

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Public Works & Development

SPACE ABOVE FOR RECORDER'S USE

EASEMENT AND MAINTENANCE AGREEMENT

THIS EASEMENT AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into as of _____, 2020 by and between CRAIG REALTY GROUP CITADEL, LLC, a Delaware limited liability company ("Citadel"); and CITY OF COMMERCE, a municipal corporation ("City"). Citadel and City are collectively referred to as the ("Parties").

R E C I T A L S

WHEREAS, Citadel is the owner of the real property in the City of Commerce, California as described in Exhibit "A" and depicted in Exhibit "B" attached hereto and make apart hereof ("Citadel Property");

WHEREAS, a portion of Telegraph Road and sidewalk immediately southwest of the Citadel Property is owned by the City for public street purposes encompassing a 14 foot by 188.6 foot strip of land containing approximately 2,640.40 square feet as depicted on Exhibit "C" ("City Property"). Citadel Property and City Property are collectively referred to herein as the ("Parkway");

WHEREAS, Citadel desires to improve the Parkway as a passenger loading and unloading zone area in order to facilitate visitors' access to the adjacent shopping center owned by Citadel, and subject to the plans approved by the City, such improvements may include without limitation, pavement, pavers, signage, curb, gutter, ADA ramp and street lightings ("Improvements");

WHEREAS, the Citadel and the City wish to establish an agreement and covenants regarding the easements and maintenance of the Parkway in the particulars hereinafter set forth;

A G R E E M E N T

NOW, THEREFORE, incorporating the foregoing recitals and upon the mutual promises of the Parties and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Public Street Easement. During the Term of this Agreement, Citadel hereby grants City a non-exclusive easement in, to, through, over, under and across Citadel Property for public streets and highways, sidewalk, and public utility and appurtenant facilities purposes. The foregoing easement amends and restates all prior easements previously granted by Citadel to the City in Citadel Property and City hereby remises, releases and quitclaims to Citadel all such interest of City in Citadel Property to the extent inconsistent with the foregoing.

2. Loading Zone Easement. During the Term of this Agreement, City hereby grants Citadel a nonexclusive easement in, to, through, over, under and across City Property to be used as a loading and unloading zone area, including ingress and egress thereto, and for the construction, maintenance, and repair of the Improvements.

3. Duties of Citadel. Following the completion of the Improvements and acceptance of such Improvements by the City, and thereafter during the Term of this Agreement pursuant to Paragraph 5 below, Citadel shall maintain the Parkway in a clean, safe, and attractive condition. The costs and expenses involved in the construction, modification and maintenance of the Parkway shall be borne entirely by Citadel, with no cost or expense to the City. Any and all modifications to the Improvements shall be coordinated with and approved by the City's Public Works Department in advance. In the event of an emergency, City may, but shall not be obligated to, perform repairs to the Parkway to the extent necessary to prevent imminent harm to persons or property. Citadel shall reimburse City for all reasonable expenditures incurred by City in performing such emergency Parkway repairs.

4. City and Utility Work. Should the City need to conduct any maintenance, repairs, installations or other work to the Parkway ("City Work"), City will use all reasonable efforts to allow Citadel uninterrupted use of the Parkway, so long as it is feasible to do so. If, under City's reasonable discretion, it becomes necessary for Citadel to temporarily relocate or suspend use of the Parkway for City Work, City will not be liable for any costs, expenses, or lost profits associated with the relocation or suspension of the use of the Parkway. Additionally, Utilities shall have the right to maintain and /or repair their facilities in the public right of way ("Utility Work") including the area shown in Exhibit C consistent with their rights under all applicable laws, including, but not limited to, the California Public Utilities Code and California Public Utilities Commission regulations and franchise agreements, and should it become necessary for Citadel to temporarily relocate or suspend use of the Parkway for Utility Work, City will not be liable for any costs, expenses, or lost profits associated with the relocation or suspension of the use of the Parkway.

5. Term. The "Term" of this Agreement and the easements contained herein shall be for a period of ten (10) years following the date of this Agreement, and thereafter the Term shall automatically renew on a month to month basis provided either party may elect not to so renew the Term by recording a release and reconveyance of this Agreement and the easements contained herein (other than the utility easement granted to the City), after delivering sixty (60) calendar days prior written notice to the other party. Such a release and reconveyance shall only require the signature of one party to this Agreement in order to effectively release and reconvey the interest of both Parties. Following such termination, Citadel shall restore the surface of City Property to its original condition prior to the execution of this Agreement, subject to normal wear and City shall cooperate with Citadel to the extent any permits or approvals are needed for such work.

6. Indemnification. Citadel agrees to indemnify, defend, and hold harmless, the City, its respective elected and appointed boards, officials, authorized agents, officers, representative and, employees, and volunteers from and against any and all claims, judgments, causes of action, damages, penalties, liabilities, costs (including court costs and attorney fees), or loss resulting from claims or court action to the extent arising out of any accident, loss or damage to persons or property happening or occurring as a proximate result of any work undertaken pursuant to this Agreement, including any allegation that the Parkway caused, or contributed to causing, death or injury to person or property, except to the extent caused by the negligence or willful misconduct of the City, its respective elected and appointed boards, officials, authorized agents, officers, representative, employees, and volunteers.

7. Insurance. Citadel shall obtain and maintain insurance against damages to property or injuries to persons, including accidental death, which may arise from or be caused by Citadel's use of the

Parkway or performance under the Agreement, whether such damage or injury shall accrue or be discovered before or after termination of the Agreement. Citadel shall be required to secure and keep in full force and effect at all times for the duration of this Agreement, a policy or policies of commercial general liability, automobile liability insurance, workers compensation, and such other insurance, written by a company or companies eligible to do business within the State of California with a rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager. Said policies shall include the City, its duly elected or appointed officers and employees as additional insureds, under the policies in the following amounts:

(a) Commercial General Liability Insurance per ISO form CG 00 01 or its equivalent in an amount of One Million Dollars (\$1,000,000) per occurrence, and \$2,000,000 general aggregate for bodily injury (including accidental death) and property damage arising out of any accident, loss or damage to persons or property happening or occurring as a proximate result of any work undertaken pursuant to this Agreement, including any allegation that the Parkway caused, or contributed to causing, death or injury to person or property; and

(b) Commercial Automobile Liability Insurance covering all owned and non-owned vehicles with a combined single limit of One Million Dollars (\$1,000,000) each accident for bodily injury and property damage.

(c) Citadel shall secure and maintain at all times for the duration of this Agreement, workers' compensation with limits greater than or equal to the statutory minimums and employer's liability insurance in an amount of One Million Dollars (\$1,000,000) for all covered losses.

(d) Excess Liability (Umbrella) insurance with limits of \$4,000,000 for bodily injury and property damage liability.

Claims made policies are not acceptable and all policies shall contain a "Severability of Interest" clause and be primary and non-contributory with any insurance or program of self-insurance that may be maintained by the City. Upon receipt of notice from its insurer(s), Citadel shall use commercially reasonable efforts to provide the City at least thirty (30) days prior written notice of any policy cancellation of coverage that is not replaced.

Prior to the issuance of the Agreement, Citadel shall furnish the City with a "certificate of insurance" and blanket "additional insured endorsement." The Certificate of Insurance shall also include that the City, its duly elected or appointed officers and employees are included as additional insureds under the policies required herein. This insurance is primary to the coverage of the City. Neither the City nor any of its insurers shall be required to contribute to any loss. The Certificate(s) of Insurance shall be provided to the City prior to the commencement of any Improvements.

In the event Citadel employs contractors or subcontractors as part of the obligations or covenants covered by this Agreement, Citadel shall endeavor to ensure that all contractors or subcontractors comply with substantially similar insurance requirements that are stated in these conditions.

8. Non-Discrimination and Equal Employment Opportunity Employer.

(a) Citadel shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all laws and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) To the extent required by law, Citadel will, in all solicitations or advertisements for employees placed by or on behalf of Citadel in connection with the work described in this Agreement, state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

(c) Citadel will endeavor to cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

9. Amendments. Except as referenced in Paragraph 5 regarding the termination of this Agreement, any amendments to this Agreement shall be made only by the written agreement by both of the Parties hereto and recorded in the offices of the County Recorder of Los Angeles.

10. California Law. It is the intention of the parties that the laws of the State of California govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

11. Compliance with Laws. The Parties shall at all times observe and comply with all current or subsequently imposed applicable laws, statutes, ordinances, resolutions, codes, conditions and regulations, which pertain to or apply to this Agreement and the construction of Improvements and use of the Parkway.

12. Permit and Approvals. Citadel shall obtain all necessary permits, licenses, and approvals required for the proposed Improvements and maintenance of the Parkway.

13. Taxes. To the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Citadel shall be responsible for any taxes levied as a result of the activities or work associated with this Agreement.

14. Parties in Interest. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties hereto.

15. Waste and Nuisance. Neither Party shall commit nor allow to be committed any waste on the property of the other Party, nor maintain or allow to be maintained any nuisance thereon.

16. Liens. During the Term, each Party shall keep the Parkway and every part thereof free and clear of all mechanics' liens, materialmen's liens, and other liens for any work or labor done, services performed, or materials and appliances used or furnished for or in connection with any operation of such Party, any repair, alteration, or addition which such Party may make or permit or cause to be made, or any work or construction by, for, or permitted by such Party on or about the other Party's property; and shall indemnify the other Party against all such liens, claims of liens, and suits or other procedures pertaining thereto. Notwithstanding the foregoing, nothing contained herein shall prevent either Party from challenging the validity of any such lien in good faith provided such Party delivers a bond in an amount equal to at least one hundred ten percent 110% of the total lien amount within twenty (20) days following notice from the other Party.

17. Mortgages. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not prevent or limit Citadel from encumbering Citadel Property or any portion thereof or any improvements thereon with any mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance ("Mortgage") in which such property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and fair value in order to secure financing with respect to the ownership, acquisition, construction, development, use or operation of Citadel Property. Notwithstanding anything in this Agreement to the contrary, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Citadel Property or any portion thereof by a holder of a beneficial interest under a Mortgage, or any successor or assignee to said holder ("Mortgagee"), whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise. The Mortgagee shall have the right, but not the obligation, to cure, correct, or remedy the default, within ten (10) days after the receipt of written notice to any Mortgagee from City for monetary defaults, or within thirty (30) days for non-monetary defaults, or, for such defaults that cannot reasonably be cured, corrected, or remedied within such period, the Mortgagee may cure, correct, or remedy the default if the Mortgagee commences to cure, correct, or remedy such default within such ten (10) day or thirty (30) day period, and continuously and diligently prosecutes such cure to completion. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall be permitted thereafter to remedy or cure the default within such time as is reasonably necessary to cure or remedy said default but in no event more than thirty (30) days after obtaining possession. If any such default cannot, with diligence, be remedied or cured within such thirty (30) day period, then such period shall be extended to permit the Mortgagee to effect a cure or remedy so long as Mortgagee commences said cure or remedy during such thirty (30) day period, and thereafter diligently pursues such cure to completion. Nothing in this section shall abridge the City's right to conduct emergency repairs, or Citadel's or their successors-in-interests' obligations to reimburse City for such repairs under Section 3 of this Agreement.

18. Notice. Except as otherwise required by law, any notice or other communication authorized or required by this Agreement shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during regular business hours or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses listed below, or at such other address as one party may notify the other:

If to City:	City of Commerce 2535 Commerce Way Commerce, CA 90040 Attn: City Manager
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If to Citadel:	Craig Realty Group Citadel, LLC 4100 MacArthur Blvd., Suite 100 Newport Beach, CA 92660 Attn: General Counsel
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Each party may change its notice address by giving written notice of such change to the other Party hereto, as herein provided.

19. Integrated Agreement. This Agreement constitutes the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof, and there are no other agreements, undertakings, restrictions, or warranties among the Parties other than those set forth herein and herein provided for.

20. Counterparts. This Agreement may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

21. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22. Covenant Running with Land. This Easement and Maintenance Agreement constitutes covenants running with the land, as provided by California Civil Code Section 1468, and shall benefit, burden, and bind both Parties. The term “Citadel” shall include not only the present Citadel, but also the heirs, successors, executors, administrators, and assigns of Citadel.

23. Not a Public Dedication. Nothing in this Agreement constitutes a gift or dedication of any part of the Citadel Property to the general public, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

24. No Partnership. Nothing in this Agreement, nor any acts of the Citadel or City shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any other business association among Citadel and City.

25. Prevailing Wages. Citadel acknowledges that City has made no representations as to whether any persons associated with construction of improvements on the Parkway must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720 et seq. City and Citadel acknowledge that Citadel shall be solely responsible for determining whether persons associated with construction of improvements on the Parkway undertaken by Citadel must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to California Labor Code Sections 1720 et seq. City shall not be under any duty or obligation to monitor or ensure the compliance of Citadel with any State of California labor laws, including, without limitation, prevailing wage laws. Citadel shall indemnify City against any claims pursuant to California Labor Code Section 1781 arising from Citadel’s construction of any improvements, work or alterations on the Parkway.

[INTENTIONALLY BLANK; SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Easement and Maintenance Agreement as of the Effective Date set forth below.

“Citadel”

CRAIG REALTY GROUP CITADEL, LLC,
a Delaware limited liability company

By: Citadel SPE, Inc.,
a Delaware corporation,
its Manager

By: _____
Steven L. Craig
President

“City”

CITY OF COMMERCE,
a California municipal corporation

By: _____

Name:

Title: City Manager

Effective Date: _____

Attest:

City Clerk Date

Approved As To Form:

City Attorney Date

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)