

# ONEIDA INDIAN NATION TRUST LANDS BUSINESS SITE LEASING ORDINANCE

Ordinance No.: O-14-05

Pursuant to the authority vested in the Oneida Indian Nation (the “Nation”) by virtue of its sovereign and inherent powers of self-government, the Nation hereby adopts and enacts this business site leasing ordinance for Nation Trust Lands.

## Article I – General Provisions

### Section 101. Scope

This Ordinance is adopted and enacted in accordance with the federal *Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012*, Pub. L. No. 112-151, 126 Stat. 1150. (2012) and governs Business Site Leases on Nation Trust Lands.

### Section 102. Definitions

For purpose of this Ordinance:

- A. “Applicant” means the person, corporation or other legal entity that is seeking to enter into a Business Site Lease authorized by this Ordinance.
- B. “Assignment” means an agreement between the Lessee and an assignee whereby the assignee acquires all of the Lessee’s rights and assumes all the Lessee’s obligations under a Business Site Lease.
- C. “BIA” means the Bureau of Indian Affairs, United States Department of the Interior.
- D. “Bond” means a security interest providing security for the performance of a duty or the payment of a debt.
- E. “Business Site Lease” means a written agreement or contract between the Lessor and the Lessee whereby the Lessee is granted a right to possess Nation Trust Land or Commercial Space for a business purpose and for a specific duration, in return for specified Rent.
- F. “Categorically Excluded Activity” means activities that have been determined not to have a Significant Effect on the Environment.
- G. “Commercial Space” means space within a building, structure or facility located on Nation Trust Land that is owned by the Nation or a Nation Entity and is not subject to an existing Business Site Lease.

- H. "Determination of Categorical Exclusion" means a determination by the Environmental Manager that a proposed leasing transaction constitutes a Categorically Excluded Activity.
- I. "Determination of Significant Effect" means a determination by the Environmental Manager addressing whether a proposed Business Site Lease will have a Significant Effect on the Environment.
- J. "Historic Resources Specialist Determination" means a determination by the Nation Historic Resources Specialist addressing the potential effects of a Business Site Lease on Nation burials or resources of religious or cultural significance to the Nation.
- K. "Leased Premises" means, as applicable, Nation Trust Land or Commercial Space leased to a Lessee under a Business Site Lease or subleased to a Sublessee under a Sublease.
- L. "Leasehold Mortgage" means a mortgage, deed of trust, or other instrument, agreement or arrangement, that creates a security interest in, or otherwise pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee.
- M. "Lessee" means a person, corporation or other legal entity, to whom Nation Trust Land or Commercial Space is leased under a Business Site Lease.
- N. "Lessor" means the Nation or Nation Entity that conveys the right to use and occupy Nation Trust Land or Commercial Space under a Business Site Lease.
- O. "Mortgagee" means the holder of a Leasehold Mortgage.
- P. "Nation" means the Oneida Nation of New York.
- Q. "Nation Entity" means any entity organized by, and existing under the laws of, the Nation, with delegated authority to serve as a Lessor for Business Site Leases of Commercial Space.
- R. "Nation Environmental Manager" or "Environmental Manager" means the individual with general supervision over the Nation's Department of Environmental Protection and the general responsibility for implementing the provisions of the Nation's Environmental Protection Ordinance.
- S. "Nation Environmental Review" (NER) means the process required by this Ordinance to determine whether a Business Site Lease will have a Significant Effect on the Environment.
- T. "Nation Historic Resources Specialist" or "Historic Resources Specialist" mean the individual responsible for designing, implementing and operating the Nation's History Program, which includes researching, advising and executing Nation

policies on matters of historical and cultural significance, including repatriation and assessing the historical and cultural significance of materials, places and events.

- U. “Nation Trust Land” means the lands possessed by the Nation within the exterior boundaries of the Oneida Reservation acknowledged as the reservation of the Oneida Nation in Article II of the Treaty of Canandaigua that are held in trust by the United States for the benefit of the Nation.
- V. “Nation Law” means the procedural and substantive laws adopted by the Nation pursuant to the authority vested in the Nation by virtue of its sovereign and inherent powers of self-government.
- W. “Nation Representative(s)” means the representative(s) of the Nation lawfully selected by the Nation.
- X. “Public” means the enrolled members of the Nation in good standing.
- Y. “Rent” means the money to be paid or consideration to be given by the Lessee under a Business Site Lease.
- Z. “Secretary” means the Secretary of the Interior, U.S. Department of the Interior, or authorized representative or designee.
- AA. “Significant Effect on the Environment” means a substantial adverse change in the environment, including land, water, minerals, flora, fauna, ambient noise, cultural areas, and objects or areas of historic, cultural, or aesthetic significance.
- BB. “Sublease” means a written agreement by which the Lessee grants a Sublessee a right of possession no greater than that held by the Lessee under a Business Site Lease.
- CC. “Sublessee” means a person, corporation or other legal entity, to whom Nation Trust Land or Commercial Space is subleased under a Sublease.
- DD. “Surety” means one who guarantees the performance of another.

## **Article II – Business Site Lease Requirements**

### **Section 201. Leases on, of or within Nation Trust Land**

- A. All Business Site Leases on, of or within Nation Trust Land shall be in compliance with this Ordinance, and shall require authorization by the Nation Representative(s).
- B. To be considered for authorization by the Nation Representative(s):

- (1) A draft Business Site Lease that contains the minimum provisions identified in Section 202 of this Ordinance and meets all other applicable requirements of this Ordinance, shall be prepared and presented to the Nation Representative(s) for review; and
- (2) The Environmental Manager shall have completed the Nation Environmental Review Process by issuing a Determination of Significant Effect or issuing a Determination of Categorical Exclusion.

### **Section 202. Minimum Provisions**

All Business Site Leases shall, at a minimum, contain the following:

- A. A description of the Leased Premises in accordance with this Ordinance;
- B. The purpose of the Business Site Lease and authorized uses of the Leased Premises;
- C. The parties to the Business Site Lease;
- D. The effective date of the Business Site Lease;
- E. The term of the Business Site Lease in accordance with this Ordinance;
- F. Identification of the responsible party for constructing, owning, operating, and maintaining any improvements of the Leased Premises, in accordance with this Ordinance;
- G. Rent and other payment requirements, including rent payment due dates, in accordance with this Ordinance;
- H. Insurance and Bond requirements in accordance with this Ordinance;
- I. A requirement that the Lessee stop all ground disturbing activities and notify the Historic Resources Specialist and the General Counsel of the Nation if historic, archeological, human remains or items of cultural or religious significance to the Nation are encountered during construction or operation of the Leased Premises;
- J. Provisions addressing (a) events constituting defaults of the Lessee, and remedies of the Lessor for the Lessee's defaults, (b) any penalties to be charged if the Lessee fails to make payments in a timely manner; (c) enforcement of the Business Site Lease; and (d) a right of the Lessor to regain possession and pursue appropriate remedies if the Lessee continues to occupy the Leased Premises after expiration or termination of the Business Site Lease without approval; and
- K. An obligation of the Lessee to comply with all applicable laws, including the Oneida Indian Nation Tax Ordinance and all other Nation Law, rules and regulations.

**Section 203. Duration and Renewal**

- A. The term of a Business Site Lease shall not exceed twenty five (25) years, except that any such Business Site Lease may include an option to renew for up to two additional terms, each of which may not exceed twenty five (25) years.
- B. For each renewal option permitted in a Business Site Lease, the Business Site Lease shall specify procedures that must be followed and any conditions that must be met for the exercise of such option.

**Section 204. Description of Leased Premises**

- A. Business Site Leases and Subleases of Nation Trust Land shall contain adequate site surveys and legal descriptions of the Leased Premises sufficient to meet recording requirements for the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Leased Premises.
- B. Business Site Leases and Subleases of Commercial Space shall contain adequate descriptions of the location and square footage of the space being leased, including a reference to the Nation tract on which the space is located, to allow for recordation as required by Section 601 of this Ordinance.

**Section 205. Appraisals**

- A. Prior to agreeing to the Rent to be paid by the Lessee under a Business Site Lease, the Nation Representative(s) or his designee shall retain a licensed appraiser to conduct an appraisal of the annual lease value of the Leased Premises utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal satisfactory to the Nation Representative(s) or his designee. Unless waived by the Nation Representative(s) or his designee, the Applicant shall pay the costs of such appraisal.
- B. The Nation Representative(s) or his designee may waive application of Section 205(A) for any Business Site Lease of Commercial Space.

**Section 206. Rent**

- A. The Rent to be paid by the Lessee and the form of Rent or methodology of determining Rent shall be determined by the Nation Representative(s) or his designee based upon the best interest of the Nation, taking into consideration the appraisal, if any, conducted pursuant to Section 205.
- B. A Business Site Lease may provide for escalation or other methodology for adjustment of the Rent.

### **Section 207. Bond**

- A. The Lessee shall provide, or obtain from a Surety, a Bond in favor of the Nation in an amount and form, and subject to terms and conditions, satisfactory to the Nation Representative(s) or his designee to secure the contractual obligations of the Business Site Lease and provide adequate protections for the Nation.
- B. The Business Site Lease shall specify that any modification to a Bond required pursuant to this Section 207 shall require the prior approval of the Nation Representative(s) or his designee.
- C. The Nation Representative(s) may waive the Bond requirements in whole or in part, or reduce the amount, if the Nation Representative(s) determines that doing so is in the best interest of the Nation.
- D. Bonds shall be deposited with the General Counsel of the Nation.

### **Section 208. Insurance**

The Lessee shall obtain, and maintain throughout the term of the Business Site Lease, insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent and authorized to do business in the State of New York. Such insurance shall:

- A. Protect the interests of the Lessor and the Nation, and be in amounts sufficient to protect all insurable improvements on the Leased Premises;
- B. Include, without limitation, property, liability and casualty insurance, including personal injury or death, business interruption coverage when required by the Nation Representative(s) or his designee, and such other insurance as specified in the Business Site Lease; and
- C. Expressly identify the Lessor, the Nation, and the United States, as additional insured parties.

### **Section 209. Improvements**

- A. The Lessee may construct improvements on the Leased Premises on terms and conditions specified in the Business Site Lease.
- B. Where a Business Site Lease permits the construction of improvements on the Leased Premises, the Business Site Lease shall address and, to the extent and in the manner deemed appropriate by the Nation Representative(s) or his designee, provide specific terms and conditions and require the supply of documents regarding:
  - (1) A plan that describes the type and location of any improvements to be built by the Lessee;

- (2) A general schedule for construction of the improvements and the process for changing the schedule;
- (3) The Lessee's due diligence obligations to complete the improvements, subject to default under the Business Site Lease;
- (4) Ownership of the improvements, and procedures for any transfer of ownership during the term of the Business Site Lease;
- (5) Responsibility for operation, maintenance and management of the improvements; and
- (6) Whether the improvements will remain on or be removed from the Leased Premises upon termination or expiration of the Business Site Lease, and if the improvements are to be removed, the Lessee's obligations, if any, with regard to restoration and reclamation of the Leased Premises.

**Section 210. Assignment**

- A. An Assignment of a Business Site Lease shall require the written authorization of the Nation Representative(s), which may be given or withheld upon consideration of the best interest of the Nation, provided, however, that no Assignment shall occur, and the Nation Representative(s) shall not consent to an Assignment, unless:
- (1) There is no event of default under the Business Site Lease or violation of this Ordinance;
  - (2) Any restrictions and use limitations respecting the use of the Leased Premises shall continue to apply to any assignee;
  - (3) The assignee agrees in writing to comply with applicable laws, including the Oneida Indian Nation Tax Ordinance and all other Nation laws, Ordinances, rules and regulations;
  - (4) The assignee agrees in writing to assume all of the obligations and conditions of the Business Site Lease;
  - (5) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease; and
  - (6) Any Mortgagee or Surety of the Lessee has been notified and has consented, as may be required under relevant mortgage or Bond documentation.

**Section 211. Amendment**

- A. Amendment of a Business Site Lease shall require the written authorization of the Nation Representative(s), which may be given or withheld upon consideration of the best interest of the Nation.
- B. Any proposed amendment of a Business Site Lease shall be subject to the same requirements set forth in this Ordinance as are applicable to a Business Site Lease, to the extent required by the substance or effect of such amendment.

**Section 212. Leasehold Mortgages**

- A. A Leasehold Mortgage of any leasehold interest shall require the written authorization of the Nation Representative(s), which may be given or withheld upon consideration of the best interest of the Nation.
- B. The Business Site Lease may authorize, subject to Section 212(A), Leasehold Mortgages of the leasehold interest for the purpose of financing the development and improvement of the Leased Premises, and may set forth additional terms and conditions applicable to an approved Leasehold Mortgage.

**Section 213. Choice of Law**

All Business Site Leases shall be governed by and construed in accordance with Nation Law, unless such requirement is waived by the Nation Representative(s) or his designee.

**Article III – Subleases**

**Section 301. Minimum Requirements**

All Subleases, at a minimum, shall contain the following:

- A. A description of the Leased Premises in accordance with this Ordinance;
- B. The authorized uses of the Leased Premises, which shall be consistent with all use limitations and restrictions under the Business Site Lease;
- C. The parties to the Sublease;
- D. The effective date of the Sublease;
- E. The term of the Sublease in accordance with this Ordinance;
- F. Identification of the responsible party for constructing, owning, operating, and maintaining any improvements of the Leased Premises, in accordance with this Ordinance;
- G. Rent and other payment requirements, including rent payment due dates, in accordance with this Ordinance;



- H. Insurance and Bond requirements in accordance with this Ordinance; and
- I. An obligation of the Sublessee to comply with all applicable laws, including the Oneida Indian Nation Tax Ordinance and all other Nation Law, rules and regulations.

**Section 302. Authorization**

All Subleases shall require the authorization of the Nation, which may be obtained by:

- A. Receiving written authorization of the Nation Representative(s), which may be given or withheld upon consideration of the best interest of the Nation; or
- B. Satisfying the following requirements, subject to verification by the General Counsel of the Nation, of this Section 302(B)(1)-(4):
  - (1) The Sublease meets the minimum requirements of Section 301 of this Ordinance;
  - (2) There exists no event of default under the Business Site Lease or violation of this Ordinance;
  - (3) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease; and
  - (4) Any Mortgagee or Surety of the Lessee has been notified and has consented, as may be required under relevant mortgage or Bond documentation.

**Article IV – Enforcement by Nation Representative(s)**

The Nation Representative(s) shall have the powers and authorities necessary to enforce the terms of a Business Site Lease or Sublease, and to exercise all such rights of the Lessor relating to enforcement and compliance by the Lessee with the Business Site Lease and of the Lessee relating to enforcement and compliance by the Sublessee with the Sublease and Business Site Lease, as applicable.

- A. If the Nation Representative(s) determines (i) a Lessee is in default under the terms of a Business Site Lease or a Sublessee is in default under the terms of a Sublease and (ii) the Lessor of a Business Site Lease or the Lessee with respect to a Sublease has failed to adequately enforce the default, cure and/or termination provisions of the Business Site Lease or Sublease, as applicable, the Nation Representative(s) shall send the Lessee or Sublessee a notice of default within five (5) business days of such determination. The notice of default may be provided by certified mail, return receipt requested.
- B. Within 30 days after the mailing of a notice of default, the Lessee or Sublessee shall:

- (1) Cure the default and notify the Nation Representative(s) in writing that the default has been cured;
  - (2) Notify the Nation Representatives(s) that Lessee or Sublessee does not agree with the Nation Representative(s) determination that the Lessee or Sublessee is in default and explain why the Business Site Lease or Sublease should not be canceled; or
  - (3) Request additional time to cure the default.
- C. If the Lessee or Sublessee fails to cure a default identified under Section (A) within the prescribed period, the Nation Representative(s) may:
- (1) Cancel the Business Site Lease or Sublease;
  - (2) Grant an extension of time to cure the default;
  - (3) Pursue other remedies, including execution on Bonds, other security or collection of insurance proceeds; or
  - (4) Any combination of remedies listed above.
- D. If the Nation Representative(s) cancels a Business Site Lease or Sublease, the Nation Representative(s) shall send the Lessee or Sublessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee or Sublessee by certified mail, return receipt requested. The cancellation letter shall:
- (1) Explain the grounds for cancellation;
  - (2) Notify the Lessee or Sublessee of any unpaid amounts, interest charges or late payment penalties due under the Business Site Lease or Sublease; and
  - (3) Order the Lessee to vacate the Leased Premises within thirty (30) days after mailing of the cancellation letter.
- E. A cancellation shall become effective thirty one (31) days after mailing of a cancellation letter.
- F. If the Nation Representative(s) decides to grant an extension of time to cure a default, the Nation Representative(s) shall notify Lessee or Sublessee of such extension of time, and the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

## **Article V - Environmental Review Process**

### **Section 501. General**

A Business Site Lease on, of or within Nation Trust Land shall not be executed until the Environmental Manager completes the Nation Environmental Review Process by issuing a Determination of Significant Effect or issuing a Determination of Categorical Exclusion.

### **Section 502. Categorically Excluded Activities**

- A. The following activities have been determined not to have a Significant Effect on the Environment and therefore constitute Categorically Excluded Activities:
  - (1) Authorized renewals, extensions, assignments and amendments to existing Business Site Leases where the activities authorized under the Business Site Lease will not materially change;
  - (2) Authorized Subleases where the activities authorized under the original Business Site Lease will not materially change;
  - (3) A lease of Commercial Space, where the use is consistent with existing uses in the existing building or facility; and
  - (4) Business Site Leases or leasing decisions that the Environmental Manager determines would not affect the environment of the Nation.
  
- B. Where the Environmental Manager determines that a proposed Business Site Lease constitutes a Categorically Excluded Activity, no EAF shall be required, and the Environmental Manager shall issue a Determination of Categorical Exclusion.

### **Section 503. Nation Environmental Review Process**

- A. The Environmental Manager shall be responsible for developing an EAF for evaluations required by this Article to be conducted under the NER, in order to identify and evaluate whether a proposed Business Site Lease would have a Significant Effect on the Environment.
  
- B. With respect to any Business Site Lease for which a NER is required under this Article, an Applicant shall submit a completed EAF to the Environmental Manager and Historic Resources Specialist.
  
- C. With respect to any Business Site Lease for which a NER is required under this Article, the Historic Resources Specialist shall be responsible for undertaking, at the expense of the Applicant, any archeological reviews or surveys required for the Historic Resources Specialist to prepare the Historic Resources Specialist Determination.

#### **Section 504. Notice of Completion of EAF and Public Comments**

- A. With respect to any Business Site Lease for which a NER is required under this Article, upon a determination by the Environmental Manager that the Applicant has submitted a properly completed EAF, the Environmental Manager shall prepare a Notice of EAF Completion, which shall include all of the following information:
  - (1) A brief description of the project;
  - (2) The proposed location of the project;
  - (3) A location where the EAF is available for Public review; and
  - (4) Notice of a period of fifteen (15) days during which the Environmental Manager will accept written comments by the Public on any Significant Effects on the Environment arising as a result of the proposed Business Site Lease.
- B. The Environmental Manager shall publish the Notice of EAF Completion in any regularly issued newspaper or periodical that is available to the Public or shall post the Notice of EAF Completion on the Nation's website and at Nation Member government programs and services offices to ensure that the Public is sufficiently informed of the Notice of EAF Completion.

#### **Section 505. Conclusion of Environmental Review Process**

- A. With respect to any Business Site Lease for which a NER is required under this Article, the Environmental Manager shall prepare, or cause the Applicant to prepare, responses to written comments by the Public addressing Significant Effects on the Environment arising as a result of the proposed Business Site Lease. Upon reasonable request, responses shall be made available for review to a member of the Public.
- B. The Environmental Manager shall issue a Determination of Significant Effect for the proposed Business Site Lease, which shall:
  - (1) Include a statement that the NER process was properly followed;
  - (2) Identify any Significant Effects on the Environment;
  - (3) Include the Historic Resources Specialist Determination; and
  - (4) Include responses to Public comments.
- C. The Environmental Manager shall provide the Determination of Significant Effect to the Nation Representative(s).

**Article VI – Records**

**Section 601. Recordation**

- A. Business Site Leases, Subleases, Assignments, amendments, renewals, modifications and cancellations, in connection with Nation Trust Lands, shall be recorded with:

Oneida Nation Court Clerk  
1256 Union Street  
Oneida, NY 13421

- B. A copy of all recorded Business Site Leases, amendments and renewals shall be sent to the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over Leased Premises.

**Section 602. Ownership of Records**

Records of activities undertaken pursuant to this Ordinance are the property of the Nation and Nation Entities, as applicable.

**Article VII – Miscellaneous Provisions**

**Section 701. Secretarial Action**

No Business Site Lease shall be authorized under this Ordinance until the Secretary has approved this Ordinance. All substantive amendments to this Ordinance must be submitted to and approved by the Secretary.


**Section 702. Sovereign Immunity Preserved**

The Nation does not, by enacting this Ordinance, waive in any respect its sovereign immunity, or that of its agents or officers, in any manner, under any law, for any purpose, or in any place. This Ordinance is not subject to review or modification in any state or federal court and is not subject to review or modification in any Nation court. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agents, its officers or employees, or any other person.

**Article VIII – Effective Date**

This Ordinance is effective upon its enactment.

Enacted this 6<sup>th</sup> day of October, 2014.

  
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Ray Halbritter  
Nation Representative(s)