

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

vs.

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS, LLC,
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. MCGINN, AND
DAVID L. SMITH,

**Civil Action No.: 1:10-CV-457
(GLS/DRH)**

Defendants, and

LYNN A. SMITH,

Relief Defendant.

AFFIDAVIT OF RELIEF DEFENDANT LYNN A. SMITH

LYNN A. SMITH, being duly sworn, deposes and says:

1. I respectfully submit this affidavit in opposition to the motion by Plaintiff Securities and Exchange Commission ("the Commission"), brought on by Order to Show Cause, seeking a preliminary injunction in the form of an Order Freezing Assets and Granting Other Relief. I hereby oppose each and every form of relief requested by the Commission as against me and request that the Commission's Application for a Preliminary Injunction and other relief be denied in its entirety and that the Temporary Restraining Order be lifted immediately.

2. I have apparently been named as a Relief Defendant in the above captioned action by virtue of my nearly 42-year marriage to David L. Smith, one of the founders of McGinn, Smith & Co., Inc., who is also the longtime manager of my personal investment account.

3. I strenuously oppose the overreaching, draconian actions of the federal government in attempting to deprive me of my life savings, which was started for me by my father more than fifty (50) years ago.

4. I was born in Amsterdam, New York in September 1946, and was the only child of Wasil and Frances Laskevich. Both of my parents were the children of immigrants, with my father's parents having emigrated from Russia and my mother's parents from Lithuania. My father grew up in Springfield, Vermont as the youngest of six children. My mother was one of three children, and most of her family worked in the knitting mills of Amsterdam.

5. Following their marriage, my mother was a homemaker and my father a skilled laborer in the turbine section of the General Electric Foundry in Schenectady. Throughout my childhood, we lived in one flat of a two-family home in the east end of Amsterdam, with my grandmother occupying the other flat, as was common during that time among the Eastern European population in our community.

6. My parents were not educated people, but my father was very industrious and hard-working, always trying to make a better life for my mother and me. He was also a savvy entrepreneur. We lived modestly and my father used their savings to buy land north of Amsterdam on Great Sacandaga Lake. On the weekends, he would single-

handedly build summer cottages on small parcels of land and then sell the improved property at a profit. He used some of the money he made on these real estate transactions to buy more land and build more cottages. He used the balance of his profits to open an account and make investments with Hayden, Stone & Co., a brokerage house which, decades later, became Shearson/American Express.

7. My father enjoyed investing in the stock market. He had good instincts and was able to grow his investments into a nest egg which he intended to become my inheritance.

8. In approximately 1960, my parents bought their own two-family home in the Market Hill section of Amsterdam. David Smith lived with his parents about four houses down the street from our new home. I had known him in high school prior to our moving to his neighborhood and, a short time later, we began dating.

9. Dave graduated from Amsterdam High School in 1963, a year before me. I enrolled in Russell Sage College in the fall of 1964. We continued dating throughout college, and he returned home to Amsterdam after graduating from college in 1967. That summer, we became engaged, and a few months later, Dave began teaching at the East Main Street School in Amsterdam.

10. In May 1968, I graduated from college with a dual degree in Fine Arts and Elementary Education. A little more than a month after my graduation, my mother lost her seven year battle with breast cancer at the age of 50. My mother's death was a shock to my father, despite the length of her illness. His concern for my future increased

dramatically and prompted him to write and execute a will to provide for me in the event of his death.

11. Later that summer, Dave and I were married and I started teaching in the Amsterdam schools in September 1968. A short time later, he left for basic training with the Air National Guard. When he returned in the spring of 1969, he took a job with Marine Midland Bank in East Rochester. I planned to finish the school year in Amsterdam and then join him in Rochester and seek a new teaching position.

12. In March 1969, following a routine chest x-ray, my father was diagnosed with Brown Lung disease as a result of his many years working in the foundry for GE. He was admitted to the hospital a short time later and succumbed to the disease on July 7, 1969.

13. My father's will created a trust that allowed a portion of the estate to pass to me immediately and a portion to pass to me five years later. My father's estate included my parent's home in Amsterdam, my father's life insurance, his stock account and the property on Great Sacandaga Lake. Having lost both my parents very young, I have always respected the fact that my father, who did not expect to die at the age of 50, provided for my future. The property and stock account my father left me in 1969 was my rightful inheritance, and it is galling that the Commission wants to take that from me.

14. When we moved to Rochester, I used a broker in Rochester to manage my stock account, which remained with Hayden, Stone & Co. At that time, the account had approximately \$60,000 in it.

15. In 1973, we moved back to the Capital Region. We bought a small home in Clifton Park, for which I provided the down payment from my inheritance. I became a teacher at the Tecler School in Amsterdam, and Dave got a job as a stock broker with Bache & Co., a brokerage house, at which time I moved my stock account to Bache, and my husband began managing my account.

16. From the beginning of our marriage, my husband and I maintained a joint checking account, into which we deposited both of our paychecks and from which we paid our household bills. Throughout our marriage and continuing until the Court froze my checking account, I have paid the bills and managed our checking account.

17. Notwithstanding the fact that we had a joint checking account, the stock account and the real estate on Great Sacandaga, indeed my entire inheritance from my father's estate, have always been my separate property. The account and the real property have always been held in my name and my name alone throughout our entire marriage. Although I have allowed my husband a fair amount of discretion in making investment decisions for my stock account, ultimate decisions on the account were made by me and there has never been any confusion as to the ownership of the account.

18. Over the years, my account grew because of good investment decisions and positive returns on those investments. My husband managed my account with full knowledge that I considered that account to be our nest egg and something I would pass on to our children some day, just as my father had done for me. Under my husband's management, my account grew steadily over the years. By the late 1990's, I had accumulated upwards of \$6,000,000 in my account.

19. Sometime during my husband's employment with Bache, Tim McGinn, an engineer with GE, became a client of the firm. In the mid-1970's, Tim left GE and joined Bache as a stock broker. I met Tim and his wife socially through firm functions. His first wife and I remained close friends while our children were young.

20. My husband left Bache and worked for a few other brokerage houses over the next several years. I had no involvement in his work other than to attend social functions as his wife. I maintained my brokerage account, and my husband moved it with him in his client portfolio each time he moved to a new firm, as he did with his other clients. I received regular account statements from the firm, and we discussed general investment strategy and any transactions which required my specific approval and signature. On occasions, I agreed with his suggestions and on occasions, I disagreed. When I disagreed with the proposed investment, the transaction was not undertaken.

21. In approximately 1980, my husband and Tim McGinn formed McGinn, Smith & Co. in a one-room office in Twin Towers, in Albany, which they refurbished themselves. Four years later, they moved to 99 Pine Street. In both locations, my only role was to assist with decorating the offices. Since the inception of McGinn, Smith & Co., my involvement in the business was as a spouse and as a client. In my role as a spouse, I decorated their offices, sent in gifts and baked goods for the staff on holidays and birthdays, and hosted Christmas parties. In my role as a client, I received account statements and occasionally authorized transactions and investments with the advice of my stock broker/husband.

22. In 1982, with our second child on the way, we built a new home in Clifton Park. I was completely immersed in our children's lives and in managing our household for the next twenty years. Dave was making enough money for us to pay household expenses and support our family without me returning to work. The only times I used my stock account was for the benefit of our children, such as making a down payment on a house, buying a ski condo in the mid-1980's and paying for their college tuition.

23. In August 2004, to provide security for my children's future apart from my stock account, my husband and I created the David L. Smith and Lynn A. Smith Irrevocable Trust. My children were adults, had completed college, and could begin making financial decisions on their own. I alone personally funded this irrevocable trust by transferring 100,000 shares of Charter One Financial Inc. stock from my stock account to the trust's account. This irrevocable trust had been managed since its inception by Tom Urbelis, a longtime friend.

24. My husband and I are both from humble beginnings and we have never lived a lavish lifestyle, as the Commission has alleged. Our children attended public schools, each excelling in their own ways, surrounded by a community of friends and parents who looked out for one another. We were involved in our children's activities, their school events and social activities, their sporting events and booster clubs. We have never dined out excessively, nor have we taken extravagant vacations. Our greatest enjoyment and fondest memories have come from our family life and the time we spend together.

25. I am aware that the Commission has alleged, in order to sweep me into the ambit of this lawsuit as a "Relief Defendant" that I have "received and retained ill gotten gains" (Complaint ¶ 12) and that I was "a recipient, without consideration, of proceeds of the fraudulent and illegal sales of securities." (Complaint ¶ 141) To support its very general but slanderous claim of wrongdoing on my part, the Commission cites two specific amounts of money which were transferred into my brokerage account in 2009, \$335,000 (See Complaint ¶¶ 68, 71 and 94) and \$100,000 (Complaint ¶ 94).

26. The statement for my brokerage account as of March 31, 2010, just three weeks before the TRO was granted, showed a balance of \$2,118,511.06 which exceeds the \$435,000 claimed by the Commission by \$1,683,511.06. Nevertheless, the Commission sought, and obtained, an order freezing my entire account, and now, by its motion for a preliminary injunction, seeks to deprive me of any ability to manage or protect my entire investment portfolio during the pendency of this lawsuit.

27. The first payment referenced, \$335,000, in or about June and July of 2009, was actually two separate payments, which are correctly stated in paragraph 26 of the Complaint. Two payments, one for \$160,800 and one for \$175,000 were made to my account from TDMM Cable in repayment of a loan in the amount of \$366,000 which I made to TDMM Cable from my stock account on 6/5/04. I have made similar loans to provide "bridge" financing to facilitate the closing of various transactions that McGinn, Smith has handled over the course of many years (I have annexed hereto and made a part hereof a copy of the note as exhibit A). It is my belief that the original note is in the possession of the United States Government and presumably accessible to the SEC.

28. With respect to the \$366,000 loan, the Commission is well aware that such loan was made, as the fact of the loan was asserted as an allegation in paragraph 78 of the Declaration of Lara Shalov Mehraban submitted in support of the application for a restraining order. Ms. Mehraban has taken an email from my husband (see App. Ex. 67, at 266), asserted the content of the email as an allegation of fact supposedly within her personal knowledge, yet misrepresented a material fact by stating that the loan was made to McGinn Smith, when the email clearly indicates that the loan was made to TDM. (Compare Declaration of Lara Shalov Mehraban ¶78 and App. Ex. 67, at 266). I cannot think of any reason why the Commission would actively misrepresent this critical fact to the Court, other than as a feeble attempt to legitimize its claim that those two payments were made to me without consideration.

29. The undisputed fact is that a \$366,000 loan was made by me, with my specific consent, to TDM Cable, and was carried out by my husband. I can only surmise that the shorthand reference to the loan in my husband's email ("I loaned") relates to the fact that he implemented the loan transaction on my behalf, and he was following up to inquire about repayment. That does not negate the fact that I specifically discussed the loan with him, approved it as an investment from my stock account, and was entitled to be repaid. In fact, TDMM still owes me approximately \$35,000 in principal plus accrued interest.

30. The Commission also alleges that I received "many other payments from McGinn Smith Entities" (Complaint ¶ 94). After obtaining the Order to Show Cause containing the temporary freeze of my assets, the attorney for the SEC, following conversations with my attorney, provided a list of transactions in my stock account which

they apparently question. (the listed transactions which were received are annexed hereto and made part hereof as Defendant's Exhibits B, C and D).

31. As the court is undoubtedly aware, I have, until recently, been deprived of virtually all of my personal financial records as a result of them having been seized by agents of the United States Department of Justice on or about April 20, 2010. While it is true that the SEC has been courteous and cooperative in providing me with some records within their possession, I am still without records sufficient to allow me to identify and explain each and every transaction which they have noted.

32. Going to the transactions listed on Exhibit B and numbering them 1-13 commencing with the first transaction dated 1/12/ 2006 and ending with the transaction dated 1/5/2010 I state as follows:

a. At this time I am unable to sufficiently identify or explain the source of and reasons for the funds listed in transaction numbers 1, 2, 3, 8, 11, 12 and 13.

b. Transaction number 4 appears to have been a cash contribution to my IRA which came from the funds of David Smith.

c. Transaction number 5 is a loan repayment from Mr. Timothy McGinn and was credited against the loan evidenced by a promissory note which I have attached to this Affidavit as Exhibit A.

d. Transaction number 6 is a check received from a mortgage lending entity named GPV which has been in existence since 1982 and which makes a distribution in January of each year.

e. Transaction number 7 is a cash contribution to my IRA and at this time I am unable to identify the source of those funds.

f. Transaction number 9 is a further loan repayment from Timothy McGinn.

g. Transaction number 10 is the repayment of a bridge loan made by me to MS Funding on 11/29/07. The loan was repaid on 12/17/07 with interest and was mistakenly placed in the account of David Smith who recognized the mistake the next day and sent out the check which is noted in transaction number 10.

33. Exhibit C lists 8 additional transactions which have been identified by the SEC and I will address them numerically as follows:

a. Transaction number 1 was a transfer of funds earned by David Smith in the late 90's and held in the Capital Center Credit Corp. account until such time as that entity was winding down in 2009 at which point Mr. Smith made a gift to those monies to me by placing them in my account.

b. The second transaction dated March 3, 2006 was a payment on a loan made by me to McGinn, Smith & Co. I believe that loan is evidenced by a promissory note currently in the possession of the United States Department of Justice, the Securities and Exchange Commission, or FINRA.

c. Transactions 3 and 4 represent payments made into my account based on my investment in Pine Street Capital Partnership LLP. Transaction 4 is a distribution from Pine Street Capital Partners LP which was a return of capital as reported

in the 2009 partnership K-1 annexed hereto as Exhibit E. Transaction 3 is believed to be the partial redemption of notes owned by me.

d. I believe transaction number 5 which shows a transfer from David Smith to my account in the amount of \$326,304.11, represents the return to my account of funds used to fund a QTIP trust established as part of some estate planning work my husband and I were doing in late 2008 and early 2009.

e. Transactions 6 and 8 are the same transaction alleged in the original Complaint and explained previously in this Affidavit in paragraphs 27, 28 and 29.

f. Transaction number 7, which occurred on 3/18/2010, was the repayment of a loan I made to TDM Benchmark on 3/16/2010.

34. Exhibit D provided to me by the Plaintiff appears to be a summary of various deposits made to my checking account at Bank of America in 2009 and 2010.

35. The vast majority of the deposits are my husband's payroll checks which as I have indicated previously have been deposited in my checking account throughout our marriage as I was responsible for the payment of our household expenses. Exhibit D also contains various "totals" which I frankly can not understand and which have been explained to me by no one.

36. I believe that it is both obvious and well known to the Commission that all of the monies in my stock account represent my funds and my funds alone and that any suggestion that my account has been used to "park" funds is baseless.

37. It is particularly galling that the Commission sought to freeze 100% of my funds without providing any notice, when it is now clear that they knew at the time of the application that there were no circumstances under which they could justify a freeze of a majority of my assets.

38. I am informed by counsel that the SEC had the benefit of an investigation which had been going on for well in excess of a year during the course of which tens of thousands of pages of financial documents were apparently produced. Surely a small portion of time could have been expended in reviewing the facts of my situation prior to subjecting me to the public humiliation attendant to the SEC's filing.

39. Similarly, the Commission has submitted factually inaccurate, ethically irresponsible and entirely conclusory Declarations, signed under oath by its attorneys, asserting, apparently without conducting any meaningful factual investigation, that specific payments made to my brokerage account are "ill-gotten gains" and that every financial account and parcel of property I own should be frozen by this Court as a result. They have unnecessarily dragged me into this lawsuit, slandered my good name and reputation and jeopardized the investments which my father began building for me before the lawyers for the Commission were born.

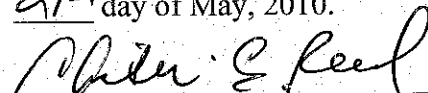
40. Had these lawyers conducted even a modicum of the due diligence they demand from my husband, they would have learned that the specific payments to my brokerage account raised in the Complaint were the repayment of loans and investments previously made by me to provide bridge financing for transactions being conducted in the ordinary course of business. With the vast resources available to the Commission and

its various colleague agencies in the federal government, surely they could have traced the origin of my brokerage account back many, many years, predating even the very existence of McGinn, Smith & Co. or any of the other Defendant Entities. Simply put, I was an investor. To suggest anything else, without any investigation or substantive support other than the fact of my marriage is simply outrageous.

WHEREFORE, I respectfully ask this Court to deny the plaintiff's request for a preliminary injunction restraining any of my assets, whether owned individually by me or jointly with my husband, release my accounts from the asset freeze and consider any further relief against the Commission which would be just under the circumstances.


LYNN A. SMITH

Sworn to before me this-
21st day of May, 2010.


Notary Public



PROMISSORY NOTE

June 5, 2009

\$366,000.00

Albany, New York

For value received, the undersigned, **TDMM Cable Funding, LLC**, a Florida limited liability company (the "Borrower"), promises to pay to the order of **Lynn Smith**, (the "Lender"), the principal amount of **Three Hundred Sixty Six Thousand and 00/100 Dollars (\$366,000.00)** on or July 6, 2009 (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full.

The interest rate shall be fixed at twenty-four percent (24.0%) per annum (the "Interest Rate").

Principal and interest shall be payable at 2 Rolling Brook Drive, Saratoga Springs, New York 12866, or at such other place as the Lender may designate in writing, in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

There shall be no prepayment premium in the event of any prepayment. In the event of a prepayment the Borrower shall pay interest to the Lender in the amount of one-half of one percent (0.5%) per week for each week, or any part of any week, that this Note remains unpaid.

At the option of the Lender, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower to the Lender, hereunder or otherwise, including failure to pay in full and when due any installment of principal or interest, or of any endorser or guarantor of any liability, obligation or undertaking, hereunder or otherwise, to the Lender, or default under any other loan document delivered by the Borrower, any endorser or guarantor, or in connection with the loan evidenced by this Note and the continuance thereof for ten (10) days after the due date; (2) failure of the Borrower to maintain aggregate collateral security value satisfactory to the Lender and the Borrower fails to cure such failure within ten (10) days after written notice is given to the Borrower by the Lender; (3) default of any material liability, obligation or undertaking of the Borrower or of any endorser or guarantor hereof to any other party and the Borrower fails to cure such default within ten (10) days after written notice is given to the Borrower by the Lender; (4) if any statement, representation or warranty heretofore, now or hereafter made in connection with the loan evidenced by this Note, or in any supporting financial statement of the Borrower or of any endorser or guarantor hereof shall be determined by the Lender to have been false in any material respect when made; (5) if the Borrower or any endorser or guarantor is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or of any endorser or guarantor hereof and, if any of the Borrower or any endorser or guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any endorser or guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any endorser or guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any endorser or guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any endorser or guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Lender of a writ in which the Lender is named as trustee of the Borrower or of any endorser or guarantor hereof; (9) a judgment or judgments for the payment of money shall be rendered against the Borrower or any endorser or guarantor hereof, and

any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any endorser or guarantor hereof which shall remain unsatisfied and in effect for any period of ten (10) consecutive days without a stay of execution; (11) the termination of any guaranty hereof; (12) the occurrence of such a material adverse change in the condition or affairs (financial or otherwise) of the Borrower or of any endorser, guarantor or other surety for any obligation of the Borrower to the Lender, or the occurrence of any other event or circumstance, such that the Lender, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any endorser or guarantor hereof to the Lender has been or may be impaired.

Any payments received by the Lender on account of this Note shall, at the Lender's option, be applied first, to any costs, expenses or charges then owed to the Lender by the Borrower; second, to accrued and unpaid interest; and third, to the unpaid principal balance hereof. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Lender may determine. The Borrower hereby authorizes the Lender to charge any deposit account which the Borrower may maintain with the Lender for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

The Borrower represents to the Lender that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each endorser and guarantor hereof grant to the Lender a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Lender to the Borrower and each endorser or guarantor hereof and any cash, securities, instruments or other property of the Borrower and each endorser and guarantor hereof in the possession of the Lender, whether for safekeeping or otherwise, or in transit to or from the Lender (regardless of the reason the Lender had received the same or whether the Lender has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any endorser and guarantor hereof to the Lender and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any endorser or guarantor hereof to the Lender at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the.

No delay or omission on the part of the Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Lender, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every endorser or guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally,

including any defense based on impairment of collateral. To the maximum extent permitted by law, the Borrower and each endorser and guarantor of this Note waive and terminate any homestead rights and/or exemptions respecting any premises under the provisions of any applicable homestead laws.

The Borrower and each endorser and guarantor of this Note shall indemnify, defend and hold the Lender and her heirs, administrators, personal representatives, assigns and attorneys harmless against any claim brought or threatened against the Lender by the Borrower, by any endorser or guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Lender's relationship with the Borrower or any endorser or guarantor hereof (each of which may be defended, compromised, settled or pursued by the Lender with counsel of the Lender's selection, but at the expense of the Borrower and any endorser and/or guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Lender.

The Borrower and each endorser and guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 4.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 10 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Lender's other remedies on account thereof), a late charge equal to 5.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each endorser and guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Lender and its successors, endorsees and assigns.

The liabilities of the Borrower and any endorser or guarantor of this Note are joint and several; provided, however, the release by the Lender of the Borrower or any one or more endorsers or guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any endorser or guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Lender. Each reference in this Note to the Borrower, any endorser, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Lender of the person from whom contribution is sought have been satisfied in full. The release or compromise by the Lender of any collateral shall not release any person obligated on account of this Note.

The Borrower and each endorser and guarantor hereof each authorizes the Lender to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Lender, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

This Note shall be governed by the laws of the State of New York.

The Borrower and each endorser and guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in New York over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each endorser and guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower

and each endorser and guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's, endorser's or guarantor's address shown below or as notified to the Lender and (ii) by serving the same upon the Borrower(s), endorser(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such endorser or guarantor.

THE BORROWER, EACH ENDORSER AND GUARANTOR AND THE LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY OF THE OBLIGATIONS OF THE BORROWER, EACH ENDORSER AND GUARANTOR TO THE LENDER, AND ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER, EACH ENDORSER AND GUARANTOR AND THE LENDER EACH CERTIFIES THAT NEITHER THE LENDER NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

Executed as an instrument under seal on the date first above written.

Witness:

Borrower:

TDMM Cable Funding, LLC

By: Timothy M. McGinn

Title: Managing Member

Draft 5/12/2010

Funds Received into Lynn Smith's Accounts

| Date | Transaction | Funds To Lynn Smith | Lynn Smith's Account Number | Lynn Smith's Bank or B-D | Notes |
|------------|----------------|---------------------|-----------------------------|--------------------------|--------------------------------|
| 1/12/2006 | Check received | \$6,301.00 | ██████████0916 | NFS | |
| 1/12/2006 | Check received | \$10,000.00 | ██████████0916 | NFS | |
| 2/6/2006 | Check received | \$4,246.58 | ██████████0916 | NFS | |
| 4/13/2006 | Check received | \$4,500.00 | ██████████0912 | NFS | Cash Contribution prior yr IRA |
| 10/4/2006 | Check received | \$85,000.00 | ██████████0916 | NFS | |
| 1/10/2007 | Check received | \$26,000.00 | ██████████0916 | NFS | |
| 4/9/2007 | Check received | \$5,000.00 | ██████████0912 | NFS | Cash Contribution prior yr IRA |
| 5/14/2007 | Check received | \$4,200.00 | ██████████0916 | NFS | |
| 5/14/2007 | Check received | \$100,000.00 | ██████████0916 | NFS | |
| 12/20/2007 | Check received | \$380,000.00 | ██████████0916 | NFS | |
| 1/5/2010 | Check received | \$525.00 | ██████████0916 | NFS | |
| 1/5/2010 | Check received | \$708.33 | ██████████0916 | NFS | |
| 1/5/2010 | Check received | \$1,329.17 | ██████████0916 | NFS | |
| | Total | \$627,810.08 | | | |

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Draft 5/12/2010

Funds Received into Lynn Smith's Accounts

| Date | Transaction | Account | Account Number | Bank or B-D | Funds To Lynn Smith | Lynn Smith's Account Number | Lynn Smith's Bank or B-D |
|-----------|----------------|-----------------------------|----------------|-------------|---------------------|-----------------------------|--------------------------|
| 2/4/2009 | Transfer | Capital Center Credit Corp. | ██████████8178 | NFS | \$38,430.46 | MSA-040916 | NFS |
| 3/3/2006 | | McGinn Smith & Company | ██████████4734 | M&T Bank | \$20,000.00 | MSA-040916 | NFS |
| 1/16/2009 | Check received | Pine St Prin | | | \$166,020.00 | MSA-040916 | NFS |
| 1/16/2009 | Check received | Pine St Rtn Invd Cap | | | \$62,257.00 | MSA-040916 | NFS |
| 2/20/2009 | Transfer | Smith, David | ██████████2208 | NFS | \$326,304.11 | MSA-040916 | NFS |
| 6/10/2009 | | TDMM Cable Funding | ██████████9077 | Mercantile | \$160,800.00 | MSA-040916 | NFS |
| 3/18/2010 | | TDMM Cable Funding | ██████████9077 | Mercantile | \$100,000.00 | MSA-040916 | NFS |
| 7/30/2009 | | TDMM Cable Jr. Trust 09 | ██████████4139 | Mercantile | \$175,000.00 | MSA-040916 | NFS |
| | | | | Total | \$1,048,811.57 | | |

Draft 5/12/2010

Lynn Smith
 Bank of America
 Account # 483027135287
 Funds Received

| Date | Source | Source Account Number | Source Bank | Deposits | Notes |
|------------|--|-----------------------|-------------|--------------|---------|
| 1/12/2010 | McGinn Smith Advisors LLC | ██████████3569 | M&T | \$5,000.00 | |
| | McGinn Smith Advisors LLC Total | | | \$5,000.00 | |
| 7/15/09 | McGinn Smith Payroll, Smith David | ██████████4734 | M&T Bank | \$7,896.60 | ck 2439 |
| 8/3/2009 | McGinn Smith Payroll, Smith David | | | \$7,896.60 | |
| 8/14/2009 | McGinn Smith Payroll, Smith David | | | \$7,896.60 | |
| 9/2/2009 | McGinn Smith Payroll, Smith David | | | \$7,896.60 | |
| 9/15/2009 | McGinn Smith Payroll, Smith David | | | \$8,234.85 | |
| 10/2/2009 | McGinn Smith Payroll, Smith David | | | \$8,888.56 | |
| 10/15/2009 | McGinn Smith Payroll, Smith David | | | \$8,888.56 | |
| 11/5/2009 | McGinn Smith Payroll, Smith David | | | \$8,888.56 | |
| 12/17/2009 | McGinn Smith Payroll, Smith David | | | \$8,888.56 | |
| 12/31/2009 | McGinn Smith Payroll, Smith David | | | \$8,888.56 | |
| 1/15/2010 | McGinn Smith Payroll, Smith David | | | \$6,775.38 | |
| 1/29/2010 | McGinn Smith Payroll, Smith David | | | \$6,775.39 | |
| 2/16/2010 | McGinn Smith Payroll, Smith David | | | \$6,775.38 | |
| 3/2/2010 | McGinn Smith Payroll, Smith David | | | \$6,775.39 | |
| 4/8/2010 | McGinn Smith Payroll, Smith David | | | \$17,731.08 | |
| | McGinn Smith Payroll, Smith David | | | \$129,096.67 | |
| 10/28/2009 | Smith, David | ██████████9965 | M&T | \$4,000.00 | ck 2211 |
| 11/18/2009 | Smith, David | ██████████9965 | M&T | \$200.00 | ck 2246 |
| 12/4/2009 | Smith, David | ██████████9965 | M&T | \$2,000.00 | ck 2263 |
| | Smith, David Total | | | \$6,200.00 | |
| | Smith, David & Lynn Total | | | \$250.00 | |
| | Smith, Lynn Total | | | \$60,000.00 | |
| 12/7/2009 | Smith, David | ██████████9965 | M&T | \$2,500.00 | ck 2275 |
| | Smith, David Total | | | \$2,500.00 | |
| | Grand Total | | | \$203,046.67 | |

Schedule K-1
(Form 1065)

2009

Final K-1 Amended K-1 OMB No. 1545-0099

Department of the Treasury
Internal Revenue Service

For calendar year 2009, or tax
year beginning _____
ending _____

**Partner's Share of Income, Deductions,
Credits, etc.**

▶ See separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
8744

B Partnership's name, address, city, state, and ZIP code

PINE STREET CAPITAL PARTNERS, LP
99 PINE STREET
ALBANY, NY 12207

C IRS Center where partnership filed return
OGDEN, UT

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
8058

F Partner's name, address, city, state, and ZIP code

LYNN SMITH
2 ROLLING BROOK DRIVE
SARATOGA SPRINGS, NY 12866

G General partner or LLC member-manager Limited partner or other LLC member

H Domestic partner Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital:

| | Beginning | Ending |
|---------|------------|-------------|
| Profit | 8.3006225% | 12.7560911% |
| Loss | 8.3006225% | 12.7560911% |
| Capital | 8.3006225% | 12.7560911% |

K Partner's share of liabilities at year end:

| | | |
|---------------------------------|----|--------|
| Nonrecourse | \$ | |
| Qualified nonrecourse financing | \$ | |
| Recourse | \$ | 4,243. |

L Partner's capital account analysis:

| | | |
|-------------------------------------|-----|------------|
| Beginning capital account | \$ | 852,284. |
| Capital contributed during the year | \$ | 773,353. |
| Current year increase (decrease) | \$ | 90,721. |
| Withdrawals & distributions | \$(| 62,258.) |
| Ending capital account | \$ | 1,654,100. |

Tax basis GAAP Section 704(b) book
 Other (explain)

M Did the partner contribute property with a built-in gain or loss?
 Yes No
If "Yes", attach statement (see instructions)

**Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items**

| | | |
|--|----------|---|
| 1 Ordinary business income (loss) | 0. | 15 Credits |
| 2 Net rental real estate income (loss) | | 16 Foreign transactions |
| 3 Other net rental income (loss) | | |
| 4 Guaranteed payments | | |
| 5 Interest income | 182,288. | |
| 6a Ordinary dividends | | 17 Alternative min tax (AMT) items |
| 6b Qualified dividends | | |
| 7 Royalties | | 18 Tax-exempt income and nondeductible expenses |
| 8 Net short-term capital gain (loss) | -60,683. | |
| 9a Net long-term capital gain (loss) | 1,046. | |
| 9b Collectibles (28%) gain (loss) | | 19 Distributions |
| 9c Unrecaptured sec 1250 gain | | A 62,258. |
| 10 Net section 1231 gain (loss) | | 20 Other information |
| 11 Other income (loss) | | A 247,338. |
| A* 65,050. | | B 65,176. |
| 12 Section 179 deduction | | |
| 13 Other deductions | | |
| H 32,540. | | |
| K* STMT | | |
| L* 682. | | |
| 14 Self-employment earnings (loss) | | |
| A 0. | | |

*See attached statement for additional information.

For IRS Use Only