

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 12, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10KD-149

Kauai

Authorize an After-the-Fact One-Year holdover of General Lease No. S-5153, Saiva Siddhanta Church, Lessee; Issuance of After-the-Fact Revocable Permit to Saiva Siddhanta Church, Permittee; Issuance of New Direct Lease to Saiva Siddhanta Church, Lessee, for Religious Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-002:114

APPLICANT:

Saiva Siddhanta Church, a foreign non-profit corporation whose business and mailing address is 107 Kaholaele Rd., Kapaa, Hawaii 96746.

LEGAL REFERENCE:

Section 171-43.1, 171-40, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua, Kawaihau, Kauai, Tax Map Key: : (4) 4-2-002:114, as shown on the attached map labeled Exhibit A.

AREA:

2.96 acres, more or less.

ZONING:

State Land Use District: Conservation
County of Kauai CZO: Conservation

TRUST LAND STATUS:

Section 5b lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-5153, Saiva Siddhanta Church, for church and allied purposes. Lease expired on March 14, 2011. Last rental reopening occurred on March 15, 2006. Rent is currently \$1,100.00 per annum.

REVOCABLE PERMIT CHARACTER OF USE:

Church and allied purposes.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2012.

REVOCABLE PERMIT MONTHLY RENTAL:

\$92 per month, based on last annual rent under General Lease No. S-5153.

REVOCABLE PERMIT COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

LEASE CHARACTER OF USE:

Church and allied purposes.

LEASE TERM:

Sixty-five (65) years

LEASE COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

LEASE ANNUAL RENT:

\$480.00 per annum.

LEASE METHOD OF PAYMENT:

Semi-annual payments, in advance.

LEASE RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th, 60th years of the lease term, by staff or independent appraisal.

LEASE PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO <u> </u>
Registered business name confirmed:	YES <u> x </u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u> x </u>	NO <u> </u>

REMARKS:

The property covered by this proposal comprises approximately 2.96 acres of land and is a part of the eastern wall of the north fork of the Wailua River valley. The property is relatively steep, sloping from flat bench lands at the top at a gradient of about 35%, to a small flat area at the foot of Nani Kaua Falls.

The property was leased on March 15, 1961, to J. Albert Roesch, then owner of the Tropical Inn situated on private land abutting the subject property. Mr. Roesch operated the Tropical Inn as a visitor accommodation until the facility closed some time during the mid-1960's.

In February of 1970, the corporate predecessor to Saiva Siddhanta Church purchased the Wailua Inn from Mr. Roesch and acquired interest in the State lease by way of a Board approved assignment in January of 1974.

On September 13, 1985 under item F-20 the Board of Land and Natural

Resources approved a direct lease to Saiva Siddhanta Church (Lessee or Applicant) for a 25-year term resulting in the issuance of General Lease No. S-5153 commencing on March 15 1986.

Since acquiring the lease, Lessee has cleared the slope and planted ferns and other low growing ornamentals. A concrete stairway has also been built to provide a safe foot path down to the river that is used by the monks for maintenance and access to the river for meditation, exercise and picking edible ferns for the church. Occasionally neighbors of the church request and are granted permission to use the access for swimming fishing and collecting torch ginger for weddings.

The Lease expired on March 14, 2011, but Lessee has continued to occupy the premises, pay rent and observe the other obligations of the expired lease. Accordingly, staff is including a recommendation below that the Board approve an after-the-fact holdover of the lease that will extend it from March 15, 2011 to March 14, 2012. For the period from March 15, 2012 until the new lease to Applicant is issued, staff is recommending that the Board approve the issuance of an after-the-fact revocable permit to document Applicant's use of the premises. Rent for under the revocable permit is proposed to be the prorated rent under expired General Lease No. S-5153 (\$92 per month).

The property is located in a conservation district and is not suitable for development. Prior to the September 13, 1985 Board action, the property was reviewed by DLNR State Parks Kauai Superintendent to determine if the property should be added to the adjacent Wailua River State Park. It was determined that this site should not be added to the Park because of the lack of convenient public access from Kaholalele Rd. and the small size of the parcel.

Due to the location, topography, and access to the property the current use for Church and allied purposes is the highest and best use. The Applicant is not proposing to change the current use.

There are no other parties interested in the property and the Lessee's maintenance of the property has been exemplary. It is staff's opinion that a direct lease would be preferable to allowing the property to revert to State control and disuse.

The Applicant has provided evidence of 501(c)(3) status, therefore qualifies for a direct lease. Copies of Applicant's Internal Revenue Service determination letter regarding its tax exempt status, and its Amended Bylaws are attached as Exhibit C.

As of March 5, 2013 the Lessee is in compliance with all terms and conditions of the (expired) lease. Rent is paid up to March 14th, 2013. Lessee has posted a \$2,200.00 bond. In the past two years one Notice of Default was issued to bring the Bond amount current with the increased rent and one Notice of Default was issued for Liability Insurance. Both Defaults were cured in a timely manner.

Staff is recommending the issuance of a direct lease to Applicant for a term of 65 years. The Board typically issues leases to private individuals and entities via public auction. If the tenant or prospective tenant is and eleemosynary (charitable) organization, the Board may issue the lease at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

A 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations or religious organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market value (i.e., nominal rent). On May 13, 2005, the Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent of a lease be no less than \$480.00 per year. Staff believes there should be a reasonable and fair annual rent for all of Land Division's non-profit (charitable) tenants. Therefore, staff is recommending the new annual rent to be \$480.00.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from:

County of Kauai:	No response
DLNR State Parks:	No comments
DLNR CWRM:	No objections
DNLN OCCL:	“Pursuant to HAR 13-5-6 (d) No land use(s) shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.”

The proposed use has continued since 1974 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the

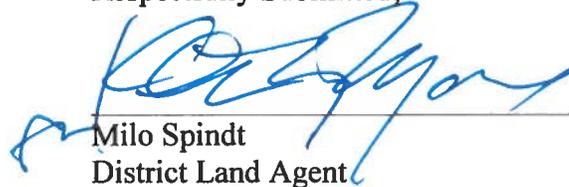
natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize an After-the-Fact One-Year holdover for General Lease No. S-5153 for the period of March 15, 2011 to March 14, 2012, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Applicant shall comply with all terms and conditions of General Lease No. S-5153 during the one-year holdover.
 - B. Rent shall remain \$1100.00 per annum during the one-year holdover period.
3. Authorize the issuance of an after-the-fact revocable permit to Saiva Siddhanta Church covering the subject area for church and allied purposes from the period March 15, 2012 until a new lease is issued to Applicant, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Saiva Siddhanta Church covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and

- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Milo Spindt
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

SOUTH OLOHENA
HOMESTEADS 2nd SERIES

SEC. 4 PLAT 02

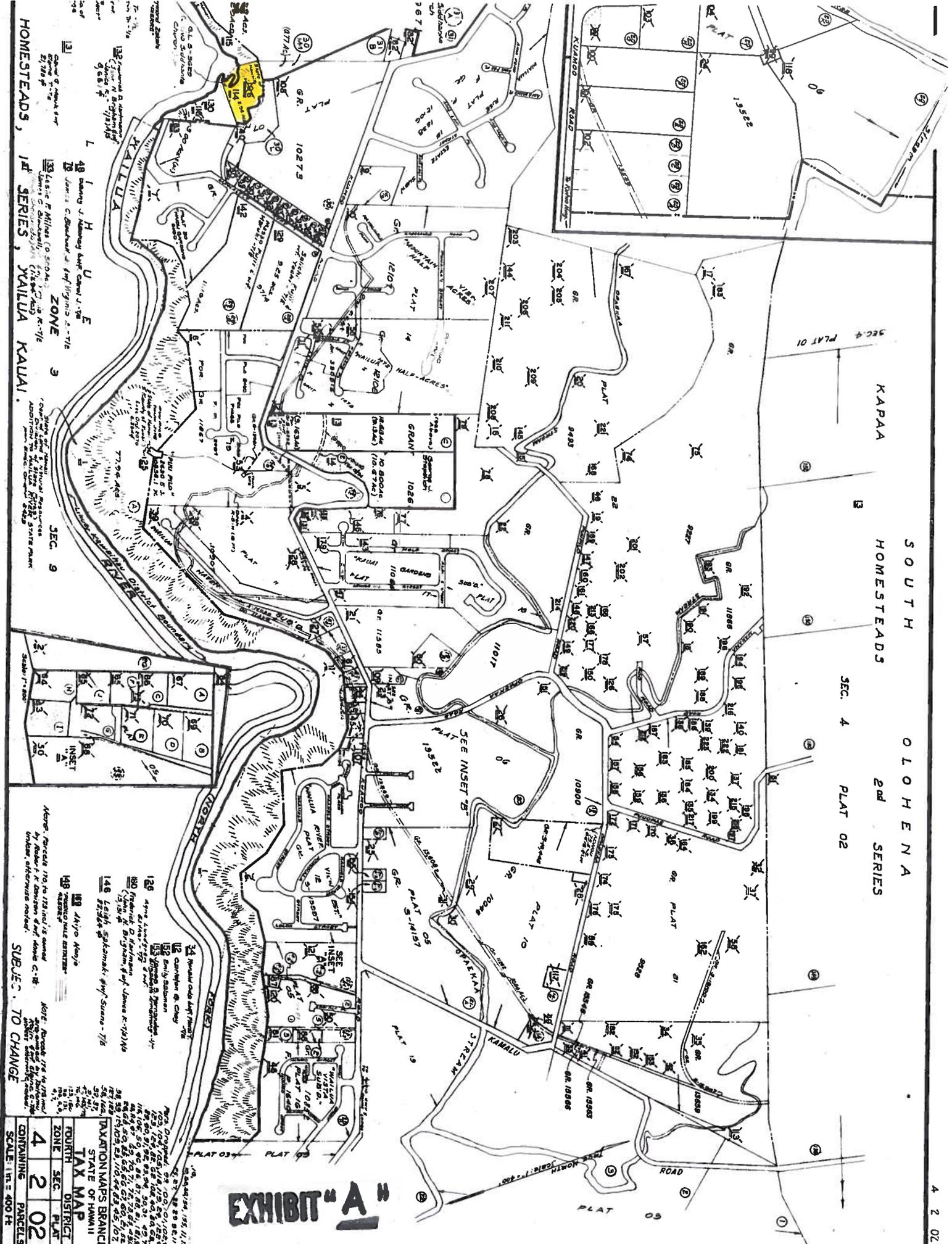


EXHIBIT "A"

HOMESTEADS, 1st SERIES, KAWAIAU KAULI.

SEC. 9

INSET

NOTE: Parcel 100 to 125 are owned by Robert K. Robinson and James C. H. White, otherwise noted.

SUBJECT TO CHANGE

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NOTE: Parcel 100 to 125 are owned by Robert K. Robinson and James C. H. White, otherwise noted.

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TAXATION MAPS BRANCH
STATE OF HAWAII

SCALE: 1" = 400 FT

PRINTED



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 12, 2013

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Re-Issuance of Direct Lease and Authorize an After-The-Fact One-Year holdover to Saiva Siddhanta Church for Religious Purposes

Project / Reference No.: PSF No. 10KD-149

Project Location: Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-002:114

Project Description: Re-Issuance of Direct Lease and Authorize an After-The-Fact One-Year holdover

Consulted Parties: DLNR, State Parks, CWRM, OCCL

Exemption Class No. and Description: In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1 that states: "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Exemption Item Description: The proposed use is the same as the historic use that has continued since 1974. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Exhibit B

Recommendation:

It is recommended that the Board find that the re-issuance of Direct Lease to Applicant will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr. Chairperson


3/20/13
Date

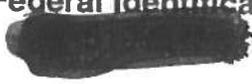
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Internal Revenue Service

Date: September 26, 2006

SAIVA SIDDHANTA CHURCH
107 KAHOLALELE RD
KAPAA HI 96746-9304

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
Kim A. Chambers 31-07674
Customer Service Specialist
Toll Free Telephone Number:
877-829-5500
Federal Identification Number:


Dear Sir or Madam:

This is in response to your request of September 26, 2006, regarding your organization's tax-exempt status.

In February 1962 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records indicate that your organization is also classified as a church under sections 509(a)(1) and 170(b)(1)(A)(i) of the Internal Revenue Code.

Our records indicate that contributions to your organization are deductible under section 170 of the Code, and that you are qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Internal Revenue Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

Janna K. Skufca
Janna K. Skufca, Director, TE/GE
Customer Account Services

EXHIBIT "C"

**AMENDED BYLAWS FOR THE REGULATION, EXCEPT AS
PROVIDED BY STATUTE OR ITS ARTICLES OF
INCORPORATION OF
SAIVA SIDDHANTA CHURCH
March 9, 1997**

**ARTICLE I
Offices**

Section 1. **PRINCIPAL OFFICE:** The principal office for the transaction of business of the corporation is hereby fixed and located at 300 Montgomery Street, Suite 450, San Francisco, California. The Board of Stewards is hereby granted full power and authority to change said principal office from one location to another.

Section 2. **INTERNATIONAL HEADQUARTERS:** The Church's International Headquarters is located at Kauai Aadheenam, 107 Kaholalele Road, Kapaa, in the County of Kauai, State of Hawaii.

Section 3. **OTHER OFFICES:** Branch or subordinate offices may at any time be established by the Board of Stewards at any place in any country where the corporation is qualified to engage in its activities.

**ARTICLE II
Meetings of the Board of Stewards**

Section 1. **PLACE:** The regular business meetings of this Church shall be held at 107 Kaholalele Road, Kapaa, Hawaii and shall be monthly or at the direction and call of the president.

Section 2. **SPECIAL MEETINGS:** Special meetings for any purpose whatsoever may be called at the discretion of the president or any other member in the event of the president's absence.

Section 3. **FOUNDER/PRESIDENT FOR LIFE:** The president shall be Master Subramuniya aka Satguru Sivaya Subramuniaswami, the Church's founder, until his death.

Section 4. **ELIGIBILITY:** Only sannyasins who are members of the Saiva Siddhanta Yoga Order are eligible to hold office in Saiva Siddhanta Church.

Section 5. **VOTING:** The president, the vice president, the secretary and the treasurer shall constitute the Board of Stewards and shall have the exclusive right to vote. The unanimous vote of the Board of Stewards shall be binding on all members of the Church. A vote may be submitted in person, in writing, over the phone or by electronic mail or cable.

Section 6. **QUORUM:** The presence of any two members of the Board of Stewards shall constitute a quorum for the transaction of business.

ARTICLE III
Church Stewardship

Section 1. STEWARDS: Subject to the limitations of the Articles of Incorporation, of the bylaws, and of the California General Corporation Law, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by, the Board of Stewards, and it is hereby expressly declared that the Stewards shall have the following powers, to wit:

- 1.) The solemn duty and responsibility of extending the work of this Church in the United States and other parts of the world, both nurturing among members a rich, rewarding and spiritually fulfilling family life and fostering Saivite monastic life.
- 2.) To supervise the two teaching platforms of the Church. The first is to protect, preserve, and promote Saivite Hinduism, most especially the doctrine of monistic theism of Saiva Siddhanta and the teachings of Satguru Sivaya Subramuniyaswami and the Satguru Siva Yogaswami Kailasa Parampara of the Natha Sampradaya. The second is to promote the doctrine of Hindu Solidarity.
- 3.) To build and manage orthodox Saivite temples and foster the Saivite priesthood.
- 4.) To publish and distribute Saivite scripture and other religious literature.
- 5.) To borrow money and incur indebtedness for the purposes of the Church and to cause to be executed and delivered therefore in the corporate name all types of evidences of debt and securities there for.
- 6.) To have charge of and full control of the disposal of money, property and endowments of the Church.

Section 2. VACANCIES: Upon the death of a member of the Board of Stewards other than the president, the remaining officers may appoint an officer to fill the vacancy. In the event of the death of the president, the presidential vacancy is filled according to the president's instructions as published in the most recent edition of the Saiva Dharma Shastras: The Book of Discipline of Saiva Siddhanta Church.

ARTICLE IV
Stewards

Section 1. PRESIDENT: It shall be the duty of the president to preside at all business and religious meetings of the Church unless the president shall choose to appoint the vice president, treasurer or the secretary over any of such meetings.

- 1.) The president shall have the general supervision of the officers and Church's business.
- 2.) The president shall appoint whatever committees are necessary for the conduct of the Church and the advancement of its purposes.

Section 2. VICE PRESIDENT: It shall be the duty of the vice president to perform the duties of the president during periods of the president's absence.

Section 3. SECRETARY: It shall be the duty of the secretary to keep a correct record of all meetings of the Church. He shall sign all papers, and attend to all correspondence under the direction of the Board of Stewards.

Section 4. TREASURER: It shall be the duty of the treasurer to keep a correct account of all money received by the Church.

1.) He shall perform all duties incident to the office of treasurer subject to the control of the Board of Stewards.

2.) Upon leaving office by resignation, or otherwise, he shall furnish a statement of all disbursements made during his term of office, turn over all monies, property, records and other effects of the Church entrusted to his keeping to his successor in office, the Board of Stewards, or to the Church itself.

ARTICLE V **Membership**

Section 1. QUALIFICATIONS: Any Hindu of good moral repute and recommended by one member in good standing may become a member of the Church after approval of his or her application by the Board of Stewards or whomsoever they may appoint.

Section 2. FEES: Fees shall be on a tithing and love offering basis.

ARTICLE VI **Ministers, Missionaries and Instructors**

Section 1. MINISTERS: Monastics under four or five vows are the Church's ministers and shall be authorized to perform all the duties that may devolve upon them in their capacity as such: teaching the Articles of Faith and Conduct of this Church, giving counsel, advice, spiritual assistance, help and comfort to members, and fellow human beings for their spiritual and temporal good. This includes arranging or performing Hindu temple rituals and sacraments: the marriage ceremony, name-giving rite, the cremation ceremony, and others.

Section 2. MISSIONARIES: Missionaries qualified to spread the Articles of Faith and Conduct of the Church and otherwise serve the Church and do missions must be members in good standing, have completed an appropriate specialized training program and passed a written examination.

Section 3. INSTRUCTORS: Teachers qualified to teach the religious or educational courses, in keeping with the Articles of Faith and Conduct of this Church, shall be given a certificate of completion. Teachers must be members in good standing of the Church, pass a written examination and be approved by the Board of Stewards .

ARTICLE VII **Seal**

The Seal of the Church shall be a graphic "Tripundra", circular in form with three horizontal

lines with a circle at the center and the title of the corporation, together with the words, "California, USA", appearing on the outer edge.

ARTICLE VIII
Jurisdiction of the Board of Stewards

The Board of Stewards shall have full administrative jurisdiction of Saiva Siddhanta Church and its decisions shall stand as the judgment in all affairs and business of the Church.

ARTICLE IX
Affiliations

Section 1. The Church shall not affiliate with any other organization which would in any case, or under any circumstances, have the power to confiscate the money or property of the Church, or which would have control of any dissolution preceding of the Church.

ARTICLE X
Dissolution

Section 1. DISSOLUTION: In the event of a dissolution of the Church, all of the money and property of the Church shall be disposed of at a meeting of the Board of Stewards.

ARTICLE XI
Governing Rules

Section 1. AUTHORITY TO ISSUE: All certificates, commemoratives and credentials of the Church shall be authorized and issued throughout the world at the sole discretion of the Board of Stewards.

Section 2. CERTIFICATE FEE: There shall be no fee for certificates, commemoratives or credentials.

ARTICLE XII
Amendments

Section 1. New bylaws may be adopted by a unanimous vote of the Board of Stewards at any regular or special meeting.

Section 2. The bylaws herein contained may be repealed or amended by a unanimous vote of the Board of Stewards at any regular or special meeting.

CORPORATE RESOLUTION OF Saiva Siddhanta Church

I, Rev. Swami Rishi Saravanan, Secretary of the Board of Directors of Saiva Siddhanta Church, a non-profit corporation organized and existing under the laws of the State of California, do hereby certify that the following individuals constitute the Church's Board of Directors.

- | | |
|------------------------------|----------------|
| Rev. Swami Bodhinatha Veylan | President |
| Rev. Swami Sivasiva Palani | Vice President |
| Rev. Swami Ananta Ceyon | Treasurer |
| Rev. Swami Rishi Saravanan | Secretary |

Rishi Saravanan
Rev. Swami Rishi Saravanan
Secretary

10/30/06
Date