

**PRE-FILING REPORT OF
ALBERT GELMAN INC.
AS PROPOSED RECEIVER OF
MILESTONE MARBLE & GRANITE LTD.**

JUNE 8, 2024

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST**

BETWEEN:

MILESTONE DISTRIBUTION 2024 LTD.

Applicant

- and -

MILESTONE MARBLE & GRANITE LTD.

Respondent

**PRE-FILING REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSED RECEIVER**

JUNE 8, 2024

I. INTRODUCTION

1. This report (“**Pre-Filing Report**”) is filed by Albert Gelman Inc. (“**AGI**”) in its capacity as proposed receiver (the “**Proposed Receiver**”) of the property, assets and undertaking (collectively, the “**Property**”) of Milestone Marble & Granite Ltd. (the “**Company**”).
2. Milestone Distribution 2024 Ltd. (the “**Applicant**”), the Company’s senior-secured creditor, has brought an application (the “**Receivership Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Receivership Order**”), among other things, appointing AGI as receiver (in such capacity, the “**Receiver**”) of the Company. AGI has consented to act as Receiver, should the Court grant the Receivership Order.
3. The primary purpose of these receivership proceedings is to create a stabilized environment to facilitate the sale of the Company’s business and/or assets by implementing a Court-supervised sale solicitation process (the “**Sale Process**”). The Sale Process, which is to be conducted by the Receiver, is contemplated to include approval of a “stalking horse bid”, as discussed below.
4. The Applicant has submitted an asset purchase agreement (the “**Stalking Horse Agreement**”), pursuant to which the Applicant has agreed to act as a stalking horse bidder (in such capacity, the “**Stalking Horse Bidder**”) for the acquisition of substantially all of the Company’s assets. The closing of the transaction contemplated by the Stalking Horse Agreement, which is to be largely satisfied by way of a credit bid, is conditional on, among other things: (i) the Stalking Horse Bidder being the Successful Bidder (as defined in the Sale Procedures (as defined below)); and (ii) Court approval of the transaction. The Stalking Horse Bidder is a newly formed Ontario corporation controlled by certain of the Company’s shareholders.
5. AGI is a well-experienced, licensed insolvency trustee within the meaning of section 2(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and is not subject to any of the restrictions on who may be appointed as Receiver set out in section 13.3(1) of the BIA. AGI was retained by the Company in December 2023 to act as its financial advisor to assist in providing strategic restructuring advice, including with respect to advising on the structure of these proceedings. Given AGI’s knowledge of the Company and its recent financial difficulties, AGI believes it is well positioned to efficiently and knowledgeably act as Receiver throughout these proceedings. The Proposed Receiver is of the view that it is not in any way compromised or unable to discharge its duties as Receiver in accordance with the Receivership Order as a result of its former mandate with the Company.

II. PURPOSE OF THIS REPORT

6. The purpose of this Pre-Filing Report is to provide the Court with information pertaining to the following:
 - a. relevant background information of the Company, including the Company's financial position, composition of and amounts owing to its creditors, and the events leading to these receivership proceedings;
 - b. the proposed Sale Process, including the proposed procedures to administer same (the "**Sale Procedures**");
 - c. the terms of the Stalking Horse Agreement; and
 - d. the Proposed Receiver's recommendation that this Court issue the Receivership Order, which, among other things:
 - i. appoints AGI as Receiver;
 - ii. grants a charge for the fees and disbursements of the Receiver and its legal counsel;
 - iii. grants a charge for any amounts borrowed by the Receiver to fund costs of the receivership, if necessary;
 - iv. grants a stay of proceedings; and
 - v. approves the Sale Process, including the Sale Procedures, and the Stalking Horse Agreement.

III. SCOPE AND TERMS OF REFERENCE

7. In preparing this Pre-Filing Report, the Proposed Receiver has relied upon certain unaudited financial information, the Company's books and records, discussions with the Company's management, directors and shareholders and legal counsel, Loopstra Nixon LLP.
8. While the Proposed Receiver has reviewed the various documents and other information provided by the Company, such review does not constitute an audit or verification of such documents/information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises ("**ASPE**") or International Financial Reporting Standards ("**IFRS**") or otherwise. Accordingly, the Proposed Receiver expresses no opinion or other form of assurance pursuant to ASPE or IFRS or otherwise with respect to such documents/information.
9. This Pre-Filing Report has been prepared for the use of this Court and the Company's stakeholders as general information relating to the Company and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Pre-Filing Report may not be appropriate for any other purpose. The Proposed Receiver will not assume responsibility

or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Pre-Filing Report contrary to the provisions of this paragraph.

10. Unless otherwise noted, all monetary amounts referenced are in Canadian dollars.
11. Capitalized terms not otherwise defined have the meanings given to them in the Stalking Horse Agreement, a copy of which is included as Exhibit "P" to the affidavit of Ms. Laura Moscone ("**Laura**") sworn May 30, 2024 (the "**Moscone Affidavit**") and filed in support of the Receivership Application.

IV. BACKGROUND INFORMATION

12. The Company's business, affairs, financial performance, and position, as well as the causes of insolvency, are detailed in the Moscone Affidavit. This Pre-Filing Report should be read in conjunction with the Moscone Affidavit, as certain information contained in the Moscone Affidavit has not been included herein to avoid unnecessary duplication. A copy of the Moscone Affidavit (without exhibits) is attached hereto as **Appendix "A"**.

General Background

13. The Company is a private company incorporated under the laws of the Province of Ontario. It is an importer and supplier of custom marble and granite and services construction projects across Canada.
14. The Company operates from a leased, mixed-use warehouse and office space located at 8181 Jane St, Concord, Ontario (the "**Leased Premises**").
15. The Company was founded in 2000 by Frank Arlotta ("**Frank**"), Laura's spouse. As noted in the Moscone Affidavit, the Company was historically a family owned and operated business. Since 2014, Frank and Laura have shared control and managed all of the Company's operations; they are the only family members still involved in the day-to-day operations of the Company.
16. Frank and Laura are the Company's directors and majority shareholders. Together, they indirectly own 59% of the Company through Group of Six Enterprises Ltd. ("**Group of Six**"), a company controlled by them. Laura also owns an additional 11% of the Company in her personal capacity. The Proposed Receiver understands that the other shareholders of the Company include: (i) Woolacott Holdings Inc. ("**Woolacott**"), a company owned by Laura's brother, Vince Moscone (15%), and (ii) Basentana Holdings Ltd. ("**Basentana**"), a company owned by Laura's sister and brother-in-law, Nina ("**Nina**") and Anthony ("**Anthony**") Marrese, respectively (15%).
17. In addition, and as discussed in more detail below, Frank and Laura control the Applicant and, as such, they are indirectly the Company's only secured creditor.

18. The Proposed Receiver understands that the Company currently employs two (2) hourly individuals (the “**Employees**”) and one independent subcontractor. There is no Company sponsored pension plan for the Employees, nor are any of the Employees unionized.

Historical Financial Results

19. Summarized below are the unaudited historical financial results for the Company for the fiscal years ended May 31, 2024, 2023 and 2022.

Milestone Marble & Granite Ltd. (the "Company")			
Historical P&L			
For the Year Ended			
(in CAD; unaudited)			
	May 31, 2024¹	May 31, 2023	May 31, 2022
Revenue	936,397	743,801	744,232
COGS	609,843	493,758	508,248
Gross profit	326,554	250,043	235,984
Operating expenses	452,916	380,379	345,196
Other expense (income)	93,000	4,985	102,308
Net loss	(219,362)	(135,321)	(211,520)

(1) The May 31, 2024 financials are not finalized and are subject to adjustment.
Source: unaudited financials statements of the Company.

20. While the May 31, 2024 financials are not finalized and subject to adjustment, the Company reports aggregate losses during the past three fiscal years of approximately \$566,000. The Proposed Receiver understands that during fiscal 2019, one the Company’s largest customers, Moscone Marble & Granite (“**Moscone Granite**”), which is partly owned by Nina and Anthony, stopped ordering product from the Company, representing a significant loss in revenue (as noted in the Moscone Affidavit, at its highest point, sales to Moscone Granite were approximately \$1.5 million annually). Additionally, the impacts of COVID-19, particularly with respect to the Company’s supply chain and work stoppages in the construction industry, negatively impacted the Company’s ability to earn revenue or otherwise replace the lost revenue from Moscone Granite. Unfortunately, and as noted in the Moscone Affidavit, the Company’s results (and profitability) continued to suffer due to general market conditions, including lower demand for the Company’s products (which are considered luxury goods), the distressed state of the construction industry, and increased competition in the marble import/supply industry.

21. The Proposed Receiver understands that, as a result of the Company’s financial difficulties, on April 13, 2023, Royal Bank of Canada (“**RBC**”), the Company’s former operating lender, issued formal demands and a notice of intention to enforce security (“**NITES**”) pursuant to section 244 of the BIA, demanding immediate repayment of an operating line RBC made available to the Company. On May

- 23, 2023, Group of Six and Laura (in her personal capacity) advanced \$203,000 to the Company to fund the repayment of the RBC operating line (the “**RBC Repayment**”). As noted in the Moscone Affidavit, the Company issued a cash call to its shareholders to fund the RBC Repayment, which the other shareholders declined to participate in.
22. Further, as noted in the Moscone Affidavit, the Company is subject to litigation advanced by MMG Stone Fabrication Inc. (the “**MMG Litigation**”), a company controlled by Nina and Anthony. The Proposed Receiver understands that the Company has expended significant funds and resources defending the MMG Litigation, which has compounded the Company’s financial challenges.
23. Set out below is the Company’s unaudited summary balance sheet as at May 31, 2024:

Milestone Marble & Granite Ltd. (the "Company")			
Balance Sheet Summary			
As At May 31, 2024			
(in CAD; unaudited)			
<u>Assets</u>		<u>Liabilities</u>	
Cash	6,904	AP, accruals and deposits	301,619
Accounts receivable	88,934	CEBA loan	20,000
Inventory	1,196,821	BDC loans	78,220
Prepaid expense and other	2,885	Advances from SH and related companies	1,922,622
Total current	1,295,544	Total liabilities	2,322,461
PPE, net	3,554	SH Equity	(1,023,363)
Total assets	1,299,098	Total liabilities and SH Equity	1,299,098

(1) The May 31, 2024 financials are not finalized and are subject to adjustment.
Source: unaudited internal financial statements of Livewire Communications Inc.

24. As reported in the Company’s internal unaudited balance sheet dated May 31, 2024 (which is subject to adjustment), the book value of the Company’s assets as at May 31, 2024 was approximately \$1.3 million, which is principally comprised of approximately \$89,000 (book value) of accounts receivable and \$1.2 million (book value) of inventory. In contrast, the book value of the Company’s total liabilities as at May 31, 2024 was approximately \$2.3 million, primarily comprising the secured debt owing to the Applicant (approximately \$903,000, recorded in Advances from SH and related companies; as discussed below), other debts owing to certain shareholders and related parties (approximately \$1.0 million), and AP, accruals and deposits (approximately \$302,000).

Secured Creditors

25. As noted in the Moscone Affidavit, as at February 29, 2024, the Company had secured debt of approximately \$903,000 owing to the following:
- a. Laura – in the amount of approximately \$231,000, pursuant to a demand promissory note dated May 3, 2023 (the “**Laura Note**”), as well as other secured advances made by Laura to the

Company (the “**Laura Secured Advances**” and collectively with the Laura Note, the “**Laura Secured Debt**”);

- b. Falcon Enterprises Corp. (“**Falcon**” and together with Laura and Group of Six, the “**Assignors**”), a company controlled by Frank and Laura – in the amount of approximately \$489,000 (the “**Falcon Secured Debt**”), including approximately \$381,000 pursuant to a demand promissory note dated August 30, 2019 (the “**Falcon Note**”) and approximately \$108,000 on account of accrued and unpaid management fees owing to Falcon (related to fiscal 2023) pursuant to a management services agreement dated April 4, 2014 between the Company and Falcon (the “**Management Services Agreement**”), setting out the terms under which Falcon provides management services to the Company; and
 - c. Group of Six – in the amount of approximately \$182,000, pursuant to a demand promissory note dated May 3, 2023 (the “**Group of Six Note**” and collectively with the Laura Secured Debt and the Falcon Secured Debt, the “**Assignors’ Secured Debt**”).
26. As further noted in the Moscone Affidavit, to secure the obligations in respect of the Assignors’ Secured Debt, the Company granted security (collectively, the “**Assignors’ Security**”) by way of general security agreements dated May 3, 2023, August 19, 2019 and May 3, 2023, in favour of Laura, Falcon and Group of Six, respectively (collectively, the “**GSAs**”). Copies of the GSAs are included as Exhibits “E”, “F” and “G” to the Moscone Affidavit.
27. The Proposed Receiver has received written opinions from its independent counsel, Reconstruct LLP, that, subject to customary assumptions and qualifications for opinions of this nature (including but not limited to whether there was due corporate authority for all of the loan and security documents), the Assignors’ Security is valid and enforceable as against the Company in the Province of Ontario (the “**Security Opinions**”).
28. In addition to obtaining the Security Opinions, the Proposed Receiver reviewed the books and records of the Company to confirm the amounts recorded in respect of Assignors’ Secured Debt. Based on its review, the Proposed Receiver notes the following:
- a. Laura Secured Debt – included as **Appendix “B”** hereto is a schedule (the “**Laura Secured Debt Schedule**”) setting out the transactions comprising the Laura Secured Debt. During the period from September 1, 2017 to February 16, 2024, Laura advanced funds to the Company to fund working capital and other expenses/disbursements (including approximately \$32,000 in respect of the RBC Repayment). Additionally, during the same period, to reduce the balance owing to Laura, the Company made certain repayments, paid certain expenses on her behalf, or recorded certain adjustments such that, as at February 29, 2024, the value of the Laura Secured Debt was approximately \$231,000. The Proposed Receiver discussed the transactions in the Laura Secured Debt Schedule with the Company and reviewed cheque

copies and bank statement details to confirm that any advances made to the Company in respect of the Laura Secured Debt were actually paid by Laura to or on behalf of the Company;

- b. Falcon Secured Debt – as noted above, the Falcon Secured Debt comprises (i) approximately \$381,000 in respect of the Falcon Note and (ii) approximately \$108,000 in respect of accrued and unpaid management fees. The Proposed Receiver has been advised by the Company that the debt giving rise to the Falcon Note is primarily the result of a notional dividend issued to Falcon that Falcon directed back to the Company as a shareholder loan. The Proposed Receiver has been further advised by the Company that the same arrangement was also carried out by the Company's other shareholders at that time, including Woolacott, Basentana, and Perth Park Holdings Ltd. (a company controlled by Anna Moscone, Laura's sister, "**Perth Park**"). With respect to the accrued/unpaid management fees, the Proposed Receiver has reviewed the Management Services Agreement, which provides, among other things, that the annual management fee payable to Falcon is to be "in the amount of no less than \$100,000". A copy of the Management Services Agreement is attached hereto as **Appendix "C"**; and
- c. Group of Six Note – on May 23, 2023, Group of Six advanced \$171,000 to the Company to fund the remaining portion of the RBC Repayment. The Proposed Receiver reviewed a cheque copy and bank statement details to confirm that this advance was made by Group of Six to the Company.

Assignment to the Applicant

29. As noted in the Moscone Affidavit, pursuant to three Assignment of Indebtedness and Security Agreements dated February 29, 2024 (collectively, the "**Assignment Agreements**"), between the Applicant and each of the Assignors, the Applicant purchased the Assignors' Secured Debt and the Assignors' right, title and interest in the Assignors' Security. A copy of the Assignment Agreements are included as Exhibit "I" to the Moscone Affidavit.
30. The results of a search of the Personal Property Security Registration System (Ontario) for the Company with a currency date of April 18, 2024 (the "**PPSA Search Results**") confirms that, in addition to the Applicant, each of RBC, Laura, Falcon and Group of Six have registered security against the Company. A copy of the PPSA Search Results is included as Exhibit "J" to the Moscone Affidavit.

Unsecured Creditors

31. The Company estimates that, as of May 31, 2024, it had arms-length unsecured obligations totaling approximately \$160,000.
32. In addition, the Company's records indicate that, as of May 31, 2024, the Company owes approximately \$1.0 million to certain shareholders and other related parties in respect of various

unsecured loans and advances, including from Falcon, Woolacott, Basentana and Perth Park, among others.

Events Leading to the Company's Receivership Proceedings

33. As noted above and discussed in the Moscone Affidavit, various factors have contributed to the Company's financial challenges, including: (i) the loss of a significant customer, being Moscone Granite, (ii) supply chain and other disruptions (work stoppages) caused by the COVID-19 pandemic, which impacted the Company's ability to earn revenue, (iii) recent general market conditions, including reduced demand for luxury marble products, a distressed construction industry, and increased competition in the marble import/supply industry, with many new entrants eroding the Company's market share, (iv) RBC's demand for repayment of the Company's operating line, and (v) the MMG Litigation.
34. As a result of these financial challenges and strains on liquidity, the Company was, and continues to be, reliant on support from Frank and Laura (and companies controlled by them) to fund the business.
35. As noted in the Moscone Affidavit, the Company is not in a financial position to make interest payments on account of the Assignors' Secured Debt and Frank and Laura (or their companies) are no longer willing to fund the business in its current state. In consideration of the foregoing, on March 25, 2024, the Applicant made formal demand for repayment of the Assignors' Secured Debt (the "**Demand Letter**") and delivered a NITES (the "**Applicant's NITES**") pursuant to section 244 of the BIA. Copies of the Demand Letter and Applicant's NITES are included as Exhibit "K" to the Moscone Affidavit. As noted in the Moscone Affidavit, the Company was given until April 5, 2024, to repay the full outstanding balance under the Assignors' Secured Debt. As of the date of this Pre-Filing Report, no payment has been made.
36. In the circumstances, the Applicant brought the Receivership Application to appoint a receiver to take control over and realize on the assets of the business for the benefit of the Company's stakeholders.

V. THE SALE PROCESS, SALE PROCEDURES AND STALKING HORSE AGREEMENT

37. The purpose of the Sale Process is to solicit interest in a sale of the Company's assets while providing the certainty of a transaction through the Stalking Horse Agreement to ensure that the business will emerge as a going concern in the event that there are no superior offers. A copy of the Sale Procedures is attached as Exhibit "Q" to the Moscone Affidavit.
38. The Sale Process is to be conducted by the Receiver in accordance with the Sale Procedures.

39. A summary of the proposed Sale Procedures is as follows (capitalized terms not otherwise defined in this section have the meanings provided to them in the Sale Procedures):

a. subject to Court approval, the following table sets out the Sale Process timeline:

Milestone	Key Dates
Commencement of Sale Process	No later than June 14, 2024
Offer Deadline	July 16, 2024
Auction (if required) and selection of the Successful Bid	July 18, 2024
Sale Approval Motion Hearing / Transaction Closing Date	Subject to Court availability
Closing of transaction	No later than August 14, 2024

- b. the Sale Process is proposed to commence immediately on the date the Court approves the Sale Process (the “**Commencement Date**”);
- c. as soon as practicable following the Commencement Date, the Receiver will distribute an initial offering summary (the “**Teaser Letter**”) detailing the opportunity to potential interested parties (the “**Prospective Participants**”) identified by the Receiver, including (i) parties that approach the Company or the Receiver indicating an interest in the opportunity and (ii) strategic and financial parties who the Receiver believes may be interested in the opportunity. Attached to the Teaser Letter will be a form of non-disclosure agreement (“**NDA**”), which Prospective Participants must execute in order to participate in the Sale Process and receive further information regarding the Company;
- d. as soon as practicable after the Commencement Date but no later than five (5) business days following Court approval of the Sale Process, the Receiver will publish an advertisement of the acquisition opportunity in the National Post and/or in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Receiver;
- e. the Receiver will cause the Teaser Letter and NDA to be sent to any other party who requests a copy or who is identified to the Receiver as a potential bidder as soon as reasonably practicable after such request or identification;
- f. upon execution of an NDA, Prospective Participants will be provided with access to a virtual data room (the “**Data Room**”) to be maintained by the Receiver. The Data Room will contain various financial and other information concerning the Company for purposes of performing diligence on the acquisition opportunity. Selected due diligence materials may be withheld from

- Prospective Participants if the Receiver determines such information to represent proprietary or sensitive competitive information;
- g. the Receiver will facilitate due diligence efforts by, *inter alia*, maintaining the Data Room, arranging meetings between Company management and Prospective Participants and responding to or otherwise dealing with Prospective Participants' enquiries regarding the Company and the opportunity;
 - h. Prospective Participants will be provided with a copy of a template share purchase agreement and template asset purchase agreement (either such agreement being referred to as the "**Template Purchase Agreement**"). Prospective Participants will be required to submit offers in the form of the Template Purchase Agreement, with a blackline comparison illustrating any changes; and
 - i. Offers will be required to be submitted to the Receiver by no later than 5:00 pm (Toronto time) on July 16, 2024 (the "**Offer Deadline**").

Qualified Offer

40. To be a "**Qualified Offer**" an offer must be submitted by the Offer Deadline and by a Prospective Participant that, in the Receiver's judgement, is determined to be likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or liquidation transaction pursuant to the Sale Procedures. In addition, to be a Qualified Offer, an offer must be a binding offer and, at a minimum, include, *inter alia*, the following requirements, unless such requirement is waived by the Receiver:
- a. is submitted in the form of the Template Purchase Agreement, accompanied by a blacklined version of the same showing all changes from the Stalking Horse Agreement (provided that a Liquidation Proposal (as defined in the Sale Procedures) is not required to be submitted on such template);
 - b. provides for a cash purchase price of no less than the aggregate of (the "**Minimum Purchase Price**"):
 - i. the amount of cash equal in value to (1) the cash payable under the Stalking Horse Agreement and (2) the value of the 'credit bid' component of the Stalking Horse Agreement, plus

- ii. \$15,000 (being the Expense Reimbursement, as defined in the Stalking Horse Agreement)¹, plus
- iii. \$10,000, being the minimum overbid amount;
- c. a cash deposit (by wire payment to the Receiver) of not less than 10% of the offer purchase price, which is acknowledged to be non-refundable subject to the offeror being the Successful Bidder and its Successful Bid (as defined in the Sale Process) being approved by the Court;
- d. includes evidence satisfactory to the Receiver of funds available to pay the Minimum Purchase Price on closing;
- e. it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction (save and except for approval by the Court);
- f. includes a description of the Company's assets to be acquired and those that are to be excluded;
- g. includes a description of the Company's liabilities that will be assumed, including any of the Company's executory contracts and leases (with clear description, for each contract or on an aggregate basis, how any monetary defaults and non-monetary defaults will be remedied);
- h. contains the proposed treatment of the Company's employees (for example, anticipated employment offers and treatment of post-employment benefits);
- i. it must include written evidence, satisfactory to the Receiver, that the prospective purchaser has the financial means to complete the proposed transaction, including specific indication of the sources of capital and the structure and financing of the transaction;
- j. must provide evidence satisfactory to the Receiver that the offeror has the capacity to close the proposed transaction on or before the date that is ten (10) days from the date of the Sale Approval Order (as defined below) and in any event, no later than August 14, 2024 (the "**Outside Date**");
- k. a provision stating that the offer is irrevocably open for acceptance until the earlier of (i) two (2) business days after the date of closing of the Successful Bid and (ii) the Outside Date; and
- l. it may only contemplate an acquisition on a "as is, where is" basis and must include an acknowledgement that the prospective purchaser has relied solely on its own independent

¹ The Proposed Receiver notes that the Moscone Affidavit references an amount of \$25,000 but that the Stalking Horse Agreement references an amount of \$15,000. The Proposed Receiver has confirmed with the Applicant that the latter is correct and the affidavit included a typo.

review and investigation and that it has not relied on any representation by the Company, the Receiver or their respective agents, employees, or advisors.

41. The Stalking Horse Bid is deemed to be a Qualified Offer.
42. Offers for all or part of the business, assets and undertakings of the Company will be considered, including liquidation offers.

Auction

43. If no Qualified Offers are submitted by the Offer Deadline, the Stalking Horse Bidder will be deemed to have made the Successful Bid.
44. If more than one Qualified Offer is received by the Offer Deadline (other than that submitted by the Stalking Horse Bidder), the Receiver may, without being obligated to do so, conduct an auction (the “**Auction**”) to select the highest and/or best offer, using the following procedures:
 - a. the Receiver will notify all bidders who submitted a Qualified Offer, that the Auction will be held at 10:00 am (Toronto time) on July 18, 2024 (unless postponed by the Receiver) virtually via videoconference, teleconference or such other reasonable means as the Receiver deems appropriate;
 - b. the Receiver will conduct the Auction;
 - c. the opening bid in the Auction will be the highest and best of the Qualified Offers, as identified by the Receiver, and subsequent bidding will continue in minimum increments of \$25,000. Additional consideration in excess of the amount set forth in the opening bid must be comprised only of cash consideration; and
 - d. the Receiver is at liberty to modify or to set additional procedures for the Auction as it sees fit.

Selection of Successful Bid

45. The Successful Bid shall be, either:
 - a. in the event that no other Qualified Offer is received by the Offer Deadline, the Stalking Horse Bidder’s offer; or
 - b. in the event that multiple Qualified Offers are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Receiver is satisfied, acting reasonably, is capable of being completed in accordance with the Sale Procedures.
46. Upon selection of the Successful Bid, the Receiver will apply to the Court for one or more orders: (i) approving the Successful Bid and authorizing the Receiver to take the steps required to complete the transaction(s) contemplated therein; and (ii) granting a vesting order(s) to the extent that such

relief is contemplated by the Successful Bid(s) so as to vest title to any purchased assets and/or shares in the name of the applicable Successful Bidder(s) (collectively, the “**Sale Approval Order**”).

The Stalking Horse Agreement

47. The Stalking Horse Agreement contemplates the acquisition of substantially all of the Property of the Company with a view to continuing the business as a going concern (as noted above, a copy of the Stalking Horse Agreement is included as Exhibit “P” to the Moscone Affidavit). The key terms and conditions of the Stalking Horse Agreement are provided below.
- a. **Stalking Horse Bidder:** The Applicant, Milestone Distribution 2024 Ltd.;
 - b. **Purchase Price:** estimated to be \$1.1 million (the “**Purchase Price**”), comprising the aggregate of the following amounts:
 - i. the value of Assignors’ Secured Debt, as at Closing;
 - ii. any outstanding amounts secured by the Administration Charge at Closing;
 - iii. any and all amounts secured by the Receiver’s Borrowing Charge at Closing; and
 - iv. any and all other amounts and claims which rank in priority to the Assignors’ Security, if any, including, without limitation, on account of unremitted source deductions (collectively, with the Administration Charge and Receiver’s Borrowing Charge, the “**Priority Payables**”); plus
 - v. the value of the Assumed Liabilities;
 - c. **Deposit:** contemporaneously with the execution of the Stalking Horse Agreement, the Stalking Horse Bidder will transfer \$100,000 to the Receiver, to be held in trust (the “**Deposit**”). Upon closing, the Deposit is to be applied against the Purchase Price on closing;
 - d. **Purchased Assets:** substantially all of the Company’s assets and property, including equipment, inventory, intellectual property and other intangible assets, accounts receivable, cash and other liquid assets and financial instruments, books and records and the Assigned Contracts (as defined in the Stalking Horse Agreement, but for clarity, includes the lease for the Leased Premises, the Company’s equipment leases and IT related contracts);
 - e. **Assumed Liabilities:** all obligations of the Company owed to Business Development Bank of Canada and all liabilities associated with the Purchased Assets, including any Assigned Contracts, solely in respect of the period from and after the Closing Time and not relating to any default existing prior to or as a consequence of Closing;
 - f. **Excluded Liabilities:** any liabilities of the Company other than the Assumed Liabilities;

- g. **Employment Offer:** the Stalking Horse Bidder may, in its sole discretion, offer new employment, conditional upon Closing, to certain of the Company's employees as it may determine, in its sole discretion. Any such offer shall be made at least two (2) Business Days prior to Closing, on terms and conditions substantially similar and no less favourable than the terms and conditions on which such employees are employed immediately prior to Closing;
- h. **Expense Reimbursement:** \$15,000, payable only if the Stalking Horse Bid is not the Successful Bid;
- i. **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties;
- j. **Closing Date:** the date that is ten (10) days after all conditions to closing are satisfied (including the granting of the Sale Approval Order) or waived, or such other earlier or later date as may be agreed by the Receiver and the Stalking Horse Bidder, in writing;
- k. **Material Conditions,** include, *inter alia*:

For the Benefit of Both Parties

- i. the Sale Approval Order shall have been issued and entered and shall not have been stayed, amended, modified, reversed or dismissed;

For the Benefit of the Stalking Horse Bidder

- i. the Stalking Horse Bid is selected as the Successful Bid;
- ii. the Receiver shall have executed and delivered or caused to have been executed and delivered to the Stalking Horse Bidder at the Closing all definitive documents required to complete the transaction, as set out in section 7.2 of the Stalking Horse Agreement;
- iii. the representations and warranties of the Receiver contained in the Stalking Horse Agreement shall be true and correct as of the Closing Date (or such other date as may be agreed to by the parties) in all material respects; and
- iv. the Receiver shall have fulfilled or complied with all covenants contained in the Stalking Horse Agreement required to be fulfilled or complied with by it in all material respects on or before the Closing Date;

For the Benefit of the Receiver

- i. the Stalking Horse Bidder shall have executed and delivered or caused to have been executed and delivered to the Receiver at the Closing all definitive documents required to complete the transaction, as set out in section 7.3 of the Stalking Horse Agreement;

- ii. the representations and warranties of the Stalking Horse Bidder contained in the Stalking Horse Agreement shall be true and correct as of the Closing Date (or such other date as may be agreed to by the parties) in all material respects;
 - iii. the Stalking Horse Bidder shall have fulfilled or complied with all covenants contained in the Stalking Horse Agreement required to be fulfilled or complied with by it in all material respects on or before the Closing Date; and
 - iv. the Receiver will have provided an executed copy of a certificate confirming that all conditions to Closing have either been satisfied or waived by both the Stalking Horse Bidder and the Receiver; and
- I. **Termination:** the Stalking Horse Agreement can be terminated if:
- i. mutually agreed between the Receiver and the Stalking Horse Bidder;
 - ii. there is a material breach by either party of any representation, warranty or covenant contained in the Stalking Horse Agreement, which breach has not been waived or cured in accordance with the Stalking Horse Agreement; and
 - iii. Closing does not occur on or prior to the Outside Date, provided that the failure to close by the Outside Date is not caused by a breach of the Stalking Horse Agreement by the party proposing to terminate same.

Bid Protections

- 48. If the Stalking Horse Bidder is not the successful bidder at the culmination of the Sale Process, it is proposed that the Stalking Horse Bidder should be entitled to payment of the Expense Reimbursement in the maximum amount of \$15,000 (inclusive of HST, if any). The purpose of the Expense Reimbursement is to provide the Stalking Horse Bidder with a means to receive compensation for its costs, expenses and opportunity cost in connection with the Stalking Horse Agreement, if it is not the successful bidder in the Sale Process.
- 49. Bid protections (including expense reimbursements and break fees) in the context of stalking horse sale processes are generally around 2.5% to 5% of the purchase price. In this case, the bid protections represent approximately 1.4% of the estimated Purchase Price, which is below market.
- 50. The Proposed Receiver is of the view that the bid protections are reasonable, not punitive in nature, and will not discourage competitive bidding with respect to the Sale Process.

Stalking Horse Agreement Recommendation

51. The Proposed Receiver has considered whether the Stalking Horse Bidder's offer warrants it being structured as a stalking horse bid, as opposed to the Stalking Horse Bidder simply being a bidder in the Sale Process. The Proposed Receiver is of the view that the stalking horse structure is superior to the alternative for the following reasons:
- a. the Stalking Horse Agreement provides certainty to the Company's customers, employees and other stakeholders that a going concern transaction will be completed;
 - b. the Stalking Horse Purchaser is not being approved as making the Successful Bid at this time, but is subject to the outcome of the Sale Process; and
 - c. the Stalking Horse Agreement sets a minimum bid amount, which will avoid the time and resources being spent on below market offers.

Sale Process Recommendation

52. The Proposed Receiver is of the view that the timelines and procedures provided for under the Sale Process, including the incorporation of the Stalking Horse Agreement, are reasonable and appropriate in the circumstances based on its experience and its review of sale and investment solicitation processes approved by the Court in similar proceedings.
53. The Proposed Receiver therefore recommends that this Court issue an order approving the Stalking Horse Agreement and the Sale Process for the following reasons:
- a. the Sale Process provides for a wide marketing of the Company's business by the Proposed Receiver, which has extensive experience selling distressed assets and businesses;
 - b. stalking horse sale processes are a recognized mechanism in restructuring processes to maximize recoveries, while creating stability for the business and certainty for the stakeholders;
 - c. the Sale Process allows for a fair, efficient and transparent market test for the benefit of all stakeholders, and provides an opportunity to complete a transaction with greater value than what is offered in the Stalking Horse Agreement, should one materialize;
 - d. it is, in the Proposed Receiver's view, in the best interests of the Company's stakeholders that the Stalking Horse Agreement be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted;
 - e. the proposed timelines of the Sale Process are sufficient to allow interested parties to perform diligence and submit offers;
 - f. the terms of the Stalking Horse Agreement are commercially reasonable;

- g. the requirement to return to Court for approval of a transaction before the Receiver can consummate any Successful Bid ensures that a transaction identified in the Sale Process will not proceed without review and consideration by the Court; and
- h. the bid protections are reasonable in the circumstances and, in the Proposed Receiver's view, will not discourage interested parties from submitting offers in the Sale Process.

VI. PROPOSED RECEIVER'S RECOMMENDATION

- 54. Based on all of the foregoing, the Proposed Receiver respectfully recommends that this Honourable Court grant the Receivership Order in the form sought.

All of which is respectfully submitted this 8th day of June 2024

**ALBERT GELMAN INC., solely in its capacity as
Proposed Receiver of
Milestone Marble & Granite Ltd.
and not its personal or any other capacity**



Per:

Adam Zeldin, CPA, CA, CIRP, LIT

APPENDIX “A”

Court File No. CV-24-00720368-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

B E T W E E N:

MILESTONE DISTRIBUTION 2024 LTD

Applicant

- and -

MILESTONE MARBLE & GRANITE LTD.

Respondent

IN THE MATTER OF AN APPLICATION PURSUANT TO
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY
ACT*, R.S.C. 1985, c. B-3, AS AMENDED and SECTION 101 OF
THE COURTS OF JUSTICE ACT, R.S.O., c. C.43, AS AMENDED

**AFFIDAVIT OF LAURA MOSCONE
(sworn May 30, 2024)**

I, **LAURA MOSCONE**, of the city of Concord, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I am the vice-president of the applicant, Milestone Distribution 2024 Ltd. (the “**Applicant**”). As such, I have knowledge of the information contained herein. Where that information has been based upon information from others, I have stated the source of the information and believe it to be true.

2. This affidavit is sworn in support of an application by the Applicant for the appointment of Albert Gelman Inc. (“**Albert Gelman**”) as receiver (“**Receiver**”) of the property,

assets, and undertakings of the Respondent, Milestone Marble & Granite Ltd. (the “**Debtor**”) and approval of a stalking horse sale process to market the business of the Debtor for sale.

OVERVIEW

3. The Debtor is an importer and supplier of custom marble and granite for construction projects across Canada. The Debtor operates out of a leased, mixed-use warehouse and office space in Concord, Ontario. The Debtor is a family business, founded by my husband, Frank Arlotta (“**Frank**”) and presently run by me and Frank. Over the past ten years, my siblings and their spouses have withdrawn from the business, and Frank and I have not only operated the business but funded it as well.

4. My husband and I also control the Applicant, the senior secured creditor of the Debtor.

5. The Debtor is incapable of continuing without funding and I am not prepared to advance any more funding to the Debtor in its current state. Accordingly, the Applicant commenced this application with a view of bringing the business to market through the within receivership. On or about March 25, 2024, the Applicant made demand on the Debtor, requiring the payment of the then outstanding principal, interest and costs in the amount of \$906,881.58 plus accruing interest thereafter by April 5, 2024. The Debtor could not make such payment.

6. As at May 30, 2024, the Debtor is indebted to the Applicant, as assignee, in the amount of \$1,016,549.80 - for principal and interest, plus continuing interest thereafter as well as costs continuing to accrue. A statement of account, prepared by the Applicant, is attached hereto and marked as **Exhibit “A”**. As at the date of this affidavit, the Debtor has been unable to make any payment in respect of the debt.

7. Accordingly, the Applicant makes this application to the Court, to appoint Albert Gelman, a licensed insolvency trustee, as receiver of the assets, undertakings and properties of the Debtor, to preserve and protect the value of the Business (as defined herein), and to realize on the same for the benefit of all stakeholders – via a stalking horse marketing and sale process which will result in either (a) a sale for value on the open market or (b) the acquisition of the company by the Applicant under a credit bid.

PARTIES

8. The Debtor is a corporation incorporated under the laws of the Province of Ontario and has its registered office located in Concord, Ontario. A copy of the Corporate Profile in respect of the Debtor, obtained from the Ontario Ministry of Government Services, is attached hereto and marked as **Exhibit “B”**.

9. The Applicant is a corporation incorporated under the laws of the Province of Ontario and has its registered office located in Concord, Ontario. A copy of a corporate profile report in respect of the Applicant, obtained from the Ontario Ministry of Government Services, is attached hereto and marked as **Exhibit “C”**.

BACKGROUND

10. The Debtor is an importer and supplier of exotic stone (the “**Business**”) and has been family owned and operated since September 19th, 2000. Since 2014, Frank and I have shared control and managed all operations of the Business. Our company, Group of Six Enterprises Ltd (“**Group of Six**”), is a 59% shareholder in the Debtor.

11. The original share structure of the Debtor was as follows:

- (a) Group of Six - 35%;
- (b) Basentana Holdings (operated by my sister and brother-in-law) - 35%;
- (c) Perth Park (operated by my sister) - 15%; and
- (d) Woolcott Holdings (operated by my brother) - 15%.

12. Over the years, Group of Six and I (in my personal capacity) have acquired shares in the Debtor from the other shareholders, resulting in the present share structure as follows:

- (a) Group of Six – 59%,
- (b) Woolcott Holdings - 15%,
- (c) Basentana Holdings - 15%, and
- (d) Laura Moscone - 11%.

13. Historically, Frank and I have been paid management fees through our management company Falcon Enterprises Corp. (“**Falcon**”). We have not taken management fees since February 2022, in an effort to support the Business during its financial troubles.

14. We have also funded the operations of the Debtor. We have done so in in three ways:

- (a) I have personally advanced monies to support operations;
- (b) our company, Group of Six Enterprises Ltd. (“**Group of Six**”) has advanced monies to support operations; and,
- (c) our management company, Falcon, has not only forgone payment of management fees but have also advanced monies to support operations.

FINANCIAL CHALLENGES

15. Financial challenges first arose due to general market conditions during the COVID-19 pandemic, including supply chain disruption and lockdowns (which halted constructions projects), and continued as the economy began its recovery. Additionally, in or about January 2023, the Royal Bank of Canada (“**RBC**”) requested the Debtor’s Line of Credit to be paid in full. The Debtor issued a cash call to its shareholders in order to pay RBC, which the other shareholders refused to participate in. As a result, only Frank and I, through Group of Six, funded.

16. In addition to the challenges posed by COVID, due to family disputes (discussed below), one of our largest customers, Moscone Marble & Granite (partly owned by Anthony and Nina Marrese) ceased ordering product from the Debtor. At their highest point, sales to Moscone Marble & Granite represented approximately \$1.5M of the Debtor’s annual orders. This loss of business – and the ongoing family dispute – only exacerbated the Debtor’s financial issues.

DEBT & SECURITY

17. The Debtor is indebted to me, Falcon and Group of Six Enterprises Ltd. (“**Group of Six**”), and together with me and Falcon, the “**Assignors**”), pursuant to promissory notes detailed below. Such indebtedness was assigned to the Applicant pursuant to assignment agreements dated February 29, 2024.

Promissory Notes

18. Pursuant to a promissory note dated May 3, 2023, Group of Six financed the principal amount of \$171,000 to the Debtor, which bears interest at the rate of prime plus three percent (3%) per annum, calculated daily and payable monthly (the “**Group of Six Note**”). The total indebtedness to Group of Six as of February 29, 2024 was \$182,425.

19. Pursuant to a promissory note dated May 3, 2023 (the “**Moscone Note**”, and collectively with the Falcon Note and the Group of Six Note, the “**Notes**”), I advanced the principal amount of \$31,900 to the Debtor, which bears interest at the rate of prime plus three percent (3%) per annum, calculated daily and payable monthly. In addition, I advanced a total of \$199,295.77 in various advances to the Debtor, which remain unpaid. The Debtor’s total indebtedness to me, as of February 29, 2024, was \$489,373.

20. Pursuant to a promissory note dated August 30, 2019, Falcon financed the principal amount of \$489,373 to the Debtor (the “**Falcon Note**”; and together with the Group of Six Note and the Moscone Note, the “**Notes**”). The total indebtedness to Falcon as of February 29, 2024 was \$489,373.

21. As of the date of this affidavit, no payments have been made in respect of the Notes. Copies of the Notes are collectively attached hereto as **Exhibit “D”**.

Security

22. As security for the indebtedness, obligations, and liabilities owed by the Debtor to the Assignors pursuant to the Notes, the Debtor granted, among other things, the following security documents in favour of the Assignors:

- (a) a General Security Agreement dated May 3, 2023 in favour of Group of Six, a copy of which is attached hereto and marked as **Exhibit “E”**; and
- (b) a General Security Agreement dated May 3, 2023 in favour of me, a copy of which is attached hereto and marked as **Exhibit “F”**; and

- (c) a General Security Agreement dated August 30, 2019 in favour of Falcon, a copy of which is attached hereto and marked as **Exhibit “G”**

23. Pursuant to each General Security Agreement, in the event of default, the Assignor is entitled to, *inter alia*, appoint a receiver in writing and/or make an application to a court of competent jurisdiction for an order appointing a receiver over the assets of the Debtor.

ASSIGNMENT OF DEBT & SECURITY

24. Pursuant to three Assignment of Indebtedness and Security Agreements executed February 29, 2024 between the Applicant and each of the Assignors, the Applicant purchased the indebtedness of the Debtor owing to each of the Assignors, along with the Assignor’s right, title and interest under their security, held and registered against the Debtor’s property.

25. A copy of each Assignment of Indebtedness and Security Agreement is attached hereto and marked as **Exhibit “I”**. The assignments were registered under the PPSA.

OTHER CREDITORS

26. I am advised by Loopstra Nixon LLP, the Applicant’s legal counsel, that the following financing statements were registered against the Debtor under the *Personal Property Security Act* (Ontario) (“**PPSA**”) as of April 18, 2024.

- (a) Royal Bank of Canada registered a financing statement against the Debtor on January 25, 2015 listing collateral classified as “inventory”, “equipment”, “accounts” and “other” and a general collateral description concerning a master

lease agreement dated January 28, 2015 (this registration relates to the line of credit that was paid out and should have been discharged);

- (b) Falcon registered a financing statement against the Debtor on August 30, 2019 listing collateral classified as “consumer goods”, “inventory”, “equipment”, and “accounts”, which was registered as assigned to the Applicant on April 5, 2024;
- (c) Group of Six. Registered a financing statement against the Debtor on May 4, 2023 listing collateral classified as “inventory”, “equipment”, “accounts”, “other”, and “motor vehicle included”, which was registered as assigned to the Applicant on April 5, 2024; and,
- (d) Laura Moscone registered a financing statement against the Debtor on May 4, 2023 listing collateral classified as “inventory”, “equipment”, “accounts”, “other”, and “motor vehicle included”, which was registered as assigned to the Applicant on April 5, 2024.

A copy of a search of the PPSA registry, current to April 18, 2024, is attached hereto and marked as **Exhibit “J”**.

DEMAND

27. On March 25, 2024, the Applicant made formal demand for payment of \$906,881.58 for principal, interest, and fees owed by the Debtor to the Applicant in respect of the Notes as of March 25, 2024, and delivered a notice of intention to enforce its security under the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”). A copy of the demand letter and BIA notice is attached hereto and marked as **Exhibit “K”**.

28. The Debtor was given until April 5, 2024 to pay the full outstanding balance. the Applicant has received no payment from the Debtor since demand was made.

FAMILY LITIGATION

29. In addition to the financial challenges facing the Debtor the Debtor is also the subject of certain family shareholder litigation. Anthony and Nina Marrese (the “**Family Litigants**”), through their corporation MMG Stone Fabrication Ltd., have sued the Debtor, Falcon, Frank and me, alleging oppression. The fundamental claim advanced by the Family Litigants is that they own equity in the Debtors. A copy of the statement of claim is attached hereto and marked as **Exhibit “L”**. For reasons discussed below and in the statement of defence, this claim is untenable.

30. My view is that the lawsuit is absurd and groundless, including – most importantly – (a) an allegation that Anthony Marrese was forcibly removed as a director - when, in fact, he resigned and (b) an allegation that the plaintiff retained a 9% interest in the Debtor – when, in fact, the shares were sold with the plaintiff’s consent and the plaintiff was paid. A copy of the Anthony’s signed resignation is attached hereto and marked as **Exhibit “M”**. A copy of the resolution (signed by Anthony) authorizing the sale transfer is attached hereto and marked as **Exhibit “N”**. In light of the foregoing, the Debtor and others filed a defence. A copy of the statement of defence is attached hereto and marked as **Exhibit “O”**.

31. This lawsuit has resulted in extensive legal costs to the Debtor, distracted the Debtor from business activities and compounded the Debtor’s financial stresses.

THE NEED FOR A RECEIVERSHIP

32. The Debtor is in default of its obligations to the Applicant; it has failed to make any payment on account of its indebtedness to the Applicant; and it is not in a financial position to make payment on account of its indebtedness.

33. Moreover, the Debtor requires an injection of cash to continue to operate, which I am not prepared to do given the uncertainty of the Business.

34. In these circumstances, the appointment of a receiver is necessary and appropriate to take control over and realize on the value of the Business. A receivership addresses the financial constraints of the Debtor, and will allow the Business to be marketed for sale for the benefit of all stakeholders.

PROPOSED STALKING SALE HORSE PROCESS

35. The Applicant has, in consultation the proposed Receiver, and subject to the approval of this Court, developed a detailed Stalking Horse Sale Process (the “**Sale Process**”) to be administered by the Receiver and based around the proposed Stalking Horse Asset Purchase Agreement (the “**APA**”) presented by the Applicant. A copy of the proposed APA is appended hereto as **Exhibit ”P”**. A copy of the proposed Sale Process is appended hereto as **Exhibit “Q”**.

36. The Applicant requests approval of the APA and the Sale Process on this application, and each are summarized below.

The APA

37. The APA contemplates the acquisition of all assets and undertakings of the Debtor by the Applicant, the material terms of which are summarized as follows:

- (a) the Applicant is to acquire all assets and undertakings of the Debtor on an “as is, where is” basis;
- (b) the Applicant shall assume all obligations to Business Development Bank of Canada;
- (c) the Applicant shall assume the lease of the Debtor’s warehouse and office space;
- (d) the Applicant shall assume all employees;
- (e) the Applicant shall credit bid all of its secured debt;
- (f) the purchase price is estimated to be \$1,100,000, comprising (i) the secured debt, (ii) the administrative costs of these proceedings and (iii) any priority payables; and
- (g) the transaction will close expeditiously after court approval.

38. In addition to the foregoing, no break fee is sought in connection with the APA. Only a cost reimbursement of \$25,000 is sought, (the “**Cost Reimbursement**”) in the event the Applicant is not the winning bidder in the Sale Process.

39. The APA was developed in consultation with the Receiver and the Receiver has had independent counsel validate the Applicant’s security. The Receiver has advised that it supports the APA and the Sale Process, as discussed below. I understand from counsel that the Receiver will be filing a “pre-filing report” providing more detail commentary on the same.

The Sale Process

40. The following is a summary of the Sale Process:

- (a) the Sale Process will solicit offers for all assets and undertakings of the Debtor;
- (b) the Sale Process will be administered by the Receiver (independent of the Applicant);
- (c) subject Court approval for the Sale Process, the Receiver, in consultation with the Applicant, will immediately following Court approval, the Receiver, in consultation with the Applicant, will identify potentially interested parties;
- (d) a “teaser” will go out to all such potentially interested parties and anyone requesting the same;
- (e) the opportunity shall also be advertised in such forums as the Receiver deems appropriate;
- (f) any party executing a non-disclosure and confidentiality agreement will be invited to review a virtual dataroom including the salient details of the business and assets of the Debtor;
- (g) binding offers will be required by July 16, 2024 (the “Bid Deadline”);
- (h) all offers must be on an “as is, where is” basis and submitted on standard form asset purchase agreement, with changes blacklined to the standard form;
- (i) all offers must be accompanied by a cash deposit in the amount of at least 10% of the purchase price made in such offer;

- (j) only offerors submitting offers (i) on same or better terms than the APA and (ii) for a value equal or greater than the APA purchase price, plus the Cost Reimbursement (\$25,000), shall be deemed to be “**Qualifying Offers**”;
- (k) the Receiver shall not disclose to the Applicant any information concerning any offer submitted in the Sale Process;
- (l) the Receiver shall invite all parties submitting Qualifying Offers (which shall also be deemed to include the Stalking Horse Bidder) to participate in a live auction to select the winning bidder;
- (m) once the winning bidder is selected, the Receiver shall apply to Court for final approval of the chosen sale transaction;
- (n) the transaction shall close shortly following Court approval; and
- (o) the Receiver, in its sole discretion, shall have the right to amend any term contemplated in the Sale Process, where the Receiver believes same to be appropriate.

41. The following is a summary of the material milestones and projected timelines of the SISP:

<u>Milestone</u>	<u>Deadline</u>
Go to market	No later than June 14, 2024
Bid Deadline	July 16, 2024
Auction (if necessary)	July 18, 2024

Hearing of the Sale Approval Motion / Transaction Execution Date	Subject to availability of the Court
Closing the Transaction (outside date)	No later than August 14, 2024

Notwithstanding the foregoing, the Sale Process and the draft order contemplates that the above deadlines may be extended, where the Receiver believes the same to be appropriate.

42. The Sale Process has been developed with the Receiver; and, I understand from counsel that the terms of the Sale Process are consistent with prevailing insolvency practices and will provide a transparent process to maximize value for the Debtor's the stakeholders. The Applicant believes that, in the circumstances, the Sale Process is appropriate and reasonable.

OTHER GROUNDS

43. Albert Gelman is a licensed insolvency trustee and has consented to act a Receiver, if appointed by the Court. A copy of the consent of Albert Gelman is attached hereto and marked as **Exhibit "R"**.

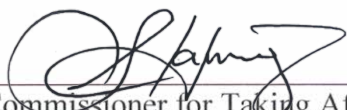
44. This application is supported by Albert Gelman.

45. No party will be materially prejudiced if the relief sought herein is granted, including the Family Litigants. Their claims against the Debtor are unsecured and/or grounded in equity – if this process returns value to over and above the secured debt, they may have recourse against such proceeds. Their claims against partes other than the Debtors (namely Falcon, my husband and me) are not affected by the relief herein. Finally, they are entitled to participate int the Sale Process, should they wish.

46. The stalking horse Sale Process provides stability to the Debtor's business and certainty to the Company's customers, employees and other stakeholders that there is a going-concern solution. In addition, concurrent exposure of the Debtor's business to the open market, will, in my view, maximize value for the benefit of the Debtor's stakeholders.

47. I swear this affidavit in support of an application for the appointment of Albert Gelman as Court-appointed receiver of the Debtor, and for no other or improper purpose.

SWORN BEFORE ME via videoconference this 30 day of May 2024. The affiant was located in the City of Concord, in the Province of Ontario and the commissioner was located in the City of Toronto, in the Province of Ontario. This affidavit of commissioned remotely and administered in accordance with *Ontario Regulation 431/20*.



A Commissioner for Taking Affidavits, etc.

Shahrzad Hamraz



LAURA MOSCONE

APPENDIX “B”

Milestone Marble and Granite Ltd
Transaction Report
February 1, 2017 - February 16, 2024

Date	Transaction Type	#	Adj	Name	Memo/Description	Account	Split	Amount	Balance
ADVANCES TO/FROM SHAREHOLDERS									
01-09-2017	Journal Entry	4	No		to record deposits into US account	ADVANCES TO/FROM SHAREHOLDERS	-Split-	124.44	124.44
01-09-2017	Journal Entry	4	No		to record deposits into US account	ADVANCES TO/FROM SHAREHOLDERS	-Split-	31,106.25	31,230.69
31-05-2018	Journal Entry	313436	No		re-allocagte legal bill paid for 1442171	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-1,271.25	29,959.44
31-05-2018	Journal Entry	313436	No		re-allocate insurance on porche	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-3,735.00	26,224.44
31-05-2018	Journal Entry	313436	No		allocate amounts advanced to Milestone by Laura, net of car insurance to Falcon	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-27,495.69	-1,271.25
13-07-2018	Journal Entry	275118	No		to record US funds deposited by Frank and Laura	ADVANCES TO/FROM SHAREHOLDERS	-Split-	40,500.00	39,228.75
13-07-2018	Deposit		No	Laura Moscone		ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	10,000.00	49,228.75
17-07-2018	Journal Entry	261472	No		Returned Cheque Laura Moscone	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-10,000.00	39,228.75
18-07-2018	Journal Entry	261473	No		Replaced NSF cheque Laura Moscone	ADVANCES TO/FROM SHAREHOLDERS	-Split-	10,000.00	49,228.75
15-11-2018	Cheque Expense		No	Laura Moscone	CHQ 25	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	-4,000.00	45,228.75
19-11-2018	Deposit		No	Laura Moscone		ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	4,000.00	49,228.75
31-01-2019	Deposit		No	Laura Moscone	Loan from Frank and Laura	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	20,000.00	69,228.75
28-05-2019	Expense		No	Laura Moscone		ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	-9,034.80	60,193.95
31-05-2019	Journal Entry	571971	No		YE - To correct opening balance in Intco. and SH Loan account to actual	ADVANCES TO/FROM SHAREHOLDERS	-Split-	1,271.25	61,465.20
31-05-2019	Journal Entry	571973	No		YE - Reallocate duplicate posting for Accounting Fees re: 1442172 Ontario (reimb to Laura)	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-910.19	60,555.01
17-06-2019	Deposit		No	CROWN CREST CORP 2		ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	0.00	60,555.01
16-07-2019	Journal Entry	455252	No			ADVANCES TO/FROM SHAREHOLDERS	-Split-	-1,000.00	59,555.01
18-07-2019	Journal Entry	571965	No		Royal Foreign Exchange Withdrawal	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-1,000.00	58,555.01
25-07-2019	Expense		No	Laura Moscone	Purchase of Euros - Later Reimbursed	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	-22,014.00	36,541.01
25-07-2019	Deposit		No	Laura Moscone	Advance	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	20,000.00	56,541.01
13-09-2019	Deposit		No	Laura Moscone	Loan From Laura Moscone	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	25,000.00	81,541.01
13-11-2019	Deposit		No	Laura Moscone	DEPOSIT 247	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	10,000.00	91,541.01
13-12-2019	Deposit		No	Laura Moscone	Shareholder Loan	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	5,000.00	96,541.01
19-12-2019	Journal Entry	539393	No		Loan from Laura	ADVANCES TO/FROM SHAREHOLDERS	-Split-	10,000.00	106,541.01
09-01-2020	Journal Entry	539392	No		Cash Call	ADVANCES TO/FROM SHAREHOLDERS	-Split-	12,600.00	119,141.01
13-01-2020	Deposit		No	Laura Moscone	DEPOSIT 337	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	10,000.00	129,141.01
31-05-2020	Journal Entry	571972	No		Reallocate duplicate posting for Accounting Fees re: 1442172 Ontario (reimb to Laura)	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-910.19	128,230.82
31-05-2020	Journal Entry	886092-3	No		To record additional deposit paid by sharholder per email 8/19/2020	ADVANCES TO/FROM SHAREHOLDERS	-Split-	33,338.50	161,569.32
31-05-2022	Journal Entry	1726533-14	No		Adjust Accounting Fees to Shareholder Loan	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-2,226.55	159,342.77
31-05-2022	Journal Entry	1726533-14	No		To writeoff overpayment amount to Falcon Enterprises -Cash draw not received by Falcon	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-3,700.00	155,642.77
29-06-2022	Deposit		No	Laura Moscone		ADVANCES TO/FROM SHAREHOLDERS	RBC US\$ - Bank Account	9,755.00	165,397.77

14-09-2022	Deposit		No		Payable to Frank - re Interglobo	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	8,000.00	173,397.77
01-12-2022	Deposit		No		DEPOSIT 476	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	15,000.00	188,397.77
01-12-2022	Bill	1EURO 12/2022	No	Laura Moscone	L.Moscone paid the rent on behalf of Milestone	ADVANCES TO/FROM SHAREHOLDERS	ACCOUNTS PAYABLE	-15,000.00	173,397.77
03-01-2023	Deposit		No	Laura Moscone	Advance from Laura	ADVANCES TO/FROM SHAREHOLDERS	RBC - Bank Account (deleted)	5,000.00	178,397.77
23-05-2023	Deposit		No		Loan From Laura	ADVANCES TO/FROM SHAREHOLDERS	BMO Bank - 3997-1965-006	31,900.00	210,297.77
31-05-2023	Journal Entry	2197579-4	No		Reverse F2022 AE adj.	ADVANCES TO/FROM SHAREHOLDERS	-Split-	3,700.00	213,997.77
31-05-2023	Bill		No	FALCON ENTERPRISES	Clear Balance - AE F2022	ADVANCES TO/FROM SHAREHOLDERS	ACCOUNTS PAYABLE	-3,700.00	210,297.77
31-05-2023	Journal Entry	2358817-8	No		Re-class Shareholder payable in AP	ADVANCES TO/FROM SHAREHOLDERS	-Split-	98,684.66	308,982.43
01-06-2023	Journal Entry	2358817-9	No		Reverse re-class ADJE for 2023	ADVANCES TO/FROM SHAREHOLDERS	-Split-	-98,684.66	210,297.77
01-06-2023	Cheque Expense		No	Laura Moscone	MILESTONE MARBLE & GRANITE LTD. to Pay Back L. Moscone as she paid with her Visa	ADVANCES TO/FROM SHAREHOLDERS	BMO Bank - 3997-1965-006	-9,040.00	201,257.77
16-02-2024	Journal Entry	2358817-11	No		Payment Made by Laura to Magraf -Slab Purchase	ADVANCES TO/FROM SHAREHOLDERS	-Split-	29,928.00	231,185.77
Total for ADVANCES TO/FROM SHAREHOLDERS								\$ 231,185.77	
TOTAL								\$ 231,185.77	

APPENDIX “C”



Management Fee Agreement

April 4, 2014

This Management Fee Agreement ("Agreement") is entered between Falcon Enterprises Corp. an organized and existing company under the laws of the Province of Ontario, with its principal place of business located at 186 Grandvista Cres. Vaughan Ontario , and Milestone Marble & Granite Ltd. , an Importing and distribution & sales company for Natural or engineered Stone; organized and existing under the laws of the Province of Ontario , with its principal place of business located at 8181 Jane St. Concord, Ontario.

Appointment of Falcon Enterprises Corp. (" Management Company ") owned by Frank Arlotta & Laura Moscone

MILESTONE MARBLE & GRANITE LTD. hereby appoints FALCON ENTERPRISES CORP. to provide management services whom the share holders are Frank Arlotta & Laura Moscone for its business operations as described herein.

2. Scope of Management Services

FALCON ENTERPRISES CORP. agrees to provide the following management services to MILESTONE MARBLE & GRANITE LTD.

1. **General Responsibilities:** The Management Company agrees to provide comprehensive management services to the Client in accordance with the terms and conditions outlined in this agreement. These services shall include but are not limited to:
 - a. Strategic Planning: Developing long-term strategies and objectives in alignment with the Client's goals and vision.
 - b. Financial Management: Overseeing budgeting, financial reporting, and ensuring sound fiscal practices.
 - c. Operations Management: Managing day-to-day operations, including staffing, procurement, and facilities management.
 - d. Marketing and Sales: Developing and implementing marketing strategies to promote the Client's products or services.
 - e. Human Resources: Handling recruitment, training, performance management, and employee relations.
 - f. Legal and Compliance: Ensuring compliance with applicable laws, regulations, and industry standards.



- g. Risk Management: Identifying and mitigating risks to protect the Client's interests.
 - i. Communication: Maintaining open communication channels with the Client and addressing any concerns or issues promptly.
 - j. Other Duties: Performing any other duties reasonably necessary for the successful management of the Client's business as agreed upon by both parties.
-
- 2. **Limitations:** The Management Company's responsibilities shall be limited to the scope of work outlined herein. Any additional services requested by the Client may be subject to separate agreements and compensation arrangements.
 - 3. **Performance Metrics:** The Management Company's compensation may be tied to specific performance metrics, such as revenue growth, cost savings, customer satisfaction, or other mutually agreed-upon indicators of success.
 - 4. **Term and Termination:** This agreement shall remain in effect for the duration specified herein, unless terminated earlier by either party in accordance with the termination provisions outlined in this agreement.
 - 5. **Modification:** Any changes or modifications to the scope of work must be agreed upon in writing by both parties.
 - 6. **Confidentiality:** The Management Company agrees to maintain the confidentiality of all proprietary information belonging to the Client and to refrain from disclosing such information to third parties without prior written consent.
 - 7. **Governing Law:** This agreement shall be governed by and construed in accordance with the laws of [Jurisdiction], without regard to its conflict of law principles.

3. Management Fee

In consideration for the services provided by FALCON ENTERPRISES CORP. & MILESTONE MARBLE & GRANITE LTD. agrees to pay FALCON ENTERPRISES INC. a management fee in the amount of no less than \$100,000.00 per annum (one hundred thousand dollars) agreed upon by Milestone Directors/Management.

4. Term

This Agreement shall commence on April 4, 2014 and shall continue in full force and effect until terminated by either party upon 60 days prior written notice.



5. Termination

Either party may terminate this Agreement upon 60 days prior written notice to the other party for any reason or no reason at all.

6. Confidentiality

Both parties agree to keep confidential all information exchanged in connection with this Agreement and not to disclose such information to any third party without the prior written consent of the other party.

7. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Province of Ontario, without regard to its conflict of law principles.

8. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MILESTONE MARBLE & GRANITE LTD.

By:  _____

Name: Frank Arlotta

Title: President & Director

Date: April 4 - 2014

FALCON ENTERPRISES CORP.

By:  _____

Name: Laura Moscone

Title: Vice President & Director

Date: April 4 - 2014