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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): December 9, 2005

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|   |   |   |   |   |
|   |   | Exact Name of Registrant as Specified in |   |   |
|   |   | Charter; State of Incorporation; |   | IRS Employer |
| Commission File Number |   | Address and Telephone Number |   | Identification Number |
| 1-8962  |   | Pinnacle West Capital Corporation (an Arizona corporation)400 North Fifth Street, P.O. Box 53999Phoenix, AZ 85072-3999(602) 250-1000  |   | 86-0512431 |
|   |   |   |   |   |
| 1-4473  |   | Arizona Public Service Company (an Arizona corporation)400 North Fifth Street, P.O. Box 53999Phoenix, AZ 85072-3999(602) 250-1000  |   | 86-0011170 |

     Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

     o Written communications pursuant to Rule 425 under the Securities Act (17CFR 230.425)

     o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

     o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

     o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

     This combined Form 8-K is separately filed by Pinnacle West Capital Corporation and Arizona Public Service Company. Each registrant is filing on its own behalf all of the information contained in this Form 8-K that relates to such registrant or, where required, its subsidiaries. Except as stated in the preceding sentence, neither registrant is filing any information that does not relate to such registrant, and therefore makes no representation as to any such information.

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**Glossary**

APS  Arizona Public Service Company, a subsidiary of the Company

APSES  APS Energy Services Company, Inc., a subsidiary of the Company

Company  Pinnacle West Capital Corporation

El Dorado  El Dorado Investment Company, a subsidiary of the Company

Palo Verde  Palo Verde Nuclear Generating Station

Pinnacle West  Pinnacle West Capital Corporation, the Company

SunCor  SunCor Development Company, a subsidiary of the Company

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**Item 1.01. Entry into a Material Definitive Agreement.**

**Item 1.02. Termination of a Material Definitive Agreement.**

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

**Pinnacle West Facility**

     On December 9, 2005, Pinnacle West entered into an amended and restated unsecured revolving credit facility with JPMorgan Chase Bank, N.A., as administrative agent, Union Bank of California, N.A., as syndication agent, Citibank, N.A., KeyBank National Association, and Mizuho Corporate Bank, Ltd., as co-documentation agents, and the lender parties thereto, allowing Pinnacle West to borrow, repay and reborrow, from time to time, up to $300 million on or prior to December 9, 2010. Pinnacle West may request an increase in the amount of the facility up to a maximum facility of $400 million upon the satisfaction of certain conditions. Pinnacle West also has the option to request that the facility be extended for up to two additional one-year periods. The facility replaces Pinnacle Wests prior $300 million revolver with JPMorgan Chase Bank, as administrative agent, which would have expired on October 19, 2007. Pinnacle West will use the facility for general corporate purposes, including commercial paper backup. Up to $100 million of the facility can be used for letters of credit. Five letters of credit, totaling approximately $11 million, are currently outstanding under the facility.

     Pinnacle West must repay borrowings under the facility by December 9, 2010 unless extended or accelerated as described below. Pinnacle West must pay interest and fees from time to time based on Pinnacle Wests then-current senior unsecured debt credit ratings.

     Borrowings under the facility are conditioned on Pinnacle Wests ability to make certain representations except for representations concerning no material adverse change, litigation and environmental matters. The facility includes customary covenants, including requirements that Pinnacle West maintain ownership of a specified percentage of the outstanding capital stock of APS, maintain a maximum consolidated debt-to-capitalization ratio and comply with a negative lien provision. The facility includes customary events of default, including a cross default provision and a change of control provision. If an event of default occurs, lenders holding a specified percentage of the commitments, or the administrative agent with such lenders consent, may terminate the obligations of the lenders to make loans under the facility and the obligations of the issuing banks to issue letters of credit, and/or may declare the obligations outstanding under the facility to be due and payable. Such termination and acceleration will occur automatically in the event of an insolvency or bankruptcy default.

     Pinnacle West and its affiliates maintain normal banking and other relationships with the agents and other lenders in the facility.

**APS Facility**

     Also, on December 9, 2005, APS entered into an amended and restated unsecured revolving credit facility with Citigroup Global Markets Inc. and KeyBank National Association, as joint lead arrangers, KeyBank National Association, as syndication agent and issuing bank, JPMorgan Chase Bank, N.A., Mizuho Corporate Bank, Ltd. and Union Bank of California, N.A., as documentation agents, Citibank, N.A. as administrative agent, and the lender parties thereto, allowing APS to borrow, repay and reborrow, from time to time, up to $400 million on or prior to December 9, 2010. APS may increase the amount of the facility up to a maximum facility of $500 million upon the satisfaction of

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certain conditions. APS also has the option to request that the facility be extended for up to two additional one-year periods. The facility replaces APS prior $325 million revolver with Citibank, N.A., as administrative agent, which would have expired on May 21, 2007. APS will use the facility for general corporate purposes, including commercial paper backup. Up to $100 million of the facility can be used for letters of credit. Two letters of credit totaling approximately $5 million are currently outstanding under the facility.

     APS must repay borrowings under the facility by December 9, 2010 unless extended or accelerated as described below. APS must pay interest and fees from time to time based on APS then-current senior unsecured debt credit ratings.

     Borrowings under the facility are conditioned on APS ability to make certain representations except for representations concerning no material adverse change and litigation. The facility includes customary covenants, including that APS maintain a maximum consolidated debt-to-capitalization ratio and comply with a negative lien provision. The facility also includes customary events of default, including a cross default provision and a change of control provision relating to Pinnacle West. If an event of default occurs, lenders holding a specified percentage of the commitments, or the administrative agent with such lenders consent, may terminate the obligations of the lenders to make loans under the facility and the obligations of the issuing banks to issue letters of credit, and/or may declare the obligations outstanding under the facility to be due and payable. Such termination and acceleration will occur automatically in the event of an insolvency or bankruptcy default relating to APS.

     APS and its affiliates maintain normal banking and other relationships with the agents and other lenders in the facility.

**Item 1.01. Entry Into A Material Definitive Agreement.**

     The following disclosure describes certain ordinary course executive and director compensation actions.

**2006 Incentive Plans**

     On December 13, 2005, the Human Resources Committee (the Committee) of the Companys Board of Directors approved the 2006 Chairman and CEO Variable Incentive Plan (the CEO Incentive Plan). The Companys Chairman of the Board and CEO, William J. Post, is eligible to receive an incentive award under the CEO Incentive Plan. Incentive award funding under the CEO Incentive Plan is triggered by the attainment of specified 2006 Company earnings. The amount of the award to Mr. Post is in the sole discretion of the Committee. Accordingly, the Committee may consider factors other than 2006 Company earnings to measure Mr. Posts performance.

     On December 14, 2005, the Companys Board of Directors, acting on the recommendation of the Committee, approved the 2006 Officer Variable Incentive Plan (the Officer Incentive Plan). Each of the Companys officers, as well as the officers of APS, are eligible to participate in the Officer Incentive Plan, including the following four most highly-compensated current executive officers (excluding the CEO) named in the Companys proxy statement relating to its May 18, 2005 annual meeting: Jack E. Davis, President and Chief Operating Officer of the Company; Donald E. Brandt, Executive Vice President and Chief Financial Officer of the Company; James M. Levine, Executive

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Vice President, Generation of APS; and Steven M. Wheeler, Executive Vice President, Customer Service and Regulation of APS (the Named Executive Officers).

     The Officer Incentive Plan is composed of two components, one of which is based on the Companys 2006 earnings and the other on the achievement of specified business unit results. Once a specified earnings threshold is met, the achievement of the level of earnings and business unit results generally determines what award, if any, the officer receives. However, the amount of the award, if any, to each officer under the Officer Incentive Plan is in the sole discretion of the Committee. Accordingly, the Committee may consider factors other than Company earnings and the achievement of business unit results to measure performance, including input from the CEO about each officers 2006 achievements.

     Subject to the foregoing, award opportunities (expressed as a percentage of the officers base salary) for the Chairman and CEO and the Named Executive Officers will be based on the following performance measures (weighted according to the indicated percentages):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|   |   |   |   |   |
| Officer |   | Performance Measure(s) |   | Award Opportunity |
| William J. Post  |   | Company Earnings  |   | Threshold (63%)Midpoint (125%)Maximum (200%) |
|   |   |   |   |   |
| Jack E. Davis  |   | Company Earnings |   | Threshold (37.5%)Midpoint (75%)Maximum (150%) |
|   |   |   |   |   |
| James M. Levine  |   | - Company Earnings (50%)- - Fossil Business Unit Results(Preventable Recordable Injuries; Coal Production Cost; Gas and Coal Units Annual Equivalent Availability Factor; Coal Units Capacity Factor; O&M and Capital Costs; and Environmental) (25%)- - Palo Verde Business Unit Results (Nuclear Safety; Preventable Recordable Injuries; Human Performance Events; Plant Improvement Plan Performances; Nuclear Capacity Factor; Equipment Reliability; and O&M and Capital Costs) (25%)  |   | -   Company Earnings:Threshold (0%)Midpoint (25%)Maximum (50%)- - Business Unit Results (up to 50%) |

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| --- | --- | --- | --- | --- |
|   |   |   |   |   |
| Officer |   | Performance Measure(s) |   | Award Opportunity |
| Steven M. Wheeler  |   | - Company Earnings (50%)- - Delivery Unit Results(Preventable Recordable Injuries; Customer Outcome Satisfaction; Business Performance Trends; Customer Reliability; and Environmental Incidents) (50%)  |   | -   Company Earnings:Threshold (0%)Midpoint (25%)Maximum (50%)- - Delivery Business Unit Results (up to 50%) |
|   |   |   |   |   |
| Donald E. Brandt  |   | - Company Earnings (50%)- - Shared Services Business UnitResults (Combined Fossil Business Unit, Palo Verde Business Unit, and Delivery Business Unit Performance; Meeting or Exceeding Budget Targets; and Preventable Recordable Injuries) (50%)  |   | -   Company Earnings:Threshold (0%)Midpoint (25%)Maximum (50%)- - Shared Services Business Unit Results (up to 50%) |

     Award opportunities for other executive vice presidents and senior vice presidents are up to 100% of base salary (up to 50% based on Company earnings and up to 50% based on the achievement of business unit results). Award opportunities for other officers are up to 70% of base salary (up to 35% based on Company earnings and up to 35% based on the achievement of business unit results).

**Payment to Certain Named Executive Officers in Lieu of Equity Grants**

     Mr. Levines employment agreement provides that the Committee is to consider an annual equity grant to Mr. Levine. On December 14, 2005, the Companys Board of Directors, acting on the recommendation of the Committee and consistent with the intent of Mr. Levines agreement, approved a cash payment of equivalent value to Mr. Levine ($86,420) in lieu of Mr. Levine receiving the annual grant during 2005. The Board of Directors, also acting on the recommendation of the Committee, approved an identical cash payment to Mr. Davis.

**Base Salary of Certain Named Executive Officers**

     On December 14, 2005, the Companys Board of Directors, acting on the recommendation of the Committee, increased Mr. Wheelers base salary to $400,000 and Mr. Brandts base salary to $450,000.

**Non-Employee Director Compensation**

     On December 14, 2005, the Companys Board of Directors, acting on the recommendation of the Committee, approved changes to the compensation arrangements for the Companys non-employee directors, effective January 1, 2006 (employee directors receive no compensation for their Board service). The Committee acted upon recommendations of an outside compensation consultant directly retained by the Committee. The increased director compensation is designed to compensate the Companys directors at the median level. The compensation of the Companys directors was last changed on July 1, 2003. The following chart details the compensation arrangements of the Companys non-employee directors:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|   |   |   |   |   |
|   |   | **Compensation** |   |
| **Compensation Element** |   | **(Effective January 1, 2006)** |   |
| Annual Retainer Fee |   | $30,000 | \* |   |
| Annual Retainer Fee for Audit Committee Chair |   | $15,000 |   |   |
| Annual Retainer Fee for Human Resources Committee Chair |   | $7,500 |   |   |
| Annual Retainer Fee for Other Committee Chairs |   | $5,000 |   |   |
| Board Meeting Fee |   | $1,500 per meeting\* |
| Committee Meeting Fee |   | $1,500 per meeting\* |
| Annual Fee for Board Liaison to APS Nuclear Oversight Committee |   | $20,000 per year\* |
| Annual Stock Grant on July 1(Requires Minimum Director Stock Ownership) |   | 1, 100 shares |

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   |   | \*No change from prior compensation |

In addition, the Company will continue to reimburse certain expenses related to service on the Board, including fees and expenses for director education programs and expenses for the members and their spouses in connection with the Board members attendance at Board meetings.

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**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

     On December 14, 2005, the Companys Board of Directors amended the Companys Bylaws to authorize the Company to issue uncertificated shares. A copy of the amended Bylaws is attached to this Form 8-K as Exhibit 3.1.

**Item 9.01. Financial Statements and Exhibits**

     **(c) Exhibits.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|   |   |   |   |   |
| **Exhibit** |   |   |   |   |
| **No.** |   | **Registrant** |   | **Description** |
| 3.1  |   | Pinnacle WestAPS  |   | Pinnacle West Capital Corporation Bylaws, amended as of December 14, 2005 |
|   |   |   |   |   |
| 10.1  |   | Pinnacle WestAPS  |   | Performance Share Agreement under the Pinnacle West Capital Corporation 2002 Long-Term Incentive Plan |

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**SIGNATURES**

     Pursuant to the requirements of the Securities Exchange Act of 1934, each registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|   |   |   |   |   |   |   |
|   |   | PINNACLE WEST CAPITAL CORPORATION(Registrant) |   |     |
|   |   |   |   |   |   |   |
| Dated: December 15, 2005  |   | By: |   | /s/ Barbara M. Gomez |   |   |
|    |   |   |   |   |   |   |
|    |   |   |   |           Barbara M. Gomez |   |   |
|    |   |   |   |           Vice President and Treasurer |   |   |
|   |   |   |   |   |   |   |
|   |   | ARIZONA PUBLIC SERVICE COMPANY(Registrant) |   |   |
|   |   |   |   |   |   |   |
| Dated: December 15, 2005  |   | By: |   | /s/ Barbara M. Gomez |   |   |
|    |   |   |   |   |   |   |
|    |   |   |   |           Barbara M. Gomez |   |   |
|    |   |   |   |           Vice President and Treasurer |   |   |

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**EXHIBIT INDEX**

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|   |   |   |   |   |
| **Exhibit** |   |   |   |   |
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|   |   |   |   |   |
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 EXHIBIT 3.1

 BYLAWS

 OF

 PINNACLE WEST CAPITAL CORPORATION

 (AMENDED AS OF DECEMBER 14, 2005)

 I. REFERENCES; SENIORITY

 1.01. REFERENCES. Any reference herein made to law will be deemed to

refer to the law of the State of Arizona, including any applicable provision or

provisions of Chapters 1-17 and Chapter 23 of Title 10, Arizona Revised Statutes

(or its successor), as at any given time in effect. Any reference herein made to

the Articles will be deemed to refer to the applicable provision or provisions

of the Articles of Incorporation of the Company, and all amendments thereto, as

at any given time on file with the Arizona Corporation Commission (this

reference to that Commission being intended to include any successor to the

incorporating and related functions being performed by that Commission at the

date of the initial adoption of these Bylaws).

 1.02. SENIORITY. Except as indicated in Part X of these Bylaws, the law

and the Articles (in that order of precedence) will in all respects be

considered senior and superior to these Bylaws, with any inconsistency to be

resolved in favor of the law and the Articles (in that order of precedence), and

with these Bylaws to be deemed automatically amended from time to time to

eliminate any such inconsistency which may then exist.

 1.03. SHAREHOLDERS OF RECORD. Except as otherwise required by law and

subject to any procedure established by the Company pursuant to Arizona Revised

Statutes Section 10-723 (or any comparable successor provision), the word

"shareholder" as used herein shall mean one who is a holder of record of shares

of capital stock in the Company.

 II. SHAREHOLDERS MEETINGS

 2.01. ANNUAL MEETINGS. An annual meeting of shareholders shall be held

for the election of directors at such date, time and place, either within or

without the State of Arizona, as may be designated by resolution of the Board of

Directors from time to time. Any other proper business may be transacted at the

annual meeting. A special meeting may be called and held in lieu of an annual

meeting pursuant to the provisions of Section 2.02 below, and the same

proceedings (including the election of directors) may be conducted thereat as at

a regular meeting. Any director elected at any annual meeting, or special

meeting in lieu of an annual meeting, will continue in office until the election

of his or her successor, subject to his or her (a) earlier resignation pursuant

to Section 6.01 below, (b) removal pursuant to Section 3.13 below, or (c) death

or disqualification.

 2.02. SPECIAL MEETINGS. Except as otherwise required by law, special

meetings of the shareholders may be held whenever and wherever called by the

Chairman of the Board, the President, or a majority of the Board of Directors,

but such special meetings may not be called by any other person or persons.

Business transacted at any special meeting of shareholders shall be limited to

the purposes stated in the notice.

 2.03. NOTICE. Notice of any meeting of the shareholders will be given

as provided by law to each shareholder entitled to vote at such meeting and, if

required by law, to each other shareholder of the Company. Any such notice may

be waived as provided by law.

 2.04. RIGHT TO VOTE. For each meeting of the shareholders, the Board of

Directors will fix in advance a record date as contemplated by law, and the

shares of stock and the shareholders "entitled to vote" (as that or any similar

term is herein used) at any meeting of the shareholders will be determined as of

the applicable record date. The Secretary (or in his or her absence an Assistant

Secretary) will see to the making and production of any record of shareholders

entitled to vote or otherwise entitled to notice of shareholders meetings, in

either case which is required by law. Any voting entitlement may be exercised

through proxy, or in such other manner as specifically provided by law, in

accordance with the applicable law. In the event of contest, the burden of

proving the validity of any undated or irrevocable proxy will rest with the

person seeking to exercise the same. A telegram, cablegram, or facsimile

appearing to have been transmitted by a shareholder (or by his or her duly

authorized attorney-in-fact) or other means of voting by telephone or electronic

transmission may be accepted as a sufficiently written and executed proxy if

otherwise permitted by law.

 2.05. NOTICE OF SHAREHOLDER BUSINESS AND NOMINATIONS.

 (a) Annual Meetings of Shareholders. (1) Nominations of

 persons for election to the Board of Directors of the

 Company and the proposal of business to be considered

 by the shareholders may be made at an annual meeting

 of shareholders only (a) pursuant to the Company's

 notice of meeting (or any supplement thereto), (b) by

 or at the direction of the Board of Directors or (c)

 by any shareholder of the Company who was a

 shareholder at the time the notice provided for in

 this Section 2.05 is delivered to the Secretary of

 the Company, who is entitled to vote at the meeting

 and who complies with the notice procedures set forth

 in this Section 2.05.

 (2) For nominations or other business to be

 properly brought before an annual meeting by

 a shareholder pursuant to clause (c) of

 paragraph (a)(1) of this Section 2.05, the

 shareholder must have given timely notice

 thereof in writing to the Secretary of the

 Company and any such proposed business other

 than the nominations of persons for election

 to the Board of Directors must constitute a

 proper matter for shareholder action. To be

 timely, a shareholder notice shall

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 be delivered to the Secretary at the

 principal executive offices of the Company

 not later than the close of business (a)

 with respect to business to be brought

 before the meeting, on the ninetieth (90th)

 day nor earlier than the close of business

 on the one hundred twentieth (120th) day

 prior to the first anniversary of the

 preceding year's annual meeting (provided,

 however, that in the event that the date of

 the annual meeting is changed by more than

 thirty (30) days from such anniversary date,

 notice by the shareholder must be so

 delivered not earlier than the close of

 business on the one hundred twentieth

 (120th) day prior to such annual meeting and

 not later than the close of business on the

 later of the ninetieth (90th) day prior to

 such annual meeting or the tenth (10th) day

 following the day on which public

 announcement of the date of such meeting is

 first made by the Company), and (b) with

 respect to nominations of persons to be

 elected to the Board of Directors, the

 one-hundred eightieth (180th) day prior to

 the date of the meeting at which the

 election is to occur. In no event shall the

 public announcement of an adjournment or

 postponement of an annual meeting commence a

 new time period (or extend any time period)

 for the giving of a shareholder's notice as

 described above.

 (3) In addition to meeting the timely notice

 requirements of paragraph (a)(2) of this

 Section 2.05, in order for nominations or

 other business to be properly brought before

 an annual meeting by a shareholder pursuant

 to clause (c) of paragraph (a)(1) of this

 Section 2.05, such shareholder's notice

 shall set forth: (a) as to each person whom

 the shareholder proposes to nominate for

 election as a director, (i) all information

 relating to such person that is required to

 be disclosed in solicitations of proxies for

 election of directors in an election

 contest, or is otherwise required, in each

 case pursuant to and in accordance with

 Regulation 14A under the Securities Exchange

 Act of 1934, as amended (the "Exchange

 Act"), and (ii) and such person's written

 consent to being named in the proxy

 statement as a nominee and to serving as a

 director if elected; (b) as to any other

 business that the shareholder proposes to

 bring before the meeting, a brief

 description of the business desired to be

 brought before the meeting, the text of the

 proposal or business (including the text of

 any resolutions proposed for consideration

 and, in the event that such business

 includes a proposal to amend the Bylaws of

 the Company, the language for the proposed

 amendment), the reasons for conducting such

 business at the meeting, and any material

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 interest in such business of such

 shareholder and the beneficial owner, if

 any, on whose behalf the proposal is made;

 and (c) as to the shareholder giving the

 notice and the beneficial owner, if any, on

 whose behalf the nomination or proposal is

 made, (i) the name and address of such

 shareholder, as they appear on the Company's

 books, and of such beneficial owner, (ii)

 the class and number of shares of capital

 stock of the Company that are owned

 beneficially and of record by such

 shareholder and such beneficial owner, (iii)

 a representation that the shareholder is a

 holder of record of stock of the Company

 entitled to vote at such meeting and intends

 to appear in person or by proxy at the

 meeting to propose such business or

 nomination, and (iv) a representation

 whether the shareholder or the beneficial

 owner, if any, intends or is part of a group

 that intends (A) to deliver a proxy

 statement and/or form of proxy to holders of

 at least the percentage of the Company's

 outstanding capital stock required to

 approve or adopt the proposal or elect the

 nominee and/or (B) otherwise to solicit

 proxies from shareholders in support of such

 proposal or nomination. The foregoing notice

 requirements of clauses (b) and (c) of

 paragraph (a)(3) of this Section 2.05 shall

 be deemed satisfied by a shareholder if the

 shareholder has notified the Company of his

 or her intention to present a proposal at an

 annual meeting in compliance with Rule 14a-8

 (or any successor thereof) promulgated under

 the Exchange Act and such shareholder's

 proposal has been included in a proxy

 statement that has been prepared by the

 Company to solicit proxies for such annual

 meeting. The Company may require any

 proposed nominee to furnish such other

 information as it may reasonably require to

 determine the eligibility of such proposed

 nominee to serve as a director of the

 Company.

 (b) Special Meetings of Shareholders. Only such business

 shall be conducted at a special meeting of

 shareholders as shall have been brought before the

 meeting pursuant to the Company's notice of meeting.

 (c) General. (1) Only such persons who are nominated in

 accordance with the procedures set forth in this

 Section 2.05 shall be eligible to be elected at an

 annual or special meeting of shareholders of the

 Company to serve as directors and only such business

 shall be conducted at a meeting of shareholders as

 shall have been brought before the meeting in

 accordance with the procedures set forth in this

 Section 2.05. Except as otherwise provided by law,

 the Chairman of the meeting shall have the power and

 duty (a) to determine whether a nomination or any

 business proposed to be

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 brought before the meeting was made or proposed, as

 the case may be, in accordance with the procedures

 set forth in this Section 2.05 (including whether the

 shareholder or beneficial owner, if any, on whose

 behalf the nomination or proposal is made solicited

 (or is part of a group that solicited) or did not so

 solicit, as the case may be, proxies in support of

 such shareholder's nominee or proposal in compliance

 with such shareholder's representation as required by

 clause (a)(2)(c)(iv) of this Section 2.05) and (b) if

 any proposed nomination or business was not made or

 proposed in compliance with this Section 2.05, to

 declare that such nomination shall be disregarded or

 that such proposed business shall not be transacted.

 Notwithstanding the foregoing provisions of this

 Section 2.05, if the shareholder (or a qualified

 representative of the shareholder) does not appear at

 the annual meeting of shareholders of the Company to

 present a nomination or business, such nomination

 shall be disregarded and such business shall not be

 transacted, notwithstanding that proxies in respect

 of such vote may have been received by the Company.

 For purposes of this Section 2.05, to be considered a

 qualified representative of the shareholder, a person

 must be authorized by a writing executed by such

 shareholder or an electronic transmission delivered

 by such shareholder to act for such shareholder as

 proxy at the meeting of shareholders and such person

 must produce such writing or electronic transmission,

 or a reliable reproduction of the writing or

 electronic transmission, at the meeting of

 shareholders.

 (2) For purposes of this Section 2.05, "public

 announcement" shall mean disclosure in a press

 release reported by the Dow Jones News Service,

 Associated Press or comparable national news service

 or in a document publicly filed by the Company with

 the Securities and Exchange Commission pursuant to

 Section 13, 14 or 15(d) of the Exchange Act.

 (3) Notwithstanding the foregoing provisions of this

 Section 2.05, a shareholder shall also comply with

 all applicable requirements of the Exchange Act and

 the rules and regulations thereunder with respect to

 the matters set forth in this Section 2.05. Nothing

 in this Section 2.05 shall be deemed to affect any

 rights (a) of shareholders to request inclusion of

 proposals in the Company's proxy statement pursuant

 to Rule 14a-8 of the Exchange Act or (b) of the

 holders of any series of Preferred Stock to elect

 directors pursuant to any applicable provisions of

 the Articles.

 2.06. RIGHT TO ATTEND. Except only to the extent of persons designated

by the Board of Directors or the Chairman of the meeting to assist in the

conduct of the meeting (as referred to in Sections 2.08 and 2.09 below) and

except as otherwise permitted by the Board or such Chairman, the persons

entitled to attend any meeting of

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shareholders may be confined to (i) shareholders entitled to vote thereat and

other shareholders entitled to notice of the meeting and (ii) the persons upon

whom proxies valid for purposes of the meeting have been conferred or their duly

appointed substitutes (if the related proxies confer a power of substitution);

provided, however, that the Board of Directors or the Chairman of the meeting

may establish rules limiting the number of persons referred to in clause (ii) as

being entitled to attend on behalf of any shareholder so as to preclude such an

excessively large representation of such shareholder at the meeting as, in the

judgment of the Board or such Chairman, would be unfair to other shareholders

represented at the meeting or be unduly disruptive of the orderly conduct of

business at such meeting (whether such representation would result from

fragmentation of the aggregate number of shares held by such shareholder for the

purpose of conferring proxies, from the naming of an excessively large proxy

delegation by such shareholder or from employment of any other device). A person

otherwise entitled to attend any such meeting will cease to be so entitled if,

in the judgment of the Chairman of the meeting, such person engages thereat in

disorderly conduct impeding the proper conduct of the meeting in the interests

of all shareholders as a group.

 2.07. QUORUM. Except as otherwise provided by law, the Articles or

these Bylaws, at each meeting of shareholders the presence in person or by proxy

of the holders of a majority in voting power of the outstanding shares of stock

entitled to vote at the meeting shall be necessary and sufficient to constitute

a quorum.

 2.08. ELECTION INSPECTORS. The Board of Directors, in advance of any

shareholders meeting may appoint an election inspector or inspectors to act at

such meeting (and any adjournment thereof). If an election inspector or

inspectors are not so appointed, the Chairman of the meeting may or, upon the

request of any person entitled to vote at the meeting will, make such

appointment. If any person appointed as an inspector fails to appear or to act,

a substitute may be appointed by the Chairman of the meeting. If appointed, the

election inspector or inspectors (acting through a majority of them if there be

more than one) will determine the number of shares outstanding, the

authenticity, validity and effect of proxies, the credentials of persons

purporting to be shareholders or persons named or referred to in proxies, and

the number of shares represented at the meeting in person and by proxy; they

will receive and count votes, ballots and consents and announce the results

thereof; they will hear and determine all challenges and questions pertaining to

proxies and voting; and, in general, they will perform such acts as may be

proper to conduct elections and voting with complete fairness to all

shareholders. No such election inspector need be a shareholder of the Company.

 2.09. ORGANIZATION AND CONDUCT OF MEETINGS. Each shareholders meeting

will be called to order and thereafter chaired by the Chairman of the Board if

there then is one; or, if not, or if the Chairman of the Board is absent or so

requests, then by the President; or if both the Chairman of the Board and the

President are unavailable, then by such other officer of the Company or such

shareholder as may be appointed by the Board of Directors. The Secretary (or in

his or her absence an Assistant Secretary) of the Company will act as secretary

of each shareholders meeting; if neither the Secretary nor an Assistant

Secretary is in attendance, the Chairman of the meeting may

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appoint any person (whether a shareholder or not) to act as secretary thereat.

After calling a meeting to order, the Chairman thereof may require the

registration of all shareholders intending to vote in person, and the filing of

all proxies, with the election inspector or inspectors, if one or more have been

appointed (or, if not, with the secretary of the meeting). After the announced

time for such filing of proxies has ended, no further proxies or changes,

substitutions or revocations of proxies will be accepted. If directors are to be

elected, a tabulation of the proxies so filed will, if any person entitled to

vote in such election so requests, be announced at the meeting (or adjournment

thereof) prior to the closing of the election polls.

 Absent a showing of bad faith on his or her part, the Chairman of a

meeting will, among other things, have absolute authority to determine the order

of business to be conducted at such meeting and to establish rules for, and

appoint personnel to assist in, preserving the orderly conduct of the business

of the meeting (including any informal, or question and answer, portions

thereof). Rules, regulations or procedures regarding the conduct of the business

of a meeting, whether adopted by the Board of Directors or prescribed by the

Chairman of the meeting, may include, without limitation, the following: (i) the

establishment of an agenda or order of business for the meeting; (ii) rules and

procedures for maintaining order at the meeting and the safety of those present;

(iii) limitations on attendance at or participation in the meeting to

shareholders of record of the Company, their duly authorized and constituted

proxies (subject to Section 2.06) or such other persons as the Chairman of the

meeting shall determine; (iv) restrictions on entry to the meeting after the

time fixed for the commencement thereof; and (v) limitations on the time

allotted to questions or comments by participants. Unless and to the extent

determined by the Board of Directors or the Chairman of the meeting, meetings of

shareholders shall not be required to be held in accordance with the rules of

parliamentary procedure. Any informational or other informal session of

shareholders conducted under the auspices of the Company after the conclusion of

or otherwise in conjunction with any formal business meeting of the shareholders

will be chaired by the same person who chairs the formal meeting, and the

foregoing authority on his or her part will extend to the conduct of such

informal session.

 2.10. VOTING. The number of shares voted on any matter submitted to the

shareholders which is required to constitute their action thereon or approval

thereof will be determined in accordance with applicable law, the Articles, and

these Bylaws, if applicable. No ballot or change of vote will be accepted after

the polls have been declared closed following the ending of the announced time

for voting.

 2.11. SHAREHOLDER APPROVAL OR RATIFICATION. The Board of Directors may

submit any contract or act for approval or ratification at any duly constituted

meeting of the shareholders, the notice of which either includes mention of the

proposed submittal or is waived as provided in Section 2.03 above. Except as

otherwise required by law (e.g., Arizona Revised Statutes Section 10-863), if

any contract or act so submitted is approved or ratified by a majority of the

votes cast thereon at such meeting, the same will be valid and as binding upon

the Company and all of its shareholders as it would be if approved and ratified

by each and every shareholder of the Company.

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 2.12. CONTROL SHARE ACT. The provisions of Section 10-2721 through and

including Section 10-2727 of the Arizona Revised Statutes shall not apply to the

Company.

 2.13. ADJOURNMENTS. Any meeting of shareholders, annual or special, may

adjourn from time to time to reconvene at the same or some other place, and

notice need not be given of any such adjourned meeting if the time and place

thereof are announced at the meeting at which the adjournment is taken. At the

adjourned meeting the Company may transact any business that might have been

transacted at the original meeting. If the adjournment is for more than one

hundred and twenty days, or if after the adjournment a new record date is fixed

for the adjourned meeting, notice of the adjourned meeting shall be given to

each shareholder of record entitled to vote at the meeting.

 III. BOARD OF DIRECTORS

 3.01. MEMBERSHIP. The Board of Directors of the corporation shall

consist of not less then nine (9) nor more than twenty-one (21) shareholders of

the Company or of any parent corporation thereof (except that it shall not be a

requirement that any member of the initial Board of Directors be a shareholder

of the Company or of any parent corporation thereof), and shall be divided into

three classes in the manner provided in the Articles (Art. Fifth). The Board

will have the exclusive power to increase or decrease its size within such

limits. Any vacancy occurring in the Board, whether by reason of death,

resignation, disqualification or otherwise, may be filled by the directors as

contemplated by law and as provided in the Articles (Art. Fifth). Any such

increase in the size of the Board, and the filling of any vacancy created

thereby, will require action by a majority of the whole membership of the Board

as comprised immediately before such increase.

 3.02. QUALIFICATIONS. In order to qualify as a director, a person must

be the owner of one or more shares of the capital stock of the Company or of any

parent corporation thereof at the time of assuming office (except as may

otherwise be provided in these Bylaws or in the Articles) and for so long

thereafter as such person remains in office. A person will cease to qualify as a

director if he or she (i) is in good faith determined by a majority of the other

directors then in office to be physically or mentally incapable of competent

performance as a director for a period, starting with inception of the

incapacity, that has extended or is likely to extend for more than six months or

(ii) has failed to attend six successive regular meetings of the Board (as

determined in accordance with Section 3.03 below) unless and to the extent such

failure is waived by a majority of the other directors then in office; however,

disqualification pursuant to clause (i) or (ii) of this sentence will not

preclude the subsequent election or appointment of such person as a director by

the shareholders or the Board if a majority of the directors in office

immediately prior to the submission of such person for election or appointment

shall determine that his or her prior incapacity or principal reason for prior

non-attendance no longer exists. A person will not qualify for election or

appointment as a director, whether initially or on re-election and whether by

the shareholders at their annual meeting or by the Board of Directors as

contemplated in

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Section 3.01 above, if such person's 72nd birthday occurs on or has occurred

before the date of such election, appointment or re-election. A person who has

been a full-time employee of the Company within twelve months prior to the date

of any election will not qualify for election as a director on that date unless

he or she then remains a full-time employee of the Company or unless the Board

of Directors specifically authorizes the election of such person (but it is not

intended that any such authorization will extend a person's service on the Board

beyond the age limitation set out in the preceding sentence). A person who has

qualified by age or employment status for his or her most recent election as a

director may serve throughout the term for which such person was elected,

notwithstanding the occurrence of his or her 72nd birthday or cessation of

full-time employment by the Company between the date of such election and the

end of such term, subject, however, to his or her otherwise remaining qualified

for such office.

 3.03. REGULAR MEETINGS. A regular annual meeting of the directors is to

be held as soon as practicable after the adjournment of each annual shareholders

meeting either at the place of the shareholders meeting or at such other place

as the directors elected at the shareholders meeting may have been informed of

at or before the time of their election. Regular meetings, other than the annual

ones, may be held at such intervals at such places and at such times as the

Board of Directors may provide.

 3.04. SPECIAL MEETINGS. Special meetings of the Board of Directors may

be held whenever and wherever called for by the Chairman of the Board, the

President or the number of directors which would be required to constitute a

quorum.

 3.05. NOTICE. No notice need be given of regular meetings of the Board

of Directors. Notice of the time and place (but not necessarily the purpose or

all of the purposes) of any special meeting will be given to each director in

person or by telephone, or via mail, telegram, facsimile, or other electronic

transmission addressed in the manner appearing on the Company's records. Notice

to any director of any such special meeting will be deemed given sufficiently in

advance when (i) if given by mail, the same is deposited in the United States

mail at least four days before the meeting date, with postage thereon prepaid,

(ii) if given by telegram, the same is delivered to the telegraph office for

fast transmittal at least 48 hours prior to the convening of the meeting, (iii)

if given by facsimile or other electronic transmission, the same is received by

the director or an adult member of his or her office staff or household, at

least 24 hours prior to the convening of the meeting, or (iv) if personally

delivered or given by telephone, the same is handed, or the substance thereof is

communicated over the telephone to the director or to an adult member of his or

her office staff or household, at least 24 hours prior to the convening of the

meeting. Any such notice may be waived as provided by law. No call or notice of

a meeting of directors will be necessary if each of them waives the same in

writing or by attendance. Any meeting, once properly called and noticed (or as

to which call and notice have been waived as aforesaid) and at which a quorum is

formed, may be adjourned to another time and place by a majority of those in

attendance.

 3.06. QUORUM; VOTING. A quorum for the transaction of business at any

meeting or adjourned meeting of the directors will consist of a majority of

those then in

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office. Any matter submitted to a meeting of the directors will be resolved by a

majority of the votes cast thereon, except as otherwise required by these Bylaws

(Section Section 3.01 and 3.02 above and Section 3.07 below), by law or by any

applicable Article. Where action by a majority of the whole membership is

required, such requirement will be deemed to relate to a majority of the

directors in office at the time the action is taken. In computing any such

majority, whether for purposes of determining the presence of a quorum or the

adequacy of the vote on any proposed action, any unfilled vacancies at the time

existing in the membership of the Board will be excluded from the computation.

 3.07. EXECUTIVE COMMITTEE. The Board of Directors may, by resolution

adopted by a majority of the whole Board, name three or more of its members as

an Executive Committee. Such Executive Committee will have and may exercise the

powers of the Board of Directors in the management of the business and affairs

of the Company while the Board is not in session, except only as precluded by

law or where action other than by a majority of the votes cast is required by

these Bylaws, or the law (all as referred to in Section 3.06 above), and subject

to such limitations as may be included in any applicable resolution passed by a

majority of the whole membership of the Board. A majority of those named to the

Executive Committee will constitute a quorum.

 3.08. OTHER COMMITTEES. The Board of Directors may designate one or

more additional committees, each committee to consist of one or more of the

directors of the Company. The Board of Directors may designate one or more

directors as alternate members of any committee, who may replace any absent or

disqualified member at any meeting of the committee. Any such committee, to the

extent permitted by law and to the extent provided in the resolution of the

Board of Directors, shall have and may exercise all the powers and authority of

the Board of Directors in the management of the business and affairs of the

Company, and may authorize the seal of the Company to be affixed to all papers

that may require it.

 3.09. COMMITTEE FUNCTIONING. Notice requirements and related waiver

provisions for meetings of the Executive Committee and other committees of the

Board will be the same as those set forth in Section 3.05 above for meetings of

the Board of Directors. Except as provided in the next two succeeding sentences,

a majority of those named to the Executive Committee or any other committee of

the Board will constitute a quorum at any meeting thereof (with the effect of

departure of committee members from a meeting and the computation of a majority

of committee members to be in accordance with the applicable policies of Section

3.06 above), and any matter submitted to a meeting of any such committee will be

resolved by a majority of the votes cast thereon. No distinction will be made

among ex-officio or other members of any such committee for quorum, voting or

other purposes, except that the membership of any committee (including the

Executive Committee), in performing any function vested in it as herein

contemplated, may be deemed to exclude any officer or employee of the Company,

in either case, or other person having a direct or indirect personal interest in

any proposed exercise of such function, whose exclusion for that purpose is

deemed appropriate by a majority of the other members of such committee

proposing to perform such function. All committees are to keep regular minutes

of the transactions of their meetings.

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 3.10. ACTION BY TELEPHONE OR CONSENT. Any meeting of the Board or any

committee thereof may be held by conference telephone or similar communications

equipment as permitted by law, in which case any required notice of such meeting

may generally describe the arrangements (rather than the place) for the holding

thereof, and all other provisions herein contained or referred to will apply to

such meeting as though it were physically held at a single place. Action may

also be taken by the Board or any committee thereof without a meeting if the

members thereof consent in writing thereto as contemplated by law.

 3.11. PRESUMPTION OF ASSENT. A director of the Company who is present

at a meeting of the Board of Directors, or of any committee when corporate

action is taken is deemed to have assented to the action taken unless either (i)

the director objects at the beginning of the meeting or promptly on the

director's arrival to holding it or transacting business at the meeting; (ii)

the director's dissent or abstention from the action taken is entered in the

minutes of the meeting; or (iii) the director delivers written notice of the

director's dissent or abstention to the presiding officer of the meeting before

its adjournment or to the Company before 5:00 P.M. on the next business day

after the meeting. The right of dissent or abstention is not available to a

director who votes in favor of the action taken.

 3.12. COMPENSATION. By resolution of the Board, the directors may be

paid their expenses, if any, of attendance at each meeting of the Board of

Directors, or of any committee, and may be paid a fixed sum for attendance at

each such meeting and/or a stated salary as a director or committee member. No

such payment will preclude any director from serving the Company in any other

capacity and receiving compensation therefor.

 3.13. REMOVAL. Any director or the entire Board of Directors may be

removed, with or without cause, only at a special meeting of shareholders called

for that purpose, if the votes cast in favor of such removal exceed the votes

cast against such removal, except that if less than the entire Board of

Directors is to be removed, no one of the directors may be removed if the votes

cast against the director's removal would be sufficient to elect the director if

then cumulatively voted at an election for the class of directors of which the

director is a part.

 IV. OFFICERS - GENERAL

 4.01. ELECTIONS AND APPOINTMENTS. The directors may elect or appoint

one or more of the officers of the Company contemplated in Part V below. Any

such election or appointment will regularly take place at the annual meeting of

the directors, but elections of officers may be held at any other meeting of the

Board. A person elected or appointed to any office will continue to hold that

office until the election or appointment of his or her successor, subject to

action earlier taken pursuant to Section 4.04 or 6.01 below. Any person may hold

more than one office.

 4.02. ADDITIONAL APPOINTMENTS. In addition to the officers contemplated

in Part V below, the Board of Directors may create other corporate positions,

and appoint

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persons thereto, with such authority to perform such duties as may be prescribed

from time to time by the Board of Directors, by the President or by the superior

officer of any person so appointed. Notwithstanding such additional

appointments, only those persons whose offices are described in Part V are to be

considered an officer of the Company unless the resolution or other Board action

appointing such person expressly states that such person is to be considered an

officer of the Company. Each of such persons (in the order designated by the

Board or the superior officer of such person) will be vested with all of the

powers and charged with all of the duties of his or her superior officer in the

event of such superior officer's absence or disability.

 4.03. BONDS AND OTHER REQUIREMENTS. The Board of Directors may require

any officer or other appointee to give bond to the Company (with sufficient

surety, and conditioned upon the faithful performance of the duties of his or

her office or position) and to comply with such other conditions as may from

time to time be required of him or her by the Board.

 4.04. REMOVAL OR DELEGATION. Provided that a majority of the whole

membership thereof concurs therein, the Board of Directors may remove any

officer of the Company as provided by law and declare his or her office or

offices vacant or abolished or, in the case of the absence or disability of any

officer or for any other reason considered sufficient, may temporarily delegate

his or her powers and duties to any other officer or to any director. Similar

action may be taken by the Board of Directors in regard to appointees designated

pursuant to Section 4.02 above.

 4.05. SALARIES. Officer salaries may from time to time be fixed by the

Board of Directors or (except as to his or her own) be left to the discretion of

the Chief Executive Officer or the President. No officer will be prevented from

receiving a salary by reason of the fact that he or she is also a director of

the Company.

 V. SPECIFIC OFFICERS, FUNCTIONS AND POWERS

 5.01. CHAIRMAN OF THE BOARD. The Board of Directors may elect a

Chairman to serve as a general executive officer of the Company and, if

specifically designated as such by the Board, as the Chief Executive Officer of

the Company. If elected, the Chairman will preside at all meetings of the

directors and be vested with such other powers and duties as the Board may from

time to time delegate to him or her.

 5.02. CHIEF EXECUTIVE OFFICER. Subject to the control of the Board of

Directors exercised as hereinafter provided, the Chief Executive Officer of the

Company will supervise its business and affairs and the performance of their

respective duties by all other officers, by appointees designated pursuant to

Section 4.02 above, and by such additional appointees to such additional

positions (corporate, divisional or otherwise) as the Chief Executive Officer

may designate, with authority on his or her part to delegate the foregoing duty

of supervision to such extent and to such person or persons as may be determined

by the Chief Executive Officer. Except as otherwise indicated from time to time

by resolution of the Board of Directors, its management of the business and

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affairs of the Company will be implemented through the office of the Chief

Executive Officer.

 5.03. PRESIDENT AND VICE PRESIDENTS. Unless specified to the contrary

by resolution of the Board of Directors, the President will be the Chief

Executive Officer of the Company. In addition to the supervisory functions above

set forth on the part of the Chief Executive Officer or in lieu thereof if a

contrary specification is made by the Board relative to the Chief Executive

Officer, the President will be vested with such powers and duties as the Board

may from time to time designate. Vice Presidents may be elected by the Board of

Directors to perform such duties as may be designated by the Board or be

assigned or delegated to them by their respective superior officers. The Board

may identify (i) one or more Vice Presidents as "Executive" or "Senior" Vice

Presidents and (ii) the President or any Vice President as "General Manager" of

the Company and the title of any Vice President may include words indicative of

his or her particular area of responsibility and authority. Vice Presidents will

succeed to the responsibilities and authority of the President, in the event of

his or her absence or disability, in the order consistent with their respective

titles or regular duties or as specifically designated by the Board of

Directors.

 5.04. TREASURER AND SECRETARY. The Treasurer and Secretary each will

perform all such duties normally associated with his or her office (including,

in the case of the Secretary, the giving of notice and the preparation and

retention of minutes of corporate proceedings and the custody of corporate

records and the seal of the Company) as are not assigned to a Vice President of

the Company, along with such other duties as may be designated by the Board or

be assigned or delegated to them by their respective superior officers. The

Board may appoint one or more Assistant Treasurers or Assistant Secretaries,

each of whom (in the order designated by the Board or their respective superior

officers) will be vested with all of the powers and charged with all of the

duties of the Treasurer or the Secretary (as the case may be) in the event of

his or her absence or disability.

 5.05. SPECIFIC POWERS. Except as may otherwise be specifically provided

in a resolution of the Board of Directors, any of the officers referred to in

this Part V will be a proper officer to authenticate records of the Company and

to sign on behalf of the Company any deed, bill of sale, assignment, option,

mortgage, pledge, note, bond, debenture, evidence of indebtedness, application,

consent (to service of process or otherwise), agreement, indenture or other

instrument of importance to the Company. Any such officer may represent the

Company at any meeting of the shareholders or members of any corporation,

association, partnership, joint venture or other entity in which this Company

then has an interest, and may vote such interest in person or by proxy appointed

by him or her, provided that the Board of Directors may from time to time confer

the foregoing authority upon any other person or persons.

 VI. RESIGNATIONS AND VACANCIES

 6.01. RESIGNATIONS. Any director, committee member or officer may

resign from his or her office at any time by written notice as specified in

accordance with

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Arizona Revised Statutes Sections 10-807 and 10-843. The acceptance of a

resignation will not be required to make it effective.

 6.02. VACANCIES. If the office of any director, committee member or

officer becomes vacant by reason of his or her death, resignation,

disqualification, removal or otherwise, the Board of Directors may choose a

successor to hold office for the unexpired term.

 VII. INDEMNIFICATION AND RATIFICATION

 7.01. INDEMNIFICATION. In order to induce qualified persons to serve

the Company (and any other corporation, joint venture, partnership, trust or

other enterprise at the request of the Company) as directors and officers, the

Company shall indemnify any and all of its directors and officers, or former

directors and officers to the fullest extent permitted by applicable law as it

presently exists or may hereafter be amended.

 7.02. RATIFICATION; SPECIAL COMMITTEE. Any transaction involving the

Company, any of its subsidiary corporations or any of its directors, officers,

employees or agents which at any time is questioned in any manner or context

(including a shareholders derivative suit), on the ground of lack of authority,

conflict of interest, misleading or omitted statement of fact or law,

nondisclosure, miscomputation, improper principles or practices of accounting,

inadequate records, defective or irregular execution or any similar ground, may

be investigated and/or ratified (before or after judgment), or an election may

be made not to institute or pursue a claim or legal proceedings on account

thereof or to accept or approve a negotiated settlement with respect thereto

(before or after the institution of legal proceedings), by the Board of

Directors or by a special committee thereof comprised of one or more

disinterested directors (that is, a director or directors who did not

participate in the questioned transaction with actual knowledge of the

questioned aspect or aspects thereof). Such a special committee may be validly

formed and fully empowered to act, in accordance with the purposes and duties

assigned thereto, by resolution or resolutions of the Board of Directors,

notwithstanding (i) the inclusion of Board members who are not disinterested as

aforesaid among those who form a quorum at the meeting or meetings at which one

or more members of such special committee are elected or appointed to the Board

or to such special committee or at which such committee is formed or empowered,

or their inclusion among the directors who vote upon or otherwise participate in

taking any of the foregoing actions, or (ii) the taking of any of such actions

by the disinterested members of the Board (or a majority of such members) whose

number is not sufficient to constitute a quorum or a majority of the membership

of the full Board. Any such special committee so comprised will, to the full

extent consistent with its purposes and duties as expressed in such resolution

or resolutions, have all of the authority and powers of the full Board and its

Executive Committee (the same as though it were the full Board and/or its

Executive Committee in carrying out such purposes and duties) and will function

in accordance with Section 3.09 above. No other provisions of these Bylaws which

may at any time appear to conflict with any provisions of this Section 7.02, and

no defect or irregularity in the formation, empowering or functioning of any

such special committee, will serve to impede, impair or bring into

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question any action taken or purported to be taken by such committee or the

validity of any such action. Any ratification of a transaction pursuant to this

Section 7.02 will have the same force and effect as if the transaction has been

duly authorized originally. Any such ratification, and any election made

pursuant to this Section 7.02 with respect to claims, legal proceedings or

settlements, will be binding upon the Company and its shareholders and will

constitute a bar to any claim or the execution of any judgment in respect of the

transaction involved in such ratification or election.

 VIII. SEAL

 8.01. FORM THEREOF. The seal of the Company will have inscribed thereon

the name of the Company, the state and year of its incorporation and the words

"SEAL".

 IX. STOCK CERTIFICATES

 9.01. FORM THEREOF. Shares shall be issued in uncertificated form

pursuant to the customary arrangements for issuing shares in such form. This

requirement shall not apply to shares represented by a certificate until the

certificate is surrendered to the Company. Notwithstanding the foregoing, every

holder of stock represented by certificates and, upon request any holder of

uncertificated shares, shall be entitled to have a certificate in such form as

approved by the Board of Directors.

 9.02. OWNERSHIP. The Company will be entitled to treat the registered

owner of any share as the absolute owner thereof and accordingly, will not be

bound to recognize any beneficial, equitable or other claim to, or interest in,

such share on the part of any other person, whether or not it has notice

thereof, except as may expressly be provided by Chapter 8 of Title 47, Arizona

Revised Statutes (or its successor), as at the time in effect, or other

applicable law.

 9.03. TRANSFERS. Transfer of stock will be made on the books of the

Company as follows: (i) with respect to certificated shares, only upon surrender

of the certificate therefor, duly endorsed by an appropriate person, with such

assurance of the genuineness and effectiveness of the endorsement as the Company

may require, all as contemplated by Chapter 8 of Title 47, Arizona Revised

Statutes (or its successor), as at the time in effect, and/or upon submission of

any affidavit, other document or notice which the Company considers necessary;

and (ii) with respect to uncertificated shares, upon compliance with the

customary procedures for transferring shares in uncertificated form.

 9.04. LOST CERTIFICATES. In the event of the loss, theft or destruction

of any certificate representing capital stock of this Company, the Company may

issue (or, in the case of any such stock as to which a transfer agent and/or

registrar have been appointed, may direct such transfer agent and/or registrar

to countersign, register and issue) a replacement certificate in lieu of that

alleged to be lost, stolen or destroyed, and cause the same to be delivered to

the owner of the stock represented thereby, provided that the owner shall have

submitted such evidence showing the circumstances of the alleged loss, theft or

destruction, and his or her ownership of the certificate as the Company

considers satisfactory, together with any other factors which the Company

considers pertinent, and further provided that an indemnity agreement and/or

indemnity bond shall have been provided in form and amount satisfactory to the

Company and to its transfer agent and/or registrar, if applicable.

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 X. EMERGENCY BYLAWS

 10.01. EMERGENCY CONDITIONS. The emergency Bylaws provided in this Part

X will be as effective in the event of an emergency as prescribed in Arizona

Revised Statutes Section 10-207.D. To the extent not inconsistent with the

provisions of this Part X, these Bylaws will remain in effect during such

emergency and upon its termination these emergency Bylaws will cease to be

operative.

 10.02. BOARD MEETINGS. During any such emergency, a meeting of the

Board of Directors or any of its committees may be called by any officer or

director of the Company. Notice of the time and place of the meeting will be

given by the person calling the same to those of the directors whom it may be

feasible to reach by any available means of communication. Such notice will be

given so much in advance of the meeting as circumstances permit in the judgment

of the person calling the same. At any Board or committee meeting held during

any such emergency, a quorum will consist of a majority of those who could

reasonably be expected to attend the meeting if they were willing to do so, but

in no event more than a majority of those to whom notice of such meeting is

required to have been given as above provided.

 10.03. CERTAIN ACTIONS. The Board of Directors, either before or during

any such emergency, may provide and from time to time modify lines of succession

in the event that during such an emergency any or all officers, appointees,

employees or agents of the Company are for any reason rendered incapable of

discharging their duties. The Board, either before or during any such emergency,

may, effective in the emergency, change the head office or designate several

alternative head offices of the Company, or authorize the officers to do so.

 10.04. LIABILITY. No director, officer, appointee, employee or agent

acting in accordance with these emergency Bylaws will be liable except for

willful misconduct.

 10.05. MODIFICATIONS. These emergency Bylaws will be subject to repeal

or change by further action of the Board of Directors, but no such repeal or

change will modify the provisions of Section 10.04 with respect to action taken

prior to the time of such repeal or change. Any amendment of these emergency

Bylaws may make any further or different provisions that may be practical and

necessary for the circumstances of the emergency.

 XI. DIVIDENDS

 11.01. DECLARATION. Subject to such restrictions or requirements as may

be imposed by law or the Company's Articles or as may otherwise be binding upon

the Company, the Board of Directors may from time to time declare dividends on

stock of the Company outstanding on the dates of record fixed by the Board, to

be paid in cash, in property or in shares of the Company's stock on or as of

such payment or distribution dates as the Board may prescribe.

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 XII. BUSINESS COMBINATIONS

 12.01. DEFINITIONS. In these Bylaws, the following definitions shall

apply:

 1. "Affiliate" means a person that directly or

 indirectly controls, is controlled by, or is under

 common control with a specified person.

 2. "Announcement date," when used in reference to any

 business combination, means the date of the first

 public announcement of the final, definitive proposal

 for the business combination.

 3. "Associate," when used to indicate a relationship

 with any person, means any of the following:

 (a) Any corporation or organization of which the

 person is an officer, director, or

 partnership or is, directly or indirectly,

 the beneficial owner of ten percent (10%) or

 more of any class or series of shares

 entitled to vote or other equity interest;

 (b) Any trust or estate in which the person has

 a substantial beneficial interest or as to

 which the person serves as trustee or

 personal representative or in a similar

 fiduciary capacity; or

 (c) Any relative or spouse of the person, or any

 relative of the spouse, residing in the home

 of the person.

 4. "Beneficial owner," when used with respect to shares

 or other securities, includes any person who,

 directly or indirectly through any agreement,

 arrangement, relationship, understanding, or

 otherwise, whether or not in writing, has or shares

 the power to vote, or direct the voting of the shares

 or securities or has or shares the power to dispose

 of or direct the disposition of the shares or

 securities, except that:

 (a) A person is not deemed the beneficial owner

 of shares or securities tendered pursuant to

 a tender or exchange offer made by the

 person or any of the person's affiliates or

 associates until the tendered shares or

 securities are accepted for purchase or

 exchange; and

 (b) A person is not deemed the beneficial owner

 of shares or securities with respect to

 which the person has the power to vote or

 direct the voting arising solely from a

 revocable proxy given in response to a proxy

 solicitation required to be made and made in

 accordance with the applicable rules and

 regulations under the Securities Exchange

 Act of 1934, as

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 amended, and is not then reportable under

 that act on a Schedule 13D or comparable

 report.

 5. "Beneficial ownership" includes the right to acquire

 shares or securities through the exercise of options,

 warrants, or rights, the conversion of convertible

 securities, or otherwise. The shares or securities

 subject to the options, warrants, rights, or

 conversion privileges held by a person are deemed to

 be outstanding for the purpose of computing the

 percentage of outstanding shares or securities of the

 class or series owned by the person but are not

 deemed to be outstanding for the purpose of computing

 the percentage of the class or series owned by any

 other person. A person is deemed the beneficial owner

 of shares and securities beneficially owned by the

 spouse of the person or any relative of the spouse

 residing in the home of the person, any trust or

 estate in which the person owns ten percent (10%) or

 more of the total beneficial interest or serves as

 trustee or personal representative, any corporation

 or entity in which the person owns ten percent (10%)

 or more of the equity and any affiliate of the

 person.

 6. "Business combination," when used in reference to the

 Company and any interested shareholder of the

 Company, means any of the following:

 (a) Any merger or consolidation of the Company

 or any subsidiary of the Company with

 either:

 (i) The interested shareholder; or

 (ii) Any other domestic or foreign

 corporation, whether or not itself

 an interested shareholder of the

 Company, that is, or after the

 merger would be, an affiliate or

 associate of the interested

 shareholder, except that the

 foregoing does not include the

 merger of a wholly-owned subsidiary

 of the Company into the Company or

 the merger of two or more

 wholly-owned subsidiaries of the

 Company.

 (b) Any exchange, pursuant to a plan of exchange

 under the laws of the State of Arizona or a

 comparable statute of any other state or

 jurisdiction, of shares of the Company or

 any subsidiary of the Company for shares of

 either:

 (i) The interested shareholder; or

 (ii) Any other domestic or foreign

 corporation, whether or not itself

 an interested shareholder of the

 Company,

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 that is, or after the exchange would

 be, an affiliate or associate of the

 interested shareholder.

 (c) Any sale, lease, exchange, mortgage, pledge,

 transfer, or other disposition, in a single

 transaction or a series of transactions, to

 or with the interested shareholder or any

 affiliate or associate of the interested

 shareholder, of assets of the Company or any

 subsidiary of the Company to which any of

 the following applies:

 (i) Has an aggregate market value equal

 to ten percent (10%) or more of the

 aggregate market value of all the

 assets, determined on a consolidated

 basis, of the Company.

 (ii) Has an aggregate market value equal

 to ten percent (10%) or more of the

 aggregate market value of all the

 outstanding shares of the Company.

 (iii) Represents ten percent (10%) or more

 of the earning power or net income,

 determined on a consolidated basis,

 of the Company.

 (d) The issuance or transfer by the Company or

 any subsidiary of the Company, in a single

 transaction or a series of transactions, of

 any shares of the Company or any subsidiary

 of the Company that have an aggregate market

 value equal to five percent (5%) or more of

 the aggregate market value of all the

 outstanding shares of the Company to the

 interested shareholder or any affiliate or

 associate of the interested shareholder,

 except pursuant to the exercise of warrants

 or rights to purchase shares offered or a

 dividend or distribution paid or made pro

 rata to all shareholders of the Company.

 (e) The adoption of any plan or proposal for the

 liquidation or dissolution of the Company,

 or any reincorporation of the Company in

 another state or jurisdiction, proposed by,

 on behalf of, or pursuant to any agreement,

 arrangement, or understanding, whether or

 not in writing, with the interested

 shareholder or any affiliate or associate of

 the interested shareholder.

 (f) Any reclassification of securities,

 including any share dividend or split,

 reverse share split, or other distribution

 of shares in respect of shares,

 recapitalization of the Company, merger or

 consolidation of the Company with any

 subsidiary

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 of the Company exchange of shares of the

 Company with any subsidiary of the Company

 or other transaction, whether or not with or

 into or otherwise involving the interested

 shareholder, proposed by, on behalf of, or

 pursuant to any agreement, arrangement, or

 understanding, whether or not in writing,

 with the interested shareholder or any

 affiliate or associate of the interested

 shareholder that has the effect, directly or

 indirectly, of increasing the proportionate

 share of the outstanding shares of any class

 or series of shares entitled to vote, or

 securities that are exchangeable for or

 convertible into or that carry a right to

 acquire shares entitled to vote, of the

 Company or any subsidiary of the Company

 that is, directly or indirectly, owned by

 the interested shareholder or any affiliate

 or associate of the interested shareholder,

 except as a result of immaterial changes due

 to fractional share adjustments.

 (g) Any receipt by the interested shareholder or

 any affiliate or associate of the interested

 shareholder of the benefit, directly or

 indirectly, except proportionately as a

 shareholder of the Company, of any loans,

 advances, guarantees, pledges, or other

 financial assistance or any tax credits or

 other tax advantages provided by or through

 the Company or any subsidiary of the Company

 (other than expense account advances made in

 the ordinary course of business).

 7. "Consummation date," with respect to any business

 combination, means the date of consummation of the

 business combination or, in the case of a business

 combination as to which a shareholder vote is taken,

 the later of:

 (i) The business day before the vote; or

 (ii) Twenty (20) days before the date of

 consummation of the business combination.

 8. "Control," "controlling," "controlled by" or "under

 common control with" means the possession, directly

 or indirectly, of the power to direct or cause the

 direction of the management and policies of a person,

 whether through the ownership of voting securities,

 by contract, or otherwise. A person's beneficial

 ownership of ten percent (10%) or more of the voting

 power of the Company's outstanding shares entitled to

 vote in the election of directors creates a

 presumption that the person has control of the

 Company. A person is not considered to have control

 of the Company if the person holds voting power, in

 good faith and not for the purpose of avoiding any

 provision of law as an agent, bank, broker, nominee,

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 custodian, or trustee for one or more beneficial

 owners who do not individually or as a group have

 control of the Company.

 9. "Interested shareholder," when used in reference to

 the Company means any person, other than the Company

 or any subsidiary of the Company, that is either:

 (a) The beneficial owner, directly or

 indirectly, of ten percent (10%) or more of

 the voting power of the outstanding shares

 entitled to vote of the Company; or

 (b) An affiliate or associate of the Company who

 at any time within the three (3) year period

 immediately before the date in question was

 the beneficial owner of ten percent (10%) or

 more of the voting power of the then

 outstanding shares entitled to vote of the

 Company.

 10. "Market value," when used in reference to shares or

 property of the Company, means the following:

 (a) In the case of shares, the highest closing

 sale price during the thirty (30) day period

 immediately preceding the date in question

 of a share on the composite tape for New

 York Stock Exchange listed shares or, if the

 shares are not quoted on the composite tape

 or not listed on the New York Stock

 Exchange, on the principal United States

 securities exchange registered under the

 Securities Exchange Act of 1934, as amended,

 on which the share are listed or, if the

 shares are not listed on any such exchange,

 on the National Association of Securities

 Dealers, Inc. Automated Quotations National

 Market System or, if the shares are not

 quoted on the National Association of

 Securities Dealers, Inc. Automated

 Quotations National Market System, the

 highest closing bid quotation during the

 thirty (30) day period preceding the date in

 question of a share on the National

 Association of Securities Dealers, Inc.

 Automated Quotations System or any system

 then in use or, if no such quotation is

 available, the fair market value on the date

 in question of a share as determined in good

 faith by the Board of the Company.

 (b) In the case of property other than cash or

 shares, the fair market value of the

 property on the date in question as

 determined in good faith by the Board of the

 Company.

 11. "Person" means any natural person, partnership,

 corporation, group, association, venture, firm, or

 other entity (other than the

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 Company, any subsidiary of the Company, or a trustee

 or fiduciary holding stock for the benefit of the

 employees of the Company or its subsidiaries or any

 one of its subsidiaries, pursuant to one or more

 employee benefit plans). If two or more persons act

 as a partnership, limited partnership, syndicate, or

 other group pursuant to any agreement, arrangement,

 relationship, understanding, or otherwise, whether or

 not in writing, for the purposes of acquiring,

 owning, or voting shares of the Company, all members

 of the partnership, syndicate, or other group shall

 be deemed a person. Person does not include a

 licensed broker, dealer, or underwriter that

 purchases shares of the Company solely for purposes

 of resale to the public that is not acting in concert

 with an interested shareholder.

 12. "Share acquisition date," with respect to any person

 and the Company, means the date that the person first

 becomes an interested shareholder of the Company.

 12.02. BUSINESS COMBINATION WITH INTERESTED SHAREHOLDERS; APPROVED BY

 DIRECTORS.

 1. Except as set forth in these Bylaws, the Company may

 not engage in any business combination or vote,

 consent or otherwise act to authorize a subsidiary of

 the Company to engage in any business combination

 with respect to, proposed by, or on behalf of, or

 pursuant to any agreement, arrangement or

 understanding, whether or not in writing, with any

 interested shareholder of the Company or any

 affiliate or associate of the interested shareholder

 for a period of three (3) years after the interested

 shareholder's share acquisition date, unless the

 business combination or the acquisition of shares

 made by the interested shareholder on the interested

 shareholder's share acquisition date is approved by a

 committee of the Board of Directors of the Company

 before the interested shareholder's share acquisition

 date. The committee shall be formed in accordance

 with subsection 4 of this Section 12.02.

 2. If a good faith definitive proposal regarding a

 business combination is made in writing to the Board

 of Directors of the Company, a committee of the Board

 formed in accordance with subsection 4 of this

 Section 12.02 shall consider and take action on the

 proposal. Unless the committee responds affirmatively

 in writing within forty-five (45) days after receipt

 of the proposal by the Company, the committee shall

 be considered to have disapproved the business

 combination.

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 3. If a good faith definitive proposal to acquire shares

 is made in writing to the Board of Directors of the

 Company, a committee of the Board of Directors formed

 in accordance with subsection 4 of this Section 12.02

 shall consider and take action on the proposal.

 Unless the committee responds affirmatively in

 writing within forty-five (45) days after receipt of

 the proposal by the Company, the committee shall be

 considered to have disapproved the share acquisition.

 4. When a business combination or acquisition of shares

 is proposed pursuant to this Section 12.02, the Board

 of Directors shall promptly form a committee composed

 of all of the Board's disinterested Directors. The

 committee shall take action on the proposal by the

 affirmative vote of a simple majority of the

 committee members. The committee is not subject to

 any direction or control by the Board with respect to

 the committee's consideration of or any action

 concerning a business combination or acquisition of

 shares pursuant to this Section 12.02. A committee

 formed pursuant to this subsection shall be composed

 of one or more members. Only disinterested Directors

 may be members of a committee formed pursuant to this

 subsection. However, if the Board of Directors has no

 disinterested Directors, the Board shall select three

 or more disinterested persons to be committee

 members. For purposes of this subsection, a Director

 or person is disinterested if the Director or person

 is not an interested shareholder or an affiliate

 thereof or a present or former officer or employee of

 the Company or an affiliate or associate of the

 Company or of the interested shareholder or of any

 affiliate or associate of the interested shareholder.

 12.03. Requirements after Three Years. Except for the provisions of

Sections 12.02 and 12.04, the Company may not engage at any time in any business

combination or vote, consent, or otherwise act to authorize a subsidiary of the

Company to engage in any business combination with respect to, proposed by, on

behalf of, or pursuant to any agreement, arrangement, or understanding, whether

or not in writing, with an interested shareholder of the Company or any

affiliate or associate of the interested shareholder other than a business

combination meeting all the requirements of this Article XII, the Articles, and

the requirements specified in any of the following:

 1. A business combination with respect to which the

 consummation date is no less than three years after

 the share acquisition date, approved by the Board of

 Directors of the Company before the interested

 shareholder's share acquisition date, or as to which

 the acquisition of shares made by the interested

 shareholder on the interested shareholder's

 acquisition date had been approved by the Board of

 Directors before the interested shareholder's share

 acquisition date.

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 2. A business combination approved by the affirmative

 vote of the holders of a majority of the outstanding

 shares entitled to vote not beneficially owned by the

 interested shareholder proposing the business

 combination or any affiliate or associate of the

 interested shareholder proposing the business

 combination at a meeting called for that purpose no

 earlier than three years after the interested

 shareholder's share acquisition date.

 3. A business combination, with respect to which the

 consummation date is no earlier than three years

 after the interested shareholder's share acquisition

 date, that meets all of the following conditions:

 (a) The aggregate amount of the cash and the

 market value as of the consummation date of

 consideration other than cash to be received

 per share by holders of outstanding common

 shares of the Company in the business

 combination is at least equal to the higher

 of the following:

 (i) The highest per share price paid by

 the interested shareholder, at a

 time when the interested

 shareholder was the beneficial

 owner, directly or indirectly, of

 five percent (5%) or more of the

 outstanding shares entitled to vote

 of the Company, for any common

 shares of the same class or series

 acquired by it within the three (3)

 year period immediately before the

 announcement date with respect to

 the business combination or within

 the three (3) year period

 immediately before, or in, the

 transaction in which the interested

 shareholder became an interested

 shareholder, whichever is higher,

 plus, in either case, interest

 compounded annually from the

 earliest date on which the highest

 per share acquisition price was

 paid through the consummation date

 at the rate for one year United

 States treasury obligations from

 time to time in effect less the

 aggregate amount of any cash

 dividends paid, and the market

 value of any dividends paid other

 than in cash, per common share

 since the earliest date, up to the

 amount of the interest.

 (ii) The market value per common share

 on the announcement date with

 respect to the business combination

 or on the interested shareholder's

 share acquisition date, whichever

 is higher, plus interest compounded

 annually from that date through the

 consummation date at the rate for

 one year United States treasury

 obligations from time to time in

 effect

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 less the aggregate amount of any

 cash dividends paid and the market

 value of any dividends paid other

 than in cash, per common share

 since that date, up to the amount

 of the interest.

 (b) The aggregate amount of the cash

 and the market value as of the

 consummation date of consideration

 other than cash to be received per

 share by holders of outstanding

 shares of any class or series of

 shares, other than common shares,

 of the Company in the business

 combination is at least equal to

 the highest of the following,

 whether or not the interested

 shareholder has previously acquired

 any shares of the class or series:

 (i) The highest per share

 price paid by the

 interested shareholder, at

 a time when the interested

 shareholder was the

 beneficial owner, directly

 or indirectly, of five

 percent (5%) or more of

 the outstanding shares

 entitled to vote of the

 Company, for any shares of

 the class or series

 acquired by it within the

 three (3) year period

 immediately before the

 announcement date with

 respect to the business

 combination or within the

 three (3) year period

 immediately before, or in,

 the transaction in which

 the interested shareholder

 became an interested

 shareholder, whichever is

 higher, plus, in either

 case, interest compounded

 annually from the earliest

 date on which the highest

 per share acquisition

 price was paid through the

 consummation date at the

 rate for one year United

 States treasury

 obligations from time to

 time in effect less the

 aggregate amount of any

 cash dividends paid and

 the market value of any

 dividends paid other than

 in cash, per share of the

 class or series since such

 earliest date, up to the

 amount of the interest.

 (ii) The highest preferential

 amount per share to which

 the holders of shares of

 the class or series are

 entitled in the event of

 any voluntary liquidation,

 dissolution, or winding up

 of the Company, plus the

 aggregate amount of any

 unpaid dividends declared

 or due as to which the

 holders are entitled

 before payment of

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 dividends on some other

 class or series of shares,

 unless the aggregate

 amount of the dividends is

 included in the

 preferential amount.

 (iii) The market value per share

 of the class or series on

 the announcement date with

 respect to the business

 combination or on the

 interested shareholder's

 share acquisition date,

 whichever is higher, plus

 interest compounded

 annually from that date

 through the consummation

 date at the rate for one

 year United States

 treasury obligations from

 time to time in effect

 less the aggregate amount

 of any cash dividends paid

 and the market value of

 any dividends paid other

 than in cash, per share of

 the class or series since

 that date, up to the

 amount of the interest.

 (c) The consideration to be received by

 holders of a particular class or

 series of outstanding shares,

 including common shares, of the

 Company in the business combination

 is in cash or in the same form as

 the interested shareholder has used

 to acquire the largest number of

 shares of the class or series of

 shares previously acquired by it

 and the consideration is

 distributed promptly.

 (d) The holders of all outstanding

 shares of the Company not

 beneficially owned by the

 interested shareholder immediately

 before the consummation date with

 respect to the business combination

 are entitled to receive in the

 business combination cash or other

 consideration for the shares in

 compliance with subdivisions (a),

 (b) and (c).

 (e) After the interested shareholder's

 share acquisition date and before

 the consummation date with respect

 to the business combination, the

 interested shareholder has not

 become the beneficial owner of any

 additional shares entitled to vote

 of the Company except:

 (i) As part of the transaction

 that resulted in the

 interested shareholder

 becoming an interested

 shareholder;

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 (ii) By virtue of proportionate

 share splits, share

 dividends, or other

 distributions of shares in

 respect of shares not

 constituting a business

 combination;

 (iii) Through a business

 combination meeting all of

 the conditions of Section

 12.02 and this paragraph;

 or

 (iv) Through purchase by the

 interested shareholder at

 any price that, if the

 price had been paid in an

 otherwise permissible

 business combination the

 announcement date and

 consummation date of which

 were the date of the

 purchase, would have

 satisfied the requirements

 of subdivisions (a), (b)

 and (c) of this Section.

 12.04. APPLICATION. This Article XII does not apply to any business

combination of the Company with an interested shareholder of the Company who

became an interested shareholder inadvertently, if the interested shareholder

both:

 1. As soon as practicable, divests itself of a

 sufficient amount of the shares entitled to vote of

 the Company so that it no longer is the beneficial

 owner, directly or indirectly, of ten percent (10%)

 or more of the outstanding shares entitled to vote of

 the Company.

 2. Would not at any time within the three (3) year

 period preceding the announcement date with respect

 to the business combination have been an interested

 shareholder except for the inadvertent acquisition.

 XIII. LIMITATION ON SHARE REPURCHASES

 13.01. LIMITATION ON SHARE REPURCHASES. The Company shall not, directly

or indirectly, purchase or agree to purchase any shares entitled to vote from a

person who beneficially owns more than five per cent (5%) of the voting stock of

the Company for more than the "average market price" of the shares if the shares

have been beneficially owned by the person or persons for less than three (3)

years, unless either (i) the purchase or agreement to purchase is approved at a

meeting of shareholders by the affirmative vote of the holders of a majority of

the voting stock entitled to vote excluding shares beneficially owned by such

person, by any of such person's affiliates or associates, or by any officer or

director of the Company or (ii) the Company makes an offer, of at least equal

value per share, to all holders of shares of such class or series and to all

holders of any class or series into which the shares may be converted.

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 13.02. DEFINITIONS. For the purposes of this Article, "average market

price" means the average closing sale price during the thirty trading days

immediately preceding the purchase of the shares in question, or if the person

or persons have commenced a tender offer or have announced an intention to seek

control of the Company, during the thirty trading days preceding the earlier of

the commencement of the tender offer or the making of the announcement, of a

share on the composite tape for New York Stock Exchange listed shares or, if the

shares are not quoted on the composite tape or not listed on the New York Stock

Exchange, on the principal United States securities exchange registered under

the Securities Exchange Act of 1934, as amended, on which the shares are listed

or, if the shares are not listed on any such exchange, on the National

Association of Securities Dealers, Inc. Automated Quotations National Market

System or, if the shares are not quoted on the National Association of

Securities Dealers, Inc. Automated Quotations National Market System, the

average closing bid quotation, during the thirty trading days preceding the

purchase of the shares in questions of a share on the National Association of

Securities Dealers, Inc. Automated Quotations System or any system then in use,

or if the person or persons have commenced a tender offer or have announced an

intention to seek control of the issuing public corporation, during the thirty

trading days preceding the earlier of the commencement of the tender offer or

the making of the announcement, except that if no quotation is available the

average market price is the fair market value on the date of purchase of the

shares in question of a share as determined in good faith by the Board of

Directors of the Company.

 XIV. AMENDMENTS

 14.01. AMENDMENT OF BYLAWS. These Bylaws may be altered, amended,

supplemented, repealed, or temporarily or permanently suspended, in whole or in

part, or replacement Bylaw provisions adopted by: (i) the affirmative vote of a

majority of the directors then in office; or (ii) the affirmative vote of a

majority of the votes cast on such matter(s) at a meeting of shareholders.

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 CERTIFICATE

 I, NANCY C. LOFTIN, Vice President, General Counsel and Secretary of

Pinnacle West Capital Corporation, an Arizona corporation, do HEREBY CERTIFY

that the foregoing is a true and correct copy of the Company's Bylaws, as

amended, and that they are in full force and effect as of the date hereof.

 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of

the corporation this 14th day of December, 2005.

 /s/ Nancy C. Loftin

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 NANCY C. LOFTIN

 Vice President, General Counsel, and

 Secretary

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 EXHIBIT 10.1

 PERFORMANCE SHARE AGREEMENT

 UNDER THE

 PINNACLE WEST CAPITAL CORPORATION 2002

 LONG-TERM INCENTIVE PLAN

 THIS AWARD AGREEMENT is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_, 200\_\_

(the "Date of Grant"), by and between Pinnacle West Capital Corporation (the

"Company"), and <> ("Employee").

 BACKGROUND

 A. The Board of Directors of the Company (the "Board of Directors") has

 adopted, and the Company's shareholders have approved, the Pinnacle

 West Capital Corporation 2002 Long-Term Incentive Plan (the "Plan"),

 pursuant to which performance share incentive awards may be granted

 to employees of the Company and its subsidiaries and certain other

 individuals.

 B. The Company desires to grant to Employee a performance share award

 under the terms of the Plan.

 C. Pursuant to the Plan, the Company and Employee agree as follows:

 AGREEMENT

 1. GRANT OF AWARD. Pursuant to action of the Committee (as

 defined herein) which was taken on the Date of Grant, the

 Company grants to Employee <> performance shares

 ("Performance Shares") subject to the terms, conditions, and

 adjustments set forth in this Award Agreement. The Performance

 Shares granted under this Section 1 are referred to in this

 Award Agreement as the "Base Grant."

 2. AWARD SUBJECT TO PLAN. This award is granted under and is

 expressly subject to, all of the terms and provisions of the

 Plan, which terms are incorporated herein by reference, and

 this Award Agreement. The Committee described in Section 4 of

 the Plan (the "Committee") has been appointed by the Board of

 Directors, and designated by it, as the Committee to make

 awards.

 3. PERFORMANCE PERIOD. The performance period for this award

 begins \_\_\_\_\_\_\_\_\_ \_\_, 20\_\_\_, and ends \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, 20\_\_\_

 (the "Performance Period").

 4. PAYMENT.

 (a) PERFORMANCE SHARES PAYABLE IN COMMON STOCK. Subject to

 early termination of this Award Agreement pursuant to

 Section 7 below, as soon as practicable following the

 end of the Performance Period and the determination of

 the Company's Earnings Per Share Growth Rate (as defined

 herein) as compared to the Earnings Per Share Growth

 Rate of the Index set forth on Attachment A (the

 "Index") over such Performance Period but in no event

 later than December 31, 20\_\_\_, the Company will deliver

 to Employee one (1) share of the Company's Common Stock

 for each then-outstanding Performance Share under this

 Award Agreement. If the Employee terminates employment

 after the end of the Performance

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 Period but before distribution of any shares pursuant to

 this Award Agreement, the distribution of the shares

 will not be made until six (6) months following the

 Employee's termination of employment if required by

 Section 409A of the Code.

 (b) DIVIDEND EQUIVALENTS. At the time of the Company's

 delivery of Common Stock to Employee pursuant to

 Subsection 4(a) above, the Company will also deliver to

 Employee a cash payment equal to the amount of dividends

 that Employee would have received if Employee had

 directly owned all of such Common Stock during the

 Performance Period, plus interest on such amount at the

 rate of \_\_\_\_\_ percent, compounded quarterly.

 (c) MAXIMUM AWARD. Employee may not receive more than

 120,000 shares of Common Stock under this Award

 Agreement.

 5. PERFORMANCE CRITERIA AND ADJUSTMENTS.

 ADJUSTMENT OF BASE GRANT. The Base Grant will increase or

 decrease based upon the Company's "Earnings Per Share Growth

 Rate" as compared to the Earnings Per Share Growth Rate of the

 Index during the Performance Period, as follows:

IF THE COMPANY'S EARNINGS PER SHARE COMPOUND GROWTH RATE THE NUMBER OF

 OVER THE PERFORMANCE PERIOD AS COMPARED TO THE INDEX IS: PERFORMANCE SHARES WILL BE:

- ---------------------------------------------------------- ---------------------------

 \_\_\_th Percentile or Greater \_\_\_ X Base Grant

 \_\_\_th Percentile \_\_\_ X Base Grant

 \_\_\_th Percentile Base Grant

 \_\_\_th Percentile \_\_\_ X Base Grant

 Less than \_\_\_th Percentile [None / \_\_\_X Base Grant]

 If intermediate percentiles are achieved, the number of

 Performance Shares awarded will be prorated (partial shares

 will be rounded down to the nearest whole share when

 applicable). For example, if the Company's Earnings Per Share

 Growth Rate during the Performance Period places the Company's

 performance in the \_\_\_th percentile, then the number of

 Performance Shares would be increased to \_\_\_\_\_\_ multiplied by

 the Base Grant. In no event will Employee be entitled to

 receive a number of Performance Shares greater than \_\_\_ times

 the Base Grant, even if the Company's Earnings Per Share

 Growth Rate during the Performance Period places the Company's

 performance higher than the \_\_\_\_th percentile. Attachment B

 provides a generic example of the operation of an award

 granted under this Award Agreement.

 6. EARNINGS PER SHARE GROWTH RATE. "Earnings Per Share Growth

 Rate" for the Performance Period is the compounded

 annual-growth rate (CAGR) of a company's earnings per share

 from continuing operations, on a fully diluted basis, during

 the Performance Period provided, however, that for purposes

 of calculating the Company's Earnings Per Share Growth Rate,

 SunCor Development Company's earnings from discontinued

 operations will be considered earnings from continuing

 operations for each fiscal year during the Performance

 Period. Only those companies which were in the Index at both

 the beginning and the ending of the Performance Period will be

 considered. The

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 Earnings Per Share Growth Rate of the companies in the Index

 will be determined using an independent third party data

 system. If the Index is discontinued, the Committee shall

 select the most comparable index then in use for the sector

 comparison. In addition, if the sector comparison is no longer

 representative of the Company's industry or business, the

 Committee shall replace the index with the most representative

 index then in use. Once the CAGR of the Company and all

 relevant companies in the Index have been determined, the

 member companies will be ranked from greatest to least CAGR.

 Percentiles will be calculated based on a company's relative

 ranking. For example, company 1 out of 26 companies is given a

 percentile of 96.2% (1.0 - 1/26). Percentiles will be carried

 out to one (1) decimal place. If the Company is not in the

 Index, then its percentile will be interpolated between the

 companies listed in the relative ranking. These calculations

 will be verified by the Company's internal auditors.

 7. TERMINATION OF AWARD. This Award Agreement will terminate and

 be of no further force or effect on the date that Employee is

 no longer actively employed by the Company or any of its

 subsidiaries, whether due to voluntary or involuntary

 termination, death, retirement, disability, or otherwise.

 Subject to Section 4, Employee will, however, be entitled to

 receive any Common Stock and dividend equivalents payable

 under Section 4 of this Award Agreement if Employee's

 employment terminates after the Performance Period but before

 Employee's receipt of such Common Stock and dividend

 equivalents. For avoidance of doubt, no acceleration of

 Performance Shares or the Performance Period will occur on a

 change of control of the Company.

 8. TAX WITHHOLDING. Employee must pay, or make arrangements

 acceptable to the Company for the payment of any and all

 federal, state, and local income and payroll tax withholding

 that in the opinion of the Company is required by law. Unless

 Employee satisfies any such tax withholding obligation by

 paying the amount in cash or by check, the Company will

 withhold shares of Common Stock having a Fair Market Value on

 the date of withholding sufficient to cover the withholding

 obligation.

 9. NON-TRANSFERABILITY. Neither this award nor any rights under

 this Award Agreement may be assigned, transferred, or in any

 manner encumbered except by will or the laws of descent and

 distribution, and any attempted assignment, transfer,

 mortgage, pledge or encumbrance except as herein authorized,

 will be void and of no effect.

 10. DEFINITIONS: COPY OF PLAN AND PLAN PROSPECTUS. To the extent

 not specifically defined in this Award Agreement, all

 capitalized terms used in this Award Agreement will have the

 same meanings ascribed to them in the Plan. By signing this

 Award Agreement, Employee acknowledges receipt of a copy of

 the Plan and the related Plan Prospectus.

 11. CHOICE OF LAW. This Agreement will be governed by the laws of

 the State of Arizona, excluding any conflicts or choice of law

 rule or principle that might otherwise refer construction or

 interpretation of this Agreement to another jurisdiction.

 An authorized representative of the Company has signed this Award

Agreement, and Employee has signed this Award Agreement to evidence Employee's

acceptance of the award on the terms specified in this Award Agreement, all as

of the Date of Grant.

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Performance Share Agreement

 PINNACLE WEST CAPITAL CORPORATION

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Its: Vice President and Treasurer

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Employee

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Performance Share Agreement

 ATTACHMENT A

The Index will be the S&P 1500 Super Composite Electric Utility Index

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 ATTACHMENT B

 GENERIC EXAMPLE

 (PERFORMANCE SHARE AWARD)

ASSUMPTIONS:

 - Employee is granted 500 Performance Shares, which constitutes

 Employee's "Base Grant".

 - During the Performance Period, the Company's Earnings Per Share

 Growth Rate is in the 88.3 percentile compared to the Index.

CALCULATION OF EMPLOYEE'S COMMON STOCK PAYMENT:

- - Based on the Company's achievement of the 88.3 Percentile during the

 Performance Period, in April of the fiscal year immediately following the

 end of the Performance Period, Employee will receive \_\_\_\_ shares of Common

 Stock, calculated as follows:

 - \_\_\_ shares of Common Stock as a result of the Company's Earnings Per

 Share Growth Rate meeting at least the \_\_\_th Percentile (\_\_\_\_ X Base

 Grant) plus

 - \_\_\_ shares of Common Stock as a result of the Company's Earnings Per

 Share Growth Rate achieving \_\_\_\_\_\_\_\_ of the Percentile increase

 between the \_\_\_th and \_\_\_th Percentiles (\_\_\_\_\_\_\_\_ X \_\_\_\_\_\_\_ shares,

 with the \_\_\_ shares representing the Common Stock opportunity

 between the \_\_\_th and \_\_\_th Percentiles). (Note: \_\_\_\_\_\_\_\_\_\_ X

 \_\_\_\_\_\_\_\_\_ shares = \_\_\_\_\_\_ shares and must be rounded down to \_\_\_\_

 shares.)