

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In Re The Matter:

In Bankruptcy No:

10-19137

Northwestern Stone, LLC

Debtor.

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**AMENDED DISCLOSURE STATEMENT**

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Northwestern Stone, LLC, the Debtor and Debtor-in-possession in the above-captioned Chapter 11 case (hereinafter “Debtor” or “Debtor-in-possession”) submits this Amended Disclosure Statement (the Disclosure Statement) pursuant to 11 U.S.C. §1125, 11 U.S.C. §101 et. seq. (the “Code”) to all known holders of claims against the Debtor’s Chapter 11 estate in order to disclose information deemed to be material, important, and necessary for creditors of the Debtor to make an informed decision in exercising their right to vote for acceptance or rejection of the Debtor’s Amended Plan of Reorganization dated September 4, 2012 (the “Plan”).

**THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED FOR A DETERMINATION BY THE COURT AS TO WHETHER IT CONTAINS ADEQUATE INFORMATION AS REQUIRED BY SECTION 1125 OF THE CODE. THIS DETERMINATION DOES NOT CONSTITUTE RECOMMENDATION OR APPROVAL OF THE PLAN BY THE COURT.**

After a to-be-held hearing, the Court will determine if the Disclosure Statement contains adequate information upon which the holders of the claim or interest will be able to make an informed judgment about the Plan. All creditors and interested parties should carefully inspect the contents of this Disclosure Statement. The Debtor cautions that no representations can be made as to the accuracy of the financial projections or the Debtor’s ability to achieve the projected results contained in this

Disclosure Statement. Unless otherwise noted, all figures are based upon the unaudited records of the Debtor and, to the best of the Debtor's knowledge, are true and accurate.

In order for the Plan to be accepted and confirmed by the Court, it must be accepted or deemed to be accepted by each class of Claims contained in the Plan, except where the "cram down" provisions of the Code are applicable. A class of Claims has accepted the Plan if it has been accepted by creditors holding at least two-thirds in amount and more than one-half in number of the Allowed Claims of such class held by creditors who have accepted or rejected the Plan. A class that is not impaired under the Plan is deemed to have accepted the Plan.

The Code allows the Court to confirm a plan or to "cram down" a plan despite its rejection by a class of impaired creditors under some circumstances. The Code provides that if a class whose rights are impaired rejects a plan, then such a plan cannot be confirmed unless the Court concludes that the plan "does not discriminate unfairly, and is fair and equitable" with respect to the Claims of the impaired class.

## **HISTORY**

Northwestern Stone, LLC (NWS) is a local family-owned aggregate-producer that has served South Central Wisconsin since 1947. It provides its customers gravel, limestone, recycled asphalt, recycled concrete and topsoil, and when needed, site preparation services, product placement, grading, road construction, and complete street rehabilitation work.

NWS has a skilled workforce of up to 20 employees including equipment operators, truck drivers, a full-time mechanic, jobsite supervisors, and office staff. Employees receive training in approved mining operation practices annually, and are certified in all applicable MSHA mining safety requirements. Richard Bakken, owner of NWS, is a Madison Business College graduate and former

Fond du Lac County Highway Commissioner. He has managed NWS for the past 37 years, and his responsibilities include bidding projects and coordinating completion of those projects. Mike Bakken, son of Richard and UW-Madison graduate, has worked at NWS since 1988 in a variety of roles, and is now the Operations Manager overseeing crushing operations and assisting on construction projects. He is also the past President of The Aggregate Producers of Wisconsin (APW) trade association. Sharel Bakken, wife of Richard and UW-Stout graduate, is a co-owner of NWS and its Office Manager. She oversees all office operations, including truck dispatching and scheduling, as well as all other administrative responsibilities. Christine Patton, UW-Stout graduate, is the Assistant Office Manager and has been with NWS since 1993. She is well versed in the operations of NWS and does all of its billing.

Prior to 2002, NWS operated solely out of its Middleton quarry, which was not only its main source of aggregate material, but also the home of its office, shop, and equipment yard. Aware of the eventual depletion of materials at the Middleton quarry, NWS found new sites for future operations and quickly developed a network of quarries.

Prior to the bankruptcy filing, and in addition to the Middleton quarry, NWS owned a 70-acre quarry in Mount Horeb, with 17 million tons of limestone, and a 119-acre quarry in the Springfield Township, with sand, gravel and 29 million tons of limestone. It also had a crushing agreement on the WK quarry, and leased two quarries near Arlington, Wisconsin and Stoughton, Wisconsin. All of these quarries are fully permitted for many years in the future, are equipped with computerized electronic scales, and most have current inventory that meets the State of Wisconsin Department of Transportation quality specifications. In addition to the real estate, and service contracts, NWS also has a full line of construction, mining, and trucking equipment, which is kept in excellent condition to

maximize efficiency and output. In fact, many in the industry, including Richie Brothers Inc. and William Farmer of Construction Equipment Appraisal Services, feel NWS has one of the best overall lineups of construction and crushing equipment in the Midwest.

Like many quarries, NWS was affected by the decline of the residential construction industry what began in 2006. In response to the decline, NWS adapted to meet changing market demands, which included shifting its focus to the local commercial and industrial markets, UW-Madison projects, and street infrastructure improvements. Further, in response to the strong demand from commercial contractors for more “environmentally friendly” and “green” products, NWS developed a recycled-aggregate business. This niche has allowed NWS to gain market position and grow into new markets.

#### **Reason for Filing Chapter 11 Bankruptcy**

In 2008, NWS began doing all of its banking at Evergreen State Bank. On June 26, 2008 it executed a note in the face amount of \$9,470,000 which matured on June 26, 2011. On June 26, 2009 it executed a Commercial Line of Credit with a \$492,500 limit. On December 15, 2009 that line of credit matured and on February 10, 2010 the bank issued a notice of default. NWS suffer operating losses in 2008 and 2009 as a result, Evergreen refused to renew any annual operating capital loans. Thus, NWS was not able to meet all of its financial obligations, and defaulted. On November 10, 2010 the bank filed an action in the Dane County Circuit Court seeking the appointment of a receiver to liquidate the Debtor’s business. In order to avoid the appointment the Debtor filed a Voluntary Chapter 11 Petition and has continued to operate its business as Debtor-in-possession since that date.

#### **Post Chapter 11 Developments**

Shortly after the filing of the Debtor’s bankruptcy petition, on December 16, 2010 Evergreen

was closed by the Wisconsin Department of Financial Institutions and the FDIC was named receiver. Eventually, Evergreen's assets, including the loans owed by the Debtor, were acquired by McFarland State Bank (MSB). The Debtor has operated as a Debtor-in-possession since the filing of its bankruptcy petition pursuant to a stipulated cash collateral agreement.

During the course of its bankruptcy, Debtor has substantially reduced its obligation to MSB and its cash flow demands. In May 2011, Debtor sold its Springfield quarry, and conducted a public auction of its excess machinery and equipment. These sales resulted in a reduction of approximately \$5,000,000 of the debt owed to McFarland, which represents more than half of the debt originally owed. The sale also allowed NWS to eliminate its debt to John Deere Construction and Forestry Co.

The Debtor has also been able to restructure its financing agreements for the purchase of equipment with General Electric Capital Corp., Milwaukee Mack Leasing, Inc, and TCF Equipment Financing Inc., which further reduced its cash flow demands.

The Debtor also took steps to reduce its labor force and labor costs. The Debtor reduced the total number of employees from 20 to 12 replacing some senior, high-wage employees with less expensive and less experienced, but highly capable employees. The Debtor's business is seasonal.

Historically revenue slows during November through April resulting in negative cash flows for the related period ranging from \$40,000 to \$140,000 per month. Revenues increase during remaining months of May through October resulting in positive cash flow from operations ranging from \$40,000 to \$140,000 per month. Although the Debtor has experienced losses from its operations during the most recent years, the steps it has taken as described above have allowed it to experience a positive net cash flow for the time period January through August 2012. The Debtor believes the effects of the changes will be permanent and, therefore, it will continue to experience

a positive net cash flow for the foreseeable future.

### **Description of Assets and Values**

#### **Real Estate**

The Debtor currently owns three parcels of real estate. Its largest parcel, and its most valuable asset, is the Middleton Quarry located at 4373 Pleasant View Road in the Town of Middleton, Dane County, Wisconsin consisting of approximately 75 acres, which is capable of producing DOT quality inventory, although it is almost depleted of limestone there is still sandstone and sand which could be mined. Not only is the Middleton Quarry the Debtor's largest asset, the value of that asset is the subject of the greatest dispute having been valued at various times by various people at between \$2,090,000 and \$16,600,000. None of the valuations used the aggregate remaining in the Middleton quarry as a basis of value. All valuations used a market approach for valuation.

Early in this case MSB commissioned L.A. Dueterbeck & Associates, Inc. to appraise the quarry. That appraisal provided a market value of \$6,900,000 and the liquidation value of \$4,830,000 as of December 3, 2010.

In July 2012 the Debtor filed a motion seeking an order approval the continued use of cash collateral. MSB opposed that motion and a hearing was held on that motion. At that hearing MSB argued the quarry had a value of \$2,090,000 supporting that argument with a broker's opinion of value.

The Debtor commissioned Rawson Realty to appraise the property. That appraisal provided a market value range of the property between \$10,600,000 and \$16,600,000, and a fair market value of \$15,000,000 as of January 28, 2011. The Debtor obtained an updated appraisal in connection with the July 2012 cash collateral hearing. The updated appraisal by Rawson Realty opined there have been no

changes in value since the time of the first appraisal and provided a liquidation value of the property at \$11,500,000 as of July 6, 2012.

The Debtor has had the property listed for sale for approximately one year at a list price of \$13,500,000 to \$10,700,000 and has not received any offers to purchase.

The Debtor also owns a quarry located at 3060 Getz Road in the Town of Springdale, Dane County, Wisconsin, the Mt. Horeb Quarry, which would also produce DOT quality inventory. The Mt. Horeb Quarry consists of approximately 70 acres. The value of the Mt. Horeb quarry is also subject to dispute. MSB also commissioned L.A. Duesterbeck & Associates, Inc. to appraise this property early in this case. That indicated a market value of \$830,000 and the liquidation value of \$581,000. The Debtor commissioned Rawson Realty on January 28, 2011 to appraise the property. That appraisal valued the property at between \$2,132,760 and \$2,622,652, with a fair market value of \$2,133,000. The Debtor obtained an updated appraisal by Rawson Realty on this property on July 6, 2012. The updated appraisal indicated there have been no changes in value since the time of the first appraisal and provided an estimated liquidation value of the property at \$1,642,000.

The Debtor's third piece of real estate is a 58-acre residential lot located in Sumter, Wisconsin, known as the "Sumpter Property." The Sumpter Property is believed to have a value range of \$168,000 to \$335,000. Again, MSB was commissioned L.A. Duesterbeck & Associates, Inc. to appraise the property. That appraisal provided a market value of \$240,000 and a liquidation value of \$168,000 as of December 3, 2010. The Debtor has listed the property in its bankruptcy schedules as having a value of \$335,000 based on its purchase price.

#### Machinery and Equipment

The Debtor owns an extensive inventory of machinery, equipment and vehicles, which has

been appraised and is believed to have a market value range of \$2,740,000 to \$4,758,000.

The first appraisal, commissioned by MSB, and performed by AccuVal Associates, Incorporated (“Accuval”) on November 15 and 16, 2010 indicated that Debtor’s machinery, equipment and vehicles had a net forced liquidation value of \$3,934,000.

In May 2011, an auction of approximately one-third (1/3) of the Debtor’s machinery, equipment and vehicles was conducted. This auction generated \$1,963,945.73 of net proceeds. On July 5, 2012, AccuVal provided an updated Desktop appraisal which addressed only the property remaining after the auction. This Desktop appraisal indicated that Debtor’s remaining machinery, equipment and vehicles have a net forced liquidation value of \$2,740,000.

Debtor also commissioned a post-auction appraisal of its machinery, equipment and vehicles, performed by Construction Equipment Appraisal Services (“CEAS”) on June 27, 2012. This appraisal provided both in-use fair market values and in-use liquidation values. Per CEAS’s appraisal, Debtors’ remaining machinery, equipment and vehicles have in-use liquidation value of \$4,252,200, and an in-use fair market value of \$4,758,000.

#### Additional Assets

As of July 31, 2012, the Debtor had \$322,502 of inventory, \$810,639 of accounts receivable \$213,251 cash, patronage accounts at Landmark Services Cooperative and Middleton Farmers Cooperative with balances of \$25,102 and \$130,864, respectively, \$8,439 life insurance cash value, policy of \$8,439 and a disputed claim against Welton Family Limited partnership listed in its amended schedule B at \$412,542.50.

### **CLAIMS AND DEBTS**

Class 1 consists of costs and expenses of administration of the Debtor’s Chapter 11 case as



determined in accordance with the Code for which application for or allowance of or a claim is filed, as the same are allowed, approved and ordered paid by the court. This class of creditors shall be paid in full and in cash after court approval and not later than the effective date, except as may be otherwise agreed upon in writing between the Debtor and each creditor. Debtor shall pay all accrued quarterly trustee's fees within thirty days of the date of the Order of Confirmation as provided in 11 U.S.C. §1129(a)(12) to the U.S. Trustee's office.

Class 2 consists of the unsecured priority tax claim of the United States government. The Internal Revenue Service has filed a claim in the amount of \$105,846.23 consisting of a priority claim in the amount of \$95,058.74 for 3<sup>rd</sup> and 4<sup>th</sup> quarter 2010 FICA and 4<sup>th</sup> quarter 2010 FUTA liabilities and \$10,787.49 non-priority unsecured penalties.

Class 3 consists of the unsecured priority tax claim of the Wisconsin Department of Revenue. The Department has filed a claim in this class in the amount of \$51,825.56, consisting of, \$46,222.31 July through December 2010 sales and withholding tax liabilities, and \$5,603.25 non-priority penalty.

Class 4 consists of the allowed secured claim of McFarland State Bank (MSB). MSB has filed a secured claim in the amount of \$4,359,989.90. This debt is secured by a properly perfected mortgage against the Debtor's real estate and properly perfected liens against the Debtor's machinery, equipment, accounts receivable and other assets.

Class 5 consists of the allowed secured claim of the CNH Capital. CNH Capital has a claim of \$8,704.19 secured by a Case 450 Skid Loader.

Class 6 consists of the allowed secured claim of Dane County Treasurer. Dane County Treasurer has filed a claim in the amount of \$36,767.07 arising out of 2010 real estate taxes.

Class 7 consists of the allowed secured claim of the General Electric Capital Corporation (GE).

GE has a claim in the amount of \$48,451 secured by a 2004 Mack dump truck Model CV713.

Class 8 consists of the allowed secured claim of Landmark Services Cooperation. Landmark has filed a claim in the amount of \$25,285.50 secured by a 10,000 gallon fuel tank. Landmark's claim arises out of the Debtor's purchase of the tank in 2007 for \$17,574.78, and purchases on an open account to the Petition Date, in the amount of \$7,720.72.

Class 9 consists of the allowed secured claim of Milwaukee Mack Leasing. Milwaukee Mack's has filed a claim in the amount of \$40,000 secured by a lien against a 2005 Mack dump truck.

Class 10 consists of the allowed secured claim of TCF Equipment Finance, Inc. TCF has filed a claim in the amount of \$79,701.70 secured by a lien against the Debtor's 2007 Peterbilt 355.

Class 11 consists of the allowed secured claim of the Town of Middleton Treasurer (Middleton). Middleton has a claim in the amount of \$53,780.43 for 2009 personal property taxes.

Class 12 consists of the claim of Marlin Leasing Corporation. Marlin has filed a claim in the amount of \$28,414.53, secured by a GPS system,

Class 13 consists of the claim of the Middleton Farmers Co-op Company. The Co-op has filed an unsecured claim in the amount of \$109,158.64.

Class 14 shall consist of the allowed unsecured claims not otherwise referred to above or consisting of another class of claims, and all claims resulting in rejection of unexpired leases and executory contracts. The total amount of unsecured debt is believed to be approximately \$1,500,000. This amount does not include accrued interest and approximately \$3,000,000 which the Welton Family Limited Partnership asserts it is owed for reclamation cost which the Debtor disputes and has filed an objection to.

Class 15 consists of the Debtor's equity holder(s).

## **CLAIMS OBJECTIONS**

The Debtor has objection to the claim of MSB and Welton Family Limited Partnership. No other claims objections are expected. The MSB objection is expected to be resolved inasmuch as it is primarily an issue of accounting.

The Welton Family Limited Partnership objection seeks to eliminate an asserted reclamation liability in the amount of \$3,373,007 arising out of a mineral lease between Welton Family Limited Partnership and the Debtor. The Debtor does not believe resolution of this objection will require extensive litigation inasmuch as it has obtained approval of the reclamation from Dane Co. as required by the lease. Counsel for WFLP disagrees with the characterization of this particular litigation and believes that, without some sort of compromise between the parties that litigation will be extensive.

## **THE PLAN**

A copy of the Amended Plan is attached.

## **MEANS OF IMPLEMENTATION**

The Debtor will continue to operate its business out of the Middleton location until such time as that location is sold and all creditors are paid in full. The Debtor will utilize its revenue and income from the operation to make the monthly principal and interest payments to MSB and other secured creditors and to pay all operating expenses including taxes. The Plan envisions the continued to marketing of the Middleton Quarry. Upon confirmation of the Plan a Liquidating Trust will be created and the Debtor will grant a mortgage against the Middleton and Mt. Horeb quarries and a lien against machinery and equipment, not including titled vehicles, to secure payment of all allowed Class 14 Claimants. The Trust Agreement will call for the payment of professionals hired by the Trust by the

Debtor upon default or through liquidation of liened/mortgaged assets. Upon the sale of the Middleton Quarry MSB and all allowed Class 14 Claimants shall be paid in full , plus interest accrued at a rate of 4.95% and 4.5% per annum, respectively. The Middleton quarry would have to sell for approximately \$7,000,000 in order for MSB and all allowed Class 14 Claimants to be paid in full.

### **RISK TO CREDITORS**

The Plan calls for a Trust to be created to hold mortgages and liens to secure full payment of all Class 14 Claimants. All though there is a risk that the liquidation of the Middleton quarry would not result in the full payment of Class 14 Claimants, a risk the Debtor believes to be remote based upon its appraisals, any such risk is greatly reduced by the mortgage against the Mt. Horeb quarry and the machinery and equipment. In the event that the Debtor is unable realize sufficient funds upon the sale of the Middleton quarry to pay all Class 14 Claimants in full, the Debtor believes it will nevertheless realize sufficient funds to reduce its overall debt thereby allowing it to obtain financing to pay all Class 14 Claimants in full as required by the Plan.

### **ESTIMATED ADMINISTRATIVE EXPENSES**

To date, the Debtor has obtained the approval of \$68,431 of attorney's fees. Debtor does not anticipate that additional attorney's fees greater than \$50,000 will be incurred. Additional administrative fees of the Debtor included the United State Trustee's quarterly fees, and Creditors' Committee's attorney fees. While these expenses cannot be closely projected, Debtor anticipates they will not exceed \$50,000 before this Chapter 11 case is closed. The administrative expenses may in fact be higher or lower inasmuch as the Debtor and counsel are unable to predict with accuracy all efforts that will be required to obtain a confirmed Plan of Reorganization, or to carry on anticipated litigation,

if any. However, it is believed that the estimated amount of administration expenses would not be unreasonable or unexpected for the size and complexity of this reorganization case.

### LIQUIDATION ANALYSIS

Although the Debtor believes that the values provided by MSB significantly undervalue its property, for the purposes of this liquidation analysis, the Debtor has used MSB's most recent values as set forth in the Description of Assets and Values section of this Amended Disclosure Statement as they represent the lowest realized value, or worst case scenario possible.

Property to be sold:

Middleton Quarry	\$2,090,000.00
Mt. Horeb Quarry	\$581,000.00
Sumter, Wisconsin	\$168,000.00
Machinery, Equipment, Vehicles	\$2,740,000.00
Inventory*	\$0.00
Accounts Receivable*	\$0.00
Cash and Other Assets**	<u>\$237,535.00</u>
	\$5,816,535.00

Less:

Costs of liquidation (10%)	\$581,653.50
Payoff of MSB***	<u>\$4,359,989.90</u>
	\$4,941,643.40

Net value in forced liquidation:      \$874,891.60

*\*The Debtor's July 2012 Operating Report filed with the USTT and the Court lists inventory with a value of \$322,502 and a/r of \$1,605,00. Although the Debtor believes the assets to be valuable, they have been listed as zero consistent with MSB's appraisals and a worst case scenario.*

*\*\*Including cash and life insurance policy; excluding the patronage accounts and the disputed Claims against the Welton Family Limited Partnership*

*\*\*\*MSB's claim as filed.*

The Debtor fears a forced liquidation will suppress the realized value of its assets such that it will not receive proceeds adequate to pay unsecured creditors in full. If Debtor is permitted to sell on

the open market, it can maximize its return to ensure that all its creditors are paid in full. The Debtor therefore believes that the Plan affords the creditors the potential for the greatest realization on the Debtor's assets and, therefore, is in the best interests of the Estate.

### **EXPENSE AND INCOME PROJECTIONS**

The Debtor's Income and Expense projections are attached hereto and incorporated herein by reference, as Exhibit A. The projections are based on a historical analysis of the Company's pre-petition operations (2008 – 2010) and post-petition operations (2011 – July 2012) including revenue and expense trends and the identification of variable and fixed expenses, management and consultant research and discussions regarding the local and regional economic outlook, a breakdown and detailed analysis of individual expense categories including lease terms, staff needs related to budgeted revenue, insurance costs based on employee and equipment needs, professional fees, material costs, fuel costs, repair costs and outside labor needs, preparation of amortization schedules based on anticipated financing terms, calculation of estimated federal and state income taxes based on projected net income levels. Landmark Co-op and Middleton Farmer's Co-op patronage payments are not contained in the projections due to the Debtor's inability to control the amount or timing of any such payment.

### **BANKRUPTCY CODE REQUIREMENTS**

The Bankruptcy Code imposes requirements of acceptance of the Plan by creditors, minimum value of distributions, and feasibility. To confirm the Plan, the Court must find that all of these conditions and other conditions set forth in §1129(a) of the Code have been met, unless the

“cram-down” provisions of the Code are applicable. Thus, even if each class of creditors accepts the Plan by the requisite majorities, the Court must undertake an independent evaluation of the Plan before the Plan may be confirmed. The conditions for minimum value and financial feasibility are discussed below. The conditions for acceptance are discussed below in the section entitled, “Voting Procedures and Confirmation of the Plan.”

### **VOTING PROCEDURES AND CONFIRMATION OF THE PLAN**

The Court has directed that acceptances or rejections of the Plan be filed in writing by the holders of Allowed Claims against the Debtor by the date set forth on the enclosed ballot. A sample of the ballot which creditors with Allowed Claims will complete to vote on the Plan is attached to this Disclosure Statement as Exhibit B.

The Court has scheduled a confirmation hearing and has directed that notice of the hearing be given to all interested parties. At the Confirmation Hearing, the Court will enter an order confirming the Plan (the “Confirmation Order”), if there are enough votes to accept the Plan and the statutory requirements for plan confirmation have been met. The hearing on the plan confirmation may be continued or adjourned without further notice to creditors except those who appear at the initial hearing.

Creditors whose Claims are “impaired” under a plan may vote to accept or reject the plan. Creditors whose Claims are “unimpaired” are not entitled to vote. *In this case, with the exception of Class 1, all Classes are impaired under the Plan.*

In order for the Plan to be accepted and confirmed by the Court, it must be accepted or deemed to be accepted by each class of Claims contained in the Plan, except where the “cram-down” provisions of the Code are applicable. A class of Claims has accepted the Plan if it has been accepted

by creditors holding at least two-thirds in amount and more than one-half in number of the Allowed Claims of such class held by creditors who have accepted or rejected the Plan. A class that is not impaired under the Plan is deemed to have accepted the Plan.

The Code allows the Court to confirm a plan or to “cram down” a plan despite its rejection by a class of impaired creditors under some circumstances. The Code provides that if a class whose rights are impaired rejects a plan, then such a plan cannot be confirmed unless the Court concludes that the plan “does not discriminate unfairly, and is fair and equitable” with respect to the Claims of the impaired class.

#### **Cash Necessary on Confirmation**

The Debtor estimates that it will need \$50,000 on the Effective Date to pay Administrative Claims.

#### **Feasibility of the Plan**

In connection with confirmation of the Plan, §1129(a)(11) of the Bankruptcy Code requires that the Court find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. In this case, there is no expectation of a need for further reorganization because the Amended Plan requires the Debtor to sell an asset and provides unsecured creditors with collateral so as to ensure all its secured and unsecured debts are paid in full.

#### **Absolute Priority Rule**

To satisfy the absolute priority rule, the Plan must provide that the holder of any Claim or Interest that is junior to the Claims of any class that is impaired and does not accept the Plan (i.e., a dissenting Class) will not receive or retain under the Plan, on account of such junior Claim or Interest, any property unless the Claims of each such senior dissenting Class have been paid in full.



**Best Interest of Creditors Test: Liquidation Analysis**

Under the best interest of creditors test, the Plan is confirmable if, with respect to each impaired Class of Claims or Interests, each holder of an Allowed Claim or Allowed Interest in such Class has either (a) accepted the Plan, or (b) receives or retains under the Plan, on account of its Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

To determine if the Plan, as proposed, is in the best interests of holders of Claims and Interests, the Court must compare the value of the distribution to each impaired Class provided for by the Plan with the value of the distribution likely to be made to each Class in a Chapter 7 case. The amount that would be available for satisfaction of the Allowed Claims and Allowed Interests of the Debtor would consist of the proceeds resulting from the disposition of the assets of the Debtor augmented by the cash held by the Debtor at the time of the commencement of the (hypothetical) Chapter 7 case. Such amounts would be reduced by the costs and expenses of the liquidation and by such additional Claims that might result in the Chapter 7 case. The Debtor's Liquidation Analysis is set forth above.

Based on the Liquidation Analysis, the Debtor believes that creditors will likely receive as much or more under the Plan than they would in a chapter 7 case. The costs of liquidation under Chapter 7 would include the fees and expenses payable to the Chapter 7 trustee appointed in the Chapter 7 case, as well as those fees and expenses that might be payable to other professional persons employed by the trustee. Costs of administration in the liquidation case would also include any unpaid expenses incurred by the Debtor during the Chapter 11 case, such as compensation for attorneys, financial advisors and accountants. The Debtor's sale of the Middleton quarry in an arms-length

transaction will result in a substantially larger recovery than could be had in Chapter 7.

Underlying the Liquidation Analysis are various estimates and assumptions, some of which are inherently subject to significant economic and competitive uncertainties and contingencies beyond the control of the Debtor and upon assumptions with respect to liquidation decisions that could be subject to change.

**ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTOR WERE, IN FACT, TO UNDERGO SUCH A LIQUIDATION, AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THE LIQUIDATION ANALYSIS.**

#### **CERTAIN TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain expected federal income tax consequences of the implementation of the Plan. No opinion of counsel has been obtained and no ruling has been requested or obtained from the Internal Revenue Service with respect to any of the tax aspects of the Plan, and the discussion set forth herein is not binding upon the Internal Revenue Service.

**ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE CONSEQUENCES TO THEM, UNDER FEDERAL AND APPLICABLE STATE AND LOCAL TAX LAWS, OF THE CONFIRMATION AND CONSUMMATION OF THE PLAN.**

#### **Tax Consequences for Creditors**

Creditors may be required to recognize income or may be entitled to a deduction as the result of the implementation of the Plan. The exact tax treatment will depend on each creditor's method of accounting and the nature of each Claim in the hands of the creditor.

In general, holders of Claims should recognize a gain or loss in an amount equal to the difference between (1) the value of the property or cash received and (2) the Claim holder's adjusted tax basis in the Claim.

Where gain or loss is recognized by a holder of a Claim, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was acquired at a market discount or for the sale of inventory, and whether and to what extent the holder had previously claimed a bad debt deduction.

**Tax Consequences for the Debtor and Holders of an Interest in the Debtor**

Upon completion of the Plan, the terms of the Debtor's aggregate outstanding indebtedness will be changed. Generally speaking, a discharge or forgiveness of indebtedness creates taxable income for the taxpayer granted the discharge. The Internal Revenue Code provides an exception, however, if the taxpayer is under the jurisdiction of a bankruptcy court in a case under the Bankruptcy Code, and the taxpayer is granted a discharge of debt by the court or pursuant to a plan approved by the court. Accordingly, the Debtor will not be required to include as income any amount resulting from any discharge of indebtedness pursuant to the Plan.

There is a possibility that the various transfers and transactions contemplated by the Plan will result in capital gains tax liability to the Debtor and holders of an Interest in the Debtor.

**DISCLAIMER**

**THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT THE PLAN, AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACTOR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE REORGANIZATION ON THE DEBTOR, ITS CREDITORS OR THE HOLDERS OF INTERESTS IN THE DEBTOR.**

**CERTAIN OF THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT, BY**

**THEIR NATURE, ARE FORWARD LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. THEY ARE BEING PROVIDED BY THE DEBTOR SOLELY TO DEMONSTRATE THE FEASIBILITY OF THE PLAN AS REQUIRED BY THE BANKRUPTCY CODE.**

**YOU SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. YOU SHOULD CONSULT WITH YOUR OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY LEGAL, BUSINESS, FINANCIAL, TAX AND RELATED MATTERS CONCERNING THE PLAN**

Dated this 7<sup>th</sup> day of September, 2012.

Dated this 7<sup>th</sup> day of September, 2012.

**NORTHWESTERN STONE, LLC**

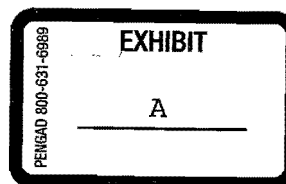
**KEPLER & PEYTON**

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**Northwestern Stone, LLC  
2012 Operating Plan**

	<b>Actual Jan -Jul 2012</b>	<b>Projected Aug 2012</b>	<b>Projected Sep 2012</b>	<b>Projected Oct 2012</b>	<b>Projected Nov 2012</b>
<b>Revenue</b>	\$ 1,919,783	\$ 450,000	\$ 450,000	\$ 450,000	\$ 250,000
<b>Expenses</b>					
Royalties & Job Materials	186,034	36,000	36,000	36,000	20,000
Advertising	1,543	600	600	600	600
Employee Compensation	419,685	90,000	80,000	85,000	90,000
Owner Draws	182,767	22,366	17,893	17,893	22,366
Payroll Taxes	50,328	9,000	8,000	8,500	9,000
Utilities	13,762	1,800	2,800	2,800	2,800
Telephone	9,172	1,500	1,500	1,500	1,400
Fuel	283,362	67,500	67,500	67,500	37,500
Education	2,399	-	-	500	-
General Insurance	42,721	14,000	14,000	14,000	14,000
Employee Benefits	7,942	1,000	1,000	1,000	1,000
Employee Benefits (Owner Health)	3,575	550	550	550	550
Licenses - Vehicle	11,999	-	6,000	-	-
Permits	6,521	-	-	-	-
Subcontractors	83,152	9,000	9,000	9,000	6,250
Blasting	103,507	20,000	20,000	10,000	12,500
Shop Expense	15,891	4,000	4,000	4,000	2,500
Leases - Long-term (see detail)	125,810	18,623	18,623	18,623	13,615
Equipment Rent - Other	43,548	10,000	10,000	10,000	7,000
Professional Fees:					
Legal	42,932	-	-	-	2,500
Trustee	17,875	-	-	6,500	-
Accounting	2,094	3,500	3,500	3,500	3,500
Property Taxes	37,128	5,400	5,400	5,400	5,400
Other Taxes (Heavy vehicle use)	-	-	-	-	-
Repairs	171,616	40,500	40,500	40,500	22,500
Dues & Subscriptions	408	300	300	300	-
Office Expense & Miscellaneous	9,416	1,500	1,500	1,500	1,500
<b>Total Monthly Expenses</b>	<b>1,875,187</b>	<b>357,139</b>	<b>348,666</b>	<b>345,166</b>	<b>276,481</b>
<b>Net Cash Flow From Operations</b>	<b>44,596</b>	<b>92,861</b>	<b>101,334</b>	<b>104,834</b>	<b>(26,481)</b>
Bank Payment (McFarland)	(125,716)	(17,875)	(17,875)	(21,000)	(21,000)
Pre-Petition Expenses					
Federal Taxes (as per plan)	-	-	-	-	-
State Taxes (as per plan)	-	-	-	-	-
<b>Total Pre-Petition Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(81,120)</b>	<b>74,986</b>	<b>83,459</b>	<b>83,834</b>	<b>(47,481)</b>
Provision for Income Taxes	-	-	(13,019)	-	-
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (81,120)</b>	<b>\$ 74,986</b>	<b>\$ 70,440</b>	<b>\$ 83,834</b>	<b>\$ (47,481)</b>



**Northwestern Stone, LLC**

**2012 Operating Plan**

	<b>Projected Dec 2012</b>	<b>Esimated Total 2012</b>
<b>Revenue</b>	\$ 200,000	\$ 3,719,783
<b>Expenses</b>		
Royalties & Job Materials	16,000	330,034
Advertising	600	4,543
Employee Compensation	60,000	824,685
Owner Draws	17,893	281,178
Payroll Taxes	6,000	90,828
Utilities	2,800	26,762
Telephone	1,400	16,472
Fuel	30,000	553,362
Education		2,899
General Insurance	14,000	112,721
Employee Benefits	1,000	12,942
Employee Benefits (Owner Health)	550	6,325
Licenses - Vehicle	-	17,999
Permits	-	6,521
Subcontractors	5,000	121,402
Blasting	10,000	176,007
Shop Expense	2,000	32,391
Leases - Long-term (see detail)	13,615	208,909
Equipment Rent - Other	7,000	87,548
Professional Fees:		-
Legal	-	45,432
Trustee		24,375
Accounting	3,500	19,594
Property Taxes	5,400	64,128
Other Taxes (Heavy vehicle use)		-
Repairs	18,000	333,616
Dues & Subscriptions		1,308
Office Expense & Miscellaneous	1,500	16,916
		-
<b>Total Monthly Expenses</b>	<b>216,258</b>	<b>3,418,897</b>
<b>Net Cash Flow From Operations</b>	<b>(16,258)</b>	<b>300,886</b>
		-
Bank Payment (McFarland)	(21,000)	(224,466)
		-
Pre-Petition Expenses		-
Federal Taxes (as per plan)	-	-
State Taxes (as per plan)	-	-
<b>Total Pre-Petition Expenses</b>	<b>-</b>	<b>-</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(37,258)</b>	<b>76,420</b>
Provision for Income Taxes	(13,019)	(26,039)
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (50,277)</b>	<b>\$ 50,381</b>

**Northwestern Stone, LLC**

**2013 Operating Plan**

	<b>Projected Jan 2013</b>	<b>Projected Feb 2013</b>	<b>Projected Mar 2013</b>	<b>Projected Apr 2013</b>	<b>Projected May 2013</b>
<b>Revenue</b>	\$ 50,000	\$ 65,000	\$ 75,000	\$ 225,000	\$ 310,000
<b>Expenses</b>					
Royalties & Job Materials (8% of sales)	4,000	5,200	6,000	18,000	24,800
Advertising	-	300	300	300	300
Employee Compensation	30,000	30,000	40,000	55,000	80,000
Owner Draws	17,893	17,893	22,366	17,893	22,366
Payroll Taxes (10% of compensation)	3,000	3,000	4,000	5,500	8,000
Utilities	2,500	2,500	2,500	1,500	1,200
Telephone	1,200	1,200	1,200	1,400	1,400
Fuel (15% of revenue)	7,500	9,750	11,250	33,750	46,500
Education	225	1,000	500	100	250
General Insurance	14,000	14,000	14,000	-	-
Employee Benefits	2,000	2,000	1,500	1,600	500
Employee Benefits (Owner Health)	550	550	550	550	550
Licenses - Vehicle	150	-	5,000	-	-
Permits	4,500	-	500	-	-
Subcontractors (2.5% of revenue)	1,250	1,625	1,875	5,625	7,750
Blasting (5.0% of revenue)	2,500	3,250	3,750	11,250	15,500
Shop Expense	1,000	1,500	2,000	2,000	3,000
Leases - Long-term (see detail)	13,615	13,615	13,615	13,615	13,615
Equipment Rent - Other	2,000	3,000	5,000	7,000	8,000
Professional Fees:					
Legal	-	-	2,500	-	-
Trustee	6,500	-	-	-	-
Accounting	2,000	2,000	2,000	2,000	2,000
Property Taxes	5,400	5,400	5,400	5,400	5,400
Other Taxes (Heavy vehicle use)	-	-	-	-	-
Repairs (9% of revenue)	4,500	5,850	6,750	20,250	27,900
Dues & Subscriptions	300	-	300	-	300
Office Expense & Miscellaneous	500	1,500	1,500	500	2,000
<b>Total Monthly Expenses</b>	<b>127,083</b>	<b>125,133</b>	<b>154,356</b>	<b>203,233</b>	<b>271,331</b>
<b>Net Cash Flow From Operations</b>	<b>(77,083)</b>	<b>(60,133)</b>	<b>(79,356)</b>	<b>21,767</b>	<b>38,669</b>
Bank Payment (McFarland)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)
Pre-Petition Expenses					
Federal Taxes (as per plan)	-	-	-	(1,000)	(1,000)
State Taxes (as per plan)	-	-	-	(500)	(500)
<b>Total Pre-Petition Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(1,500)</b>	<b>(1,500)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(98,083)</b>	<b>(81,133)</b>	<b>(100,356)</b>	<b>(733)</b>	<b>16,169</b>
Provision for Income Taxes				(18,807)	
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (98,083)</b>	<b>\$ (81,133)</b>	<b>\$ (100,356)</b>	<b>\$ (19,540)</b>	<b>\$ 16,169</b>

**Northwestern Stone, LLC**

**2013 Operating Plan**

	<b>Projected June 2013</b>	<b>Projected July 2013</b>	<b>Projected Aug 2013</b>	<b>Projected Sep 2013</b>	<b>Projected Oct 2013</b>
<b>Revenue</b>	\$ 375,000	\$ 500,000	\$ 525,000	\$ 600,000	\$ 550,000
<b>Expenses</b>					
Royalties & Job Materials (8% of sales)	30,000	40,000	42,000	48,000	44,000
Advertising	300	600	600	600	600
Employee Compensation	80,000	85,000	90,000	85,000	85,000
Owner Draws	17,893	17,893	22,366	17,893	17,893
Payroll Taxes (10% of compensation)	8,000	8,500	9,000	8,500	8,500
Utilities	1,700	1,800	1,800	2,800	2,800
Telephone	1,400	1,500	1,500	1,500	1,500
Fuel (15% of revenue)	56,250	75,000	78,750	90,000	82,500
Education	150		500		500
General Insurance	22,000	14,000	14,000	14,000	14,000
Employee Benefits	1,300	1,000	1,000	1,000	1,000
Employee Benefits (Owner Health)	550	550	550	550	550
Licenses - Vehicle	6,500	-	-	6,000	-
Permits	1,000	-	-	-	-
Subcontractors (2.5% of revenue)	9,375	12,500	13,125	15,000	13,750
Blasting (5.0% of revenue)	18,750	25,000	26,250	30,000	27,500
Shop Expense	3,000	4,000	4,000	4,000	4,000
Leases - Long-term (see detail)	13,615	13,615	13,615	13,615	13,615
Equipment Rent - Other	10,000	10,000	10,000	10,000	10,000
Professional Fees:					
Legal	-	2,500	-	-	-
Trustee	-	-			-
Accounting	2,000	2,000	2,000	2,000	2,000
Property Taxes	5,400	5,400	5,400	5,400	5,400
Other Taxes (Heavy vehicle use)	-	5,000		-	-
Repairs (9% of revenue)	33,750	45,000	47,250	54,000	49,500
Dues & Subscriptions	-	300			300
Office Expense & Miscellaneous	1,500	1,500	1,500	1,500	1,500
<b>Total Monthly Expenses</b>	<b>324,433</b>	<b>372,658</b>	<b>385,206</b>	<b>411,358</b>	<b>386,408</b>
<b>Net Cash Flow From Operations</b>	<b>50,567</b>	<b>127,342</b>	<b>139,794</b>	<b>188,642</b>	<b>163,592</b>
Bank Payment (McFarland)	(21,000)	(30,000)	(30,000)	(30,000)	(30,000)
Pre-Petition Expenses					
Federal Taxes (as per plan)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
State Taxes (as per plan)	(500)	(500)	(500)	(500)	(500)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>28,067</b>	<b>95,842</b>	<b>108,294</b>	<b>157,142</b>	<b>132,092</b>
Provision for Income Taxes	(18,807)			(18,807)	
<b>Net Cash Flow After Income Taxes</b>	<b>\$ 9,260</b>	<b>\$ 95,842</b>	<b>\$ 108,294</b>	<b>\$ 138,335</b>	<b>\$ 132,092</b>



**Northwestern Stone, LLC**

**2013 Operating Plan**

	<b>Projected Nov 2013</b>	<b>Projected Dec 2013</b>	<b>Projected Total 2013</b>
<b>Revenue</b>	\$ 250,000	\$ 175,000	\$ 3,700,000
<b>Expenses</b>			
Royalties & Job Materials (8% of sales)	20,000	14,000	296,000
Advertising	600	600	5,100
Employee Compensation	80,000	65,000	805,000
Owner Draws	22,366	17,893	232,608
Payroll Taxes (10% of compensation)	8,000	6,500	80,500
Utilities	2,800	2,800	26,700
Telephone	1,400	1,400	16,600
Fuel (15% of revenue)	37,500	26,250	555,000
Education			3,225
General Insurance	14,000	14,000	148,000
Employee Benefits	1,000	1,000	14,900
Employee Benefits (Owner Health)	550	550	6,600
Licenses - Vehicle	-	-	17,650
Permits	-	-	6,000
Subcontractors (2.5% of revenue)	6,250	4,375	92,500
Blasting (5.0% of revenue)	12,500	8,750	185,000
Shop Expense	2,500	2,000	33,000
Leases - Long-term (see detail)	10,241	10,241	156,631
Equipment Rent - Other	7,000	7,000	89,000
Professional Fees:			
Legal	2,500	-	7,500
Trustee			6,500
Accounting	2,000	2,000	24,000
Property Taxes	5,400	5,400	64,800
Other Taxes (Heavy vehicle use)			5,000
Repairs (9% of revenue)	22,500	15,750	333,000
Dues & Subscriptions			1,500
Office Expense & Miscellaneous	1,500	1,500	16,500
<b>Total Monthly Expenses</b>	<b>260,607</b>	<b>207,008</b>	<b>3,228,814</b>
<b>Net Cash Flow From Operations</b>	<b>(10,607)</b>	<b>(32,008)</b>	<b>471,186</b>
Bank Payment (McFarland)	(30,000)	(30,000)	(306,000)
Pre-Petition Expenses			
Federal Taxes (as per plan)	(1,000)	(1,000)	(9,000)
State Taxes (as per plan)	(500)	(500)	(4,500)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(13,500)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(42,107)</b>	<b>(63,508)</b>	<b>151,686</b>
Provision for Income Taxes		(18,807)	(75,229)
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (42,107)</b>	<b>\$ (82,316)</b>	<b>\$ 76,457</b>

**Northwestern Stone, LLC**

**2014 Operating Plan**

	<b>Projected Jan 2014</b>	<b>Projected Feb 2014</b>	<b>Projected Mar 2014</b>	<b>Projected Apr 2014</b>	<b>Projected May 2014</b>
<b>Revenue</b>	\$ 55,000	\$ 70,000	\$ 75,000	\$ 230,000	\$ 330,000
<b>Expenses</b>					
Royalties & Job Materials (8% of sales)	4,400	5,600	6,000	18,400	26,400
Advertising	-	300	300	300	300
Employee Compensation	30,600	30,600	40,800	56,100	81,600
Owner Draws	17,893	17,893	22,366	17,893	22,366
Payroll Taxes (10% of compensation)	3,060	3,060	4,080	5,610	8,160
Utilities	2,575	2,575	2,575	1,545	1,236
Telephone	1,200	1,200	1,200	1,400	1,400
Fuel (15% of revenue)	8,250	10,500	11,250	34,500	49,500
Education	225	1,000	500	100	250
General Insurance	14,500	14,500	14,500	-	-
Employee Benefits	2,100	2,100	1,575	1,680	525
Employee Benefits (Owner Health)	600	600	600	600	600
Licenses - Vehicle	150	-	5,000	-	-
Permits	4,500	-	500	-	-
Subcontractors (2.5% of revenue)	1,375	1,750	1,875	5,750	8,250
Blasting (5.0% of revenue)	2,750	3,500	3,750	11,500	16,500
Shop Expense	1,050	1,575	2,100	2,100	3,150
Leases - Long-term (see detail)	4,826	4,826	4,826	4,826	4,826
Equipment Rent - Other (5% of revenue)	2,750	3,500	3,750	11,500	16,500
Professional Fees:					
Legal	-	-	2,500	-	-
Trustee	-	-	-	-	-
Accounting	2,000	2,000	2,000	2,000	2,000
Property Taxes	5,508	5,508	5,508	5,508	5,508
Other Taxes (Heavy vehicle use)	-	-	-	-	-
Repairs (9% of revenue)	4,950	6,300	6,750	20,700	29,700
Dues & Subscriptions	300	-	300	-	300
Office Expense & Miscellaneous	500	1,500	1,500	500	2,000
<b>Total Monthly Expenses</b>	<b>116,062</b>	<b>120,387</b>	<b>146,105</b>	<b>202,512</b>	<b>281,071</b>
<b>Net Cash Flow From Operations</b>	<b>(61,062)</b>	<b>(50,387)</b>	<b>(71,105)</b>	<b>27,488</b>	<b>48,929</b>
Bank Payment (McFarland)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)
Pre-Petition Expenses					
Federal Taxes (as per plan)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
State Taxes (as per plan)	(500)	(500)	(500)	(500)	(500)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(83,562)</b>	<b>(72,887)</b>	<b>(93,605)</b>	<b>4,988</b>	<b>26,429</b>
Provision for Income Taxes				(28,173)	
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (83,562)</b>	<b>\$ (72,887)</b>	<b>\$ (93,605)</b>	<b>\$ (23,185)</b>	<b>\$ 26,429</b>

**Northwestern Stone, LLC**

**2014 Operating Plan**

	<b>Projected June 2014</b>	<b>Projected July 2014</b>	<b>Projected Aug 2014</b>	<b>Projected Sep 2014</b>	<b>Projected Oct 2014</b>
<b>Revenue</b>	\$ 400,000	\$ 500,000	\$ 525,000	\$ 625,000	\$ 550,000
<b>Expenses</b>					
Royalties & Job Materials (8% of sales)	32,000	40,000	42,000	50,000	44,000
Advertising	300	600	600	600	600
Employee Compensation	81,600	86,700	91,800	86,700	86,700
Owner Draws	17,893	17,893	22,366	17,893	17,893
Payroll Taxes (10% of compensation)	8,160	8,670	9,180	8,670	8,670
Utilities	1,751	1,854	1,854	2,884	2,884
Telephone	1,400	1,500	1,500	1,500	1,500
Fuel (15% of revenue)	60,000	75,000	78,750	93,750	82,500
Education	150		500		500
General Insurance	22,500	14,500	14,500	14,500	14,500
Employee Benefits	1,365	1,050	1,050	1,050	1,050
Employee Benefits (Owner Health)	600	600	600	600	600
Licenses - Vehicle	6,500	-	-	6,000	-
Permits	1,000	-	-	-	-
Subcontractors (2.5% of revenue)	10,000	12,500	13,125	15,625	13,750
Blasting (5.0% of revenue)	20,000	25,000	26,250	31,250	27,500
Shop Expense	3,150	4,200	4,200	4,200	4,200
Leases - Long-term (see detail)	4,826	4,330	2,979	1,900	1,900
Equipment Rent - Other (5% of revenue)	20,000	25,000	26,250	31,250	27,500
Professional Fees:					
Legal	-	2,500	-	-	-
Trustee	-	-	-	-	-
Accounting	2,000	2,000	2,000	2,000	2,000
Property Taxes	5,508	5,508	5,508	5,508	5,508
Other Taxes (Heavy vehicle use)	-	5,000	-	-	-
Repairs (9% of revenue)	36,000	45,000	47,250	56,250	49,500
Dues & Subscriptions	-	300			300
Office Expense & Miscellaneous	1,500	1,500	1,500	1,500	1,500
<b>Total Monthly Expenses</b>	<b>338,203</b>	<b>381,205</b>	<b>393,762</b>	<b>433,630</b>	<b>395,055</b>
<b>Net Cash Flow From Operations</b>	<b>61,797</b>	<b>118,795</b>	<b>131,238</b>	<b>191,370</b>	<b>154,945</b>
Bank Payment (McFarland)	(21,000)	(30,000)	(30,000)	(30,000)	(30,000)
Pre-Petition Expenses					
Federal Taxes (as per plan)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
State Taxes (as per plan)	(500)	(500)	(500)	(500)	(500)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>39,297</b>	<b>87,295</b>	<b>99,738</b>	<b>159,870</b>	<b>123,445</b>
Provision for Income Taxes	(28,173)			(28,173)	
<b>Net Cash Flow After Income Taxes</b>	<b>\$ 11,124</b>	<b>\$ 87,295</b>	<b>\$ 99,738</b>	<b>\$ 131,697</b>	<b>\$ 123,445</b>

**Northwestern Stone, LLC**

**2014 Operating Plan**

	<b>Projected Nov 2014</b>	<b>Projected Dec 2014</b>	<b>Projected Total 2014</b>
<b>Revenue</b>	\$ 260,000	\$ 180,000	\$ 3,800,000
<b>Expenses</b>			
Royalties & Job Materials (8% of sales)	20,800	14,400	304,000
Advertising	600	600	5,100
Employee Compensation	81,600	66,300	821,100
Owner Draws	22,366	17,893	232,608
Payroll Taxes (10% of compensation)	8,160	6,630	82,110
Utilities	2,884	2,884	27,501
Telephone	1,400	1,400	16,600
Fuel (15% of revenue)	39,000	27,000	570,000
Education			3,225
General Insurance	14,500	14,500	153,000
Employee Benefits	1,050	1,050	15,645
Employee Benefits (Owner Health)	600	600	7,200
Licenses - Vehicle	-	-	17,650
Permits	-	-	6,000
Subcontractors (2.5% of revenue)	6,500	4,500	95,000
Blasting (5.0% of revenue)	13,000	9,000	190,000
Shop Expense	2,625	2,100	34,650
Leases - Long-term (see detail)	1,900	1,900	43,866
Equipment Rent - Other (5% of revenue)	13,000	9,000	190,000
Professional Fees:			
Legal	2,500	-	7,500
Trustee			-
Accounting	2,000	2,000	24,000
Property Taxes	5,508	5,508	66,096
Other Taxes (Heavy vehicle use)			5,000
Repairs (9% of revenue)	23,400	16,200	342,000
Dues & Subscriptions			1,500
Office Expense & Miscellaneous	1,500	1,500	16,500
<b>Total Monthly Expenses</b>	<b>264,893</b>	<b>204,965</b>	<b>3,277,851</b>
<b>Net Cash Flow From Operations</b>	<b>(4,893)</b>	<b>(24,965)</b>	<b>522,149</b>
Bank Payment (McFarland)	(30,000)	(30,000)	(306,000)
Pre-Petition Expenses			
Federal Taxes (as per plan)	(1,000)	(1,000)	(12,000)
State Taxes (as per plan)	(500)	(500)	(6,000)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(18,000)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(36,393)</b>	<b>(56,465)</b>	<b>198,149</b>
Provision for Income Taxes		(28,173)	(112,691)
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (36,393)</b>	<b>\$ (84,638)</b>	<b>\$ 85,458</b>

**Northwestern Stone, LLC**  
**2015 Operating Plan**

	<b>Projected Jan 2015</b>	<b>Projected Feb 2015</b>	<b>Projected Mar 2015</b>	<b>Projected Apr 2015</b>	<b>Projected May 2015</b>
<b>Revenue</b>	\$ 65,000	\$ 80,000	\$ 85,000	\$ 250,000	\$ 360,000
<b>Expenses</b>					
Royalties & Job Materials (8% of sales)	5,200	6,400	6,800	20,000	28,800
Advertising	-	300	300	300	300
Employee Compensation	31,800	31,800	42,400	58,300	84,800
Owner Draws	17,893	17,893	22,366	17,893	22,366
Payroll Taxes (10% of compensation)	3,180	3,180	4,240	5,830	8,480
Utilities	2,625	2,625	2,625	1,575	1,260
Telephone	1,300	1,300	1,300	1,500	1,500
Fuel (15% of revenue)	9,750	12,000	12,750	37,500	54,000
Education	225	1,000	500	100	250
General Insurance	15,000	15,000	15,000	-	-
Employee Benefits	2,160	2,160	1,620	1,728	540
Employee Benefits (Owner Health)	700	700	700	700	700
Licenses - Vehicle	150	-	5,000	-	-
Permits	4,500	-	500	-	-
Subcontractors (2.5% of revenue)	1,625	2,000	2,125	6,250	9,000
Blasting (5.0% of revenue)	3,250	4,000	4,250	12,500	18,000
Shop Expense	1,080	1,620	2,160	2,160	3,240
Leases - Long-term (see detail)	1,900	1,900	1,900	1,900	-
Equipment Rent - Other (5% of revenue)	3,250	4,000	4,250	12,500	18,000
Professional Fees:					
Legal	-	-	3,000	-	-
Trustee	-	-	-	-	-
Accounting	2,100	2,100	2,100	2,100	2,100
Property Taxes	5,616	5,616	5,616	5,616	5,616
Other Taxes (Heavy vehicle use)	-	-	-	-	-
Repairs (9% of revenue)	5,850	7,200	7,650	22,500	32,400
Dues & Subscriptions	300	-	300	-	300
Office Expense & Miscellaneous	500	1,500	1,500	500	2,000
<b>Total Monthly Expenses</b>	<b>119,954</b>	<b>124,294</b>	<b>150,952</b>	<b>211,452</b>	<b>293,652</b>
<b>Net Cash Flow From Operations</b>	<b>(54,954)</b>	<b>(44,294)</b>	<b>(65,952)</b>	<b>38,548</b>	<b>66,348</b>
Bank Payment (McFarland)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)
Pre-Petition Expenses					
Federal Taxes (as per plan)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
State Taxes (as per plan)	(500)	(500)	(500)	(500)	(500)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(77,454)</b>	<b>(66,794)</b>	<b>(88,452)</b>	<b>16,048</b>	<b>43,848</b>
Provision for Income Taxes				(41,990)	
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (77,454)</b>	<b>\$ (66,794)</b>	<b>\$ (88,452)</b>	<b>\$ (25,942)</b>	<b>\$ 43,848</b>

**Northwestern Stone, LLC**

**2015 Operating Plan**

	<b>Projected June 2015</b>	<b>Projected July 2015</b>	<b>Projected Aug 2015</b>	<b>Projected Sep 2015</b>	<b>Projected Oct 2015</b>
<b>Revenue</b>	\$ 425,000	\$ 520,000	\$ 540,000	\$ 635,000	\$ 575,000
<b>Expenses</b>					
Royalties & Job Materials (8% of sales)	34,000	41,600	43,200	50,800	46,000
Advertising	300	600	600	600	600
Employee Compensation	84,800	90,100	95,400	90,100	90,100
Owner Draws	17,893	17,893	22,366	17,893	17,893
Payroll Taxes (10% of compensation)	8,480	9,010	9,540	9,010	9,010
Utilities	1,785	1,890	1,890	2,940	2,940
Telephone	1,500	1,600	1,600	1,600	1,600
Fuel (15% of revenue)	63,750	78,000	81,000	95,250	86,250
Education	150		500		500
General Insurance	23,000	15,000	15,000	15,000	15,000
Employee Benefits	1,404	1,080	1,080	1,080	1,080
Employee Benefits (Owner Health)	700	700	700	700	700
Licenses - Vehicle	6,500	-	-	6,000	-
Permits	1,000	-	-	-	-
Subcontractors (2.5% of revenue)	10,625	13,000	13,500	15,875	14,375
Blasting (5.0% of revenue)	21,250	26,000	27,000	31,750	28,750
Shop Expense	3,240	4,320	4,320	4,320	4,320
Leases - Long-term (see detail)	-	-	-	-	-
Equipment Rent - Other (5% of revenue)	21,250	26,000	27,000	31,750	28,750
Professional Fees:					
Legal	-	3,000	-	-	-
Trustee	-	-	-	-	-
Accounting	2,100	2,100	2,100	2,100	2,100
Property Taxes	5,616	5,616	5,616	5,616	5,616
Other Taxes (Heavy vehicle use)	-	5,000	-	-	-
Repairs (9% of revenue)	38,250	46,800	48,600	57,150	51,750
Dues & Subscriptions	-	300			300
Office Expense & Miscellaneous	1,500	1,500	1,500	1,500	1,500
<b>Total Monthly Expenses</b>	<b>349,093</b>	<b>391,109</b>	<b>402,512</b>	<b>441,034</b>	<b>409,134</b>
<b>Net Cash Flow From Operations</b>	<b>75,907</b>	<b>128,891</b>	<b>137,488</b>	<b>193,966</b>	<b>165,866</b>
Bank Payment (McFarland)	(21,000)	(30,000)	(30,000)	(30,000)	(30,000)
Pre-Petition Expenses					
Federal Taxes (as per plan)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
State Taxes (as per plan)	(500)	(500)	(500)	(500)	(500)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(1,500)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>53,407</b>	<b>97,391</b>	<b>105,988</b>	<b>162,466</b>	<b>134,366</b>
Provision for Income Taxes	(41,990)			(41,990)	
<b>Net Cash Flow After Income Taxes</b>	<b>\$ 11,417</b>	<b>\$ 97,391</b>	<b>\$ 105,988</b>	<b>\$ 120,476</b>	<b>\$ 134,366</b>

**Northwestern Stone, LLC**

**2015 Operating Plan**

	<b>Projected Nov 2015</b>	<b>Projected Dec 2015</b>	<b>Projected Total 2015</b>
<b>Revenue</b>	\$ 275,000	\$ 190,000	\$ 4,000,000
<b>Expenses</b>			
Royalties & Job Materials (8% of sales)	22,000	15,200	320,000
Advertising	600	600	5,100
Employee Compensation	84,800	68,900	853,300
Owner Draws	22,366	17,893	232,608
Payroll Taxes (10% of compensation)	8,480	6,890	85,330
Utilities	2,940	2,940	28,035
Telephone	1,500	1,500	17,800
Fuel (15% of revenue)	41,250	28,500	600,000
Education			3,225
General Insurance	15,000	15,000	158,000
Employee Benefits	1,080	1,080	16,092
Employee Benefits (Owner Health)	700	700	8,400
Licenses - Vehicle	-	-	17,650
Permits	-	-	6,000
Subcontractors (2.5% of revenue)	6,875	4,750	100,000
Blasting (5.0% of revenue)	13,750	9,500	200,000
Shop Expense	2,700	2,160	35,640
Leases - Long-term (see detail)	-	-	7,600
Equipment Rent - Other (5% of revenue)	13,750	9,500	200,000
Professional Fees:			
Legal	3,000	-	9,000
Trustee			-
Accounting	2,100	2,100	25,200
Property Taxes	5,616	5,616	67,392
Other Taxes (Heavy vehicle use)			5,000
Repairs (9% of revenue)	24,750	17,100	360,000
Dues & Subscriptions			1,500
Office Expense & Miscellaneous	1,500	1,500	16,500
<b>Total Monthly Expenses</b>	<b>274,757</b>	<b>211,429</b>	<b>3,379,372</b>
<b>Net Cash Flow From Operations</b>	<b>243</b>	<b>(21,429)</b>	<b>620,628</b>
Bank Payment (McFarland)	(30,000)	(30,000)	(306,000)
Pre-Petition Expenses			
Federal Taxes (as per plan)	(1,000)	(1,000)	(12,000)
State Taxes (as per plan)	(500)	(500)	(6,000)
<b>Total Pre-Petition Expenses</b>	<b>(1,500)</b>	<b>(1,500)</b>	<b>(18,000)</b>
<b>Net Cash Flow Before Income Taxes</b>	<b>(31,257)</b>	<b>(52,929)</b>	<b>296,628</b>
Provision for Income Taxes		(41,990)	(167,959)
<b>Net Cash Flow After Income Taxes</b>	<b>\$ (31,257)</b>	<b>\$ (94,919)</b>	<b>\$ 128,669</b>

**Northwestern Stone, LLC  
Lease Summary**

<u>Creditor</u>	<u>Monthly Payment</u>	<u>Secured By</u>	<u>Notes</u>
CNH Capital	\$ 495.71	Secured	Case Skid - 18 payments beginning 1/1/2013, last on 6/1/14
TCF	1,900.00	Crane & Body	Post-petition revised terms - 48 paymts of \$1900 beg 5/1/11, last on 4/1/15
GE	1,351.42	2004 Mack & Dump Body (Henderson)	Post-petition revised terms - 36 pymts beg 8/1/11, last on 7/1/14
Madison Mack	1,079.00	Mack Truck w/ Dump	Post-petition revised terms - 36 pymts of \$1,079 beg 9/1/11, last \$604.45 on 8/1/14
National Exchange Bank	5,008.05	1996 Cat, 988F Loader	Last pymt on 10/1/12
National Exchange Bank	5,414.37	5048 Crushing Plant	Last pymt on 12/06/13
National Exchange Bank	3,374.52	2006 & 2007 Mack Dump Trucks	Last pymt on 10/10/13
<b>Total</b>	<b>\$ 18,623.07</b>		
9/1/2012	18,623.07		
10/1/2012	18,623.07		
11/1/2012	13,615.02		
12/1/2012	13,615.02		
1/1/2013	13,615.02		
2/1/2013	13,615.02		
3/1/2013	13,615.02		
4/1/2013	13,615.02		
5/1/2013	13,615.02		
6/1/2013	13,615.02		
7/1/2013	13,615.02		
8/1/2013	13,615.02		
9/1/2013	13,615.02		
10/1/2013	13,615.02		
11/1/2013	10,240.50		
12/1/2013	10,240.50		
1/1/2014	4,826.13		
2/1/2014	4,826.13		
3/1/2014	4,826.13		
4/1/2014	4,826.13		
5/1/2014	4,826.13		
6/1/2014	4,826.13		
7/1/2014	4,330.42		
8/1/2014	2,979.00		
9/1/2014	1,900.00		
10/1/2014	1,900.00		
11/1/2014	1,900.00		
12/1/2014	1,900.00		
1/1/2015	1,900.00		
2/1/2015	1,900.00		
3/1/2015	1,900.00		
4/1/2015	1,900.00		
5/1/2015	-		
6/1/2015	-		
7/1/2015	-		
8/1/2015	-		
9/1/2015	-		
10/1/2015	-		
11/1/2015	-		



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

In Re The Matter:

In Bankruptcy No:

Northwestern Stone, LLC

10-19137

Debtor.

**CLASS ( ) BALLOT FOR ACCEPTING OR REJECTING PLAN OF  
REORGANIZATION**

The Debtors filed a plan of reorganization (Plan) dated September 4, 2012 for the Debtor in this case. The Court has conditionally approved a disclosure statement with respect to the Plan (the "Disclosure Statement"). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from Attorney Timothy J. Peyton, Kepler & Peyton, Suite 202, 634 West Main Street, Madison, Wisconsin, 53703; telephone number (608) 257-5424; fax number (608) 257-2377. Court approval of the disclosure statement does not indicate approval of the Plan by the Court.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your claim/equity interest has been placed in Class ( ) under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by Attorney Timothy J. Peyton, Kepler & Peyton, Suite 202, 634 West Main Street, Madison, Wisconsin, 53703 on or before (date), and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.

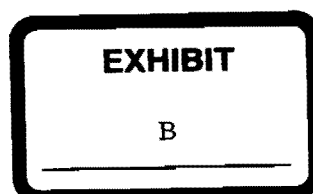
If the Plan is confirmed by the Bankruptcy Court, it will be binding on whether or not you vote.

**ACCEPTANCE OR REJECTION OF THE PLAN**

*[At this point the ballot should provide for voting by the particular class of creditors or equity holders receiving the ballot using one of the following alternatives.]*

*[If the voter is the holder of a secured, priority, or unsecured nonpriority claim:]*

The undersigned, the holder of a Class( ) claim against the Debtor in the unpaid amount of Dollars (\$ )



*[or, if the voter is the holder of a bond, debenture, or other debt security:]*

The undersigned, the holder of a Class ( ) claim against the Debtor, consisting of Dollars (\$ ) principal amount of *[describe bond, debenture, or other debt security]* of the Debtor (For purposes of this Ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest.)

*[or, if the voter is the holder of an equity interest:]*

The undersigned, the holder of Class ( ) equity interest in the Debtor, consisting of \_\_\_\_\_ shares or other interest of *[describe equity interest]* in the Debtor

*[In each case, the following language should be included:]*

(Check one box only)

ACCEPTS THE PLAN

REJECTS THE PLAN

Dated: \_\_\_\_\_

Print or type name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title (if corporation or partnership) \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

RETURN THIS BALLOT TO:

Attorney Timothy J. Peyton, Kepler & Peyton, Suite 202, 634 West Main Street, Madison, Wisconsin, 53703

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In Re The Matter:

In Bankruptcy No:  
10-19137

Northwestern Stone, LLC

Debtor.

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**AMENDED PLAN OF REORGANIZATION**

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The Debtor proposes the following Plan of Reorganization:

**ARTICLE 1**

**Definitions**

For the purpose of this Plan of Reorganization, the following terms shall have the respective meanings hereinafter set forth:

1.01 "Allowed Claim" shall mean a claim (a) in respect of which a proof of claim has been filed with the Court within the applicable period of limitation fixed by Rule 3003 or (b) scheduled in the list of creditors prepared and filed with the Court pursuant to Rule 1007(b) and not listed as disputed, contingent or unliquidated as to the amount, in either case as to which no objection to the allowance thereof has been interposed within any applicable period of limitation fixed by Rule 3003 or an order of the Court, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari proceeding is pending. Allowed claim shall not include interest on the principal amount of such claim subsequent to the petition date, except as may be otherwise provided herein.

1.02 "Allowed Interest" shall mean an interest (a) in respect to which a proof of

interest has been filed with the court within the applicable period of limitation fixed by Rule 3003 or (b) scheduled in the list of equity security holders prepared and filed with the court pursuant to Rule 1007(b), in either case as to which no objection to the allowance thereof has been interposed within any applicable period of limitation fixed by Rule 3003 or an order of the court, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceedings and as to which no appeal or certiorari proceeding is pending.

1.03 "Claimant" shall mean the owner of any claim or interest.

1.04 "Claim" shall have the meaning as set forth in 11 U.S.C. §101 and include any right of payment or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, against the Debtor in existence on or as of the petition date, whether or not such right to payment or right to an equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, secured or unsecured.

1.05 "Class" shall mean any class into which allowed claims or allowed interest are classified pursuant to Article II of this Plan.

1.06 "Code" shall mean the Bankruptcy Code, 11 U.S.C. §101 et seq., and any amendments thereof.

1.07 "Confirmation Date" shall mean the date upon which the order confirming the Plan is entered by the court in accordance with the provisions of Chapter 11 of the code.

1.08 "Court" shall mean the United States Bankruptcy Court for the Western District of Wisconsin in which the Debtor's Chapter 11 case, pursuant to which this Plan is proposed, is pending, and any court having competent jurisdiction to hear appeals or certiorari proceedings

therefrom.

1.09 "Creditor" shall mean any person or its assignee that holds a claim against the Debtor for debts, liabilities, or demand of whatever kind or character which arose prior to the petition date.

1.10 "Creditors' Committee" shall mean the Committee of Unsecured Creditors appointed by the U.S. Trustee's Office on January 26, 2011.

1.11 "Debtor" or "Debtors" shall mean Northwestern Stone, LLC, the Debtor in this Chapter 11 case.

1.12 "Distribution Date" shall mean the date the Trustee makes the distributions from the Liquidating Trust.

1.13 "Effective Date" shall be the later of (a) the next business day after all conditions and terms of the Plan have been satisfied, or (b) the fourteenth (14) day after the Confirmation Date.

1.1 "Final Order" shall mean an order or judgment of the court which has not been stayed and as to which order or judgment (or any revisions, modification or amendment thereof) the time to appeal or seek review or rehearing has expired.

1.15 "Liquidating Trust" shall mean the trust created by the Plan.

1.16 "Person" or "Persons" shall mean an individual, corporation, partnership, joint venture, trust, estate, unincorporated organization, or a government or any agency or political subdivision thereof or any entity.

1.17 "Petition Date" shall mean December 16, 2010, the date on which the Debtor filed its voluntary Chapter 11 petition with the court.

1.18 "Plan" shall mean this Chapter 11 Plan of Reorganization in its present form or as may hereafter be amended, modified or supplemented in accordance with the terms hereof or in accordance with the Code.

1.19 "Rule" and "Rules" shall mean the Federal Rules of Bankruptcy Procedure and the local bankruptcy rules as adopted by the court.

1.20 "Trustee" shall mean Claire Ann Resop, as Trustee of the Liquidating Trust.

## **ARTICLE II**

### **Classification of Claims and Interests**

The claims and interest are classified as follows:

2.01 Class 1 - The costs and expenses of administration of the Debtor's Chapter 11 case as determined in accordance with the Code for which application for or allowance of or a claim is filed, as the same are allowed, approved and ordered paid by the court.

2.02 Class 2 - Shall be the allowed unsecured priority claim of the United States Government-Internal Revenue Service.

2.03 Class 3 - Shall be the allowed unsecured priority claim of the Wisconsin Department of Revenue.

2.04 Class 4 - Shall be the allowed secured claim of the McFarland State Bank (MSB), successor to Evergreen State Bank. MSB has filed a secured claim in the amount of \$4,359,989.90. This debt is secured by a properly perfected mortgage against the Debtor's real estate and properly perfected liens against the Debtor's machinery, equipment, accounts receivable and other assets.

2.05 Class 5 - Shall be the allowed secured claim of the CNH Capital (CNH). CNH has filed a claim in the amount of \$8,704.19 indicating it is secured by Case skid steer Model 450.

- 2.06 Class 6 - Shall consist of the allowed secured claim of Dane County Treasurer.
- 2.07 Class 7 - shall be the allowed secured claim of the General Electric Capital Corporation.
- 2.08 Class 8 - Shall consist of the allowed secured claim of Landmark Services Cooperative (Landmark).
- 2.09 Class 9 - Shall consist of the allowed secured claim of Milwaukee Mack Leasing (Milwaukee Mack).
- 2.10 Class 10 - Shall be the allowed secured claim of TCF Equipment Finance, Inc. (TCF).
- 2.11 Class 11 - Shall consist of the allowed secured claim of Town of Middleton Treasurer (Middleton). Middleton has a claim in the amount of \$53,780.43 for 2009 personal property taxes.
- 2.12 Class 12 - Shall consist of the allowed secured claim of Marlin Leasing Corporation (Marlin).
- 2.13 Class 13 - Shall consist of the allowed claim of Middleton Farmers Co-op Company.
- 2.14 Class 14 - Shall consist of all allowed unsecured claims not otherwise referred to above or consisting of another class of claim, all claims resulting in the rejection of unexpired leases and executor contracts.
- 2.15 Class 15 - Shall consist of the Debtor's equity holder(s). **ARTICLE III**

**Impaired and Unimpaired Classes**

- 3.01 With the exception of Class 1, all classes are impaired as defined in §1124 of the

Bankruptcy Code.

## ARTICLE IV

### Treatment of Classes of Claims

4.01 The costs and expenses of administration of the Debtor's Chapter 11 case as determined in accordance with the Code for which application for or allowance of or a claim is filed, as the same are allowed, approved and ordered paid by the court shall be paid in full and in cash after court approval and not later than the entry of an Order of Substantial Consummation, except as may be otherwise agreed upon in writing between the Debtor and each creditor. Debtor shall pay all accrued quarterly trustee's fees within thirty days of the date of the Order of Confirmation as provided in 11 U.S.C. §1129(a)(12) and all post-confirmation quarterly trustee's fees prior to the entry of an order of substantial consummation. Class 1 claimants shall be paid from revenue generated from the operation of the Debtor's business.

4.02 Class 2 consists of the unsecured priority tax claim of the United States government. The Service has filed a claim in the amount of \$105,846.23, consisting of a priority claim in the amount of \$95,058.74 for 3<sup>rd</sup> and 4<sup>th</sup> quarter 2010 FICA and 4<sup>th</sup> quarter 2010 FUTA liabilities and \$10,787.49 non-priority unsecured penalties. Commencing the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) full month following the Confirmation date the Debtor shall make monthly payments of one thousand dollars (\$1,000) to this claimant. The entire priority amount of this claim shall be paid in full within five years of the Petition Date as required by 11 U.S.C. §1129(a)(9)(C). This class shall receive post confirmation interest pursuant to I.R.C. §6621. The penalty portion of the claim shall be allowed and treated as a Class 14 claim.

4.03 Class 3 consists of the unsecured priority tax claim of the Wisconsin Department of Revenue. The Department has filed a claim in this class in the amount of \$51,825.56,



consisting of a priority claim in the amount of \$46,222.31 for July through December 2010 sales and withholding taxes and \$5,603.25 non-priority unsecured penalties. Commencing the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) full month following the Confirmation Date the Debtor shall make monthly payments of five hundred dollars (\$500) to this claimant. The entire priority amount of this claim shall be paid in full within five years of the Petition Date as required by 11 U.S.C. §1129(a)(9)(C). This class shall receive post confirmation interest pursuant to I.R.C. §6621. The penalty portion of the claim shall be allowed and treated as a Class 14 claim.

4.04 Class 4 consists of the allowed secured claim of McFarland State Bank.

McFarland State Bank (MSB) has filed a secured claim in the amount of \$4,359,989.90. This debt is secured by a properly perfected mortgage against the Debtor's real estate and properly perfected liens against the Debtor's machinery, equipment, accounts receivable and all other assets. Upon confirmation, the Debtor shall execute a note in favor of McFarland State Bank in an amount equal to its secured claim, plus all additional allowed fees and expenses, including reasonable attorney's fees and costs incurred by MSB. Said note shall call for simple interest to accrue at a rate of 4.95% per annum with the entire amount due in full, along with all accrued interest, on the third anniversary of the Confirmation Date. Commencing on the twentieth (20<sup>th</sup>) day of the first (1<sup>st</sup>) full month following the Confirmation Date, the Debtor shall make payment to MSB of Twenty-One Thousand and No/100 Dollars (\$21,000) each month through June 2013. Thereafter, payments shall be made at the rate of Thirty Thousand and No/100 Dollars (\$30,000) per month during the months of July through December, and Twenty-One Thousand and No/100 Dollars (\$21,000) per month during the months of January through June, until such time as the entire amount comes due. MSB shall retain its mortgage and all its mortgage rights, and all liens and lien rights against personal property of the Debtor.

Upon confirmation, the Debtor and MSB shall enter a stipulation calling for the dismissal of the Dane County Wisconsin Circuit matter *Evergreen State Bank v. Northwestern Stone, LLC et al.*, (Case No. 10CV5765) (the "Dane County Litigation"). The stipulation will call for the dismissal of the Debtor without prejudice with leave to reopen and obtain the entry of a judgment of foreclosure as to the Middleton Quarry Property and to proceed immediately to Sheriff's sale, the Debtor having waived its right of redemption. A copy of the Stipulation is attached hereto and marked Exhibit 1, the terms and conditions of which are incorporated herein.

Upon confirmation, the Sumpter Property will be transferred to MSB via Quit Claim Deed. In exchange for the transfer the Debtor will be credited \$258,000 against MSB's then outstanding indebtedness. The Deed will grant the Debtor a 10-day right of first refusal of any actual accepted offer to purchase the Sumpter property, unless the same is sold by auction, in which case the Debtor's rights will be limited to the ability to bid at auction.

Commencing January 1, 2013, the Debtor shall begin providing MSB quarterly financial statements (balance statement and profit and loss statement). These statements will be compiled with limited disclosures and shall conform to GAAP.

The Debtor shall create and maintain a maintenance log of its machinery and equipment beginning January 1, 2013, a copy of which will be provided to the bank on a quarterly basis.

The Debtor shall be entitled to cure any default for thirty (30) days from the date of notice given pursuant to Article XIII. Debtor's right to cure shall be limited to two (2) in any twelve (12) month period. In the event the Debtor defaults on any payment more than twice in any 12-month period, or fails to cure any default within the time allowed, or fails to provide financial statements or maintenance log as required, or fails to pay off MSB in full on the third anniversary of confirmation, MSB shall be entitled to an immediate Judgment of Foreclosure

against the Middleton Quarry Property. The Debtor may continue to operate its business until the sale of the Middleton Quarry Property, such sale to be at the Bank's sole discretion. If a deficiency remains after the sale of the Middleton Quarry Property, the Bank shall direct the orderly liquidation of its remaining collateral, in the order and manner as it sees fit, until the Bank is paid in full.

4.05 Class 5 consists of the allowed secured claim of the CNH Capital. CNH Capital shall be paid the full amount owed to it, plus interest at the original contract rate of 3.15%, Commencing the first day of the first full month following the Effective Date, the Debtor shall make 18 equal monthly payments of \$495.71. CNH Capital shall retain its pre-petition lien

4.06 Class 6 consists of the allowed secured claim of Dane County Treasurer. Dane County Treasurer has filed a claim in the amount of \$36,767.07 arising out of 2010 real estate taxes. The Dane County Treasurer shall be paid the full amount owed to it plus 18% interest per annum, upon the fifth anniversary of the effective date of this Plan, or upon the sale of the Middleton quarry, whichever is earlier. Dane County Treasurer shall retain its tax lien.

4.07 Class 7 consists of the allowed secured claim of the General Electric Capital Corporation (GE). GE has a claim secured by a 2004 Mack dump truck Model CV713. On July 5, 2011, the Debtor and GE entered into a stipulation calling for the Debtor to make 36 monthly payments of \$1,351.42 commencing on August 1, 2011. GE's claim shall be paid in full through the Debtor's continuation of those monthly payments. GE shall receive a total of 36 adequate protection/post-confirmation payments, after which time it will release its lien against the Debtor's dump truck. GE shall retain its lien.

4.08 Class 8 consists of the allowed secured claim of Landmark Services Cooperation. Landmark has filed a claim in the amount of \$25,285.50 secured by a 10,000 gallon fuel tank.

Landmark's claim arises out of the Debtor's purchase of the tank in 2007, \$17,574.78 and purchases on an open account to the Petition Date, \$7,720.72. This claim shall be paid in full, without interest, by Annual Patronage Refund Check as set forth in the parties Retail Installment Sales Contract dated March 21, 2007. The timing and amount of all payments will be made in accordance with the Landmark Patronage Agreement. Landmark Services Cooperative shall retain its lien on the 10,000 gallon tank.

4.09 Class 9 consists of the allowed secured claim of Milwaukee Mack Leasing. Milwaukee Mack's has filed a claim in the amount of \$40,000 secured by a lien against a 2005 Mack dump truck. On September 23, 2011, Milwaukee Mack and the Debtor entered into a stipulation wherein the Debtor agreed to pay Milwaukee Mack \$40,000 plus interest at a rate of 6.5%. \$4,300 was due upon inception. Thereafter, the Debtor was to make payments of \$1,079.00 per month the first day of each month for 15 months commencing September 1, 2011. The Debtor shall continue making the payments as agreed by the stipulation until such time it has made a total of 36 payments of \$1,079.00 and thereafter shall make one final payment of \$604.45. Milwaukee Mack shall retain its lien on the Debtor's 2005 Mack dump truck.

4.10 Class 10 consists of the allowed secured claim of TCF Equipment Finance, Inc. TCF has filed a claim in the amount of \$79,701.70 secured by a lien against the Debtor's 2007 Peterbilt 355. On May 10, 2011, the Debtor and TCF entered into a stipulation whereby the Debtor agreed to make adequate protection payments to TCF in the amount of \$1,900.00 per month. The Debtor shall pay the full amount of TCF's claim plus interest at a rate of 6.5%. Payments shall be made through the Debtor's continuation of adequate protection payments and post-confirmation payments until such time as TCF has received a total of 48 adequate protection and/or post-confirmation payments. Upon payment of the full amount owed to TCF, TCF shall

transfer title to the vehicle to the Debtor. TCF shall retain its lien.

4.11 Class 11 consists of the allowed secured claim of Town of Middleton Treasurer for 2009 personal property taxes. The entire amount of this claim shall be paid in full within five years of the Petition Date as required by 11 U.S.C. §1129.

4.12 Class 12 consists of the claim of Marlin Leasing Corporation. Marlin has filed a claim in the amount of \$28,414.53, secured by a GPS system. At the confirmation date, the Debtor shall surrender the GPS system to Marlin in full satisfaction of its claim.

4.13 Class 13 consists of the claim of the Middleton Farmers Co-op Company. The Co-op has filed an unsecured claim in the amount of \$109,158.64. The Co-op shall be paid the full amount owed to it through annual offsets of the patronage payment arising out of amounts owed the Debtor by the Co-op on its patronage account and through payment as a Class 14 creditor of any balance remaining existing after the annual offset. The timing and amount of all patronage payments will be made in accordance to the Middleton Farmers Co-op Company Patronage Agreement.

4.14 Class 14 shall consist of the allowed unsecured claims not otherwise referred to above or consisting of another class of claims, and all claims resulting in rejection of unexpired leases and executory contracts. Upon the confirmation of Debtor's Plan, a mortgage shall be executed by the Debtor in favor of the Liquidating Trust against the Debtor's Middleton and Mt. Horeb quarries and a lien granted against the Debtor's machinery and equipment, specifically excluding all titled motor vehicles to secure payment of all allowed class 14 Claimants. The Mortgage and lien shall be held by the Liquidating Trust for the benefit of all allowed class 14 claims. All allowed Class 14 Claimants shall be paid in full, with interest of 4½% upon the

third anniversary of the effective date of this Plan or the sale of the Middleton quarry, whichever is earlier.

4.15 Class 15 consists of the Debtor's equity holder(s). The Debtor's equity holder(s) shall retain his ownership interest upon confirmation of this Plan.

## **ARTICLE V**

### **Means of Execution of this Plan**

5.01 To effectuate the proposed Plan upon confirmation the Debtor will utilize rents profits, revenues, income from operations and cash on hand on the Effective Date. In addition, Within 5 days of the Effective date the Debtor shall grant to the Liquidating Trust for the benefit of all allowed unsecured claim, the note and mortgage and lien referred to in paragraph 4.14. The Debtor has listed the Middleton Quarry for sale during the pendency of this action. Although the debtor has not been able to sell the property, the Debtor, MSB, and members of the official Creditors Committee believe market conditions continue to improve and that the Debtor will be able to liquidate the quarry, in whole or in part, within three years of the Confirmation Date, and that by doing so, pay claims as called for by this Plan in full.

5.02 After the Effective Date and until such time as the Middleton quarry is sold, the Trustee shall hold the Mortgages and lien called for by Section 4.14 of the Plan in trust for the benefit of all allowed Class 14 claimants.

5.03 Upon receiving an Offer to Purchase and the removal of all contingencies contained therein, if any, the Debtor shall notify the Trustee of the impending sale of the Middleton Quarry. The Trustee will then calculate the amount owed to each allowed Class 14 claimant to the anticipated date of closing. That total will be provided to the Debtor so as to allow that amount to be paid directly to the Trustee at closing. The Trustee shall in turn pay the

amount due to each Class 14 claimant. Neither the Trustee nor any professionals working for the Trustee shall have any liability to any individual Creditor or any other Entity for any action or inaction related to their service on or on behalf of the Creditors' Committee, except for gross negligence or willful misconduct. The Note and Mortgages granted to the Liquidating Trust shall be managed by the Trustee in Trustee's sole and absolute discretion.

5.04 Creation of Liquidating Trust. On the Effective Date, the Liquidating Trust shall be created pursuant to the Liquidating Trust Agreement, Exhibit 2 attached hereto. The Liquidating Trustee shall be Claire Ann Resop.

5.05 Transfer of Property to be Distributed under the Plan. On the Effective Date, Debtors shall grant the Liquidating Trust a mortgage against the Debtor's Middleton quarry, Mt. Horeb quarry, machinery and equipment, excluding titled motor vehicles, to secure payment of the full amount of all allowed Class 14 Claimants and costs of the Liquidating Trust.

5.06 Purpose and Powers of Liquidating Trust. The Liquidating Trust will be organized for the purposes of making the distributions required under this Plan and taking such steps as necessary or appropriate to accomplish such purposes.

5.07 Management of Liquidating Trust. After the Effective Date, the affairs of the Liquidating Trust and of the Trust Assets shall be managed under the discretion of the Liquidating Trustee in accordance with the Liquidating Trust Agreement. The powers of the Liquidating Trust shall be: (i) to effectuate distributions under this Plan to the holders of Allowed Class 14 Claims in accordance with this Plan, the Confirmation Order, any other Final Order and the Liquidating Trust Agreement; (ii) participate in any post-Confirmation motions to amend or modify this Plan, or appeals from the Confirmation Order; and (iii) participate in actions to enforce or interpret this Plan.

5.08 Costs of Administration. All costs and expenses associated with the administration of the Liquidating Trust, shall be the sole responsibility of and paid by the Liquidating Trust pursuant to the terms of the Liquidating Trust Agreement and shall be paid from the Trust Assets.

5.09 Hiring of Employees and Retention of Professionals. The Liquidating Trust is authorized, without further order of the Bankruptcy Court, to hire such employees and retain and engage such professionals as it may deem necessary to perform its functions thereunder, and the costs of such employment and other expenditures shall be paid from the Liquidating Trust. Such persons shall be compensated and reimbursed for their reasonable and necessary fees and out-of-pocket expenses on a monthly basis from the Liquidating Trust without further notice, hearing or approval of the Bankruptcy Court.

5.10 Tax Aspects of the Liquidating Trust. For federal income tax purposes, it is intended that the Liquidating Trust be classified as a liquidating trust under section 301.7701-4 of the Internal Revenue Service Procedure and Administration Regulations and that such trust is owned by the Trust Beneficiaries. Accordingly, it is intended that the Trust Beneficiaries be treated as if they had received a distribution of an undivided interest in the Trust Assets and then contributed such interests to the Liquidating Trust.

5.11 Dissolution of Liquidating Trust. Subject to the Liquidating Trust Agreement, the Liquidating Trust shall be dissolved after all Trust Assets have been liquidated and all proceeds there from have been distributed.

5.12 The Creditors' Committee shall be dissolved upon the Effective Date.

5.13 Prior to the effective date, the Debtor is authorized and directed to execute and deliver all documents and to take and cause to be taken all action necessary and appropriate to execute and implement the provisions of the Plan.

5.14 This Plan may be altered, amended or modified by the Debtor before or after the confirmation date, as provided in §1127 of the Code.



5.15 Bar Date and Resolution of Administrative Claims. All holders of unpaid Administrative Claims and professional fees, must file with the Court their final applications for allowance of compensation for services rendered and reimbursement of expenses incurred through the Confirmation Date within forty-five (45) days after the Confirmation Date and in accordance with the substantive and procedural requirements in the Bankruptcy Code. The Reorganized Company shall be responsible for the resolution of those Claims, and shall have standing to object to the allowance of any of those claims.

5.16 The Debtor shall emerge from Bankruptcy as the Reorganized Company and on the Effective Date all assets of the Debtor's Bankruptcy Estate shall vest in the Reorganized Company.

## ARTICLE VI

### Provisions Governing Trust Distributions

6.01 Distribution. The distribution of proceeds by the Liquidating Trust shall be made in accordance with this Plan, the Confirmation Order, the Liquidating Trust Agreement and any Final Orders of the Bankruptcy Court.

6.02 Disbursing Agent. The Liquidating Trust shall make all distributions to Class 14 Claimants required under this Plan.

6.03 Distribution Date. On the Distribution Date, the Liquidating Trust shall make distributions pursuant to the terms of this Plan.

6.04 Delivery of Distributions. Distributions to holders of Allowed Class 14 Claims shall be made:

(a) at the addresses set forth on the proofs of Claim filed by such holders (or at the

last known addresses of such holders if no proof of Claim is filed or if Debtors have been notified of a change of address),

(b) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trust after the date of any related proof of Claim or

(c) at the addresses reflected in the Schedules if no proof of Claim has been filed and no written notice of a change of address has been received.

If a distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Liquidating Trust is notified of such holder's current address, at which time all missed distributions shall be made without interest. Amounts in respect of undeliverable distributions shall be returned to the Liquidating Trust until claimed.

All claims for undeliverable distributions must be made on or before the first (1st) anniversary of the Distribution Date, after which date all unclaimed property shall revert to Debtor free of any restrictions thereon and the claim of any holder or successor to such holder shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. Nothing in the Plan shall require Debtor or the Trustee to attempt to locate any holder of an Allowed Class 14 Claim.

6.05 Withholding and Reporting Requirements. In connection with this Plan and all distributions to be made hereunder, the Liquidating Trust shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Liquidating Trust is authorized to take any and all actions that may be necessary or appropriate to comply with any such requirements.

6.06 Means of Cash Payments Made Pursuant to Plan. Cash payments made pursuant to this

Plan shall be in U.S. funds, by the means agreed to by the payor and the payee, including by check or wire transfer, or, in the absence of an agreement, such commercially reasonable manner as the Liquidating Trustee shall determine.

6.07 De Minimis Distributions. No Cash distribution of less than ten dollars (\$10.00) shall be made to any holder of an Allowed Claim Such undistributed amounts, if any, shall be distributed to Liquidating Trust.

6.08 Distribution Report. The Liquidating Trustee shall make all distributions required under this Plan, shall distribute the balance, if any, to Debtor, shall file a final report and account of all receipts and disbursements with the Debtor and all Class 14 Claimants, and shall thereafter be discharged from any further liabilities or obligations under this Plan.

## **ARTICLE VII**

### **Covenants**

7.01 Insurance. The Debtor shall maintain insurance with responsible and reputable insurance companies on such of its properties and against such risks as it is customary to maintain by reputable businesses engaged in similar business and owning or operating similar properties in the same general areas which the Debtor operate.

7.02 The Debtor shall pay all taxes, assessments and government charges or levies imposed upon the Debtor or their income or profits, or upon any property belonging to them, prior to the date on which the same shall be in default, which, if unpaid, might become a lien or charge upon the property of the Debtor; provided the Debtor shall not be required to pay any tax, assessment, charge, levy, obligation or claim, the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted.

## **ARTICLE VIII**

**Events of Default; Acceleration**

8.01 Events of Default. The occurrence of any of the following shall constitute an event of default under the Plan:

(a) Failure to Make Payments. Failure on the part of the Debtor to pay fully when due any payment required to be made in respect to the Plan debt;

(b) Failure to Perform Covenants. Failure on the part of the Debtor to perform or observe any term or provision set forth in Article VI of the Plan, which failure remains uncured for a period of thirty (30) days.

8.02 Declaration of Acceleration. If an event of default occurs, and is not cured within forty-five (45) days after a notice of default is served upon the Debtor in the manner prescribed in this Plan by the holder of the claim affected by said default, then the holder of said claim, after thirty (30) days after service of an acceleration notice is given in the manner prescribed in this Plan, may declare the entire claim due and payable unless the default is sooner cured.

**ARTICLE IX**

**Amendments and Waivers**

9.01 Except as otherwise specifically set forth in the Plan, any term of the Plan may be amended and the observance of any term of the Plan may be waived provided that all holders of claims who are effected by said amendment or waiver have received notice of said proposed amendment or waiver and have consented in writing to said change.

**ARTICLE X**

**Discharge**

10.01 Except as to any executory contract or unexpired lease assumed by the Debtor during the pendency of this bankruptcy, which assumption is hereby incorporated as a term of the Plan, on the Effective Date the Debtor shall be discharged from any debt that arose before the date of confirmation as provided in §1141(d)(1)(A) of the Code. All persons and entities shall be permanently enjoined through the Confirmation Order from taking any action against the Debtor or the Reorganized Company, or the assets of any of the foregoing entities to collect, enforce or secure their Claims. This provision shall not, however, prevent any holder of a Claim from taking any action to enforce the terms of this Plan.

10.02 Exculpation. Neither the Debtor nor the Reorganized Company, nor any of their respective members, officers employees, professionals or agents, shall in any way be liable for any acts relating to this case, except for acts undertaken in bad faith, gross negligence or willful misconduct, in the performance of their respective duties.

10.03 Affirmative Vote Acts as a Release. As of the Effective Date, to the fullest extent permitted under applicable law, in consideration for the obligations under the Plan and the cash, securities, contracts, instruments, releases and other agreements or documents to be delivered in connection with the Plan, each present and former holder of a Claim or Interest who votes in favor of the Plan will be deemed to release forever, waive and discharge the Debtor and the Reorganized Company of all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the rights to enforce the Debtor's obligations under the Plan and the securities, contracts, instruments, releases and other agreements and documents delivered with the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Debtor's

bankruptcy case, or this Plan. This section shall not be deemed a release by the Debtor or the Reorganized Company.

10.04 Injunction. Except as otherwise specifically provided in this Plan, all Persons, entities and Governmental Units who have held, hold or may hold Claims or Interests and any successors, assigns or representatives of the foregoing shall be precluded and permanently enjoined on and after the Effective Date, with respect to the Debtor and the Reorganized Company from (a) commencing or continuing in any manner any Claim, action or other proceeding of any kind with respect to any Claim, Interest or any other right or Claim which they possessed or may possess prior to the Effective Date, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any Claim, Interest or any other right or Claim which they possessed or may possess prior to the Effective Date, (c) creating, perfecting or enforcing any Lien or encumbrance of any kind with respect to any Claim, Interest or any other right or Claim which they possessed or may possess prior to the Effective Date, and (d) asserting any Claims that are released under this Plan.

## ARTICLE XI

### Retention of Jurisdiction

11.01 The court shall retain jurisdiction of this Chapter 11 case pursuant to and for the purposes set forth in §1127(b) of the Code and to:

(a) Hear and determine any and all pending applications for the rejection, assignment or assumption of executory contracts or unexpired leases or licenses and the allowance of claims resulting therefrom.

(b) To determine and adjudicate any and all pending adversary proceedings, applications and unlitigated matters.

(c) To determine and adjudicate any and all pending contested matters.

(d) To hear and determine any objections to claims filed both before and after confirmation, including objections to the classification of any claim or interest and to allow or disallow any disputed claim in whole or in part.

(e) To determine the amount, priority and validity and security of any claim asserted by a secured creditor.

(f) To hear and determine all applications for compensation of professional persons and reimbursement of expenses under §§ 330 and 331 of the Bankruptcy Code.

(g) To enter and implement such orders as may be appropriate in the event confirmation is for any reason stayed, reversed, revoked, modified or vacated.

(h) To hear the Debtor's application, if any, to modify the Plan in accordance with §1127 of the Bankruptcy Code. After confirmation, the Debtor may also, so long as it does not adversely affect the interests of the creditors, institute proceedings in the bankruptcy court to remedy any defect or omission or reconcile any inconsistencies in the Plan, disclosure statement, the confirmation order or the order approving the agreement to purchase, provided that prior notice of such proceedings is served in accordance with Bankruptcy Rules 2002, 7004, and 9016.

(i) To hear and determine disputes arising in connection with the Plan or its implementation.

(j) To hear any other matters not inconsistent with Chapter 11 of Bankruptcy Code.

## **ARTICLE XII**

### **Executory Contracts**

12.01 Reservation of Rights. Debtor reserve the right to assume or reject pursuant to §365 of the Code prior to the confirmation date. Any executory contract not specifically treated under Article IV, or not specifically assumed prior to the confirmation of the Plan shall be

deemed rejected.

### **ARTICLE XIII**

#### **Miscellaneous**

13.01 Headings. The headings in the Plan are for convenience or reference only and shall not limit or otherwise affect the meanings hereof.

13.02 Notices. All notices required or permitted to be made in accordance with the Plan shall be in writing and shall be delivered personally or mailed by registered or certified mail, return receipt requested:

(a) To Debtor: Northwestern Stone, LLC  
Attn: Richard C. Bakken  
P.O. Box 620071  
Middleton, WI 53562-0071

(b) To the Debtor's attorney: Timothy J. Peyton  
Kepler & Peyton  
634 W. Main St. Suite 202  
Madison, WI 53703

(c) No notice to the Debtor shall be deemed sufficient under this Plan unless notice is also given, in the manner prescribed herein, to the Debtor's counsel, at the address contained in this section.

13.03 Reservation of Rights. Neither the filing of this Plan, nor any statement or provisions contained herein, nor the taking by any creditors of any action with respect to this Plan shall (a) be or be deemed to be an admission against interest and (b) until the distribution date, be or be deemed to be a waiver of any rights which any creditor might have against Debtor or any of their properties or any other creditor of the Debtor, and until the distribution date all such rights are specifically reserved. In the event that the distribution date does not occur, neither this Plan nor any statement contained herein, may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside of the reorganization case involving



Debtor.

Dated this 7<sup>th</sup> day of September, 2012.

**NORTHWESTERN STONE, LLC**

**KEPLER & PEYTON**

/s/Richard C. Bakken  
Richard C. Bakken, Member

/s/ Timothy J. Peyton  
Timothy J. Peyton  
Attorneys for Debtor  
634 W. Main St., Ste. 202  
Madison, WI 53703  
(608) 257-5424

**Exhibit 1**

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

---

MCFARLAND STATE BANK,

Plaintiff,

vs.

NORTHWESTERN STONE, LLC

RICHARD C. BAKKEN, and

SHAREL L. BAKKEN

Defendants,

Case No. : 2010-CV-6664

Classification: 30301 Money Judgment  
30404 Mortgage Foreclosure  
30303 Other Contracts

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**STIPULATION FOR ENTRY OF A FORECLOSURE JUDGMENT UPON DEFAULT  
UNDER CONFIRMED CHAPTER 11 PLAN**

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WHEREAS, the above-named Defendant Northwestern Stone (“NWS”) is operating under a confirmed Amended Chapter 11 Plan of Reorganization dated August \_\_\_\_, 2012 (the “Plan”), filed in the matter of *In re* Northwestern Stone, LLC (W.D. of Wisconsin Bankruptcy Case No. 19137 (the “Bankruptcy Proceeding”)); and

WHEREAS, pursuant to the Plan, Plaintiff is entitled to a judgment in this Court upon the default of NWS under the Plan.

NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties hereto, that a Judgment of Foreclosure Upon Stipulation shall be entered in favor of Plaintiff and against the Defendant NWS, granting the Plaintiff a judgment of foreclosure of its mortgage, along with a deficiency judgment, against the property located at 4373 Pleasant View Drive, Town of Middleton, Wisconsin, and legally described as follows:

**Parcel A:**

That part of the Northwest ¼ of the Southwest ¼ of Section 10, Township 7 North, Range 8 East, in the Town of Middleton, Dane County, Wisconsin, lying South of the right-of-way of the Chicago, Milwaukee and St. Paul Railroad.

East line of said Southwest ¼ of Southwest ¼ being a point on road known as Pleasant View Road; thence North 30 feet to point of beginning.

**Parcel B:**

The Southwest ¼ of the Southwest ¼ of Section 10, Township 7 North, Range 8 East, in the Town of Middleton, Dane County, Wisconsin, EXCEPT, land conveyed by Warranty Deed recorded in Volume 3854 of Records, page 30, as Document No. 1752235.

IT IS HEREBY FURTHER STIPULATED that Defendants, for good and valuable consideration, hereby waive their right of redemption, and that Plaintiff may proceed to Sheriff's sale on the Mortgaged Property immediately upon entry of the Stipulated Foreclosure Judgment.

Dated: \_\_\_\_\_, 2012

**WHYTE HIRSCHBOECK DUDEK S.C.**  
For the Plaintiff McFarland State Bank

By: \_\_\_\_\_  
Daniel J. McGarry  
State Bar No. 1052213  
P.O. Box 1379  
Madison, WI 53703  
(608) 255-4440

**NORTHWESTERN STONE, LLC**

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit 2**

**LIQUIDATING TRUST AGREEMENT**

This Liquidating Trust Agreement (this "Agreement") is dated as of \_\_\_\_\_, 2012, by and between Northwestern Stone, LLC ( Debtor), and Claire Ann Resop not individually but solely as trustee (the "Trustee") of the Liquidating Trust (as defined hereinafter).

**RECITALS**

A. On December 16, 2010 (the "Petition Date"), Debtor filed a petition for relief under chapter 11 of title 11, U.S. Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), commencing a case pending in the U.S. Bankruptcy Court for the Western District of Wisconsin (the "Bankruptcy Court") as Case Nos. 10-19137 (the "Case");

B. On August \_\_, 2012, Debtor filed an Amended Plan of Reorganization (the "Plan"). The Plan contemplates that a liquidating trust (the "Liquidating Trust") be created for the benefit of the holders of Allowed Class 14 Claims;

C. On \_\_\_\_\_, 2012, the Plan was confirmed by order of the Bankruptcy Court dated that same date (the "Confirmation Order"); and

D. Debtor desires to create the Liquidating Trust, as contemplated by the Plan, pursuant to terms and provisions of this Agreement.

**AGREEMENTS**

NOW THEREFORE, for and in consideration of the mutual promises and agreements contained herein and in the Plan, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Debtor and the Trustee hereby agree as follows:

1. Definitions. Capitalized terms used herein shall have the meanings specified herein. Capitalized terms used but not defined herein shall have the meaning specified in the Plan, which meanings are hereby incorporated by reference. Where the context requires, such terms shall include the plural as well as the singular and the masculine gender as well as the feminine, and words importing persons shall include partnerships, associations, corporations and other entities.
  - 1.1 "Holder" shall mean a holder of an Allowed Class 14 Claim.
  - 1.2 "IRC" shall mean the Internal Revenue Code of 1986, as amended from time to time.
  - 1.3 "Liquidating Trust" shall have the meaning specified in Section 2.1 hereof.

1.4 "Trust Assets" shall have be the mortgages and liens specified in Section 4.14 of the Plan, which shall be irrevocably assigned, transferred and conveyed to the Liquidating Trust on the Effective Date pursuant to the terms hereof.

2. Authority of and Certain Directions to Trustee: Declaration of Trust

2.1 Creation of Liquidating Trust. Pursuant to Article V of the Plan and the Confirmation Order, and effective on the Effective Date of the Plan, the Holders and Debtor hereby create the Liquidating Trust for the benefit of the Holders.

2.2 Property in the Liquidating Trust. The Liquidating Trust shall hold legal title to all Trust Assets and shall hold such property in trust to be administered and liquidated, by sale, transfer or other disposition, pursuant to the terms and provisions of this Agreement and the Plan for the benefit of the Holders. The Trustee is hereby authorized to make disbursements and payments from the Trust Assets in accordance with the provisions of Sections 5 and 7 of this Agreement and pursuant to the Plan.

2.3 Purpose of Liquidating Trust. This Liquidating Trust is organized for the sole purposes of collecting and distributing the Trust Assets. In accordance with such express and limited purposes, as of the Effective Date the Trustee is hereby authorized and directed:

- (a) to take any and all steps necessary to maintain the Liquidating Trust as a liquidating trust for Federal income tax purposes in accordance with Treasury Regulation Section 301.7701-4(d) and as a "grantor trust" subject to the provisions of Subchapter J, Subpart E of the IRC unless otherwise required;
- (b) to take all reasonable and necessary actions to conserve and protect the Trust Assets; and
- (c) to sell or otherwise dispose of Trust Assets, in accordance with the terms and provisions of this Agreement, the Plan, or the Final Orders of the Bankruptcy Court, and to distribute the net proceeds of such disposition to the Holders, in as prompt, efficient and orderly a fashion as possible in accordance with the provisions of Section 7 hereof.

Further pursuant to these purposes, the Holders recognize that, although the Debtor is transferring the Trust Assets to the Liquidating Trust, the Holders are acquiring beneficial interests (the "Beneficial Interests") in a trust for their benefit and, as such, will be deemed grantors of the Liquidating Trust pursuant to the provisions of Subchapter J, Subpart E of the IRC.

3. Beneficial Interests.

- 3.1 Creation of Beneficial Interests. Beneficial Interests in the Liquidating Trust shall consist of one series.
- 3.2 Sharing of Proceeds. All Beneficial Interests shall rank equally as to priority of distributions from the Liquidating Trust and shall share ratably in the payment of all expenses, debts, charges, liabilities and obligations with respect thereto.
- 3.3 No Transfer or Exchange. Beneficial Interests will not be evidenced by any certificate or other instrument or document. Beneficial Interests are non-transferable and non-assignable other than to successors in interest, or by will, the laws of descent and distribution, or by operation of law (each a "Permitted Transfer").
- 3.4 Absolute Owners. The Trustee may deem and treat the persons who are Holders (as determined in accordance with the Plan) as the absolute owners of the Beneficial Interests for the purpose of receiving distributions and payments thereof, or on account thereof, and for all other purposes whatsoever. Unless the Trustee receives written notice of a Permitted Transfer from the duly authorized transferee not less than thirty (30) days prior to a distribution made pursuant to the terms and provisions of this Agreement, and subject to the applicable provisions of Bankruptcy Rule 3001(e), the Trustee shall have no duty or obligation to make or direct any distributions or payments to such transferee of a Permitted Transfer.

4. Delivery and Acceptance of Trust Assets.

- 4.1 Conveyance by Debtor. On the Effective Date, the Debtor shall execute and deliver to the Trustee the Note and Mortgages as specified in the Plan and Confirmation Order. At any time and from time to time after the date hereof at the Trustee's request and without further consideration, the Debtor shall execute and deliver such other instrument(s) and will cooperate and take such other actions as the Trustee may deem reasonably necessary or desirable in order to more effectively transfer, convey and assign all rights, title and interests in and to the Trust Assets.
- 4.2 Acceptance of Conveyance. The Trustee is hereby directed to, and the Trustee hereby agrees that she will:
- (a) accept the Trust Assets on behalf of the Liquidating Trust;
  - (b) accept from the Debtor, the Note and Mortgages required to be delivered by the Debtor with respect to the Trust Assets transferred to the Trustee on behalf of the Liquidating Trust pursuant to or in connection with the Plan, the Confirmation Order, or this Agreement; and
  - (c) take such other action as may be required of the Liquidating Trust

hereunder, including the receipt and acceptance as part of the Trust Assets of any notes and mortgages which the Trustee may receive in connection with or in consideration of the Trust Assets.

5. Administration of Trust Estate.

5.1 Powers of the Trustee.

- (a) Administrative Powers. During the Trustee's administration of the Liquidating Trust, and subject to all the terms and provisions of this Agreement, the Trustee may exercise the power:
- (i) to receive and hold all Trust Assets and to have exclusive possession and control thereof as permissible under applicable law;
  - (ii) to enter into, perform and exercise rights under contracts binding upon the Liquidating Trust (but not upon the Trustee in her individual or corporate capacity) which are reasonably incident to the administration of the Liquidating Trust and which the Trustee, in the exercise of her business judgment, reasonably believe to be in the best interests of the Liquidating Trust;
  - (iii) to establish and maintain accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which cash and property of the Liquidating Trust may be deposited, and draw checks or make withdrawals from such accounts, and to pay or distribute such proceeds of the Trust Assets as permitted or required under this Agreement;
  - (iv) to employ attorneys, accountants, or other persons whose services may be necessary or advisable in the sole judgment of the Trustee, to advise or assist her in the discharge of her duties as Trustee, or otherwise in the exercise of any powers vested in the Trustee, and to pay from the Trust Assets reasonable compensation to such attorneys, accountants, or other persons;
  - (v) to hold the Trust Assets;
  - (vi) to collect and receive proceeds derived from or relating to the Trust Assets and to distribute the same to the Holders in accordance with the terms of this Agreement;
  - (vii) to pay all necessary or appropriate expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Trust Assets;
  - (viii) to represent the interests of the Holders with respect to any matters relating to the Plan, this Agreement, or the Liquidating Trust affecting the rights of such Holders;
  - (ix) to do any and all other things, not in violation of any other terms of this Agreement, which, in the reasonable business judgment of the Trustee, are necessary or appropriate for the proper

liquidation and distribution of the Trust Assets, in accordance with the provisions of this Agreement and the Plan.

- 5.2 No Implied Duties. The Trustee shall not manage, control, use, sell, dispose, collect or otherwise deal with the Trust Assets or otherwise take any action hereunder except as expressly provided herein, and no implied duties or obligations whatsoever of the Trustee shall be read into this Agreement.
- 5.3 Administration of Trust. In administering the Liquidating Trust, the Trustee, subject to the express limitations contained herein, is authorized and directed to do and perform all such acts as she may deem necessary or advisable to carry out the purposes of the Liquidating Trust.
- 5.4 Fiscal Year. The Liquidating Trust's fiscal year shall end on December 31 of each year, unless the Trustee deems it advisable to establish some other date on which the fiscal year of the Liquidating Trust shall end.
- 5.5 Reports. The Trustee shall prepare, deliver, and file with the Debtor reports as follows:
- (a) Any interim financial reports as may be required by regulatory authorities, applicable laws, rules or regulations or as the Trustee deems necessary or appropriate during the fiscal year; and
  - (b) Any necessary income tax information, tax returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation 1.671-4(a), or reports to the Holders and applicable taxing authorities, including, on an annual basis, the manner and calculation of the Liquidating Trust's taxable gain or loss which the Liquidating Trust would recognize if it were a separate taxable entity. The Liquidating Trust and the Holders shall at all times consistently value the Trust Assets, and this value shall be used by the Liquidating Trust and the Holders for federal income tax purposes.
  - (c) A final report and account of all receipts and disbursements with the Debtor.

6. Source of Payments.

- 6.1 Distributions from Trust Assets. All payments to be made hereunder to the Holders shall be made only from the assets, income and proceeds of the Trust Assets and only to the extent that the Trustee shall have received sufficient assets, income or proceeds of the Trust Assets to make such payments. Each Holder shall look solely to the assets, income and proceeds of the Trust Assets, and not to the Trustee in her individual or corporate capacity for distribution to such Holder as herein provided.



7. Payments and Distributions.

7.1 Establishment of the Claim Accounts.

- (a) Claims List. Immediately after the Effective Date, the Debtor will deliver to the Trustee a list of all Holders of Allowed Class 14 Claims (the "Trust Claims Ledger"). The Trustee shall be entitled to rely upon the Trust Claims Ledger in calculating and making distributions from the Trust Assets as provided herein. The Trustee shall revise the Trust Claims Ledger from time to time upon receipt of notice from the holder of a Trust Claim stating that such Trust Claim has been transferred pursuant to a Permitted Transfer to a new holder, that the new holder has complied with any applicable provisions of Bankruptcy Rule 3001(e) (and providing evidence thereof), and setting forth the name and address of such new holder; provided, however, that the Trustee shall not be required to revise the Trust Claims Ledger during the thirty (30) day period preceding the date of any distribution made hereunder. The Trustee shall establish the revised Trust Claims Ledger that is to be used in conjunction with the distribution of any particular Distribution Amount not less than fourteen (14) days prior to such distribution.
- (b) Claim Account. Upon receipt of the Trust Claims Ledger, the Trustee will establish on the Liquidating Trust's books and records an account representing each Allowed Class 14 Claim as set forth on the Trust Claims Ledger (each, a "Claim Account"). It is expressly understood that the establishment of the Claim Accounts is solely for administrative convenience, and that amounts allocable to such Claim Accounts need not be segregated and may be commingled for investment purposes as specified herein.

7.2 Distribution. Upon the collection or liquidation of all Trust Assets, and in any event prior to the Termination Date (as defined in Section 7.13 hereof), the Trustee shall prepare a final accounting of any and all accounts maintained by the Trustee on behalf of the Liquidating Trust (the "Final Cash"). Once the amount of Final Cash has been determined, the Trustee shall deduct and pay therefrom all permitted costs, expenses and liabilities of the Liquidating Trust. The Trustee shall then distribute the Distribution to the Holders or the Debtor, as appropriate (the "Distribution Date").

7.3 Dissolution of Liquidating Trust. The Liquidating Trust shall be dissolved upon the liquidation of all of the Trust Assets and the distribution of the proceeds thereof to the Holders as set forth above, which date shall not be more than seven (7) years from and after the Effective Date (the "Termination Date"); provided, that if the Trustee agrees, in light of existing facts and circumstances, that the liquidation of the Trust Assets and the distribution of the proceeds thereof will not be completed prior to the Termination Date, then not more than ninety (90) days prior to the Termination Date, the Trustee may extend the Termination Date.

8. Concerning the Trustee.

8.1 Acceptance by Trustee. The Trustee accepts the Liquidating Trust hereby created for the benefit of the Holders and agree to act as Trustee of the Liquidating Trust pursuant to the terms and provisions of this Agreement. The Trustee shall have and exercise the rights and powers herein granted and shall be charged solely with the performance of the duties herein declared on the part of the Trustee. The Trustee also agrees to receive and disburse all monies actually received by them constituting part of the Trust Assets pursuant to the terms of this Agreement and the Plan.

8.2 Liability of the Trustee.

- (a) Limitation on Liability. No provision of this Agreement shall be construed to impart any liability upon the Trustee unless it shall be proven that the Trustee's actions or omissions constituted gross negligence or willful misconduct in the exercise of or failure to exercise any right or power under this Agreement.
- (b) Reliance on Certificates or Opinions. In the absence of gross negligence or willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and correctness of the opinions expressed upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement.
- (c) Discretion of Trustee. The Trustee, within the limitations and restrictions expressed and imposed herein, may act freely under all or any of the rights, powers and authority conferred hereby, in all matters concerning the Trust Assets, after forming her business judgment based upon the circumstances of any particular question or situation as to the best course to pursue, without the necessity of obtaining the consent or permission or authorization of the Holders, the Debtor or the Bankruptcy Court, or of any official or officer; and the rights, powers and authority conferred on the Trustee by this Agreement are conferred in contemplation of such freedom of reasonable business judgment and action within the limitations and restrictions so expressed and imposed; provided, however, that the Trustee shall not be liable for any error or exercise of judgment, unless it shall be proved that such Trustee was grossly negligent or acted in a manner which constituted willful misconduct.

8.3 Reliance by Trustee.

- (a) Genuineness of Documents. The Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, objection, order, judgment, decree, or other paper or document reasonably believed to be genuine and to have been signed, made, entered or presented by the proper party, official or entity.

- (b) Retention of Counsel. The Trustee may consult with legal counsel and with independent public accountants and other experts. The Trustee shall not be liable for any action taken or suffered by her or omitted to be taken by her without gross negligence or willful misconduct in reliance on any opinion or certification of such accountants or in accordance with the advice of such counsel or experts, provided that such accountants, counsel and experts were selected and retained with reasonable care.
- (c) Reliance on Trustee. No person dealing with the Trustee shall be obligated to see to the application of any monies, securities, or other property paid or delivered to them or to inquire into the expediency or propriety of any transaction or the right, power, or authority of the Trustee to enter into or consummate the same upon such terms as the Trustee may deem advisable. Persons dealing with the Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Trustee to such persons in carrying out the terms of this Agreement, and, except as otherwise expressly provided herein, the Trustee shall have no personal, individual or corporate obligation to satisfy any such liability.

#### 8.4 Indemnification.

- (a) Indemnification of Trustee and Agents. The Liquidating Trust hereby indemnifies to the full extent of the Trust Assets any person or entity who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that such person or entity is or was the Trustee or an employee or agent of the Liquidating Trust, from and against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or entity in connection with such action, suit or proceeding, including appeals thereof, if such person or entity acted without gross negligence and willful misconduct in the exercise and performance of any power or duties conferred under this Agreement.
- (b) Payment of Expenses. Expenses (including attorneys' fees) incurred in defending any action, suit or proceeding referred to in this Section 8.5 may be paid by the Liquidating Trust in advance of the final disposition of such action, suit or proceeding, upon an undertaking by the Trustee or an employee or agent of the Liquidating Trust to repay such amount unless it shall be determined that such person or entity is not entitled to be indemnified.
- (c) Insurance. The Liquidating Trust may maintain insurance during its existence and after its termination, at its expense, to protect itself and the Trustee, officers, employees or agents of the Liquidating Trust of and from any liability, whether or not the Liquidating Trust would have the legal power to directly indemnify the Trustee and any officers, employees, or agents of the Liquidating Trust against such liability. The terms "Trustee," "employer" or "agent" as used herein, where

applicable, include the heirs, successors, executors, administrators, personal representatives, or estates of such persons or entities.

8.5 Costs and Expenses of Trustee.

- (a) Costs and Expenses. The Trustee shall pay out of the Trust Assets all reasonable costs, expenses and obligations incurred by the Trustee in carrying out her duties under this Agreement or in any manner connected, incidental or related to the administration of the Liquidating Trust without application to or order of the Bankruptcy Court.

9. Supplement and Amendments to this Trust Agreement.

9.1 Supplements and Amendments. The Trustee may execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Agreement, or amendments thereto, as specified in such vote or consent, provided, however, that no such supplement or amendment shall:

- (a) require any Holder to furnish or advance funds to the Trustee or shall entail any additional personal liability or the surrender of any individual right on the part of any Holder except with the written consent of such Holder or
- (b) without the consent of those Holders holding not less than 66 2/3% (in aggregate dollar amount) of the Beneficial Interests, change or modify the provisions for distribution of the Trust Assets. In no event shall this Agreement be amended so as to change the purposes of the Liquidating Trust set forth in Section 2.

9.2 Notice and Form of Supplements and Amendments Requiring Vote or Consent. A copy of each amendment or supplement (or a summary thereof) shall be furnished to the Holders promptly after the execution thereof, except that with respect to any proposed amendment or supplement for which the consent of the Holders is required, the form of such proposed supplement or amendment (or a summary thereof) shall be furnished to the Holders before the Trustee seeks approval of the Holders.

9.3 Notice and Effect of Executed Amendment. Upon the execution of any declaration of amendment or supplement, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities of the Trustee and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Agreement.

10. Miscellaneous.

10.1 Title to Trust Assets. No Holder shall have title to any Trust Assets.

- 10.2 Sales of Trust Assets. Any sale, transfer or other disposition of any Trust Assets by the Trustee made in accordance with the terms and provisions of this Agreement shall bind the Holders and shall be effective to transfer or convey all right, title and interest of the Trustee and the Holders in and to such Trust Assets.
- 10.3 Notices. Unless otherwise expressly specified or permitted by the terms of the Plan or this Agreement, all notices shall be in writing and delivered by registered or certified mail, return receipt requested, or by a hand or by facsimile transmission (and confirmed by mail), in any such case addressed as follows:  
If to the Trustee:  
    Claire Ann Resop  
    Steinhilber, Swanson & Resop  
    122 W. Washington Ave. Suite 850  
    Madison, WI 53703  
    P: (608)  
    F: (608)
- If to any Holder, addressed to its latest mailing address reflected on the Trust Claims Ledger or as is appropriate pursuant to the terms of this Liquidating Trust Agreement.
- 10.4 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 10.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute this Agreement.
- 10.6 Binding Agreement. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Trustee and the Holders, and their respective personal representatives, successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by any party hereto or any Holder shall bind their respective heirs, personal representatives, successors and assigns.
- 10.7 No Personal Liability of Holders. The Holders will not incur any personal liability through their ownership or possession of their Beneficial Interests, except for taxes imposed on the Holders pursuant to applicable provisions of federal, state or local law with respect to the receipt of such Beneficial Interests or distributions from or transactions of the Liquidating Trust and other charges specified herein. Liabilities of the Liquidating Trust are to be satisfied in all events exclusively from the Trust Assets and such liabilities are not to attach to or be paid from any amounts

distributed to the Holders, regardless of when such distributions took place, or from the assets of the Holders.

- 10.8 Headings. The headings herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.
- 10.9 Governing Law. This Agreement, including all matters of construction, validity and performance hereof, shall in all respects be governed by, and construed and interpreted in accordance with the internal laws of the State of Wisconsin.
- 10.10 Construction with the Plan. The Plan is hereby incorporated by reference and is made a part hereof for all purposes. In the event of any inconsistency or conflict between the terms, conditions, definitions and provisions of this Agreement and the terms, conditions and provisions of the Plan, the Plan shall control.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed, as of the day and year first written above.

NORTHWESTERN STONE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CLAIRE ANN RESOP

\_\_\_\_\_  
Not individually, but solely in her capacity as Trustee of the  
Liquidating Trust