

## **MURAL INSTALLATION CONTRACT**

This mural contract ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_ between:

### **PARTIES**

Town of Tecumseh

Business Improvement Area ("TOTBIA")

12122 Tecumseh Rd. E., Unit 2

Tecumseh, ON N8N 1L9

#519-735-3795

-and-

\_\_\_\_\_ (Property Owner)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Phone Number)

\_\_\_\_\_ (Artist)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Phone Number)

### **RECITALS**

WHEREAS, the TOTBIA understands that there must be an agreement put in place between the Artist, DERKZ, the Property Owners of 11977 Tecumseh Rd. E., Zac Braga & Jordan Nicholls, and the TOTBIA to communicate in detail the intentions, desires and overall plan of the installation of the mural to go up on part of the east-side-facing wall of the building (11977 Tecumseh Rd. E.) TOTBIA believes this mural will help promote a sense of pride within Tecumseh.

WHEREAS, our efforts are currently concentrated on the Town of Tecumseh core that runs down Tecumseh Rd. E. as part of the CIP.

WHEREAS, the TOTBIA has been working in concert with Artist, DERKZ, and Property Owners of 11977 Tecumseh Rd. E., Zac Braga & Jordan Nicholls, on this beautification project, and expects that the creation of the mural on part of the east-side-facing wall of the building (11977 Tecumseh Rd. E.) within the Tecumseh core will significantly increase tourism into the community – essentially increasing business to the Members within the Tecumseh BIA.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

## **AGREEMENT**

### **1. SCOPE OF THE AGREEMENT**

The Town of Tecumseh Business Improvement Area, through Artist, DERKZ, shall perform the Work set forth below:

1. TOTBIA agrees to cover all of the costs pertaining to the mural and the painting of the east-side-facing wall of the building a background colour as determined by Property Owners, Zac Braga & Jordan Nicholls.

2. The Property Owners of 11977 Tecumseh Rd. E., Zac Braga & Jordan Nicholls, accepts TOTBIA's offer to install the mural on part of the east-side-facing wall of their building and subject to section 1.3 below, agrees to the placement of the mural on their building.

3. The specifications of artwork for the mural and placement of the mural shall be agreed upon by all parties involved and a final rendering of the artwork must be approved by Property Owners, Zac Braga & Jordan Nicholls, prior to the commencement of the Work on part of the east-side-facing wall of 11977 Tecumseh Rd. E.

4. Property Owners, Zac Braga & Jordan Nicholls, agrees to not tamper with or paint over the mural for at least 10 years from the date the mural is completed.

5. TOTBIA agrees, at their sole cost, to keep the Mural in good condition at all times and do all repairs, maintenance and improvements necessary to maintain the condition of the Mural.

## **2. TERM OF THE AGREEMENT**

The time frame for installation of the mural will be confirmed with specific days and hours of labour provided by the Artist, DERKZ, to the Property Owners of 11977 Tecumseh Rd. E., Zac Braga & Jordan Nicholls, and agreed upon before commencing the mural project.

Subject to section 5 of this Agreement, if the installation of the mural is delayed for more than three (3) months beyond the end of the term of the agreement as agreed upon by all parties prior to commencement, then unless otherwise extended by the parties, this Agreement shall be null and void and Property Owners, Zac Braga & Jordan Nicholls reserves the right to paint over the unfinished Work.

## **3. PRICE AND PAYMENT TERMS**

The TOTBIA shall make payment directly to the Artist, DERKZ, as quoted. Installation fees and the cost for materials including the lift, safety equipment and spray paint will be covered by the TOTBIA, as quoted by the Artist. For greater certainty, Property Owners, Zac Braga & Jordan Nicholls will not be responsible for any costs relating to the installation of the mural.

## **4. NOTICE TO PROCEED**

This agreement shall become effective on the date of the last signature on the signature page below and the Artist, DERKZ, shall commence performance of the beautification project based on timelines provided per Section 2 of this agreement.

## **5. DELAYS AND IMPACTS**

If the TOTBIA &/or DERKZ are delayed in the commencement, performance, or completion of the beautification project by causes beyond their control and without the party's fault, including but not limited to inability to access property; concealed or unknown conditions encountered at the project; failure by Property Owners, Zac Braga & Jordan Nicholls, to perform its obligations under this agreement; or failure by Property Owners, Zac Braga & Jordan Nicholls, to cooperate with the TOTBIA in the timely completion of the beautification project, the TOTBIA shall provide written notice to Property Owners, Zac Braga & Jordan Nicholls, of the existence, extent of, and reason for such delays and impacts.

## **6. ACCESS**

Property Owners, Zac Braga & Jordan Nicholls, shall provide Artist, DERKZ, reasonable access to all exterior facilities and properties in Property's control that are subject to the beautification project. An equitable adjustment in the time for performance shall be made as a result of any failure to grant such access. Artist, DERKZ, will be responsible for inspecting and ensuring access is safe and adequate for the purposes of carrying out the Work. Property Owners, Zac Braga & Jordan Nicholls makes no representations or warranties as to the safety of accessing the exterior facilities and properties in Property's control and Artist, DERKZ, acknowledges that he will carry out the Work at his own risk.

## **7. PERMITS, TAXES, AND FEES**

Unless otherwise specified, the TOTBIA shall be responsible for obtaining all building and installation permits, and contractor registration, required for it to perform the beautification project. Any fees, taxes, or other lawful charges to be paid by the TOTBIA in relation to the beautification project on account of Artist, DERKZ, shall become immediately due from Artist, DERKZ, to TOTBIA. The Property Owners, Zac Braga & Jordan Nicholls, agrees to cooperate with the TOTBIA during this process.

## **8. WARRANTY**

Artist, DERKZ, warrants materials and equipment needed to create the beautification project for TOTBIA will be of good quality. Artist, DERKZ further warrants that the materials and chemicals used to complete the Work are not hazardous nor will the result in contamination of

the property. Artist, DERKZ, through his contractors will perform the labour in a professional, workman-like manner. Artist, DERKZ, will promptly re-perform any non-conforming labour, as long as TOTBIA provides written notice to Artist, DERKZ. The Property Owners, Zac Braga & Jordan Nicholls, agrees to not tamper with the mural for at least 10 years from the date the mural is completed and any damage as a result of tampering with the mural by the Property Owners, Zac Braga & Jordan Nicholls, during this time, will be fixed at the expense of the Property Owners, Zac Braga & Jordan Nicholls. Any damage to the mural caused by anyone other than the Property Owners, Zac Braga & Jordan Nicholls, or their agents or assigns shall be repaired forthwith at the expense of the TOTBIA. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY TOTBIA.

## **9. CLEAN-UP**

Artist, DERKZ, shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the labour and, upon completion of the beautification project, Artist, DERKZ, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

## **10. SAFETY; COMPLIANCE WITH LAWS**

Artist, DERKZ, shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the labour. TOTBIA, Artist DERKZ, and Property Owners, Zac Braga & Jordan Nicholls, shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (collectively, "Laws") in connection with its performance hereunder.

## **11. WAIVER AND LIMITATION OF LIABILITY**

ARTIST, DERKZ AND TOTBIA ACKNOWLEDGE AND ACCEPT THAT NEITHER ARTIST, DERKZ NOR PROPERTY OWNERS, ZAC BRAGA & JORDAN NICHOLLS, WILL BE RESPONSIBLE TO THE OTHER, TOTBIA AND ANYONE THEY ARE IN LAW RESPONSIBLE FOR ANY LIABILITY WHATSOEVER INCLUDING BUT NOT LIMITED TO SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, PUNITIVE, EXEMPLARY, LOSS OF PROFITS OR REVENUE, LOSS OF USE, OR SIMILAR DAMAGES, REGARDLESS OF HOW CHARACTERIZED AND REGARDLESS OF A PARTY HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSSES OR RELIEF, ARISING IN ANY

MANNER FROM THIS AGREEMENT, THE WORK, THE IMPROVEMENT MEASURES, THE PREMISES, OR OTHERWISE.

IN THE EVENT THAT THE PROPERTY IS DAMAGED IN ANY WAY BY ARTIST, DERKZ, IN CONNECTION WITH THE INSTALLATION OF THE MURAL, TOTBIA AGREES TO INDENIFY AND SAVE HARMLESS PROPERTY OWNERS, ZAC BRAGA & JORDAN NICHOLLS, THEIR HIERS, EXECUTORS, ADMINISTRATORS, ESTATE TRUSTEES AND LEGAL PERSONAL REPRESENTATIVES AND SUCCESSORS IN TITLE, FROM AND FOR ALL AND ANY DAMAGES ARISING BY ARTIST, DERKZ, IN CONNECTION WITH THE INSTALLATION OF THE MURAL.

The foregoing waivers and limitations are fundamental elements of the basis for this agreement between TOTBIA, Artist, DERKZ, and Property Owners, Zac Braga & Jordan Nicholls, and each party acknowledges that Artist, DERKZ, would not be able to provide the work and services contemplated by this agreement on an economic basis in the absence of such waivers and limitations, and would not have entered into this agreement without such waivers and limitations.

## **12. DISPUTES**

TOTBIA, Artist, DERKZ, and Property Owners, Zac Braga & Jordan Nicholls, will attempt to settle any controversy, dispute, difference, or claim between them concerning the performance, enforcement, or interpretation of this agreement (collectively, “dispute”) through direct discussion in good faith, but if unsuccessful, will submit any dispute to non-binding mediation. If mediation is unsuccessful the parties shall submit such dispute to arbitration in accordance with Ontario law.

## **13. COVENANTS**

The TOTBIA, Artist, DERKZ, and Property Owners, Zac Braga & Jordan Nicholls, each mutually covenants, warrants and agrees with the other that it has the power and authority to enter into this agreement. This agreement shall ensure to the benefit of and shall be binding upon the TOTBIA, Artist, DERKZ, and Property Owners, Zac Braga & Jordan Nicholls, and their respective successors and permitted assigns, including any change in property ownership. This agreement constitutes the entire agreement between the parties. The terms of this agreement shall remain confidential and not be released without the prior written consent of TOTBIA, Artist, DERKZ, and Property Owners, Zac Braga & Jordan Nicholls.

#### **14. SEVERABILITY**

In the event that any clause, provision, or portion of this agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this agreement unless the result would be manifestly inequitable or materially impair the benefits intended to inure to either party under this agreement.

#### **15. COMPLETE AGREEMENT**

It is understood and agreed that this agreement contains the entire agreement between the parties relating to all issues involving the subject matter of this agreement. No binding understandings, statements, promises or inducements contrary to this agreement exist. This agreement supersedes and cancels all previous agreements, negotiations, communications, commitments and understandings with respect to the subject matter hereof, whether made orally or in writing. Each of the parties to this agreement expressly warrants and represents to the other that no promise or agreement which is not herein expressed has been made to the other, and that neither party is relying upon any statement or representation of the other that is not expressly set forth in this agreement. Each party hereto is relying exclusively on the terms of this agreement, its own judgment, and the advice of its own legal counsel and/or other advisors in entering into this agreement.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;  
SIGNATURE PAGE TO FOLLOW]**

Agreed to this \_\_\_\_\_ day of (insert month and year) in The Town of Tecumseh.

**Town of Tecumseh Business Improvement Area**

Per: \_\_\_\_\_

**Property Owners**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**Artist**

Per: \_\_\_\_\_