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August 6, 1974

MEMORANDUM FOR HOWARD WILLENS

Subject: Micronesian Development Company Lease

Attached is a copy of what was given to me by Jim White when I asked for the MDC lease.

The lease runs for 20 years from 1965, with an automatic extension of 10 years unless the Lessee provides "written notice to the contrary at least thirty (30) days prior to the expiration date" (§ 2). Contrary to what we were told, the lease does not permit the government to terminate it at any time. Rather, the government may give the required two years notice only "after the fifteenth year of operations under this lease" (§ 10). This means that notice could be given in 1980, and the lease could be terminated in 1982. In the event of such termination, the government is to "pay an amount based on fair market value of Lessee's physical assets in the Marianas Island District" (apparently not just on Tinian) plus a premium of 20% "of such amount as liquidated damages." If the Trust Territory or the Marianas attempts to terminate the lease prior to 1982, it appears that the power of eminent domain will have to be exercised.*/ This may not be so bad, however, for it may be cheaper to condemn MDC's leasehold interest in the specific land which the military requires, than to pay MDC the fair market value of its physical assets.

The rental payments increase in June 1975 from their present level to "[a]n amount mutually agreeable to Government and the Lessee, but in no event shall such rental exceed three per cent (3%) of the gross receipts of Lessee from whatever activity within or without the Trust Territory Islands," (§ 1(C); see § 8 for a definition of gross receipts). Assuming that title to public land is transferred from the Trust Territory to the Marianas Land Corporation before an agreement is reached with respect to the new rental, we will be in a position to

*/ I assume that the exercise of the eminent domain power would not be a breach of the provision of paragraph 4 whereby the government covenanted that the Lessee "shall and may at all times during the said term, or extension thereof, peaceable and quietly have, hold and enjoy the said premises, without any manner of . . . suit, trouble or hindrance of or from the said Government"

negotiate that rental.*/ Note that if things are delayed until 1985 the Corporation or at least Marianas citizens may be able to buy Mr. Jones out (§ 5).

The review of the lease leads me to conclude that it is more important than ever to assure that the United States will settle with Mr. Jones before the Marianas makes land available for a military base.

When you are in the Marianas you might check on the following points. First, is the attachment a complete copy of all the agreements with Mr. Jones relating to the farm on Tinian? Second, has any agreement been made with Mr. Jones concerning rentals for the periods beginning June 1975? And if not, can we arrange for appropriate representatives of the Commission and of the District Legislature to be notified before any such arrangement with Mr. Jones is concluded?

Michael S. Helfer

cc: Eleanor O'Hara

*/ This also assumes all of the land leased to MDC is public land, and none of it is military retention land.