

THE MOHAWK COUNCIL OF AKWESASNE

Hereinafter "MCA"

- and -

THE CORPORATION OF THE CITY OF CORNWALL

Hereinafter "Cornwall"

CO-OWNERS' AGREEMENT

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This **CO-OWNERS' AGREEMENT** made as of the 15th day of April, 2016,

BETWEEN:

THE MOHAWK COUNCIL OF AKWESASNE

(hereinafter called "**MCA**")

OF THE FIRST PART

-and-

THE CORPORATION OF THE CITY OF CORNWALL

(hereinafter called "**Cornwall**")

OF THE SECOND PART

WHEREAS Transport Canada has agreed in principle to convey to Cornwall and MCA an undivided 50% interest as tenant-in-common in the port lands which are described in Schedule "A" attached hereto (hereinafter the "Lands");

AND WHEREAS in advance of such transfer, Cornwall and the MCA have agreed to work together in a spirit of good faith, mutual respect, understanding and harmony in the planning, development, operation and maintenance of the Lands.

AND WHEREAS the City and the MCA (collectively the "Co-Owners" or the "Parties") have agreed to enter into this Agreement to set out their respective rights and obligations in the use, operation, management, and development of the Lands;

AND WHEREAS Cornwall intends to create a municipal service corporation and the MCA intends to create a business corporation to take title to the Lands and to manage and operate the port;

AND WHEREAS it is the intent of Cornwall to assign this agreement to the municipal service corporation it intends to create and it is the intent of the MCA to assign this agreement to the business corporation it intends to create;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the sum of \$10.00 paid by each party to each other and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the Parties covenant and agree as follows:

ARTICLE I GUIDING PRINCIPLES

The Co-Owners acknowledge that they have entered into this Agreement solely for the purpose of governing their respective undivided one half interests in the Lands and their joint ownership, use, operation, management and development of the Lands. The Co-Owners hereto specifically acknowledge and agree that the use, operation, management and development of the Lands shall be guided by the following fundamental principles:

- 1.1 Mutual respect for each other's obligations, which specifically include, but are not limited to:
 - (a) In the case of MCA, its historical connection to the Lands as part of its traditional territory and its obligation to act in the best interest of its members;
 - (b) In the case of City, its obligations as a municipal corporation to act in accordance with applicable legislation and in the best interests of its citizens.
- 1.2 Commitment to mutual cooperation in the use, operation, management and development of the Lands and the resolution of disputes guided by the principles of good faith, mutual respect, understanding, and harmony.
- 1.3 Recognition of the current use of the Lands as an operating port and an understanding that the future use of the Lands will not include new industrial uses and will focus on commercial, recreational and tourism uses and consideration of some residential uses.
- 1.4 An understanding that this Agreement is without prejudice to the North Shore land claim filed by the MCA and that the North Shore land claim shall not include the City's interest in the Lands.

- 1.5 Recognition that this Agreement is being executed within the context of the shared and mutual cooperation and respect envisioned by the Truth and Reconciliation Canada Report.

ARTICLE II DEFINITIONS

2.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

“Agreement” or **“Co-Owners Agreement”** means this Co-Owners Agreement, as amended from time to time.

“Co-Owner’s Committee” has the meaning ascribed to it in Section 4.2.

“Co-Owner’s Interest” means, with respect to a Co-Owner, the undivided right, title, benefit and interest of such Co-Owner from time to time in and to the Lands.

“Co-Owner’s Proportion” means, with respect to each Co-Owner, a fifty percent interest in the Lands.

“Development” means the redevelopment of the Lands and buildings on the Lands, the planning and construction process relating to the use of the Lands including; agreements to be entered into with any governmental authority, utility or other entity and any approval required pursuant to the Planning Act, subdivision, site plan or severance agreements, any rezoning or official plan amendments, payment of development charges and levies, any cost sharing agreement with any other owner of land, grading and other improvements to the Lands, the construction of improvements and all other matters required for the redevelopment of the Lands.

“Disposition” means the sale, assignment, exchange, transfer, mortgage, pledge, encumbrance, grant of a lease of all or a substantial portion of the Lands or other disposition by the Co-Owners of the whole or any part of their Co-Owners’ interest, or a change of control of a Co-Owner.

“Gross Receipts” means, for any period, all amounts received by the Co-Owners during such period in connection with the Lands including without limiting the generality of the foregoing:

- (a) Revenue and income of any nature or kind whatsoever including rent and interest;
- (b) Net proceeds received from the sale or transfer of any portion of the Lands and/or improvements;
- (c) Net proceeds of insurance received; and
- (d) Revenues received from the Co-Owners, if any.

“Lands” means the lands and premises located as described in Schedule “A”.

“Land Use Plan” means any framework drafted to plan the use of the Lands, including any applications pursuant to the *Planning Act* and other relevant legislation, including any Official Plan, Zoning By-law, Land Severance, Minor Variance, and any planning matter or amendment relating to such framework.

“Major Decisions” means those decisions referred to in Schedule “B” annexed hereto and those decisions otherwise required to be made with the approval of the Co-Owners as provided for in Section 4.1.

“Manager” means as provided in Section 8.1.

2.2 Schedules

The following Schedules are attached to this Agreement:

Schedule “A” – The Lands

Schedule “B” – Major Decisions

ARTICLE III

RELATIONSHIP BETWEEN CO-OWNERS

3.1 Purpose

The purpose of this Agreement is to establish and define the manner in which the Co-Owners intend to hold their respective interests for the scope of activities set out in this Agreement.

3.2 Disclaimer of Partnership or Agency

Each Co-Owner expressly disclaims any intention to create a partnership or joint venture or to constitute the other Co-Owner as its agent (except as expressly provided in this Agreement). Each Co-Owner covenants with the other Co-Owner that it will not, at any time, allege or claim that a relationship or partnership, joint venture or (except as expressly provided in this Agreement) agency was created. Nothing in this Agreement shall constitute the Co-Owners partners or joint venturers nor (except as expressly provided in this Agreement) constitute one Co-Owner the agent of the other Co-Owner.

3.3 Limited Recourse and Several Liability Under Contracts

Unless otherwise provided in this Agreement or approved by the Co-Owners, the Co-Owners shall use reasonable commercial efforts to include in every agreement or instrument creating obligations of the Co-Owners to third parties and to each other in respect of the Lands a provision to the effect that:

- (a) Only each Co-Owner's Interest shall be bound thereby and the obligations thereunder are not otherwise binding upon nor shall recourse be had to any other assets or property of the Co-Owners; and
- (b) The rights and obligations of each Co-Owner thereunder shall be several and not either joint or joint and several and limited to the Co-Owner's Proportion of the aggregate liability in respect thereof.

3.4 Limited Liability

- (a) The Co-Owners shall be severally liable in the same proportions as their respective Co-Owner's Proportion for the obligations, liabilities and losses

incurred by or on behalf of the Co-Owners for the purposes of the Lands in accordance with the terms of this Agreement, and neither Co-Owner shall be liable for any obligations, liabilities or losses incurred by the other Co-Owner. Each of the Co-Owners agrees to indemnify and save harmless the other Co-Owner with respect to each Co-Owner's Proportion with respect to any actions, proceedings, liability, claims, damages, costs and expenses arising from or to their ownership, management, operation and maintenance of the Lands and all structures thereon;

- (b) The Co-Owners shall be liable in their respective Co-Owner's Proportions for the debts, obligations, duties, agreements, expenses, liabilities and losses, and for guarantees, if any, made by either or both of them, in connection with the Lands, provided the same have been approved by the Co-Owners or incurred in accordance with this Agreement; and
- (c) If any Co-Owner shall, as a result of the actions of the other Co-Owner, be subject to any obligations or liability which was required by this Agreement to be approved by the Co-Owners but has not been so approved by the Co-Owners, the Co-Owner whose actions caused such obligations or liability shall indemnify the other Co-Owner against such obligations or liability in their entirety unless thereafter approved by the Co-Owners.

3.5 Other Activities

Nothing herein shall be deemed to restrict in any way the freedom of either Co-Owner to conduct any other activity whatsoever without any accountability to the other Co-Owner. No Co-Owner, by reason of this Agreement, shall have any interest in any other property owned by the other Co-Owner or have an interest in how the operations in relation to the other property is conducted.

3.6 Actions of Co-Owners

Each Co-Owner agrees to act honestly and in good faith and in the best interest of the Lands and the use, operation, management and Development of the Lands and to exercise the degree of

care, diligence and skill that a reasonably prudent person would exercise as a Co-Owner in comparable circumstances.

3.7 Term

This Agreement shall come into force and effect as of the date set out above but shall terminate if the Lands have not been conveyed to the Parties by December 31, 2016, unless extended on the consent of both Parties. If the Lands are conveyed, this Agreement shall continue in force until the earlier of:

- (a) The date on which only one Co-Owner holds an interest in the Lands;
- (b) The date this Agreement is terminated by written agreement of the Co-Owners;
and
- (c) The date no part of any portion of the Lands is owned by the Co-Owners or no part of any portion of the Lands is subject to the terms and provisions of this Agreement.

3.8 Termination

Notwithstanding the termination of this Agreement, except as otherwise provided herein, all obligations of the Co-Owners hereunder which are outstanding as of the date of such termination shall be performed and final settlement made between the Co-Owners with the intent that, subject to the provisions hereof, each of the Co-Owners shall have shared all the rights and benefits of and borne all the costs and liabilities provided for by this Agreement in accordance with their respective Co-Owner's Proportion to the date of such termination.

ARTICLE IV

DECISIONS, OWNERS COMMITTEE AND APPROVALS

4.1 Decisions

- (a) All Major Decisions and other decisions respecting matters referred to in this Agreement or otherwise concerning the Lands shall require the approval of the Co-Owners. Day-to-day decisions respecting the use, operation and management

of the Lands shall be determined by the Manager in accordance with Section 8.2;
and

- (b) The Co-Owners shall adopt and maintain policies with respect to the sale and Disposition of the Lands, the hiring of employees and the procurement of goods and services.

4.2 Co-Owners Committee

- (a) Approval of the Co-Owners, if not given in writing and signed by or on behalf of both Co-Owners, shall be given by a committee (the “**Committee**”) consisting of eight members, each of whom shall be a natural person;
- (b) Four members shall be appointed by MCA and four members shall be appointed by Cornwall. Such members shall be appointed as soon as practical upon this Agreement coming into effect. The members appointed by a Co-Owner shall make recommendations to their respective Councils but all Major Decisions shall be ratified by the respective Council of each Co-Owner;
- (c) Each Co-Owner may at any time and from time to time by written notice to the other Co-Owner remove from office and replace a member or members of the Committee appointed by it and any member so replaced shall cease to be a member of the Committee upon the giving of such notice. Copies of such notice shall be given to the other Co-Owner, the person so appointed a member of the Committee and the member of the Committee so replaced;
- (d) Each Co-Owner may from time to time by notice to the other Co-Owner appoint an alternate for its members of the Committee and any such alternate shall have all powers, rights and obligations hereunder of a member for whom such person is an alternate, provided that only the members or their alternatives shall be entitled to attend meetings of the Committee and act as a member thereof and, if both members of a Co-Owner and the alternate of such Co-Owner shall attend any such meeting, the alternate shall have no authority to act as a member of the Committee;
- (e) The office of a member of the Committee shall be vacated upon the occurrence of any of the following events:

- (i) If a receiving order is made against him or her or if he or she makes an assignment under the *Bankruptcy and Insolvency Act* (Canada);
 - (ii) If an order is made declaring him or her to be a mentally incompetent person or incapable of managing his or her affairs;
 - (iii) If he or she shall be removed from office by a written notice from the Co-Owner that appointed him or her as provided in subsection 4.2(d);
 - (iv) If, by notice in writing to the Co-Owner which appointed him or her, he or she resigns his or her office and such resignation, if not effective immediately, becomes effective in accordance with its terms; or
 - (v) Upon the death of the member.
- (f) Any vacancy in the Committee shall be filled by the Co-Owner which appointed the former member of the Committee whose loss of office created the vacancy within thirty (30) days of the creation of the vacancy. Such Co-Owner shall fill the vacancy by notice stating the name and address of the person who it appoints to the Committee to fill the vacancy. Copies of such notice shall be given to the other Co-Owner and the person so appointed a member of the Committee;
- (g) Subject to the provisions of subsection 4.5 relating to the absence of a member from a meeting of the Committee, the powers of the Committee may only be exercised either by resolution at a meeting at which two members of each of the Co-Owners are present or by resolution in writing consented to by the signatures of two member of the Committee appointed by each of the Co-Owners;
- (h) Copies of all notices of meetings of the Committee and of all minutes of the Committee and of all resolutions passed by it in accordance with the terms hereof shall be provided to each Co-Owner; and
- (i) Any resolution to be passed or action to be taken by the Committee at a meeting must have the unanimous support of each Co-Owner as evidenced in the case of each Co-Owner either by the affirmative vote, or the prior approval in writing, of one member of the Committee appointed by each Co-Owner. The Committee

shall not exercise its powers unless each Co-Owner is represented by at least two of its members on the Committee.

4.3 Meetings

- (a) Meetings of the Committee will be held quarterly at the offices of the City or otherwise as approved by the Co-Owners. Notwithstanding the foregoing, meetings of the Committee may be held by telephone with the unanimous consent of the members of the Committee;
- (b) Meetings of the Committee may also be called at any time upon the request of a Co-Owner in the manner prescribed by Section 4.4 below; and
- (c) At each of the quarterly meetings, the Manager shall present a report, as contemplated in Section 8.2.

4.4 Notice

- (a) Any member of the Committee may send reminder notices of the time and place of every meeting of the Committee (including an agenda and relevant background materials) herein to each member and to each alternate so designated from time to time of the Committee not less than ten (10) days before the time when the meeting is to be held;
- (b) In the case of an emergency or in the case of a meeting (other than a quarterly meeting) called pursuant to Section 4.3, any member of the Committee may give notice of a meeting of the Committee in the manner provided herein to the other members of the Committee and to each alternate so designated from time to time not less than three (3) business days before the time of such meeting (or such shorter period of time as the Co-Owners may agree) together with all materials and documents which may be reasonably necessary to consider properly the matters on the agenda;
- (c) No notice of a meeting shall be necessary if a quorum is present and those members present consent to the transaction of the specific item or items of business on the agenda for such meeting, or if those absent waive notice of the

meeting and signify their consent to the transaction of the business on the agenda for such meeting; and

- (d) Notices to members of the Committee may be given to them at the address or email address in each case of the Co-Owner whose nominee they are.

4.5 Quorum

Unless otherwise expressly provided herein, two members of the Committee appointed by each of the Co-Owners shall constitute a quorum for the transaction of business at any meeting of the Committee. If a quorum of members of the Committee is not present within thirty (30) minutes from the time fixed for holding any meeting, the meeting shall be adjourned for seven (7) business days (or such shorter period of time as the Co-Owners may agree) and a notice of the resumption of the meeting shall forthwith be given to the absent members. Such notice shall give the time and place of the resumed meeting (including an agenda and relevant background materials if different from that scheduled for the original meeting), and be given to each member not less than one (1) business day before the time when the resumed meeting is to be held.

4.6 Voting

The members of the Committee appointed by a Co-Owner shall be collectively entitled to one vote on each question submitted to the Committee.

4.7 Books and Records

- (a) The Committee shall ensure that proper written records of all meetings and decisions of the members are kept and maintained by the Manager and that copies of the same are sent to each member within 14 days following each meeting of the Committee; and
- (b) The Committee shall cause proper financial records to be kept, shall cause an annual audit to be conducted by auditors approved by the Co-Owners and annual financial statements prepared for the Co-Owners.

4.8 No Compensation

No fees, salaries, expenses, commissions or other compensation shall be paid by the Co-Owners to the members of the Committee in respect of their work on the Committee, and all expenses incurred by members of the Committee shall be borne by the Co-Owner which appointed each such member.

4.9 Telephone Meetings

If both Co-Owners agree, a meeting of the Committee may be held by means of telephone conference or other communications equipment by which all members participating are able to hear each other, and all members so participating shall be deemed to be present in person at such meeting and the meeting shall be deemed to have been held at the place determined at such meeting.

4.10 Limitation of Liability

No member of the Committee shall be liable for the acts, neglects or defaults of any other member of the Committee or for any loss, damage or expense incurred by the Co-Owners unless the same shall happen through his or her own wilful act or negligence.

ARTICLE V FINANCIAL MATTERS

5.1 Expenditures

Each Co-Owner shall be responsible for paying its respective Co-Owner's Proportion of all expenditures required to be paid from time to time in connection with the operation, maintenance, management and Development of the Lands. The Parties acknowledge that the Lands will be subject to property taxes and other fees and charges that apply to property in the City.

5.2 Borrowing from Third Parties Not Contemplated

The Parties agree that it is their intention that any and all amounts required from time to time for the purposes of the Co-Tenancy, including, without limitation, any amounts required for or in

respect of the management of the Lands, shall be funded by the Co-Owners, each as to their Co-Owner Proportion, as required from time to time and shall not be borrowed from third parties.

5.3 Deficiencies in funding

Each Co-Owner shall provide its Co-Owner's Proportion of expenditures that exceed revenues from the Lands within ten (10) business days of receipt of notice of such requirement and shall provide the other Co-Owner with confirmation of such payment. Such funding shall occur not more frequently than monthly. If a Co-Owner fails to fulfill its obligation within such ten (10) business days and the other Co-Owner is required to provide additional funding to maintain operations, then any income from operations normally owing to that Co-Owner shall be applied to the Co-Owner which provided the additional funding until the obligation has been satisfied. If the debt from one Co-Owner to another exceeds the amount of revenue recovery, the defaulting Co-Owner shall pay interest at the rate of 5% per annum to the contributing Co-Owner until the debt has been paid.

5.4 Distribution of Income

Income, if any, received from time to time, shall be distributed as follows:

- (a) Firstly, to pay all amounts owing on account of expenditures;
- (b) Secondly, to a reserve for future expenditures, as approved by the Co-Owners from time to time;
- (c) The balance shall be distributed to each of the Co-Owners in accordance with their Co-Owner Proportion, subject to subparagraph (d) below; and
- (d) Notwithstanding the provisions of subparagraph (c), in the event that, in accordance with section 5.3 there shall exist a debt from one Co-Owner to another, that debt shall be payable out of the relevant Co-Owner's share of funds.

5.5 Contribution Funds

It is anticipated by the Parties that on transfer of the Lands, Transport Canada will provide to the Co-Owners, pursuant to an Operation and Contribution Agreement, funds to be applied to eligible expenditures as set out in that agreement. The Parties agree that all funds received from

Transport Canada on the transfer of the Lands shall be deposited to a reserve account and only used towards these eligible expenditures.

ARTICLE VI

LAND USE

6.1 Land Use Plan

The Co-Owners shall develop a Land Use Plan for the Lands as soon as reasonably possible. The Land Use Plan shall:

- (a) Take into account the port operations on the Lands and determine whether such operations should continue in the long term;
- (b) Take into account compatibility with existing and proposed uses on the adjacent lands;
- (c) Not permit or allow any use of the Lands which could have a detrimental environmental impact on the Lands; and
- (d) Conform to the process in Ontario's *Planning Act* and other legislation in making all land use decisions.

6.2 Separate Management and Ownership

- (a) The Committee shall consider, on a case by case basis and as circumstances arise, whether, with respect to a particular use or operation of a part of the Lands, separate or individual management by one or the other Co-Owners is appropriate and on what basis;
- (b) The Committee shall consider, on a case by case basis, whether the conveyance of a part of the Lands is appropriate in the circumstances; and
- (c) The Parties agree the part of the Lands currently used as a municipal road, recreational path and for municipal services shall be conveyed to the City.

ARTICLE VII GOVERNANCE

7.1 Applicable Law

Federal, provincial, and municipal laws and bylaws, as applicable, will apply to the Lands as well as any action or decision made under this Agreement, including but not limited to

- (a) The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56;
- (b) The *Municipal Conflict of Interest Act*, R.S.O., 1990 c.M50;
- (c) The *Environmental Assessment Act*, R.S.O., 1990 c.E9;
- (d) The MCA's Access to Information and Protection of Privacy Policy; and
- (e) The MCA's environmental regulations.

7.2 Emergency Services

The Co-Owners agree that the Lands will be policed by the Cornwall Police Force and firefighting will be conducted by the Cornwall Fire Department.

ARTICLE VIII MANAGEMENT

8.1 Appointment of Manager

- (a) The Co-Owners may appoint a Manager to manage services as outlined in section 8.2 or may consider appointing an employee of one of the Co-Owners to act as a Manager;
- (b) The scope of authority and responsibility of a Manager in performing management services shall at all times be subject to Major Decisions made, or required to be made by the Co-Owners; and
- (c) In the event that either Co-Owner shall cease to be a Co-Owner or the Co-Owners agree to terminate a Manager, then the management of the Lands by the Manager shall terminate.

8.2 Management Services

A Manager shall:

- (a) Establish and maintain accounts necessary for the use, operation, management and Development of the Lands;
 - (b) Identify and arrange the infrastructure needs for the Lands;
 - (c) Manage the leases to which the Lands are subject;
 - (d) Subject to the direction of the Co-Owners, establish building and architectural design criteria and guidelines, if appropriate;
 - (e) Formulate cost control reporting systems;
 - (f) Liaison with local and statutory authorities;
 - (g) Negotiate and coordinate arrangements with appropriate utility authorities and other persons to ensure supply and continuity and availability of services to the Lands, including sewers, water mains, roadways and electrical, gas, telephone and other utilities;
 - (h) Negotiate forms of contract to be executed by contractors and suppliers;
 - (i) Subject to the approval of the Co-Owners, retain all consultants, contractors and suppliers;
 - (j) Coordinate activities of all consultants, contractors and suppliers;
 - (k) Obtain appropriate insurance coverage for the Lands;
-
- (l) Prepare budgets for approval by the Co-Owners that relate to the Lands or the use, operation, management and development of the Lands;
 - (m) Pay costs in accordance with the approved budgets (and any amendment thereto, subject to the approval of the Co-Owners as may be required as a Major Decision) in relation to this Agreement from funds provided by the Gross Receipts, and if funds from Gross Receipts are insufficient, from the Co-Owners;

- (n) Attend regular meetings of the Co-Owner's Committee and develop quarterly reporting programs to keep the Co-Owners informed of the status and needs of the Lands and the use, operation, management and Development of the Lands;
- (o) Use reasonable efforts to promptly notify the Co-Owners of any material adverse change or matter in the condition, financial or otherwise, relating to the use, operation, management and development of the Lands;
- (p) Instruct and liaise with solicitors in connection with all matters and transactions contemplated by this Agreement and the necessary legal advice, negotiations and documentation in connection therewith;
- (q) Manage the funds in respect of the Lands, including the Gross Receipts, reserves and the investment of excess funds, and the payment of cash expenditures incurred by the Manager or the Co-Owners in connection with the use, operation, management or development of the Lands;
- (r) Maintain at its principal office, proper books of account and records as are necessary to reflect the assets, liabilities, results of operations and all transactions relating to the Agreement;
- (s) Prepare monthly reports of expenses incurred and disbursements made during the previous month and projected revenues for the current month;
- (t) Supervise and manage all other administrative matters;
- (u) Conduct such other operational or administrative activities as the Co-Owners may reasonably request from time to time; and
- (v) Engage in any other activities which the Co-Owners consider proper, necessary or expedient in relation to the use, operation, management and Development of the Lands.

ARTICLE IX
TRANSFERS OF INTERESTS AND CHARGES

9.1 Transfers and Mortgages

- (a) Neither Co-Owner shall mortgage, pledge or encumber its Co-Owner's interest, except if approved by the other Co-Owner;
- (b) No Disposition shall be made or permitted, nor any agreement or commitment to do so made or permitted, without the prior written consent of the other Co-Owner, which consent may be arbitrarily withheld, and any agreement or commitment to do so, in the absence of obtaining any such prior written consent, shall be void; and
- (c) Prior to any Disposition by one Co-Owner to a third party, such Co-Owner shall first offer its Co-Owner interest to the other Co-Owner and such transfer will be based on payment of the market value of the interest.

9.2 Covenant of Prospective Co-Owner

Notwithstanding anything contained in this Agreement, no Disposition may be made unless the prospective Co-Owner enters into an agreement with the remaining Co-Owner whereby the prospective Co-Owner shall be bound by and entitled to the benefit of this Agreement and the other agreements affecting the Lands contemplated by this Agreement to the extent of the Co-Owner's Interest which is the subject of the Disposition.

9.3 Sale to Third Party

In the event that there is a sale by either or both of the Co-Owners of their respective Co-Owner's Interests to a third party and if a Co-Owner is indebted to the other Co-Owner for any amounts so recorded in the books of the Lands, on the closing of the transaction with the third party, the indebted Co-Owner shall direct the third party to pay the amount in default to the other Co-Owner on the closing.

9.4 Sale to Other Co-Owner

In the event that one Co-Owner has agreed to convey its interest to the other and a purchase price cannot be agreed upon, then each Co-Owner shall have a professional appraisal report prepared, at each Co-Owner's own cost, which report shall be exchanged with each other. If the parties, as a result of this exchange, are unable to reach an agreement, then the two appraisers who did the reports will together select a third appraiser and that appraiser shall determine the price for which the Lands are conveyed. If the two appraisers cannot agree on a third appraiser then the selection of an appraiser shall be referred to arbitration and, if necessary, to a Judge of the Ontario Superior Court of Justice.

ARTICLE X DEFAULT

10.1 Event of Default

In the event of default by a Co-Owner in the performance or observance of its obligation pursuant to Section 5 of this Agreement which default continues for over six (6) months, the non-defaulting Co-Owner shall have the right, in addition to any other remedies available to it at law or under this Agreement, to do one, any or all, either separately or simultaneously, of the following:

- (a) Bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the parties that damages at law may be an inadequate remedy for a default or breach of this Agreement;
- (b) Bring any action at law or otherwise for reimbursement for any monies expended to remedy default of the other; and
- (c) Bring any action at law as may be necessary or advisable in order to recover damages.

ARTICLE XI

DISPUTE RESOLUTION

11.1 Negotiation

The Parties shall attempt in good faith to resolve any dispute arising out of or relating to the use, Development and operation of the Lands. If the Co-Owners Committee is unable to resolve such dispute, the matter will be referred to each Co-Owners Council which will attempt to find a settlement. Either Council may invite a delegation from the other Co-Owner's Council to meet for the purposes of seeking resolution. All negotiations pursuant to this clause shall be confidential and without prejudice.

11.2 Mediation

- (a) If the Parties are unable to resolve the matter in dispute, then the Parties agree to endeavor to settle the dispute with the assistance of a mediator;
- (b) The Parties agree to jointly select a mediator. If the parties cannot agree on the choice of a mediator within twenty (20) days of the date on which mediation is considered to be necessary, then the Parties will consider other means to choose a mediator and, if necessary, will consider an application to a Judge of the Superior Court of Ontario for this purpose;
- (c) Each Co-Owner will be responsible for its own costs of mediation and shall equally share the costs of the mediator;
- (d) All information exchanged during the meditation shall be regarded as "without prejudice" communications for the purpose of settlement negotiations, unless otherwise required by law;
- (e) The parties agree to an exchange of all information upon which they intend to rely in any presentation to the mediator; and
- (f) During the course of the mediation, the parties agree to take no new steps in any legal proceeding between them which concerns the same matter as is the subject of this meditation.

11.3 Arbitration

- (a) If the mediation is unsuccessful, the Parties will discuss whether the issue is one where they are prepared to proceed to arbitration. A party wishing to have arbitration of an issue pursuant to the provisions of this Agreement shall give notice to the other party specifying particulars of the matter or matters in dispute. If the other party agrees to arbitration then each party shall propose the name of the person it wishes to be the single arbitrator. Within five (5) calendar days thereafter the other party shall give notice to the first party advising whether such party accepts the arbitrator proposed by the other party. If there is no such agreement then the Parties will consider other means to choose an arbitrator and, if necessary shall consider an application to a Judge of the Superior Court of Ontario for this purpose.
- (b) Meetings and hearings of the arbitrator shall take place in the City of Cornwall, Ontario or such other place as the parties may agree upon in writing. Subject to the foregoing, the arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and shall give all the parties adequate notice of these. Subject to any adjournments which the arbitrator allows, the final hearing will be continued on successive working days until it is concluded. All meetings and hearings will be in private unless the parties otherwise agree. Any party may be represented at any meetings or hearings by a legal practitioner;
- (c) The arbitrator will make its decision in writing and, unless all parties otherwise agree, its reasons will be set out in the decision. The arbitrator will send its decision to the parties as soon as practicable after conclusion of the final hearing. The decision shall be final and binding on the parties and shall not be subject to any appeal or review procedure provided that the arbitrator has followed by rules provided herein in good faith and has proceeded in accordance with the principles of natural justice;
- (d) By submitting to arbitration under the foregoing rules, the parties shall be taken to have conferred on the arbitrator the following jurisdiction and powers, to be exercised by him so far as the relevant law allows, and in his or her absolute and unfettered discretion, if he or she shall judge it to be expedient for the purpose of

ensuring the just, expeditious, economical and final determination of the dispute referred to him or her;

- (e) The arbitrator shall have jurisdiction to:
 - (i) Determine any question as to his or her own jurisdiction;
 - (ii) Order any party to furnish such further details of the party's case in fact or in law, as he or she may be required;
 - (iii) Order any party to furnish such further details of the party's case in fact or in law, as he or she may be required;
 - (iv) Proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these rules or with his or her orders or directions or to attend any meeting or hearing but only after giving that party written notice that he or she intends to so;
 - (v) Receive and take into account such written or oral evidence as he or she shall determine to be relevant, whether or not strictly admissible in law;
 - (vi) Hold meetings and hearings and make his or her decision (including the final decision) in Ontario or elsewhere with the concurrence of the parties thereto;
 - (vii) Order the parties to produce to him or her and to each other for inspection and supply copies of any documents or classes of documents in their possession or power which he determines to be relevant; and
 - (viii) Award damages for costs to any party, including determination of payment for the cost of arbitration.
- (f) Notwithstanding the intention of the parties that the arbitrator be able to act free of court proceedings set forth herein, the parties consent to the decision of the arbitrator being entered in any court having jurisdiction for the purposes of enforcement. In addition, any party may apply to an appropriate court for such relief and it is expressly agreed that the making of any such application or the

granting of such relief by a court shall not be deemed to be in derogation of the intention of the parties that the dispute be subject to the final and binding arbitration as set forth herein; and

- (g) In all proceedings subject to arbitration, the parties shall instruct the arbitrator to render a final decision no later than sixty (60) days from that date upon which the notice is given by a party hereto invoking the provisions of arbitration pursuant to this Agreement.

ARTICLE XII PLANNING ACT

12.1 Compliance with Planning Act (Ontario)

If the provisions of Section 50 of the *Planning Act*, as amended or re-enacted from time to time, apply to any sale or lease of the Lands under this Agreement, the sale or lease is effective to create an interest in the Lands only if there is compliance with Section 50.

ARTICLE XIII PARTITION, SALE AND ADVERSE CLAIMS

13.1 Waiver of Partition and Sale

Each Co-Owner waives the benefit of all provisions of law, now in effect or hereinafter enacted, relating to actions for a partition or sale in lieu of partition and/or administration of real and personal property including, without limiting the generality of the foregoing, the *Partition Act* (Ontario), as amended or re-enacted from time to time. Each Co-Owner agrees that it will not resort to any action at law or in equity for partition or sale in lieu of partition of the Lands or seek administration in respect thereof, except in each case as herein provided.

Either owner is entitled to a decree or order restraining or enjoining any application, petition, action or proceeding to dissolve or terminate the tenancy-in-common or for the partition or sale of the Lands, it being acknowledged that the injury resulting from a breach of section would be irreparable and could not be measured in damages.

13.2 Notice of Adverse Claims

If any Co-Owner receives any notice, claim or document respecting the Lands which would adversely affect the Co-Owner's Interest of the other Co-Owner, it shall forthwith deliver a copy of any such notice, claim or document to the other Co-Owner.

ARTICLE XIV MISCELLANEOUS

14.1 Registration

Neither Co-Owner may register this Agreement, notice of this Agreement or an assignment of this Agreement against title to the Lands without the approval of the other Co-Owner.

14.2 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication (herein in this Agreement referred to as a "**Notice**") to be given under or in connection with this Agreement shall be in writing, may be given by a party or its counsel and shall be given by personal delivery or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

In the case of MCA:	Address: Box 579 Cornwall, Ontario K6H 5T3
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and in the case of Cornwall:	City of Cornwall 100 Water St. Cornwall, Ontario K6H 6G4
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Any Notice, if personally delivered, or sent by electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the date of such delivery or transmission.

14.3 Assignment

The Parties acknowledge that it is their intent to create corporations to take title to the Lands and to assign this Agreement to the corporations at the time of the transfer of the Lands. All of the terms and provisions of this Agreement shall be binding upon the Co-Owners and their respective successors and permitted assigns, and shall enure to the benefit of and be enforceable by successors and assigns of any Co-Owner only to the extent that they are permitted successors and assigns pursuant to the terms hereof.

14.4 Further Assurances

The parties hereto agree that they will, from time to time at the reasonable request of any of them, execute and deliver such assignments, instruments and conveyances and take such further action as may be required to accomplish the purposes of this Agreement.

14.5 Time is of the Essence

Time shall be deemed to be of the essence with respect to all time limits mentioned in this Agreement. The time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement in writing signed by both parties or by their respective solicitors who are expressly appointed in that regard.

14.6 Press Releases

The parties hereto agree that any press releases, announcements and other forms of public disclosure pertaining to the matters herein will be subject to the approval of the Co-Owners.

ARTICLE XV

GENERAL

15.1 Indemnities

Each Co-Owner agrees with the other Co-Owner to be responsible for its Co-Owner's Proportion of the debts, liabilities, claims, damages, losses, obligations, duties, agreements and expenses (the "**Liabilities**") arising from or incurred in connection with the Lands and the Development, whether present or future, provided that the liabilities have been imposed by statute, law, by-law

or regulation of a governmental body of competent jurisdiction or have been imposed by a court of law or other judicial, administrative or governmental authority or have been approved by the Co-Owners or properly incurred pursuant to this Agreement.

Each Co-Owner shall at all times indemnify and save harmless the other Co-Owner from any and all liabilities to the extent of that portion of all liabilities which it has incurred and which is in excess of that Co-Owners Proportion of the liabilities and which has been paid or incurred by it. In such case the Co-Owner shall reimburse, forthwith on demand, the other Co-Owner with respect to such portion.

15.2 Non-Waiver

No consent to or waiver of any breach or default by any Co-Owner in the performance of its obligations hereunder shall be valid unless made in writing and no such consent to or waiver of any breach or default shall be deemed or construed to be a consent to or waiver of any other breach or default by such Co-Owner of any other obligations of such Co-Owner hereunder. Failure on the part of any Co-Owner to complain of any act or failure to act of the other Co-Owner or to declare the other Co-Owner in default, irrespective of how long such failure continues, shall not constitute a waiver by such Co-Owner of its rights hereunder.

15.3 Accounting Principles

Except as specifically provided otherwise in this Agreement, all calculations referred to herein shall be made in accordance with generally accepted accounting principles and practices applicable to corporations and applied on a consistent basis.

15.4 Rights of Co-Owners Independent

The rights available to each Co-Owner under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a Co-Owner from time to time and no such exercise shall exhaust the rights or preclude the other Co-Owner from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

15.5 Entire Agreement

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, of the parties with respect thereto.

15.6 Covenants to Run with Lands

The Co-Owners acknowledge that all covenants that are contained in this Agreement are intended by them to run with the title to the Lands and to be binding upon their successors in title.

15.7 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

15.8 Counterparts

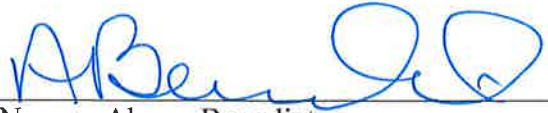
This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Counterparts may be executed either in original, faxed or PDF form and the parties adopt any signatures received by a receiving fax machine or electronic mail as original signatures of the parties.


15.9 Invalidity of Provisions

If any covenant, obligation or agreement of this Agreement, shall to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each covenant, obligation or agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF the Co-Owners have duly executed this Co-Owners Agreement as of the date hereof.

THE MOHAWK COUNCIL OF AKWESASNE

By: 
Name: Abram Benedict
Title: Grand Chief

By: 
Name: Heather Phillips
Title: Acting Executive Director

THE CORPORATION OF THE CITY OF CORNWALL

By: 
Name: Leslie O'Shaughnessy
Title: Mayor

By: 
Name: Helen Finn
Title: Clerk

SCHEDULE "A"

LANDS

PIN 60463-0090 (R)

PART OF LA POINTE MALIGNE CORNWALL PART OF LOT 7 CONCESSION 1 CORNWALL AND PART OF THE BED OF THE ST. LAWRENCE RIVER AND DESIGNATED AS PART 1, 2, 3, 4 & 5 on Plan 52R-3083 SAVE AND EXCEPT THAT PART OF LOT 5 DESCRIBED IN INSTRUMENT NO. S45570

SCHEDULE "B"

MAJOR DECISIONS

The Major Decisions of the owners in their use, operation, management and development of the Lands include:

- (a) Developing a Land Use Plan for the Lands;
- (b) Decisions relating to the Development of the Lands;
- (c) Funding for capital improvements on the Lands;
- (d) Third party agreements for the use to or access to or over all or part of the Lands;
- (e) The sale or lease of parts of the Lands to third parties and the terms of such agreement;
- (f) The use of any income produced by the Lands;
- (g) Approval of Budgets;
- (h) Approval of Press Releases;
- (i) The hiring/or selecting of a Manager; and
- (j) Such other purposes or activities as the owners may decide on in accordance with the terms of this Agreement.