

FERN ACRES COMMUNITY ASSOCIATION

BYLAWS

(Revised March 2014)

CHARTER OF INCORPORATION
of
FERN ACRES COMMUNITY ASSOCIATION

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, SIDNEY I. HASHIMOTO, Director of regulatory agencies of the State of Hawaii, send GREETINGS:

WHEREAS, GUSTAF BLOMBERG, ALICE BLOMBERG, AL SIEMANN, GRACE SIEMANN and BECKY ARQUERO, hereinafter called the petitioners, have made application to me as Director aforesaid, whereby they and those who may hereafter become associated with them and their successors may be made a body corporate of the State of Hawaii, under the name of

FERN ACRES COMMUNITY ASSOCIATION

with all rights, powers, privileges or immunities which are now or may hereafter be conferred by law upon a corporation of such nature;

NOW, THEREFORE, KNOW YE, that I, SIDNEY I. HASHIMOTO, as Director as aforesaid in the exercise and execution of every power and authority in anywise enabling me in this behalf, hereby constitute the petitioners and their associates and successors a perpetual body corporate under the laws of the State of Hawaii.

FIRST: The name of the corporation shall be FERN ACRES COMMUNITY ASSOCIATION.

SECOND: The location of the corporation and the address of its initial office shall be at P.O. Box 38, Keaau, County and State of Hawaii, and at such other place as directors may from time to time determine.

THIRD: The purposes of the corporation and its powers in connection therewith are as follows:

(a) To protect and promote the best interest of the property owners and residents of the subdivision known as FERN ACRES, Puna, County and State of Hawaii, which is more particularly shown on Maps filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No, 1053; to promote and strive for the improvement and betterment of roadways and utilities within FERN ACRES; and to promote and encourage a better community and civic spirit among and to foster good will and friendship between all residents of FERN ACRES; to cooperate with civic and public organizations for the general welfare of the people of the Island of Hawaii and the State of Hawaii.

(b) To take and hold by devise, bequest, gift, purchase, lease or other transfer either absolutely or in trust, for such purposes or any of them, any property, real, personal or mixed, without limitation as to amount or value; to sell, convey or otherwise dispose of any such property and to invest and reinvest the same or any proceeds thereof or income therefrom in real and personal property of every class and description, including bonds, stocks, and securities of every class, type and description; and to expend or distribute the income, principal, or both income and principal, of any such property, for any of the purposes of the corporation in such manner as in the judgment of its members or directors will promote such purposes;

(c) To enter into, make, perform and carry out contracts of every kind for any corporate purpose, without limit as to amount, with any person, firm, association or corporation or other group or organization, including particularly contracts for the borrowing of money and for the employment of administrators and investment or other counsel as the directors may deem necessary; to draw, make, accept, endorse, discount, execute and issue promissory notes, warrants and other negotiable or transferable instruments; to issue bonds, debentures or other obligations for any of the purposes of the corporation, and to secure the same by mortgages, pledges, deeds of trust or otherwise;

(d) To engage in such other activities as may be reasonably incidental to the promoting and furthering of its purposes;

(e) To exercise and possess any and all of the rights, privileges, powers and immunities which now or hereafter may be secured by law to chartered benevolent and charitable corporations and which are reasonably incidental to the fulfillment of the purposes above set forth or to the exercise of any powers possessed by or granted to the corporation.

FOURTH: The period of duration of the corporation shall be perpetual.

FIFTH: There shall be a Board of Directors of the corporation to consist of not less than three (3) nor more than eleven (11) persons, each of whom shall be a member of the corporation, the majority of whom must be residents of the State of Hawaii. The Board of Directors shall be constituted and its members elected and appointed as the By-laws shall prescribe. The direction and management of the affairs of the corporation and the central and distribution of its property, shall be vested in the Board of Directors:

subject however, to any regulations which may be set forth in statutory provisions, in this charter of incorporation, or in the Bylaws.

The number and names of the initial Board of Directors of the corporation who shall hold office until their successors shall be duly elected, together with their residence addresses, are as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
1. GUSTAF BLOMBERG	P. O. Box 38, Keaau, Hawaii
2. BECKY B. ARQUERO	Hilo, Hawaii
3. GRACE SIEMANN	Keaau, Hawaii
4. AL SIEMANN	Keaau, Hawaii
5. ALICE BLOMBERG	P. O. Box 38, Keaau, Hawaii

SIXTH: The Board of Directors of the corporation shall elect each year from among the members of the corporation a President, A Vice President, one or more Secretaries, a Treasurer; and, from time to time, such other officers as the conduct of the affairs of the corporation may require.

SEVENTH: The corporation is a membership corporation and is not organized for profit and it will not issue any stock. No part of its assets, income or earnings shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation and except upon liquidation of its property in case of corporate dissolution. No loans shall be made by the corporation to its officers or directors.

EIGHTH: In all events and under all circumstances, including but not limited to reorganization, dissolution, or amendment of the charter of incorporation of the corporation, no substantial part of the activities of the corporation shall consist of carrying on propaganda, or otherwise attempting, to influence legislation; (except as it may directly or adversely effect the residents of FERN ACRES) nor shall it participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; (however, this does not preclude any individual from support of any candidate of his own choice of any legally state recognized political party nor shall it engage in any activities which are unlawful under the laws of the United States, or the State of Hawaii; nor shall it engage in any transaction defined at the time as prohibited under the Internal Revenue Laws of the United States; nor shall amounts be accumulated out of income of the corporation in amount or duration, or be used or invested in such manner or for purposes or functions, such that the same would constitute grounds for denial of income tax exemption under the Internal Revenue Laws of the United States.

NINTH: The membership of the corporation shall consist of the petitioners named herein, together with such other members, whether as successors to the original members or as additional members, as shall be admitted to membership in the manner prescribed in the by-laws. At all meetings of the members each member shall be entitled to one vote. A person shall cease to be a member upon his death or upon his withdrawal or expulsion from membership. Any member may be expelled from membership, for any reason, by vote of the majority of the members of the corporation at any annual, regular or special meeting of the membership. A member may also be expelled for non-payment of dues or other particular reason which may, together with the procedure for expulsion, be specified in the by-laws. No membership shall be assignable inter vivos nor shall any membership pass to any personal representative, heir or devise of any member.

TENTH: The by-laws of the corporation shall be adopted by the petitioners prior to the effective date of such by-laws and within thirty (30) days after the charter has been granted, and thereafter may be adopted, amended or repealed by vote of two thirds of the members of the corporation present in person at any meeting of the membership duly called and held, the notice of which shall have stated that a purpose of the meeting is to consider the adoption or amendment or repeal of the by-laws.

ELEVENTH: The property of the corporation shall alone be liable for the payment of its debts and liabilities and the private property of the members, directors and officers shall not be subject to the payment of corporate debts to any extent whatever.

TWELFTH: The corporation shall indemnify every director or officer, his heirs, executors and administrators, against expenses reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a director or officer of the corporation, except in relation to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the corporation is advised by counsel that the person to be indemnified did not commit such a breach of duty. The foregoing right of indemnification shall be in addition to any other rights to which he may be entitled as a matter of law.

IN WITNESS HEREOF, I have hereunto set my hand and official seal at Honolulu, Hawaii, this 16 day of May, 1967.

(SIG.) Sidney I. Hashimoto

Directory of Regulatory Agencies State of Hawaii

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FERN ACRES COMMUNITY ASSOCIATION

BYLAWS

ARTICLE I: PRINCIPAL OFFICE AND PURPOSE OF ASSOCIATION

SECTION 1. PRINCIPAL OFFICE: The location of the principal office of the Fern Acres Community Association ("Association") shall be at such place in the County and State of Hawaii as its Board of Directors may from time to time determine.

SECTION 2. PURPOSE OF THE ASSOCIATION: The purpose and area of Association activities shall be limited to road improvements, electric and telephone extensions of the Association lot owned on Lehua Street, and such other community services and programs as the Board shall wish to promote.

ARTICLE II: MEMBERSHIP

SECTION 1. QUALIFICATIONS: Any person of voting age may become a member of the Association with full benefits and voting privileges by meeting all the following requirements. Said person shall:

- (a) Participate constructively in the improvement and general development of the Fern Acres community through the contribution of funds, efforts and good will;
- (b) Be able to provide evidence of legal ownership of one or more lots in the Fern Acres subdivision;
- (c) Not be a previously expelled member, unless meeting the requirements for reinstatement as provided in Section 4 of this Article;
- (d) Pay initiation and transfer fees, dues and assessments of the amounts and in the manner prescribed in Article VII of these Bylaws.

SECTION 2. PERIOD: The membership period shall be the calendar year during which dues are tendered, except that dues received during a calendar year for which dues have already been paid, or during the month of December shall automatically be allocated to the following calendar year.

SECTION 3. TERMINATION: Membership in the Association may be terminated in any one of the following manners:

- (a) By failing to pay annual dues by March 31, or by failing to pay annual assessments by March 31.
- (b) By voluntary resignation, in writing, submitted at any time by a member otherwise in good standing.
- (c) By termination of ownership in Fern Acres property.
- (d) By involuntary expulsion as recommended by a committee of Directors so assigned, based upon suitable investigation and supported by a majority vote of the Board of Directors. Expulsion shall result from any material conflict with the goals and objectives of the Association, or from the direct failure to comply with Section 1(a) of this Article.

SECTION 4. REINSTATEMENT: Membership in the Association may be reinstated as follows:

- (a) In all cases except for involuntary expulsion, membership may be reinstated by meeting the qualifications for membership stipulated in Section 1 of this Article.
- (b) Previously expelled members may be exonerated or pardoned through appeal procedures by a two-thirds (2/3) vote in their favor by the Board of Directors. An appeal may be requested by any Director on behalf of the expelled member and heard at the discretion and convenience of the Board.

SECTION 5. ASSOCIATE MEMBERSHIP: Anyone meeting all of the requirements of membership except for property ownership required by Section 1(b), may be proffered associate membership status by a majority vote of the Board of Directors, provided that they collectively determine that the individual has a vested interest in the well-being of the Association, and is expected to benefit the Association and the community as a result of this membership. An associate member shall have the same benefits and privileges as a regular member. Associate membership may be terminated in any of the following manners:

- (a) By voluntary resignation in writing submitted at any time by an associate member otherwise in good standing.
- (b) By a majority vote of the Board of Directors.

SECTION 6. HONORARY MEMBERSHIP: The Board of Directors may from time to time, elect to bestow honorary membership upon visiting dignitaries or other special individuals, strictly as a means of extending official recognition, usually in response to special efforts or interest shown the Association or community by such persons. This is strictly a formality, and does not confer any of the benefits or privileges of membership. However, at any meeting attended by an honorary member, the presiding director may invite the honorary member to sit with the directors and take part in discussions, especially concerning matters in which this person might be involved or otherwise especially knowledgeable. In such instance, the honorary member may express an opinion, but shall not vote. Honorary membership shall extend indefinitely, subject to annual review at the prompting of the secretary or membership chairman, or until revoked by the Board of Directors. Notice of revocation of honorary membership is not required, but may be given at the discretion of the Board of Directors.

SECTION 7. MEMBERSHIP PRIVILEGES: Any member, his or her family, guests or tenants, shall be entitled to enjoy and use all Common Areas and facilities belonging to the Association, subject, however, to such rules and regulations as may be adopted from time to time by the Board of Directors. No member shall have an interest in the property of the Association. The Board of Directors shall have full discretion to use or dispose of Association property consistent with law, the Charter of Incorporation and these Bylaws provided the value of each piece of property for disposal shall not be in excess of one thousand dollars (1,000). Value to be determined by local market price for like item. In this event the membership shall have the power to approve or deny the disposal of said property by simple majority vote of membership. Donations to F.A.C.A. earmarked by donor for a specific disposal shall be exempt from this provision.

SECTION 8. TRANSFER: Membership in the Association may not be transferred or assigned. No member may hold more than one membership in the Association.

ARTICLE III: MEETINGS OF MEMBERS

SECTION 1. ANNUAL MEETING: An annual meeting shall be held at 11:00 a.m., on a Saturday or Sunday in July of each year as the Board of Directors may select, for the inauguration of Directors, and for transacting any business which might be appropriately brought before the membership at that time. The general vicinity of the annual meeting shall be the County of Hawaii, within easy driving range of the

Fern Acres Subdivision. The annual meeting shall be announced by U.S. mail to all members of the Association no less than thirty (30) days prior to the time of the meeting.

SECTION 2. SPECIAL MEETINGS: A special meeting of the membership may be called by the President, the Board of Directors, or not less than ten percent (10%) of the voting membership. Written notice of special meetings shall be sent to all members no less than thirty (30) or more than sixty (60) days prior to the time of the meeting. Notices are deemed as having been sent upon their deposit in the U.S. mail with postage prepaid. Notice of a special meeting shall include information regarding the purpose of the meeting, and the names and phone numbers or mailing addresses of individuals who may be contacted for further information.

SECTION 3. VOTING PRIVILEGES: Each member in good standing shall have one vote on matters pertaining to the organization or general business of the Association. In the event of mandatory assessment for community projects such as road development and maintenance, etc., the Association shall, to the extent so directed by civil authority, serve as steward for all owners of property within the Fern Acres Subdivision, and in this capacity, shall administer the voting on these special issues. On votes of this nature, each owner in good standing with respect to the payment of all legal assessments, shall have one vote for each lot he owns within the subdivision, and membership in the Association is not required.

SECTION 4. QUORUM: The members holding five percent (5%) of the votes which may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting without further notice.

SECTION 5. ABSENTEE VOTE: At any meeting of members, a member may vote in absentia by absentee ballot. All members shall be notified by mail no less than thirty (30) days prior to the meeting date showing matters to be voted upon.

ARTICLE IV: BOARD OF DIRECTORS

SECTION 1. AUTHORITY AND RESPONSIBILITY: The Board of Directors derives its authority from the Charter and Bylaws of the Association, and by the laws and rulings of the State of Hawaii. The Board shall assume the responsibility to the membership of the Association for managing its organizational business and affairs. Furthermore, the Board shall act on behalf of the Association by directing any community development for which the Association might assume responsibility to the Fern Acres Subdivision property owners and residents, to the extent that the Association is thus empowered by them, and/or by appropriate civil authority. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers, to-wit:

FIRST: To select and remove a Chairman of the Board, officers, agents, and employees of the Association, to prescribe such duties for them, not inconsistent with law, the Charter of Incorporation or these Bylaws; to delegate authority or to limit the authority of the Chairman of the Board, the officers; and other provisions of these Bylaws notwithstanding, to require security for faithful service, including execution of an oath of office or written acceptance of responsibility; and to fix compensation for employees.

SECOND: To make such rules and regulations for conducting, managing and controlling the affairs and business of the Association, not inconsistent with law, the Charter of Incorporation or these Bylaws.

THIRD: To borrow money and incur indebtedness for the purposes of the Association or Fern Acres Subdivision in the corporate name, and to execute promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecation or other evidences of debt and securities therefore.

FOURTH: To establish the following standing committees, prescribe the duties of each, and elect from the Board the chairperson of each – Executive Committee, Policy Committee, and Nominating Committee. The Board may also establish an Audit Committee, prescribe the duties

thereof, and elect a non-Board member as chairperson. The Board may establish other committees from time to time, prescribing the duties and electing from the Board the chairperson thereof.

FIFTH: To establish membership dues and rules pertaining to their payment and collection. Subject to applicable civil laws and rulings, the provisions of the Charter of Incorporation and these Bylaws, to make property assessments for the repair, improvement and management of roadways, utilities and all common facilities within Fern Acres Subdivision, and to file liens in the case of delinquent payment.

SIXTH: To hire employees to assist with the business of the Association, where the Board of Directors determine that such action might best serve the interests of the Association.

SEVENTH: No director shall vote on any matter in which said Director has an interest, nor shall said Director be present at any portion of a meeting of the Board of Directors which the Director considers to be in conflict of interest by said Director. No Officer shall undertake any action on behalf of the Corporation in which said Officer has an interest unless said Officer has first made written disclosure of the conflict of interest in writing to the Board of Directors and the Board of Directors has given advance approval for said action. All issues related to a conflict of interest or perception of a conflict of interest shall be determined by the Board of Directors.

SECTION 2. NUMBER AND QUALIFICATION OF DIRECTORS: The Board of Directors shall consist of nine (9) persons, all of whom must be members in good standing of the Association, and shall have expressed a willingness to serve as a committee chairperson. If, during the course of his or her tenure, a Director shall cease to be qualified for membership in the Association, his or her tenure will be terminated automatically as of the date the eligibility terminated.

SECTION 3. ELECTION AND TERM OF OFFICE: Three (3) directors shall be elected each year by ballot, and shall be administered the oath of office at the annual meeting, and assume their offices at that time. A list of qualified candidates, along with a ballot and voting instructions, shall be distributed to all members sufficiently in advance of the annual meeting to facilitate the election process. Voters may select from the list or write in the name of any other qualified person for each position to be filled. Except when elected to complete an unexpired term, all directors shall serve for a three (3) year period, unless otherwise terminated by resignation or action of the Board or the membership at an annual or special meeting. Directors may serve successive terms if reelected. Should it become necessary to reestablish the entire Board, three (3) directors shall be elected for a one (1) year term, three (3) directors for a two (2) year term, and three (3) directors for a three (3) year term. The initial Board of Directors under these Bylaws shall at their first meeting establish the term of each director accordingly.

SECTION 4. VACANCIES:

Vacancies in the Board shall be filled at the meeting at which they occur, or not later than the next regular meeting, by a majority vote of the remaining directors, though less than a quorum. Each director so elected shall serve for the remainder of the term to which he or she has succeeded. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his or her term of office.

SECTION 5. REMOVAL: The Board of Directors may, by vote of the majority of members present at any meeting where a quorum is present, remove any director, whether the director is present or not, provided that grounds exist for such removal, that thirty (30) days notice has been given to the director involved, and that said director has had reasonable opportunity, in the judgment of the Board, to vindicate himself or herself. Grounds for removal include the following, but are not limited to them:

- (a) Failure of a director to attend three successive regular meetings.
- (b) Conviction of any director, by a legally constituted court, of a felony involving moral turpitude.

- (c) Malfeasance in office of a director who is or has been an officer of the Association, except that a two-thirds (2/3) vote of the directors present at any regular or properly noticed special meeting at which a quorum is present shall be required to effect such removal.

The general membership of the Association shall have the same powers of removal, provided that such power is exercised at an annual meeting or a special meeting called for that purpose at which a quorum is present, and further provided that only a majority vote is required to effect such removal.

SECTION 6. REGULAR BOARD MEETINGS: A regular annual meeting of the Board of Directors shall be held without other notice than this Bylaw, one hour before, and at the same place as the annual meeting of members. The Board of Directors may provide, by resolution, the time and place for holding additional regular meetings of the Board of Directors, to be held without additional notice.

SECTION 7. SPECIAL MEETINGS: The President, or any two (2) directors, may call a special meeting of the Board of Directors at any place within the County of Hawaii. Notice of a special meeting shall be given to all directors no less than seven (7) days prior to the day of the meeting. Notice shall indicate the time, date, and the purpose or subject of the meeting, and who is calling the meeting. Notice is deemed to be accomplished upon delivery to the U.S. Postal Service, with postage prepaid.

SECTION 8. QUORUM: A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting without further notice.

SECTION 9. COMPENSATION: Directors shall not receive any fees or stated salaries for their services as directors or officers. However, reimbursement may be made for reasonable, substantiated expenses incurred in the performance of official duties of the Association, subject to the approval of the Executive Committee. Furthermore, nothing shall preclude any director serving the Association in such professional capacity which he or she is qualified and receiving remuneration therefore, provided that the services are specifically requested by the Board, and the duration of such services and the compensation therefore are specifically authorized in advance by the Board.

ARTICLE V: OFFICERS

SECTION 1. NUMBER AND QUALIFICATION: The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, and such other officers as may be elected in accordance with the provisions of Section 3 of this Article. Only members in good standing in the Association who have been duly elected as directors shall be elected to office. One person may temporarily serve in two or more offices, except those of President and Secretary.

SECTION 2. ELECTION: The officers of the Association, except such officers as may be elected in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by the Board of Directors, and each shall hold office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected.

SECTION 3. SUBORDINATE OFFICERS: The Board of Directors may elect such other officers as the business of the Association requires, provided they are in good standing. Each shall hold office for such period and have such authority and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

SECTION 4. REMOVAL AND RESIGNATION: Any officer may be removed with or without cause, by a two-thirds (2/3) vote of the Board at that time in office, at a special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein. The acceptance of such resignation shall not be necessary to make it effective.

SECTION 5. VACANCIES: A vacancy in any office resulting from any cause shall be filled in the manner prescribed elsewhere in these Bylaws for regular selection to such office. Any vacancy occurring in the office of President, Vice President, Treasurer or Secretary will be resolved by convening an executive meeting of the Board of Directors. The directors will choose one of themselves as successor.

SECTION 6. PRESIDENT: The President of the Association shall be the chief executive officer of the Association, and subject to the control of the Board of Directors, shall have general supervision, direction and control of the business and officers of the Association. The President shall be chairman of the Executive Committee, ex-officio member of all standing committees, and shall have the power to appoint such special committees as he deems necessary for the administration of the Association, provided that they are not duplicative of committees appointed by the Board. The President shall preside at all annual or special meetings of the membership and have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. Subject to advance approval of the Board of Directors, once annually the President shall order an audit by a certified public accountant, and or a reputable public accountant, not a member of the Association. The audit performed shall be adequate to assure compliance with public law and the requirements of the membership of the Association. The President shall serve no more than two (2) consecutive terms, except by a two-thirds (2/3) vote of the Board of Directors.

SECTION 7. VICE PRESIDENT: In the absence or disability of the President, the Vice President shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors or these Bylaws.

SECTION 8. SECRETARY: The Secretary shall keep or cause to be kept a complete set of minutes, at the principal office of the Association or such other place as the Board of Directors may order, of all meetings of directors and members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at director's meetings, the number of memberships present or represented at members' meetings and the proceedings thereof.

The Secretary shall keep or cause to be kept, at the principal office, a membership register showing the names of the members and their addresses, and the property to which each member shall relate. The Secretary shall give, or cause to be given, notice of all meetings of the members and the Board of Directors, where such notice is required by these Bylaws, or by law to be given. The Secretary shall keep the corporate seal of the Association, and shall have such other duties as may be prescribed by the Board of Directors or these Bylaws.

SECTION 9. TREASURER: The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association. The books of account shall at all times be open for inspection by any director. The Treasurer shall deposit, or cause to be deposited in accordance with the policy of the Board of Directors, all moneys and other valuables in the name of and to the credit of the Association, with such depositories as may be designated by the Board of Directors; shall disburse the funds of the Association as may be ordered by the Board of Directors; shall render to the President and the directors, whenever requested, an account of all his or her transactions as Treasurer, and of the financial condition of the Association; and shall have such other powers and such other duties as may be prescribed by the Board of Directors or these Bylaws.

ARTICLE VI: LIABILITY OF OFFICERS AND DIRECTORS

SECTION 1. EXCULPATION: Each director or officer shall be free from all personal liability for any acts done on behalf of the Association, or for any losses incurred or sustained by the Association, unless the same have occurred through his or her willful or fraudulent misconduct.

SECTION 2. INDEMNIFICATION: Every director or officer shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him or her in connection with or resulting from any claim, action, suit, proceeding, investigation or inquiry of whatever nature in which he or she may be involved as a party, or otherwise by reason of being or having been a director or officer of the Association, whether or not he or she continues to be a director or officer of the Association at the time of the incurring or imposition of such costs, expenses or liabilities except in relation to matters as to which he or she shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or fraud toward the Association in the performance of his or her duties as such director or officer. As to whether or not a director or officer was liable by reason of willful misconduct or fraud toward the Association in the performance of duties as such director or officer, in the absence of such final adjudication of the existence of such liability, the Board of Directors and each director and officer may conclusively rely upon an opinion of legal counsel selected by or in the manner designated by the Board of Directors. The foregoing right to indemnification shall be in addition to, and not in limitation of, all other rights to which said person may be entitled as matter of law, and shall inure to the benefit of the legal representation of such person.

ARTICLE VII: DUES AND ASSESSMENTS

SECTION 1. AMOUNT OF DUES: The Board of Directors shall from time to time, determine the amount of initiation fee, if any, and annual membership dues. Dues may not be increased more than twenty-five percent (25%) per year without a two-thirds (2/3) vote of the Board of Directors. The amount set for annual dues as of the adoption of these Bylaws is Twenty Dollars (\$20.00) per member.

SECTION 2. USE OF DUES: Dues money shall go into the general fund and be used for the operating expenses of the Association, and for any other legal purpose intended to benefit or improve the Association or the Fern Acres community, as determined by the Board of Directors. Dues are not intended to cover project costs, or any increased operating expenses resulting therefrom, but nevertheless may be so applied at the discretion of the Board of Directors, provided that so doing does not significantly impair the ability of the Association to meet its operating expenses and other prior obligations.

SECTION 3. PROPERTY ASSESSMENTS: The repair, improvement and management of roads and other common property shall be organized as specific projects which are completed upon the accomplishment of stated objectives, or as on-going programs, as appropriate. These activities shall be planned and budgeted by the Board of Directors. The resulting direct and indirect costs shall be borne by all lot owners in proportion to the total number of lots within the Fern Acres Subdivision. Assessments may be increased by majority vote of the Board of Directors to a maximum of fifteen percent (15%) per year. Any increase beyond 15% must be approved by simple majority of all qualified voting lot owners. To qualify for voting, the lot owner must be in good standing with respect to full payment of all legal assessments and will be entitled to cast one vote for each lot owned. The amount set for annual property assessment as of the adoption of these Bylaws is Forty Dollars (\$40.00) for each lot as shown on the original map of the subdivision, Land Court, Territory of Hawaii, Land Court Application No. 1053, Subdivision of Lot 1286-B as shown on Map No. 50 into Lots 6215 to 8213, Inclusive, whether or not the lot has improvements. Thereafter, annual assessments for all lots located in Fern Acres Subdivision shall be in such amounts as the Board of Directors shall establish pursuant to this Section, including assessments for any additional lots that may be created by further subdivision of the lots as shown on said Map No. 50, provided, however, that should any of the original lots shown on said map be consolidated and/or resubdivided, the Board of Directors may continue to assess the consolidated or resubdivided lots in accordance with this Section based on the number of lots which were in existence prior to the consolidated and/or resubdivision. The indirect cost of a community project or program is defined as a proportional share of the general operating expenses, excluding certain specific expenses for organizational activities benefitting only members of the Association, as determined by the Board of Directors.

SECTION 4. SPECIAL ASSESSMENTS: The Board of Directors may issue special assessments for costs incurred by the Association in remedying violations of Article IX or for costs incurred by the Association in repairing damage to common road rights of way specifically caused by the activities of a lot

owner or the owner's agents, contractors, guests or tenants in violation of the provisions of Article IX of these Bylaws, and such special assessment shall be chargeable to the responsible owner and the involved lot(s) pursuant to the procedures set forth in Article IV, Section 7 of these Bylaws.

SECTION 5. TIME AND MANNER OF PAYMENT: Dues and property assessments shall be payable on or before the first (1st) business day of each calendar year. Payment not received by March 31 shall be considered delinquent. Payment shall be in the form of U.S. currency or checks or money orders payable in U.S. currency at any U.S. bank.

Special assessment assessed against an individual lot pursuant to Section 4 of this Article shall be due and payable on or before the thirtieth (30th) day after the special assessment is issued. Payment not received by such 30th day shall be considered delinquent.

SECTION 6. LATE PAYMENT OF ASSESSMENTS: Delinquent payments shall result in a penalty of Ten Dollars (\$10.00) per lot, and interest on both the delinquent payment and the penalty therefore of two-thirds of one percent (2/3 %) for each month or portion thereof that the payment is overdue; however, the penalty and interest may be waived if it is determined by the Board of Directors that the payer had a good and acceptable reason for the delinquency.

SECTION 7. LIEN FOR ASSESSMENTS: The Association shall have the right, but shall be under no duty, to file for recordation with the Bureau of Conveyances in the State of Hawaii, at any time within one hundred twenty (120) days after delinquency, a claim or lien for the amount of such assessments, together with penalties and interest as aforesaid, which shall have become delinquent with respect to any lot. The aggregate amount of all such assessments and charges shall constitute a lien upon such lot, and all improvements thereon, from the date that a claim of lien is so recorded; and such lien shall be prior to all other liens, except (a) liens for taxes and assessments lawfully imposed by governmental authority against such lot, and (b) all sums unpaid on mortgages of record. By majority vote of the Board of Directors, the Association may elect to sue to recover a money judgment for any unpaid assessment, and such suit may be maintained without waiving of lien. In the event of a suit, the property owner against whom the suit is brought shall be responsible for all costs thereof, including reasonable attorney's fees.

SECTION 8. RESERVE FUND: In determining the amount of any annual assessment, the Board of Directors shall consider the necessity and advisability of establishing a reserve fund for emergency or extra-ordinary expenses, or for the eventual construction and maintenance of the roadways to such a standard and condition that they may be dedicated to the County or State of Hawaii, whichever is legally appropriate, and the Board shall have the power to reasonably and equitably establish such a reserve fund.

SECTION 9. TRANSFER FEE UPON SALE OR CONVEYANCE: The Association shall have the right to impose a transfer fee of \$150.00 per lot, with such transfer fee to be due and payable by the transferee upon the sale or conveyance of title to such lot(s). The purpose of the transfer fee is to pay for administrative costs and expenses of registering the transfer upon the books of the Association, and for the costs of preparing new owner packets. The Association may obtain payment of the transfer fee through escrow or by billing the new owner directly. Payment of the transfer fee, together with payment of dues and assessments, shall be a condition of membership and the exercise of voting privileges in the Association. The Association may, through the Board of Directors, increase the transfer fee sum, to cover administrative cost increases associated with the transfer of a lot.

SECTION 9. ENFORCEMENT OF ASSESSMENTS AND LIENS: Sections 3, 5, 6 and 7 of this Article shall become enforceable only upon the approval of the court of the State of Hawaii, and the consequent delegation of authority to the Association to take such actions as hereinbefore provided.]

ARTICLE VIII: COMMITTEES

SECTION 1. STANDING COMMITTEES: Standing committees shall consist of at least three (3), but no more than five (5), members including the chairperson. Such committee members are to be chosen by the chairperson of said committee, who, unless otherwise specified, shall be elected by and from the

Board. Non-member resident tenants may serve on subcommittees or in an advisory capacity on standing committees, subject to approval of the Board.

SECTION 2. ACCOUNTABILITY: All committees shall be accountable to the electing or appointing authority, and shall report directly thereto.

SECTION 3. REMOVAL: The chairperson and members of all committees shall serve at the pleasure of the electing or appointing authority, and may be removed thereby with or without cause.

SECTION 4. DUTIES AND AUTHORITIES OF STANDING COMMITTEES:

EXECUTIVE COMMITTEE: The President, Secretary and Treasurer of the Association shall comprise the first three members of the Executive Committee, with additional members to be selected by the chairperson from the general membership and confirmed by the Board. Subject to the control of the Board of Directors, the Executive Committee may be delegated any of the powers and authority of said Board, except the power to adopt, amend or repeal these Bylaws, or the power to fix, establish or levy assessments, or to approve expenditures of Five Hundred Dollars (\$500.00) or more. The committee shall meet at least once each month at a predetermined place and time, shall document meetings by informal minutes or a log showing as a minimum the date, members present and action taken, and cause a copy of such minutes or log to be made available at the next subsequent regular meeting of the Board, and shall recommend changes regarding their duties and authorities. Action not specifically delegated to the Executive Committee by these Bylaws will require specific approval of the Board of Directors on a case-by-case basis.

AUDIT COMMITTEE: Within one month following the annual meeting, the President shall appoint an Audit Committee, subject to confirmation by the Board of Directors, to perform a continuing audit of the corporate financial records. Reports shall be made by the Audit Committee semi-annually to the Board of Directors, such reports to be made at the next regular meeting following submission of the regular financial report. The report of the committee shall, as a minimum, include verification of cash on hand by justification of receipts and expenditures, payroll amounts by name, inventory of assets and supplies, and verification of the authorization for individual expenditures totaling Fifty Dollars (\$50.00) or more per month. The Audit Committee shall consist of two (2) persons, neither of whom shall be an officer of the Association. The report of the Audit Committee shall be confidential until reported to the Board of Directors, but may be reported to the Chairman of the Board in advance of a board meeting.

POLICY COMMITTEE: The Policy Committee shall review and interpret all Bylaws, policy statements, and rules of procedure as may be requested by the chairperson of the Board of Directors, the officers, committee chairpersons or membership, and subject to the approval of the Board of Directors shall initiate and recommend to the membership at an annual or special meeting called for such purpose, any changes to the Bylaws or rules which they deem necessary. Additional Bylaw changes submitted with or without Board approval by qualified members shall be accepted by the Policy Committee, provided a petition signed by a minimum of five (5) members in good standing is submitted not later than seventy-five (75) days in advance of the annual meeting or any special meeting.

NOMINATING COMMITTEE: Not less than one hundred twenty (120) days in advance of the annual meeting, the Board shall establish a Nominating Committee by electing one (1) director as chairperson, who in turn will select two (2) additional committee members, neither of whom shall be directors, but shall be subject to confirmation of the Board. The Nominating Committee shall submit to the Board of Directors the name of at least one member for each of the director positions to be filled by election at the next annual meeting. Subject to membership qualifications for directorship as specified elsewhere in these Bylaws, and an expression by the nominee of willingness to serve and to accept committee chairmanship if it is offered, the names of nominees submitted by the Nominating Committee shall be approved by the Board of Directors.

Additional nominees of qualified members shall be accepted by the Nominating Committee, provided a petition signed by a minimum of three (3) members in good standing is submitted to the committee not later than seventy-five (75) days in advance of the regular annual meeting.

The Committee shall submit the names of all nominees, however determined, in alphabetical order in ballot form, not later than sixty (60) days in advance of the annual meeting and shall include a short, self-descriptive paragraph composed by each nominee, stating his or her qualifications, experience and stand on current Association issues. The committee shall plan, complete arrangements for, and assist in the conduct of the annual election of Directors; and shall also perform such other duties as may be prescribed for them by the President or Board of Directors from time to time.

ROAD COMMITTEE: There shall be a Road Maintenance Committee consisting of five (5) members.

- (A) Three (3) members shall be appointed annually from the Board of Directors, two of whom shall be elected by the Board of Directors and one by the Road Committee from the Board.
- (B) The two (2) remaining members shall be elected by all persons with ownership interest in a lot or lots in Fern Acres subdivision with no arrears of road fees. There shall be only one (1) vote per lot. These members shall not be required to be members of the Association, but shall be required to own interest in a lot or lots in the subdivision and be in good standing with their Mandatory Road Maintenance Agreement ("M.R.M.A") payments. These members shall hereafter be known as members-at-large.
- (C) Any member or member-at-large who sells or transfers his/her interest in the subdivision shall automatically vacate his/her position. Should any member-at-large vacancy occur in the Road Committee, for any cause, the committee shall appoint a successor to serve for the remainder of that unexpired term. No person who is in arrears on payment of road fees shall serve on the Road Committee.
- (D) Road Committee members or members-at-large shall not receive any compensation or payment for services and may not become an employee of the Road Committee until one (1) year has expired after termination of membership on the committee.
- (E) Except for the members appointed from the Board of Directors, the term of office to the Road Committee shall be two (2) years, with one (1) member-at-large elected each year.
- (F) Absentee voting shall be allowed. Proxy voting and powers of attorney shall not be allowed. It shall be the responsibility of the Board of Directors to conduct the election of the Road Committee members-at-large. The election of Road Committee members-at-large shall be conducted at the same time that annual road assessments are mailed to lot owners. The ballots shall be included in this billing. A deadline of March 1 for receipt of all ballots shall be set, and ballots not received by this deadline shall not be counted.
- (G) Nominees for Road Committee positions and members-at-large, shall be submitted to the Board of Directors at least sixty (60) days prior to the mailing of the annual road assessments. The Nominating Committee shall consist of up to two (2) persons appointed by the Board of Directors and up to two (2) persons appointed by the Road Committee. Nominating Committee members may not be candidates for the Road Committee. In the event qualified volunteers are not available for the election process for members-at-large positions or vacancies, the Road Committee may function with three (3) members.
- (H) The Road Committee members shall officially begin their terms at the first regular meeting of the Road Committee following the certification of the winning candidates.

- (I) The Road Committee shall be responsible for road maintenance in Fern Acres subdivision, which shall include:
 - (1) maintaining all roadways in the subdivision;
 - (2) ensuring that road maintenance equipment owned by the Association is kept in good operating condition;
 - (3) requisitioning maintenance materials and supplies, and soliciting bids for improvement projects;
 - (4) hiring and supervising all road maintenance personnel, with the approval of the Board; and,
 - (5) preparing an annual budget thirty (30) days prior to the December Board of Directors and Road Committee meetings for approval by the Board of Directors and Road Committee and to be included in the January newsletter.
- (J) The Road Committee chairman shall be appointed from members of the Road Committee by the President of the Board of Directors and the Road Committee shall meet at least once each month prior to the meeting of the Board of Directors. Three (3) members of the Road Committee shall constitute a quorum.
- (K) Any recommendations for changes in road assessments shall be originated by the Road Committee and shall be submitted to the Board at least sixty (60) days prior to the mailing of the annual road billing.
- (L) Any funds expended for road maintenance purposes shall be reimbursed from road maintenance assessments.
- (M) There shall be an annual audit of the financial records by an accredited public accountant.

ARTICLE IX: ROAD POLICIES

SECTION 1. PROHIBITION OF STREET PARKING: The parking of vehicles on or within the fifty (50) foot wide common road right-of-way shall be prohibited as such parking interferes with the flow of traffic and poses dangers to traffic safety. Any abandoned vehicles parked in the right-of-way shall be subject to being towed away and the cost of towing assessed against the owner of the vehicle. The Association shall not be responsible for damage or theft of illegally parked vehicles.

SECTION 2. COMMON AREA ENCROACHMENT: Encroachments within the fifty (50) foot wide common road right-of-way shall be prohibited. This includes vegetation and landscaping, rocks, rock walls, driveway improvements or fencing. Any encroachment within the right-of-way may be removed by the Association after reasonable notice is given to the owner of the property responsible for the encroachment, providing the owner an opportunity to remove the encroachment. The costs of having such encroachment removed may be assessed against the owner of the property responsible for the encroachment. Exclusions include newspaper delivery boxes and temporary real estate "for sale" signs, provided that the location of such boxes and signs are located at the edge of the edge of property line.

SECTION 3. DRIVEWAYS: All driveways shall be constructed so that water does not drain from the owner's property onto the common road right-of-way. Drainage shall be designed to cause water to drain on to the lot owner's property. Plans for all paved driveways adjoining the common road right-of-way must be approved by the Road Committee of the Association prior to construction of such improvements. Any improvements constructed on or within the common road right-of-way shall not be the responsibility of the Association for maintenance and repair.

SECTION 4. **ILLEGAL DUMPING:** Dumping of any material, trash, rubbish, or vegetation on Fern Acres common roadways is prohibited. Violators will be prosecuted.

SECTION 5. **HEAVY EQUIPMENT:** All heavy equipment shall be trailered to and from all work sites within the Fern Acres Subdivision. Cleat tracked or lugged vehicles may not be operated on the common road right-of-way at any time. Lot owners will be responsible for the transport of such heavy equipment and liable for any damage to the roadbed caused by such vehicles. All heavy equipment operators transporting heavy equipment on the common road right-of-way shall be licensed and insured.

SECTION 6. **DAMAGE TO ROADS:** No lot owners or any agent or contractor, guest or tenant of a lot owner shall undertake any activity which causes direct and immediate damage to the common area road right-of-way.

SECTION 7. **ENFORCEMENT OF VIOLATIONS:** If any violation of the policies in this Article occurs, the responsible lot owner/violator shall be responsible for remedying the violation and/or for repairing of any damage to the common road right-of-way caused by such violation. Procedures for enforcement of this obligation to remedy the violation or repair damage shall be as follows:

- (A) A notice of the violation shall be issued by first class mail and by certified mail, return receipt requested, to a lot owner stating the nature of the violation, providing information concerning the violation, and requesting the lot owner to remedy the violation and/or to repair damage caused by such violation.
- (B) If within twenty (20) business days after receipt of the written notification the owner fails to remedy the violation and/or repair the damage caused by the violation, or fails to provide satisfactory assurance that such remedy or repair will be performed, the Association may undertake to remedy the violation or repair the damage, and the cost of remediation and repair shall be charged to the lot owner as a special assessment pursuant to Article VII, Section 4 of these Bylaws. Costs for such remediation or repair may include the cost of work performed, materials, contractor's fees, and attorney's fees. Non-payment will result in a lien being placed on the property.
- (C) The Association may also enforce the provisions of this Article by court proceeding or take such emergency action as it deems necessary under the circumstances.

ARTICLE X: MISCELLANEOUS

SECTION 1. **RECORD DATE AND CLOSING OF MEMBERSHIP REGISTER:** The Board of Directors may fix a time, not exceeding sixty (60) days preceding the date of any regular annual meeting of members, as a record date for the determination of the members entitled to notice of any such meeting, and to vote in the election of Directors, notwithstanding any granting of membership on the books of the Association after any record date fixed as aforesaid. The Board of Directors may close the books of the Association against membership transactions during the whole, or any part, of such period. Exception shall be made upon personal application to the Secretary, prior to the meeting, by submission of documentation to support such application. When so done, voting rights shall be recognized.

SECTION 2. **FISCAL YEAR:** The fiscal year of the Association shall be from January 1 to December 31 of the same year.

SECTION 3. **AUTHORIZED SIGNATURES:** All checks, drafts, notes, bonds, acceptances, deeds, leases, contracts and all other instruments shall be signed by such person or persons as shall be provided by general or special resolution applicable to any such instrument, then such instrument shall be signed by the President and by the Treasurer or by the President and by the Secretary.

SECTION 4. **INSPECTION OF CORPORATE RECORDS:** The membership register, the books of account and the minutes of proceedings of the members and directors shall be open to inspection by any director, and upon the written request of any member, at any reasonable time, and for a purpose

reasonably related to his interests as a member, and shall be produced at any time when required by the request of members entitled to cast at least ten percent (10%) of the votes represented at any members' meeting. Such inspection may be made at the principal office in person or by an agent or attorney and shall include the right to make extracts, but shall not include the right of removal of original documents from the principal office.

SECTION 5. INSPECTION OF CHARTER OF INCORPORATION AND BYLAWS: The Association shall keep in its principal office for the transaction of business a copy of the Charter of Incorporation and the Bylaws of the Association, as amended or otherwise altered to date, which shall be open to inspection by the members at all reasonable times during office hours.

SECTION 6. WAIVER OF NOTICE: Whenever any notice is required to be given under the provisions of the Charter of Incorporation or the Bylaws of the Association, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

SECTION 7. UTILITY POLES: The Association shall be responsible for the installation of all utility poles in the subdivision on road easement only.

SECTION 8. NONDISCRIMINATION: There shall be no discrimination on basis of race, color, religion, sex, national origin, marital status, age, or handicap with regard to hiring, assignment, promotion or other conditions of staff employment, use of volunteers, or delivery of services.

SECTION 9. NEPOTISM: There can be no appointed or hired persons within the second sanguinity of a member of Board of Directors without written consent of the Board of Directors.

ARTICLE XI: DISSOLUTION OF THE ASSOCIATION

If the Association shall cease to exist or shall be dissolved, all property and assets of the Association of every kind, after payment of its just debts, shall be distributed only to one or more public agencies, organizations, corporations, trusts or foundations having the like purposes and organized and operated exclusively as a tax-exempt organization under Section 501(c)(4) of the Internal Revenue Code of 1954 (or any future corresponding provision) with purposes similar or related to those of the Association, as the Board of Directors shall determine. In no way shall any of the assets or property of this Association, or the proceeds of any of the assets or property, in the event of dissolution, go or be distributed to members, either for the reimbursement of any sums subscribed, donated, or contributed by such member, or for any other such purpose, it being the intent in the event of the dissolution of this Association, or upon its ceasing to carry out the object and purposes herein set forth, that the property and assets then owned by the Association shall be devoted only to non-profit charitable purposes.

ARTICLE XII: AMENDMENTS TO THESE BYLAWS

The Bylaws of the Association may from time to time be amended, altered, repealed, and new or additional Bylaws may be adopted by an affirmative vote of not less than two-thirds (2/3) of the members of the Association present in person at any meeting of the membership duly called and held, the notice of which shall have stated that a purpose of the meeting is to consider the adoption, amendment or repeal of the Bylaws.

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COPY

RECORDATION REQUESTED BY:

STUART H. ODA

AFTER RECORDATION, RETURN TO:

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A Law Corporation
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Tel. No. 935-3355

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

FERN ACRES COMMUNITY
ASSOCIATION, a Hawaii
non-profit corporation,

Plaintiff,

vs.

PAN AMERICAN LAND CO., et al.,

Defendants.

CIVIL NO. 9870

DECLARATORY JUDGMENT

LISA LAMBLA
CLERK

1987 MAR -6 PM 3:16

THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

DECLARATORY JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law entered herein, Judgment is hereby entered in favor of Plaintiff FERN ACRES COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, and against all Defendants in the said action as well as all property owners in Fern Acres Subdivision, individually and as representatives of all

I hereby certify that this is a full, true
correct copy of the original on file in this of

John Oda
Clerk, Third Circuit Court, State of Hawaii

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Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

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FERN ACRES COMMUNITY
ASSOCIATION, a Hawaii
non-profit corporation,

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Defendants.

CIVIL NO. 9870

DECLARATORY JUDGMENT

LISA M. LIA
CLERK

FILED
1987 MAR -6 PM 3:16

THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

DECLARATORY JUDGMENT

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I hereby certify that this is a full, true
correct copy of the original on file in this of

Oliver Watkins

Clerk, Third Circuit Court of Hawaii