

LEASE AND USE AGREEMENTS

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Part A GENERAL PROVISIONS

42 PC 2-101. Lease and use agreements on public trust lands.

The Public Lands Trust Board of Trustees, hereinafter referred to as “Board,” is empowered and authorized to execute, upon approval of the Governor following consultation with the local government of the jurisdiction wherein the land is located, leases and other use agreements in regard to public lands held in trust by the Board and designated as available for lease or use by Pohnpei law or by resolution of the Pohnpei Legislature to citizens of the Federated States of Micronesia and by corporations wholly owned by said citizens and to corporations and businesses holding valid foreign investment permits in accordance with and subject to the following provisions of this part:

(1) General authority of the Board. Except as otherwise provided by this part or unless otherwise specified in a statute prescribing a specific use of public lands, no lease or use agreement may be executed under this part for a period of more than 25 years, including any options for renewal or extension thereof.

(2) Development leases. Notwithstanding the term restrictions of Subsection (1) of this section, the Board is authorized to issue development leases of interests in public land designated as available for lease pursuant to this section, to qualified lessees for such

extended terms as are authorized under the Development Leasehold Act, Title 41 Chapter 5, as amended or superseded by Pohnpei law, (41 PC 5-*).

(3) Foreign investment permit holders. In addition to the restrictions and limitations on the authority of the Board stated in Subsections (1) and (2) of this section, the Board may only issue a lease or use agreement to a corporation or business holding a foreign investment permit for property directly related to the conduct of the business authorized by the permit and may not extend the lease term beyond the period for which the corporation or business is authorized to do business in Pohnpei. Notwithstanding 67 TTC (1980) and 51 TTC §11 (1980), a lease issued by the Board to a noncitizen foreign investment permit holder under this section shall be valid without the necessity for review or execution as provided therein for the granting of leases under this part; PROVIDED that the Board shall give priority consideration to applications rendering the greatest benefit to beneficiaries of the Public Lands Trust.

(4) Procedural requirements. Leases and use agreements issued under this part shall be granted in accordance with policies of the Board established by regulations issued by the Board in accordance with the Administrative Procedures Act, Title 8 Chapter 1, as amended or superseded by Pohnpei law, (8 PC 1-*); PROVIDED that such laws are consistent with this part and other laws of Pohnpei; PROVIDED FURTHER that the regulations shall adequately provide for, but need not be limited to:

(a) Limitations and restrictions on the authority of the Board to execute leases and land use agreements;

(b) Reservation to the public trust of the rights to minerals and exhaustible resources, rights-of-way and public easements, and other uses in the public interest which the Board shall prescribe;

(c) Required advertising of lands as available for leasing, unless public notice is otherwise prescribed by statute;

(d) Forms and procedures for applying for leases and use agreements and the awarding of the same;

(e) Submission of the decision of the Board as to proposed recipients of leases and use agreements under this part to the local government of the jurisdiction wherein the affected land is located at least 30 days prior to its submission to the Governor for action, which submission shall contain a complete record of the Board as to the selection process, setting forth the reasons given for each potential recipient so selected;

(f) Recording of the time and manner of consultation of the Governor with the local government prior to his taking any action on the lease or use agreement so submitted;

(g) Standard categories and forms of lease and use agreements;

(h) Requirements of options for extensions;

(i) Recording of each lease and use agreement executed under this part with the Clerk of the Pohnpei Supreme Court, attaching thereto all written records of the Board and written comments of the local governments and Governor related thereto;

(j) Forfeiture; and

(k) Termination of agreements.

Source: D.L. No. 4L-153-78 §1, 9/14/78

Note: S.L. No. 4L-21-96 §21, 10/25/96 repealed §1 of D.L. No. 4L-153-78 and inserted a new §1.

Extended legislative history: D.L. No. 4L-153-78 §1, 9/14/78; S.L. No. 2L-41-80 §1, 11/12/80; §1(3) was amended by S.L. No. 2L-51-81 §1, 3/17/81; S.L. No. 2L-135-82 §1, 10/7/82; S.L. No. 1L-32-85 §1, 7/30/85 amended §1 and inserted new subsections (7) – (9); S.L. No. 3L-97-95 §19, 7/18/95; S.L. No. 4L-21-96 §21, 10/25/96 repealed §1 and inserted a new §1.

42 PC 2-102. Advertisement; exemption.

No lease or use agreement in excess of 120 days nor the renewal or re-execution of any lease or use agreement may be executed by the Board without prior advertisement in the manner prescribed by Part 9 of the Trust Territory regulation No. 72-9; PROVIDED, HOWEVER, that the Board may, in the interest of justice, individually waive the advertisement requirements herein stated, upon a finding that a lease or use agreement should be issued to a particular party or parties in order to remedy a past wrong or wrongs in urban residential leasing or action by the Trust Territory Government, the former Public Lands Authority or by the Board to such party or parties, or predecessors thereof in interest.

Source: D.L. No. 4L-153-78 §2(5), 9/14/78; S.L. No. 2L-41-80 §2(5), 11/12/80; S.L. No. 2L-51-81 §2, 3/17/81

Note: The Public Lands Trust Board of Trustees has been added to this section insofar as the Public Lands Authority has been superseded by the Public Lands Trust Board of Trustees. See S.L. No. 1L-155-87, as amended, and codified as 42 PC Chapter 1.

42 PC 2-103. Transition.

Until such time as the Board issues regulations pursuant to 42 PC 2-101, the Board shall exercise its power under this part in accordance with Public Regulation No. 72-9, of the Trust Territory Government, amended, except to the extent that said regulation is inconsistent with this part and the other laws of the state; PROVIDED that in operating under said regulation:

(1) The Public Lands Trust Board of Trustees shall be inserted in lieu of the District Administrator;

(2) The Public Lands Trust Board of Trustees shall be inserted in lieu of the Trust Territory Government;

(3) All fees and rentals collected by the Board shall be deposited in the Pohnpei Public Lands Trust Fund; and

(4) The Attorney General and the Director of the Department of Land and Natural Resources shall be inserted in lieu of the Trust Territory Attorney General and the Trust Territory Chief of Lands and Surveys, respectively.

(5) No lease or use agreement in excess of 120 days may be executed by the Board without prior advertisement in the manner prescribed by Part (a) of the Trust Territory Regulation No. 72-9.

Source: D.L. No. 4L-153-78 §2(1) – (4), 9/14/78; S.L. No. 2L-41-80 §2(1) – (4), 11/12/80

PART B SPECIAL PROVISIONS

42 PC 2-104. Subleases of residential leases restricted.

Commencing on the effective date of this part [September 18, 2000] and except as provided in 42 PC 2-105 and 42 PC 2-106, no residential lease issued by the Pohnpei Public Lands Trust Board of Trustees, or any public predecessor in interest thereto, may be subleased or assigned to any person who is not an immediate family member of the initial lessee of said property; PROVIDED that the Public Lands Trust Board of Trustees may, in the interest of equity, allow for a person who is an immediate family member of a person who was granted a sublease or assignment of the initial lease by the Public Lands Trust Board of Trustees, or public predecessor in interest thereto, to obtain a further sublease or assignment of said lease in his or her name from the sublessee or assignee. For the purpose of this section:

(1) “Immediate family member” shall mean and be limited to the spouse, to the children and their issue, to the brothers and sisters of the full and half blood, and to the parents of the person. An adopted person shall be deemed a family member of both the natural and adoptive family.

(2) “Initial lessee” shall mean the first lessee in the chain of title extending back to the most recent occasion when the property was not subject to a lease.

Source: S.L. No. 5L-17-00 §1, 9/18/00

42 PC 2-105. Effect on mortgages and deeds of trust.

42 PC 2-104 shall not restrict the issuance of a mortgage or deed of trust pursuant to state law on the leasehold property specified in 42 PC 2-104 for the purpose of improving said property for the benefit of the holders of the interests in said leasehold, nor of the sale of the leasehold

estate pursuant to foreclosure under said state laws to persons who are not of the immediate family.

Source: S.L. No. 5L-17-00 §2, 9/18/00

42 PC 2-106. Tenancies of five years or less.

42 PC 2-104 shall not restrict the establishment of landlord-tenant relationships with respect to the lease of the leasehold property or portion thereof of five years or less, inclusive of any options to extend or renew said tenancy, between the initial lessee, or successor in interest, and any person(s) who are not of the immediate family. For purposes of this part, an assignment or sublease of five years or less, inclusive of options to extend or renew the agreement, shall be deemed a tenancy.

Source: S.L. No. 5L-17-00 §3, 9/18/00

42 PC 2-107. Regulations.

The Pohnpei Public Lands Trust Board of Trustees may issue regulations for the proper enforcement of this part; PROVIDED, HOWEVER, that any sublease, assignment, rental agreement or other conveyance subject to this part, but not in compliance therewith, shall be null and void, and of no effect.

Source: S.L. No. 5L-17-00 §4, 9/18/00