MIDVALE CITY, UTAH
RESOLUTION NO. 2016-R-09

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT BETWEEN MIDVALE CITY AND COMMUNITIES BUILDING COMMUNITIES (CBC) FOR THE FORMER MIDVALE MIDDLE SCHOOL SEMINARY BUILDING LOCATED AT 328 WEST WASATCH STREET, IN MIDVALE, UTAH.

WHEREAS, Midvale desires to improve the general well-being of Midvale residents; and

WHEREAS, CBC is a non-profit organization that promotes health, stable families, education, safety, and income; and

WHEREAS, Midvale is the owner of the former Midvale Middle School Seminary Building, located at 328 W. Wasatch Street, Midvale ("Property"); and

WHEREAS, Midvale received the Property from The Church of Jesus Christ of Latter-day Saints under the condition that the Property would only be used as an education center and a community medical and dental clinic ("Permitted Use Restrictions"); and

WHEREAS, CBC desires to use the Property to host programs in conformance with the Permitted Use Restrictions; and

WHEREAS, Midvale desires to lease the Property to CBC for the purpose of hosting CBC's programs in conformance with the Permitted Use Restrictions; and

WHEREAS, Midvale determines the value of the services provided by CBC for Midvale residents is adequate compensation for leasing the Property.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve the Lease Agreement and authorizes the Mayor to sign the same between Midvale City and the Communities Building Communities (CBC).

APPROVED AND ADOPTED this 15th day of March, 2016

JoAnn B. Seghini
Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

Voting by the City Council

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Former Midvale Middle School Seminary Building
Lease Agreement

This Agreement to lease the former Midvale Middle School Seminary Building is entered into on [March 15], 2016, by and between Midvale City ("Midvale"), a Utah Municipal Corporation, and Community Building Community ("CBC"), a Utah non-profit organization.

Background

Midvale desires to improve the general well-being of Midvale residents; and

CBC is a non-profit organization that promotes health, stable families, education, safety, and income; and

Midvale is the owner of the former Midvale Middle School Seminary Building, located at 328 W. Wasatch Street, Midvale ("Property"); and

Midvale received the Property from The Church of Jesus Christ of Latter-day Saints under the condition that the Property would only be used as an education center and a community medical and dental clinic ("Permitted Use Restrictions"); and

CBC desires to use the Property to host programs in conformance with the Permitted Use Restrictions; and

Midvale desires to lease the Property to CBC for the purpose of hosting CBC's programs in conformance with the Permitted Use Restrictions; and

Midvale determines the value of the services provided by CBC for Midvale residents is adequate compensation for leasing the Property.

Therefore, in consideration of the mutual promises contained in this Agreement, it is agreed:

Agreement

1. Property

Midvale leases the Property, known as the former Midvale Middle School Seminary Building, located at 328 W. Wasatch Street, Midvale, to CBC. The legal description is described within Exhibit 'A' of Appendix '1.'

2. Use of Property

A. Permitted Use Restrictions. CBC may only use the Property in conformance with the Permitted Use Restrictions. The Permitted Use Restrictions are defined in Paragraph 1, Exhibit 'B,' Appendix '1.'

B. Midvale Use. In the event that Midvale needs to use the Property, in Midvale's sole opinion, Midvale may use the Property at any time and in any circumstance.
C. **Prohibitions.**

i. **Contraceptives.** CBC may not use the Property to distribute contraceptives including, but not limited to, condoms and oral contraceptive pills.

ii. **Business Activities.** CBC may not use the Property in any business activities contrary to the Permitted Use Restrictions or contrary to its non-profit status.

iii. **Dangerous Substances.** CBC may not use the Property to store, manufacture, or sell any explosives, flammables, toxins, or other inherently dangerous substance, device, or chemical.

3. **Term**

   A. **Initial Term.** The initial term of the Agreement begins on January 1, 2016, and ends on December 31, 2026.

   B. **Renewal.** The lease will automatically renew each year for an additional 1 year term.

   C. **Maximum Number of Renewals.** The lease may be renewed a maximum of 9 additional terms.

4. **Termination.**

   The Agreement may be terminated by either party with 30 days written notice to the other party. Termination of the Agreement by a party under this provision is not considered a default and may not result in any legal liability for the terminating party.

5. **Payment**

   A. **Amount.** CBC pays Midvale $1 per year for use of the Property during the term of the Agreement.

   B. **Schedule.** CBC must make each payment to Midvale before the first day of each calendar year during the lease term. The rental amount for partial calendar months included in the lease term is prorated on a monthly basis.

   C. **Adequate Compensation.** Midvale has determined that the nominal payment amount and the value of the services by CBC to Midvale residents is adequate compensation for leasing the Property.

6. **Assignment**

   CBC may not sublease or assign any part of this Agreement without Midvale's written consent.

7. **Repairs**

   Midvale is responsible for making all necessary and routine repairs to the Property. Repairs include such responsibilities as routine repairs of floors, walls, ceilings, and other parts of the Property damaged or worn through normal occupancy.
8. Alterations and Improvements

A. Permission. CBC may make alterations and improvements to any part of the Property during the term of the Agreement after receiving Midvale's consent.

B. Expense. Any alteration or improvement made to the Property is done at the CBC's sole expense.

C. Quality. Any alteration or improvement made to the Property must utilize good quality materials and be done in a workmanlike manner.

D. Equipment. CBC may install or remove personal property, trade fixtures, equipment, and other temporary installations in the Property during the term of the Agreement.

E. Equipment Ownership. All personal property, trade fixtures, equipment, and other temporary installations acquired by CBC or its agents will remain CBC or its agents' property, free and clear of any claim by Midvale.

F. Repairs. In the event that CBC damages the Property while installing or removing personal property, trade fixtures, equipment, and other temporary installations, CBC is responsible for repairing the Property at its sole expense and in a timely manner.

9. Entry

Midvale has the right to enter the Property at reasonable hours to inspect the Property, provided Midvale does not unreasonably interfere with CBC's activities at the Property.

10. Parking

A. Use. During the term of the Agreement, CBC has the non-exclusive use in common with Midvale and their guest and invitees of the non-reserved common automobile areas, driveways, and footways, subject to the rules and regulations for the use prescribed from time to time by Midvale.

B. Designated Parking. Midvale reserves the right to designate parking areas upon the Property for CBC and CBC's agents and employees.

11. Taxes

A. Midvale's Responsibility. Midvale is responsible for paying, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the term of the Agreement on the Property. Midvale is also responsible for paying all personal property taxes with respect to Midvale's personal property, if any, at the Property.

B. CBC's Responsibility. CBC is responsible for paying all personal property taxes on CBC's personal property at the Property.

12. Insurance

A. Comprehensive General Liability Insurance. Midvale and CBC must each maintain a policy of comprehensive general liability insurance with respect to the respective activities of each party at the Property. Each party is solely responsible for the cost of its policy.
B. Fire and Extended Coverage Insurance.
   i. **Midvale.** Midvale maintains fire and extended coverage insurance on the Property
      in such amounts as Midvale deems appropriate.
   ii. **CBC.** CBC is responsible for maintaining fire and extended coverage insurance on
       all of its personal property, including trade fixtures, located at the Property. CBC is
       solely responsible for the costs of such insurance.

C. Costs Not Covered By Insurance. If any part of the Property is damaged from any act or
   omission of CBC or any of CBC’s agents, employees, or invitees, CBC is responsible for the
   costs of repair not covered by insurance.

13. Utilities
    Midvale pays all charges for water, sewer, gas, electricity, and other utilities used by CBC at
    the Property during the term of the Agreement unless otherwise expressly agreed in writing by
    Midvale.

14. Damages and Destruction
    A. **Significant Damage.** If any part of the Property is damaged by fire, casualty, or structural
       defects and cannot be used for CBC’s purposes, then CBC has the right to notify Midvale
       within 90 days to terminate the Agreement as of the date of the damage.
    B. **Minor Damage.** In the event of minor damage to any part of the Property that does not
       render the Property unusable for CBC’s purposes, Midvale will promptly repair the damage
       at the cost of Midvale.
    C. **Delays.** Midvale is not liable for any delays resulting from strikes, governmental restrictions,
       inability to obtain necessary materials or labor, or other matters which are beyond the
       reasonable control of Midvale when making repairs.
    D. **Rent.** CBC will not have to pay rent and other charges during any portion of the term of the
       Agreement that the Property are inoperable or unfit for occupancy, or use, in whole or in
       part, for CBC’s purposes.
    E. **CBC.** The provisions of this section extend to any occurrence which is beyond CBC’s
       reasonable control and which renders the Property inoperable or unfit for occupancy or use,
       in whole or in part, for CBC’s activities.

15. CBC Default
    A. **Definition.** The following actions by CBC may be considered a default:
       i. **Unpaid Rent.** CBC fails to pay rent to Midvale within 15 days of the due date.
       ii. **Breach of Agreement.** CBC fails to abide by a provision of the Agreement and
           does not cure the failure within 30 days after receiving written notice from Midvale.
B. Remedies. The following actions may be taken by Midvale if CBC has defaulted on the Agreement:

i. **Termination.** If CBC violates the Permitted Use Restrictions, the Agreement is immediately terminated. For any other default under this Agreement, Midvale may terminate the Agreement by providing CBC with written notice.

ii. **Reenter.** If possession of the Property is not surrendered, Midvale may reenter the Property.

iii. **Other Rights or Remedies.** Midvale may pursue other right or remedy available to Midvale on account of CBC default, either in law or equity.

iv. **Mitigation.** Midvale must use reasonable efforts to mitigate its damages.

v. **Nonexclusive.** The remedies available to Midvale are nonexclusive. Midvale may use any combination of remedies available to it.

16. Midvale Default

A. **Definition.** It is considered a default if Midvale fails to fulfill its covenants, warranties, or representations made under this Agreement and the failure continues 30 days after Midvale has received written notice specifying the failure from CBC.

B. **Remedies.** The following actions may be taken by CBC if Midvale has defaulted on the Agreement:

i. **Cure.** CBC may cure Midvale’s default and deduct the cost from the next occurring installment of rent until CBC is fully reimbursed for the cost to cure. If the Agreement terminates before CBC receives full reimbursement, Midvale will pay the unreimbursed balance to CBC on demand.

ii. **Other Rights or Remedies.** CBC may pursue any other right or remedy available in the Agreement on account of Midvale default.

iii. **Nonexclusive.** The remedies available to CBC are nonexclusive. CBC may use any combination of remedies available to it.

17. **Indemnification**

CBC agrees to defend, indemnify, and hold harmless Midvale and its officials, employees, and all others acting on Midvale's behalf from and against all damages, liabilities, and claims relating to CBC's activities and use of the Property.

18. **Quiet Possession**

As long as CBC is performing its obligations under the Agreement, Midvale covenants and warrants that Midvale will keep and maintain CBC in exclusive, quiet, peaceable, and undisturbed and uninterrupted possession of the Property during the term of the Agreement.
19. **Condemnation**

A. **Termination.** If any legally, constituted authority condemns any part of the Property which make the Property unsuitable for leasing, this Agreement will cease when the public authority takes possession.

B. **Rent.** Midvale and CBC will account for rental as of that date.

C. **Rights.** Such termination will be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

20. **Notice**

Any notice required or permitted under the Agreement will be deemed sufficiently given or served if sent by United States Certified Mail, return receipt requested, addressed as follows:

*If to Midvale to:*
- Midvale City Corp.
- Attn: City Recorder
- 7505 S. Holden Street
- Midvale, UT 84047

*If to CBC to:*
- Community Building Community
- Attn: Director
- 328 W. Wasatch St.
- Midvale, UT 84047

Midvale and CBC each have the right, from time to time, to change the place notice is to be given under this paragraph by written notice to the other party.

21. **Insufficient Funding**

Due to the nature of government programs, if funding is cut to the program or not approved by a government legislature, the Agreement may be terminated with 60 days written notice and evidence of the program funding being cut or not approved.

22. **Waiver**

Failure by either party to insist upon the strict performance of any condition of this Agreement or to exercise any right or remedy found under the Agreement does not constitute a waiver. Any party may waive any of its rights or any conditions by written notice to the other party. No waiver may affect or alter the remainder of this Agreement. Every other condition in the Agreement will remain in full force with respect to any other existing or subsequently occurring breach.

23. **Memorandum of Lease**

The parties contemplate that this Agreement should not and is not to be filed for record, but in the place of it, at the request of either party, Midvale and CBC will execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Agreement.
24. **Headings**

The headings used in this Agreement are for the convenience of the parties only and are not to be considered in interpreting the meaning of any provision of this Agreement.

25. **Successors**

The provisions of this Agreement will extend to and be binding on Midvale and CBC and their respective legal representatives, successors, and assigns.

26. **Consent**

Midvale may not unreasonably withhold or delay its consent with respect to any matter for which Midvale's consent is required or desirable under this Agreement.

27. **Compliance with Law**

CBC and Midvale must comply with all laws, orders, ordinances, and other public requirements now or later passed affecting the Property.

28. **Entire Agreement**

This Agreement constitutes the entire agreement and supersedes all prior understandings or agreements relating to the lease of the Property.

29. **Modification**

Any modification to the Agreement is prohibited without prior written consent by both parties.

30. **Severability**

In the event that any provision of the Agreement is held to be void, the voided provision will be considered severable from the remainder of the Agreement and will not affect any other provision in the Agreement. If the provision is invalid due to its scope or breadth, the provision will be considered valid to the extent of the scope or breadth permitted by law.

31. **Governing Law**

The Agreement is governed, construed, and interpreted by, through, and under the laws of the State of Utah.

[Signature Page to Follow]
Midvale and CBC have read and understand the terms of the Agreement. Both parties have demonstrated their willingness to enter into the Agreement as of the date above by having their authorized representatives sign below.

Midvale City

[Signature]
JoAnn B. Seghini, Mayor

Attest:

[Signature]
Rori Andreason, City Recorder

Community Building Community

[Signature]
Mauricio Agramont, Director
EXHIBIT B

(Condition Subsequent and Power of Termination)

This Condition Subsequent and Power of Termination (right of re-entry) is incorporated by reference into the Quitclaim Deed (the "Deed") to which it is attached.

1. The Property is conveyed on the express condition that it be used by Grantee, its successors and assigns, for the following and for no other purpose: (i) an education center and (ii) a community medical and dental clinic. The foregoing restrictions in this paragraph are referred to as the "Permitted Use Restrictions."

2. If Grantor determines at any time that the Property is not being used as required by the Permitted Use Restrictions, Grantor shall have the right to either: (i) obtain an injunction enforcing the Permitted Use Restrictions, or (ii) terminate Grantee's estate in the Property by recording a document evidencing Grantor's election of its right to terminate (the "Termination Notice"). Grantor shall be entitled to reasonable attorneys' fees and costs from Grantee incurred in the enforcement of Grantor's remedies herein. If Grantor elects to record such Termination Notice, Grantor shall provide written notice thereof to Grantee addressed to Grantee's address as set forth in Section 6 below, which notice will refer to this Deed and Grantor's right to record a Termination Notice.

3. Upon Grantor's recordation of a Termination Notice, title to the Property shall automatically vest in Grantor without any further action and without payment of any purchase price by Grantor. If requested in writing by Grantor following the recordation of a Termination Notice, Grantee shall execute a quitclaim deed to the Property in favor of Grantor.

4. Grantee may transfer the Property to a third party, but the conveyance to such third party shall be subject to the condition set forth in this Deed and Grantor's power to terminate such party's interest in the Property, which condition and right shall run with the land and be binding on subsequent owners.

5. To the extent permitted by law, the Permitted Use Restrictions and Grantor's power to terminate shall have perpetual duration. If Utah law limits the period during which such rights may run with the land, then, to the extent consistent with such law, such rights shall automatically be extended at the expiration of such period for successive 20-year periods unless terminated as provided below. Notwithstanding the above, if any provision of this Deed shall be unlawful, void, or voidable for violation of the rule against perpetuities then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

6. For purposes of this Deed, notices, demands or other writings to be given, made or sent shall be deemed to be fully given, made or sent if in writing and personally delivered, deposited in the United States Mail, certified mail, return receipt requested, or delivered by reputable overnight delivery service, and addressed as follows:

4835-4431-7219
EXHIBIT A

(Legal Description of the Property)

All that certain real property situated in Salt Lake County, State of Utah, and more particularly described as follows:

Commencing at a point on the North side of Wasatch Street which is North 0°07' East 23.31 feet and North 89°41' West 146.30 feet from the Southeast corner of Lot 53, Section 36, Township 2 South, Range 1 West, Salt Lake Meridian, and running thence North 89°41' West 56.80 feet along said North line of Wasatch Street; thence North 0°19' East 159.99 feet; thence South 89°41' East 56.80 feet; thence South 0°19' West 159.99 feet to the place of beginning.
MIDVALE CITY, a Utah municipal corporation

By: ______________________________________
Name: ____________________________________
Its: ______________________________________

STATE OF ______________ )
   : ss
COUNTY OF __________ )

This instrument was ACKNOWLEDGED before me on the ___ day of
_________, 2015 by ________________________, the ______________________
of MIDVALE CITY, a Utah municipal corporation, on behalf of said municipal corporation.

_______________________________________
NOTARY PUBLIC

Residing at: _______________________________

My commission expires ____________________.

[end of signatures and acknowledgments]
IN WITNESS WHEREOF, Grantor and Grantee have executed this Quitclaim Deed this ___
day of ____________, 2015.

CORPORATION OF THE PRESIDING BISHOP
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah Corporation sole

By: __________________________

Name (print): __________________________

Its: Authorized Agent

STATE OF UTAH )
COUNTY OF SALT LAKE )

On this ___ day of ____________, 2015, personally appeared before me
____________________, personally known to me to be an Authorized Agent of CORPORATIONS
OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah corporation sole, who acknowledged before me that he signed the foregoing
instrument as Authorized Agent for CORPORATION OF THE PRESIDING BISHOP OF THE
CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and that
the seal impressed on the within instrument is the seal of said corporation; and that said
instrument is the free and voluntary act of said corporation, for the uses and purposes therein
mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said
corporation and that said corporation executed the same.

WITNESS my hand and official seal.

____________________
Notary Public for the State of Utah

[signature and acknowledgment to follow]
NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND RELEASES AND DISCHARGES GRANTOR FROM ALL CLAIMS OF GRANTEE RELATING TO THE CONDITION OF THE PROPERTY AND THE IMPROVEMENTS THEREON.

RESERVING unto Grantor any water rights and/or mineral rights whether appurtenant to the Property or not in which Grantor may have an interest.

[signatures and acknowledgments to follow]
QUITCLAIM DEED
[PN 510-3711]

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("Grantor"), of 50 E. North Temple, Salt Lake City, Utah 84150, hereby QUITCLAIMS to MIDVALE CITY, a Utah municipal corporation ("Grantee"), all of its right, title and interest in and to the real property situated in Salt Lake County, State of Utah, and more particularly described in Exhibit “A”, attached hereto and incorporated herein by this reference (the "Property");

TOGETHER with all easements, rights and hereditaments appurtenant thereto and all improvements located thereon; and

SUBJECT TO: (i) any state of facts which an accurate survey or physical inspection of the Property might show, (ii) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, and (iii) current taxes, reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.

FURTHER SUBJECT to the express condition subsequent that the Property be used as more particularly set forth in Exhibit “B”, attached hereto and incorporated herein by this reference.

GRANTOR CONVEYS THE PROPERTY AND ANY AND ALL IMPROVEMENTS LOCATED THEREON IN THEIR “AS IS,” “WHERE IS” CONDITION, SUBJECT TO ALL LEGAL REQUIREMENTS, WITHOUT WARRANTIES, EITHER EXPRESS OR IMPLIED, “WITH ALL FAULTS,” INCLUDING BUT NOT LIMITED TO BOTH LATENT AND PATENT DEFECTS, AND ANY ENVIRONMENTAL CONDITIONS OR HAZARDS ON THE PROPERTY. BY ACCEPTING THIS DEED, GRANTEE WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITION AND USE OF THE PROPERTY AND THE IMPROVEMENTS LOCATED THEREON INCLUDING, BUT