

**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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Albert Gelman Inc. in its capacity as the Court appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the undertaking, property, and assets of Milestone Marble & Granite Ltd. (the “**Debtor**”), for an order, *inter alia*, (a) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver and Milestone Distribution 2024 Ltd. (the “**Purchaser**”) dated June 12, 2024 (the “**Sale Agreement**”), a copy of which is appended as Appendix “C” to the first report of the Receiver dated July 30, 2024 (the “**First Report**”), and (b) vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day by

judicial videoconference via Zoom.

ON READING the First Report and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Levi Rivers sworn on August 2, 2024, filed:

SERVICE

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.

SALE APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, obligations, 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 (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Black made in this proceeding on June 12, 2024; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company’s records pertaining to the Debtor’s past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

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

- (a) the pendency of these proceedings;
- (b) 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 applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order 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 under 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 legislation.

GENERAL

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.

9. **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 Receiver's Certificate

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

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RECEIVER'S 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 approved the agreement of purchase and sale between the Receiver, as vendor, and Milestone Distribution 2024 Ltd. (the "**Purchaser**"), as purchaser, dated June 12, 2024 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; and (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at __[TIME] on ____,2024.

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

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(COMMERCIAL LIST)**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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capacity as the court-appointed Receiver of
Milestone Marble & Granite Ltd.**