



**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

**APPROVAL OF
THE OSAGE NATION
TRUST LANDS LEASING ACT**

The attached Trust Lands Leasing Act, submitted by The Osage Nation (listed in the Federal Register, 86 FR 26830 (May 4, 2016) as The Osage Nation, and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 21 pages and adopted by the Osage Nation Congress on December 9, 2016, is hereby approved.

Dated: 7/17/2017

Acting Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

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OSAGE NATION CONGRESS

3rd Special Session of the 5th Congress

BILL NUMBER ONCA 17-01

ENROLLED

December 6, 2016

SPONSOR: R.J. Walker

An Act

To restate with amendments the leasing procedures for business, economic development, and public purposes on Osage Nation Restricted and Trust Lands as authorized by Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, P.L. 112-151, July 30, 2012 codified as 25 U.S.C. § 415 (h) (HEARTH Act).

Be it enacted by the Congress of the Osage Nation:

SUBCHAPTER 1: GENERAL PROVISIONS

SECTION 1. TRUST LAND LEASING ACT; SHORT TITLE

This Act may be cited as the "Trust Land Leasing Act," and is herein referred to as the Act. The Act is a law that will be codified as Chapter 4 of Title 25 of the Osage Nation Code, unless there is a duplication of numbering, in which case the code reviser will assign the appropriate title, chapter, and section numbers.

SECTION 2. FINDINGS; PURPOSES; SCOPE

- A. The Osage Nation Congress finds that this Act will promote self-determination, encourage economic self-sufficiency, and increase and expedite business activity and employment on Osage Nation lands by specifying the authority of the Osage Nation to approve Leases and to establish procedures for environmental review, approval, management, and enforcement of such Leases.
- B. The purpose of this Act is to implement the authority granted to the Osage Nation under the HEARTH Act, to approve the lease of lands owned by the Osage Nation in restricted status or held in trust by the United States for the benefit of the Osage Nation and to develop and streamline procedures for Lease management.
- C. This Act:
 - 1. Applies only to Leases and Subleases of Osage Nation Tribal Land for Business Purposes as described in Section 3.D.1. and 2. of this Act and to

all Leasing Documents, actions, and Leasing Decisions relating to such Leases and Subleases;

2. Shall not be construed to affect valid existing rights under Leases and Subleases approved prior to the effective date of this Act; and
3. Does not apply to residential leases, leases of unrestricted fee lands, or any lands owned by individuals.

- D. Except where otherwise required by agreement or applicable law, the Osage Nation shall manage all Leases pursuant to this Act. Laws that will apply to Leases authorized under this Act will be, in the following order: federal law, the laws of the Osage Nation, and other laws that may be applicable.

SECTION 3. DEFINITIONS

In this Act:

- A. "Assignment" means an agreement between a Lessee and an assignee by which the assignee acquires all or some of the Lessee's rights and assumes all or some of the Lessee's obligations under a Lease;
- B. "Best Interest" means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Osage Nation land, increase employment and jobs on Osage Nation land, and preserve the sovereignty of the Osage Nation;
- C. "BIA" means the Bureau of Indian Affairs, U.S. Department of the Interior;
- D. "Business Purpose" means:
1. Commercial or industrial uses, including but not limited to any single or multi-purpose uses, such as retail, office, manufacturing, storage, energy production (including bio-mass and waste-to-energy but not including oil and gas production); and
 2. For the purposes of this Act, religious, educational, recreational, cultural, and other public uses;
- E. "Development Period" means the time period beginning when a Lease is executed and lasting until improvements are expected to be substantially completed;
- F. "Director" means the Director of the Osage Nation Tribal Development and Land Acquisition Department or any successor agency, which Director is authorized by the Osage Nation to make Leasing Decisions and to review, approve or disapprove, record, supervise and otherwise manage Leases and leasing

93 transactions as described in this Act, to the extent described in this Act and in
94 compliance with Osage law;

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96 G. "Environmental Review Process" means the process for conducting an
97 environmental review to assess whether and to what extent a proposed
98 development or Project under a Lease will have a positive or negative Significant
99 Effect on the Environment;

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101 H. "Environmental Reviewer" means an employee or agent of the Osage Nation,
102 designated by the Director of the Department of Environmental and Natural
103 Resources of the Osage Nation or any successor agency to perform the
104 Environmental Review Process;

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106 I. "Fair Market Rental" means the amount of rental income that a leased parcel of
107 Restricted or Trust Land would likely command in an open and competitive
108 market, or as determined by competitive bidding, and reflecting all of the
109 conditions and restrictions of the particular leasing agreement, as well as all the
110 revenues likely to be generated for the Osage Nation;

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112 J. "Lease" means a written agreement between the Osage Nation and Lessee by
113 which Lessee is granted the right to possess the surface estate of a parcel of Tribal
114 Land for a Business Purpose and a duration or term that is authorized by this Act,
115 and under specified conditions;

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117 K. "Leasing Decision" means a decision of the Director resulting from a review of
118 Leasing Documents;

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120 L. "Leasing Documents" mean Leases, Subleases, Space Leases, Assignments, and
121 Leasehold Mortgages; and amendments thereto; terminations, cancelations, and
122 renewals thereof;

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124 M. "Lessee" means a person or entity who has acquired a Lease and certain
125 occupancy rights pursuant to this Act;

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127 N. "Leasehold Mortgage" means a mortgage, deed of trust, or other instrument that
128 pledges a Lessee's leasehold interest as security for a debt or other obligation
129 owed by the Lessee to a lender or other mortgagee, and must be approved in
130 writing by the Osage Nation Congress or its designee;

131 O. "Lessor" means the Osage Nation;

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133 P. "Project" means any economic development activity occurring on Tribal Land of
134 the Osage Nation pursuant to the terms of a Lease or Sublease for a Business
135 Purpose as defined in this section;

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137 Q. "Public" means, in the context of the Environmental Review Process, Osage
38 Nation members, individuals who live or work within Osage Nation jurisdiction,

business entities or institutions that operate programs or conduct activities at the location of or on land adjacent to a Project, and other persons who have a definable interest that reasonably may be affected by a proposed Project or Lease, and living or working within the jurisdiction of the Osage Nation;

R. "Restricted Land" means any tract of land owned by the Osage Nation and subject to federal restrictions against alienation;

S. "Significant Effect on the Environment" means a substantial or potentially substantial, change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural, or aesthetic significance;

T. "Space Lease" means a rental of space within an existing facility on land that is subject to a Lease;

U. "Sublease" means a written agreement by which a Lessee grants to another the right to possession of property covered by a Lease, which right may be no greater than that held by the Lessee;

V. "Tribal Land" means the surface estate of any tract of land, which estate is owned by Osage Nation in trust or restricted status, and includes such lands reserved for BIA administrative purposes; and

W. "Trust Land" means any tract of land owned by the United States and held in trust for the benefit of the Osage Nation.

SUBCHAPTER 2. LEASE REQUIREMENTS

SECTION 4. TERMS AND CONDITIONS

A. Leases shall be governed by terms and conditions as required by this Act and as set forth in the approved Lease and not inconsistent with Osage Nation law. The terms and conditions may be modified only with the approval of the Director.

B. Leases shall contain a provision that a Lessee, by signing a Lease, consents to the jurisdiction of the Osage Nation and to the application of the laws of the Osage Nation in dealing with all issues arising out of or concerning the Leases.

SECTION 5. DURATION AND RENEWAL

A. Unless otherwise stated in the Lease, no Lease shall be approved more than 12 months prior to the commencement of the term of the Lease.

B. The term of a Lease may not be more than 25 years except it may include an option for Lessor and Lessee mutually to agree upon renewal for up to 2

185 additional terms, neither of which may exceed 25 years, unless the Lease is
186 expressly for and limited to religious, educational, recreational, cultural, or other
187 public uses, in which case the term of the Lease may be for up to, but not in
188 excess of, 75 years.
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- 190 C. Renewal of a Lease for an additional term shall not be automatic. The process for
191 renewal shall be described in the Lease itself and at a minimum requires a written
192 notice to Lessor by Lessee of its intent to exercise its option to renew. The process
193 may also provide Lessor with the option to accept, reject, or negotiate new terms
194 for the renewal. For a Lease with longer than a 5-year term, the written notice
195 must be given no less than one year before the Lease is due to expire.
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197 SECTION 6. OBTAINING A LEASE

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- 199 A. Information on obtaining a Lease shall be available from the Director.
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201 B. An applicant for a Lease shall submit the following documents to the Director:
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203 1. Financial statement;
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205 2. Site survey and legal description, as required herein;
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207 3. Tribal environmental review, as required herein; and
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209 4. Other documents as may be required by the Director and the Lease
210 management plan.
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212 C. A Lease shall contain, at a minimum, the following provisions:
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214 1. The tract, location, or parcel of land being leased;
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216 2. Its purpose and authorized uses of the leased premises;
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218 3. The names and addresses of the parties to the Lease;
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220 4. The term of the Lease;
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222 5. The effective date of the Lease;
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224 6. Identification of the party responsible for constructing, owning, operating,
225 maintaining, and removing any improvements to the leased premises;
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227 7. Indemnification of the United States and Lessor;
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229 8. Payment requirements, including provisions regarding the dates by which
230 all payments are due, late payments, penalties, and interest;

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9. Due diligence, insurance, and bonding requirements as provided in this Act, and as may be required by the Lease Management Plan, as described in Subchapter 3, Section 1;
 10. The requirement that Lessee shall make payments directly to the Director, and the specification of the method of payment required and acceptable; and
 11. A provision stating that, by executing the Lease, the Lessee stipulates and consents to the jurisdiction of the Courts of the Osage Nation for purposes of adjudicating any disputes or claims arising under the Lease or from the activities of the Lessee or the Lessee's employees on the leasehold premises, unless the provisions of this subparagraph 11 have been expressly waived for the particular Lease by way of a duly adopted resolution of the Osage Congress, signed by the Principal Chief, that identifies the specific Lease and the Lessee by name.
- D. A Lease may include a provision to give preference in hiring to members of the Osage Nation, consistent with Osage Nation law.
- E. The Director may require additional information and documents and time to assist in making a Leasing Decision. Such additional information and documentation may include (but is not limited to) information regarding business organization and management, archeological reports, cultural and demographic studies, restoration and/or restoration plans, and proof of due diligence performed.
- F. Nothing in this section waives the sovereign immunity of the Osage Nation or any of its agencies or offices.

261 SECTION 7. RECORDS

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- A. The Director shall deliver all Leasing Documents to the appropriate BIA Realty Officer or, if and when authorized, Tribal Realty Officer for encoding and subsequent delivery to the BIA's Land Titles and Records Office for recording.
 - B. The Director is responsible for maintaining files and records related to all Leases and for disseminating such documents to the Osage Nation executive, legislative, and judicial offices, as necessary. Records so collected, filed, received, and maintained are the property of the Osage Nation.
 - C. Records that relate to Leases that are collected, filed, received, and maintained by the BIA are the property of the United States.

277 **SECTION 8. REVIEW AND APPROVAL**

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279 All Leases and all Leasing Documents shall be reviewed by the Director and approved
280 pursuant to this Act in order to be valid.

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282 **SECTION 9. LAND DESCRIPTIONS**

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284 A Lease shall contain site surveys and adequate legal descriptions based on metes and
285 bounds, rectangular or lot and block systems, or other means reasonably calculated to indicate
286 the size and location of the premises being leased. Space Leases shall contain adequate
287 descriptions of the underlying Lease, location and square footage of the space being leased, and
288 may include renderings, architectural drawings, or other schematics to illustrate the location of
289 the space.

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291 **SECTION 10. FAIR MARKET RENTAL; APPRAISAL**

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293 A. The Fair Market Rental shall be determined by an appraisal or equivalent
294 procedure performed by the Director, or his or her designee, using the following
295 data: improvement cost, replacement cost, earning capacity, sales and lease data
296 of comparable sites, or similar methodology approved by the Director and deemed
297 to be in the Best Interest of the Osage Nation.
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299 B. Alternatively, the Fair Market Rental shall be determined by an appraisal
300 performed by a licensed appraiser using the Uniform Standards of Professional
301 Appraisal Practice or another commonly accepted method of appraisal.
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303 C. An appraisal log, in a form approved by the Director, describing the method of
304 appraisal and value of the Restricted or Trust Land shall be attached to every
305 Lease application.
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307 D. No Lease shall be approved for less than the present Fair Market Rental as set
308 forth in the appraisal, except if:
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310 1. The Lease is in the Development Period;
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312 2. The Osage Nation intends to provide an incentive in the form of
313 concessions, improvement credits, and rental abatements to attract a
314 business to locate on Osage Nation lands;
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316 3. The Director determines that accepting less than Fair Market Rental is in
317 the Best Interest of the Osage Nation; or
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319 4. The Lease is for a religious, educational, recreational, cultural, or other
320 public purpose.
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- 322 E. A Lease may be structured at a flat rental rate, a flat rental rate plus a percentage
323 of gross receipts, or based on a percentage of gross receipts or other market
324 indicator
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326 F. All Leases must provide for periodic rental rate reviews occurring not less than
327 once every 5 years; provided that, Leases for five years or less are not subject to
328 this provision.
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330 G. Leases shall be structured to allow for rental rate adjustments. Leases shall
331 specify how adjustments shall be made, when adjustments will go into effect, and
332 how disputes shall be resolved.
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334 H. Economic conditions, exclusive of improvement or development required by the
335 contract or the contribution value of such improvements, may be considered
336 during periodic reviews and adjustment of the rental rate.
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338 I. Unless otherwise provided in the Lease, rental payments may not be made or
339 accepted more than one year in advance of the due date.
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341 J. The Director shall keep written records of the basis used in determining the Fair
342 Market Rental, as well as the basis for adjustments. These records shall be
343 included in the Osage Nation Lease records file.
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345 **SECTION 11. INSURANCE**
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- 347 A. A Lessee shall provide the insurance necessary and in amounts sufficient to
348 protect the interests of Lessor and all insurable improvements on the premises.
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350 B. The insurance may include, but is not limited to, property, liability, or casualty
351 insurance, or other insurance as may be required by the Lease.
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353 C. The Lessor and the United States must be identified as additional insured parties.
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355 D. The Osage Nation Congress may waive these insurance requirements if the
356 waiver is in the Best Interest of the Osage Nation. The waiver may be revoked at
357 any time if the waiver ceases to be in the Best Interest of the Osage Nation.
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359 **SECTION 12. PERFORMANCE BOND**
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- 361 A. Unless waived in writing by the Osage Nation Congress in accordance with this
362 Act, Lessee shall obtain a satisfactory performance bond in an amount sufficient
363 to secure the contractual obligations of the Lease. Such bond shall be for the
364 purpose of securing Lessee's contractual obligations under the Lease and may
365 guarantee:
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367 1. The annual rental payment under the Lease;

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2. The estimated development cost of improvements; and
 3. Any additional amount necessary to ensure compliance with the Lease and restoration/reclamation of the leased premises.
- B. The Osage Nation Congress may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Nation. The Director shall maintain written records of waivers and reductions.
- C. The performance bond may be in one of the following forms:
1. Certificate of deposit issued by a federally-insured financial institution authorized to do business in the United States;
 2. Irrevocable letter of credit issued by a federally-insured financial institution authorized to do business in the United States;
 3. Negotiable security issued by the U.S. Department of the Treasury; or
 4. Surety bond issued by a company approved by the U.S. Department of the Treasury.
- D. If a certificate of deposit, letter of credit, negotiable security, or any combination thereof is used to ensure performance, Lessee must enter into a written surety agreement with the Osage Nation, which agreement shall establish the written procedures to be followed if Lessee defaults in any payment or performance requirements under the Lease.

397 **SECTION 13. IMPROVEMENTS**

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- A. A Lease shall require Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Lease.
- B. Lessee, at Lessee's expense or as otherwise provided in the Lease, may construct improvements under a Lease if the Lease specifies, or provides for, the development of:
1. A plan that describes the type and location of any improvements to be built by Lessee; and
 2. A general schedule for construction of the improvements.

- 412 C. Lessee shall provide the Director written justification as to the nature of any
413 delay, the anticipated date of construction of the improvements, and evidence of
414 progress toward commencement of construction.
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416 D. When requested by the Director or otherwise required in the Lease, Lessee shall
417 provide to the Director, in writing, an updated schedule for construction.
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419 E. Failure of Lessee to comply with these requirements will be deemed a violation of
420 the Lease and may lead to cancellation or termination of the Lease pursuant to this
421 Act.
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423 F. Upon cancellation or termination of a Lease, improvements to the premises shall
424 become the property of the Osage Nation unless otherwise provided for in the
425 Lease. If improvements are permitted or required to be removed, the Lease may
426 specify the maximum time allowed for such removal.
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428 G. If specified in a Lease, a Lessee may develop equity value in the improvements
429 and sell its interest in the improvements based on such value, provided that the
430 Osage Nation is given a right of first refusal to purchase such interest.
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432 H. A Lease may provide that, at its expiration, Lessor may purchase improvements to
433 the premises at fair market value.
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435 I. Unless allowed or required by applicable law, no fee, tax, assessment, levy or
436 charge imposed by a state or political subdivision shall apply to permanent
437 improvements, activities under a Lease, or leasehold or possessory interests on
438 Tribal Lands, provided that the Osage Nation may impose its own taxes or other
439 charges on the same.
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441 **SECTION 14. AMENDMENTS, ASSIGNMENTS, SUBLEASES AND LEASEHOLD MORTGAGES**
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- 443 A. Amendments, Assignments, and Subleases affecting any Lease may be made only
444 with the written consent of the Director and Lessee, unless otherwise provided
445 herein.
446
447 B. A Lease may authorize the execution of amendments, Subleases, and
448 Assignments, in whole or in part, without approval from the Director, provided
449 that a copy of the amendment, Sublease, or Assignment is provided to the
450 Director upon execution and the following conditions, if applicable, are stated in
451 the Lease and are met and certified by Lessee:
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453 1. No event of default exists under the Lease or in violation of this Act;
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455 2. Any restrictions and use limitations on the use of the premises shall
456 continue to apply to any assignee or sublessee;
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458 3. The assignee or sublessee submits a current financial statement showing
459 financial adequacy; and

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461 4. The assignee or sublessee agrees in writing to be bound by all terms and
462 conditions of the Lease.

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464 C. A Lease may authorize the Lessee to grant a Leasehold Mortgage of the Lessee's
465 leasehold interest, for the purpose of financing improvements to the premises,
466 subject to the written approval of the Leasehold Mortgage by the Osage Nation
467 Congress or its designee.

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469 D. If a sale or foreclosure of Lessee's business or assets that include the leasehold
470 interest occurs and the mortgagee is also the purchaser, the mortgagee may assign
471 the Lease without approval of the Director, provided the assignee agrees in a
472 writing, delivered to the Director, to be bound by all the terms and conditions of
473 the Lease, including but not limited to any bonding and insurance requirements of
474 the Lease, together with evidence that the assignee has met the bonding and
475 insurance requirements, prior to taking possession of the premises. If the
476 purchaser is a party other than the mortgagee, prior written approval by the Osage
477 Nation Congress or its designee is required, and the purchaser must agree in
478 writing to be bound by all terms and conditions of the Lease, including but not
479 limited to any bonding and insurance requirements of the Lease, together with
480 evidence that the assignee has met the bonding and insurance requirements.
481 Failure to furnish the evidence of bonding or insurance required by this paragraph
482 or to obtain the required approval of the Osage Nation Congress or its designee
483 shall be a violation of the Lease and a trespass by the purchaser if the purchaser
484 enters upon or occupies the premises of the Lease.

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486 **SUBCHAPTER 3: LEASE MANAGEMENT**

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488 **SECTION 15. MANAGEMENT**

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490 A. Except where required otherwise by agreement or applicable law, the Director
491 shall manage all Leases pursuant to this Act.

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493 B. The Director shall develop a Lease Management Plan that establishes real estate
494 management practices, and addresses the details, requirements, and guidelines for
495 accounting, collections, monitoring, enforcement, relief, and remedies.

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497 **SECTION 16. ADMINISTRATIVE FEES**

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499 The Director may charge administrative fees for costs associated with the review,
500 maintenance, and recording of Leasing Documents.

SUBCHAPTER 4: ENFORCEMENT

SECTION 17. GENERAL PROVISIONS - ENFORCEMENT

The Director shall have all powers necessary and proper to make Leasing Decisions and to enforce Lease terms, laws, regulations, rules, policies, and covenants, consistent with the Lease Management Plan; to enter the premises at a reasonable time, with or without notice; and to assess late payment interest and penalties.

SECTION 18. DEFAULT

A. If the Director determines a Lessee is in default under the Lease—

1. The Director shall send the Lessee a notice of default within a reasonable time thereafter;
2. The notice of default shall be given in accordance with this Act, unless otherwise provided in the Lease, and must be provided by personal delivery (and an affidavit of the details of the delivery) or certified mail, return receipt requested; and
3. A copy of the notice of default shall be sent by certified mail to any holder of a Leasehold Mortgage and any surety or performance bond issuer under Section 12.

B. Within ten (10) days of receipt of the notice of default, Lessee shall—

1. Cure the default and notify the Director, in writing, that the default has been cured;
2. Dispute the Director's determination that the Lease is in default and explain why the Lease should not be cancelled; or
3. Request additional time to cure the default.

SECTION 19. REMEDIES

A. If Lessee fails to cure the default within the prescribed period, the Director may—

1. Cancel the Lease pursuant to the Lease terms or this Act;
2. Grant an extension of time in which to cure the default;
3. Pursue other remedies, including execution of bonds or collection of insurance proceeds;

- 550 4. Pursue any combination of remedies listed above; or
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552 5. Pursue any other remedy set forth in the Lease Management Plan or
553 policy.
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555 B. If the Director fails to exercise any right, power, or remedy accruing under a
556 Lease or this Act, such failure shall not impair such right, power, or remedy, nor
557 shall it be construed to be a waiver of or acquiescence in a breach of or default
558 under the Lease. .
559
560 C. If the Director elects to cancel a Lease, the Director shall send a notice of
561 cancellation to Lessee in accordance with the terms of the Lease. The dated
562 cancellation letter must be sent to Lessee by certified mail, return receipt
563 requested. The cancellation letter shall—
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565 1. Explain the grounds for cancellation;
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567 2. Notify Lessee of unpaid amounts, interest charges, late payment penalties,
568 or other amounts due under the Lease;
569
570 3. Notify Lessee of its right to appeal; and
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572 4. Order Lessee to vacate the premises within 30 days of mailing of the
573 cancellation letter, if an appeal is not filed by that time.
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575 D. A notice of cancellation of the Lease shall become effective 31 days after its
576 mailing date. The filing of an appeal shall not change the effective date of the
577 cancellation but will allow the Lessee continued occupancy during the pendency
578 of the appeal. Pending the outcome of an appeal, Lessee must make all required
579 payments and comply with all the terms of the Lease.
580
581 E. If the Director elects to grant an extension of time in which to cure a default,
582 Lessee shall proceed diligently to perform and complete the corrective actions
583 within the time extension period.
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585 SECTION 20. PENALTIES

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587 A Lease shall specify the rate of interest to be charged if the Lessee fails to make
588 payments in a timely manner, and shall identify additional late payment penalties. Unless the
589 Lease provides otherwise, interest charges and late payment penalties shall apply in the absence
590 of any specific notice to the Lessee from the Director, and the failure to pay such amounts will
591 be considered as a violation of the Lease.
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596 **SECTION 21. HARMFUL OR THREATENING ACTIVITIES**

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598 If a Lessee or other party causes or threatens to cause immediate and significant harm to
599 the premises, or undertakes criminal activity thereon, the Director may take appropriate
600 emergency action to mitigate harm or curtail criminal or harmful activity.
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602 **SECTION 22. HOLDOVER**

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604 A Lessee remaining in possession of Tribal Land after the expiration or cancellation of a
605 Lease shall be deemed in trespass. The Director may take any lawful action to recover possession
606 and pursue additional remedies or damages under Osage Nation law. The Director may make a
607 written request sent by certified mail to the BIA for resolution under any applicable federal laws.
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609 **SECTION 23. TRESPASS**

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611 The Director may pursue any lawful remedy, including criminal trespass, to eject anyone
612 trespassing on or occupying Tribal Land without permission.
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614 **SECTION 24. BIA AUTHORITY UNAFFECTED**

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616 Nothing in this Act shall be deemed to limit the authority of the BIA, at its discretion, to
617 enforce provisions of, or cancel with cause, a Lease granted under this Act, in accordance with
618 25 U.S.C. 415(h)(7)(B).
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620 **SUBCHAPTER 5: APPEALS**

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622 **SECTION 25. APPEALS**

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624 A Lessee or an interested party may appeal a determination of the Director within thirty
625 (30) days of the determination. Appeals shall be filed with the Osage Nation Tribal Court and
626 pursuant to its rules. Exhaustion of the remedies available under this Subchapter is required in
627 accordance with 25 U.S.C. 415(h)(8)(A), as added by the HEARTH Act, Pub. L. 112-151, 126
628 Stat. 1150 (July 30, 2012).
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630 **SECTION 26. SCOPE OF REVIEW**

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632 The Osage Nation Tribal Court shall uphold the Director's determination unless it was
633 arbitrary, capricious, or an abuse of discretion; unsupported by substantial evidence in the
634 record; or otherwise not in accordance with applicable law. The decision of the Tribal Court shall
635 be final.
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642 **SUBCHAPTER 6: ENVIRONMENTAL REVIEW PROCESS**

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644 **SECTION 27. GENERAL PROVISIONS – ENVIRONMENTAL REVIEW**

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646 A. The Department of Environmental and Natural Resources, or successor agency,
647 shall perform the Environmental Review Process.
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649 B. The Director shall not approve a Lease until the Department of Environmental
650 and Natural Resources has completed the Environmental Review Process
651 pursuant to this Act and applicable Osage Nation regulations, unless the Lease is
652 determined to be exempt from such process under section 28. Any Lease, even if
653 approved and executed, shall be null and void if it has not been issued in full
654 compliance with this section.
655
656 C. If the Environmental Reviewer determines that a proposed Lease is subject to the
657 Environmental Review Process, the Director may not issue a Leasing Decision
658 until the Environmental Reviewer closes the Environmental Review Process in
659 accordance with applicable Osage Nation regulations.
660

661 **SECTION 28. THRESHOLD DETERMINATION; EXEMPTION**

- 662
663 A. Lease Subject to Environmental Review Process: If the Environmental Reviewer
664 determines that a proposed Lease or Project is reasonably anticipated to have a
665 Significant Effect on Tribal Land (such as land clearing, new building
666 construction, or discharge of emission or effluent associated with site
667 development) or a significant change in the human environment, the proposed
668 Lease or Project shall be subject to the requirements of the Environmental Review
669 Process set forth in section 29.
670
671 B. Lease Exempt from Environmental Review Process of Section 29:
672
673 1. The Leasing Decision may determine that a proposed Lease or Project is
674 exempt from additional requirements of the Environmental Review
675 Process if the Environmental Reviewer, after reviewing the proposed
676 Lease or Project and considering the activities that will be carried out
677 under such Lease or Project, determines as a threshold matter that the
678 proposed Lease or Project by its nature will not have a Significant
679 Environmental Impact on Tribal Land or is otherwise subject to an
680 exemption under paragraph 2.
681
682 2. The Leasing Decision may determine that a proposed Lease or Project is
683 exempt from the Environmental Review Process of Section 29 if the
684 Environmental Reviewer, in his or her discretion, determines that—
685
686 a. No significant change in use will result from the proposed Lease or
687 Project;

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- b. The site was the subject of an Environmental Review Process within the previous twenty-four months for a substantially similar Lease;
 - c. The site is within the footprint of an existing site for which an Environmental Review Process was already conducted (for example, a Space Lease); or
 - d. Based on an environmental assessment of the activities under the proposed Lease or Project requested by the Environmental Reviewer in his or her discretion, any effects of the activities, either after mitigation or without mitigation if none is required, will be so de minimis that they will have no Significant Effect on the Environment. The environmental assessment relied on under this subparagraph d. shall be posted on the Osage Nation website not less than 10 days before the issuance of the Leasing Decision and finding of no Significant Effect.
3. Any Leasing Decision and finding of no Significant Effect made pursuant to subparagraph 2(d) of this subsection (B) shall be posted on the Osage Nation website not less than thirty (30) days before the effective date of the Lease.

712 **SECTION 29. ENVIRONMENTAL REVIEW PROCESS**

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- A. Absent a determination that a proposed Lease or Project is exempt under Section 28.B.1. or B.2., the Department of Environmental and Natural Resources shall cause to be prepared a draft Environmental Impact Report (EIR), analyzing the potentially significant effects of the proposed Lease or Project on the environment and lands under the jurisdiction of the Osage Nation.
 - B. The draft EIR shall provide detailed information about the Significant Effect on the Environment that the proposed Lease or Project is likely to have and shall include a detailed statement setting forth the following—
 - 1. A description of the physical environmental conditions in the vicinity of the Lease or Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;
 - 2. All likely Significant Effects on the Environment of the proposed Lease or Project, giving due consideration to short- and long-term effects;
 - 3. In a separate section—

- 733 a. Any Significant Effect on the Environment that cannot be avoided
734 if the Lease is executed as proposed;
735
736 b. Any Significant Effect on the Environment that would be
737 irreversible if the Lease were to be executed as proposed; and
738
739 c. Any mitigation measures proposed, recommended, or required.
740

- 741 C. The draft EIR shall state the reasons for any determination of effects, or lack
742 thereof, of the proposed Lease activities on the environment beyond the
743 jurisdiction of the Osage Nation, including those that are not significant and,
744 consequently, are not discussed in detail in the draft EIR.
745

746 **SECTION 30. NOTICE OF COMPLETION OF DRAFT EIR**
747

- 748 A. Within thirty (30) days following completion of the draft EIR, the Department of
749 Environmental and Natural Resources shall file a copy of the draft EIR and a
750 Notice of Completion with the Director, and post a copy of the draft EIR and the
751 Notice of Completion on the Osage Nation's website. The Notice of Completion
752 shall include all of the following information—
753

- 754 1. A brief description of the proposed Lease or Project;
755
756 2. The proposed location of the Lease or Project;
757
758 3. Where copies of the draft EIR are available; and
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760 4. Notice of a comment period of 30 days during which the Department of
761 Environmental and Natural Resources may receive comments from the
762 Public on the draft EIR.
763

- 764 B. To satisfy the notice and comment requirement under 25 U.S.C. §415(h)
765 regarding the draft EIR, the Department of Environmental and Natural Resources
766 shall provide notice to the Public by—
767

- 768 1. Publishing the draft EIR in a newspaper of general circulation in the area
769 affected by the proposed Lease, with notice to the Public of the
770 opportunity to comment on any significant effect on the environment.
771
772 2. Posting the draft EIR in the offices of the Osage Nation and the
773 Department of Environmental and Natural Resources with notice to the
774 Public of the opportunity to comment on any significant effect on the
775 environment.
776

777 **SECTION 31. RESPONSE TO PUBLIC COMMENTS**
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- 779 A. At the close of the thirty (30) day comment period, the Department of
780 Environmental and Natural Resources shall review the comments received from
781 the Public.
782
- 783 B. Within thirty (30) days after the close of the comment period, the Department of
784 Environmental and Natural Resources shall incorporate in the final EIR any
785 relevant and substantive comments of the Public and the Department's written
786 responses addressing any significant effect on the environment arising as a result
787 of the proposed Lease or Project, including proposed or recommended mitigation
788 measures.
789
790

791 **SECTION 32. FINAL EIR**
792

- 793 A. The Department of Environmental and Natural Resources shall file a copy of the
794 final EIR and a Notice of Completion with the Director and post the Notice of
795 Completion and a copy of the final EIR on the Osage Nation's website.
796
- 797 B. The Director shall consider the final EIR and the terms of the proposed Lease or
798 Project and, upon finding that such proposed Lease or Project is in the Best
799 Interest of the Osage Nation, may approve the Lease or Project.
800

801 **SUBCHAPTER 7: SOVEREIGN IMMUNITY**
802

803 **SECTION 33. NO WAIVER OF SOVEREIGN IMMUNITY**
804

805 Nothing in this Act shall be deemed a waiver of the sovereign immunity of the Osage
806 Nation or any Osage Nation enterprise, authority, department, commission, or board, or their
807 respective officers, agents, or employees, and such immunity is specifically asserted.
808

809 **SUBCHAPTER 8: CHOICE OF LAW**
810

811 **SECTION 34. CHOICE OF LAW**
812

813 Disputes arising under this Act or under a Lease or other Leasing Document governed by
814 this Act shall be resolved under the laws of the Osage Nation, to the extent that they do not
815 conflict with federal law.
816

817 **SUBCHAPTER 9: AMENDMENT; EFFECTIVE DATE**
818

819 **SECTION 35. AMENDMENT**
820

821 Any substantive amendment to this Act shall be submitted to and approved by the U.S.
822 Department of the Interior prior to its becoming effective.
823
824

825 **SECTION 36. ONCA 15-32 SUPERCEDED**

826
827 All previous Acts of the Osage Nation Congress inconsistent with the law herein are
828 superseded.
829

830 **SECTION 37. EFFECTIVE DATE**

831
832 This Act shall take effect upon its adoption by the Osage Nation Congress, upon the
833 signature of the Principal Chief or upon the signature of the Speaker of the Osage Nation
834 Congress following legislative override, and approval by the U.S. Department of the Interior.
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844 ENACTED by the Osage Nation Congress on this 6th day of December, 2016.
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847 IN WITNESS WHEREOF, the Speaker of the Osage Nation Congress has
848 hereto attached her signature.
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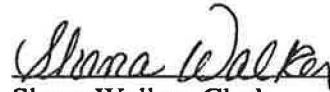
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853 Angela Pratt, Speaker
854 Osage Nation Congress
855

856 I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING IS A TRUE EXTRACT
857 FROM THE MINUTES OF THE Osage Nation Congress comprised of twelve members and one
858 ex-officio member with 11 members attending this meeting on the 6th day of December, 2016,
859 and that the above is in conformity with the provisions therein adopted by a vote of 6 in favor, 5
860 against, and 1 absent.
861

862	Alice Buffalohead	no
863	Shannon Edwards	no
864	Otto Hamilton	yes
865	John Maker	yes
866	Archie Mason	yes
867	James Norris	absent
868	Angela Pratt	yes
869	Ron Shaw	yes
870	William Supernaw	no

871 Joe Tillman no
872 R.J. Walker yes
873 Maria Whitehorn no
874

875 Said bill has not been rescinded or amended in any way and the above is the
876 signature of the Speaker of the Osage Nation Congress.
877

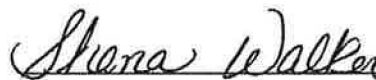
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880 Shana Walker, Clerk
881 Osage Nation Congress
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889 **EFFECTIVE DATE CERTIFICATION**
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891 I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING EFFECTIVE DATE
892 was approved by a two-thirds vote of the Osage Nation Congress in accordance with the
893 Constitution of the Osage Nation Article VI, Section 13. This provision was adopted by a vote
894 of 11 in favor, 0 against, 0 abstentions, and 1 absent.
895

896 Alice Buffalohead yes
897 Shannon Edwards yes
898 Otto Hamilton yes
899 John Maker yes
900 Archie Mason yes
901 James Norris absent
902 Angela Pratt yes
903 Ron Shaw yes
904 William Supernaw yes
905 Joe Tillman yes
906 R.J. Walker yes
907 Maria Whitehorn yes
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910 Shana Walker, Clerk
911 Osage Nation Congress
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APPROVAL

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I, the Principal Chief of the Osage Nation, hereby affix my signature this 9th day of December, 2016, to the above Bill No. ONCA 17-01 authorizing it to become a law under the Constitution of the Osage Nation.



Geoffrey M. Standing Bear, Principal Chief
Osage Nation