



Housing Agreement (Pinnacle Living (Capstan Village) Lands Inc. - Lot 1) ARTS Units Bylaw No. 9161

The Council of the City of Richmond enacts as follows:

- 1. The Mayor and City Clerk for the City of Richmond are authorized to execute and deliver a housing agreement, substantially in the form set out as Schedule A to this Bylaw, with the owner of the lands legally described as:

PID: 007-976-682 Lot 1 Sections 27, 28 and 29 Block 4 North Range 6 West New Westminster District Plan 6311;

PID: 004-135-091 Lot "A" Section 28 Block 5 North Range 6 West New Westminster District Plan 6368

PID: 011-191-082 North Half Lot "B" Section 28 Block 5 North Range 6 West New Westminster District Plan 6368.

- 2. This Bylaw is cited as "Housing Agreement (Pinnacle Living (Capstan Village) Lands Inc. - Lot 1) ARTS Units Bylaw No. 9161".

FIRST READING

DEC 08 2014

SECOND READING

DEC 08 2014

THIRD READING

DEC 08 2014

ADOPTED

CITY OF RICHMOND APPROVED for content by originating dept. APPROVED for legality by Solicitor

MAYOR

CORPORATE OFFICER

Schedule A

To Housing Agreement (Pinnacle International (Capstan Village) Lands Inc. - Lot 1) ARTS
Units Bylaw No. 9161

HOUSING AGREEMENT BETWEEN PINNACLE INTERNATIONAL (CAPSTAN
VILLAGE) LANDS INC. AND THE CITY OF RICHMOND

HOUSING AGREEMENT – ARTS UNITS
(Section 905 *Local Government Act*)

THIS AGREEMENT is dated for reference the 4th day of November, 2014.

BETWEEN:

PINNACLE LIVING (CAPSTAN VILLAGE) LANDS INC. (Inc. No. BC0884962) a company duly incorporated under the laws of the Province of British Columbia and having its office at Suite 300, 911 Homer Street, Vancouver, British Columbia, V6B 2W6

(the "Owner")

AND:

CITY OF RICHMOND, a municipal corporation pursuant to the *Local Government Act* and having its offices at 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1

(the "City")

WHEREAS:

- A. Section 905 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;
- B. The Owner is the registered owner of the Lands (as hereinafter defined); and
- C. The Owner and the City wish to enter into this Agreement (as hereinafter defined) to provide for affordable artist housing to encourage artists in the community to greater self-sufficiency and increased contributions to local cultural and economic activities, on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained and the sum of Ten Dollars (\$10.00) now paid by the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto hereby covenant and agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words have the following meanings:

ART Units (Lot 1) (Section 905 Local Government Act) – RZC #14(a)
3200, 3220, 3240, 3300, and 3320 No. 3 Road and
3171, 3191, 3211, 3231, 3251, 3271, 3291, 3331, and 3371 Sexsmith Road
Application No. RZ-12-610011
Davis: 16930320.7

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- (a) **"Agreement"** or **"this Agreement"** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
- (b) **"ARTS Unit"** means a Dwelling Unit or Dwelling Units owned by the Owner and designated as an artist residential tenancy studio in accordance with a building permit and/or development permit issued by the City and/or, if applicable, in accordance with any rezoning considerations applicable to the development on the Lands and includes, without limiting the generality of the foregoing, the Dwelling Unit charged by this Agreement;
- (c) **"Business Day"** means a day which is not a Saturday, Sunday or statutory holiday (as defined in the *Employment Standards Act* (British Columbia)) in British Columbia;
- (d) **"City"** or **"City of Richmond"** means the City of Richmond and is called the "City" when referring to the corporate entity and "City of Richmond" when referring to the geographic location;
- (e) **"City Personnel"** means the City's officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates;
- (f) **"City Solicitor"** means the individual appointed from time to time to be the City Solicitor of the Law Division of the City, or his or her designate;
- (g) **"CPI"** means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;
- (h) **"Daily Amount"** means \$100.00 per day as of January 1, 2009 adjusted annually thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, 2009, to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 6.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the City of the Daily Amount in any particular year shall be final and conclusive;
- (i) **"Director of Arts, Culture and Heritage"** means the individual appointed to be the Director of Arts, Culture and Heritage from time to time within the Community Services Department of the City and his or her designate;
- (j) **"Director of Development"** means the individual appointed to be the chief administrator from time to time of the Development Applications Division of the City and his or her designate;
- (k) **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan and includes, where the context permits, an ARTS Unit;
- (l) **"Eligible Tenant"** means a Professional Artist and his or her Family, having a cumulative annual income of \$34,000 or less during each year of a Tenancy

Agreement, provided that, commencing July 1, 2013, the annual income set-out in this definition shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as the case may be, an amount calculated that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the absence of obvious error or mistake, any calculation by the City of an Eligible Tenant's permitted income in any particular year shall be final and conclusive;

- (m) **"Family"** means:
- (i) one or more persons related to a Professional Artist by blood, marriage or adoption; or
 - (ii) a group of not more than 6 persons who are not related to a Professional Artist by blood, marriage or adoption;
- (n) **"Guidelines"** means the City's guidelines for Low End Market Rental housing in effect from time to time;
- (o) **"Housing Covenant"** means the agreements, covenants and charges granted by the Owner to the City (which includes covenants pursuant to section 219 of the *Land Title Act*) charging the Lands registered on ___ day of _____, 2014, under number _____;
- (p) **"Housing Strategy"** means the Richmond Affordable Housing Strategy approved by the City on May 28, 2007, and containing a number of recommendations, policies, directions, priorities, definitions and annual targets for affordable housing, as may be amended or replaced from time to time;
- (q) **"Interpretation Act"** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- (r) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and amendments thereto and re-enactments thereof;
- (s) **"Lands"** means Lot 1 Section 28 Block 5 North Range 6 West New Westminster District Plan EPP43707, which lands were formerly legally described as set out in Schedule A hereto;
- (t) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 1996, Chapter 323, together with all amendments thereto and replacements thereof;
- (u) **"LTO"** means the Lower Mainland Land Title Office or its successor;
- (v) **"Manager, Community Social Development"** means the individual appointed to be the Manager, Community Social Development from time to time of the Community Services Department of the City and his or her designate;
- (w) **"Owner"** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are

Subdivided, and includes any person who is a registered owner in fee simple of an ARTS Unit from time to time;

- (x) **“Permitted Rent”** means no greater than \$850.00 a month for an ARTS Unit, regardless of whether such ARTS Unit is a bachelor unit, a one bedroom unit, a one bedroom plus den, or a two bedroom unit, provided that, commencing July 1, 2013, the rent set out in this definition shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as the case may be, an amount calculated that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the event that, in applying the values set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*. In the absence of obvious error or mistake, any calculation by the City of the Permitted Rent in any particular year shall be final and conclusive;

- (y) **“Professional Artist”** means an artist who, in the determination of the Director of Arts, Culture and Heritage, at his or her discretion:
 - (i) has specialized training in the field (not necessarily in academic institutions);
 - (ii) is recognized as such by his or her peers (artists working in the same artistic tradition);
 - (iii) is committed to devoting more time to artistic activity, if financially feasible;
 - (iv) has a history of public presentation; and
 - (v) has a practice that falls within Category A Professional Artist, as specified in the Housing Covenant,or such other definition of Professional Artist as promulgated from time to time by the Canada Council for the Arts and approved by the Director of Arts, Culture and Heritage, and includes a Professional Visual Artist;

- (z) **“Professional Visual Artist”** means an artist who, in the determination of the Director of Arts, Culture and Heritage, at his or her discretion:
 - (i) has specialized training in and makes his or her primary living from the visual arts (not necessarily in academic institutions);
 - (ii) is recognized as such by his or her peers (artists working in the same artistic tradition);
 - (iii) is committed to devoting more time to artistic activity, if financially feasible;

- (iv) has a history of public presentation, with at least 3 public presentations of work in a professional context over a 3-year period;
- (v) has produced an independent body of work;
- (vi) has maintained an independent professional practice for at least 3 years; and
- (vii) has a practice that falls within Category A Professional Artist, as specified in the Housing Covenant,

or such other definition of Professional Visual Artist as promulgated from time to time by the Canada Council for the Arts and approved by the Director of Arts, Culture and Heritage;

- (aa) **"Real Estate Development Marketing Act"** means the *Real Estate Development Marketing Act*, S.B.C. 2004, Chapter 41, together with all amendments thereto and replacements thereof;
- (bb) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- (cc) **"Strata Corporation"** has the meaning given in the *Strata Property Act*;
- (dd) **"Strata Property Act"** means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof;
- (ee) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or "shared interest in land" as defined in the *Real Estate Development Marketing Act*;
- (ff) **"Tenancy Agreement"** means a tenancy agreement, lease, license or other agreement granting rights to occupy an ARTS Unit;
- (gg) **"Tenant"** means an occupant of an ARTS Unit by way of a Tenancy Agreement; and
- (hh) **"Zoning Bylaw"** means the City of Richmond Zoning Bylaw No. 8500, as may be amended or replaced from time to time.

1.2 In this Agreement:

- (a) words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, and vice versa;

- (b) the division of this Agreement into Articles and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles are to Articles of this Agreement;
- (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (g) all provisions are to be interpreted as always speaking;
- (h) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes an Eligible Tenant, agent, officer and invitee of the party;
- (i) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (j) the word "including", when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but will be construed to refer to all other items or matters that could reasonably fall within the scope of such general statement, term or matter, whether or not non-limiting language (such as "without limitation", "but not limited to" or words of similar import) is used with reference thereto; and
- (k) any interest in land created hereby, as being found in certain Articles, sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:
 - (i) which define the terms used herein;
 - (ii) which deal with the interpretation of this Agreement; and
 - (iii) which are otherwise of general application

1.3 The following Schedule is attached hereto and form part of this Agreement:

Schedule A - Lands

**ARTICLE 2
USE AND OCCUPANCY OF ARTS UNITS**

- 2.1 The Owner agrees that each ARTS Unit may only be used as a permanent residence occupied by one Eligible Tenant. An ARTS Unit must not be occupied by the Owner, the Owner's family members (unless the Owner's family members qualify as Eligible Tenants), or any tenant or guest of the Owner, other than an Eligible Tenant. For the purposes of this Article, "permanent residence" means that the ARTS Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant.
- 2.2 Within 30 days after receiving notice from the City, the Owner must, in respect of each ARTS Unit, provide to the City a statutory declaration, substantially in the form (with, in the City Solicitor's discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Owner, containing all of the information required to complete the statutory declaration, including without limitation information satisfactory to the Director of Arts, Culture and Heritage verifying the Tenant's income level and confirming that the Tenant meets the criteria for an Eligible Tenant, as set out in section 1.1(l) of this Agreement, and for a Professional Artist or Professional Visual Artist, as set out in sections 1.1(y) and 1.1(z), respectively, of this Agreement. The City may request such statutory declaration in respect of each ARTS Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City such further statutory declarations as requested by the City in respect to an ARTS Unit if, in the City's absolute determination, the City believes that the Owner is in breach of any of its obligations under this Agreement.
- 2.3 The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

**ARTICLE 3
MANAGEMENT, DISPOSITION AND ACQUISITION OF ARTS UNITS**

- 3.1 The Owner will operate and manage each ARTS Unit in accordance with the Housing Strategy and Guidelines, unless otherwise agreed to by the Owner, the Director of Development and the Manager, Community Social Development.
- 3.2 The Owner will, or will include a clause in each Tenancy Agreement requiring the Tenant to, repair and maintain the ARTS Unit in good order and condition, excepting reasonable wear and tear.
- 3.3 The Owner will not permit an ARTS Unit to be subleased, or a Tenancy Agreement to be assigned.
- 3.4 If this Housing Agreement encumbers more than one ARTS Unit, then the Owner may not, without the prior written consent of the City Solicitor, sell or transfer less than five (5) ARTS Units in a single or related series of transactions with the result that when the

purchaser or transferee of the ARTS Units becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than five (5) ARTS Units.

- 3.5 The Owner must not rent, lease, license or otherwise permit occupancy of any ARTS Unit except to an Eligible Tenant in accordance with the following additional conditions:
- (a) the ARTS Unit will be used or occupied only pursuant to a Tenancy Agreement;
 - (b) the monthly rent payable for the ARTS Unit will not exceed the Permitted Rent;
 - (c) the Owner will allow the Tenant and any permitted occupant to have full access to and use and enjoy all on-site common indoor and outdoor common property, limited common property, or other common areas, facilities or amenities, including all common amenities and facilities shared by the Lands, all in accordance with the Bylaws and rules and regulations of the applicable strata corporation, provided that such Bylaws and rules and regulations do not unreasonably restrict the Tenant or any permitted occupant's access to and use of such properties, areas, facilities and amenities and the cross access easement agreements for parking, garbage and recycling facilities (Rezoning Consideration 4.1) and for communal residential amenity facilities (Rezoning Consideration 5.1) for the Lands and 8677 Capstan Way;
 - (d) the Owner will not require the Tenant or any permitted occupant to pay any strata fees, strata property contingency reserve fees or any extra charges or fees for use of any common property, limited common property, or other common areas, facilities or amenities, or for sanitary sewer, storm sewer, water, other utilities, property or similar tax. By way of clarification, parking, "Class 1" bike storage and related electric vehicle (EV) charging stations shall be provided for the use of ARTS Unit occupants pursuant to the City's Official Community Plan and Zoning Bylaw at no additional charge to the ARTS Unit occupants (i.e. no monthly rents or other fees shall apply for the casual, shared or assigned use of the parking spaces, bike storage, EV charging stations or related facilities by the ARTS Unit occupants); provided, however, if the ARTS Unit is a strata unit and the following costs are not part of strata or similar fees, an Owner may charge the Tenant the Owner's cost, if any, of providing cablevision, telephone, other telecommunications, gas, or electricity fees, charges or rates;
 - (e) the Owner will attach a copy of this Agreement to every Tenancy Agreement;
 - (f) the Owner will include in the Tenancy Agreement a clause requiring the Tenant and each permitted occupant of the ARTS Unit to comply with this Agreement;
 - (g) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) an ARTS Unit is occupied by a person or persons other than an Eligible Tenant, except as otherwise authorized by this Agreement;
 - (ii) the annual income of an Eligible Tenant rises above the applicable maximum amount specified in section 1.1(l) of this Agreement;

- (iii) the ARTS Unit is occupied by more than the number of people the City's building inspector determines can reside in the ARTS Unit given the number and size of bedrooms in the ARTS Unit and in light of any relevant standards set by the City in any bylaws of the City;
- (iv) the ARTS Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or
- (v) the Tenant subleases the ARTS Unit or assigns the Tenancy Agreement in whole or in part,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination. Except for section 3.5(g)(ii) of this Agreement [*Termination of Tenancy Agreement if Annual Income of Tenant rises above amount prescribed in section 1.1(l) of this Agreement*], the notice of termination shall provide that the termination of the tenancy shall be effective 30 days following the date of the notice of termination. In respect to section 3.5(g)(ii) of this Agreement, termination shall be effective on the day that is six (6) months following the date that the Owner provided the notice of termination to the Tenant. The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any payments that the Owner may be required to pay to the Tenant under the *Residential Tenancy Act*, whether or not such payments relate directly or indirectly to the operation of this Agreement;

- (h) the Tenancy Agreement will identify all occupants of the ARTS Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the ARTS Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
- (i) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement to the City upon demand.

3.6 If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant and all other persons that may be in occupation of the ARTS Unit to vacate the ARTS Unit on or before the effective date of termination.

ARTICLE 4 DEMOLITION OF ARTS UNIT

4.1 The Owner will not demolish an ARTS Unit unless:

- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the ARTS Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or
- (b) the ARTS Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the City in its sole discretion,

and, in each case, a demolition permit for the ARTS Unit has been issued by the City and the ARTS Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy any replacement Dwelling Unit in compliance with this Agreement and the Housing Covenant both of which will apply to any replacement Dwelling Unit to the same extent and in the same manner as those agreements apply to the original Dwelling Unit, and the Dwelling Unit must be approved by the City as an ARTS Unit in accordance with this Agreement.

ARTICLE 5 STRATA CORPORATION BYLAWS

- 5.1 This Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any Subdivided parcel of the Lands.
- 5.2 Any strata corporation bylaw which prevents, restricts or abridges the right to use the ARTS Units as rental accommodation will have no force and effect.
- 5.3 No strata corporation shall pass any bylaws preventing, restricting or abridging the use of the ARTS Units as rental accommodation.
- 5.4 No strata corporation shall pass any bylaw or approve any levies which would result in only the Owner or the Tenant or any other permitted occupant of an ARTS Unit (and not the other owners, tenants, or any other permitted occupants of all other strata lots on the Lands that are not ARTS Units) paying any extra charges or fees for the use of any common property, limited common property or other common areas, facilities, or amenities of the strata corporation.
- 5.5 The strata corporation shall not pass any bylaw or make any rule which would restrict the Owner or the Tenant or any other permitted occupant of an ARTS Unit from using and enjoying any common property, limited common property or other common areas, facilities or amenities of the strata corporation except on the same basis that governs the use and enjoyment of any common property, limited common property or other common areas, facilities or amenities of the strata corporation by all the owners, tenants, or any other permitted occupants of all the strata lots on the Lands which are not ARTS Units.

ARTICLE 6 DEFAULT AND REMEDIES

- 6.1 The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or in equity, if an ARTS Unit is used or occupied in breach of this Agreement or rented at a rate in excess of the Permitted Rent or the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay the Daily Amount to the City for every day that the breach continues after ten (10) days written notice from the City to the Owner stating the particulars of the breach. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period, if any, has expired. The Daily Amount is due and payable five (5) Business Days following receipt by the Owner of an invoice from the City for the same, and such invoice will be given and deemed received in accordance with section 7.10 [Notice] of this Agreement.

- 6.2 The Owner acknowledges and agrees that a default by the Owner of any of its promises, covenants, representations or warranties set-out in the Housing Covenant shall also constitute a default under this Agreement.

ARTICLE 7 MISCELLANEOUS

7.1 Housing Agreement

The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 905 of the *Local Government Act*;
- (b) where an ARTS Unit is a separate legal parcel the City may file notice of this Agreement in the LTO against the title to the ARTS Unit and, in the case of a strata corporation, may note this Agreement on the common property sheet; and
- (c) where the Lands have not yet been Subdivided to create the separate parcels to be charged by this Agreement, the City may file a notice of this Agreement in the LTO against the title to the Lands. If this Agreement is filed in the LTO as a notice under section 905 of the *Local Government Act* prior to the Lands having been Subdivided, and it is the intention that this Agreement is, once separate legal parcels are created and/or the Lands are subdivided, to charge and secure only the legal parcels or Subdivided Lands which contain the ARTS Units, then the City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to partially discharge this Agreement accordingly. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect in perpetuity and, but for the partial discharge, otherwise unamended. Further, the Owner acknowledges and agrees that in the event that the ARTS Unit is in a strata corporation, this Agreement shall remain noted on the strata corporation's common property sheet in perpetuity in addition to against title to those strata lots which are used as ARTS Units.

7.2 Modification

Subject to section 7.1 of this Agreement, this Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

7.3 Management

The Owner covenants and agrees that it will furnish good and efficient management of the ARTS Units and will permit representatives of the City to inspect the ARTS Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the ARTS Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the

Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the ARTS Units.

7.4 Indemnity

The Owner hereby releases and indemnifies and saves harmless the City and the City Personnel from all losses, damages, costs (including without limitation, legal costs), expenses, actions, suits, debts, accounts, claims and demands, including without limitation, any and all claims of third parties, which the City or the City Personnel may suffer, incur or be put to arising out of or in connection, directly or indirectly or that would not or could not have occurred "but for":

- (a) this Agreement;
- (b) any breach by the Owner of any covenant or agreement contained in this Agreement;
- (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any ARTS Unit or the enforcement of any Tenancy Agreement;
- (d) any personal injury, death or damage occurring in or on the Lands, including an ARTS Unit;
- (e) the exercise of discretion by any City Personnel for any matter relating to this Agreement;
- (f) the City withholding any permission or permit to occupy any building on the Lands or any ARTS Unit; or
- (g) the exercise by the City of any of its rights under this Agreement or an enactment.

7.5 Survival

The obligations of the Owner set out in this Agreement will survive termination or discharge of this Agreement.

7.6 Priority

The Owner agrees, if required by the City Solicitor, to cause the registrable interests in land granted pursuant to this Agreement to be registered as first registered charges against the Lands, at the Owner's expense, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered in favour of the City; or

- (c) which the City has determined may rank in priority to the registrable interests in land granted pursuant to this Agreement,

and that a notice under section 905(5) of the *Local Government Act* will be filed on the title to the Lands.

7.7 No Fettering and No Derogation

Nothing contained or implied in this Agreement shall fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Agreement shall derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands and the Owner as if this Agreement had not been executed and delivered by the Owner and the City.

7.8 Agreement for Benefit of City Only

The Owner and the City agree that:

- (a) this Agreement is entered into only for the benefit of the City;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any ARTS Unit; and
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

7.9 No Public Law Duty

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

7.10 Notice

Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed:

to the City:

City of Richmond
6911 No. 3 Road
Richmond, B.C., V6Y 2C1
Attention: City Clerk
Fax: 604 276-5139

with a copy to the Director of Arts, Culture and Heritage and the City Solicitor;
and

to the Owner, to the address as set out on the title for the Lands:

Attention: President
Fax: 604 688-7749

or to such other address or fax number as any party may in writing advise. Any notice or communication will be deemed to have been given when delivered if delivered by hand, two Business Days following mailing if sent by prepaid mail, and on the following Business Day after transmission if sent by facsimile.

7.11 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and assigns.

7.12 Severability

If any Article, section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the remainder of this Agreement will continue in full force and effect and, in such case, the parties hereto will agree upon an amendment to be made to the Article, section, subsection, sentence, clause or phrase previously found to be invalid and will do or cause to be done all acts reasonably necessary in order to amend this Agreement so as to reflect its original spirit and intent.

7.13 Waiver and Remedies

All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

7.14 Sole Agreement

This Agreement, and any documents signed by the Owners contemplated by this Agreement (including, without limitation, the Housing Covenant), represent the whole agreement between the City and the Owner respecting the use and occupation of the ARTS Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

7.15 Further Acts

Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

7.16 Equitable Relief

The Owner covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the City will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

7.17 No Joint Venture

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

7.18 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

7.19 Deed and Contract

By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

7.20 Joint and Several

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

7.21 No Liability

The parties agree that neither the Owner, nor any successor in title to the Lands, or portions thereof, will be liable for breaches of or non-observance or non-performance of covenants contained in this Agreement occurring after the date that the Owner or its successor in title, as the case may be, ceases to be the registered owner of the Lands; provided, however, the Owner or its successors in title, as the case may be, shall remain liable after ceasing to be the registered owner of the Lands for all breaches of and non-observance and non-performance of covenants in this Agreement if the breach, non-observance or non-performance occurred prior to the Owner or any successor in title, as the case may be, ceasing to be the registered owner the Lands.

7.22 City Approval and Exercise of Discretion

Any City approval or consent to be given pursuant to or in connection with this Agreement is not effective or valid unless provided by the City in writing. Any City approval or consent to be granted by the City in this Agreement may, unless stated expressly otherwise, be granted or withheld in the absolute discretion of the City.

7.23 No Compensation

The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any decrease in the market value of the Lands, or any Subdivided portion thereof as applicable, and for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

7.24 Runs with the Lands

The interest in lands including all covenants, rights of way and easements as the case may be, contained in this Agreement will, unless discharged in accordance with this Agreement, run with and bind the Lands in perpetuity.

7.25 Time of Essence

Time, where mentioned herein, will be of the essence of this Agreement.

7.26 Assignment of Rights

The City, upon prior written notice to the Owner, may assign or license all or any part of this Agreement or any or all of the City's rights under this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing or administering the Housing Strategy or other related public facilities, services or utilities. The Owner may not assign all or any part of this Agreement without the City's prior written consent.

7.27 Counterparts

This Agreement may be signed by the parties hereto in counterparts and by facsimile or pdf email transmission, each such counterpart, facsimile or pdf email transmission copy shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument and may be compiled for registration, if registration is required, as a single document.

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

PINNACLE LIVING (CAPSTAN VILLAGE) LANDS INC. by its authorized signatory(ies):

Per: _____
Name

Per: _____
Name

CITY OF RICHMOND by its authorized signatory(ies):

Per: _____
Malcolm D. Brodie, Mayor

Per: _____
David Weber, Corporate Officer

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor
DATE OF COUNCIL APPROVAL

Appendix A to Housing Agreement

STATUTORY DECLARATION

CANADA)
)
PROVINCE OF BRITISH COLUMBIA)
)
)
)
IN THE MATTER OF A HOUSING
AGREEMENT WITH THE CITY OF
RICHMOND
("Housing Agreement")

TO WIT:

I, _____ of _____, British Columbia, do solemnly declare that:

- 1. I am the owner or authorized signatory of the owner of _____ (the "ARTS Unit"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the ARTS Unit.
3. For the period from _____ to _____ the ART Unit was occupied only by the Eligible Tenants (as defined in the Housing Agreement) whose names and current addresses and whose employer's names and current addresses appear below:

[Names, addresses and phone numbers of Eligible Tenants and their employer(s)]

- 4. The rent charged each month for the ARTS Unit is as follows:
(a) the monthly rent on the date 365 days before this date of this statutory declaration: \$_____ per month;
(b) the rent on the date of this statutory declaration: \$_____; and
(c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$_____.

- 5. For the period from _____ to _____ the ARTS Unit was occupied by a Professional Artist (as defined in the Housing Agreement) whose name and current address appear below:

[Names, addresses and phone numbers of Eligible Tenants and their employer(s)]

- 6. The Professional Artist has completed specialized training in _____

7. The Professional Artist is recognized as a professional artist by the following persons, who are also artists working in the same artistic tradition as the Professional Artist:

[Names, addresses and phone numbers of peer references]

8. The Professional Artist estimates devoting approximately _____ hours to artistic activity in the following year;

9. The Professional Artist has publically presented their work as follows:

[insert date and description of public presentations over the past 5 years and those anticipated in the following year]

10. The Professional Artist has produced the following independent body of work: – **Applies only to Professional Visual Artists (as defined in the Housing Agreement)**

[insert description of independent body of work]

11. The Professional Artist has maintained an independent professional practice from _____ to _____; – **Applies only to Professional Visual Artists**

12. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against the land on which the Affordable Housing Unit is situated and confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.

13. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the City of _____)
_____, in the Province of British Columbia, this _____ day of _____, 20____.)

A Commissioner for Taking Affidavits in the Province of British Columbia)

DECLARANT

SCHEDULE A

LANDS

1. PID: 007-976-682; Lot 1 Sections 27, 28 and 29 Block 4 North Range 6 West New Westminster District Plan 6311;
2. PID: 004-135-091; Lot "A" Section 28 Block 5 North Range 6 West New Westminster District Plan 6368; and
3. PID: 011-191-082; North Half Lot "B" Section 28 Block 5 North Range 6 West New Westminster District Plan 6368.

{250291-500503-00232733;4}

{250291-500503-00232733;4}

3200, 3220, 3240, 3300, and 3320 No. 3 Road and
3171, 3191, 3211, 3231, 3251, 3271, 3291, 3331, and 3371 Sexsmith Road
Application No. RZ-12-610011

Davis: 16930320.5
Davis: 16930320.7

(c) 2010