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Counsel for GRAND CANYON SKYWALK DEVELOPMENT, LLC

**IN THE HUALAPAI TRIBAL COURT
HUALAPAI RESERVATION, STATE OF ARIZONA**

| | | |
|----------------------------|---|----------------------|
| THE HUALAPAI INDIAN TRIBE |) | |
| OF THE HUALAPAI INDIAN |) | |
| RESERVATION, Arizona, |) | |
| |) | |
| Plaintiff |) | |
| VS. |) | CASE NO. 2012-CV-017 |
| |) | |
| GRAND CANYON SKYWALK |) | |
| DEVELOPMENT, LLC, a Nevada |) | |
| limited liability company, |) | |
| |) | |
| Defendant. |) | |

**OPPOSITION TO PLAINTIFF'S APPLICATION
FOR TEMPORARY RESTRAINING ORDER AND DECLARATION OF
TAKING**

I. INTRODUCTION

On February 8, 2012, the Plaintiff, the Hualapai Indian Tribe of the Hualapai Indian Reservation (the "Tribe") filed several pleadings against Defendant Grand Canyon Skywalk Development, LLC ("GCSD"), a non-Indian. Plaintiff's pleadings included: (i) an Application for Temporary Restraining Order (the "Application"); (ii) a Declaration of Taking (the "Declaration");¹ and (iii) a Complaint in Condemnation. This Court subsequently issued two identical Temporary Restraining Orders (the "Orders") on February 8, 2012, and February 9, 2012 purporting to seize by eminent domain Defendant's intangible contract interests and personal property located at the Grant Canyon Skywalk (the "Skywalk"). Defendant respectfully submits this Opposition in response to Plaintiff's pleadings.²

¹ Pursuant to Section 2.16(6) of the Hualapai Law and Order Code ("Code"), Defendant may file a motion to dismiss Plaintiff's Declaration within ten-days of the filing of such Declaration. As set forth in greater detail below, neither the Tribe or this Court has the authority to exercise civil jurisdiction over the non-Indian Defendant, and Defendant's non-Indian intangible contractual interests. On February 16, 2012, Defendant filed a Complaint and Motion for Temporary Restraining Order before the United States District Court for the District of Arizona seeking declaratory and injunctive relief to protect its constitutional rights. By filing this opposition, Defendant is not waiving any claims or defenses, consenting to this Court's jurisdiction in any manner. Defendant, therefore, *ONLY* files this Opposition to prevent this Court from issuing a default judgment against Defendant with respect to Plaintiff's Declaration. Defendant's submission of this Opposition in no way, shape, or form constitutes, nor shall it be inferred to constitute, Defendant's acceptance of consent to the Tribe's or this Court's civil adjudicatory or regulatory jurisdiction. Defendant solely files this Opposition because the federal district court has not yet had the opportunity to schedule a hearing and address Plaintiff's claims for declaratory and injunctive relief.

² As mentioned in FN 1, with the submission of this Opposition Defendant is *only* entering a very limited appearance before this Court with respect to the Plaintiff's

Defendant opposes the Plaintiff's pleadings, and this Court's Orders for several reasons. These reasons include: (i) that neither the Tribe, this Court, the Hualapai Tribal Council (the "Tribal Council"), nor any representative of the Tribe has the authority to exercise civil regulatory or civil adjudicatory jurisdiction over the non-Indian Defendant, or Defendant's non-Indian contract interests; (ii) Sec 2.16 ("Section 2.16") of the Code violates the Tribe's Constitution (the "Constitution"), and the Indian Civil Rights Act (ICRA), 25 U.S.C. §1302; (iii) Sec 2.16 unlawfully violates the Constitution by limiting the powers and authorities vested to this Court as an independent branch of the Tribe's government; (iv) this Court's prior Orders violate the Constitution, ICRA, and Section 2.16; and (v) both the judges of this Court who issued the identical Orders should be disqualified from continuing to preside over this issue pursuant to the Constitution.

II. NEITHER THE TRIBE NOR THIS COURT HAS THE AUTHORITY TO EXERCISE JURISDICTION OVER THE NON-INDIAN DEFENDANT.

The Tribe's and this Court's actions to enforce Sec 2.16 and the Orders against Defendant's non-Indian interests violates federal law because the Tribe lacks civil jurisdiction over Defendant, a non-Indian. It is a matter of clear federal law that Indian tribes generally lack the authority to exercise civil jurisdiction over non-Indians. An Indian tribe may exercise civil jurisdiction over a non-Indian party only in situations where: (i) the non-Indian has a consensual relationship with the tribe under which the non-Indian should reasonably expect to be subject to the tribe's jurisdiction, or (ii) the exercise of the tribe's civil jurisdiction is necessary to protect tribal self-government or to

Application, this Court's Orders, and Plaintiff's Declaration. Neither Defendant's submission of this Opposition -- nor Defendant's appearance at this Court's unilaterally scheduled TRO hearing, set for 3:00 p.m. on February 17 -- shall constitute, or be inferred to constitute, Defendant's consent to this Court's jurisdiction over Defendant.

control internal tribal relations. *See generally Montana v. United States*, 450 U.S. 544 (1981). Neither of these *Montana* “exceptions” applies here.

A. There is no predicate for the Tribe’s purported exercise of civil jurisdiction over Defendant.

Montana holds that Indian tribes ordinarily lack civil jurisdiction over non-Indians, and neither of the two exceptions outlined in that case are satisfied in this instance. First, there is no, nor was there ever a, “consensual relationship” between Defendant and the Tribe. Defendant entered into the 2003 Development and Management Agreement (“2003 Agreement”) with “Sa” NYU Wa (“SNW”), a Tribally-chartered corporation, and not the Tribe. Defendant never consented to the Tribe’s civil jurisdiction in the 2003 Agreement or elsewhere, nor can Defendant’s actions be inferred or be implied as a consent to the Tribe’s exercise of civil jurisdiction. *See Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 655 (2001).

Because Defendant never entered into a consensual commercial relationship with the Tribe in which Defendant could anticipate later becoming subject to Tribal civil jurisdiction, the Tribe may not shoehorn civil jurisdiction from the first *Montana* exception. Indeed, Defendant’s contract with SNW never indicated that Defendant, as a non-Indian with a non-Indian interest in the 2003 Agreement, could be subject to the legislative, regulatory or adjudicatory jurisdiction of the Tribe or this Court. Instead, the parties specifically agreed that “[a]ny controversy, claim or dispute arising out of or related to this Agreement shall be resolved by binding arbitration,” and that “[t]he venue and jurisdiction for (x) any litigation under this Agreement and (y) all other civil matters arising out of this Agreement shall be the Federal courts sitting in the State of Arizona.” *See Exhibit 1*, Sec. 15.(a). Stated differently, Defendant never could have imagined that its interest in the 2003 Agreement could be “condemned” or “taken” by an entity not privy to the 2003 Agreement, or by an entity with respect to which the non-Indian Defendant has no voice or political role. *See Rolling Frito-Lay Sales, LP v. Stover*, --- F.

3d ---, 2012 WL 252938, *5 (Dist. of Ariz. Jan. 26, 2012) (stating that “subjecting non-Indians to the jurisdiction of a [tribe] without their consent would subject them to an entity outside the Constitution” and that “Government with the consent of the governed is everything in America.” (citing *Montana*, 450 U.S. at 337)). Perhaps more importantly, it is obvious that Defendant never would have entered into the 2003 Agreement if Defendant believed its interest could be “condemned” or “taken” by the Tribe by way of the Tribal Council and this Court. Plaintiff should not be punished for entering into the 2003 Agreement in good faith solely because the Tribal Council and its legal counsel have decided to deprive Defendant of its non-Indian contract rights. This Court should not continue to exert civil jurisdiction over the non-Indian Defendant, and thereby deprive Defendant of its non-Indian interest in the 2003 Agreement. The exercise of such jurisdiction and authority is clearly precluded by well settled federal law.

As the Supreme Court has emphasized, “it is not in for a penny, in for a pound.” *Atkinson Trading Co.*, 532 U.S. at 656. Indian tribes cannot exercise civil jurisdiction over a non-Indian solely because the non-Indian entered into a commercial contract with a tribal *corporate* entity such as SNW. In fact, a commercial contract will satisfy the first *Montana* exception *only* if the contract creates a reasonable anticipation, in the non-Indian, that such a consensual dealing could later result in the non-Indian being subject to tribal civil jurisdiction. *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.*, 554 U.S. 316, 338 (2008). In *Plains Commerce Bank*, for example, the non-Indian’s contractual dealings with individual tribal members never gave the non-Indian reason to anticipate that the tribe would attempt to regulate the non-Indian’s sale of non-Indian property. *Id.* The same is true here. Defendant could not have reasonably anticipated that merely entering into the 2003 Agreement would give the Tribe and this Court the authority to regulate the disposition of Defendant’s non-Indian interest. On the contrary,

the 2003 Agreement expressly states that all “litigation” and all “civil matters” must be brought in the Federal District Court of the District of Arizona,³ and not in this Court.

Furthermore, the first *Montana* exception does not grant the Tribe unlimited civil authority over non-Indians. Rather, *Montana* expressly limits the first exception to particular non-Indian “activities.” The forced sale/disposition of a non-Indian interest has been explicitly rejected as an “activity” that tribes may regulate. *Plains Commerce Bank*, 554 U.S. at 332-34. Yet, that is exactly what the Tribe is attempting to do. The Tribe’s and this Court’s use of eminent domain has resulted in a situation where the non-Indian Defendant is required/compelled to liquidate its non-Indian interest. Such a forced sale to the Tribe analogous to the situation in *Plains Commerce*, and the United States Supreme Court has already held that as a firm rule, Indian tribes do not, and cannot, exercise the civil authority to regulate, let alone force, the sale of a non-Indian interests by non-Indian owners. *Id.*

Nor does the second *Montana* exception apply in this instance. *Nevada v. Hicks*, 533 U.S. 353, 359 (2001) (“Where nonmembers are concerned, the ‘exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations*’ is inconsistent with the dependent status of the tribes, and so cannot survive without express Congressional delegation.” (citing *Montana*, 450 U.S. at 564) (emphasis in original)). In addition, the Supreme Court in *Plains Commerce Bank* instructs that the exercise of tribal civil jurisdiction over non-Indians may only occur when the non-Indians’ “conduct” menaces the “political integrity, the economic security, or the health or welfare of the tribe.” *Montana*, 450 U.S. at 566. Thus, in order to be subject to tribal jurisdiction, the non-Indian conduct must do more than injure the tribe, “it must imperil the subsistence” of the tribal community. *Plains Commerce Bank*, 554 U.S. at 341. In

³ As stated above in FN 2, Defendant filed a Compliant in the Arizona Federal Court on February 16, 2012.

this instance, Defendant is not performing or engaging in any conduct that threatens⁴ the Hualapai community. In fact, just the opposite is true. Defendant conceived the idea for, financed, designed, and built the Skywalk. Defendant manages and operates the Skywalk, employs several Tribal members at the Skywalk as provided for in the 2003 Agreement, and transports the Tribal member employees to and from the Skywalk daily. Perhaps most importantly, Defendant also transports roughly one-third of all Skywalk patrons to the Tribe's reservation. Defendant, therefore, only seeks to perform its obligations as set out in the 2003 Agreement, which generate substantial revenues for the benefit of the Tribe and its members. Surely the provision of these much needed financial revenues to an economically depressed community could not be perceived as imperiling the Tribe's subsistence or the cause of "catastrophic consequences."

There is no Tribal jurisdiction in this case, as has been very clearly established in prevailing federal law. *See Rolling Frito-Lay*, 2012 WL 252938, *3 (observing that it "*speaks volumes*" that "To this day, the Supreme Court has 'never held that a [tribe] had jurisdiction over a nonmember defendant'") (quoting *Hicks*, 533 U.S. at 358, n.2) (emphasis supplied)).

III. SECTION 2.16 VIOLATES THE CONSTITUTION AND ICRA BECAUSE IT FAILS TO PROVIDE DEFENDANT WITH JUST COMPENSATION AND DUE PROCESS.

Section 2.16 violates the Constitution and ICRA. In 1968, Congress enacted ICRA to guarantee that Indian tribes provided all people with the most fundamental protections embodied in the United States Constitution's Bill of Rights. Indeed, 25 U.S.C. §1302 states:

⁴ *Plains Commerce Bank*, 554 U.S. at 341 (stating that a mere threat to a tribal community is not enough, rather the conduct sought to be regulated "must 'imperil the subsistence' of the tribal community" and pose the risk of "catastrophic consequences").

No Indian tribe in exercising powers of self-government shall . . . take any private property for a public use without just compensation. . . [or] deny to any person . . . the equal protection of its law or deprive any person of liberty or property without due process of law.

This language is mirrored in Article IX of the Constitution. Specially, Article IX states that the Tribe:

in exercising its powers of self government shall not: . . . take any private property for a public use without just compensation; or . . . deny to any person . . . the equal protection of its laws or deprive any person of liberty of property without the due process of law.

See Constitution, Article IX(c) and (d).

The language of the Constitution and ICRA, is in direct conflict with Section 2.16 which permits the Tribe, through the actions of this Court, to strip individuals of their property without: (i) just compensation, and (ii) due process. Indeed, as discussed below, Section 2.16 permits Defendant's valuable non-Indian interests to be *immediately* taken simply upon Plaintiff's filing of the Declaration. See **Exhibit 2**, at subsections F(4) and (5).⁵ This constitutes a gross violation of the Constitution and ICRA, as well as, Defendant's most protected non-Indian rights as vested by the United States of America.

In circumstances such as this one where the Declaration has been filed, Section 2.16 subsection F provides—in contrast to the Constitution, ICRA and federal law—that title to the “taken” property immediately vests in the Tribe. Thus, Defendant's non-Indian interest immediately vested in the Plaintiff without providing Defendant with due

⁵ Notably, it must be recognized that the provisions set forward in subsection F are controlling throughout Section 2.16. *Id.* at Subsection F(11). Thus, subsection F must be the focus of whether Section 2.16 violates both the Constitution and ICRA.

process.⁶ Such an immediate taking may, and in this case did, occur without first providing Defendant notice.⁷ Section 2.16, therefore, permits the Tribe to immediately take possession and title of another's property interests, without first providing notice, seeking a judicial order, posting a bond, or being held responsible for the financial impact such a taking will cause. **Exhibit 2** at subsection F. This is a clear violation of the Constitution and ICRA.

A. Section 2.16 denies Defendant just compensation for Defendant's "taken" interests.

Section 2.16 fails to ensure that GCSD can or will ever receive just compensation. United States Supreme Court precedent dictates that "[just] compensation means the full and perfect equivalent in money of the property taken." *See U.S. v. Miller*, 317 U.S. 369, 373 (1943) (internal citation and quotations omitted). While subsection F states that "the right to just compensation vests in the person(s)'s entitled to just compensation," it provides no means by which such constitutionally-required just compensation can be realized. *Id.* at subsection F(4)(d). For example, if the Tribe, in its "sole and absolute discretion," voluntarily elects to post a bond with this Court, Defendant may *only* receive such monies if it files a stipulation with this Court stating that the bond "constitutes full and just compensation for the taking." *Id.* at subsection F(8)(b). Moreover, pursuant to

⁶ It should also be noted that the Ordinance precludes *any* court from issuing an injunction or stay to prohibit the Tribe from taking immediate possession and title to the condemned property. *See Exhibit 2*, at subsection J(2). If upheld, this provision guarantees that individuals will have their property stripped from their possession, even if only temporarily, without due process and despite any legal challenge they raise to the validity of the condemnation.

⁷ Moreover, Section 2.16 provides that the Tribe may file a declaration of taking without notice, and should that occur, the injured party, like Defendant, is prohibited from any and all access to or control over the "taken" property and any such access or control shall be deemed a trespass against the Tribe. *See Exhibit 2*, at subsection F(4)(c).

Section 2.16, payment of any bond to GCSD:

shall constitute a *complete* settlement of the case . . . a *full relinquishment* of that defendant's claims . . . and of that defendant's right, title and interest in and to the property. . . and an *abandonment* of that defendant's defenses to the action or proceeding.

Id. at subsection (F)(8)(c) (emphasis added). Additionally, Section 2.16 preserves the Tribe's right to a refund of any bond collected by Defendant if this Court believes the amount paid to Defendant pursuant to the bond was too high. In contrast, Section 2.16 does not preserve Defendant's right to receive greater compensation than the amount bonded, if such a bond exists, even if the Tribal Court so awards. *See id.* at subsection (F)(8)(c) (failing to also preserve GCSD's rights pursuant to Section 2.16(F)(7)(a)).

Importantly, therefore, under subsection F Defendant may only receive compensation if Defendant waives all of its rights and defenses relative to the Tribe's taking, including the right to challenge the amount of compensation itself. This is despite the fact that Section 2.16 subsection F(4)(d) which states that the rights to compensation immediately vest in the victim of a "taking." Defendant, however, has not received compensation for its "taken" interests despite this immediate vesting. Therefore, Defendant's interests were immediately seized and taken, however, Defendant's compensation did not immediately vest. This is a blatant violation of Defendant's rights pursuant to the Constitution and ICRA. So, in effect, GCSD cannot receive any timely compensation without completely foreclosing its ability to challenge the amount of compensation this Court and the Tribe deem just.

Importantly, Section 2.16 does not only prohibit Defendant from receiving timely compensation, but it also provides the Tribe with an indefinite period of time in which to compensate Defendant, *if ever*. Subsection N(2) provides that the Tribe has 240 days from the date of Plaintiff's filing of the Declaration to compensate Defendant. If the

Tribe fails to make payment within 240-days, the Tribe may petition this Court for additional time “for good cause.” *Id.* at subsection N(3). This guarantees that the Tribe may never be required to compensate Defendant for its “condemned” and “taken” interest. A mechanism which guarantees that the Tribe may never compensate Defendant is clearly against the Constitution and ICRA.⁸ In addition, not only does Section 2.16 provide a mechanism by which the Tribe may never be required to compensate Defendant, it also *penalizes* Defendant should Defendant seek to obtain greater compensation than was originally permitted by this Court. *Id.* at subsection N(4) (stating that Defendant would be charged the costs of a new trial plus a penalty in the amount of thirty percent (30%) of such costs should it challenge this Court’s initial determination of the amount of just compensation).

B. Section 2.16 denies Defendant the due process provided for in the Constitution and the ICRA.

In further violation of Defendant’s rights, Section 2.16 violates the Constitution and ICRA by not providing Defendant due process prior to the “taking” of Defendant’s interest. *Id.* at subsection F(6)9d) (“The Tribe’s right and authority to possess and use the property, including acting as the party to the contract or other intangible property . . . *shall not be delayed or prevented through any court action.*”) (emphasis added). Indeed, Section 2.16 even goes so far as to state that “[n]o subsequent proceedings shall affect the title acquired by the Tribe to the property, or its status to the contract.” *Id.* at Section F(6)(f); *see also id.* at subsection F(4). Thus, despite any legal challenge GCSD may initiate, GCSD has been automatically deprived of its property interests from the moment

⁸ Such a mechanism is also against traditional Hualapai Law which ensures “just compensation for the taking of private property.” *See Exhibit 2* at Recital 4.

Plaintiff filed the Declaration. This situation, coupled with Defendant's inability to prohibit the immediate taking or at the very least slow the taking down, is a clear violation of the Constitution and ICRA.

Pursuant to United States Supreme Court precedent, this Court must provide Defendant with notice and a hearing prior to vesting Defendant's interests in the Tribe. *See Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956) (finding that failure to provide notice and a hearing "may leave government authorities free to fix one-sidedly the amount that must be paid owners for their property taken for public use"—in contravention of defendant's due process rights). Section 2.16 violates the Constitution and ICRA because it provides for neither. For example, Section 2.16 renders notice "optional," and allows this Court to remedy any failure of notice of other procedural error, but does such a remedy. *Id.* at subsection I(3) (failure to provide notice "shall not constitute grounds for dismissal . . . or affect the consequences of [taking].") These provisions are blatant violations of even the most fundamental due process rights protected by the Constitution and ICRA because they deprive Defendant of liberty and property without notice and a right to be heard. Accordingly, Section 2.16 should not be permitted to be exercised against the non-Indian Defendant and Defendant's non-Indian interests because it violates the Constitution and ICRA.

IV. SECTION 2.16 IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE SEPARATION OF POWERS AND UNILATERALLY BIND THIS COURT'S HANDS.

This Court is a court of general jurisdiction capable and entitled to hear a variety

of claims and matters.⁹ See Constitution, at Article VI, Section 2. By enacting Section 2.16, however, the Tribal Council unilaterally tied the hands of this Court and limited the types of matters and claims which this Court may hear. See **Exhibit 2** at subsection F(6) and J(2). This is clear and blatant violation of the Constitution.

Understanding the problems which arise when governmental branches are prohibited from acting independently, the Tribe enacted and ratified the Constitution to guarantee that the Tribe's government had two separate and independent branches. One branch consists of the Legislative Department (Tribal Council), and the other branch is the Judicial Department (this Court). The Constitution guarantees that the "Hualapai tribal government shall be divided into two separate and independent branches of government." See Constitution, at Article III. Additionally, the Constitution vests this Court with the ability, power, and authority to "exercise jurisdiction over all cases and controversies . . . in law and equity, whether civil or criminal in nature that arise under [the Constitution]." *Id.* at Article VI, Section 2. Pursuant to the Constitution, therefore, this Court is an independent branch of the Hualapai government which is free to determine its own jurisdiction and willingness to hear the grievances of injured parties such as Defendant.

Despite the independent nature of this Court, the Tribal Council severely limited the powers of this Court when enacting Section 2.16. For example, the victim of a

⁹ It should also be noted that this Court has the Constitutional authority to "declare laws of the Hualapai Tribe void if such laws are not in agreement with [the Constitution]." See Constitution, at Article VI, Section 3(b). Thus, this Court has the ability to void Section 2.16 of the Code.

“taking” initiated by the Tribe may only file a motion to dismiss such a “taking” by challenging the validity of the Tribe’s purported public use. *See Exhibit 2* at subsection F(6). This narrowly constricts the types of actions which this Court may hear. Thus, the Tribal Council (Legislative Department), violated the Constitution and has hindered the ability of this Court to operate. Furthermore, pursuant to Section 2.16, if the victim of the Tribe’s “taking” challenges such a “taking” this Court’s issuance of potential remedies is also restricted. For example, Section 2.16 states that this Court “shall issue no injunction, stay or other relief, or provide any right or remedy not provided for in [Section 2.16].” *Id.* at subsection J(2). Thus, even if Defendant prevailed on the sole challenge allowed by the text of Section .216 -- public purpose -- such a victory would be hollow as this Court is powerless under the terms of Section 2.16 itself to provide any relief. In contrast to the rights provided to this Court pursuant to the Constitution, the Tribal Council, in violation of the independent nature of this Court, has hindered the ability of this Court to function by limiting the matters and claims which this Court may hear, and more importantly the remedies which this Court may provide.

The Code requires this Court to apply a hierarchy of laws when rendering decisions. Pursuant to the Constitution, the highest form of law before this Court is the Constitution. *See Code, Chapter 3.1(A)(1).* This Court, therefore, must uphold its independent and separate authority and not allow the Tribal Council to deprive this Court of its fullest abilities as provided in the Constitution. Section 2.16 violates the Constitution by binding the hands of this Court and not permitting this independent Court to exercise its fullest inherent and Constitutionally vested power and authority.

V. THIS COURT'S PREVIOUS ORDERS VIOLATE THE CONSTITUTION, ICRA, AND TRIBAL LAW.

On February 8, 2012, and February 9, 2012, this Court issued two identical TRO Orders prohibiting Defendant from taking, removing or absconding with Defendant's personal property located at the Skywalk. As discussed above in much greater detail, this is a violation of the Constitution and ICRA because this Court's Orders stripped Defendant of its personal property without due process and without justly compensating Defendant. This Court never provided Defendant notice, a hearing or just compensation when "taking" Defendant's intangible contract rights and personal property. Additionally, on information and belief, Defendant understands that the Tribe has already taken actions to damage Defendant's "seized" personal property. Thus, not only did this Court violate the Constitution and ICRA when issuing the Orders, but it has also allowed the Tribe to cause serious damage to Defendant's personal property.

This Court, however, also violated Section 2.16 when issuing the Orders because the Tribe and its legal counsel did not file a declaration of taking or a complaint in condemnation for Defendant's personal property. Pursuant to Section 2.16, the Tribe may only initiate a taking by filing a complaint in condemnation and a declaration of taking. See **Exhibit 2** at subsection F(2). Therefore, it was improper and unlawful, pursuant to Tribal law, for this Court to "condemn" Defendant's personal property under the guise of the Orders. The Tribe and their legal counsel may only "seize" Defendant's personal property by filing a complaint in condemnation and a declaration of taking. Thus, this Court's Orders violate the Constitution, ICRA, and Section 2.16.

VI. THE TRIBAL COURT JUDGES WHO EXECUTED THE ORDERS ACTED *ULTRA VIRES* AND MUST DISQUALIFY THEMSELVES FROM FURTHER PROCEEDINGS RELATED TO THIS MATTER.

As discussed above, this Court is required to abide by the Constitution when a conflict arises between the Constitution and the Code. Section 2.16 states that only an appointed full-time judge of this Court may adjudicate actions related to the Tribe's condemnation of Defendant's interests. *Id.* at subsection K(1). This is despite that fact that this Court's usual practice is to appoint a judge pro tem in all matters where the Tribe is a party to the dispute. Furthermore, the Constitution requires judges of this Court to disqualify themselves from any action or proceeding "wherein any relatives by marriage or blood in the first degree are a party." *See* Constitution, Article VI, Section 10.

On information and belief, both Judges of this Court who executed the Orders, Hon. Duane Yellowhawk and Hon. Jolene Cooney Marshall, are related to members of the Tribal Council. The Tribe, through, the actions initiated by the Tribal Council, is a party to the Plaintiff's "condemnation" proceedings against Defendant. In reality, it is the Tribal Council and its legal counsel, and not the Tribe, that decided and proceeded to initiate the "condemnation" proceedings against Defendant. Judges of this Court, therefore, who are related to members of the Tribal Council should disqualify themselves from acting in this proceeding.¹⁰

VII. CONCLUSION

Defendant requests that the Court address the reality of the instant situation. With

¹⁰ Defendant also believes that any Order issued by a judge of this Court who should have disqualified themselves should be deemed void and null.

its exercise of Section 2.16 against Defendant, the Tribal Council has alleged some sovereign ability to eviscerate the meeting of the minds of private contracting parties and, at their whim, rewrite "Hualapai Indian Tribe" in place of Defendant's name in its contracts without the possibility of any meaningful review in Tribal Court. These proceedings are clearly intended by the Tribe to be the final step in the plot to steal -- by veil of sovereignty -- more than \$100 million in value from Defendant so that the Tribe does not have to address the significant Tribal accounting irregularities exposed by Defendant in the American Arbitration proceedings ongoing between Defendant and SNW since last fall. Against that backdrop, there has been and will continue to be wide-ranging media coverage of this case. The eyes of the Nation are upon this Court.

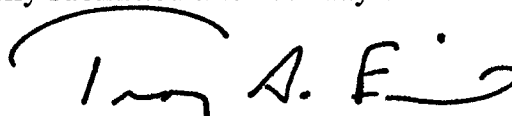
It is difficult to conceive of an event more chilling to investment and economic development in Indian country than this case. This Court's treatment of this case could impact tribes around the country. Who would ever invest in Indian country if that investment could be legally and wholly eliminated with the stroke of a sovereign pen? How could this Court countenance the idea that any government could come in and rewrite itself as the party to a private contract, without notice, without opportunity for redress, without any opportunity to challenge the law upon which such a nuclear power was based? How could it be that the Tribal Council could "seize" any private contract? Could they seize your cell phone contract? Could they seize a long-haul trucker's load of goods? A grocery store? A gas station? Your credit card contract? How can a government seize your business and tell you it belongs to the government and there is nothing you can do about it? How would any goods or services ever be available on the

Hualapai Reservation under such a regime?

Defendant submits the zephyr-like power of Section 2.16, enacted and exercised in total bad faith to try to hide the facts of SNW's stolen profits from the Skywalk and the criminal embezzlement by Tribal members appointed to positions of trust, must be struck down. The sham of Section 2.16 simply cannot stand in the United States. This Court has a duty to the Hualapai people to ensure they do not suffer under the strangle-hold a viable Section 2.16 surely represents to this community. This Court should not be a party to the injustice afoot with respect to Section 2.16.

WHEREFORE, Defendant Grand Canyon Skywalk Development, LLC, respectfully requests that this Court grant relief against the Tribe as follows: dismiss Plaintiff's pleading against Defendant because this Court and the Tribe lack the civil jurisdiction over Defendant.

Respectfully submitted this 17th day of February 2012,



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