

LAKEVIEW MEMORIAL WALL AGREEMENT

Between:

The Corporation of the Town of Tecumseh

-and-

Transition to Betterness Family and Healthcare

PREPARED BY:

WOLF HOOKER PROFESSIONAL CORPORATION

Barristers & Solicitors
72 Talbot Street North, Suite 100
Essex, Ontario
N8M 1A2

LAKEVIEW MEMORIAL WALL AGREEMENT

THIS AGREEMENT made in triplicate this _____ day of _____, 20_____.

B E T W E E N:

THE CORPORATION OF THE TOWN OF TECUMSEH,
hereinafter called the "**Municipality**" or "**Town**"

OF THE FIRST PART

-and-

***TRANSITION TO BETTERNESS FAMILY AND
HEALTHCARE***
hereinafter called the "**T2B**"

OF THE SECOND PART

HEREINAFTER collectively referred to as the "Parties"

RECITALS

WHEREAS the Town is the owner of those lands described on Schedule A hereto and known municipally as Lakewood Park together with the memorial granite walls located thereupon which memorial granite walls are herein termed "the Panels";

AND WHEREAS T2B desires to enter into an arrangement with the Town to allow for the memorialization of the names of certain T2B donors on the Panels, the erection of a monument (herein "Monument") in proximity to the Panels, and maintenance of the associated center garden in proximity to the Monument and existing Panels all of which and together with certain works and improvements and supports herein collectively referred to as the "Works";

AND WHEREAS the Municipality desires to document the terms of this arrangement including the terms of payment by T2B, maintenance of the Works by T2B, and the indemnification and insurance obligations of T2B with respect to the Works;

WITNESSETH that in consideration of these presents, and other good and valuable consideration, the Parties hereto mutually covenant, promise and agree as follows:

ARTICLE I

DEFINITIONS

1.1 DEFINITIONS

“**Business Day**” means every day except Saturdays, Sundays and statutory holidays in the Province of Ontario.

“**Lands**” means those lands described on Schedule A attached hereto;

“**Monument**” shall carry the meaning set out in the recitals above;

“**Panels**” shall carry the meaning set out in the recitals above;

“**Term**” of this Agreement means the period of 25 years from the date of this Agreement set out above unless terminated earlier in accordance with the provisions of this Agreement;

“**Use**” in respect of the Panels means the activity of having access to the Panels for purposes of memorialization of names on the Panels, including but not limited to inspecting the state of the Panels, cleaning the Panels and marketing opportunities to donors in respect of the Panels;

“**Works**” shall carry the meaning set out in the recitals above;

ARTICLE 2

T2B COVENANTS

2.1 T2B AGREES

T2B makes the following covenants, all of which shall be carried out at T2B's expense:

2.1.1 T2B to Provide

- A) T2B shall pay to the Town the sum of \$33,262.45 particulars of which are set out at Schedule “B” hereto, representing unfunded costs incurred by the Town to date respecting the Panels. Such payment to be made within thirty (30) days of both parties executing this Agreement and in advance of T2B having Use of the Panels or erecting the Monument;
- B) Preparation, submission, and revision of all drawings, renderings, and designs required under this Agreement.
- C) The Monument shall be constructed and installed on the Lands at the sole expense of T2B by a qualified contractor approved by both T2B and the Municipality and to the satisfaction of the Municipality (acting reasonably) in accordance with all the applicable provisions of the Municipality's By-Laws and subject to each of the

Municipality and T2B approving and agreeing upon all drawings, renderings, and designs required under this Agreement prior to construction and installation;

- D) At their expense, T2B will have a landscaper of their choice (subject to Town approval, acting reasonably) to annually plant the centre garden and the garden around the outside of the Panels and maintain these gardens throughout the growing season annually for each year of the Term. Subject to Town approval, acting reasonably, T2B may select an alternative landscaper retained by it for this purpose from time to time.

2.1.2 Location

T2B shall locate the Works on the Lands in the location approved by the Municipality and as otherwise set out on any schedule attached hereto.

2.1.3 Maintenance and Acceptance of Monument

The Municipality shall issue a letter of acceptance (herein “the Acceptance”) upon completion of construction and placement of the Monument to the satisfaction of the Municipality. Upon issuance of the Acceptance, the Monument shall become property of the Municipality. Notwithstanding the foregoing, T2B will be solely responsible for any repairs, replacement, removal of graffiti, other damage, or failure of the Works at the expense of T2B throughout the Term of this Agreement. After termination or expiration of this Agreement for any reason (provided that T2B shall reimburse the Town for all reasonable out of pocket costs incurred by the Town under this Section 2.1.3 provided such costs are incurred by the Town as a result of a default hereunder by T2B and during the Term hereof), the Works shall be maintained, repaired, altered, decommissioned or removed by the Municipality at its sole expense during the life of the Works as determined by the Town in its sole and unfettered discretion;

2.1.3 Drawings

Drawings shall be prepared detailing the construction and installation of the Monument which drawings shall be completed in accordance with:

- a) Sound engineering practice as evidenced by a stamp from a qualified professional engineer;
- b) The criteria laid down by governmental authorities having jurisdiction including, without limiting the generality of the foregoing, the Municipality, the Corporation of the County of Essex, the Essex Power Corporation or Ontario Hydro Corporation (whichever is the applicable hydro authority), and the Essex Region Conservation Authority (ERCA);
- c) Such other reasonable criteria as approved by the Municipality and communicated to T2B in writing.

The Monument shall be constructed in accordance with the approved drawings;

2.1.4 No Liens on Monument

T2B covenants that it will be the sole and absolute owner of the Monument until the date of the Acceptance and on the issuance of the Acceptance will transfer the Monument to the Municipality free and clear of any lien and/or encumbrance. This covenant shall survive transfer of title of the Monument to the Municipality. T2B shall indemnify and save harmless the Municipality from all claims whatsoever from any third party claiming title or a lien or encumbrance with respect to the Monument. T2B makes no covenant, agreement, representation or warranty regarding title to any part of the Works aside from the Monument.

ARTICLE 3

THE TOWN COVENANTS

3.1 PERMISSIONS

3.1.1

Subject to the terms of this Agreement (including, without limitation, the performance of the covenants by T2B set out in Article 1 above) T2B is authorized to and shall have access to Lakewood Park (without interference from the Town or those for whom it is responsible at law) for the following purposes:

- A) to inspect the current condition of the Panels, the existing Works, and the surrounding Lands;
- B) to memorialize by engraving the names of certain T2B donors on 29 of the existing 30 Panels.

3.1.2

T2B acknowledges that the designated 30th Panel will house the existing names of the Dragon Boat donors and the Panel that will be used for this purpose will be one that is mutually agreed upon by the Municipality and T2B. In any remaining space on the said agreed 30th Panel, T2B will have the right to sell additional memorial engravings on it should it so choose.

3.2 ACCEPTANCE

Subject to the provisions of this Agreement, the Municipality hereby agrees to accept ownership of the Monument effective upon the issuance of the Acceptance or such earlier time as it may confirm in writing in accordance with the terms of this Agreement. Upon acceptance hereunder, the Municipality agrees that the Monument shall be transferred on an “as-is/where-is” basis and that T2B makes no representation or warranty, statutory, express or implied with respect to the Monument or that it is fit for any purpose except for the covenant at Section 2.1.4 related to encumbrances/liens. The Municipality assumes all risk and liability whatsoever resulting from its possession of, use of or eventual disposition of the Monument and T2B shall have no liability with respect thereto including no liability for indirect, punitive, incidental or consequential damages related thereto except as specifically set out herein during the Term hereof.

ARTICLE 4

INDEMNITIES AND ASSURANCES

4.1 CONTRACTOR REQUIREMENTS

Prior to commencing construction T2B shall comply or cause its contractor (the “**Contractor**”) to comply with the following:

- a) SAFETY: all requirements of the Workplace Safety & Insurance Act, the Occupational Health and Safety Act, Environmental Protection Act and all other applicable law, regulations and by-laws and Town health and safety policies.
- b) Accessibility: ensure that all its employees, agents, volunteers, or others for whom T2B or its Contractor is legally responsible receive training regarding the provisions of the goods and services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the “Regulation”) made under the *Accessibility for Ontarians with Disabilities Act, 2005* as amended (the “Act”).
- c) Workers' Compensation Board Clearance Certificate issued in respect of the Contractor.

4.2 INDEMNITY AND INSURANCE

T2B shall indemnify and save harmless the Municipality, from and against all actions, claims, loss, damage and liability connected with T2B’s use of Lakewood Park, the use of the Panels by T2B, damage to the Panels and gardens which damage occurs after the date upon which T2B is given access to the Panels hereunder, maintenance and repair of the gardens, and erection and on-going maintenance and repair of the Monument as contemplated herein whether arising directly or indirectly out of an act, omission, whether amounting to negligence or unlawful performance or the non-performance of any obligation, of T2B or any contractors to T2B under this Agreement or otherwise arising from the actions of third parties and/or an act of God. During the currency of this Agreement, provided that T2B shall have no liability hereunder in respect of any acts or omissions of the Town or those for whom it is responsible at law, under no circumstances shall T2B be liable for any indirect, incidental, consequential or punitive damages. During the Term hereof, T2B or its Contractor shall maintain in full force and effect a policy of personal liability and property damage insurance in form and amount satisfactory to the Municipality's solicitor wherein T2B and the Municipality shall be insured as principals against such liability to the limits approved. T2B or its Contractor shall provide the Municipality with a certified copy of such policy prior to the commencement of construction of any of the facilities and works referred to herein. The Municipality confirms that it maintains its own such insurance in respect of Lakewood Park and the Lands.

ARTICLE 5

DEFAULT

5.1 STOP WORK

In the event of any default by T2B in the performance of any of the terms and conditions of this Agreement, the Municipality at its discretion shall, in addition to other remedies available to the Municipality, be entitled to refuse access to Lakewood Park, and/or shall be entitled to issue stop work orders with respect to any matters in respect of which a permission has been issued or contemplated under this Agreement and/or may refuse to grant to T2B any permissions, permits, certificates, approvals or authorities of any kind or nature which T2B would have been entitled to receive had T2B otherwise complied with the Municipality's requirements in this Agreement, all of which may be done until such time as the default has been cured in a manner satisfactory to the Municipality, acting reasonably.

5.2 MUNICIPALITY MAY COMPLETE

T2B acknowledges that this Agreement is entered into pursuant to a bylaw that has been passed by the Municipality approving the entering into of this Agreement by the Municipality and incorporating the terms of this Agreement into that bylaw, and further that section 446 of The Municipal Act, S.O. 2001, c.25 and amendments thereto, applies to all requirements of this Agreement. If T2B neglects to undertake any matter or thing required to be done by this Agreement and such default continues after TEN (10) Business Days of T2B being given written notice by the Municipality of such default, in addition to other remedies available to the Municipality, the Municipality may direct that such matter or thing shall be done at the expense of T2B, and the Municipality may recover the costs incurred in doing it by any means permitted under the Municipality Act; T2B hereby authorises the Municipality (including, without limiting the generality of the foregoing, its employees, agents and servants) to enter upon the Lands to do any such matter or thing.

5.3 TERMINATION RIGHTS

In addition to the rights and remedies set out in articles 5.1 and 5.2 above, where T2B is and remains in default under the terms of this Agreement and fails to cure the default upon 10 days' notice in writing from the Town, the Town may, without losing its rights of indemnification under this Agreement, terminate the rights of T2B hereunder, assume ownership of the Monument (if an acceptance has not already been issued) leaving it in the existing location or at the sole option of the Town, relocating the Monument or disposing the Monument without any obligation to account to T2B for its status, removal of value and recover from T2B all costs (including, without limitation, legal costs) incurred by the Town in doing so and rectifying the default of T2B under the provisions of this Agreement.

5.4 FORCE MAJEURE

Without limiting the nature of the indemnity required above in section 4.2, if either party hereto shall be bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles; inability to procure materials or services; failure of power; restrictive governmental laws or regulations; riots, insurrection; sabotage; rebellion; war; act of God; pandemic; or other reason whether of a like nature or not, not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of the term, covenant or act shall be excused for the period of the delay and period for the performance of any such term, covenant or act shall be extended for a period equivalent to the period of such delay.

5.5 TERMINATION

Upon expiration or other termination of the Term, T2B shall have no further obligation with respect to maintenance of the Works or any part thereof and shall be released from all obligations hereunder except as specifically contemplated herein to survive termination or expiration of this Agreement. Notwithstanding anything to the contrary set out herein, T2B acknowledges that its obligations at 5.3 hereof may survive any termination or expiration hereof in the event of a default by T2B hereunder.

ARTICLE 6

MISCELLANEOUS

6.1 COMMUNICATION

Subject to the express provisions of this Agreement, all communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered and receipted mail, charges prepaid, or by facsimile transmission or other means of recorded telecommunication, charges prepaid, to the applicable address set forth below or to such other address as either party hereto may from time to time designate to the other in such manner.

Communications sent to the Municipality shall be addressed to:

917 Lesperance Road, Tecumseh, Ontario N8N 1W9

Communications sent to T2B shall be addressed to:

3200 Deziel Drive, Unit 307, Windsor, Ontario N8N 5K8

Attention: Amber Hunter, Executive Director

Any communication so personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Communications so sent by registered and receipted mail shall be deemed to have been validly and effectively given on the Business Day next following the day on which it is received, as evidenced by the postal receipt. Communications so sent by facsimile transmission or other means of recorded telecommunication shall be deemed to have been validly and effectively given on the Business

Day next following the day on which it is sent. Any party may from time to time change his or its address for service on written notice to the others.

6.2 TIME OF ESSENCE

Time shall be of the essence of this Agreement and of every part thereof.

6.3 WAIVER

No waiver by any part of a breach of any of the covenants, conditions and provisions herein contained shall be effective or binding upon such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any other future breach.

6.4 FURTHER ASSURANCES

Each of the Parties covenants and agrees that their successors and assigns will sign such further agreements, assurances, waivers and documents, attend such meetings, enact such by-laws or pass such resolutions and exercise such votes and influence, do and perform or cause to be done and performed such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part thereof.

6.5 HEADINGS

The headings of the Articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

6.6 SUCCESSORS AND ASSIGNS

The covenants hereunder shall run with the Lands and this Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

6.7 GENDER

All words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be construed as agreeing with the required word and pronoun.

6.8 SEVERABILITY

If any covenant or provision contained herein is determined to be in whole or in part, invalid or unenforceable by reason of any rule of law or public policy, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant or provision contained herein and, in the case of partial invalidity or unenforceability of a covenant or provision, such partial invalidity or unenforceability shall not affect the validity or enforceability of the remainder of such covenant or provision, and such invalid or

unenforceable covenant or provision or portion thereof, as the case may be, shall be severable from the remainder of this Agreement.

6.9 ENTIRE AGREEMENT

This Agreement expresses the final agreement among the parties hereto with respect to all matters herein and no representations, inducements, promises or agreements or otherwise among the parties not embodied herein shall be of any force and effect. This Agreement shall not be altered, amended or qualified except by a memorandum in writing, signed by all the parties hereto, and any alteration, amendment or qualification thereof shall be null and void and shall not be binding upon any such party unless made and recorded as aforesaid.

6.10 EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

6.11 JURISDICTION

This Agreement and all other agreements, security and documents to be delivered in connection with this Agreement shall be governed by and construed in accordance with the applicable laws of the Province of Ontario and of Canada.

6.12 ASSIGNMENT

Subject to the terms of this Agreement, this Agreement is not assignable by T2B prior to completion of the Works without the prior consent of the Municipality.

6.13 TRUE COPY

All of the parties hereto acknowledge having received a true copy of this document.

6.14 SCHEDULES

Those Schedules marked as Schedules "A" and "B" have been signed by the parties and are on file with the Municipality.

6.15 CONTRA PROFERENTEM RULE NOT APPLICABLE

It is agreed and acknowledged that both parties, directly or through their agents, principals, representatives and/or solicitors, have participated in the preparation and/or negotiation of the provisions of this Agreement.

Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against

one party or so as to disadvantage any party on the basis that such party and/or its solicitor or agent:

- a. *Prepared this agreement or any part of it; or*
- b. *Seeks to rely on this agreement or any part of it."*

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED
in the presence of

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**THE CORPORATION OF THE
TOWN OF TECUMSEH**

Per: _____

Gary McNamara - MAYOR

Laura Moy - CLERK

**TRANSITION TO BETTERNESS
FAMILY AND HEALTHCARE**

Per: _____

Per: _____

SCHEDULE "A"

DESCRIPTION OF LANDS

Those lands owned by the Town of Tecumseh and identified for park purposes lying east of the closed portion of Manning Road, North of Riverside Drive and South of the Southerly boundary of Lake St. Clair described as part of Gore Lot West of Pike Creek being Part of Parts 1 and 9 on 12R-12263 (geographic Township of St. Clair Beach), in the Town of Tecumseh, County of Essex and being part of PIN 01412-3192

SCHEDULE "B"

Unfunded Costs of Municipality related to the Panels

Lakeview Memorial Wall (formerly known as Dragon View Gardens) – construction costs incurred by the Town to be repaid to the Town – account statement at November 24, 2020:

Date	Transaction	Amount	Balance receivable
May 2015	Construction costs incurred by Town	\$50,000.00	\$50,000.00
Jul – Dec 2015	Payments received by Town	\$5,100.00	\$44,900.00
Dec 2015	Credit adjustment – retaining wall	\$587.55	\$44,312.45
Jan – Dec 2016	Payments received by Town	\$10,200.00	\$34,112.45
Jan 2017	Payments received by Town	\$850.00	\$33,262.45