



7505 S. Holden St.
Midvale, UT 84047
801-567-7200
www.midvalecity.org

THE REDEVELOPMENT AGENCY OF MIDVALE CITY
MEETING AGENDA
April 07, 2015

PUBLIC NOTICE IS HEREBY GIVEN that the **Redevelopment Agency of Midvale City** will hold a regular meeting on the **7th Day of April, 2015** at Midvale City Hall, 7505 South Holden Street, Midvale, Utah as follows:

7:00 p.m. – Or Immediately Following the City Council Meeting

REGULAR MEETING

I. GENERAL BUSINESS

A. Roll Call

II. CONSENT AGENDA

A. Approve Minutes of March 10, 2015 [*Rori Andreason, H.R. Director/City Recorder*]

III. ACTION ITEMS

A. Approve Resolution No. 2015-04RDA entering into a Reimbursement Agreement with Overstock.com [*Danny Walz, Redevelopment Agency Director*]

IV. ADJOURN

In accordance with the Americans with Disabilities Act, Midvale City will make reasonable accommodations for participation in the meeting. Request assistance by contacting the City Recorder at 801-567-7207, providing at least three working days advance notice of the meeting. TTY 711

A copy of the foregoing agenda was provided to the news media by email and/or fax; the agenda was posted in the City Hall Lobby, the 2nd Floor City Hall Lobby, on the City's website at www.midvalecity.org and the State Public Notice Website at <http://pnn.utah.gov>. Board Members may participate in the meeting via electronic communications. Board Members' participation via electronic communication will be broadcast and amplified so other Board Members and all other persons present in the Council Chambers will be able to hear or see the communication.

PLEASE MAKE SURE ALL CELL PHONES ARE TURNED OFF DURING THE MEETING

Date Posted: April 3, 2015

RORI L. ANDREASON, MMC
H.R. DIRECTOR/CITY RECORDER



Midvale City
REDEVELOPMENT AGENCY WORKSHOP MEETING
Minutes

Tuesday, March 10, 2015
Council Chambers
7505 South Holden Street
Midvale, Utah 84047

CHAIR: JoAnn Seghini

BOARD MEMBERS: Board Member Stephen Brown
Board Member Paul Glover
Board Member Paul Hunt
Board Member Quinn Sperry
Board Member Wayne Sharp

STAFF: Kane Loader, City Manager; Phillip Hill, Asst. City Manager/CED Director; Laurie Harvey, Assistant City Manager/Admin. Services Director; Rori Andreason, City Recorder/H.R. Director; Chad Woolley, City Attorney; Danny Walz, Redevelopment Agency Director; and Jarin Blackham, IT Manager.

Chair Seghini called the meeting to order at 8:49 p.m.

I. ROLL CALL

Board Members Paul Glover, Paul Hunt, Steve Brown, Robert Hale, and Wayne Sharp were present at roll call.

II. DISCUSSION ITEM:

A. DISCUSS TERMS FOR A REIMBURSEMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND CHG

Danny Walz said he was not quite ready to discuss this item at this time. He briefly discussed issues with the project. He will bring this item back at a future date.

III. ADJOURN

MOTION: Board Member Wayne Sharp **MOVED** to adjourn. Board Member Paul Hunt **SECONDED** the motion. Chair Seghini called for discussion on the motion. There being none, she called for a call vote. The motion passed unanimously.

Chair Seghini declared the meeting adjourned at approximately 8:52 p.m.

Rori L. Andreason, MMC
City Recorder

Approved this 10th day of March, 2015



Redevelopment Agency of MIDVALE CITY
SUMMARY REPORT

MEETING DATE: APRIL 7, 2015

SUBJECT: Discussion and Action regarding Resolution No. 2015-04RDA authorizing the execution of a Tax Increment Reimbursement Agreement between the Redevelopment Agency of Midvale City and O.com Land, LLC.

SUBMITTED BY: Danny Walz, Redevelopment Director

SUMMARY: On February 19, 2013, the Redevelopment Agency of Midvale City Board of Directors approved the creation of a program for the reimbursement of a percentage of the incremental costs associated with projects within the Bingham Junction Project Area. The overall goal of the program is to facilitate and attract development to the area that has a positive impact for Midvale City. The program was created to provide reimbursement for projects that increase tax value, provide high paying jobs, attract prominent tenants, promote green building standards or encourage good planning design.

The attached reimbursement agreement is separate from the master reimbursement agreement that was executed with Littleton and subsequently assigned to Mercer Bingham Junction LLC and Arbor Gardner Bingham Junction Holdings LC. It is a limited obligation payable from the tax increment of the specific project and subordinate to any prior tax increment obligations of the Agency including the debt service of current and future bonds as well as the Agency's administration costs.

The agreement details the requirements the owner must satisfy in order to receive the portion of tax increment. The attached agreement represents a commitment for reimbursement from tax increment up to an amount of \$9,000,000. The Agency will reimburse the developer through annual payments for a period of seventeen (17) years or until the costs have been paid, whichever comes first. Over the course of the agreement, the owner must continue to meet the requirements for reimbursement. If not, the Agency has the option to reduce the reimbursement payment.

The reimbursement agreement has been prepared by Tom Berggren of Jones Waldo and has been reviewed by legal counsel for O.com Land, LLC.

FISCAL IMPACT: The reimbursement agreement will be subordinate to the Agency's existing obligations. Future payments will be allocated within future budgets as funds are

available. The Owner is responsible for paying the initial costs of the project and the reimbursement is limited by the amount of tax increment generated from the property.

RECOMMENDED MOTION: I move that we adopt Resolution No. 2015-04RDA authorizing the execution of a Tax Increment Reimbursement Agreement between the Redevelopment Agency of Midvale City and O.com Land, LLC.

ATTACHMENTS: Resolution No. 2015-04RDA, Tax Increment Reimbursement Agreement

RESOLUTION No. 2015-04RDA

A RESOLUTION AUTHORIZING THE EXECUTION OF A TAX INCREMENT REIMBURSEMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF MIDVALE CITY AND O.COM LAND, LLC

WHEREAS, the Redevelopment Agency of Midvale City was created to transact the business and exercise the powers provided for in the Utah Redevelopment Agencies Act; and

WHEREAS, the Board of Directors of the Redevelopment Agency of Midvale City adopted the Bingham Junction Redevelopment Plan on August 10, 2004; and

WHEREAS, the Board of Directors of the Redevelopment Agency of Midvale City adopted the Tax Increment Reimbursement Program on February 19, 2013; and

WHEREAS, the Board of Directors of the Redevelopment Agency of Midvale City desire to redevelop the Bingham Junction site and attract development that has a positive impact for Midvale City.

NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, STATE OF UTAH, that the Board of Directors does hereby authorize the Chief Administrative Officer and Executive Director to execute the Tax Increment Reimbursement Agreement in the form attached subject to such other terms and conditions as recommended by Agency's legal counsel.

PASSED AND ADOPTED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF MIDVALE CITY, STATE OF UTAH, this _____ day of _____, 2015.

JoAnn B. Seghini
Chief Administrative Officer

Kane Loader
Executive Director

ATTEST:

Rori L. Andreason, MMC
Secretary

Voting by the Board:

Steve Brown
Paul Glover
Quinn Sperry
Paul Hunt
Wayne Sharp

“Aye”

“Nay”

**TAX INCREMENT REIMBURSEMENT AGREEMENT
(Bingham Junction Project Area)**

Overstock Project

THIS TAX INCREMENT REIMBURSEMENT AGREEMENT is made and entered into this ____ day of March, 2015, between the **Redevelopment Agency of Midvale City**, a public agency (“Agency”), and **O.com Land, LLC**, a Utah limited liability company (“Developer”), sometimes collectively referred to as the “Parties,” and individually, as a “Party.”

RECITALS

A. Agency exercises its functions and powers and is organized and existing under the provisions of the Community Development and Renewal Agencies Act, Section 17C-4-101, et seq., Utah Code Ann. 1953, as amended from time to time (the “Act”).

B. Agency approved, and Midvale City through its City Council adopted, the Bingham Junction Project Area Redevelopment Plan on August 10, 2004 (the “Project Area Plan”), which covers that certain real property located in Midvale City, Utah, as depicted in the Project Area Plan (the “Project Area”).

C. Under the Act and pursuant to the Project Area Plan and the Project Area Budget adopted pursuant thereto, Agency is entitled to receive certain tax increment from the Project Area (as defined below, the “Tax Increment”).

D. Developer intends to construct certain buildings and related improvements (as defined below, the “Developer Improvements”) in the Project Area on the real property described on Exhibit A attached hereto (the “Property”).

E. Agency is willing to reimburse Developer for a portion of the construction costs of the Developer Improvements (as defined below, the “Developer Costs”) from a portion of the Tax Increment from the Property (as defined below, the “Property Tax Increment”) on the terms and conditions set forth herein.

F. Agency and Developer agree that the Agency’s obligation to reimburse Developer for a portion of the Developer Costs shall be a special limited obligation payable solely from the Property Tax Increment as Agency receives such Tax Increment from the payment of taxes levied on the Developer Improvements, and that such limited obligation shall be secondary and subordinate to any other prior Tax Increment obligations of the Agency, as more fully provided hereafter.

G. Developer acknowledges that the Developer Improvements need to be completed pursuant to and in accordance with the provisions of the Development Agreement (as defined below) with Midvale City.

NOW, THEREFORE, in consideration of the terms and conditions hereby agreed to, and other good and valuable consideration, the Parties hereby agree as follows:

1. Recitals. The above Recitals are incorporated herein as material factual context and expressions of intent for this Agreement.

2. Definitions. As used herein, terms shall have the meaning as set forth in the Act, unless otherwise defined in this Section or in the Recitals. The following terms shall have the meanings respectively indicated:

2.1 “Act” shall have the meaning set forth in Recital A.

2.2 “Agency” means the Redevelopment Agency of Midvale City, a public agency exercising its functions and powers and organized and existing under the Act, and includes any successor designated by Agency or succeeding to Agency.

2.3 “Annual Payments” shall have the meaning set forth in Section 4.1.

2.4 “Application” means the Application for Reimbursement of Tax Increment that was submitted by Developer to Agency.

2.5 “City” means Midvale City, Utah, a municipal corporation under the laws of the State of Utah.

2.6 “Developer” means O.com Land, LLC, a Utah limited liability company.

2.7 “Developer Costs” means the actual costs incurred by Developer in connection with the construction of the Developer Improvements that have been approved by Agency in accordance with Section 4.2.

2.8 “Development Agreement” means that certain Development Agreement for the Overstock Project dated March ____, 2015 between Developer and the City.

2.9 “Developer Improvements” means the buildings and improvements to be constructed on the Property substantially in accordance with the Plans and Specifications.

2.10 “Developer Requirements” means the requirements set forth in Exhibit B.

2.11 “Developer Tax Increment Share” means fifty percent (50%) of the Property Tax Increment.

2.12 “Events of Force Majeure” means any event or period of delay preventing the performance of Developer’s obligations, which delay is caused by strikes, lock-outs,

fire or other casualty, inclement weather abnormal for the period of time and not reasonably anticipatable, the elements or acts of God, war, riot, insurrections or shortages of or unusual delays in the delivery of construction materials (which have been ordered in a timely manner) or other causes, other than financial and managerial, beyond the reasonable control of Developer, or its subcontractors of any tier, agents or employees.

2.13 “Initial Conditions” shall have the meaning set forth in Section 4.2.

2.14 “Overstock” means Overstock.com, Inc., a Delaware corporation.

2.15 “Payment Conditions” shall have the meaning set forth in Section 4.3.

2.16 “Plans and Specifications” shall have the meaning set forth in Section 3.2.

2.17 “Project Area” shall have the meaning set forth in Recital B.

2.18 “Property” shall have the meaning set forth in Recital D.

2.19 “Property Base Taxable Value” means, with respect to the Property, the amount agreed upon by the Parties for the purposes of this Agreement, which is \$10,861,381 (and not what “base taxable value” means under the Act).

2.20 “Property Tax Increment” means the portion of the Tax Increment that is generated from the Developer Improvements that is paid to the Agency and available for reimbursement pursuant to the terms of this Agreement after deduction of all previously committed reimbursement obligations from the Tax Increment, except that:

(a) the term “property tax” for the purpose of calculating Property Tax Increment under this Agreement shall mean the ad valorem property tax on real property only, and not on personal property, as would be the result from using the definition in the Act of such term, and

(b) the term “base taxable value” for the purposes of calculating Property Tax Increment under this Agreement shall mean the dollar amount specified in the definition of “Property Base Taxable Value” above and not the amount that would result from using the definition in the Act of such term.

Under the Project Area Plan and the Project Area Budget, the Agency is entitled to collect 80% of the Tax Increment.

2.21 “Reimbursement Cap” means Nine Million Dollars (\$9,000,000).

2.22 “Reimbursement Term” means the tax years 2017 through 2033.

2.23 “Substantial Completion” means that (a) the Developer Improvements have received a certificate of occupancy from the City and (b) the Developer Improvements have been completed in accordance with the requirements in the Development Agreement.

2.24 “Substantial Completion Outside Date” means May 31, 2017.

2.25 “Tax Increment” shall have the meaning set forth in the Act.

3. Completion of Developer Improvements.

3.1 Completion of Developer Improvements. Developer shall construct or cause to be constructed the Developer Improvements in accordance with the Plans and Specifications and as contemplated by this Agreement. Developer shall cause the Substantial Completion of the Developer Improvements no later than the Substantial Completion Outside Date.

3.2 Developer’s Responsibilities. Prior to construction, Developer shall submit to Agency for its review and approval a complete set of construction drawings and a complete cost breakdown of all items projected to be used for the construction of the Developer Improvements. Agency shall not unreasonably withhold its approval so long as such submittals are consistent with (a) the description of the Developer Improvements in the approved Application and (b) the Developer Requirements. Once approved by Agency in writing, all of such submittals shall be referred to herein as the “Plans and Specifications”.

3.3 No Agency Responsibility. Developer shall be solely responsible for errors and omissions in any construction documents pertaining to the Developer Improvements prepared by Developer or Developer’s consultants or agents, change orders thereto, and shop drawings and other submittals interpreting them and for their accuracy, suitability, technical adequacy and compliance with applicable laws, codes, ordinances and regulations. Developer shall be solely responsible for compliance with all building codes and other laws and requirements of governmental authorities having jurisdiction.

3.4 City and Other Governmental Agency Permits and Agreements. Before commencement of any construction, development or work on the Property, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City or any other governmental agency having jurisdiction over such construction, development or work. Developer acknowledges that Agency is a separate entity from the City, and Agency’s approvals of any documents does not constitute approval by the City.

3.5 Local, State and Federal Laws. Developer shall carry out the construction of the Developer Improvements in conformity with all applicable federal, state and local laws, ordinances, governmental orders and permits.

3.6 Cost of Construction of Development Improvements. The cost of developing and constructing the Developer Improvements and all other costs related thereto shall be borne solely by Developer.

3.7 Completion Certificate. After Substantial Completion and after the satisfaction of the Initial Conditions, Agency shall furnish Developer a certificate of completion (“Certificate of Completion”) upon written request by Developer. A Certificate of Completion shall be in recordable form and may, at the option of Developer, be recorded in the Recorder’s Office of Salt Lake County. A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof.

3.8 Indemnity. Developer agrees to hold and indemnify Agency and the City, together with their respective officers, employees and agents harmless from, all liability, loss, damage, costs or expenses (including attorney’s fees and court costs) arising from or as a result of the death of a person or any accident, injury, loss or damage caused to any person or the property of any person which shall occur during the term of this Agreement on the portions of the Property to the extent directly or indirectly caused by the acts, errors or omissions of Developer or its agents, employees, servants or contractors. Developer shall defend Agency and the City, as the case may be, in any action or claim for which Agency and the City, as the case may be, is indemnified hereunder, with counsel selected by Developer subject to the approval by Agency and/or the City; provided, in the event Developer's insurance company assumes the liability and defense of any action or claim for which Agency and/or the City is indemnified hereunder, Agency and/or the City will approve such insurance company's counsel so long as the insurance company and its counsel each represent all of Agency's and/or the City’s interests and such counsel does not have a conflict of interest in any such action or claim.

3.9 Rights of Access. For the purpose of assuring compliance with this Agreement, representatives of Agency shall have the right of access to the Property without charges or fees during construction of the Developer Improvements for the purpose of monitoring compliance by Developer with its obligations under this Agreement, including, but not limited to, the inspection of the work being performed: provided, such representatives shall not interfere with the activities of Developer or its contractors, employees or agents in the Project Area. Representatives of the Agency shall provide reasonable advance notice, but no less than two (2) business days’ notice to Developer of any inspection or similar entry on the Property and shall permit a representative of Developer to accompany such representatives during any such inspection. Developer shall not be liable for any loss, damage, cost or expense (including attorneys’ fees and court costs) to such representatives or their property arising in connection with their entry on and inspection of the Project Area unless such loss, damage, cost or expense arises from Developer’s grossly negligent actions or willful misconduct.

4. Reimbursement of Developer’s Tax Increment Share.

4.1 Reimbursement. In order to reimburse Developer for a portion of the Developer Costs, Agency agrees to make a payment to Developer each year during the Reimbursement Term (an “Annual Payment”) in an amount equal to Developer’s Tax

Increment Share until the earlier to occur of (a) Developer has received an amount equal to the Reimbursement Cap or (b) the expiration of the Reimbursement Term. After Developer has received payments from Agency in the amount of the Reimbursement Cap, or after the expiration of the Reimbursement Term, if earlier, Agency shall have no further obligations to Developer and this Agreement shall terminate as of the date of the final payment or the last day of the Reimbursement Term, as the case may be.

4.2 Condition to First Payment. Agency shall have no obligation to make the first Annual Payment unless each of the following conditions has been satisfied (collectively referred to as the “Initial Conditions”):

(a) Substantial Completion. Developer shall have caused Substantial Completion no later than the Substantial Completion Outside Date.

(b) Compliance with Developer Requirements. Developer shall have provided written evidence that the Developer Requirements have been satisfied.

(c) Approval of Developer Costs. Developer shall submit to Agency a formal reimbursement request. The reimbursement submittal shall identify the actual costs for work completed, copies of all associated invoices, tests, surveys, agreements or other method of measurement depending on the particular item, lien waivers, proof of payment by the Developer and any other reasonable documentation deemed necessary by the Agency. Once the information submitted with respect to such costs is approved by Agency, such costs will be deemed “Developer Costs”.

4.3 Additional Conditions to Each Payment. Agency shall have no obligation to make an Annual Payment unless each of the following conditions has been satisfied (collectively referred to as the “Payment Conditions”):

(a) Developer shall have delivered to Agency no later than on December 31 of each tax year evidence that the property taxes for the Property were paid to Salt Lake County no later than on November 30th of such tax year (i.e., for an Annual Payment due March 31, 2018, Developer must provide to Agency such evidence for the 2017 tax year by December 31, 2017).

(b) Developer shall have provided written evidence that Overstock occupies 100% of the Developer Improvements as its corporate headquarters. If the occupant of the Developer Improvements is not Overstock using the Developer Improvements for this purpose, this Payment Condition shall only be satisfied if Developer can reasonably demonstrate to Agency that the occupant of the Developer Improvements provides commensurate benefits to the City (both in terms of the taxes (of all kinds) generated and the economic impact in general and in terms of creating a business environment that will attract and maintain other users) as was the case with Overstock.

(c) Developer shall not be in default under this Agreement beyond any applicable cure periods.

4.4 Approval of Submittals. Agency shall not unreasonably withhold its approval of any submittal so long as such submittal is consistent with (a) the description of the Developer Improvements in the approved Application and (b) the Developer Requirements.

4.5 Tax Increment Reimbursement and Procedures. Provided that the all of the Initial Conditions and all of the Payment Conditions have been fully and timely satisfied by Developer, Agency shall make each Annual Payment by the later of (a) March 31 following the applicable tax year or (b) thirty (30) days following Agency's receipt of Tax Increment from Salt Lake County. The first Annual Payment due hereunder is currently scheduled for March 31, 2018, but such schedule is based only on the projected dates for compliance with this Agreement, including the projected time for construction, and the actual schedule (in addition to the amount) may differ. If the Initial Conditions are satisfied before the Substantial Completion Outside Date but after December 31, 2016, then such first Annual Payment shall be in 2019.

4.6 Reduction in Annual Payment. In the event that some but not all of the Developer Requirements are satisfied at the time an Annual Payment is due, Agency shall have no obligation to make such Annual Payment (either full or in a reduced amount). In such event, Agency may decide, in its sole discretion, to make a reduced Annual Payment, the amount of which shall be in Agency's its sole discretion.

4.7 Subordination. Payment of Developer's Tax Increment Share shall be subordinate to Agency's payment of the following: (i) debt service on bonds or other indebtedness issued in relation to the Project Area and secured by a pledge of Tax Increment; (ii) pre-existing reimbursement obligations disclosed on Exhibit C attached hereto; (iii) Agency's actual administration costs; and (iv) payment to the City for any outstanding developer fees or developer costs associated with the Developer Improvements.

4.8 Maintenance of Records. Developer shall keep complete and comprehensive records and books of account as to all of its activities, including the performance of its obligations, under this Agreement. Developer shall maintain all records pursuant to Generally Accepted Accounting Principles (GAAP) and pursuant to pronouncements by the Financial Accounting Standards Board (FASB). Upon not less than ten (10) business days prior written notice to Developer, Agency shall have reasonable access during customary business hours to all records, functions, property and to the extent reasonably available personnel of Developer, for the purpose of reviewing and auditing, at Agency expense, all records of Developer related to the Developer Improvements as necessary to determine Developer's actual costs related to the Developer Improvements (hereinafter referred to as "Records"). The Records shall be open to inspection and subject to audit and/or reproduction by Agency or authorized representatives to the extent reasonably necessary to adequately permit evaluation and

verification of cost of the work. Developer shall not be obligated to develop or create additional reports or Records that are not already developed or created in the normal and usual course of Developer's business. Agency acknowledges and agrees that certain Records may be subject to Developer's general document retention policy and may be purged or deleted from time to time in accordance with such policy. The parties agree that the review of the Initial Conditions shall be completed in connection with the first Annual Payment.

4.9 Limited Obligation. Agency and Developer agree that Agency's obligation to pay the Developer's Tax Increment Share hereunder is a special limited obligation payable solely from the Property Tax Increment.

4.10 Agency's Encumbrance of Tax Increment or Tax Increment. Developer and Agency agree that Agency may from time to time and at any time issue bonds and other indebtedness that may be secured by the Tax Increment, and which are payable senior to and ahead of the obligations of Agency under this Agreement; provided that (a) the issuance of such bonds or indebtedness shall not release Agency from its obligations under this Agreement, and (b) the estimated aggregate Tax Increment for each year to be received by the Agency is expected to equal or exceed 120% of the debt service or payments on such bonds or indebtedness. The amounts due under this Agreement shall be amortized over the remaining term of such bonds or indebtedness when calculating the debt service, but in no event shall the calculation assume that Developer shall receive a greater proportion of Tax Increment than it is entitled to receive under this Agreement. If necessary, Agency may prepay or defease, at Developer's option, Developer's Tax Increment Share to meet the 120% test.

4.11 Prepayment. Agency may elect at any time to prepay all or any portion of the Reimbursement Cap without the consent of Developer. At Agency's election, to be exercised in writing on or before the date of prepayment, any prepayment shall proportionately reduce the percentage of Tax Increment to be paid pursuant to this Section 4, i.e., a prepayment of ten percent (10%) of the amount owing with respect to the Reimbursement Cap would reduce the proportion of Tax Increment to be paid annually from [fifty percent (50%)] to [forty-five percent (45%)], resulting in a ten percent (10%) reduction in annual payments.

4.12 Limitations on Tax Increment. Developer acknowledges that increases in taxes due to a factored increase in the assessed value, a change in the tax rates, or to items described in the Act, cannot be paid by Agency because Agency does not receive these increases as a part of Tax Increment. Further, Tax Increment may be adjusted, diminished or discontinued in the future by actions of governmental agencies and bodies, including, without limitation, the Salt Lake County Assessor, the Salt Lake County Auditor (which might include, among other things, a reassessment of the Developer Improvements after Agency files its request for Tax Increment), taxing entities, the Utah Tax Commission, and the Utah legislature. Consequently, Agency makes no representation (and Developer assumes all risk) with regard to the amount of Tax Increment (if any) that will be available

to make the Annual Payments. For purposes of clarification, any limitation on the Tax Increment in this Section does not apply to or include increases in taxes due to re-assessments of the Property to fair market value as may occur from time to time.

4.13 Tax Appeals. During the Reimbursement Term, Developer shall not protest or appeal any property taxes unless Developer notifies Agency in advance. Developer acknowledges and agrees that, in the event that Developer pays any property taxes under protest or otherwise appeals or disputes its liability for any property taxes, Agency shall have the option of not paying a portion of the Annual Payment otherwise due equal to the amount being so protested or appealed. Developer agrees that if Salt Lake County demands a refund from Agency of any property taxes paid to Agency that Agency had previously used for an Annual Payment, Developer shall immediately upon notice from Agency refund to Agency an amount equal to the amount being claimed by Salt Lake County, and if Developer has not made such refund by the time that the next Annual Payment is due, Agency may set off against such Annual Payment the amount owed by Developer to Agency.

5. Representations and Warranties. Developer represents and warrants to Agency as follows:

5.1 Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Utah.

5.2 Developer has the full right, power and authority to enter into and perform this Agreement. The execution, delivery, and performance by Developer of this Agreement does not and will not conflict with, or result in the breach or termination of any provision of, or constitute a default under, any indenture, mortgage, deed of trust, lease contract, or other instrument or agreement or any order, judgment, award, or decree to which Developer is subject or by which the assets of Developer may be bound.

5.3 Developer has not received notice of any claims, actions, suits, or other proceedings pending or, to the best of Developer's knowledge, threatened by any governmental department or agency, or any other entity or person, pertaining to the Property.

5.4 All information provided in the Application, and all other information provided to Agency to date, was true and correct.

5.5 All information provided to Agency in all future submittals shall be true and correct.

5.6 Neither it nor any of its members, managers, employees or officers has: (1) provided an illegal gift or payoff to a City Employee or Elected Officer (as such terms are defined in the Utah Municipal Officers' and Employees' Ethics Act (the "Ethics Act")) or an Agency employee or officer or a former City Employee or Elected Officer or Agency officer or employee, or his or her relative or business entity; (2) retained any person to

solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the Ethics Act; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City Employee or Elected Officer or an Agency employee or officer or a former City Employee or Elected Officer to breach any of the ethical standards set forth in the Ethics Act.

6. Default. The Parties agree as follows:

6.1 Default. Neither Party shall be in default under this Agreement unless such Party fails to perform an obligation required under this Agreement within thirty (30) days after written notice is given to the defaulting Party by the other Party, reasonably setting forth the respects in which the defaulting Party has failed to perform such obligation. If the nature of the defaulting Party's obligation is such that more than thirty (30) days are reasonably required for performance or cure, the defaulting Party shall not be in default if such Party commences performance within such thirty (30) day period and after such commencement diligently prosecutes the same to completion.

6.2 Remedies. In the event of an uncured default by Agency within the applicable time for performance and cure period, Developer shall have all remedies available at law or in equity. In the event of an uncured default by Developer of obligations and covenants pertaining to the Developer Improvements within the applicable time for performance and cure period (including, without limitation, any period during which a Mortgagee is entitled to notice and/or may cure), Agency may at its option, either (i) refuse to pay any Annual Payment until the default is fully cured, or (ii) reduce the amount of the Developer's Tax Increment Share by the amount incurred by Agency to cure such default and/or the loss sustained by Agency as a result of such default.

6.3 Attorneys' Fees. If either Party to this Agreement or their successors and assigns commences a legal or equitable proceeding, whether litigation, arbitration or otherwise, respecting any question between the Parties to this Agreement arising out of or relating to this Agreement or the breach thereof, the prevailing Party in such dispute resolution proceeding shall be entitled to the recovery of a reasonable attorneys' fee and all other reasonably incurred costs and expenses of the successful prosecution or defense of such proceeding.

7. Miscellaneous.

7.1 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement.

7.2 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

7.3 Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be deemed to be delivered, whether actually received or not, three (3) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified (or another commercially acceptable means requiring a return receipt), postage prepaid, addressed as follows:

If to Developer: O.com Land, LLC
6350 South 3000 East
Salt Lake City, UT 84121
Attn: General Counsel

If to Agency: Redevelopment Agency of Midvale City
Attention: Executive Director
655 West Center Street
Midvale, Utah 84047-7123

Such communications may also be given by facsimile transmission or electronic mail, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

7.4 Governing Law. This Agreement is intended to be performed in the State of Utah, and the laws of Utah shall govern the validity, construction, enforcement and interpretation of this Agreement.

7.5 Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by both Agency and Developer.

7.6 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by Agency and Developer, Agency and Developer agree to perform, execute and deliver or cause to be performed, executed, and delivered any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby. Such further acts shall include minor modifications which may otherwise interfere with or inhibit the ability of the Agency to issue bonds, and Developer further agrees not to unreasonably withhold approval of any such minor modifications necessary for the issuance of bonds.

7.7 No Relationship of Principal and Agent. Nothing contained in this Agreement, nor any acts of the Parties, shall be deemed or construed to create the relationship of principal and agent, or of limited or general partnership, or of joint venture or of any other similar association between Agency, its successors or assigns, and Developer, its successors or assigns.

7.8 No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party.

7.9 Exhibits. All references to “Exhibits” contained herein are references to exhibits attached hereto, all of which are deemed incorporated herein and made a part hereof for all purposes.

7.10 Transfer and Assignment. Until the satisfaction of all of the Initial Conditions, Developer shall not assign, transfer or convey, directly or indirectly, any rights or obligations under the terms of this Agreement. After the satisfaction of all of the Initial Conditions, Developer may assign this Agreement, subject to the written approval of Agency, such approval not to be unreasonably withheld so long as (a) such assignment is to only one assignee (i.e. there will only be one party as “Developer” hereunder at any given time), (b) such assignee assumes all of the obligations of Developer hereunder pursuant to an agreement in form and substance satisfactory to Agency, and (c) Agency is promptly given notice of such assignment.

7.11 Non-liability of Agency Officials and Employees. No member, official, or employee of Agency shall be personally liable to Developer, or any successor-in-interest, in the event of any default or breach by Agency, or for any amount which may become due to Developer or its successor, or on any obligation under the terms of this Agreement.

7.12 Governmental Immunity. Nothing in this Agreement shall be deemed to constitute or imply a waiver, modification or alteration of the caps or limitations on liability or privileges, immunities or other protection available to Agency under the Utah Governmental Immunity Act or such other statutes or laws affording governmental agencies caps or limitations on liability or privileges, immunities or other protections.

7.13 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never composed a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided, however, that such illegal, invalid or unenforceable provision does not relieve Developer from any obligation for Developer Costs for which Agency has an obligation to reimburse Developer under the provisions of this Agreement.

7.14 No Third-Party Rights. This Agreement does not create any rights or benefits to third parties unless otherwise expressly stated.

7.15 Integration. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

AGENCY:

REDEVELOPMENT AGENCY OF MIDVALE CITY

By _____
JoAnn Seghini
Chief Administrative Officer

By _____
Kane Loader
Executive Director

DEVELOPER:

O.COM LAND, LLC
a Utah limited liability company

By _____
Its Manager

Legal Description of Property

Developer Requirements

1. The Developer Improvements (as stated in the Application) consist of the following improvements specified in the Development Agreement:
 - 1,008 stall parking structure with glass enclosed stairwells, superior exterior finish and modulated facades.
2. The Developer Improvements have received a LEED certification from the United States Green Building Council.
3. The completed Developer Improvements shall have an assessed value of at least \$40 million.
4. The occupant of the Developer Improvements has 1,400 full time employees working therein and the average wages of such employees is at least 120% of the Salt Lake County average. For purposes of clarification, the calculation of average wages under this provision shall include company-paid health benefits, consistent with the practices of the Utah Governor's Office of Economic Development as of the Effective Date.

Agency's Pre-Existing Reimbursement Obligations (Section 4.7)