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TO: The Honorable Judge Greg K. Nakamura  
Third Circuit Court, State of Hawaii

FROM: Nancy Cabral, Special Master

Date: December 4, 2017

RE: Report on Orchidland Community Association, Inc.  
CIVIL NO. 15-1-0238

As requested in the ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR ORDER APPOINTING SPECIAL MASTER, I, Nancy Cabral, as the appointed Special Master, do hereby offer the following:

As requested in the Court Order dated July 27, 2017, I have attempted to investigate the current situation regarding the **governance** of Orchidland Community Association, the **road maintenance operation** and the **financial condition** of the Association.

The Association is to be governed in accordance with the Bylaws as written in 1979 and all legally adopted amendments, thereafter, with the most current version dated September 2010.

The purpose of the Association is to:

- To aid, promote and assist in the development, improvement and maintenance of Orchidland Estates Subdivision as a desirable rural residential community.
- To preserve the agricultural status of the subdivision.
- To help and assist residents in time of need and distress.
- To maintain and improve the roads of the subdivision.
- To provide for the administration of the subdivision's affairs.
- To represent the residents of the subdivision in matters pertaining to and directly affecting the subdivision and to actively represent the residents of the subdivision before government agencies.
- To promote the health, safety and welfare of the residents in the subdivision.
- To develop a unified community spirit and to promote better understanding and good fellowship among the residents of the subdivision.
- To promote and support projects for the betterment of the residents in the subdivision and to maintain and improve the quality of life therein.

As referenced in the Court Order and for the sake of clarity, I will reference the two groups as the "Wirick Group" and the "Arthurs Group".

As a part of this investigation I have met with the two groups. I had a private meeting with the two separate groups on two occasions each, inspected the roadways with a representative of the "Wirick Group" and attended one 'membership' meeting with the "Arthur Group".

I have driven through the subdivision on four (4) separate occasions. I have read many documents as presented by the two groups.

In regard to the governance of the Association, I found the “Wirick Group” generally in control of the operations of the Association at this time as they had control of the money coming into the Association and they are overseeing the general maintenance of the roadways and the capital improvements to the roadways.

In review of the Association documents and the minutes from the meetings held by the “Wirick Group”. I have several concerns about governance practices by the “Wirick Group” that conflict with the Association’s current Bylaws. Of concern is the attitude and appearance by members in the “Wirick Group” that it is acceptable to not operate within the requirements of the Bylaws.

The “Arthurs Group” does not have access to any of the financial accounts of the Association and does not provide for any maintenance of the roadways and the governance by this group appears to have less of an effect to the operations of the Association.

However, as the distribution of Newsletters is a part of governance, some of the language and comments in the Newsletters from each group are not in alignment with the Association Bylaws. This practice, by both groups, to have negative comments in their Newsletters about the other group have caused a lot of confusion and concern among the membership. The resulting disruption and mistrust have caused a major problem for the Association and its ability to fulfill the purpose of the Association as stated in the Bylaws.

The primary duty and responsibility of the governance body for the Association is the road maintenance operations. Currently the “Wirick Group” is overseeing the maintenance of the roadways.

The maintenance of the roadways is a major undertaking as the roadways were not properly designed or properly built to allow for a simple ongoing maintenance program. Over the near 40-year history of the subdivision, the roadways have always been problematic because there have never been adequate funds available to do proper long-term design and development of the roadways.

Because the “Wirick Group” controls the Association Funds, they are overseeing the maintenance of the roadways. They appear to be doing a similar job on the roadways as other groups or Boards have done in the past. They are placing gravel on most miles of the roadways and they contracted to have some areas ‘improved’ with the application of a ‘chip seal’. The typical maintenance is with the basic grading of the roadway and then the laying, spreading and packing down of gravel. This technique can service a road for a short time period at a reasonable cost. By the very nature of the gravel, it is loose and subject to movement when cars and trucks go over it and when it rains heavy or when the roads become flooded due to the lack of proper ditches or swells around the roads. As with prior administrations, this ongoing practice will not result in a good quality road over the long run, but it satisfies the residents with temporary improvements that are affordable.

The better practice is to pave or chip seal the roadways as they will better survive rains and driving, over time. The “Wirick Group”, who is currently overseeing the capital improvements

to the roadways, had a large area chip sealed. This work was reportedly done by an unlicensed vendor. The “Wirick Group” informed me that licensed contractors were not needed for the road work done in Orchidland even when the cost exceeded \$1,000.00. According to information received, there is a legal claim against the contractor for the work done in Orchidland Subdivision. In addition, there is a complaint that has been filed with the Dept. of Commerce and Consumer Affairs, Regulatory Complaint Office, about the vendor not having a contractor’s license as required by Hawaii State Law.

The lack of concern or effort to have the roads maintained or improved by licensed contractors is a concern and potential liability. An injury on a roadway, by a road worker or by a member of the general public, could become a major problem for the Association, especially if unlicensed vendors are used to do road work.

The financial oversight of the Association Fees are a major portion of the governance of the Association and duty of the Board of Directors. Currently there are eleven (11) bank accounts belonging to the Association. Some of these accounts have been ‘frozen’ by the banks due to actions taken by the “Arthurs Group” and the legal questions being considered by the courts. The current collection of Association Fees that are being controlled by the “Wirick Group”. They have retained the services of Data Processing Services, Inc. with Kenneth AhLo as the Account Manager. The Association Fees being collected by the “Arthurs Group” are being turned over to Kenneth AhLo and deposited in the bank accounts that are controlled by the “Wirick Group”.

Data Processing Services maintain the ownership records for the Association that show who all the owners of record are. By their ownership in the subdivision each individual lot owner is a member of the Association. Data Processing Services also provides information to all escrow companies for all properties that have their ownership transferred. Through this process all past due Association Fees are collected from the sellers along with Transfer Fees and current or future Association Fees from the buyers are paid into the Association accounts. Data Processing Services prepares the deposits for all Association Fees paid into the Association and credits each individual lot owner for the payments received. Payments from these operational bank accounts are under the control of the “Wirick Group”. The Orchidland Board Members from the “Wirick Group” authorize all work to be paid by the Association and authorize all payments from the bank accounts with two officers co-signing all checks.

The Tax Returns for July 1, 2014 to June 30, 2015 and July 1, 2015 to June 30, 2016 have been completed by Carbonaro CPS’s & Management Group. They are currently working on the July 1, 2016 to June 30, 2017 Tax Returns. An audit of the July 1, 2016 to June 30, 2017 Financial Records being completed by Carbonaro CPA’s & Management Group. This audit is pending completion and not available at this time.

As Special Master, I requested information about payments made from the Association Fees. I asked for the list of payments made to vendors for work done on the roadways and for payments made for legal expenses. Mr. Ah Lo, with Data Processing Services, indicated that he requested permission from the “Wirick Group” to provide this information to me, as the Special Master. He indicated that since they pay him, he could not do anything without their permission. The information about these payments has not been released and made available for review, despite several requests.

In my initial meetings with each group, I found all parties to be sincere in their desire to service the Association and equally committed to the idea that their group was the best party to control the Association. Because I believed in their individual and collective desire to do what is best for the Association, I seriously considered several limited options to unite the Association and create one group to govern the membership and oversee the Association.

With my continued exposure to the two different groups and my detailed readings of the Meeting Minutes from each group, the Newsletters from both group and the court documents for this case, I have changed my opinion.

Because some individuals involved with these groups are so adamant that only their group must control the Association, I do not believe the two groups can work together at this time. Because the “Wirick Group” and “Arthurs Group” can not work together, the general population of Orchidland, the individual lot owners suffer as members of the Association.

I hereby recommend that the Third Circuit Court Appoint a Master Receiver to take over all aspects of the Association. Such an appointment will help the general membership regain confidence in the Association. The appointment will help with the collection of unpaid Association Fees that as of June 30, 2017 totaled over \$600,000.00. The collection of a percentage of these fees that the “Wirick Group” was prepared to write off could cover the expense of a Court Appointed Master Receiver.

A Master Receiver would oversee the creation of a Board of Directors that would be elected in a fair and equitable manner in accordance with the Association Bylaws. A Master Receiver would unite the clear majority of owners to have confidence in their Association which is otherwise seriously divided by the “Wirick Group” and “Arthurs Group”. The current situation with the two groups has caused a major problem for the entire ownership which I believe can only be resolved with the assistance of the Third Circuit Court and a Court Appointed Master Receiver.

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