

AGREEMENT
WITH RESPECT TO
KANESATAKE GOVERNANCE OF THE INTERIM LAND BASE

BETWEEN

The MOHAWKS OF KANESATAKE, as represented by the Mohawk Council of KANESATAKE,
(hereinafter referred to as “Kanesatake”)

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian
Affairs and Northern Development, (hereinafter referred to as “Canada”)

PREAMBLE

WHEREAS the Mohawks of Kanesatake are a community of the Mohawk Nation;

AND WHEREAS the Mohawks of Kanesatake have asserted that they have Aboriginal rights and title and treaty rights, protected by the Royal Proclamation of 1763, in and to the lands which make up the Seignury of the Lake of Two Mountains, and the parties agree that this Agreement is without prejudice to that assertion;

AND WHEREAS the Mohawks of Kanesatake assert that it is one of their guiding principles to consider the consequences of actions for the next seven generations and beyond, and the Mohawks of Kanesatake intend to protect and preserve Kanesatake Mohawk Lands for the benefit of the next seven generations and beyond;

AND WHEREAS the Mohawks of Kanesatake have asserted their view that the Kanesatake Mohawk Lands have historically come within the meaning of section 91(24) of the *Constitution Act, 1867*;

AND WHEREAS Canada takes no position with respect to the constitutional status of the Kanesatake Mohawk Lands prior to implementation of this Agreement;

AND WHEREAS the parties wish to resolve the question of constitutional status of Kanesatake Mohawk Lands from this point forward, without prejudice to the position that either of them may wish to take as to the historical status of such lands;

AND WHEREAS the parties further wish to address certain matters in relation to the governance of lands described in Schedule "A" (hereinafter referred to as Kanesatake Mohawk Lands);

AND WHEREAS the parties further intend to ensure the establishment of a secure land base comprised of the interim land base and any new lands that may be added thereto, as described in Schedule "A";

AND WHEREAS, in that spirit, Canada agrees to recommend to Parliament that the Kanesatake Mohawk Lands be reserved as lands reserved for the Mohawks of Kanesatake within the meaning of section 91(24) of the *Constitution Act, 1867*, but not a "reserve" within the meaning of the *Indian Act*;

AND WHEREAS the parties agree that Kanesatake and the neighbouring Municipality of Oka should strive to pursue the future development of their respective adjacent lands in mutual harmony;

AND WHEREAS this Agreement has been negotiated as a first step in addressing the overall governance of Kanesatake Mohawk Lands;

AND WHEREAS the parties remain committed to resolving other important issues related to Kanesatake Mohawk Lands following the signing of this Agreement, and according to the priorities identified by the parties;

AND WHEREAS the parties view this Agreement as consistent with the Agenda and Process for Negotiations dated March 6, 1991 and the Memorandum of Understanding dated December 19, 1994, both of which have been agreed to by the parties;

NOW THEREFORE, the parties agree that:

1. Canada will recommend to the Parliament of Canada Legislation to ratify and implement this Agreement.

SHORT TITLE

2. Canada will recommend that the short title of the Legislation be the “Kanesatake Interim Land Base Governance Act”.

PART I: DEFINITIONS

3. In this Agreement:

“Agreement” means this agreement between Canada and Kanesatake;

“Canada” means her Majesty the Queen in Right of Canada;

“conflict” means an actual conflict in operation, or operational incompatibility between two laws, such that compliance with one law would necessarily result in a breach of the other;

“jurisdiction” means the power to enact laws described in section 21 of this Agreement;

“Kanesatake Mohawk Lands” means lands referred to in section 14 and Schedule “A” to this Agreement;

“Kanesatake Mohawk Laws” means laws enacted in conformity with this Agreement, the Legislation and the Land Governance Code;

“Land Governance Code” means a code, adopted in conformity with this Agreement, that sets out the principles and processes regarding the exercise by the Mohawk Council of Kanesatake of jurisdiction over Kanesatake Mohawk Lands;

“Legislation” means the Act of Parliament that will ratify and implement this Agreement;

“Kanesatake” or “Mohawks of Kanesatake” means the Mohawks of Kanesatake Indian Band;

“Minister” means the Minister of Indian Affairs and Northern Development;

“Mohawk Council of Kanesatake” means the Council of the Mohawks of Kanesatake.

PART II: PURPOSE

4. The purpose of this Agreement is:

- (a) to record the agreement of the parties for Canada to act on its intention to recommend to Parliament that the Kanesatake Mohawk Lands be reserved as lands reserved for the Mohawks of Kanesatake within the meaning of section 91(24) of the *Constitution Act, 1867*;
- (b) to provide for the exercise of jurisdiction by Kanesatake over the use and regulation of Kanesatake Mohawk Lands for the benefit and use of the Mohawks of Kanesatake; and
- (c) to establish the principles by which Kanesatake will strive to develop Kanesatake Mohawk Lands adjacent to lands within the neighbouring Municipality of Oka in mutual harmony with that Municipality;

PART III: GENERAL PROVISIONS

- 5. This Agreement has been negotiated and concluded without prejudice to any positions the parties may take with respect to the Mohawks of Kanesatake’s grievances related to the Seigneury of the Lake of Two Mountains, and without prejudice to a resolution of those grievances.
- 6. This Agreement is without prejudice to ongoing or future negotiations between the parties in respect of any other subject matters.
- 7. Nothing in this Agreement is intended to prejudice any Aboriginal or treaty rights of the Mohawks of Kanesatake. Nothing in this Agreement will be construed as an implicit or explicit recognition by Canada of such rights or any legal obligations or liability of Canada.
- 8. This Agreement does not address or affect jurisdiction over the creation, recognition or transfer of interests in land.
- 9. All Kanesatake Mohawk Lands will be subject to the laws enacted pursuant to this Agreement.

10. Notwithstanding section 9, any existing interests in Kanesatake Mohawk Lands continue in accordance with their terms and conditions and will be administered as they were prior to this Agreement.
11. This Agreement is not a treaty or a land claims agreement within the meaning of section 35 of the *Constitution Act, 1982*.

PART IV: TITLE TO AND PROTECTION OF KANESATAKE MOHAWK LANDS

12. Canada agrees to recommend to Parliament that the Kanesatake Mohawk Lands be reserved as lands reserved for the Mohawks of Kanesatake within the meaning of section 91(24) of the *Constitution Act, 1867* but not a “reserve” within the meaning of the *Indian Act*.
13. Nothing in this Agreement is intended to affect the underlying title to Kanesatake Mohawk Lands.

PART V: DESCRIPTION OF LANDS

14. Lands described as Kanesatake Mohawk Lands under this Agreement are set out in Schedule “A” to this Agreement.
15. For greater certainty, any exercise of jurisdiction or authority by the Mohawks of Kanesatake in respect of lands known as Doncaster Reserve No. 17, and described in Schedule “A” hereto, will be subject to an agreement between the parties for whom those lands were set aside, and an agreement with Canada to take any necessary steps to implement the agreement.
16. Notwithstanding anything in this Agreement and the Legislation, lands known as Doncaster Reserve No. 17 will continue to be a “reserve” within the meaning of the *Indian Act*.
17. Following the enactment of laws pursuant to this Agreement and conclusion of an agreement as contemplated in s. 15, the corresponding provisions of the *Indian Act*, if any, will cease to apply to lands known as Doncaster Reserve No. 17.
18. The Legislation will provide for the Mohawk Council of Kanesatake to exercise the appropriate powers, under s. 29(3) of the *Canada Lands Surveys Act*, to indicate to the Surveyor General, as and when necessary, their satisfaction with surveys and plans.

PART VI: LEGAL STATUS AND CAPACITY

19. For greater certainty, Kanesatake is a legal entity and has the status, capacity, rights, powers and privileges of a natural person, including the legal capacity:
- (a) to acquire and hold property,
 - (b) to borrow,
 - (c) to contract,
 - (d) to expend and invest money,
 - (e) to exercise rights and enforce performance of obligations, including by being a party to legal proceedings, and
 - (f) to do such other things as are ancillary to the exercise of its status, capacity, rights, powers and privileges.

PART VII: LAND GOVERNANCE CODE

20. Kanesatake will not exercise jurisdiction as set out in section 21 prior to the adoption of a land governance code that will provide for good governance by the Mohawk Council of Kanesatake over Kanesatake Mohawk Lands, and will, among other things:
- (a) provide for the development, enactment, and publication of laws;
 - (b) establish processes for the review, assessment and approval of proposed uses of Kanesatake Mohawk Lands;
 - (c) establish principles and rules to ensure the political accountability of the Mohawk Council of Kanesatake to its members, including conflict of interest rules;
 - (d) establish principles and rules to ensure the financial accountability of the Mohawk Council of Kanesatake to its members;
 - (e) provide for rights of appeal and redress; and
 - (f) include a procedure to make amendments.

PART VIII: JURISDICTION OVER THE USE AND REGULATION OF KANESATAKE MOHAWK LANDS

21. Subject to section 7, and consistent with the purpose of this Agreement, the parties agree that Kanesatake has jurisdiction over the use and regulation of Kanesatake Mohawk Lands, including such matters as:
- (a) health and quality of life of residents;
 - (b) protection and management of wildlife and fish;
 - (c) observance of law and order and prevention of disorderly conduct and nuisances;
 - (d) trespass;
 - (e) residency;
 - (f) fire safety and protection services;
 - (g) construction and maintenance of local works;
 - (h) construction and regulation of water supplies;
 - (i) building construction, including inspections, alteration or renovation of premises;
 - (j) zoning;
 - (k) waste disposal, management and sanitation;
 - (l) traffic regulation.
22. For greater certainty, section 21 does not include jurisdiction over the creation, recognition or transfer of interests in land, which matters will be addressed in a subsequent agreement or in an amendment to this Agreement, negotiated according to the priorities identified by the parties.
23. For greater certainty, jurisdiction over the use and regulation of Kanesatake Mohawk Lands includes the power to prohibit.
24. Prior to beginning a public process in relation to the proposed use of Kanesatake Mohawk Lands:
- (a) for any commercial or industrial use which results or which may result in environmental damage;
 - (b) for storage or transportation of any dangerous or toxic materials; or
 - (c) for use as a waste disposal site,

Kanesatake will adopt a development plan determining the general policies on land use of Kanesatake Mohawk Lands for the different parts thereof.

25. In the event that federal laws in respect of environmental protection, which laws apply to Kanesatake Mohawk Lands and the Mohawks of Kanesatake, do not establish standards of environmental protection in respect of a matter, Kanesatake Mohawk Laws enacted pursuant to section 21, and executive actions, decisions or policies of the Mohawk Council of Kanesatake will be consistent with the standards of environmental protection that prevail in the region in respect of that matter.

26. For greater certainty, nothing in section 25 precludes Kanesatake from exceeding the standards referred to in that section.
27. Sections 25 and 26 are subject to any future agreements between the parties dealing with the exercise, by Kanesatake, of jurisdiction in respect of the environment.
28. For greater certainty, this Agreement does not address, and the Legislation will not include jurisdiction in relation to subject matters referred to in section 91(27) of the *Constitution Act, 1867*, or in relation to labour relations or working conditions.

PART IX: FUTURE DEVELOPMENT

29. The existing land uses and constructions on Kanesatake Mohawk Lands in the former Village of Oka, which lands form part of Kanesatake Indian Lands No. 16, will remain unchanged until the adoption of Kanesatake Mohawk Laws with respect to the use and development of those lands.
30. Notwithstanding section 29, modifications or alterations may be made to the existing land uses or constructions on the lands referred to in section 29 consistent with the land uses or land use and building standards set out in Schedule “B” to this Agreement.
31. Prior to enacting, in respect of the lands referred to in section 29, any Kanesatake Mohawk Laws respecting land uses or land use and building standards to replace the uses or standards set out in Schedule “B”, a mutually-acceptable arrangement on harmonization pertaining to the lands in question will be concluded with the Municipality of Oka, unless the content of the Kanesatake Mohawk Laws is comparable to the uses and standards set out in Schedule “B”.
32. The mutually-acceptable arrangement on harmonization referred to in s. 31 will be based on the principles set out in Schedule “C” to this Agreement.
33. For greater certainty, section 31 will also apply to those parts of a development plan, as contemplated in section 24, that deal with the lands referred to in section 29.
34. Any construction that takes place on Kanesatake Mohawk Lands will be subject to the building standards as set out in the *National Building Code* and in any subsequent amendments thereto.
35. Kanesatake will seek to resolve any disagreements with the Municipality of Oka in relation to harmonization arrangements through a mutually-agreeable dispute resolution process.

PART X: ENFORCEMENT AND ADJUDICATION

36. Kanesatake's jurisdiction as set out in section 21 includes the power to enforce, and to provide for sanctions for the violation of, Kanesatake Mohawk Laws enacted pursuant to this Agreement, provided that such sanctions, which may include orders, fines, imprisonment and restorative justice measures, will not be greater than the general limits established, from time to time, for summary conviction offences under the *Criminal Code* for which no specific penalties or punishments are provided.
37. Subject to sections 38 and 39, Kanesatake may appoint persons to act as justices of the peace to interpret and adjudicate Kanesatake Mohawk Laws enacted pursuant to this Agreement.
38. The parties agree to negotiate an agreement that will make provision for the appointment and functioning of justices of the peace. The agreement will address, among other matters, the following:
 - (a) jurisdiction and qualifications of the justices of the peace;
 - (b) independence, impartiality and financial security of the justices of the peace;
 - (c) supervision of the justices of the peace, including provisions to ensure that, once appointed, they may only be removed for misconduct or inability to perform their duties after review by an impartial body;
 - (d) the right to appeal any decision of such justices of the peace to the court of competent jurisdiction; and
 - (e) the relationship between the justices of the peace appointments and the existing justice system and institutions.
39. Kanesatake will not appoint any justices of the peace until the parties have concluded an agreement as contemplated in section 38.
40. The parties will make best efforts to conclude an agreement as contemplated in section 38 within twelve months of signing this Agreement.
41. Kanesatake will have the power to prosecute any offences committed under Kanesatake Mohawk Laws enacted pursuant to this Agreement through courts of competent jurisdiction.

PART XI: PROGRAMS AND SERVICES

42. Nothing in this Agreement or the Legislation is intended to affect the delivery of ongoing programs and services to the Mohawks of Kanesatake.

PART XII: RELATIONSHIP OF LAWS

43. All municipal by-laws, and provincial laws of general application that do not apply of their own force to or in respect of the Mohawks of Kanesatake but have been incorporated by reference through federal legislation, do not apply to the extent that they are inconsistent or in conflict with the Agreement and the Legislation or with a law or order made thereunder or to the extent that they make provision for a matter that is provided for by the Legislation.
44. In the event of a conflict between a provision of a Kanesatake Mohawk Law and a provision of a provincial law of general application that may apply of its own force, the Kanesatake Mohawk Law will prevail to the extent of the conflict.
45. In the event of a conflict between a provision of a Kanesatake Mohawk Law and a provision of an applicable federal law, the federal law will prevail, but only to the extent of the conflict.

PART XIII: LEGISLATIVE PROCESS

46. Canada will consult Kanesatake during the drafting of the Legislation, by:
 - (a) providing copies of the English and French versions of the legislative proposals to Kanesatake; and
 - (b) providing full opportunity and ensuring that Kanesatake has a reasonable period of time to present its views and comments on the drafts of such Legislation at meetings with Canada.
47. Prior to introducing the Legislation into Parliament, Canada will consider any comments made by Kanesatake on the content of such draft Legislation as to whether it accurately reflects the Agreement.

PART XIV: PROOF OF LAWS

48. In any proceeding, a copy of a Kanesatake Mohawk Law certified as a true copy by a duly authorized officer of the Mohawks of Kanesatake is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.

PART XV: FUNDING

49. Canada will provide funding towards the implementation of this Agreement in accordance with the terms and conditions approved by Treasury Board for this purpose.

PART XVI: RATIFICATION

50. Initialling of this Agreement by the Negotiators for Kanesatake and for Canada signifies that they will diligently seek ratification.
51. Ratification by Canada will take place following ratification by Kanesatake.
52. In the case of Kanesatake, ratification of this Agreement will be by secret ballot vote in which all members 18 years of age and over will be entitled to vote. The Agreement will be considered approved by Kanesatake if at least a majority of participating voters vote to approve it and the Mohawk Council of Kanesatake issues a resolution signifying that such approval has been achieved.
53. Kanesatake and Canada will also agree on such matters as notification, provision of information, community consultation and other ratification procedures.
54. In the case of Canada, ratification of this Agreement will be by signature of the Minister and the enactment of Legislation by Parliament.

Schedule "A"

1. For the purposes of this Agreement, Kanesatake Mohawk Lands include:
 - (a) Kanesatake Indian Lands no. 16;
 - (b) lands known as Doncaster Reserve no. 17, which lands were set aside for Kanesatake and Kahnawake;
 - (c) lands known as "Assenenson", "Chemin du Milieu" or "Centre Road";
 - (d) lands described in Article 2.1.1 of a Management Agreement entered into between Her Majesty the Queen in Right of Canada and Kanesatake Orihwa'Shon: A Development Corporation on June 30th , 1999, and any such other lands included by way of amendment to the said article; and
 - (e) lands which may be added to lands identified herein, before or after the coming into force of the Legislation, through the resolution of the Seigneurie of the Lake of Two Mountains grievance, or as the result of any other means, and which both parties agree are lands within the meaning of s. 91(24) of the *Constitution Act, 1867*, and which Canada agrees to set aside and reserve as such, but not a "reserve" within the meaning of the *Indian Act*.

Schedule "B"

SECTION 1

The only uses permitted in the various sectors identified on the plan are as follows:

PERMITTED USES	SECTOR
Detached single family dwellings	1,2,3
Semi-detached single family dwellings or townhouses	1,2,3
Row single family dwellings from 4 to 8 units maximum	3
Duplexes	3
Bed and Breakfast (maximum 3 rooms)	1,2
Commercial establishments ¹	3
Gas stations	3
Accessory buildings ²	all sectors

¹Commercial establishments will be permitted on the ground floor and the first floor of two-story buildings, or else only on the ground floor where the first floor is occupied by residential units. The following are permitted establishments: shops, restaurants, professional personal and financial services establishments, as well as cultural establishments.

²These include either private garages, private pools, sheds, greenhouses or any other outbuildings that have a maximum surface area of 14 square meters and a maximum height of 3 meters. Accessory buildings are not permitted within the front setback. The total floor area of accessory buildings shall not exceed 10% of the surface area of the landsite.

SECTION 2

LAND USE STANDARDS

The following land use standards apply in the various sectors identified on the plan.

Sector 1	
Minimum surface area/ Serviced lots and landsites/detached buildings	650 m ²
Minimum width/ Serviced lots and landsites/detached buildings	18 m
Minimum depth/ Serviced lots and landsites/detached buildings	27 m
Minimum front setback/ Serviced lots and landsites/detached buildings	6 m
Minimum side setbacks/ Serviced lots and landsites/detached buildings	2 m
Minimum rear setback/ Serviced lots and landsites/detached buildings	9 m
Minimum surface area/ Serviced lots and landsites/semi-detached	460 m ²
Minimum width/ Serviced lots and landsites/semi-detached	15 m
Minimum depth/ Serviced lots and landsites/semi-detached	27 m
Minimum front setback/ Serviced lots and landsites/semi-detached	6 m
Minimum side setbacks/ Serviced lots and landsites/semi-detached	2 m
Minimum rear setback/ Serviced lots and landsites/semi-detached	9 m

Sector 2	
Minimum surface area/ Service lots and landsites/detached buildings	375 m ²
Minimum width/ Service lots and landsites/detached buildings	12 m
Minimum depth/ Service lots and landsites/detached buildings	15 m
Minimum front setback/ Service lots and landsites/detached buildings	2 m
Minimum side setbacks/ Service lots and landsites/detached buildings	2 m
Minimum rear setback/ Service lots and landsites/detached buildings	6 m
Minimum surface area/ Serviced lots and landsites/semi-detached	325 m ²
Minimum width/ Serviced lots and landsites/semi-detached	10 m
Minimum depth/ Serviced lots and landsites/semi-detached	15 m
Minimum front setback/ Serviced lots and landsites/semi-detached	2 m
Minimum side setbacks/ Serviced lots and landsites/semi-detached	2 m on one side
Minimum rear setback/ Serviced lots and landsites/semi-detached	6 m

Sector 3	
Detached single family dwellings, row single family dwellings and duplexes	
Minimum front setback	6 m
Minimum side setbacks	2 m
Minimum rear setback	6 m
Commercial establishments	
Minimum front setback	1.5 m
Minimum side setbacks	3 m
Minimum rear setback	6 m
Gas Stations	
Minimum front setback	12 m
Minimum side setbacks	6 m
Minimum rear setback	6 m
Minimum width of serviced lots or landsites/Gas Stations	30 m
Minimum surface area or serviced lots or landsites/Gas Stations	1850 m ²

SECTION 3

MINIMUM DIMENSIONS OF LOTS AND LANDSITES THAT ARE EITHER NOT SERVICED OR PARTIALLY SERVICED (AQUEDUC OR SEWERS) IN ALL SECTORS.

Lots and landsites totally or partially located within 100 meters from a watercourse		
	Non-serviced	Partially serviced
Minimum surface area	4 000 m ²	2 000 m ²
Minimum width	50 m	30 m
Minimum depth	75 m	75 m

Other lots and land sites		
	Non-serviced	Partially serviced
Minimum surface area	2 500 m ²	1 500 m ²
Minimum width	38 m	25 m
Minimum depth	60 m	50 m

SECTION 4 / Special provision

There can be no more than one main building per landsite.

Schedule “C”

Principles Governing Negotiation of Harmonization Arrangements with the Municipality of Oka

1. In this Agreement, “adjacent lands” means, in respect of Kanesatake, the Kanesatake Mohawk Lands in the former Village of Oka and, in respect of the Municipality of Oka (hereinafter referred to as, “the Municipality”), lands adjacent to such lands.
2. Kanesatake and the Municipality should pursue the future development of their respective adjacent lands in mutual harmony and with respect for one another’s laws. To that end, they should negotiate arrangements to ensure the harmonization of laws or by-laws governing such lands.
3. Harmonization arrangements should establish a dispute resolution process, including arbitration, if necessary, to resolve disagreements between the parties.
4. Any commitments by Kanesatake to harmonize Kanesatake Mohawk Laws with the laws of the Municipality in relation to Kanesatake adjacent lands will require reciprocal commitments by the Municipality.
5. Kanesatake will be released from a commitment to harmonize Kanesatake Mohawk Laws with the laws of the Municipality in relation to Kanesatake adjacent lands in the event that the Municipality:
 - (a) enacts a by-law amending a planning by-law in breach of its commitments to harmonize with Kanesatake Mohawk Laws, unless the Municipality has a legal obligation under Quebec law to enact such a by-law, or
 - (b) permits any uses, activities or construction in contravention of its own planning by-laws, which uses, activities or construction significantly prejudice the interests of an occupant of Kanesatake adjacent lands.
6. A harmonization arrangement may determine the level of compatibility required for various laws or by-laws of Kanesatake or the Municipality in relation to their respective adjacent lands.