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7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF ARIZONA**

9 In re:

Chapter 11

10 TRI STATE STONE, INC.,

Case No. 0:16-bk-11275-SHG

11 Debtor.

**DEBTOR'S DISCLOSURE STATEMENT
DATED MARCH 3, 2017**

12
13 Tri State Stone, Inc., debtor and debtor-in-possession ("Debtor" or "Plan Proponent") in
14 the above-captioned chapter 11 bankruptcy case ("Case"), hereby submits its *Disclosure*
15 *Statement Dated March 3, 2017* ("Disclosure Statement") to assist Creditors in making
16 informed decisions when voting on the *Debtor's Plan of Reorganization Dated March 3, 2017*
17 ("Plan"), attached hereto as **Exhibit A**.

18 **ARTICLE 1**

19 **INTRODUCTION TO THE DISCLOSURE STATEMENT AND VOTING**

20 **1.1 Purpose of the Disclosure Statement.**

21 This Disclosure Statement sets forth certain information regarding Debtor's pre-petition
22 history, its assets, significant events that have occurred during the Case, a summary of the Plan,
23 including when and how Creditors will be paid, and a brief discussion of the confirmation process
24 and the voting procedures that holders of Claims in impaired Classes must follow for their votes to
25 be counted. The information provided herein is true and accurate based upon Debtor's personal
26 knowledge, information, and belief, as attested to by Debtor's signature below.

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1 The primary purpose of this Disclosure Statement is to provide adequate information to
2 those Creditors who are eligible to vote on the Plan so they can make a reasonably informed
3 decision with respect to exercising their rights to accept or reject the Plan. This Disclosure
4 Statement is not intended to be relied upon for any purpose other than to determine how to vote on
5 the Plan. Nothing contained herein shall be deemed conclusive advice on the tax or other legal
6 effects of the reorganization on holders of Claims or interests.

7 **You should consult your personal counsel or tax advisor on any questions or concerns**
8 **respecting tax, securities, or other legal consequences of the Plan.**

9 **1.2 Definitions.**

10 Unless otherwise defined herein, terms defined in the Plan shall have the same meaning
11 when used in this Disclosure Statement. In addition, unless otherwise defined herein or in the Plan,
12 terms used in this Disclosure Statement shall have the same meanings as in the Bankruptcy Code
13 (“Code”) or the Federal Rules of Bankruptcy Procedure (“Rules”), or, if not defined therein, their
14 ordinary meanings.

15 **1.3 Authorized Representations.**

16 This Disclosure Statement is the only document authorized by the Bankruptcy Court to be
17 used in connection with the solicitation of votes on the Plan. You should not rely upon any
18 representations or inducements made to secure your acceptance of the Plan other than those set
19 forth herein or in the Plan. **The Bankruptcy Court’s approval of this Disclosure Statement**
20 **does not constitute a certification or ruling by the Bankruptcy Court regarding the**
21 **completeness or accuracy of any statements contained herein. The information contained in**
22 **this Disclosure Statement came from Debtor.**

23 This Disclosure Statement is not the Plan. This Disclosure Statement and the Plan (**Exhibit**
24 **A** hereto) should be read in their entirety before you vote on the Plan. For the convenience of the
25 Creditors and holders of interests, the Plan is summarized in this Disclosure Statement, but all
26 summaries are qualified in their entirety by the Plan itself, which is controlling in the event of any
27 inconsistency. The financial information contained herein has been provided in good faith but has
28 not been audited by a certified public accountant and has not been prepared in accordance with

1 generally accepted accounting principles.

2 **1.4 Voting Procedures.**

3 To be entitled to vote, a Creditor must have an Allowed Claim that is impaired under the
4 Plan. Code § 1124 defines whether a Claim is impaired. To summarize, a Claim is impaired if the
5 Plan modifies the legal or contractual rights of the Claimant, or if the Plan does not cure and
6 reinstate the legal rights of the Claimant. A Creditor in a Class that will not, under any
7 circumstances, receive any distributions under the Plan, is not entitled to vote as the Class of which
8 it is a member is deemed to have rejected the Plan. If a Creditor holds more than one Claim in one
9 Class, all of the Claims in such Class will be aggregated and the Creditor will be entitled to one
10 vote in the amount of all aggregated Claims.

11 **All Creditors or parties in interest entitled to vote on the Plan may cast their votes for**
12 **or against the Plan by completing, dating, and signing the Ballot that accompanies this**
13 **Disclosure Statement and timely sending the Ballot to Debtor's counsel as directed below.**

14 For the Ballot to be considered, the original Ballot must be mailed to Debtor's counsel.
15 The Bankruptcy Court has issued an order requiring that all votes for the acceptance or rejection of
16 the Plan be **received by close of business on _____**. The Ballot should be sent to
17 Debtor's counsel at the following address:

18 Thomas H. Allen, Esq.
19 Philip J. Giles, Esq.
20 **ALLEN BARNES & JONES, PLC**
1850 N. Central Ave., Suite 1150
Phoenix, Arizona 85004

21 **Your Ballot will not be counted if Debtor's counsel receives it after such deadline.**

22 You may not change your vote after casting it unless the Bankruptcy Court permits such change
23 after notice and a hearing to determine whether sufficient cause exists to permit the change.

24 **1.5 Confirmation of the Plan.**

25 For the Plan to be effective, it must be confirmed, which means that the Bankruptcy Court
26 has approved the Plan. For the Plan to be confirmed, votes by each impaired Class representing at
27 least two-thirds (2/3) in amount of the Allowed Claims voting in each Class and greater than one-
28 half (1/2) in number of individual Creditors for such class (of those casting votes) must be

1 submitted in favor of acceptance of the Plan. If the requisite acceptances are not obtained from one
2 or more impaired Classes, pursuant to Code § 1129(b), the Bankruptcy Court may nonetheless
3 confirm the Plan if one impaired Class accepts the Plan and the Bankruptcy Court finds that the
4 Plan provides, among other things, fair and equitable treatment of the Classes rejecting the Plan,
5 and that Creditors receive as much or more under the Plan than they would receive in a Chapter 7
6 liquidation (discussed more fully below).

7 When confirmed by the Bankruptcy Court, the Plan will bind all holders of Claims,
8 whether or not they are entitled to vote, or did vote on the Plan, and whether or not they received or
9 retained any distributions or Property under the Plan.

10 **1.6 Debtor's Recommendation to Vote in Favor of The Plan.**

11 Debtor strongly urges each Creditor to vote to accept the Plan. Debtor believes that each
12 Person or entity entitled to vote will conclude that the Plan is fair, reasonable, and provides the
13 greatest return to the greatest number of Creditors.

14 **ARTICLE 2**

15 **TRI STATE STONE, INC.**

16 **2.1 History of Debtor and Incidents Leading to Bankruptcy Filing.**

17 Debtor is an Arizona corporation with its principal place of business located in
18 Somerton, Arizona. Debtor installs granite and quartz countertops in commercial and
19 residential buildings and subcontracts with a number of general contractors throughout the
20 Yuma area. Debtor also has a "slab yard" on the property it leases where customers can visit
21 and select different types of stone to use for various projects. Victor Flores is the manager and
22 100% shareholder Debtor.

23 Due to Debtor's success with counter-top installation, Debtor expanded its operations to
24 include designing and building custom cabinets. Unfortunately, Debtor was unsuccessful with
25 the custom cabinetry business and began to suffer negative cash flow as a result of low revenues
26 and high expenses associated with the custom work. Debtor was eventually forced to obtain
27 hard-money loans in order to finance its operations. Debtor could not maintain the payment
28 obligations to the various lenders which quickly led to multiple lawsuits being filed against

1 Debtor. See Article 9, *infra*.

2 Debtor also obtained loans from its landlord, Jose H. Rojas, and Debtor offered its
3 vehicles as security for the loans owed to Mr. Rojas. However, due to Debtor's cash flow
4 problems, Debtor was unable to maintain payments to Mr. Rojas. As a result of these
5 circumstances, Debtor had no choice but to file for relief under Chapter 11 of the Bankruptcy
6 Code to reorganize its debt obligations.

7 **2.2 Debtor's Future**

8 Debtor will return to its roots and focus primarily on installing stone countertops.
9 Debtor will no longer build custom cabinets, but will continue to install manufactured cabinets,
10 which is similar to the installation of countertops. With the combination of these actions,
11 Debtor anticipates having sufficient post-petition income and funding to provide for ongoing
12 business expenses, its Priority and Secured Creditors in full over the life of the Plan, and
13 provide more towards its Allowed Unsecured Creditors than they would receive in a Chapter 7
14 liquidation.

15 **2.3 Debtor's Financial Position and Budget.**

16 Debtor has an average monthly income of \$58,000.00 and expenses of \$54,800.00.
17 With Plan payments of \$1,744.75, Debtor's monthly net income available for Creditors is
18 \$1,455.25. Debtor has created a Plan budget, attached hereto as **Exhibit B**, which reflects that
19 the Debtor is able to pay its expenses and make payments to its Creditors as required under the
20 Plan.

21 **2.4 Anticipated Payments to Creditors.**

22 After payment of Priority Claims and Secured Claims, Debtor will make annual payments
23 to satisfy claims of its Allowed Unsecured Creditors. Because the Somerton and Yuma markets
24 are seasonal in nature, annual payments to the Allowed Unsecured Creditors will help ensure
25 Debtor maintains the Plan payment obligations without the burden of providing for monthly
26 payments during lower revenue months. Ultimately, Debtor is confident that it will be able to
27 maintain all Priority and Secured Claim payments and return a total of \$87,314.79 to Allowed
28 Unsecured Creditors over the life of the Plan.

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ARTICLE 3

DEVELOPMENTS DURING THE BANKRUPTCY CASE

3.1 Bankruptcy Proceeding.

On September 30, 2016, Debtor filed a petition for relief under Chapter 11 of the Code. Debtor employed Allen Barnes & Jones, PLC (“AB&J”) to represent it in this Case, and AB&J’s employment was approved by this Court on October 4, 2016 [Docket No. 11].

On November 9, 2016, the Meeting of Creditors was held and concluded.

On November 10, 2016, the Court held the Chapter 11 Case Management Hearing.

On December 15, 2016, Debtor lodged a *Stipulated Interim Order Authorizing Debtor’s Use of Cash Collateral* [Docket No. 24], which was approved by the Court on December 15, 2016 [Docket No. 25]. The Stipulated Order was agreed to by and between Debtor and On Deck Capital, Inc. (“On Deck”).

3.2 Claims Register

As of the filing of the Disclosure Statement, six (6) proofs of claims have been filed. See Claims Register. The total amount claim is \$216,967.32. The total amount of secured claims is \$139,457.46, and the total of priority claims is \$4,738.49. Debtor is in the process of reviewing each proof of claim filed. In the event Debtor disputes a proof of claim, Debtor will timely object to the proof of claim and/or try to reach an informal resolution with the relevant creditor.

ARTICLE 4

SUMMARY OF DEBTOR’S CURRENT FINANCIAL CONDITION

Debtor’s current financial condition is detailed in its Schedules and Statements of Financial Affairs, as amended, the Monthly Operating Reports that have been and will continue to be filed with the Bankruptcy Court, and the Budget attached hereto as Exhibit B. Interested parties are encouraged to review the Schedules, Statements of Financial Affairs, Monthly Operating Reports, along with the attachments hereto. As set forth in Article 2.4 above, Debtor will have monthly disposable net income to pledge a return of \$87,314.79 to the Allowed Unsecured Creditors over the life of the Plan.

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ARTICLE 5

DESCRIPTION OF ASSETS

Debtor's Assets are listed on its Schedules and Statements of Financial Affairs filed in this Bankruptcy Case, and as amended. Debtor determined the liquidation value of the assets by personal knowledge and searching for resale values online. Debtor has created a Liquidation Analysis Chart that details the liquidation value of Debtor's non-exempt Assets, attached hereto as **Exhibit C**. See also Article 10 below. Due to On Deck's, Everest Business Funding's, and Jose Rojas' security interests, as of the petition date, Debtor's assets are fully encumbered.

ARTICLE 6

POST-CONFIRMATION CONTROL

Debtor will retain control of its Assets and use its income to make the payments set forth in the Plan. Debtor shall be responsible for preparing and filing quarterly post-confirmation financial reports. Copies of those reports will be provided to the United States Trustee's Office. During the term of the Plan, Debtor will pay, in cash, or other certified funds, quarterly fees to the United States Trustee's Office.

ARTICLE 7

SUMMARY OF THE PLAN

This section contains a brief summary of the Plan, and it is qualified in its entirety by reference to the Plan (Exhibit A), which accompanies this Disclosure Statement. **THIS SUMMARY DOES NOT PURPORT TO BE COMPLETE. THE PLAN ITSELF CONTROLS THE RELATIONSHIP BETWEEN DEBTOR AND ITS CREDITORS. YOU SHOULD READ THE PLAN IN ITS ENTIRETY PRIOR TO CASTING YOUR BALLOT.**

7.1 Classification and Treatment of Claims.

7.1.1 Class I - Administrative Claims.

Class I consists of the allowed Administrative Claims for actual and necessary costs and expenses of administration entitled to priority under Code §§ 503(b) and 507(a)(1). This Class includes, without limitation, post-petition tax Claims, Debtor's attorneys' fees, any post-petition accounting fees, and fees due the United States Trustee, if any. Upon retention of

1 AB&J, Debtor provided AB&J with a retainer in the amount of \$17,000.00. AB&J applied to
2 \$7,930.32 to pre-bankruptcy advice, services, and costs, and the Chapter 11 filing fee prior to
3 the Petition Date. The remaining \$9,069.68 of the retainer is held in AB&J's trust account.
4 AB&J has not yet filed applications for attorneys' fees in this Case, but as of this filing, AB&J's
5 fees and costs total approximately \$14,200.00. While Plan litigation is possible, at this time
6 Debtor anticipates that AB&J will not accrue significant attorneys' fees and costs in pursuing
7 confirmation of the Plan. The holders of Allowed Class I Claims shall be paid in full on the
8 Effective Date of the Plan or upon such other terms as Debtor and the holders of Allowed Class
9 I Claims agree. Class I Claims are unimpaired.

10 **7.1.2 Class II – Priority Claims.**

11 Class II consists of all Claims which are entitled to priority treatment pursuant to
12 Code § 507(a). Each holder of a Priority Claim in Class II is considered to be in its own
13 separate subclass within Class II, and each such subclass is deemed to be a separate Class for
14 purposes of the Plan. Class II consists of various subclasses of asserted priority Creditor
15 Claims. Unless otherwise specified, holders of Allowed Priority Claims in any of the Class II
16 subclasses shall receive payment in full within five years of the Petition Date. The first
17 payment will be due on the Effective Date and payments shall continue on a monthly basis
18 thereafter.

19 **7.1.2.1 Class II(a) - Claim of Arizona Department of Economic**
20 **Security.**

21 Class II(a) consists of any Allowed Priority Claim of the Arizona
22 Department of Economic Security ("ADES") relating to unemployment taxes due by Debtor.
23 The Allowed Class II(a) Claim is in the total amount of \$1,865.63 [Claim No. 1]. The interest
24 rate paid to the Allowed Class II(a) Claim shall be four percent (4.0%) per annum. The holder
25 of the Allowed Class II(a) Claim shall receive payment of the Allowed Class II(a) Claim in full,
26 in equal monthly payments of \$34.36 beginning on the Effective Date and continuing through
27 August 30, 2021. No prepayment penalty shall pertain to the Class II(a) Claim.

1 If Debtor fails to comply with the provisions of the Plan with respect to
2 the liability owed to the ADES, which includes but is not limited to, the failure to make full and
3 timely payments, such failure shall constitute a default under the Plan. If Debtor fails to cure
4 the default within 30 days after written notice of the default from the ADES or its agents, the
5 entire balance due to the ADES shall be immediately due and owing. In the event of a default,
6 the ADES may enforce the entire amount of its Claim, exercise any and all rights and remedies
7 under applicable non-bankruptcy law, which include, but are not limited to, state tax collection
8 procedures and any other such relief as may be deemed appropriate by the Bankruptcy Court.
9 Class II(a) is impaired.

10 **7.1.2.2 Class II(b) - Claim of Internal Revenue Service.**

11 Class II(b) consists of the Allowed Priority Claim of the Internal Revenue
12 Service (IRS) relating to Debtor's income taxes. The Allowed Class II(b) Claim is in the total
13 amount of \$2,872.86 [Claim No. 5]. Allowed Class II(b) Claim shall be paid with interest at the
14 statutory rate set forth in I.R.C. §§ 6621 and 6622 that is in effect during the month the Plan is
15 confirmed (currently 4.0% compounded daily). The holder of the Allowed Class II(b) Claim
16 shall receive payment of the Allowed Class II(b) Claim in full, in equal monthly payments of
17 \$52.91 beginning on the Effective Date and continuing through August 30, 2021. Additionally,
18 the IRS asserts a general Unsecured Claim in the amount of \$3,362.25, which shall be treated
19 and paid as an Allowed Class IV General Unsecured Claim. No prepayment penalty shall
20 pertain to the Class II(b) Claim.

21 In the event Debtor defaults on any payment due to the holder of the
22 Class II(b) Claim as required under the confirmed Plan, and in the event Debtor fails to cure
23 said default within 30 days after written notice of the default is mailed to Debtor and its
24 attorneys, the entire imposed liability together with any unpaid current liabilities, shall become
25 due and payable immediately. The IRS may collect unpaid liabilities that become due as a
26 result of the default through the administrative collection provision or judicial remedies as set
27 forth in the Internal Revenue Code. The IRS shall not be required to seek a modification from
28 the automatic stay to collect any tax liabilities from property that reverts with Debtor. Class

1 II(b) is impaired.

2 **7.1.3 Class III – Secured Claims.**

3 Class III consists of various subclasses of asserted Secured Creditor Claims.
4 Each holder of a Secured Claim in Class III is considered to be in its own separate subclass
5 within Class III, and each such subclass is deemed to be a separate Class for purposes of the
6 Plan. Unless otherwise specified below, holders of Allowed Secured Claims in any of the Class
7 III subclasses shall receive full payment of the amount of their Allowed Secured Claims. Any
8 of Debtor’s defaults under loan documents with the Allowed Secured Claimants shall be
9 deemed cured as of the Effective Date and to the extent such loan documents provide for default
10 resulting from Debtor’s bankruptcy filings, such default shall not be enforceable.
11 Notwithstanding any pre-bankruptcy agreements with Class III Claimants, Debtor’s statement
12 of the value of each Secured Claim shall be final unless a Creditor objects to Debtor’s value
13 prior to the confirmation of the Plan. Unless otherwise specified herein or in an order entered
14 by the Bankruptcy Court, holders of Allowed Secured Claims shall retain any existing perfected
15 liens to secure Debtor’s obligations under the Plan. Payments to holders of Allowed Class III
16 Secured Claims will begin on the Effective Date.

17 **7.1.3.1 Class III(a) – Secured Claim of Jose H. Rojas.**

18 Class III(a) consists of the Allowed Secured Claim of Jose H. Rojas
19 relating to a 2007 Chevrolet Silverado (“2007 Silverado”). Mr. Rojas has an Allowed Secured
20 Claim in the amount of \$12,500.00. The Allowed Secured Claim shall be amortized over five
21 (5) years and accrue interest a 4.0% per annum. Payments in the approximate amount of
22 \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall retain his lien
23 encumbering the 2007 Silverado. No prepayment penalty shall pertain to this Claim. Class
24 III(a) is impaired.

25 **7.1.3.2 Class III(b) – Secured Claim of Jose H. Rojas.**

26 Class III(b) consists of the Allowed Secured Claim of Jose H. Rojas
27 relating to a 2008 Chevrolet Silverado (“2008 Silverado”). Mr. Rojas has an Allowed Secured
28 Claim in the amount of \$12,500.00. The Allowed Secured Claim shall be amortized over five

1 (5) years and accrue interest a 4.0% per annum. Payments in the approximate amount of
2 \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall retain his lien
3 encumbering the 2008 Silverado. No prepayment penalty shall pertain to this Claim. Class
4 III(b) is impaired.

5 **7.1.3.3 Class III(c) – Secured Claim of Jose H. Rojas.**

6 Class III(c) consists of the Allowed Secured Claim of Jose H. Rojas
7 relating to a 2008 Chevrolet Avalanche (“2008 Avalanche”). Mr. Rojas has an Allowed
8 Secured Claim in the amount of \$12,500.00. The Allowed Secured Claim shall be amortized
9 over five (5) years and accrue interest a 4.0% per annum. Payments in the approximate amount
10 of \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall retain his lien
11 encumbering the 2008 Avalanche. No prepayment penalty shall pertain to this Claim. Class
12 III(c) is impaired.

13 **7.1.3.4 Class III(d) – Secured Claim of Jose H. Rojas.**

14 Class III(d) consists of the Allowed Secured Claim of Jose H. Rojas
15 relating to a 1999 Chevrolet Silverado (“1999 Silverado”). Mr. Rojas has an Allowed Secured
16 Claim in the amount of \$12,500.00. The Allowed Secured Claim shall be amortized over five
17 (5) years and accrue interest a 4.0% per annum. Payments in the approximate amount of
18 \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall retain his lien
19 encumbering the 1999 Silverado. No prepayment penalty shall pertain to this Claim. Class
20 III(d) is impaired.

21 **7.1.3.5 Class III(e) – Secured Claim of On Deck.**

22 Class III(e) consists of the Allowed Secured Claim of On Deck relating to
23 security interest in the Debtor’s now owned or hereafter acquired property (“Non-Vehicle
24 Assets”), as evidenced by a UCC Financing Statement, filed with the Arizona Secretary of State
25 at document no. 2015-001-6786-2. On Deck’s Claim is undersecured, and On Deck shall have
26 an Allowed Secured Claim in the amount of \$40,000.00. On Deck shall have an Allowed
27 Unsecured Claim for \$46,942.86, which shall be treated in section 7.1.4, *infra*.

28

1 On Deck's Allowed Secured Claim shall be amortized over five (5) years
2 and accrue interest at 4.0% per annum. Payments in the approximate amount of \$736.66 per
3 month shall begin on the Effective Date. Upon full payment of On Deck's Allowed Secured
4 Claim, On Deck shall release its lien encumbering Debtor's Non-Vehicle Assets. No
5 prepayment penalty shall pertain to this Claim. Class III(e) is impaired.

6 **7.1.3.6 Class III(f) – Secured Claim of Everest Business Funding.**

7 Class III(f) consists of the Allowed Secured Claim of Everest Business
8 Funding ("Everest") relating to its second-position Secured Claim encumbering the Debtor's
9 Non-Vehicle Assets. Because Everest's security interest is second-in-priority to On Deck, and
10 because On Deck's Claim is undersecured, Everest's Allowed Claim is wholly unsecured.
11 Pursuant to Bankruptcy Code Sections 506(a) and (d), and 1123(b)(5), any and all of Everest's
12 Class III(f) Secured Claim, security interest, or lien encumbering the Non-Vehicle Assets shall
13 be fully released, discharged, and satisfied as of the Effective Date. The Debtor shall be entitled
14 to record or file the confirmation order in conjunction with any necessary release with the
15 Arizona Secretary of State to provide notice of such release, discharge, and satisfaction of such
16 purported secured claim. The entirety of the Allowed Class III(f) Claim shall be treated as a
17 Class IV unsecured Claim under the Plan. See section 7.1.4, *infra*. Class III(f) is impaired.

18 **7.1.4 Class IV – General Unsecured Creditors.**

19 Class IV consists of all Allowed Unsecured Claims that are not entitled to
20 classification in any other class of claims. Holders of Allowed Class IV Claims shall be paid
21 the sum of \$87,314.79 over five years. Debtor shall make the payments to the holders of
22 Allowed Class IV Claims on the first Business Day that occurs 11 months after the Effective
23 Date ("Initial Payment Date") and every year thereafter for four years based upon each Class IV
24 Claim's *pro rata* share of potential Unsecured Claims. Such payments shall be as follows: (i)
25 Year One — \$17,463; (ii) Year Two — \$17,463; (iii) Year Three — \$17,463; (iv) Year Four —
26 \$17,463; and (v) Year Five — \$17,462.79. No interest will accrue or be paid to the holders of
27 the Allowed Class IV Claims. If a Class IV Claim is not an Allowed Claim prior to 30 days
28 after the Effective Date, such Class IV Claim holder shall receive payment on the one year

1 payment date that falls after its Class IV Claim becomes an Allowed Claim. Class IV is
2 impaired.

3 **ARTICLE 8**

4 **MEANS TO IMPLEMENT PLAN**

5 The Plan will be implemented upon entry of an order by the Bankruptcy Court
6 confirming the Plan. Upon the Effective Date, or at such other time as specifically provided for
7 in the Plan, creditors holding Allowed Claims will receive the treatment provided for in the
8 Plan. Creditors will only be entitled to the treatment of the Class of Claims within which they
9 belong upon having their claim allowed.

10 The Plan will be funded from Debtor's post-confirmation income. Through hard work
11 and by restructuring its debts, Debtor is confident that it can fulfill its obligations under the
12 Plan. See Disclosure Statement Article 2.2.

13 **ARTICLE 9**

14 **NON-BANKRUPTCY LITIGATION**

15 Debtor was named as a defendant in four (4) pre-petition lawsuits, which led to Debtor
16 filing its bankruptcy petition. The lawsuits were initiated by various creditors and are described
17 below:

- 18 • *Elite Woodworking, Inc. v. [Debtor]*; Yuma County Superior Court, case no.
19 CV201600489. Elite Woodworking, Inc. filed a complaint for breach of contract.
- 20 • *Felipe Meza v. [Debtor]*; Industrial Commission of Arizona, ICA Claim no.
21 20162090052, Ins. Claim No. WC10122346, related to a worker's compensation
22 insurance claim.
- 23 • *On Deck Capital, Inc. v. [Debtor] and Victor Flores*; In the Arlington County
24 Circuit Court for the Commonwealth of Virginia, Case No. 16-2181. On Deck filed
25 a complaint for breach of contract and breach of guaranty.
- 26 • *Supreme Hardwoods of Arizona, LLC dba Superior Hardwoods v. [Debtor], Victor*
27 *Flores and Francis Flores*, Maricopa Justice Court – Downtown Precinct, case no.
28 002016109590RC. Superior Hardwoods filed a complaint for breach of contract and

1 breach of guaranty.

2 The four lawsuits were stayed as to Debtor as a result of the bankruptcy filing. Debtor
3 does not anticipate any of these suits will be transferred to the bankruptcy court and prosecuted
4 through an adversary proceeding.

5 **ARTICLE 10**

6 **LIQUIDATION ANALYSIS**

7 As a condition to confirmation, Code § 1129(a)(7) requires the Plan to provide that each
8 Creditor either accept the Plan or receive from Debtor's estate as much under the Plan as each
9 Creditor would receive in a Chapter 7 liquidation. Debtor's assets and liabilities are listed in its
10 Schedules and Statement of Financial Affairs, and as amended. Debtor's Liquidation Analysis
11 Chart that details the liquidation value of Debtor's non-exempt Assets is attached hereto as
12 Exhibit C. Debtor has investigated and is unaware of any receivable owing to it or any transfer
13 that may be avoided for the benefit of the bankruptcy estate. As the Debtor's assets are fully
14 encumbered, Debtor is able to pay Unsecured Creditors in excess of what they would recover in
15 a Chapter 7 liquidation.

16 **ARTICLE 11**

17 **TAX ISSUES**

18 Pursuant to 11 U.S.C. § 1125(a)(1), the Debtor must provide a discussion of the
19 potential material tax consequences of the Plan to the Debtor and any successor to the Debtor,
20 and a hypothetical investor typical of the holders of Claims or Interests in the Bankruptcy Case,
21 that would enable such a hypothetical investor of the relevant Class to make an informed
22 judgment about the Plan. However, the Debtor need not include such information about any
23 other possible or proposed plan. In determining whether the Disclosure Statement provides
24 "adequate information" as required by 11 U.S.C. § 1125, the Court must consider the
25 complexity of the case, the benefit of additional information to creditors and other parties in
26 interest, and the cost of providing additional information.

27 The following discussion summarizes certain considerations that may affect the
28 anticipated federal income tax consequences of the Plan's implementation to Creditors and to

1 the Debtor. It does not address all federal income tax consequences of the Plan nor does it
2 address the state or local income tax or other state or local tax consequences of the Plan's
3 implementation to Creditors or to the Debtor.

4 This description of the federal income tax consequences of implementing the Plan is
5 based on the Debtor's interpretation of the applicable provisions of the Internal Revenue Code
6 of 1986, as amended, the regulations promulgated thereunder, and other relevant authority.
7 The Debtor's interpretation, however, is not binding on the IRS or any court. The Debtor has
8 not obtained, nor does it intend to obtain, a private letter ruling from the IRS, nor has the
9 Debtor obtained an opinion of counsel with respect to any of these matters. The discussion
10 below is general in nature and is not directed to the specific tax situation of any particular
11 interested taxpayer. **For these reasons, all creditors and Interest Holders should consult
12 with their own tax advisors as to the tax consequences of implementation of the Plan to
13 them under applicable federal, state, and local tax laws.**

14 **11.1 Tax Consequences to the Debtor.**

15 In general, the amount of any debt of a business entity that is partially or totally
16 discharged pursuant to a Title 11 bankruptcy case is excluded from gross income. Generally,
17 the amount of debt discharge income that is excluded from gross income must be applied to
18 reduce the tax attributes of the Debtor. The Debtor's tax attributes are reduced in the following
19 order: (1) net operating losses; (2) general business credits; (3) minimum tax credit; (4) net
20 capital loss and net capital loss carryovers; (5) reduction in tax basis of the Debtor's property
21 (both depreciable and non-depreciable); (6) any passive activity loss and credit carryovers from
22 the taxable year of the discharge; and (7) foreign tax credit carryovers. The Debtor may elect
23 to apply the debt discharge exclusion first to depreciable property and thereafter to the tax
24 attributes in the above-prescribed order.

25 **11.2 Tax Consequences to the Secured Creditor and Unsecured Creditors.**

26 Both the Secured Creditor and/or the Unsecured Creditors may be required to
27 report income or be entitled to a deduction as a result of the implementation of the Plan. The
28 exact tax treatment depends on, among other things, each Claimant's method of accounting, the

1 nature of each Claimant's claim, and whether and to what extent such Claimant has taken a bad
2 debt deduction in prior taxable years with respect to the particular debt owed to it by the
3 Debtor. **Each Holder of a Secured Claim or Unsecured Claim is urged to consult with his,
4 her, or its own tax advisor regarding the particular tax consequences of the treatment of
5 his, her, or its claim under the Plan.**

6 **11.3 Tax Consequences to the Interest Holders.**

7 Each Interest Holder of the Debtor is urged to consult with his, her, or its own
8 tax advisor regarding the particular tax consequences of the treatment of his, her, or its interest
9 under the Plan.

10 **DEBTOR MAKES NO REPRESENTATIONS REGARDING ANY TAX IMPLICATIONS
11 RESULTING FROM CONFIRMATION OF THE PLAN. CLAIMANTS AND PARTIES
12 IN INTEREST ARE ADVISED TO CONSULT WITH THEIR TAX ADVISORS
13 CONCERNING THE INDIVIDUAL TAX CONSEQUENCES OF THE TRANSACTIONS
14 CONTEMPLATED BY THE PLAN, INCLUDING STATE AND LOCAL TAX
15 CONSEQUENCES.**

14 **ARTICLE 12**

15 **BALLOTING INSTRUCTIONS**

16 Impaired Creditors are entitled to vote to accept or reject this Plan. THIS PLAN CANNOT
17 BE CONFIRMED IF THE PLAN DOES NOT RECEIVE AT LEAST TWO-THIRDS (2/3) IN
18 AMOUNT AND MORE THAN ONE-HALF (1/2) IN NUMBER OF ALLOWED CLAIMS
19 VOTING IN EACH IMPAIRED CLASS, provided, however, if the requisite acceptances are not
20 obtained from one or more impaired Classes, the Court may nonetheless confirm the Plan pursuant
21 to Code § 1129(b) if one impaired Class accepts the Plan and the Court finds that the Plan
22 provides, among other things, fair and equitable treatment of the Classes rejecting the Plan and that
23 Creditors receive as much or more under the Plan than they would receive in a Chapter 7
24 liquidation.

25 **ARTICLE 13**

26 **MODIFICATION OF PLAN**

27 Debtor reserves the right to modify the Plan in accordance with the provisions of the Code
28 as follows:

1 **13.1 Pre-Confirmation.**

2 In accordance with Code § 1127(a), Debtor may propose a Plan modification in writing at
3 any time before its Confirmation, provided that the Plan, as thus modified, meets the requirements
4 of Code §§ 1122 and 1123, and Debtor complies with Code § 1125.

5 **13.2 Post-Confirmation.**

6 In accordance with Code § 1127(b), Debtor may modify the Plan at any time after its
7 confirmation and before its substantial consummation, provided that the Plan as thus modified
8 meets the requirements of Code §§ 1122 and 1123, provided further that the circumstances then
9 existing justify such modification and the Court confirms the Plan as modified under Code § 1129.

10 **13.3 Objections.**

11 Any holder of a Claim or equity interest that has accepted or rejected the Plan will be
12 deemed to have accepted or rejected, as the case may be, the Plan as modified unless, within the
13 time fixed by the Bankruptcy Court for doing so, such holder changes its previous acceptance or
14 rejection.

15 **13.4 Effect.**

16 Any and every modification of the Plan will supersede the previous version of the Plan as
17 and when ever each modification is effective. When superseded, the previous version of the Plan
18 will be in the nature of a withdrawn or rejected settlement proposal, and will be null, void and
19 unusable by Debtor or any other party for any purposes whatsoever with respect to any of the
20 contents of such version of the Plan.

21 **13.5 Default.**

22 If Debtor is unable to perform the terms and conditions of the Plan, they will be in default.
23 Any Creditor may seek to enforce the Plan and bring a motion to convert or dismiss the case under
24 Section 1112(b), after the Plan is confirmed, if there is a default in performing under the Plan, or
25 for other administrative deficiencies. Before doing so, the Creditor must provide written notice to
26 Debtor specifying the nature of the alleged default and a 30-day period to cure the default. Any
27 notice must be in writing and sent via certified mail to Debtor at the address on file with the Clerk
28 of this Court and with a copy sent via certified mail to:

1 Thomas H. Allen, Esq.
2 Philip J. Giles, Esq.
3 ALLEN BARNES & JONES, PLC
1850 N. Central Ave., Suite 1150
Phoenix, Arizona 85004

4 In the event the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all
5 property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant
6 to the Plan, including specifically all causes of action or claims for preference, recovery of
7 transferred assets, or damages will then vest in the Chapter 7 estate, and the automatic stay will be
8 reimposed upon the vested property only to the extent that relief from stay was not previously
9 granted by the Court during the case.

10 ARTICLE 14

11 CONFIRMATION, RISKS & RECOMMENDATION

12 14.1 Best Interests Test.

13 The Plan satisfies the “best interests test” imposed by Code § 1129(a)(7) because each
14 holder of a Claim or interest not accepting the Plan will receive at least as much as such holder
15 would receive in a Chapter 7 liquidation as discussed in detail in Article 10 herein.

16 14.2 Fair and Equitable Test.

17 To the extent such requirements are applicable based upon the votes of Creditors on the
18 Plan, the Plan satisfies the fair and equitable requirements of Code § 1129(b). With respect to
19 Secured Classes, the Plan provides for all Secured Creditors to retain prepetition liens and to be
20 paid the full value of their Allowed Secured Claims. With respect to Unsecured Classes, the
21 unsecured creditors are receiving a substantial payout, which far exceeds the minimal return the
22 Unsecured Creditors would receive if the case were converted to a Chapter 7 liquidation.

23 14.3 Recommendation of Debtor.

24 Debtor respectfully recommends that Creditors vote in favor of the Plan.

25 RESPECTFULLY SUBMITTED this 3rd day of March, 2017.

26 TRI STATE STONE, INC.

27
28 /s/ Victor Flores
Victor Flores

1 **APPROVED AS TO FORM AND CONTENT:**

2 **ALLEN BARNES & JONES, PLC**

3

4 *By: /s/ Philip J. Giles (SBN 30340)* _____

5 Thomas H. Allen
6 Philip J. Giles
7 1850 N. Central Avenue, Suite 1150
8 Phoenix, Arizona 85004
9 Attorneys for Debtor

7

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Exhibit “A”

1 Thomas H. Allen, State Bar #11160
Philip J. Giles, State Bar #30340
2 **ALLEN BARNES & JONES, PLC**
1850 N. Central Ave., Suite 1150
3 Phoenix, Arizona 85004
Ofc: (602) 256-6000
4 Fax: (602) 252-4712
Email: tallen@allenbarneslaw.com
5 pgiles@allenbarneslaw.com

6 Attorneys for Debtor

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF ARIZONA**

10 In re:

11 TRI STATE STONE, INC.,
12 Debtor.

Chapter 11

Case No. 0:16-bk-11275-SHG

**DEBTOR'S PLAN OF
REORGANIZATION DATED MARCH 3,
2017**

13
14 Tri State Stone, Inc., debtor and debtor-in-possession ("Debtor" or "Plan Proponent") in
15 the above-captioned chapter 11 bankruptcy case ("Case"), hereby files its *Plan of*
16 *Reorganization Dated March 3, 2017*.

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1 **ARTICLE I – INTRODUCTION**

2 Debtor proposes this Plan. All creditors and parties in interest are encouraged to consult
3 the Disclosure Statement, which was prepared by Debtor before voting to accept or reject the
4 Plan. **NO SOLICITATION MATERIALS OTHER THAN THE DISCLOSURE**
5 **STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH HAVE**
6 **BEEN APPROVED OR AUTHORIZED BY THE BANKRUPTCY COURT AND THE**
7 **BANKRUPTCY CODE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS**
8 **PLAN.**

9 **ARTICLE II – DEFINITIONS**

10 **Rules of Construction.** The following terms shall have the meanings specified below
11 when used in this Plan. Wherever from the context it appears appropriate, each term stated in
12 either the singular or the plural shall include the singular and the plural, and pronouns stated in
13 the masculine, feminine, or neuter gender shall include the masculine, the feminine, and the
14 neuter. The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer
15 to the Plan as a whole and not to any particular section, subsection, or clause contained in the
16 Plan. Unless otherwise specified, all section, schedule, or exhibit references in the Plan are to
17 the respective section in, schedule to, or Exhibit to the Plan. The headings in the Plan are for
18 convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.
19 The Rules of Construction contained in Bankruptcy Code § 102 shall apply to the construction
20 of the Plan, and terms that are defined by the Bankruptcy Code shall have that meaning defined
21 by the Bankruptcy Code unless specifically modified herein. All terms not specifically defined
22 by this Plan shall have the meaning designated in the Bankruptcy Code, or, if not defined
23 therein, their ordinary meaning. These definitions are a substantial and operative part of the
24 Plan.

25 **2.1 Administrative Claim.**

26 This term refers to and means every cost or expense of administration of this case
27 allowed under Bankruptcy Code § 503(b) and referred to in Bankruptcy Code § 507(a) (1),
28 including, without limitation: (i) any actual and necessary expense of preserving the estate as

1 approved by the Bankruptcy Court; (ii) all professional charges; and (iii) all fees and charges
2 assessed against the Debtor's estate under Chapter 123 of Title 28, United States Code.

3 **2.2 Allowed Claim.**

4 This term will refer to and mean every Claim: (a) (i) as to which a proof of such Claim
5 has been filed within the time fixed by the Bankruptcy Court or, if such Claim arises from the
6 Debtor's rejection of an Executory Contract, no later than the first Business Day that is thirty
7 (30) days after the Effective Date, or (ii) which the Debtor has scheduled in its Schedules
8 (including any amendments thereto) as liquidated in amount, non-contingent, and undisputed;
9 and in either event: (b) (i) as to which no objection to the allowance of such Claim has been
10 filed within any applicable time period fixed by the Bankruptcy Court, or (ii) as to which the
11 order allowing such Claim has become final and non-appealable without any appeal, review, or
12 other challenge of any kind to that order having been taken or being still timely. The term
13 Allowed Claim may be used throughout the Plan with each of the various Creditors' Claims or
14 Classes of those Claims (*e.g.*, "Allowed Administrative Claims" or "Allowed Class I Claims")
15 to signify that such Claims are, will be, or must be Allowed Claims to qualify for certain
16 treatment under the Plan.

17 **2.3 Allowed Secured Claim.**

18 This term refers to and means a claim that is both an Allowed Claim and a Secured
19 Claim.

20 **2.4 Allowed Unsecured Claim.**

21 This term refers to and means a claim that is both an Allowed Claim and an Unsecured
22 Claim.

23 **2.5 Assets.**

24 This term will refer to and mean, collectively, each and every item of property and
25 interests of the Debtor as of the Effective Date, whether tangible or intangible, real or personal,
26 legal or equitable, liquidated or unliquidated.

27 **2.6 Ballot.**

28 This term refers to and means the ballot for accepting or rejecting the Plan which will be

1 distributed to holders of claims in Classes that are impaired under this Plan and are entitled to
2 vote on this Plan.

3 **2.7 Bankruptcy Code.**

4 This term refers to and means Title 11 of the United States Code, 11 U.S.C. §§ 101, et
5 seq., as now existing or hereafter amended during this case.

6 **2.8 Bankruptcy Court or Court.**

7 These terms refer to and mean the United States Bankruptcy Court for the District of
8 Arizona, Phoenix Division, or any other court that exercises jurisdiction over all or part of the
9 Bankruptcy Case, including the United States District Court for the District of Arizona to the
10 extent that the reference of all or part of the Bankruptcy Case is withdrawn.

11 **2.9 Bankruptcy Rules.**

12 This term refers to and means the Federal Rules of Bankruptcy Procedure promulgated
13 under 28 U.S.C. § 2075 and the local rules of Court, as applicable during the term of the
14 Bankruptcy Case.

15 **2.10 Bar Date.**

16 This term will refer to the last day by which any and all individuals or entities asserting
17 claims against the bankruptcy estate were required to file a proof of claim for: (i) claims not
18 listed in the Schedules of Assets and Liabilities, as the same may be amended from time to time;
19 (ii) claims that are listed in the Schedules of Assets and Liabilities as disputed, contingent, or
20 unliquidated; and (iii) claims that differ in any respect from those listed in the Schedules of
21 Assets and Liabilities (including, without limitation, the assertion of any right to a setoff under
22 Code § 553 or otherwise).

23 **2.11 Budget.**

24 This term refers to the Debtor's monthly budget attached to the Disclosure Statement as
25 Exhibit B.

26 **2.12 Business Day.**

27 This term refers to and means every day except Saturdays, Sundays, and holidays
28 observed by the Bankruptcy Court.

1 **2.13 Chapter 11 Case.**

2 This term will refer to and mean the case under Chapter 11 of the Bankruptcy Code that
3 was commenced by the filing of a voluntary Chapter 11 petition by Debtor on the Petition Date.

4 **2.14 Claim.**

5 This term will refer to and mean “claim” as defined in Bankruptcy Code § 101(5).

6 **2.15 Claimant.**

7 This term will refer to and mean the holder of a Claim.

8 **2.16 Class.**

9 This term refers to and means each of the categories of claims described in Article IV of
10 the Plan.

11 **2.17 Confirmation Date.**

12 This term refers to and means the date on which the Bankruptcy Court enters the
13 Confirmation Order.

14 **2.18 Confirmation Hearing.**

15 This term refers to and means the hearing regarding confirmation of the Plan conducted
16 by the Bankruptcy Court pursuant to Bankruptcy Code § 1128, including any adjournment or
17 continuation of that hearing from time to time.

18 **2.19 Confirmation Order.**

19 This term refers to and means the order of the Bankruptcy Court confirming the Plan
20 pursuant to Bankruptcy Code § 1129.

21 **2.20 Court.**

22 This term is defined in a preceding Section of this Article II, which defines the term
23 “Bankruptcy Court.”

24 **2.21 Creditor.**

25 This term will refer to and mean “creditor” as defined in 11 U.S.C. § 101(10).

26 **2.22 Debtor.**

27 This term refers to and means Tri State Stone, Inc.
28

1 **2.23 Disclosure Statement.**

2 This term refers to and means the *Debtor's Disclosure Statement Dated March 3, 2017*,
3 presented by the Debtor with respect to the Plan, in its present form or as it may be altered,
4 amended, or modified.

5 **2.24 Disputed Claim.**

6 This term refers to and means every claim: (a) that is scheduled by the Debtor as
7 disputed, contingent, or unliquidated; (b) that is listed herein as disputed; and/or (c) that is not
8 an Allowed Claim. Where performance is to be rendered under the Plan to any creditor in
9 respect to a Disputed Claim, such performance shall not be due (notwithstanding the occurrence
10 of the Effective Date for all other purposes and legal effects) unless and until such Disputed
11 Claim becomes, wholly or in part, an Allowed Claim.

12 **2.25 Effective Date.**

13 This term refers to and means the 30th calendar day that occurs after the Confirmation
14 Date.

15 **2.26 Estate.**

16 This term refers to and means the bankruptcy estate of the Debtor created under
17 Bankruptcy Code § 541.

18 **2.27 Executory Contract.**

19 This term will refer to and mean every unexpired lease and other contract that is subject
20 to being assumed or rejected under 11 U.S.C. § 365.

21 **2.28 Final Order.**

22 This term refers to and means an order or judgment of the Court which (a) shall not have
23 been reversed, stayed, modified or amended and the time to appeal from, or to seek review or
24 rehearing of, shall have expired and as to which no appeal or petition for review, or hearing for
25 certiorari is pending, or (b) if appealed from, shall have been affirmed and no further hearing,
26 appeal or petition for certiorari can be taken or granted.

27 **2.29 General Unsecured Claim.**

28 This term will refer to and mean every Unsecured Claim against the Debtor (including,

1 but not limited to, every such Claim arising from the rejection of an Executory Contract, and
2 Unsecured Deficiency Claims of creditors with claims solely against the Debtor) which will be
3 classified and paid under the Plan as the Plan provides for Class IV Claims.

4 **2.30 Initial Payment Date.**

5 This term will refer to and mean the first Business Day that occurs 11 months after the
6 Effective Date.

7 **2.31 IRS.**

8 This term will refer to and mean the Internal Revenue Service.

9 **2.32 Person.**

10 This term will refer to and mean “person” as defined in Bankruptcy Code § 101(41).

11 **2.33 Petition Date.**

12 This term will refer to and mean the filing date of the voluntary Chapter 11 petition of
13 the Debtor. The Petition Date in the Chapter 11 Case is September 30, 2016.

14 **2.34 Plan.**

15 This term will refer to and means *Debtor’s Plan of Reorganization Dated March 3, 2017*
16 and every amendment to or modification thereof, if any, filed by the Debtor.

17 **2.35 Plan Assets.**

18 This term will refer to and mean the unencumbered, non-exempt assets to be liquidated
19 to fund the Plan, as listed on the Liquidation Analysis Chart, attached to the Disclosure
20 Statement as Exhibit C.

21 **2.36 Professional Fees.**

22 This term will refer to and mean any of the interim and final professional fees and
23 expenses charged by the Chapter 11 Professionals.

24 **2.37 Proof of Interest Bar Date.**

25 This refers to and means any deadline fixed by the Bankruptcy Court for the filing of
26 Proofs of Interest (equity claims) in the Bankruptcy Case.

27 **2.38 Property.**

28 This term refers to, with respect to the Debtor, all rights, causes of action, all of the

1 right, title and interest in and to Property (real or personal, tangible or intangible) of whatever
2 type or nature, owned by the Debtor as of the Effective Date, together with Property
3 subsequently acquired by the Debtor, and including, but not limited to, Property as defined in
4 Bankruptcy Code § 541.

5 **2.39 Pro Rata.**

6 This term will refer to and mean the proportion that an Allowed Claim in a particular
7 Class bears to the total amount of all Allowed Claims in that Class.

8 **2.40 Proponent.**

9 This term refers to and means Tri State Stone, Inc., who is the proponent of this Plan.

10 **2.41 Secured Claim.**

11 This term refers to and means every claim or portion thereof which is asserted by a
12 creditor holding such claim to be secured by a lien, security interest, or assignment encumbering
13 property in which the Debtor has an interest, **provided, however,** that such claim shall be a
14 Secured Claim only to the extent of the validity, perfection, and enforceability of the claimed
15 lien, security interest, or assignment and only to the extent of the value of the interest of the
16 creditor holding such claim against such property of the Debtor.

17 **2.42 Secured Creditor.**

18 This term refers to and means every creditor that holds a Secured Claim in the
19 Bankruptcy Case.

20 **2.43 Subordinated Claim.**

21 This term refers to and means any claim judged to be subordinated pursuant to 11 U.S.C.
22 § 510.

23 **2.44 Unsecured Claim.**

24 This term refers to and means all claims held by creditors of the Debtor, including
25 deficiency claims, dissolution claims and claims arising out of the rejection of executory
26 contracts, other than Secured Claims, administrative claims, tax claims and equity claims.

27 **2.45 Unsecured Creditor.**

28 This term refers to and means the owner or holder of an Unsecured Claim.

1 **ARTICLE III - GENERAL TERMS AND PROVISIONS**

2 The following General Terms and Provisions shall apply to this Plan.

3 **3.1 Class of Claims and Payment.**

4 There are various classes of claims and interests defined in this Plan. This Plan is
5 intended to deal with all claims against the Debtor of whatever character, whether or not
6 contingent or liquidated, and whether or not allowed by the Court under Section 502(h) of the
7 Code. Only those claims allowed under Section 502(a) of the Code will receive payment under
8 this Plan.

9 **3.2 Time For Filing Claims.**

10 On _____, the Court entered an order setting _____ as the
11 deadline by which any and all individuals or entities asserting claims against the bankruptcy
12 estate were required to file a proof of claim for: (i) claims not listed in the Schedules of Assets
13 and Liabilities, as the same may be amended from time to time; (ii) claims that are listed in the
14 Schedules of Assets and Liabilities as disputed, contingent, or unliquidated; and (iii) claims that
15 differ in any respect from those listed in the Schedules of Assets and Liabilities (including,
16 without limitation, the assertion of any right to a setoff under Code § 553 or otherwise).

17 Claims for Class I Administrative Claims and claims for professionals employed
18 pursuant to Bankruptcy Code § 327, shall be filed on or before the first business day that occurs
19 on or after the 30th day after the Effective Date. See Plan Section 12.3. Applications for
20 Approval of Administrative Claims shall be filed with the Bankruptcy Court with copies served
21 upon counsel for the Debtor. Any holder of a Class I Administrative Claim that fails to timely
22 file a final Application for Approval of Administrative Claim shall be deemed to have waived
23 its claim and the claim will be disallowed.

24 Claims arising from the Debtor's rejection of an Executory Contract or unexpired lease
25 that occurred prior to the Claims Bar Date were required to be filed on or before the Claims Bar
26 Date. Claims arising from the Debtor's rejection of an Executory Contract or unexpired lease
27 that occurs after the Claims Bar Date shall be filed on the first business day that occurs on or
28 after the 30th day after the Effective Date. Any person or entity asserting a claim arising from

1 the Debtor's rejection of an Executory Contract or unexpired lease that fails to timely file a
2 proof of claim shall be deemed to have waived its claim and the claim will be enjoined and
3 disallowed.

4 **3.3 Claim Dispute Resolution.**

5 On or before the 60th day after the Effective Date, the Debtor and/or any party in
6 interest may file with the Bankruptcy Court, serving a copy upon counsel for the Debtor, an
7 objection to any pending Application for Approval of Administrative Claim, proof of claim or
8 proof of interest filed, or deemed filed herein. No claim will be an Allowed Claim until timely
9 filed objections to its allowance are resolved. The Court shall resolve all objections at a
10 separate hearing or hearings. **Any claims not timely filed or allowed shall be discharged by**
11 **the Confirmation Order.**

12 Only Allowed Claims and interests will receive a distribution from Debtor's bankruptcy
13 estate. The Debtor has the right to object to any claim where it appears that there is some
14 dispute with regard to the claim or interest as filed. Unless deemed filed pursuant to Fed. R.
15 Bankr. P. 3003(b), the failure to timely file a proof of claim or interest will result in
16 disallowance of the claim or interest.

17 **3.4 Executory Contracts.**

18 The assumption or rejection of all all executory contracts is provided for in the Plan and
19 Disclosure Statement. Any Order confirming the Plan shall affirm the assumption or rejection
20 of any executory contracts.

21 **ARTICLE IV - CLASSIFICATION OF CLAIMS AND INTERESTS**

22 In accordance with Bankruptcy Code § 1122, all claims or interests against the Debtor
23 and/or Estate of the Debtor are classified below:

24 **4.1 Class I - Administrative Claims.**

25 Class I consists of the allowed Administrative Claims for actual and necessary costs and
26 expenses of administration entitled to priority under Code §§ 503(b) and 507(a)(1). This Class
27 includes, without limitation, post-petition tax Claims, Debtor's attorneys' fees, any post-petition
28 accounting fees, and fees due the United States Trustee, if any.

1 **4.2 Class II – Priority Claims.**

2 Class II consists of all Claims which are entitled to priority treatment pursuant to Code §
3 507(a). Each holder of a Priority Claim in Class II is considered to be in its own separate
4 subclass within Class II, and each such subclass is deemed to be a separate Class for purposes of
5 the Plan. Class II consists of various subclasses of asserted priority Creditor Claims.

6 **4.2.1 Class II(a) – Claim of Arizona Department of Economic Security**

7 Class II(a) consists of any Allowed Priority Claim of the Arizona Department of
8 Economic Security (“ADES”) relating to unemployment taxes due by Debtor.

9 **4.2.2 Class II(b) - Claim of Internal Revenue Service.**

10 Class II(b) consists of the Allowed Priority Claim of the IRS relating to Debtor’s
11 income taxes.

12 **4.3 Class III – Secured Claims.**

13 Class III consists of various subclasses of asserted Secured Creditor Claims. Each
14 holder of a Secured Claim in Class III is considered to be in its own separate subclass within
15 Class III, and each such subclass is deemed to be a separate Class for purposes of the Plan.

16 **4.3.1 Class III(a) – Secured Claim of Jose H. Rojas**

17 Class III(a) consists of the Allowed Secured Claim of Jose H. Rojas relating to a
18 2007 Chevrolet Silverado.

19 **4.3.2 Class III(b) – Secured Claim of Jose H. Rojas**

20 Class III(b) consists of the Allowed Secured Claim of Jose H. Rojas relating to a
21 2008 Chevrolet Silverado.

22 **4.3.3 Class III(c) – Secured Claim of Jose H. Rojas**

23 Class III(c) consists of the Allowed Secured Claim of Jose H. Rojas relating to a
24 2008 Chevrolet Avalanche.

25 **4.3.4 Class III(d) – Secured Claim of Jose H. Rojas**

26 Class III(d) consists of the Allowed Secured Claim of Jose H. Rojas relating to a
27 1999 Chevrolet Silverado.

28

1 **4.3.5 Class III(e) – Secured Claim of On Deck Capital, Inc.**

2 Class III(e) consists of the Allowed Secured Claim of On Deck Capital, Inc.
3 relating to a security interest in Debtor’s non-vehicle, personal property assets.

4 **4.3.6 Class III(f) – Secured Claim of Everest Business Funding**

5 Class III(f) consists of the wholly unsecured claim of Everest Business Funding,
6 secured by Debtor’s non-vehicle, personal property assets and second-in-priority to On Deck
7 Capital, Inc.’s Allowed Secured Claim.

8 **4.4 Class IV – General Unsecured Creditors.**

9 Class IV consists of all Allowed Unsecured Claims that are not entitled to classification
10 in any other class of claims.

11 **ARTICLE V - PLAN IMPLEMENTATION**

12 The Plan will be implemented upon entry of the Confirmation Order. Upon the
13 Effective Date, or at such other time as specifically provided for in this Plan, creditors holding
14 Allowed Claims will receive the treatment provided for in the Plan. Creditors must hold
15 Allowed Claims before they will be entitled to the treatment provided in the Plan.

16 The Plan will be funded by the Debtor’s post-petition income. Unless a party in interest
17 objects to the Debtor’s estimate of value of any asset prior to confirmation of the Plan, the value
18 of the assets set forth in the Plan, as amended, shall be determinative.

19 **ARTICLE VI - TREATMENT OF CLAIMS AND INTERESTS**

20 **6.1 Class I - Administrative Claims.**

21 Upon retention of AB&J, Debtor provided AB&J with a retainer in the amount of
22 \$17,000.00. AB&J applied to \$7,930.32 to pre-bankruptcy advice, services, and costs, and the
23 Chapter 11 filing fee prior to the Petition Date. The remaining \$9,069.68 of the retainer is held
24 in AB&J’s trust account. AB&J has not yet filed applications for attorneys’ fees in this Case,
25 but as of this filing, AB&J’s fees and costs total approximately \$14,200.00. While Plan
26 litigation is possible, at this time Debtor anticipates that AB&J will not accrue significant
27 attorneys’ fees and costs in pursuing confirmation of the Plan. The holders of Allowed Class I
28 Claims shall be paid in full on the Effective Date of the Plan or upon such other terms as Debtor

1 and the holders of Allowed Class I Claims agree. Class I Claims are unimpaired.

2 **6.2 Class II – Priority Claims.**

3 Unless otherwise specified, holders of Allowed Priority Claims in any of the Class II
4 subclasses shall receive payment in full within five years of the Petition Date. The first
5 payment will be due on the Effective Date and payments shall continue on a monthly basis
6 thereafter.

7 **6.2.1 Class II(a) – Claim of ADES.**

8 Class II(a) consists of any Allowed Priority Claim of the ADES relating
9 to unemployment taxes due by Debtor. The Allowed Class II(a) Claim is in the total amount of
10 \$1,865.63 [Claim No. 1]. The interest rate paid to the Allowed Class II(a) Claim shall be four
11 percent (4.0%) per annum. The holder of the Allowed Class II(a) Claim shall receive payment
12 of the Allowed Class II(a) Claim in full, in equal monthly payments of \$34.36 beginning on the
13 Effective Date and continuing through August 30, 2021. No prepayment penalty shall pertain to
14 the Class II(a) Claim.

15 If Debtor fails to comply with the provisions of the Plan with respect to
16 the liability owed to the ADES, which includes but is not limited to, the failure to make full and
17 timely payments, such failure shall constitute a default under the Plan. If Debtor fails to cure
18 the default within 30 days after written notice of the default from the ADES or its agents, the
19 entire balance due to the ADES shall be immediately due and owing. In the event of a default,
20 the ADES may enforce the entire amount of its Claim, exercise any and all rights and remedies
21 under applicable non-bankruptcy law, which include, but are not limited to, state tax collection
22 procedures and any other such relief as may be deemed appropriate by the Bankruptcy Court.
23 Class II(a) is impaired.

24 **6.2.2 Class II(b) – Claim of Internal Revenue Service.**

25 Class II(b) consists of the Allowed Priority Claim of the Internal Revenue
26 Service (IRS) relating to Debtor's income taxes. The Allowed Class II(b) Claim is in the total
27 amount of \$2,872.86 [Claim No. 5]. Allowed Class II(b) Claim shall be paid with interest at the
28 statutory rate set forth in I.R.C. §§ 6621 and 6622 that is in effect during the month the Plan is

1 confirmed (currently 4.0% compounded daily). The holder of the Allowed Class II(b) Claim
2 shall receive payment of the Allowed Class II(b) Claim in full, in equal monthly payments of
3 \$52.91 beginning on the Effective Date and continuing through August 30, 2021. Additionally,
4 the IRS asserts a general Unsecured Claim in the amount of \$3,362.25, which shall be treated
5 and paid as an Allowed Class IV General Unsecured Claim. No prepayment penalty shall
6 pertain to the Class II(b) Claim.

7 In the event Debtor defaults on any payment due to the holder of the
8 Class II(b) Claim as required under the confirmed Plan, and in the event Debtor fails to cure
9 said default within 30 days after written notice of the default is mailed to Debtor and its
10 attorneys, the entire imposed liability together with any unpaid current liabilities, shall become
11 due and payable immediately. The IRS may collect unpaid liabilities that become due as a
12 result of the default through the administrative collection provision or judicial remedies as set
13 forth in the Internal Revenue Code. The IRS shall not be required to seek a modification from
14 the automatic stay to collect any tax liabilities from property that reverts with Debtor. Class
15 II(b) is impaired.

16 **6.3 Class III – Secured Claims.**

17 Unless otherwise specified below, holders of Allowed Secured Claims in any of the
18 Class III subclasses shall receive full payment of the amount of their Allowed Secured Claims.
19 Any of Debtor's defaults under loan documents with the Allowed Secured Claimants shall be
20 deemed cured as of the Effective Date and to the extent such loan documents provide for default
21 resulting from Debtor's bankruptcy filings, such default shall not be enforceable.
22 Notwithstanding any pre-bankruptcy agreements with Class III Claimants, Debtor's statement
23 of the value of each Secured Claim shall be final unless a Creditor objects to Debtor's value
24 prior to the confirmation of the Plan. Unless otherwise specified herein or in an order entered
25 by the Bankruptcy Court, holders of Allowed Secured Claims shall retain any existing perfected
26 liens to secure Debtor's obligations under the Plan. Payments to holders of Allowed Class III
27 Secured Claims will begin on the Effective Date.

28 ///

1 **6.3.1 Class III(a) – Secured Claim of Jose H. Rojas.**

2 Mr. Rojas has an Allowed Secured Claim in the amount of \$12,500.00 relating to
3 the 2007 Chevrolet Silverado (“2007 Silverado”). The Allowed Secured Claim shall be
4 amortized over five (5) years and accrue interest a 4.0% per annum. Payments in the
5 approximate amount of \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall
6 retain his lien encumbering the 2007 Silverado. No prepayment penalty shall pertain to this
7 Claim. Class III(a) is impaired.

8 **6.3.2 Class III(b) – Secured Claim of Jose H. Rojas.**

9 Mr. Rojas has an Allowed Secured Claim in the amount of \$12,500.00 relating to
10 the 2008 Chevrolet Silverado (“2008 Silverado”). The Allowed Secured Claim shall be
11 amortized over five (5) years and accrue interest a 4.0% per annum. Payments in the
12 approximate amount of \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall
13 retain his lien encumbering the 2008 Silverado. No prepayment penalty shall pertain to this
14 Claim. Class III(b) is impaired.

15 **6.3.3 Class III(c) – Secured Claim of Jose H. Rojas.**

16 Mr. Rojas has an Allowed Secured Claim in the amount of \$12,500.00 relating to
17 the 2008 Chevrolet Avalanche (“2008 Avalanche”). The Allowed Secured Claim shall be
18 amortized over five (5) years and accrue interest a 4.0% per annum. Payments in the
19 approximate amount of \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall
20 retain his lien encumbering the 2008 Avalanche. No prepayment penalty shall pertain to this
21 Claim. Class III(c) is impaired.

22 **6.3.4 Class III(d) – Secured Claim of Jose H. Rojas.**

23 Mr. Rojas has an Allowed Secured Claim in the amount of \$12,500.00 relating to
24 the 1999 Chevrolet Silverado (“1999 Silverado”). The Allowed Secured Claim shall be
25 amortized over five (5) years and accrue interest a 4.0% per annum. Payments in the
26 approximate amount of \$230.21 per month shall begin on the Effective Date. Mr. Rojas shall
27 retain his lien encumbering the 1999 Silverado. No prepayment penalty shall pertain to this
28 Claim. Class III(d) is impaired.

1 **6.3.5 Class III(e) – Secured Claim of On Deck Capital, Inc.**

2 On Deck Capital, Inc. (“On Deck”) claim relating to its security interest in the
3 Debtor’s now owned or hereafter acquired property (“Non-Vehicle Assets”) is undersecured.
4 On Deck shall have an Allowed Secured Claim in the amount of \$40,000.00 that shall be
5 amortized over five (5) years and accrue interest at 4.0% per annum. Payments in the
6 approximate amount of \$736.66 per month shall begin on the Effective Date. Additionally, On
7 Deck shall have an Allowed Unsecured Claim for \$46,942.86, which shall be treated as a Class
8 IV unsecured Claim under the Plan. See section 6.4, *infra*. Upon full payment of On Deck’s
9 Allowed Secured Claim, On Deck shall release its lien encumbering Debtor’s Non-Vehicle
10 Assets. No prepayment penalty shall pertain to this Claim. Class III(e) is impaired.

11 **6.3.6 Class III(f) – Secured Claim of Everest Business Funding.**

12 Everest Business Funding’s (“Everest”) Allowed Claim encumbering Debtor’s
13 Non-Vehicle Assets is second-in-priority to On Deck and is wholly unsecured. Pursuant to
14 Bankruptcy Code Sections 506(a) and (d), and 1123(b)(5), any and all of Everest’s Class III(f)
15 Secured Claim, security interest, or lien encumbering the Non-Vehicle Assets shall be fully
16 released, discharged, and satisfied as of the Effective Date. The Debtor shall be entitled to
17 record or file the confirmation order in conjunction with any necessary release with the Arizona
18 Secretary of State to provide notice of such release, discharge, and satisfaction of such
19 purported secured claim. The entirety of the Allowed Class III(f) Claim shall be treated as a
20 Class IV unsecured Claim under the Plan. See section 6.4, *infra*. Class III(f) is impaired.

21 **6.4 Class IV– General Unsecured Creditors.**

22 Holders of Allowed Class IV Claims shall be paid the sum of \$87,314.79 over
23 five years. Debtor shall make the payments to the holders of Allowed Class IV Claims on the
24 first Business Day that occurs 11 months after the Effective Date (“Initial Payment Date”) and
25 every year thereafter for four years based upon each Class IV Claim’s *pro rata* share of
26 potential Unsecured Claims. Such payments shall be as follows: (i) Year One — \$17,463; (ii)
27 Year Two — \$17,463; (iii) Year Three — \$17,463; (iv) Year Four — \$17,463; and (v) Year
28 Five — \$17,462.79. No interest will accrue or be paid to the holders of the Allowed Class IV

1 Claims. If a Class IV Claim is not an Allowed Claim prior to 30 days after the Effective Date,
2 such Class IV Claim holder shall receive payment on the one year payment date that falls after
3 its Class IV Claim becomes an Allowed Claim. Class IV is impaired.

4 **ARTICLE VII - VOTING PROCEDURE**

5 Creditors will vote to accept or reject this Plan. THIS PLAN CANNOT BE
6 CONFIRMED IF THE PLAN DOES NOT RECEIVE AT LEAST TWO-THIRDS (2/3) IN
7 AMOUNT AND MORE THAN ONE-HALF (1/2) IN NUMBER OF ALLOWED CLAIMS
8 VOTING IN EACH IMPAIRED CLASS, provided, however, if the requisite acceptances are
9 not obtained from one or more impaired classes, the Court may nonetheless confirm the
10 Proponent's Plan pursuant to Bankruptcy Code § 1129(b) if one impaired class accepts the Plan
11 and the Court finds that the Debtor's Plan provides, among other things, fair and equitable
12 treatment of the classes rejecting the Plan and that creditors receive as much or more under the
13 Plan than they would receive in a Chapter 7 liquidation.

14 **ARTICLE VIII - BINDING EFFECT OF PLAN**

15 The provisions of this Plan shall bind the Debtor and any person or entity holding a
16 claim against the Debtor and its Estate, whether asserted or non-asserted, and any person
17 asserting an interest in the Debtor, whether or not a claim or interest of such person or entity
18 arose before or after the respective filing dates or the Effective Date, whether or not the claim or
19 interest is impaired under the Plan, and whether or not such person or entity has accepted the
20 Plan.

21 **ARTICLE IX - EFFECT OF CONFIRMATION**

22 Except as otherwise provided herein and upon the Debtor completing all payments under
23 the Plan, the rights afforded in the Plan shall be in exchange for and in complete satisfaction,
24 discharge and release of all claims against the Debtor of any nature whatsoever. All such claims
25 against the Debtor shall be satisfied, discharged and released in full upon the Debtor completing
26 all payments under the Plan. All holders of claims against the Debtor shall be precluded from
27 asserting against the Debtor, its Estate, or the assets or properties of the Debtor or its Estate any
28 other or further claim based upon any omission, transaction or other activity of any kind or

1 nature that occurred prior to the Effective Date. This discharge shall be effective as to each
2 claim, regardless of whether the claim is listed on the Debtor's Statements or Schedules filed in
3 these Chapter 11 proceedings, whether a proof of claim was filed, whether such proof of claim
4 was withdrawn, whether the claim is an Allowed Claim, in whole or in part, or whether the
5 holder of the claim votes to accept or reject this Plan. Upon the Effective Date, all the property
6 of the Debtor will vest in the Debtor, which, subject to the obligation set forth in this Plan, may
7 utilize the property free of any burdens of the Bankruptcy Code and without need to obtain
8 Court approval of its actions.

9 **ARTICLE X - MODIFICATION OF PLAN**

10 This Plan may be modified in accordance with the provisions of the Bankruptcy Code
11 and Chapter 11 as follows:

12 **10.1 Pre-Confirmation.**

13 In accordance with Bankruptcy Code § 1127(a), the modification of the Plan may be
14 proposed in writing by the Proponent at any time before its Confirmation, provided that the
15 Plan, as thus modified, meets the requirements of Bankruptcy Code §§ 1122 and 1123, and the
16 Proponent complies with Bankruptcy Code § 1125.

17 **10.2 Post-Confirmation.**

18 In accordance with Bankruptcy Code § 1127(b), the Plan also may be modified at any
19 time after its Confirmation and before its substantial consummation. In accordance with Code §
20 1127(e), the Plan may be modified at any time after confirmation of the Plan but before the
21 completion of payments under the Plan, whether or not the Plan has been substantially
22 consummated, upon request of the Debtor, any trustee appointed under Code § 1104, the United
23 States Trustee, or the holder of an Allowed Unsecured Claim. However, the Plan as thus
24 modified must meet the requirements of Code §§ 1122, 1123, and 1127(f), the circumstances
25 then existing must justify such modification, and the Court confirms the Plan as thus modified
26 under Code § 1129.

27 **10.3 Objections.**

28 Except as to any Claim that has been Allowed prior to the Effective Date, no later than

1 on the 60th day after the Effective Date, Debtor or any party-in-interest may object to the
2 allowance of any Claim against the Debtor or seek estimation thereof on any Claim (including
3 any Claim amounts stated in the Plan).

4 **10.4 Effect.**

5 Any and every modification of the Plan will supersede the previous version of the Plan
6 as and when ever each modification is effective. When superseded, the previous version of the
7 Plan will be in the nature of a withdrawn or rejected settlement proposal, and will be null, void,
8 and unusable by Debtor or any other party for any purposes whatsoever with respect to any of
9 the contents of such version of the Plan.

10 **ARTICLE XI - RETENTION OF JURISDICTION**

11 Notwithstanding the confirmation of this Plan, the Bankruptcy Court shall retain
12 jurisdiction for all matters arising out of, or related to, the Bankruptcy Case and this Plan,
13 including, but not limited to, all of the following:

14 **11.1 In General.**

15 The Court shall retain jurisdiction to determine the allowance and payment of any
16 claims upon any objection thereto (or other appropriate proceedings) by Debtor, the Committee,
17 or by any other party in interest entitled to proceed in that manner. As part of such retained
18 jurisdiction, the Court shall continue to determine the allowance of Administrative Claims and
19 any request(s) for payment(s) thereof, including professional fees and costs which are
20 Administrative Claims classified as Class I Claims.

21 **11.2 Sales.**

22 The Court shall retain jurisdiction to adjudicate and determine any issues that arise out
23 of or relate to a sale of any Property of Debtor.

24 **11.3 Plan Disputes.**

25 The Court shall retain jurisdiction to determine any Disputes, which may arise regarding
26 the interpretation of any provisions of this Plan.

27 **11.4 Further Orders.**

28 The Court shall retain jurisdiction to facilitate the Consummation of this Plan by

1 entering, consistent with the provisions of this Plan, any further necessary or appropriate
2 order(s) regarding the enforcement of this Plan and any provision(s) thereof.

3 **11.5 Other Claims.**

4 The Court shall retain jurisdiction to adjudicate any causes of action or other
5 proceedings presently pending or otherwise referenced here or elsewhere in this Plan, including,
6 but not limited to any action regarding the initiation, prosecution, enforcement, compromise or
7 settlement of the causes of action in Debtor's Estate, and the adjudication of any and all "core
8 proceedings" under 28 U.S.C. § 157(b) which may be pertinent to the Bankruptcy Case.

9 **11.6 Enforcement of Plan.**

10 The Court shall retain jurisdiction to enforce any provisions of this Plan, and any and all
11 documents relating to this Plan, including but not limited to the conduct of sales pursuant to
12 Bankruptcy Code §§ 363(f) or (h), and the approval of any borrowing by the Debtor, if required
13 by the lender.

14 **11.7 Appeals.**

15 In the event of any appeal of the Confirmation Order, and provided that no stay of the
16 effectiveness of such Confirmation Order has been entered, the Court shall retain jurisdiction to
17 implement and enforce the Confirmation Order and this Plan according to their terms,
18 including, but not limited to, jurisdiction to enter such orders regarding disbursements under
19 this Plan or the consummation thereof as may be necessary to effectuate the terms of this Plan.

20 **11.8 Tax Issues.**

21 The Court shall retain jurisdiction to adjudicate and determine any issues that relate to
22 this Bankruptcy Case, and any governmental unit's claim with respect to any tax, or any fine,
23 interest or penalty relating to a tax.

24 **11.9 Unexpired Leases and Other Executory Contracts.**

25 The Court shall retain jurisdiction to determine any and all claims arising from rejection
26 of unexpired leases and other executory contracts.

27 **11.10 Settlement Agreement Disputes.**

28 The Court will retain jurisdiction to determine any dispute which may arise regarding

1 the enforcement of any settlement or compromise related to the Bankruptcy Case.

2 **11.11 Professional Fees and Costs.**

3 The Court will retain jurisdiction to determine any and all issues that relate to the
4 payment of professionals in the Bankruptcy Case. Any professional fees incurred by the
5 Debtor's professionals after the Confirmation Date shall be payable in the ordinary course
6 without the need to seek or obtain Bankruptcy Court approval.

7 **11.12 Close of Case.**

8 This case shall be deemed closed upon entry of a final decree closing this case.
9 Notwithstanding anything to the contrary contained herein, the Proponent shall not be bound by
10 estoppel, or the principles of *res judicata* or collateral estoppel, with respect to any term or
11 provision contained herein in the event the Plan is not confirmed upon the terms and provisions
12 set forth herein.

13 **ARTICLE XII - RETENTION AND PROSECUTION OF CLAIMS**

14 **12.1 Preservation of Debtor's Claims, Demands, and Causes of Action.**

15 In accordance with Bankruptcy Code § 1123(b)(3), all of the Debtor's claims and causes
16 of action will survive the entry of the Confirmation Order and the Effective Date; they will not
17 be discharged by the Plan; and they will become and remain assets of the reorganized Debtor
18 after the Effective Date.

19 **12.2 Procedure for Determination of Claims.**

20 **12.2.1 Objections to Claims.**

21 Except as to any Claim that has been Allowed prior to the Effective Date, no
22 later than on the 60th day after the Effective Date, the Debtor or any party in interest may object
23 to the allowance of any Claim against the Debtor or seek estimation thereof on any Claim
24 (including any Claim amounts stated in the Plan).

25 **12.2.2 Disputed Claims.**

26 No payments or other distributions will be made to holders of Claims unless and
27 until such Claims are Allowed Claims pursuant to a Final Order. If a Claim is not an Allowed
28 Claim by or on the Effective Date or when payment is otherwise due under the Plan, payment of

1 the Claim will be made when a Claim becomes an Allowed Claim after the Effective Date or as
2 otherwise specifically provided in the Plan.

3 **12.2.3 Treatment of Contingent Claims.**

4 Until such time as a contingent Claim or a contingent portion of an Allowed
5 Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed
6 Claim for all purposes related to distributions under the Plan. The holder of a contingent Claim
7 will only be entitled to a distribution under the Plan when and if such contingent Claim becomes
8 an Allowed Claim.

9 **12.3 Administrative Claims Bar Date.**

10 Administrative expense proofs of claim requesting payment of administrative costs and
11 expenses incurred prior to the Effective Date pursuant to Bankruptcy Code §§ 507(a)(1) and
12 503(b) (except for professionals employed pursuant to Bankruptcy Code § 327) must be served
13 and filed with the Bankruptcy Court no later than thirty (30) days after the Effective Date;
14 provided, however, that proofs of claim will not be required with respect to any unpaid post-
15 petition operating expenses incurred in the normal course of the Debtor's business prior to the
16 Effective Date. Any such Claim that is not served and filed within this time period will be
17 forever barred. Any Claims for fees, costs, and expenses incurred by any Chapter 11
18 professionals after the Confirmation Date will be paid in the ordinary course of the reorganized
19 Debtor's business.

20 **ARTICLE XIII - PROVISIONS GOVERNING DISTRIBUTIONS**

21 **13.1 Distributions by Reorganized Debtor.**

22 All Allowed Claims against the Debtor will be paid by the reorganized Debtor according
23 to the Plan.

24 **13.2 Date of Distributions.**

25 Except as otherwise provided in the Plan, or as may be ordered by the Bankruptcy
26 Court, distributions of Cash as to Allowed Claims as of the Effective Date will be made as of
27 the Effective Date or as otherwise agreed by the respective parties. Authorized distributions to
28 be made as of the Effective Date will be deemed made as of the Effective Date if made on the

1 Effective Date or as promptly thereafter as practicable, but in any event no later than thirty (30)
2 days after the Effective Date. Distributions on account of the disputed portion of Disputed
3 Claims that are allowed after the Effective Date will be made as provided in the Plan and if not
4 so provided no later than thirty (30) days after entry of a Final Order allowing the Claim.

5 **13.3 Delivery of Distributions.**

6 Subject to Bankruptcy Rule 9010, distributions and deliveries to each holder of an
7 Allowed Claim will be made at the address of such holder as set forth on the respective Proof of
8 Claim (or at the last known address of such holder if no Proof of Claim is filed or if the Debtor
9 have been notified of a change of address) as of the last business day prior to the Effective Date.
10 If any holder's distribution is returned as undeliverable, no further distribution to such holder
11 will be made unless and until the reorganized Debtor is notified of such holder's then current
12 address, at which time all missed distributions will be made to such holder without interest. The
13 Debtor will be under no obligation to attempt to locate the holder of any Allowed Claim or to
14 recognize any purported transfer or encumbrance on the rights of holders of Allowed Claims
15 after the Confirmation Date. Amounts of undeliverable distributions attempted by the
16 reorganized Debtor will be retained by the reorganized Debtor until such distributions are
17 claimed or become unclaimed property. All claims for undeliverable distributions will be made
18 on or before the first anniversary of the Effective Date. After such date, all unclaimed property
19 will be paid to the general unsecured class.

20 **13.4 Means of Payment.**

21 Payments made to holders of Allowed Claims pursuant to this Plan will be in United
22 States dollars by checks drawn on the domestic bank selected by the reorganized Debtor, or by
23 wire transfer from a domestic bank, at the option of the reorganized Debtor.

24 **13.5 De Minimis Cash Distributions.**

25 No cash payment of less than ten dollars (\$10.00) will be made to any holder of an
26 Allowed Claim unless a request therefore is made in writing to the reorganized Debtor.

27 **13.6 Setoff.**

28 The reorganized Debtor will, pursuant to Bankruptcy Code § 553 or common law rights

1 of setoff and/or recoupment, in the ordinary course of business setoff or assert recoupment
2 against any Allowed Claim, and the distributions to be made pursuant to this Plan on account of
3 such Claim, the claims, rights, and causes of action of any nature that the Debtor may hold
4 against the holder of such Claim; provided, however, that neither the failure to effect such a
5 setoff nor the allowance of any Claim hereunder will constitute a waiver or release by the
6 Debtor of any such claims, rights, and causes of action that the Debtor may possess against such
7 holder.

8 **ARTICLE XIV - GENERAL PROVISIONS**

9 **14.1 Extension of Payment Dates.**

10 If any payment date falls due on any day that is not a Business Day, then such due date
11 will be extended to the next Business Day.

12 **14.2 Notices.**

13 Any notice required or permitted to be provided under the Plan will be in writing and
14 served by regular postage prepaid first-class mail, hand-delivery, facsimile, or e-mail.

15 **14.3 Default.**

16 If the Debtor is unable to perform the terms and conditions of the Plan, then he will be in
17 default. Any creditor may seek to enforce the Plan and bring a motion to convert or dismiss the
18 case under Bankruptcy Code § 1112(b), after the Plan is confirmed, if there is a default in
19 performing under the Plan, or for other administrative deficiencies. Before doing so, the creditor
20 must provide notice to the Debtor specifying the nature of the alleged default and a 30-day period
21 to cure the default. Any notice must be in writing and sent via certified mail to the Debtor at the
22 address on file with the Clerk of this Court and with a copy sent via certified mail to:

23 Thomas H. Allen, Esq.
24 Philip J. Giles, Esq.
25 **ALLEN BARNES & JONES, PLC**
1850 N. Central, Suite 1150
Phoenix, Arizona 85004

26 In the event the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all
27 property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant
28 to the Plan, including specifically all causes of action or claims for preference, recovery of

1 transferred assets, or damages will vest in the Chapter 7 estate, and the automatic stay will be
2 reimposed upon the vested property only to the extent that relief from stay was not previously
3 granted by the Court during the case.

4 **14.4 Closing of the Case.**

5 At such time as the Plan has been fully administered (*i.e.*, when the Plan has been
6 substantially consummated), the reorganized Debtor will file an application for Final Order
7 showing that the Plan has been fully administered.

8 **14.5 Exculpation and Limitation of Liability.**

9 Neither the Debtor, nor any of his respective present or former employees, advisors,
10 attorneys, or agents, will have or incur any liability to any holder of a Claim, or any other party-
11 in-interest, or any of their respective agents, employees, representatives, financial advisors,
12 attorneys, or affiliates, or any of their successors or assigns, for any act or omission that
13 occurred after the Petition Date and prior to confirmation of the Plan, relating to, or arising out
14 of the Bankruptcy Case, the extension of credit to the Debtor during the Bankruptcy Case
15 pursuant to debtor-in-possession financing or the use of cash collateral, efforts to obtain
16 confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the
17 property to be distributed under the Plan, whether now known or hereafter discovered, *except*
18 *for his negligence; willful, wanton, or intentional misconduct; or breaches of fiduciary duties.*

19 **14.6 General Injunction.**

20 Except as otherwise expressly provided in this Plan, the Confirmation Order shall
21 provide, among other things, that all parties-in-interest who have held, hold, or may hold Claims
22 are permanently enjoined on and after the Effective Date from: (a) commencing or continuing
23 in any manner any action or other proceeding of any kind with respect to any such Claim
24 against the Debtor or any successor-in-interest of the Debtor, against property of the Debtor, or
25 against property of any successor-in-interest of the Debtor; (b) the enforcement, attachment,
26 collection, or recovery by any manner or means of any judgment, award, decree, or order
27 against the Debtor or any successor-in-interest of the Debtor, property of the Debtor, or against
28 property of any successor-in-interest of the Debtor with respect to any such Claim; (c) creating,

1 perfecting, or enforcing any encumbrance of any kind against the Debtor or any successor-in-
2 interest of the Debtor, against property of the Debtor, or against property of any successor-in-
3 interest of the Debtor with respect to any such Claim; (d) from asserting any setoff, right of
4 subrogation, or recoupment of any kind against any obligation due the Debtor or any successor-
5 in-interest of the Debtor, against property of the Debtor, or against property of any successor-in-
6 interest of the Debtor, with respect to any such Claim; (e) conducting any form of discovery
7 from the Debtor with respect to any such Claim, or any successor-in-interest of the Debtor;
8 and/or (f) harassing the Debtor or any successor-in-interest of the Debtor. While the Debtor are
9 performing under the Plan and is not in default under the Plan, this injunction shall apply in-full
10 to claims determined to be nondischargeable under Bankruptcy Code §§ 727 or 1141. Such
11 injunction is critical to the Debtor's ability to perform and comply with the terms of the Plan. If
12 the Debtor default under the Plan, a creditor may seek such relief as it deems proper.

13 **14.7 Interest.**

14 Whenever interest is to be computed under the Plan, interest will be simple interest and
15 not compounded. Unless otherwise specifically provided for in the Plan or the Confirmation
16 Order, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim will
17 be entitled to interest accruing on or after the applicable Petition Date on any Claim.

18 **14.8 Additional Assurances.**

19 The Debtor and any party-in-interest holding Claims herein will execute such other
20 further documents as are necessary to implement any of the provisions of the Plan.

21 **14.9 Confirmation by Non-Acceptance Method.**

22 The Debtor hereby requests, if necessary, confirmation of the Plan pursuant to
23 Bankruptcy Code § 1129(b) with respect to any impaired Class of Claims that does not vote to
24 accept the Plan.

25 **14.10 Vesting.**

26 As of the Effective Date of the Plan, the reorganized Debtor shall retain and be vested
27 with all of the assets of the Estate. All assets retained shall be free and clear of all liens, claims,
28 and interest of creditors and parties-in-interest, except as specifically provided in this Plan.

1 **14.11 Successors and Assigns.**

2 The rights and obligations of any Creditor or other party-in-interest referred to in the
3 Plan will be binding upon, and will inure to the benefit of, the successors, assigns, heirs,
4 devisees, executors, and personal representatives of such Creditor or party-in-interest.

5 **14.12 Withdrawal of Plan.**

6 The Plan may be withdrawn or revoked by the Debtor at any time before entry of the
7 Confirmation Order.

8 **14.13 Severability and Reformation.**

9 It is the intention of Debtor to comply fully with the Bankruptcy Code and applicable
10 non-bankruptcy law in proposing the Plan. Therefore, if any provision of the Plan is determined
11 by the Bankruptcy Court to be contrary to the Bankruptcy Code or applicable non-bankruptcy
12 law, that provision will be deemed severed and automatically deleted from the Plan, if it cannot
13 be reformed or the provision or its interpretation will be deemed reformed to ensure
14 compliance; provided, however, that nothing contained in this paragraph will prevent the Debtor
15 from modifying the Plan in any manner whatsoever in accordance with and as set forth in the
16 Plan. Pursuant to any ruling by the Bankruptcy Court regarding the subject matter of this
17 paragraph, any such severance or reformation will be stated specifically in the Confirmation
18 Order, which then will control notwithstanding any contrary or inconsistent provisions of the
19 Plan.

20 **14.14 Prohibition Against Prepayment Penalties.**

21 Except as otherwise provided herein, if the reorganized Debtor so chooses, in its sole
22 and absolute discretion, to prepay any obligation on which deferred payments are provided for
23 under the Plan, the reorganized Debtor will not be liable or subject to the assessment of any
24 prepayment penalty thereon unless otherwise ordered by the Bankruptcy Court.

25 **14.15 Fractional Dollars.**

26 Notwithstanding any other provision of the Plan, no payments or distributions under the
27 Plan of or on account of fractions of dollars will be made. When any payment or distribution of
28 or on account of a fraction of a dollar to any holder of an Allowed Claim would otherwise be

1 required, the actual payment or distribution made will reflect a rounding down of such fraction
2 to the nearest whole number.

3 **14.16 Payment of Statutory Fees and Filing of Quarterly Reports.**

4 All fees payable pursuant to 28 U.S.C. § 1980, as determined by the Bankruptcy Court
5 at or in conjunction with the Confirmation Hearing, will be paid on or before the Effective Date
6 and, thereafter, in accordance with applicable bankruptcy law. All quarterly reports of
7 disbursements required to be filed by applicable bankruptcy law will be filed in accordance with
8 applicable bankruptcy law.

9 **14.17 Governing Law.**

10 Except to the extent that the Bankruptcy Code is applicable, the rights and obligations
11 arising under this Plan shall be governed by, construed, and enforced in accordance with, and
12 subject to, the laws of the State of Arizona, excluding any laws that result in the application of
13 the laws of another jurisdiction.

14 **14.18 Special Tax Issues.**

15 The issuance, transfer, or exchange of a security as defined under the Bankruptcy Code
16 or applicable law, or the making or delivery of any instrument of transfer under this Plan, shall
17 not be taxed under any state or local law imposing a stamp tax or similar tax as provided in
18 Bankruptcy Code § 1146.

19 **14.19 Conflicts Between Plan and Confirmation Order.**

20 In the event the terms of this Plan and the Confirmation Order conflict, the terms of the
21 Confirmation Order shall govern.

22 RESPECTFULLY SUBMITTED this 3rd day of March, 2017.

23 **TRI STATE STONE, INC.**

24 */s/ Victor Flores*
25 Victor Flores

26
27 ///

28 ///

1 **APPROVED AS TO FORM AND CONTENT:**

2 **ALLEN BARNES & JONES, PLC**

3
4 By: /s/ Philip J. Giles (SBN 30340)

5 Thomas H. Allen
6 Philip J. Giles
7 1850 N. Central Avenue, Suite 1150
8 Phoenix, Arizona 85004
9 Attorneys for Debtor
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Exhibit “B”

Tri State Stone, Inc. Budget

BUDGET		
Income	Monthly Amt	
Total Revenue		\$58,000.00
Expenses	Amount	
Rent	\$3,500.00	
Insurance	\$2,000.00	
Utilities	\$1,000.00	
Gas/Propane/fuel for vehicles	\$2,200.00	
Office/shop supplies/machinery maintenance	\$2,050.00	
Payroll/wages	\$24,000.00	
Vehicle maintenance	\$50.00	
Materials	\$20,000.00	
Total Expenses:		\$54,800.00
Plan Payments		
IRS	\$52.91	
AZ Dept. of Economic Security	\$34.36	
On Deck Capital, Inc.	\$736.66	
Jose H. Rojas	\$230.21	
Jose H. Rojas	\$230.21	
Jose H. Rojas	\$230.21	
Jose H. Rojas	\$230.21	
Total Plan Payments:		\$1,744.75
	Total monthly expenses:	\$56,544.75
	Total remaining for unsecured creditors:	\$1,455.25
	Total to unsecured creditors over 5 years:	\$87,314.79

Plan Payments			
Creditor	Balance	Payment	Terms
IRS	\$2,872.86	\$52.91	payable over 5 years at 4%
AZ Dept. of Economic Security	\$1,865.63	\$34.36	payable over 5 years at 4%
On Deck Capital, Inc.	\$40,000.00	\$736.66	payable over 5 years at 4%
Jose H. Rojas	\$12,500.00	\$230.21	payable over 5 years at 4%
Jose H. Rojas	\$12,500.00	\$230.21	payable over 5 years at 4%
Jose H. Rojas	\$12,500.00	\$230.21	payable over 5 years at 4%
Jose H. Rojas	\$12,500.00	\$230.21	payable over 5 years at 4%
Total secured and priority debt payments:		\$1,744.75	

Exhibit “C”

Tri State Stone, Inc.			
Liquidation Analysis			
Property	Value	Lien	Unencumbered Equity
1st Bank Checking Account	\$3,200	\$3,200	\$0
Office equipment	\$1,066	\$1,066	\$0
2007 Chevrolet Silverado	\$6,000	\$12,500	\$0
2008 Chevrolet Silverado	\$5,000	\$12,500	\$0
2008 Chevrolet Avalanche	\$7,000	\$12,500	\$0
1999 Chevrolet Silverado	\$1,200	\$12,500	\$0
2006 Carson trailer	\$500	\$500	\$0
Various tools, machinery and equipment: range meter, Toyota forklift, band saws, table saws, chop saw, jigsaw, cables, boring machine, belt sander, compressors, sanding tables, dust collector	\$39,970	\$39,970	\$0
Total equity for unsecured creditors			\$0