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Annotated Covid-19 Lease Amendment

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ANNOTATED PANDEMIC AMENDMENT TO LEASE

between LEVERAGED PROPERTY OWNER, as Landlord,
and COVID POSITIVE ENTERPRISES, as Tenant.

This Annotated Pandemic Amendment to Lease (this Amendment) is by and between **Leveraged Property Owner**, a typical commercial landlord (Landlord) and **COVID-19 Positive Enterprises**, a financially distressed business organization (Tenant). Tenant's parent, **On the Hook, Inc.** (Guarantor), is executing this Amendment for the purposes set forth below. This Amendment is dated as of the last date accompanying the signature of Landlord, Tenant, or Guarantor below (if one or more signatures are not dated, then only the dated signatures will be used to determine the date of this Amendment) and that date is referred to as the Effective Date.

INTRODUCTION

- A. Before COVID-19, Landlord and Tenant entered into a Commercial Lease (the Base Lease) for certain space within the building located in Anywhere, Texas (the Premises).
- B. After COVID-19, Landlord delivered written notice to Tenant demanding payment of certain amounts owing and past due under the Lease.
- C. Claiming that the COVID-19 pandemic and various government decrees constitute a *force majeure* under the terms of the Lease and that the operation of that clause excused Tenant's obligation to pay Base Rent and other sums due and owing under the Lease,¹ Tenant did not pay all or part the outstanding amounts past due and owing, and on May __, 2020, and Landlord and Tenant temporized hoping the pandemic would pass quickly. It did not.
- D. Landlord and Tenant typically have done one or more of the following things:
 - 1. Stage 1. Between ____, 2020, and the Effective Date of this Amendment, Landlord accepted X partial payments of Base Rent and Additional Rent from Tenant totaling \$____, and Landlord also notified Tenant, in writing, that Landlord accepted Tenant's partial payments without waiving any right or remedy for Tenant's Default under the Lease. **Schedule 1** lists the date due, the amount owed as of the date due, the amount paid, and the accrued amounts still outstanding, past due, and unpaid as of the Effective Date, exclusive of any Late Fees or Default Interest.
 - 2. Stage 2: Landlord and Tenant entered into a Temporary Forbearance and Payment Agreement in which:
 - a. Tenant expressly stipulates and agrees that it is in [Monetary] Default under the Lease and that Landlord is not in breach or default of its obligations under the Lease;

¹ See *infra* Section xxx of this Amendment (Force Majeure) and footnotes xxx – xxx annotating waiver and waiver of no-waiver clauses. See also **Appendix II** (Force Majeure, Impossibility, Frustration of Purpose).

- b. Landlord and Tenant each acknowledge that: (i) the Lease obligates Tenant to make the scheduled minimum monthly payments of Base Rent and estimated monthly payments of Addition Rent for the months of _____ through _____, 2020, and that such obligation remains un-modified and in full force and effect; (ii) Landlord has accepted certain late or partial payments of Base Rent and Additional Rent during the months of _____ through _____, 2020, without waiver of any right or remedy for Tenant's Monetary Defaults; and (iii) Landlord conditionally agrees to accept less than full monthly payments of Base Rent [and estimated Additional Rent] for the months of _____ through _____ ;
- c. Landlord agrees to forbear the exercise certain of its rights and remedies for Tenant's Monetary Defaults that occurred before the Effective Date and that may occur as a result of Tenant's failure to pay the full amount of Base Rent as it accrues during the ___ day deferral period beginning on _____ and ending on _____ (the *Forbearance Period*) if, but only if:
1. Tenant complies with [is not in breach or default—beyond any applicable grace or notice and cure period—] of its non-monetary obligations under the Lease
 2. Tenant pays, on or before the date each payment of monthly Base Rent is due, the partial installments of Base Rent in the amount of \$_____ and the full amount of Additional Rent set forth in Schedule 2 during the remainder of the Forbearance Period.
 3. Tenant resumes payment of full Rent and Additional Rent beginning with the payment due on _____, 2020, and thereafter pays on time and in full each such installment of Rent and Additional Rent as it accrues.
 4. Tenant pays the sum of \$_____ (*Forbearance Amount*) in xx equal consecutive monthly installments of \$_____ beginning on _____ 1, 2022, and ending with the ___ and final monthly installment due on _____, 2024; and
 5. Tenant also satisfies the conditions set forth below:
 - a. E.g., Re-delivers the ___ square feet of space depicted on Exhibit A-1 (Recapture Space) in _____ condition on or before _____, 202X (*Re-Delivery Date*).
 - b. Renews the Letter of Credit through _____, 202X;
 - c. Delivers Financial Statements, Tax Returns, and Certifications of Financial Condition of Tenant and Guarantor within ___ Business Days of the date Landlord delivers written request for any such financial information.

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