

Richmond Town Center Building Window Mural Agreement and License

THIS AGREEMENT AND LICENSE (hereafter “Agreement”), made this 21st day of December 2020, by and between the Town of Richmond, a Vermont municipality located in Chittenden County (the “Town”), and The Ratc Nest, Inc., d/b/a Radiate Art Space, a Vermont non-profit corporation, with its principal offices located at 203 Bridge Street, Richmond, Vermont 05477 (hereafter “Radiate”) (collectively, the “Parties”).

WHEREAS, the Town owns the Richmond Town Center Building located at 203 Bridge Street in Richmond, which is under the control and supervision of the Selectboard and Town Manager; and

WHEREAS, the Town leases space in the interior of the Town Center Building to Radiate, which utilizes the space to promote various community art initiatives; and

WHEREAS, Radiate’s lease does not expressly authorize it to paint or exhibit art on the exterior of the Town Center Building; and

WHEREAS, Radiate states that it has received verbal approval from the Town to paint the boarded-up basement windows of the Town Center Building and has done so on four prior occasions; and

WHEREAS, other than the Parties, no other person or party has ever expressly or implicitly been permitted to display art on the exterior of the Town Office Building; and

WHEREAS, art enhances and promotes Richmond’s identity as a livable, creative town and a desirable place to live, work and visit; and

WHEREAS, the purpose of the window murals is to visually inspire community-building and personal connections through art at the Town Center Building, which is located at the heart of the Richmond community; and

WHEREAS, the window murals have the further potential to give residents of all ages, incomes and backgrounds access to art as part of daily life in the Town; give expression to the history, values, identity and diversity of the Town, its neighborhoods, buildings and places; and provide opportunities for local artists to share their work; and

WHEREAS, the Town Center Building, while a non-public forum, must nonetheless be managed in a manner that gives effect to constitutional limitations; and

WHEREAS, Radiate has both the expertise, experience and desire to curate the window murals on the Town Center Building, subject to the aforementioned limitations, and the Selectboard is prepared and willing to delegate that curation authority to Radiate and to license it to install and maintain said murals on the Town Center Building, pursuant to the terms and conditions of this Agreement; and

WHEREAS, the purpose of this Agreement is to clarify and make transparent the guidelines, standards and process for the display of window murals on the Town Center Building;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties stipulate and agree as follows.

1. Definitions. For the purpose of this Agreement, the following definitions shall apply, unless the context clearly indicates a contrary intent.

"Artist": – Any person, whether novice or professional, who seeks to or does participate in the Town Center Building mural application/selection process.

"Radiate Art Space" or "Radiate": A private, nonprofit 501(c)(3) entity that includes Board members, the Executive Director, and volunteers that serve the stated mission of organization, to wit: to provide community space to create art, with access to a wide array of materials and mediums for artistic expression and exploration; a space that fosters social and community-building interactions in a creative environment for all ages. As a non-profit organization, Radiate Art Space aims to be physically and economically accessible to all, with low or no cost offerings to the entire community.

"Curator Committee": The Radiate Board of Directors will serve as the Curator Committee. The Board consists of volunteer visual arts professionals and community members who contribute their knowledge and expertise to curate art and fulfill the mission of Radiate Art Space. The bylaws of Radiate Art Space are attached as Addendum A to this Agreement. Current Board members are listed on the Radiate Art Space website (www.radiateartspace.org).

"Window Murals": Temporary window murals on the Town Center Building, which shall be painted "in situ" by the selected artist(s) under Radiate supervision and only in locations that have been approved in advance by the Selectboard. Namely, the boarded up windows on the ground floor of the building; more specifically, the seven boarded up windows facing Bridge Street, and the four windows facing the parking lot nearest the Bridge Street entrance, also on the ground floor.

“Temporary”: A period of time generally not to extend beyond 12 months.

2. Application/Proposal Process.

- A. Window murals shall be repainted at least once a year, unless otherwise authorized by the Richmond Selectboard.
- B. All requests for applications/proposals for new window mural ideas (a/k/a, “call to artists”) shall be publicly posted by the Curator Committee at least 30 days prior to the application deadline.
- C. All applications/proposals shall be submitted via a structured form, developed by Radiate and approved by the Curator Committee, that requests sufficient detail regarding window mural proposals to guide and inform the review process. Such forms may be submitted online or mailed, via paper copies, to the Curator Committee. The Curator Committee, at its discretion, shall determine whether to use open competition, invitational competition, or other methods to solicit applications.
- D. All applications/proposals shall be reviewed by the Curator Committee based on the selection criteria, discussed below, and any final decision shall be made by majority vote of the full Committee.
- E. The Curator Committee shall be responsible for overseeing the entire window mural project, from application/selection to final removal, including, without limitation: preparing the window space, all communication with the artist(s), organizing the painting process (with teaching/support, if necessary), providing the materials used (namely, acrylic paint), and maintenance of the artwork in the event of defacing or degradation from the weather.
- F. The Curator Committee shall ensure that any and all selected artist(s) prepare mock-up sketches, as detailed as appropriate, and lists of supplies needed prior to painting. The Curator Committee shall also ensure that the artist is responsible for painting their murals “in situ,” within a specified time frame, and cleaning up the area and all materials afterward.
- G. Artist names, statements and any supporting materials for their piece must also be provided to be posted on the same date that the art is installed. Artists shall also be responsible for any special supplies needed that are not normally supplied by Radiate Art Space.

3. Content Restrictions and Selection Criteria.

- A. Since the Town Center Building is a non-public forum (i.e., it is traditionally closed off to the public and not a traditional platform for expression), the Curator Committee may place reasonable restrictions on speech/expression in connection with the selection and content of window murals, subject to constitutional limitations. Such restrictions are constitutionally permissible within a non-public forum if, when balanced against First Amendment interests, they are (a) reasonably related to a governmental interest; (b) there exists alternative means of expression;

and (c) the restriction is viewpoint neutral.

B. **Criteria for Review and Selection.** In reviewing applications for window murals and selecting a proposal, the Curator Committee shall develop a series of questions and a rating matrix that shall be used to guide its decision-making process. In addition to assessing artistic quality, appropriateness to its context, and durability, these questions shall ask whether a proposed window mural, as described in the application and/or depicted in sketches or mock-ups:

1. Fits with the Town's overarching goal of community-building? Provides a source of community pride, heightened community aesthetics, and/or highlights the uniqueness of historical or local resources, or is educational?
2. Is consistent with specific policies in the Richmond Town Plan and/or the Community Vision more broadly, as articulated in ordinances and policies duly adopted by the Selectboard?
3. Support diversity in racial, cultural, socio-economic, gender, or sexual identities, gives voice to marginalized groups, or promotes anti-discrimination?
4. If educational, is factually accurate and stimulates thoughtful discussion or debate?
5. Such other lawful inquiries and considerations as the Curator Committee may deem relevant. Other factors to be considered in determining what proposal is selected shall be based on seeking balance and variety in the types of topics and groups selected. (For example, if a teen group prepared the last mural, it may be appropriate for a senior group to get priority, if both proposals are deemed equally acceptable).

C. **Criteria for Exclusion.** All mural proposals shall be subject to rejection if the proposal contains any of the following:

1. advertising, including political advertising
2. all religious content
3. hate speech or images that degrade, stigmatize or discriminate against others
4. violent, easily recognizable and offensive profanity, or pornographic content

4. Transparency.

Transparency in the Curator Committee's soliciting, review and selection process for window mural proposals shall be achieved through at least the following actions:

- A. The Application/Proposal process will be publicly posted.
- B. Anyone may propose an idea for a new mural by submitting an online proposal at any time.
- C. Outdoor signage shall accompany the window art identifying the artist and where more information about the murals can be found.

D. Online information about the artists, artist statements and any other accompanying information shall be posted on Radiate Art Space's website (www.radiateartspace.org), with an additional link on the Town of Richmond website to that information.

5. License. By this Agreement, the Town licenses Radiate, as its tenant, to create, install, maintain and repair temporary window murals on the Town Center Building, subject to the terms and conditions of this Agreement. By its terms, said license is personal to Radiate and may not be conveyed, assigned, sold, gifted or otherwise transferred without the express written consent of the Town. Said license is revocable and may be terminated at any time by vote of the Richmond Selectboard or action by the Town Manager, without liability by the Town to Radiate or any artists in connection with such termination.

6. Ownership of Window Murals; Copyright.

Once installed on the Town Center Building, all temporary window murals shall be the property of the Town. However, all copyright privileges associated with a window mural shall be assigned to the Artist, without exception. The Artist(s) shall in turn grant the Curator Committee and the Town of Richmond the right and license to display and reproduce the work of art, at the sole discretion of the Curator Committee and the Town, in two-dimensional form for non-commercial purposes. The Town agrees that all references to the Work and all reproduction of the Work shall credit the Work to the Artist(s), unless the Artist(s) requests to the contrary in writing. The Town also agrees that all references to the Work and all reproduction of the Work shall credit Radiate Art Space for its curation.

7. Further Assurances. In addition to the foregoing, the Curator Committee shall ensure that the following requirements are met in connection with any and all window murals:

- A. Prior to painting the murals, the artist(s) must agree that their work is for temporary display only, and that their art will be repainted or removed at a future point, not to exceed 12 months (unless extended by action of the Selectboard).
- B. The artist(s) shall agree not to hold the Town of Richmond liable for any and all damages or loss to the Artist(s) or the artwork(s).
- C. On-site activity in connection with the installation and removal of the artwork shall be handled by the Curator Committee, unless agreed in advance by the Town Manager.
- D. Radiate Art Space will bear all costs associated with the window mural painting process and removal. The Town of Richmond shall incur no costs whatsoever.
- E. Defense, Indemnification and Hold Harmless. By this Agreement, Radiate

shall defend, indemnify and hold harmless the Town and its agents, officers, board members, employees, officials and volunteers from and against any and all liabilities, damages, losses, demands, suits, costs, claims and expenses, including but not limited to attorney fees, arising out of or resulting from the negligent, unlawful or unconstitutional conduct of Radiate, its Curator Committee, agents, officers or employees in connection with the window murals and the solicitation, review, selection and oversight of artists relative thereto. Radiate's obligation to indemnify, hold harmless and defend the Town shall include any settlement or judgment made by or rendered against the Town.

- F. At all times material to this Agreement, Radiate shall maintain a policy of general liability insurance (bodily injury, property damage) in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Radiate shall provide the Town with a certificate of insurance demonstrating such coverage and shall name the Town as an additional insured in any policy that it holds.

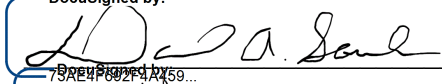
8. Duration

- A. This Agreement shall run from the date of the last signature below to 12/21/21, unless first terminated in accordance with Item 8.C., below, or renewed or extended by mutual written agreement prior to the date of termination.
- B. Decisions by the Town to extend, modify or terminate this Agreement shall be made by the Richmond Selectboard or its designee.
- C. This Agreement may be terminated by either Party upon thirty-day advanced written notice mailed or presented in hand to the Radiate Executive Director or the Richmond Town Manager, as the case may be.
- D. The Parties recognize that the existing art installation did not go through the curation process outlined in this Agreement and further agree that the current installation will not go through that curation process. This Agreement shall apply to the current installation from the date that the Agreement is signed through the removal of the current installation, which shall be no later than July 12, 2021.
- E. If this Agreement is terminated, the Curator Committee shall be responsible for the removal of any window murals then installed on the Town Center Building within 30 days of the date of termination. By such date, the window coverings shall be repainted in appropriate white outdoor latex paint in keeping with the rest of the building.
- F. If any of the designated windows are replaced with working windows, this Agreement shall terminate for those windows.


9. Miscellaneous. This Agreement shall constitute the complete agreement between the Parties relative to the subject matter addressed herein. It shall be governed by

and interpreted in accordance with the laws of the State of Vermont. The provisions of this Agreement are severable. If any provision is deemed by a court of competent jurisdiction to be unlawful or unenforceable, that provision shall be severed and the remainder shall continue in full force and effect. This Agreement shall only be modified by mutual written agreement of the Parties.

By: TOWN OF RICHMOND

David Sander  Date 12/21/20

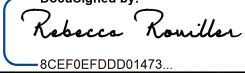
Bard Hill  Date 12/21/20

Roger Brown  Date 12/21/20

Katie Mather  Date 12/21/20

Christine Werneke  Date 12/21/20

By: RADIATE

(Radiate Executive Director)  Date 1/27/2021
Its Duly Authorized Agent

ADDENDUM A FOLLOWS ON NEXT PAGE

THE RATC NEST, INC. (dba. RADIATE ART SPACE) BYLAWS

Article 1. Name

The registered name of the non-profit corporation is "The RATC Nest, Inc." RATC representing Richmond Area Teen Center. The date of incorporation with the State of Vermont was August 24, 2005. The RATC Nest was recognized as a federally exempt non-profit on August 1, 2014. The RATC Nest started doing business as "Radiate Art Space" as of December 3, 2016.

Article 2. Purpose

Radiate Art Space shall be organized exclusively for charitable purposes under Section 501(c)(3) of the U.S. Internal Revenue Code providing relief of the poor, the distressed, and the under privileged by creating and maintaining a space where the community can gather to create art, share creative pursuits, and educate others in different types of art methods, materials and techniques. Radiate Art Space will strive to provide a space that fosters social and community-building interactions in a creative environment for all ages.

The types of activities that are envisioned to achieve a maximum use of the space include a mix of structured programs, drop-in classes, and workshops.

Article 3. Office

The registered office of Radiate Art Space will be located at Town Center Building 203 Bridge St., PO Box 383, Richmond, VT 05477. A public file will also be kept at this location and is open to the public.

Article 4. Board of Directors

- **Powers:** The business and affairs of Radiate Art Space shall be managed by the Board of Directors. The board may appoint committees for any purpose, including an executive committee that may exercise any of the authority of the board.
- **Number, Tenure, and Qualifications:** The Board of Directors of Radiate Art Space shall consist of at least four and not more than twelve members. Directors shall be elected at the annual meeting in March of the Board, and the term of office of each director shall be two years and will remain in office until the election of his or her successor. Directors must be residents of Richmond, Bolton, Huntington, Underhill, or Jericho, Vermont and must be recommended to the Board or apply by submitting a letter of interest to the Board of Directors.
- **Regular Meetings:** The Board of Directors may provide, by resolution, the time and place for holding additional regular meetings without other notice than such resolution. Regular meetings of the Board of Directors shall be held at the principal office of

Radiate Art Space.

- **Special Meetings:** Special meetings of the Board of Directors may be called by or at the request of the president or any two directors, and shall be held at the principal office of Radiate Art Space or at such other place as the directors may determine.
- **Notice:** Notice of any special meeting shall be given at least forty-eight (48) hours before the time fixed for the meeting, by phone, or e-mail with confirmation of receipt. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.
- **Quorum:** A majority of the number of directors fixed in these bylaws shall constitute a quorum for the transaction of business. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Any action consented to in writing by each and every director shall be as valid as if adopted by the Board of Directors at a duly warned and held meeting of the board, provided such written consent is inserted in the minutes.
- **Voting:** Any action that is proper for a special meeting may be conducted by written ballot in lieu of a meeting.
- **Removal of Absent Directors:** Directors missing two consecutive regular meetings are deemed removed upon a vote by members present.
- **Vacancies:** Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors at any meeting. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Article 5. Officers

- **Number:** The officers of Radiate Art Space shall be a president, vice-president, secretary, and a treasurer, each of whom shall be elected by the Board of Directors.
- **Election and Term of Office:** The officers of Radiate Art Space shall be elected bi-annually at the annual meeting of the Board of Directors. If the election is not held at such meeting, such election shall be held as soon as possible thereafter as is convenient. Each officer shall hold office until his or her successor has been duly elected and qualified or until his or her death, resignation, or removal in the manner hereinafter provided.

- **Removal:** Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of Radiate Art Space would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create contract rights.
- **Vacancies:** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.
- **Powers and Duties:** The powers and duties of the several officers shall be as provided from time to time by resolution or other directive of the Board of Directors. In the absence of such provisions, the respective officers shall have the powers and shall discharge the duties associated with such offices. The secretary shall prepare and file minutes of all meetings of the board, and shall authenticate the records of Radiate Art Space upon request.
- **Salaries:** The salaries of the officers may be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of Radiate Art Space. There shall be no right to a salary and a salary may not be paid unless the Board of Directors so orders.

Article 6. Contracts, Loans, Checks, and Deposits

- **Contracts:** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of Radiate Art Space, and such authority may be general or confined to specific business.
- **Loans:** No loans shall be contracted on behalf of Radiate Art Space and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.
- **Checks, Drafts, or Orders:** All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness shall be signed by such officer or officers, agent or agents of Radiate Art Space and in such manner as from time to time shall be determined by resolution of the Board of Directors.
- **Deposits:** All funds of Radiate Art Space not otherwise employed shall be deposited from time to time to the credit of Radiate Art Space in such banks, trust companies, or other depositories as the Board of Directors shall select.

Article 7. Fiscal Year

The fiscal year of Radiate Art Space shall be January 1 to December 31.

Article 8. Waiver of Notice

Whenever any notice is required to be given to any member or director of Radiate Art Space under the provisions of law or these bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

These bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board of Directors at any regular or special meeting of the board; provided, however, that the number of directors shall not be increased or decreased without the prior approval of two-thirds of the Board.

Article 9. Books and Records

Radiate Art Space shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having and exercising any of the authority of the Board of Directors, and shall keep at the principal office a record giving the names and addresses of the members of the Board entitled to vote. The office is located at Town Center Building, 203 Bridge St., Richmond, VT 05477. All books and records of Radiate Art Space may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

Article 10. Dissolution or Sale of Assets

A quorum of the Board of Directors shall be required to sell or mortgage assets of Radiate Art Space not in the regular course of business or to dissolve Radiate Art Space. Upon dissolution of Radiate Art Space, any assets remaining after payment of or provision for its debts and liabilities shall, consistent with the purposes of the organization, will be paid over to charitable organizations exempt under the provisions of Section 501(c)(3) of the U.S. Internal Revenue Code or corresponding provisions of subsequently enacted federal law. No part of the net assets or net earnings of Radiate Art Space shall inure to the benefit of or be paid or distributed to an officer, director, member, employee, or donor of the organization.

Signed: DocuSigned by:
Darrie Rankin Date: 1/27/2021
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President

Signed: DocuSigned by:
Judy Bush Date: 1/27/2021
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Vice President

Signed: DocuSigned by:
Shari Stue Date: 1/27/2021
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Treasurer

Signed: DocuSigned by:
Julie Toth Date: 1/27/2021
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Secretary