DRAFT/MSH January 13, 1975 12

AGREED STATEMENT OF THE NEGOTIATING PARTIES

This Statement is designed to record the understanding and the intention of the Marianas Political Status Commission and the President's Personal Representative concerning certain legal and technical matters omitted from certain provisions of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.

Section 501. The purpose of this Section is to extend to the people of the Northern Mariana Islands the basic rights of United States citizenship just as those rights are enjoyed by the people of the States of the Union. The Section is also intended to make applicable to the Northern Mariana Islands, as if it were a State, certain of the constitutional provisions governing the relationship between the federal government and the States. The parties recognize that the wording of the Section is broad enough to include certain provisions of the United States Constitution granting legislative power to Congress and at the same time narrow enough to exclude other similar provisions. The wording of the Section in this regard is not intended in any way to limit or to expand the authority of the United States with respect to the Northern Mariana Islands under Sections 104 or 105 of the Covenant.

The parties intend that under no circumstances should the extension of certain provisions of the Constitution of the United States to the Northern Mariana Islands slallwat moderaw coss interfere with the authority of the Northern Mariana Islands from to distribute the membership of its legislature on the basis of considerations in addition to population Section 203 or to conduct trials without juries or prosecute criminal cases without indictments by grand juries [Section 50], or to limit, the acquisition of permanent or long-term interests in land to persons of Northern Mariana Islands descent or regulate the extent of the holding of land which is now Nor is the extension of certain public land (Section 805). provisions of the United States Constitution to the Northern Mariana Islands intended in any way to prohibit the United States Congress from authorizing or requiring any of the actions mentioned in this paragraph.

Section 504. The negotiating parties recommend that the Commission begin work promptly after it is established to determine the precise effect of the formula for the applicability of law stated in Section 502 of the Covenant, and that the Commission make recommendations to Congress of such modifications as may be necessary and appropriate. In particular the parties believe that the Commission should investigate the application of the banking laws to assure that they fully protect the local interest in local control of important financial institutions.

The Commission on Federal Law should also review problems which may arise after termination of the Trustee-ship Agreement. There are a number of federal laws, particularly in the shipping and air transportation fields, which prohibit the citizens of the United States from taking certain actions, and which prohibit persons or corporations which do not meet certain citizenship requirements from engaging in certain activities. In view of the possibility that there will be a number of nationals of the United States in the Northern Mariana Islands following termination of the Trusteeship, and considering that nationals owe the same allegiance to the United States as do citizens, the Commission may want to make recommendations to Congress concerning the manner in which such laws should apply to the Northern Mariana Islands.

The parties intend that the provision that the United States will bear the cost of the work of the Commission does not mean that the United States will pay the salary of the four Commissioners who are domiciled in the Northern Mariana Islands.

Section 805. The parties intend that it will be the responsibility of the Government of the Northern Mariana Islands to implement the provisions of this Section. In particular, the parties understand that the local Government will define the operative terms in this Section,

including such terms as "long-term interest in real property", "acquisition", and "persons of Northern Mariana Islands descent".

WHH 03

January 13, 1975

MEMORANDUM FOR HOWARD WILLENS

Subject: Marianas Public Land Corporation

Eleanor O'Hara and I met today to discuss the Public Land Corporation and the work which we might undertake prior to your return to the Marianas. Our views are summarized in the following paragraphs.

- The new legislation must be drafted for the District Legislature to comply with the Secretarial Order. We think that the new legislation should be in the form of an act, not a resolution, and that it should of its own force create the corporation. Previously we had recommended that the District Legislature by resolution simply authorize the incorporation of the entity under Trust Territory law. But in view of the relatively short period of time until separate administration, and in view of the fact that it is now very clearly in the interest of the United States to order the District Administrator to sign such legislation, we think it is now best to take the direct approach. The legislation would state that the District Legislature has reviewed the proposed articles and bylaws and approves them, and would direct certain named incorporators to proceed with the organization of the corporation. The primary downside risk with this approach is the possibility that the District Legislature will quibble about the articles and bylaws and not pass legislation. This can be handled to some extent by using looser language in the legislation so that enactment would create a corporation "generally organized like the one described in the" articles and bylaws. If this proves to be unfeasible, the act of the District Legislature can create the corporation and authorize it to commence operations only after the designated incorporators have approved the articles and bylaws.
- 2. It seems to us that little new work other than on the legislation is needed. In particular, we think we should do no further work on the Trust Policy Guidelines. A draft was prepared in August. The additional work needed on the draft should be done in the Marianas by the incorporators and by counsel to the corporation. Since the legislation to be drafted would prohibit the disposal of any land prior to the approval of the Trust Policy Guidelines by

the District Legislature (except as otherwise required by the Covenant), the political interests of the District Legislature in this matter would be fully protected.

- 3. As EO'H pointed out in her memorandum of January 9, it is possible to read Section 2(d) of the Secretarial Order not to authorize the creation of a membership corporation. The reading is strained, and on balance we both believe that there is no legal obstacle to the creation of the kind of entity which we have recommended in the past. However, in order to clear up any possible doubts which may come back to haunt us later, I propose that I call Adrian or Emmett Rice and find out whether it would be possible to make the necessary one word change in the Secretarial Order to clear up all confusion. I have already been assured by Adrian that the definition in Section 2(d) was written with the idea of a corporation very much in mind. EO'H does not think the change in the Secretarial Order is necessary.
- 4. EO'H and I discussed the possibility of slightly restructuring the corporation so that it would be a "public" corporation; as she noted in her memorandum, the necessary changes would be minimal. The argument against the creation of a public corporation centers on the possibility that the District Legislature or the District Administrator would attempt to exercise a higher degree of control over such a corporation than the one we have proposed that they create. We see no benefit to making the Public Land Corporation into a public corporation, unless you think this change might make approval by the District Legislature more likely.
- 5. In the course of our conversation about a public corporation, we discussed the potential tax liability of the corporation. If it were a public corporation it presumably would not be subject to federal income tax. The question whether the corporation which we have proposed would be subject to federal income tax is one which we have never fully explored. While styled as a non-profit corporation, in fact the very purpose of the corporation is to administer public land so as to create profits which can be used for the benefit of all the people of the Marianas. Be that as it may, we are not sure that it is necessary to explore the tax question. For, assuming that the corporation would be taxable, all of its taxes would be paid directly to the Marianas Government under the Covenant. The Marianas Government could either rebate it to the

corporation (I assume it will all be "local source") or could simply expend it. Since the District Legislature will have control over the expenditures of the "profits" of the corporation in any event, it does not seem to make any difference whether it gains that control directly or indirectly.

6. In view of the short time which remains until the next meeting of the District Legislature, perhaps it would be best if we could get together quickly to determine how to proceed.

Michael S. Helfer

cc: P. J. Mode
David Lake
Eleanor O'Hara

ி ஃ064