

Receipt # 3182730

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No. Pages: 8

Instrument: ASSIGNMENT OF AGREEMENT (D)

Control #: 202208311121

Ref #: TT0000002265

Date: 08/31/2022

Time: 3:35:17 PM

Return To:
LIPPES MATHIAS LLP
50 FOUNTAIN PL
STE 1700
BUFFALO, NY 14202

TOP CAPITAL OF NEW YORK BROCKPORT LLC,

CHATEAU AT HERITAGE SQUARE LLC,

Recording Fee	\$26.00	
Pages Fee	\$35.00	
State Fee Cultural Education	\$14.25	
State Fee Records	\$4.75	Employee: CT
Management		
Total Fees Paid:	\$80.00	

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



ASSIGNMENT AND ASSUMPTION OF AGREEMENTS

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THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENTS (the "Assignment and Assumption"), dated as of the 12th day of May, 2022 (the "Effective Date"), is made by and between **TOP CAPITAL OF NEW YORK BROCKPORT, LLC**, a New York limited liability company with offices at 400 Andrews Street, Suite 360, Rochester, New York 14604 (the "Assignor") and **CHATEAU AT HERITAGE SQUARE LLC**, a New York limited liability company with offices at 1942 East Main Street, Rochester, New York 14609 (the "Assignee").

All capitalized terms used but not defined herein shall have the meanings ascribed to them in that certain Leaseback Agreement, dated as of December 1, 2015, by and between the County of Monroe Industrial Development Agency, a public benefit corporation of the State of New York (the "Agency") and Assignor (the "Leaseback Agreement"). The Agency is executing this document in its capacity as leasehold title holder only for the purpose of consenting to this Assignment and Assumption as contemplated herein.

W I T N E S S E T H:

WHEREAS, Assignor is the owner of that certain parcel of land and all improvements thereon located at 100 Isla Way in the Town of Sweden, New York (the "Land"); and

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WHEREAS, Assignor has entered into a lease with the Agency, dated as of December 1, 2015 (the "Lease Agreement") whereby Assignor leases the Facility (as defined below) to the Agency pursuant to the terms thereof; and

WHEREAS, by Resolutions adopted by the Agency on October 20, 2015, the Agency authorized the execution of certain documents with respect to the Project (as defined below), including the Lease Agreement, a memorandum of which was recorded in the Monroe County Clerk's Office on December 21, 2015 in Liber 11634 of Deeds, at Page 443; the Leaseback Agreement, a memorandum of which was recorded in the Office of the Monroe County Clerk on December 21, 2015 in Liber 11634 of Deeds, at Page 448; and a certain Payment In Lieu of Tax Agreement, dated as of December 1, 2015, by and between the Agency and Assignor (the "PILOT Agreement" and, together with the Lease Agreement, the Leaseback Agreement and related documents, the "Documents"); and

WHEREAS, pursuant to the Documents, the Agency provided financial assistance to the Assignor in the form of (i) a sales tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project; (ii) a partial mortgage tax exemption for financing related to the Project; and (iii) a partial real property tax abatement through the PILOT Agreement; and

WHEREAS, the term of the leasehold estates created by the Lease Agreement and the Leaseback Agreement commenced as of December 1, 2015 and shall terminate at 11:59 P.M. on November 30, 2027, or on such earlier date as may be permitted under the Documents; and

WHEREAS, the Project consisted of: (A) the acquisition by lease, license or otherwise, of an interest in an approximately 7.55-acre portion of land located at 100 Isla Way in the Town of

Sweden, New York 14420 (the "Land"); (B) the construction on the Land of two 4-story buildings containing in the aggregate, 90- independent and assisted living apartments for seniors, a common area, public courtyard, two second story roof decks, spa, beauty salon, fitness center and library (collectively, the "Improvements"), and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, Assignor has informed the Agency that Assignor and Assignee have entered into a purchase agreement ("Purchase Agreement") whereby Assignee will acquire the Facility, and as a result thereof indirectly acquire all of the Assignor's right, title and interest and obligations under the Documents, as the same may be amended from time to time, which arise from and after the Effective Date; and

WHEREAS, Agency approved the assignment and assumption by its resolution dated April 19, 2022; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's rights, title, interest, duties, obligations and liabilities under the Documents which arise from and after the Effective Date, and the Assignee desires to accept such assignment and to assume all of such rights, title, interest, duties and obligations and liabilities of Assignor thereunder.

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment by Assignor.

(a) Assignor hereby sells, assigns, transfers, conveys and sets over unto Assignee all of Assignor's rights, title, interest, duties, obligations and liability in, to and under the Documents first arising from and after the Effective Date.

(b) Assignee hereby accepts such assignment, and Assignee hereby covenants to operate and maintain the Project, during the term of the Documents, such that it constitutes a "project" under Title I of Article 18-A of the General Municipal Law of the State of New York.

(c) Assignor hereby agrees and consents that this Assignment and Assumption shall in no way be construed as a waiver or release of any claims or rights that the Agency may have at any time against the Assignor relating to any matters asserted or first arising under the Documents prior to the Effective Date, and the Agency expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

2. Assumption by Assignee. Assignee hereby assumes the performance of all of the obligations, terms, covenants and conditions of the Documents on Assignor's part first to be performed thereunder first arising from and after the Effective Date and will perform all of the obligations, terms, covenants and conditions of the Documents on Assignee's part to be performed

and which arise from and after the Effective Date, all with the same force and effect as though the Assignee had signed the Documents as a party named therein.

3. Indemnity of Assignee. Assignee does hereby agree, for Assignee and for Assignee's legal representatives, successors and assigns, to indemnify, defend and save Assignor and Assignor's successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignee under the Documents with respect to obligations which arise from and after the Effective Date.

4. Indemnity of Assignor. Assignor does hereby agree, for Assignor and for Assignor's successors and assigns, to indemnify, defend and save Assignee and Assignee's legal representatives, successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignor under the Documents with respect to obligations which arose prior to the Effective Date.

5. Consent of Agency; Indemnity of Assignee and Assignor to Agency. Pursuant to the terms and provisions of the Documents, the Agency hereby consents to this Assignment and Assumption, and acknowledges its consent below by and through its duly authorized officer. It being expressly understood and agreed that each of Assignor and Assignee, jointly and severally, agree and covenant that each of Assignor and Assignee hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend and hold the Agency and its members, officers, agents and employees harmless from and against, any and all costs or liabilities that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to this Assignment and Assumption, including without limitation, all causes of action and reasonable attorneys' fees and litigation expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing.

6. Representations and Warranties of Assignor. Assignor hereby represents and warrants to the Assignee that (a) there have been no prior assignments of the Documents made by Assignor to any other party, (b) that the Documents are being assigned to the Assignee free and clear of all liens and encumbrances, and (c) Assignor has complied with all provisions of the Documents regarding assignment, including but not limited to Section 6.3 of the Leaseback Agreement. The representations and warranties of Assignor set forth herein shall survive the closing of the transactions contemplated by the Purchase Agreement and the delivery of this Assignment and Assumption. The Agency hereby acknowledges Assignor's compliance with the provisions of the Lease Agreement and the Leaseback Agreement regarding assignment.

7. Counterparts. This Assignment and Assumption may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

8. Binding Effect. Each reference herein to a party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Assignment and Assumption and in whose favor the provisions of this Assignment and Assumption shall inure.

9. Entire Agreement. This Assignment and Assumption represents the entire agreement between the parties hereto with respect to the subject hereof and supersedes all prior negotiations, either written or oral.

10. Further Assurances. Assignor and Assignee agree to deliver to each other such further instruments and/or documents as reasonably requested and for the purpose of carrying out or consummating the transactions contemplated by this Assignment and Assumption.

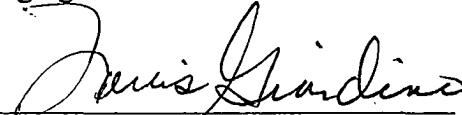
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[Assignor's Signature Page to Assignment and Assumption of Agreements]

IN WITNESS WHEREOF, the Assignor has executed and delivered this Assignment and Assumption of Agreements as of the date first above written.


ASSIGNOR:

TOP CAPITAL OF NEW YORK BROCKPORT, LLC, a New York limited liability company
By: Top Capital of New York, LLC, its
Managing Member

By: 
Name: Louis Giardino
Title: Member

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the 24th day of June, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared Louis Giardino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public


LORI A. PALMER
Notary Public, State of New York
No. 01PA4848797
Qualified in Monroe County
Commission Expires May 31, 2023

[Assignee's Signature Page to Assignment and Assumption of Agreements]

IN WITNESS WHEREOF, the Assignee has executed and delivered this Assignment and Assumption of Agreements as of the date first above written.

ASSIGNEE:

CHATEAU AT HERITAGE SQUARE LLC,
a New York limited liability company

By: 
Name: Antonio Cilino
Title: Manager

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the 12th day of May, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared **Antonio Cilino**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

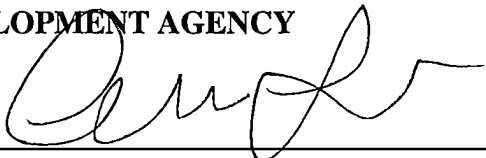
MICHAEL ROBERT OVERMYER
NOTARY PUBLIC, State of New York
Qualified in Monroe County
Registration No. 02OV6231124
Commission Expires November 15, 2022

ACKNOWLEDGMENT OF ASSIGNMENT AND ASSUMPTION OF AGREEMENTS

The undersigned hereby acknowledges receipt of notice of the Assignment and Assumption of Agreements, by and between **TOP CAPITAL OF NEW YORK BROCKPORT, LLC** (the "Assignor") and **CHATEAU AT HERITAGE SQUARE LLC** (the "Assignee"), dated the date first written above (the "Assignment and Assumption"), pursuant to which Assignor assigns all of Assignor's rights, title, interest, duties, obligations and liabilities under the Documents (as defined in the Assignment and Assumption) first arising from and after the Effective Date thereof and Assignee accepts such assignment and assumes all of Assignor's rights, title, interest, duties, obligations and liability into and under the Documents first arising from and after the Effective Date thereof. The foregoing shall not be construed, however, as a waiver or release of any claims or rights that the undersigned may have at any time against the Assignor except as set forth in Section 1(c) of the Assignment and Assumption, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity. Moreover, the undersigned hereby acknowledges Assignor's compliance with the provisions of the Leaseback Agreement regarding assignment.

IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of the 3rd day of May, 2022.

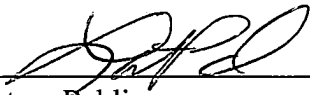
COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

By: 

Name: Ana J. Liss
Title: Executive Director

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the 3rd day of May, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **Ana J. Liss**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

LORI A. PALMER
Notary Public, State of New York
No. 01PA4848797
Qualified in Monroe County 23
Commission Expires May 31, 20