

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 solely relates to the Wayhome and Boots and Hearts Festivals to be held on the lands noted above in 2017.
- 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 expressly acknowledges and agrees that nothing in this MOU shall or can be construed as providing permission, authorization, consent or approval for events to occur contrary to Township by-laws and does not in any way prejudice any decision to be made with respect to an application for approval of a temporary use by-law submitted to the Township.
- E. Burl's Creek has applied 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.

- F. Burl's Creek's application for a temporary use by-law has been appealed to the Ontario Municipal Board (OMB), which is presently considering the matter.

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 and licensing by-laws.

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, these costs will be the responsibility of Burl's Creek and may be drawn against the cash security deposit. The Township shall prepare a reconciliation of all costs sought to be recovered under this MOU and shall submit same for review and consideration by Burl's Creek on or before September 30, 2017.

3. Prior Township Costs

Burl's Creek expressly agrees that it shall be responsible for any and all costs incurred by the Township subsequent to April 22, 2015 due to the holding or planning of any events held on the Burl's Creek lands as outlined in this MOU or otherwise, as determined by the Township, in its sole discretion acting reasonably, which shall be invoiced to Burl's Creek at the Township's normal rate as identified by Township by-law or on the basis of the Township's cost.

4. 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 any events being held at Burl's Creek lands, and Burl's Creek agrees to reimburse the Township upon receipt of invoice;

- (c) Burl's Creek will be invoiced for the provision of Fire Services as outlined in the Emergency Services Agreements executed by Burl's Creek and the Township's Fire Department immediately following the Wayhome event. Burl's Creek agrees to pay the invoice to the Township for the Wayhome event no later than August 4, 2017;
- (d) Should there be a life safety emergency during the course of any events, the Fire Chief of the Township shall have the absolute and unfettered authority to shut down an event following discussions with other agency officials;
- (e) 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;
- (f) 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 the OPP has not in the past provided to the municipality detailed reports for calls for service or overtime costs related to specific events, resulting in the use of reasonable estimates by the municipality in the calculation of OPP costs for purposes of this MOU;
 - (iii) that the Township has been recently provided a reconciliation of OPP costs for 2016 that estimates that there were approximately 193 calls for service associated with the two major 2016 events on the Burl's Creek lands, at a cost to the Township of approximately \$64,000 (\$14,000 more than estimated in the 2016 MOU);
 - (iv) that the estimated cost to the Township for OPP Staffing / Overtime charges (to address calls for service) for the 2016 events on the Burl's Creek lands totaled approximately \$134,000, (\$9,000 more than estimated in the 2016 MOU);
 - (v) that the Township estimates (based on 2015 and 2016 OPP data) approximately 155 calls for service associated with the two major 2017 events on the Burl's Creek lands, at a cost to the Township of approximately \$40,000;
 - (vi) that the Township estimates (based on OPP estimates) OPP Staffing / Overtime charges (to address calls for service) for these 2017

events on the Burl's Creek properties to total approximately \$15,000;
and

- (vii) that the sum of \$55,000 has been factored into the cash security deposit required to be provided pursuant to Section 12 of the 2017 MOU, however, if the amount of security can be reasonably reduced based on input from the OPP then the Township will make a corresponding refund to Burl's Creek as soon as is practical.

5. Infrastructure, Pre/Post Road Inspections and Rehabilitation

- (a) Burl's Creek and the Township agree to monitor traffic during the 2017 events at Burl's Creek for the purposes of on-going analysis in order to determine if:
 - (i) A turning lane needs to be added to Line 7 from Highway 11 to the south entrance of the event grounds;
 - (ii) Upgrades are required to Line 8 from Hwy 11 to Ridge Road;
 - (iii) Line 9 needs be widened with roadside shoulder paving between Highway 11 and Ridge Road; and
 - (iv) Signage and infrastructure is required for pedestrian traffic and active transportation.
- (b) If the monitoring analysis concludes that the events at Burl's Creek warrant the work set out in Sections 5(a), Burl's Creek and the Township will negotiate in good faith for Burl's Creek to partner with the Township to pay for such work that is warranted, with the work to be completed as a condition of the Official Plan and Zoning By-law Amendment Applications (known as Permanent Use By-law) should that by-law be approved.
- (c) If Township roads are damaged and/or the Township is required to deploy traffic management resources as a result of the events at Burl's Creek, Burl's Creek shall reimburse the Township for all costs for any repairs and traffic management resources upon receipt of invoice from the Township provided that the Township has substantiated the damages through photographic evidence and communicated any repair/resource requirements with Burl's Creek.

6. Compliance Requirements

Burl's Creek shall comply with all federal, provincial and municipal laws and all applicable legislation meeting all requirements of applicable agencies, providing proof, including, but not limited to:

- Occupational Health & Safety & First Aid CPR
- Workers Safety & Insurance Board
- Alcohol and Gaming Commission
- Ministry of Transportation
- Ministry of the Environment
- Technical Standards and Safety Authority
- Electrical Safety Authority

7. Refreshment Vehicles

Burl's Creek shall require all refreshment vehicles to pass a fire inspection by the Township's designated Fire Inspector and to be validly licensed by the Township prior to any event occurring on its lands.

8. 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 from July 24, 2017 and continuing to August 14, 2017, inclusive.

The specifications identified below are based on the 2015 and 2016 sound monitoring program established through the previous Memoranda of Understanding between the parties.

Perimeter Monitoring & Compliance

- (a) Burl's Creek and the Township agree as follows with respect to sound levels and requirements for Wayhome and Boots and Hearts with all sound levels noted below measured at the property boundaries:
 - (i) Three (3) boundary locations will be utilized for the 2017 Sound Monitoring Program as identified in subsection 8(f)(v)(B) below;
 - (ii) On all days, from 1:00 pm to 11:30 pm sound will be limited to 70 dBA with a 15-minute grace period;
 - (iii) On all days, from 11:30 pm to 1:00 am sound will be limited to 65 dBA with a 5-minute grace period;
 - (iv) Burls 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 WayHome and Boots and Hearts events;
 - (v) All sound limits listed above are expressed as 60 minute equivalent sound levels (Leq (60min) and sound levels will be tracked instantaneously);

- (vi) Notwithstanding the above, if sound levels exceed 5 DBA above the set limits listed above, Burl's Creek will take action within 15 minutes of notification to the individual responsible for sound management noted in subsection (f)(iv) below to correct and ensure compliance within the 60 min LEQ.
- (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 reduced DbA levels noted above;
- (b) Burl's Creek will have control over the stage mixing boards and the perimeter monitors for all events and will ensure sound emission levels do not exceed the aforementioned limits.
- (c) Burl's Creek will post a \$30,000 bond (as part of the cash security deposit posted pursuant to Section 12) to secure against sound exceedances beyond the aforementioned limits identified in subsections 8(a) and (b) as follows:
 - (i) \$5,000 each for failure to take corrective action as expressed in 8(a) (vi) above.
 - (ii) \$15,000 each for the first and second exceedances; and
 - (iii) \$20,000 for any further exceedance per event.
- (d) The Township through assessment of the perimeter monitors shall determine, in its sole discretion, if there is an exceedance of any of the levels identified in subsection 8(b) above and shall be entitled to draw down upon any cash security deposit to the extent of any exceedances in the amounts set out in section 8(d) above.
- (e) Burl's Creek agrees to replenish the amount of the cash security deposit, if any, that the Township has drawn down for any exceedances during the event on July 28-30, 2017 and to do so no later than August 4, 2017 for the August 10-13, 2017 event.
- (f) Burl's Creek will undertake the following Sound Monitoring Program:
 - (i) Bob Rimrott, Principal at Aercoustics Engineering Limited in consultation with Burl's Creek and Township Municipal Law Enforcement staff will lead the 2017 Burl's Creek Event Grounds Sound Monitoring Program;
 - (ii) The purpose of the Sound Monitoring Program is to enable Burl's Creek and the Township to establish a permanent regime of sound regulations that will govern festivals and special events at Burl's Creek and it is recognized by both parties that the Sound Monitoring Program may need to be extended into future years if the 2017 results are not sufficient to establish the future sound regime;

- (iii) Township staff shall have full access to and be able to consult with Burl's Creek's acoustical engineer;
- (iv) Burl's Creek shall provide Township staff in writing full contact information for the individual responsible for sound management by end of business day on Monday July 24, 2017;
- (v) The Sound Monitoring Program will be both attended and unattended so that the boundary sound levels can be established and the effectiveness of the sound mitigation measures can be assessed. Each of the 2017 events will have:

(A) One (1) acoustical engineer who will have full access on-property, and around Burl's Creek boundaries.

The acoustic engineer will be available on site for the following dates and times:

July 28 and 29 – 4:00 pm – 1:00 am;

July 30 – 4:00 pm – 11:00 p.m.;

(B) Three (3) Sound level monitors located around the perimeter of the Burl's Creek property established by Burl's Creek's acoustic engineer for the 2017 event season at locations determined to the satisfaction of the Township.

(C) The sound measurement report completed by Burl's Creek's acoustic engineer to be provided to the Township by September 30th, 2017.

(D) The Sound Monitoring Program is established for the WayHome Festival and may require additional revisions to the Program prior to the Boots and Hearts Festival based on assessment of the festival.

9. 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.

10. 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.

11. 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.

12. Cash Security Deposit

Burl's Creek agrees to provide the Township with a cash security deposit in the amount of One Hundred Thousand Dollars (\$100,000.00) which shall be held by the Township as performance security for any and all obligations of Burl's Creek under this MOU. Burl's Creek has the option of staging this security deposit between the two events if it so chooses, which amounts to \$70,000.00 for Wayhome and the additional \$30,000.00 for Boots and Hearts. The cash security deposit for Wayhome (or the full amount) must be provided to the Township by end of day on July 18, 2017. The cash security deposit for Boots and Hearts, if still outstanding, must be provided to the Township by end of day on July 28, 2017. 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.

13. 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.

Should Burl's Creek host any single day special events during the remainder of 2017, an amendment to this agreement may be required.

14. 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.

15. Duration of this MOU

This MOU will shall be in force and effect from the date of execution to December 31, 2017.

16. Renewal of MOU

This MOU will be renegotiated on an annual basis.

DATED at the Township of Oro-Medonte this 21 day of July, 2017.

THE CORPORATION OF THE TOWNSHIP OF ORO-MEDONTE



MAYOR

Deputy


CLERK

2440656 ONTARIO INC.



Name: TODD JENERREAU
Title: EXEC VP

I have the authority to bind the corporation.

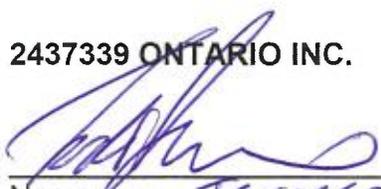
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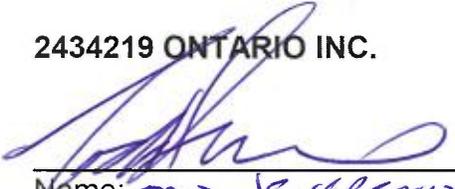
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Title: EXEC VP

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2434219 ONTARIO INC.



Name: TODD JENERCAUX
Title: EXEC VP

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