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**July 27, 1995**

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**VIA TELECOPIER**

**TO:** Delegate Juan Tenorio  
**FROM:** John F. Biehl  
**TELECOPIER NO.:** 322-2270  
**TELEPHONE NO.:** 664-5377  
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**MESSAGE:** Please see attached letter of even date.

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Third Northern Mariana Islands  
Constitutional Convention  
Second Floor, Joeten Dandan Center  
Caller Box 10007, Saipan, MP 96950

**Re: Proposed Amendments to Section 5 of Article XII**

Dear Mr. Tenorio:

This letter is a follow-up to our letter to you dated July 25, 1995, regarding our recommendation that the amendments to Section 5 of Article XII of the Constitution be given prospective application only. We want to stress the urgency and importance of making the amendments, if adopted, prospective rather than retroactive in application.

As you may be aware, there has been a recent renewal of interest in investing in the Commonwealth on the part of investors. This renewed interest is largely the result of the decisions which have been reached by the CNMI courts in Article XII cases. Investors are encouraged when a jurisdiction's own courts demonstrate a capability to straighten out serious legal problems, as the local courts have done in these cases. The Commonwealth Supreme Court has resolved the severability issue in the Diamond Hotel case, and the right to secure financing from third parties in the Ferreira case. Just this month the Commonwealth Superior Court has decided the Nikko Hotel case involving the corporate status of corporations in the chain of title to land. All of these decisions, in our view, are correct and lend greater certainty to land titles and stability to land values.

But there is a serious problem. We have previously submitted written comments to Committee Chairman Lifoifoi recommending against including subjective control tests in amendments to the corporation section of Article XII (i.e. Section 5). Using such terms as

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"actually, completely and directly" in connection with directors involvement in governing corporations and shareholders ownership of stock obviously invites unending litigation in cases where a corporation is in the chain of title. If the people of the Commonwealth have learned nothing else in the past eight or nine years, they should have learned that inviting litigation in the matter of land titles is absolutely against the interests of the Commonwealth as a whole as well as land owners. If we assume the proposed amendments to Section 5 are not made prospective in application only, and are given retroactive application to pending cases, including cases on appeal, then the new subjective tests will have application to the Nikko Hotel case which will undoubtedly be taken up on appeal. If that occurs, then everything which has been accomplished to eliminate ambiguity, subjectivity and uncertainty in corporate land titles will be destroyed.

The practical consequences which will follow if Nikko Hotel's victory is turned into a defeat due to the new tests, and the hotel is lost, are sobering. Nikko Hotel and Japan Air Lines have affirmatively stated that they will leave Saipan. There is no reasonable basis to disbelieve this. If they leave, other large outside investors on Saipan may well follow. It is certain that outside investors considering the Commonwealth will by-pass the CMI and develop projects where their investments are secure. It is our opinion, based on our contacts with many outside investors, that these adverse consequences will happen; it's not just idle talk or scare tactics. This is why we believe it is so important for any amendments to Section 5 which include subjective control tests to be given prospective application only. In some respects the economic future of the Commonwealth depends on it. Of course, we believe the best solution would be to omit subjective control tests altogether from any amendments to Article XII.

Very truly yours,



John F. Biehl

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