PARKING LICENSE AGREEMENT G&C POMPANO STATION, LLC

No. 1334

THIS PARKING LICENSE AGREEMENT is n	nade on, by
and between:	

CITY OF POMPANO BEACH, a Florida municipal corporation having its principal office at 100 W. Atlantic Boulevard, Pompano Beach, Florida 33060, ("CITY"),

and

G&C POMPANO STATION, LLC, a Florida for profit limited liability company having its principal office at 1499 West Palmetto Park Road, Suite 415, Boca Raton, Florida 33486, ("LICENSEE"),

collectively referred to as the "Parties."

WHEREAS, the CITY entered into an Interlocal Agreement with the Pompano Beach Community Redevelopment Agency (CRA) granting the CITY use of three (3) CRA owned lots along SE 22nd Avenue, between E. Atlantic Boulevard and 2nd Street, in the East District of the CRA (specifically for the installation, construction, management and operation of public parking); and

WHEREAS, the LICENSEE is developing property located at 2335 East Atlantic Boulevard and 121 NE 24th Avenue in Pompano Beach ("Pompano Station Project") that will temporarily displace parking for many of its current commercial tenants and their tenants' employees and vendors for the duration of the Pompano Station Project construction;

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions, the Parties agree as follows:

1. Grant of License. CITY grants to LICENSEE a nonexclusive revocable license to park not less than sixty-nine (69) and not more than eighty-two (82) vehicles in the License Area,

as depicted in Exhibit "A" ("License Area"). The License Area is to be used for parking vehicles owned or operated by LICENSEE's commercial tenants and the tenants' customers, visitors, employees, and vendors, during the hours of 7:00 a.m. and 11:00 p.m., seven days a week ("Operating Hours").

- 2. Parking Permits. In furtherance of the LICENSEE's use of the License Area, LICENSEE is required to purchase not less than sixty-nine (69) and not more than eighty-two (82) monthly parking permits from CITY, the reduced rate of Fifty Dollars (\$50.00) per monthly parking permit plus any applicable sales taxes, for each vehicle parking in the License Area. Monthly Parking Permit payment is due no later than the first day of each month ("Payment Date"). A late fee of five percent (5.0%) will be assessed on the 10th day following the Payment Date.
- 3. License Area Availability. CITY reserves the right to close, relocate or modify the License Area, but will make every attempt to provide alternative parking for use by LICENSEE's commercial tenants, customers, visitors, employees, and vendors.
- 4. License Term. This Agreement shall be for a term of two (2) years (the "Term") and shall commence upon the effective date that the last party fully and completely executes this License Agreement, unless sooner terminated as provided in this Agreement. The Parties shall have the option, but shall in no way be obligated, to extend the License Agreement on a month to month basis, but not for a period of more than one year ("Extension Period"), on the terms and conditions as set forth in this Agreement. Should either party wish to extend this Agreement, the requesting party shall provide written notice to that effect to the other party at least three (3) months prior to the last day of the term of the Agreement.
- 5. Termination for Cause. Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination, if such breach or default remains uncured for more than thirty (30) days after written notice from the non-defaulting party to the defaulting party,

or such longer period as may be reasonably required under the circumstances as long as the defaulting party commences the cure of such breach or default prior to the expiration of such thirty (30) day period and diligently thereafter pursues the cure of the breach or default to completion. Any such notice of default shall describe in reasonable detail the alleged breach or default.

- 6. Termination for Convenience. During the Term or any extension of this Agreement, upon no less than thirty (30) calendar days written notice, delivered by certified mail, return receipt requested, or by hand delivery, either party may without cause and without prejudice to any other right or remedy terminate this Agreement for convenience whenever it determines that such termination is in the best interests of that Party. Upon receipt of such notice, LICENSEE shall discontinue all use of the License Area. Neither party shall be responsible for any costs incurred as a result of the termination for convenience. In the event of such termination, the License Fee shall be prorated and the portion of the License Fee attributable to the period following such termination shall be refunded.
- 7. License Area Maintenance. CITY shall be responsible to maintain the License Area including but not limited to removing litter, garbage, or other material deposited on the License Area on a periodic basis.
- 8. Unauthorized Use. LICENSEE is permitted to park passenger cars and ¾ ton pickup trucks. No large vans or oversized vehicles, including trucks, nor commercial vehicles defined in the CITY's Code of Ordinances may by parked in the License Area. No vehicles may be parked that are not titled or without tags and current registration. Spaces are available on a "first-come, first-serve" basis. Vehicles are prohibited from "back-end" parking, and must prominently display parking passes (i.e., "hangtags"), license plates and decals within the parked vehicle either on the vehicle's rear-view mirror or on the front dashboard or on the front driver's seat window to facilitate verification of the vehicle's right to park in License Area; otherwise, a

vehicle will be subject to receiving a parking citation. Hangtags may be paper, decal or electronic types.

- 9. This Agreement and the underlying rights and obligations shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of LICENSEE'S insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event, all rights of LICENSEE shall immediately cease and terminate.
- 10. Taxes. As further consideration of this License Agreement, LICENSEE agrees to pay any taxes, including sales taxes, of whatever nature that may validly be levied against—the license area premises or pursuant to this Agreement during the continuance of this Agreement.
- 11. Permitted Use. LICENSEE specifically agrees that it will use the License Area pursuant to this Agreement only for the intended purpose; the License Area may not be used for material storage or staging for construction. Further, LICENSEE will not suffer or permit the License Area or any part to be used for any other purpose without the express written consent of CITY. Failure to abide by this provision will be a cause of default of the Agreement and the CITY may terminate the License Agreement as described in Paragraphs 4 and 5 above.
- 12. Public Benefit. The license area shall be used to benefit the general public by relieving the congested parking on the LICENSEE'S property and providing parking to service a project under construction that is essential to the city for providing additional housing including workforce housing that promotes the use of the CITY's recreational beaches, McNab Park and other public spaces.
- 13. License Definition. It is expressly understood and agreed that no real or personal property is leased to LICENSEE by CITY. This license is nonexclusive and is not intended to

restrict the rights of the public for pedestrian foot-trail passage to access the public parks and other amenities. CITY and LICENSEE acknowledge that the intention of this license is for CITY to grant a license to LICENSEE to store vehicles of LICENSEE and LICENSEE's tenants, employees, and invitees for LICENSEE's use and benefit, and that there is no intention whatsoever to grant to LICENSEE, its successors or assigns, or to any other person or entity, any permanent rights of any kind in CITY's real property. This agreement shall not be recorded in the Public Records of Broward County, Florida.

- 14. LICENSEE, on behalf of itself, its commercial tenants, their customers, visitors, employees, and vendors, assumes all risks in the use of the License Area. LICENSEE shall be solely responsible for any damage to, or loss of, motor vehicles parked within the License Area as well as the personal property of the LICENSEE, its commercial tenants, their customers, visitors, employees, and vendors.
- 15. Insurance. LICENSEE shall procure, at its own cost and expense, the insurance coverage set forth in Exhibit "B" naming the City of Pompano Beach as an additional insured pursuant to this Agreement. The Certificate of Insurance must be approved by the CITY's Risk Manager prior to execution of this Agreement. Any subcontractor must also obtain insurance coverage set forth in Exhibit "B." LICENSEE may contract individually with the CITY's ride vendor, Circuit, to provide transportation to and from the LICENSEE's Property to the License Area.
- 16. Non-Transferability. LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the previous written consent of CITY, which will not be unreasonably withheld. In the event of an attempt to assign, transfer, convey or otherwise dispose of this license to any person not specifically a party to this Agreement and license, then this license shall be null and void and terminated without notice to

LICENSEE. Notwithstanding, Licensee has the right to collaterally assign its rights under this Parking License Agreement to any institutional lender with a mortgage on the Property or other verifiable financial interest (the "Lender"). Such collateral assignment will not, by its terms, transfer any rights under this Parking License Agreement to Lender, unless and until the occurrence of an uncured default by Licensee under the mortgage or financial encumbrance or other instrument (the "Trigger Event"). Notice of the occurrence of a Trigger Event and the intent of Lender to exercise rights under the collateral assignment, setting forth the name and address of the Lender shall be given to City by Licensee or Lender no later than ten (10) days before the date that such exercise of rights with respect to this License shall become effective. Such assignment, and the exercise of rights applicable thereto, shall be on the same terms and conditions as this Parking License Agreement.

- 17. Rights of Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any person other than the Parties and their respective heirs, successors, legal representatives, and permitted assigns; nor is anything in the Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement; nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.
- 18. Public Health, Safety and Welfare. Notwithstanding any provision to the contrary, if at any time CITY determines there is an emergency in its sole discretion of the existence of hazardous motor vehicles on the License Area which poses a risk or hazard to the public health, safety or welfare, then the LICENSEE shall, immediately upon receipt of written, email, or verbal notice from CITY, remove the motor vehicles, at LICENSEE's sole expense. If the vehicles are not immediately removed, CITY may remove the motor vehicles and LICENSEE agrees to pay for the costs to remove the motor vehicles. During any time of a hurricane alert,

CITY will notify LICENSEE to remove all vehicles in the License Area if the CITY determines it is in the best interest of the public that such removal is necessary.

- 19. Compliance with Laws/Regulations. LICENSEE and its commercial tenants, their customers, visitors, employees, and vendors, agree to comply and adhere to all applicable laws and regulations including, but not limited to, all state laws and local ordinances and regulations regarding traffic and parking that exist or as amended from time to time.
- 20. Governing Law. This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in Federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

21. Public Records

- A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, LICENSEE shall:
- 1. Keep and maintain public records required by the CITY in order to perform the service.
- 2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a

reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

- 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Licensee does not transfer the records to the CITY.
- 4. Upon completion of the Agreement, transfer, where applicable, at no cost to the CITY, all public records in LICENSEE's possession, or keep and maintain public records required by the CITY to perform the service. If the LICENSEE transfers all public records to the CITY upon completion of the Agreement, the LICENSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LICENSEE keeps and maintains public records upon completion of the Agreement, the LICENSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.
- B. Failure of the LICENSEE to provide the above described public records to the CITY within a reasonable time may subject LICENSEE to penalties under Section 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

OUESTIONS HAS IF THE LICENSEE REGARDING THE APPLICATION OF CHAPTER TO STATUTES, FLORIDA 119, CONTRACTOR'S DUTY TO PROVIDE PUBLIC CONTRACT. RECORDS RELATING TO THIS **CUSTODIAN PUBLIC** OF CONTACT THE **RECORDS AT:**

CITY CLERK 100 W. Atlantic Blvd., Suite 253 Pompano Beach, Florida 33060 954-786-4611 RecordsCustodian@copbfl.com

22. Notices. Any notice required under the terms of this License Agreement must be in writing and must be sent by certified mail, return receipt requested, or by hand delivery to the address of the party to whom the notice is to be given. Addresses of the parties are as follows:

FOR CITY:

Gregory P. Harrison, City Manager City of Pompano Beach 100 W. Atlantic Blvd., Fourth Floor Pompano Beach, Florida 33060-1300 greg.harrison@copbfl.com

Mark E. Berman, City Attorney City of Pompano Beach 100 W. Atlantic Blvd., #467 Pompano Beach, Florida 33060 mark.berman@copbfl.com

Suzette Sibble, Assistant City Manager City of Pompano Beach 100 W. Atlantic Blvd., Fourth Floor Pompano Beach, Florida 33060 suzette.sibble@copbfl.com

Jeff Lantz, Parking Manager City of Pompano Beach 3460 NE 3rd Street Pompano Beach, Florida 33062 jeff.lantz@copbfl.com

FOR LICENSEE:

Mark Corlew
G&C Pompano Station, LLC.
1499 West Palmetto Park Road, Suite 415
Boca Raton, FL 33486
MCorlew@grovercorlew.com
954-516-7019

Dave Canfield G&C Pompano Station, LLC. 1499 West Palmetto Park Road, Suite 415 Boca Raton, FL 33486 David.Canfield@grovercorlew.com 954-516-7002

Steve Vainder, Legal Counsel White & Case, LLP 200 South Biscayne Blvd., Suite 4900 Miami, FL 33131 svainder@whitecase.com 305-995-5226

23. INDEMNIFICATION

A. LICENSEE shall at all times indemnify, save, hold harmless and defend the CITY its officers, officials, its authorized agents, and its employees from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly, indirectly or in connection with this Agreement, with LICENSEE's use of the License Area, and with LICENSEE's officers, staff, its commercial tenants, their customers, visitors, employees, and vendors, and their actions, negligence or misconduct whether the occurrence or cause arises on or away from the License Area; except that LICENSEE shall not be liable under this Article for damages arising out of injury or damage to persons or Property arising from the negligence, gross negligence or willful misconduct of the CITY, any of its officers, agents or employees. LICENSEE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all costs and expenses related to such claims, even if the claim is groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by LICENSEE for any causes of action LICENSEE has or may have for breaches or defaults by the CITY under this Agreement.

B. LICENSEE acknowledges and agrees that neither party would enter into this Agreement without this indemnification of CITY by LICENSEE. The parties agree that

authorization to use CITY's facility shall constitute consideration.

- C. LICENSEE shall be solely responsible for insuring all personal property belonging to LICENSEE, its commercial tenants, their customers, visitors, employees, and vendors, located at the License Area, against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property placed at the License Area by LICENSEE, its commercial tenants, their customers, visitors, employees, and vendors, , with the exception of damages or loss suffered as a result of CITY's negligence. CITY is expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of the presence of any property owned by LICENSEE, its commercial tenants, their customers, visitors, employees, and vendors in the License Area.
- D. The indemnification provisions of this Article shall survive the expiration or termination of this Agreement and remain binding upon the parties to this Agreement until fully observed, kept, or performed.
- E. Nothing contained in this Agreement shall be construed to affect in any way the rights, privileges and immunities of CITY, or be intended to serve as a waiver of sovereign immunity, as set forth in Florida Statutes §768.28. Nothing herein shall be construed as consent from either party to be sued by third parties.

24. FORCE MAJEURE

A. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented, delayed or stopped by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God, or act or order of a governmental instrumentality, failure of technical facilities, interruption or delay of transportation service, epidemic, pandemic, or public health emergencies (including any

resurgence or re-occurrence) or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force Majeure.

- B. If either party is unable to perform or is prevented, delayed or stopped in performing any obligations under this Agreement because of any event of force majeure including an event that prevents the use or ability to use the Property for its intended purpose to the benefit of the public, such inability to perform or delay shall be excused and any associated charges or payment suspended until such time as the event of force majeure ends or as long as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure, to the extent and in the form as mutually agreed by the Parties.
- C. In order to be entitled to the benefit of this Paragraph, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party after commencement or discovery of the event of force majeure, specifying in detail the event of force majeure, the estimated length of the event of force majeure, diligently proceed to correct the adverse effect of any force majeure, where possible, and, upon request from the non-claiming party, provide an update until the event of force majeure ends. The parties agree that, as to this Paragraph, time is of the essence.

25. WAIVER AND MODIFICATION

A. A Party's failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

- B. The Parties may request changes to modify certain provisions of this Agreement; however, unless otherwise provided, such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.
- **26. SEVERABILITY**. Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.
- 27. BINDING EFFECT. The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the Parties.
- 28. LICENSE NOT LEASE. Both parties acknowledge and agree this License shall not be deemed a lease but rather a license granted to LICENSEE by CITY to provide the License Area under the conditions and purposes expressed in this Agreement and shall not be construed to be a license to engage in any other uses. LICENSEE understands and agrees that it takes the License Area in "as is" condition.

29. MISCELLANEOUS

- A. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, email or facsimile copy of this Agreement and any signatory to this Agreement shall be considered for all purposes as original.
- B. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained in this Agreement and both parties agree there are no commitments, agreements or understandings relevant to the subject matter that are not contained in this Agreement. Accordingly, both parties

agree not to deviate from the terms in this Agreement predicated upon any prior representations or agreements, whether oral or written.

- C. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against, either party.
- D. It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.
- E. The Recital stated above are true and correct and are incorporated by this reference into this Agreement. The Exhibits attached are also incorporated into and made a part of this Agreement.
- F. In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs, at trial or on appeal. The provisions of this paragraph shall survive termination of this Agreement.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties to this Parking License Agreement have set their hands and seals on the day and year first above written.

CITY OF POMPANO BEACH

Attest:	By: REX HARDIN, MAYOR
	Date:
ASCELETA HAMMOND, CITY CLERK	By: GREGORY P. HARRISON, CITY MANAGER
	Date:
	(SEAL)
Approved as to form by:	
MARK E. BERMAN, CITY ATTORNEY	

"LICENSEE":

Signed, sealed and delivered In the presence of:	G&C POMPANO STATION, LLC, a Florida limited liability company		
	By: G&C Pompano Management, LLC, a Florida limited liability company, its Manager		
Jenny Gerguson (Signature) Jenai Ferguson Print Name	By: Mark Corlew, Manager Address: 1499 W. Palmetto Park Road, Suite 415 Boca Raton, FL 33486		
(Signature) Matthew Christopher Print Name	Dated:		
ACKNO	DWLEDGMENT:		
STATE OF FLORIDA) folm Beach) SS COUNTY OF BROWARD)			
	owledged before me by means of □ physical presence		
Pompano Management, LLC, a Florida lim	f January, 2022, by Mark Corlew, as Manager of G&C ited liability company, as Manager of G&C Pompano ompany, who is personally known to me or produced as identification.		
(SEAL) MATTHEW T. LYNCH MY COMMISSION #GG314889 EXPIRES: March 21, 2023	Notary Public, State of Elorida		
My commission expires: 3/21/23	Print name		

EXHIBIT A LICENSE AREA



EXHIBIT B

INSURANCE

STANDARDIZED INSURANCE REQUIREMENTS OF THE CITY OF POMPANO BEACH

Insurance

The vendor shall not commence operations, labor, construction and/or installation of improvements to complete this project until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Management Division.

The following insurance coverage shall be required.

- A. <u>Workers' Compensation Insurance</u> for all its employees in accordance with the requirements of Florida Statute, Chapter 440. The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
- B. Public Liability & Auto Liability Insurance
 - 1) Naming the City of Pompano Beach as an additional insured in connection with the work being done under this contract.

each

2) The types of insurance and minimum policy limits that are required are indicated by "XXXX" below.

LIMITS OF LIABILITY

	Type of Insurance	occurrence	aggregate			
PUBLIC LIABILITY						
XXXX XXXX ————————————————————————————	comprehensive form premises - operations explosion & collapse hazard underground hazard products (if items are sold) contractual insurance liquor legal (if items are sold)	Bodily Injury	\$1,000,000. \$1,000,000. \$1,000,000.			
XXXX	independent contractors Personal injury	Personal Injury \$1,000,000.	\$1,000,000.			

AUTOMOBILE LIABILITY

		Bodily Injury (each person)	\$1,000,000.	
XXXX	comprehensive form owned Hired	Bodily Injury (each accident) Property Damage or Bodily Injury and		\$1,000,000. \$1,000,000.
	Non-owned	Property Damage combine	ed \$1,000,000.	\$1,000,000.
- EXCES	SS LIABILITY			
	Umbrella form other than umbrella	Bodily injury and Property damage Combined	\$2,000,000.	\$2,000,000.

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

Firm shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within five (5) days after notification of award of contract.

Mail certificate(s) to: City of Pompano Beach, Attention Risk Manager, P.O. Box 1300, Pompano Beach, Florida 33061.