MIDVALE CITY, UTAH
RESOLUTION NO. 2016-R-32

A RESOLUTION APPROVING OVERSTOCK PROJECT EASEMENTS

WHEREAS, pursuant to Section 10-9a-102 (2) of the Utah State Code, the City is authorized as follows: "To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, and height and location of vegetation, trees, and landscaping, unless expressly prohibited by law"; and

WHEREAS, the Overstock Project includes easements and agreements to ensure the appropriate use of the perpetual public open space areas with the Overstock property; and

WHEREAS, there have been some changes in the immediate area that require some of these public open space areas to be readjusted and operated in a slightly different manner than originally contemplated, and

WHEREAS, the City and Overstock have reached an agreement on how to best address these changes for the safety of the public and Overstock employees; and

WHEREAS, this agreement includes the execution of two easement documents known as "Public Easement Agreement" and Amendment to Public Easement Agreement" and included as Exhibit A and Exhibit B to this Resolution; and

WHEREAS, the City Council has thoroughly reviewed said documents and agrees their execution is in the best interest of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. The Midvale City Council on this date does hereby authorize the approval of the "Public Easement Agreement" and Amendment to Public Easement Agreement" documents as included in Exhibit A and Exhibit B.

Section 2. These documents shall become effective upon their execution of required signatures.
PASSED AND APPROVED this 23rd day of September, 2016.

JoAnn B. Seghini
Mayor

ATTEST:

Rori Andreasen, MMC
City Recorder

Voting by City Council

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AMENDMENT TO EASEMENT AGREEMENT

THIS AMENDMENT TO EASEMENT AGREEMENT (this "Amendment") is made this 31st day of June, 2016, by O.com Land, LLC, a Utah limited liability company ("Owner"), and Midvale City Corporation, a Utah municipal corporation ("Midvale City" or "City"). Owner and City have previously entered into that certain Easement Agreement dated as of February 19, 2015 and recorded in the Salt Lake County Records, Book 10304 and Page 3792-3803 as item 12009654 ("Easement Agreement"). The Easement Agreement together with all modifications of the Easement Agreement set forth in this Amendment are together referred to herein as the "Agreement." All capitalized terms set forth in this Agreement and not otherwise defined shall have the meaning ascribed to them in the Easement Agreement.

A. Owner desires the ability to restrict access across the Easement during certain hours of the day and during any time that Owner believes such restriction is necessary for the safety of the public who may travel across the Easement or employees working at Owner’s facility.

B. City desires to maintain the Easement open as much as reasonably possible but agrees that safety is a paramount concern for both the public and Owner.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, for themselves and their successors and assigns, hereby covenant as follows:

1. AMENDMENT OF EASEMENT

Section 1.3 of the Easement Agreement is hereby deleted in its entirety and replaced with the following language:

1.3 No Interference. Owner may construct the fencing set forth in Exhibit A to this Agreement and may prohibit access to portions of the Easement Areas from dusk to dawn and for safety reasons, such as, but not limited to: weather, snow removal, and private security issues, for reasonable periods of time. Owner shall use its best efforts to minimize the time that the Easement Areas are closed and shall attempt to keep them open as much as possible. Owner may also delay construction of the section of walkway noted on Exhibit A until such time as agreed upon by City and Owner. Upon determination by the City that this section of walkway should be constructed, Owner shall be responsible for
completing the construction in accordance with the approved site plan and shall construct a gate in the fence to access the sidewalk along 700 West. Access to this section of the Easement Area may be prohibited as noted above. Unless otherwise approved by City, Owner shall not construct any other wall, impediment, or structure on any portion of the Easement Areas, or engage in any other act, which would unreasonably obstruct the right granted herein to the general public for access over, across and through the Easement Areas.

2. GENERAL PROVISIONS

2.3 **Headings.** The headings used herein are for convenience only and are not intended to be a part of this Agreement or in any way to define, limit, or describe the scope and intent of the sections to which they refer.

2.4 **Effect of Invalidation.** If any provision (by reference or otherwise) of this Agreement is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

2.5 **Further Amendments / Conflicts.** This Agreement may not be modified or rescinded, in whole or in part, except by a writing executed by Owner and City. In the event of any conflict between the Easement Agreement and this Amendment, the terms of this Amendment shall control.

2.6 **Binding Effect.** It is intended and agreed that the covenants set forth herein shall run with the land and that they shall be binding on the Owner, as provided herein, to the fullest extent permitted by law and equity. This Agreement and the covenants, conditions and the rights of City set forth in this Agreement shall run in favor of City regardless of whether City owns any real property adjoining or near the Property.

2.7 **Governing Law.** This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Utah.

[The remainder of this page was purposely left blank, signature pages to follow.]
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

OWNER:

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

By: Carter Lee
Name: Manager

CITY:

MIDVALE CITY CORPORATION

By: JoAnn Seghini, Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

APPROVED AS TO FORM:

Lisa A. Garner
City Attorney
STATE OF UTAH

COUNTY OF SALT LAKE

On the 3rd day of June, 2016, personally appeared before me Carter Lee, who being by me duly sworn did say he/she is the Manager of O.com Land, LLC, a Utah limited liability company, and that he/she had signed the within and foregoing instrument on behalf of such limited liability company.

Notary Public
Residing at: 9656 Bluffside Dr. Sandy, UT 84092

My Commission Expires:
6-22-2019

STATE OF UTAH

COUNTY OF SALT LAKE

On the 215th day of November, 2016, personally appeared before me JoAnn Seghini, who being by me duly sworn did say she is the Mayor of Midvale City Corporation, and that the within and foregoing instrument was signed on behalf of such Corporation.

Notary Public
Residing at: Midvale, UT

My Commission Expires:
11-1-2016
Exhibit A
(To Amendment of Easement Agreement)