

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) FRIDAY, THE 9TH
JUSTICE KIMMEL) DAY OF AUGUST, 2024

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 SUBSECTION 242(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. 1990, c. C.43, as amended

**ORDER
(FEE APPROVAL, DISTRIBUTION, AND DISCHARGE)**

THIS MOTION, made by Albert Gelman Inc. ("**AGI**") in its capacity as the Court-appointed receiver and manager (the "**Receiver**"), without security, of the undertaking, property and assets of Milestone Marble & Granite Ltd. (the "**Debtor**"), for an order, among other things, (i) approving the activities of the Receiver as set out in the report of the Receiver dated July 30, 2024 (the "**First Report**"); (ii) approving the fees and disbursements of the Receiver and its counsel; (iii) approving the distribution of the remaining proceeds available in the estate of the Debtor; (iv) discharging AGI as Receiver of the Debtor; and (v) releasing the Receiver from any and all liability as set out in this Order, was heard this day by judicial

videoconference via Zoom.

ON READING the Motion Record of the Receiver dated July 30, 2024, including the First Report and the affidavits of the Receiver and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver and such other parties in attendance at the hearing of this motion, no one else appearing although duly served as evidenced by the Affidavit of Service of Levi Rivers sworn August 2, 2024, filed;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the Receiver is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the First Report.

APPROVAL OF RECIEVER’S REPORT, FEES AND ACTIVITIES

3. **THIS COURT ORDERS** that the Pre-Filing Report of the Receiver dated June 8, 2024 (the “**Pre-Filing Report**”), the First Report, and the activities of the Receiver described in the Pre-Filing Report and the First Report, including the Receiver’s interim Statement of Receipts and Disbursements for the period from June 12, 2024 to July 26, 2024, are hereby approved; provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period between December 8, 2023 and July 28, 2024 in the amount of \$ 46,934.00 in fees, \$1,752.96 in disbursements, plus HST of \$6,314.84, for a total of \$55,001.80, as further set out in the

First Report and the affidavit attached as Appendix “D” to the First Report, be and are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of Reconstruct LLP, counsel to the Receiver, for the period between December 19, 2023 and July 28, 2024 in the amount of \$15,503.55 in fees, \$138.05 in disbursements, plus HST of \$2,015.47 for a total amount of \$17,657.07 as further set out in the First Report and the affidavit attached as Appendix “E” to the First Report, be and are hereby approved.

6. **THIS COURT ORDERS** that the Remaining Fees and Disbursements, as described in the First Report, of Reconstruct LLP and the Receiver are hereby approved.

DISTRIBUTIONS

7. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, following the closing of the Transaction, to make the following distributions:

- (a) to the Receiver and Reconstruct in respect of their outstanding fees and disbursements including the Remaining Fees and Disbursements; and
- (b) to the Canada Revenue Agency in payment of the Debtor’s outstanding obligations on account of harmonized sales tax, subject to CRA proving such claim.

8. **THIS COURT ORDERS** that the Receiver, its counsel and other agents are hereby authorized to take all necessary or appropriate steps and actions to effect the payments and distributions described in this Order, and shall not incur any liability as a result of making such payments and distributions.

9. **THIS COURT ORDERS** that, notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear

of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order; and (ii) all charges security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property or real property registry system.

10. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by applicable law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

11. **THIS COURT ORDERS** that, notwithstanding:

- the pendency of these proceedings;
- any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- any assignment in bankruptcy made in respect of the Debtor;

any payment or distribution made pursuant to this Order are final and irreversible and shall be

binding on any trustee-in-bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction pursuant to the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial law.

DISCHARGE

12. **THIS COURT ORDERS** that upon the Receiver filing a certificate substantially in the form attached as **Schedule “A”** hereto (the “**Discharge Certificate**”) certifying that all matters to be attended to in connection with these receivership proceedings of the Debtor have been completed to the satisfaction of the Receiver, the Receiver shall be discharged as receiver and manager of the Debtor, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of all Orders made in these Receivership Proceedings, including, without limitation, all approvals, protections and stays of proceedings in favour of AGI in its capacity as Receiver.

13. **THIS COURT ORDERS AND DECLARES** that, upon the filing of the Discharge Certificate, AGI is hereby released and discharged from any and all liability that AGI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of AGI while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver’s part. Without limiting the generality of the foregoing, upon the filing of the Discharge Certificate, AGI is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the

within receivership proceedings, save and except for any gross negligence or willful misconduct on the Receiver's part.

GENERAL

14. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

17. **THIS COURT ORDERS** that this Order is effective from 12:01 am (Toronto Time) on the date of the Order without any requirement for filing or entry.

Schedule "A" – Form of Discharge Certificate

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

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RECEIVER'S DISCHARGE CERTIFICATE

Recitals

I. Pursuant to an Order of The Honourable Justice Black of the Ontario Superior Court of Justice (the "**Court**") made on June 12, 2024, Albert Gelman Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties Milestone Marble & Granite Ltd. (the "**Debtor**").

II. Pursuant to an Order of the Court dated August 9, 2024, the Court ordered the discharge of the Receiver to become effective (and conditional) upon the filing with the Court by the Receiver of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of the Debtor have

been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at __[TIME] on ____, 2024 [DATE].

ALBERT GELMAN INC., solely in its capacity
as the Court-appointed receiver of the Debtor,
and not in its personal capacity or in any other
capacity

Per: _____

Name:

Title: Licensed Insolvency Trustee

MILESTONE DISTRIBUTIONS 2024 LTD.

and

MILESTONE MARBLE & GRANITE LTD.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**ORDER
(Distribution, Fee Approval, and Termination)**

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**Lawyers for Albert Gelman Inc., in its
capacity as the court-appointed Receiver of
Milestone Marble & Granite Ltd.**