

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. _____

Introduced by: _____

**AN ACT TO APPROVE RULES AND REGULATIONS OF THE
CHAMORRO LAND TRUST COMMISSION PURSUANT TO
SECTION 75107 OF CHAPTER 75, TITLE 21, GUAM CODE
ANNOTATED RELATIVE TO LEASES AND LICENSES FOR
COMMERCIAL USES.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Section 75107(f) of Chapter 75, Title 21, Guam Code Annotated authorizes the Chamorro Land Trust Commission to make rules and regulations relative to lease and license for commercial uses pursuant to the Administrative Adjudication Law.

Section 2. Notwithstanding any other provision of law, rule, regulation, and Executive Order, the rules and regulations for commercial uses, attached hereto as Appendix "A," are hereby approved by I Liheslaturan Guahan. The Rules and Regulations for Commercial Use shall be amendments to "The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission" adopted in Public Law 23-38.

Section 3. The Rules and Regulations contained in the Appendix and adopted by this Act shall not affect the provisions of the Chamorro Land Trust Act, Chapter 75 of Title 21, Guam Code Annotated. Any provision or application of these Rules and Regulations which conflicts with the Chamorro Land Trust Act or is held invalid shall be null and void. The invalidity of a provision or application shall not affect other provisions or applications of the Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of the Rules and Regulations are severable.

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2 **APPENDIX “A”**

3 **“Commercial Lease and License Program”**
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5 The following Section 6.9 is added to the “Senator Paul Bordallo Rules and Regulations
6 for the Chamorro Land Trust Commission” to read:
7

8 **Section 6.9. Commercial Lease and License Program: Purpose.**

9 The purpose of this part is to establish rules and regulations governing the announcement,
10 selection, negotiation, execution, administration, monitoring and modification of commercial
11 leases and licenses for real property owned and/or managed by the Chamorro Land Trust
12 Commission (CLTC). Commercial leases and licenses are intended for the highest and best use
13 of CLTC lands to provide necessary revenue to improve and enhance CLTC residential and
14 agricultural properties. Commercial leases and licenses are limited to CLTC real property made
15 available for this purpose, and that has been registered prior to being made available.
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17 **Section 6.9(a) Definitions**

- 18 **1. “Commercial Lease”** is a leasehold interest in real property between the
19 CLTC and a lessee/tenant for the commercial use of real property under the
20 management of the CLTC.
- 21 **2. “Commercial License”** is an agreement between the licensee and the CLTC
22 which permits certain activity to be conducted upon real property under the
23 management of the CLTC, but does not confer upon the licensee any title
24 or leasehold interest, and is terminable upon cessation of the approved
25 activity.
- 26 **3. “Commercial Use”** means a purpose that furthers the commercial, trade, or
27 profit interests of a Lessee or Licensee. Commercial use includes mineral
28 extraction for commercial purposes but does not include commercial
29 agriculture and aquaculture use which is addressed in Section 6.7
30 (Livestock and Crops) of The Senator Paul Bordallo Rules and Regulations

1 for the Chamorro Land Trust Commission. The appropriate regulatory
2 clearances will be required for all commercial uses of CLTC lands.

3 4. **“Tenant”** means an applicant who has been approved for either a lease or
4 license, and can also be referred to as a “Lessee” or “Licensee.”

5 5. **“Default Remedies”** are actions the CLTC Board of Commissioners may
6 direct the Administrative Director to take to resolve noncompliance issues
7 which may be actions up to and including termination of the lease or license.
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9 **Section 6.9(b) Board Authority.**

10 The Board of Commissioners of CLTC (the “Board”) shall be responsible for establishing the
11 policies and direction of the Commercial Lease and License Program (the “Program”). The
12 Administrative Director is directly responsible to the Board for the operation of the Program.
13

14 **Section 6.9(c) Available Property.**

15 Prior to any lease or license of CLTC real property for commercial use, the CLTC shall publish a
16 solicitation in a newspaper of general circulation, or through any methods of electronic publication
17 capable of providing notice to the general public of the opportunity to apply for available real
18 property under the Program. The CLTC may also accept from interested applicants alternative
19 proposals for lease or license of CLTC real property made available under the Program.
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21 **Section 6.9(d) Eligibility.**

22 Sole proprietorships, partnerships, corporations, limited liability companies, and limited liability
23 partnerships may submit a proposal to lease or license real property owned and/or managed by
24 CLTC. The owner(s) of a sole proprietorship, partnership, or limited partnership must be a
25 resident(s) of Guam. A corporation must be created under the laws of Guam or must be a duly
26 constituted “possession” corporation created under the laws of a state of the United States of
27 America and limited to doing its principal business in Guam. A limited liability company must be
28 created under the laws of Guam. The entity must possess a valid business license prior to executing
29 a lease and must demonstrate that its proposed use of CLTC property will satisfy CLTC’s statutory
30 objective of generating revenues for the programs administered by CLTC or such other objectives

1 as approved by the Board. Eligibility preference shall be granted to an entity whose owner or
2 company officer is a native Chamorro, as defined in 21 GCA, Chapter 75.

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4 **Section 6.9(e) Application Requirements.**

5 Each applicant is required to provide at a minimum, the following information:

- 6 1. Two (2) copies of the last three (3) most recent annual audited financial
7 statements if available;
- 8 2. A copy of the applicant’s current business license and other licenses or
9 permits required by Guam law;
- 10 3. Revenue projections for the first five (5) years of the lease or license, two
11 (2) copies of applicant’s corporate or formation documents (articles,
12 bylaws, partnership agreement, etc.);
- 13 4. Two (2) copies of the applicant’s preliminary business plan for the use of
14 the property, to include personnel requirements, capital improvements,
15 target market, financing source, and other information deemed pertinent by
16 CLTC;
- 17 5. A corporate resolution authorizing the submission of a proposal to lease or
18 license (if applicant is a corporation);
- 19 6. A qualitative description of its proposed use of the property and a
20 quantitative description of how the proposal will assist CLTC in achieving
21 its objectives;
- 22 7. The applicant shall also complete and sign all required forms, including: a)
23 Authorization to Release Information Form, which will be used to obtain
24 credit information from lenders, trade suppliers, customers, and other
25 similar sources; and, b) an Advanced Costs Form which contains the
26 applicant’s agreement to pay recoverable expenses.

27
28 **Section 6.9(f) Evaluation and Action.**

29 CLTC shall determine whether the applicant has submitted all required information and evaluate
30 proposals based on the extent to which the applicant’s proposal meets and exceeds CLTC

1 objectives as stated in the purpose herein. CLTC shall also conduct background checks of the
2 applicant using all possible sources as deemed necessary. Approval or denial of an application
3 shall be made by majority vote of the Board at a regularly called meeting.
4

5 **Section 6.9(g) Terms and Conditions of Lease or License Agreements.**

6 The following terms and condition shall apply to all agreements:

- 7 1. Rents shall be based upon fair market value as determined by the average
8 of two appraisals pursuant to Public Law 31-44. Immediately prior to
9 execution of a prospective lease or license, the applicant shall authorize
10 CLTC to employ one or two certified appraisers to appraise the value of the
11 available real property including any improvements thereon at the
12 applicant's expense. One appraisal may be selected by the CLTC, and the
13 second appraisal by the applicant. All costs for both appraisals shall be
14 borne by the applicant.
- 15 2. Fair market annual rent shall be no less than nine percent (9%) of the
16 original appraisal of fair market value. Rent shall escalate at five (5) year
17 intervals based upon original appraisals of fair market value, but in no event
18 shall rent be lower than the rent charged during the previous five (5) year
19 period.
- 20 3. The latest lease or license agreement executed by CLTC shall be used as the
21 model containing current requirements. All lease and license agreements
22 shall require tenants to have business insurance which indemnifies and
23 holds CLTC harmless; shall have tenants maintain storm water management
24 systems pursuant to generally accepted maintenance standards or as
25 required by applicable laws and government regulations; and shall require
26 the tenant to respond to CLTC requests for information on a timely basis.
27 All lease and license agreements shall require that any improvements made
28 to or upon the real property shall belong in title to the CLTC upon
29 termination or expiration of the lease or license, and that any removal
30 required by the CLTC of improvements or items remaining on the property

1 shall be the responsibility of the tenant at no cost to the CLTC.

- 2 4. All commercial tenants of CLTC shall be required to pay to CLTC a
3 negotiated amount of participation rent which is defined as a percentage of
4 the gross annual income derived from the use of the property.
- 5 5. Unless otherwise approved by the Board, the term of a lease or license shall
6 coincide with financing requirements for initial construction of
7 improvements. Tenants shall be afforded options to extend based upon the
8 demonstrated need for extensions and the extent to which CLTC objectives
9 will be achieved and shall notify CLTC of its intent to exercise its options
10 no later than ninety (90) days prior to the expiration of the lease or license.
11 Tenants shall not be given the right to extend options more than one (1) at
12 a time.
- 13 6. Payments shall be due monthly. Monthly rents can be paid in advance on a
14 different schedule with prior Board approval. Rental payments that are
15 unpaid greater than ninety (90) days shall be considered in non-compliance.
- 16 7. Land uses for properties under CLTC jurisdiction shall be utilized in a
17 manner consistent with the zoning category applicable to the property
18 pursuant to the zoning laws of Guam.
- 19 8. Tenants shall pay all taxes and assessments lawfully levied against the
20 leased premises and against any business conducted thereon or in
21 connection therewith. Tenant shall also pay all charges for utility services
22 furnished or provided to the leased premises.
- 23 9. Tenants shall pay for those expenses associated with the processing of
24 leases, amendments, assignments, estoppels, consents or other such
25 documents, including, but not limited to, attorneys' fees, appraisal fees, title
26 report fees, survey fees, credit report fees, recording fees, and
27 documentation fees but not including CLTC staff time. Payment of fees
28 shall be made prior to document recordation or pick up.
- 29 10. Applicants need not possess a Guam business license to submit a proposal
30 but must be licensed to do business in Guam prior to the execution of a lease

1 or license and all tenants must maintain a valid license to do business in
2 Guam during the term of their lease or license.

3 11. All activities on leased or licensed available real property shall be in
4 compliance and maintained in accordance with existing environmental
5 laws.

6 12. Tenants shall be required to prepare within one hundred twenty (120) days
7 after lease or license execution at their own expense, a Phase I
8 Environmental Site Assessment (ESA) of the leased property to serve as a
9 baseline. The complexity of the assessment shall be dependent of the
10 previous use of the property. The Phase I ESA shall be referenced in any
11 lease or license agreement for the property. Prior to the issuance or renewal
12 of any agreement, tenants or prospective tenants must conduct a Phase I
13 ESA of the site at tenant's expense.

14 13. At the end of the lease or license period, or upon termination, tenant shall
15 restore the land to baseline levels established at the start of their lease or
16 license, and shall bear all expenses relating to such restoration.

17 14. Failure to comply with environmental laws may be cause to terminate the
18 agreement.

19
20 **Section 6.9(h) Lease and License Approval.**

21 All fully completed applications meeting the requirements herein and all agreements derived from
22 eligible applications shall be presented to the Board for approval. Upon approval and execution
23 by all parties, three (3) original copies of the agreement shall be prepared, signed by the appropriate
24 parties and recorded with the Department of Land Management. Additionally, there will be two
25 (2) copies of the recorded document. One (1) recorded original is for CLTC; one (1) recorded
26 original for the tenant; one (1) recorded original along with one (1) recorded copy shall remain
27 with the Department of Land Management where the recorded original shall be permanently stored
28 and the recorded copy be made available as public record; and, one (1) recorded copy shall be
29 transmitted to the Department of Revenue and Taxation, Real Property Tax Division. All
30 agreements shall be executed by the CLTC Administrative Director, the Attorney General, and the

1 Governor.

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3 **Section 6.9(i) Amendments and Modifications.**

4 Except as modified by the sections below, all amendments and modifications to an agreement shall
5 be requested in writing by the tenant. The request shall state the nature of the amendment or
6 modification to the agreement, the consent of any financing institution if the premises were used
7 to secure financing, and the reasons for the request. Upon receipt of the written request from the
8 tenant, CLTC will acknowledge receipt of the request and if necessary provide tenant with a list
9 of additional information required by CLTC to evaluate the request within five (5) working days
10 from the date the request was received. CLTC staff will conduct a review and analysis of the
11 request and provide a recommendation for action by the Administrative Director or the Board as
12 necessary. Financial institutions must be provided with copies of approved amendments and
13 modifications, if estoppel, mortgage or other such agreements require the provision of such
14 documentation.

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16 **Section 6.9(j) Estoppel and Consents to Mortgage Buildings Only.**

17 Tenant may submit written requests for estoppel certificates, consents to mortgage or similar
18 requests for the purpose of securing financing. At a minimum, tenant must provide the following
19 information: purpose of the financing, a copy of the draft estoppel or consent to mortgage
20 document, a description of the financing arrangement, a copy of the real estate appraisal and other
21 related information. Tenants must be current on all rents to CLTC or must have an approved
22 payment plan prior to CLTC issuing any estoppel certificate, consent to mortgage or other such
23 documents. Estoppel certificates, consents to mortgage or similar agreements for the purpose of
24 securing financing shall not provide financing institutions or tenants with benefits that are greater
25 than or inconsistent with those contained in the lease or license. All financing using the leasehold
26 or licensing interest as collateral shall be used to further the operations of the business located on
27 the leased or licensed premises. The Board delegates approval authority to the Administrative
28 Director to issue estoppel certificates, consents to mortgage or other such documents, applicable
29 to building and infrastructure only.

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1 **Section 6.9(k) Rent Amendments and Payments Schedules.**

2 Tenants may submit written requests for reductions in rent. Tenants shall submit audited financial
3 statements covering the previous three (3) year period. If audited financial statements are not
4 available, tenants shall provide financial statements attested to by an officer or legal representative
5 of the company. CLTC shall consider the current financial position of the tenant and the prospect
6 for improvements in the tenant’s financial position and such other information as may be required
7 in considering tenant’s request for rent reductions. Any rent reductions authorized by CLTC shall
8 not exceed one (1) year. Tenants may submit written requests for extensions no later than thirty
9 (30) calendar days prior to the date the rent reduction expires, if financial requirements of the
10 tenant warrant continuing rent reductions. As temporary rent reductions are intended to assist
11 tenants over a short period of time, tenants must agree in writing that such temporary reductions
12 shall in no way affect the schedule and amount of rent escalations for future option terms identified
13 in the lease agreement. Requests for rent reductions shall be subject to Board approval.

14
15 **Section 6.9(l) Payment Plans.**

16 Requests to develop a payment plan for back rent shall be submitted in writing with the reasons
17 for the request. In addition, tenants shall submit a copy of audited financial statements covering
18 the previous three (3) year period. If audited financial statements are not available, tenants shall
19 provide financial statements attested to by an officer or legal representative of the company.
20 Payment plans must include a provision for payment of interest on the unpaid balance. In addition,
21 payment plans must contain the requirement that late fees using the industry standard be paid, in
22 the event the lessee does not make payments as scheduled and if the lessee is not deemed to be in
23 breach of the lease. Financial institutions must be provided with copies of approved payment
24 plans, if estoppel, mortgage or other such agreements require such notification. The Board
25 delegates the authority to approve payment plans to the Administrative Director. To the extent
26 possible, payment plans for outstanding rent must be paid off within the fiscal year to avoid
27 budgetary problems within CLTC.

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29 **Section 6.9(m) Annual Report.**

30 The Administrative Director shall prepare an annual report for presentation to the Board

1 summarizing the benefits received by CLTC on activities of the Program for the fiscal year. The
2 annual report shall contain findings on employment, payroll, gross receipts taxes paid, local
3 purchases made and total and annual capital investments by tenants and their sub-tenants, if any.
4 The report shall not contain proprietary information of tenants. The report shall also contain a
5 projection of revenues over the next five year time period and a discussion on outstanding issues
6 and recommendations. The report shall be submitted no later than December 31 covering the
7 previous fiscal year ending September 30.

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9 **Section 6.9(n) Monitoring and Compliance**

- 10 1. **Initial Meeting.** No more than five (5) working days after recordation of the
11 commercial lease or license agreement at the Department of Land Management, the
12 CLTC staff shall meet with the tenant of a newly approved commercial lease or
13 license agreement to ensure understanding of its terms and conditions.
- 14 2. **Annual Inspections.** Annual on-site inspections shall be conducted following a
15 standard inspection format to be developed by CLTC staff, to the extent possible
16 given possible differences in agreements. Written notification of the annual
17 inspection shall be sent via mail to the tenant two (2) weeks prior to the inspection
18 date, notifying them of the date, time and issues to be reviewed or discussed during
19 the inspection. Two (2) working days prior to the annual inspection, the tenant shall
20 provide all requested records and documents required by the CLTC including the
21 following: copies of their comprehensive business insurance policy in effect; and
22 any other documents requested by the CLTC to ensure compliance with the terms
23 of the commercial agreement. A concise detailed inspection report shall be
24 submitted to the Administrative Director within fifteen (15) working days from the
25 date of the annual inspection. As soon as possible thereafter, the results of the
26 annual inspection shall be transmitted to the tenant.
- 27 3. **Compliance Inspections.** CLTC may inspect facilities and premises to determine
28 the observable condition of the leased premises and any improvements and
29 compliance with conditions of the agreement. A concise detailed inspection report
30 shall be submitted to the Administrative Director within fifteen (15) working days

1 from the date of the compliance inspection. As soon as possible thereafter, the
2 results of the inspection shall be transmitted to the tenant.
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4 **Section 6.9(o) Notice of Non-compliance.**

5 When the CLTC has determined that the terms and conditions stipulated in the lease or license
6 agreement have not been met, the CLTC shall take the following action:

- 7 1. **First Notice.** Within ten (10) working days after CLTC identifies a non-compliance
8 issue, CLTC shall notify the tenant in writing of the specifics of the non-compliance,
9 giving the tenant the period of time required for cure as specified in the lease or
10 license agreement. Should no cure period be contained in the lease or license, a
11 period of ten (10) working days shall be given for the tenant to respond. CLTC must
12 provide financial institutions with copies of first notices, if estoppel, mortgage or
13 other such agreements require such notification. Should the tenant acknowledge the
14 non-compliance, thirty (30) working days shall be provided to correct the non-
15 compliance issue. Should the tenant respond and contest the non-compliance, the
16 tenant may address the matter with the board of commissioners at its next regularly
17 scheduled meeting. These time periods can be extended by the Administrative
18 Director. Copies of all notices and responses shall be provided to CLTC legal
19 counsel.
- 20 2. **Second Notice.** Should the tenant not respond after ten (10) working days to the first
21 notice, or if the tenant contests the matter but fails to appear before the board of
22 commissioners, or if tenant does not correct non-compliance after thirty (30) working
23 days, CLTC shall issue a second notice and prepare its findings to refer the matter to
24 CLTC legal counsel for default remedies, to include termination of the agreement.
25 CLTC must provide financial institutions with copies of the second notice, if
26 estoppel, mortgage or other such agreements require such notification.
27

28 **Section 6.9(p) Failure to Exercise Option to Extend.**

29 Should tenants fail to exercise options to extend as provided for in the commercial lease or license
30 agreement, CLTC may reinstate the lease or license with the same tenant for the same property

1 under terms that coincide with standard practices of the time including charging rents based upon
2 a current real property appraisal negotiated between CLTC and the tenant. Should CLTC
3 determine that economic circumstances make it possible that other tenants can be found to lease
4 the property, CLTC may terminate the lease or license and re-advertise the property as provided
5 for in these Rules and Regulations.

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7 **Section 6.9(q) Tenant Notification.**

8 To the maximum extent practicable, tenants will be provided advance notification of any public
9 Board meetings in which any aspect of the tenant’s lease or license is an agenda item for Board
10 discussion.

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12 **Section 6.9(r) Applicability of Rules and Regulations.**

13 All current leases and licenses with provisions that differ from these Rules and Regulations shall
14 be renegotiated to conform to these Rules and Regulations, as opportunities to revise the lease or
15 license arise. In instances where these Rules and Regulations differ from the provisions of leases
16 or licenses that pre-date these Rules and Regulations, the provisions of the pre-existing leases or
17 licenses shall prevail. These rules and regulations shall not apply to utility companies and licenses
18 for lots with villages which are addressed under Section 75107(c). However, the leases and
19 licenses for lots with villages that are addressed in Section 75107(c) are not exempt from
20 compliance to the Rules and Regulation for Clearing and Grading of Land and Construction of
21 Buildings and other Structures on Guam (Pursuant to Section 24200 as Amended, 31014 and
22 31015 of the Government Code of Guam). All leases, licenses, or sale or transfer of CLTC lands
23 are subject to Article 5, Chapter 76, Title 21, Guam Code Annotated, Historical Objects and Sites.