

Schedule "A"

TINY TOWNSHIP "LINK BEACH" AGREEMENT

made as of the ____ day of _____, 2004

BETWEEN:

[Name of beachfront property owner]

(the "Owner")

OF THE FIRST PART

AND:

THE CORPORATION OF THE TOWNSHIP OF TINY

(the "Township")

OF THE SECOND PART

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO, AS REPRESENTED BY
THE ATTORNEY GENERAL FOR THE PROVINCE
OF ONTARIO

(the "Province")

OF THE THIRD PART

BACKGROUND INFORMATION:

- A. The Owner holds an interest in certain shoreline property in Tiny Township which includes a beach bounded by the waters of Georgian Bay (the "Link Beach"), the nature of such interest and the location and extent of the Link Beach being each more particularly described in Appendix 1 attached to, and forming part of, this Agreement.
- B. The Owner has agreed to grant a licence to members of the public permitting pedestrian passage along a defined portion of the Link Beach, in accordance with, and subject to, the terms and conditions of, this Agreement.

NOW THEREFORE, IN CONSIDERATION OF their mutual covenants and agreements set out below, the parties agree as follows:

1.0 Grant of Licence

- 1.1 The Owner hereby grants to members of the public (as represented by the Attorney General for the Province of Ontario), a limited, non-exclusive licence of pedestrian passage along that portion of the Link Beach directly adjacent to the water's edge of Georgian Bay and extending inland for a distance which is one-third of that portion of the Link Beach, directly adjacent to the waters of Georgian Bay, which is primarily non-vegetated.
- 1.2 The licence granted in the preceding section 1.1 (the "Licence") is expressly acknowledged to be a limited, non-exclusive and revocable licence only, and shall not be construed as a dedication to public use of any portion of the Link Beach or of any other lands owned by the Owner.
- 1.3 The Licence is expressly limited to, and conditional upon, its exercise in a manner which is peaceful, recreational and respectful of:
 - (a) the privacy of, and use of the Link Beach by, the Owner, guests and invitees of the Owner, and others exercising the Licence; and
 - (b) the natural environment, including plants, birds, insects and animals, on the Link Beach and other lands of the Owner in the vicinity of the Link Beach.

- 1.4 The Licence shall be subject to such additional reasonable rules of responsible behaviour as the Owner may establish from time to time, in consultation with the Township and the Province.
- 1.5 The Licence may be revoked by the Owner by termination of this Agreement in accordance with section 6.2.

2.0 Covenants and Agreements of the Township and the Province

- 2.1 The Township and the Province covenant and agree, to and with the Owner, that, so long as this Agreement remains in effect, neither the Township nor the Province will take any action adverse to the title or ownership of any registered owner of the lands described in Appendix 2 attached to and forming part of this Agreement (the "Lands"). By way of example, and without limiting the generality of the preceding sentence, while this Agreement remains in effect, neither the Township nor the Province will take any action to expropriate or acquire title to any portion of the Lands, and the Province will not apply to a court for a declaration of dedication to public use in respect of any portion of the Lands.
- 2.2 The Township and the Province agree to work with the Owner to establish and effectively communicate reasonable rules of responsible behaviour for members of the public exercising the Licence, and to assist the Owner as may reasonably be required, from time to time, to encourage and enforce adherence to such rules.

3.0 Covenants and Agreements of the Province

- 3.1 The Province covenants and agrees that neither:
 - (a) anything that happens on any of the Lands; nor
 - (b) any statement (whether written or oral) made by any person in respect of the Lands;

while this agreement remains in effect, shall ever be used or asserted as evidence to establish a right of access, or to support an application for a declaration of dedication to public use, in respect of any portion of the Lands, either while this Agreement remains in effect, or afterwards.

3.2 It is expressly acknowledged and agreed that the provisions of the foregoing section 3.1 shall continue in effect indefinitely, and shall survive termination of this Agreement, for any reason, by either the Province or the Owner.

4.0 Covenant and Agreement of the Province and the Owner

4.1 The Province and the Owner covenant and agree that any evidence in support of a claim of access, or which might be used in support of an application for a declaration of dedication to public use, in respect of any of the Lands, based upon matters occurring prior to this Agreement coming into effect, will remain available and will not be time-barred in the event that either the Owner or the Province terminates this Agreement, for any reason.

5.0 Effective Date of this Agreement

5.1 This Agreement shall be deemed to have come into effect as of 12:01 a.m on the date of this Agreement first set out above.

5.2 For greater certainty, the provisions of sections 1.0, 2.0, 3.0 and 4.0 of this Agreement shall be deemed to have come into effect simultaneously, as of the date and time specified in the preceding section 5.1.

6.0 Term and Termination of Agreement

6.1 The term of this Agreement begins as of the time and date specified in section 5.1, and shall continue for a period of one year, unless earlier terminated in accordance with the provisions of this Agreement; and thereafter, if still in effect, shall automatically be renewed and continued for additional renewal terms of one year, unless and until terminated in accordance with the provisions of this Agreement.

6.2 The Owner and the Province shall be entitled to terminate this Agreement for any reason by giving 90 days' prior written notice to each other and to the Township; provided that such notice may only be given in any year during the period from October 1 through December 31.

7.0 No Publication or Advertisement

7.1 No public notice or advertisement of the Licence or of this Agreement will be made without the prior written consent of each of the parties.

8.0 No Registration

8.1 The parties agree that no registration or deposit against any portion of the Lands will be made in respect of the Licence or this Agreement.

9.0 Indemnification

9.1 The Province agrees to, and does hereby, indemnify the Owner against any and all claims for personal injury or damage to property, together with all expenses (including legal fees) reasonably incurred by the Owner in respect thereof, arising out of access to or passage over the Lands by any third party in consequence of the granting of the Licence and the entering into of this Agreement.

10.0 Governing Law

10.1 This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario.

11.0 Notices

11.1 Any notice given pursuant to this Agreement shall be in writing, and shall be forwarded in the manner prescribed herein to the respective party at the address designated as follows, or at such other address as such party may, from time to time, designate by giving notice in writing to the other party in the prescribed manner:

To the Owner:

[insert address]

Attention:

Telephone:

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Fax:

To the Township:

[insert address]

Attention:

Telephone:

Fax:

To the Province:

[insert address]

Attention:

Telephone:

Fax:

- 11.2 Notice shall be given in the manner prescribed as follows: (a) by delivery, effective at the time of actual delivery; (b) by telex, telecopier or other form of electronic communication, effective at the time of transmission if transmitted during the recipient's regular business hours and otherwise effective at the commencement of business on the next business day following transmission; or (c) by registered or certified mail effective on the third business day following the deposit of such registered or certified mail with each party's respective postal service. In the event of any disruption, or threatened disruption, of regular postal service, notice shall not be given by mail.

12.0 No Waiver

- 12.1 Failure by any party to enforce any provision of this Agreement shall not be

deemed a waiver of future enforcement of that or any other provisions.

13.0 Partial Invalidity

13.1 In the event that any provision of this Agreement is held void or unenforceable by a court of competent jurisdiction, the remaining provisions will be unaffected and the unenforceable provisions will be deemed automatically modified to the minimum extent necessary to render them valid and enforceable.

14.0 Complete Agreement

14.2 This is the complete and exclusive statement of this Agreement between the parties and supersedes all prior and other proposals, both written and verbal, and all other communications between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first written above.

[Insert appropriate particulars for authorized signatures for parties]

[Insert legal description of the Link Beach and description of the interest which the Owner holds in the Link Beach.]

For purposes of this Agreement, the defined term "the Lands" shall be deemed to mean:

1. the Link Beach;
2. all real property and interests in real property of the Owner in Tiny Township in the vicinity of the Link Beach; and
3. where the Owner is a corporation or other entity having one or more shareholders, members or other interest-holders, all real property and interests in real property of all of such shareholders, members or other interest-holders in Tiny Township in the vicinity of the Link Beach.

**"Link Beach" Initiative
in Support of Neighbourhood Harmony
in Shoreline Areas of Tiny Township**

Guidelines and Agreement Template

The purpose of this initiative is to support and maintain neighbourhood harmony in shoreline areas of Tiny Township. This is based upon ongoing co-operation between individual residents of Tiny Township, Tiny community ratepayer groups, the Corporation of the Township of Tiny (the "Township"), and the Province of Ontario, as represented by the Offices of the Attorney General and of the Solicitor General (the "Province").

1.0 Commencement and Implementation

The following steps move the process from its present status through to "Link Beach" agreements ("Agreements"), and beyond, through neighbourhood consensus-building as to responsible uses and reasonable numbers of users in particular beach areas.

- 1.1 The stakeholders who have participated in recent discussions agree upon the key elements of a form of basic Agreement, incorporating a grant of licence for pedestrian passage along a defined portion of beach and covenants from the Township and the Province assuring the neutrality of this initiative with respect to legal rights.
- 1.2 On a neighbourhood by neighbourhood basis, the parameters of individual beach areas appropriate to distinctly enter into an Agreement are established and described.
- 1.3 The Province and the Township confirm that, in any individual beach area, as established, where the beachfront property owners (or, in any case where ownership is unclear or divided, where at least 60 % of owners of beachfront property in the area) have formally signified acceptance of the Agreement, the Province and the Township will execute the Agreement.
- 1.4 An Agreement will be deemed to have come into effect when it has been executed by the Province, the Township, and the applicable beachfront property owners (as outlined in section 1.3 above).

- 1.5 Beachfront property owners may, with the concurrence of the Province and the Township, modify or expand the terms of the Agreement to better suit the special circumstances of any particular beach area, so long as each Agreement contains the key elements set out in the following Template of Key Elements of Agreements included in these Guidelines.

Template of Key Elements of Agreements

2.0 Introduction

- 2.1 Execution of an Agreement in respect of any beach area is intended as the first step in achieving a lasting arrangement to govern access to and use of the beach area in question. In exchange for a commitment from beachfront property owners, the Province and the Township will agree that no access or use of the beach during the currency of the Agreement will be deemed to constitute a dedication to public use, an adverse possessory interest in land, or in any other way operate to the detriment of the beachfront property owners whose interests are subject to the Agreement, either individually or collectively.
- 2.2 During the term of the Agreement, beachfront property owners and other neighbourhood members will have an opportunity to build upon long term relationships to clarify and establish specific protocols with respect to access and use of the beach in that area.
- 2.3 The "Link Beach" initiative is, and each Agreement entered into will be, completely neutral as to all issues of property or access rights and claims. Neither this initiative nor any Agreement entered into shall be construed either to establish or to extinguish any property or access right or claim.
- 2.4 No licence granted by beachfront property owners, and no access or use of a beach during the currency of an Agreement relating to that beach, may be referred to in any proceeding in support of any argument with respect to rights or access, or use, accruing to any party.

3.0 Definitions

- 3.1 "Beachfront property owner" means a person with title to real property at the beach that is adjacent to the water, and includes a person with title to property immediately inland from property adjacent to the water if no person holds title to the beach area.
- 3.2 "Pedestrian passage" means crossing on foot the beach area, parallel to the shoreline, at or near the shore, within a distance from the water's edge specified in any particular Agreement.
- 3.3 "Referee" is a person appointed by the Province.

4.0 Key Elements of Agreements

Each Agreement shall be in such form as may be mutually agreed upon by the beachfront property owners having an interest in the beach which is the subject of the Agreement, the Province and the Township, but shall include at least the following key elements:

- 4.1 A description of the beach area which is subject to the Agreement.
- 4.2 A grant by the beachfront property owners to members of the public (as represented by the Attorney General for the Province of Ontario) of a licence of pedestrian passage along a defined portion of the beach directly adjacent to the water's edge of Georgian Bay; such defined portion of the beach being reasonable to permit pedestrian passage, having regard to the particular nature of the beach in question.
- 4.3 An acknowledgement that the licence referred to in the preceding section 4.2 is a limited, non-exclusive and revocable licence only, and not to be construed as a dedication to public use of any portion of the beach in question, or of any other lands owned by the beachfront property owners.
- 4.4 A stipulation that the licence granted is expressly limited to, and conditional upon, its exercise in a manner which is peaceful, recreational and respectful of
- (a) the privacy of, and use of the beach by, the beachfront property owners, their guests and invitees, and others exercising the licence; and

(b) the natural environment, including plants, birds, insects and animals on the beach and other lands of the beachfront property owners in the vicinity of the beach.

4.5 A covenant and agreement of the Province and the Township that, so long as the Agreement remains in effect, neither the Province nor the Township will take any action adverse to the title or ownership of any beachfront property owner whose interests are subject to the Agreement. For example, and without limiting the generality of the preceding sentence, while an Agreement remains in effect, neither the Township nor the Province will take any action to expropriate or acquire title to any portion of the beach subject to the Agreement, and the Province will not apply to a court for a declaration of dedication to public use in respect of any portion of the beach subject to the Agreement.

4.6 A covenant and agreement of the Province and the Township to work with the beachfront property owners whose interests are subject to the Agreement to establish and effectively communicate reasonable rules of responsible behaviour for members of the public exercising the licence granted under the Agreement, and to assist the beachfront property owners as may reasonably be required, from time to time, to encourage and enforce adherence to such rules.

4.7 A covenant and agreement of the Province that neither:

(a) anything that happens on the beach subject to the Agreement; nor

(b) any statement (whether written or oral) made by any person in respect of the beach subject to the Agreement;

while the Agreement remains in effect, shall ever be used or asserted as evidence to establish a right of access, or to support an application for a declaration of dedication to public use, in respect of any portion of the beach subject to the Agreement, either while the Agreement remains in effect, or afterwards.

4.8 A covenant and agreement of the Province and the beachfront property owners that any evidence in support of a claim of access, or which might be used in support of an application for a declaration of dedication to public use, in respect of the beach subject to the Agreement, based upon matters occurring prior to the Agreement coming into effect, will remain available and will not be time-barred in the event that either the Province or the beachfront property owners shall terminate the Agreement, for any reason.

4.9 A statement of the period during which the Agreement will be in effect.

4.10 A stipulation that the Agreement may be terminated by the beachfront property owners who entered into the Agreement (or their successors or legal representatives) for any reason, or by the Province if it deems it in the public interest to do so, by written notice to the other and to the Township, given in accordance with specified notice provisions.

4.11 Termination of an Agreement will require at least 90 days notice, given in any year during the period between October 1 and December 31.

5.0 Sample Form of Basic Agreement

5.1 Attached as Schedule "A" is a sample form of basic Agreement incorporating the key elements set out in the preceding Article 4.0.

5.2 An Agreement may be in the form attached as Schedule "A", or in such other form, and/or with such other provisions, as may be mutually agreed upon by the Province, the Township and the beachfront property owners entering into the Agreement, so long as each Agreement contains at least the key elements set out in the preceding Article 4.0.

6.0 Support of "Link Beach" Initiative by the Province and the Township

6.1 In addition to the covenants and agreements forming part of each Agreement, the Province, through the Office of the Solicitor General for Ontario, will direct the Ontario Provincial Police, and the Township will direct its by-law enforcement officers, to encourage and enforce adherence to reasonable rules of responsible behaviour (as mutually agreed upon by the Province, the Township and beachfront property owners) in beach areas subject to an Agreement. In addition, the Township, through maintenance or implementation of appropriate parking control policies, will seek to prevent excessive user loads upon individual beach areas subject to an Agreement and adjacent Township-owned beach areas.

7.0 Disputes During the Term of an Agreement

7.1 Any dispute that arises in connection with access to or use of a beach during the term of an Agreement may be referred to a Referee appointed by the Province.

7.2 The Referee shall make a report of his or her finds to the Province. If he or she considers it in the public interest to do so, after such findings of facts and/or efforts at mediation as may seem reasonable in the circumstances, the Referee may recommend to the Province termination of any Agreement.

7.3 Any final report of the Referee will be a public document and a copy of such report will be provided to any beachfront property owners whose interests may reasonably be affected by its findings.

8.0 Agreements a First Step Towards Informal Neighbourhood Social Contracts

8.1 In addition to linking together adjacent Township-owned beach areas and increasing general enjoyment of those areas by permitting pedestrian passage between them, it is expected that -- by reducing tensions associated with conflicting claims to either acquire, or resist the acquisition of, legal interests in property -- each Agreement will promote dialogue and informal agreement among neighbours on a beach by beach, neighbourhood by neighbourhood basis, to establish consensus about what are responsible uses and what is a reasonable number of users on a beach. This consensus would be implemented through the development (or the continuation) over time of a strong, informal neighbourhood social contract based upon mutual respect, consideration, communication and compromise.

9.0 Evaluation of the "Link Beach" Policy Initiative and Agreements

9.1 Evaluation of the effectiveness of the "Link Beach" initiative as a whole, and of individual Agreements, will be based upon an assessment of the extent to which progress is made towards the purpose stated in the first paragraph of these Guidelines: of supporting and maintaining neighbourhood harmony in shoreline areas of the Township, through the implementation or continuation of informal neighbourhood social contracts.