

## RECIPROCAL PARKING LOT LICENSE AGREEMENT

THIS RECIPROCAL PARKING LOT LICENSE AGREEMENT (this “Agreement”) is made and entered into this 7th day of April, 2020, by and between TOCU VI LLC, a Delaware limited liability company (“4500 Owner”), and JULDAN, LLC., a New Mexico limited liability company (“4720 Owner”). 4500 Owner and 4720 Owner are each a “Party” and collectively, the “Parties.”

### WITNESSETH

**WHEREAS**, 4500 Owner is the owner of the property located at 4500 Alexander Boulevard, N.E., Albuquerque, New Mexico, improved with an approximately 102,523 square foot office Building (the “4500 Property”);

**WHEREAS**, 4720 Owner is the owner of the property located at 4720 Alexander Boulevard, N.E., Albuquerque, New Mexico, improved with a multipurpose venue consisting of food and beverage vendors, along with musical entertainment facilities (the “4720 Property”);

**WHEREAS**, 4500 Owner desires to use a portion of the parking lot upon the 4720 Property containing 100 parking spaces, as depicted on Exhibit A attached hereto (the “4720 Parking Area”), for the daytime parking of motor vehicles; and

**WHEREAS**, 4720 Owner desires to use a portion of the parking lots upon the 4500 Property containing approximately 325 parking spaces and depicted as the “North Lot” and “East Lot” on Exhibit B attached hereto (the “4500 Parking Area”), for the nighttime parking of motor vehicles.

**NOW THEREFORE**, in consideration of the mutual promises herein contained, the Parties do hereby agree as follows:

1. Grant of License Upon 4720 Parking Area. 4720 Owner grants 4500 Owner a license to use the 4720 Parking Area for the purpose of parking passenger motor vehicles, along with ingress and egress across 4720 Parking Area for such motor vehicles and for occupants to walk or be transported between 4720 Parking Area and 4500 Property, and for no other purpose. Such use shall be by any tenant, occupant or invitee of the 4500 Property designated by 4500 Owner. Such use is limited to the hours of 6:00 a.m. to 6:00 p.m., Mondays through Fridays.

2. Grant of License Upon 4500 Parking Area. 4500 Owner grants 4720 Owner a non-exclusive license to use the 4500 Parking Area for the purpose of parking passenger motor vehicles, along with ingress and egress across 4500 Parking Area for such motor vehicles and for occupants to walk or be transported between 4500 Parking Area and 4720 Property, and for no other purpose. Such use is limited to valet and employee parking from 6:00 p.m. to 3:00 a.m., seven (7) days per week. 4720 Owner acknowledges that 4500 Owner and its tenants, occupants and invitees will also have the right to use the 4500 Parking Area.

3. Use of Parking Areas. 4500 Owner may not use the 4720 Parking Area and 4720 Owner may not use the 4500 Parking Area (each of the 4720 Parking Area and the 4500 Parking



Area is a “Parking Area”) in a manner which might (i) increase the existing rate of insurance upon the 4720 Property or the 4500 Property (each, a “Property”), respectively, or cause the cancellation of any insurance policy covering the other’s Property, (ii) commit any waste upon the other’s Property, or (iii) cause any public or private nuisance or otherwise unreasonably disturb the use of the other Party’s Property. Overnight parking of vehicles is strictly prohibited and vehicles parked outside the allowed hours may be towed.

4. Term. The term of this Agreement shall be commence on August 1, 2020 (the “Commencement Date”) and shall expire on September 30, 2025.

5. No Fee. The mutual agreement to share parking spaces is acknowledged by the parties hereto to constitute fair and adequate consideration for this Agreement. There shall be no rent or license fee payable for the licenses granted herein, but 4720 Owner shall pay to 4500 Owner the amount of \$2,000 per year , in advance, commencing on the Commencement Date and no later than each anniversary of the Commencement Date during the term, to reimburse 4500 Owner for wear and tear of the access gates upon the 4500 Property. Such amount shall be prorated for the partial year at the end of the term.

6. Maintenance and Cleaning. Each Party, at its expense (except as otherwise provided herein), same maintain its Parking Area in a condition suitable for the parking of passenger motor vehicles (and, at a minimum, in the same condition as of the date hereof). Each Party is responsible for the cleanliness of its Parking Area, provided a Party shall be responsible to remove trash and debris placed upon the other Party’s Parking Area by the first Party’s users. Neither Party shall make any alterations or additions to the other Party’s Parking Area. Upon the mutual agreement of the Parties, temporary or permanent signage may be erected on either or both parking areas to inform users of their availability and restrictions.

7. Relocation. Each Party may relocate its Parking Area to another location on its Property on thirty (30) days’ prior written notice to the other Party, provided the relocated area is comparable (including, without limitation, at least the same number of parking spaces). Such relocated Parking Area shall, upon the effective date of the relocation, become the applicable “Parking Area” under this Agreement.

8. Environmental.

(a) Each Party’s generation, handling, usage, transportation, treatment, storage, or disposal of Hazardous Materials at the other Party’s Parking Area will not cause or allow any Environmental Condition to occur or exist.

(b) Each Party shall defend, with counsel reasonably approved by the other Party, all actions against the other with respect to, and pay, protect, indemnify, and hold harmless the other from and against any and all Environmental Costs of any nature arising out of, or claimed to be arising out of, any Environmental Condition caused by the first Party’s use or occupancy of the other’s Parking Area. This indemnification shall include without limitation Environmental Costs arising out of any violations of Environmental Laws, regardless of any real or alleged fault of any person or entity. The foregoing indemnity shall survive the expiration or termination of this Agreement.



(c) For purposes of this Section 8, the following terms shall have the following meanings.

(i) “Environmental Laws” shall mean any and all federal, state or local laws, regulations, ordinances, rules, orders, directions, requirements or court decrees pertaining to health, industrial hygiene, or the environmental conditions on, under or about a Parking Area, including, without limitation, the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, *et seq.*), and regulations promulgated thereunder (“RCRA”); the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. §9601, *et seq.*), and regulations promulgated thereunder (“CERCLA”), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, *et seq.*), and regulations promulgated thereunder; the Toxic Substances Control Act, as amended (15 U.S.C. §2601, *et seq.*), and regulations promulgated thereunder; the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. §136, *et seq.*), and regulations promulgated thereunder; the Federal Water Pollution Control Act (the Clean Water Act), as amended (33 U.S.C. §1251, *et seq.*), and regulations promulgated thereunder; the Safe Drinking Water Act, as amended (42 U.S.C. §300f *et seq.*), and regulations promulgated thereunder; the Clean Air Act, as amended (42 U.S.C. §7401 *et seq.*), and regulations promulgated thereunder; and all parallel, similar or relevant Laws.

(ii) “Hazardous Material” shall mean any (A) hazardous waste as defined in RCRA, (B) hazardous substance as defined in CERCLA; (C) petroleum or liquid petroleum or wastes; and (D) other toxic or hazardous substances that may be regulated from time to time by Environmental Laws.

(iii) “Environmental Condition” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Material other than in compliance with applicable Environmental Laws.

(iv) “Environmental Costs” shall mean any and all judgments, damages, penalties, fines, costs, liabilities, obligations, losses, or expenses of whatever kind and nature (including, without limitation, diminution in value of the applicable Property, damages for the loss or restriction on use of real estate, damages arising from any adverse impact on marketing of real estate, sums paid in settlement of claims, attorney fees, consultant fees and expert fees), arising from or incurred in connection with any Environmental Condition, including, but not limited to, one relating to the presence, investigation, or remediation of any Hazardous Material.

## 9. Indemnification.

(a) 4500 Owner covenants and agrees that 4500 Owner at all times will indemnify and save, protect, defend and hold harmless 4720 Owner of, from and against any and all liability, cost, damage, expense, reasonable attorney’s fees and fines whatsoever which may arise or be claimed against 4720 Owner by any person or persons for any loss, injury, damage or death to any person or property whatsoever arising from or out of the business, operations, use or occupancy of the 4720 Parking Area by 4500 Owner’s agents, employees or invitees.



(b) 4720 Owner covenants and agrees that 4720 Owner at all times will indemnify and save, protect, defend and hold harmless 4500 Owner of, from and against any and all liability, cost, damage, expense, reasonable attorney's fees and fines whatsoever which may arise or be claimed against 4500 Owner by any person or persons for any loss, injury, damage or death to any person or property whatsoever arising from or out of the business, operations, use or occupancy of the 4500 Parking Area by 4720 Owner's agents, employees or invitees.

(c) The foregoing indemnities shall survive the expiration or termination of this Agreement.

10. Waivers.

(a) It is understood that 4720 Owner and its agents and employees shall not be liable for loss or damage to any vehicle parked at the 4720 Parking Area under 4500 Owner's rights herein and/or to the contents thereof, caused by fire, theft, explosion, freezing of circulation system, strikes, riots or by any other causes, and 4500 Owner, (1) waives any claim against 4720 Owner for and in respect thereto, and (2) hereby agrees to indemnify and defend 4720 Owner against all claims for any loss or damage to any such vehicle or its contents. It is further expressly understood that the relationship between 4720 Owner and 4500 Owner constitutes a license to use the 4720 Parking Area subject to the terms and conditions herein only and that neither such relationship nor the storage or parking of any automobile thereunder shall constitute a bailment nor create the relationship of bailor and bailee. In no event will 4720 Owner be liable for any loss of profits, loss of use, business interruption, cost of cover or other indirect, special, incidental or consequential damages arising out of any circumstance concerning 4500 Owner's use of the 4720 Parking Area.

(b) It is understood that 4500 Owner and its agents and employees shall not be liable for loss or damage to any vehicle parked at the 4500 Parking Area under 4720 Owner's rights herein and/or to the contents thereof, caused by fire, theft, explosion, freezing of circulation system, strikes, riots or by any other causes, and 4720 Owner, (1) waives any claim against 4500 Owner for and in respect thereto, and (2) hereby agrees to indemnify and defend 4500 Owner against all claims for any loss or damage to any such vehicle or its contents. It is further expressly understood that the relationship between 4500 Owner and 4720 Owner constitutes a license to use the 4500 Parking Area subject to the terms and conditions herein only and that neither such relationship nor the storage or parking of any automobile thereunder shall constitute a bailment nor create the relationship of bailor and bailee. In no event will 4500 Owner be liable for any loss of profits, loss of use, business interruption, cost of cover or other indirect, special, incidental or consequential damages arising out of any circumstance concerning 4720 Owner's use of the 4500 Parking Area.

11. Insurance.

(a) Each Party shall procure and keep in force during the term of this Agreement the following policies of insurance: (i) commercial general liability insurance written on an occurrence basis, covering the other Party's Parking Area and all activities and operations of such first Party's agents, employees or invitees in or about the other Party's Parking Area against claims for death, bodily injury or property damage (including standard ISO language for contractual liability of "insured contracts" insuring such Party's indemnification obligations under this Agreement), in an amount not less than \$1,000,000 per occurrence, \$2,000,000 aggregate with a



per location aggregate endorsement; (ii) auto liability (including hired and non-owned coverage) with \$1,000,000 combined single limit for bodily injury and property damage. If no owned autos, hired and non-owned auto liability is acceptable; (iii) excess liability/umbrella liability, providing coverage in excess of the commercial general liability, auto liability and employers liability listed herein, in the amount of \$2,000,000/\$5,000,000; (iv) Workers' compensation and employer's liability insurance, with the employer's liability portion thereof to have minimum limits of \$1,000,000 bodily injury by accident each accident, \$1,000,000 bodily injury by disease policy limit, and \$1,000,000 bodily injury by disease each employee; and (v) garage keeper's legal liability with a limit of not less than \$1,000,00.00. All such insurance shall be issued by an insurer licensed in the State of New Mexico. Each Party shall be named as an additional insured on the other Party's policy and shall be furnished with a Certificate of Insurance evidencing such coverage. Each Party shall maintain such insurance during the entire term of this Agreement and shall give to the other Party at least thirty (30) days prior written notice of any cancellation or termination of, or reduction below the coverage required hereunder for, any such policy. Each such policy shall contain a waiver by the insurer of any rights of subrogation the insurer might be entitled to claim against the other Party.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT EACH PARTY DOES HEREBY WAIVE ANY AND ALL CLAIMS (INCLUDING SUBROGATION CLAIMS) OR CAUSES OF ACTION AGAINST THE OTHER FOR THE LOSS OR DESTRUCTION OF, OR DAMAGE TO, PROPERTY TO THE EXTENT SUCH LOSS, DESTRUCTION OR DAMAGE IS OF THE TYPE INSURABLE UNDER A CUSTOMARY "CAUSES OF LOSS – SPECIAL FORM" PROPERTY INSURANCE POLICY (IRRESPECTIVE OF WHETHER EITHER PARTY MAINTAINS SUCH INSURANCE). EACH PARTY AGREES THAT THE FOREGOING WAIVER APPLIES REGARDLESS OF THE CAUSE OF THE LOSS, DESTRUCTION OR DAMAGE, EVEN IF CAUSED BY THE NEGLIGENCE OF ANY PARTY.

12. Assignment. Either Party may assign or transfer this Agreement to any party that purchases such Party's Property, without the written consent of the other Party. Upon such an assignment the assignor shall be released from any liability or obligation thereafter accruing under this Agreement that is expressly assumed by the assignee.

13. Mortgages. Each Party shall cause any mortgage lender upon its Property to either: (i) provide a non-disturbance agreement to the other Party in a form reasonably acceptable to the other Party or (ii) subordinate its mortgage lien upon the Property to this Agreement.

14. Default. Upon or after the occurrence of a breach or default by a Party, the other Party may elect to terminate this Agreement upon ten (10) days written notice and/or it may seek any other damages and/or other remedies to which such Party may be entitled at law or in equity.

15. Attorneys' Fees. If either Party to this Agreement brings an action to enforce any provision hereof or for damages on account of any breach of this Agreement, the prevailing Party in any such action shall be entitled to recover from the other Party, in addition to any damages or other relief granted as a result of such action, all costs and expenses of such action, and reasonable attorneys' fees.



16. Trial by Jury. 4500 Owner and 4720 Owner hereby waive trial by jury in any action, proceeding or counterclaim brought by either Party against the other on any matters in any way arising out of or connected with this Agreement, or the enforcement of any remedy hereunder.

17. Amendment. This Agreement may not be modified or amended nor may any covenant, agreement, condition, requirement, provision, warranty or obligation contained herein be waived, except in a writing signed by both Parties.

18. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed received (i) upon receipted delivery if sent by messenger, (ii) one (1) business day after being deposited with a nationally recognized overnight courier service, or (iii) five (5) business days after being deposited in the US mail, registered or certified, return receipt requested, with postage/delivery prepaid and addressed as follows, or to such other or additional addresses as a Party may hereafter designate by written notice to the other Party:

If to 4500 Owner:

CBRE Property Management  
6100 Uptown Boulevard, N.E.  
Suite 300  
Albuquerque, New Mexico 87110  
Attention: Serina Gallegos

With a copy to:

TOCU VI LLC  
650 Newport Center Drive  
Newport Beach, California 92660  
Attention: Stefanie Evans

If to 4720 Owner:

Juldan, LLC.  
4415 Towner N.E.  
Albuquerque, New Mexico 87110

19. Counterparts; Execution. This Agreement may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single amendment. Each Party agrees that the execution of this Agreement by electronic means (including by use of DocuSign (or similar) and/or by use of digital signatures) and/or the delivery of an executed copy of this Agreement by facsimile or e-mail shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Agreement had been delivered.


[Signatures are on the following page]



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their duly authorized corporate officers.


4500 OWNER:

TOCU VI LLC,  
a Delaware limited liability company

BY:   
NAME: Russell D. Gannaway  
TITLE: Authorized Person

4720 OWNER:

JULDAN, LLC., a New Mexico limited liability company

BY:   
ITS: \_\_\_\_\_



# EXHIBIT A

## The 4720 Parking Area





# EXHIBIT B

## The 4500 Parking Area



