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Gary W. Ott
Recorder, Salt Lake County, UT
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DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

(View Corridor Easements)

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (this "**Declaration**"), dated as of the 19th day of September, is executed by ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company (the "**Declarant**").

RECITALS:

- A. Declarant owns a certain parcel of real property the legal description of which is set forth on Exhibit "A" attached hereto and made a part hereof (the "**Burdened Lot**").
- B. On or around the date hereof, Overstock (defined below) is purchasing from certain affiliates of Declarant a certain parcel of real property the legal description of which is set forth on Exhibit "B" attached hereto and made a part hereof (the "**Benefitted Lot**").
- C. Declarant desires to establish with respect to the Burdened Lot, for the benefit of the Benefitted Lot, easements for certain building height restrictions, all on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant grants the following easements and makes the following declarations and establishes the following covenants and restrictions on the Burdened Lot for the benefit of the Benefitted Lot.

1. Definitions. Certain terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined terms, the following terms shall have the meanings indicated.

(a) "**Building or Related Improvement**" means a building or other principal above-ground structure on a Lot (including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, enclosed malls, and similar items), but excluding any above ground utility structures and landscaping.

(b) "**Burdened Lot Owner**" shall mean an Owner of a Burdened Lot.

(c) "**Burdened Lot Owners**" shall mean, collectively, all of the Owners of the Burdened Lot.

(d) "**Five Story Restricted Area**" means the area on the Burdened Lot which is more particularly described on Exhibit "C" attached hereto as the Five Story Restricted Area.

- (e) **"Lot"** means a Burdened Lot or the Benefitted Lot.
- (f) **"Lots"** means the Burdened Lot and the Benefitted Lot.
- (g) **"Mortgage"** means a recorded mortgage, deed of trust or other security agreement creating a lien on an Owner's interest in a Lot or a portion of a Lot as security for the payment of indebtedness.
- (h) **"Mortgagee"** means the mortgagee, beneficiary or other secured party under a Mortgage.
- (i) **"Overstock"** means O.COM Land, LLC, a Utah limited liability company, or its affiliated persons or entities
- (j) **"Owner"** means the Person that, at the time concerned, is the owner of record in the office of the County Recorder of Salt Lake County, Utah, of a fee interest in any Lot or portion of any Lot. In the event that, at any time, more than one Person owns the fee interest in a Lot, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Lot encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.
- (k) **"Person"** means a natural person or a legal entity.
- (l) **"Restricted Areas"** means, collectively, the Five Story Restricted Area and the Six Story Restricted Area.
- (m) **"Six Story Restricted Area"** means the area on the Burdened Lot which is more particularly described on Exhibit "C" attached hereto as the Six Story Restricted Area.

2. Restrictive Covenants and Grant of Easements. So long as Overstock is the Owner of the Benefitted Lot, or if not, then for a period of twenty (20) years from the date of this Declaration, in order to preserve the views from the Benefitted Lot, all Building or Related Improvements located in the Restricted Areas shall not exceed the following height limitations:

- (a) No Building or Related Improvement shall be constructed in the Five Story Restricted Area if such Building or Related Improvements exceeds eighty six feet (86') in height measured at the natural grade of the land on which such Building or Related Improvement is constructed to the top of the parapet of such Building or Related Improvement.
- (b) No Building or Related Improvement shall be constructed in the Six Story Restricted Area if such Building or Related Improvements exceeds one hundred feet (100') in height measured at the natural grade of the land on which such Building or Related Improvement is constructed to the top of the parapet of such Building or Related Improvement.

Subject to the provisions of Section 3 below, Grantor hereby grants, conveys and demises to the Benefitted Lot, an easement above the Restricted Areas for a right of view which is not obstructed by a Building or Related Improvement constructed on the Burdened Lot.

3. Reservation of Rights. Except for those liens, rights and interests that have been expressly subordinated to this Declaration pursuant to the Consent and Subordination of Lienholder attached hereto and made a part hereof by this reference, the restrictive covenants imposed on the Restricted Areas in Section 1 of this Declaration shall not affect, limit, impede, impair or otherwise modify the rights of any Person, other than Declarant, having an interest in the Burdened Property as shown in the Salt Lake County Recorder's Office prior to the recording of this Declaration.

4. Title and Mortgage Protection.

(a) No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

(b) A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration.

5. Amendment or Termination; Duration of Declaration. If Overstock ceases to be the owner of the Benefitted Parcel, then upon the date which is twenty (20) years from the date of this Declaration, this Declaration shall automatically terminate and shall be of no further force and effect. In all other events, this Declaration may be amended, but only by an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by the Owner of the Benefitted Lot and the Owner of any Burdened Lot affected by such amendment. In all other events, this Declaration may be terminated by an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by the Owner of the Benefitted Lot. This Declaration shall be and remain in force and effect until amended or terminated pursuant to this Section.

6. Covenants to Run with Land. This Declaration and the covenants created by this Declaration are intended by the Declarant to be and shall constitute covenants running with the land as to each of the Lots, and shall be binding upon each Owner and any Person who acquires or comes to have any interest in any Lot, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. Each Owner shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Lot, the Person so acquiring, coming to have such interest in, or occupying Lot, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

7. Enforcement and Remedies. The Owner of a Lot or any portion of a Lot shall have the right to enforce, through any permitted proceeding at law or in equity, including but not limited to injunctive relief, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a breach of the

provisions of, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration, the Owner prevailing in such action shall be entitled to recover from the unsuccessful Owner reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

8. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

9. Titles, Captions and References. All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument. The Recitals preceding this Declaration are by this reference incorporated herein in their entirety.

10. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

11. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules.

12. Counterparts. This Declaration may be executed in any number of counterparts. Each such counterpart of this Declaration shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

13. Exhibits. All exhibits annexed to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.

(Signatures begin on following page)

EXECUTED the day and year first above written.

"Declarant"

ARBOR GARDNER BINGHAM JUNCTION
HOLDINGS, L.C., a Utah limited liability company, by
its Managers

By: Arbor Commercial Real Estate L.L.C., a Utah
limited liability company

By: 

Print Name: CURT GUSI

Its: Manager

By: KC Gardner Company L.C., a Utah limited
liability company

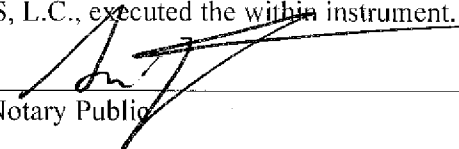
By: 

Print Name: KIM C GARDNER

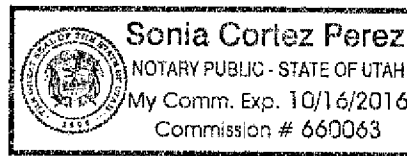
Its: Managers

STATE OF UTAH)
) : ss.
COUNTY OF SALT LAKE)

On this 19 day of September, 2014, personally appeared before me Kimberly Gardner Martin, ^{+ KEM C. GARDNER} the person who executed the within instrument as the Manager on behalf of KC GARDNER COMPANY, L.C., a Utah limited liability company, which is a manager of ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company, and acknowledged to me ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., executed the within instrument.



Notary Public



STATE OF UTAH)
) : ss.
COUNTY OF SALT LAKE)

On this 19 day of September, 2014, personally appeared before me Cory Gust, the person who executed the within instrument as the Manager on behalf of ARBOR COMMERCIAL REAL ESTATE LLC, a Utah limited liability company, which is a manager of ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company, and acknowledged to me ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., executed the within instrument.



Notary Public



EXHIBIT "A"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Burdened Lot

Parcel A, View 72 Retail Subdivision Amended, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

Contains 1,203,321 Square Feet or 27.624 Acres

Tax ID No. 21-26-276-003

EXHIBIT "B"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Benefitted Lot

Beginning at a point being South 00°17'30" West 2,022.66 feet along the Section Line and North 89°42'30" West 617.34 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence South 00°17'30" West 464.63 feet to the North Line of the Utah Transit Authority Corridor;

thence South 83°51'00" West 1,014.92 feet along the North Line of said Utah Transit Authority Corridor to the Easterly Right-of-Way Line of Bingham Junction Boulevard;

thence North 06°11'37" West 169.67 feet along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;

thence Northeasterly 637.50 feet along the arc of a 1,327.00 foot radius curve to the right (center bears North 83°48'23" East and the chord bears North 07°34'08" East 631.38 feet with a central angle of 27°31'30") along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;

thence South 68°31'47" East 311.79 feet;

thence Southeasterly 567.76 feet along the arc of a 1,536.00 foot radius curve to the left (center bears North 21°28'13" East and the chord bears South 79°07'09" East 564.53 feet with a central angle of 21°10'43");

thence South 89°42'30" East 102.05 feet to the point of beginning.

Contains 609,274 Square Feet or 13.99 Acres

EXHIBIT "C"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Description of Restricted Areas

Five Story Restricted Area

Beginning at a point being South 00°17'30" West 1,878.22 feet along the Section Line and West 1,279.50 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence North 68°31'47" West 268.59 feet;
thence Northwesterly 40.26 feet along the arc of a 25.00 foot radius curve to the right (center bears North 21°28'13" East and the chord bears North 22°23'24" West 36.05 feet with a central angle of 92°16'47") to the Easterly Right-of-Way Line of Bingham Junction Boulevard;
thence Northeasterly 218.51 feet along the arc of a 1,327.00 foot radius curve to the right (center bears South 66°15'00" East and the chord bears North 28°28'02" East 218.26 feet with a central angle of 09°26'05") along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;
thence North 33°11'04" East 136.30 feet along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;
thence South 56°48'56" East 244.40 feet;
thence South 21°28'13" West 326.48 feet to the point of beginning.

Contains 96,718 square feet or 2.220 acres

Six Story Restricted Area

Beginning at a point being South 00°17'30" West 2,022.66 feet along the Section Line and North 89°42'30" West 627.34 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running

thence North 89°42'30" West 92.05 feet;
thence Northwesterly 178.58 feet along the arc of a 1,506.00 foot radius curve to the right (center bears North 00°17'30" East and the chord bears North 86°18'41" West 178.48 feet with a central angle of 06°47'39");
thence North 07°05'09" East 280.75 feet;
thence South 89°42'30" East 255.00 feet to the Westerly Right-of-Way Line of Grandeur View Way;
thence South 00°17'30" West 265.36 feet along the Westerly Right-of-Way Line of said Grandeur View Way;
thence Southwesterly 28.27 feet along the arc of a 18.00 foot radius curve to the right (center bears North 89°42'30" West and the chord bears South 45°17'30" West 25.46 feet with a central angle of 90°00'00") along the Westerly Right-of-Way Line of said Grandeur View Way;
thence South 00°17'30" West 6.00 feet along the Westerly Right-of-Way Line of said Grandeur View Way to the point of beginning.

Contains 77,963 square feet or 1.790 acres

CONSENT AND SUBORDINATION OF LIENHOLDER

Effective as of the 18th day of September, 2014, Wells Fargo Bank, National Association ("Wells Fargo"), as the holder of the liens encumbering the Burdened Lots arising under each of the following documents (including all amendments and/or modifications thereto):

Construction Deed of Trust, dated August 25, 2005, from Arbor Gardner, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on August 31, 2005 as Entry No. 9478425 in Book 9182 at Page 4552 in the Recorder's Office of Salt Lake County (the "Official Records"), as amended, restated, supplemented or otherwise modified from time to time;

Deed of Trust, dated July 28, 2006, from Arbor/Gardner/Plum Sunset Hills, L.L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on August 3, 2006 as Entry No. 9801582 in Book 9331 at Page 2819 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated August 23, 2006, from Arbor Residential Properties L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on August 30, 2006 as Entry No. 9830013 in Book 9343 at Page 9407 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated January 25, 2006, from Arbor Residential Properties L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on February 28, 2007 as Entry No. 10017060 in Book 9428 at Page 3207 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated March 12, 2007, from Arbor Gardner, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on April 27, 2007, as Entry No. 10080302 in Book 9455 at Page 8112 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated November 19, 2007, from Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on November 20, 2007 as Entry No. 10281128 in Book 9539 at Page 7100 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time; and

Construction Deed of Trust, dated July 19, 2010, from Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on July 19, 2010 as Entry No. 11014001 in Book 9850 at Page 6519 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

hereby consents to the recording of this Declaration and agrees that the liens evidenced by, and all other rights and interests of Wells Fargo arising under, the foregoing documents shall be and are hereby subordinated to this Declaration.

Wells Fargo Bank, National Association

By:

Name:

Title:

Mike Dulgarian
Mike Dulgarian
Vice President

State of UTAH)
County of SALT LAKE) ss.

The foregoing instrument was acknowledged before me on 9.19.14, by MIKE DULGARIAN, the VICE PRESIDENT of Wells Fargo Bank, National Association, by and on behalf of said national association.

Jessica Perez
Notary Public

