

WHEN RECORDED, RETURN TO:

Lamont Richardson, Esq.
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111

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9/22/2014 9:17:00 AM \$44.00
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Gary W. Ott
Recorder, Salt Lake County, UT
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BY: eCASH, DEPUTY - EF 18 P.

DECLARATION AND GRANT OF RECIPROCAL ACCESS EASEMENTS

(Salt Lake County, Utah)

This Declaration and Grant of Reciprocal Access Easements (the "**Reciprocal Easement Agreement**") is entered into as of the 19th day of September, 2014, by and between O.COM LAND, LLC, a Utah limited liability company ("**Overstock**"), and (b) ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company ("**Arbor Gardner**").

WHEREAS, Overstock owns certain real property (the "**Overstock Property**") located in Salt Lake County, Utah, as particularly described in attached **Exhibit "A"**;

WHEREAS, Arbor Gardner owns certain other real property (the "**Arbor Gardner Property**") located adjacent to the Overstock Property in Salt Lake County, Utah, as particularly described in attached **Exhibit "B"**;

WHEREAS, Arbor Gardner has agreed to design and construct a roadway along the northern portion of the Overstock Property and the southern portion of the Arbor Gardner Property (the "**Roadway**"), which is intended to and shall provide access to and from the Overstock Property and Arbor Gardner Property to those certain public thoroughfares known as "Junction View Drive" in Salt Lake County, Utah (the "**Public Thoroughfares**");

WHEREAS, the Roadway is more particularly described on attached **Exhibit "C"**;

WHEREAS, in consideration of the mutual covenants set forth herein and subject to the payment by Overstock and Arbor Gardner, respectively, of their "**Proportionate Share**" of the "**Applicable Roadway Construction Costs**" (as defined below), Arbor Gardner is willing to grant to Overstock a non-exclusive easement for access over and across the portion of the Roadway on the Arbor Gardner Parcel to and from the Overstock Property and the Public Thoroughfares, and Overstock is willing to grant to Arbor Gardner a non-exclusive easement for access over and across the portion of the Roadway on the Overstock Parcel to and from the Arbor Gardner Property and the Public Thoroughfares;

WHEREAS, by the execution hereof, Overstock and Arbor Gardner desire to enter into this Reciprocal Easement Agreement to definitively set forth their agreements and understandings regarding the design, construction, use, and maintenance of the Roadway;

NOW, THEREFORE, to these ends and in consideration of the promises, mutual covenants and agreements set forth below, together with the mutual benefits to be derived from this Reciprocal Easement Agreement, Overstock and Arbor Gardner agree as follows:

1. Construction of Roadway.

(a) The Roadway shall be designed, engineered and constructed, sufficient to provide adequate two-way vehicular and pedestrian traffic and circulation from the Overstock Property

and Arbor Gardner Property to and from the Public Thoroughfares, which Roadway shall be substantially as described on attached **Exhibit "C"**.

(b) The Roadway shall be, designed by a reputable and qualified engineering or design firm. The proposed elevations of the Roadway shall be designed so as to appropriately accommodate the intended uses located on the Overstock Property and Arbor Gardner Property in a reasonable manner, and shall be constructed and/or located in accordance with any and all applicable governmental, regulatory and administrative laws, rules, ordinances and regulations.

(c) Within sixty (60) days of the date Overstock delivers notice to Arbor Gardner that Overstock has obtained all building permits from the construction of a building containing approximately 220,000 square feet on the Overstock Property (the "**Overstock Improvements**"), Arbor Gardner shall deliver to Overstock a preliminary construction budget, construction schedule (which shall require completion of the Roadway to coincide with the completion of the Overstock Improvements) and the plans and specifications for the Roadway (collectively, the "**Preliminary Construction Plans**") for Overstock's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Overstock shall have a period of ten (10) business days from the receipt of the Preliminary Construction Plans to approve or disapprove of the Preliminary Construction Plans. In the event Overstock does not disapprove of the Preliminary Construction Plans in writing within such ten (10) business day period, Overstock shall be deemed to have approved the Preliminary Construction Plans. In the event Overstock disapproves the Preliminary Construction Plans, such disapproval shall be in writing and shall include a reasonably detailed explanation of the corrections or changes which, if made, would cause Overstock to approve the Preliminary Construction Plans, as revised. In the event Overstock disapproves of the Preliminary Construction Plans pursuant to the immediately preceding sentence, Arbor Gardner shall use commercially reasonable, good faith efforts to revise the Preliminary Construction Plans to the extent necessary to satisfy Overstock's objections or concerns and shall resubmit such modified Preliminary Construction Plans to Overstock to be approved in accordance with the procedure set forth above until approved or deemed approved as provided herein. The approved, or deemed approved, Preliminary Construction Plans shall be referred to herein as the "**Construction Plans**". Within ten (10) business days following Overstock's approval or deemed approval of the Construction Plans, Arbor Gardner shall submit the Construction Plans to the appropriate governmental authority and shall thereafter diligently pursue its approval. Overstock shall cooperate with Arbor Gardner during the approval process and shall provide Arbor Gardner with any information required by any governmental authority in connection with the approval. Arbor Gardner shall keep Overstock informed as to its progress and promptly shall notify Overstock in writing of any changes to the Construction Plans required by any governmental authority. In the event any changes are required by the governmental authority, Arbor Gardner shall inform Overstock of such changes and shall make such changes to the Construction Plans.

(d) Following the approval of the Construction Plans by all applicable governmental authorities, Arbor Gardner shall construct the Roadway in a good and workmanlike manner, in accordance with the Construction Plans (defined below), subject only to completion of Minor Construction Items and free and clear of any unpaid charges, debts, liabilities, claims, or obligations arising from the construction, of the Roadway, subject to delays as a result of force majeure. For purposes of this Agreement, the term "**Minor Construction Items**" means items described in the Construction Plans), the non-completion or non-correction of which would not prevent issuance of a certificate of occupancy for the Overstock Improvements.

(e) In the event that during the completion of the Roadway, Arbor Gardner or Arbor Gardner's contractor requires that a change be made to the Construction Plans which increases the costs of construction by \$20,000 or more, Arbor Gardner shall propose such modification (each a "**Change Order**") to Overstock for Overstock's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Overstock shall have a period of five (5) business days from the receipt of such Change Order to approve or disapprove of such Change Order. Overstock's review and approval or disapproval of such Change Order shall not constitute a representation or warranty by Overstock that such

Change Order, if made, will comply with any applicable laws. In the event Overstock does not disapprove of such Change Order in writing within such five (5) business day period, Overstock shall be deemed to have approved of the Change Order. In the event Overstock disapproves such Change Order, such disapproval shall be in writing and include a reasonably detailed explanation of the corrections or changes which, if made, would cause Overstock's approval of the Change Order. In the event Overstock disapproves of a Change Order as required by the immediately preceding sentence, Arbor Gardner shall use good faith efforts to revise such Change Order to the extent necessary to alleviate Overstock's objections and/or concerns and shall resubmit such modified Change Order to Overstock to be approved in accordance with the procedure set forth above. Notwithstanding the foregoing to the contrary, Arbor Gardner shall not be required to seek Overstock's consent for any Change Order which is necessary to cause the Roadway to be constructed in accordance with any applicable laws, provided, however, Arbor Gardner shall give Overstock notice of any such Change Order.

(f) Overstock shall designate a representative to represent and bind Overstock with regard to requests for approval of Overstock to Change Orders. As of the date hereof, Overstock designates Carter Lee as Overstock's representative for purposes of this Section 1(f). Any delivery of a request for Overstock's approval of a Change Order shall be deemed effective if delivered to such representative. Overstock may at any time change the identity of such representative by delivering notice to Arbor Gardner of the same.

(g) Upon completion of the Roadway, Arbor Gardner shall deliver to Overstock a written certification from a registered professional engineer, addressed to Overstock, certifying that all Roadway have been completed in accordance with the Construction Plans, as modified by all applicable Change Orders.

(h) Overstock reimburse Arbor Gardner on a work in progress basis for one-half (1/2) ("**Proportionate Share**") of the costs and expenses (excluding any overhead expenses, allocations or internal costs of Arbor Gardner) incurred by Arbor Gardner, directly or indirectly, in the design, engineering and construction of the portion of the Roadway (collectively, the "**Applicable Roadway Construction Costs**") including any changes (other than as specified in this subsection (h) below), within thirty (30) days of Overstock's receipt of any invoice from Arbor Gardner (together with reasonably satisfactory evidentiary support therefor). However, and notwithstanding anything to the contrary contained herein, Overstock's total Proportionate Share shall in no event exceed the total amount of \$200,000, and Arbor Gardner shall be solely responsible to pay all Applicable Roadway Costs in excess of Overstock's Proportionate Share as limited herein; provided, however, in the event Overstock requests a change to the Roadway, and such change causes an increase in the Applicable Roadway Construction Costs, Overstock shall be responsible for the entire increase of the Applicable Roadway Construction Costs even if such amount causes the amount reimbursed by Overstock under this subsection (h) to exceed \$200,000.

2. Grant of Rights-of-Way and Easements; Limitations.

(a) Subject to the limitations set forth in this Reciprocal Easement Agreement, Arbor Gardner hereby grants and conveys to Overstock non-exclusive perpetual rights-of-way and easements for vehicular ingress and egress (without charge) on, over and across the portion of the Roadway on the Arbor Gardner Property. Such rights-of-way and easements shall each (i) be appurtenant to and benefit the Overstock Property, (ii) bind and burden the Roadway and every person having any fee, leasehold, lien or other interest, as and to the extent arising by, through or under Arbor Gardner, in any portion of the Roadway, and (iii) constitute a covenant running with the land.

(b) Subject to the limitations set forth in this Reciprocal Easement Agreement, Overstock hereby grants and conveys to Arbor Gardner non-exclusive perpetual rights-of-way and easements for vehicular ingress and egress (without charge) on, over and across the portion of the Roadway on the Overstock Property. Such rights-of-way and easements shall each (i) be appurtenant to

and benefit the Arbor Gardner Property, (ii) bind and burden the Roadway and every person having any fee, leasehold, lien or other interest, as and to the extent arising by, through or under Overstock, in any portion of the Roadway, and (iii) constitute a covenant running with the land.

(c) Exclusive use of the Roadway is not hereby granted, and the right and easement for ingress and egress in common with Overstock and Arbor Gardner hereby is expressly reserved by Arbor Gardner and Overstock. Arbor Gardner and Overstock hereby reserve the right to make any use of the Roadway, so long as, except as otherwise specified herein, any such use does not unreasonably interfere with the right and easement for use and related ingress and egress which is herein granted to the other party.

(d) The rights-of-way and easements described above, so long as the following do not unreasonably interfere with the right and easement for use and related ingress and egress which is herein granted to Overstock and Arbor Gardner, shall be subject to and limited as follows:

(i) They shall not be exercised in any manner which substantially interferes with the purposes for which the Roadway are to be used as provided herein.

(ii) The right of the County of Salt Lake and any other governmental or quasi-governmental body having jurisdiction over the Arbor Gardner Property and Overstock Property at any time and from time to time, and any private or public utility company serving the Arbor Gardner Property and/or Overstock Property, of access to, and rights of ingress and egress over and across, any of the Roadway for purposes of providing police and fire protection, and providing any other governmental, municipal or utilities services.

(iii) The right of Arbor Gardner and Overstock, in their sole discretion (subject, however, to this subsection 2(d)), to grant permits, licenses and easements over, across, through and under the Roadway to any governmental or quasi-governmental authority, to any public or private utility company for the purpose of installing, maintaining or providing utilities and related facilities or roads or for such other purposes reasonably necessary or appropriate, in Arbor Gardner's or Overstock's sole and reasonable discretion, for the use construction, development, maintenance or operation of the Arbor Gardner Property and/or the Overstock Property, as applicable.

(e) Neither Arbor Gardner nor Overstock shall permit any lien or claim of mechanics, laborers or materialmen to be filed against the Roadway, or any part or parts thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by such party. Within ten (10) business days after the date of the filing or recording of any such lien, such party shall cause the same to be paid and discharged of record, or, if such party contests the amount allegedly due or the right of the lienor to make its lien claim, such party shall cause a bond for at least 110% of the amount of the disputed lien claim to be issued in favor of the other party to protect the other party from any damage resulting from the lien during the entire time of any proceeding in which such party contests the lien.

(f) Each of the parties to this Reciprocal Easement Agreement hereby (i) irrevocably consents to the grant, conveyance and/or dedication of the Roadway to Salt Lake County, the Utah Department of Transportation, or the municipality in which the Arbor Gardner Property is located, as applicable, for public use, together with any underground public or private utilities located therein (the "**Dedication**"); and (ii) agrees to cooperate fully with the other party and to take all actions necessary to accomplish the Dedication promptly following the construction of the Roadway, including without limitation the execution and recordation of a dedication plat effectuating such Dedication, if necessary.

(g) Overstock and Arbor Gardner shall be entitled, in their reasonable discretion, and at their own respective expense, to place as many entrances and exits from the Overstock Property or the Arbor Gardner Property, as the case may be, to the Roadway as Overstock or Arbor Gardner, as the case

may be, shall determine to be necessary or appropriate; provided that such entrances and exits shall be designed and placed in those locations permitted by any applicable laws or governmental planning approvals and shall be limited to the extent necessary so as not to adversely affect the use, development or occupancy of the Arbor Gardner Property or the Overstock Property, as the case may be.

(i) Either Arbor Gardner and/or Overstock may, on a temporary basis, for reasonable construction, repair, maintenance, or to prevent a public dedication or the accrual of any rights to the public, close the Roadway for access, provided that, in any such event, the party closing the Roadway shall first notify the other party in writing and shall provide for alternate access to the Overstock Property or Arbor Gardner Property, as applicable, during such period of closure.

3. Maintenance and Maintenance Expenses.

(a) Except as otherwise agreed, in writing, Arbor Gardner (or the owner of the Arbor Gardner Property, from time to time, as applicable), prior to the date on which the Dedication is completed (the "**Dedication Date**"), shall, subject to the provisions of Section 3(c) below, be responsible to maintain the Roadway in good condition and repair, or cause the Roadway to be maintained and kept in good condition and repair. Notwithstanding the foregoing, and subject to reasonable wear and tear from normal use, in the event the Roadway or any utility or improvements within the Roadway are damaged (i) by Overstock or its employees, agents, contractors or invitees, Overstock shall be solely responsible for the repair of any such damage or (ii) by Arbor Gardner or its employees, agents, contractors or invitees, Arbor Gardner shall be solely responsible for the repair of any such damage.

(b) The obligation to maintain, repair and keep in repair the Roadway shall, without limiting the generality thereof, include: (i) maintaining the surfaces at such grades and levels that they may be used and enjoyed as contiguous and homogeneous common areas and maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or of similar quality, use and durability; (ii) removing all papers, debris, snow, ice, filth and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep these areas in a neat, clean and orderly condition; and (iii) placing, keeping in repair, and replacing any necessary appropriate directional signs, striping markers and lines; and operating, keeping in repair and replacing, when necessary, artificial lighting facilities as shall be reasonably required.

(c) In connection with the foregoing, Arbor Gardner shall on or before November 1st of each year following completion of the construction of the initial improvements within the Roadway area prepare and submit to Overstock for Overstock's approval, which approval shall not be unreasonably withheld, conditioned or delayed, a proposed budget for the maintenance and repair of the Roadway for the following year (each a "**Proposed Maintenance Budget**"). Overstock shall have a period of twenty (20) business days from the receipt of each Proposed Maintenance Budget to approve or disapprove of the Proposed Maintenance Budget. In the event Overstock does not disapprove of the Proposed Maintenance Budget in writing within such twenty (20) business day period, Overstock shall be deemed to have approved the Proposed Maintenance Budget. In the event Overstock disapproves the Proposed Maintenance Budget, such disapproval shall be in writing and shall include a reasonably detailed explanation of Overstock's objections. In the event Overstock disapproves of the Preliminary Construction Plans pursuant to the immediately preceding sentence, Arbor Gardner shall use commercially reasonable, good faith efforts to satisfy Overstock's objections or concerns and shall resubmit such modified Proposed Maintenance Budget to Overstock to be approved in accordance with the procedure set forth above until approved or deemed approved as provided herein. Each approved, or deemed approved, Proposed Maintenance Budget shall be referred to herein as an "Approved Maintenance Budget". In the event Overstock and Arbor Gardner have not agreed on an Approved Maintenance Budget prior to January 1 of the following year, the Approved Maintenance Budget from the prior year, with budgeted line items increased by five percent (5%) shall apply until Arbor Gardner and

Overstock have agreed on an Approved Maintenance Budget for the current year. Thereafter, on a not less than annual basis but not more often than on a monthly basis, and in no event later than one hundred twenty (120) days after the end of each calendar year, Arbor Gardner shall provide Overstock with an invoice for one-half (1/2) of all out of pocket costs and expenses incurred by Arbor Gardner in performing its maintenance obligations as provided in this Article 3 ("*Overstock's Expense Share*"). Payment of Overstock's Expense Share shall be made by Overstock within ten (10) business days of Overstock's receipt of a written demand for payment from Arbor Gardner, which written demand shall include supporting invoices and appropriate evidence of the payment of such by Arbor Gardner. Arbor Gardner shall use its commercially reasonable efforts to cause the maintenance obligations to be performed in accordance with the Approved Maintenance Budget. In the event that Arbor Gardner determines that it will incur costs that exceed ten percent (10%) of a line item for such costs in the Approved Maintenance Budget for the then applicable year, Arbor Gardner shall promptly notify Overstock of such in writing prior to incurring such expense, provided, however, Arbor Gardner shall have the right to make emergency repairs to prevent injury or damage to life or property prior to notifying Overstock, it being understood that Arbor Gardner shall nevertheless advise Overstock of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. In no event shall Overstock's Expense Share include any costs or expenses not approved by Overstock. Furthermore, in the event that Arbor Gardner fails to appropriate invoice Overstock for Overstock's Expense Share, or any portion thereof, for a given calendar year within one hundred twenty (120) days of the end of each such Calendar Year, Overstock shall not be obligated to reimburse Arbor Gardner for such. In the event that Arbor Gardner determines that replacement of all or some portion of the Roadway improvements is necessary, then Arbor Gardner shall promptly notify Overstock of such in writing and such replacement shall be subject to the approval of Overstock in a manner similar to the approval process set forth herein for the initial construction of the Roadway improvements.

4. Authority. Each party hereto represents and warrants that it has the right, power, legal capacity, authority, and means to enter into and perform this Reciprocal Easement Agreement and that, to their respective knowledge, the same will not contravene or result in the violation of any agreement, law, rule, or regulation to which any such party may be subject.

5. Failure to Perform; Remedies. In the event that Overstock fails to perform when due any act or obligation required by this Reciprocal Easement Agreement to be performed by Overstock, Arbor Gardner, in addition to and not in lieu of any other remedies available at law or in equity, shall be entitled to file a suit in equity to enjoin Overstock from such breach or threatened breach and/or for the specific performance of Overstock's obligations under this Reciprocal Easement Agreement. In the event Arbor Gardner fails to perform when due any act or obligation required by this Reciprocal Easement Agreement to be performed by Arbor Gardner, Overstock, in addition to and not in lieu of any other remedies available at law or in equity, shall be entitled to file a suit in equity to enjoin Arbor Gardner from such breach or threatened breach and/or for the specific performance of Arbor Gardner's obligations under this Reciprocal Easement Agreement. In addition, in the event that Arbor Gardner fails to perform its maintenance obligations set forth in Article 3 above, Overstock shall be permitted to perform, or cause to be performed, the same and shall be entitled to recover from Arbor Gardner fifty-percent (50%) of all costs and expenses incurred by Overstock in performing such obligations on Arbor Gardner's behalf.

6. Limitation on Authority.

(a) Arbor Gardner's intent is only to construct the Roadway as contemplated hereunder and Arbor Gardner is not to be deemed or construed as the agent or joint venturer of Overstock in any respect, all other provisions of this Reciprocal Easement Agreement notwithstanding. Arbor Gardner has not and does not hereby assume or agree to assume any liability whatsoever of Overstock and Arbor Gardner does not assume or agree to assume any obligation of Overstock under any contract, agreement, indenture, or any other document to which Overstock may be a party or by which Overstock is

or may be bound, or which in any manner affects the Overstock Property or any part thereof, except as expressly agreed to by Arbor Gardner in this Reciprocal Easement Agreement.

(b) Overstock is not to be deemed or construed as the agent or joint venturer of Arbor Gardner in any respect, all other provisions of this Reciprocal Easement Agreement notwithstanding. Overstock has not and does not hereby assume or agree to assume any liability whatsoever of Arbor Gardner and Overstock does not assume or agree to assume any obligation of Arbor Gardner under any contract, agreement, indenture, or any other document to which Arbor Gardner may be a party or by which Arbor Gardner is or may be bound, or which in any manner affects the Arbor Gardner Property or any part thereof, except as expressly agreed to by Overstock in this Reciprocal Easement Agreement.

7. Notices. All communications, consents, and other notices provided for in this Reciprocal Easement Agreement shall be in writing and shall be effective on the date hand delivered, sent by facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

(a) If to Arbor Gardner, to:

ARBOR GARDNER BINGHAM JUNCTION
HOLDINGS, L.C.
c/o KC Gardner Company
90 South 400 West, Suite 360
Salt Lake City, Utah 84101
Attention: Christian Gardner

with a simultaneous copy to:

PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Lamont Richardson, Esq.

or to such other address as Arbor Gardner may designate to Overstock, in writing.

(b) If to Overstock, to:

OVERSTOCK.COM, INC.
Mr. Carter Lee
VP IT Administration and Facilities
Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

with a simultaneous copy to:

Mr. Mark Griffin
SVP & General Counsel
Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, Utah 84121

or to such other address as Overstock may designate to Arbor Gardner, in writing.

8. Miscellaneous Provisions.

(a) This Reciprocal Easement Agreement shall be interpreted in accordance with the laws of the State of Utah. The recital paragraphs set forth above are hereby expressly incorporated in and made a part of this Reciprocal Easement Agreement, however, the paragraph headings and titles are not part of this Reciprocal Easement Agreement, having been inserted for reference only, and shall have no effect upon the construction or interpretation hereof.

(b) The waiver by either party hereto of a breach of any term or condition of this Reciprocal Easement Agreement shall not constitute a waiver of any further breach of a term or condition. As concerns all matters of performance agreed hereunder, it is covenanted by the parties that time is strictly of the essence.

(c) This Reciprocal Easement Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in such documents, which supersede all prior and contemporaneous agreements, representations and understandings of the parties with respect thereto. No supplement, modification or amendment of this Reciprocal Easement Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Reciprocal Easement Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed, in writing, by the party making the waiver.

(d) This Reciprocal Easement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The recitals stated above and the exhibits attached to this Reciprocal Easement Agreement shall be and hereby are incorporated in and an integral part of this Reciprocal Easement Agreement by this reference.

(e) This Reciprocal Easement Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and the Arbor Gardner Property and the Overstock Property shall be subject to the easements, covenants, restrictions and charges set forth herein, which shall run with each of the Arbor Gardner Property and the Overstock Property and shall be binding upon all parties having or acquiring any right, title or interest in (i) the Arbor Gardner Property, or any part thereof, by, through or under Arbor Gardner, or (ii) the Overstock Property, or any part thereof, by, through or under Overstock, as the case may be.

(f) In the event that any provision of this Reciprocal Easement Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Reciprocal Easement Agreement.

(g) For purposes of this Reciprocal Easement Agreement, "*force majeure*" shall mean any delay caused by acts of nature, strikes, lockouts, other labor troubles, riots, civil commotion, insurrection, war or other reason not the fault of the party delayed (financial inability excepted), or any delay in reaching agreement on the Construction Plans, in which case performance of the action in question shall be excused for the period of delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

(h) In the event of default by either party, or if any action is brought because of any breach of or to enforce or interpret any of the provisions of this Reciprocal Easement Agreement, the defaulting party or the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in the enforcement of or the termination of this Reciprocal Easement Agreement.

(i) Concurrently with the execution and delivery of this Reciprocal Easement Agreement, this Reciprocal Easement Agreement shall be recorded against the Roadway and the Arbor Gardner Property and the Overstock Property in the official real estate records of Salt Lake County, Utah.

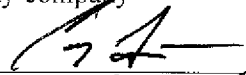
[signatures and acknowledgments on following page]

IN WITNESS WHEREOF, Arbor Gardner and Overstock have executed this Reciprocal Easement Agreement to be effective as of the date first written above.

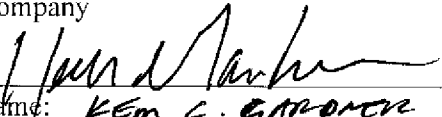
ARBOR GARDNER

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: CORY GUST
Its: Manager

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

By: 
Print Name: KEN C. GARDNER
Its: Manager

OVERSTOCK

O.COM LAND, LLC, a Utah limited liability company

By: _____
Print Name: _____
Its: _____

IN WITNESS WHEREOF, Arbor Gardner and Overstock have executed this Reciprocal Easement Agreement to be effective as of the date first written above.

ARBOR GARDNER

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: _____
Its: Manager

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

By: _____
Print Name: _____
Its: Manager

OVERSTOCK

O.COM LAND, LLC, a Utah limited liability company

By: _____
Print Name: *Carrie Lee*
Its: *Manager*



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

On this 19 day of September, 2014, personally appeared before me 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.

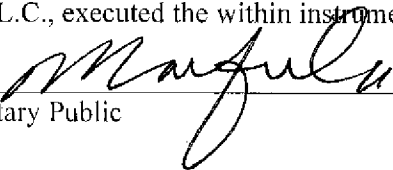


Notary Public



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



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

On this 19 day of September, 2014, personally appeared before me
Carter Ree, the person who executed the within instrument as the
Manager on behalf of O.COM LAND, LLC, a Utah limited liability company, and acknowledged to me
O.COM LAND, LLC, a Utah limited liability company executed the within instrument

Kateel Whitehead
Notary Public



—————
EXHIBIT "A"
—————

(Description of Overstock Property)

Property located in Salt Lake County, Utah more particularly described as follows:

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

Tax ID # 21-26-276-003

EXHIBIT "B"

(Description of Arbor Gardner Property)

Property located in Salt Lake County, Utah more particularly described as follows:

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 567.76 feet along the arc of a 1,536.00 foot radius curve to the right (center bears North 00°17'30" East and the chord bears North 79°07'09" West 564.53 feet with a central angle of 21°10'43");
- thence North 68°31'47" West 311.79 feet to the Easterly Right-of-Way Line of Bingham Junction Boulevard;
- thence Northeasterly 274.52 feet along the arc of a 1,327.00 foot radius curve to the right (center bears South 68°40'06" East and the chord bears North 27°15'29" East 274.03 feet with a central angle of 11°51'11") along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;
- thence North 33°11'04" East 524.28 feet along the Easterly Right-of-Way Line of said Bingham Junction Boulevard;
- thence North 76°55'32" East 37.21 feet along the Easterly Right-of-Way Line of said Bingham Junction Boulevard to the Southerly Right-of-Way Line of 7200 South Street;
- thence Southeasterly 465.31 feet along the arc of a 1,335.74 foot radius curve to the left (center bears North 29°38'34" East and the chord bears South 70°20'12" East 462.96 feet with a central angle of 19°57'32") along the Southerly Right-of-Way Line of said 7200 South Street to the Westerly Right-of-Way Line of Grandeur View Way;
- thence South 35°49'15" East 16.64 feet along the Westerly Right-of-Way Line of said Grandeur View Way;
- thence South 07°48'12" West 45.68 feet along the Westerly Right-of-Way Line of said Grandeur View Way;
- thence Southeasterly 170.75 feet along the arc of a 333.00 foot radius curve to the left (center bears South 82°11'48" East and the chord bears South 06°53'09" East 168.88 feet with a central angle of 29°22'42") along the Westerly Right-of-Way Line of said Grandeur View Way;
- thence South 21°34'30" East 79.54 feet along the Westerly Right-of-Way Line of said Grandeur View Way;
- thence Southeasterly 101.90 feet along the arc of a 267.00 foot radius curve to the right (center bears South 68°25'30" West and the chord bears South 10°38'30" East 101.28 feet with a central angle of 21°52'00") along the Westerly Right-of-Way Line of said Grandeur View Way;
- thence South 00°17'30" West 302.35 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 36.00 feet along the Westerly Right-of-Way Line of said Grandeur View Way to the point of beginning.

Contains 598,678 Square Feet or 13.744 Acres

EXHIBIT "C"

(Description of Roadway)

Property located in Salt Lake County, Utah more particularly described as follows:

Beginning at a point being South 00°17'30" West 1,992.66 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 South 00°17'30" West 30.00 feet;
thence South 89°42'30" East 10.00 feet;
thence South 00°17'30" West 30.00 feet;
thence North 89°42'30" West 102.05 feet;
thence Northwesterly 578.85 feet along the arc of a 1,566.00 foot radius curve to the right (center bears North 00°17'30" East and the chord bears North 79°07'09" West 575.56 feet with a central angle of 21°10'43");
thence North 68°31'47" West 285.49 feet;
thence Southwesterly 40.39 feet along the arc of a 25.00 foot radius curve to the left (center bears South 21°28'13" West and the chord bears South 65°11'20" West 36.14 feet with a central angle of 92°33'45");
thence Northeasterly 56.14 feet along the arc of a 1,327.00 foot radius curve to the right (center bears South 71°05'32" East and the chord bears North 20°07'11" East 56.13 feet with a central angle of 02°25'26");
thence Northeasterly 56.01 feet along the arc of a 1,327.00 foot radius curve to the right (center bears South 68°40'06" East and the chord bears North 22°32'27" East 56.00 feet with a central angle of 02°25'06");
thence Southeasterly 40.26 feet along the arc of a 25.00 foot radius curve to the left (center bears South 66°15'01" East and the chord bears South 22°23'24" East 36.05 feet with a central angle of 92°16'47");
thence South 68°31'47" East 285.76 feet;
thence Southeasterly 556.67 feet along the arc of a 1,506.00 foot radius curve to the left (center bears North 21°28'13" East and the chord bears South 79°07'08" East 553.51 feet with a central angle of 21°10'43");
thence South 89°42'30" East 92.05 feet to the point of beginning.

Contains 58,881 Square Feet or 1.352 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: Mike Dulgarian
Name: Mike Dulgarian
Title: 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

