

UNOFFICIAL COPY



2304734004

Doc# 2304734004 Fee \$65.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/16/2023 09:15 AM PG: 1 OF 8

This document prepared by and after recording return to:

Mail to:

DLA Piper LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606
Attn: Paul Shadle, Esq.

This space reserved for Clerk's use only.

*20153373
5 of 9*

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Agreement**”) is made and entered into as of the 15th day of February, 2023 (the “**Effective Date**”), by and among Montrose Clarendon Partners LLC, an Illinois limited liability company (“**Partners**”), Montrose and Clarendon LLC, a Delaware limited liability company (“**Developer**”; together with Partners, “**Assignor**”), and Clarendoux LLC, an Illinois limited liability company (“**Assignee**”).

RECITALS

A. Assignor and the City of Chicago have entered into that certain Montrose Clarendon Apartments Redevelopment Agreement dated as of October 31, 2016, and recorded with the Cook County Clerk as document number 1630734033 (the “**RDA**”) with respect to the development of property located in the Montrose/Clarendon Redevelopment Project Area at the intersection of Montrose and Clarendon Avenues in Chicago, Illinois, as legally described on Exhibit A attached hereto. Capitalized terms not defined herein shall have the meaning ascribed to them in the RDA.

B. The Property under the RDA consists of two parcels identified in the RDA as (i) Sub-Area A, on which the Residential Facility was constructed, and (ii) Sub-Area C, on which the Commercial Facility was constructed.

C. On June 24, 2022, the City issued the Certificate of Completion for the Project.

D. Concurrently with the execution of this Agreement, and pursuant to that certain Purchase and Sale Agreement dated November 14, 2022, by and between Developer and Eleventh Hour, LLC, a Virginia limited liability company and an affiliate of Assignee, as thereafter amended (the “**PSA**”), Assignee is acquiring fee simple ownership of Sub-Area C and the Commercial Facility constructed thereon.

8

UNOFFICIAL COPY

D. In accordance with Section 18.22(a) of the RDA, the parties hereto desire to enter into this Agreement pursuant to which Assignee agrees to assume all surviving responsibilities and covenants pertaining to Sub-Area C and the Commercial Facility under the RDA.

NOW THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Effective as of the Effective Date, Assignor hereby assigns, transfers, sells and conveys to Assignee all of Assignor's rights and obligations under the RDA that pertain to Sub-Area C and the Commercial Facility.

2. Assumption. Assignee hereby accepts the foregoing assignment, transfer and conveyance of all of Assignor's rights and obligations under the RDA that pertain to Sub-Area C and the Commercial Facility, and Assignee hereby assumes all of the duties, liabilities and obligations under the RDA pertaining to Sub-Area C and the Commercial Facility and agrees to fulfill, keep, perform and observe each and every duty, obligation, term, covenant and condition contained in the RDA and pertaining to Sub-Area C and the Commercial Facility that is required to be fulfilled, kept, performed and observed by Assignor under the RDA, including without limitation the covenants set forth in Section 8.06 (Retail Occupancy Covenant) of the RDA, Section 8.19 (Real Estate Provisions) of the RDA, and the requirement to file an Annual Compliance Report with respect to matters pertaining to Sub-Area C and the Commercial Facility.

Assignee agrees that, as between Assignor and Assignee, Assignor shall have no further duties or obligations under the RDA pertaining to Sub-Area C and the Commercial Facility on or after the Effective Date and Assignee shall be directly liable to the City for all of the duties, obligations and liabilities of Assignor under the RDA pertaining to Sub-Area C and the Commercial Facility.

3. Assignor's Retained Obligations. Assignor shall retain all obligations under the RDA pertaining to Sub-Area A and the Residential Facility.

4. Representations of Assignee. Assignee represents and warrants that (a) it meets the qualifications as a Qualified Investor under Regulation D of the Securities Act of 1933, and (ii) it is not a banned or blocked person, entity or nation pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control.

5. Several Liability. Subject to the City's consent to this Agreement, Assignor's and Assignee's respective liabilities and obligations under the RDA shall be several and not joint. For the avoidance of doubt, a default by either Assignor or Assignee under the RDA or any other agreement with the City related thereto shall not constitute a default of the other party, and in no event shall the City be entitled to terminate the RDA as it relates to a party or its respective portion of the Property due to a default by the other party. Without limiting the foregoing, the City shall not be entitled to cease payments under the City Note due to a default by Assignee. The City Note, and the collateral assignment thereof by Assignor to its lender, shall remain in full force and effect pursuant to the terms thereof from and after the Effective Date.

UNOFFICIAL COPY

6. Mutual Indemnification. As of the Effective Date and continuing until expiration of the Monitoring Period, each of Assignor and Assignee shall defend, protect, indemnify and hold harmless the other party hereto, and its affiliates and its and their respective directors, employees, attorneys, and agents (each an “**Indemnified Party**”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses of any kind or nature, which may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of the other party’s default under the RDA; provided, however, the indemnifying party shall not have any obligation hereunder to an Indemnified Party with respect to matters caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party.

7. Further Assurances. Assignor and Assignee agree to execute such additional documents after the date hereof as may be reasonably required to effectuate the terms of this Assignment; provided, however, that neither party shall have an obligation to execute any such document that such party reasonably believes will change its respective liability as set forth in this Assignment.

8. Covenant Running with the Land; Successors and Assigns. This Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

9. Amendment. This Agreement may be amended only by a written instrument executed by each of the parties to this Agreement.

10. Applicable Law. This Agreement shall be construed and enforced in accordance with the substantive laws of the State of Illinois without regard to its principles of conflicts of laws.

11. Binding Effect. This Agreement has been duly executed and delivered by Assignor and Assignee, and this Agreement constitutes a valid and binding obligation of each party to this Agreement, enforceable against it in accordance with the terms of this Agreement.

12. Counterpart Execution. This Agreement may be executed in any number of counterparts or counterpart signature pages (by facsimile or electronic transmission or otherwise), each of which, when so executed, shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

[Signature Page Follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

ASSIGNOR:

MONTROSE AND CLARENDON, LLC, a
Delaware limited liability company

By: Montrose and Clarendon Holdings, LLC, a Delaware
limited liability company, its sole member

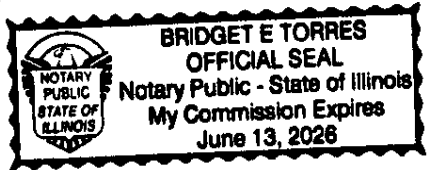
By: *[Signature]*
Name: VINCENT G. FORGIONE
Title: Authorized Signatory

State of ILLINOIS)
) ss.
County of COOK)

On February 13, 2023, before me, the undersigned, a notary public in and for said State, personally appeared VINCENT G. FORGIONE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

[Signature] Notary Public

My Commission Expires:
June 13, 2026



UNOFFICIAL COPY

MONTROSE CLARENDON PARTNERS LLC, an
 Illinois limited liability company
By: MONTCLARE LLC, an Illinois limited liability company, manager
 By: *[Signature]*
 Name: VINCENT G. FORGIONE
 Title: AUTHORIZED SIGNATORY

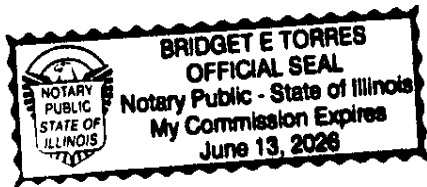
State of Illinois)
) ss.
 County of Cook)

On February 13, 2023, before me, the undersigned, a notary public in and for said State, personally appeared VINCENT G. FORGIONE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

[Signature], Notary Public

My Commission Expires:

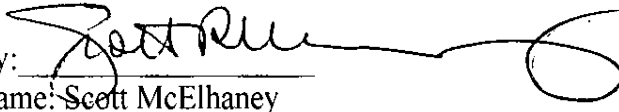
June 13, 2026



UNOFFICIAL COPY

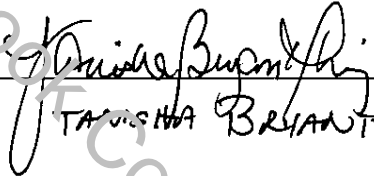
ASSIGNEE:

CLARENDEUX LLC, an Illinois limited liability company

By: 
Name: Scott McElhaney
Title: Manager

State of SOUTH CAROLINA)
County of CHARLESTON) ss.

On February 15th, 2023, before me, the undersigned, a notary public in and for said State, personally appeared Scott McElhaney, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

, Notary Public
TANISHA BRYANT-KING

My Commission Expires:
9/20/2031



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

SUB-AREA A:

PARCEL 1

LOT 1 AND ALL OF LOTS 2, 3 AND 4 IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2

LOTS 1 AND 2 (EXCEPT THE NORTH 105 FEET OF THE EAST 85 FEET OF SAID LOTS) IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3

THAT PART OF THE NORTH 1/2 OF THE EAST AND WEST 16 FOOT VACATED PUBLIC ALLEY, LYING WEST OF THE WEST LINE OF CLARENDON AVENUE, LYING EAST OF A LINE 18 FEET EAST OF AND PARALLEL TO THE WEST LINE OF LOT 1 AND SAID WEST LINE PRODUCED SOUTH 16 FEET IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 OF BLOCK 1 AFORESAID, SAID VACATED ALLEY LYING SOUTH AND ADJOINING PARCELS 2 AND 3, IN COOK COUNTY, ILLINOIS.

PARCEL 4

LOT 18 (EXCEPT THE WEST 18 FEET THEREOF DEDICATED FOR PUBLIC ALLEY, BY INSTRUMENT RECORDED AUGUST 20, 1992 AS DOCUMENT 92618869) AND LOTS 19 AND 20 IN BLOCK 1 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 5

LOTS 1 TO 4, BOTH INCLUSIVE, IN THE SUBDIVISION OF LOT 2 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

PARCEL 6

THAT PART OF THE SOUTH 1/2 OF THE EAST AND WEST 16 FOOT VACATED PUBLIC ALLEY, LYING WEST OF THE WEST LINE OF CLARENDON AVENUE, LYING EAST OF A LINE 18 FEET EAST OF AND PARALLEL TO THE WEST LINE OF LOT 1 AND SAID WEST LINE PRODUCED SOUTH 16 FEET IN LYDSTON'S RESUBDIVISION OF LOTS 3 TO 7 OF BLOCK 1 AFORESAID, SAID VACATED ALLEY LYING NORTH AND ADJOINING PARCELS 4 AND 5 AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 7

THE NORTH 105 FEET OF THE EAST 85 FEET OF LOTS 1 AND 2 IN JOHN N. YOUNG'S SUBDIVISION OF LOT 1 IN SUPERIOR COURT PARTITION OF THE SOUTH 10 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SUB-AREA C:

THE WEST 103 FEET OF THE SOUTH 147 FEET (EXCEPT THE NORTH 14 FEET OF THE EAST 51.6 FEET THEREOF) OF LOT 4 IN SCHOOL TRUSTEE'S SUBDIVISION OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SUB-AREA A COMMON ADDRESS: 810 WEST MONTROSE AVENUE, CHICAGO, IL

SUB-AREA A PINS:

14-17-229-008
14-17-229-014
14-17-229-015
14-17-229-016
14-17-229-017
14-17-229-018
14-17-229-019

SUB-AREA C COMMON ADDRESS: 4401-4415 N CLARENDON AVENUE, CHICAGO, IL

SUB-AREA C PIN: 14-16-103-006