January 27, 1975

MEMORANDUM FOR THE MARIANAS POLITICAL STATUS COMMISSION FILE

Subject: Joint Working Draft of the Technical Agreement (dated January 27, 1975)

This memorandum explains the important differences between the U.S. and the MPSC concerning the Technical Agreement.

Title. I have opposed the use of the term "acquisition" in the title because it implies something more permanent than a lease. Whatever title is used will also have to be used in Section 803(e) of the Covenant.

Preamble, Sixth Paragraph. The substantive problem here is whether the Technical Agreement will or will not be worded in a way which invites the District Legislature to vote on it separately from the Covenant. I have reason to believe from Smith that the United States will accept our revised wording.

Part I, Paragraph 2 (Acquisition). I have not pressed White's suggestion that the U.S. pay a minimum of $19,520,600 regardless of any changes in the Guam Consumer Price Index. I did bring up with Smith and with Rice the question of interest until the lump sum is paid, in recognition of the fact that the potential uses of the land are restricted because it may have to be made available to the United States. Both were adamantly opposed to any such provision.

Part I, Paragraph 3 (Encumbrances -- MDC Lease). The two main questions here are whether both the United States and the Northern Marianas will have the power to terminate Jones' lease, and whether the United States will receive a pro rata share of the rentals which Jones pays. Since the Marianas will own the land subject to Jones' lease and since we will be the sole landlord with respect to at least half of his land, it seemed to me that were better off maintaining as much control as possible, while at the same time obligating ourselves to terminate the lease if the United States requested us to do so. Smith said that the United States' version of this paragraph contemplated that the U.S. would terminate upon a request from the Marianas, but there is no explicit obligation on it to do so in their language. It should be noted that the obligation of the U.S. to pay any damages which result from breach or early termination of the MDC lease at U.S. initiative is intended to assure that the U.S. pays if the transaction we are presently working out is considered to be a breach of Jones' lease. The language could be clearer on this

point, but I have some concern that if we press too hard the principals may have to negotiate about this. Still, the problem cannot be overlooked because by the time the lease to the United States becomes effective, the Marainas will presumably hold title to the land in question, and will therefore be Jones' landlord. On the other hand, we could leave the details of this to be worked out between the legal entity and the TT Government in conjunction with the return of public land. On perhaps a related point, White said in his comments that Jones may want to trade acreage in the southern one third for land in the northern one third to consolidate his grazing area. This might solve a number of problems, and would make additional land available for homesteads.

Part I, Paragraph 4 (Disposal). This is a new paragraph we have proposed concerning that used to be called reversion for non-use. It is based on 40 U.S.C. Sections 472(e), (g) and 484(e)(3)(H). I have not done extensive research into this matter, but the cited sections would require the Marianas to pay the fair market value of the U.S. Government's interest in such property. It appears that disposal to the Marianas for fair market value instead of to someone else would at least be discretionary under the law. At the least, this paragraph would make it mandatory. The definition of surplus property, which I have tracked in the introductory phrase of this paragraph, is such that property is not surplus if it is needed by any federal agency for any purpose.

Part I, Paragraph 5(A)(1) (General Terms of Tinian Leasebacks). White believes that the conditions of the leasebacks are too restrictive with respect to the area south of West Field. The United States refuses to budge on this question. I did not bring up with the U.S. White's suggestion that the leasebacks be for $1 per acre rather than $1 per acre per year.

Part I, Paragraph 5(A)(4) (Tinian Grazing Leases). There are a number of problems here. First, the U.S. has proposed a new sentence which would limit this paragraph to valid existing leases in effect as of December 31, 1974. White, even before this sentence was proposed, noted that many of the existing leases had expired, though people are still using the land. Second, the U.S. has proposed to make these leases for periods of up to five years rather than automatically for a five-year period. The U.S. says that it now wants to have additional flexibility. However, both the December 19 draft of the Technical Agreement (page 5) and the Ambassador's December 14 statement (pages 3 and 5) state that these leasebacks would be for five years. Third, this paragraph obligates the United States to lease back this land only to those who are presently using it, not the Government of the Northern Marianas or to the legal entity -- which could give the present users the right of first refusal but then sub-lease it to others. Smith said the U.S. has some concern

that the Marianas might make a profit from the sub-lease of such land, but this could be handled by appropriate language. However, the Ambassador's statement does make it fairly clear that the United States intended to lease back this land to the present users itself and not operate through the local government. Fourth, White raised the question why grazing would be the only permitted use. Smith said that the reason is that this would be the only use which would be compatible with military maneuvers. I did not press the point. Fifth, there seems to be a mistake with respect to the number of acres covered by this paragraph. The present version, like the December 19 version, says that there are 1,113 acres. The Ambassador, however, said that there were only 610 acres. The U.S. total of 6,458 acreas to be leased back (see U.S. proposed paragraph 5(A)(7)) is correct only if the Ambassador's figure of 610 acres is used with respect to the acreage now covered by grazing leases.

Part I, Paragraph 5(A)(5) (Leasebacks of Homesteads) The two main problems raised by this paragraph are similar to those raised with respect to the grazing leases. First, the land will be going back to the present owners only and not to the Government of the Northern Marianas or to the legal entity. A review of the Ambassador's statement in Saipan in December clearly shows, however, that the U.S. proposal was that these lands go back directly to their former owners. Second, the United States has suggested new language which would make the leasebacks up to five years instead of for five years. This is different than the prior U.S. position. However, since the U.S. undertakes no obligation with respect to homsteads but instead promises only case-by-case review, the point does not seem worth fighting over, for the United States could always during its case-by-case review refuse a five-year leaseback.

Part I, Paragraph 5(A)(6) (West Field Terminal). I think that all of White's points have now been taken care of, is somewhat ambiguously. I did not, however, press the suggestion that the United States pay for aprons, roads and aircraft and autombile parking areas to be built near any new civilian air terminal. The U.S. will pay apron and parking area costs if the terminal is relocated at its request.

Part I, Paragraph 5(B)(Tanapag). Up for decision is the question whether our client will agree that the prior concurrence of the United States is necessary before the $2 million to be set aside for the park at Tanapag, or

its income, can be used for any other purpose, even after the 100 years of the potential lease have run. This is a paternalistic annoyance but I do not think it is all that serious. White pointed out that there is a serious problem with respect to the requirement of prior U.S. approval of harbor-related construction on the 44 acres to be leased back to us at Tanapag. White also thought that the Tinian leaseback restrictions should not as a whole be extended to Tanapag. I have brought this up with Smith and Rice and have found them immovable on the subject. I have also brought up White's point that the U.S. should obligate itself to return the park to its prior condition if it ever uses the park for military purposes. Smith refused to make any such change, arguing that this is what the United States is paying $2 million for.

Part I, Paragraph 5(C) (Other Leasebacks). I have proposed this innocuous language just so that there will be no implication that the United States Government's obligation to lease back land is exhausted by the specific leasebacks described. Similar language was contained in the December 11 draft of the Technical Agreement.

Part II, Paragraph 1 (San Jose Harbor). I did not press White's point about fees for the use of San Jose Harbor since the Technical Agreement provides that "appropriate joint control arrangements will be agreed upon for the construction and subsequent periods" if the U.S. decides to build the Tinian base.

Part II, Paragraph 2(B) (Development Costs). I continue to believe that this sentence is not necessary, but Smith says that it makes the people at the Defense Department sleep better at night.

Part III, Introduction. The United States has proposed the bracketed language as a reaction to our alleged continued insistence that they bear the costs of planning and developing facilities and services on Tinian. I find the language mildly insulting and wholly unnecessary.

Part III, Paragraph 2 (Beaches). The U.S. opposes our bracketed phrase "military personnel and their" dependents, because they want to have the flexibility to assign beaches solely to military personnel. Smith also admitted that there may be a time at which there will be a "non-dependent" base there, and, upon question, agreed that the U.S. language would have no effect if there were no dependents on the base!

I told him that under no circumstances could we agree to the U.S. language and that the Ambassador and Wilson were committed to nondiscrimination against the people of Tinian. I did not press White's point about the joint development of recreational facilities, however.

Part III, Paragraph 3 (Utilities). The U.S. response to our insistence that there be some recognition in the Technical Agreement of the principle developed in the Joint Land Committee negotiations concerning the joint development of utilities was the second and very confusing sentence in their version of subparagraph (C) of this paragraph. My proposed revision contains no substantive difference and hopefully will be acceptable to the United States. White thought this was one of the more important points in the Technical Agreement.

Part III, Paragraph 5 (Medical Care). The bracketed phrase limiting emergency medical care to U.S. citizens and nationals is intended, Smith said, to reduce the scope of the U.S. obligation. Of course, prior to termination of the Trusteeship most of the people will be neither.

Part III, Paragraph 8 (Schools). The December 11 and the December 19 draft of the Technical Agreement contained language dealing with schools -- indeed, the first sentence of the proposed language in this paragraph is taken directly from the December 19 draft prepared by the United States. Smith now says that the U.S. does not want to say anything about schools. The second sentence of this paragraph is based on statements made to me by Rice during prior negotiations about the Technical Agreement.

Part III, Paragraph 9 (Economic Opportunity). This paragraph is taken from the MPSC draft of the Covenant dealing with what used to be called "contractors." Smith opposes it because it will, he says, limit the U.S. flexibility with respect to these matters.

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cc: H. P. Willens
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