

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

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

**DISCLOSURE STATEMENT FOR THE 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

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

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Smitty’s Building Supply, Inc., and its affiliated entities, SBS Acquisition Corp., SBS Window Corp., and WindowSmith, Inc. (collectively, “Smitty’s” or the “Debtors”), each a corporation organized and existing under the laws of the Commonwealth of Virginia, filed voluntary petitions under Chapter 11 of the Bankruptcy Code (“Code”) in the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”) on January 5, 2009. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors have remained in possession of their property since the initiation of these Chapter 11 Cases and continue to manage their financial affairs as debtors-in-possession.

The Debtors operate an independent lumber yard. Their primary assets are real estate holdings, accounts receivables, equipment, and inventory used in their business operations. The Debtors propose selling their real estate holdings. The proceeds of the sale, as well as funds generated through the sale of new common stock in the Reorganized Debtor and the pursuit of

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claims and causes of action, would be distributed to creditors through a Chapter 11 Plan of Reorganization.

This Disclosure Statement for the First Amended Chapter 11 Plan of Reorganization (the “Plan”) filed by the Debtors is provided pursuant to Section 1125 of the Bankruptcy Code to all of the Debtors’ known creditors, interest holders and other parties-in-interest. A copy of the Plan is attached to this Disclosure Statement and is incorporated herein by reference as Exhibit “A.”

CREDITORS AND EQUITY INTEREST HOLDERS- PLEASE NOTE

NO REPRESENTATION CONCERNING THE DEBTORS, THEIR BUSINESS OPERATIONS, THEIR PROPERTY OR THE VALUE OF SUCH PROPERTY HAS BEEN AUTHORIZED EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT. THUS, ANY REPRESENTATION OTHER THAN ONE CONTAINED HEREIN SHOULD NOT BE RELIED UPON.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS ACCURATE, ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE THIS STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THE PLAN WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT IS AN INTEGRAL PART OF THE DISCLOSURE STATEMENT, CREDITORS AND INTERESTED PARTIES ARE URGED TO REVIEW THE PLAN CAREFULLY.

I. DEFINITIONS

Unless otherwise indicated, capitalized terms appearing in this Disclosure Statement shall have the meanings ascribed to them under Article I (Definitions), Section 1.2 of the Plan. See Exhibit "A" attached hereto.

II. BACKGROUND

A. General

Smitty's Building Supply, Inc. ("Smitty's"), was founded in April 1975 by Nelson and Patricia Smith. Since 1975, Smitty's has grown to become the leading supplier of quality building materials to home builders, remodelers, and residential and commercial contractors in the Metropolitan Washington, D.C., area ("Metro D.C. Region"). When it was founded, Smitty's had only eight employees.

Smitty's is currently one of the largest independent lumber yards in the Metro D.C. Region. In 2007, Smitty's employed approximately 300 people. Prior to filing, Smitty's employed approximately 130 people. Smitty's had eight locations, including the Crestwood sales office; distribution centers in Alexandria and Manassas; a warehouse in Manassas; and WindowSmith and Marvin Window & Door Showplace stores in Falls Church, Rockville, McLean, and Chantilly. In 2005 and 2006, the *Washington Business Journal* named Smitty's as one of the top 50 fastest growing companies. Today, Patricia and Nelson Smith's sons and daughters, as well as other members of the Smith family (collectively, the "Smith Family"), still oversee the management and operations of Smitty's as members of the Board of Directors, shareholders, officers, and employees.

In response to the strong demand for building supplies and builder services in the Metro D.C. Region, Smitty's made strategic decisions to acquire existing businesses which would

supplement and enhance the services and product lines already offered by Smitty's. In the fourth quarter of 2006 and the first quarter of 2007, Smitty's acquired the assets of Shelter Systems, L.C., an independent lumber yard; Fairfax Millwork and Building Products, Inc., a manufacturer of custom woodwork and trim; and Marvin Window and Door Showplace, Inc., a specialty retailer offering replacement and installation of high-end Andersen and Marvin windows and doors. At the time, Smitty's believed that it was strongly positioned to take advantage of the unprecedented boom in residential and commercial construction.

B. Organizational Structure

Smitty's Building Supply, Inc. is a corporation organized under the laws of the Commonwealth of Virginia. It is the parent corporation, and all of the other debtor entities are corporate subsidiaries of Smitty's. As discussed above, Smitty's is an independent lumber yard which supplies quality building materials to home builders, remodelers, and residential and commercial contractors in the Metro D.C. Region. Smitty's is a debtor and debtor-in-possession herein. Smitty's has also done business as Smitty's Lumberteria, Marvin Window and Door Showplace, Smitty's Millwork & Supply, and Smitty's Induserve.

SBS Acquisition Corporation ("SBS Acquisition") is a corporation organized under the laws of the Commonwealth of Virginia. It is a wholly-owned subsidiary of Smitty's. SBS Acquisition was incorporated on July 24, 2006, for the primary purpose of facilitating Smitty's acquisitions of Shelter Systems, L.C., and Fairfax Millwork and Building Products, Inc. SBS Acquisition is a debtor and debtor-in-possession herein.

SBS Window Division Corporation ("SBS Window") is a corporation organized under the laws of the Commonwealth of Virginia. It is a wholly-owned subsidiary of Smitty's. SBS Window was incorporated on December 22, 2006, for the primary purpose of facilitating

Smitty's acquisition of Marvin Window and Door Showplace, Inc. SBS Window is a debtor and debtor-in-possession herein.

WindowSmith, Inc., ("WindowSmith") is a corporation organized under the laws of the Commonwealth of Virginia. It is a wholly-owned subsidiary of Smitty's. WindowSmith was incorporated on June 7, 2005, for the primary purpose of operating a commercial and retail window sales and installation business. WindowSmith is a debtor and debtor-in-possession herein.

Smitty's is also a member of a joint venture known as the G&H/Smitty's Joint Venture (the "JV"). The JV was established in September 2007 between Smitty's and Galliher & Hugely Associates, Inc., for the purpose of obtaining and performing various construction contracts for the District of Columbia government. The JV is not a debtor entity; however, Smitty's interest in the JV is an asset of Smitty's estate.

C. Events Leading Up to the Debtors' Chapter 11 Filings

In 2007, the housing market in the D.C Metro Region slowed considerably and continues to be sluggish. A recent edition of the Federal Reserve's Beige Book notes that "housing markets and home construction remained sluggish throughout most of the nation" and that "ongoing weakness in housing markets, in general, was reported in almost all Districts." The Beige Book also indicates that in the Fifth District, which includes D.C., Maryland, North and South Carolina, and most of West Virginia, "reports of new construction activity remained 'sparse' as lenders continued to heavily scrutinize proposals." The National Association of Home Builders State and Top 100 Metro Forecast for 2008-2009 states that "single family housing starts are down 63% from peak levels of production during the housing boom, with some of the most troubled markets down 80% or more."

Contemporaneous with the decline in the housing market, credit markets tightened considerably. The tightening credit markets impacted both contractors and consumers. On the consumer side, the credit crunch has left consumers without access to inexpensive credit and a lingering sense of financial instability. Many homeowners have postponed or cancelled plans for home renovations and additions. Similarly, potential purchasers of new homes have either breached their purchase contracts or simply decided not to purchase new homes at this time. On the contractor side, the credit crunch has left contractors large and small without access to short-term operating cash to cover deficits during the housing downturn. As a result, vendors such as Smitty's have had difficulty collecting their accounts receivables from these contractors.

The credit crunch has not only had a negative impact on Smitty's accounts receivables but has also affected Smitty's own ability to get inexpensive credit. Because of the acquisitions in 2006-2007, Smitty's debt load increased substantially. While Smitty's was confident in its ability to handle the debt load when credit was inexpensive, the tightening credit markets caused Smitty's to devote more and more of its operating revenues to debt service, at the expense of its accounts payable. Unable to pay both its vendors and its secured creditors, Smitty's resorted to lowering inventory levels and cutting operating expenses to stay afloat.

In addition to these external market conditions, Smitty's business has been negatively impacted by internal factors. First, Smitty's internal systems were challenged by its rapid expansion in 2006-2007. Smitty's had difficulty integrating the three acquisitions into its then-existing operations and accordingly lost revenue and market share during the difficult transition. Second, Smitty's accounting department was not able to handle the complex challenges arising from Smitty's rapid expansion, thereby causing operational decisions to be made too late or without sufficient information. Finally, in response to these internal difficulties, Smitty's made

the business decision to implement a new enterprise resource planning (“ERP”) system. While the system ultimately proved beneficial and allowed Smitty’s to produce real-time reports and data, the transition resulted in some past due accounts receivable becoming uncollectable and being written off.

D. Pre-Petition Financing Issues

The Debtors’ primary secured lender is Bank of America (“BofA”). Pursuant to a Credit and Security Agreement dated as of July 14, 2006, as amended by the First Amendment, Joinder, Assumption and Ratification Agreement dated as of October 2, 2006, and the (incorrectly titled) Third Amendment to Credit and Security Agreement dated as of September 4, 2007 (collectively known as the “Credit Agreement”), BofA has made available to Smitty’s (a) a committed revolving credit facility pursuant to which BofA will make advances to Smitty’s from time to time in an aggregate principal amount not to exceed \$9.75 million at any one time outstanding, (b) a real estate term loan in the original principal amount of \$5,600,000 and (c) an equipment credit facility in the maximum amount not to exceed \$1,600,000 at any one time outstanding, which has since been converted into a term loan facility in accordance with its stated terms (collectively, the “Credit Facility”). The Credit Facility is secured by property owned by Smitty’s located at 8453 Richmond Highway, Alexandria, Virginia (the “Alexandria Property”), as well as a first priority lien on and security interest in all of Smitty’s assets. One of Smitty’s two primary distribution centers is located on the Alexandria Property.

The Debtors defaulted under the original Credit Agreement. On March 25, 2008, the parties entered into a Loan Modification and Forbearance Agreement (the “Original Modification Agreement”). Thereafter, the parties entered into a First Amended and Restated Loan Modification and Forbearance Agreement effective as of May 30, 2008 (the “First

Amended Modification Agreement”), a Second Amended and Restated Loan Modification and Forbearance Agreement effective as of August 30, 2008 (the “Second Amended Modification Agreement”), and a Third Amended Master Loan Modification, Joinder, Ratification, Amendment, and Forbearance Agreement effective as of December 16, 2008 (the “Third Amended Modification Agreement”).

In the spring of 2008, Smitty’s was having increasing difficulties in maintaining its debt service to BofA. Smitty’s engaged in conversations with several lenders but was unable to secure a firm commitment. The Smith Family made the difficult decision to offer as collateral property owned by S&D Manassas, LLC, f/k/a S&D Partnership (“S&D Manassas”), an entity controlled by the Smith Family but not affiliated with the Debtors. S&D Manassas owns the parcel of land located at 11801 Balls Ford Road, Manassas, Virginia (the “Balls Ford Property”). Smitty’s leases the Balls Ford Property for its second primary distribution center and pays rent monthly to S&D Manassas.

On April 24, 2008, S&D Manassas entered into a \$5.84 million term loan with Access National Bank (the “Access Loan”), pledging the Balls Ford Property as collateral. Some of the proceeds of the Access Loan were used to pay existing liens on the property, as well as some Smitty’s debt. The terms of the Access Loan were less than ideal. The interest rate was 8%, and the terms and conditions of the loan required S&D Manassas to meet stringent reporting requirements. S&D soon fell into technical default on the loan. On August 15, 2008, the parties entered into a forbearance agreement (the “Forbearance Agreement”).

Because of these onerous reporting requirements and Access National Bank’s adversarial stance, the Debtors grew increasingly concerned that Access National Bank would take advantage of a technical default and foreclose on the Balls Ford Property, thereby closing one of

Smitty's primary distribution centers and effectively putting Smitty's out of business. The Debtors began looking for other sources of funding and other means of weathering the current economic downturn. The Debtors hired FTI Consulting, Inc., as management consultants and financial advisors. At that time the Debtors, with the assistance of FTI, began the process of analyzing the Debtors' books and records, examining cash flow and operations, and evaluating costs.

As a result of the evaluation process, the Debtors decided to negotiate terms, where needed, with their most important vendors. The Debtors were able to reach agreements with several vendors. The Debtors also successfully found replacement financing for the Access Loan. On September 30, 2008, S&D Manassas executed a promissory note in the amount of \$4.8 million with Archimedes I, LLC (the "Archimedes Note"). The Archimedes Note requires payments of interest only in the amount of \$60,000 per month. The note matures on September 30, 2010. While the interest rate is significantly higher on the Archimedes note than the Access Loan, the reporting requirements are much less onerous, and the Debtors do not fear a technical default and subsequent foreclosure. As with the Access Loan, Smitty's makes monthly payments to S&D Manassas in an amount equal to the monthly debt service on the Archimedes Note.

Despite their best efforts in securing replacement financing, negotiating agreements with vendors, and streamlining expenses, the Debtors have been unable to resolve their liquidity crisis outside the bankruptcy forum. Accordingly, the Debtors filed their Chapter 11 petitions to preserve and maximize the value of their assets, as well as to insure that both secured and unsecured creditors are protected.

F. The Chapter 11 Filing and Post-Petition Events

On January 5, 2009 (the “Commencement Date”), the Debtors filed their petitions under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). Along with the petitions, the Debtors filed first-day motions relating to the administration of the case, the employment of professionals, operational authority, and post-petition financing. On January 8, 2009, the Court entered an order authorizing joint administration of the Debtors’ cases. On February 2, 2009, the Court entered a final order approving debtor-in-possession financing, whereby BofA is providing the Debtors with a maximum line of credit totaling \$10.5 million, including \$3.75 million in post-filing debtor-in-possession financing

The Office of the United States Trustee appointed an official committee of unsecured creditors (the “Committee”) on January 15, 2009. A meeting of creditors was held on February 25, 2009.

The bar date for filing reclamations claims in these chapter 11 cases was February 8, 2009. The bar date for filing proofs of claim, other than for governmental units, was March 31, 2009. The bar date for governmental units to file proofs of claim is July 6, 2009.

Since filing these bankruptcy petitions, the Debtors have made a concerted effort to reduce expenses and streamline operations. The Debtors rejected eleven commercial leases and three executory contracts, with an estimated combined savings from these rejections of over \$1,000,000 annually. The rejected leases were retail showrooms for the Debtors’ Marvin Window and Door Showplaces, a warehouse used primarily for the retails windows division, and the Crestwood sales office. On February 5, 2009 and February 6, 2009, the Debtors conducted a reduction in force, whereby 22 employees were terminated and seven employees were given the option of transitioning to different positions at significantly reduced salaries. The majority of

Smitty's remaining employees took wage cuts between 2.5% and 5%. The Debtors are implementing additional cost-savings measures, including the rejection of leases for certain vehicles and equipment, centralization of business operations in the Balls Ford Property, and further employee reductions as necessary. Through these aggressive cost-cutting measures, Smitty's intends to emerge from bankruptcy as a leaner but stronger company.

III. ASSETS AND LIABILITIES

NOTE: ALL VALUATIONS INCLUDED HEREIN ARE BASED UPON THE DEBTORS' SCHEDULES AND STATEMENTS OF FINANCIAL AFFAIRS. THE BAR DATE FOR FILING RECLAMATIONS CLAIMS IN THESE CHAPTER 11 CASES WAS FEBRUARY 8, 2009. THE BAR DATE FOR FILING PROOFS OF CLAIM, OTHER THAN FOR GOVERNMENTAL UNITS, WAS MARCH 31, 2009. THE BAR DATE FOR GOVERNMENTAL UNITS TO FILE PROOFS OF CLAIM IS JULY 6, 2009. THE DEBTORS HAVE NOT YET COMPLETED A FULL REVIEW OF THEIR LIABILITIES. ALL VALUATIONS ARE AS OF THE COMMENCEMENT DATE AND ARE SUBJECT TO CHANGE.

A. Assets.

The Estates' primary assets are its real estate holdings, accounts receivables, equipment, and inventory used in the Debtors' business operations. The Alexandria Property, including real property and improvements, was valued at \$9.53 million in an appraisal dated March 7, 2008. As of the Commencement Date, the Debtors also had accounts receivables totaling \$4.96 million and liquidated debts owed to them in the amount of \$1.30 million. As of the Commencement Date, the value of the Debtors' equipment, including vehicles, trucks, machinery, and office equipment, was approximately \$1.73 million, and the Debtors' inventory was approximately

\$2.63 million. Finally, as of the Commencement Date, the Debtors had cash assets in the approximate amount of \$232,000 and security deposits in the approximate amount of \$126,000.

B. Liabilities.

(i) Secured Claims. The Debtors have one primary secured creditor, Bank of America (“BofA”), with a claim in the approximate amount of \$12.44 million dollars. Mack Financial, Ford Credit, and GMAC also hold secured claims in the amounts of \$377,594, \$18,123 and \$14,077, respectively. Banc of America Leasing & Capital, LLC and Great American Leasing Corp. may also be secured creditors, with claims in the approximate amounts of \$724,410 and \$506,130, respectively.

(ii) Administrative Expenses. Unpaid administrative expenses in these Chapter 11 Cases include administrative claims for post-petition rent and professional fees for financial and management consultant to the Debtor, counsel to the Debtor, and counsel to the Committee. Administrative expense claims are entitled to priority pursuant to Section 507(a)(2) of the Bankruptcy Code.

(iii) Employee Claims. All pre-petition employee wage, paid time off and paid vacation claims were paid pursuant to an order entered by the Bankruptcy Court on January 8, 2009. However, certain prepetition deferred commissions and bonuses remain unpaid. These claims are entitled to priority treatment pursuant to Sections 507(a)(4) and (a)(5) of the Bankruptcy Code.

(iv) Deposits by Individuals. The Debtors are in possession of certain pre-petition deposits from retail customers for windows. These deposits total approximately \$160,000, of which \$54,404.83 is entitled to priority treatment pursuant to Section 507(a)(7) of the Bankruptcy Code.

(v) Taxes and Certain Other Debts Owed to Governmental Units. The Debtors owe pre-petition sales taxes for the months of November and December to the Commonwealth of Virginia, State of Maryland, and District of Columbia, in the amounts of \$219,705.15, \$36,693, and \$9,811, respectively. The Debtors also owe property taxes to Fairfax and Prince William Counties in the amounts of \$54,436 and \$730.70, respectively. These tax claims are entitled to priority treatment pursuant to Section 507(a)(8) of the Bankruptcy Code.

(vi) Pre-Petition Unsecured Nonpriority Claims. The bar date for the filing of claims was March 31, 2009 and is July 6, 2009 for governmental entities. As of the date of filing this Plan and Disclosure Statement, 210 proofs of claim were filed. In addition to the filed proofs of claim, numerous liquidated, undisputed, non-contingent unsecured claims were scheduled by the Debtor.

A schedule of all claims, including secured claims, pre-petition claims that are entitled to priority treatment, unsecured claims for which proofs of claim were filed and unsecured claims scheduled by the Debtors is attached hereto as Exhibit "B."

IV. SUMMARY OF THE PLAN

The Debtors propose selling the Alexandria Property. The proceeds of the sale, as well as funds generated through the sale of new common stock and the pursuit of claims and causes of action, will be distributed to creditors through a Chapter 11 Plan of Reorganization in accordance with the priorities of the Bankruptcy Code. For purposes of the Plan and the distributions thereunder, the Chapter 11 Cases of the Debtors will be substantively consolidated into a single Chapter 11 Case such that (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. The Debtor anticipates that distribution on account of Claims and Equity Interests will be completed within sixty (60) months following the Effective Date of the Plan.

THIS SUMMARY IS MODIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A" TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN, THE TERMS OF THE PLAN SHALL CONTROL.

A. Treatment of Administrative Expense Claims

Allowed Administrative Expense Claims consist of, *inter alia*, Claims that are allowed pursuant to 11 U.S.C. § 503(b) and entitled to priority under 11 U.S.C. § 507(a)(2). Pursuant to the Plan, 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 Administrative Expense 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 of the Plan. Reorganized Smitty's shall at all times have standing to object to Administrative Expense Claims.

Professional Fee Claims are Administrative Expense Claims under Section 503(b)(2) of the Bankruptcy Code and shall be paid in full in accordance with the terms and conditions of the Bankruptcy Court order allowing such fees. Any Allowed Professional Fee Claim incurred from the Commencement Date through the Effective Date shall be paid pro rata from the operating revenues of Reorganized Smitty's or from the Carve Out; and any Allowed Professional Fee Claim not otherwise paid, shall be paid pro rata from the Expense Reserve in accordance with Sections 8.3 of the Plan. 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 pursuant to Sections 8.3 and 8.4 of the Plan.

B. Priority Tax Claims

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 or the first

(1st) 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 for 5-year treasury bills, over a period not to exceed 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.

C. Classification of Claims and Equity Interests

The Plan provides for the division of Claims and Equity Interests into seven (7) classes.

Class 1. Class 1 consists of all Other Priority Claims.

Class 2. Class 2 consists of the Pre-Effective Date Lender Secured Claim.

Class 3. Class 3 consists of all Other Pre-Petition Secured Claims.

Class 4. Class 4 consists of Class 4 consists of all Other Pre-Petition Secured Claims that are otherwise Deficiency Claims.

Class 5. Class 5 consists of all Landlord Unsecured Claims.

Class 6. Class 6 consists of all General Unsecured Claims.

Class 7. Class 7 consists of all Equity Interests.

D. Treatment of Claims and Equity Interests

1. Class 1 (Other Priority Claims). Class 1 Claims consists of Other Priority Claims, including, but not limited to, claims by employees and claims for deposits by individuals. 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.

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 as Exhibit "1" to the Plan. 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.

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.

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 of the Plan. Class 4 is impaired by the Plan.

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 of the Plan. Class 5 is impaired by the Plan.

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 of the Plan. Class 6 is impaired by the Plan.

7. Class 7 (Equity Interests). The Equity Interests in Smitty's Building Supply, Inc., and its Affiliated Debtors shall be deemed and by the 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 its 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.

E. Means for Execution of the Plan

The Debtors propose that the Plan be funded through (i) Exit Financing provided by the Exit Financing Lender; (ii) proceeds of the sale of the Alexandria Property; (iii) the proceeds of a contribution to include \$125,000 cash and a \$250,000 promissory note made by the Smith Family for the benefit of the Reorganized Debtor in exchange for New Common Stock; (iv) the Equipment Sale Proceeds; (v) the proceeds of any Sale of De Minimis Assets; and (vi) the proceeds of Bankruptcy Causes of Action and Contingent Assets.

1. Exit Financing from the Exit Financing Lender.

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.

2. Sale of Alexandria Property.

a. Marketing Efforts. Reorganized Smitty's shall continue to market and actively consider all expressions of interest and offers on the Alexandria Property. 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. Distribution of Proceeds. In the event that Net Realized Proceeds do not exceed \$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. If Net Realized Proceeds exceed \$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: First, to the Exit Financing Lender in an amount up to and including \$7,500,000 in partial satisfaction of Reorganized Smitty's Exit Financing obligations; second, in an amount not to exceed \$300,000 to the Distribution Trust; and third, to the Exit Financing Lender any Net Realized Proceeds in excess of \$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. The sale, or refinancing, of the Alexandria Property is 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.

3. The Smith Note. On the Effective Date, the Smith Family or its designee shall deliver Cash in the amount of \$125,000 ("Smith Family Cash Contribution") and a promissory note in the amount of \$250,000 ("Smith Note"), in exchange for which the Smith Family will receive New Common Stock in the Reorganized Debtor, subject to higher and better offers.

a. Terms of the Smith Note. The Smith Note shall have a 5 year term and bear interest at an annual rate of 6%. The makers of the Smith Note shall make monthly

payments of amortized principal and accrued interest, payable to the Distribution Trust, beginning on the first day of the first month after the Effective Date.

b. Smith Family Initial Cash Contribution. An Expense Reserve of \$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 of the Plan. This amount shall be deposited in the Expense Reserve Account on the Effective Date. The remaining \$50,000 of the Smith Family Cash Contribution shall be contributed and paid directly to the Distribution Trust.

c. Proceeds of the Smith Note. The monthly payments on the Smith Note shall be contributed and paid directly to the Distribution Trust.

4. The Distribution Trust. 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 Class 4, Class 5, and 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 filed Claims of any kind.

a. Distribution Trust Agent. 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.

b. Powers and Authority of the Distribution Trust and Distribution Trust Agent. 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.

c. Distribution Trust Account. 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) \$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.

d. Authority of the Distribution Trust. The Distribution Trust shall be authorized to appoint litigation counsel to pursue the Bankruptcy Causes of Action and Contingent Assets on behalf of the Distribution Trust. 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 order of the Bankruptcy Court. Any out-of-pocket expenses (including, but not limited to, U.S. Trustee fees as otherwise limited herein and any court expenses incurred more than three (3) quarters after the Effective) incurred by the Distribution Trust 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.

e. Settlement of Bankruptcy Causes of Action or Contingent Assets. 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.

f. Deadline for Filing Certain Actions. 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 as set forth in subparagraph (c), above.

g. Responsibility for On-Going U.S. Trustee Fees. 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 (i) 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 (ii) 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.

h. Distribution of Proceeds. Any Net Realized Proceeds of the Distribution Trust shall be distributed by the Distribution Trust Agent as follows: 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; second, to expenses, including professional fees, incurred by the Distribution Trust; 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; and fourth, after the 2% distribution to holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims, one-half of such distribution to the Exit Financing Lender and one-half of such distribution to the holders of Allowed Class 4 Claims, Allowed Class 5 Claims, and Allowed Class 6 Claims.

i. Distribution Trust Disputes. The Bankruptcy Court shall have the exclusive jurisdiction to resolve any dispute which may arise in connection with the Distribution Trust.

i. Disposition of Expense Reserve. 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

F. Corporate Form and Governance

1. 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 and any 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 to the Smith Family, subject to higher and better offers, on the Effective Date in exchange for the Smith Family Cash Contribution and the Smith Note. The New Common Stock shall have a par value of \$1.00 per share.

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"). Proposed bid procedures (the "Bid Procedures") for submission of alternative proposals are attached to the Plan 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 in the Plan.

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.

2. 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 and except as otherwise provided in the Plan, the surviving corporation shall possess all of the rights, privileges, and immunities, of Smitty’s Building Supply, Inc. and its Affiliated Debtors. All real and personal property, including all causes of action and any interest in the G&H/Smitty’s Joint Venture Agreement, belonging to or due to Smitty’s Building Supply, Inc. and its Affiliated Debtors shall be deemed transferred to and vested in the surviving corporation. Similarly, on the Effective Date and except as otherwise provided in the Plan, the surviving corporation shall thenceforth be responsible for all liabilities and obligations of each of Smitty’s Building Supply, Inc. and its Affiliated Debtors.

3. Board of Directors. 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. On the Effective Date, the officers of Reorganized Smitty's shall be those officers in office immediately prior to the Effective Date.

4. 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 an 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 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.

5. 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, (a) each holder of: (i) any Claim that is purportedly secured; and/or (ii) any judgment, personal property or ad valorem tax, mechanics' or similar lien 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 be deemed released and (z) execute such documents and instruments as the Reorganized Debtor requires to evidence such Claim holder's release of such property or lien; and (b) 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.

6. Exemption from Certain Transfer Taxes. Pursuant to Section 1146(c) of the Bankruptcy Code, any transfers (a) from the Debtors to any Person pursuant to the Plan or (b) 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.

G. Distributions

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.

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 in the exercise of sound business judgment.

3. Priority of Distributions. The funds in the Distribution Trust shall be paid in accordance with the procedures established under the Plan.

4. 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 and in writing, of a change of address. In the event that any distribution to any holder is returned as undeliverable, the Distribution Trust shall not make a distribution to such holder unless and until such holder has notified the Reorganized Debtor and/or the Distribution Trust of the holder's current address. Distributions returned as undeliverable 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).

5. Withholding and Reporting Requirements. In connection with the Plan and all distributions thereunder, 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 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.

6. Allocation of Distribution 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.

7. 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. Neither the failure to exercise the right to set off nor the allowance of any Claim under the Plan shall constitute a waiver or release of any such Claim that the Debtors or Reorganized Smitty's may have against such holder.

H. Procedures for Disputed 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. Unless otherwise extended by the Court, any objections to such Claims shall be served and filed on or before 120 days after the Effective Date. If any portion of a Claim is a Disputed Claim, no payment or distribution provided shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim. 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 thereof. 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. In the event that, once a Disputed Claim is allowed, the Distribution Fund does not have sufficient assets to make a pro rata distribution on account of the Allowed Claim 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, the 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.

I. Executory Contracts and Unexpired Leases

1. General Treatment. The Confirmation Order shall automatically constitute an order approving the rejection, as of the Effective Date, of all executory contracts and unexpired leases of the Debtors that existed at the time these Chapter 11 Cases were filed 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.

2. Cure of Defaults. The Schedule of executory contracts to be assumed shall identify the amount necessary to cure each such executory contract and unexpired lease. Except to the extent that the non-Debtor party to such executory contract or unexpired lease has agreed to a different treatment, the Debtor shall pay this cure amount to the other party within 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 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.

3. Rejection Claims. Except as otherwise ordered by the Bankruptcy Court, a non-Debtor party to a lease or executory contract which has been rejected by the Debtors must file a proof of claim and serve such proof of claim upon counsel for the Reorganized Debtor on

or before thirty (30) days after the Effective Date. If the non-Debtor party fails to timely file a proof of claim, 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.

4. Change of Control. 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.

V. EFFECT OF CONFIRMATION

A. Vesting of Assets

On the Effective Date, all property of the Estates shall vest in Reorganized Smitty’s or the Distribution Trust, 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 in the Plan.

B. Binding Effect

Except as otherwise provided in Section 1141(d)(3) of the Bankruptcy Code, 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.

C. Discharge of Claims and Termination of Equity Interests

Except as otherwise provided in the Plan or Confirmation Order, upon the Effective Date, the rights afforded in the Plan and the payments and distributions to be made thereunder 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.

D. Discharge of Debtors

Upon the Effective Date and in consideration of the distributions to be made hereunder, except as otherwise provided in the Plan, 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. 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.

E. Term of Injunction or Stays and Injunction against Interference with Plan

Unless otherwise provided in the Plan, 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. 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.

F. Release of Claims against Officers, Directors, Etc.

Rule 3016(c) Declaration. In accordance with the requirements of Bankruptcy Rule 3016(c), the provisions of Section 13.7 of the Plan 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.

1. 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 (a) 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; (b) prevent the Distribution Trust from objecting to the Claim of any such person; or (c) 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 of the Plan. 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 Section 13.7 of the Plan; provided, however, that the injunction provided for in that section shall not (a) 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; (b) preclude police, federal tax, or regulatory authorities from fulfilling their statutory duties; or (c) bar the Claims, if any, of the United States.

2. 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 (a) 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 (b) 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 Section 13.7 of the Plan; provided, however, that the injunction provided for in that section shall not (a) 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 (b) 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.

G. Exculpation and Limitation of Liability

Except as otherwise specifically provided in the 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. Notwithstanding any other provision of the 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.

H. 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 Commencement 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.

VI. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

The following discussion summarizes certain U.S. Federal income tax consequences of the Plan to the Debtors and holders of Claims and Interests. This summary is based upon the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated thereunder, judicial decisions and published administrative rulings and pronouncements of the IRS, as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated hereafter could alter or modify the analysis and conclusions set forth below. Any such changes or interpretations may be retroactive and could affect significantly the federal income tax consequences discussed below. This summary does not address foreign, state or local tax law, or any estate or gift tax consequences of the Plan, nor does it purport to address the Federal income tax consequences of the Plan to special categories of taxpayers who are holders of Claims (such as taxpayers who are

not U.S. domestic corporations or citizens or residents of the United States, or are S corporations, banks, mutual funds, insurance companies, financial institutions, regulated investment companies, broker-dealers and tax-exempt organizations) and assumes that each Creditor holds its Claim directly.

The U.S. Federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtors have not requested and will not request a ruling from the IRS with respect to any of the tax aspects of the Plan.

THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN.

A. Federal Tax Treatment of Creation of Trust

The transfer of assets by the Debtors to the Distribution Trust will be treated as a transfer of the assets by the Debtors to the Creditors for Federal tax purposes. The Creditors will then be treated as transferring the assets to the Distribution Trust. The tax basis of the contributed assets will be their fair market value. For Federal tax purposes, the Distribution Trust will be treated as

a grantor trust and the Creditors will be treated as the grantors and deemed owners of the Distribution Trust. Accordingly, any items of income, deduction, losses, or credits of the Distribution Trust will be passed through to the Creditors in proportion to how they share in the distributions from the Distribution Trust.

B. Certain U.S. Federal Income Tax Consequences to the Debtors

1. Limited Liability Companies and S Corporations Exempt from Income Taxation

Upon information and belief, each of the Debtors has elected to be treated as an S corporation for Federal income tax purposes. Thus, each of the Debtors passes through income and loss items separately to shareholders, and normally is not subject to any of the taxes imposed under Chapter 1 of the Tax Code. Instead, each of the shareholders includes his or her share of the Debtors' income or loss in his or her federal tax return.

Because any net operating losses generated by the Debtors during a taxable year ("NOLs") have passed through to their shareholders, such NOLs cannot be used by the Debtor on a carryback or carryforward basis to offset income earned during a different taxable year. Any losses allocated to shareholders are available to offset such shareholder's other taxable income except to the extent that deduction limitations or basis limitations apply.

If any of the Debtors was a C corporation prior to electing S corporation status, then such Debtor may have to pay income tax at corporate tax rates on a portion of the gain recognized as a result of the Plan under Section 1374 of the Tax Code. This tax would apply to the extent of any unrecognized gain inherent in the C Corporation's assets at the time of the S corporation election. Any NOLs generated when such Debtor was a C corporation, however, may be available to offset such taxable gains.

2. Cancellation of Debtors' Debt

In general, pursuant to section 108 of the Tax Code, a debtor will realize cancellation of indebtedness ("COI") income to the extent that any recourse indebtedness is canceled or forgiven at the moment it is determined that any such debt will never have to be repaid. The determination of when it is clear that a debt will not be paid is based on the substance of a transaction and could be the year in which the Plan is approved if there are not sufficient assets to satisfy particular debts. Although a taxpayer is generally required to include COI income in its income, COI income is excludible under the Tax Code if such income arises in a case under the Bankruptcy Code if the COI is pursuant to a plan approved by the Bankruptcy Court. The COI income may also be excluded from income if the Debtor is insolvent or the debt is "qualified real property business indebtedness." In such cases, any COI income otherwise includible in gross income is generally applied to reduce certain tax attributes.

For S corporations, the exclusion of COI income and corresponding attribute reductions are applied at the entity level; in addition, COI income from the cancellation of indebtedness of an S corporation that is excluded from its income is not taken into account as an item of income by shareholders of the S corporation and thus does not increase the basis of a shareholder's stock.

3. Gain Recognition by Debtors' Shareholders

Upon a sale by a Debtor of its property, any recognized gain or loss equal to the difference between the pre-distribution sale proceeds and the Debtor's adjusted tax basis in the property will flow through to the Debtor's shareholders. The amount of gain recognized will include the full proceeds from any sale of property, including the amount of any indebtedness assumed by the buyer to which the property is subject, and, therefore, it is possible that any such

disposition will produce gain in excess of the cash proceeds of the transaction. In such an event, the shareholders could be obligated to pay the resulting tax out of his or her personal resources other than proceeds from the disposition of the property.

If the sale of the property results in a gain and such property was used in the Debtors trade or business, such gain would generally be treated as a “section 1231 gain.” Such gain would be combined with other Tax Code section 1231 gains and losses of the shareholders, and the tax consequences would depend upon the shareholders’ individual circumstances. Generally, Tax Code section 1231 gains and losses are offset against each other on an annual basis, and net gain is treated as long-term capital gain, while net loss is treated as ordinary loss. Net section 1231 gains must, however, be treated as ordinary income to the extent of net section 1231 losses taken over the five most recent years, to the extent such losses have not been previously “recaptured.”

Any gain derived from the sale of a property by a Debtor that is characterized as a passive gain for purposes of section 469 of the Tax Code will entitle the Debtor’s shareholders to take into account previously suspended passive activity losses from prior taxable years to the extent of such gain. Also, in the event that a shareholder completely disposes of its ownership interest in a Debtor pursuant to the Plan, any unused passive losses related to the Debtor may be used by the shareholder against his or her nonpassive income. Moreover, to the extent that some or all of the gain represents cost recovery deductions previously claimed with respect to a property, such portion of the gain will be recaptured and subject to tax on the part of the shareholders at a special capital gains rate of 25%, rather than the 15% rate that otherwise is applicable to long-term capital gains.

C. Certain U.S. Federal Income Tax Consequences to the Creditors

1. Generally

The U.S. federal income tax consequences of the Plan to a Creditor will depend upon several factors, including but not limited to: (i) whether the Creditor's Claim (or portion thereof) constitutes a Claim for principal or interest; (ii) whether the Creditor is a resident of the United States for tax purposes (or falls into any of the special classes of taxpayers excluded from this discussion as noted above); and (iii) whether the Creditor has taken a bad debt deduction with respect to its Claim. In addition, if a Claim is a "security" for tax purposes, different rules may apply. **CREDITORS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT UNDER THE PLAN OF THEIR PARTICULAR CLAIMS.**

2. Creditors Who Receive Solely Cash

A Creditor receiving solely cash in exchange for its Claim will generally recognize taxable gain or loss in an amount equal to the difference between the amount realized and its adjusted tax basis in the Allowed Claim. The amount realized will equal the amount of cash to the extent that such consideration is not allocable to any portion of the Allowed Claim representing accrued and unpaid interest, as further discussed below.

The character of any recognized gain or loss (i.e., ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the Creditor, the nature of the Allowed Claim in the Creditor's hands, the purpose and circumstances of its acquisition, the Creditor's holding period of the Allowed Claim, and the extent to which the Creditor previously claimed a deduction for the worthlessness of all or a portion of the Allowed Claim.

A loss generally is treated as sustained in the taxable year for which there has been a closed and completed transaction, and no portion of a loss with respect to which there is a reasonable prospect of reimbursement may be deducted until it can be ascertained with reasonable certainty whether or not such reimbursement will be recovered.

A portion of the consideration received by a Creditor in satisfaction of an Allowed Claim may be allocated to the portion of such Claim (if any) that represents accrued but unpaid interest. If any portion of the distribution were required to be allocated to accrued interest, such portion would be taxable to the Creditor as interest income, except to the extent the Creditor has previously reported such interest as income.

In the event that a Creditor has not previously reported the interest income, only the balance of the distribution after the allocation of proceeds to accrued interest would be considered received by the Creditor in respect of the principal amount of the Allowed Claim. Such an allocation would reduce the amount of the gain, or increase the amount of loss, realized by the Creditor with respect to the Allowed Claim. If such loss were a capital loss, it would not offset any amount of the distribution that was treated as ordinary interest income (except, in the case of individuals, to the limited extent that capital losses may be deducted against ordinary income).

3. Federal Income Tax Consequences to Holders of Allowed Interests Receiving No Distributions

Holders of Allowed Interests receiving no distributions will generally recognize loss in the amount of each such holder's adjusted tax basis in the Allowed Interest.

The character of any recognized loss (i.e., ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the holder, the nature of the Allowed Interest in the holder's hands, the purpose and circumstances of its acquisition, the holder's holding

period, and the extent to which the holder had previously claimed a deduction for the worthlessness of all or a portion of the Allowed Interest.

A loss generally is treated as sustained in the taxable year for which there has been a closed and completed transaction, and no portion of loss with respect to which there is a reasonable prospect of reimbursement may be deducted until it can be ascertained with reasonable certainty whether or not such reimbursement will be recovered.

4. Information Reporting and Backup Withholding

All distributions to holders of Allowed Claims under the Plan are subject to any applicable withholding requirements. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at a rate of 28%. Backup withholding generally applies if the holder fails to provide a taxpayer identification number or fails to otherwise establish an exemption. The amount of any backup withholding will be allowed as a credit against the holder’s U.S. federal income tax liability and may entitle such holder to a refund. Certain persons, including corporations and financial institutions, are generally exempt from backup withholding.

5. Importance of Obtaining Professional Tax Assistance

No holder of a Claim or Interest should rely on the tax discussion in this Disclosure Statement in lieu of consulting with one’s own tax professional. The foregoing is intended to be a summary only and not a substitute for consultation with a tax professional. The federal, state, local and foreign tax consequences of the Plan are complex and, in some respects, uncertain. Such consequences may also vary based upon the individual circumstances of each holder of a Claim or Interest. Accordingly, each holder of a Claim or Interest is strongly urged to consult

with its own tax advisor regarding the federal, estate, local and foreign tax consequences of the Plan.

VII. MODIFICATION OF THE PLAN

The Reorganized Debtor reserves the right in accordance with the Bankruptcy Code to amend or modify the Plan prior to the Confirmation Date. The Reorganized Debtor may also modify the Plan at any time after the Confirmation Date regardless of whether the 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 disclosure under Section 1125 of the Bankruptcy Code has been given, and the Court, after notice and a hearing, confirms the Plan as modified. 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 the Plan, remedy any defect or omission, or reconcile any inconsistencies in the Plan or amend the Plan, in such a manner as may be necessary to carry out the purposes and the effect of the Plan without the necessity of re-soliciting acceptances.

VIII. RETENTION OF JURISDICTION

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 reexamination of Claims or Equity Interests which have been allowed for purposes of voting, and the determination of any objections to Claims or Equity Interest 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 the Plan, and to issue such orders as may be necessary for the implementation, execution, and consummation of the Plan;

(e) to determine any and all applications for allowance of compensation or reimbursement of expenses;

(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 the Plan incurred prior to the Effective Date;

(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 the Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

(j) to enter any order, including injunctions, necessary to enforce the rights, title and powers of the Distribution Trust and the Distribution Trust Agent 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 Debtor(s) is a party or with respect to which the Debtor(s) 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 Section 1142 of the Bankruptcy Code; and

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

IX. ALTERNATIVES TO THE PLAN

Based on the Debtors' research and analysis, the Plan represents the best method of generating funds for distribution to creditors. During the course of these Chapter 11 Cases, the Debtors considered and evaluated a liquidation of the Estates' remaining assets under Chapter 7 of the Bankruptcy Code. In the Debtors' judgment, the Plan, by comparison, provides a greater prospect of recovery and a more expeditious distribution to creditors and interest holders in a manner which avoids certain administrative costs necessitated by a conversion to Chapter 7, such as the costs associated with the appointment of a Chapter 7 trustee and the retention of new professionals.

A. Distributions Under The Plan

A liquidation analysis is attached hereto as Exhibit "C." This analysis projects the estimated amount of money expected to be available for distribution to creditors and Equity

Interest holders if the case is converted to Chapter 7. Were that to occur, the Debtors do not believe that the funds generated through a liquidation sale of the Debtors' assets will generate sufficient cash to pay the Class 2 and Class 3 Allowed Secured Claims in full. Under this scenario, there would be no distributions made to any creditor class other than Classes 2 and 3.

The projected distributions that would be available under the Plan, as described in this Disclosure Statement, are based upon estimated amounts of administrative expenses to be incurred prior to distribution and assume that the Debtor is successful in its efforts to sell the Alexandria Property. The ultimate distributions under the Plan will depend in part on the total amount of professional fees and other administrative expenses ultimately allowed and the net amount received from a sale of the Alexandria Property. In addition, distributions will be affected by any objections that may be brought.

If the Plan or any other Chapter 11 plan cannot be confirmed under Sections 1129(a) and (b) of the Bankruptcy Code, the Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code, in which case a Chapter 7 trustee would be appointed or elected to liquidate any remaining assets of the estate for distribution to creditors pursuant to Chapter 7 of the Bankruptcy Code. As reflected in the liquidation analysis, if a Chapter 7 trustee is appointed, no creditors, other than holders of Class 2 Claims and Class 3 Claims, will receive distributions. Even if the Trustee pursued the sale of the Alexandria property at market value and pursued the Bankruptcy Causes of Action and Contingent Assets, there would be an additional layer of expenses due to the appointment of the Chapter 7 trustee and any professionals he or she might hire. This additional layer of expense would not be offset by any greater recovery on assets or any greater success in claims objections. Accordingly, the additional expense added by appointment of a Chapter 7 trustee would only diminish and delay creditor recovery. Thus,

reorganization under the Plan will likely result in greater recovery than would be obtained through conversion to Chapter 7 and appointment of a Chapter 7 trustee.

B. Alternative Chapter 11 Plan

If the Plan is not confirmed on or before the statutory exclusivity period ends on May 5, 2009, the Debtors or any other party in interest may attempt to formulate an alternative Chapter 11 plan which would provide for distribution of the Estate's assets other than as provided by the Plan. However, because the Estate's primary asset, the Alexandria Property, is encumbered by significant debt, the Debtors believe that any alternative Chapter 11 plan will necessarily be inferior to the Plan because it would merely impose unnecessary delay in the Plan process and add additional administrative expense. Any attempt to formulate an alternative Chapter 11 plan would unnecessarily delay distribution to creditors and, due to the incurrence of additional administrative expenses during such period of delay, would likely provide for smaller distributions than are currently provided for in the Plan. Accordingly, the Debtors believe that the Plan will enable all creditors to realize the greatest possible recovery on their respective Claims or Equity Interests in the most expedient manner.

X. VOTING ON THE PLAN

Under Section 1126(f) of the Bankruptcy Code, if a class of creditors or Equity Interest holders is not impaired, such class is conclusively deemed to have accepted the plan and solicitation of votes from the holders of such Claims or Equity Interests is not required. Under Section 1126(g) of the Bankruptcy Code, if a class of creditors or Equity Interest holders will not receive or retain any property under the Plan, such class is conclusively deemed to have rejected the Plan and their votes will not be solicited.

Under Section 1126(a) of the Bankruptcy Code, only holders of Allowed Claims or Interests may vote to accept or reject the Plan. Disputed Claims may be Allowed solely for the purpose of voting on 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].

XI. IMPAIRMENT UNDER THE PLAN

A. Definition of Impairment.

Under Section 1124 of the Bankruptcy Code, a class of Claims or Equity Interests is “impaired” under a plan of reorganization unless such plan (a) leaves unaltered the legal, equitable and contract rights of each holder of a Claim or Equity Interest in such class, or (b) provides, among other things, for the cure of existing defaults and reinstatement of the maturity of the Claims or Equity Interests in such class.

B. Impaired Classes.

The Debtors believe that 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 under the Plan. Holders of Equity Interests in Class 7 will not receive or retain any property under the Plan and will be deemed to reject the Plan in accordance with Section 1126(g) of the Bankruptcy Code and their

votes will not be solicited. Accordingly, only holders of Allowed Claims in Classes 2, 3, 4, 5, and 6 are entitled to vote to accept or reject the Plan.

XII. CONFIRMATION OF THE PLAN

The Bankruptcy Court will confirm the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation are that the Plan: (i) is accepted by all impaired classes of Claims and Equity Interests entitled to vote or, if rejected by an impaired class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such class, and as to the impaired classes of Claims and Equity Interests that are deemed to reject the Plan, (ii) is feasible, and (iii) is in the “best interests” of the holders of Claims impaired under the Plan. The Plan is feasible on its face because its distributions are greater than those that would be made under Section 726 of the Bankruptcy Code. Additionally, while the Debtors believe that certain classes of creditors may be impaired, the Debtors nonetheless believe that the Plan conforms to the requirements of Section 1129 of the Bankruptcy Code.

A. Acceptance of the Plan.

The Bankruptcy Code defines acceptance of a plan of reorganization by a class of creditors as acceptance by creditors holding two-thirds (2/3) in dollar amount and a majority in number of the Claims in such class (other than any such creditor designated under Section 1126(e) of the Bankruptcy Code), but for that purpose counts only those creditors that actually cast ballots. 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.

B. No Unfair Discrimination/Fair and Equitable Test

In the event that any impaired class of Claims or Equity Interests does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Debtors if, as to each impaired class of Claims or Equity Interests which has not accepted the Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.”

A Chapter 11 plan does not discriminate unfairly, within the meaning of the Bankruptcy Code, if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class and if no class of Claims or Equity Interests receives more than it legally is entitled to receive for its Claims or Equity Interests.

Under the Bankruptcy Code, “fair and equitable” has different meanings for secured and unsecured Claims. With respect to a secured Claim, “fair and equitable” means (i) the impaired secured creditor retains its liens to the extent of its allowed Claim and receives deferred cash payments at least equal in value to the allowed amount of its 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 estate’s 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) if the impaired secured creditor realizes the “indubitable equivalent” of its Claim under the plan.

With respect to an unsecured Claim, “fair and equitable” means either (i) each impaired unsecured creditor receives or retains property of a value, as of the Effective Date of the Plan, equal to the amount of its Allowed Claim, or (ii) the holders of Claims or Equity Interests that

are junior to the Claims or Equity Interests of the dissenting class will not receive or retain any property under the plan.

With respect to Equity Interests, “fair and equitable” means that each Equity Interest holder (i) will receive or retain property of a value, as of the effective date of the plan, equal to the greatest of (a) the allowed amount of any fixed liquidation preference to which such holder is entitled, (b) any fixed redemption price to which such holder is entitled, or (c) the value of such Equity Interest; or (ii) the holder of any Equity Interest that is junior to the Equity Interests of such class will not receive or retain any property under the plan on account of such junior Equity Interest.

Under the Plan, no holder in a class of Claims or Equity Interests is to receive cash or other property in excess of the full amount of its Allowed Claim or Allowed Equity Interest. As to the holders of Allowed Secured Claims, the Plan provides that Allowed Secured Claimholders will receive a distribution based on the value of its Allowed Secured Claim upon closing of the sale of the property securing the claim. As to holders of Unsecured Claims, the Plan provides that they will be paid pro rata from funds contributed to the Distribution Trust, including (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) 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 thereof; (vi) the Equipment Sale Proceeds; and (vii) the proceeds of any other non-Cash assets not otherwise described herein. Because holders of Unsecured Claims will not be paid in full, no distributions will be made to Equity Interest Holders. Thus, the Debtors believe that the Plan does not discriminate unfairly as to any

impaired class of Claims or Equity Interests and is fair and equitable with respect to each such class.

C. “Best Interests” Test

The Bankruptcy Code provides that the Plan will not be confirmed, regardless of whether or not anyone objects to Confirmation, unless the Bankruptcy Court finds that the Plan is in the “best interests” of all classes of Claims and Equity Interests which are impaired. The “best interests” test will be satisfied by a finding of the Bankruptcy Court that either (i) all holders of impaired Claims have accepted the Plan, or (ii) the Plan will provide such a holder that has not accepted the Plan with a recovery at least equal in value to the recovery such holder would receive if the estate were distributed under Chapter 7 of the Bankruptcy Code.

The Debtors believe that the Plan meets the “best interests” test. The starting point in determining whether the Plan meets the “best interests” test is a determination of the amount of proceeds that would be generated from the distribution of the estate’s remaining assets in the context of a Chapter 7 liquidation. The amount to be distributed must be reduced by the additional costs of converting to a case under Chapter 7, including the costs incurred during the Chapter 11 case and those allowed under Chapter 7 of the Bankruptcy Code (such as trustee’s commission and the fees and expenses of professionals retained by a trustee). The potential Chapter 7 distribution in respect to each class must be further reduced by the costs imposed by the delay caused by conversion to Chapter 7. The net present value of a hypothetical Chapter 7 distribution in respect to an impaired class is then compared to the recovery in respect to such class provided for in the Plan. Here, the Plan has been drafted to provide a distribution at least equal to that which would be paid under Section 726 of the Bankruptcy Code without the additional administrative expenses imposed by conversion to Chapter 7. Moreover, in a Chapter

7 liquidation, it is projected that there would be no distributions to unsecured creditors.

Accordingly, the Debtors submit that the “best interest” test is met.

D. Feasibility

Section 1129(a)(11) of the Bankruptcy-Code provides that a Chapter 11 plan may be confirmed only if the Bankruptcy Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation. Since the Plan provides for the distribution of the sales proceeds of the assets of the estate in conformity with Section 726 of the Bankruptcy Code, the Debtors believe that the Bankruptcy Court will find that the Plan is feasible.

E. Confirmation

1. Conditions to the Effective Date. Under the Plan, the following conditions to the Effective Date must occur:

(a) The Bankruptcy Court shall have entered an order confirming the Plan; and

(b) No stay of the Confirmation Order shall then be in effect.

2. Confirmation Hearing. Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan (the “Confirmation Hearing”). Section 1128(b) provides that any party in interest may object to confirmation of a plan.

A CONFIRMATION HEARING HAS BEEN SCHEDULED FOR JUNE 12, 2009, AT 9:30A.M. EASTERN STANDARD TIME, IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION, 200 SOUTH WASHINGTON STREET, ALEXANDRIA, VIRGINIA, 22314. THE CONFIRMATION HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE BANKRUPTCY COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT MADE AT THE CONFIRMATION HEARING OR ANY ADJOURNED HEARING. ANY OBJECTION TO CONFIRMATION MUST BE MADE IN WRITING,

FILED WITH THE BANKRUPTCY COURT AND SERVED UPON THE FOLLOWING PARTIES, TOGETHER WITH PROOF OF SERVICE THEREOF, SO AS TO BE ACTUALLY RECEIVED ON OR BEFORE JUNE 8, 2009 AT 5:00 P.M. EASTERN STANDARD TIME:

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]

UNLESS A WRITTEN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

At the Confirmation Hearing, the Bankruptcy Court must determine whether the requirements of Section 1129 of the Bankruptcy Code have been satisfied and, upon demonstration of such compliance, the Bankruptcy Court will enter the Confirmation Order.

XIII. CONCLUSION

THE DEBTORS SUBMIT THAT THE PLAN COMPLIES IN ALL RESPECTS WITH CHAPTER 11 OF THE BANKRUPTCY CODE AND THE DEBTORS RECOMMEND THAT THE PLAN BE CONFIRMED.

Dated: May 4, 2009

By: /s/ Andrew J. Currie
Andrew J. Currie (Admitted *Pro Hac*)
Kristen E. Burgers (VSB No. 67997)
Abby W. Clifton (Admitted *Pro Hac*)
VENABLE LLP
8010 Towers Crescent Drive
Suite 300
Vienna, VA 22182
lakatz@venable.com
Phone: (703) 760-1600
Fax (703) 760-1600

Counsel to the Debtors