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BEFORE THE ARIZONA CORPORATION COMMISSION

2008 DEC 30 A 11: 22

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COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-08-0049

NOTICE OF FILING
AFFIDAVIT OF DAVID ASHTON

Swing First Golf LLC ("Swing First") hereby files the notarized affidavit of David Ashton in support of its December 15, 2008, Response to Motion for Summary Judgment. Please substitute this for the non-notarized affidavit previously filed with the Response.

RESPECTFULLY SUBMITTED on December 24, 2008.

Craig A. Marks
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Craig.Marks@azbar.org
Attorney for Swing First Golf LLC

Original and 13 copies **mailed**
on December 24, 2008, to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing **mailed**
on December 24, 2008, to:

Yvette B. Kinsey
Administrative Law Judge
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

DEC 30 2008

DOCKETED BY

Copy of the foregoing mailed and e-mailed
on December 24, 2008, to:

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By:


Craig A. Marks

BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE FORMAL
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DOCKET NO. WS-02987A-08-0049

**AFFIDAVIT OF DAVID ASHTON IN
SUPPORT OF RESPONSE TO THE
MOTION FOR SUMMARY
JUDGMENT**

1)
2)
3)

- 4 1. I am a citizen of the United States of America.
- 5 2. I am a managing member of Swing First Golf, LLC, ("Swing First") an Arizona
6 limited liability company.
- 7 3. Swing First is the Complainant in the above captioned proceeding.
- 8 4. Swing First owns and operates the Johnson Ranch Golf Club.
- 9 5. The Johnson Ranch Golf Club is a customer of Respondent Johnson Utilities LLC
10 ("Utility")
- 11 6. I have received and reviewed copies of a Motion for Summary Judgment and a
12 Statement of Facts filed by Utility.
- 13 7. Swing First is a successor in interest to the September 17, 1999, Agreement
14 Regarding Utility Service ("Agreement"), attached to Utility's Statement of Facts.
- 15 8. As I understand the Agreement:
- 16 a. Swing First has the first right to all effluent generated in Utility's service
17 territory.

1 b. Utility may satisfy this obligation by either delivering effluent, or at its
2 option, delivering water from another source.

3 c. Regardless of the source of the water, Swing First is obligated to pay for
4 the water at Utility's rate for effluent water as set by the Arizona Corporation
5 Commission.

6 9. Swing First has no need for CAP water or a CAP-water meter.

7 10. I am informed and believe that Utility's San Tan Water Reclamation Plant ("San
8 Tan WRP") produces sufficient treated effluent to satisfy Swing First's irrigation needs for the
9 Johnson Ranch Golf Club.

10 11. Instead of water from the San Tan WRP, Utility has supplied the majority of
11 Swing First's irrigation needs by water delivered through a CAP-water meter and billed to Swing
12 First at Utility's CAP rate.

13 12. Utility charges Swing First each month for two minimum bills, one for effluent
14 and the other for CAP water, regardless of whether or not water is received. All water received is
15 charged over and above the monthly minimums.

16 13. In January 2008, Utility replaced Swing First's three-inch effluent meter with an
17 eight-inch meter. At that time Utility acknowledged that it had been, for more than two years,
18 charging Swing First for a six-inch meter when in fact Swing First had only a three-inch meter.

19 14. Until filing of the complaint in this case, Utility had always billed Swing First at a
20 rate of \$0.83 or higher per thousand gallons for effluent. The commission's rate for effluent is
21 \$0.62 per thousand gallons.

22 15. In April of 2006 Swing First agreed to manage the Golf Club at Oasis ("the
23 Oasis"), for George Johnson, Utility's owner, in exchange for a water credit of 150 million
24 gallons per year to be provided by Utility.

25 16. Swing First began managing the Oasis on May 1, 2006.

26 17. Swing First discontinued the Oasis management relationship on Nov 16, 2006,
27 retroactive to October 31, 2006.

1 18. During most of the six-month term of service, Utility effectuated the water credit
2 by not billing Swing First for water. Swing First received no other compensation for its
3 management services.

4 19. In late 2006, Utility's employees changed Swing First's CAP water rate to \$3.75
5 per thousand gallons at the direction of Mr. Johnson. Billing at this rate continued for nearly one
6 year.

7 20. In 2007, Johnson Utilities decided at the direction of Mr. Johnson to reverse the
8 2006 credits and now is improperly asking Swing First to pay for the water not billed in 2006.

9 21. The water credit for six months is 75 million gallons. At the effluent rate of \$0.62
10 per thousand gallons, the value of the credit earned by Swing First is \$50,056.50.

11 22. Utility provided free irrigation water to the Oasis Golf Course, and did not bill its
12 employees for water service at their homes.

13 23. Brian Tompsett, Utility's Executive Vice President, paid for Oasis Golf Course
14 expenses by providing checks drawn on Utility.

15 24. Mr. Tompsett paid Swing First for the Oasis Golf Course liquor license by a
16 check drawn on Utility.

17 25. In violation of Commission regulations, Utility has regularly failed to read Swing
18 First's meters, in one instance for the seven months dated April through November 2007.

19 26. Over the weekend of February 1, 2008, Johnson Utilities over-delivered effluent
20 to Swing First, which caused the lake bordering the 18th hole to overflow.

21 27. Utility twice cut off service to Swing First without notice in November 2007.

22 28. Swing First's attempts to resolve its billing issues with Utility have been met with
23 incompetence, broken promises, rudeness, and outright obscenities.

24 29. Utility bills Swing First each month for a "Superfund" tax at the rate of
25 \$0.0065/1000 gallons.

26 30. Since Swing First continues each month to pay for all water it receives at Utility's
27 effluent rate and its monthly minimum charge for a three-inch effluent meter.

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31. Utility continues to overcharge Swing First and owes Swing First an amount in excess of \$70,000.

Signed: 
David Ashton

Subscribed and sworn before me this __ day of December, 2008, by David Ashton.

Notary: MARIE Annabelle

Seal

