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MEMORANDUM FOR CAPTAIN WHELAN, ASST FOR TTPI (ASD/ISA)

Sbbj: Proposed changes in Sections 801-805, Marianas Covenant

1. The following changes are recommended in the subject draft of January 22, 1975.

2. Section 802(b)

Recommendation: In line 3 after "property" add "listed in subparagraph (a) and"; in lines 3 and 4 delete "in accordance ... Covenant"

Reason: To ensure that the leasing restriction applies only to the property listed in subparagraph (a) and not to any other property which may be leased in the future by the United States. The statement of present intention applies only to the property listed in subparagraph (a), and that should be made clear.

3. Section 803(e)

Recommendation: In line 5 of page 5 after "representative" add "and to private individuals or organizations"; in line 7 on page 5 delete "the" before "principles".

Reasons: Language should be added on line 5 to provide for the leasebacks, contemplated in paragraph 4.A.(3)-(5) of the Technical Agreement, to the Micronesian Development Corporation and to private persons. The language of the Covenant is misleading without such a change. The second change eliminates the implication that Part III of the Technical Agreement contains all principles governing relations between the U.S. military and the civilian community on Tinian. U.S. laws and regulations will also be applicable to these relations.

4. Section 804(b)

a. Recommendation: In lines 4 and 5 place a comma after "aircraft" each place it is found.

Reason: Lacking commas, the reference to other aircraft could be construed as indicating that they also will be entitled to use the field without charge. It is presumed that result is not intended.

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b. Recommendation: In the fifth line after "substantial,"
revise the remainder of the subsection as follows: "the United States
Government shall make a fair and reasonable contribution to the cost
of operating and maintaining the facilities, the amount of such con-
tribution being determined by agreement between the Government of the
United States and the Government of the Northern Mariana Islands."

Reason: The present text could be construed as permitting the
Government of the Northern Mariana Islands unilaterally to determine the
charge which the United States Government should pay in the event that
there is substantial use of Isely Field by military and naval aircraft.
The change recommended clarifies that the amount to be paid by the United
States Government is a matter for negotiation.

RICHARD L. FRUCHTERMAN, Jr.
Captain, JAGC, U. S. Navy
Deputy Assistant Judge Advocate General
(International Law)

January 22, 1975

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Proposed Changes In Sections 801-805

Underscored = Proposed wording to be added

Brackets = Present wording to be eliminated

ARTICLE VIII

PROPERTY

Section 801. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands [of the Government of the Trust Territory of the Pacific Islands] on the date of the signing of this Covenant or thereafter acquired by it in any manner whatsoever, will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to all personal property [of the Government of the Trust Territory of the Pacific Islands] on the date of the signing of this Covenant, or thereafter acquired by it in any manner whatsoever, will, no later than upon the termination of the Trusteeship Agreement, be distributed equitably in a manner to be determined by the Government of the Trust Territory of the Pacific Islands in consultation with those concerned, including the Government of the Northern Mariana Islands.

Section 802. (a) The following property will be made available to the Government of the United States by lease [in accordance with this Covenant] to enable it to carry out

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its defense responsibilities:

(1) On Tinian Island, approximately 17,799 acres (7,203 hectares) and the waters immediately adjacent thereto;

(2) On Saipan Island, approximately 177 acres (72 hectares) at Tanapag Harbor;

(3) On Farallon de Medinilla Island, approximately 206 acres (83 hectares) encompassing the entire island, and the waters immediately adjacent thereto.

(b) The United States affirms that it has no present need for or present intention to acquire any additional property or any greater interest in the property, *listed in paragraph 2) and 3)* to be leased to it in accordance with this [the] Covenant] [than that which is granted to it thereby], in order to carry out its defense responsibilities.

Section 803. (a) The Government of the Northern Mariana Islands or its duly authorized representative[s] will lease the property [areas] described in Section 802 to the Government of the United States for a term of 50 years, and the Government of the United States will have the option of renewing this lease for all or part of such property [areas] for an additional term of 50 years if it so desires at the end of the first term.

(b) The Government of the United States will pay to the Government of the Northern Mariana Islands or its duly authorized representative which enters into the lease described in this Section, */ in full settlement of this lease, including the renewal term, if any [option], the total sum

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of \$19,520,600, determined [stated in constant 1975 dollars, divided] as follows:

(1) For that property on Tinian Island, \$17,500,000;

(2) For that property at Tanapag Harbor on Saipan Island, \$2,000,000; and

(3) For that property known as Farallon de Medinilla, \$20,600.

The sum stated in this Subsection will be adjusted by a percentage which will be the same as the percentage change in the Guam Consumer Price Index from the date of the signing of this Covenant until the sum is paid.

(c) From the property to be leased to it in accordance with this Covenant, the Government of the United States will lease back to the Government of the Northern Mariana Islands, or its duly authorized representative, for the [at a nominal] sum of \$1 per acre per year, approximately 6,400 acres (_____ hectares) on Tinian Island, and approximately 44 acres (_____ hectares) at Tanapag Harbor on Saipan Island, which will be used for purposes compatible with their intended military use. [the following areas to be made available for purposes compatible with their intended military use:

[(1) On Tinian, approximately 6,400 acres [sic]; and

[(2) At Tanapag, 44 acres.]

(d) From the property to be leased to it at Tanapag Harbor on Saipan Island, the Government of the

United States will make available to the Government of the Northern Mariana Islands or its duly authorized representative 133 acres (hectares) at no cost. This property will be set aside as a public park to serve as a memorial to the American and Marianas dead in World War II. The \$2,000,000 received from the Government of the United States for the lease of this property will be placed into a trust fund. The principal of this trust fund will not be expended, and the income therefrom will be expended only for the development and maintenance of the park (unless not needed for that purpose) for so long as the lease to the Government of the United States with respect to such property is in effect. [One hundred thirty-three of the 177 acres included at Tanapag Harbor will be made available to the Government of the Northern Mariana Islands by the United States Government and will be set aside by the Government of the Northern Mariana Islands as a memorial for the American and Marianas dead in World War II and a public park. The Government of the Northern Mariana Islands will place the \$2 million made available by the United States in a perpetual trust fund to be used as needed for the development of the memorial park and for its maintenance.]

(e) A separate Technical Agreement Regarding United States Land Use in the Northern Mariana Islands will be executed simultaneously with this Covenant. The terms of

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the lease to the United States will be in accordance with this Section and with the terms of the Technical Agreement. The Technical Agreement will also contain terms relating to the lease-back of property to the Government of the Northern Mariana Islands or its duly authorized representative ^{and to private individuals or} to ^{organizations,} the [terms of] joint use arrangements for San Jose Harbor and West Field on Tinian Island, and to [the] ^{principles} principles which will govern [governing] the social structure relations between the United States military and the Northern Mariana Islands civil authorities.

Section 804. (a) The Government of the United States will cause all agreements between it and the Government of the Trust Territory of the Pacific Islands which grant to the Government of the United States use or other rights in real property [located within] in the Northern Mariana Islands to be terminated upon or before the effective date of this Section. All right, title and interest [Title to any real property] of the Government of the Trust Territory of the Pacific Islands in and to any real property with respect to which the Government of the United States [Government] enjoys such use or other rights will be transferred to the Government of the Northern Mariana Islands or its duly authorized representative at the time of such termination. At the time such right, title and interest is so transferred, the Government of the Northern Mariana Islands

or its duly authorized representative will assure the Government of the United States the continued use of real property then actively used by it [the Government of the United States] for civilian governmental purposes, on terms comparable to those enjoyed by the Government of the United States under its arrangement with the Government of the Trust Territory of the Pacific Islands on the date of the signature of this Covenant with respect to such property.

(b) All facilities at Isely Field developed with federal aid and all facilities at that Field usable for the landing and take-off of aircraft will be available to the United States for use by military and naval aircraft, in common with other aircraft, at all times without charge, except if the use by the military and naval aircraft shall be substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities so used may be charged.

Section 805. Except as otherwise provided in this Article, and notwithstanding the other provisions of this Covenant, or those provisions of the Constitution, treaties or [and] laws of the United States applicable to the Northern Mariana Islands, the Government of the Northern Mariana Islands, in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them

against exploitation and to promote their economic advancement and self-sufficiency:

(a) will until 25 years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long term interests in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent; and

(b) may regulate the extent to which a person may own or hold land which is now public land.