MIDVALE CITY, UTAH
RESOLUTION NO. 2016-R-23

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A LEASE AGREEMENT BETWEEN MIDVALE CITY AND UTAH COMMUNITY ACTION FOR USE OF THE FORMER MIDVALE MIDDLE SCHOOL SEMINARY BUILDING.

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

WHEREAS, Utah Community Action is a non-profit organization that empowers individuals to rise out of poverty by assisting with housing, utilities expenses, food security, and early education; and

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

WHEREAS, Utah Community Action desires to host programs in conformance with the conditions of the property; and

WHEREAS, Midvale desires to lease the property to Utah Community Action for the purpose of hosting programs in conformance with the conditions of the property.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve the Former Midvale Middle School Seminary Building Lease Agreement and authorizes the Mayor to sign the same between Midvale City and Utah Community Action.

APPROVED AND ADOPTED this 6th day of September, 2016.

JoAnn B. Seghini, Mayor

ATTEST:

Rori L. Andreasen, MMC
City Recorder

Voting by the City Council

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<tr>
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<th>&quot;Aye&quot;</th>
<th>&quot;Nay&quot;</th>
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<tbody>
<tr>
<td>Stephen Brown</td>
<td>✓</td>
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<td>Paul Glover</td>
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<td>Quinn Sperry</td>
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<td>Paul Hunt</td>
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<td>Wayne Sharp</td>
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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 __________, 2016, by and between Midvale City ("Midvale"), a Utah Municipal Corporation, and Salt Lake Community Action doing business as Utah Community Action ("UCA"), a Utah non-profit organization.

Background

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

UCA is a non-profit organization that empowers individuals to rise out of poverty by assisting with housing, utilities expenses, food security, and early education; 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

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

Midvale desires to lease the Property to UCA for the purpose of hosting UCA’s programs in conformance with the Permitted Use Restrictions.

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 UCA. The legal description is described within Exhibit ‘A’ of Appendix ‘1.’

2. Use of Property

A. Permitted Use Restrictions. UCA 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. Prohibitions.

i. Contraceptives. UCA may not use the Property to distribute contraceptives including, but not limited to, condoms and oral contraceptive pills.
ii. **Business Activities.** UCA 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.** UCA 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 this Agreement begins on July 1, 2016, and ends on June 30, 2036.

   B. **Renewal.** The parties may agree to renew this Agreement for additional 5-year terms. If the Parties renew the Agreement, both parties must provide written confirmation of the renewal no later than 30 days before the expiration of the lease term. There may be an indefinite number of renewals.

4. **Termination.**

   The Agreement may be terminated by either party with 90 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.** UCA pays Midvale $2,000 per month for use of the Property during the term of the Agreement.

   B. **Schedule.** UCA must make each payment to Midvale on or before the first of each month during the Agreement Term. If payment is not received by the fifth day of the month, then UCA will be considered in default.

   C. **2-Year Review.** Every two years during the lease, the parties will review and may renegotiate the payment amount of this Agreement. Any change to the payment amount will be attached to this Agreement as an addendum and must be signed by both parties.

6. **Assignment**

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

7. **Repairs**

   Midvale is responsible for maintenance of the parking areas and any structural maintenance and repairs to the foundation, walls, roof, and floor structures of the Property. UCA is responsible for any repairs not covered by Midvale including, but not limited to, cosmetic repairs and snow removal. UCA, at its own expense, may add an HVAC system make any lawful alteration to the parking areas.

8. **Alterations and Improvements**
A. **Permission.** UCA may make alterations and improvements to any part of the Property during the term of the Agreement after receiving Midvale’s consent which will not be unreasonably withheld, conditioned, or delayed.

B. **Expense.** Any alteration or improvement made to the Property is done at the UCA’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.** UCA 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 UCA or its agents will remain UCA or its agents’ property, free and clear of any claim by Midvale.

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

G. **Permits.** UCA is responsible for getting any necessary permits and inspections prior to making any alterations and improvements. Midvale, at its own discretion, will waive any associated building and inspection fees.

H. **Termination.** In the event that Midvale terminates this Agreement under Section 4 of this Agreement within five years of the effective date, Midvale agrees to reimburse UCA the unamortized cost of any alteration or improvement made by UCA to the Property.

9. **Entry**

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

10. **Parking**

A. **Use.** During the term of the Agreement, UCA 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. **Shared Parking Agreement.** Midvale will make reasonable attempts to establish a shared parking agreement with Canyon School District for UCA’s overflow use of newly-constructed Midvale Middle School’s parking lot.

11. **Landscaping and Exterior Equipment**

UCA is responsible for the maintenance of the landscaping at the Property. UCA is also responsible for ensuring that any exterior equipment at the Property including, but not limited to, the playground is maintained in good working order and in a safe condition.

12. **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. **UCA’s Responsibility.** UCA is responsible for paying all personal property taxes on UCA’s personal property at the Property.

13. **Insurance**

A. **Comprehensive General Liability Insurance.** UCA must maintain a policy of comprehensive general liability insurance with respect to the respective activities it conducts at the Property. Midvale must be listed as an additional insured.

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. **UCA.** UCA is responsible for maintaining fire and extended coverage insurance on all of its personal property, including trade fixtures, located at the Property. UCA 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 UCA or any of UCA’s agents, employees, or invitees, UCA is responsible for the costs of repair not covered by insurance.

14. **Utilities**

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

15. **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 UCA’s purposes, then UCA 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 UCA’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.** UCA 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 UCA’s purposes.
E. **UCA.** The provisions of this section extend to any occurrence which is beyond UCA’s reasonable control and which renders the Property inoperable or unfit for occupancy or use, in whole or in part, for UCA’s activities.

16. **UCA Default**

A. **Definition.** The following actions by UCA may be considered a default:

   i. **Unpaid Rent.** UCA fails to pay rent to Midvale within 15 days after written notice from Midvale that UCA failed to pay rent.

   ii. **Breach of Agreement.** UCA 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 UCA has defaulted on the Agreement:

   i. **Termination.** If UCA violates the Permitted Use Restrictions, the Agreement is immediately terminated. For any other default under this Agreement, Midvale may terminate the Agreement if UCA has not cured the default within 30 days of receiving written notice of the default.

   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 UCA 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.

17. **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 UCA.

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

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

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

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

UCA agrees to defend, indemnify, and hold harmless Midvale and its officials, officers, employees, and all others acting on Midvale's behalf from and against all damages, liabilities, and claims relating to UCA's activities and use of the Property including, but not limited to, acts of negligence, omission, or intentional harm.

19. **Quiet Possession**

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

20. **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 UCA 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.

21. **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, Utah 84047

*If to UCA to:*
Utah Community Action
Attn: Chief Executive Officer
1307 South 900 West
Salt Lake City, Utah 84104

Midvale and UCA 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.

22. **Insufficient Funding**

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

23. **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.

24. 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 UCA will execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Agreement.

25. 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.

26. Successors

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

27. 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.

28. Compliance with Law

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

29. Entire Agreement

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

30. Modification

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

31. 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.

32. Governing Law

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

JoAnn B. Seghini, Mayor

Attest:

Rori Andreason, City Recorder

Utah Community Action

Erin Trenbeath-Murray, CEO
Appendix 1:
Quitclaim Deed
[PN 510-3711]