

MEMORANDUM OF UNDERSTANDING

Between:

**THE CORPORATION OF THE TOWNSHIP OF ORO-MEDONTE
(Township)**

- and -

**2440656 ONTARIO INC. ,
1350341 ONTARIO INC. ,
2437339 ONTARIO INC. &
2434219 ONTARIO INC.
(collectively Burl's Creek)**

WHEREAS:

- A. The Township and Burl's Creek understand that Burl's Creek intends to hold events on the following privately-owned properties located within the Township:
- 97 Line 7 South
 - 241 Line 7 South
 - 8 Line 8 South
 - 240 Line 8 South
 - 259 Line 8 South
 - 329 Line 9 South
 - 3231 Highway 11
- B. This MOU relates to the Barenaked Ladies, Boots and Hearts Festival, and I Love the 90's special events to be held on the lands noted above in 2018.
- C. Burl's Creek acknowledges and agrees that no event shall take place on the lands noted above unless all requirements of this Memorandum of Understanding (MOU) are met and a Special Events permit has been issued.
- D. Burl's Creek obtained a decision on July 14, 2017 from the Ontario Municipal Board (PL151011) for a temporary use by-law under s. 39 of the *Planning Act* in relation to the following properties as identified in Recital A above that is in effect until December 31, 2018.

The Township and Burl's Creek agree as follows:

1. No Events Without Compliance with Applicable Law

Burl's Creek expressly agrees that no events shall occur or be permitted to occur on any of its lands unless all applicable laws having been complied with, including, but not limited to, any zoning by-laws, licensing by-laws and all necessary permits obtained from the Township.

2. Township Not Having any General Financial Obligations

Except as expressly agreed within this MOU, Burl's Creek acknowledges and agrees that the Township shall have no responsibility, financial or otherwise, with respect to any events held or to be held at any of Burl's Creek's lands other than the services expressly specified in this MOU. Further, should the Township incur costs from agencies/bodies external to the Township, not otherwise provided for in this MOU, or for costs or damages incurred as a result of events that these costs will be the responsibility of Burl's Creek and may be drawn against the cash security deposit or invoiced accordingly. The Township shall prepare a reconciliation of all costs to be recovered under this MOU and shall submit same for review and consideration by Burl's Creek on or before September 30, 2018 (subject to receipt of information from external agencies).

3. Emergency Services

Burl's Creek agrees that:

- (a) all emergency services agreement(s) shall be in place prior to the consideration of any Special Event Permit and the holding of any event, during any event and during the clean-up of any event, including, but not limited to, the Simcoe County Emergency Medical Service, Ontario Provincial Police and the Township's Fire Department;
- (b) any services required outside of endorsed agreement(s) made with the Township's Fire Department, Simcoe County Emergency Medical Service and Ontario Provincial Police shall be invoiced at full cost recovery, including any costs associated with emergency management and responses required as a result of an emergency that is directly attributable to the specified events being held at Burl's Creek lands, and Burl's Creek agrees to reimburse the Township upon receipt of invoice;
- (c) with respect to policing costs related to the OPP, the Township agrees that representatives from Burl's Creek may be invited and entitled to attend meetings with the OPP from time to time in the future and;
- (d) should there be a life safety emergency during the course of any events, the Fire Chief of the Township, Commanding Officer of the Ontario

Provincial Police or their designate shall have the absolute and unfettered authority to shutdown and/or evacuate an event following discussion with Burl's Creek and other agency officials.

- (e) With respect to services provided by the OPP in particular:
 - (i) Burl's Creek acknowledges that, effective January 1, 2015, the OPP has introduced a new billing model for the municipalities it serves across the province, pursuant to which municipalities are charged for calls for service based on the municipality's individual usage level relative to usage levels across the province, and that the OPP also bills the municipalities for overtime costs resulting from occurrences in their geographic area.
 - (ii) That following the review and reconciliation of OPP costs incurred by the Township and paid for Burl's Creek for the 2017 Burl's Creek events, the sum of \$ 15,000 has been factored into the cash security deposit required to be provided pursuant to Section 8 with final amounts to be reconciled as outlined in Section 2.
 - (iii) Recognizing subsections (i) and (ii), Burl's Creek expressly agrees that it shall be responsible for any costs incurred by the Township for OPP services directly attributable for the planning or holding of any events held on Burl's Creek Land subsequent to April 22, 2015, as determined by the Township, in its sole discretion acting reasonably and these costs shall form part of the reconciliation process.

4. Sound

Burl's Creek agrees to comply with the Township's Noise By-law and shall cooperate and comply with Township's Municipal Law Enforcement Staff allowing them full access to the lands commencing one day prior to scheduled event dates and throughout the scheduled events in 2018.

The specifications identified below are agreed upon as a result of an assessment of the 2015-2017 sound monitoring programs established through the previous Memoranda of Understanding between the parties, review of the annual sound monitoring results, and consultation with the Township's Sound Consultant.

Barenaked Ladies and I Love the 90's Sound Monitoring

Front of House Monitoring & Compliance

1. Burl's Creek and the Township agree to the following amplified sound levels and requirements for Barenaked Ladies and I Love the 90's at Burl's Creek Events Grounds in 2018 that have obtained a Special Event Permit from the Township with all sound levels noted below measured at the front of house (stage mixing board):

(i) On July 22 and on August 18th from 5:00 pm to 11:00 pm sound will be limited to 105 dBA with a 15-minute grace period.

(ii) All sound limits listed above are expressed as 15 minute equivalent sound levels (Leq (15 min)) and sound levels will also be tracked instantaneously. Sound data measurements will be logged both as Leq (1min) and Leq (15 min) dBA formats.

(iii) Notwithstanding the above, if sound levels exceed the set limits listed above, Burl's Creek will take action within 15 minutes of notification by the Township to the individual responsible for sound management noted in subsection 5(iii) below to correct and ensure compliance within the 15 min LEQ.

(iv) Burl's Creek will set up sound monitoring equipment that will monitor amplified sound levels and provide real time sound level recordings in order for the Operators to adjust levels to ensure compliance with the levels noted above. All equipment is to be calibrated during the sound testing and again on the event date.

2. Burl's Creek will have control over the stage mixing boards for both events and will ensure sound emission levels maintain compliance with the limits noted above and do not exceed the aforementioned limits.

3. Burl's Creek agrees that the Township will be paid promptly and in any event within 30 days for any reported sound exceedances beyond the aforementioned limits identified above as follows:

(i) \$5,000 each for failure to take corrective action/sound exceedance

4. Township Staff will monitor the sound board through on site attendance during the events and will review the sound data daily graphs, as required in subsection 5 (iv). In its sole discretion, the Township shall determine if an exceedance has occurred at any time during the performances as identified in section 1 (i),(ii), and (iii). Burl's Creek shall be notified in writing of any exceedance(s) and in accordance with Section 3 above and Section 3.8 of By-law 2015-123, as amended (the Special Events By-law) , shall submit payment to the Township within 30 days of invoicing.

5. Burl's Creek will undertake the following Sound Monitoring Program:

(i) To elevate the position of the sound recording microphone in an effort to reduce the potential impact of the crowd on the front of house monitoring levels.

(ii) Township staff shall have full access to the site and are able to consult with Burl's Creek staff engaged in measuring sound levels at the sound mixing board (front of house).

(iii) Burl's Creek shall provide Township staff in writing the full contact information for the appointed sound manager responsible for sound management by end of

business day on July 19, 2018 and also an alternate contact should Township staff not be able to reach the appointed sound manager.

(iv) Documentation of all sound graphs shall be provided to the Township Municipal Law Enforcement staff by noon of the day following each event day.

(v) Township staff shall have full access to and be able to consult with Burl's Creek's sound manager.

(vi) Burl's Creek will carry out, implement, and satisfy the requirements set out in the "Statement of 'Like Experts' in Noise" dated May 10, 2016 as presented to the OMB, save and except Point 3, prior to and during the events.

Boots and Hearts Festival Sound Monitoring

Front of House Monitoring & Compliance

1. Burl's Creek and the Township agree to the following amplified sound levels and requirements for the Boots and Hearts Festival at Burl's Creek Events Grounds in 2018 that obtained a Special Event Permit from the Township with all sound levels noted below measured at the front of house (stage mixing board):

(i) August 9th through until August 12th, 2018, from 1:00 pm to 11:30 pm sound will be limited to 105 dBA with a 15-minute grace period.

(ii) August 9th through until August 11th, 2018, from 11:30 pm to 1:00 am sound will be limited to 95 dBA with a 5-minute grace period.

(iii) All sound limits listed above are expressed as 15 minute equivalent sound levels (Leq (15 min)) and sound levels will also be tracked instantaneously. Sound data measurements will be logged both as Leq (1min) and Leq (15 min) dBA formats.

(iv) Notwithstanding the above, if sound levels exceed the set limits listed above, Burl's Creek will take action within 15 minutes of notification by the Township to the individual responsible for sound management noted in subsection 5(iii) below to correct and ensure compliance within the 15 min LEQ.

(v) Burl's Creek will set up sound recording equipment that will record all amplified sound levels and provide real time sound level recordings in order for the Operators to adjust levels to ensure compliance with the levels noted above. All equipment is to be calibrated during the sound testing and again on the event date.

(vi) Burl's Creek agrees to record the sound content for any/all exceedances of the above noted limits. Township staff will have access to all of the recordings, when requested from Burls Creek, in order to validate the cause of the sound exceedance. All recordings shall be kept by Burl's Creek for a period of 2 weeks following a scheduled event date unless an alternate date for destruction of these

recordings is determined by mutual agreement between the Township and Burl's Creek.

(vii) All sound level monitoring devices will be re-set or the computation of the trailing sound levels will be re-started at 11:30 p.m. and 1:00 a.m. to reflect the reduced Dba levels noted above.

2. Burl's Creek will have control over the stage mixing boards for the event and will ensure sound emission levels maintain compliance with the limits noted above and do not exceed the aforementioned limits.

3. Burl's Creek agrees that the Township will be paid promptly and in any event within 30 days for any reported sound exceedances beyond the aforementioned limits identified above as follows:

(i) \$5,000 each for failure to take corrective action/sound exceedance

4. Township Staff will monitor the sound board through on site attendance during the events and will review the sound data daily graphs, as required in subsection 5 (iv)., In its sole discretion, the Township shall determine if an exceedance has occurred at any time during the performances as identified in section 1 (i),(ii), and (iii). Burls Creek shall be notified in writing of any exceedance(s) and in accordance with Section 3 above and Section 3.8 of By-law 2015-123, as amended (the Special Events By-law) , shall submit payment to the Township within 30 days of invoicing.

5. Burl's Creek will undertake the following Sound Monitoring Program:

(i) To elevate the position of the sound recording microphone in an effort to reduce the potential impact of the crowd on the front of house monitoring levels.

(ii) Township staff shall have full access to the site and are able to consult with Burl's Creek staff engaged in measuring sound levels at the sound mixing board (front of house).

(iii) Burl's Creek shall provide Township staff in writing the full contact information for the appointed sound manager responsible for sound management by end of business day on August 3, 2018 and also an alternate contact should Township staff not be able to reach the appointed sound manager.

(iv) Documentation of all sound recordings shall be provided to the Township Municipal Law Enforcement staff in writing by noon of the day following each event day.

(v) Township staff shall have full access to and be able to consult with Burl's Creek's sound manager.

(vi) Burl's Creek will carry out, implement, and satisfy the requirements set out in the "Statement of 'Like Experts' in Noise" dated May 10, 2016 as presented to the OMB, save and except Point 3, prior to and during the events.

5. Site Clean-up

Burl's Creek agrees to complete a full clean-up of any of its lands used for an event to their pre-event state, ensuring that they are clean and safe within five (5) business days of the conclusion of any event. Burl's Creek agrees to be responsible for any and all costs associated with the depositing of sewage or refuse, and/or damage occurring on private, municipal property or highway and roadsides identified within the traffic management plan that is directly attributable to an event held on any of Burl's Creek's lands and to reimburse to the Township upon receipt of invoice.

6. Indemnification and Release

Burl's Creek agrees, before, during and after the events, at its own cost, expense and risk, to save, defend and keep completely harmless and fully indemnify the Township and each of its elected officials, officers, employees, volunteers, sponsors and agents of, from and against all manner of actions, suits, claims, executions and demands which may be brought against or made upon the Township, its elected officials, officers, employees, volunteers and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by the Township, its elected officials, officers, employees, volunteers and agents, or any of them, by reason of, or on account of, or in consequence of the use of Burl's Creek lands by Burl's Creek and its invitees, guests or users of events.

Burl's Creek agrees to pay to the Township and to each such elected official, officer, employee, volunteer or agent on demand any loss, costs, damages and expenses which may be sustained, incurred or paid by the Township or by any of its elected officials, officers, employees, volunteers, sponsors and agents in consequence of any such action, suit, claim, lien, execution or demand and any monies paid or payable by the Township or any of its elected officials, officers, employees, volunteers or agents in settlement of or in discharge or on account thereof.

Burl's Creek also releases the Township and each of its elected officials, officers, employees, volunteers, sponsors and agents of, from and against all manner of actions, suits, claims, executions and demands which could be brought against or made upon the Township, its elected officials, officers, employees, volunteers and agents or any of them and of, from and against all loss, costs, charges, damages, liens and expenses which may be sustained, incurred or paid by Burl's Creek by reason of, or on account of, or in consequence of the use of the Burl's Creek lands by Burl's Creek and its invitees, guests or users for any event, provided, however, that such release shall not apply to any loss, costs, charges, damages, liens and

expenses incurred by Burl's Creek arising directly from the gross negligence and/or willful misconduct of the Township, its officers, employees, agents, volunteers, or agents.

7. Insurance

Burl's Creek shall maintain liability insurance acceptable to the Township for itself, its affiliates and any and all subsidiaries, throughout the term of this MOU from the date of commencement of work until one year from the date of the Event. Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all available coverage extensions/ endorsements, in an amount of not less than \$10,000,000 per occurrence. Such insurance shall name **The Corporation of the Township of Oro-Medonte** and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interests' provision. The policy SIR/deductible shall not exceed \$10,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.

Burl's Creek shall maintain liability insurance on all owned, non-owned and leased automobiles used in the performance of this project to a limit of \$5,000,000 per occurrence throughout the term of this MOU from the date of commencement of work and until one year after the date(s) of the Events.

Prior to the commencement of work Burl's Creek shall forward a Certificate of Insurance on the Township's standard form evidencing this insurance with the executed MOU. The Certificate of Insurance shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days (ten (10) days if cancellation is due to non-payment of premium) prior written notice by certified mail to the Township.

It is also understood and agreed that in the event of a claim, any deductible or self-insured retention under these policies of insurance shall be the sole responsibility of Burl's Creek and that this coverage shall preclude subrogation claims against the Township and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the Township and any other person insured under the policy shall be considered excess of the service provider's insurance and shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter Burl's Creek's obligation to fully indemnify the Township under this MOU.

8. Cash Security Deposit

Burl's Creek agrees to provide the Township with a cash security deposit in the amount of \$15,000 which shall be held by the Township as performance security for any and all obligations of Burl's Creek under this MOU. Unless earlier released by the Township, in its sole and absolute discretion, the cash security deposit may be drawn upon by the Township at any time and in any amount, and any such

amounts may be applied to the cost of taking any corrective or remedial action in the event that Burl's Creek is in default of any of its obligations under this MOU.

9. Alterations to this MOU

At the request of either party, this MOU may be reviewed for amendments. Amendments to this MOU shall only be made on the agreement of all parties. Reasonable requests for modifications shall not be unreasonably withheld by any party.

10. Facilitation

If a dispute arises out of or relates to this MOU which involves the payment of money by Burl's Creek to the Township or otherwise, save and except with respect to any payment related to sound exceedances under Section 8, and if the dispute cannot be settled through negotiation, the parties agree to work together in good faith to settle the dispute by facilitation. The party that calls for the facilitation is to pay the facilitator and the parties agree to re-examine who should pay based on the outcome of the facilitation.

11. Duration of this MOU

This MOU will shall be in force and effect from the date of execution to December 31, 2018.

12. Renewal of MOU

This MOU will be renegotiated on an annual basis.

DATED at the Township of Oro-Medonte this 18 day of July, 2018.

THE CORPORATION OF THE TOWNSHIP OF ORO-MEDONTE



MAYOR H.S. Hughes



CLERK Karen Way

2440656 ONTARIO INC.



Name: TODD JENERCAUX
Title: VP

I have the authority to bind the corporation.

1350341 ONTARIO INC.



Name: TODD JENERCAUX
Title: VP

I have the authority to bind the corporation.

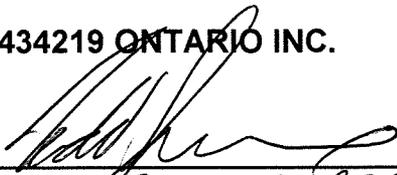
2437339 ONTARIO INC.



Name: TODD JENERCAUX
Title: VP

I have the authority to bind the corporation.

2434219 ONTARIO INC.



Name: TODD JENERCAUX
Title: VP

I have the authority to bind the corporation.