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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

- GARY PIERCE - Chairman
- BOB STUMP
- SANDRA D. KENNEDY
- PAUL NEWMAN
- BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF TUSAYAN WATER DEVELOPMENT ASSOCIATION, INC. FOR ESTABLISHMENT OF RATES FOR WATER SERVICE.

DOCKET NO. W-02350A-10-0163

IN THE MATTER OF THE APPLICATION OF ANASAZI WATER CO., LLC FOR ADJUDICATION "NOT A PUBLIC SERVICE CORPORATION."

DOCKET NO. W-20765A-10-0432

IN THE MATTER OF THE APPLICATION OF HYDRO-RESOURCES, INC. FOR ADJUDICATION "NOT A PUBLIC SERVICE CORPORATION."

DOCKET NO. W-20770A-10-0473

PROCEDURAL ORDER

**BY THE COMMISSION:**

On April 29, 2010, Tusayan Water Development Association, Inc. ("Tusayan") filed with the Arizona Corporation Commission ("Commission"), in Docket No. W-02350A-10-0163 ("Tusayan Docket"), a rate application using a test year ending December 31, 2009. In its application, Tusayan stated that it was directed to file the application by a Commission letter dated November 16, 2009. Tusayan explained that it does not own any of the facilities used in pumping or distributing water or any other property, plant, or equipment, and that it purchases water from two water companies and bills its customers for the water used. Tusayan stated that each of its 36 customers (5 residential and 31 commercial) receives water from one of two separate distribution systems owned and operated by the two separate water companies, with the serving system determined based on the customer's location. One of the water companies was identified as Hydro Resources, for which the billing rate is \$24.50 per 1,000 gallons. The other water company was identified as Anasazi Water Co., for which the billing rate is \$55.00 per 1,000 gallons. Tusayan stated that it assesses a fee on each bill of \$0.0004 per gallon to cover its administrative costs. Tusayan's application did not request a rate increase.

1 On June 4, 2010, the Commission's Utilities Division ("Staff") issued a Letter of  
2 Insufficiency in the Tusayan Docket, stating that Tusayan's application did not meet the sufficiency  
3 requirements outlined in Arizona Administrative Code ("A.A.C.") R14-2-103, that Tusayan needed  
4 to familiarize itself with the Commission's rules related to rate case filings, and that Staff would like  
5 to meet with Tusayan to assist it in understanding the process. Staff requested that Tusayan contact  
6 Staff within 15 days of receiving the letter.

7 On July 2, 2010, in the Tusayan Docket, Tusayan Ventures LLC ("T Ventures") filed an  
8 Application for Leave to Intervene, requesting that it be permitted to intervene in the rate case  
9 because T Ventures and its affiliate companies are the owners and developers of property located  
10 within Tusayan's Certificate of Convenience and Necessity ("CC&N") service area and thus will be  
11 directly and substantially affected by the Commission's decision in the rate case.

12 Tusayan did not file a response to the intervention request.

13 On July 19, 2010, a Notice of Intervention Procedural Order was issued in the Tusayan  
14 Docket granting T Ventures intervention.

15 On July 21, 2010, Staff filed in the Tusayan Docket two letters issued that day, one to Hydro-  
16 Resources, Inc. ("Hydro") and one to Anasazi Water Company, LLC ("Anasazi"). Each letter  
17 thanked the recipient for taking the time to talk with Staff regarding the recipient's relationship with  
18 Tusayan, stated that Staff believes that the recipient may be acting as a public service corporation,  
19 asked the recipient to file within 90 days either an application for a CC&N or a request to be  
20 adjudicated not a public service corporation, and stated that failure to take action could result in the  
21 filing of a complaint and a petition for an order to show cause regarding why the recipient should not  
22 be subject to Commission regulation.

23 On October 21, 2010, Anasazi filed, in Docket No. W-20765A-10-0432 ("Anasazi Docket"),  
24 an Application for Adjudication "Not a Public Service Corporation" ("Anasazi Adjudication  
25 Application").

26 On November 19, 2010, Hydro filed, in Docket No. W-20770A-10-0473 ("Hydro Docket"),  
27 Hydro-Resources, Inc.'s Application for a Determination That It Is Not Acting as a Public Service  
28 Corporation in Tusayan, Arizona ("Hydro Adjudication Application").

1 On December 2, 2010, in the Tusayan Docket, the Anasazi Docket, and the Hydro Docket  
2 (jointly “the three dockets”), Staff filed a Request for Procedural Conference. In each Request, Staff  
3 requested a procedural conference; stated that the matters in the three dockets are complex and  
4 interrelated; and stated that Staff recommends, at a minimum, suspension of Tusayan’s rate  
5 application, pending the resolution of the Anasazi Adjudication Application and the Hydro  
6 Adjudication Application.

7 On December 10, 2010, in each of the three dockets, a Procedural Order was issued  
8 scheduling a joint procedural conference for the three dockets to be held on January 4, 2011, at the  
9 Commission’s offices in Phoenix. The parties were instructed to be prepared to discuss whether the  
10 three dockets should be consolidated and how the three dockets should proceed.

11 On December 30, 2010, the Town of Tusayan (“Town”) filed, in the Tusayan Docket, a letter  
12 advising that the Town is exploring options available for financing and operating its own municipal  
13 water system; stating that the Town was aware of the procedural conference scheduled for January 4,  
14 2011; stating that the Town has a strong interest in any decisions that might be made concerning  
15 water service to its residents; and asking that the Commission not act further on these issues without  
16 the Town’s “having a seat at the table to discuss them and provide its input as to how matters should  
17 proceed.” The Town did not mention intervention in its letter or otherwise formally request that it be  
18 permitted to participate as a party in any of the three dockets.

19 On January 4, 2011, a procedural conference was held as scheduled at the Commission’s  
20 offices in Phoenix, Arizona. Tusayan was represented by Chris Brainard, its contracted Certified  
21 Public Accountant, who was directed that Tusayan needed to select, by Board Resolution, a  
22 representative eligible to appear before the Commission on Tusayan’s behalf under A.R.S. § 40-243  
23 and Arizona Supreme Court Rule 31. T Ventures, Anasazi, Hydro, and Staff appeared through  
24 counsel. Anasazi, Hydro, and Staff all expressed support for consolidating the three dockets and for  
25 suspending the rate case process while the other issues are resolved. Mr. Brainard expressed support  
26 for consolidating the three dockets, expressed no opposition to suspending the rate case process, and  
27 was informed that Tusayan’s Board Resolution needed to include Tusayan’s position on  
28 consolidating the three dockets. T Ventures expressed no objection to consolidating the three dockets

1 or to suspending the rate case pending resolution of other issues, provided that “benchmarks” must be  
2 met, and the process does not result in excessive delay. No representative for the Town was present.  
3 However, counsel for Hydro advised that he had been informed by the Town that the issue of  
4 intervention was expected to be on the agenda for the Town Council meeting scheduled for January  
5 5, 2011. Hydro and Anasazi both also asserted that the Town should participate as a party in the  
6 three dockets. No ruling was made on consolidation, pending consideration of Tusayan’s Resolution,  
7 and it was determined that another procedural conference would be held in approximately one month.  
8 It was further determined that the Procedural Order scheduling the procedural conference would also  
9 direct the Town to make a filing clarifying its intent as to intervention and would memorialize the  
10 requirement for Tusayan’s Resolution.

11 On January 4, 2011, a Procedural Order was issued in the Tusayan Docket scheduling a joint  
12 procedural conference in the three dockets on February 7, 2011;<sup>1</sup> requiring Tusayan to file, by  
13 January 14, 2011, copies of a Tusayan Board Resolution identifying and authorizing a qualified  
14 individual to serve as Tusayan’s representative, providing Tusayan’s position on consolidating the  
15 three dockets, and providing Tusayan’s position on suspending the rate case process pending  
16 resolution of the other issues in the three dockets; and requiring the Town, by January 20, 2011, to  
17 file either a Motion to Intervene or a document explaining why the Town believes that it is not a  
18 necessary party in interest. The Procedural Order also required that any party desiring to file a  
19 response to the Town’s filing do so by January 27, 2011.

20 On January 14, 2011, a Notice of Appearance and a separate Response to Motion for  
21 Consolidation and Suspension of Rate Case Process were filed in the Tusayan Docket showing that  
22 Tusayan is now represented by counsel and stating that Tusayan did not object to consolidation of the  
23 three dockets and did not object to suspension of the rate case process pending resolution of other  
24 issues in the three dockets.

25 On January 18, 2011, a Procedural Order was issued consolidating the three dockets and  
26 suspending the rate case process and the time-frame for Tusayan’s rate case.

27

28 <sup>1</sup> Corresponding Procedural Orders were issued in the Anasazi Docket and the Hydro Docket.

1           On January 20, 2011, the Town filed a Motion to Intervene, explaining that it is considering  
2 its options for acquiring the assets necessary to operate a municipal water utility to serve Town  
3 residents.

4           On January 27, 2011, Staff filed a response stating that Staff did not oppose the Town's  
5 Motion to Intervene.

6           No other party filed a response to the Town's Motion to Intervene.

7           On February 7, 2011, a procedural conference was held at the Commission's offices in  
8 Phoenix, Arizona. Tusayan, T Ventures, Anasazi, Hydro, Staff, and the Town appeared through  
9 counsel. At the procedural conference, the Town's Motion to Intervene was granted without  
10 objection. In addition, with the agreement of Tusayan, Tusayan's rate application was deemed  
11 amended to include an application for adjudication of Tusayan's status as a public service  
12 corporation. After some discussion, it was determined that the next step in the consolidated matter  
13 would be for Staff to engage in discovery and then issue a letter addressing the sufficiency or  
14 deficiency of each application for adjudication. Pursuant to Staff's request, a deadline of April 8,  
15 2011, was established for the issuance of Staff's letter. It was further determined that another  
16 procedural conference would be held in mid-April 2011, which would allow the parties more than  
17 two months to engage in negotiations and determine the likelihood of the Town's succeeding in  
18 reaching agreements with Tusayan, Anasazi, and Hydro as to the acquisition of property necessary  
19 for the Town to establish its own municipal water department to take over the provision of water  
20 utility services in Tusayan's CC&N service area. Staff expressed concern about the continuation of  
21 the status quo during the pendency of this matter, stating that disparate and untariffed rates are being  
22 charged to the customers served in Tusayan's CC&N service area, but had no suggestion for how the  
23 situation could be ameliorated or resolved in the interim. Tusayan also expressed an interest in taking  
24 the steps necessary to become a public service corporation, should it ultimately be determined not to  
25 be a public service corporation.

26           Also on February 7, 2011, a Procedural Order was issued memorializing the deadline for  
27 Staff's filing and scheduling another procedural conference for April 18, 2011.

28

1 On March 25, 2011, Tusayan filed its response to Staff's First Set of Data Requests and its  
2 response to Staff's Second Set of Data Requests.<sup>2</sup>

3 On April 14, 2011, the Town filed a Status Report, indicating that it had had limited success  
4 in obtaining the information necessary to reach agreement with Tusayan, Anasazi, and Hydro  
5 regarding the acquisition of property necessary for the Town to establish a municipal water  
6 department and that the Town had determined that it would not be able to put the issue to its citizens  
7 on an August ballot as it had hoped. The Town also revealed that it had determined that a significant  
8 portion of Hydro's water distribution system is owned by unknown third parties rather than by  
9 Hydro. The Town stated that it would continue working toward a proposal to acquire water  
10 distribution assets that the Town Council can recommend to Tusayan voters for approval, that the  
11 Town cannot guarantee the success of its efforts, and that the Town desires for the Commission to  
12 establish fair and reasonable interim rates to address the "disparate and untariffed rates that are  
13 currently being charged to the customers served in Tusayan's CC&N service area" until either the  
14 Town obtains voter approval to acquire water distribution assets or the Commission addresses the  
15 Tusayan, Hydro, and Anasazi applications.

16 On April 18, 2011, a procedural conference was held at the Commission's offices in Phoenix,  
17 Arizona, with Tusayan, Hydro, Anasazi, T Ventures, the Town, and Staff all appearing through  
18 counsel. Staff indicated that it had issued a Letter of Sufficiency as to the three dockets, along with  
19 data requests, but it was determined that the Letter inadvertently had not been filed in the docket.  
20 Staff stated that the Letter would be filed in the docket that same day. The parties appeared to agree  
21 that it would be appropriate to establish a procedural schedule to move forward with the applications  
22 for adjudication, although Tusayan, Hydro, and Anasazi expressed continued willingness to engage in  
23 discussions with the Town concerning the Town's acquisition of facilities and establishment of a  
24 municipal water utility. The parties were encouraged to engage in such discussions and were advised  
25 that a procedural schedule would be forthcoming in a Procedural Order.

26 ...

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28 <sup>2</sup> The data requests were not filed in the docket.

1 It is now appropriate to schedule an evidentiary hearing and establish other procedural  
2 requirements and deadlines in this matter. Because Tusayan, Hydro, and Anasazi (“the applicants”)  
3 have not filed direct testimony in this matter; Tusayan’s filed application did not address  
4 adjudication; and the parties and the Commission will best be served by the creation of a robust  
5 evidentiary record in this rather unique consolidated matter, it is appropriate to require the applicants  
6 to file direct testimony herein before Staff files its testimony. It is also appropriate to require the  
7 applicants jointly to provide both mailed and published notice of the hearing scheduled in this matter.

8 IT IS THEREFORE ORDERED that the **hearing** in the above-captioned matter shall  
9 commence on **September 9, 2011, at 9:00 a.m.**, or as soon thereafter as is practicable, at the  
10 Commission’s offices, Hearing Room #1, 1200 West Washington, Phoenix, Arizona 85007.  
11 **Additional hearing** shall proceed on **September 21, 2011, at 9:00 a.m.**, in Hearing Room #1, if  
12 necessary.

13 IT IS FURTHER ORDERED that **each applicant** shall, by **June 20, 2011**, file **direct**  
14 **testimony and associated exhibits** to be presented at hearing. Each applicant shall ensure that the  
15 direct testimony addresses in detail the applicant’s involvement in the provision of water service to  
16 customers in the Tusayan area, addressing, at a minimum, the applicant’s ownership and control of  
17 water system facilities, the applicant’s involvement in management and operation of the water  
18 systems (including ensuring regulatory compliance with the Arizona Department of Environmental  
19 Quality, the handling of repairs and maintenance, and the payment of operating expenses), the  
20 applicant’s involvement in bringing any new customers onto service, and the applicant’s interactions  
21 with current customers. Each applicant shall ensure that the applicant’s direct testimony provides  
22 sufficient facts to allow an analysis of whether the applicant meets the definition of “public service  
23 corporation” in Article XV, § 2 of the Arizona Constitution and whether the applicant’s operations  
24 make its rates, charges, and methods of operation a matter of public concern under the eight factors  
25 articulated in *Natural Gas Service Co. v. Serv-Yu Cooperative, Inc.*, 70 Ariz. 235 (1950).

26 IT IS FURTHER ORDERED that **Staff and each intervenor** shall, by **July 20, 2011**, file  
27 **direct testimony and associated exhibits** to be presented at hearing. Staff and each intervenor shall  
28

1 present all known facts probative of each applicant's status as a "public service corporation" and shall  
2 respond to each applicant's written testimony and exhibits.

3 IT IS FURTHER ORDERED that any **rebuttal testimony and associated exhibits** to be  
4 presented at hearing by **each applicant** shall be reduced to writing and filed on or before **August 10,**  
5 **2011.**

6 IT IS FURTHER ORDERED that any **surrebuttal testimony and associated exhibits** to be  
7 presented at hearing by **Staff or an intervenor** shall be reduced to writing and filed on or before  
8 **August 24, 2011.**

9 IT IS FURTHER ORDERED that any **rejoinder testimony and associated exhibits** to be  
10 presented at hearing by **each applicant** shall be reduced to writing and filed on or before **September**  
11 **2, 2011.**

12 IT IS FURTHER ORDERED that any **objections to testimony or exhibits that have been**  
13 **prefiled shall be made in writing as soon as practicable after they arise.**

14 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-  
15 105, except that all motions to intervene must be filed on or before **June 9, 2011.**

16 IT IS FURTHER ORDERED that any **objections to intervention** shall be filed on or before  
17 **June 20, 2011.**

18 IT IS FURTHER ORDERED that any motions filed in this matter that are not ruled upon by  
19 the Commission within 20 calendar days of the filing date of the motion shall be deemed denied.

20 IT IS FURTHER ORDERED that, except as to motions to intervene, any responses to  
21 motions shall be filed within five calendar days of the filing date of the motion.

22 IT IS FURTHER ORDERED that any replies shall be filed within five calendar days of the  
23 filing date of the response.

24 IT IS FURTHER ORDERED that the **applicants jointly shall provide public notice** of the  
25 hearing in this matter, in the following form and style, with the heading in no less than 12-point bold  
26 type and the body in no less than 10-point regular type:

27 ...

28 ...

**PUBLIC NOTICE OF HEARING ON THE APPLICATIONS OF  
TUSAYAN WATER DEVELOPMENT ASSOCIATION, INC.; ANASAZI  
WATER CO., LLC; AND HYDRO-RESOURCES, INC. REGARDING  
ADJUDICATION OF PUBLIC SERVICE CORPORATION STATUS.  
(Docket No. W-02350A-10-0163 et al.)**

**Summary**

Tusayan Water Development Association, Inc. ("Tusayan") currently holds a Certificate of Convenience and Necessity ("CC&N") issued by the Arizona Corporation Commission ("Commission") to provide water utility service in a service area including areas within the Town of Tusayan ("Town"). Tusayan currently provides its customers water through the water distribution systems of Hydro-Resources, Inc. ("Hydro") and Anasazi Water Co., LLC ("Anasazi") and charges each customer a rate according to which water distribution system serves the customer's property. Tusayan has requested to have the Commission adjudicate its status as a public service corporation subject to Commission regulation. Hydro and Anasazi have each applied to be adjudicated "not a public service corporation" subject to Commission regulation. The three applications for adjudication are being processed as a single consolidated matter due to the interrelatedness of the applicants' operations.

The Commission will determine each applicant's public service corporation status based on the evidence presented through an evidentiary hearing. The Commission is not bound by proposals made by the applicants, by the Commission's Utilities Division ("Staff"), or by any intervenor.

**How You Can View or Obtain a Copy of Filings**

Copies of the filings in this case are available at the applicants' offices [COMPANIES INSERT ADDRESS/ES HERE] and at the Commission's Docket Control Center at 1200 West Washington, Phoenix, Arizona, for public inspection during regular business hours, and on the Internet via the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using the e-Docket function.

**Commission Public Hearing Information**

The Commission will hold a hearing in this matter beginning **September 9, 2011, at 9:00 a.m.**, at the Commission's offices, Hearing Room #1, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted by e-mail or by mailing a letter to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007 and must include a reference to Docket No. **W-02350A-10-0163 et al.** A form and instructions for e-mailing comments are available at <http://www.azcc.gov/Divisions/Utilities/consumerservices.asp>. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

**About Intervention**

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you desire to intervene, you must file a written motion to intervene with the Commission no later than **June 9, 2011**. You must send a copy of the motion to intervene to each applicant or its counsel and to all parties of record. Your motion to intervene must contain the following:

- 1 1. Your name, address, and telephone number and the name, address, and  
2 telephone number of any person upon whom service of documents is to be  
3 made, if not yourself;
- 4 2. A short statement of your interest in the proceeding (e.g., a customer of  
5 Tusayan, etc.); and
- 6 3. A statement certifying that you have mailed a copy of the motion to intervene  
7 to each applicant or its counsel and to all parties of record in the case.

8 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except  
9 that all motions to intervene must be filed on or before **June 9, 2011**. If representation  
10 by counsel is required by Arizona Supreme Court Rule 31, intervention will be  
11 conditioned upon the intervenor's obtaining counsel to represent the intervenor. For  
12 information about requesting intervention, visit the Commission's website at  
13 <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting  
14 of intervention, among other things, entitles a party to present sworn evidence at the  
15 hearing and to cross-examine other witnesses. However, failure to intervene will not  
16 preclude any interested person or entity from appearing at the hearing and providing  
17 public comment on the application or from filing written comments in the record of  
18 the case.

19 **ADA/Equal Access Information**

20 The Commission does not discriminate on the basis of disability in admission to its  
21 public meetings. Persons with a disability may request a reasonable accommodation  
22 such as a sign language interpreter, as well as request this document in an alternative  
23 format, by contacting the ADA Coordinator, Shaylin Bernal, at [sabernal@azcc.gov](mailto:sabernal@azcc.gov),  
24 voice phone number (602) 542-3931. Requests should be made as early as possible to  
25 allow time to arrange the accommodation.

26 IT IS FURTHER ORDERED that, by **May 19, 2011, the applicants jointly shall cause a**  
27 copy of the above **notice** to be **mailed** to each customer in Tusayan's CC&N service area and to be  
28 **published in a newspaper(s) of general circulation** in Tusayan's CC&N service area.

IT IS FURTHER ORDERED that **the applicants jointly shall file certification of mailing**  
and **publication** as soon as practicable after the mailing and publication have been completed, but **no**  
**later than June 9, 2011.**

IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication  
of same, notwithstanding the failure of an individual to read or receive the notice.

IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
Communications) applies to this proceeding and shall remain in effect until the Commission's  
Decision in this matter is final and non-appealable.

1 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended  
2 pursuant to Civil Procedure Rule 6(a) or (e).

3 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
4 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
5 rules of the Arizona Supreme Court). Representation before the Commission includes the obligation  
6 to appear at all hearings, prehearing conferences, procedural conferences, and Open Meetings at  
7 which the matter is scheduled for discussion, unless counsel has previously been granted permission  
8 to withdraw by the Administrative Law Judge or the Commission.

9 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
10 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
11 hearing.

12 DATED this 20<sup>th</sup> day of April, 2011.

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15 SARAH N. HARPRING  
16 ADMINISTRATIVE LAW JUDGE  
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27  
28

1 Copies of the foregoing mailed/delivered  
2 this 20<sup>th</sup> day of April, 2011, to:

3 Russell A. Kolsrud  
4 Ryan J. Lorenz  
5 CLARK HILL PLC  
6 14850 North Scottsdale Road, Suite 500  
7 Scottsdale, AZ 85254  
8 Attorneys for Tusayan Water Development  
9 Association, Inc.

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12 1702 East Highland Avenue, Suite 204  
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14 Attorney for Tusayan Ventures LLC

15 Paul L. Brinkmann  
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17 702 North Beaver  
18 Flagstaff, AZ 86001  
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20 Steven A. Hirsch  
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26 William J. Sims III  
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Phoenix, AZ 85014  
Attorney for the Town of Tusayan

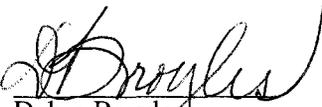
Cynthia Seelhammer, Interim Town Manager  
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By:



Debra Broyles  
Secretary to Sarah N. Harpring