

THIS INSTRUMENT PREPARED BY/RECORD AND RETURN TO: Conrad J. Boyle, Esq.,
Mombach, Boyle, Hardin & Simmons, P.A., 100 N.E. Third Avenue, Suite 1000, Fort Lauderdale,
Florida 33301

DECLARATION OF EASEMENTS AND PARKING AGREEMENT

THIS DECLARATION OF EASEMENTS AND PARKING AGREEMENT (“Declaration” or “Agreement”) is made and entered into as of the ____ day of July, 2020 by the **City of New Port Richey Community Redevelopment Agency**, a public body corporate and politic, having an address of 5919 Main Street, New Port Richey, Florida 34652 (hereinafter referred to as “Declarant”), and **Prometheus Port Richey, LLLP**, a Florida limited liability limited partnership, having an address of 1900 W. Commercial Boulevard, Suite 200, Fort Lauderdale, Florida 33309 (hereinafter referred to as the “Adjacent Property Owner”), joined by the **City of New Port Richey**, a duly incorporated municipality, having an address of 5919 Main Street, New Port Richey, Florida 34652 (hereinafter referred to as the “City”) and joined by **Everglades College, Inc.**, a Florida Non Profit Corporation, d/b/a Keiser University (“Keiser University”).

RECITALS:

A. Concurrently with the execution of this Agreement, the Adjacent Property Owner is conveying to Declarant fee simple title in and to a parcel of real property located in Pasco County, Florida, as more particularly described on Exhibit “A” attached hereto and made a part hereof (the “Parcel 3”);

B. The Adjacent Property Owner is the owner of fee simple title in and to two (2) parcels of real property adjacent to Parcel 3 and located in Pasco County, Florida, as follows: (i) that certain parcel more particularly described on Exhibit “B” attached hereto and made a part hereof (“Parcel 1”) and (ii) that certain parcel more particularly described on Exhibit “C” attached hereto and made a part hereof (“Parcel 2”);

C. Declarant and the Adjacent Property Owner have agreed that Declarant, at Declarant’s sole cost and expense, will construct a multi-level parking garage, inclusive of site improvements required for a parking garage (the “Parking Garage”) for joint use by the Declarant, City, the general public as determined by Declarant and City, the owner of Parcel 1 and the owner of Parcel 2, their successors and assigns;

D. The Parking Garage will be constructed on Parcel 3 plus certain additional property presently owned by Declarant as described on Exhibit “E” attached hereto and made a part hereof (the “Parking Garage Parcel”).

E. Declarant and the Adjacent Property Owner hereby desire to create certain reciprocal easements for the benefit of Parcel 1, Parcel 2 and the Parking Garage Parcel and to enter into certain agreements as more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals (which are hereby incorporated into the body of this Agreement) and other valuable consideration, it is hereby agreed as follows:

I. DEFINITIONS.

Defined Terms. The following definitions shall apply, unless the context shall otherwise require:

(a) “Adjacent Property Owner(s)” shall mean, collectively, from time to time, the owner or owners of fee simple title in and to Parcel 1 and the owner or owners of fee simple title to Parcel 2, and its and their successors and assigns.

(b) “Effective Date” shall mean the date that Declarant and Adjacent Property Owners have caused this Declaration to be recorded in the public records of Pasco County, Florida.

(c) “Garage CO Date” shall mean the date upon which a temporary or permanent Certificate of Occupancy or Certificate of Completion is first issued for the Parking Garage by the City.

(d) “Garage Owner” shall mean Declarant and its successors and assigns, as fee title holder to the Parking Garage Parcel.

(e) “Institutional Mortgagee” shall mean a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or foreign banking institution, an insurance company, a publicly held real estate investment trust, a pension fund, an entity created for the issuance of commercial mortgage-backed securities, an investment banking organization, or a financing company of national standing; provided, however, that the foregoing shall constitute an Institutional Mortgagee only if they have assets of not less than Fifty Million Dollars and hold a first mortgage lien upon a Parcel.

(f) “Operating Budget” shall mean a budget for the Operating Expenses (as defined in Section IV hereof) of operating and maintaining the Parking Garage (other than capital items) pursuant to this Agreement for the calendar year to which such Operating Budget relates.

(g) “Operating Expense Commencement Date” as to the Parcel 1 Owner and the Parcel 2 Owner, shall mean the date which is the later of: (i) 15 days following notice from the Garage Owner that the Garage CO Date has occurred and the Parking Garage is ready for use or (ii) as to

Parcel 1, the date of the certificate of occupancy for any improvements constructed on Parcel 1 and as to Parcel 2, the date of the certificate of occupancy for any improvements constructed on Parcel 2.

(h) “Owner” or “Owners” shall mean any or all fee title holders to Parcel 1, Parcel 2, or the Parking Garage Parcel, each as evidenced in the Public Records of Pasco County, Florida, from time to time.

(i) “Parcel” shall mean the Parking Garage Parcel, Parcel 1 or Parcel 2 (“Parcels” shall mean, collectively, the Parking Garage Parcel, Parcel 1 and Parcel 2).

(j) “Parcel Owner” shall mean the Owner of a Parcel.

(k) “Parcel Owner Percentage” shall mean as to the Parcel 1 Owner and the Parcel 2 Owner each’s respective share of Operating Expenses as determined pursuant to section 4.9 hereof.

(l) “Parcel 1 Owner” shall mean the owner of fee simple title in and to Parcel 1, its successors and assigns.

(m) “Parcel 2 Owner” shall mean the owner of fee simple title in and to Parcel 2, its successors and assigns.

(n) “Project” shall mean the development of the Parking Garage on the Parking Garage Parcel, including all related improvements.

(o) “Unavoidable Delays” shall mean matters beyond the reasonable control of an Owner including, without limitation, those in the nature of strike, walk out, eminent domain, moratorium, shortage of materials, unusual inclement weather, fire, flood, hurricane, epidemic, pandemic and other acts of nature. Any time period set forth herein which is extended by Unavoidable Delays shall be extended for the period in which such Unavoidable Delays are in effect.

II. CONSTRUCTION OF PARKING GARAGE/GRANT OF PARKING EASEMENTS FOR PARKING GARAGE

2.1 Construction of Parking Garage. Declarant hereby agrees to construct the Parking Garage in accordance with this Agreement and pursuant to plans and specifications, generally consistent with Exhibit “F” hereto. Commencement of construction of the Parking Garage Project shall be on or before December 1, 2020 and completion of the Parking Garage Project, with issuance of the Parking Garage CO anticipated to occur on or before June 1, 2021. Once the Parking Garage CO is issued, the Parking Garage shall be deemed to have been constructed in accordance with this subsection.

2.2 Failure to Construct Parking Garage In the event that the Garage Owner does not commence construction of the Parking Garage within the timeframe provided herein, Parcel 1

Owner and Parcel 2 Owner shall have the right to use the Parking Garage Parcel for surface parking, and shall have the right to reacquire the Parking Garage Parcel for \$10.00 upon notice to Declarant (the "Notice to Re-convey") which right shall be enforceable by specific performance. Closing of the re-conveyance shall occur within 30 days of the Notice to Re-convey and all transfer taxes and closing expenses, including title insurance premiums shall be paid by Declarant.

2.3 Construction Financing Declarant may obtain financing for the construction of the Parking Garage. The City agrees to guarantee any such financing, including municipal bond financing. Keiser University, as the owner of the leasehold interest on Parcel 1 shall remit directly to the Garage Owner, the Parcel 1 Owner's Parcel Owner Percentage of the Operating Expenses. The Parcel 2 Owner shall remit directly to the Garage Owner, the Parcel 2 Owner's Percentage of the Operating Expenses. The General Contractor constructing the Parking Garage shall provide a Performance Bond to the Garage Owner which shall include a dual obligee rider in favor of Parcel 1 Owner. All costs for construction and completion of the Parking Garage shall remain the responsibility of Garage Owner; however Garage Owner, provided it pays such costs, shall be entitled to any payments received under the Performance Bond.

2.4 Grant of Easements. Declarant hereby grants, bargains and conveys the following perpetual easements in favor of the Parcel 1 Owner and the Parcel 2 Owner, their respective successors and assigns for the benefit of Parcel 1 and Parcel 2, respectively, for use by the Parcel 1 Owner and the Parcel 2 Owner, and its and their tenants, invitees, licensees and employees, subject to the terms and conditions set forth in this Agreement:

(a) a non-exclusive easement for parking in the Parking Garage for the number of parking spaces specified herein. Except as set forth in this Declaration or as otherwise agreed in writing between the Garage Parcel Owner and the respective Owners of Parcel 1 and Parcel 2 (as applicable), the following total number of parking spaces located in the Parking Garage shall be available for parking by the Owners of Parcel 1 and Parcel 2 and its and their tenants, invitees, licensees and employees:

- (i) Parcel 1 Owner: 140 spaces
- (ii) Parcel 2 Owner: 60 spaces

One half of the total parking spaces made available hereunder to the Parcel 1 Owner and to the Parcel 2 Owner shall be reserved exclusively for Parcel 1 and for Parcel 2, and shall be designated accordingly. The remaining one half of the parking spaces designated for each Parcel shall be provided as undesignated parking spaces available throughout the Parking Garage. No more than 75% of the number of parking spaces in the Parking Garage in excess of the total number of reserved and undesignated parking spaces for the Parcel 1 and Parcel 2 Owners shall be designated as reserved by the Garage Owner, unless otherwise agreed by the Parcel Owners.

(b) a non-exclusive easement : (i) for access, ingress and egress applicable with respect to Parcel 1, to and from the Parking Garage, (ii) for access, ingress and egress applicable with respect to Parcel 2, to and from the Parking Garage, (iii) over and across all vehicular parking ramps or driveways located in the Parking Garage which provide a means of vehicular access to

or ingress to and egress from parking spaces within the Parking Garage to public rights-of-way adjoining the Parcels, (iv) for access through all gates, ticket and other access control devices and instrumentalities used in the operation of the Parking Garage which control access to any of said ramps or driveways, (v) for access over any public pedestrian ways, walkways, sidewalks, stairwells, corridors, passenger elevators and fire escapes serving the Parking Garage and (vi) such other rights as may be needed from time to time for the use and enjoyment of the Parking Garage and the allocated parking spaces therein as provided in this Agreement. Except as otherwise expressly provided in this Agreement, Adjacent Property Owners and their respective tenants, invitees, licensees and employees, using only the spaces allocated hereunder to said Adjacent Property Owner, shall not be required to make any payment in connection with their use and enjoyment of the easements granted herein.

2.5 Parking Spaces allocated to Parcel 2. In the event that Parcel 2, when fully developed has a number of available on-site parking spaces which when added to the 60 spaces in the Parking Garage allocated to Parcel 2 hereunder, exceeds the number of parking spaces required by City code, then the allocation of total parking spaces in the Parking Garage allocated to Parcel 2 shall be reduced to an amount which when added to the on-site parking equals the amount of parking spaces required by City code or any other applicable code. In the event that the number of parking spaces allocated to Parcel 2 is reduced below 60, the Parcel Owner Percentage for the Parcel 2 Owner shall adjust accordingly. Notwithstanding the foregoing, the total parking spaces allocated to Parcel 2 shall not be reduced below 30.

2.6 Rights Reserved to Garage Owner. Garage Owner reserves the right to allow other parties and the general public to use the parking spaces in the Parking Garage not allocated to Parcel 1 or Parcel 2, subject to the provisions of Section 2.8 below. Garage Owner also reserves and shall have the following specific rights, so long as the number of parking spaces to be made available for the benefit of the Parcel 1 and Parcel 2 under Section 2.4 is not reduced and neither the easement rights granted under Section 2.4 nor the operation of the Parcel 1 and Parcel 2 are materially and adversely affected:

(a) the right from time to time to reduce the number of parking spaces located in the Parking Garage so long as the Parking Garage contains a minimum of 300 parking spaces;

(b) the right from time to time to increase the number of parking spaces in the Parking Garage from the number of parking spaces existing on the Garage CO Date; provided; however, that the Parcel Owner Percentages shall adjust accordingly;

(c) the right to designate through rules and regulations, signage or otherwise, exclusive or semi-exclusive use of parking spaces not specifically designated to Parcel 1 or Parcel 2 as provided herein; and

(d) the right to charge third parties (whether or not owners, tenants or occupants of the Project) and their respective tenants, invitees, licensees and employees, fees for parking which shall be retained by Garage Owner and not shared with the Parcel 1 Owner or the Parcel 2 Owner or used to reduce Operating Expenses. However, there shall be no right to charge the Parcel 1 Owner or the Parcel 2 Owner, or their tenants, guests, or invitees for use of any parking in the

Parking Garage, except for the Operating Expense reimbursement provided for herein and any use of parking spaces in excess of the total number of spaces designated for said Adjacent Owner.

2.7 Location of Parking Spaces. The parking spaces which are to be designated to the Parcel 1 Owner and the Parcel 2 Owner and its and their tenants, invitees, licensees and employees pursuant to Section 2.4(a) shall be located in covered areas of the Parking garage as designated by Garage Owner . Garage Owner shall have no responsibility or obligation to prevent unauthorized persons or vehicles from parking in any designated spaces. The Parcel 1 Owner and the Parcel 2 Owner shall be entitled to signs approved by Garage Owner in front of such designated parking spaces, at their expense and in the manner approved by Garage Owner. The Parcel 1 Owner and the Parcel 2 Owner shall have the right to charge fees to their tenants and invitees of the Parcel 1 or Parcel 2 for the use of any of the parking spaces allocated pursuant to the terms of this Agreement. The Parcel 1 Owner and the Parcel 2 Owner shall not, however, have the right to grant third parties who are not tenants, guests or invitees of their respective Parcel the right to use any such spaces or to charge such persons a fee or other charge without the prior written consent of Garage Owner.

2.8 Control of Entry. Garage Owner shall be required to reasonably monitor and control the entry of vehicles to the Parking Garage to ensure that the total number of non-exclusive parking spaces to which the Parcel 1 Owner and the Parcel 2 Owner are entitled under Section 2.4(a) will be available to the Parcel 1 Owner and the Parcel 2 Owner and its and their respective tenants, invitees, licensees and employees and will not be used by other parties, to the extent systems are in place that allow Garage Owner to identify all of the vehicles parked by each Adjacent Property Owner and their respective tenants, invitees, licensees and employees. If an unauthorized vehicle is parked in a parking space that is marked as being reserved for the Parcel 1 Owner or the Parcel 2 Owner or its and their respective tenants, invitees, licensees or employees, the Parcel 1 Owner or the Parcel 2 Owner may cause such unauthorized vehicle to be towed, subject to compliance with all legal requirements.

2.9 Agreements between Parcel 1 Owner and Parcel 2 Owner. The Parcel 1 Owner and the Parcel 2 Owner may from time to time enter into sharing arrangements between each other as to the use of the parking spaces allocated to Parcel 1 and Parcel 2.

2.10 Effective Date. The easements granted herein shall become effective, without further action of any party, upon the recordation of this instrument in the Public Records of Pasco County, Florida. Garage Owner and Adjacent Parcel Owner shall cause this Declaration to be recorded promptly after execution hereof.

2.11 Easement Across Parcel 1 and Parcel 2. The Parcel 1 Owner and Parcel 2 Owner hereby grant, convey, remise, release and warrant unto Garage Owner and City, its successors, invitees, licensees, transferees, permittees, agents, employees, officers, assigns and the general public, a non-exclusive and perpetual easement on, across, over and through the pedestrian and vehicle access areas constructed on Parcel 1 and Parcel 2 for access to and from, and ingress and egress to, the Garage Parcel by vehicle, pedestrian or otherwise, including without limitation any drives, sidewalks, parking areas, access points to public rights-of-way, roadways, paved areas,

pathways, pedestrian areas or other areas on said properties. No obstruction shall be erected on Parcel 1 or Parcel 2 which impedes the access described in this section. This section shall be deemed an essential part of this Agreement and shall be upheld to the fullest extent allowed by law. The easement granted herein, and all covenants, terms, provisions and conditions, shall be appurtenant to and constitute a covenant running with the land against Parcel 1 and Parcel 2 for the use and benefit of the Garage Owner and City.

III. OPERATION OF THE PARKING GARAGE

3.1 Operation by Garage Owner. Garage Owner agrees that it shall cause the Parking Garage to be operated, as a 24-hour per day, 365-day per year, parking garage, if the operating hours of either Parcel 1 or Parcel 2 require such access; subject, however to temporary interruptions as specified in Section 3.8. Nothing contained herein shall require Garage Owner to operate the Parking Garage during any hours that either Parcel 1 or Parcel 2 business operations are not open to the public. Garage Owner may enter into a separate contract (an “Operator Contract”) with a qualified garage operator (the “Garage Operator”) for the operation of the Parking Garage. The Operator Contract must contain the following provisions:

(a) The Garage Operator must maintain the insurance described on Exhibit “G” attached hereto; and

(b) The Operator Contract must require the Garage Operator to indemnify, defend and hold harmless the Parcel Owners and the Garage Owner and their agents, employees, officers, directors, shareholders, partners, trustees and employees from and against all claims, causes of action, liabilities, damages, costs (including attorneys’ fees) and expenses arising out of the negligence or willful misconduct of Garage Operator in connection with the operation of the Parking Garage, and must contain a provision whereby the Garage Operator waives subrogation rights against Parcel Owners and Garage Owner with respect to matters that would be covered by the insurance described on Exhibit “G”.

3.2 Rule and Regulations and Enforcement. Garage Owner may from time to time impose reasonable rules and regulations with regard to use and operation of the Parking Garage. Garage Owner may impose such access controls (whether through signage, restricted gates, electronic means or otherwise) within the Parking Garage as Garage Owner deems reasonably necessary or desirable for operation of the Parking Garage. The Parcel 1 Owner and the Parcel 2 Owner shall use reasonable efforts to cause their respective tenants, occupants, licensees and invitees to comply with such rules, regulations and access controls. Violators of the rules and regulations promulgated by Garage Owner may be subject to citation and towing, without imposing obligation or liability on Garage Owner, its agents, managers, employees or representatives, subject to compliance with the law. Notwithstanding the foregoing provisions of this Section 3.2, the rules, regulations and controls promulgated by Garage Owner shall be no more restrictive on the other Parcel Owners than the rules, regulations and controls imposed by Garage Owner on other users of the Parking Garage (taking into consideration the different uses), and the enforcement of such rules, regulations and controls shall be consistent in respect of all users of the Parking Garage.

3.3 Services to be Provided by Garage Owner. Garage Owner shall provide (or cause to be provided) the following services (the “Parking Garage Services”) in respect of the Parking Garage:

(a) Garage Owner shall cause the Parking Garage, the landscaped areas and sidewalks to be reasonably cleaned of trash and the sidewalks to be power washed on a regular schedule and shall also provide routine cleaning and maintenance of the Parking Garage, including capital repairs, in accordance with standards observed by the owners of other parking garages in similar first-class projects of similar age (“Comparable Garages”);

(b) all reasonably necessary electric, water, lighting, elevator, ventilation and heating systems and services required for the Parking Garage;

(c) fire alarm and sprinkling service, to the extent and only as specifically required by law for the Parking Garage;

(d) such other services as are expressly required to be performed by Garage Owner under this Declaration including, without limitation, access to control in accordance with Section 3.4, repairs in accordance with Section 3.6, and compliance with legal requirements in accordance with Section 3.7 hereof.

If any other Parcel Owner desires Garage Owner to provide any services in excess of the above Parking Garage Services and Garage Owner provides such services (Garage Owner having no obligation to do so), such other applicable Parcel Owner shall pay Garage Owner for the cost of providing such additional services.

Each Parcel Owner shall have the right to provide additional services for the benefit of their permitted users of the Parking Garage, at such Parcel Owner’s sole expense, so long as such services do not unreasonably interfere with Garage Owner’s use of the Parking Garage.

3.4 Access Control. Garage Owner may install access gates or other access control devices in the Parking Garage and shall furnish each other Parcel Owner and its tenants with access cards (or other necessary instruments of access) for the Parking Garage at a charge by Garage Owner equal to the out-of-pocket cost of such access cards, access gates and access control devices (or other instruments of access). From time to time, upon the request of Garage Owner, the other Parcel Owners shall promptly provide Garage Owner with a list of the persons holding such cards (or other instruments of access).

3.5 No Fences or Barriers. Except as otherwise expressly permitted by this Agreement, and except as may be required for safety during periods of construction and maintenance, there shall be no fence or barrier erected within the Parking Garage Parcel which will prevent the other Parcel Owners and its and their tenants, invitees, licensees or employees from having access to the parking spaces which are to be made available to them pursuant to the terms of this Declaration. Nothing contained herein shall prohibit the Garage Owner, on a temporary basis, restricting access in order to prevent acquisition of rights of the public, and during any such temporary blockage for such purpose (which will be limited to twice per calendar year and will never exceed 24 hours) alternate access shall be provided.

3.6 Repairs by Garage Owner. Garage Owner shall make such improvements, repairs, maintenance or replacements in the Parking Garage as necessary to maintain the Parking Garage in accordance with the standards of Comparable Garages, all applicable legal requirements and insurance requirements now or hereafter enacted. The obligations of Garage Owner hereunder shall apply to structural and nonstructural components of the Parking Garage and shall apply whether such improvements, repair, maintenance, or replacements are large or small, foreseen or unforeseen, and shall include any changes necessary to comply with such legal requirements or insurance requirements in all material respects. If any legal requirements or insurance requirements may be satisfied in one or more ways, Garage Owner shall have sole discretion as to how and when to make any improvement, repair, maintenance or replacement to comply with such requirement, as long as such requirement is timely satisfied as a result.

3.7 Compliance with Legal Requirements. Garage Owner agrees to comply with all legal requirements relating to the condition of the Parking Garage including, without limitation, any modifications, repair or additions to the structure of the Parking Garage (subject to Garage Owner's right, in good faith, to contest any such legal requirements), except to the extent any such legal requirement relates to a third party's obligation. Without limiting the generality of the foregoing, Garage Owner shall not cause or knowingly permit the use, generation, storage or disposal in or about the Parking Garage of any Hazardous Material; provided, however, that the foregoing shall not be construed to prohibit the parking of vehicles which contain petroleum products for ordinary use by such vehicles or the use of ordinary cleaning materials and supplies. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or any toxic, hazardous, corrosive or radioactive substances, materials and wastes that are or become regulated under any applicable local, state or federal law including, but not limited to, petroleum, petroleum-by-products, and asbestos.

3.8 Operating Hours. The Parking Garage shall be open for use by the other Parcel Owners and its and their tenants, invitees, licensees and employees during the operating hours established from time to time as provided in Section 3.1, except to the extent such access is restricted due to (a) emergencies, (b) applicable legal requirements, (c) necessary maintenance and repairs to the Parking garage (Garage Owner agreeing to minimize, to the extent reasonably possible, such restrictions for purposes of repairs and maintenance), and (d) unavoidable delays. In the event the Parking Garage (or a portion thereof) is required to be closed for any of the purposes specified in this Section 3.8, Garage Owner and the other Parcel Owners shall cooperate in efforts to accommodate the parking requirements of the other Parcels. Additionally, Garage Owner shall notify the other Parcel Owners in advance of any interruptions of use.

3.9 Interruption of Utilities, Security Services. Failure by Garage Owner to any extent to furnish any Parking Garage Services, or any cessation thereof, caused by the failure of a public utility to provide utility services or due to any other cause beyond the reasonable control of Garage Owner shall not render Garage Owner liable to the other Parcel Owners in any respect for damages to person, property or otherwise. In addition, the fact that Garage Owner may provide security

services, and the manner in which they are provided, is no guarantee that acts of crime and injury, theft or damage to person or property will not occur in the Parking Garage. Nothing contained in this Agreement, or the obligations undertaken by Garage Owner pursuant hereto, shall create any liability by Garage Owner or City for any injury to any persons or property within the Parking Garage, without regard to the identity of the party to this Agreement that provided implied or actual consent for such person or property accessing the Parking Garage.

3.10 Modification of Parking Garage. Garage Owner shall be permitted to make modifications, alterations, improvements and additions to the Parking Garage at any time. provided, however, that, except for any such modifications, alterations, improvements or additions which are required by governmental authorization, Garage Owner must obtain the consent of the other Parcel Owners to the extent any such modification, alteration, improvement or addition materially adversely affects any other Parcel Owner's continuing ability to use the Parking Garage or the operation of Parcel 1 or Parcel 2. If the modification, alteration, improvement or addition proposed by Garage Owner would not materially adversely affect any other Parcel Owner's continuing ability to use the Parking Garage or the operation of the Parcel 1 or Parcel 2 in the event the parking spaces so affected were temporarily relocated elsewhere in the Parking Garage, Garage Owner may so temporarily relocate such spaces and proceed with such modification, alteration, improvement or addition only with the written consent of the other Parcel Owners, which consent shall not be unreasonably withheld.

IV. EXPENSES RELATING TO PARKING GARAGE

4.1 Operating Expenses. The term "Operating Expenses" as used herein shall mean all out-of-pocket expenses of every kind and nature actually paid or incurred by Garage Owner in connection with the ownership, operation, insuring and maintenance of the Parking Garage Parcel and the Parking Garage including, but not limited to, the following:

- (a) all cost of supplies, materials, tools and equipment used in the operation and maintenance of the Parking Garage;
- (b) the cost of all utilities for the Parking Garage, including the cost of water and power, heating, lighting, air conditioning and ventilating for the Parking Garage;
- (c) the cost of all maintenance, repairs and service for the Parking Garage and the equipment therein including, but not limited to, alarm service, security monitoring service, window cleaning, elevator maintenance, pressure cleaning, restriping, landscaping and janitorial services (including costs of independent contractors performing such services);
- (d) the cost of all insurance relating to the Parking Garage and the Parking Garage Parcel obtained pursuant to Exhibit "G" attached hereto or pursuant to Article VII hereof or otherwise maintained by Parking Garage Owner;
- (e) personal property taxes, if any, imposed upon the furniture, fixtures, machinery, equipment, apparatus, systems and appurtenances used in connection with the Parking Garage;

(f) cost of signage, control arms, gates and other vehicle control devices, repairs and general maintenance;

(g) fees and costs for accounting and legal services relating to the Parking Garage and Parking Garage Parcel, including any such fees and costs incurred in connection with any contest of taxes or legal requirements; (but excluding legal services in connection with negotiations and disputes with users of the Parking Garage, unless the matter involved affects all users of the Parking Garage);

(h) fees and costs attributable to security and security assistance (whether or not monitored, manned or unmanned) with respect to the Parking Garage.

(i) amortization of capital improvements or replacements which are (i) intended to reduce, stabilize or limit increases in Operating Expenses; (ii) intended to improve security; (iii) required by governmental authority; or (iv) capital repairs. Except as otherwise provided in this Agreement, the cost of such capital improvements, together with a reasonable finance charge, will be amortized over the useful life of the applicable item in accordance with generally accepted accounting principles.

(j) all costs of complying with Garage Owner's obligations under this Agreement including, without limitation, the costs of providing the Parking Garage Services under Section 3.3 and costs of complying with the provisions of Sections 3.4, 3.6, and 3.7 hereof;

(k) a management fee computed at market rates, for services to be performed by Garage Operator;

(l) costs (less any reimbursements received from third parties) incurred to test, survey, clean-up, contain, abate, remove, or otherwise remedy any Hazardous Material from the Parking Garage unless placed thereon by Garage Owner or Adjacent Property Owner (in which case the party placing such Hazardous Material in the Parking Garage shall be solely responsible for the costs thereof); and

(m) any property or ad valorem taxes assessed by any governmental authority against the Parking Garage Parcel, which shall be paid by the Parcel 1 and Parcel 2 Owners, only, and in proportion to the amount of the taxes levied as to the use of each said Parcel 1 and Parcel 2. It is expressly understood that the Garage Owner shall have no liability or responsibility for payment of property or ad valorem taxes assessed against the Parking Garage Parcel as an exempt governmental entity and any taxes assessed shall be paid only by the Owners of Parcel 1 and Parcel 2, provided however that the taxes assessed are based only on the portion of the Property equal to the Parcel Owner Percentage of Parcel 1 and Parcel 2. If the Property is assessed in the same manner as a property not owned by an exempt entity, Garage Owner shall be responsible for its share of such taxes.

4.2 Exclusions from Operating Expenses. Notwithstanding the provisions of Section 4.1 above, there shall be excluded from Operating Expenses the following:

- (a) if and to the extent applicable, any costs of initially constructing, fixturing or equipping the Parking Garage for which any Parcel Owner has made a contribution to Garage Owner;
- (b) any depreciation or any amortization of the costs of improvements to the Parking Garage which are capital in nature, except to the extent amortization of such capital improvements is permitted under Section 4.1(i) above;
- (c) cost of repairs or other work occasioned by fire, windstorm or other casualty or by condemnation, or any other work to the extent reimbursed by insurance or condemnation proceeds (provided that the foregoing shall not be construed to relieve any other Parcel Owner of any contribution obligations under Section 9.1 or Section 9.2);
- (d) any management fee or other compensation paid to any manager involved in the operation of the Parking Garage, except to the extent permitted under Section 4.1(k) and Section 4.1(l) above;
- (e) costs of repairs resulting from any defect in the original design or construction of the Parking Garage;
- (f) federal, state and local income taxes, inheritance taxes, estate taxes, gift taxes and franchise taxes paid by Garage Owner;
- (g) rents paid under any ground lease in respect of the Garage Parcel or the Parking Garage;
- (h) interest on debt or amortization payments on any mortgages or deeds of trust or any other debt for borrowed money, except as permitted under Section 4.1(i) above;
- (i) intentionally omitted;
- (j) costs of any special services rendered to a user of the Parking Garage for which Garage Owner is entitled to be reimbursed by such user;
- (k) costs of any services rendered exclusively to any owner of any Parcel or other user of the Parking Garage which is not made available to the Owner of the other Parcel;
- (l) costs of items and services for which any Parcel Owner reimburses Garage Owner outside of Operating Expenses;
- (m) any costs interest, fines, penalties and related expenses (including attorneys' fees) incurred by Garage Owner as a result of (i) Garage Owner's violation of any governmental rule, statute or authority (including specifically, without limitation, the failure of Garage Owner to pay timely real estate taxes or assessments in respect of the Project), or (ii) default by Garage Owner under any mortgage encumbering the Project or any portion thereof; or
- (n) losses caused by bad debts or any damages or settlements paid to any other user of the Parking Garage, provided that any increases in insurance costs shall be included as an Operating Expense.

4.3 Submission of Budgets. By October 1, of each fiscal year after the Garage CO Date, Garage Owner, as a part of its normal and customary budgetary process, only, shall prepare a proposed Operating Budget for the upcoming fiscal year, setting forth the Operating Expenses proposed to be incurred in respect of the Parking Garage for such fiscal year. When approved by Garage Owner, the proposed Operating Budget shall become an “Approved Operating Budget”. Garage Owner shall notify Parcel 1 Owner and Parcel 2 Owner of the proposed Operating Budget prior to approval and shall review their input with regard thereto.

4.4 Expenditures for Operations. An Approved Operating Budget shall constitute an authorization for Garage Owner to expend money for the purposes, and to the extent, provided for in such Approved Operating Budget. A proposed increase in expenditures beyond those shown in the Approved Operating Budget must be reported to each Parcel Owner in writing, along with a proposed revised Operating Budget, and the provisions of Section 4.3 hereof shall apply to said revised Operating Budget line item. Once approved, Garage Owner’s authority as to the revised, or any additionally revised, Operating Budget shall be the same as that authorized for the original Approved Operating Budget.

4.5 Obligation to Pay Approved Operating Expenses. For purposes hereof, the term “Approved Operating Expenses” shall refer to Operating Expenses which are set forth in an Approved Operating Budget. Beginning on the Operating Expense Commencement Date, each Parcel Owner shall be responsible for paying its Percentage of all Approved Operating Expenses.

4.6 Payment of Operating Expenses. On or before September 15th of each year (or, with respect to the year in which the Operating Expense Commencement Date occurs, prior to the Operating Expense Commencement Date), Garage Owner shall furnish to each Parcel Owner a statement (“Approved Operating Costs Statement”) setting forth the initial Approved Operating Expenses for the forthcoming fiscal year (or the fractional year in which the Operating Expense Commencement Date occurs, as the case may be). On the first day of each fiscal year, commencing on October 1st, each Parcel Owner shall pay to Garage Owner such Parcel Owner’s Percentage of Approved Operating Expenses, as set forth in the Approved Operating Costs Statement.

4.7 Annual Statement and Reconciliation. Within 120 days after the end of the fiscal year, Garage Owner shall furnish each Parcel Owner with a statement (“Statement”) in reasonable detail of the actual amount of the annual Approved Operating Expenses for the previous fiscal year, prepared in accordance with sound accounting practices consistently applied. Based upon said statement, a credit or charge shall be made to the Operating Expense Budget for the next fiscal year, to reflect the overpayment or underpayment, respectively, of the actual Operating Expenses payable by the Parcel 1 and Parcel 2 Owners. Any Parcel Owner shall have the right to cause a national accounting firm to audit Garage Owner’s Statement of Operating Expenses for any fiscal year to be completed within 365 days after Adjacent Property Owner’s receipt of the annual Statement for any fiscal year (but not thereafter). Each Parcel Owner shall be deemed to have waived any adjustment in any Operating Expenses paid by such Parcel Owner if such Parcel Owner shall fail to give Garage Owner notice of any required adjustment within said 365 days after having received the Statement for the fiscal year to which such Statement applies. The applicable Parcel Owner shall pay the cost of any such audit; provided, however, that if it is ultimately determined

by agreement of the parties or by final non appealable court decision that Garage Owner's calculation of actual Approved Operating Expenses was overstated by more than 10%, then Garage Owner shall reimburse the Parcel Owner for the reasonable costs of Parcel Owner's audit.

4.8 Proration of Operating Expenses. If the liability of each Parcel Owner for Approved Operating Expenses commences or terminates at any time other than the first day of a fiscal year, then (a) the adjustment of any difference between the Approved Operating Expenses for the fiscal year and the Approved Operating Expenses for the number of days in which Approved Operating Expenses applied to the Parcel Owner, shall be calculated by using in such calculation a fraction, the numerator of which is the number of days of the fiscal year in which Approved Operating Expenses applied to the Parcel Owner and the denominator of which is 365 (or 366 in a leap year).

4.9 Parcel Owner Percentage. The Parcel Owner Percentage of Operating Expenses for Parcel 1 shall be a fraction the numerator of which will be 140 and the denominator of which will be the total number of parking spaces in the Parking Garage. The Parcel Owner Percentage of Operating Expenses for Parcel 2 shall be a fraction the numerator of which will be 60 (or such lower number if adjusted as provided herein) and the denominator of which will be the total number of parking spaces in the Parking Garage.

V. USE OF PARKING GARAGE

5.1 No Unlawful Use. The Parcel 1 Owner and the Parcel 2 Owner shall not occupy or use the Parking Garage for any purpose which is unlawful, disreputable or deemed to be hazardous, or would in any way increase the rate of fire, liability or any other insurance coverage on the parking Garage and/or its contents.

5.2 Environmental Matters. The Declarant, the Parcel 1 Owner and the Parcel 2 Owner shall not cause or authorize the use, generation, storage or disposal in or about the Parking Garage of Hazardous Material (as defined in Section 3.7, provided, however, that the foregoing shall not be construed to prohibit the parking of vehicles which contain petroleum products for ordinary use by such vehicles.

VI. SUBORDINATION, FINANCING AND ESTOPPELS.

6.1 Primary Agreement. This Agreement is primary, is not subordinate to and shall be senior to any ground lease, land lease, master lease, mortgage or deed of trust which may now or anytime hereafter cover or encumber all or any part of the Parking Garage Parcel or Parking Garage, Parcel 1 or Parcel 2, or to any renewals, modifications, consolidations, replacements, or extensions thereof. In the event of the enforcement by the lessor, trustee, beneficiary or mortgagee of its remedies under such subordinate interest, then, should that party become the owner of the Parcel ("Successor Owner") such Successor Owner shall be deemed to have taken title to such Parcel subject to this Declaration and: (a) Successor Owner shall not terminate or disturb the easements of any Parcel Owner in respect of the Parking Garage or otherwise created hereunder; (b) Successor Owner shall be bound by all of the terms and conditions of this Declaration; and (c) this Declaration shall continue in full force and effect.

6.2 Financing Parking Garage Parcel. This Agreement shall be subject and subordinate to the financing obtained by Garage Owner to construct the Parking Garage on the Parking Garage Parcel. This Agreement shall be modified to reasonably comply with the provisions of any agreement pertaining to said financing agreement. The parties shall make reasonable modifications to this Agreement to comply with such financing agreement. No mortgage of any kind shall encumber the Parking Garage Parcel, while owned by Declarant or City, and any mortgage hereafter encumbering the Parking Garage Parcel if sold shall be subordinate to this Declaration and the easements and rights granted hereunder. Accordingly, the foreclosure of any such mortgage shall not affect or disturb in any manner the rights of the Parcel 1 Owner or the Parcel 2 Owner set forth in this Declaration. It is hereby acknowledged by the parties that construction of the parking garage is dependent and contingent upon the financing of the same.

6.3 Mortgage Encumbering Parcel 1 or Parcel 2. In the event of a mortgage encumbering Parcel 1 or Parcel 2, such mortgage shall automatically include the rights of the Parcel 1 Owner or the rights of the Parcel 2 Owner, as the case may be. Accordingly, the foreclosure of any such mortgage shall include all such rights which shall automatically pass with title to the respective Parcel. There shall be no requirement for the inclusion of the Garage Owner as a party in any such foreclosure action and Garage Owner shall recognize any successor owner of a Parcel, and such successor owner shall succeed to all rights of the applicable Parcel Owner hereunder.

6.4 Estoppel Certificate. Within 10 days after request from Garage Owner or any other Parcel Owner, to another party, such party shall execute an estoppel certificate certifying as to such facts (if true, or specifying the extent to which such facts are not true) as the other party (or any ground or land lessors, mortgagees or any proposed purchaser of the applicable Parcel) may reasonably request (including, in the case of mortgagees, agreeing to provide reasonable notice provisions as the relevant mortgagee customarily requires in respect of similar parties and properties).

6.5 Bankruptcy. In the event that any party hereto or their successor or assignee should be involved in any bankruptcy proceeding, this Agreement and the rights hereunder shall not be disturbed in any manner. In the event of the termination or purported termination of this Agreement in any bankruptcy or similar proceedings, the title holder or successor title holder shall enter into a new agreement with the other Parcel Owners identical to this Agreement.

VII. INSURANCE AND INDEMNITY.

7.1 Casualty Insurance. Garage Owner shall at all times maintain fire and extended coverage insurance on the entire Parking Garage. Said insurance shall be (a) maintained with an insurance company admitted to do business in the State of Florida; (b) issued on an "all risk" basis, and (c) in amounts desired by Garage Owner, but in no event in an amount less than the full insurable value of the Parking Garage on a replacement cost basis with an agreed amount endorsement above the foundation. Such insurance will be written in the name of Garage Owner. Insurance proceeds received with respect to an insured Major Casualty (as hereinafter defined) will be placed in a Construction Account (as hereinafter defined) pursuant to Section 8.1.

7.2 Liability Insurance. Garage Owner shall maintain a policy or policies of commercial general liability insurance or its equivalent with the premiums thereon fully paid in advance, issued by and binding upon an insurance company admitted to do business in the State of Florida, such insurance to meet the minimum requirement set forth on Exhibit G hereto. Without limiting the foregoing, Garage Owner may carry such greater limits of liability coverage as Garage Owner reasonably deems necessary. The general liability coverage may be provided through the use of a primary liability policy or through a combination of primary liability and umbrella excess liability policies, or in combination with any other insurance acquired by Garage Owner. Such insurance will be written in the name of Garage Owner. Nothing contained herein shall be deemed to waive or reduce City or Garage Owner's sovereign immunity or limitation of liability to any person or party as provided by law.

7.3 Requirements for Insurance. All insurance maintained by Garage Owner under this Declaration will be written by insurance companies rated A – V or better in the current Best's Rating Guide (or, if such rating ceases to exist, a reasonably comparable rating) at the time such policies are issued or renewed. If Garage Owner fails to obtain and provide such insurance, then any other Parcel Owner, after 30 days' notice to Garage Owner, may, but shall not be required to, purchase such insurance on behalf of Garage Owner and recover the cost thereof from Garage Owner (which cost shall then be included as part of Operating Expenses). From time to time, upon request of Parcel 1 or 2 Owner, Garage Owner shall provide proof of insurance coverage thereto.

7.4 Liability. Except as expressly set forth elsewhere in this Agreement or any other agreement between Garage Owner and each other Parcel Owner, Garage Owner will not be liable for any injury or damage caused by other users of the Parking Garage or any other person (other than Garage Owner, Garage Owner's employees or agents). Garage Owner will be liable for any breach by Garage Owner of any of the other terms, covenants or conditions to be performed by Garage Owner as set forth in this Agreement. Except as expressly set forth elsewhere in this Agreement or any other agreement between Garage Owner and each other Parcel Owner, each Parcel Owner will not be liable for any injury or damage caused by other users of the Parking Garage or any other person (other than such Parcel Owner, and such Parcel Owner's employees or agents). Each Parcel Owner will be liable for any breach by such Parcel Owner of any of the other terms, covenants or conditions to be performed by such Parcel Owner as set forth in this Agreement.

7.5 Indemnity. Parcel 1 and Parcel 2 Owner shall indemnify the other Parcel Owners against and hold them harmless from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) arising from (a) any negligent act or omission of such Owner, or (b) any breach or default in the performance of such Parcel Owner's obligations under this Agreement. Each Parcel Owner shall defend the other Parcel Owners at such Parcel Owner's expense with counsel reasonably acceptable to the indemnified party.

7.6 Waiver of Subrogation Rights. Anything in this Agreement to the contrary notwithstanding Garage Owner and the other Parcel Owners each hereby waive any and all rights

of recovery, claim, action or cause of action, against the other, its agents (including partners, both general and limited), officers, directors, shareholders, customers, invitees or employees, for any loss or damage that may occur to the Parking Garage or any personal property of such party, by reason of fire, the elements or any other cause which would be insured against under the terms of all risk property insurance required by this Agreement, regardless of cause or origin, including negligence of the other party hereto, its agents, partners, shareholders, customers, invitees, directors, officers or employees, and Garage Owner and the other Parcel Owners covenant that no insurer shall hold any right of subrogation against such other party. The all-risk property insurance obtained by Garage Owner and any other Parcel Owner shall include a waiver of subrogation by the insurers and a waiver of all rights based upon an assignment from its insured against Garage Owner or such other Parcel Owner, their officers, directors, employees, Garage Operators, managers, agents, invitees and contractors, in connection with any loss or damage thereby insured against. The failure of a party to insure its property shall not void the waivers set forth herein.

VIII. CASUALTY.

8.1 Casualty.

(a) If the Parking Garage should be damaged or destroyed by fire or other casualty at any time, this Declaration shall not terminate, and Garage Owner shall exercise commercially reasonable efforts and proceed with reasonable diligence to rebuild or repair the Parking Garage. To the extent allowed by all applicable legal requirements and subject to obtaining all necessary building permits and governmental authorizations, Garage Owner shall be obligated to complete such repair or restoration to a condition sufficient to permit the Parcel 1 Owner and the Parcel 2 Owner to utilize the Parking Garage as provided in this Agreement no later than one year following the settlement of insurance proceeds as to such fire or other casualty (subject, however to extension by reason of Unavoidable Delays). If there are parking spaces in the Parking Garage that can be safely occupied during the period of such repair or restoration, Garage Owner will allow a pro rata portion of the undamaged spaces to be used for the benefit of Parcel 1 and Parcel 2 during such repair and restoration. In any event the Parking Garage, as rebuilt, must allow Garage Owner to continue to provide to the Parcel 1 Owner and the Parcel 2 Owner the equivalent number and similar quality of parking spaces that were provided to each such Parcel Owner immediately prior to the damage or destruction. All costs of rebuilding the Parking Garage shall be paid by Garage Owner from such insurance proceeds.

(b) If the fire or other casualty results in damage to the Parking Garage which costs more than \$100,000.00 to repair, it shall be deemed a "Major Casualty".

(c) As soon as reasonably possible after a Major Casualty, and in any event within 180 days after the occurrence thereof, Garage Owner will submit to the Parcel 1 Owner and the Parcel 2 Owner (i) a reasonably detailed description of the work to be done to repair such Major Casualty including, if required, plans, and (ii) a budget of the total costs to repair such Major Casualty (including, without limitation the cost of architectural and design fees, engineering fees, testing fees, and the cost of construction and equipment).

(d) During the repair of the Major Casualty, the repair work will be inspected by Garage Owner. Any insurance proceeds remaining after completion of repair of the Major Casualty will be applied toward future Operating Expenses. If Garage Owner fails to rebuild or repair a Major Casualty in accordance with the terms hereof, or otherwise breaches any provision of this Section 8.1, then the Parcel 1 Owner and the Parcel 2 Owner shall be entitled to exercise any and all of such Parcel Owner's rights under this Agreement or applicable law (but termination of this Agreement shall not in any event be permitted), and all insurance proceeds will be made available for any costs of repair of the Major Casualty incurred by such other Parcel Owner.

IX. DEFAULT AND REMEDIES.

9.1 By the Parcel 1 Owner.

(a) The occurrence of any of the following events and the expiration of any grace periods hereafter described shall constitute an "Event of Default" under this Agreement on the part of the Parcel 1 Owner if:

(i) the Parcel 1 Owner shall fail to pay any sum to be paid by the Parcel 1 Owner under this Agreement, and such failure shall continue for 10 days after delivery to the Parcel 1 Owner of written notice thereof from Garage Owner; or

(ii) a breach shall be made in the performance of any of the other covenants or conditions which the Parcel 1 Owner is required to observe and to perform [other than those referred to in subsection (a)(i) above], and such breach shall continue for 30 days after notice from Garage Owner of such breach (unless with respect to any default which cannot be cured within 30 days due to causes beyond the Parcel 1 Owner's reasonable control, the Parcel 1 Owner, in good faith, within 30 days after receiving such notice, shall have commenced and thereafter shall have continued diligently to perform all action necessary to cure such default).

(b) If an Event of Default on the part of the Parcel 1 Owner shall have occurred under this Agreement, then or at any time thereafter while such Event of Default continues, Garage Owner, at Garage Owner's option, may, as its exclusive remedies (in addition to the lien rights set forth in Section 9.4), exercise one of the following remedies (it being specifically agreed that Garage Owner shall not be allowed to terminate this Agreement by reason of an Event of Default:

(i) Garage Owner may correct or repair any condition which shall constitute a failure on the Parcel 1 Owner's part to keep, observe, perform, satisfy or abide by any term, condition, covenant, agreement or obligation of this Declaration, and the Parcel 1 Owner shall fully reimburse and compensate Garage Owner on demand for 120% of the costs incurred by Garage Owner in doing so;

(ii) Garage Owner may recover damages as permitted by applicable law (excluding, however, punitive or exemplary damages);

(iii) Garage Owner may seek to enjoin such breach or threatened breach;

and

(iv) Garage Owner may suspend access to the Parking Garage by the Parcel 1 Owner, its tenants, invitees, licensees and employees, until Garage Owner has received full payment of any financial obligations due and owing from the Parcel 1 Owner.

9.2 By the Parcel 2 Owner.

(a) The occurrence of any of the following events and the expiration of any grace periods hereafter described shall constitute an “Event of Default” under this Agreement on the part of the Parcel 2 Owner if:

(i) the Parcel 2 Owner shall fail to pay any sum to be paid by the Parcel 2 Owner under this Agreement, and such failure shall continue for 10 days after delivery to the Parcel 2 Owner of written notice thereof from Garage Owner; or

(ii) a breach shall be made in the performance of any of the other covenants or conditions which the Parcel 2 Owner is required to observe and to perform [other than those referred to in subsection (a) above], and such breach shall continue for 30 days after notice from Garage Owner of such breach (unless with respect to any default which cannot be cured within 30 days due to causes beyond the Parcel 2 Owner’s reasonable control, the Parcel 2 Owner, in good faith, within 30 days after receiving such notice, shall have commenced and thereafter shall have continued diligently to perform all action necessary to cure such default).

(b) If an Event of Default on the part of the Parcel 2 Owner shall have occurred under this Agreement, then or at any time thereafter while such Event of Default continues, Garage Owner, at Garage Owner’s option, may, as its exclusive remedies (in addition to the lien rights set forth in Section 9.4), exercise one of the following remedies (it being specifically agreed that Garage Owner shall not be allowed to terminate this Agreement by reason of an Event of Default:

(i) Garage Owner may correct or repair any condition which shall constitute a failure on the Parcel 2 Owner’s part to keep, observe, perform, satisfy or abide by any term, condition, covenant, agreement or obligation of this Declaration, and the Parcel 2 Owner shall fully reimburse and compensate Garage Owner on demand for 120% of the costs incurred by Garage Owner in doing so.

(ii) Garage Owner may recover damages as permitted by applicable law (excluding, however, punitive or exemplary damages);

(iii) Garage Owner may seek to enjoin such breach or threatened breach;
and

(iv) Garage Owner may suspend access to the Parking Garage by the Parcel 2 Owner, its tenants, invitees, licensees and employees, until Garage Owner has received full payment of any financial obligations due and owing from the Parcel 2 Owner.

9.3 By Garage Owner.

If Garage Owner defaults in the performance of any covenant, condition or other provision of this Declaration, the Parcel 1 Owner or the Parcel 2 Owner may give Garage Owner written notice specifying such default with particularity. Garage Owner shall thereupon have 60 days (or such longer period as may be reasonably required to cure such default with the exercise of due diligence and all reasonable efforts so long as Garage Owner commences within such 60-day period and thereafter diligently pursues such cure) in which to cure such default. If Garage Owner does not cure such default within the time period described above (or commence to cure such default within such time period thereafter diligently pursue such cure), the Parcel 1 Owner or the Parcel 2 Owner may, as its exclusive remedies, exercise one of the following remedies:

(a) The Parcel 1 Owner or the Parcel 2 Owner may correct or repair any condition which shall constitute a failure on Garage Owner's part to keep, observe, perform, satisfy or abide by any term, condition, covenant, agreement or obligation of this Declaration, and Garage Owner shall fully reimburse and compensate the Parcel 1 Owner or the Parcel 2 Owner on demand for 120% of the costs incurred by such respective Parcel Owner in doing so, provided, however, if (i) Garage Owner's default is failure to maintain or repair the Garage in accordance with the terms of this Agreement, and (ii) the Garage Owner has failed to reimburse the Parcel 1 Owner and/or the Parcel 2 Owner in accordance with this Declaration, the Parcel 1 Owner and/or the Parcel 2 Owner shall thereupon be entitled to deduct such sums from installment of Operating Expenses and other sums becoming due from the Parcel 1 Owner and/or the Parcel 2 Owner under this Declaration. In the event that the Parcel 1 Owner and/or the Parcel 2 Owner takes any such deductions and Garage Owner disputes such deductions, the matter shall be submitted to binding arbitration pursuant to Article X within 30 days after demand by either party. If it is ultimately decided through arbitration that any deductions taken by the Parcel 1 Owner or the Parcel 2 Owner were improper, the Parcel 1 Owner and/or the Parcel 2 Owner shall promptly pay such amount to Garage Owner, together with interest at the prevailing legal rate allowed on judgments under Florida law per annum from the date the deduction was taken until the date that repayment to Garage Owner has been made.

(b) The Parcel 1 Owner and the Parcel 2 Owner may recover damages as permitted by applicable law (excluding, however, punitive or exemplary damages); or

(c) The Parcel 1 Owner and the Parcel 2 Owner may seek to enjoin such breach or threatened breach;

9.4 Lien. In the event of breach of this Declaration by Parcel Owner 1 or 2, which is not cured within the applicable time periods set forth in this Declaration then (a) all sums due hereunder, including attorneys' fees and costs, shall bear interest until paid at the rate of Wall Street Journal Prime Rate (or an equivalent rate if not available) plus 5%, per annum, or the maximum lawful rate, whichever is lower (the "Default Rate"), (b) the non-defaulting Parcel Owner(s) shall be entitled to place a lien against the defaulting Parcel 1 or Parcel 2 Owner's Parcel which shall be effective as of recording. In all cases, any lien imposed shall be subordinate to any first lien mortgage of an Institutional Mortgagee which may exist on the date of recordation of such lien. Any such lien may be foreclosed in the same manner as a mortgage on real property.

9.5 Non-Waiver. No failure or delay of Garage Owner or any other Parcel Owner to exercise any remedy or power given it herein or to insist upon strict performance by the other of any obligation imposed herein shall constitute a waiver or a modification of the terms hereof or any right it has herein to demand strict compliance with the terms hereof by the other.

9.6 Late Payments. If Garage Owner or any other Parcel Owner fails to make payment to the other party on the date required by the terms of this Declaration, such payment shall bear interest at the Default Rate from the date when due until the date when payment has been made.

X. ARBITRATION PROVISIONS.

10.1 Binding Arbitration. In the event of a dispute arising out of or relating to this Agreement with respect to approval of an Operating Budget pursuant to Section 4.3 or with respect to any deduction taken by any Parcel Owner pursuant to Section 9.3, then, upon notice by any party to the other party (an "Arbitration Notice") and to the American Arbitration Association ("AAA"), Pasco County, Florida, the controversy or dispute shall be submitted to a sole arbitrator who is independent and impartial, for binding arbitration in New Port Richey, Florida, in accordance with AAA's Commercial Arbitration Rule for an expedited procedure (the "Rules"), as modified or supplemented hereby. The parties will initially mediate the dispute in good faith in front of a mediator mutually agreed to by the parties with the cost thereof to be shared equally by the parties. The parties agree that they will faithfully observe this Agreement and the Rules and that they will abide by and perform any award rendered by the arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1 – 16 (or by the same principles enunciated by such Act in the event it may not be technically applicable). The award or judgment of the arbitrator shall be binding and final on all parties and judgment upon the award or judgment of the arbitrator may be entered and enforced by any court having jurisdiction. If any party becomes the subject of a bankruptcy, receivership or other similar proceeding under the laws of the United States of America, any state or commonwealth or any other nation or political subdivision thereof, then, to the extent permitted or not prohibited by applicable law, any factual or substantive legal issues arising in or during the pendency of any such proceeding shall be subject to all of the foregoing mandatory mediation and arbitration provisions and shall be resolved in accordance therewith. The agreements contained herein have been given for valuable consideration, are coupled with an interest and are not intended to be executory contracts. The fees and expenses of the arbitrator will be shared equitably (as determined by the arbitrator) by all parties engaged in the dispute or controversy.

10.2 Selection of Arbitrator. Promptly after the Arbitration Notice is given, AAA will select five possible arbitrators to whom AAA will give the identities of the parties and the general nature of the controversy. It is the intent of the parties hereto that the five possible arbitrators have knowledge of parking space operations and operations of projects similar to the Project. If any of those arbitrators disqualifies himself or herself or declines to serve, AAA shall continue to designate potential arbitrators until the parties have five to select from. After the panel of five potential arbitrators has been completed, a two-page summary of the background of each of the potential arbitrators will be given to each of the parties and the parties will have a period of 10

days after receiving the summaries in which to attempt to agree upon the arbitrator to conduct the arbitration. If the parties are unable to agree upon an arbitrator, then one of the parties shall notify AAA and the other parties and AAA will notify such party that it has five days from the AAA notice to strike two names from the list and advise AAA of the two names stricken. After expiration of the strike period, if all but one candidate has been stricken, the remaining one will be the arbitrator, but, if two or more have not been stricken, AAA shall select the arbitrator from one of those not stricken. The decision of AAA with respect to the selection of the arbitrator will be final and binding in such case.

10.3 No Litigation. No litigation or other proceeding may ever be instituted at any time in any court or before any administrative agency or body for the purpose of obtaining approval of an Operating Budget, or for the purpose of appealing any decision of an arbitrator, except a proceeding instituted (a) for the purposes of having the award or judgment of an arbitrator entered and enforced or (b) to seek an injunction or restraining order (but not damages in connection therewith) in circumstances where such relief is available. No punitive, exemplary or consequential damages may ever be awarded by the arbitrator or anyone else, and each of the parties hereby waives any and all rights to make, claim or recover any such damages.

10.4 Arbitration Hearing. Within 10 days after the selection of the arbitrator, the parties and their counsel will appear before the arbitrator at a place and time designated by the arbitrator for the purpose of each party making a one hour or less presentation and summary of the case. Thereafter, the arbitrator will set dates and times for additional hearings in accordance with the Rules until the proceeding is concluded. The desire and goal of the parties is, and the arbitrator will be advised that his or her goal should be, to conduct and conclude the arbitration proceeding as expeditiously as possible. If any party or counsel fails to appear at any hearing, the arbitrator shall be entitled to reach a decision based on the evidence which has been presented by the parties who did appear. The arbitrator shall be required to approve an Operating Budget which allows the Garage owner to fully comply with all of its obligations hereunder including the obligation to operate the Parking Garage to the same standard as Comparable Garages.

10.5 Law Governing Arbitration. The laws of the State of Florida shall govern the arbitration proceeding.

10.6 Other Provisions. Arbitration shall only be applicable with respect to determining approval of an Operating Budget, pursuant to Section 4.3 or with respect to any deductions taken by any Parcel Owner pursuant to Section 9.3. All other provisions of this Agreement shall be determined or enforced in the federal or state courts having jurisdiction.

XI. COVENANTS RUNNING WITH THE LAND.

The easements hereby granted, the restrictions and obligations of the parties hereby imposed, and the agreements herein contained shall be perpetual easements, restrictions and covenants running with the title to each of the Parking Garage Parcel, Parcel 1 and Parcel 2.

XII. MISCELLANEOUS.

12.1 Entire Agreement. This Declaration, together with Exhibits attached hereto, contains the entire agreement and may only be modified, amended or terminated as set forth herein. This Declaration may not be amended or modified, except by agreement in writing, signed by Garage Owner, the Parcel 1 Owner and the Parcel 2 Owner, without the joinder or consent of any other party. Any such amendment or modification shall become effective upon the date of recordation in the Public Records of Pasco County, Florida. Notwithstanding any provision of this Section 12.1, this Declaration shall inure to the benefit of the City of New Port Richey and may not be terminated or amended without the prior written consent of the City Manager of the City of New Port Richey.

12.2 Severability. If any term or provision of this Declaration or the application thereof to any purpose or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration, or of the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall remain valid and enforceable. Each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

12.3 Successors and Assigns. This Declaration and all of the covenants, terms, conditions, provisions and undertaking contained herein, shall extend to, be binding upon and inure to the benefit of the successors assigns of each Owner, to the extent applicable to the Parcel owned by such Owner, to the same extent as if each successor and assign were, in each case, named and expressed as a party to this original Declaration.

12.4 Governing Law. This Declaration shall be construed in accordance with the internal laws of the State of Florida.

12.5 Notice. All notices, requests, demands or other communications required or permitted under this Declaration shall be in writing and delivered personally, by certified mail, return receipt requested, postage prepaid, by overnight courier (such as FedEx), or by facsimile transmission (with a copy to follow by either overnight courier or certified mail, return receipt requested, postage prepaid), addressed as follows:

If to Garage Owner: City of New Port Richey Community Development Agency
5919 Main Street
New Port Richey, Florida 34652
Attn: Debbie L. Manns

with a copy to: Driscoll Law Firm
146 2nd Street, Suite 310
St. Petersburg, Florida 33701
Attn: Timothy Driscoll

If to any other
Parcel Owner: Keenan Development Group Inc
1900 W. Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33309
Attn: Bill Keenan

with a copy to: Mombach, Boyle, Hardin, & Simmons, P.A.
100 NE 3rd Avenue, Suite 1000
Fort Lauderdale, Florida 33301
Attn: Conrad J. Boyle

If to the City: City of New Port Richey
5919 Main Street
New Port Richey, Florida 34652
Attn: Debbie L. Manns

with a copy to: Driscoll Law Firm
146 2nd Street, Suite 310
St. Petersburg, Florida 33701
Attn: Timothy Driscoll

If to Keiser
University: Everglades College, Inc., a Florida Non Profit Corporation,
d/b/a Keiser University
1900 W. Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33309
Attn: James Waldman

with a copy to: Mombach, Boyle, Hardin, & Simmons, P.A.
100 NE 3rd Avenue, Suite 1000
Fort Lauderdale, Florida 33301
Attn: Conrad J. Boyle

12.6 Notices to Institutional Mortgagees. An Institutional Mortgagee may request that it receive copies of all notices to an Owner under this Declaration. With respect to any sums paid by an Owner under this Declaration and performance to be made by an Owner under this Declaration, the same may be paid by an Institutional Mortgagee on behalf of an Owner, or performed by an Institutional Mortgagee on behalf of an Owner, in order to bring such Owner into compliance under the terms of this Declaration. The effect of such Institutional Mortgagee's actions as to such Owner shall be deemed separate from and unrelated to this Declaration and determined under terms and conditions as set forth between such Owner and such Institutional Mortgagee in such Institutional Mortgagee's mortgage and related loan documents.

12.7 Duration. This Declaration shall be in perpetuity unless terminated as evidenced by the written consent of all Owners. Provided however, this Declaration shall also inure to the benefit of the City of New Port Richey, Florida and the prior written consent of the City Manager

of the City of New Port Richey, Florida shall be required as to (i) any termination, or (ii) amendment to reduce the number of vehicle parking spaces.

12.8 Attorneys' Fees; Waiver of Jury Trial. In connection with any litigation, including appellate proceedings, arising out of this Declaration, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party. **Garage Owner and each other Parcel Owner hereby waive any right to trial by jury with respect to any litigation with respect to this Agreement or the Parking Garage.** As used in this Agreement, the term "attorneys' fees" or "legal fees" shall mean all such fees that are incurred whether or not litigation is instituted and, if instituted, shall mean those incurred at the trial level and at all levels of appeal and in any bankruptcy or post-judgment proceedings. The term "attorneys' fees" shall also include paralegal fees and all costs incurred in connection with any litigation.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Declaration of Parking Easements and Agreement to be effective as of the date first set forth above.

Signed in the presence of:

CITY OF NEW PORT RICHEY
COMMUNITY REDEVELOPMENT
AGENCY, a public body corporate and
politic

Print Name: _____

By: _____
Debbie L. Manns, Executive Director

Print Name: _____

PROMETHEUS PORT RICHEY, LLLP, a
Florida limited liability limited partnership

By: Keenan Prometheus, LLC, a Florida
limited liability company, its General
Partner

Print Name: _____

By _____
Dale Chynoweth, Manager

Print Name: _____

Joined by:

CITY OF NEW PORT RICHEY, a
duly incorporated municipality

Print Name: _____

By: _____
Print Name: _____
Title: _____

Print Name: _____

EVERGLADES COLLEGE, INC., a Florida
Non Profit Corporation d/b/a Keiser

University

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF PASCO

The foregoing instrument was acknowledged before me by means of (___) physical presence or (___) online notarization, this _____ day of _____, 2020, by Debbie L. Manns, as Executive Director, of and on behalf of, City of New Port Richey Community Redevelopment Agency, a public body corporate and politic, who (___) is personally known to me or (___) produced a driver's license as identification.

NOTARY PUBLIC- State and County Aforesaid
Print/Type/Stamp Name:
Commission Expiration Date:
Notary Seal:

CANADA
PROVIDENCE OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this _____ day of _____, 2020 by Dale Chynoweth, as Manager, of and on behalf of, Keenan Prometheus, LLC, a Florida limited liability company, as General Partner, of and on behalf of, Prometheus Port Richey, LLLP, a Florida limited liability limited company, who (___) is personally known to me or (___) produced a driver's license as identification.

NOTARY PUBLIC- Providence Aforesaid
Print/Type/Stamp Name:
Commission Expiration Date:
Notary Seal:

STATE OF FLORIDA
COUNTY OF PASCO

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this ____ day of _____, 2020, by Debbie L. Manns, as city manager, of and on behalf of, City of New Port Richey, a duly incorporated municipality, who () is personally known to me or () produced a driver's license as identification.

NOTARY PUBLIC- State and County Aforesaid
Print/Type/Stamp Name:
Commission Expiration Date:
Notary Seal:

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ____ day of _____, 2020 by _____, as _____, of and on behalf of, EVERGLADES COLLEGE, INC., a Florida Non Profit Corporation d/b/a Keiser University, who () is personally known to me or () produced a driver's license as identification.

NOTARY PUBLIC- State and County Aforesaid
Print/Type/Stamp Name:
Commission Expiration Date:
Notary Seal

SCHEDULE OF EXHIBITS

| | |
|-------------|--|
| Exhibit "A" | Parcel 3 |
| Exhibit "B" | Parcel 1 |
| Exhibit "C" | Parcel 2 |
| Exhibit "D" | Parking Garage |
| Exhibit "E" | Parking Garage Parcel |
| Exhibit "F" | Plans and specifications of Parking Garage |
| Exhibit "G" | Insurance requirements |

Exhibit "A"

Parcel 3

A portion of Lots 1, 2, 3, 4 and Lot 21, Block 210, REVISED PLAN FOR TOWN OF NEW PORT RICHEY, recorded in Plat Book 2, Page 27, of the Public Records of Pasco County, Florida, being more particularly described as follows:

BEGIN at the Northeast corner of Lot 21, Block 210 of said plat; thence South $01^{\circ}00'25''$ West, 330.27 feet to the Southeast corner of said Lot 21 ; thence North $71^{\circ}46'25''$ West, 99.58 feet along the Southerly Boundary line of said Lot 21 to the Southwest corner of said Lot 21; thence South $00^{\circ}20'09''$ West, 46.00 feet along the East Boundary line of Lot 4 being 53.85 feet North of the South line of said Lot 4; thence North $89^{\circ}50'43''$ West, 42.35 feet being 53.85 feet North of and Parallel with the South line of said Lot 4 thence North $00^{\circ}01'01''$ West, 345.57 feet to the North line of said Lot 1; thence South $89^{\circ}45'13''$ East, 143.11 feet along the North Line of said Lot 1 and Lot 21 to the Point of Beginning.

Exhibit "B"

Parcel 1

A portion of Lots 11, 12 and 13, Block 207 and Lots 1 and 2 of Block 210, A REVISED PLAN OF THE TOWN OF NEW PORT RICHEY, recorded in Plat Book 2, page 27, of the Public Records of Pasco County, Florida, being more particularly described as follows:

BEGIN at a point lying on the intersection of the East boundary line of said Lot 11, Block 207 of said plat and the Southerly right-of-way line of Main Street; thence South $00^{\circ}09'47''$ West, 154.19 feet along the East Boundary line of said Lot 11, Block 207 to the North Boundary line of said Lot 1, Block 210; thence South $89^{\circ}45'13''$ East, 57.32 feet along said North Boundary line; thence South $00^{\circ}01'01''$ East, 188.15 feet; thence North $89^{\circ}59'53''$ West, 332.22 feet to the East right of way line of US Highway 19; thence North $00^{\circ}00'33''$ East, 165.70 feet; thence North $89^{\circ}41'22''$ East, 10.21 feet; thence North $00^{\circ}04'26''$ West, 116.52 feet; thence leaving said East right of way North $89^{\circ}56'54''$ East, 29.02 feet to a curve concave to the Southeast having a radius of 54.00 feet a chord bearing of North $55^{\circ}47'40''$ East a chord distance of 38.81 feet thence along said curve 39.70 feet through a central angle of $42^{\circ}07'14''$; thence North $76^{\circ}51'17''$ East, 50.40 feet; thence North $00^{\circ}04'21''$ East, 27.20 feet to the Southerly right of way line of Main Street; thence South $89^{\circ}55'39''$ East, 154.96 feet along said Southerly right of way line to the Point of Beginning

Exhibit "C"

Parcel 2

A portion of Lots 2, 3, and 4, Block 210, REVISED PLAN FOR TOWN OF NEW PORT RICHEY, recorded in Plat Book 2, Page 27, of the Public Records of Pasco County, Florida, being more particularly described as follows:

BEGIN at the Northeast corner of Lot 21, Block 210 of said plat; thence South $01^{\circ}00'25''$ West, 330.27 feet to the Southeast corner of said Lot 21; thence North $71^{\circ}46'25''$ West, 99.58 feet along the Southerly Boundary line of said Lot 21 to the Southwest corner of said Lot 21; thence South $00^{\circ}20'09''$ West, 46.00 feet along the East Boundary line of Lot 4 being 53.85 feet North of the South line of said Lot 4; thence North $89^{\circ}50'43''$ West, 42.35 feet being 53.85 feet North of and Parallel with the South line of said Lot 4 to the POINT OF BEGINNING; thence continue North $89^{\circ}50'43''$ West, 332.29 feet to the East right of way line of US Highway 19; thence North $00^{\circ}00'33''$ East, 156.54 feet along said East right of way line; thence leaving said right of way line South $89^{\circ}59'53''$ East, 332.22 feet; thence South $00^{\circ}01'01''$ West, 157.42 feet to the Point of beginning

Exhibit "D"

Parking Garage

[ATTACH RENDERING]

Exhibit "E"

Parking Garage Parcel

Exhibit "F"

Plans and specifications of Parking Garage

[See building plans filed with the City of New Port Richey for issuance of the building permit]

Exhibit "G"

Insurance Requirements

GARAGE INSURANCE

Garage Owner or Operator shall be required to maintain the following insurance with insurance companies rated "A – V" or better by Best & Company and authorized to do business in the State of Florida.

1. Worker's Compensation and Employers' Liability Insurance.

- a. Worker's Compensation Insurance with statutory benefits and limits which shall fully comply with all State and Federal requirements applying to this insurance, which shall also include Broad Form All States and Voluntary Compensation Endorsements and which shall include a waiver of any and all right of subrogation against Garage Owner or Adjacent Parcel Owner;
- b. Employer's Liability Insurance with limits of not less than \$500,000 per accident, \$500,000 per disease and \$500,000 policy limit on disease.

2. Automobile Liability Insurance. Automobile Liability Insurance in Garage Owner or Operator's name including owned, non-owned, leased and hired car coverage and insuring Garage Owner and Adjacent Parcel Owner as additional insureds. Limits of liability shall not be less than \$1,000,000 combined single limit per occurrence for bodily injury and property damages.

3. Commercial General Liability Insurance. Commercial General Liability Insurance in Garage Owner's or Operator's name which shall include: Garage Liability, Garage Keeper's Primary, Bodily Injury, Products, Completed Operations, Blanket Contractual and Broad Form Property Damage coverage, with bodily injury and property damage of combined single limits of not less than \$5,000,000 per occurrence and in the aggregate. Said policy must be further endorsed to:

- a. Name Garage Owner and Adjacent Parcel Owner as additional insureds.
- b. Stipulate that such insurance is primary and is not additional to, or contributing with, any other insurance carried by, or for the benefit of Garage Owner and Adjacent Parcel Owner.
- c. Waive any and all right of subrogation against Garage Owner, Adjacent Parcel Owner, and Garage Operator.
- d. Contain cross liability or severability endorsements.
- e. Contain sufficient insurance so as to provide coverage of the full actual cash value of any and all vehicles in the care, custody or control of Garage Owner or Operator.

Garage Owner or Operator may provide the liability coverage required herein through the use of a primary liability policy or through a combination of primary liability and umbrella excess liability policies.

4. Other Insurance. Such other insurance as Garage Owner or Garage Operator shall deem necessary or desirable and which is commonly carried by other owners of other similar garages.