnification, or applicable state law or specific agreement in respect of any claims, demands, suits, causes of action or proceedings against an Indemnitee based upon any act or omission related to an Indemnitee’s service with, for or on behalf of the Debtors.

“Indemnitee” means all present and former directors, officers, employees, agents, advisors or representatives of the Debtors who are entitled to assert Indemnification Rights.

“Insider” means any (i) director of one or more of the Debtors, (ii) officer of one or more of the Debtors, (iii) person in control of one or more of the Debtors, (iv) partnership in which one or more of the Debtors is a general partner, (v) general partner of one or more of the Debtors; or (vi) relative of a general partner, director, officer, or person in control of one or more of the Debtors, pursuant to Section 101(31)(B) of the Bankruptcy Code.

“Interest Rate” means the interest rate in effect for 5-year treasury bills.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Landlord Unsecured Claim” shall mean the unsecured portion of any Claim arising from the lease of nonresidential real property, including Claims for pre-petition rent and rejection damages, if any.



“Merger” has the meaning set forth in Section 8.6 hereof.

“Net Realized . . . Proceeds” means, in respect of any Asset, the gross Cash or non-Cash proceeds realized after the Petition Date in connection with the liquidation, collection or other disposition of such Asset, net of the transaction fees, if any, of investment bankers, brokers, collection agents and other professionals incurred as a consequence of completion of such transaction and paid from such proceeds.

“New Common Stock” means that common stock in Reorganized Smitty’s to be distributed to the Winning Bidder in accordance with Section 8.5 hereof.

“Other Priority Claim” means a Claim, if any, entitled to priority pursuant to Section 507(a) of the Bankruptcy Code other than an Administrative Expense Claim or a Priority Tax Claim.

“Other Creditors” means pre-petition creditors of the Debtors other than the Pre-Petition Secured Lender.

“Person” means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization or other entity.

“Petition Date” means January 5, 2009.

“Plan” means this plan of reorganization which is proposed by the Debtors for the resolution of outstanding Claims and Equity Interests in these Chapter 11 cases, as such Plan may be amended from time to time in accordance with the Bankruptcy Code and Article XIV herein.

“Plan Supplement” means the supplement to Plan filed by the Debtors no later than five (5) days before the Confirmation Hearing, which will include the documents listed in Section 8.11 hereof and such other documents as the Debtors submit to the Bankruptcy Court for approval as necessary or useful.

“Post-Effective Date Professional Fee Claim” means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred after the Effective Date. Such claims shall be paid pursuant to Section 3.4.

“Post-Petition Indemnification Rights” has the meaning set forth in Section 13.9 hereof.

“Pre-Petition Credit Agreement” means the Credit and Security Agreement dated as of July 14, 2006, as amended, supplemented or otherwise modified from time to time by and among the Debtors and Bank of America.

“Pre-Effective Date Lender Secured Claim” means the Allowed Claim of BofA in respect to the DIP Financing in the aggregate amount of twelve million four hundred thousand dollars (\$12,400,000), secured by a first lien on all the Assets and a second lien

on certain real property located on 11801 Balls Ford Road in Manassas, Virginia, owned by S&D Manassas, LLC.

“Pre-Petition Secured Lender” means BofA.

“Priority Claim” means any Claim against any of the Debtors which is entitled to priority in payment as specified in Section 507(a) of the Bankruptcy Code, other than an Administrative Expense Claim, Professional Fee Claim, or a Priority Tax Claim.

“Priority Tax Claim” means a Claim entitled to priority pursuant to Section 507(a)(8) of the Bankruptcy Code.

“Professional” means a consultant, accountant, attorney or other professional service provider retained by the Debtors or the Committee pursuant to Sections 327, 363 and 1103 of the Bankruptcy Code or otherwise.

“Professional Fee Claim” means a Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date. Until a timely filed Professional Claim is Allowed or Disallowed, it shall be considered a Disputed Administrative Expense Claim for purposes of Section 3.3.

“Pro Rata” means, at any time, the proportion that the Face Amount of a Claim in a particular Class bears to the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class, unless the Plan provides otherwise.

“Realization Event” means the date when proceeds of the sale, collection or other disposition of any Asset are realized by the Debtors, whether prior to, on or after the Effective Date.

“Record Date” means July 8, 2009.

“Reorganized Debtor” or “Reorganized Smitty’s” means Smitty’s Building Supply, Inc. on and after the Effective Date.

“Sale of De Minimis Assets” shall mean those sales of de minimis assets as authorized by the Bankruptcy Court at the hearing on March 20, 2009.

“Scheduled” means, with respect to a Claim, that the Claim is listed on the schedules of assets and liabilities filed by a Debtor in the Chapter 11 Cases pursuant to Bankruptcy Rule 1007(b)(1).

“Secured Claim” means a Claim secured by a security interest in or lien upon property of the Debtors’ Estates to the extent of the value, as of the Effective Date or such other date as is established by the Bankruptcy Court, of such security interest or lien as determined by a Final Order of the Bankruptcy Court pursuant to Section 506 of the Bankruptcy Code or as otherwise agreed upon in writing by the Debtor and the holder of such Claim.

“Secured Deficiency Claim” means with respect to a Claim that is partially secured by a lien on, or security interest in, property of any of the Debtors, or that has the benefit of partial rights of setoff under § 553 of the Bankruptcy Code, the amount by which the Allowed amount of such Claim exceeds the value of the property of the Debtors securing such Claim or the amount subject to setoff, as applicable, as determined by the Bankruptcy Court pursuant to §§ 506(a), 553, and/or 1129(b)(2)(A)(i)(II) of the Bankruptcy Code.

“Smith Family” means Douglas A. Smith, Jeffrey T. Smith, Kathryn C. Smith, Lynn S. Pedrotti, Michael J. Smith, N. Patrick Smith, Pamela S. Montano, Patricia R. Smith, Patricia S. Giles, and Robert S. Smith, or his/her/or their designee(s).

“Smith Family Cash Contribution” has the meaning set forth in Section 8.3 hereof.

“Smith Note” has the meaning set forth in Section 8.3 hereof.

“Treasury Regulations” means all final, temporary and proposed regulations promulgated under the Internal Revenue Code of 1986, as amended.

“Unimpaired” refers to any Claim or Equity Interest that is not Impaired.

“Value” means, as of any measurement date, (i) with respect to Cash, the amount of such Cash, and (ii) with respect to any other assets, the fair market value of such assets as determined by an independent professional experienced in valuing such assets, or by the Bankruptcy Court.

“Winning Bidder” means the person or entity which submits the highest and best bid pursuant to Section 8.5 hereof.

1.3 *Rules of Interpretation.* Unless otherwise specified, all references in the Plan to Sections, Articles, Schedules and Exhibits are references to Sections, Articles, Schedules and Exhibits of or to the Plan. The words “herein” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan. Captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. Except for the rule contained in Section 102(5) of the Bankruptcy Code, the rules of construction set forth in Section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply to the Plan.

1.4 *Computation of Time.* In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

1.5 *Exhibits Documents.* All Exhibits are incorporated into and are a part of the Plan as if set forth in full herein.

## ARTICLE II

### **SUBSTANTIVE CONSOLIDATION**

2.1 *Substantive Consolidation of Chapter 11 Cases for Purposes of Distributions.* The Plan is predicated upon, and it is a condition precedent to confirmation of the Plan that the Court provides in the Confirmation Order for substantive consolidation of the Chapter 11 Cases of the Debtors into a single Chapter 11 Case for purposes of this Plan and the distributions hereunder. Pursuant to such final order, (i) all assets and liabilities of the Debtors will be merged, (ii) any obligations executed by any Debtor will be deemed to be one obligation of the Debtors, (iii) any claims filed or to be filed in connection with any such obligation will be deemed one claim against the Debtors, (iv) each Claim filed in the Chapter 11 Case of any Debtor will be deemed filed against the Debtors in the consolidated Chapter 11 Case, in accordance with the substantive consolidation of the assets and liabilities of the Debtors and (v) all transfers, disbursements and distributions made by any Debtor will be deemed to be made by all of the Debtors. Holders of Allowed Claims in each Class shall be entitled to their Pro Rata share of assets available for distribution to such Class without regard to which Debtor was originally liable for such Claim.

## ARTICLE III

### **ADMINISTRATIVE EXPENSE CLAIMS, PROFESSIONAL FEE CLAIMS AND PRIORITY TAX CLAIMS**

3.1 *Administrative Expense Claims.* Each holder of an Allowed Administrative Expense Claim shall be entitled to receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Expense Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Expense Claim, or (b) such other treatment as to which the Debtors and such holder shall have agreed upon in writing; provided, however, that Allowed Administrative Expense Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases shall, at the option of the Debtors, be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto. Payment shall be made on the later of the Effective Date or within five (5) Business Days after such Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable. All Disputed Administrative Expense Claims shall be reserved for in full on the Effective Date. Payment of Allowed Administrative Expense Claims on the Effective Date shall be made from the Exit Financing (as available for such purposes) and from other available and permitted sources hereunder. Payment of Allowed Administrative Expense Claims, other than Professional Fee Claims, may be made from the Distribution Trust as a source of last resort pursuant to Section 8.4 hereof. Reorganized Smitty's shall at all times have standing to object to Administrative Expense Claims.

3.2 *Bar Date for Administrative Expense Claims.* Any Persons that failed to file a proof of Administrative Expense Claim or request for payment thereof on or before the Administrative Bar Date pursuant to the Administrative Bar Date Order are forever barred from asserting such Claim against any of the Debtors, the Estates, the Reorganized Debtor or their

property, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Expense Claim.

3.3 *Professional Fee Claims.* All Persons seeking an award by the Bankruptcy Court of a Professional Fee Claim incurred through and including the Effective Date shall, unless otherwise ordered by the Bankruptcy Court, file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is no later than sixty (60) days after the Effective Date. Professional Fee Claims that are allowed by a Final Order of the Bankruptcy Court shall be paid as follows:

(a) any Allowed Professional Fee Claim incurred from the Commencement Date through the Effective Date shall be paid pro rata from operating revenues of Reorganized Smitty's or from the Carve Out; and

(b) any Allowed Professional Fee Claim not otherwise paid, including amounts not paid under section (a) above, shall be paid pro rata from the Expense Reserve in accordance with Sections 8.3 of the Plan.

3.4 *Post-Effective Date Professional Fee Claims.* Reorganized Smitty's shall pay, to the extent practicable, the reasonable fees and expenses of the professional persons employed by Reorganized Smitty's accrued or incurred after the Effective Date in the ordinary course of business without the necessity for any approval of the Bankruptcy Court. Such professional fees and expenses may be incurred in connection with the implementation and consummation of this Plan, the claims reconciliation process or any other matters as to which such professionals may be engaged by the Reorganized Debtor. To the extent that Reorganized Smitty's does not have sufficient operating revenue to pay these Post-Effective Date Professional Fee Claims, such claims may be paid from the Expense Reserve in accordance with Sections 8.3 and 8.4 of the Plan but only after the holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims have received an amount equal to 2% of all Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims. All Post-Effective Date Professional Fee Claims of the Committee, the Distribution Trust, and/or the Distribution Trust Agent shall not be paid by the Reorganized Debtor but shall be paid from (i) the Expense Reserve or (ii) the Distribution Trust.

3.5 *Priority Tax Claims.* Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Reorganized Debtor, in full satisfaction, settlement, release and discharge of, and in exchange for such Allowed Priority Tax Claim, one of the following treatments: (i) Cash in an amount equal to such Allowed Priority Tax Claim on the later of the Effective Date and the first (1<sup>st</sup>) Business Day that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim; (ii) equal annual Cash payments in an aggregate amount equal to such Allowed Priority Tax Claim, together with interest at the Interest Rate in effect on the Effective Date, over a period not exceeding five (5) years after the Commencement Date, which annual payments shall begin one (1) year after the Effective Date; or (iii) such other treatment as to which the Debtors and such holder shall have agreed upon in writing.

## ARTICLE IV

### **CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Equity Interests in the Debtors. A Claim or Equity Interest is also placed in a particular Class for the purposes of voting on the Plan and of receiving distributions pursuant to the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class and such Claim or Equity Interest has not been paid, released or otherwise settled prior to the Effective Date. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Professional Fee Claims and Priority Tax Claims of the kinds specified in Sections 507(a)(2) and 507(a)(8) of the Bankruptcy Code have not been classified and their treatment is set forth in Article III above.

- 4.1 *Class 1.* Class 1 consists of all Other Priority Claims.
- 4.2 *Class 2.* Class 2 consists of the Pre-Effective Date Lender Secured Claim.
- 4.3 *Class 3.* Class 3 consists of all Other Pre-Petition Secured Claims.
- 4.4 *Class 4.* Class 4 consists of all Other Pre-Petition Secured Claims that are otherwise Deficiency Claims.
- 4.5 *Class 5.* Class 5 consists of all Landlord Unsecured Claims.
- 4.6 *Class 6.* Class 6 consists of all General Unsecured Claims.
- 4.7 *Class 7.* Class 7 consists of all Equity Interests.

## ARTICLE V

### **IDENTIFICATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS IMPAIRED AND UNIMPAIRED BY THE PLAN**

5.1 *Unimpaired Classes of Claims and Equity Interests.* Class 1 (Other Priority Claims) is an Unimpaired Class under the Plan.

5.2 *Impaired Classes of Claims and Equity Interests.* Class 2 (Pre-Effective Date Lender Secured Claim), Class 3 (Other Pre-Petition Secured Claims), Class 4 (Other Pre-Petition Secured Claims that are otherwise Deficiency Claims), Class 5 (Landlord Unsecured Claims), Class 6 (General Unsecured Claims), and Class 7 (Equity Interests) are Impaired Classes under the Plan.

## ARTICLE VI

### **PROVISIONS FOR TREATMENT OF CLAIMS AND EQUITY INTERESTS**

6.1 *Class 1 (Other Priority Claims)*. Unless paid pursuant to Bankruptcy Court order prior to the Effective Date, an Allowed Class 1 Claim shall be paid in full on the later of the Effective Date or thirty (30) days after such Claim becomes an Allowed Priority Claim, or upon such other terms as may be agreed to by the holder of such Claim and the Debtors. Should a Class 1 Claim be a Disputed Claim or a Claim that has not yet become an Allowed Priority Claim as of the Effective Date, such Claim shall be paid pursuant to this paragraph only after it is allowed by a Final Order. Class 1 is unimpaired by the Plan.

6.2 *Class 2 (Pre-Effective Date Lender Secured Claim)*. The Class 2 Claim is an Allowed Claim and shall be amended and restated pursuant to the terms and conditions of the Exit Financing and shall be paid according to the terms set forth in the Exit Financing Lender's Term Sheet for Exit Financing, which is attached hereto as Exhibit "1." The holder of the Allowed Class 2 Claim will not participate as a Class 6 claimant for any unsecured deficiency Claim. Class 2 is impaired by the Plan.

6.3 *Class 3 (Other Pre-Petition Secured Claims)*. On the Effective Date, each holder of an Allowed Class 3 Other Pre-Petition Secured Claim shall (i) retain its liens to the extent of its allowed Claim and receive deferred cash payments at least equal in value to the amount of its Allowed Claim with a present value as of the Effective Date of the Plan at least equal in value to such creditor's interest in the Estates' interest in the property securing its Claim; (ii) if property subject to the lien of the impaired secured creditor is sold free and clear of that lien, the lien attaches to the proceeds of the sale, and such lien proceeds are treated in accordance with clause (i) or (iii) of this paragraph; or (iii) be entitled to such other treatment as to which the Debtors and such holder shall have agreed upon in writing. Class 3 is impaired by the Plan.

6.4 *Class 4 (Other Pre-Petition Secured Claims that are otherwise Deficiency Claims)*. On the Effective Date, each holder of an Allowed Class 4 Other Pre-Petition Secured Claims that are otherwise Deficiency Claims shall receive a Class 4 interest representing the right to receive the distributions contemplated in Section 8.4 hereof. Class 4 is impaired by the Plan.

6.5 *Class 5 (Landlord Unsecured Claims)*. On the Effective Date, each holder of an Allowed Class 5 Landlord Unsecured Claim shall receive a Class 5 interest representing the right to receive the distributions contemplated in Section 8.4 hereof. Class 5 is impaired by the Plan.

6.6 *Class 6 (General Unsecured Claims)*. On the Effective Date, each holder of an Allowed Class 6 General Unsecured Claim shall receive a Class 6 interest representing the right to receive the distributions contemplated in Section 8.4 hereof. Class 6 is impaired by the Plan.

6.7 *Class 7 (Equity Interests)*. The Equity Interests in Smitty's Building Supply, Inc., and its Affiliated Debtors shall be deemed and by this Plan will be cancelled as of the Effective

Date. Holders of Class 7 Equity Interests shall receive no distributions under the Plan in respect of the Equity Interest. Class 7 is impaired by the Plan and deemed to reject the Plan and, consequently, is not entitled to vote to accept or reject the Plan.

## ARTICLE VII

### **ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE IMPAIRED CLASSES OF CLAIMS OR EQUITY INTERESTS**

7.1 *Impaired Classes of Claims and Equity Interests Entitled to Vote.* Subject to Section 7.4 of the Plan, the holders of Claims or Equity Interests in each Impaired Class of Claims or Equity Interests are entitled to vote as a class to accept or reject the Plan. Procedures to allow disputed claims solely for the purpose of voting on the Plan are outlined in the Debtors' Motion for Entry of an Order Pursuant to Sections 11 U.S.C. §§105, 502, 1125, and 1126 and Fed. R. Bankr. P. 3017 and 3018: (I) Approving Form of Ballot, (II) Establishing a Voting Deadline and Procedures for Vote Tabulation, and (III) Approving a Form of Notice Establishing Deadlines Related Thereto, filed on April 10, 2009 [Docket No. 243].

7.2 *Acceptance by an Impaired Class.* In accordance with Section 1126(c) of the Bankruptcy Code and except as provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan. Holders of claims that fail to vote are not counted as either accepting or rejecting a plan. If no votes are cast by holders of claims in a particular class, that class is deemed to accept the Plan.

7.3 *Presumed Acceptance by Unimpaired Classes.* Claims in Class 1 (Other Priority Claims) are Unimpaired by the Plan. Under Section 1126(f) of the Bankruptcy Code, the holders of such Claims are conclusively presumed to accept the Plan and the votes of such holders will not be solicited.

7.4 *Classes Deemed to Reject Plan.* Holders of Equity Interests in Class 7 will be deemed to reject the Plan and their votes will not be solicited.

7.5 *Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.* As holders of Equity Interests in Class 7 (Equity Interests) will be deemed to reject the Plan, the Debtors will request confirmation of the Plan, as it may be modified from time to time, under Section 1129(b) of the Bankruptcy Code.

7.6 *Confirmability and Severability of the Plan.* The confirmation requirements of Section 1129 of the Bankruptcy Code must be satisfied with respect to the Debtors. The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan prior to the Confirmation Hearing upon notice to the Pre-Petition Secured Lender and the Committee. A determination by the Bankruptcy Court that the Plan as it applies to the Debtors is not confirmable pursuant to Section 1129 of the Bankruptcy Code shall not limit or affect the Debtors' ability to modify the Plan to satisfy the confirmation requirements of Section 1129 of the Bankruptcy Code.



## ARTICLE VIII

### MEANS FOR IMPLEMENTATION

#### 8.1 *Exit Financing.*

The Exit Financing Lender will amend and restate the Pre-Effective Date Lender Secured Claim to Reorganized Smitty's on terms acceptable to the Debtors and the Exit Financing Lender. The Allowed Class 2 Claim will be amended and restated pursuant to the terms and conditions of the Exit Financing and will be paid according to the terms set forth in the Exit Financing Lender's Term Sheet for Exit Financing, which is attached hereto as Exhibit "1." The Exit Financing Lender will retain all of the existing pre-Effective Date liens and security interests until the Exit Financing obligations are paid in full, and the pre-Effective Date documents creating such liens and security interests will be deemed modified by the Exit Financing documents. The terms and conditions of the Exit Financing shall be further set forth in the Exit Financing loan documents, which shall be filed as a Plan Supplement. In the event of any inconsistency between the Exit Financing loan documents and the Plan, the terms of the Exit Financing loan documents will govern. After the Effective Date, modifications to, and enforcement of, the Exit Financing need not be submitted to nor approved by the Bankruptcy Court. The Exit Financing, including any amended financing statements or amended and/or restated deeds of trust for the Alexandria Property or the property located at 11801 Balls Ford Road, Manassas, Virginia, are made pursuant to this Plan and shall not be taxed under any law imposing a stamp tax or similar tax under Section 1146 of the Bankruptcy Code.

#### 8.2 *The Alexandria Property.*

(a) Reorganized Smitty's shall continue to market and actively consider all expressions of interests and offers on the Alexandria Property, which Reorganized Smitty's may or may not pursue, in the exercise of its reasonable and good faith business judgment. In recognition of the soft commercial real estate market, the Exit Financing Lender has provided the Debtors with "breathing room" in the form of pricing and amortization relief through December 31, 2009, to allow Reorganized Smitty's adequate time to market and sell the Alexandria Property.

(b) If Net Realized Proceeds exceed seven million five hundred thousand dollars (\$7,500,000), all Net Realized Proceeds from the sale of the Alexandria Property shall be distributed at closing by Reorganized Smitty's as follows:

- (i) First, to The Exit Financing Lender in an amount up to and including seven million five hundred thousand dollars (\$7,500,000) in partial satisfaction of Reorganized Smitty's Exit Financing obligations.
- (ii) Second, in an amount not to exceed three hundred thousand dollars (\$300,000) to the Distribution Trust.

- (iii) Third, to the Exit Financing Lender any Net Realized Proceeds in excess of seven million eight hundred thousand dollars (\$7,800,000) for application as a permanent reduction to the Reorganized Debtor's revolving line of credit as provided in the Final DIP Order.

(c) In the event that Net Realized Proceeds do not exceed seven million five hundred thousand dollars (\$7,500,000), all Net Realized Proceeds from the sale of the Alexandria Property shall be distributed at closing to the Exit Financing Lender, which, in its sole discretion and authority, may elect not to share the proceeds with any other party.

(d) Except as described in this Section 8.2, and except in favor of the Exit Financing Lender with respect to the Exit Financing Loans, Reorganized Smitty's shall not create, permit, or suffer to exist any liens, encumbrances, charges or other interests in the Alexandria Property.

(e) The sale, or any refinancing, of the Alexandria Property shall be made pursuant to this Plan and shall not be taxed under any law imposing a stamp tax or similar tax under Section 1146 of the Bankruptcy Code. To the extent the provisions of this subparagraph result in the imposition of any additional statutory U.S. Trustee fees pursuant to 28 U.S.C. §1930(a), then Reorganized Smitty's shall contribute an amount equal to such increase in the Distribution Trust within thirty (30) days of the imposition thereof.

### 8.3 *The Smith Family Cash Contribution and the Smith Note*

(a) On the Effective Date, the Smith Family or their designee(s) shall deliver one hundred twenty-five thousand dollars (\$125,000.00) Cash (the "Smith Family Cash Contribution") and a promissory note in the amount of two hundred fifty thousand dollars (\$250,000.00) (the "Smith Note"), in exchange for which the Smith Family will receive New Common Stock in the Reorganized Debtor, subject to higher and better offers, as described in Section 8.5 below.

(b) The terms of the Smith Note are as follows:

- (i) The Smith Note shall have a five (5) year term.
- (ii) The Smith Note shall bear interest at an annual rate of six percent (6 %).
- (iii) The makers of the Smith Note shall make monthly payments of amortized principal and accrued interest to the Distribution Trust beginning on the first day of the first month after the Effective Date.

(c) An Expense Reserve of seventy five thousand dollars (\$75,000.00) shall be established from the Smith Family Cash Contribution for the payment of costs and expenses of the Distribution Trust and Post-Effective Date Professional Fee Claims pursuant to Section 3.4 hereof. This amount shall be deposited in the Expense Reserve Account on the Effective Date.

(d) The remaining fifty thousand dollars (\$50,000) of the Smith Family Cash Contribution and the proceeds of the Smith Note shall be contributed and paid directly to the Distribution Trust and distributed in accordance with Section 8.4 hereof.

#### 8.4 *The Distribution Trust*

(a) On the Effective Date, the Debtors shall form the Distribution Trust, a Virginia limited liability company, for the purposes of administering certain post-Effective Date responsibilities and exercising certain post-Effective Date rights under the Plan for the benefit of holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims, including but not limited to responsibilities and rights associated with (i) the pursuit of any and all Bankruptcy Causes of Action; (ii) the pursuit of any and all Contingent Assets; (iii) collections pursuant to the Smith Note, and (iv) the reconciliation and objection to Claims of any kind except the Claims in Class 2.

(b) The Distribution Trust Agent shall administer the Distribution Trust. The Distribution Trust Agent shall be selected by (i) the Debtors, (ii) the Board of Directors and (iii) the Committee, with each party having one vote.

(c) The powers, authority, responsibilities, and duties of the Distribution Trust and the Distribution Trust Agent shall be set forth in and governed by the Distribution Trust Agreement, which shall be filed with the Plan Supplement.

(d) The Distribution Trust shall establish a depository account to receive (i) any and all Net Realized Proceeds of the Bankruptcy Causes of Action, (ii) any and all Net Realized Proceeds of the Contingent Assets, (iii) fifty thousand dollars (\$50,000) from the Smith Family Cash Contribution and the proceeds of the Smith Note, (iv) any and all proceeds from the Sale of De Minimis Assets, (v) any and all proceeds from the sale of the Alexandria Property as described in Section 8.2 hereof, (vi) Equipment Sale Proceeds and (vii) the proceeds of any other non-Cash Assets not otherwise described herein.

(e) The Distribution Trust shall be authorized to take the following actions:

- (i) The Distribution Trust shall appoint litigation counsel to pursue the Bankruptcy Causes of Action and Contingent Assets on behalf of the Distribution Trust.
- (ii) The Distribution Trust, in the exercise of sound business judgment, may pursue or decline to pursue any Bankruptcy Causes of Action, Contingent Asset action, or objections to Claims other than the Class 2 Claim and any claim(s) previously allowed by an order of the Bankruptcy Court. Any out-of-pocket expenses (including, but not limited to, U.S. Trustee fees and any court expenses incurred more than three (3) quarters after the Effective Date) incurred to pursue any such Claim objection, Bankruptcy Cause of Action or Contingent Asset shall be payable from the Expense

Reserve and/or the Distribution Trust, and the Reorganized Debtor shall have no liability or responsibility therefore.

- (iii) The Distribution Trust, acting through the Distribution Trust Agent and litigation counsel, may compromise and settle any Bankruptcy Cause of Action, any Contingent Asset action or any other matter based on sound business judgment. Any proposed settlement of any Bankruptcy Cause of Action, Contingent Asset action or any other matter shall be communicated to the designee of the Reorganized Debtor and the designee of the Exit Financing Lender.
  - (iv) The Distribution Trust shall file any and all Bankruptcy Causes of Action and Contingent Asset actions that it chooses to file within the statutory limit in Section 546 of the Bankruptcy Code. The Distribution Trust is solely responsible for all filing fees, professional fees, court costs, and other expenses relating to its objections to Claims, Bankruptcy Causes of Action, and Contingent Asset actions.
  - (v) The Distribution Trust shall pay all U.S. Trustee fees and similar costs pursuant to 28 U.S.C. §1930 resulting from the continued pendency of the Chapter 11 Cases provided that (a) the Reorganized Debtor has, as of such date, resolved all Pre-Effective Date Professional Fee Claims and all objections to Claims raised and prosecuted by the Debtors or the Reorganized Debtor and (b) the Distribution Trust shall not be responsible for paying any portion of the U.S. Trustee fees due and payable based on any distribution to Class 2 from the sale of the Alexandria Property. Nothing in this subparagraph shall prohibit the Distribution Trust from seeking to close the Debtors' Chapter 11 Cases in order to limit or avoid the responsibility for on-going U.S. Trustee fees.
  - (vi) The Distribution Trust shall have the exclusive authority to examine and object to claims in Class 4, Class 5, and Class 6, unless such claims have been previously allowed by an order of the Bankruptcy Court. The Debtors and Reorganized Smitty's shall have the exclusive right to object to claims in Class 1 and Class 3.
- (f) Any assets in the Distribution Trust shall be distributed by the Distribution Trust Agent as follows:
- (i) First, as a source of last resort, to holders of Allowed Administrative Expense Claims, other than Professional Fee Claims, not otherwise paid in accordance with the provisions of this Plan;
  - (ii) Second, to the payment of all fees owed to the Office of the U.S. Trustee accruing more than three (3) quarters after the Effective Date and all court

and other costs for filing Bankruptcy Causes of Action and Contingent Asset actions for the benefit of the Distribution Trust;

- (iii) Third, when combined with any payments made to holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims under Sections 8.2 and 8.3 hereof, to holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims on a pro rata basis in an amount equal to 2% of all Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims;
  - (iv) Fourth, after Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims receive distributions from any and all sources equal to 2% of the Allowed Claims, (i) fifty percent (50%) to the Exit Financing Lender and (ii) fifty percent (50%) to the holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims in equal amounts.
- (g) The Bankruptcy Court shall have the exclusive jurisdiction to resolve any dispute which may arise in connection with the Distribution Trust.
- (h) Once all Bankruptcy Causes of Action, Contingent Asset actions, or objections to Claims (other than the Class 2 Claim) have concluded and all fees and expenses associated therewith have been paid, any amounts remaining in the Expense Reserve Account shall be contributed to the Distribution Trust.

8.5 *Cancellation of Existing Securities and Agreements and Issuance of New Common Stock.* On the Effective Date, other than in connection with the Allowed Class 2 Claim of BofA, all the agreements, instruments, and other documents evidencing the Claims or Equity Interest rights of any holder of a Claim or Equity Interest against the Debtors, an agreement obligating the Debtors to issue, transfer, or sell Equity Interests or any other capital stock of the Debtors shall be deemed cancelled and of no force or effect.

Reorganized Smitty's shall issue New Common Stock with a par value of \$1.00 per share to the Smith Family on the Effective Date in exchange for the Smith Family Cash Contribution and the Smith Note, subject to higher and better offers. Other potential purchasers of the New Common Stock may submit bids for the New Common Stock on or before 1:00 p.m. Eastern Standard Time on June 8, 2009 (the "Bid Deadline"). Procedures for submission of alternative proposals (the "Bid Procedures") are attached hereto as Exhibit "2." Alternative proposals, together with all supporting documentation, must be submitted by the Bid Deadline to counsel for the Debtors, counsel to the Committee, and counsel to the Exit Financing Lender. Alternative proposals must comply with the Bid Procedures and must provide for an irrevocable offer to purchase the New Common Stock on terms similar to or better than the Smith Family Cash Contribution and the Smith Note. Any such alternative proposal must be without due diligence or other qualification or contingencies, must be accompanied by a current financial statement of the bidder, and must be capable of performance on the Effective Date, which is projected to occur on or before July 10, 2009.

If one or more alternative bids are received by the Bid Deadline, the Debtors will conduct an auction in compliance with the Bid Procedures. If a bidder other than the Smith Family submits the highest and best bid at the auction (the "Winning Bidder"), the Plan shall be amended to reflect the identity of the winning bidder and the terms of the winning bid. If the Winning Bidder subsequently defaults on consummating the winning bid, then the next highest and best qualified bidder shall be obligated to close on its bid. If the Smith Family is the next highest and best qualified bidder, the New Common Stock will be issued to the Smith Family and the Plan will be consummated on the Effective Date in accordance with its original terms as set forth herein.

As soon as practicable after the Bid Deadline and/or auction, the Debtors shall file (i) a list of the members of the Smith Family and the number of shares received by each or (ii) the identity of the Winning Bidder receiving New Common Stock and the number of shares received.

8.6 *Merger.* On the Effective Date, the Affiliated Debtors will merge with and into Smitty's Building Supply, Inc., with Smitty's Building Supply, Inc. being the surviving corporation (the "Merger"). As a result of the Merger, on the Effective Date, (a) the surviving corporation shall have all the rights, privileges, immunities and powers of a corporation under applicable state law and shall be subject to all the duties and liabilities of a corporation under applicable state law, (b) except as otherwise provided in the Plan, the surviving corporation shall possess all of the rights, privileges, immunities, licenses, and franchises, whether of a public or private nature, of Smitty's Building Supply, Inc. and its Affiliated Debtors; and all property, real, personal, and mixed, and all debts due on whatever account, including all causes of action, and all and every other interest of or belonging to or due to Smitty's Building Supply, Inc. and its Affiliated Debtors, including any interest in the G&H/Smitty's Joint Venture Agreement, shall be taken and deemed to be transferred to and vested in the surviving corporation without further act or deed, (c) except as otherwise provided in the Plan, the surviving corporation shall thenceforth be responsible for and liable for all liabilities and obligations of each of Smitty's Building Supply, Inc. and its Affiliated Debtors, all executory contracts assumed by any of the Affiliated Debtors shall be deemed to be assigned to and assumed by Smitty's Building Supply, Inc., and, with respect to any claim existing or action or proceeding pending by or against any of the merging Debtors, the surviving corporation shall be deemed substituted for such Debtor for all such purposes, and (d) Smitty's Building Supply, Inc., shall authorize and issue the New Common Stock as set forth in Section 8.5 of the Plan. With respect to the Merger, all requirements of applicable state law relating to mergers, including the requirement of approval by the board of directors and by the stockholders, shall be deemed satisfied; and the Debtors or the Reorganized Debtor may file articles of merger with the appropriate governmental units, which shall entitle the surviving corporation to receive a certificate of merger; provided, however, that in no event may the issuance of a certificate of merger be conditioned on the payment of any prepetition fees or franchise taxes on terms other than those specifically set forth in the Plan, and such issuance shall not be delayed pending the satisfaction of the obligations of Reorganized Smitty's under the Plan. Except as expressly provided otherwise in the Plan, the Merger shall in no way modify in any way the rights of holders of Claims and Equity Interests under the Plan; nor shall the Merger create any liabilities against any of the Debtors that did not exist prior to the Effective Date or operate to create in favor of any Person any right against any of the Debtors that such Person did not have prior to the Effective Date.

8.7 *Board of Directors*

(a) The Board of Directors of Reorganized Smitty's as of the Effective Date will be identified in the Plan Supplement. Thereafter, the Board of Directors of Reorganized Smitty's will be elected in accordance with the Amended Certificate of Incorporation and Amended Bylaws and applicable nonbankruptcy law.

(b) On the Effective Date, the officers of Reorganized Smitty's shall be those officers in office immediately prior to the Effective Date.

8.8 *Continued Existence and Corporate Action.* Reorganized Smitty's shall continue to exist after the Effective Date, in accordance with the laws of the Commonwealth of Virginia and pursuant to its certificate of incorporation and bylaws, as amended and restated on the Effective Date. On the Effective Date, Reorganized Smitty's shall file the Amended Certificate of Incorporation with the Secretary of State of the Commonwealth of Virginia. The Amended Certificate of Incorporation shall prohibit the issuance of nonvoting equity securities, as required by Section 1123(a)(6) of the Bankruptcy Code, subject to further amendment as permitted by applicable law. The Amended Certificate of Incorporation and Amended Bylaws shall be deemed adopted by the Board of Directors of Reorganized Smitty's as of the Effective Date, and such corporate action shall be authorized and approved in all respects without further action under applicable law, regulation, order or rule, including any action by the shareholders or directors of the Debtors or Reorganized Smitty's. On the Effective Date, the approval and effectiveness of matters provided under the Plan involving the corporate structure of Reorganized Smitty's or any corporate action taken by or required of the Debtor or Reorganized Smitty's shall be deemed to have occurred, be authorized and approved and shall be in effect from and after the Effective Date without requiring further action under applicable law, regulation, order, or rule, including any action by the shareholders or directors of the Debtors or Reorganized Smitty's.

8.9 *Release of Liens.* Except as to the liens and security interests associated with the Allowed Class 2 Claim of BofA and as otherwise specifically provided in the Plan or the Plan Documents, (i) each holder of: (a) any Claim that is purportedly secured; and/or (b) any judgment, personal property or ad valorem tax, mechanics' or similar lien Claim, in each case regardless of whether such Claim is an Allowed Claim, shall, on or immediately before the Effective Date and regardless of whether such Claim has been scheduled or proof of such Claim has been filed: (y) turn over and release to the Estates or the Reorganized Debtor, as the case may be, any and all property of a Debtor or Estate that secures or purportedly secures such Claim, or such lien and/or Claim shall automatically, and without further action by the Debtors, the Estates or the Reorganized Debtor, be deemed released; and (z) execute such documents and instruments as the Reorganized Debtor require to evidence such Claim holder's release of such property or lien, and if such holder refuses to execute appropriate documents or instruments, the Debtors, the Estates or the Reorganized Debtor (as applicable) may, in its discretion, file a copy of the Confirmation Order in the appropriate recording office, which shall serve to release any Claim holder's rights in such property; and (ii) on the Effective Date, all right, title and interest in such property shall revert or be transferred to Reorganized Smitty's, as applicable, free and clear of all Claims and interests, including, without limitation, liens, escrows, charges, pledges, encumbrances and/or security interests of any kind.

8.10 *Exemption from Certain Transfer Taxes.* Pursuant to Section 1146(c) of the Bankruptcy Code, any transfers (i) from the Debtors to any Person pursuant to the Plan or (ii) from any other Person pursuant to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order or supplemental order under Section 1146 of the Bankruptcy Code shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

8.11 *Plan Supplement.* On or before the date which is five (5) Business Days prior to the scheduled day of the Confirmation Hearing, the Debtors shall file the Plan Supplement which shall contain the following documents: Amended Certificate of Incorporation, Amended Bylaws, a list of the officers and directors of Reorganized Smitty's, the Schedule of executory contracts to be assumed, the Schedule of New Common Stock issued to the Smith Family or the Winning Bidder, the Distribution Trust Agreement, the identity and affiliations of the Distribution Trust Agent, the Exit Financing Loan Documents, the Short Form Confirmatory Release of BofA, the identities of any guarantor of the Repayment of the Exit Financing and the Smith Family, and such other documents as the Debtors submit to the Bankruptcy Court for approval as necessary or useful. The Plan Supplement (and any amendments thereto) shall be deemed an integral part of the Plan and shall be incorporated by reference herein.

## ARTICLE IX

### DISTRIBUTIONS

9.1 *Record Date.* As of the close of business on the Record Date, the official claims register maintained by the Debtors shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Equity Interests. The Debtors shall have no obligation to recognize any transfer of the Claims or Equity Interests occurring after the close of business on the Record Date. The Debtors shall be entitled to recognize and deal for all purposes hereunder only with those record holders stated on the transfer ledgers as of the close of business on the Record Date, to the extent applicable.

9.2 *Distributions for Allowed Claims.* Except with respect to Class 4 Claims, Class 5 Claims, and Class 6 Claims, and subject to the provisions of Article 10 of the Plan, all distributions on account of Allowed Claims shall be made by the Reorganized Debtor from the Exit Financing, Net Realized Proceeds from the Alexandria Property, or the Expense Reserve in accordance with Articles 6 and 8 of the Plan. The Distribution Trust Agent shall make interim and final distributions on account of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims in the exercise of sound business judgment.

9.3 *Delivery of Distributions.* Subject to Bankruptcy Rule 9010, unless otherwise provided herein, all distributions to any holder of an Allowed Claim shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents, unless the Debtors have been notified, in advance, in



writing of a change of address, including, without limitation, by the filing of a proof of claim or equity interest by such holder that contains an address for such holder different from the address reflected on such Schedules for such holder. In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder shall be made unless and until the Reorganized Debtor and/or the Distribution Trust has been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter such distribution shall be made to such holder without interest; provided that such distributions shall be deemed unclaimed property under Section 347(b) of the Bankruptcy Code at the expiration of one (1) year from the later of (i) the Effective Date and (ii) the date such holder's Claim is Allowed. After such date, all unclaimed property or interest in property shall revert to the Distribution Trust. The Distribution Trust shall not have any obligation to attempt to locate any holder of an Allowed Claim other than by reviewing the Debtors' books and records (including any proofs of claim filed against the Debtors).

9.4 *Withholding and Reporting Requirements.* In connection with the Plan and all distributions hereunder, the Distribution Trust shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. All distributions hereunder shall be subject to the withholding and reporting requirements, and the Distribution Trust shall be authorized to take all actions as may be necessary or appropriate to comply with such requirements. Notwithstanding any other provision of the Plan, (i) each holder of an Allowed Claim that is to receive a distribution under the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligation imposed by any governmental authority, including income, withholding and other tax obligations on account of such distribution, and (ii) no distribution shall be made to, or on behalf of, such holder under the Plan unless and until such holder has made arrangements satisfactory to the Distribution Trust for the payment and satisfaction of such tax obligations. Any distribution to be made under the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution pursuant to Section 9.3 hereof.

9.5 *Allocation of Plan Distributions Between Principal and Interest.* To the extent that any Allowed Claim entitled to a distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, for the Debtors' federal income tax purposes, be allocated on the Debtors' books and records to the principal amount of the claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

9.6 *Setoffs.* Reorganized Smitty's may, but shall not be required to, set off against any Claim and the payments or other distributions to be made under the Plan on account of the Claim, Claims of any nature whatsoever that the Debtors or Reorganized Smitty's had or may have against the holder thereof or that Reorganized Smitty's received from the Debtors against the holder thereof, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release of any such Claim that the Debtors or Reorganized Smitty's may have against such holder.

## ARTICLE X

### **PROCEDURES FOR DISPUTED CLAIMS**

10.1 *Objections to Claims.* After the Effective Date, the Distribution Trust shall be entitled to object to all Claims other than the Allowed Class 2 Claim of BofA pursuant to Section 8.4 hereof. Unless otherwise extended by the Court, any objections to such Claims shall be served and filed on or before one hundred twenty (120) days after the Effective Date. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the Distribution Trust or its agent(s) effect service in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (b) to the extent counsel for a claimant is unknown, by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified in the proof of claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in the Chapter 11 Cases.

10.2 *Payments and Distributions with Respect to Disputed Claims.* Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

10.3 *Distributions After Allowance.* After a Disputed Claim becomes, in whole or in part, an Allowed Claim, the holder of such Allowed Claim shall be entitled to distributions, if any, to which such holder is then entitled under the Plan in accordance with the provisions hereof. Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim shall receive any distribution of a value in excess of the Allowed amount of such Claim.

10.4 *No Recourse.* Notwithstanding that the Allowed amount of any Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which after application of the payment priorities established by this Plan there is insufficient value to provide a recovery equal to that received by other holders of Allowed Claims in the respective Class, no Claim holder shall have recourse against the Debtors, the Committee, the Reorganized Debtor, the Distribution Trust, the Distribution Trust Agent, Post-Effective Date Committee, the Exit Financing Lender or any of their respective professional consultants, attorneys, advisors, officers, directors or members or their successors or assigns, or any of their respective property. However, nothing in the Plan shall modify any right of a holder of a Claim under Section 502(j) of the Bankruptcy Code.

## ARTICLE XI

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

11.1 *General Treatment.* All executory contracts and unexpired leases to which any of the Debtors are a party are hereby deemed rejected by the respective Debtors that are parties to such executory contracts and unexpired leases, except for any executory contracts or unexpired leases that (i) have been assumed pursuant to Final Order of the Bankruptcy Court, (ii) are designated as a contract or lease to be assumed on the Schedule of executory contracts to be assumed included in the Plan Supplement, as such Schedule of executory contracts to be assumed may be amended from time to time prior to the Confirmation Date, or (iii) are the subject of a separate motion to assume or reject filed under Section 365 of the Bankruptcy Code by the Debtors prior to the Confirmation Date.

11.2 *Cure of Defaults.* Except to the extent that different treatment has been agreed to by the non-debtor party or parties to any executory contract or unexpired lease to be assumed, the amount necessary to cure each executory contract and unexpired lease to be assumed hereunder (pursuant to Sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of Section 365 of the Bankruptcy Code), shall be identified on the Schedule of executory contracts to be assumed and paid to the other party to such assumed executory contract or unexpired lease within thirty (30) days after the Effective Date. To the extent that any party objects to or disagrees with the nature or amount of any cure, then such party shall file an objection to the cure amount within twenty (20) days after the Effective Date and serve such objection on the Reorganized Debtor. If an objection with respect to the cure amount is timely filed and served, the Bankruptcy Court will hold a hearing to determine the amount of the disputed cure amount, unless otherwise resolved by the parties.

11.3 *Rejection Claims.* Except as otherwise ordered by the Bankruptcy Court, in the event that the rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be forever barred and shall not be enforceable against the Reorganized Debtor, or their respective properties or interests in property as agents, successors, or assigns, unless a proof of claim has been filed and served upon counsel for the Reorganized Debtor on or before thirty (30) days after the Effective Date.

11.4 *Change of Control Provisions.* The entry of the Confirmation Order, consummation of the Plan and/or any other acts taken to implement the Plan shall not constitute a "change of control" under any provision of any contract, agreement or other document which provides for the occurrence of any event, the granting of any right, or any other change in the then existing relationship between the parties upon a "change of control" of the Debtors.

## ARTICLE XII

### CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

#### 12.1 *Confirmation Conditions Precedent*

Confirmation is subject to:

(a) The Bankruptcy Court having approved the Disclosure Statement by order entered on the docket of the Chapter 11 Cases;

(b) The presentment of a Confirmation Order to the Bankruptcy Court in the Chapter 11 Cases for entry to confirm the Plan in a form and substance acceptable to the Debtors, the Exit Financing Lender and the Committee, and shall include, without limitation, a provision that waives the effect of Bankruptcy Rule 3020(e); and

(c) All Plan documents necessary to implement the Plan having been filed in the Plan Supplement.

#### 12.2 *Effective Date Conditions Precedent*

The occurrence of the Effective Date is subject to:

(a) The Confirmation Order, in a form and substance acceptable to the Debtors, the Exit Financing Lender and the Committee, becoming a Final Order;

(b) All Plan documents necessary to implement the Plan having been executed and are in full force and effect.

#### 12.3 *Waiver of Conditions Precedent*

(a) The Debtors with the Exit Financing Lender's and the Committee's written consent (in the case of the Committee not to be unreasonably withheld) shall have the right to waive the conditions set forth in Sections 12.1 or 12.2 at any time without leave of or notice to the Bankruptcy Court and without any formal action other than proceeding with consummation of the Plan. Further, the stay of the Confirmation Order pursuant to Bankruptcy Rule 3020(e) shall be deemed waived by entry of the Confirmation Order.

(b) If the Debtors perform such a waiver and consummation, the Debtors' waiver of this condition will benefit from the "mootness doctrine," and the act of consummation of the Plan will foreclose any ability to challenge the Plan in court. The failure to satisfy or waive a condition may be asserted by the Debtors regardless of the circumstances that give rise to the failure of the condition to be satisfied (including, without limitation, any act, action, failure to act, or inaction by the Debtors). The failure of the Debtors to assert the non-satisfaction of any conditions will not be deemed a waiver of any other rights under the

Plan, and each such right will be deemed an ongoing right that may be asserted or waived at any time or from time to time.

### **SECTION XIII**

#### **EFFECT OF CONFIRMATION**

13.1. *Vesting of Assets.* On the Effective Date, pursuant to Sections 1141(b) and (c) of the Bankruptcy Code, all property of the Estates shall vest in Reorganized Smitty's, including all claims, rights and causes of action and any property acquired by the Debtors or Reorganized Smitty's under or in connection with the Plan, free and clear of all Claims, liens, encumbrances, charges, and other interests, except as to the claims, rights and causes of action encumbered by BofA pursuant to the Exit Financing documents and as otherwise provided in the Plan and the Plan Documents. On and after the Effective Date, Reorganized Smitty's may operate its businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as provided herein.

13.2 *Binding Effect.* Except as otherwise provided in 11 U.S.C. § 1141(d)(3), and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtor and such holder's respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

13.3 *Discharge of Claims and Termination of Equity Interests.* Except as otherwise provided herein or in the Confirmation Order, upon the Effective Date, the rights afforded in the Plan and the payments and distributions to be made hereunder shall discharge all existing debts and Claims and terminate all Equity Interests of any kind, nature, or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by Section 1141 of the Bankruptcy Code. Except as otherwise provided herein or in the Confirmation Order, upon the Effective Date, all existing Claims against the Debtors and Equity Interests in the Debtors, shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Equity Interests shall be precluded and enjoined from asserting against the Reorganized Debtor, or any of its assets or properties, any other or further Claim or Equity Interest based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of claim or proof of equity interest.

13.4 *Discharge of Debtors.* Upon the Effective Date and in consideration of the distributions to be made hereunder, except as otherwise provided herein, each holder (as well as any trustees and agents on behalf of each holder) of a Claim or Equity Interest and any affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtors, to the fullest extent permitted by Section 1141 of the Bankruptcy Code, of and from any and all Claims, Equity Interests, rights, and liabilities that arose prior to the Effective Date, whether or not (a) a proof of Claim based on such Claim was filed or deemed filed under Section 501 of the Bankruptcy Code, or such Claim was listed on the Schedules of the Debtors, (b) such Claim is or was Allowed under Section 502 of the Bankruptcy Code, or (c) the holder of such Claim has voted on or accepted the Plan. Except as specifically provided in the Plan to the contrary, the rights that are provided in the Plan shall be in complete satisfaction, discharge and release of all Claims against, Liens on, and Equity Interests in the Debtors and Reorganized Smitty's or the assets and properties of the Debtors and Reorganized Smitty's.

As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtors and Reorganized Smitty's any other or further Claims, debts, rights, causes of action, liabilities or Equity Interests based on any act, omission, transaction or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, the Confirmation Order shall be a judicial determination of discharge of all liabilities to the Debtors, subject to the occurrence of the Effective Date, and any such discharge shall void any judgment obtained against the Debtors or Reorganized Smitty's at any time, to the extent such judgment relates to a discharged Claim or terminated Equity Interest.

13.5 *Term of Injunctions or Stays.* Unless otherwise provided herein, all injunctions or stays arising prior to the Confirmation Date in accordance with Section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

13.6 *Injunction Against Interference With Plan.* Upon the entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present or former affiliates, employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

13.7 *Releases and Injunctions.*

**Rule 3016(c) Declaration.** In accordance with the requirements of Bankruptcy Rule 3016(c), the provisions of this Section 13.7 operate to specifically release certain individuals and entities from all claims arising out of these Chapter 11 Cases and enjoin certain acts in connection with such releases. Such releases and injunctions cover not only the Debtors but also certain third parties (including BofA) whose interests are congruent with those of the Debtors in these Chapter 11 Cases and whose contributions are so critical to the reorganization effort that without them the reorganization effort would fail. The Debtors believe that without the protection of such injunctions the Plan would have less likelihood of success.

(a) Release of Claims Against Officers, Directors, Etc. As of the Effective Date, each present or former officer, director, employee, professional, agent, or representative of the Debtors shall be deemed to have been released and discharged from any and all claims arising out of or based upon their service in any such capacity or any transaction, event, circumstance or other matter involving or relating to the Debtors that occurred on or before the Effective Date; provided, however, that nothing in this section shall be deemed to (i) release any such person from liability for acts or omissions that are the result of fraud, gross negligence, willful misconduct, or willful violation of the securities laws or the Internal Revenue Code or the Claims, if any, of the United States; (ii) prevent the Distribution Trust from objecting to the Claim of any such person; or (iii) preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties. This section shall preclude the Distribution Trust from pursuing any Bankruptcy Cause of Action against such person provided that the Smith Family contributes new value pursuant to Section 8.3 or otherwise. Holders of Claims or Equity Interests shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover any claims and/or Bankruptcy Causes of Action released and discharged pursuant to this Section 13.7; provided, however, that the injunction provided for in this section shall not (i) bar actions based upon liability for acts or omissions that are the result of fraud, gross negligence, willful misconduct or willful violation of the securities laws or the Internal Revenue Code; (ii) preclude police, federal tax, or regulatory authorities from fulfilling their statutory duties; or (iii) bar the Claims, if any, of the United States.

(b) Release of Claims Against BofA, Etc. As of the Effective Date, each present or former officer, director, employee, professional, agent, or representative of BofA, all guarantors of the Exit Financing Facility, and the Winning Bidder for the New Common Stock shall be deemed to have been released and discharged from any and all claims arising out of or based upon their service in any such capacity or any transaction, event, circumstance or other matter involving or relating to the Debtors that occurred on or before the Effective Date; provided, however, that nothing in this section shall be deemed to (i) release any such person from liability for acts or omissions that are the result of fraud, gross negligence, willful misconduct, or willful violation of the securities laws or the Internal Revenue Code or the Claims, if any, of the United States or (ii) preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties. Holders of Claims or Equity Interests shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover any claims and/or Bankruptcy Causes of Action released and discharged pursuant to this Section 13.7; provided, however, that the injunction provided for in this section shall not (i) bar actions based upon liability for acts or omissions that are the result of fraud, gross negligence, willful misconduct or willful violation of the securities laws or the Internal Revenue Code or (ii) preclude police, federal tax, or regulatory authorities from fulfilling their statutory duties. On the Effective Date, BofA shall receive a Short Form Confirmatory Release of BofA, a specimen copy of which shall be filed with the Plan Supplement.

13.8 *Exculpation and Limitation of Liability*

(a) Except as otherwise specifically provided in this Plan, the Debtors, the Committee, and any of such parties' respective present or former members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers or agents in their capacities as such and any of such parties' successors and assigns, shall not have or incur, and are hereby released from, any claim, obligation, Bankruptcy Cause of Action or liability to one another or to any holder of a Claim or an Equity Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to or arising out of the Debtors' Chapter 11 cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan; provided, however, that nothing in this section shall be deemed to release any such person from liability for acts or omissions that are the result of fraud, gross negligence, willful misconduct, or willful violation of the securities laws or the Internal Revenue Code.

(b) Notwithstanding any other provision of this Plan, no holder of a Claim or Equity Interest, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Debtors, the Committee, or any of such parties' respective present or former members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers or agents in their capacities as such or such parties' successors and assigns, for any act or omission in connection with, relating to or arising out of the Chapter 11 cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan; provided, however, that nothing in this section shall be deemed to release any such person from liability for acts or omissions that are the result of fraud, gross negligence, willful misconduct, or willful violation of the securities laws or the Internal Revenue Code.

13.9 *Indemnification Rights.* In satisfaction and compromise of the Indemnitees' Indemnification Rights, all Indemnification Rights except those based upon any act or omission arising out of or relating to any Indemnitee's service with, for or on behalf of the Debtors on or after the Petition Date (the "Post-Petition Indemnification Rights") or the Indemnification Rights arising under the Debtors' Director and Officer Indemnification insurance policies (the "D&O Indemnification Rights") shall be released and discharged on and as of the Effective Date. Timely claims of Indemnitees based upon Post-Petition Indemnification Rights shall be satisfied solely out of the Distribution Trust. Timely claims based upon D&O Indemnification Rights shall be satisfied solely out of the proceeds of the Debtors' Director and Officer Indemnification insurance policies.

13.10 *Modification of Releases.* If and to the extent that the Bankruptcy Court concludes that the inclusion in the Plan of any portion of the foregoing releases would prevent confirmation, then the Debtors reserve the right to amend the Plan so as to give effect as much as possible to the foregoing releases, or to delete them.



## ARTICLE XIV

### MODIFICATION

14.1 *Pre-Confirmation Amendment.* The Reorganized Debtor reserves the right in accordance with the Bankruptcy Code to amend or modify this Plan prior to the Confirmation Date. After the Reorganized Debtor files a modification with the Court, this Plan, as modified, becomes the Plan.

14.2 *Post-Confirmation Modification.* The Reorganized Debtor may modify this Plan at any time after the Confirmation Date regardless of whether this Plan has been substantially consummated within the meaning of Sections 1101(2) and 1127(b) of the Bankruptcy Code, if circumstances warrant such modification, if all required disclosures under Section 1125 of the Bankruptcy Code have been given, and the Court, after notice and a hearing, confirms the Plan as modified.

14.3 *Correction of Errors; Inconsistencies.* Before or after the Confirmation Date, or in the Confirmation Order, the Reorganized Debtor may, with the approval of the Court, so long as it does not materially and adversely affect the interests of creditors who have accepted this Plan, remedy any defect or omission, or reconcile any inconsistencies in this Plan or amend this Plan, in such a manner as may be necessary to carry out the purposes and the effect of this Plan without the necessity of re-soliciting acceptances.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

15.1 *Headings.* The headings used herein are inserted for convenience only and neither constitute a substantive portion hereof nor in any manner affect the provisions hereof.

15.2 *Business Day.* If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

15.3 *Timing.* Wherever the Plan provides that a payment or distribution shall occur “on” any date, it shall mean “on, or as soon as practicable after” such date.

15.4 *Manner of Payment.* Any payment made under the Plan may be made either by check or by wire transfer.

15.5 *Authorization of Action by the Reorganized Debtor.* The occurrence of the Effective Date shall constitute Bankruptcy Court authorization for the Reorganized Debtor to take or cause to be taken any action necessary or appropriate after the Effective Date for the effectuation of the Plan and such action will be authorized and approved in all respects and for all purposes without any requirement of further action by any other person.

15.6 *Governing Law.* Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent any Plan Document provides otherwise, the rights, duties, and obligations arising under the Plan and the Plan Documents shall be governed by, and construed and enforced in conformance with the laws of the Commonwealth of Virginia, without giving effect to the principles of conflict of laws thereof.

15.7 *Severability.* Should any provision in this Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any other provisions of the Plan.

15.8 *Reservation of Rights.* Neither the filing of the Plan, nor any statement or provision contained in the Plan or the Disclosure Statement, shall be deemed to be a waiver of any rights, remedies, defenses or claims by the Debtors, the Reorganized Debtor, the Committee, the Post-Effective Date Committee or the Estates, and all such rights, remedies, defenses or claims are hereby specifically reserved.

15.9 *Plan Controls.* To the extent the Plan is inconsistent with the Disclosure Statement, the provisions of the Plan shall control.

15.10 *Notice.*

(a) Any notices or requests made in connection with this Plan shall be in writing and served either by (i) certified mail, return receipt requested, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, freight prepaid, and will be deemed to have been given when received by the following parties at the following addresses:

To the Debtor:

N. Patrick Smith  
Smitty's Building Supply, Inc.  
8457 Richmond Highway  
Alexandria, VA 22309

- and -

Lawrence A. Katz, Esq.  
Kristen E. Burgers  
VENABLE LLP  
8010 Towers Crescent Drive  
Suite 300  
Vienna, VA 22182

Andrew J. Currie  
Abby W. Clifton  
Venable LLP

750 E. Pratt Street  
Suite 900  
Baltimore, MD 21202

*Counsel to the Debtor*

To the Office of the United States Trustee:

Martha L. Davis, Esq.  
Office of the United States Trustee  
115 South Union Street, Room 210  
Alexandria, VA 22314

To the Committee:

Craig B. Young, Esquire  
LeClairRylan, PC  
225 Reinekers Lane, Suite 700  
Alexandria, VA 22314

*Counsel to the Committee*

To the Exit Financing Lender:

*[As provided in the Notice provisions to the Exit Financing documents to be included in the Plan Supplement]*

(b) All notices, requests and distributions to any creditor shall be sent to the address given in each creditor's proof of Claim. With regard to those scheduled creditors who did not file a proof of Claim, all notices, requests and distributions shall be sent to the address listed in the Debtor's Schedule of Liabilities, unless the Reorganized Debtor receive other instructions in writing from such creditor(s). Notices, requests and distributions to creditors shall be deemed to have been given when mailed to such address. It shall be the obligation of creditors to provide written notice of any change in address to the Reorganized Debtor.

## ARTICLE XVI

### **RETENTION OF JURISDICTION**

16.1. Except as to the interpretation and/or enforcement of the Exit Financing documents, the Bankruptcy Court shall retain jurisdiction after confirmation of the Plan for the following purposes:

(a) to determine the allowance and classification of any Claim or Equity Interest, the re-examination of Claims or Equity Interests which have been allowed for purposes of voting,

and the determination of any objections to Claims or Equity Interests that may be or may have been filed;

(b) to determine motions to estimate Claims at any time, regardless of whether the Claim to be estimated is the subject of a pending objection, a pending appeal, or otherwise;

(c) to determine motions to subordinate Claims or Equity Interests at any time and on any basis permitted by applicable law;

(d) to construe or take any action to enforce this Plan, and to issue such orders as may be necessary for the implementation, execution, and consummation of this Plan;

(e) to determine any and all applications for allowance of compensation or reimbursement of expenses incurred prior to the Effective Date;

(f) to determine any other requests for payment of administrative expenses incurred prior to the Effective Date;

(g) to resolve any disputes arising under or relating to this Plan;

(h) to modify the Plan pursuant to Section 1127 of the Bankruptcy Code and applicable Bankruptcy Rules;

(i) to take any action to correct any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of this Plan;

(j) to enter any order, including injunctions, necessary to enforce the rights, title and powers of the Reorganized Debtor or Post-Effective Date Committee and to impose such limitations, restrictions, terms and conditions of such rights, title and powers as the Bankruptcy Court may deem necessary;

(k) to enforce any order previously entered by the Bankruptcy Court in this case and to enter the Closing Order;

(l) to determine pending applications for the assumption or rejection of executory contracts or unexpired leases to which the Debtors is a party or with respect to which the Debtors or Reorganized Debtor may be liable, and to hear and determine, and if need be to adjudicate, any and all Claims arising therefrom;

(m) to determine applications, adversary proceedings and contested or litigated matters and all causes of action, whether pending on the Effective Date or commenced thereafter, whether or not the Chapter 11 Cases themselves have been closed and final decree(s) entered;

(n) to issue orders in aid of execution of the Plan to the extent authorized by 11 U.S.C. § 1142; and

(o) to determine such other matters as may be set forth in the Confirmation Order.

Dated: Alexandria, Virginia  
May 4, 2009

Respectfully submitted,

SMITTY'S BUILDING SUPPLY, INC.

By: /s/ N. Patrick Smith  
N. Patrick Smith  
Chief Executive Officer

SBS ACQUISITION CORP.

By: /s/ N. Patrick Smith  
N. Patrick Smith  
Chief Executive Officer

SBS WINDOW DIVISION CORP.

By: /s/ N. Patrick Smith  
N. Patrick Smith  
Chief Executive Officer

WINDOWSMITH, INC.

By: /s/ N. Patrick Smith  
N. Patrick Smith  
Chief Executive Officer  
Chief Executive Officer

VENABLE LLP  
Counsel for the Debtors and  
Debtors in Possession  
8010 Towers Crescent Drive  
Suite 300  
Vienna, VA 22182

By: /s/ Andrew J. Currie  
Andrew J. Currie (Admitted *Pro Hac*)