

SHAWANAGA FIRST NATION



LAND CODE

March 16, 2015

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SHAWANAGA FIRST NATION LAND CODE **CERTIFIED**

PREAMBLE

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Whereas the Shawanaga First Nation has a profound relationship with the Land that is rooted in respect for the spiritual value of the Earth and the gifts of the Creator and has a deep desire to preserve their relationship with the Land;

And Whereas Go-iji-mi-nigo-izit Anishinabe, the Creator gave Shawanaga First Nation laws that have always been and that govern all of our relationships to live in harmony with nature and humankind and those laws define our rights and responsibilities and we have maintained our freedom, our language, and our traditions from time immemorial;

And Whereas fourteen First Nations and Canada concluded a government-to-government *Framework Agreement on First Nation Land Management* on February 12, 1996, as amended from time to time;

And Whereas the *Framework Agreement on First Nation Land Management* provides the option to First Nations of withdrawing their reserve Land from the land management provisions of the *Indian Act* in order to exercise control over their Land and resources for the use and benefit of their Members;

And Whereas Canada ratified its commitment to the *Framework Agreement on First Nation Land Management* with the enactment of the *First Nations Land Management Act*, S.C. 1999, c.24;

And Whereas in light of new First Nations seeking entry to the *Framework Agreement on First Nation Land Management*, the original fourteen First Nations and Canada amended the *Framework Agreement* to expand the opportunity to additional signatory First Nations;

And Whereas Shawanaga First Nation became a signatory on March 25, 2013, as Shawanaga First Nation wishes to govern its Land and resources under the *Shawanaga First Nation Land Code*, rather than having its Land and resources managed on its behalf under the *Indian Act*;

And Whereas the *Framework Agreement on First Nation Land Management* is ratified by Shawanaga First Nation through community approval of the *Shawanaga First Nation Land Code*;

NOW THEREFORE, THIS LAND CODE IS HEREBY ENACTED AS THE FUNDAMENTAL LAND LAW OF THE SHAWANAGA FIRST NATION.

**PART 1
PRELIMINARY MATTERS**

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1. Title

Title

- 1.1 The title of this enactment is the *Shawanaga First Nation Land Code*.

2. Definitions

Clarification

- 2.1 Any words or terms used in this *Land Code* which are defined in the *Framework Agreement* shall have the same meaning as in the *Framework Agreement*, unless the context otherwise requires.

Definitions in Land Laws

- 2.2 For greater certainty, if context requires, Shawanaga First Nation Land Laws, policies and regulations may prescribe different definitions than is provided in this *Land Code*.

Definitions

- 2.3 The following definitions apply in this *Land Code*:

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

“Common-Law Partnership” means the relationship between two (2) persons who are cohabiting in a conjugal relationship;

“Community Land” means any Shawanaga First Nation Land in which all Members have a common interest;

“Council” means the Chief and Council of the Shawanaga First Nation or any successor elected government of the Shawanaga First Nation;

“Eligible Voter” means, for the purpose of voting in respect of Land matters under this *Land Code*, a Member who has attained the age of eighteen (18) years of age on or before the day of the vote;

“Extended Family”, in respect of a person, means the person’s grandparent, parent, uncle, aunt, first degree cousin, grandchild, and/or any other relation or relationship that Council may add by law;

“First Nation Lands Register” means the register established pursuant to clause 51 of the *Framework Agreement* and maintained by the Department of Aboriginal Affairs and Northern Development Canada;

“*Framework Agreement*” means the *Framework Agreement on First Nation Land Management*, entered into between the Minister of Indian Affairs and Northern Development and the signatory First Nations on February 12, 1996, and amended to include Shawanaga First Nation on March 25, 2013;

“Ga-iji-mi-nigo-izit Anishinabe” means what has always been, what has been given from the beginning is our Life Way and our Aboriginal Right. These define our right to Aboriginal Land and our right to the resources, and these Aboriginal Rights have never been surrendered or alienated in any way. Along with this follows our responsibility to the earth and to creation as Aboriginal People;

“Immediate Relatives”, in respect of a person, means the person’s parent, sister, brother, child, and Spouse;

“Individual Agreement” means the Individual Agreement made between Shawanaga First Nation and Canada in accordance with clause 6.1 of the *Framework Agreement* and may be amended from time to time;

“Interest”, in relation to First Nation Land, means any Interest, right or estate of any nature in or to that Land, including a certificate of possession, certificate of entitlement, lease, easement, right of way, servitude, or profit à prendre, but does not include title to that Land;

“Land” or “Shawanaga First Nation Land” means any reserve Land that is subject to this *Land Code*;

“*Land Code*” means the *Shawanaga First Nation Land Code*, and sets out the basic provisions regarding the exercise of the Shawanaga First Nation’s rights and powers over its Land;

“Land Law” means a law, including, but not limited to, policies, regulations, standards, restricted to Shawanaga First Nation Land, enacted in accordance with this *Land Code*;

“Lands Committee” means the Lands Committee established under Part 6 of this *Land Code*;

“Licence” in relation to Shawanaga First Nation Land, means any right of use or occupation of that Land, other than an Interest in the Land;

“Meeting of Members” means a meeting under Part 3 of this *Land Code* to which the Members are invited to attend;

“Member” means a person whose name appears or is entitled to appear on the Shawanaga First Nation Band Membership List;

“Shawanaga First Nation” means the Shawanaga First Nation and its Members;

“Panel” means the Dispute Resolution Panel established under Part 8 of this *Land Code*;

“Resolution” means a Resolution of Council enacted under this *Land Code*;

“Riparian Rights” means the legal right of owners of land bordering on a river or other body of water, and any law that pertains to use of the water for that land; and

“Spouse” means a person who is married to another, whether by a traditional, religious or civil ceremony, and includes a Spouse by Common-Law Partnership.

3. Interpretation

Interpretation

3.1 In this *Land Code*:

- (a) the *Land Code* shall be interpreted in a fair, large and liberal manner;
- (b) the word “shall” signifies an obligation that, unless this *Land Code* provides to the contrary, must be carried out as soon as practicable after this *Land Code* comes into effect or the event that gives rise to the obligation;
- (c) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;

- (d) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine;
- (e) titles and headings of Parts and provisions have been inserted in the *Land Code* for convenience of reference only, and are not interpretive aids;
- (f) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (g) all references to a time period of days means consecutive days and not business days;
- (h) where the time limited for the doing of an act expires or falls on a Saturday or Sunday or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (i) where the time limited for the doing of an act in the Shawanaga First Nation administration building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open;
- (j) where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded; and
- (k) the principles set out in the Preamble to this *Land Code* may be used to interpret this *Land Code*.

Culture and traditions

- 3.2 The structures, organizations and procedures established by or under this *Land Code* shall be interpreted in accordance with the culture, traditions and customs of the Shawanaga First Nation, unless otherwise provided.

Language

- 3.3 The language of the Shawanaga First Nation may be used to clarify the meaning of any provision in this *Land Code*, if the meaning of that provision is not otherwise clear in English.

Paramountcy

- 3.4 If there is an inconsistency or conflict between this *Land Code* and any other enactment of the Shawanaga First Nation, including a by-law enacted under section 81 of the *Indian Act*, this *Land Code* prevails to the extent of the inconsistency or conflict.

Consistency with *Framework Agreement*

- 3.5 If there is an inconsistency or conflict between this *Land Code* and the *Framework Agreement*, the *Framework Agreement* will prevail to the extent of the inconsistency or conflict.

Rights not affected

- 3.6 This *Land Code* does not change:
- (a) the by-law powers of Council pursuant to the *Indian Act*,
 - (b) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to the Shawanaga First Nation or its Members; or
 - (c) the fiduciary relationship between Canada and Shawanaga First Nation and its Members.

Special Relationship

- 3.7 The *Framework Agreement* acknowledges that Canada's special relationship with Shawanaga First Nation will continue.

Lands and Interests affected

- 3.8 A reference to Land in this *Land Code* means all rights and resources in and of that Land, and includes:
- (a) the water, beds underlying water, Riparian Rights, and renewable and non-renewable natural resources in and of that Land, to the extent that these are under the jurisdiction of Canada;
 - (b) all the Interests and Licences granted to the Shawanaga First Nation by Canada listed in the Individual Agreement; and
 - (c) all the Interests and Licences granted by Shawanaga First Nation after this *Land Code* comes into effect.

Eligible Reserve Land

- 3.9 Only Land that has reserve status is eligible to be governed under this *Land Code*.

4. Authority to Govern

Origin of authority

- 4.1 We the Original Peoples of this land know the Creator put us here. The Creator gave us our spiritual beliefs, our languages, our culture, and a place on Mother Earth which provided us with all our needs. The Laws of the Creator defined our rights and responsibilities.

Flow of authority

- 4.2 The authority of the Shawanaga First Nation flows from the Creator who has given us laws that govern all our relationships to live in harmony with nature and mankind. The Creator has given us the right to govern ourselves and the right to self-determination. We continue to exercise the rights and fulfill the responsibilities and obligations given to us by the Creator for the land upon which we were placed. We have maintained our freedom, our languages, and our traditions from time immemorial. The rights and responsibilities given to us by the Creator cannot be altered or taken away by any other Nation.

5. Purpose

Purpose

- 5.1 The purpose of this *Land Code* is to set out the principles, rules and administrative structures that apply to Shawanaga First Nation Land and by which the Shawanaga First Nation will exercise authority over that Land in accordance with the *Framework Agreement*.

Ratification

- 5.2 The *Framework Agreement* is ratified and confirmed by the Shawanaga First Nation when this *Land Code* takes effect.

6. Description of Shawanaga First Nation Land

Shawanaga First Nation Land

- 6.1 The Shawanaga First Nation Land that is subject to this *Land Code* is that Land known as Shawanaga Indian Reserve No. 17, Naiscoutaing Indian Reserve No. 17A and Shawanaga Indian Reserve No. 17B.

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Description of Land

6.2 The Shawanaga First Nation Land includes all reserve Lands listed in the Individual Agreement and such other Lands as may be described in the Individual Agreement as amended from time to time, and more particularly described as:

(a) **Shawanaga Indian Reserve No. 17**

All of Shawanaga Indian Reserve Number 17 as shown on a plan recorded in the Canada Lands Survey Records (CLSR) as No. 102469.

Save and except all those portions of Shawanaga Indian Reserve No. 17 more particularly described as:

FIRSTLY: all those lands described in Letters Patent 17448 and as shown on plan RR1446 CLSR;

SECONDLY: all those lands bordered red on plan 4648 CLSR;

Total lands described herein containing 3271 hectares (8083 acres).

(b) **Naiscoutaing Indian Reserve No. 17A**

All of Naiscoutaing Indian Reserve No. 17A as shown on a plan recorded in the Canada Lands Survey Records (CLSR) as number 56478;

Save and except all of those portions of Naiscoutaing Indian Reserve No. 17A more particularly described as:

FIRSTLY: all those lands described in Letters Patent 14986 and as shown on Plan 689A CLSR;

SECONDLY: all those lands described as Parts 1, 2 and 3, Plan 56448 CLSR.

Total lands described herein containing 1016 hectares (2510 acres).

(c) **Shawanaga Indian Reserve No. 17B**

All of Shawanaga Indian Reserve No. 17B being Lot 34, Broken Lot 35 and part of the Shore Road Allowance adjoining Broken Lot 35, Geographic Township of Shawanaga, District

of Parry Sound, all as shown on Plans 103585 and 57239 recorded in the Canada Lands Surveys Records; the herein described land containing 75 hectares (185 acres) more or less.

Additional Lands

- 6.3 Council shall receive community consultation in accordance with section 13, prior to the amendment of the description of Land or addition of reserve Land to the *Land Code*.

No Approval Required

- 6.4 For greater certainty, a community approval or ratification vote is not required for amending the description of reserve Land in the *Land Code* and Individual Agreement, as amended from time to time.

Inclusion of Land or Interest

- 6.5 Council may by enacting a Land Law declare the Land or Interest to be subject to this *Land Code*.

PART 2 FIRST NATION LEGISLATION

7. Law-Making Powers

Council may make Land Laws

- 7.1 Council may, in accordance with this *Land Code*, make Land Laws respecting:
- (a) the development, conservation, protection, management, use and possession of Shawanaga First Nation Land;
 - (b) Interests and Licences in relation to Shawanaga First Nation Land; and
 - (c) any matter necessary or ancillary to the making of Land Laws in relation to the Shawanaga First Nation Land.

Examples of Land Laws

- 7.2 For greater certainty, Council may make Land Laws including, but not limited to:

- (a) regulation, control and prohibition of zoning, Land use, subdivision control and Land development;
- (b) the creation, regulation and prohibition of Interests and Licences in relation to Shawanaga First Nation Land;
- (c) regulation, control, authorization and prohibition of residency, access, occupation and development of Shawanaga First Nation Land;
- (d) environmental assessment and protection;
- (e) provision of local services in relation to Shawanaga First Nation Land and the imposition of equitable user charges;
- (f) enforcement of Shawanaga First Nation Land Laws; and
- (g) provision of services for the resolution, outside the courts, of disputes in relation to Shawanaga First Nation Land.

Regulatory Instruments

- 7.3 For greater certainty, in addition to Land Laws, Council may also develop the following instruments, including, but not limited to, rules, regulations, standards, codes and policies.

8. Law-Making Procedure

Introduction of Land Laws

- 8.1 A proposed Land Law may be introduced at a duly convened meeting of Council by:
- (a) the Chief;
 - (b) a Councillor;
 - (c) the representative of the Lands Committee, or other body or authority composed of Members, that may be authorized by Council to do so; or
 - (d) any Eligible Voter.

Rationalization of Proposal

- 8.2 A written proposal for a Land Law in subsection 8.1 shall include at minimum:

- (a) a proposed title;
- (b) a brief description of the subject matter to be addressed;
- (c) a rationale for why the proposed Land Law is needed;
- (d) a draft outline of the Land Law; and
- (e) the section(s) of the *Land Code* authorizing the proposed Land Law.

Procedure upon receipt of Proposal

8.3 Upon receipt of a Land Law proposal, Council may:

- (a) table the Land Law proposal for further review or for enactment;
- (b) request that the proposer provide further information or attend before a future meeting of Council to speak to the Land Law proposal;
- (c) undertake or direct the preparation of a draft Land Law concerning matters raised in the Land Law proposal, for consideration by Council; or
- (d) decline the Land Law proposal.

Tabling and posting
of proposed Land Laws

8.4 Before a proposed Land Law may be enacted by Council, it must first be:

- (a) tabled at a duly convened meeting of Council held at least forty-two (42) days before the Land Law is to be enacted;
- (b) deposited with the Lands Committee at least forty-two (42) days before the Land Law is to be enacted; and
- (c) provided to the Members, posted in public places on Shawanaga First Nation Land and publicly available online at least thirty-five (35) days before the Land Law is to be enacted.

Urgent matters

- 8.5 Council may enact a Land Law without the preliminary steps required under subsection 8.4, if Council is of the opinion that the Land Law is needed urgently for public health and safety or to protect Shawanaga First Nation Land or the Members.

Expiration

- 8.6 A Land Law enacted under subsection 8.5 expires one hundred and twenty (120) days after its enactment unless re-enacted in accordance with subsection 8.4.

Approval of Land Law

- 8.7 A Land Law is approved by:
- (a) a quorum of Council at a duly convened meeting of Council open to the Members; or
 - (b) the Eligible Voters by community approval or ratification vote pursuant to Part 3 of this *Land Code*.

Certification of Land Laws

- 8.8 The original copy of any Land Law or Resolution concerning Shawanaga First Nation Land shall be approved when:
- (a) it is signed by a quorum of Council present at the duly convened meeting at which it was enacted; or
 - (b) it is signed at a duly convened meeting subsequent to the Community Approval.

Land Laws taking effect

- 8.9 A Land Law enacted by Council takes effect on the date of its enactment or such later date as specified by the Land Law.

9. Publication of Land Laws

Publication

- 9.1 Land Laws pursuant to this *Land Code* shall be published:
- (a) in the minutes of Council meeting at which it was enacted;

- (b) by the Lands Committee in minutes of the Lands Committee meeting at which an official true copy of the Land Law is noted as received;
- (c) by posting an official true copy of the Land Law in a location within the administrative office of Shawanaga First Nation accessible to all Members, as soon as practicable after enactment and for a period of not less than twenty eight (28) days thereafter;
- (d) by making it publicly available online; and
- (e) any additional method as Council may consider appropriate.

Registry of Land Laws

- 9.2 Council shall cause to be kept, at the administrative offices of the Shawanaga First Nation, a register of the original copy of all Land Laws and Resolutions, including Land Laws and Resolutions that have been repealed or are no longer in force.

Copies for any Person

- 9.3 Any person may obtain a copy of a Land Law or Resolution on payment of a reasonable fee set by Council or a designate. Fees may be amended from time to time.

10. Enforcement of Land Laws

Enforceability of Land Laws

- 10.1 To enforce its *Land Code* and its Land Laws, Shawanaga First Nation shall have the power to:
- (a) establish offences that are punishable on summary conviction;
 - (b) provide for fines, imprisonment, restitution, community services, and alternate means for achieving compliance; and
 - (c) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information.

Prosecuting Offences

10.2 For the purpose of prosecuting offences, Shawanaga First Nation shall follow one or more of these options:

- (a) retain its own prosecutor;
- (b) enter into an agreement with Canada and the government of the province to arrange for a provincial prosecutor;
- (c) enter into an agreement with Canada to arrange for a federal agent to prosecute these offenses; or
- (d) appoint its own justices of the peace.

PART 3 COMMUNITY CONSULTATIONS AND APPROVALS

11. Participation of Members

Participation of Members

11.1 Every Member is entitled to participate in the community consultation process set out in Part 3 of this *Land Code*.

12. Participation of Eligible Voters

Participation of Eligible Voters

12.1 Every Eligible Voter is entitled to participate in the community approval process set out in Part 3 of this *Land Code*.

13. Community Consultation

Community Consultation

13.1 Council shall consult with Members at a Meeting of Members prior to the enactment of a Land Law:

- (a) declaring Land or an Interest to be subject to this *Land Code*;
- (b) respecting a community plan or subdivision plan;
- (c) affecting a heritage site or an environmentally sensitive property;

- (d) respecting environmental assessment and protection;
- (e) respecting the transfer and assignment of rights and Interests in Shawanaga First Nation Land;
- (f) respecting matrimonial real property on Shawanaga First Nation Land under section 39;
- (g) respecting the rate and criteria for the payment of fees or rent for Shawanaga First Nation Land;
- (h) respecting the rights and procedures on community expropriation; and
- (i) respecting any other matter, Land Law or class of law that Council, by Resolution, declares to be subject to this section.

No Quorum

- 13.2 For greater certainty, community input for consultation purposes does not require a quorum.

14. Procedure at a Meeting of Members

Notice of meeting

- 14.1 Council shall give written notice of the Meeting of Members that shall include:
- (a) the date, time and place of the meeting;
 - (b) a brief description of the matters to be discussed and decided on at the meeting;
 - (c) the name and telephone number of a contact person; and
 - (d) feedback by such additional methods, if any, as Council and the Lands Committee may consider appropriate.

Manner of notice

- 14.2 The notice of a Meeting of Members must be given to the Members by:
- (a) posting the notice in public places on Shawanaga First Nation Land at least forty two (42) days before the meeting;

- (b) emailing and/ or mailing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve at least forty two (42) days before the meeting;
- (c) posting the notice on a website maintained by the Shawanaga First Nation that is open and accessible by any person who may be entitled to attend the meeting at least forty two (42) days before the meeting;
- (d) publishing the notice in the community newsletter or local newspaper at least thirty five (35) days before the meeting; and
- (e) such additional method as Council may consider appropriate in the circumstances.

Permission of Council

- 14.3 A person, other than a Member, may attend a Meeting of Members only with permission of Council granted at a duly convened meeting of the Council.

Informed Decision

- 14.4 Council may schedule as many Meetings of Members as may be necessary to ensure that Members are well informed before making a decision on a proposed Land Law or Land matter.

Additional meetings

- 14.5 Council may schedule more than one Meeting of Members to discuss and decide on a matter that requires a Meeting of Members without the time requirements under subsection 14.2.

15. Community Approval

Community approval

- 15.1 Community approval must be obtained for the following:
- (a) any master Land use plan;
 - (b) any new grant or disposition of an Interest or Licence in any Shawanaga First Nation Land exceeding a term of twenty five (25) years;
 - (c) any renewal of a grant or disposition of an Interest or Licence in any Shawanaga First Nation Land that extends the original term beyond twenty five (25) years;

- (d) any grant or disposition of any non-renewable natural resources on any Shawanaga First Nation Land;
- (e) any grant or disposition of a Licence for any non-renewable natural resources on any Shawanaga First Nation Land;
- (f) any deletion of a heritage site referred to in section 18 of this *Land Code*;
- (g) any voluntary exchange of Shawanaga First Nation Land referred to in section 19 of this *Land Code*;
- (h) any Land Law or class of law that Council, by Resolution, declares to be subject to this section.

Method of Voting

15.2 Community approval may be obtained by various methods, including but not limited to:

- (a) secret ballot;
- (b) show of hands;
- (c) mail-in ballot;
- (d) phone voting;
- (e) electronic voting; or
- (f) any other method outlined in voting policies.

Community Approval Vote

15.3 For greater certainty, Council may determine that the community approval may be achieved by calling for a Meeting of Members, by calling for a vote and establishing voting days and polling locations, by calling for a mail-in ballot community vote, or any other method outlined in subsection 15.2.

Quorum

15.4 In order to obtain a quorum for community approval under section 15 of this *Land Code* at least ten percent (10%) of Eligible Voters must participate.

Shawanaga First Nation Land Code

Approval by Majority

- 15.5 For community approvals under section 15, a matter shall be considered approved if a majority of fifty percent plus one (50%+1) of the Eligible Voters cast a vote to approve the matter.

Second Community Approval

- 15.6 If a quorum was not obtained pursuant to subsection 15.4 a second community approval vote may be called.

Second Community Approval Vote

- 15.7 In order to obtain a quorum for a second attempt at a community approval vote under section 15 of this *Land Code* at least five percent (5%) of Eligible Voters must participate.

Approval by Majority

- 15.8 A matter shall be considered approved at a second attempt at a community approval vote, if a majority of fifty percent plus one (50%+1) of the Eligible Voters cast a vote to approve the matter.

**Proposed Land Matter
rejected by Majority Vote**

- 15.9 A matter shall be considered not approved at a community approval vote if a majority of the Eligible Voters cast a vote in opposition of the matter.

**No Further Vote
if Land Matter Rejected**

- 15.10 For greater certainty, at a first or second vote, if the matter is rejected pursuant to subsection 15.9, the Land Law or Land matter shall not be executed, shall have no effect and shall not be submitted for another vote. The document may be re-submitted for a vote under subsection 15.4 provided additional community consultation occurs and is incorporated into the proposed Land Law or Land matter.

16. Ratification Votes**Community Approval
by ratification vote**

- 16.1 Community approval by ratification vote must be obtained for an amendment to this *Land Code*.

Exceptions

- 16.2 A community approval by ratification vote is not required for:

- (a) an amendment to section 6 of this *Land Code*;

- (b) revisions to this *Land Code* made pursuant to section 49; and
- (c) an amendment to, or renewal of, the Individual Agreement.

Other Matters

- 16.3 For greater certainty, Council may, by Resolution, declare a matter, a Land Law or a class of law, to be subject to this section.

Ratification process

- 16.4 Any ratification vote required under this *Land Code* shall be conducted in substantially the same manner as the *Shawanaga First Nation Community Ratification Process*, which was used to ratify this *Land Code*.

No verifier

- 16.5 A Verifier is not required in any ratification vote except a vote on an amendment to this *Land Code*.

Quorum

- 16.6 In order to obtain a quorum for a community approval by ratification vote under this *Land Code* at least ten percent (10%) of Eligible Voters must register.

Approval by majority

- 16.7 A matter shall be considered approved at a ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters cast a vote to approve the matter.

Proposed Land Matter
rejected by Majority Vote

- 16.8 A matter shall be considered not approved at a ratification vote if a majority of the registered Eligible Voters cast a vote in opposition of the matter.

No Further Ratification Vote
if Land Matter Rejected

- 16.9 For greater certainty, at a first or second vote, if the matter is rejected pursuant to subsection 16.8, the amendment to the *Land Code* or the proposed Land Law or Land matter shall not be executed, shall have no effect and shall not be submitted for another ratification vote. The document may be re-submitted for a ratification vote under subsection 16.6 provided additional community consultation occurs and is incorporated into the proposed amendment to the *Land Code*, proposed Land Law or Land matter.

Second Ratification Vote

16.10 If a quorum was not obtained pursuant to subsection 16.6 a second ratification vote may be called.

Second Attempt at Ratification Vote Quorum

16.11 In order to obtain a quorum for community approval for a second attempt at a ratification vote under this *Land Code* at least five percent (5%) of Eligible Voters must register.

Approval by majority

16.12 A matter shall be considered approved at a second ratification vote if a majority of fifty percent plus one (50%+1) of the registered Eligible Voters cast a vote in favour of the matter.

Policies Consultation, Approval
and Ratification

16.13 For greater certainty, Council may make Land Laws or policies consistent with this *Land Code*:

- a) for Meetings of Members;
- b) for community consultations;
- c) for community approvals;
- d) for ratification votes; and
- e) respecting any other matter, that Council, by Resolution, declares to be subject to Part 3 of this *Land Code*.

PART 4 PROTECTION OF LAND

17. Expropriation

Acquisition by Mutual Agreement

17.1 The right of Shawanaga First Nation to expropriate can only be exercised after a good faith effort to acquire, by mutual agreement, the Interest or Licence in Shawanaga First Nation Land rather than by expropriation.

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Rights and Interest
that may be expropriated

- 17.2 An Interest or Licence in Shawanaga First Nation Land, or in any building or other structure on that Land, may only be expropriated by Shawanaga First Nation in accordance with the *Framework Agreement* and any Land Law enacted for the purpose of establishing the rights and procedures for community expropriations.

Community purposes

- 17.3 A community expropriation shall only be made for necessary community works or other Shawanaga First Nation purposes, including but not limited to: a fire hall, sewage or water treatment facility, community center, public works, roads, schools, daycare facility, hospitals, health-care facility, and retirement home.

Expropriation laws

- 17.4 Before proceeding to make any community expropriations in accordance with this *Land Code* and the *Framework Agreement*, Council shall enact a Land Law respecting the rights and procedures for community expropriations, including provisions respecting:
- (a) the taking of possession of the Interest or Licence;
 - (b) transfer of the Interest or Licence;
 - (c) notice of expropriation and service of the notice of expropriation;
 - (d) entitlement to compensation;
 - (e) determination of the amount of compensation; and
 - (f) the method of payment of compensation.

Member notification

- 17.5 In the case of an expropriation of a Member's Interest in Shawanaga First Nation Land, the affected Member or Members must receive notification of the expropriation within a reasonable time prior to the release of the public report referred to in subsection 17.6.

Public report

- 17.6 Before Shawanaga First Nation decides to expropriate an Interest or Licence, it shall make a public report on the reasons justifying the expropriation.

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Rights that may not
be expropriated

- 17.7 In accordance with clause 17.6 of the *Framework Agreement*, any Interest of Canada or the province in Shawanaga First Nation Land is not subject to expropriation by the Shawanaga First Nation.

Compensation for
rights and Interests

- 17.8 Shawanaga First Nation shall, in accordance with its Land Laws and the *Framework Agreement*.
- (a) serve reasonable notice of the expropriation on each affected holder of the Interest or Licence to be expropriated; and
 - (b) pay fair and reasonable compensation to the holders of the Interest or Licence being expropriated.

Compensation calculations

- 17.9 Shawanaga First Nation shall calculate the total value of the compensation under this section based on the heads of the compensation set out in the *Expropriation Act (Canada)*.

Market value

- 17.10 The "market value" of an expropriated Interest or Licence is equal to the amount that would have been paid for the Interest or Licence if it had been sold by a willing seller to a willing buyer under no duress.

Neutral evaluation to Resolve Disputes

- 17.11 The resolution of disputes concerning the right of the Shawanaga First Nation to expropriate shall be determined by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the sixty (60) day period referred to in clause 32.6 of the *Framework Agreement* shall be applied, as appropriate in the circumstance, by the neutral evaluator.

Arbitration to resolve
Disputes

- 17.12 The resolution of the following disputes shall be determined by arbitration, in the same manner as provided in Part IX of the *Framework Agreement*.
- (a) disputes concerning the right of a holder of an expropriated Interest or Licence to compensation; and
 - (b) disputes concerning the amount of the compensation.

18. Heritage Sites

Community consultation of development

- 18.1 No development shall be allowed on any site designated as a heritage site under the Land use plan, unless the development receives community consultation.

Land use plan

- 18.2 For greater certainty, no amendment may be made to a Land use plan to delete a heritage site unless the amendment receives community approval.

19. Voluntary Exchange of Shawanaga First Nation Land

Conditions for a land exchange

- 19.1 The Shawanaga First Nation may agree with another party to exchange a parcel of Shawanaga First Nation Land for a parcel of land from that other party in accordance with this *Land Code* and the *Framework Agreement*.

No effect

- 19.2 A land exchange is of no effect unless it receives community approval.

Land to be received

- 19.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:
- (a) it must be equal to or greater than the area of the Shawanaga First Nation Land to be exchanged;
 - (b) it must be at least comparable to the appraised value of the Shawanaga First Nation Land; and
 - (c) it must become a reserve and Shawanaga First Nation Land subject to this *Land Code*.

Negotiators

- 19.4 The person(s) who will have authority to negotiate a land exchange agreement on behalf of the Shawanaga First Nation must be designated by Resolution.

Additional land

- 19.5 The Shawanaga First Nation may negotiate to receive other compensation, such as money or other additional parcels of land, in addition to the parcel

referred to in subsection 19.1 which is intended to become a reserve. Such other parcels of land may be held by the Shawanaga First Nation in fee simple or some other manner.

Federal Consent

19.6 Before the Shawanaga First Nation concludes a land exchange agreement, it must receive a written statement from Canada clearly stating that Canada:

- (a) consents to set apart as a reserve the land to be received in exchange, as of the date of the land exchange or such later date as Council may specify; and
- (b) consents to the manner and form of the exchange as set out in the exchange agreement.

Community notice

19.7 Once negotiations on the land exchange agreement are concluded, Council shall provide the following information to Eligible Voters at least forty two (42) days before the vote:

- (a) a description of the Shawanaga First Nation Land to be exchanged;
- (b) a description of the land to be received in the exchange;
- (c) a description of any other compensation to be exchanged;
- (d) a report of a certified land appraiser setting out that the conditions in subsection 19.3 have been met;
- (e) a copy or summary of the exchange agreement; and
- (f) a copy of the consent referred to in subsection 19.6;

Process of land exchange

19.8 The land exchange agreement shall provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) Council must pass a Resolution authorizing Canada to transfer title to the Shawanaga First Nation Land being exchanged, in accordance with the exchange agreement;

- (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Register; and
- (d) the land to be set apart as a reserve has been subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provisions have been made for such clearance or remediation at no cost to Shawanaga First Nation, and with full indemnification to Shawanaga First Nation.

PART 5 ACCOUNTABILITY

20. Conflict of Interest or Appearance of Conflict of Interest

Application of rules

20.1 The rules in subsection 20.2 apply to the following persons:

- (a) each member of Council who is dealing with any matter before Council that is related to Shawanaga First Nation Land;
- (b) each person who is an employee of the Shawanaga First Nation dealing with any matter that is related to Shawanaga First Nation Land;
- (c) each member of the Dispute Resolution Panel; and
- (d) each person who is a member of a board, committee or other body of the Shawanaga First Nation dealing with any matter that is related to Shawanaga First Nation Land.

Duty to report and abstain

20.2 If there is any actual or apparent financial, familial or personal conflict of interest in the matter being dealt with, the person:

- (a) shall disclose the interest to Council, or the board, committee or other body as the case may be;
- (b) shall not take part in any deliberations on that matter or vote on that matter; and
- (c) shall remove themselves from the proceedings.

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Apparent conflict of interest

20.3 A person to which this Part applies has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the person's ability to deliberate or decide on the matter must have been affected by his or her private interest or the private interest of a member of his or her Immediate Family.

Inability to act

20.4 If the Board, committee or other body is unable to act due to a conflict of interest, the matter shall be referred to Council.

Meeting of Members

20.5 If Council is unable to vote on a matter, a proposed Land Law or Resolution due to a conflict of interest, Council may refer the matter to a community Meeting of Members and, if a quorum of Eligible Voters is present, a majority of the Eligible Voters present at the meeting may approve the matter, Land Law or Resolution.

Specific Conflict situations

20.6 No Immediate Relatives and not more than two (2) members from the same Extended Family shall be concurrent members of an appointed board, committee or other body dealing with any matter that is related to Shawanaga First Nation Land.

Elected Body

20.7 For greater certainty, Council or any other elected board, committee or body is not included under the rule set out in subsection 20.6.

Disputes

20.8 Questions about whether a breach of this section has occurred may be referred to the Panel.

Other laws

20.9 For greater certainty, Council may develop a policy or enact Land Laws to further implement this section.

21. Financial Management

Application

- 21.1 This section applies only to financial matters relating to Shawanaga First Nation Land and natural resources.

Financial policies

- 21.2 Council may, in accordance with this *Land Code*, develop and adopt, or revise existing financial management policies including, but not limited to:
- (a) regulate the receipt, management and expenditure of moneys, including transfer payments, all capital and revenue moneys received from Canada, all Land revenue, and moneys received from a grant or disposition of any Interests or Licences in related to Shawanaga First Nation Land and natural resources;
 - (b) manage financial records and accounts;
 - (c) prepare financial statements and audits;
 - (d) prepare and implement Land management budgets and annual presentation of budgets;
 - (e) determine the general investment strategy;
 - (f) contract notes, loans and other indebtedness;
 - (g) establish fees, fines, charges and levies; and
 - (h) establish and maintain confidentiality, records security and document retention.

Administrative structure

- 21.3 Council shall establish the administrative structure:
- (a) to implement all financial policies and procedures;
 - (b) to oversee the day to day operational responsibilities for managing moneys related to Shawanaga First Nation Land and natural resources;
 - (c) to ensure the accuracy of the accounting records;
 - (d) to reconcile, review and approve bank statements;

- (e) to present the annual budgets to Members;
- (f) to present annually an audit of the financial statements to the Members; and
- (g) to prepare the annual report to Members.

22. Annual Report

Publish annual report

22.1 Council, on behalf of the Shawanaga First Nation, shall publish an annual report on Land issues.

Contents

22.2 The annual report will include:

- (a) an annual review of Shawanaga First Nation Land and natural resources management;
- (b) a copy and explanation of the audit as it applies to Shawanaga First Nation Land and natural resources; and
- (c) any other matter as determined by Council or Lands Committee.

23. Access to Information

Access

23.1 Any Member may, during normal business hours at the main administrative office of the Shawanaga First Nation, have reasonable access to:

- (a) the register of Land Laws;
- (b) the auditor's report; and
- (c) the annual report on Land and natural resources.

Access to records

23.2 Any person, at any reasonable time, inspect the financial records of Shawanaga First Nation related to Shawanaga First Nation Land.



PART 6
LAND AND NATURAL RESOURCES ADMINISTRATION

24. Land Staff

Administration

- 24.1 Council may delegate administrative authority to staff to carry out functions necessary for day-to-day administrative operations of Land and natural resources.

25. Lands Committee

Lands Committee
established

- 25.1 The Lands Committee is hereby established for the following purposes:

- (a) assist with the development of the Land administration system;
- (b) advise Council and its staff on matters respecting Shawanaga First Nation Land;
- (c) recommend Land Laws, Resolutions, policies and practices respecting Shawanaga First Nation Land to Council;
- (d) consult with Members and non-Members on Shawanaga First Nation Land issues, and to make recommendations on the resolution of those issues to Council;
- (e) manage and oversee ratification votes, community approvals and community consultation meetings; and
- (f) perform such other duties as may be delegated or assigned by Resolution or Land Law under this *Land Code*.

Process to
Implement Land Laws

- 25.2 The Lands Committee shall, within a reasonable time after this *Land Code* takes effect, establish a community process to develop and implement the Land Laws.

Development of Land
related rules and
procedures.

25.3 Within a reasonable time after this *Land Code* takes effect, the Lands Committee shall, in consultation with the community, ensure that Land Laws, rules and procedures, as may be appropriate, are developed that address the following matters:

- (a) environmental protection and assessment in relation to Shawanaga First Nation Land;
- (b) any outstanding issues on the resolution of disputes in relation to Shawanaga First Nation Land;
- (c) Land use planning and zoning;
- (d) section 39 respecting Matrimonial real property on reserve and whether any change should be made to the policy upon which that section is based; and
- (e) any other matter referred by Council.

Implementation of
Policies

25.4 The rules and procedures, once developed, shall be presented to Council for consideration and implementation as policies, Land Laws or amendments to this *Land Code*, whichever is most appropriate.

Internal procedures

25.5 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, not inconsistent with those established by Council.

26. Implementation of the Lands Committee

First Lands Committee

26.1 Immediately upon the coming into effect of this *Land Code*, the existing Land Code Development Committee shall continue and serve the first term for up to 2 years until a policy governing the Lands Committee comes into force. Any Lands Committee seat vacancies upon the ratification of this Land Code shall be filled by an election of the Eligible Voters. The Lands Committee shall be composed of seven (7) Members, one (1) of which will be a Councillor with the Lands related portfolio.

Policy Governing Successors to
the First Lands Advisory Committee

- 26.2 As soon as possible after the coming into force of this *Land Code*, Council, in consultation with the Lands Committee, shall develop a policy providing for community involvement in the selection, election, or appointment of Eligible Voters to serve on the Lands Committee, and dealing with such matters as number of members, composition, eligibility, Chair and Deputy Chair, functions of the Chair, term of office, remuneration, conditions of service, termination of membership, vacancies arising during term and such other matters as Council deems appropriate to the operation of the Lands Committee.

PART 7 INTERESTS AND LICENCES IN LAND

27. Revenue from Lands and Natural Resources

Determination of
fees, and rent

- 27.1 The Lands Committee shall, subject to the approval of Council, establish the process and recommend any Land Laws, rules and policies for determining:
- (a) the fees and rent for Interests and Licences in Shawanaga First Nation Land;
 - (b) the fees for services provided in relation to any Shawanaga First Nation Land; and
 - (c) the fees and royalties to be paid for the taking of natural resources from Shawanaga First Nation Land.

28. Registration of Interests and Licences

Enforcement of
Interest and Licences

- 28.1 An Interest or Licence in Shawanaga First Nation Land created or granted after this *Land Code* takes effect is not enforceable unless it is registered in the Shawanaga First Nation Lands Register and the First Nation Lands Register.



Registration of
Consent or approval

28.2 An instrument granting an Interest or Licence in Shawanaga First Nation Land that requires the consent of Council, or community approval, shall include a certified copy of the document indicating that the applicable consent or approval has been obtained.

Instrument void

28.3 An instrument registered in the First Nation Lands Register which does not include the certificate referred to in subsection 28.2 is void.

Duty to deposit

28.4 An original copy of the following instruments shall be deposited in the Shawanaga First Nation Lands Register and the First Nation Lands Register:

- (a) any grant of an Interest or Licence in Shawanaga First Nation Land;
- (b) any transfer or assignment of an Interest or Licence in Shawanaga First Nation Land;
- (c) every Land use plan, subdivision plan or resource use plan; and
- (d) this *Land Code* and any amendment to this *Land Code*.

29. Separate Shawanaga First Nation Lands Register

Maintain
Shawanaga First Nation Register

29.1 Council shall establish and maintain a separate Shawanaga First Nation Lands Register and make Land Laws with respect to the Land Register and the effect of registering documents in the Register.

Duty to Deposit

29.2 Every person who receives an Interest or Licence in Shawanaga First Nation Land shall deposit an original copy of the relevant instrument in the separate Shawanaga First Nation Lands Register.

Priority

29.3 In the event of an inconsistency or a conflict between the separate Shawanaga First Nation and the First Nation Lands Register, the separate

Shawanaga First Nation Lands Register prevails to the extent of the inconsistency or conflict.

30. Limits on Interests and Licences

All dispositions in writing

- 30.1 An Interest in, or Licence to use, Shawanaga First Nation Land may only be created, granted, disposed of, assigned or transferred by a written document made in accordance with this *Land Code* and any relevant Land Law.

Standards

- 30.2 Council may establish mandatory standards, criteria and forms for Interests and Licences in Shawanaga First Nation Land.

Improper Transactions void

- 30.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Shawanaga First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or Licence in Shawanaga First Nation Land after the date this *Land Code* takes effect is void if it contravenes this *Land Code*.

31. Existing Interests

Continuation of existing Interests and Licences

- 31.1 Any Interest or Licence in Shawanaga First Nation Land that existed when this *Land Code* takes effect will, subject to this *Land Code*, continue in force in accordance with its terms and conditions.

Voluntary exchange

- 31.2 For greater certainty, Interests or Licences previously issued under the *Indian Act* shall continue to exist after the coming into force of this *Land Code* unless the Member or non-Member voluntarily agrees to have the Interest or Licence replaced with the issuance of a new Interest or Licence developed pursuant to the coming into force of this *Land Code*.

Replacing the role of the Minister or Canada

- 31.3 Immediately upon the coming into force of this *Land Code*, Canada transfers to Shawanaga First Nation all of the rights and obligations of Canada as grantor in respect of existing Interests and Licences in or in relation to Shawanaga First Nation Land.

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32. New Interests and Licences

Authority to make dispositions

32.1 Subject to subsection 15.1, Council may, on behalf of Shawanaga First Nation, grant;

- (a) Interests and Licences in Shawanaga First Nation Land, including certificates of possession, member allocations, leases, permits, easements and rights-of-ways; and
- (b) Licences to take resources from Shawanaga First Nation Land, including cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

Conditional grant

32.2 The grant of an Interest or Licence may be made subject to the satisfaction of written conditions.

Role of the Lands Committee

32.3 The Lands Committee shall advise Council on the granting of Interests or Licences and may be authorized to act as a delegate of Council under this section.

33. Interests of Non-Members

Non-Members

33.1 A person who is not a Member of Shawanaga First Nation shall not hold any Interest in Shawanaga First Nation Land except a lease or Licence.

Grants to non-Members

33.2 A transfer or other disposition of all or any part of a lease or Licence in Shawanaga First Nation Land to a person who is not a Member shall not be effective unless and until it is confirmed by a Resolution of Council, adopted with the advice of the Lands Committee.

34. Certificates of Possession or Member Interests

Application

34.1 For greater certainty, certificates of possession or Member Interests previously issued under the *Indian Act* shall continue to exist after the coming into force of this *Land Code* unless the Member voluntarily agrees

to have the certificate of possession or Interest replaced with the issuance of a new Interest document developed pursuant to the coming into force of this *Land Code*.

35. Allocation of Land to Members

Policies and procedures for allocation of Land

- 35.1 Subject to the provisions of this *Land Code*, Council in consultation with the Lands Committee shall establish Land Laws, policies and procedures for Member Interests and Licences, including certificates of possession, certificates of entitlement and allocation of Land.

Allocation

- 35.2 Council may, in accordance with this *Land Code*:
- (a) allocate Land to Members; or
 - (b) issue a certificate of possession or certificate of entitlement to a Member for Land allocated to that Member.

No allocation of Land to non-Members

- 35.3 A person who is not a Member of Shawanaga First Nation is not entitled to be allocated Land or to hold a permanent Interest in Shawanaga First Nation Land.

36. Transfer and Assignment of Interests

Transfer of Member Interest

- 36.1 A Member may transfer or assign an Interest in Shawanaga First Nation Land to another Member without community approval or the consent of Council.

Consent of Council

- 36.2 Except for the transfers under subsection 36.1 and transfers that occur by operation of law, including transfers of estate by testamentary disposition or in accordance with the Matrimonial Real Property on Reserve Law enacted pursuant to section 39:
- (a) there shall be no transfer or assignment of an Interest in Shawanaga First Nation Land without the written consent of Council; and

- (b) the grant of an Interest or Licence is deemed to include subsection 36.2(a) as a condition on any subsequent transfers or assignments.

Member authority to grant to themselves

36.3 A Member holding an Allocation of Shawanaga First Nation Land may grant a Leasehold, Easement, Permit or Licence Interest to himself or herself in the same manner as to another person.

37. Limits on Mortgages and Seizures

Protections

37.1 In accordance with the *Framework Agreement*, the following provisions of the *Indian Act*, as amended from time to time, continue to apply to the Shawanaga First Nation Land;

- (a) section 29;
- (b) section 87;
- (c) Sub-section 89(1); and
- (d) Sub-section 89(2).

Mortgage of Allocated Land

37.2 Subject to subsection 37.3, the holder of an allotment, leasehold or Licence may, in accordance with this section grant a Mortgage of that Interest.

Mortgage of Interest to Member or Shawanaga First Nation

37.3 The holder of an allotment may only grant a mortgage of that Interest to a Member or to Shawanaga First Nation.

Mortgages of leasehold Interests

37.4 For greater certainty:

- (a) the holder of an allotment who has been granted a leasehold Interest pursuant to subsection 36.3 may grant a mortgage of the leasehold Interest to any person;
- (b) a leasehold Interest held by a Member in Shawanaga First Nation Land, including allotted Land, is subject to a charge,

pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights as it would have if the leasehold Interest was held by a non-Member; and

- (c) leasehold Interest in Community Land is subject to a charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

Mortgages of
leasehold Interests
with consent

37.5 A leasehold Interest may be subject to charge or mortgage, but only with the express written consent of Council.

Time limit

37.6 The term of any charge or mortgage of a leasehold Interest shall not exceed the term of the lease.

Default in mortgage

37.7 In the event of default in the terms of a charge or mortgage of a leasehold Interest, the leasehold Interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the charge or mortgage received the written consent of Council;
- (b) the charge or mortgage was registered in the First Nation Lands Register; and
- (c) a reasonable opportunity to redeem the charge or mortgage is given to Council on behalf of Shawanaga First Nation.

Power of redemption

37.8 Subject to prior redemption by the lessee or Member, Council may redeem the charge or mortgage from the charger or mortgagor in possession and shall thereupon acquire all the rights and Interests of the charger or mortgagor and of the lessee or Member for all purposes after the date of the redemption.

Waiver of redemption

37.9 Council may, by Resolution, waive the requirements of subsection 37.8 for any charge or mortgage of a Leasehold Interest or Licence.

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Other Laws

37.10 For greater certainty, Council may develop a policy, or enact Land Laws to further implement this section.

38. Transfers on Death

Indian Act application

38.1 Until Shawanaga First Nation exercises jurisdiction in relation to wills and estates, the provision of the *Indian Act* dealing with wills and estates shall continue to apply with respect to Interests in Shawanaga First Nation Land.

Registered of transfer

38.2 A person who receives an Interest in Shawanaga First Nation Land by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that Interest registered in the Shawanaga First Nation Lands Register.

Disposition of Interest

38.3 If no provision has been made by the deceased Member of the disposition of the Interest to another Member, the following rules apply:

- (a) the Minister or his or her delegate may make application to Council requesting that an instrument evidencing lawful possession or occupation of Shawanaga First Nation Land be issued; or
- (b) a Certificate of Possession or other instrument may be issued in accordance with procedures established by Council, or application of the Minister or his or her delegate, if the beneficiary or purchaser is a Member of the Shawanaga First Nation.

39. Matrimonial Real Property on Reserve Law

Development of rules and procedures

39.1 Council shall enact a matrimonial real property on reserve law providing rules and procedures applicable on the breakdown of a marriage, to:

- (a) the use, occupancy and possession of Shawanaga First Nation Land;
- (b) the division of Interests in that Land; and
- (c) the division of the value of improvements in that Land.

Enactment of rules and procedures

39.2 The rules and procedures contained in the matrimonial real property on reserve law shall be developed by the Lands Committee in consultation with the community.

Enactment deadline

39.3 The matrimonial real property on reserve law must be enacted within twelve (12) months from the date this *Land Code* takes effect.

General principles

- 39.4 For greater certainty, the rules and procedures developed by the Lands Committee under this section must respect the following general principles:
- (a) each Spouse should have an equal right to possession of their matrimonial home;
 - (b) each Spouse should be entitled to an undivided half Interest in their matrimonial home, as a tenant in common;
 - (c) the rules and procedures shall not discriminate on the basis of sex; and
 - (d) only Members are entitled to hold a permanent Interest in Shawanaga First Nation Land or a charge against a permanent Interest in Shawanaga First Nation Land.

Immediate rules

39.5 In order that Members benefit immediately from the legislative authority of Council to address the issue of spousal property under this *Land Code*, Council may enact an interim matrimonial real property on reserve law as soon as this *Land Code* comes into force.

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Expiration

- 39.6 As this law would be enacted before the work of the Lands Committee and the community consultation is complete, the law will expire at the end of the twelve (12) month period after the coming into force of this *Land Code*, unless re-enacted, replaced or amended.

PART 8 DISPUTE RESOLUTION

40. Purpose

Intent

- 40.1 The intent of this part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Shawanaga First Nation Land to do so harmoniously with due respect to the rights of others and of Shawanaga First Nation and with access to Shawanaga First Nation procedures to resolve disputes.

Purpose

- 40.2 The purpose of these rules is to enable the parties to a dispute to achieve a just, speedy and inexpensive determination of matter in dispute, taking into account the values which distinguish dispute resolution from litigation.

41. Disputes

Dispute Prevention

- 41.1 The parties shall use best efforts to prevent disputes from arising and shall consider the use of dispute resolution processes at the earliest possible stage of any conflict.

Disputes Prior
to *Land Code*

- 41.2 Disputes that arose before the *Land Code* takes effect could also be referred to this Part.

Decision of Council or Lands Committee

- 41.3 If a Member, or a non-Member with an Interest in Shawanaga First Nation Land, has a dispute with respect to a decision of Council or the Lands Committee, the person must first attempt to resolve that dispute with Council or the Lands Committee, before referring the dispute to the Panel.

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Settle a Dispute

41.4 Nothing in this Part shall be construed to limit the ability of any person to reach agreement to settle a dispute without recourse to this Part.

Settlement Agreement

41.5 Any settlement reached through dispute resolution shall not be legally binding until it has been reduced to writing and properly executed by, or on behalf of, the parties.

Mandatory Application

41.6 Council may establish a Land Law that sets out the mandatory application of this Part in certain circumstances.

Contractual Agreement

41.7 Subject to any Land Law enacted under subsection 41.6, a contractual agreement made under this *Land Code* may establish that the dispute resolution outlined in this *Land Code* and its Land Laws may be mandatory or may to some degree prescribe for alternate dispute resolution process if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

Variation of Rules

41.8 Subject to any Land Law enacted under subsection 41.6, the parties to a dispute to which these rules apply may to some degree modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing.

Civil Remedies

41.9 Notwithstanding subsections 41.6 and 41.7, nothing in this Part shall be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

Challenge to Validity of Law

41.10 For greater certainty, nothing in this Part shall be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

42. Processes

Staged Processes

42.1 Shawanaga First Nation intends that a dispute in relation to Shawanaga First Nation Land, except as otherwise provided, may progress through the following stages provided for in this Part:

- (a) negotiation;
- (b) facilitated discussions;
- (c) mediation; and
- (d) final arbitration by the Dispute Resolution Panel.

Procedure to File a Dispute

42.2 A person who wishes to resolve a dispute with another person or Shawanaga First Nation in relation to the use or occupation of Shawanaga First Nation Land may file a written notice of dispute setting out:

- (a) the nature of the dispute;
- (b) a statement outlining the facts and supporting arguments of the dispute claim; and
- (c) the relief that is sought.

Termination of Processes

42.3 Negotiations, facilitated discussions and mediations may be suspended upon any of the following occurrences:

- (a) the parties reach an agreement;
- (b) one of the parties refuses to continue with the negotiation, facilitated discussion or mediation;
- (c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- (d) upon the request of both parties.

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Notice of
Termination

42.4 A notice of termination is required when further facilitated discussions or mediation shall not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

Dispute resolution
not available

42.5 Dispute resolution is not available under this Part for disputes in relation to:

- (a) administration or distribution of an estate;
- (b) decisions relating to housing allocations;
- (c) decisions of Council to grant or refuse to grant an Interest or Licence in Shawanaga First Nation Land to a non-Member;
- (d) decisions on expropriation under section 17 of this *Land Code*; and
- (e) prosecution or conviction of an offence under a Land Law or under criminal law.

Duty of Fairness

42.6 All persons involved in a dispute under this Part shall be:

- (a) treated fairly;
- (b) given a full opportunity to present their case; and
- (c) given reasons for a decision made under this Part.

Rules and
Procedures

42.7 Council may prescribe such laws, Resolutions, rules, policies, procedures, forms and reasonable fees not inconsistent with this *Land Code*, as may be necessary to give effect to this Part including but not limited to:

- (a) negotiations, facilitated discussions, mediations and arbitrations;
- (b) terms of office for panelists;
- (c) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in

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the resolution of disputes under this Part;

- (d) code of conduct for facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- (e) disclosure and confidentiality;
- (f) imposition of time limitations for submitting a notice of dispute and referring a matter or dispute to the Panel;
- (g) implementing recommendations of the Dispute Resolution Panel made under subsection 46.2; and
- (h) any other matter necessary to give effect to this Part.

Waiver of Liability

42.8 By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists shall not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

43. Roster Panel Established

Appointment to Roster Panel

43.1 The Roster Panel shall be composed of a maximum of twenty (20) panelists.

Ineligible

43.2 Notwithstanding section 20, in order to avoid conflict of interest, no Council member, or employee of Shawanaga First Nation or person already serving on another board, body, or committee related to Shawanaga First Nation Land shall sit on the Roster Panel.

Representation

43.3 Council shall appoint the Roster panelists, and shall ensure that, where possible, the Roster panelists represent the various elements of the community.

Rules of Roster Panel

43.4 The Roster Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.



44. Impartiality of the Dispute Resolution Panel

Duty to Act Impartially

- 44.1 The Panel shall act impartially and without bias or favour to any party in a dispute.

Offence

- 44.2 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

Rejection of Application

- 44.3 In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

Rules of Conduct for Parties to a Dispute

- 44.4 The Roster Panel shall establish rules of conduct for the parties to a dispute.

45. Arbitration by the Dispute Resolution Panel

Disputes

- 45.1 Any matter or dispute related to Shawanaga First Nation Land shall be submitted to the Lands Staff but that such matter or dispute shall then be referred to the Roster Panel for resolution.

Panel of Three Chosen From Roster Panel

- 45.2 Disputes referred to the Roster Panel are to be heard by five (5) panelists chosen as follows:
- (a) two (2) panelists are to be chosen by each of the two (2) parties to the dispute;
 - (b) one (1) panelist, who is to be the chairperson, shall be chosen by the rest of the Panel; and
 - (c) in the case of situations not adequately covered by section (a) or (b), all five (5) panelists shall to be chosen by the Roster Panel as a whole.

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Panel Established

45.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to Shawanaga First Nation Land. For greater certainty, disputes outlined in subsection 42.5 shall not be heard by the Panel.

46. Authority of the Dispute Resolution Panel

Authority of the Panel

46.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;
- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute back for a new decision; or
- (e) make an order to give effect to its decision, including any necessary order for the survey of an Interest in Shawanaga First Nation Land, the registration of an Interest in Shawanaga First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

Recommendations by Panel

46.2 In addition to making a determination under subsection 46.1, the Panel may:

- (a) recommend to Council the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land Law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this *Land Code*; or
- (b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

Interim Decisions

46.3 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an Interest in Shawanaga First Nation Land.

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**Professional Services**

- 46.4 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it shall make best efforts to use professional services available in the community. The Council shall determine the expense limit for any professional services, after consulting with the Land Staff. The limit will be applied consistently and evenly to each dispute.

Written Decisions

- 46.5 Decisions of the Panel must be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so. Where requested, the written decision shall be provided to a party to the proceeding within fourteen (14) days after the date of the decision.

Appeal of Decision

- 46.6 A decision of the Panel is binding and may be, subject to review by the Federal Court (Trial Division).

PART 9 OTHER MATTERS

47. Liability

Liability Coverage

- 47.1 Council shall arrange, maintain and pay insurance coverage for its officers and employees engaged in carrying out any matter related to Shawanaga First Nation Land to indemnify them against personal liability arising from the performance of those duties.

Extent of coverage

- 47.2 The extent of the insurance coverage shall be determined by Council.

48. Offences

**Application of the
Criminal Code**

- 48.1 Unless some other procedure is provided for by a Shawanaga First Nation Land Law, the summary conviction procedures of Part XXVII of the Criminal Code, as amended from time to time, apply to offences under this *Land Code* or under a First Nation Land Law.

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Fines & Imprisonment

48.2 Any person who commits an offence under this *Land Code* or a Shawanaga First Nation Land Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six months or to both fine and imprisonment, provided however, that offences related to Shawanaga First Nation environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.

Penalties in Laws

48.3 A Shawanaga First Nation Land Law may provide for a penalty, which is different than the penalties referred to in subsections 48.1 and 48.2.

49. Revisions to Land Code

Revisions

49.1 A ratification vote is not required for revisions made to this *Land Code* that do not change the substance of this *Land Code*. Council may, from time to time, arrange and revise this *Land Code*. Revisions may be made as a result of, but are not limited to:

- (a) an amendment of the description of Shawanaga First Nation Land subject to the *Land Code* and Individual Agreement as amended from time to time;
- (b) a reference in this *Land Code* to a clause in another act or document that was amended and resulted in clause renumbering;
- (c) a reference in this *Land Code* to an Act or parts thereof that have expired, have been repealed or suspended;
- (d) changes in this *Land Code* as are required to reconcile seeming inconsistencies with other acts;
- (e) minor improvements in the language as may be required to bring out more clearly the intention of the Shawanaga First Nation without changing the substance of the *Land Code*; and
- (f) correct editing, grammatical or typographical errors.

50. Commencement

Preconditions

- 50.1 This *Land Code* shall take effect if the community approves this *Land Code* and the Individual Agreement with Canada and this *Land Code* has been certified by the verifier pursuant to the *Framework Agreement*.

Commencement date

- 50.2 This *Land Code* shall take effect on the first day of the month following the certification of this *Land Code* by the Verifier.

CERTIFIED
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