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July 26, 1995

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VIA TELECOPIER

TO: Maya Kara

FROM: John F. Biehl

TELECOPIER NO.: 322-0993

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NUMBER OF PAGES INCLUDING THIS COVER SHEET: 4

CASE NAME:

CASE NUMBER:

MESSAGE: Please see attached letter of even date.

IF PROBLEMS OCCUR, PLEASE CALL Lucie AT (670) 322-3455,
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VIA TELECOPIER
322-0993

Maya Kara
House of Representatives Legal Counsel
CNMI Government
Legislature Building
Capitol Hill, Saipan, MP 96950

Re: Comments on proposed amendments to Section 1 of Article XII

Dear Ms. Kara:

We have reviewed the analysis of the so-called "disclosure sufficient to ensure fairness" provision appearing in a proposed amendment to Section 1 of Article XII of the CNMI Constitution. The invasiveness of the provision into the area of traditional private arms-length commercial transactions is rather shocking. We are unaware of any jurisdiction in the world adhering to principles of free market forces which has such provisions. Simply as a matter of principle, we believe this government should be loath to legislate, by constitutional amendment or otherwise, such a profound invasion into arms-length transactions between private parties. In our opinion the disclosure statement provision is extremely ill-advised and recommend that it be discarded in its entirety.

In addition to concerns over the principle of having our government takes such invasive action at the constitutional level, other concerns include:

1. This provision is an open invitation to endless litigation. For one reason there is ambiguity and a lack of certainty in the standards. For example, what level of proficiency in English is sufficient to allow the disclosure to be made in English, or what level of reading skills is sufficient to allow disclosure to be in writing? The normal legal presumptions should

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apply in these areas rather than introducing these immeasurable considerations. The adequacy of the disclosure will be an ongoing basis for challenging transactions. No transaction will ever be safe because sellers will always claim the disclosure was fraudulent, and thereby render the six year statute of limitations inapplicable. All matters involving title to land should be free of ambiguity, subjectivity and uncertainty in order to have certainty of title and stability in land values, and this proposed provision will have just exactly the opposite effect.

2. In a land transaction there is as much likelihood that a future title problem will be caused by the seller or seller's predecessor as the buyer, yet the government under the proposed amendment is weighing in entirely on the side of just one side of land transactions. On its face the amendment "to assure fairness" is unfair.

3. As a practical matter, the proposed amendment requires buyers to disclose perfectly legal arrangements which historically are essentially none of the seller's business. It provides a basis for a seller to back out of a transaction on the basis that a buyer refused to provide information to which the seller is not entitled under any law, including this one. From an objective perspective, the sole purpose of the amendment appears to be to give sellers information in a private arms-length transaction to which they were heretofore not entitled in order for sellers to demand a higher price on a basis unrelated to demand and supply, location, or other market factors involved in establishing real estate values. A seller is not entitled under normal circumstance to be told of the business risks a buyer is planning to take with respect to a parcel, and then be able to increase the price based on the risk the other party intends to undertake. The requirement of disclosing the "assembling of parcels", for example, will lead inevitably to killing developments of any size involving more than one parcel. Large developments are predicated on land acquisition budgets, and the "assembly of parcels" disclosure will almost certainly result in prices which will exceed acquisition budgets and kill deals. Such a requirement would have likely prevented the development of a single golf course on Saipan which is built on private property, nor would California have a Disney Land or Florida a Disney World with such a requirement. All these examples involved assembling parcels and have been of enormous economic benefit to the local economies which depend on tourism.

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In short, both in principle and in practical effect, it is our opinion that the extraordinarily invasive provisions of the disclosure statement will produce far more harm than good, invite litigation, continuously destabilize land values, perpetuate uncertainty in land titles, and discourage investment in the Commonwealth.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Biehl", written over a large, stylized circular flourish.

JOHN F. BIEHL

JFB/1a
jfb.A10:kara.ltr