

# ONEIDA INDIAN NATION TRUST LANDS RESIDENTIAL LEASING ORDINANCE

Ordinance No.: O-16-01

The Oneida Indian Nation (the “Nation”) adopts and enacts this Ordinance pursuant to its inherent powers of self-government to establish procedures for the authorization of residential leases on Nation Trust Lands.

## Article I – General Provisions

### 1. 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 Residential Leases on Nation Trust Lands.

### 2. Definitions

For purpose of this Ordinance:

- A. “Applicant” means the person, corporation or other legal entity that is seeking to enter into a Residential 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 Residential Lease.
- C. “Categorically Excluded Activity” means activities that have been determined not to have a Significant Effect on the Environment.
- D. “Department of Housing” means the Nation’s Housing Department or its predecessors, its successors or any other entity or agency established by the Nation for the purpose of developing or overseeing housing units within the territorial jurisdiction of the Nation.
- E. “Designated Assignee” means any lender to which a Mortgagee has or may transfer or assign its interest in a Lease or Leasehold Mortgage.
- F. “Environmental Assessment Form” (EAF) means the form required under the Nation Environmental Review process required by this Ordinance.
- G. “Determination of Categorical Exclusion” means a determination by the Environmental Manager that a proposed leasing transaction constitutes a Categorically Excluded Activity.

- H. "Determination of Significant Effect" means a determination by the Environmental Manager addressing whether a proposed Residential Lease will have a Significant Effect on the Environment.
- I. "Historic Resources Specialist Determination" means a determination by the Nation Historic Resources Specialist addressing the potential effects of a Residential Lease on Nation burials or resources of religious or cultural significance to the Nation.
- J. "Housing Unit" means all or any portion of any house, home, building or other structure used as a residence by any person, which is located on Nation Trust Land and subject to this Ordinance.
- K. "Leased Premises" means any portion of a Housing Unit or Nation Trust Land, as described in any Residential Lease, any common areas and adjoining grounds.
- L. "Leasehold Estate" means the possessory interest in Nation Trust Land established between a Lessor and a Lessee.
- M. "Leasehold Mortgage" means a mortgage or other instrument that pledges the Leasehold Estate of a Lessee as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.
- N. "Lessee" means a person, corporation or other legal entity that has acquired a legal right to possess Nation Trust Land by executing a Residential Lease of a Housing Unit or Nation Trust Land.
- O. "Lessor" means the Nation.
- P. "Mortgage" means a lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance or renovate a Housing Unit or improvement, and may refer to both a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument or note secured thereby.
- Q. "Mortgagee" means any person, entity or governmental agency which lends under a Leasehold Mortgage, and includes any Designated Assignee, or any heir, successor, executor, administrator, or assignee thereof.
- R. "Mortgagor" means the Nation or any person or entity who has executed a Leasehold Mortgage, including any heir, successor, executor, administrator, or assignee thereof.
- S. "Nation" means the Oneida Nation of New York.
- T. "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.

- U. "Nation Environmental Review" (NER) means the process required by this Ordinance to determine whether a Residential Lease will have a Significant Effect on the Environment.
- V. "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.
- W. "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.
- X. "Nation Representative(s)" means the representative(s) of the Nation lawfully selected by the Nation.
- Y. "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.
- Z. "Permanent Improvements" means buildings, other structures, and associated infrastructure attached to the Leased Premises.
- AA. "Public" means the enrolled members of the Nation in good standing.
- BB. "Rent" means the money to be paid or consideration to be given by the Lessee under a Residential Lease.
- CC. "Residential Lease" or "Lease" means a written contract between the Nation and a Lessee, whereby the Lessee is granted a right to possess a Housing Unit or Nation Trust Land for residential use for a specified purpose and duration.
- DD. "Secretary" means the Secretary of the Interior, U.S. Department of the Interior, or authorized representative or designee.
- EE. "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.
- FF. "Sublease" means a written agreement by which the Lessee grants a right to possession no greater than that held by the Lessee under a Residential Lease.

GG. "Sublessee" means a person, corporation or other legal entity, to whom Nation Trust Land is subleased under a Sublease.

## **Article II – Residential Lease Requirements**

### **1. Lease Authorization**

- A. All Residential Leases on, of or within Nation Trust Lands shall be in compliance with this Ordinance, and shall require authorization by the Nation Representative(s).
- B. All Residential Leases shall be signed on behalf of the Nation by the Nation Representative(s) or his designee.
- C. Any Residential Lease that is authorized and executed under this Article II(1) shall refer to this Ordinance as authority for its execution on behalf of the Nation.
- D. To be considered for authorization by the Nation Representative(s):
  - (1) A draft Residential Lease that contains the minimum provisions identified in Article II(2) 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.
- E. Unless Nation Law states otherwise, all decisions and determinations made by the Nation Representative(s) or his designee pursuant to this Ordinance, or other Nation employee authorized to make decisions under this Ordinance, shall be final and non-appealable.

### **2. Minimum Provisions**

All Residential Leases shall be in writing, and, at a minimum, shall contain the following:

- A. A description of the tract or parcel of Nation Trust Land being leased, or on which a Housing Unit is located, with reference to a public or private survey plan, if available, in terms sufficient to determine its location and meet recording requirements for the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Leased Premises;
- B. The purpose of the Residential Lease and authorized uses of the Leased Premises;
- C. The parties to the Residential Lease;
- D. The effective date of the Residential Lease;

- E. The term of the Residential Lease in accordance with this Ordinance;
- F. Identification of the general type and location of any Permanent Improvements and of the responsible party for constructing, owning, operating, maintaining, and managing any Permanent Improvements, in accordance with this Ordinance;
- G. Rent and other payment requirements, including rent payment due dates, payee and places of payment, and any interest, in accordance with this Ordinance;
- H. 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 occupation of the Leased Premises or construction of Permanent Improvements to the Leased Premises;
- I. 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 Residential Lease; (d) insurance and bond requirements, if any; and (e) 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 Residential Lease without authorization;
- J. An obligation of the Lessee to comply with all applicable laws, including Nation Law, rules and regulations.

### **3. Duration**

The term of a Residential Lease shall not exceed seventy-five (75) years.

### **4. Rent and Payments**

- 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.
- B. For Residential Leases that are not "housing for public purposes," periodic review and adjustment of the rent shall be conducted by the Department of Housing at least every five (5) years. Rent adjustments may be authorized by the Nation Representative(s) or his designee following a periodic review, and shall take effect on January 1<sup>st</sup> of the calendar year following the periodic review.
- C. The Nation Representative(s) may waive the review in Article II(4)(B) if the Nation Representative(s) determines that doing so is in the best interest of the Nation.

- D. For any Lease of Nation Land requiring payments to be made to the Nation, the Nation shall provide the Secretary of the Interior with such documentation of the lease payments as the Secretary may request to enable the Secretary to discharge the trust responsibility of the United States with respect to the Leased Premises.

**5. Improvements**

- A. The Lessee may construct Permanent Improvements on the Leased Premises on terms and conditions specified in the Residential Lease.
- B. Where a Residential Lease permits the construction of Permanent Improvements on the Leased Premises, the Residential 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) The Lessee's due diligence obligations to complete the improvements, subject to default under the Residential Lease;
  - (3) Ownership of the improvements, and procedures for any transfer of ownership during the term of the Residential Lease;
  - (4) Responsibility for operation, maintenance and management of the improvements;
  - (5) Requirement for reasonable notice to the Nation of the construction of any improvement not described in the Residential Lease; and
  - (6) Whether the improvements will remain on or be removed from the Leased Premises upon termination or expiration of the Residential 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.

**6. Assignment**

- A. An Assignment of a Residential 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 Residential 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 Nation laws, rules and regulations;
- (4) The assignee, if other than a Mortgagee of the Leasehold Estate, agrees in writing to assume all of the obligations and conditions of the Residential Lease;
- (5) The Lessee shall be relieved and released from its obligations under the Residential Lease; and
- (6) Any Mortgagee or Surety of the Lessee has been notified and has consented, as may be required under relevant mortgage documentation.

**7. Amendment**

- A. Amendment of a Residential 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 Residential Lease shall be subject to the same requirements set forth in this Ordinance as are applicable to a Residential Lease.

**8. 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 Residential Lease may authorize, subject to Article II(8)(A), Leasehold Mortgages of the leasehold interest and must state the law governing foreclosure, and may set forth additional terms and conditions applicable to an authorized Leasehold Mortgage.

**9. Choice of Law**

All Residential Leases shall be governed by and construed in accordance with Nation Law.

**Article III – Subleases**

**1. 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 Residential 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 general type and location of any Permanent Improvements and of the responsible party for constructing, owning, operating, maintaining, and managing any Permanent Improvements, in accordance with this Ordinance;
- G. Rent and other payment requirements, including rent payment due dates, payee and places of payment, and any interest, in accordance with this Ordinance; and
- H. An obligation of the Sublessee to comply with all applicable laws, including Nation Law, rules and regulations.

**2. 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 Article III(2)(B)(1)-(4):
  - (1) The Sublease meets the minimum requirements of Article III of this Ordinance;
  - (2) There exists no event of default under the Residential Lease or violation of this Ordinance;
  - (3) The Lessee shall not be relieved or released from any of its obligations under the Residential Lease; and
  - (4) Any Mortgagee or Surety of the Lessee has been notified and has consented, as may be required under relevant Mortgage documentation.

**Article IV – Enforcement**

**1. Enforcement by Nation Representative(s)**

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



to enforcement and compliance by the Sublessee with the Sublease and Residential Lease, as applicable.

## **2. Enforcement Procedures**

For purposes of this Article IV.2, the term "Lessee" shall also include a Sublessee or Assignee, if a Lessor has subleased or assigned a Lease.

### **A. Grounds for Eviction. A Lessee may be evicted for:**

- (1) Nonpayment of rent under a Lease when such payments are not made after ten (10) calendar days of the date of payment set forth in the Lease, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- (2) Any arrearage in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a Lessor of partial payment under a Lease shall not excuse the payment of any balance due upon demand.
- (3) Nuisance, damage, or destruction of property, injury to any person, or disturbance of peace of other Lessees.
- (4) Violation of the Nation Housing Code, this Ordinance or any rule or regulation adopted in accordance with the Nation Housing Code or this Ordinance.
- (5) Noncompliance with any Nation building, health or safety code or other Nation Law.
- (6) Occupation of any Leased Premises without permission or agreement, following any reasonable demand by a person in authority over the Leased Premises to leave.
- (7) Failure to comply with any term in the Lease which does not conflict with the provisions of the Nation Housing Code or this Ordinance.

### **B. Notice to Quit Requirements**

- (1) **When Notice to Quit is Required.** When a Lessor desires to obtain possession of Leased Premises, and when there exists one or more legally cognizable reasons to evict a Lessee from the Leased Premises, the Lessor shall give written notice to the Lessee to quit possession of such Leased Premises.
- (2) **Statement of Grounds for Eviction Required.** The notice to quit shall be addressed to the known Lessees of the Leased Premises and shall state the

reason(s) for termination of the Lease and the date by which the Lessee is required to quit possession.

- (3) Form of Notice. The notice shall be in writing substantially in the following form:

I (or we) hereby give you notice that you are to quit possession or occupancy of the Leased Premises now occupied by you at (here insert the address or other reasonable description of the location), on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the Lessor, as well as the date and place of signing).

- (4) Time Requirements for Notice. The notice must be delivered within the following periods of time:

- (a) No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the Lease.
- (b) No less than five (5) calendar days prior to the date to quit specified in the notice for nuisance, serious damage to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the Leased Premises unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable under the circumstances;
- (c) No less than fourteen (14) calendar days in all other situations.

C. Serving the Notice to Quit.

- (1) Any notice to quit must be in writing, and must be delivered to the Lessee by (1) a law enforcement officer of the Nation, or (2) any person, not a party to the action, over the age of 18 years.
- (2) Delivery will be effective when it is:
  - (a) Personally delivered to the Lessee; or
  - (b) Personally delivered to an adult living in the Leased Premises with a copy delivered by certified mail to the Lessee,

- (3) If the notice cannot be given by means of personal delivery, or the Lessee cannot be found, the notice may be delivered by means of:
  - (a) Certified mail, return receipt requested, at the last known address of the Lessee, or
  - (b) Securing a copy of the notice to the main entry door of the Leased Premises in such a manner that it is not likely to blow away, posting a copy of the notice in some public place near the Leased Premises, including a Nation office, or other commonly-frequented Nation facility, and sending a copy first class mail, postage prepaid, addressed to the Lessee at the Leased Premises.
- (4) The person serving the notice must return the proof of service to the Lessor.

D. Pre-Eviction Options

- (1) **Negotiated Settlement.** After a Notice to Quit is served upon a Lessee, the Lessor and Lessee may engage in discussions to settle the issues between the parties and avoid an eviction proceeding. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.
- (2) **Stay of Proceedings.** Where the parties mutually agree in good faith to proceed with such discussions, and formal eviction procedures have been initiated, upon notice, Nation Court shall stay such proceedings until notified that a hearing is required or that a settlement has been reached.
- (3) **Settlement Options.** In reaching an agreement, the parties may consider, but are not limited to the following options:
  - (a) The parties may employ the use of advocates or attorneys;
  - (b) The parties may employ the use of the peacemaker;
  - (c) The parties may agree to dismiss the matter in exchange for any agreement reached;
  - (d) The parties may agree to stipulate to a judgment to be entered by Nation Court.
- (4) **Judicial Eviction.** If, after the expiration date set forth in the notice to quit the Lessee has not quit possession of the Leased Premises, the Lessor may file a complaint in Nation Court for eviction.

## **Article V – Environmental Review Process**

### **1. General**

A Residential Lease on, of or within Nation Trust Lands 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.

### **2. 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) Authorization of Lease for residential use of an existing Housing Unit, including any associated improvements, access roads and utilities;
  - (2) Authorization of a Lease for five (5) acres or less of contiguous Nation Trust Land for construction of a Housing Unit of one to four dwelling units, including any associated improvements, access roads, and utilities;
  - (3) Authorized Subleases where the activities authorized under the original Residential Lease will not materially change; and
  - (4) Residential 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 Residential Lease constitutes a Categorically Excluded Activity, no EAF shall be required, and the Environmental Manager shall issue a Determination of Categorical Exclusion.
- C. Notwithstanding Article IV(2)(A), the Nation Environmental Manager shall follow the procedures set forth in Article IV(3) if he or determines that extraordinary circumstances exist under which the residential use of the proposed Leased Premises may, individually or cumulatively, have a Significant Effect on the Environment.

### **3. 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 Residential Lease would have a Significant Effect on the Environment.
- B. With respect to any Residential 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 Residential 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.

**4. Notice of Completion of EAF and Public Comments**

- A. With respect to any Residential 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 proposed Residential Lease;
  - (2) The proposed location of the Residential Lease;
  - (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 Residential 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.

**5. Conclusion of Environmental Review Process**

- A. With respect to any Residential 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 Residential 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 Residential 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**

### **1. Recordation**

- A. Residential Leases, Subleases, Assignments, Leasehold Mortgages, and amendments shall be recorded with:

Oneida Nation Court Clerk  
1256 Union Street  
Oneida, NY 13421

- B. Pursuant to the current practices of the Bureau of Indian Affairs, Eastern Region, a copy of all recorded Residential Leases, Subleases, Assignments, Leasehold Mortgages and amendments shall be sent to the Bureau of Indian Affairs.

### **2. 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**

### **1. Secretarial Action**

- A. No Residential 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.
- B. After the Secretary approves this Ordinance, all Residential Leases, Subleases, Assignments, and Leasehold Mortgages that are authorized and executed in accordance with this Ordinance shall be effective without federal approval, unless the Secretary rescinds approval of this Ordinance and reassumes responsibility for such approval.

### **2. 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 11<sup>th</sup> day of February, 2016.

  
\_\_\_\_\_  
Ray Halbritter  
Nation Representative(s)