

ORIGINAL

NEW APPLICATION

BATTAGLIA & ROBERTS, P.C.

167 East Fifth Street

Benson, Arizona 85602

Tel: (520) 586-2292

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0000102374

Benson, Arizona 85602

Mark E. Battaglia

Ann P. Roberts

September 23, 2009

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

W-20704A-09-0467

RE: Application for an Adjudication not a Public Service Corporation

To Whom It May Concern:

Enclosed for filing, please find an Application for an Adjudication not a Public Service Corporation for the Kayenta Estates Homeowner's Association, Inc.

The Homeowner's Association is requesting the adjudication for the purpose of providing water service to the 27 Lots in the Subdivision.

Please refer all communications regarding the application process to me, as the Statutory Agent of the Corporation, at the above address and telephone number. If you have any questions or additional information is needed, please call.

Thank you for your assistance with this matter.

Very truly yours,

ANN P. ROBERTS

Arizona Corporation Commission
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ARIZONA CORPORATION COMMISSION

APPLICATION FOR AN ADJUDICATION NOT A PUBLIC SERVICE CORPORATION

WATER AND/OR SEWER

APPLICATION INSTRUCTIONS

GENERAL INFORMATION

The attached forms have been prepared by the Utilities Division of the Arizona Corporation Commission (“Commission”) to assist applicants filing an Application for “Adjudication Not A Public Service Corporation” (“Adjudication”).

The criteria for seeking adjudication was established in Commission Decision No.55568, dated May 7, 1987 (Attachment A). The Decision cites seven criteria which must be met when seeking adjudication. **BEFORE PROCEEDING FURTHER** please review the attached Decision to ensure your entity meets the required criteria. To facilitate the application process, the attached Decision also indicates where each of the seven criteria **MUST** appear in the application.

IMPORTANT:

- Please complete the application accurately and attach all the required documents, after determining your entity meets the required criteria for adjudication.
- Please complete all the items. If you do not complete an item, your application could be delayed or denied.
- If the space provided is insufficient, please use a separate sheet of paper and clearly label the information.

- Please allow up to 30 calendar days after application has been docketed, for the Commission to determine if your application meets sufficiency requirements.

APPLICANT INFORMATION

1. Please legibly print or type applicant's name, title, address, e-mail address (if applicable) and telephone number :

Kayenta Estates Homeowner's Association, Incorporated

1191 Via Coyote, Benson, Arizona 85602 (520) 586-7060

John J. Scully, Incorporator

185 Forest View Drive, Elgin, Illinois 60120

2. If application is being submitted by an attorney or other representative, please legibly print or type the name, business name, title, address, e-mail address (if applicable) and telephone number:

Ann P. Roberts, Esq.

Battaglia & Roberts, P.C.

P.O. Box 2315

Benson, Arizona 85602

(520) 586-2292

annroberts@theriver.com

Statutory Agent for Kayenta Estates Homeowner's Association, Inc.

FILING INSTRUCTIONS

1. The following documents **MUST** be submitted when filing your application:
 - A. An executed copy of the Articles of Incorporation which indicates applicant is a Non-Profit Homeowners Association (“HOA”), and is in **Good Standing** with the Corporations Division of the Arizona Corporation Commission.
 - B. Copy of the HOA’s Covenants, Conditions and Restrictions (“CC&R’s”).
 - C. Copy of the Corporation’s Bylaws.
 - D. Corporate Resolution **or** Petition signed by 51% or more of the then existing HOA members. The petition list should be legible and contain the names of the homeowner’s/property owner’s, printed and signed. This should be inclusive of addresses, telephone numbers, and area codes. The petition should also include a heading that describes the purpose of the petition.
 - E. Evidence, such as a signed notarized affidavit, of association ownership of the utility assets (current or future), including wells, pumps, tanks, mains and all other necessary equipment, sufficient to serve the members requirements.
 - F. A complete description of the facilities proposed to be constructed, including a preliminary engineering report with specifications.

PLEASE ANSWER THE FOLLOWING QUESTIONS:

- A. Is the applicant presently providing service within the designated area?
Yes ___ No X If yes, to how many connections? ___
In addition, if yes, as a substitute for item “F” above, please provide as-built plans of the system with documentation from the Arizona Department of Environmental Quality stating that the system is in full compliance.

If the answer is yes, is this area within an Active Management Area ("AMA") as determined by the Arizona Department of Water Resources?
Yes _____ No X

C. How will wastewater be addressed within the HOA?

Each individual lot of approximately three (3) acres will have a septic system.

D. Is this application is being submitted by a non-profit homeowner's association? Yes X No _____ If no, please review the seven criteria for adjudication not a public service corporation.

E. Is this application for adjudication not a public service corporation a bona fide request by a majority of the membership of the association through a petition signed by 51% or more of the then existing members? Yes _____ No X . If yes, please submit petitions. If no, a signed and notarized resolution must be filed in lieu of a petition.

F. Please provide a legal description of the area to be adjudicated (cadastral or metes and bounds).

The North half of the Northeast Quarter of Section 30, Township 17 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, State of Arizona, more particularly described as follows:

Beginning at the Northeast quarter of said Section 30, monumented by a 3" open pipe tagged LS5980;

Thence along the East line of said Northeast quarter of Section 30, South 00°43'44" East a distance of 1332.84 feet to the Southeast corner of said North half of the Northeast quarter;

Thence along the South line of said North half North 89°58'42" West a distance of 2643.91 feet to the Southwest corner of said North half;

Thence along the West line of said North half North 00°49'01" West a distance of 1330.39 feet to the Northwest corner of said Northeast quarter, being monumented by a 3" open pipe;

Thence along the North line of said Section 30, North 89°58'05" East a distance of 2645.92 feet to the Northeast corner of said Section 30 and the Point of Beginning.

Said parcel contains 80.85 acres more or less.

PLEASE DESIGNATE IN THE SECTION GRID NOTED BELOW, THE EXACT LOCATION OF THE PROPOSED ADJUDICATED AREA AS REFERENCED TO IN THE LEGAL DESCRIPTION.

Section 30, Township 17 South, Range 21 East of the Gila and Salt River Base and Meridian:

Please also provide a general description of the entity's location. For example: Located XXXX number of miles from XXXXXX, between XXXXXX and XXXXX.

The property is located two (2) miles East of Highway 80 and two and one half miles from Interstate 10, in Section 30, Township 17 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, State of Arizona.

APPLICATION FILING

When you have completed this application, you may mail or deliver to:

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

If you have any questions regarding the adjudication application, please contact the Utilities Division of the Arizona Corporation Commission at (602) 542-4251 or 1-800-222-7000.

ATTACHMENT A
SEE NEXT THREE (3) PAGES

EXHIBIT 1. A.

ARTICLES OF INCORPORATION

AND

ARIZONA CORPORATION COMMISSION CERTIFICATE OF GOOD STANDING

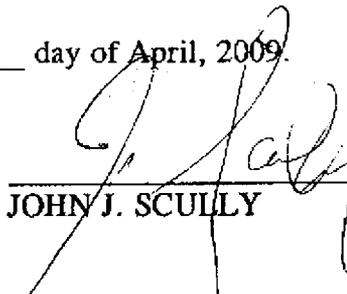
APR - 9 2009

FILE NO. -1518344-7

ARTICLES OF INCORPORATION
OF
KAYENTA ESTATES HOMEOWNER'S ASSOCIATION, INC.

1. The name of the corporation is **KAYENTA ESTATES HOMEOWNER'S ASSOCIATION, INC.**, and the duration of the corporation shall be perpetual.
2. This corporation is organized to operate as a non-profit homeowner's association (HOA) and to hold title to certain real property located in Cochise County, Arizona, title to which shall be vested in the corporation by plat or otherwise.
3. This corporation is organized to carry on any lawful business of the corporation, to conduct activities associated with the operation of a HOA and for the purpose of operating a not for public service water company to provide water service to the property owners of Kayenta Estates Subdivision.
4. Every person or entity who is an owner of a fee interest in any lot within the Kayenta Estates Subdivision, which is, or becomes subject to, assessment by the corporation, shall be a member of the corporation and every member who is a customer of the not for public service water company shall have equal voting rights.
5. Every person or entity who is a member of the corporation is or will be a customer of the for public service water company.
6. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the corporate purposes.
7. The power of indemnification under the Arizona Revised Statutes shall not be denied or limited by the bylaws.
8. Ann P. Roberts shall be the initial statutory agent with an address of: 167 E. 5th Street, Benson, Arizona 85602.
9. The known place of business of the corporation shall be: 1191 Via Coyote, Benson, Arizona 85602.
10. John J. Scully, 185 Forest View Drive, Elgin, Illinois 60120, is the person who shall serve as the initial director of the corporation until the first annual meeting of the board of directors, or until his successor is elected and qualified.
11. The personal liability of the directors to the corporation for monetary damages for breach of fiduciary duty as a director is limited or eliminated to the fullest extent permitted by applicable law.
12. The incorporator of the corporation is John J. Scully, 185 Forest View Drive, Elgin, Illinois 60120.

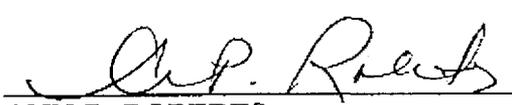
DATED this 7 day of April, 2009.



JOHN J. SCULLY

CONSENT OF STATUTORY AGENT

I, Ann P. Roberts, having been designated to act as Statutory Agent of Kayenta Estates Homeowner's Association, Inc., hereby consent to act in that capacity until removed or my resignation is submitted in accordance with the Arizona Revised Statutes.



ANN P. ROBERTS

**NONPROFIT
CERTIFICATE OF DISCLOSURE**
Pursuant to A.R.S. § 10-3202 (D)

Kayenta Estates Homeowner's Assoc., D.
EXACT CORPORATE NAME

- A. Has any person serving either by election or appointment as officer, director, trustee, or incorporator in the corporation:
1. Been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
 2. Been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses, or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
 3. Been or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the execution of this Certificate wherein such injunction, judgment, decree or permanent order:
 - (a) Involved the violation of fraud or registration provisions of the securities laws of that jurisdiction; or
 - (b) Involved the violation of the consumer fraud laws of that jurisdiction; or
 - (c) Involved the violation of the antitrust or restraint of trade laws of that jurisdiction?

Yes _____ No ✓

B. IF YES, the following information **MUST** be attached:

1. Full name and prior name(s) used.
2. Full birth name.
3. Present home address.
4. Prior addresses (for immediate preceding 7-year period).
5. Date and location of birth.
6. The nature and description of each conviction or judicial action, date and location, the court and public agency involved and file or case number.

- C. Has any person serving as an officer, director, trustee or incorporator of the corporation, served in any such capacity in any other corporation in any jurisdiction on the bankruptcy or receivership of the other corporation?

Yes _____ No ✓

IF YOUR ANSWER TO THE ABOVE QUESTION IS "YES", YOU MUST ATTACH THE FOLLOWING INFORMATION FOR EACH CORPORATION:

1. Name and address of the corporation.
2. Full name, including alias and address of each person involved.
3. State(s) in which the corporation:
 - (a) Was incorporated.
 - (b) Has transacted business.
4. Dates of corporate operation.
5. A description of the bankruptcy or receivership, including the date, court or agency and the file or case number.

Under penalties of law, the undersigned incorporators/officers declare that we have examined this Certificate, including any attachments, and to the best of our knowledge and belief it is true, correct and complete, and hereby declare as indicated above. **THE SIGNATURE(S) MUST BE DATED WITHIN THIRTY (30) DAYS OF THE DELIVERY DATE.**

BY [Signature] DATE 4/7/09 BY _____ DATE _____

TITLE Incorporator TITLE _____

BY _____ DATE _____ BY _____ DATE _____

TITLE _____ TITLE _____

DOMESTIC CORPORATIONS: ALL INCORPORATORS MUST SIGN THE INITIAL CERTIFICATE OF DISCLOSURE.
(If more than four incorporators, please attach remaining signatures on a separate sheet of paper.)

If within sixty (60) days, any person becomes an officer, director, or trustee and the person was not included in this disclosure, the corporation must file an AMENDED certificate signed by all incorporators, or if officers have been elected, by a duly authorized officer.
FOREIGN CORPORATIONS: MUST BE SIGNED BY AT LEAST ONE DULY AUTHORIZED OFFICER OF THE CORPORATION.

STATE OF ARIZONA



Office of the
CORPORATION COMMISSION
CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Ernest G. Johnson, Executive Director of the Arizona Corporation Commission, do hereby certify that

*****KAYENTA ESTATES HOMEOWNER'S ASSOCIATION, INC.*****

a domestic nonprofit corporation organized under the laws of the State of Arizona, did incorporate on April 9, 2009.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said corporation is not administratively dissolved for failure to comply with the provisions of the Arizona Nonprofit Corporation Act; and that its most recent Annual Report, subject to the provisions of A.R.S. sections 10-3122, 10-3123, 10-3125, & 10-11622, has been delivered to the Arizona Corporation Commission for filing; and that the said corporation has not filed Articles of Dissolution as of the date of this certificate.

This certificate relates only to the legal existence of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 23rd Day of September, 2009, A. D.



A handwritten signature in black ink, appearing to read "E G Johnson".

Executive Director

By: _____ 396102

EXHIBIT 1. B.

**DECLARATION OF ESTABLISHMENT
OF
CONDITIONS, RESERVATIONS AND RESTRICTIONS
OF
KAYENTA ESTATES SUBDIVISION**

KAYENTA ESTATES

**DECLARATION OF ESTABLISHMENT
OF
CONDITIONS, RESERVATIONS AND RESTRICTIONS**

The undersigned, being first duly sworn upon oath, depose and say:

THIS DECLARATION, made on the date hereinafter set forth, by JOHN J. SCULLY, hereinafter "Declarant".

WITNESSTH:

WHEREAS, Declarant is the sole owner of Lot Nos. 1 through 27 of Kayenta Estates subdivision, recorded on the 26th day of March, 2008, in Book 15, pages 95 through 95 E, Records of Cochise County, State of Arizona, which is more particularly described in Exhibit "A" attached; and,

WHEREAS, Declarant upon conveying said real property desires to subject the same to certain restrictive conditions, reservations and restrictions as set forth; and,

WHEREAS, Declarant, by this DECLARATION, hereby reaffirms the Hidden Valley Declaration of Establishment of Conditions, Reservations and Restrictions, recorded as document number 0209-27692, Records of Cochise County, State of Arizona.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having right, title or interest in the described properties or any part there, their heirs, successors and assigns, shall inure to the benefit of each owner thereof.

**ARTICLE I.
DEFINITIONS**

Section 1. "Association" shall mean and refer to **Kayenta Estates Homeowner's Association, Inc.**, an Arizona nonprofit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for **Kayenta Estates** subdivision, Lot No. 1 through 27, according to the Record of Survey recorded on March 26, 2008, at Book 15, page 95 through 95(E) of Maps and Plats, Records of Cochise County, State of Arizona.

Section 3. "Common Property" shall mean the **Kayenta Estates Water System** and all real property, including that part of each Lot or Excluded Parcel which is burdened by an easement or easements in favor of the Association, which is maintained by the Association for the common use and enjoyment of the Owners and occupants of the Properties pursuant to the Declaration.

Section 4. "Lot" shall mean and refer to Lots shown on the Record of Survey.

Section 5. "Excluded Parcel" shall mean and refer to those parcels of real property adjacent to the Subdivision but not included therein on the Record of Survey.

Section 6. "Parcel" shall mean and refer to any Lot or Excluded Parcel.

Section 7. "Record of Survey" shall mean and refer to the record of survey recorded March 26, 2008, at Book 15, page 95 through 95(E) of Maps and Plats, Records of Cochise County, State of Arizona, as hereafter amended or revised.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Declarant" shall mean and collectively refer to the persons identified as the Declarant in the Declaration, and their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Member" shall mean and refer to those persons entitled to membership in the association, as provided in the Declaration.

Section 11. "Kayenta Estates Water System" shall refer to the water system established by the Association for the purpose of providing water service to the property which consists of Lot No. 1 through 27.

Section 12. "Customer of the Kayenta Estates Water System" every Lot Owner within the subdivision shall be a Member of the Association and customer of the water system.

Section 13. "Service Area of the Kayenta Estates Water System" the service area of the water system shall be limited to the fixed territory of the Property which is not within the water service area of any municipal utility or public service corporation.

ARTICLE II. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot that is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Members of the Association shall be of two classes:

Class A Members. Class A members shall be any Owner(s) other than the Declarant and shall be entitled one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they determine. In no event shall more than one (1) vote be cast with respect to any one (1) Lot.

Class B Members. Class B Member(s) shall be the Declarant and shall be entitled to twenty (27) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, *whichever occurs earlier*:

a. The Class B membership shall cease and be converted to Class A membership at such time as the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership; or,

b. On December 31, 2020.

Section 3. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 4. Membership in the Association shall be restricted to the customers of the Kayenta Estates Water System as determined by Lot Ownership within the Property.

**ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation Assessments. The Declarant for each Lot owned within the property, hereby covenants, and each Owner of any Lot, by acceptance of a deed thereof, whether or not is shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- a. Annual assessments or charges; and,
- b. Special assessments for capital improvements, such assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each and such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the association shall be used exclusively to promote the health, safety and welfare of the residents in the property and for the improvement, liability and casualty insurance, and maintenance of the Common Property facilities thereon and the Kayenta Estates Water System.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the **maximum** annual assessment shall be Five Hundred and 00/100 Dollars (\$500.00) per Lot. No Lot shall be assessed until the water service is provided to said Lot.

a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes in each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and will be collected on a monthly or yearly basis in advance as established by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Properties. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of 10 percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may

waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI. ADDITIONAL RESTRICTIONS

Section 1. Resubdivision. No lot or lots as shown hereon shall again be subdivided, resubdivided, altered or changed so as to produce less area than hereby established.

Section 2. Service Area of the Kayenta Estates Water System. The service area of the water system shall be limited to the fixed territory of the Property which is not within the water service area of any municipal utility or public service corporation.

Section 3. Ownership of the Kayenta Estates Water System Assets. All assets of the Kayenta Estates Water System shall belong to and shall be operated, maintained and controlled by the Association.

Section 4. Applications for Adjudication as a Not a Public Service Corporation. No applications requesting designation as not a public service corporation for the operation of the water system shall be made by the Association to the Arizona Corporation Commission without approval of fifty one percent (51%) or more of the existing Members of the Association.

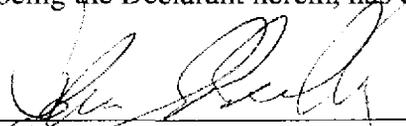
ARTICLE V. GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 21st day of September, 2009.



JOHN J. SCULLY, Declarant

STATE OF ARIZONA)
)ss:
County of Cochise)

The foregoing Declaration was subscribed and sworn to before me this 21st day of September, 2009, by JOHN J. SCULLY.



Notary Public

My Commission Expires:

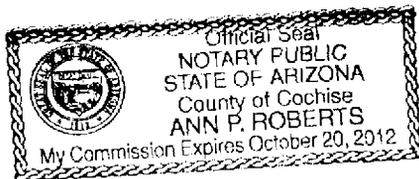


EXHIBIT 1. C.

BY-LAWS

OF THE

KAYENTA ESTATES HOMEOWNER'S ASSOCIATION

**BYLAWS
OF
KAYENTA ESTATES HOMEOWNER'S ASSOCIATION, INC.**
an Arizona nonprofit corporation

Pursuant to the provisions of Section §10-3206, Arizona Revised Statutes, **Kayenta Estates Homeowner's Association, Inc.**, an Arizona nonprofit corporation, hereby adopts the following Bylaws:

**ARTICLE I
NAME AND LOCATION**

The name of the corporation is **Kayenta Estates Homeowner's Association, Inc.**, hereinafter referred to as the "Association." The principal office of the corporation shall be located at 1191 Via Coyote, Benson, Arizona 85602, but meetings of Members and Directors may be held at such places within the State of Arizona, County of Cochise, as may be designated by the Board of Directors.

**ARTICLE II
DEFINITIONS**

Section 1. "Association" shall mean and refer to **Kayenta Estates Homeowner's Association, Inc.**, an Arizona nonprofit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described in the *Declaration of Covenants, Conditions, Restrictions and Easements for Kayenta Estates* subdivision, Lot No. 1 through 27, according to the Record of Survey recorded on March 26, 2008, at Book 15, page 95 through 95(E) of Maps and Plats, Records of Cochise County, State of Arizona.

Section 3. "Common Property" shall mean the **Kayenta Estates Water System** and all real property, including that part of each Lot or Excluded Parcel which is burdened by an easement or easements in favor of the Association, which is maintained by the Association for the common use and enjoyment of the Owners and occupants of the Properties pursuant to the Declaration.

Section 4. "Lot" shall mean and refer to Lots shown on the Record of Survey.

Section 5. "Excluded Parcel" shall mean and refer to those parcels of real property adjacent to the Subdivision but not included therein on the Record of Survey.

Section 6. "Parcel" shall mean and refer to any Lot or Excluded Parcel.

Section 7. "Record of Survey" shall mean and refer to the record of survey recorded March 26, 2008, at Book 15, page 95 through 95(E) of Maps and Plats, Records of Cochise County, State of Arizona, as hereafter amended or revised.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Declarant" shall mean and collectively refer to the persons identified as the Declarant in the Declaration, and their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Declaration" shall mean and refer to the Kayenta Estates Declaration of Establishment of Covenants, Conditions and Restrictions, recorded in the Office of the Cochise County Recorder, State of Arizona, as the same may be amended.

Section 11. "Member" shall mean and refer to those persons entitled to membership in the association, as provided in the Declaration. Every Owner shall be a Member of the Association. The Members of the Association shall be of two classes. The Class A Members shall be any Owner other than the Declarant. The Class B Member shall be the Declarant until the Class B membership converts to Class A membership in accordance with the terms of the Declaration.

Section 12. "Kayenta Estates Water System" shall refer to the water system established by the Association for the purpose of providing water service to the property which consists of Lot No. 1 through 27.

Section 13. "Customer of the Kayenta Estates Water System" every Lot Owner within the subdivision shall be a Member of the Association and customer of the water system.

Section 14. "Service Area of the Kayenta Estates Water System" the service area of the water system shall be limited to the fixed territory of the Property which is not within the water service area of any municipal utility or public service corporation.

ARTICLE III MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the fifteenth of each month of March of each year thereafter, at the hour of 12:00 o'clock p.m., unless changed by the Board of Directors. If the day for the annual meeting of the members is a legal

holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Class A and Class B Voting Rights. The Class A Members shall be entitled to one vote for each Parcel owned by such Member. In no event shall more than one (1) vote be cast with respect to any Parcel by a Class A Member. The Class B Member shall be the Declarant, which shall be entitled to twenty seven (27) votes for each Parcel owned by it. The Class B membership shall cease and be converted to Class A membership at such time as the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership, but no later than December 31, 2020.

Section 3. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, by Declarant, or upon written request of the Members who are entitled to vote two-thirds (2/3) of all of the votes of all the Members.

Section 4. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days before such meeting to each Member entitled to vote thereafter, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. Notice to one Owner of a Parcel shall be deemed notice to all Owners thereof.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-half (1/2) of the votes of each class of membership shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of not less than two (2) nor more than three (3) directors, who may, but, except as provided in the Declaration, need not, be Members of the Association.

Section 2. Term of Office. The directors shall be appointed or elected at the annual meeting of the Members, and each director shall hold office until the annual meeting held next after his election and until his or her successor shall have been elected and qualified, or until his or her death, or until he or she shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of all of the Members of the Association, except that the Declarant shall appoint the directors during any period during which, under the Declaration, the Declarant shall control the Association and no director may be removed without Declarant's consent during such time. 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 for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Appointment by Class B Member, Class A Members. The Board shall initially consist of two (2) Directors, both of which shall be appointed by the Class B Member. At such time as Declarant has sold eight (8) of the Parcels to Owners who become Class A Members, a third Director shall be appointed by the Class B Member from among the Class A Members. At such time as Declarant has sold twenty (20) of the Parcels to Owners who become Class A Members, the third (3rd) Director shall be elected by the Class A Members from among themselves. At such time as Declarant has sold all twenty seven (27) of the Parcels, all three (3) of the Directors shall be elected from the Class A Members among themselves.

Section 2. Election. Election by the Class A Members of Directors shall be by secret written ballot at the annual meeting. At such election the Class A Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VI
MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held annually, without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall, at the option of a majority of the Directors, be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than one (1) day notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. In addition to all other powers, the Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing operation and management of the Kayenta Estates Water System and the use of the Common Property and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations or any provision of the Declaration;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration, including the maintenance and insurance the Kayenta Estates Water System and the Common Property;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) employ on behalf of the Association such independent contractors and/or employees as they deem necessary, and to prescribe their duties; and

(f) grant easements over, across or under the Common Property for public or private utilities, ingress, egress and such other purposes as may be deemed advisable by the Board.

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

(a) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within sixty (60) days after the due date or to bring an action at law against the Owner personally obligated to pay the same, provided same is cost effective in the sole discretion of the Board of Directors.

(b) issue, or to cause an appropriate officer to issue, upon 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;

(c) procure and maintain liability and hazard insurance on property maintained by the Association in amounts determined by the Board of Directors in their sole discretion;

(d) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(e) cause the Kayenta Estates Water System and the Common Property to be maintained.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president who shall at all times be a member of the Board of Directors, a secretary, and a treasurer, and such other officers, including a vice president, as the Board may from time to time by resolution create.

Section 2. Election of Officers. 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. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for two (2) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers 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 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. 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 6. 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 7. Multiple Offices. Any two or more offices may be held by the same individual except President and Secretary.

Section 8. Duties. The duties of the officers are as follows: (a) The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out and shall sign all written instruments and shall co-sign all promissory notes. (b) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. (c) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE IX COMMITTEES

The Association shall, subject to Declarant's rights, may appoint committees as deemed appropriate in carrying out its purpose.

ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid when due under the Declaration, the assessment shall bear interest from the date of delinquency at the rate specified in the Declaration, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's 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 by non-use of the Common Property or abandonment of his Lot.

ARTICLE XII AMENDMENTS - CONFLICTS

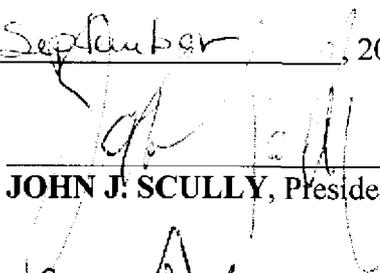
Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of the votes entitled to be cast at a meeting of a quorum of Members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws or the Articles, the Declaration shall control.

**ARTICLE XIII
MISCELLANEOUS**

Section 1. The fiscal year of the Association 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.

DATED: This 21st day of September, 2009.



JOHN J. SCULLY, President/Treasurer



GLEN RATH, Vice-President/Secretary

EXHIBIT 1. D.

RESOLUTION OF THE BOARD OF DIRECTORS

OF THE

KAYENTA ESTATES HOMEOWNER'S ASSOCIATION

APPROVING APPLICATION TO THE ARIZONA CORPORATION COMMISSION

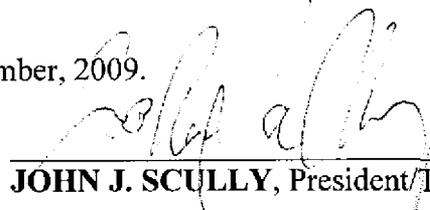
**RESOLUTION OF THE BOARD OF DIRECTORS OF THE KAYENTA ESTATES
HOMEOWNER'S ASSOCIATION APPROVING THE SUBMISSION TO THE
ARIZONA CORPORATION COMMISSION OF THE APPLICATION FOR
ADJUDICATION NOT A PUBLIC SERVICE CORPORATION FOR THE KAYENTA
ESTATES WATER SYSTEM**

WHEREAS, the Kayenta Estates Homeowner's Association intends to provide water service to the Kayenta Estates subdivision consisting of 27 lots located in Cochise County, State of Arizona, and in order to provide such water service, the Corporation must apply the Arizona Corporation Commission for adjudication as "Not a Public Service Corporation"; and,

WHEREAS, the Application having been prepared and ready for submission to the Arizona Corporation Commission for adjudication as "Not a Public Service Corporation" and said Application having been reviewed by the Board of Directors of the Corporation.

IT IS HEREBY RESOLVED that the Application for submission to the Arizona Corporation Commission for adjudication as "Not a Public Service Corporation" is hereby approved and Counsel is directed to submit such Application to the Arizona Corporation Commission for consideration.

DATED this 21st day of September, 2009.



JOHN J. SCULLY, President/Treasurer



GLEN RATH, Vice-President/Secretary

EXHIBIT 1. E.

**ARIZONA DEPARTMENT OF WATER RESOURCES
REQUEST TO CHANGE WELL INFORMATION**

Mark E. Battaglia
Ann P. Roberts

BATTAGLIA & ROBERTS, P.C.
167 East Fifth Street
Benson, Arizona 85602
Tel: (520) 586-2292
Fax: (520) 586-2294

Mailing Address:
P. O. Box 2315
Benson, Arizona 85602

September 23, 2009

Arizona Department of Water Resources
Water Management Support Section
P.O. Box 33589
Phoenix, Arizona 85067-3589

RE: Request to Change Well Information
Scully to Kayenta Estates Homeowner's Assoc., Inc
Well Reg. No. 55-565860

To Whom It May Concern:

Enclosed for processing, please find a Request to Change Well Information form. Also enclosed is my general account check in the amount of \$10.00 to cover your fees.

Thank you for your assistance in this matter.

Very truly yours,



Ann P. Roberts

EXHIBIT 1. F.

PRELIMINARY ENGINEERING REPORT

PREPARED BY

PHYSICAL RESOURCES ENGINEERING, INC.



PHYSICAL RESOURCE ENGINEERING, INC.

4655 N. FLOWING WELLS RDP.O. BOX 36985

TUCSON, ARIZONA 85705

TUCSON, ARIZONA 85740

(520) 690-1669

Fax (520) 690-1769

Date: 17 March 2009

To: Arizona Corporation Commission

RE: **Preliminary Engineering Report
Water System for Kayenta Estates Subdivision
St. David Fire District, Sec 30, T 17 S, R 21 E**

1. The system will deliver water at 50 psi. to the highest house—Lot # 7.
2. Pressure at the lowest house will be 62 psi—Lot # 26.
3. Two wells will serve the subdivision; one 4" diameter in lot #10 and a new well of 4" diameter in lot # 26. Each well will be able to supply 23 GPM.
4. Each well will pump to a storage tank of 20,000 gallon capacity—20 foot diameter by 10 foot height or 16 foot diameter by 15 foot height. Each tank will supply a pressure pump and a 3,000 gallon pressure tank.
5. A looped water main of 6 inch diameter PVC pipe of about 4,539 feet will serve the subdivision. About 120 feet of 6 inch diameter PVC pipe will tie each of the pressure tanks to the system.
6. The well pumps will be Grundfos 22S Q/S QE 10C-190, 1 horse power pumps or approved equal supplying water from about 140 foot depth to a fill port on a 15-foot tall tank at 23-25 gpm. The system will be alternately pressurized by a Grundfos CR 32-2, 7½ HP pump (or approved equal) supplying 180 gpm at up to 65 psi from each well site in turn—extending life of the pumps and offering redundancy. Each site will have a supplemental Grundfos CR-45-1-1, 7½ to 10 HP pump (or approved equal) drawing from the storage tank and delivering 250 gpm at minimal head for filling Saint David Fire District vehicles.
7. The pressure tanks will be 6 foot diameter by 15 feet long or an equivalent readily available substitute. The operating range will be zero to 100 psi. Cathodic protection is recommended.
8. Valves shall be brass body gate valves of six inch diameter. They shall be placed every 500 feet within the looped system, a valve and reduced pressure back flow preventer shall isolate each well site, a valve shall be placed at each outlet of the storage tanks to allow down stream maintenance. An additional valve shall be placed in a normally closed position on a line between the pressure tank outlet and feed to the Saint David Fire District hydrants. This will allow for additional filling capacity.
9. The storage tanks shall be 20,000 gallon capacity; they shall be allowed to be drawn down during the day and shall be filled during night hours with provision for well pumping if 10,000 gallons reserve capacity has been



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4655 N. FLOWING WELLS RD. P.O. BOX 36985

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lost. An access port, valves, and manual controls shall; allow for draining, isolation, cleaning, and disinfection as required. Redundancy should allow for no disruption of service.

10. Meters for the individual properties are not considered at this time.

11. Two hydrants for use by the Saint David Fire District are being installed. With the associated booster pump, a 4,000 gallon tanker can be filled in 16 minutes. Allowing inter tie of the pressure tank could allow a fill rate of 430 gpm to be approached with filling occurring in about 9.5 minutes. The physical arrangement allows for draft by a pumper truck if all power has been lost.

12. Control will be by contact switches, timers, pressure sensors, manual overrides and dedicated wire and/or wireless signals.

William J. Strang, Arizona PE 18784
Physical Resource Engineering

