



# Chamorro Land Trust Commission

(Kumision Inangokkon Tano' Chamoru)

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November 5, 2014

Speaker Judith T. Won Pat  
32<sup>nd</sup> Guam Legislature  
155 Hesler Street  
Hagatna, Guam 96910

SUBJ: Chamorro Land Trust Commission (CLTC) Commercial Rules and Regulations Public Hearing

Hafa Adai Madam Speaker:

I am pleased to inform you that the Chamorro Land Trust Commission will be conducting a public hearing on the CLTC Commercial Rules and Regulations on Thursday, November 20, 2014, at 1:00PM in the Department of Land Management conference room, 3<sup>rd</sup> floor of the ITC building in Tamuning. This public hearing will be conducted in accordance with 5 GCA Chapter 9 Administrative Adjudication Law, and is the first step towards instituting the rules and regulations for commercial use of CLTC lands as required in 21 GCA Chapter 75 Chamorro Land Trust Commission.

Notices for this public hearing will commence this week in a publication of general circulation and on the CLTC website. I have also attached a copy of the draft rules and regulations that will be heard.

Should you have any questions or comments, please do not hesitate to contact me at (671) 649-5381.

Very Respectfully,

  
MICHAEL J. BORJA

32-14-2234  
Office of the Speaker  
Judith T. Won Pat, Ed.D

cc: Office of the Governor  
Vice Speaker Cruz  
CLTC Commissioners

Date: NOV. 5. 2014  
Time: 4:18 PM  
Received By: CARL SANCHEZ, MPJ

Attachment  
CLTC Commercial Rules and Regulations (draft)

2014 NOV - 4 AM 7:58

*I MINA'TRENTAI DOS 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 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 leases for commercial uses pursuant to the Administrative Adjudication Law.

**Section 2.** 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.

**Section 3.** The Rules and Regulations contained in the Appendix and adopted by this Act shall be amendments to "The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust Commission" which were adopted by Public Law 23-38.

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3 **APPENDIX**

4 Section 6.9 of The Senator Paul Bordallo Rules and Regulations for the Chamorro Land  
5 Trust Commission enacted by Public Law 23-38 is repealed and reenacted to read:

6 **6.9. Commercial Leases: Purpose.** The purpose of this part is to establish rules and  
7 regulations governing the announcement, selection, negotiation, execution, administration,  
8 monitoring and modification of commercial leases for real property owned and/or managed by  
9 the Chamorro Land Trust Commission (CLTC).

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11 **6.9.1. Definitions**

12 **6.9.1.1. Commercial Lease** is a contractual arrangement calling for the lessee to  
13 pay the lessor for the commercial use of an asset.

14  
15 **6.9.1.2. Commercial Use** means a purpose that furthers the commercial, trade, or  
16 profit interests of the tenant. Commercial use includes coral extraction for commercial purposes  
17 but does not include commercial agricultural use which is addressed in Section 6.7 (Livestock  
18 and Crops) of The Senator Paul Bordallo Rules and Regulations for the Chamorro Land Trust  
19 Commission.

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21 **6.9.2. Responsibility.** The Board of Commissioners of CLTC (the “Board”) shall be  
22 responsible for establishing the policies and direction of the commercial lease program. The  
23 Administrative Director is directly responsible to the Board for the operation of the commercial  
24 lease program.

25  
26 **6.9.3. Commercial Lease or License Opportunities.** Prior to any lease or license of  
27 government property for commercial use, the CLTC shall give notice of the opportunity to lease  
28 or license by issuing a “Request for Proposals to Lease PUBLIC LAND” (RFP) and shall  
29 thereafter afford all interested persons a reasonable opportunity to respond to the RFP or to

1 submit data, views, or arguments in writing. The CLTC shall also accept from interested persons  
2 alternative proposals for lease or license of the public land that is the subject of the intended  
3 action. Notice of the RFP shall be made by publication at least two times during two consecutive  
4 weeks in a newspaper of general circulation in Guam. Pursuant to Section 75105(f), CLTC shall  
5 not lease any available property until such property is registered. Further, pursuant to 21 G.C.A.  
6 Section 60112, all commercial leases are subject to the prior approval of *I Liheslatura* (the Guam  
7 Legislature).

8 **6.9.4. Eligibility.** Sole proprietorships, partnerships, corporations, limited liability companies,  
9 and limited liability partnerships may submit a proposal to lease real property owned and/or  
10 managed by CLTC. The owner(s) of a sole proprietorship, partnership, or limited partnership  
11 must be a resident(s) of Guam. A corporation must be created under the laws of Guam or must  
12 be a duly constituted “possession” corporation created under the laws of a state of the United  
13 States of America and limited to doing its principal business in Guam. A limited liability  
14 company must be created under the laws of Guam. The sole proprietorship, partnership, limited  
15 liability partnership, corporation, or limited liability corporation must possess a valid license  
16 prior to executing a lease and must demonstrate that its proposed use of CLTC property will  
17 satisfy CLTC’s statutory objective of generating revenues for the programs administered by  
18 CLTC or such other objectives as approved by the Board.

19  
20 **6.9.5. Proposals In Response to RFPs.** Each applicant is required to provide at a minimum, the  
21 following information: copies of the last three most recent annual audited financial statements if  
22 available, a copy of the applicant’s current business license if available and other licenses  
23 required by Guam law, revenue projections for the first five years of the lease, copies of  
24 applicant’s corporate or formation documents (articles, bylaws, partnership agreement etc.),  
25 copies of the applicant’s preliminary business plan for the use of the property (to include  
26 personnel requirements, capital improvements, market, financing source, and other information  
27 deemed pertinent by CLTC), and corporate resolution authorizing the submission of a proposal

1 to lease (if applicant is a corporation). The applicant is also required to provide a qualitative  
2 description of its proposed use and a quantitative description of how the proposal will assist  
3 CLTC in achieving its objectives identified in Section 6.9.3.

4  
5 The applicant shall also complete and sign an Authorization to Release Information form, which  
6 will be used to obtain credit information from lenders, trade suppliers, customers, and other  
7 similar sources. The applicant shall also complete and sign an Advanced Costs form which  
8 contains the applicant's agreement to pay recoverable expenses identified in Section 6.9.7.12.

9  
10 **6.9.6. Evaluation.** CLTC shall determine whether the applicant has submitted all required  
11 information identified in Section 6.9.5 and evaluate proposals based on the extent to which the  
12 applicant's proposal meets and exceeds CLTC objectives and evaluation criteria as specified in  
13 the RFP. CLTC shall also conduct background checks of the applicant using all possible sources  
14 as deemed necessary. Selection of the prospective tenant shall be by action of the Board.

15  
16 **6.9.7. Negotiations.** Terms and conditions shall be negotiated with the selected applicant. The  
17 major terms identified in the subsections below, shall be followed to the maximum extent  
18 practicable.

19  
20 **6.9.7.1. Appraisals.** Rents shall be based upon fair market value as determined by the  
21 average of two appraisals pursuant to Public Law 31-44. Immediately prior to lease  
22 execution, the prospective tenant shall authorize CLTC to employ one or two certified  
23 appraisers to appraise the value of the leased premises (inclusive of both land and  
24 improvements if any) at the prospective tenant's expense. Prospective tenants may  
25 authorize CLTC to commission one appraisal with the prospective tenant commissioning  
26 the second appraisal however both appraisals shall be at the expense of the prospective  
27 tenant pursuant to law.

28  
29 **6.9.7.2. Fair Market Rent.** Based upon the appraisal, fair market rent shall be established

1 at between six (6) to ten (10) percent of the fair market value, which is the industry  
2 standard. The lower percentage can be used in the discretion of the Board in instances  
3 where the prospective tenant can demonstrate clearly that CLTC objectives will be  
4 substantially exceeded by the prospective tenant's proposal. Rent shall escalate at 5 year  
5 intervals based upon appraisals, but in no event shall rent be lower than the rent charged  
6 during the previous 5 year period.

7  
8 **6.9.7.3. Model Lease.** To the maximum extent practicable, the latest lease executed by  
9 CLTC shall be used as the model lease as it contains current requirements. All leases must  
10 indemnify CLTC from environmental contamination; must require tenants to maintain  
11 storm water management systems pursuant to generally accepted maintenance standards or  
12 as required by applicable laws and government regulations; and must contain a provision  
13 that requires the tenant and all subtenants to respond to CLTC requests for information on a  
14 timely basis.

15  
16 **6.9.7.4. Assignments.** Leases shall require that assignments of the leasehold interest,  
17 including changes of ownership, can only be effectuated by a tenant with the prior written  
18 consent of the Board, which consent shall not unreasonably be withheld. Tenant requests  
19 for assignment shall be in writing and shall contain the name, address, and description of  
20 the business of the proposed assignee, the proposed assignee's most recent financial  
21 statement covering the previous 3 year period and other evidence of financial  
22 responsibility, its intended use of the premises and give the terms and conditions of the  
23 proposed assignment. Prospective assignees must agree to accept all terms of the lease  
24 being assigned.

25  
26 **6.9.7.5. Subletting.** Leases shall require that subletting or allowing other subtenants to  
27 sublet the leasehold premises under any form of agreement including use and occupancy  
28 permits, shall be allowed only with the prior written consent of CLTC, which consent shall  
29 not unreasonably be withheld. Requests for approval of subleases shall be submitted by

1 tenants and shall include at a minimum, the name, address, and description of the business  
2 of the proposed subtenant, the proposed subtenant's most recent financial statement over  
3 the past three years and other evidence of financial responsibility, its intended use of the  
4 premises, the terms and conditions of the proposed sublease and a description of how the  
5 sublease meets or exceeds CLTC objectives. To ensure expeditious processing of requests  
6 to sublease so that tenants do not lose subtenants, the Board hereby delegates the authority  
7 to approve subleases to the Administrative Director. CLTC shall notify the Legislature of  
8 such subletting pursuant to Section 75103(b) of Chapter 5, Title 21, Guam Code  
9 Annotated.

10  
11 **6.9.7.6. Subtenant Rents.** All commercial tenants of CLTC no matter under what form of  
12 agreement a subtenant is allowed to use the leased premises, shall be required to pay to  
13 CLTC a negotiated percentage of gross sub-rents.

14 **6.9.7.7. Participation Rent.** All commercial tenants of CLTC shall be required to pay to  
15 CLTC a negotiated amount of participation rent which is defined as a percentage of the  
16 gross annual income derived from the use of the property.

17  
18 **6.9.7.8. Term of Lease and Options to Extend.** Unless otherwise approved by the  
19 Board, the term of the lease should coincide with financing requirements for initial  
20 construction of improvements. Tenants shall be afforded options to extend based upon the  
21 demonstrated need for extensions and the extent to which CLTC objectives will be  
22 achieved and shall be afforded no more than ninety (90) days to notify CLTC of its intent  
23 to exercise its options. Tenants shall not be given the right to extend options more than one  
24 (1) at a time.

25  
26 **6.9.7.9. Payment Due Dates.** Payments shall be due monthly in advance on the  
27 anniversary of the lease. Monthly rents can be paid in advance on a different schedule if  
28 prior Board approval is received. As long as rents are paid within the fiscal year, the Board  
29 delegates the authority to approve rent payment on a different schedule to the

1 Administrative Director.

2  
3 **6.9.7.10. Authorized Uses.** Land uses for properties under CLTC jurisdiction can be  
4 utilized for any commercial purpose, except as provided in Section 6.9.1.2 of these Rules  
5 and Regulations, in a manner consistent with the zoning category applicable to the property  
6 pursuant to the Zoning Laws of Guam.

7  
8 **6.9.7.11. Taxes and Utilities.** Tenants shall pay all taxes and assessments lawfully levied  
9 against the leased premises and against any business conducted thereon or in connection  
10 therewith, and all charges for utility services furnished or provided to the leased premises.

11  
12 **6.9.7.12. Recoverable Expenses.** Tenants shall pay for those expenses associated with  
13 the processing of leases, subleases, amendments, assignments, estoppels, consents or other  
14 such documents, including, but not limited to, attorneys' fees, appraisal fees, title report  
15 fees, survey fees, credit report fees, recording fees, and documentation fees but not  
16 including CLTC staff time. Payment of fees shall be made prior to document recordation  
17 or pick up.

18  
19 **6.9.7.13. Business License.** Applicants need not possess a Guam business license to  
20 submit a proposal but must be licensed to do business in Guam prior to the execution of a  
21 lease and all tenants must maintain a valid license to do business in Guam during the term  
22 of their lease.

23  
24 **6.9.7.14. Environmental Baseline Study.** Tenants shall be required to have prepared  
25 soon after lease execution at their own expense, a Phase I Environmental Survey of the  
26 leased property to serve as a baseline against which future use of the property by  
27 prospective tenants can be evaluated. The Phase I study shall be referenced in any lease  
28 and sublease agreements for the property. Prior to the issuance of any new lease or renewal  
29 lease, tenants or prospective tenants must conduct a Phase I Environmental Investigation of



1 the site at tenant's expense.

2  
3 **6.9.8. Lease Approval.** Results of the negotiations shall be presented to the CLTC Board of  
4 Commissioners for final approval and if approved, three (3) original lease agreements shall be  
5 prepared, signed by the appropriate parties and recorded with the Department of Land  
6 Management. One original shall remain with the Department of Land Management, one original  
7 shall be provided to the tenant, and one original shall be filed with the CLTC.

8  
9 **6.9.9. Lease Amendments and Modifications.** Except as modified by the sections below, all  
10 amendments and modifications to a lease agreement, shall be requested in writing by the tenant.  
11 The request shall state the nature of the amendment or modification to the sublease, the consent  
12 of any financing institution if the leased premises were used to secure financing, and the reasons  
13 for the request. Upon receipt of the written request from the tenant, CLTC will acknowledge  
14 receipt of the request and if necessary provide tenant with a list of additional information  
15 required by CLTC to evaluate the request within five working days from the date the request was  
16 received. CLTC staff will conduct a review and analysis of the request and provide a  
17 recommendation for action by the Administrative Director or the Board as necessary. Financial  
18 institutions must be provided with copies of approved lease amendments and modifications, if  
19 estoppel, mortgage or other such agreements require the provision of such documentation.

20  
21 **6.9.9.1. Estoppel and Consents to Mortgage.** Any tenant requesting estoppel  
22 certificates, consents to mortgage or similar requests for the purpose of securing financing,  
23 shall be in writing and at a minimum provide the following information: purpose of the  
24 financing, a copy of the draft estoppel or consent to mortgage document, a description of  
25 the financing arrangement, a copy of the real estate appraisal and other related information.  
26 Tenants must be current on all rents to CLTC or must have an approved payment plan prior  
27 to CLTC issuing any estoppel certificate, consent to mortgage or other such documents.  
28 Estoppel certificates, consents to mortgage or similar agreements for the purpose of  
29 securing financing shall not provide financing institutions or tenants with benefits that are

1 greater than or inconsistent with those contained in the lease. All financing using the  
2 leasehold interest as collateral shall be used to further the operations of the business located  
3 on the leased premises. The Board delegates approval authority to the Administrative  
4 Director to issue estoppel certificates, consents to mortgage or other such documents.  
5

6 **6.9.9.2. Rent Amendments and Payments Schedules.** Tenants may submit written  
7 requests for reductions in rent. Tenants shall submit audited financial statements covering  
8 the previous three (3) year period. If audited financial statements are not available, tenants  
9 shall provide financial statements attested to by a company official. CLTC shall consider  
10 the current financial position of the tenant and the prospect for improvements in the  
11 tenant's financial position and such other information as may be required in considering  
12 tenant's request for rent reductions. Any rent reductions authorized by CLTC shall not  
13 exceed one year. Tenants may submit written requests for extensions no later than thirty  
14 (30) calendar days prior to the date the rent reduction expires, if financial requirements of  
15 the tenant warrant continuing rent reductions. As temporary rent reductions are intended to  
16 assist tenants over a short period of time, tenants must agree in writing that such temporary  
17 reductions shall in no way affect the schedule and amount of rent escalations for future  
18 option terms identified in the lease agreement. Requests for rent reductions shall be  
19 subject to Board approval.  
20

21 **6.9.9.3. Payment Plans.** Requests to develop a payment plan for back rent shall be  
22 submitted in writing with the reasons for the request. In addition, tenants shall submit a  
23 copy of audited financial statements covering the previous three (3) year period. If audited  
24 financial statements are not available, tenants shall provide financial statements attested to  
25 by a company official. Payment plans must include a provision for payment of interest on  
26 the unpaid balance. In addition, payment plans must contain the requirement that late fees  
27 using the industry standard be paid, in the event the lessee does not make payments as  
28 scheduled and if the lessee is not deemed to be in breach of the lease. Financial institutions  
29 must be provided with copies of approved payment plans, if estoppel, mortgage or other

1 such agreements require such notification. The Board delegates the authority to approve  
2 payment plans to the Administrative Director. To the extent possible, payment plans for  
3 outstanding rent must be paid off within the fiscal year to avoid budgetary problems within  
4 CLTC.

5  
6 **6.9.9.4. Annual Report.** The Administrative Director shall prepare an annual report for  
7 presentation to the Board summarizing the benefits received by CLTC on activities of the  
8 commercial lease tenants for the fiscal year. The annual report shall contain findings on  
9 employment, payroll, GRT paid, local purchases made and total and annual capital  
10 investments by tenants and their sub-tenants, if any. The report shall not contain  
11 proprietary information of tenants. The report shall also contain a projection of revenues  
12 over the next five year time period and a discussion on outstanding issues and  
13 recommendations. The report shall be submitted no later than December 31 covering the  
14 previous fiscal year ending September 30.

15  
16 **6.9.10. Monitoring and Compliance**

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18 **6.9.10.1. Initial Meeting.** No more than five working days after recordation of the  
19 commercial lease agreement at the Department of Land Management, the CLTC staff shall  
20 meet with the tenant of a newly approved commercial lease to ensure understanding of the  
21 terms and conditions of the lease.

22  
23 **6.9.10.2. Annual Inspections.** Annual on-site inspections shall be conducted following a  
24 standard inspection format to be developed by CLTC staff, to the extent possible given  
25 possible differences in lease agreements. Written notification of the annual inspection shall  
26 be sent via mail to the Lessee two (2) weeks prior to the inspection date, notifying them of  
27 the date, time and issues to be reviewed or discussed during the inspection. Two working  
28 days prior to the annual inspection, the Lessee shall provide all requested records and  
29 documents required by the CLTC including the following: copies of any subleases tenants

1 have entered into with 3<sup>rd</sup> parties; copies of their comprehensive business insurance policy  
2 in effect; and any other documents requested by the CLTC to ensure compliance with the  
3 terms of the commercial lease agreement. A concise detailed inspection report shall be  
4 submitted to the Administrative Director within fifteen (15) working days from the date of  
5 the annual inspection. As soon as possible thereafter, the results of the annual inspection  
6 shall be transmitted to the tenant.

7  
8 **6.9.10.3. Drive-By Inspection.** Drive-by inspections of the facility and leased premises  
9 shall be performed periodically in order for CLTC to determine the observable condition of  
10 the leased premises and any improvements and compliance with lease conditions.

11  
12 **6.9.11. Notice of Non-compliance.** When the CLTC has determined that the terms and  
13 conditions stipulated in the lease *have not been met*, the CLTC shall take the following action:

14  
15 **6.9.11.1. First Notice.** Within ten (10) working days after CLTC identifies a non-  
16 compliance issue, CLTC shall notify the tenant in writing of the specifics of the non-  
17 compliance, giving the tenant the period of time required for cure as specified in the lease  
18 agreement. Should no cure period be contained in the lease, a period of ten (10) workdays  
19 shall be given for the tenant to respond. Financial institutions must be provided with  
20 copies of first notices, if estoppel, mortgage or other such agreements require such  
21 notification. Should the tenant acknowledge the non-compliance, thirty (30) working days  
22 shall be provided to correct the non-compliance issue. Should the tenant respond and  
23 contest the non-compliance, the matter shall be referred to legal counsel. These time  
24 periods can be extended by the Administrative Director should conditions warrant. Copies  
25 of all notices and responses shall be provided to CLTC legal counsel.

26  
27 **6.9.11.2. Second Notice.** Should the tenant not respond after 10 working days to the first  
28 notice or if tenant does not correct non-compliance after 30 working days, CLTC shall  
29 issue a second notice and prepare its findings to refer the matter to CLTC Legal Counsel

1 for default remedies. Financial institutions must be provided with copies of the second  
2 notice, if estoppel, mortgage or other such agreements require such notification.

3  
4 **6.9.12. Failure to Exercise Option to Extend.** Should tenants fail to exercise options to extend  
5 as provided for in the commercial lease agreement, CLTC may reinstate the lease with the same  
6 tenant for the same property under terms that coincide with standard practices of the time  
7 including charging rents based upon a current real property appraisal negotiated between CLTC  
8 and the tenant. Should CLTC determine that economic circumstances make it possible that other  
9 tenants can be found to lease the property, CLTC may terminate the lease and re-advertise the  
10 property as provided for in these Rules and Regulations.

11  
12 **6.9.13. Tenant Notification.** To the maximum extent practicable, tenants will be provided  
13 advance notification of any public Board meetings in which any aspect of the tenant's lease is an  
14 agenda item for Board discussion.

15  
16 **6.9.14. Applicability of Rules and Regulations.** All current leases and licenses with provisions  
17 that differ from these Rules and Regulations shall be renegotiated to conform to these Rules and  
18 Regulations, as opportunities to revise the lease or license arise. In instances where these Rules  
19 and Regulations differ from the provisions of leases or licenses that pre-date these Rules and  
20 Regulations, the provisions of the pre-existing leases or licenses shall prevail. These rules and  
21 regulations shall not apply to utility companies and licenses for lots with villages which are  
22 addressed under Section 75107(c).