

RESOLUTION NO. 2022-02RDA

A RESOLUTION AUTHORIZING THE REDEVELOPMENT AGENCY OF MIDVALE CITY TO ENTER INTO A MURAL FESTIVAL PARTICIPATION AGREEMENT WITH ALL CAPS ART GALLERY.

WHEREAS, The Redevelopment Agency of Midvale City ("RDA") will participate in the Main Street Mural Festival being held on June 18th, 2022, organized by Aelias and Brigham LLC, a Utah limited liability company d/b/a ALL CAPS Art Gallery ("Organizer"); and

WHEREAS, to participate in the Main Street Mural Festival, the RDA will donate exterior walls (east facing) at the Art House, an RDA property located at 7697 S. Main St. Midvale, UT 84047 and the wall (west facing) at the back of the parking lot behind the Art House; and

WHEREAS, festival participation will require that the RDA enters into the Mural Festival Participation Agreement which includes a Property Owner Consent and Release, a Sponsorship Commitment, and agree to the Midvale City Public Art Guidelines.


NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, that the Board of Directors does hereby approve entering into the Mural Festival Agreement, including a Property Owner Consent and Release, a Sponsorship Commitment, and agree to the Midvale City Public Art Guidelines.

APPROVED AND ADOPTED this 19th day of April 2022.






Marcus Stevenson
Chief Administrative Officer, RDA



Matt Dahl
Executive Director, RDA

ATTEST:



Rori L. Andreason, MMC
Secretary

Voting by the Board
of Directors:

	"Aye"	"Nay"
Quinn Sperry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heidi Robinson <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bryant Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Gettel	<input checked="" type="checkbox"/>	<input type="checkbox"/>

MIDVALE MURAL FESTIVAL PARTICIPATION AGREEMENT

THIS MIDVALE MURAL FESTIVAL PARTICIPATION AGREEMENT (this “*Agreement*”) is entered into effective _____, 20____ (the “*Effective Date*”) by and between AELIAS AND BRIGHAM LLC, a Utah limited liability company d/b/a ALL CAPS ART GALLERY (“*Organizer*”), and the Redevelopment Agency of Midvale City, a public service (“*Applicant*”) (Organizer and Applicant are collectively referred to as the “*Parties*”).

RECITALS:

A. Because Midvale City (“*City*”) desires to increase the number of public art installations within the City, the Redevelopment Agency of Midvale City (“*RDA*”) is sponsoring the “Midvale Mural Festival” (the “*Festival*”) and has engaged Organizer to obtain all necessary authorizations and consents from each owner of a commercial building located in City who desires for a mural to be painted on a specified exterior wall of such building as part of the Festival (“*Mural*”).

B. Applicant, as either the legal and beneficial owner of certain real property located at 7697 S. Main St. Midvale, UT 84047 (the “*Property*”) OR as an individual or entity that has obtained consent of the owner for the installation of a Mural on the Property. Express consent of all owners will be provided in the Property Owner Consent and Release attached as **Exhibit A**.

C. Organizer has inspected the Location and deems it appropriate for inclusion in the Festival. Organizer will select the Mural artist for the Property and will oversee installation of the Mural unless contrary arrangements are specified in any Festival sponsorship agreement made between Organizer and Applicant as described in attached **Exhibit B** (a “*Sponsorship Agreement*”).

D. The Parties desire to enter into this Agreement so that the Property can become the Location of a Mural painted in connection with the Festival.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Effect of Recitals**. The recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

2. **Disbursed Funds**. Any funds disbursed to Organizer by Applicant are conditioned on a Sponsorship Agreement and its deliverables as stated in the Recitals.

3. **Responsibilities of Organizer**. Organizer represents, warrants, and covenants that:

a. The Mural will be an original creation and will not infringe upon any copyright, trademark, or other intellectual property right of any third party.

b. Subject to any Sponsorship Agreement, Organizer is responsible for the selection and management of the artist(s) creating the Mural, including any arrangements or agreements that must be made with the artist(s) for the design, installation, and maintenance of the Mural.

c. City and RDA may use photos of the Mural on their website(s) and in any of their respective promotional materials, provided that the Mural artist(s) shall be appropriately credited in any such use. Organizer shall ensure that the artist is aware of and agrees to the foregoing.

d. The Mural must always comply with the Midvale Public Art guidelines on attached **Exhibit C** (the “*Guidelines*”) and all other applicable laws.

4. **Responsibilities of Applicant**. Applicant represents, warrants, and covenants that:

- a. All Owners have consented to installation of the Mural at the Location on the Property by executing and delivering to Organizer an appropriate Consent Form. Applicant shall defend, indemnify, and hold harmless City, RDA and Organizer from all claims, damages, actions and proceedings, including attorney's fees and costs, arising from or related to any material inaccuracy of this representation and warranty.
- b. Applicant shall allow the Mural to remain at the Location throughout the Maintenance Period (defined below).
- c. Applicant shall provide full, unimpeded access to the Property and the Location for the purposes of inspecting, installing, and maintaining the Mural.
- d. Applicant promptly will cooperate to provide Organizer and the contracted artist with all reasonably necessary permissions for the installation and maintenance of the Mural at the Location.
- e. Applicant shall maintain the Mural throughout the Maintenance Period.
- f. The Mural must always comply with the Guidelines and all other applicable laws.

5. Maintenance Period.

- a. Unless otherwise agreed upon in writing, the Mural shall remain in place for a period of 3 years. Additionally, unless otherwise agreed upon in writing, the Applicant shall maintain the Mural in good condition and repair for a period of 3 years.
- b. If the Mural becomes subject to any graffiti, vandalism, or other damage during the 3-year period, then Applicant shall clean repair and/or remove such graffiti, vandalism, or damage, as applicable, while preserving the Mural. If the repair is beyond reasonable repair, the graffiti can't be cleaned, the mural needs to be re-painted, or other repairs beyond the Applicant's ability, the Applicant must notify the Organizer to coordinate and/or perform maintenance and/or repairs, identify the actions necessary to do so including contacting the artist, for compliance with this provision.
- c. If Organizer reasonably determines that Applicant has not maintained the Mural as required above within thirty (30) days after Applicant has been notified of the damage, then Organizer may enter the Property and perform any necessary maintenance and/or repairs at Applicant's expense.

6. Effective Date. Termination.

- a. This Agreement is effective on the Effective Date and terminates 3 years after the installation of the Mural.
- b. Organizer may terminate this Agreement at any time upon finding that the Mural, Building or Location does not or will not fulfill or comply with the requirements of this Agreement, the Guidelines, or other applicable laws. If Organizer terminates this Agreement before three (3) years from the Completion Date, Organizer will refund to Applicant a proportionate amount of any sponsorship fee paid by Applicant under a Sponsorship Agreement.
- c. Applicant shall notify Organizer at least 30 days before the closing of any sale or transfer of ownership of the Property to a third party. Such notice shall include the name, address, and telephone number of the proposed new Owner. This Agreement will become void upon the closing of the sale or transfer if the new Owner does not agree to assume all of Applicant's obligations under this Agreement.

7. Default. If a Party defaults in its obligations under this Agreement, the non-defaulting Party shall be entitled to pursue all legal and equitable remedies, including injunctive relief, if such default continues for ten days after written notice from the non-defaulting Party to the defaulting Party specifying the alleged default and the actions reasonably necessary to cure it. In addition to all other remedies available, the non-defaulting Party may, at its option, declare this Agreement to be null and void.

8. Indemnification. Each Party shall defend, indemnify and hold harmless the other Party, City, RDA, and their respective owners, officers, employees and agents from and against all demands, claims, actions, causes of action, damages (including attorney's fees and costs) and proceedings arising from or relating to (a) the material inaccuracy of any representation or warranty of the indemnifying Party contained in this Agreement; (b) the failure of the indemnifying Party to timely, fully perform all of its obligations under this Agreement; or (c) any material violation of applicable law by the indemnifying Party concerning the subject matter of this Agreement.

9. **Notice.** Any notice required or permitted under this Agreement will be deemed sufficiently given or served if personally delivered or sent by United States Certified Mail, return receipt requested, addressed as follows:

To Organizer:

ALL CAPS ART GALLERY
4928 W Vermillion Dr.
South Jordan, UT 84004

To Applicant:

REDEVELOPMENT AGENCY OF MIDVALE CITY
7505 South Holden Street
Midvale, UT 84047

10. **Relationship of Parties.** This Agreement does not create any legal relationship between the Parties including, but not limited to, that of partner, employee, agent, or contractor. Neither Party has any authority to bind the other Party.

11. **Assignment and Delegation.** A Party may not assign or delegate any part of this Agreement without the other Party's prior written consent.

12. **Amendments.** This Agreement may be amended only by a writing signed by both Parties. Any other purported modification is prohibited and invalid.

13. **Severability.** If any part of this Agreement is determined unlawful or invalid by a court of competent jurisdiction, then the remaining provisions shall continue in full force and effect.

14. **Waiver.** Any failure or delay by either Party to exercise any right, power, or privilege or to insist upon observance or performance of this Agreement shall not operate or be construed as a waiver. One or more waivers by either Party of any provision of this Agreement shall not be construed by the other Party as a waiver of any subsequent breach of the same provision by the other Party.

15. **Dispute Resolution.** Any dispute arising under or relating to this Agreement shall be resolved in the following order:

- a. Good faith negotiations between the Parties;
- b. Good faith mediation with a mutually agreed upon mediator and with each Party paying one half of the mediation costs; and
- c. Litigation, provided that each of the Parties hereby waives, to the fullest extent legally possible, the right to a trial by jury in any such litigation. If litigation concerning this Agreement occurs, then the prevailing Party in such litigation shall be entitled to an award of its attorney's fees and costs incurred therein, whether incurred before or after judgment, on appeal, or in any bankruptcy or insolvency proceeding.

16. **Governing Law and Venue.** This Agreement shall be governed, construed, and interpreted under the laws of the State of Utah. The venue of any lawsuit arising from this Agreement shall be the Third Judicial District Court of Salt Lake County, Utah.

17. **Entire Agreement. Etc.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior understandings or agreements between the Parties, concerning the subject matter of this Agreement. Time is the essence of this Agreement. City and RDA are third-party beneficiaries of this Agreement.

18. **Authorization.** Each of the Parties executing this Agreement represents that it has taken all the steps necessary to make this Agreement binding upon it. Each individual signing this Agreement for an entity represents that he has been duly authorized by appropriate action of the governing body of the Party for which he signs to execute and deliver this Agreement in the capacity and for the entity set forth where he signs and that as a result of his signature, this Agreement shall be binding upon that Party for which he signs.

DATED effective the date first-above written.

APPLICANT:

REDEVELOPMENT AGENCY OF MIDVALE CITY, a public service



Marcus Stevenson

Chief Administrative Officer, RDA



Matt Dahl

Executive Director, RDA



ORGANIZER:

AELIAS AND BRIGHAM LLC, a Utah limited liability company

d/b/a **ALL CAPS ART GALLERY**

By: Brigham Stewart

Brigham Stewart

Its: Brigham Stewart (Apr 19, 2022 15:47 MDT); and

By: Aelias McHam

Aelias McHam

Its: Aelias McHam (Apr 19, 2022 13:33 MDT)

EXHIBIT A

PROPERTY OWNER CONSENT AND RELEASE

The undersigned (collectively, "*Owner*") irrevocably consents to **AELIAS AND BRIGHAM LLC**, a Utah limited liability company d/b/a **ALL CAPS ART GALLERY** ("*Organizer*") and **REDEVELOPMENT AGENCY OF MIDVALE CITY**, a public service ("*Applicant*") using one or more exterior walls (the "*Location*") of the commercial building(s) (the "*Building*") on Owner's real property (the "*Property*") located at 7697 S. Main St. Midvale, UT 84047 in connection with the Midvale Mural Festival (the "*Festival*"), including engaging an artist to paint a mural (the "*Mural*") on the Location and accessing and using the Property to paint the Mural and to perform any subsequent maintenance obligations for up to three years after completion of the Mural.

1. To induce Organizer to, *inter alia*, accept Applicant's application for the Property to participate in the Festival, Owner represents, warrants and certifies to Organizer that:

- a. Owner is the legal and beneficial owner of the Property;
- b. Owner has full power and authority to enter into and grant this consent, release and indemnity (this "*Release*");
- c. Owner has, and hereby does, authorize Applicant to enter into a Festival participation agreement and other related agreements with Organizer, Midvale City ("*City*"), and/or the Redevelopment Agency of Midvale City ("*RDA*"), authorizing use of the Property and the Location for Mural purposes in connection with the Festival; and
- d. No other person or entity (such as any tenant, occupant, or operator of the Property) is required to join in this Release in order to make it fully effective for the benefit of Organizer, Applicant, City, RDA, and their respective owners, officers, employees, agents and other related parties (collectively, the "*Benefitted Parties*").

2. Owner shall be responsible and liable for all damages, losses, costs (including reasonable attorneys fees and costs), actions, causes of action, claims, demands, liens, liabilities, expenses and indirect or consequential damages of any kind and nature whatsoever (collectively, "*Losses*") caused by, resulting from, arising out of, or incidental to any wrongful act or omission of Owner or its officers, employees, agents or other related parties ("*Related Parties*") in connection with the Property's participation in the Festival.

3. Owner, for itself and its Related Parties, hereby releases and discharges each of the Benefitted Parties from and against all Losses which may arise out of, or would not have been incurred but for, the Property's participation in the Festival except to the extent that such Losses result from the recklessness or intentional misconduct of the Benefitted Parties.

4. Owner shall defend, indemnify and hold harmless each of the Benefitted Parties from and against all Losses which may arise or accrue to or against any of the Benefitted Parties by reason of or in connection with:

- a. The Festival;
- b. One or more of the Benefitted Parties supplying labor and/or materials to the Festival; or
- c. Any personal injury or property damage in connection with the Property's use for Mural purposes, except to the extent that such Losses are the result of recklessness or intentional misconduct of such Benefitted Parties.

5. Owner agrees to allow the Mural to remain at the Location for at least three (3) years after the date it is completed, or such shorter time period as may be specified in any written agreement signed by Organizer and Applicant (or Owner).

6. Owner shall notify Organizer at least 30 days before the closing of any sale or transfer of ownership of the Property to a third party. Such notice shall include the name, address and telephone number of the proposed

new Owner.

OWNER: REDEVELOPMENT AGENCY OF MIDVALE CITY



Marcus Stevenson

Chief Administrative Officer, RDA



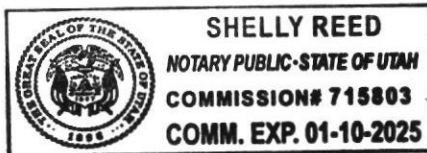
Matt Dahl

Executive Director, RDA

STATE OF Utah)
COUNTY OF Salt Lake) : ss

Subscribed and sworn (or affirmed) to before me on this 27th day of April 2022 by
Marcus Stevenson & Matt Dahl.

(Seal)



Witness my hand and official seal



Notary Public

EXHIBIT B

MIDVALE MURAL FESTIVAL SPONSORSHIP COMMITMENT

By sponsoring the Midvale Mural Festival (the “*Festival*”) organized by **ALL CAPS ART GALLERY** (“*Organizer*”) you will receive exclusive benefits and recognition before, during and after event, and gain more control over the mural commissioned (the “*Mural*”).

By signing this commitment, you agree to contribute at least **\$1,000** to co-sponsor the Festival. Once you submit this commitment, Organizer will contact you to discuss your sponsorship contribution, benefits, and Mural options in more detail. All payments should be submitted directly to Organizer to secure your sponsorship.

Please contact Organizer with any questions regarding your Mural and sponsorship benefits:

ALL CAPS ART GALLERY

Aelias and Brigham LLC
4928 W Vermillion Dr
South Jordan, UT 84004
385-528-5074
allcapsartgallery@gmail.com

Exclusive Sponsorship Benefits:

- a. Choice of a Mural theme – work with Festival organizers and the artist to determine an appropriate theme for your Mural.
- b. Selection of artist – work with Festival organizers to determine appropriate artist to achieve your goals and theme.
- c. Logo inclusion – your logo will be included on all promotional materials for the Festival.

Sponsorship Amount: N/A - Refer to original Grant Agreement with ALL CAPS, Resolution 2022-01RDA adopted on February 15th, 2022.

Address of property for the Mural: 7697 S. Main St. Midvale, UT 84047

Business name for sponsorship: Midvale City

Email: RDA@midvale.com

Phone: 801-576-7200



Marcus Stevenson

Chief Administrative Officer, RDA



Matt Dahl

Executive Director, RDA

EXHIBIT C

MIDVALE CITY PUBLIC ART GUIDELINES

A “mural” is any piece of artwork painted or applied directly on a wall or other permanent surface. Murals are intended to deter graffiti vandalism and enhance the community. Midvale City supports this endeavor and has created the following criteria to ensure consistency and appropriate results:

- Murals are encouraged to be located on wall surfaces having a history of graffiti vandalism or propensity for graffiti vandalism.
- The mural work shall be of exceptional quality and provide enduring value to the City. The work shall be relevant to the site or City, its values, culture and/or people. It shall enhance the aesthetic experience within the City.
- The mural’s visual imagery shall be appropriate for all audiences. The imagery shall not reflect partisan politics, or contain sexual or religious content, or express a commercial aspect through use of logos, slogans or other advertising messages.
- The mural shall be designed for all viewpoints, i.e. pedestrians, moving vehicles, seated audiences, etc.
- Wall surfaces used shall be suitable to receive the proposed mural materials and enable technical detailing. Exposure to weathering elements shall be considered to minimize fading and damage to the mural. Appropriate measures shall be taken to prepare wall surfaces before mural work commences.

Each of the undersigned has read and agrees to the Midvale City Public Art Program guidelines.

APPLICANT:

REDEVELOPMENT AGENCY OF MIDVALE CITY, a public service



Marcus Stevenson

Chief Administrative Officer, RDA



Matt Dahl

Executive Director, RDA

ORGANIZER:

AELIAS AND BRIGHAM LLC, a Utah limited liability company
d/b/a **ALL CAPS ART GALLERY**

By: Brigham Stewart

Its: Brigham Stewart
Brigham Stewart (Apr 19, 2022 15:47 MDT) _____; and

By: Aelias McHam

Its: Aelias McHam
Aelias McHam (Apr 19, 2022 13:33 MDT) _____









Mural Festival Agreement_ALL CAPS_RDA

Final Audit Report

2022-04-19

Created:	2022-04-19
By:	Meggie Troili (mtroili@midvale.com)
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"Mural Festival Agreement_ALL CAPS_RDA" History

-  Document created by Meggie Troili (mtroili@midvale.com)
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