

Re: Section 28

DOCUMENT 3:

SENECA NATION - CITY OF SALAMANCA

JOINT LEASING COMMISSION

Introduction

This document accompanies and is an integral part of the Agreement between the Seneca Nation of Indians and the City of Salamanca ("Agreement"). This document describes the composition, powers, and responsibilities of an administrative body established to compute rent under the leases, and perform other administrative functions, and establishes an arbitration procedure to resolve issues that may arise under the leases.

A. Commission Established. There is hereby established the Seneca Nation-City of Salamanca Joint Leasing Commission [hereinafter referred to as the Commission], which shall exercise powers and responsibilities as set forth in this Document.

B. Membership.

1. The Commission shall consist of five members. Two members shall be appointed by the Council of the City of Salamanca [hereinafter referred to as the City]. The compensation and expenses of the City's members shall be paid by the City. Two members shall be appointed by the Council of the Seneca Nation of Indians [hereinafter referred to as the Nation]. The compensation and expenses of the Nation's members shall be paid by the Nation. The fifth member shall be selected by agreement of the other four members. The compensation and expenses of that member and all other expenses of the Commission shall be shared equally by the

1 City and the Nation. Each member duly appointed or selected shall
2 hold office for a term of six years, and for so long thereafter
3 until a successor shall be appointed or selected, unless earlier
4 removed. The initial terms of each member shall be staggered, with
5 one member serving a six-year term, one a five-year term, one a
6 four-year term, one a three-year term, and one a two-year term.
7 The initial term of each member shall be chosen by lot, or by any
8 other procedure agreed upon in writing by the first five members
9 of the Commission.

10
11 2. Should the four appointed members fail to agree within
12 sixty days of the effective date of this Document or within thirty
13 days after any vacancy occurs, on the selection of the fifth
14 member, the following procedure shall be utilized:

15
16 (a) Within five days the City appointees shall nominate
17 no more than five and no fewer than three persons
18 to serve as a member of the Commission and the
19 Nation appointees also shall nominate no more than
20 five and no fewer than three persons to serve as a
21 member of the Commission.

22
23 (b) Within fifteen days thereafter the City appointees
24 shall reject all but one of the persons nominated
25 by the Nation appointees and the Nation appointees
26 shall reject all but one of the persons nominated
27 by the City appointees.

28
29 (c) The American Arbitration Association shall select
30 the fifth member of the Commission from the
31 remaining two nominees.

32
33 3. The removal of the members of the Commission appointed by
34 the Nation shall be governed by and subject to the laws of the
35 Nation. The removal of members of the Commission appointed by the

1 City shall be governed by and subject to the laws of the City.
2

3 4. Vacancies on the Commission shall be filled by
4 appointment of a person to serve the unexpired term of the member
5 whose seat has become vacant. If a City appointee becomes unable
6 or unwilling to serve on the Commission or is removed by the City,
7 the Council of the City of Salamanca shall make the appointment
8 within thirty days. If a Nation appointee becomes unable or
9 unwilling to serve on the Commission or is removed by the Nation,
10 the Council of the Seneca Nation shall make the appointment within
11 thirty days. If the fifth member of the Commission becomes unable
12 or unwilling to serve on the Commission, the remaining members
13 shall fill the vacancy under the procedures set forth in paragraphs
14 1 and 2 of this section.
15

16 C. Quorum and Vote Required. Three members of the Commission
17 shall constitute a quorum if reasonable notice has been provided
18 in advance to the absent members. Meetings may be in person or,
19 in appropriate circumstances, by telephone. All meetings of the
20 Commission shall be held on the Allegany Reservation. All acts of
21 the Commission shall be by a majority of the Commission, shall be
22 in writing and, shall be delivered to the Nation, the City, and
23 such other persons or entities as the Commission may designate.
24

25 D. Authority of the Commission.
26

27 1. The Commission is authorized and directed:
28

29 (a) to compute the annual rental payment due for the
30 leases in accordance with Section II.B.3. of the
31 Agreement (hereafter the "annual rental payment")
32 and to apportion the annual rental payment between
33 the lessees collectively and the City of Salamanca
34 in accordance with Section II.B.5. of the Agreement.
35 The City shall make available to the Commission by

1 December 1 of each year all records, figures, and
2 dates within its possession necessary to make the
3 required computation.
4

5 (b) to notify the City annually by December 15 of each
6 year of the share of the annual rental payment
7 collectively owed by the lessees, and of the share
8 of the annual rental payment owed by the City in
9 accordance with Section II.B.5. of the Agreement.
10 The amounts so determined and provided to the City
11 shall be certified to the City by the Commission,
12 and unless disputed by the City within 10 days,
13 shall constitute the annual rental payment and the
14 apportionment thereof between the lessees
15 collectively and the City.
16

17 → (c) to verify and confirm annually the amount of the
18 annual rental payment which each individual lessee
19 will pay pursuant to the procedures used by the City
20 to determine said amount, which procedures shall be
21 provided to the Commission at least 60 days before
22 February 19 of each year. The Commission shall
23 certify such amounts to the City, and the City shall
24 then proceed to notify the lessees individually and
25 to collect said amounts from the lessees
26 individually under procedures approved by the
27 Commission.
28

29 (d) to perform other administrative tasks necessary for
30 administration of the leases, provided that the
31 Commission shall have no authority to exempt any
32 lessee from his or her share of the annual rental
33 payment.
34

35 2. The Commission is authorized:

D.2.

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(a) to adopt rules and regulations to govern its procedures and to carry out its responsibilities under this Document and the Agreement. Such rules and regulations must be consistent with all provisions of the Agreement, this Document, and all federal legislation. All records of the Commission shall be open to public inspection except for privileged information.

(b) to employ or seek assistance of such clerical or other personnel and establish such offices as it deems necessary for the performance of its functions according to the Agreement and this Document. Pending the establishment of a principal office, the Commission's office shall be located at such location convenient to the Commission and the parties as the Commission may designate.

(c) To submit an annual budget, which shall be subject to approval by the City and the Nation. The Nation and the City shall each provide fifty percent of the funds budgeted for the operations of the Commission.

E. Dispute resolution; arbitration.

1. The Nation, the City and the lessees shall attempt to resolve any dispute that arises under the lease terms or under provisions in the Agreement relating to lease terms or lease administration by good faith negotiations. The Commission may mediate such disputes if authorized to do so by the rules and regulations adopted pursuant to Section D.2 (a) of this Document.

2. If after 15 days of negotiations, and at the end of such period of time as the Commission may establish for mediation, a

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1 dispute remains, the Nation, the City or any individual lessee who
2 believes that any other of these persons or entities has failed to
3 comply fully with any lease term or any provision in the Agreement
4 relating to lease terms or lease administration, may file a
5 complaint with the Commission initiating binding arbitration under
6 the procedures set forth in this Section. The arbitration panel
7 selected shall have exclusive jurisdiction to resolve, through a
8 process of binding arbitration, any and all disputes and issues
9 arising under the lease terms or under provisions in the Agreement
10 relating to lease terms or lease administration, which arbitration
11 shall be the exclusive means of resolving such disputes, provided
12 that the legal positions reserved under Section VII of the
13 Agreement shall not be subject to arbitration. Matters subject to
14 arbitration shall include but are not limited to all disputes
15 concerning rental payments, and all disputes concerning compliance
16 with the terms set out in Document 2 of the Technical Documents,
17 provided, however, that if the Nation receives from the City the
18 total annual rental payment, then the Nation shall have no recourse
19 against any individual lessee for failure to make rental payments,
20 and in such case, the City shall have the exclusive right to seek
21 redress from any defaulting lessee. However, if the City does not
22 pay the lessees' full share, then the Nation may seek redress
23 against the City, any defaulting lessees, or both.

24

25 3. Arbitration initiated under this section shall take place
26 under the following procedures. A panel of arbitrators consisting
27 of three members shall be appointed. One member shall be appointed
28 by the Nation and one member shall be appointed by the person or
29 entity filing the arbitration complaint ("complainant"), or if the
30 Nation files the complaint, by the person or entity against whom
31 the complaint is filed ("respondent"), each to be appointed within
32 five days of the filing of the complaint initiating arbitration.
33 The third member shall be selected by agreement of the other two
34 members. In the event the two members cannot agree upon the third
35 arbitrator within ten days, the third arbitrator shall be chosen

1 by the American Arbitration Association. The compensation and
2 expenses of the Nation's appointee shall be paid by the Nation.
3 The compensation and expenses of the complainant's or respondent's
4 appointee, as the case may be, shall be paid by the complainant or
5 respondent. The compensation and expenses of the third arbitrator
6 and all other expenses of arbitration shall be shared equally by
7 the Nation and the complainant or respondent. The City shall have
8 the right to intervene as a party in all arbitration proceedings
9 in which the lessee is the complainant or respondent. //

10

11 4. Meetings of arbitrators may be in person or, in
12 appropriate circumstances, by telephone. The arbitration panel may
13 consolidate proceedings presenting similar issues on motion of any
14 party, or on its own motion. All decisions of the arbitration
15 panel, shall be by majority vote, in writing and, together with any
16 dissenting opinions, shall be delivered to all parties to the
17 arbitration proceeding and to the parties to this Agreement.

18

19 5. The arbitration panel shall have the power to administer
20 oaths to witnesses, to take evidence under oath, and to issue
21 subpoenas to compel the attendance of witnesses or for the
22 production of books, records, documents and other evidence.

23

24 6. The arbitration panel shall hold hearings in proceedings
25 before it and shall give advance notice to the Seneca Nation, the
26 City of Salamanca, and all parties to any proceeding, personally
27 or by certified mail return receipt requested no fewer than five
28 days before any hearing. Appearance at a hearing waives such
29 notice. The arbitration panel may hear and determine the
30 controversy upon the evidence produced notwithstanding the failure
31 of a party duly notified to appear. The Nation, the City, and all
32 parties to the proceeding are entitled to be heard, to present
33 evidence material to the controversy, to cross-examine witnesses
34 appearing at the hearing, and to be represented by counsel at their
35 own expense. The arbitration panel shall decide matters submitted

1 to it within sixty days of the date on which the matter is deemed
2 under submission by the Commission.

3
4 F. Review and Enforcement of Arbitration Decisions.

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6 1. Decisions of the arbitration panel shall be effective
7 immediately, unless stayed for a period of time prescribed by the
8 arbitration panel. On application of a party within a reasonable
9 time, but in any event no more than ninety days after a decision
10 is rendered, the arbitration panel may modify or correct any
11 decision, and may make such modification or correction retroactive
12 to the date of the initial decision:

13
14 (a) where there was an evident material miscalculation
15 of the figures or any evident material mistake in
16 the description of any person, thing or property
17 referred to in the decision;

18
19 (b) where the decision is imperfect in a matter of form
20 not affecting the merits of the controversy; or

21
22 (c) where the decision requires clarification.
23

24 2. Any party to the arbitration proceeding may, within ten
25 days of any final decision, apply to the arbitration panel to
26 modify or set aside any aspect of the decision. Notice of such
27 application shall be served personally or by certified mail return
28 receipt requested upon all parties to the proceeding, the Clerk of
29 the Seneca Nation, and the Clerk of the Council of the City of
30 Salamanca. Any other party shall have ten days within which to
31 respond to the application. The arbitration panel shall act on
32 such application within ten days after a response is filed or, if
33 no response is filed, within fifteen days after the application is
34 filed. If the arbitration panel fails to act within the time
35 limitations set forth in this paragraph, the application shall be

1 deemed denied. The time for appeal provided in paragraph 3 of this
2 section shall not begin to run until the application is determined
3 as provided in this paragraph.

4
5 3. Any party before the arbitration panel may seek review of
6 any final decision by the arbitration panel only in the United
7 States District Court for the Western District of New York. Such
8 an appeal must be filed within thirty days of such decision. The
9 notice of appeal shall be filed with the Court and served
10 personally or by certified mail return receipt requested upon the
11 Clerk of the Nation, the Clerk of the Council of the City, the
12 arbitration panel, and all parties to the arbitration proceeding,
13 and all such persons and entities shall thereafter have the right
14 to participate in the appeal.

15
16 4. In any appeal, the arbitration panel's decision shall be
17 presumed to be valid, and may be vacated by the Court only on one
18 of the following grounds:

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20 (a) the decision was procured by corruption, fraud or
21 undue means;

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23 (b) there was evident partiality or corruption by the
24 arbitration panel, or by any member;

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26 (c) the arbitration panel was guilty of misconduct in
27 refusing to hear the dispute, or in refusing to hear
28 evidence pertinent and material to the controversy,
29 or any other clear misbehavior by which the rights
30 of any party have been substantially prejudiced;

31
32 (d) the arbitration panel exceeded its authority under
33 the terms of this Document; or

34
35 (e) the decision is arbitrary and capricious or contrary

1 to law.
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3 5. Unless an appeal is timely filed as provided in paragraph
4 3 of this section, any decision of the arbitration panel shall be
5 confirmed or enforced by the United States District Court for the
6 Western District of New York, on petition of the Nation, the City,
7 or any party to the arbitration proceeding in which the decision
8 was made.
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10 6. When a timely appeal is filed pursuant to paragraph 3 of
11 this section, or a petition to confirm or enforce is filed pursuant
12 to paragraph 5 of this section, the United States District Court
13 for the Western District of New York may order such temporary or
14 permanent relief as it considers just and proper.
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16 7. An appeal may be taken from any decision of the court in
17 which a timely appeal is filed pursuant to paragraph 3 of this
18 section, or in which a petition to confirm or enforce is filed
19 pursuant to paragraph 5 of this section, in the manner and to the
20 same extent as from orders or judgments of the Court in a civil
21 action.

1 8. In any appeal or petition to confirm or enforce the
2 arbitration panel's decision, the arbitration panel shall promptly
3 file with the Court the record of the arbitration proceedings.
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7 .SENECA NATION OF INDIANS
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10 By: 
11 President
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14 Date: 7-13-90
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18 CITY OF SALAMANCA
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21 By: 
22 Mayor
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25 Date: 7-12-90
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