

18 GAR - LAND MAN-
AGEMENT

Article 5
Leasing of Government Land

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§1500. General Provisions: Authority. These guidelines are promulgated pursuant to the rule-making procedures of the Administrative Adjudication Law, which provide at §9107 of Title 5 of the Guam

Code Annotated that the meaning of *rule* includes any 'procedure or requirement of any agency ... interpreting, supplementing or implementing any law enforced or administered by it'

§1501. Identity and Purpose of Reserved Land. Pursuant to Public Law Number 22-18, the Department of Land Management ('Department') reserved twenty (20) acres each from Lot Number 10120-R16 in Dededo, Guam, and from Lot Number 480 in Agat, Guam for the purpose of establishing a '*cultural center*.'

(a) Lot 10120-17, Dededo, Guam. The twenty (20) acres which were reserved from Lot Number 10120-R16, Dededo, Guam have been parceled out of Lot Number 10120-R16, Dededo, Guam and the parceled lot is identified as Lot Number 10120-17, Dededo, Guam. The Department does *not* intend to subdivide Lot Number 10120-17, Dededo, Guam, but has instead surveyed a portion of Lot Number 10120-17, Dededo, Guam and has established within the surveyed portion, areas which are suitable for leasing. Each area to be leased is 20,000 ± square feet, as shown on Land Management Drawing Number I4-97T632, recorded under Document Number 572938 in the Records Division, Department of Land Management. Water and electricity are *not* available on Lot Number 10120-17, Dededo, Guam, but within one hundred feet (100') of its southern boundary.

§1502. Intent. These rules are intended to provide a suitable amount of government land for leasing to qualified and eligible applicants, which are non-profit organizations and which plan to develop a '*cultural facility*,' as the term is used in these rules, within the time allotted, and which applicants show the capability and responsibility to do so. Public rights of way have been planned to give each area to be leased a means of ingress and egress.

However, all expenses for any development, including utility infrastructure not already available, are the sole responsibility and expense of the applicant or lessee.

§1503. Interpretation of 'Cultural Center.' The legislative history of Public Law Number 22-18 indicates that the term '*cultural center*,' as used therein, was meant to be the same as used in the Guam Land Use Master Plan, or *I Tano'ta Plan*, as it is commonly known, ('Plan'). The Plan, which became official on April 18, 1998, *however*, does *not* define '*cultural center*' into the terms '*club*,' '*clubhouse*,' and '*private club*.' For purposes of these rules, the term '*cultural center*' shall have the same meaning as the term '*club*' defined in the Plan.

§1504. Scope. Section 3 of Public Law Number 22-18 contemplates that land reserved by government entities are either: (a) for development of long-term government facilities, (b) for parks and the like, or (c) for commercial leases to private interests. In accordance with §3(b) of Public Law Number 22-18, the Department will prepare a conceptual plan for the twenty (20) acres of reserved land in Dededo and for the twenty (20) acres reserved from Lot Number 480 in Agat, Guam depicting their full development as cultural centers in which long-term cultural facilities will be built. The conceptual plan will include any land leased in accordance with these rules. These rules contain the procedural guidelines for leasing land to applicants who wish to build cultural facilities at their own expense.

§1505. Grandfather Clause. Some legitimate non-profit organizations occupying or formerly occupying the Harmon cliff line area are *not* culturally related clubs. Notwithstanding, they may apply for a lease in accordance with these rules, so long as such non-profit organization plans to develop the leased property for its regular activities, the planned development represents a use harmonious to the rest of the area's use as a cultural center, and so long as the planned development is *not* in conflict with any other applicable law. *However*, in order to enter into a lease, any applicant grandfathered in pursuant to this rule must nevertheless meet the other eligibility criteria set out in Chapter 3, below, and must make adequate submittal as required by Chapter 6 of these rules.

(a) Background History. During hearings on the bill, which became Public Law Number 22-18 before the 22nd Guam Legislature's Committee on Housing and Community Development, the Department testified that a part of the twenty (20) acres of land in Dededo or Agat reserved for cultural centers was intended for the relocation of the legitimate non-profit organizations occupying the Harmon cliffline area.

(b) Interim Limited Land Use Permits. The Department considered the time required for these rules to undergo the Administrative Adjudication Law's rule-making procedure, and also the need of some of the Harmon cliffline non-profit organizations to have some limited use of some land for their immediate general purposes. Because §3(a) of Public Law Number 22-18 authorizes temporary uses of reserved land, guidelines for the interim temporary use of a portion of Lot Number 10120-17, Dededo, Guam, by means of limited land use permits were set by Executive Order Number 98-13. These rules recognize that such temporary use may *not* impede, delay or in any way interfere with the leases to be given pursuant to these rules. No entity with a limited land use permit, which shall apply for a lease in accordance with these rules, shall be given priority or special consideration contrary to these rules.

§1506. Application to Lease: Form of Application. Applications shall be on forms prepared by the Department, which are available from the Department's Land Administration Division located on the third floor of the building at 855 West Marine Drive in Anigua, Guam.

§1507. Application Fee. An application fee of One Hundred Dollars (\$100.00) must accompany each application. The fee represents the reasonable expenses of the Department in processing the application.

§1508. Delivery. Delivery of the application to the Department may be by personal, hand-delivery to the Department's Land Administration Division on the third floor of the building of 855 West Marine

Drive in Anigua, Guam, or by mail to the Department's Land Administration Division at Post Office Box 2950, Hagatna, Guam 96932.

§1509. Intake Processing. The Department shall review all applications immediately upon receipt, in the order received, to determine only whether they are complete and have the required documentation attached. Consideration of the applicant's eligibility will be at a later time. Only completed applications shall be stamped received with the date and time, and initialed by a Department employee. The application fee shall *not* be received, nor processed by the Department, *unless* an application is complete.

§1510. Incomplete Application. An application is considered incomplete and contains insufficient information *if* any question is *not* answered, *if* any blank is *not* filled in as required or the appropriate documents are *not* attached.

(a) Rejection. Incomplete applications shall be rejected and returned to the applicant *immediately* by mail to the address of the applicant, as indicated, or *if* the application is delivered in person, immediately to the person so delivering. The full application with all attachments, including any fee, shall be returned as though no application had been made.

§1511. Application's Effective Period. The applicant's authorized representative is required to certify the truth of certain statements the applicant makes in the application. Based upon these certifications, the application is considered good for only one (1) year from the date the certifications are made. *If* the applicant does *not* enter into an Agreement to Reserve, as provided for in Rule 5002, below, within a one (1) year period from the date the application is signed by applicant's authorized representative, then the application becomes stale and the applicant must reapply in accordance with the terms of Rule 7005, below, *if* applicant still desires a lease.

§1512. Criteria for Eligibility: Priority of Review. Completed applications will be reviewed for eligibility and acted upon by the

Department in priority of receipt of the application, as such priority is provided for in Rule 2004, above.

§1513. Proof of Eligibility. An eligible applicant must possess all of the qualities enumerated in Rules (a) through (f), below, and must submit proof of each.

§1514. Criteria. To be eligible each of the following requirements must be met:

(a) Status as Non-Profit Organization. The applicant must be a legitimate non-profit organization, which shall mean for purposes herein only, an organization that is organized and operated primarily for activities which do *not* directly benefit any individual member, and as recognized by the Department of Revenue and Taxation. Copies of any articles of organization, by laws, association papers or membership agreements shall be submitted with the application, *if* available. *If* unavailable, the application must clearly indicate the reason for unavailability. In addition, a written summary of the following must be provided: the historical background of the organization, its purposes, its significant accomplishments, its chief activities and an explanation as to why the applicant is or should be considered a culturally related non-profit organization.

(b) Tax Exempt Status. The applicant need *not* be exempted from paying income taxes. *However*, a tax-exempt status will entitle the applicant to a lower rental amount on the lease applied for. Therefore, *if* the applicant is *not* required to pay gross receipts taxes, it should submit a copy of its certificate of exemption issued by the Department of Revenue and Taxation. *If* the applicant is *not* required to pay income taxes, the application shall also submit a copy of a determination by the Department of Revenue and Taxation or the Internal Revenue Service indicating that the applicant is tax-exempt.

(c) Culturally-Related. The applicant shall prepare its written summary as described in Rule (a) to allow the Department to make a determination that the applicant's primary activities are culturally-related. This Section is *not* applicable to applicants subject to Rule 1006.

(d) Title to or Use of other Real Property. The government's desired outcome based upon these rules is the development of an integrated cultural center, which is representative of the diverse cultures which co-exist on Guam, in order to promote understanding and harmony amongst them. Thus, an applicant's ownership or lease of any other real property is *not* a consideration in determining the applicant's eligibility.

(e) Condition of Property Under Use Permit. *If* the applicant has an interim use permit as referred to in Rule (a) above, then at the time the lease application is submitted, the applicant must be in compliance with all the terms of the use permit in order for applicant to be eligible for a lease under these rules, and the applicant must *not* owe anything to the Department for any expenses the Department may have incurred on the applicant's behalf under the use permit.

(f) Contact Person and Address. The current mailing address of the applicant, along with the name of an authorized representative, must be clearly indicated. All notices to be sent to the applicant will be mailed to the address the applicant indicates.

(g) Intent to Construct. The purpose of the lease is for the construction of an improvement, or improvements, which are cultural facilities as that term is used in these rules. The applicant must state this intent in writing. Applicants subject to Rule 1006 should describe the improvement planned and state their intent to so construct.

(h) Financial Responsibility. The applicant must show its ability to finance the construction of improvements and to pay the rental

value of the property. Proof may be shown by the applicant submitting the applicant's financial statements, preferably audited, for its immediately preceding two (2) fiscal years. *If* applicant is required to pay income taxes, the applicant shall submit a copy of the return filed for the last two (2) of it fiscal years.

§1515. Determination of Eligibility to Lease: Determination and Effect. The Department shall make a determination in writing as to whether or not the applicant is eligible. *If* upon review of the completed application the Department finds that the submitted application and documents sufficiently prove that the applicant is a legitimate, financially responsible non-profit organization, whose primary activities are culturally-related, and that it intends to construct a cultural facility, *except* as applicant may be exempted by Rule 1006, then the Department shall determine that the applicant is eligible to select and reserve land or lease in accordance with these rules.

§1516. Priority to Reserve. Upon a determination that the applicant is eligible, the Department shall place the applicant's name on a priority list in the order that the applicants are determined to be eligible. An applicant may select and reserve land for leasing in the order that its name appears on the priority list.

§1517. Notice of Determination. The Department shall notify each applicant by mail of the Department's determination as soon as practicable after a determination is made. *If* a negative determination is made, the reasons must be stated in the notice to the applicant. *If* the Department cannot make a determination because the application, which is initially thought to be complete, is later found to be incomplete, then the Department shall so notify the applicant.

§1518. Appointment to Reserve. The Department shall also provide in the notice of determination of eligibility an appointment date and time for the applicant to select and reserve land.

(a) Designated Appointments. The Department shall designate an appointment date and time for applicants in the order that the

applicant's name appears on the priority list of eligible applicants. The Department shall make no more than one (1) appointment in the morning and one (1) appointment in the afternoon of any working day during normal working hours, and the appointment must be at least twenty (20) calendar days from the date the notice of determination of eligibility is mailed.

(b) Time of the Essence for Appointments. All eligible applicants are on notice that '*time is of the essence*' and that *if* the designated appointment is changed or missed, the applicant may lose its original priority status and shall acquire the priority ranking that corresponds with the newly chosen appointment date and time.

(c) Changed Appointments. At the request of the applicant, a designated appointment date and time may be changed to any other date and time available.

(d) Missed Appointments. Eligible applicants who miss an appointment are *not* automatically reassigned another appointment, but must request a new appointment. Any new appointment date and time available may be given.

§1519. Section and Reservation: Selection. At the appointed date and time, the eligible applicant may select any area of land which has been designated by the Department to be a part of the program under these rules and which has *not* been selected and reserved by any other eligible applicant.

(a) Area and Location . The eligible applicant may reserve one of the areas, the size of which is 20,000 • square feet. *If* the applicant convincingly demonstrates circumstances which would require a greater area, then the Department in its sole discretion may allow the applicant to reserve one (1) additional 20,000 • square foot area, both of which must be adjacent to each other. Circumstances which shall justify a greater area and which the Department shall consider pertinent include, but are *not* limited to, the applicant's size in membership, the frequency and type of their activities, their ideas or plans for a cultural

facility, and their financial ability to carry out their proposed plans. From Lot Number 10120-17, Dededo, Guam, up to five (5) acres may be developed for a common area multicultural center.

(b) Site Inspection. Any applicant desiring to view the site is expected to make arrangements with Department personnel and visit the site *prior to* the designated appointment.

§1520. Reservation Agreement. Upon selection of an area of land by an eligible applicant, the Department and applicant shall enter into an '*Agreement to Reserve*'; *provided*, that the applicant is in compliance with all the terms of their use permit, as referred to in Rule 1006(b), above, *if any*, and no sums are owed to the Department upon the use permit's termination when the Agreement to Reserve is executed. The date *I Maga'lahren Guåhan* approves the Agreement to Reserve with *I Maga'lahren Guåhan's* signature shall be the effective date of the Agreement.

(a) Automatic Termination After One Year. The Agreement to Reserve shall automatically terminate one (1) year from its effective date, but subject to Rule 6005(a), below.

(b) License to Clear and Grade. The Agreement to Reserve shall give the applicant the privilege to clear and grade the property so reserved, at applicant's own risk *prior to* entering into a lease. In this respect the applicant is permitted to cut, detach, remove, burn, or otherwise clear and take away from the property all standing or fallen timber, crops, vegetation or growth of any kind whatsoever, and to grade the property so long as all required governmental approvals are first obtained. In no event shall applicant cause or allow any construction, development or improvement of any type or nature whatsoever to be built on the property, nor permit any waste, nuisance or dumping. Should the applicant *not* enter into a lease with the Department for any reason, then in no event shall the expense of any clearing or grading undertaken by the applicant be considered an amount owing by the Department to the applicant.

(c) Reservation Not a Lease. The Agreement to Reserve is a limited act preliminary to the lease designed to reserve the selected area of land. By no means should the Agreement be interpreted as a lease, nor does it grant any rights to the applicant as a lessee. Before the Department gives its final approval, and before a lease with the eligible applicant is entered into, the eligible applicant must fulfill the requirements of the rules contained in Chapter 6, below, and as outlined in the Agreement to Reserve.

§1521. Requirements of Entering into Lease: Submittal Required. In order to enter into a lease on the reserved property, the eligible applicant must submit the following *prior to* the automatic termination of the Agreement to Reserve:

(a) Conceptual Plan. A conceptual plan depicting the reserved property's development as a cultural facility shall be submitted in adequate visual detail showing the improvement or improvements to be constructed, with landscaping, from all angles. The plan should include a sketch showing the location of the improvement or improvements on the land, and a sketch of the floor plans or proposed building layouts with approximate square footage of floor area, the proposed parking area and, *if required*, any loading areas. The visual drawings should be accompanied by a written summary of the development. This conceptual plan need *not* be as detailed as an architect's or engineer's blueprints, *unless* desired, but should be professional in appearance.

(b) Statement of Costs and Funding. The eligible applicant must also submit a supporting statement, in sufficient detail, concerning the approximate cost of the development, the proposed contractor's name and license number, and the development's financing method or source of funding.

§1522. Determination of Adequacy. The Department shall determine, in its sole discretion, whether the conceptual plan and financing statement are adequate in detail as provided for in Rules 6001(a) and (b), and whether the applicant's financial resources are

sufficient to complete the proposed development. A building in which an applicant intends to conduct its regular or special activities, as shown by applicant's historical background, shall be considered adequate as a cultural facility, even as to those applicants subject to Rule 1006, above.

(a) Notice of Determination. A written notice of determination shall be provided by mail to the applicant. *If* the submittals are determined adequate, then the notice shall indicate that a lease is being prepared and that applicant must sign the lease as provided for in Rule 6004 (a), below. *If* any part of any submittal is found to be inadequate, the reason or reasons shall be provided in the notice in sufficient detail to enable the applicant to redo and bring the required submittals into compliance with the requirements of Rule 6002, above.

§1523. Resubmittals Accepted. An applicant may resubmit the documentation required by Rules 6001(a) and (b), above, as many times as necessary for a determination of adequacy. Each resubmittal shall be considered a new submittal for purposes of Rule 6005, below.

§1524. Preparation of Lease. *If* the required submittals are determined to be adequate, the Department shall as soon as practicable prepare a lease in accordance with the lease terms contained in Chapter 8, below, naming the eligible applicant as the lessee for the land reserved.

(a) Deadline to Enter Into Lease. *If* the lease is *not* signed by the applicant within six (6) months from the date of the notice of a favorable determination in Rule 6002(a), above, then the lease shall be cancelled, and the land which is reserved and which is the subject of the lease shall become available for selection and reservation by other applicants under these rules.

§1525. Disqualification. *If* the Department has *not* made a determination of adequacy within the one (1) year period from the date the Agreement to Reserve is approved by *I Magsalahen Guáhan*, then the eligible applicant is *automatically* disqualified and the reserved land

shall become available for selection and reservation by other applicants under these rules.

(a) Extension of Time to Determination Date. *If* the applicant has submitted the required documents in accordance with Rule 6002, above, within the one (1) year period, but the Department has *not* made a determination of adequacy as of the last day of the one (1) year period, then in such event, the date upon which a determination is made shall be the date upon which either a lease is prepared for the applicant, or the reserved land becomes available for selection and reservation by other eligible applicants. In the latter event, the applicant shall no longer have the right to make resubmittals in accordance with Rule 6003, above.

§1526. Miscellaneous Provisions: Notices to Applicant. All notices and official correspondence to applicant shall be in writing and mailed to the address provided in the application. *If* the applicant desires, the Department may telephone the applicant's authorized representative with any information as requested. *However*, the Department is under no obligation to do so, and in no event shall any telephonic communication be considered the date on which any notice to be given by the Department is given.

§1527. Notices to Department. All notices and anything to be submitted to the Department may be delivered by the applicant to the Department's Land Administration Division on the third floor of the building at 855 West Marine Drive in Anigua, Guam, or by mail to the Division at Post Office Box 2950, Hagatna, Guam 96932.

§1528. Applicant's Authorized Representative. The authorized representative designated in the application shall be the sole voice of the applicant in any non-written communications with the Department. In no event is the Department obligated to entertain any communications by any person purportedly representing the applicant, but who is *not* the authorized representative designated by the applicant and on record at the Department. The statements of persons purportedly

representing the applicant shall *not* be considered the official statements of the applicant.

§1529. Change of Address or of Authorized Representative. A written change of address or of authorized representative must be received by the Department *before* the change is considered effective.

§1530. Reapplication. *If* the applicant is *not* found eligible within the one (1) year period that the application is effective, or *if* an eligible applicant's reserved land is returned to the pool of available land for any reason under Chapter 6, above, the applicant may reapply at any time so long as land is still available for purposes of these rules, and the applicant pays the regular application fee. Any applicant who reapplies must go through the entire application process as though no prior application had ever been submitted. The Department is *not* obligated to use any of applicant's submittals under a prior application.

§1531. Lease Terms: Significant Terms. The Attorney General shall prepare a form of lease to be used for the reserved property, which shall protect the Department's interest in the leased premises and which shall be designed to carry out the purposes and intent of these rules. The lease shall incorporate the significant terms indicated below in this Rule 8001:

(a) Term of Lease. The term of the lease shall be fixed at twenty-five (25) years to allow for the construction of improvements and the full payment of a construction loan, *if any*, with an option to renew for an additional twenty-five (25) year renewal term.

(b) Rent. The rental rate for the leases provided in these rules, or how it is to be determined, is *not* indicated anywhere in Guam law. Public Law Number 22-18, to which the land reserved as a cultural center is subject, addresses the rental provisions of commercial leases only, setting such value in terms of fair market value of the property, with payments going to the Chamorro Land Trust Commission. The Chamorro Land Trust Act indicates that the rental amount of available land *not* immediately needed and

which is returned to the Department, may be leased in accordance with 21 GCA §75103(b) with the Department determining the rental amount. In accordance with these considerations, the Department has determined that the rental amount for the leases provided for in these rules shall be based on whether or not the applicant is exempt from paying income taxes, as evidenced by a determination in accordance with Rule 3003(b), above. Rent payments shall go to the Chamorro Land Trust Commission.

(c) Income Tax Paying Applicants. An applicant which, at the time it enters into a lease, does *not* have a determination that the applicant is exempt from paying income taxes, shall pay the fair market rental value of the leased premises, as such value is determined by the Department. Rent may be paid monthly or annually, as the Department and applicant shall mutually agree.

(d) Income Tax Paying Applicants. An applicant which, at the time it enters into a lease, is exempt from paying income taxes as evidenced by a determination from the appropriate government authority, shall pay an annual rental amount which is nominal. The nominal amount is determined to be One Hundred Dollars (\$100.00) per year for the first twenty-five (25) years and Three Hundred Dollars (\$300.00) per year for each thereafter that the reserved property is under lease to the applicant.

(e) Beginning Construction. *If* the applicant enters into a lease according to these rules, the applicant shall complete its plans for development; secure or otherwise provide for financing; arrange for water, sewer and electricity infrastructure, as needed; and begin construction within one (1) year from the effective date of the lease.

(f) Completing Construction. Construction must be completed within three (3) years of the effective date of the lease.

(g) Failure to Begin or Complete Construction. Failure to begin construction within one (1) year from the effective date of the lease

shall result in the *automatic* termination of the lease. Failure to complete construction within three (3) years of the effective date of the lease shall give the Department the right to terminate the lease in its sole discretion.

(h) Covenant Against Gambling. The applicant shall covenant that no gambling activities will be conducted on the leased property, *except* as the applicant may be legally licensed to carry on such activities.

§1532. Approval of Attorney General and *I Maga'lahaen Guahan*. All leases entered into in accordance with these rules must be executed by *I Maga'lahaen Guahan*, attested to by *I Segundu Na Maga'lahaen Guahan*, and approved as to form by the Attorney General.

§1533. Concurrence by *I Liheslaturan Guahan*. All leases entered into in accordance with these rules must be concurred to by *I Liheslaturan Guahan* pursuant to 21 GCA §60112."

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