Texas Water Development Board

P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

TO: Board Members, TWDB

THROUGH: Jeff Walker, Executive Administrator
Les Trobman, Office of General Counsel

FROM: Rebecca Trevino, Chief Financial Officer

DATE: October 20, 2016

SUBJECT: Consider amending the Portfolio Sale and Servicing Agreement with the Texas Water Resources Finance Authority.

ACTION REQUESTED

Consider amending the Portfolio Sale and Servicing Agreement between the Texas Water Development Board (TWDB) and Texas Water Resources Finance Authority (TWRFA) by removing section 2.02 (a) from the agreement.

BACKGROUND

In 1989, the TWRFA issued its Series 1989 Revenue Bonds and used the proceeds to acquire from the Texas Water Development Board its portfolio of political subdivision bonds and entered into a Portfolio Sale and Servicing Agreement with the TWDB. In 1999, this Agreement was amended in conjunction with the TWRFA's refunding of the Series 1989 Bonds. In 2012, with the payment of all of the TWRFA bonds in full, and as provided by Texas Water Code Sections 20.045 and 20.075, the TWRFA and TWDB have entered into a new Portfolio Sale and Servicing Agreement (Agreement) under which the TWDB acts as servicing agent for the TWRFA assets and provides for payment of additional consideration for the acquisition of the TWDB's Portfolio of Political Subdivision Bonds.

Existing Section 2.02(b) of the Agreement provides that upon written request from time to time by the TWDB, the TWRFA will transfer and pay the requested amount to TWDB as agreed. Existing Section 2.02(d) of the Agreement allows the TWDB to use the payments:

- to discharge, pay or redeem, any of the TWDB's outstanding bonds;
- to pay debt service or satisfy the reserve requirement; or
- for any other lawful purpose.

Texas Water Code Section 17.075 provides that money from authorized sources shall be credited to the Administrative Fund in amounts sufficient to pay the administrative expenses of the TWDB, as authorized by legislative appropriation. Texas Water Code Section 17.0871(g)

Our Mission

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

Board Members

Bech Bruun, Chairman | Kathleen Jackson, Board Member | Peter Lake, Board Member

Jeff Walker, Executive Administrator

provides that money from the sale not applied to discharges, payments or redemptions shall be deposited to the Development Fund, Administrative Fund, Water Assistance Fund or Agricultural Water Conservation Fund to be used for the purposes provided by law.

KEY ISSUES

The Executive Administrator is requesting that the TWDB board amend the Portfolio Sale and Servicing Agreement between the Texas Water Development Board and the Texas Water Resources Finance Authority by removing section 2.02 (a). Section 2.02 (b) provides the TWDB flexibility in requesting funds from TWRFA upon written request.

RECOMMENDATION

The Executive Administrator recommends amending the Portfolio Sale and Servicing Agreement with the Texas Water Resources Water Finance Authority. This recommendation has been reviewed by legal counsel and is within both the TWDB's and TWRFA's legal authorities.

Attachment(s): 1 – Amendment to the Portfolio Sale and Servicing Agreement

STATE OF TEXAS TEXAS WATER DEVELOPMENT BOARD

and

TRAVIS COUNTY TEXAS WATER RESOURCES FINANCE AUTHORITY

AMENDMENT NO. 1

The Portfolio Sale and Servicing Agreement (Agreement) previously made and entered into on September 20, 2012 between the Texas Water Development Board (TWDB) and the Texas Water Resources Finance Authority (TWRFA) is now hereby amended, pursuant to Section 4.03 of the Agreement, as follows:

1. Section 2.02. Consideration, Subsection (a) is deleted in its entirety.

2. Section 2.02. Consideration, Subsection (b) is changed as follows:

   (a) As additional consideration for the acquisition of the Portfolio, the Authority, at the written request from time to time by the Board, shall pay to the Board the amount(s) requested by the Board, during the course of a Fiscal Year and considered at a scheduled meeting, which shall be transferred and paid to the Board as agreed.

3. The remaining Section 2.02. Consideration shall be renumbered accordingly including any references thereto.

4. All other terms and conditions of the Agreement shall remain in effect.

IN WITNESS WHEREOF the parties hereto cause this Amendment No. 1 to be duly executed by their respective authorized officers.

TEXAS WATER DEVELOPMENT BOARD	TEXAS WATER RESOURCES FINANCE AUTHORITY
_____	_____
Bech Bruun, Chairman	Chairman
Date: _____	Date: _____
ATTEST:	ATTEST:
_____	_____
Jeff Walker, Executive Administrator	Secretary/Treasurer

PORTFOLIO SALE AND SERVICING AGREEMENT
between
TEXAS WATER DEVELOPMENT BOARD
and
TEXAS WATER RESOURCES FINANCE AUTHORITY
Dated: September 20, 2012

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PORTFOLIO SALE AND SERVICING AGREEMENT

THIS PORTFOLIO SALE AND SERVICING AGREEMENT (together with any amendments, modifications or supplements hereafter made between the parties hereto, this "Agreement"), dated as of September 20, 2012, is between TEXAS WATER DEVELOPMENT BOARD (together with any successor to its rights, duties and obligations hereunder, the "Board"), an agency of the State of Texas (the "State"), and the TEXAS WATER RESOURCES FINANCE AUTHORITY (together with any successor to its rights, duties and obligations hereunder, the "Authority"), a governmental entity and a body politic and corporate duly created, organized and existing under the laws of the State of Texas. This Agreement supersedes and replaces previous agreements between the Board and the Authority, specifically the agreements dated February 15, 1989 and May 1, 1999.

RECITALS

Chapter 20 of the Texas Water Code (as amended from time to time, the "Act") authorizes the Authority, in furtherance of the public purposes set forth in the Act, (a) to issue revenue bonds to finance the acquisition of Political Subdivision Bonds (as hereinafter defined) and to pay costs of issuing such revenue bonds; (b) to establish and maintain an interest and sinking fund, a reserve fund and other funds with respect to such revenue bonds; and (c) to pledge all or any part of the revenues derived from Political Subdivision Bonds acquired or to be acquired by the Authority to provide for the payment of the principal of and premium, if any, and interest on the Authority's revenue bonds.

Chapter 17 of the Texas Water Code (as amended from time to time, "Chapter 17"), and particularly Section 17.0871 thereof, authorizes the Board, in furtherance of the public purposes set forth in Chapter 17, (a) to sell any of its Political Subdivision Bonds to the Authority; and (b) to apply the proceeds of the sale for the purposes provided by law.

The Authority, exercising its authority under the Act, issued and delivered its Revenue Bonds, Series 1989 (the "1989 Bonds") to obtain funds to acquire the Portfolio (as hereinafter defined) of Political Subdivision Bonds from the Board, to fund a portion of a reserve fund for the Series 1989 Bonds and to pay costs relating to issuance of the Series 1989 Bonds, under and in accordance with the Constitution and laws of the State.

The Board sold the Portfolio to the Authority and agreed in the Portfolio Sale and Servicing Agreement between the Authority and the Board, dated February 15, 1989 (the "1989 Agreement) to perform the necessary administrative and servicing functions with respect to the Authority's Political Subdivision Bonds held in the Water Resources Trust Fund (as hereinafter defined) on behalf of the Authority.

The Authority issued the Texas Water Resources Finance Authority Refunding Bonds Series 1999 (tax exempt), the Texas Water Resources Finance Authority Refunding Bonds Taxable Series 1999, and the Texas Water Resources Finance Authority Series 1999 Periodic Auction

Reset Securities (collectively, the "1999 Refunding Bonds") for the purpose of refunding all of the outstanding 1989 Bonds, and secured the 1999 Refunding Bonds with the Portfolio.

The Authority has paid all costs relating to the issuance of the 1989 Bonds as well as all principal, interest, and premiums due on the 1989 Bonds and has no outstanding obligations relating to such Bonds, all in compliance with the Resolution, adopted by the Authority on April 8, 1999, authorizing the issuance of the Authority's 1999 Refunding Bonds.

The Authority has paid all costs relating to the issuance of the 1999 Refunding Bonds as well as all principal, interest, and premiums due and has no outstanding obligations relating to such Bonds.

The Authority and the Board desire to set forth in this Agreement the terms and conditions relating to the continued servicing of the Portfolio by the Board in respect to the Authority's portfolio and assets.

The Board and the Authority further officially find and determine that the continued servicing of the Portfolio and the management of the Authority's assets will enhance the ability of the State to aid in the accomplishment of the public purposes set forth in Chapter 17 and the Act;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration and the mutual benefits, covenants and agreements set forth below, the parties agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATIONS

Section 1.01. Definitions. Unless otherwise expressly provided or unless the context clearly requires otherwise, the following terms shall have the respective meanings specified below for all purposes of this Agreement:

"Act" has the meaning specified for that term in the recitals to this Agreement.

"Agreement" has the meaning specified for that term in the recitals to this Agreement.

"Assets" means those assets owned by and in the possession of the Authority at the time of the execution of this Agreement, including the portfolio of Political Subdivision Bonds and Collateral Documents, repayments on those outstanding Political Subdivision Bonds, instruments delivered in conjunction with the issuance of the 1989 Bonds or the 1999 Refunding Bonds, as described in the Recitals herein, Authority Bonds, cash, investments, and any assets acquired after the execution of this Agreement

"Attorney General" means the Attorney General of the State.

"Authority" has the meaning specified for that term in the recitals of this Agreement.

"Board" has the meaning specified for that term in the recitals of this Agreement.

"Board of Directors" means the Board of Directors, or any successor governing body, of the Authority.

"Bonds" means the bonds, in one or more series, issued by the Authority in accordance with the terms of the Resolutions.

"Chapter 17" has the meaning specified for that term in the recitals of this Agreement.

"Collateral Documents" means all documents, certificates, resolutions, orders, commitments, agreements, instruments and opinions adopted, approved, made, produced or entered into by a Political Subdivision, the Board, or others in connection with any particular issue of Political Subdivision Bonds or Bonds.

"Comptroller" means the Comptroller of Public Accounts of the State.

"Fiscal Year" means the fiscal year of the Authority, which is the period of time beginning in each calendar year on September 1and ending August 31 of the calendar year next following, or such other consecutive twelve month period hereafter designated by the Authority as its fiscal year.

"Operating Fund" means a fund of the Authority used to pay the expenses in the servicing and management of the Authority's assets.

"Political Subdivision" means any "political subdivision" within the meaning of Section 20.002 of the Act.

"Political Subdivision Bonds" means those bonds, notes, or other securities issued, and those debts or other contractual obligations incurred, by a Political Subdivision for the purpose of financing or refinancing projects for water resource development and conservation, water quality enhancement, flood control, drainage, subsidence control, recharge, chloride control, agricultural soil and water conservation, desalinization or any combination of these purposes.

"Portfolio" means the existing portfolio of Political Subdivision Bonds held in the Water Resources Trust fund, and any other assets therein deposited in accordance with the terms of the 1999 Refunding Bonds Resolution.

"Resolution" means the resolution of the Board of Directors adopted by the Board of Directors on April 8, 1999, authorizing the issuance, sale and delivery of the Bonds, together with any amendments or supplements thereto.

"State" has the meaning specified for that term in the preamble of this Agreement.

"Water Resources Trust Fund" means the fund of the Authority designated for holding the Political Subdivision Bonds.

Section 1.02. Recitals, Table of Contents, Titles and Headings. The terms and phrases used in the recitals of this Agreement have been included for convenience of reference only and the meaning, construction and interpretation of such words and phrases for purposes of this Agreement shall be determined solely by reference to Section 1.01. The table of contents, titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.03. Interpretation. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Agreement.

Section 1.04. Rules of Construction. For all purposes of this Agreement, unless the context requires otherwise, all references to designated Articles, Sections and other subdivisions are to the articles, sections and subdivisions of this Agreement.

ARTICLE II
ACQUISITION OF PORTFOLIO OF POLITICAL SUBDIVISION BONDS

Section 2.01. Acquisition of Portfolio. The parties hereto affirm that the Authority purchased, acquired and assumed from the Board, all of the Board's rights, titles and interests in and to the Portfolio and the Collateral Documents related thereto.

Section 2.02. Consideration (a) As additional consideration for the acquisition of the Portfolio, at the close of each Fiscal Year the Authority, at the written request of the Board, shall pay to the Board the amount requested by the Board, which shall be transferred and paid to the Board no later than September 15.

(b) As additional consideration, the Authority shall also pay to the Board any other amounts, at the written request from time to time by the Board, during the course of a Fiscal Year and considered at a scheduled meeting, which shall be transferred and paid to the Board as agreed.

(c) The Authority may delegate to the Authority's Chairman the authority to transfer amounts to the Board not in excess of ten percent of the value of the Authority's assets upon request from the Board's Executive Administrator. If such delegation and actions are taken, then the Board's Executive Administrator and the Authority's Chairman shall provide a full report to the Authority and Board relating to such actions within sixty days of such actions.

(d) Any such payments transferred may be used by the Board to (i) discharge, pay or redeem, any of the TWDB's outstanding bonds; (ii) pay debt service or satisfy the reserve requirement; or (iii) for any other lawful purpose.

Section 2.03. Portfolio Assets. The Authority finds that the Board has fulfilled its obligations relating to the Authority's acquisition of the Portfolio and further finds that the assets of the Portfolio that remain after the payment of the Bonds and the Refunding Bonds require the continuing services of the Board as Servicing Agent.

Section 2.04. Ownership of Portfolio. The parties hereby confirm that the Authority is the true and absolute owner of the Portfolio, and the Board shall have no continuing right, title or interest in or to the Portfolio or related Collateral Documents. The Board shall execute from time to time such instruments of assignment or transfer as may be necessary to evidence the assignment and transfer to the Authority of ownership of the Portfolio in accordance with this Agreement.

Section 2.05. Possession of Portfolio. From and after the transfer of ownership of any Political Subdivision Bonds from the Board to the Authority, and for so long as such Political Subdivision Bonds are owned by the Authority, the custody and possession of such Political Subdivision Bonds shall be deposited with the Comptroller to the credit of the Water Resources Trust Fund. The Board hereby covenants and agrees to identify for the Comptroller by Political Subdivision, series and aggregate principal amount, all Political Subdivision Bonds so transferred and to notify the Comptroller in writing of the transfer of ownership of each Political Subdivision Bond immediately upon acquisition thereof by the Authority. It is made the duty of the Comptroller to

maintain books or records of the Authority's ownership of the Portfolio as the Authority acquires Political Subdivision Bonds in the Portfolio.

ARTICLE III
SERVICING OF POLITICAL SUBDIVISION BONDS AND REMAINING COLLATERAL AND ANCILLARY BOND DOCUMENTS

Section 3.01. Board to Act as Servicing Agent . (a)As required in § 20.075 of the Act, the Authority shall contract with the Board for the Board to perform the functions required to ensure that the Political Subdivisions pay the debt service on Political Subdivision bonds and observe the conditions and requirements set forth in those. The Authority hereby reaffirms the appointment of the Board to act as its servicing agent to provide functions required to seek to ensure that each Political Subdivision pays the debt service on its Political Subdivision Bonds in the Water Resources Trust Fund and observes the covenants and requirements set forth in such Political Subdivision Bonds and related Collateral Documents. The Board reaffirms its acceptance of the appointment as servicing agent and shall perform the duties required of it under this Article III.

(b) The Authority also reaffirms the Board's authority to provide services for the remaining collateral and ancillary documents relating to the 1999 Refunding Bonds as described in the Resolution, including, but not limited to, directing investments thereof in strict compliance with the Act.

Section 3.02. Application of Money. In its capacity as servicing agent, the Board promptly shall deposit, or cause to be deposited, into the Revenue Fund as defined in the Resolution (i) all amounts received as payments of principal of and premium, if any, and interest on the Political Subdivision Bonds and government obligations in the Water Resources Trust Fund, (ii) all Prepayments and Sale Proceeds, and (iii) any amounts received by the Board for the Authority under any Collateral Documents.

Section 3.03. Cooperation with the Comptroller. As servicing agent, it shall be the duty of the Board, its officers, employees and agents (who are hereby so "authorized and directed") to cooperate with and aid the Comptroller and the Authority in calculating the amounts to be deposited in, or transferred to, the appropriate funds of the Authority.

Section 3.04. Power of Attorney. The Authority hereby (i) makes, constitutes and appoints the Board the true and lawful attorney-in-fact for the Authority, in its name, place and stead with the same effect as if personally done by the Authority, to take all actions deemed necessary by it in connection with the servicing of the obligations in the Water Resources Trust Fund in accordance with this Agreement, including, without limitation, to execute and deliver documents in connection with the servicing of the Political Subdivision Bonds on behalf of the Authority and to perform all responsibilities and duties imposed on the Authority under the Resolution with respect to such Political Subdivision Bonds, and (ii) ratifies and confirms all actions that the Board shall take or cause to be taken as attorney-in-fact for the Authority. Any act or thing done by the Board with respect to the obligations in the Water Resources Trust Fund as attorney-in-fact for the Authority shall be binding with respect to third parties on the Authority and its successors and assigns regardless of whether such action is in violation of the terms of this

Agreement. The power of attorney granted to the Board by the Authority hereunder is a power coupled with an interest and shall be irrevocable during the term of this Agreement.

Section 3.05. Accounting and Records. The Board covenants and agrees that it will maintain books, records and accounts relating to the payment and enforcement of the obligations in the Water Resources Trust Fund separate and apart from the records and accounts of the Board, in keeping with generally accepted accounting principles required in accordance with Chapter 2101, Texas Government Code, in which full, true and correct entries will be made of all dealings, activities and transactions relating to the Water Resources Trust Fund. The Board will keep such books, records and accounts on the basis of the Authority's Fiscal Year.

Section 3.06. Inspection. The Board covenants that all books, records, accounts, documents and vouchers relating to the Water Resources Trust Fund and the obligations therein and the funds created pursuant to the Resolution, shall at all reasonable times be made available for inspection by the Authority and any successor in interest to all or any part of the Water Resources Trust Fund.

Section 3.07. Tax Exemption. In its capacity as servicing agent for the Authority, the Board hereby covenants and agrees to take such other and further actions as may be required, or omit to take such actions as may be proscribed, by sections 103 and 141 through 150 of the Internal Revenue Code of 1954, as amended, and all applicable temporary, proposed and final regulations and procedures promulgated under the Internal Revenue Code (the "Regulations") necessary to assure that interest on the Bonds, any Additional Bonds (that are issued as tax-exempt bonds), the Refunded Bonds and the Political Subdivision Bonds in the Water Resources Trust Fund is excludable from gross income for federal income tax purposes.

Section 3.08. Direction to Board Officers, Employees, Agents, and Representatives. The appropriate officers, employees, agents and representatives of the Board are hereby expressly authorized and directed to undertake any duties and actions as may be necessary to carry out the duties and actions undertaken by the Board hereunder.

Section 3.09. Expenses of Servicing Agent. The Authority will pay or reimburse the Board, from the Operating Fund as an Operating Expense of the Authority, for all costs and expenses incurred by the Board in its capacity as servicing agent at the close of each Fiscal Year, but no later than September 15.

Section 3.10. Servicing Objective . The Board will perform its obligations under this Article III with respect to the Water Resources Trust Fund, toward the objective of obtaining full and timely repayment of all obligations in the Water Resources Trust Fund and full compliance with all of the covenants and agreements set forth in the related Bonds, Political Subdivision Bonds and Collateral Documents.

Section 3.11. Enforcement by Attorney General. As provided in Section 20.076 of the Act, if there is a default in the payment of principal of or interest on Political Subdivision Bonds in the Water Resources Trust Fund or any other default as defined in the Collateral Documents or proceedings authorizing the issuance of such Political Subdivision Bonds, the Executive

Administrator of the Board shall request that the Attorney General institute appropriate proceedings for mandamus or other legal remedies to compel the defaulting Political Subdivision or its officers, agents, and employees to cure the default.

ARTICLE IV
MISCELLANEOUS PROVISIONS

Section 4.01 . Representations, Warranties and Covenants. (a) The Board hereby represents and warrants that:
(i) it is duly created as an agency of the State and is duly authorized under the laws of the State to enter into this Agreement and to undertake and perform all actions required of it hereunder;
(ii) each of the Political Subdivision Bonds in the Portfolio has been approved by the Attorney General;
(iii) the transfer of each of the Political Subdivision Bonds in the Portfolio was effective and rightful ;
(iv) it was the owner of each of the Political Subdivision Bonds in the Portfolio immediately prior to the transfer thereof to the Authority, and at the time of transfer, such transfer was made free and clear of any superior claim, right, title or encumbrance, and each of the Political Subdivision Bonds in the Portfolio is genuine and has not been materially altered; and (v) it knows of no fact which might impair the validity of the security for any of the Political Subdivision Bonds in the Portfolio.

(b) The Authority hereby represents and warrants that it is a governmental entity and a body politic and corporate, duly created, organized and existing under the laws of the State, and is duly authorized under the laws of the State to enter into this Agreement and to undertake and perform all actions required of it hereunder.

(c) The Authority hereby covenants that it will not amend the Resolution without the prior written consent of the Board.

Section 4.02. Enforcement The Board and the Authority hereby each covenant and agree that it shall fully and faithfully perform each of the covenants, undertakings and actions required of it pursuant to the provisions of this Agreement and that the performance of its covenants, undertakings and actions under this Agreement may be enforced by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction.

Section 4.03. Amendments. This Agreement may be amended only in writing signed by both of the parties hereto.

Section 4.04. Further Assurances. The Board and the Authority each covenant that it will take such further action as may be required to carry out the purposes of this Agreement and to assure its validity.

Section 4.05. Further Procedures. The Board and the Authority each do hereby expressly authorize, empower and direct its respective officers, employees, agents and representatives from time to time to do and perform all such acts and things and to execute, acknowledge and deliver on its behalf all instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Agreement.

Section 4.06. Beneficiaries. This Agreement shall not be deemed to create any right of subrogation or otherwise in any person who is not a party hereto (other than the permitted successors and assigns of a party) and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors or assigns of a party hereto) but such rights shall be enforceable only as provided in this Agreement.

Section 4.07. Term and Termination. This Agreement shall be effective on the last date of execution and for a term ending ninety (90) days after all assets of the Authority have been properly disposed of.

Section 4.08. Repeal. All instruments or agreements or other official action of the Board or the Authority which in any manner or to any extent conflict with any provision of this Agreement, including, without limitation, the 1989 Agreement and the 1999 Agreement, shall be, and such other instruments and actions are hereby, expressly repealed by the Board and the Authority to the extent of conflict.

Section4.09. Severability Clause. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to any other person or circumstance, shall not be affected thereby.

Section 4.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Sect ion 4.11. Governing Law. This Agreement shall be deemed to be a contract made under and shall be construed in accordance with and governed by the laws of the State.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized officers as of the day and year first above written.

TEXAS WATER DEVELOPMENT BOARD
By:

Billy R. Bradford, Jr., Chairman

ATTEST:

Melanie Callahan
Executive Administrator

TEXAS WATER RESOURCES FINANCE AUTHORITY
By:

Lewis H. McMahan, Chairman

ATTEST:

Monte Chuck, Secretary