

BY-LAWS OF  
OVERLOOK WATER COOPERATIVE

Preamble. This is a cooperative Association organized and operated under the applicable laws of the State of New Mexico.

ARTICLE I.: OFFICES

Section 1.01. Principal Office.

The principal office of the cooperative in the State of New Mexico shall be located as the Board of Directors may determine or as the affairs of the corporation may require from time to time.

Section 1.02. Registered Office and Registered Agent.

The Cooperative shall have and continuously maintain in the State of New Mexico a registered office, and a registered agent, as required by law. The registered office may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II.: DEFINITIONS

Section 1. Cooperative.

The term "Cooperative" shall mean and refer to the Overlook Water Cooperative, a New Mexico Cooperative, its successors and assigns.

Section 2. Declarant.

The term "Declarant" shall have the same meaning as set forth in the Declaration.

Section 3. Declaration.

The term "Declaration" shall mean and refer to the comprehensive Declaration of Covenants, Conditions and Restrictions applicable to the properties recorded in the Office of the County Clerk of Sandoval County, New Mexico.

Section 4. The Overlook Homeowners Association.

The term "The Overlook Homeowners Association" shall have the same meaning as set forth in the Declaration.

Section 5. Lot.

The term "lot" shall have the same meaning as set forth in the Declaration.

Section 6. Member.

The term "Member" shall mean and refer to those persons or entities who are members of the Cooperative as provided in the Articles of Incorporation.

Section 7. Property or Properties.

The terms "property" or "properties" shall have the same meaning as set forth in the Declaration.

Section 8. Service Connection.

The term "Service Connection" shall mean and refer to the connection of a cooperative water meter to a members residence.

ARTICLE III.: MEMBERSHIP

Section 1. Qualifications.

In addition to meeting those qualifications set forth in the Declaration and Articles of Incorporation, the qualifications for membership shall be as follows:

a) full payment of any and all assessments levied by the corporation pursuant to these By-laws against a members lot.

Section 2. Membership Certificate.

Membership status shall be evidenced by a membership certificate executed by the member, the Declarant and the Cooperative. A sample certificate is attached hereto and labeled as Exhibit "A".

Section 3. Voting.

Each member shall be entitled to one (1) vote. There shall be no voting by proxy.

ARTICLE IV.: MEETINGS OF MEMBERS

Section 1. Annual Meeting.

The annual meeting of the members of this Cooperative shall be held at a location selected by the Board of Directors within ten miles of The Overlook subdivision, within the County of Sandoval, State of New Mexico. To the extent possible, the annual meeting should immediately follow the annual meeting of The Overlook Homeowners Association, Inc. At the annual meeting, the Board of Directors shall present an audit of the expenses, itemizing receipts and disbursements for the preceding calendar year, the allocation

thereof to each Owner, and the estimated budget for the coming calendar year, and any other business which may properly be brought before the Cooperative.

Section 2. Special Meeting.

Special meetings of the members of the Cooperative may be called at any time by the President, or upon resolution signed by at least a majority of the Board of Directors, or upon written petition to the President signed by ten percent (10%) of the members. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted except such as is specified in the notice.

Section 3. Notice.

Notice of meetings of the members of the Cooperative, both regular and special shall include the purpose, place, date and time of the meeting and shall be given to each member of record in writing, and sent either personally or by mail to the address shown upon the books of the Cooperative, at least ten (10) days prior to the meeting.

Section 4. Order of Business.

The order of business at the regular meetings, and as far as possible at other meetings, shall be:

1. Calling to order and proof of quorum;
2. Proof of notice of meeting;
3. Reading and action taken upon the minutes of the last meeting;

4. Report of Directors;
5. Reports of Officers and committees;
6. Election of Directors;
7. Unfinished business;
8. New business;
9. Adjournment.

#### ARTICLE V.: DIRECTORS

##### Section 1. Directors Meeting.

Regular meetings of the Board of Directors shall be held as the Board may determine and at such place and hour as may be fixed from time to time by resolution of the Board. Special meetings of the Board of Directors shall be held when called by the President of the Cooperative, or by any two directors, after not less than three (3) days notice to each director. Directors meetings shall be open to any member of the Cooperative.

##### Section 2. Quorum.

A majority of the total number of Directors shall constitute a quorum for the transaction of business. Each act or decision done or made by the Directors shall require the assent of a simple majority of the quorum.

##### Section 3. Removal and Replacement of Directors.

Any Director or Officer of the Cooperative may resign in writing at any time and may be removed from office, with or without cause, by a vote of not less than two-thirds (2/3) of the members of the cooperative present at any annual meeting and entitled to vote, or at any special meeting

called for that purpose. In the event of death, resignation or removal of a Director his successor shall be selected by the remaining members of the Board and shall serve until the next meeting of the Association when another will be elected for the unexpired term.

Section 4. Compensation of Director.

No Director shall receive compensation for any service he may render to the Cooperative. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action of Directors Without a Meeting.

The Directors shall have the right to take any action in the absence of a meeting of the Directors which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE VI.: POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers.

The Board of Directors shall have power to:

- a) Adopt and publish rules and regulations governing the use of the Cooperatives facilities.
- b) Suspend a party's membership in the Cooperative during any period in which such party shall be in default in the payment of any assessment levied by the Cooperative.

- c) Exercise for the Cooperative all powers, duties and authority vested in or delegated to this Cooperative and not reserved to the membership by other provisions of these By-laws, the Articles of Incorporation, or the Declaration.
- d) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from four (4) consecutive regular meetings of the Board of Directors and fill that vacancy; and
- e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.
- f) Fix compensation for officers, managers, independent contractors and the like.
- g) Approve new members.
- h) To incur debt and approve contracts.
- i) Levy assessments and the enforcement and collection thereof in accordance with the provisions of the Declaration, these By-laws and the laws of the State of New Mexico.
- j) Establish water charges and fees.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or any special meeting when such statement is requested in writing by one-fourth (1/4) of the total votes of the membership;
- b) Supervise all officers, agents and employees of this Cooperative, to insure that their duties are properly performed;
- c) As more fully provided in the Declaration and these By-laws, to:
  - (1) Fix the amount of the Minimum Monthly Water Assessment against each Lot;
  - (2) Fix the amount of the Standby Fee Assessment, the Installation Fee Assessment, Transfer Assessment, any Special Assessment, and any other assessment set by these By-laws;
  - (3) Send written notice of all assessments to the Owner subject thereto at least thirty (30) days in advance of its due date;  
and
  - (4) Foreclose the lien of the Cooperative against any Lot for which assessments are not paid within thirty (30) days after the due date or to bring an action at law



against the owner personally obligated to pay the same when, in the discretion of the Board of Directors, such action would be in the best interests of the Cooperative.

- (d) Issue, or to cause an appropriate officer to issue, upon reasonable demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) Procure and maintain adequate liability and hazard insurance on property owned or maintained by the Cooperative.
- (f) Cause all officers or employees having fiscal responsibilities to be bonded, if in the discretion of the Board of Directors such bond is deemed appropriate.
- (g) Cause the water system and water system extensions to be maintained.
- (h) Prepare the annual budget.
- (i) Pay the cost of all authorized services rendered to the Cooperative and not billed to Owners of individual Lots or otherwise provided for in these By-laws.

(j) Enforce by legal means the provisions of the Declaration, these By-laws, and the Rules and Regulations, and act on behalf of the Owners with respect to all matters arising out of any eminent domain proceeding.

#### ARTICLE VII.: OFFICERS

##### Section 1. Enumeration of Officers.

The officers of this Cooperative shall be a president, vice-president, a secretary, and a treasurer, and such other officers as the Board of Directors may from time to time by resolution create. Each Officer shall be a member of the Cooperative or the authorized agent of a member corporation or partnership.

##### Section 2. Election of Officers and Term.

The officers of this Cooperative shall be elected annually by the Board and each shall hold office for one (1) year unless the Officer shall sooner resign, or shall be removed, or otherwise disqualified to serve. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

##### Section 3. Special Officers.

The Board may elect such other officers from the members as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 4. Resignation and Removal.

Any officer may be removed from office, with or without cause, by the Board. Any officer may resign in writing at any time giving written notice to the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies.

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. Duties.

The duties of the officers are as follows:

- a) President. The president shall preside at all meetings of the members and the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments including Membership Certificates on behalf of the Cooperative. He shall be an ex-officio on all standing committees and shall have such powers and shall have such other duties as may be properly required of him by the Board of Directors.

- b) Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- c) Secretary. The secretary shall have general charge and supervision of the books and records of the Cooperative and record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; shall keep the corporate seal of the Cooperative and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records including a Membership Book, showing the members of the Cooperative together with their mailing address, and whether all assessments made have been duly paid, and shall perform such other duties as required by the Board.
- d) Treasurer. The treasurer shall collect, receive and deposit in appropriate bank accounts all monies of the Cooperative, including but not limited to the Maintenance and Repair Reserve Fund, and shall disburse such funds as directed by resolution of the

Board of Directors; shall sign all checks and promissory notes of the Cooperative; keep proper books of account; he shall keep a proper membership certificate record showing the name of each member of the cooperative, date of issuance, date of surrender or transfer, termination, cancellation or forfeiture of certificates, complete, attest and deliver membership certificates as required and affix any necessary cooperative seal thereto; cause an annual audit of the Cooperative books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditure to be presented to the membership at its regular annual meeting.

ARTICLE VIII.: WATER SYSTEM

Section 1. Statement of Purpose.

As more fully provided in the Declaration and the Articles of Incorporation, the primary purpose of the Cooperative shall be to acquire, construct, install, maintain and operate a water system to supply and distribute water to the members.

Section 2. Modification of Water System.

The Declarant shall also have the sole and exclusive right to construct and extend the water system and to expand its service capacity.

Section 3. Participation in the Water System.

Water shall not be delivered except to users who are members of the Cooperative as evidenced by a valid Membership Certificate. If any member needs and desires more than one service connection to the system, such additional connections shall be made only upon application to and with the approval of the Declarant and upon payment of such additional fee as the Declarant shall determine.

ARTICLE IX.: WATER SYSTEM COSTS

Section 1. Initial Costs.

All costs of construction of the water system and any water system extension shall be borne by the Declarant. These costs shall include the designing of the water system, the drilling of wells, the construction of the distribution lines, the installation of pumps, tanks, purification devices, controls and other necessary equipment, the acquisition of water rights and all administrative, legal and accounting services necessary to establish the Cooperative and render the water system operational. The Declarant shall not bear the cost of installation of water meters for each individual member and the installation of water service lines from the member's water meter to the dwelling of each member. Water rights purchased by the Declarant are based on an average consumption for each service connection of 7750 gallons per month. If any additional water rights are required, then any additional water rights shall be born by the Cooperative and not the Declarant.

Section 2. Operating Costs.

Operating costs shall be an expense of the Cooperative and payable from the Maintenance and Repair Reserve. Operating costs are those usual, normal and customary expenses incurred for routine maintenance and operation of a water system, including utility costs, insurance, supplies, water testing, purification, accounting, administrative, legal and other miscellaneous day-to-day expenses.

Section 3. Other Costs.

Major repair and maintenance costs shall be an expense of the Cooperative and shall include replacement and repair of equipment or property and improvements to the water system. Such Other Costs shall be payable from the Maintenance and Repair Reserve Fund. To the extent the Maintenance and Repair Reserve is insufficient to pay for necessary repair and maintenance, the Board of Directors may levy a special water assessment.

Section 4. Maintenance and Repair Reserve Fund.

The Minimum Monthly Water Assessment shall include a levy, uniform throughout the membership and sufficient for the purpose of establishing and maintaining a Maintenance and Repair Reserve Fund to be used by the Cooperative for the purposes set forth in these By-laws. The amount of the monthly levy to establish and maintain the cash reserve shall be determined by the Board of Directors based in part upon

the average annual expenditures for past years. In no instances shall said cash reserve total more than a reasonable amount necessary to meet annual average costs.

Section 5. Costs Caused by Individual Member.

If any cost or expense of the Cooperative is proximately caused by the negligence or misconduct of any individual member, then the Cooperative may assess that expense exclusively against the member and may Lien said member's Lot accordingly.

ARTICLE X.: ASSESSMENTS

Section 1. Generally.

Each member is obligated to promptly pay to the Cooperative all assessments made by the Cooperative. If the assessment is not paid within ninety (90) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Cooperative may bring an action at law against the owner personally obligated to pay the same or file and foreclose a lien against the property, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein. The Board of Directors shall be entitled to record a notice of the lien of the Cooperative for any assessment which is delinquent.



Section 2. Stand By Fee Assessment.

Upon issuance of a membership certificate, there shall be a Stand By Assessment Fee paid by each member until the member's residence is connected to the water system. This Stand By Fee shall initially be \$21.00 per quarter. Each member shall pay the Stand By Fee Assessment until the service connection is installed. Declarant shall not be subject to the Stand By Assessment Fee.

Section 3. Installation Fee Assessment.

Each new member of the Cooperative shall be required to pay a one-time Meter Installation Fee Assessment of \$680.00 to the Declarant who shall then provide within a reasonable time the service connection. An Additional payment of \$100.00 shall be made by the new member to the Cooperative to defray costs. Installation and assessment fees shall be waived as to Declarant.

Section 4. Minimum Monthly Water Assessment.

The Board of Directors shall establish the Minimum Monthly Water assessment to be paid by each member. The Minimum Monthly Water Assessment shall consist of the cost of the water and water services provided to each Member as set forth in the rate schedule, and an amount sufficient to establish and maintain the Maintenance and Repair Reserve Fund. The Board of Directors shall establish and review at least annually the rate schedule for water and water services provided to the members by the Cooperative. The Rate Schedule shall initially be \$30.00 per month per member for

the first 7,000 gallons, or increment thereof, of water used and an additional \$3.50 per month per member for each additional thousand gallons or increment thereof up to 11,000 gallons of water used. Thereafter, there shall be an additional \$4.50 per 1,000 gallons, or increment thereof, of water used. The Minimum Monthly Water Assessment shall be sufficient to provide for the prompt payment by the Cooperative of all Operating Costs and Other Costs and to provide for the Maintenance and Repair Reserve.

Section 5. Transfer Assessment.

Upon the transfer of a membership, the transferee shall be required to pay a \$100.00 Transfer Assessment to the Cooperative to defray the cost of the associated bookkeeping and administrative expenses of the Cooperative.

Section 6. Special Assessments.

To the extent necessary to defray its costs and maintain the Maintenance and Repair Reserve fund the Board of Directors may levy a Special Assessment against the members of the Cooperative. The Special Assessment shall be levied against all members proportionately.

Section 7. Declarant Not Liable.

Notwithstanding any of the foregoing provisions of this Article, Declarant shall not be liable for any assessments incident to membership in the Association.

ARTICLE XI.: NONPAYMENT OF ASSESSMENT BY MEMBER

Section 1. Generally.

The Board of Directors shall determine what constitutes delinquent non-payment of any water charges or assessments owed by any member, and shall establish penalties for same to be levied against delinquent members. Delinquent charges and assessments shall constitute a lien against the real property of the member, as set forth in the Declarations.

Section 2. Sale of Membership Rights.

The Board of Directors shall have the authority to sell and assign the Membership of any member in the event of delinquent non-payment of any water charges or assessments owing by said member within ninety (90) days after demand for payment by mail, properly addressed to such delinquent member. The proceeds of any sale of Membership over and above the amount due the Cooperative shall be paid to the delinquent member. In lieu of such sale of Membership, the Board of Directors may purchase the Membership on behalf of the Cooperative, at a price determined by the Board to be the fair value of the membership. In the event of either a sale of the Membership or the purchase thereof by the Cooperative, the proceeds shall be first applied to the payment of any indebtedness due the Cooperative by the delinquent member.

Section 3. Termination of Services.

Notwithstanding the rights of the Cooperative to terminate the Membership of a delinquent member as provided

above, the Cooperative, through its Board of Directors, shall have the additional right to terminate the supply of water to the delinquent member after ninety (90) days written notice by mail of the delinquency.

ARTICLE XIII.: RECORDS OF THE COOPERATIVE

Section 1. Inspection of Records.

The books, records and papers of the Cooperative shall at all times, during regular business hours and upon reasonable notice, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-laws of the Cooperative shall be available for inspection by any member at the principal office of the Cooperative, where copies may be purchased at reproduction cost.

Section 2. Membership Certificate.

The Board of Directors shall determine the form of Membership Certificate. The Certificate shall be signed by the President, and his signature attested by the Secretary/Treasurer, who shall impress thereon the Corporate Seal of the Cooperative.

Section 3. Membership Book.

As a part of the records of the Cooperative, there shall be kept a Membership Book, which shall contain a list of the Certificates of Membership which have been issued, noting the numbers of the Certificates, the dates thereof, the number of service connections, and the names and addresses of the persons to whom issued.

ARTICLE XIII.: TRANSFER OF MEMBERSHIP

Sale or transfer of the possessory interest in any lot or portion thereof benefited by a membership in this Association shall act to terminate the membership of the Seller and to make the new owner of the possessory interest a member who shall thereupon be bound by this Agreement, and the rights and obligations provided in this Agreement shall run with the land.

Transfer of an interest in the Cooperative will not affect or change any existing or accrued obligations, and such new interest holder will not be liable for such obligations unless otherwise provided in this Agreement transferring the interest in the Cooperative; provided, however, that the Cooperative does not have to give the new member service until all fees, charges and assessments incurred for serving the property transferred are brought current.

ARTICLE XIV: AMENDMENTS

These By-laws may be repealed or amended by a vote of a majority of the members voting at the annual meeting, or any any special meeting called for that purpose; provided notice of the proposed repeal or amendment is incorporated in the notice of such meeting, and upon written approval of the Declarant.

ARTICLE XV. MISCELLANEOUS

Section 1. Fiscal Year.

The fiscal year of the Cooperative shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. Indemnification of Board of Directors and Cooperative.

Each member of the Board of Directors or officer of the Cooperative shall be indemnified by the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved by reason of their being or having been an officer or member of the Board of Directors, or any settlement thereof, whether or not they are a member of the Board of Directors or officer at any time such expenses are incurred except in cases wherein the officer or Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Cooperative.

Section 3. Conflicts.

In the case of any conflict between the Articles of Incorporation and these By-laws, the Articles of Incorporation shall control and in the case of any conflict between the Declaration and these By-laws, the Declaration shall control.

Section 4. Interested Parties.

No transaction of the Cooperative will be affected because a Member, Director, Officer, or Employee of the Cooperative is interested in the transaction, provided full disclosure is made in advance to the Directors and Officers of the Cooperative. Such interested parties will be counted for quorum purposes, and may vote, when the Cooperative considers the transaction. Such interested persons will not be liable to the Cooperative for the party's profits, or the Cooperative's losses from the transaction.

Section 5. Limitation of Warranties. The system has been designated, installed and constructed with the best information available. The Declarant will not be liable for any loss or damage as a result of improper design or operation, nor for any interruption of service. The Developer has exercised his best judgment to design and install a system adequate for the purposes intended; however, he does not warrant the adequacy or operation of the system.

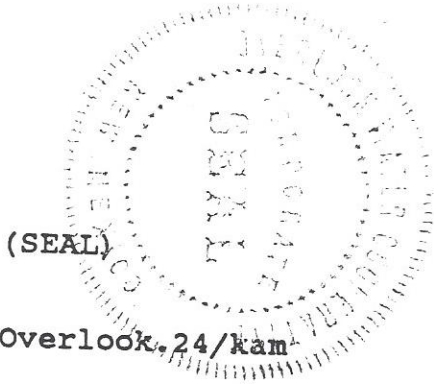
Section 6. Withdrawal from Cooperative.

Any member may voluntarily withdraw from the force an effect of this Agreement: (1) by paying all outstanding

charges, assessments and penalties; (2) by relinquishing all right, title or interest in the property of the Cooperative, including the right to be provided water by the Cooperative.

I, Sandra S. Poling, Secretary of The Overlook Water Cooperative, a Cooperative Association existing under the laws of the State of New Mexico, hereby certify that the above is a true and correct copy of the By-laws, together with all amendments thereto, as of this 18th day of January, 1990.

Done at Placitas, New Mexico this 18th day of January, 1990.



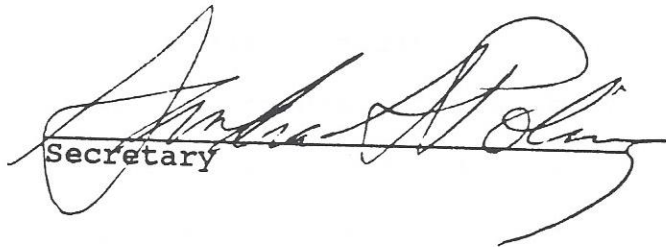
  
Secretary



EXHIBIT "A"

THE OVERLOOK WATER COOPERATIVE ASSOCIATION

CERTIFICATE OF MEMBERSHIP

This certifies that \_\_\_\_\_

is a member of the Overlook Water Cooperative Association having paid for \_\_\_\_\_ shares of the Association in full.

Rights of Members. Each member of the Association shall have one and only one vote, except that, if a member is another association or group organized on a cooperative basis, the voting rights of such a member may be prescribed the articles or bylaws. No member shall be permitted to vote by proxy.

Withdrawal from Association. If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him out of surplus funds the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within 60 days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors are under a duty to exercise their power to purchase, if and when there are sufficient surplus funds.

IN WITNESS WHEREOF, the Overlook Water Cooperative Association has caused this Certificate to be signed by its duly authorized officers and to be sealed with the seal of the Association this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary