

**FIRST AMENDMENT TO LEASE BETWEEN CITY OF
CORAL GABLES, FLORIDA AND PATIO & THINGS, INC.**

THIS FIRST AMENDMENT TO LEASE BETWEEN CITY OF CORAL GABLES, FLORIDA AND PATIO & THINGS, INC. (this “**Amendment**”) is made and entered into as of the ____ day of _____, 2020 (the “**Effective Date**”), by and between the CITY OF CORAL GABLES, a municipal corporation existing under the laws of the State of Florida, (“**Landlord**”), and PATIO & THINGS, INC., a Florida corporation, (“**Tenant**”).

W I T N E S S E T H:

WHEREAS, Landlord and Tenant entered into that certain Lease, dated as of September 15, 2005, as amended by the letter agreement dated September 9, 2012 (collectively, as amended, the “**Lease**”) whereby Landlord agreed to lease to Tenant certain property described in the Lease, having a physical address of 240 Aragon Avenue, Coral Gables, Florida 33134 (the “**Premises**”); and

WHEREAS, the current term of the Lease is set to expire on August 31, 2020; and

WHEREAS, Landlord and Tenant have agreed to extend the term of the Lease for an additional one (1) year, subject to City Commission approval, and subject to and in accordance with the terms and provisions set forth herein; and

WHEREAS, through this Amendment, Landlord and Tenant further desire to amend other terms of the Lease.

NOW THEREFORE, in consideration of the mutual covenants provided herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties, for themselves and their successors and assigns, hereby covenant and agree to amend the Lease as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein as if set forth in full.

2. **Defined Terms.** All capitalized terms not defined in this Amendment shall have the same meanings as set forth in the Lease. All references in the Lease to the term “**Lease**” shall mean the Lease, as amended by this Amendment.

3. **Term of the Lease.** Landlord and Tenant acknowledge and agree that the Term of the Lease, as referenced under Section II of the Lease, is hereby extended for an additional one (1) year, commencing on September 1, 2020 (the “**Extension Commencement Date**”) and terminating on August 31, 2021, unless sooner terminated as provided herein. Either party shall have the right to terminate this Lease (“**Termination Right**”) at any time after the Extension Commencement Date (“**Early Termination Date**”), so long as it delivers to the other party a written notice (“**Termination Notice**”), of its election to exercise its Termination Right no less than sixty (60) days in advance of the Early Termination Date. Upon either party timely and properly exercising its Termination Right, Tenant shall vacate the Premises and deliver possession to Landlord in the condition required by the Terms of this Lease on or before the Early Termination Date and Tenant shall have

no further obligations under this Lease with respect to the Premises except for those accruing prior to the Early Termination Date, and those which, pursuant to the terms of the Lease, survive the expiration or early termination of this Lease with respect to the Premises.

4. **Base Rent.** Section IV of the Lease is hereby amended to provide that throughout the extension of the Term, commencing on the Extension Commencement Date, Tenant agrees to pay Landlord a total "Base Rent" of Eighty-nine Thousand Six Hundred Ten Dollars and no cents (\$89,610.00), based on a rate of \$30.00 per rentable square foot and a total of 2,987 square feet, payable in twelve equal monthly installments, each payment to be made without any offset or deduction whatsoever, in lawful money of the United States of America, at Landlord's address specified in the Lease, or elsewhere as designated from time to time by Landlord's written notice to Tenant. Section IV is further amended to delete the last paragraph regarding Business Improvement District ("BID") assessments which are instead addressed in section 6 of this Amendment.

5. **Insurance.** Section X of the Lease is replaced with the following provision:
Tenant shall maintain at its expense throughout the Term of this Lease the following insurance coverage:

1. Liability Insurance for bodily injury, personal injury and property damage including contractual liability and fire legal liability to protect both Landlord and Tenant against damages, costs, and attorney's fees arising out of accidents of any kind occurring on or about the Premises or in conjunction with the reserved parking spaces in the Garage, with combined single limit of liability of not less than \$1,000,000 per occurrence I \$2,000,000 annual aggregate and affording such additional coverage as is required by City of Coral Gables Resolution No. 25786 dated September 9, 1986 and any amendments, alterations or substitutions thereto. This policy will name the City as an additional insured and be endorsed to read "This coverage is primary and non-contributory over any other insurance or self-insurance available to the City of Coral Gables as respects any claims arising out of or in relation to this lease agreement." This coverage will also include a waiver of subrogation in favor of the City of Coral Gables. Also, if the tenant has company vehicles, auto liability insurance with limits of \$1,000,000 adding the City as an additional insured, on a primary and non-contributory basis, with a waiver of subrogation in favor of the City of Coral Gables.

2. Property Insurance for "all risks of physical loss or damage" sufficient amount to cover the premises and reimburse all of the Tenant's improvements and betterments to the premises, as well as all of the Tenant's fixtures, equipment, personal property and inventory, such coverage shall add the City of Coral Gables as Loss Payee; and

3. Statutory Workman's Compensation including a specific waiver of subrogation in favor of the Landlord (City) and any and all insurance required by law with limits of \$1,000,000 for Employer's Liability.

All insurance shall be written by a company or companies qualified to do business in Florida and acceptable to Landlord. A certificate or duplicate policies showing such insurance in force, including all the required endorsements, shall be delivered to Landlord prior to commencement of the Lease Term, and such insurance

and updated certificates or renewed policies shall be maintained with Landlord throughout the Term of this Lease. Each such policy shall name the Landlord and/or its appointee as an additional insured and shall be non-cancelable without thirty (30) days prior notice to Landlord. Tenant shall deliver to Landlord a copy of each such insurance policy, certified as true and correct by the issuing agent.

6. **Taxes and Assessments.** The title of Section XIII of the Lease is amended to read as, “**XIII. OPERATION, UTILITIES, MAINTENANCE, REPAIR EXPENSES, TAXES, AND ASSESSMENTS.**” Section XIII of the Lease is further amended to add the following provisions:

Beginning on December 1, 2020, Tenant’s share of 2021 real property taxes shall be paid by Tenant in monthly installments in such amounts as are reasonably estimated and billed by Landlord, each such installment being due on the first day of each calendar month. At any time during a tax year, Landlord may re-estimate Tenant’s share of taxes and thereafter adjust Tenant’s monthly installments payable during the tax year to reflect more accurately Tenant’s share of taxes. Within one hundred and twenty (120) days after Landlord’s receipt of tax bills for each tax year, or such reasonable (in Landlord’s determination) time thereafter, Landlord will notify Tenant of the amount of taxes for the tax year in question and the amount of Tenant’s share thereof. Any overpayment or deficiency in Tenant’s payment of taxes for each tax year shall be paid promptly.

Tenant and Landlord both acknowledge that the Premises may be subject to certain assessments, including without limitation, Business Improvement District (“BID”) assessments. Tenant agrees to be solely responsible for its proportionate share of BID assessments based on the square footage of the Premises. Tenants shall be responsible to pay all amounts due hereunder to Landlord within thirty (30) days after receipt of an invoice therefor. In the event that Tenant fails to make the appropriate payment for assessments when due, Tenant shall be responsible for any penalties imposed on the Landlord as a result of Tenant’s delinquency in the payment of said assessments.

7. **Public Records.** The following provision shall be incorporated as Section XLIII of the Lease:

XLIII. PUBLIC RECORDS: Records subject to the provisions of Public Records Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. Tenant acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the Landlord in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the Landlord for such disclosure and/or production. Tenant also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, Tenant agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

8. **Sovereign Immunity.** The following provision shall be incorporated as Section XLIV of the Lease:

XLIV. SOVEREIGN IMMUNITY. Landlord and Tenant acknowledge that the Florida Doctrine of Sovereign Immunity bars all claims against Landlord other than claims arising out of this Lease. Specifically, Tenant acknowledges that it cannot and will not assert any claims against Landlord, unless the claim is based upon a breach by Landlord of this Lease. Furthermore, Tenant understands that it has no right and will not make any claims based upon any of the following: (i) claims based upon any alleged breach by Landlord of warranties or representations not specifically set forth in this Lease; (ii) claims based upon negligence or any tort arising out of this Lease; (iii) claims upon alleged acts or inaction by Landlord, its elected officials, attorneys, administrators, consultants, agents, or any Landlord employee; or (iv) claims based upon an alleged waiver of any of the terms of this Lease. Nothing in this Lease is intended to operate as a waiver of Landlord's sovereign immunity, as set forth in the Florida Constitution and Florida Statutes Chapter 768.28.

9. **Governing Law.** This Amendment shall be governed by the laws of the State of Florida.

10. **Regulatory Authority.** Landlord and Tenant agree that notwithstanding and without limiting the terms of this Amendment, the Landlord retains its regulatory authority and will enforce its Zoning Code and take all action necessary to protect the public safety.

11. **Ratification.** Except as modified by this Amendment, all of the terms, covenants and conditions of the Lease are confirmed and approved and shall remain in full force and effect.

12. **Conflict.** In the event of a conflict between the terms of this Amendment and the Lease, the terms of this Amendment shall control.

13. **Negotiations of Amendment.** The drafting and negotiation of this Amendment have been participated in by each of the parties, and for all purposes, therefore, this Amendment shall be deemed to have been drafted jointly by each of the parties.

14. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. This Amendment may be executed by each party upon a separate copy, and one or more execution pages may be detached from one copy of this Amendment and attached to another copy in order to form one or more counterparts. Signature pages exchanged by facsimile or electronic transmission shall be fully binding.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties below have caused this First Amendment to Lease Agreement to be executed under seal as of the date and year first above written.

LANDLORD:

**CITY OF CORAL GABLES, a
municipal corporation of the State of Florida**

By: _____
Peter J. Iglesias
City Manager

ATTEST:

By: _____
Billy Y. Urquia
City Clerk

Approved as to form and legal sufficiency

By: _____
Miriam Soler Ramos
City Attorney

TENANT:

**PATIO & THINGS, INC., a Florida
corporation**

By: *Maria Santamarina*
Name: MARIA SANTAMARINA
Title: President

ATTEST/WITNESS:

By: *Celia F. Garcia*
Name: CELIA R. GARCIA

By: *Raul R. Santamarina*
Name: RAUL R. SANTAMARINA