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Apella - ClearLogic - Assignment Assumption
and Consent of Landlord (PLG 3-27) - 4.25.pdf

8 pages (126 KB)
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versus

New File:

Apella_-_ClearLogic_-
_Assignment_Assumption_and_Consent_of_L
andlord_(Execution_Version).docx.pdf

8 pages (264 KB)
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Total Changes

9

Text only comparison

Content

- 1 Replacement
- 8 Insertions
- 0 Deletions

Styling and
Annotations

- 0 Styling
- 0 Annotations

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ASSIGNMENT, ASSUMPTION AND CONSENT OF LANDLORD

This Assignment, Assumption and Consent of Landlord (“**Assignment**”) is made and entered into as of April 12, 2024 (the “Effective Date”), by and among ClearLogic Financial, Inc., a Virginia corporation (“**Assignor**”), Apella Capital, LLC, a Delaware limited liability company (“**Assignee**”) and Stewart Chestnut Sunset Hills, LLC, a Delaware limited liability company (“**Landlord**”).

RECITALS

a. Assignor, as tenant, and Landlord, as landlord, are parties to that certain Office Lease Agreement, dated May 31, 2012, by and between Landlord and Assignor, as amended by that certain First Amendment to Office Lease Agreement, dated November 19, 2018, and that certain Second Amendment to Office Lease Agreement, dated October 19, 2021 (collectively, the “**Lease**”).

b. The Lease is being assigned to Assignee in connection with Assignee’s purchase of Assignor’s business operated on the premises covered by the Lease.

c. Assignor desires to assign to Assignee its right, title and interest under the Lease, and Assignee desires to assume and become responsible for all obligations and liabilities under the Lease. Landlord is willing to consent to the assignment on the terms and conditions as set forth herein. Any capitalized term not defined herein shall have the meaning as set forth in the Lease.

NOW, THEREFORE, in consideration of the recitals and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below.

AGREEMENT

1. Assignment. Assignor hereby assigns to Assignee all of its right, title, and interest under the Lease as of the Effective Date. Assignor hereby transfers and assigns to Assignee all rights relating to the return of any security deposit upon expiration of the Lease, subject to any proration requirements as agreed upon by Assignor and Assignee.

2. Assumption. Assignee represents and warrants to Assignor and Landlord that Assignee has read the Lease and understands its obligations and liabilities under the Lease. Assignee hereby accepts the assignment and assumes and agrees to become responsible for, and further agrees to faithfully perform and be bound by, all of the terms, covenants, conditions, provisions and agreements of the Lease from and after the Effective Date, including, but not limited to, the payment of rent and all other charges to be paid under the Lease (which may include, without limitation, Operating Charges and Real Estate Tax reconciliation statements, even if all or portions of the statement(s) therefor relate to periods prior to the Effective Date).

3. Liability (As Between Assignor and Assignee).

a. It is specifically agreed between Assignor and Assignee that Assignor shall remain fully liable to Landlord for the performance of all of the terms, covenants and conditions to be performed and/or discharged by the tenant under the Lease arising prior to (but not from and after) the Effective Date, and Assignor hereby agrees to save, defend, indemnify and hold harmless Assignee from and against any and all demands, claims, causes of action, actions, losses, liabilities, obligations, costs and expenses (including reasonable attorneys' fees and court costs) arising or accruing as a result of Assignor's failure to discharge or perform the terms, covenants and conditions to be performed and/or discharged by the tenant under the Lease arising prior to (but not from and after) the Effective Date hereof, including without limitation, claims of Landlord, contractors, other business invitees, licensees, tort claimants, and pursuant to any indemnification obligations arising prior to (but not from and after) the Effective Date.

b. It is specifically agreed between Assignor and Assignee that Assignee shall be fully liable to Landlord for the performance of all of the terms, covenants, duties, obligations and conditions to be performed and/or discharged by the tenant under the Lease arising from and after (but not prior to) the Effective Date. By accepting this Assignment and by its execution hereof, Assignee hereby assumes and agrees to save, defend, indemnify and hold harmless Assignor from and against any and all demands, claims, causes of action, actions, losses, liabilities, obligations, costs and expenses (including reasonable attorneys' fees and court costs) arising or accruing as a result of Assignee's failure to discharge or perform the terms, covenants and conditions to be performed and/or discharged by the tenant under the Lease arising from and after (but not prior to) the Effective Date, including, without limitation, claims of Landlord, contractors, other business invitees, licensees and tort claimants or indemnity claims, arising from and after (but not prior to) the Effective Date.

4. Landlord's Consent to Assignment. Provided that (i) no Event of Default exists under the Lease as of the Effective Date and (ii) all payments of Base Rent, additional rent and other sums due under the Lease shall have been paid in full as of the Effective Date, then Landlord, by its execution below, hereby expressly consents to the assignment of the Lease by Assignor to Assignee, and the assumption by Assignee of the Assignor's interest in the Lease, as set forth in Sections 1 and 2 of this Assignment. Notwithstanding anything to the contrary in Sections 1, 2, or 3 above, however, Landlord does not release Assignor of any liability arising under the Lease, whether arising prior to or after, or from and after, the Effective Date. It is expressly provided that:

a. Such consent will not release Assignor of liability for compliance with all Lease obligations, whether past, present, or future during the Lease Term. Further, Landlord and Assignee may change, modify, alter, or amend the Lease, and further assignments or sublettings may be made, without the consent of Assignor, and such changes, modifications, alterations, amendments, or further assignments or sublettings shall not in any manner release or relieve Assignor for compliance by Tenant with the obligations of the Lease. Assignor is and shall remain jointly and severally liable with Assignee for compliance therewith throughout the Lease Term;

b. The consent to this Assignment shall not be deemed to be consent by Landlord to any subsequent assignment, sublease, subcontract, license or other transfer of the Lease or any rights, responsibilities, obligations, interests or benefits thereunder;

c. This consent by Landlord shall not be valid or effective unless and until this Assignment has been fully executed by Assignor, Assignee and Landlord;

d. This consent of Landlord shall not be construed to modify, waive or affect any of the terms, conditions, provisions or agreements of the Lease, or any of the rights of Landlord under the Lease, or to enlarge or increase the obligations of Landlord under the Lease as currently stated;

e. Under no circumstances shall Landlord be liable for any brokerage commission(s) or any other charge or expense in connection with this consent or this Assignment; and

f. Upon expiration or termination of the Lease, Landlord shall return the Security Deposit of \$4,416.75 to Assignee if appropriate pursuant to the terms of Article XI of the Lease, and Landlord shall have no further obligations or liabilities to Assignor regarding the Security Deposit.

g. Tenant acknowledges and agrees that, due to the assignment of the Lease, Paragraph 8 of the Second Amendment shall be of no further force or effect.

5. Ratification and Confirmation. The parties hereby ratify and confirm all of the terms, covenants and conditions of the Lease, and acknowledges that the Lease shall continue to remain in full force and effect in all respects from and after the assignment of the Lease from Assignor to Assignee being effected by this Assignment. Assignor acknowledges and agrees that: (a) to its knowledge, Landlord is not in default of any of its obligations or requirements under the Lease whatsoever, and (b) Assignor has no offset, claim, recoupment, or defense against the payment of rent and other sums due and owing under the Lease and/or the performance of all of its obligations as tenant under the Lease. Landlord acknowledges and agrees that, to its current actual knowledge, Assignor is not in default of any of its obligations under the Lease prior to the Effective Date.

6. Insurance. Assignee has delivered to Landlord evidence of the insurance required to be maintained by the tenant under Article XIII of the Lease.

7. Notices. Upon the Effective Date, the Lease is hereby modified to provide that all notices shall be addressed as follows:

If to Landlord, to:

Stewart Investment Partners
Attn: Property Manager
6849 Old Dominion Dr., Suite 100
McLean, VA 22101

Stewart Investment Partners
Attn: Director, Asset Management
7373 Wisconsin Avenue, Suite 825
Bethesda, MD 20814

If to Assignor, to:

Samuel Mark Atherton
9917 Rosewood Hill Circle
Reston, VA 20190

If to Tenant or to Assignee, to:

Apella Capital, LLC
Attn: James J. Scanlan, President
65 Memorial Road, Suite C340
West Hartford, CT 06107

8. Miscellaneous.

a. Effectiveness. This Assignment shall be effective as of the Effective Date.

b. Authority. Each party to this Assignment represents and warrants to the other parties to this Assignment that it is duly authorized to enter into this Assignment and/or to execute the applicable assignment, assumption and/or consent provisions set forth herein and perform its respective obligations hereunder without the consent or approval of any other person or party, and that the person signing this Assignment on its respective behalf is duly authorized to sign on behalf of such party.

c. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Virginia without regard to principles of conflicts of law.

d. Disclaimer. The transfer and assignment set forth herein is made by Assignor without any express or implied representation or warranty of any kind or nature, except as expressly set forth in this Assignment.

e. No Third-Party Beneficiaries. Nothing in this Assignment, express or implied, is intended or shall be construed to confer upon, or give to, any person, corporation or other entity, other than the named parties to this Assignment, any rights, remedies, obligations or liabilities.

f. Binding Effect and Interpretation. This Assignment shall be binding upon and inure to the benefit of the Assignor, the Assignee and Landlord, and their respective successors and permitted assigns. Assignor, Assignee, and Landlord understand, agree and acknowledge that (i) this Assignment has been freely negotiated by all of the parties hereto; and (ii) in any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Assignment, or any of its terms or conditions, there shall not be any inference, presumption or conclusion drawn whatsoever against any party by virtue of that party having drafted this Assignment, or any portion thereof.

g. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original copy, and all of which together will constitute one and the same instrument. Electronic, digital, and facsimile signatures to this Assignment shall be binding on the parties hereto to the same extent as original signatures hereto.

h. Entire Agreement. This Assignment represents the entire understanding and agreement between the Assignor, Assignee and Landlord with respect to the subject matter hereof, and no amendment or modification of this Assignment shall be effective unless it is set forth in a writing specifically stating that it is intended to be an amendment hereof, specifying what provision hereof is being amended thereby, and signed by each of the Assignor, Assignee and Landlord.

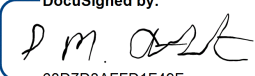
i. Severability. If any term or provision of this Assignment is invalid, illegal, or incapable of being enforced by virtue of any federal or state law, or public policy, all other terms and provisions of this Assignment shall nevertheless remain in full force and effect so long as the legal substance of the transaction contemplated hereby is not affected in any manner materially adverse to any of the parties to this Assignment. Upon such determination that any such term or provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Assignment so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Signature pages follow.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment effective as of the date first set forth above.

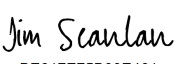
ASSIGNOR:

CLEARLOGIC FINANCIAL, INC.

By:  DocuSigned by:
68D7D3AFFD1F49F...
Name: Samuel Mark Atherton
Title: President

ASSIGNEE:

APELLA CAPITAL, LLC

DocuSigned by:
By: 

Name: James J. Scanlan

Title: President

LANDLORD:

STEWART CHESTNUT SUNSET HILLS,
LLC

By: _____

Name: Vadim Goland

Title: