

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	MERGER		
EFFECTIVE DATE:	09/10/2005		
<b>CONVEYING PARTY DATA</b>			
Name	Formerly	Execution Date	Entity Type
Midwestern Stone & Metal LLC		09/10/2005	LIMITED LIABILITY COMPANY: COLORADO
<b>RECEIVING PARTY DATA</b>			
Name:	Western Stone & Metal Corp.		
Street Address:	9200 E. Mineral Avenue, Suite 200		
City:	Englewood		
State/Country:	COLORADO		
Postal Code:	80112		
Entity Type:	CORPORATION: COLORADO		
<b>PROPERTY NUMBERS Total: 1</b>			
Property Type	Number	Word Mark	
Registration Number:	2812773	NOW YOU HAVE A FRIEND IN THE RUBY BUSINESS	
<b>CORRESPONDENCE DATA</b>			
Fax Number:	(303)830-1033		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	303-830-2400		
Email:	jleonard@fwlaw.com		
Correspondent Name:	John A. Leonard, Esq.		
Address Line 1:	1700 Lincoln Street, Suite 2400		
Address Line 4:	Denver, COLORADO 80203		
ATTORNEY DOCKET NUMBER:	2131-65		
NAME OF SUBMITTER:	John A. Leonard, Esq.		
Signature:	/jal/		

OP \$40.00 2812773

Date:

04/27/2006

**Total Attachments: 8**

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## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Merger Agreement") is made and entered into to be effective September 10, 2005, by and between Midwestern Stone & Metal LLC, a Colorado limited liability company ("Midwestern Stone"), and Western Stone & Metal Corp., a Colorado corporation ("Western Stone"). Midwestern Stone and Western Stone are hereinafter collectively referred to as the "Constituent Entities."

### Recitals:

- A. Midwestern Stone is a limited liability company duly organized and existing under the laws of the State of Colorado, and Western Stone is a corporation duly organized and existing under the laws of the State of Colorado.
- B. Western Stone owns one hundred percent (100%) of the issued and outstanding membership interests of Midwestern Stone.
- C. The manager and sole member of Midwestern Stone and the board of directors and shareholders of Western Stone find it advisable and in the best interests of the Constituent Entities that Midwestern Stone be merged with and into Western Stone (the "Merger"), and that Western Stone be the surviving entity as authorized by the Colorado Corporations and Associations Act, under and pursuant to the terms and conditions hereinafter set forth.

### Terms of Agreement:

In consideration of the Recitals, which are incorporated herein by this reference, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby adopt the plan of reorganization set forth in this Merger Agreement and do hereby agree that Midwestern Stone shall merge with and into Western Stone on the following terms, conditions, and other provisions:

#### 1. Merger Transaction.

**1.1 Description.** At the Effective Time (as defined below), and in accordance with the provisions of this Merger Agreement and the Colorado Corporations and Associations Act, Midwestern Stone shall merge with and into Western Stone, with the effect set forth in Section 7-90-204 of the Colorado Corporations and Associations Act.

**1.2 Name of Surviving Entity.** Western Stone shall be the surviving entity. The name which the surviving entity is to have after the Merger shall be "Western Stone & Metal Corp." Immediately after the Merger, Western Stone shall continue to be a corporation duly organized and existing under the laws of the State of Colorado.

**1.3 Effective Time of Merger.** The Merger shall become effective upon filing a Statement of Merger with the Colorado Secretary of State (the "Effective Time").

**1.4 Taking of Necessary Actions.** The Constituent Entities shall take all such lawful action as may be necessary or appropriate in order to effectuate the transactions contemplated by this Merger Agreement.

**1.5 Effect of Merger.** The separate existence and organization of Midwestern Stone shall cease at the Effective Time, and thereupon the Constituent Entities shall be a single corporation with the effect set forth by the Colorado Corporations and Associations Act.

**1.5.1** Western Stone shall thereupon and thereafter possess all rights, privileges, immunities, and franchises of Midwestern Stone.

**1.5.2** All property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of, or belonging to, Midwestern Stone shall continue or shall be transferred to and vested in Western Stone without further act or deed.

**1.5.3** The title to any real estate, or interest therein, vested in Midwestern Stone shall not revert nor be in any way impaired by reason of the Merger.

**1.5.4** To the extent permitted by law, any claim existing, action, or proceeding whether civil or criminal, pending by or against Midwestern Stone may be prosecuted as if the Merger had not taken place or Western Stone may be substituted in the place of Midwestern Stone, and any judgment rendered against Midwestern Stone may be enforced against Western Stone.

**1.6 Filing of Statement of Merger.** After approval of the Merger by the manager and sole member of Midwestern Stone and the board of directors and shareholders of Western Stone and the signing of this Merger Agreement, Western Stone shall file a Statement of Merger with the Colorado Secretary of State and any other documents necessary to effectuate the terms and provisions of this Merger Agreement.

**1.7 Articles of Incorporation.** The articles of incorporation of Western Stone as in effect immediately prior to the Effective Time shall remain the articles of incorporation of Western Stone immediately after the Merger. No amendment is being made to the articles of incorporation of Western Stone in connection with the Merger.

**1.8 Bylaws.** The bylaws of Western Stone as in effect immediately prior to the Effective Time shall remain the bylaws of Western Stone immediately after the Merger. No amendment is being made to the bylaws of Western Stone in connection with the Merger.

**1.9 Directors.** The directors of Western Stone in office immediately prior to the Effective Time shall remain the directors of Western Stone immediately after the Merger and shall hold office until their successors have been elected and shall qualify to serve.

**1.10 Officers.** The officers of Western Stone in office immediately prior to the Effective Time shall remain the officers of Western Stone immediately after the Merger and shall hold office until their successors have been elected and shall qualify to serve.

**2. Effect of Merger on Capital Stock of the Constituent Entities.** The manner and basis of converting the membership interests of Midwestern Stone into shares of capital stock of Western Stone and the consideration which the holders of membership interests of Midwestern Stone are to receive in exchange for such membership interests are as follows:

**2.1 Midwestern Stone Membership Interests.** All of the issued and outstanding membership interests in Midwestern Stone are owned by Western Stone. At the Effective Time, all of the issued and outstanding membership interests in Midwestern Stone shall be cancelled without consideration.

**2.2 Western Stone Common Stock.** No change shall be made in Western Stone's capital stock as a result of the Merger.

**3. Plan of Reorganization.** This Merger Agreement constitutes a "plan of reorganization" to be carried out in the manner, on the terms, and subject to the conditions herein set forth.

**4. Further Assurances.** From time to time, as and when required by Western Stone or by its successors or assigns, there shall be executed and delivered on behalf of Midwestern Stone such deeds, assignments, and other instruments, and there shall be taken or caused to be taken by it all such further action as shall be appropriate, advisable, or necessary in order to vest, perfect, or confirm, of record or otherwise, in Western Stone the title to and possession of all property, interests, assets, rights, privileges, immunities, powers, franchises, and authority of Midwestern Stone, and otherwise to carry out the purposes of this Merger Agreement. The officers and directors of Western Stone are fully authorized in the name of and on behalf of Midwestern Stone, or otherwise, to take any and all such actions and to execute and deliver any and all such deeds and other instruments as may be necessary or appropriate to accomplish the foregoing.

**5. Abandonment.** At any time before the Effective Time, this Merger Agreement may be terminated and the Merger abandoned by the manager of Western Stone or the board of directors of Western Stone, notwithstanding approval of this Merger Agreement by the manager and sole member of Midwestern Stone and the board of directors and shareholders of Western Stone.

**6. Governing Law.** This Merger Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Merger Agreement has been signed by each of the Constituent Entities as of the date first written above.

**MIDWESTERN STONE**

Midwestern Stone & Metal LLC,  
a Colorado limited liability company

By: Thomas M. Shane  
Thomas M. Shane, its Manager

**WESTERN STONE**

Western Stone & Metal Corp.,  
a Colorado corporation

By: Thomas M. Shane  
Thomas M. Shane, its President

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

Document processing fee  
If document is filed on paper \$150.00  
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Fees & forms/cover sheets  
are subject to change.  
To file electronically, access instructions  
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and select Business Center.

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Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

### Statement of Merger

filed pursuant to §7-90-301, et seq. and §7-90-203 Colorado Revised Statutes (C.R.S.)

1. Entity name or true name of each  
merging entity:  
(other than the surviving entity)

Midwestern Stone & Metal LLC  
*(Enter name exactly as it appears in the records of the secretary of state if applicable)*

Form of entity:

Limited Liability Company

Jurisdiction under which the  
entity was formed:

Colorado

ID number (if applicable):

19961003756

Principal office street address:

9200 E. Mineral Avenue, Suite 200  
*(Street name and number)*

Englewood CO 80112  
*(City) (State) (Postal/Zip Code)*

*(Province - if applicable) (Country - if not US)*

Principal office mailing address:  
(if different from above)

*(Street name and number or Post Office Box information)*

*(City) (State) (Postal/Zip Code)*

*(Province - if applicable) (Country - if not US)*

Entity name or true name:  
(other than the surviving entity)

*(Enter name exactly as it appears in the records of the secretary of state if applicable)*

Form of entity:

Jurisdiction under which the  
entity was formed:

ID number (if applicable):

Principal office street address:

*(Street name and number)*

Principal office mailing address:  
(if different from above)

\_\_\_\_\_  
(City) (State) (Postal/Zip Code)  
\_\_\_\_\_  
(Province - if applicable) (Country - if not US)  
\_\_\_\_\_  
(Street name and number or Post Office Box information)

Entity name or true name:  
(other than the surviving entity)

\_\_\_\_\_  
(City) (State) (Postal/Zip Code)  
\_\_\_\_\_  
(Province - if applicable) (Country - if not US)  
\_\_\_\_\_  
(Enter name exactly as it appears in the records of the secretary of state if applicable)

Form of entity:

Jurisdiction under which the  
entity was formed:

ID number (if applicable):

Principal office street address:

\_\_\_\_\_  
(Street name and number)  
\_\_\_\_\_  
(City) (State) (Postal/Zip Code)  
\_\_\_\_\_  
(Province - if applicable) (Country - if not US)

Principal office mailing address:  
(if different from above)

\_\_\_\_\_  
(Street name and number or Post Office Box information)  
\_\_\_\_\_  
(City) (State) (Postal/Zip Code)  
\_\_\_\_\_  
(Province - if applicable) (Country - if not US)

(If there are more than three merging entities, mark this box  and include an attachment stating the entity name, ID number, and the principal office address of each additional merging entity.)

2. Entity name of the surviving entity:

Western Stone & Metal Corp.  
(Enter name exactly as it appears in the records of the secretary of state if applicable)

Form of entity:

Corporation

Jurisdiction under which the  
entity was formed:

Colorado

ID number (if applicable):

19871270356

Principal office street address:

9200 E. Mineral Avenue, Suite 200  
(Street name and number)

Englewood CO 80112  
(City) (State) (Postal/Zip Code)  
\_\_\_\_\_  
(Province - if applicable) (Country - if not US)

MERGE

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Principal office mailing address: \_\_\_\_\_  
(if different from above) (Street name and number or Post Office Box information)

\_\_\_\_\_  
(City) (State) (Postal/Zip Code)

\_\_\_\_\_  
(Province - if applicable) (Country - if not US)

3. New entity name of surviving entity: \_\_\_\_\_

4. Use of Restricted Words (if any of these terms are contained in an entity name, true name of an entity, trade name or trademark stated in this document, mark the applicable box):

- "bank" or "trust" or any derivative thereof  
 "credit union"  "savings and loan"  
 "insurance", "casualty", "mutual", or "surety"

5. The merging entities are merged into the surviving entity pursuant to this section.

6. If the entity's period of duration as amended is perpetual, mark this box:

OR

If the entity's period of duration as amended is less than perpetual, state the date on which the period of duration expires:

\_\_\_\_\_  
(mm/dd/yyyy)

7. If one or more of the merging entities is a registrant of a trademark described in a filed document in the records of the secretary of state, mark this box  and state below the document number of each such filed document.

Document number: \_\_\_\_\_

Document number: \_\_\_\_\_

(If more than two trademarks, mark this box  and include an attachment stating the additional document numbers.)

8. Other amendments, if any, are attached.

9. Additional information may be included. If applicable, mark this box  and include an attachment stating the additional information.

10. (Optional) Delayed effective date: September 10, 2005  
(mm/dd/yyyy)

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

11. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing:

<u>Loeb</u>	<u>Robert</u>	<u>L.</u>	<u>Jr.</u>
<i>(Last)</i>	<i>(First)</i>	<i>(Middle)</i>	<i>(Suffix)</i>
<u>Fairfield and Woods, P.C.</u>			
<i>(Street name and number or Post Office Box information)</i>			
<u>1700 Lincoln Street, Suite 2400</u>			
<u>Denver</u>	<u>CO</u>	<u>80203</u>	
<i>(City)</i>	<i>(State)</i>	<i>(Postal/Zip Code)</i>	
<u></u>		<u></u>	
<i>(Province - if applicable)</i>		<i>(Country - if not US)</i>	

*(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box  and include an attachment stating the name and address of such individuals.)*

**Disclaimer:**

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user's attorney.