

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

THE HONOURABLE  
JUSTICE

MR  
T. McEwen

TUESDAY, THE 3<sup>rd</sup>  
DAY OF JULY, 2018

BETWEEN:



**DOWNING STREET FINANCIAL INC., IN TRUST**

Applicant

- and -

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF  
HARMONY VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents

**APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act* and  
Section 101 of the *Courts of Justice Act***

**ORDER**

**THIS MOTION**, made by Rosen Goldberg Inc., in its capacity as Receiver (the “**Receiver**”) of the assets, undertakings, and properties of Harmony Village – Sheppard Inc. as general partner of Harmony Village – Sheppard LP (the “**Debtor**”) and City Core Developments Inc., for an order approving the assignment by the Receiver of a Tieback and Crane Agreement dated June 24, 2015, and an Easement Agreement dated June 25, 2015 between the Debtor and Arbor Memorial Inc., (the “**Assigned Agreements**”) on the terms set out in the Assignment and Assumption Agreement between the Receiver and Pinnacle International Sheppard Lands Inc. (“**Pinnacle**”) and other relief as set out in the Sixth Report

of the Receiver dated June 25, 2018 (the “**Sixth Report**”), was heard this day at the Courthouse, 330 University Avenue, Toronto, Ontario.

**ON READING** the Sixth Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Jennifer Samuels, filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record is hereby abridged, if necessary, and validated, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Sixth Report and activities of the Receiver described therein be and are hereby approved.
3. THIS COURT ORDERS that the Receiver’s Statement of Receipts and Disbursements attached as Appendix F to the Sixth Report be and is hereby approved.
4. THIS COURT ORDERS that the Receiver is hereby authorized and directed to complete the assignment to Pinnacle of the Assigned Agreements on the terms set out in the Assignment and Assumption Agreement attached as Appendix I to the Sixth Report. <sup>and Schedule</sup>  
*A to the order. M*
5. THIS COURT ORDERS that the Receiver is hereby authorized and directed to deliver to the Ministry of the Environment and Climate Change a consent to the transfer to Pinnacle of Environmental Compliance Approval 9670-9ZHQVM.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUL 03 2018

PER / PAR: *RW*

Schedule A

ASSIGNMENT AND ASSUMPTION OF TIEBACK AND CRANE AGREEMENT AND EASEMENT AGREEMENT

THIS ASSIGNMENT made as of the \_\_\_\_\_ day of May, 2018 (the "Effective Date")

B E T W E E N:

ROSEN GOLDBERG INC., in its capacity as court-appointed Receiver of all of the assets, undertakings and properties of Harmony Village-Sheppard Inc., as General Partner of Harmony Village-Sheppard LP and City Core Developments Inc. (collectively, the "Debtors"), acquired for, or used in relation to a business carried on by each of the Debtors, and not in its personal or corporate capacity (the "Assignor")

- and -

PINNACLE INTERNATIONAL SHEPPARD LANDS INC. (the "Assignee")

WHEREAS pursuant to an offer to purchase entered into by and between the Assignor and Pinnacle International One Lands Inc. (the "Original Purchaser"), as purchaser, accepted May 2, 2017, as assigned by the Original Purchaser to the Assignee pursuant to an assignment and assumption of purchase agreement made as of the date hereof (as may be amended, restated, modified or further assigned from time to time, collectively, the "Purchase Agreement"), the Assignor agreed to sell and the Assignee agreed to purchase, *inter alia*, those lands and premises known municipally as 3260 Sheppard Avenue East, Toronto, Ontario, and legally described as Part Lots 3, 4, 5 & 6, Plan 3591, being Part 1, 66R27877; subject to AT1939845, City of Toronto, on the terms and subject to the conditions set out therein;

AND WHEREAS the Assignor has agreed to assign and the Assignee has agreed to assume all of the Assignor's right, title and interest in and to: (i) the tieback and crane swing agreement made as of June 24, 2015 between Arbor Memorial Inc. and Harmony Village-Sheppard Inc. (the "Tieback and Crane Agreement"); and (ii) the easement agreement made as of June 25, 2015 between Arbor Memorial Inc. Memorial Arbor Inc. carrying on business as Highland Funeral Home - Scarborough Chapel, as transferor, and Harmony Village-Sheppard Inc., as transferee (the "Easement Agreement").

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Assignment

Effective as of the Effective Date, the Assignor hereby absolutely assigns, transfers and sets over unto the Assignee all of the Debtors' right, title and interest, if any, in and to the Tieback and Crane

Agreement and the Easement Agreement (hereinafter collectively, the "Assigned Interests"), together with all benefits and advantages, if any, to be derived therefrom, and together with the benefit of all covenants, representations, warranties, guarantees, indemnities, obligations, liabilities and responsibilities thereunder on an "as is, where is" and "without recourse" basis. The Assignor hereby acknowledges that the Assignor makes no representation or warranty of any kind with respect to the Assigned Interests, and the Assignor is relying entirely on its own investigations in entering into the Assignment.

**2. Assumption**

The Assignee hereby accepts the assignment and transfer contained in Section 2 hereof, and hereby agrees with the Assignor that from and after the Effective Date, it will assume, observe, perform, fulfill and be bound by each and every covenant, proviso, obligation, term and condition of the Debtors that is contained in the Assigned Interests which arises from and after the Effective Date.

**3. Court Approval**

The Assignee and Assignor hereby acknowledge and agree that this Assignment and Assumption Agreement is subject to the approval of the Ontario Superior Court of Justice (Commercial List). The Assignor shall bring a motion to the Court for approval of this Assignment and Assumption Agreement and the Assignee shall promptly provide to the Assignor all information and assistance within the Assignee's power as the Assignor may reasonably require to obtain approval of this Assignment and Assumption Agreement.

**4. Notices**

Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement shall be in accordance with the provisions of the Purchase Agreement.

**5. Further Assurances**

Each of the parties hereto shall, at the expense of the requesting party, execute and deliver such additional documents and instruments and shall perform such additional acts as may be reasonably necessary or appropriate in connection with this Assignment and all transactions contemplated by this Assignment to effectuate, carry out and perform all of the covenants, obligations, and agreements contained herein.

**6. Successors and Assigns**

The provisions of this Assignment shall endure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**7. Counterparts**

This Assignment may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on all the parties hereto notwithstanding that all parties are not signatories to the same counterpart, provided that each party has signed at least one

counterpart.

**8. Electronic Transmission**

This Assignment may be executed and delivered by facsimile or electronic transmission and the parties hereto may rely upon all such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures.

**9. Governing Law**

This Assignment shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

*[signature page follows]*

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

**ROSEN GOLDBERG INC.**, in its capacity as court-appointed Receiver of all of the Debtors' assets, undertakings and properties acquired for, or used in relation to a business carried on by each of the Debtors, and not in its personal or corporate capacity

Per: \_\_\_\_\_  
Name: Brahm Rosen  
Title: President

I have authority to bind the Corporation.

**PINNACLE INTERNATIONAL  
SHEPPARD LANDS INC.**

Per: \_\_\_\_\_  
Name: Michael De Cotiis  
Title: President

I have authority to bind the Corporation.

DOWNING STREET FINANCIAL INC., IN TRUST

-and-

HARMONY VILLAGE-SHEPPARD INC. et al.

Applicant

Respondents

Court File No. CV-17-11669-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

ORDER

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