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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

GRAND CANYON SKYWALK  
DEVELOPMENT,LLC,

Petitioner,

v.

‘SA’ NYU WA, Inc.,

Respondent.

NO.

**APPLICATION FOR  
CONFIRMATION OF  
ARBITRATION AWARD**

1 Pursuant to 9 U.S.C. §§ 9 and 13 of the Federal Arbitration Act (“FAA”),  
2 Petitioner Grand Canyon Skywalk Development, LLC, a Nevada limited liability  
3 company (“GCSD”), respectfully requests this Court confirm the August 16, 2012  
4 arbitration award rendered in its favor in Case Number 76 517 Y 00191 11 S1M, decided  
5 before the American Arbitration Association (the “Final Award”), and enter judgment  
6 against Defendant Sa Nyu Wa, Inc. a Hualapai tribally chartered corporation (“SNW”), in  
7 accordance with the Final Award. This Petition is supported by the Memorandum of  
8 Points and Authorities and is made on the following grounds:

9  
10 **MEMORANDUM OF POINTS AND AUTHORITIES**  
11 **JURISDICTION AND VENUE**

12 1. At all times mentioned herein, GCSD was, and is a limited liability  
13 company organized and existing under the laws of the State of Nevada with its principal  
14 place of business in Las Vegas, Nevada. No member of GCSD is a citizen or resident of  
15 Arizona, a member of the Hualapai Tribe or a resident on the Hualapai reservation.

16 2. SNW is a Hualapai tribally chartered corporation with its principal place of  
17 business within Arizona.

18 3. This Court has original jurisdiction over this matter pursuant to 28 U.S.C.  
19 §1332(a), as the parties are diverse in citizenship and the amount at issue exceeds  
20 \$75,000.

21 4. Venue is proper in this Court because this is a judicial district specified in the  
22 underlying contract and the judicial district in which the arbitration award sought to be  
23 confirmed was made. *See* 9 U.S.C. §9; December 31, 2003 Development and  
24 Management Agreement, (the “2003 Agreement”), attached hereto as **Exhibit 1** at §  
25 15.4(a).  
26

**ARBITRATION AGREEMENT, PROCEEDINGS AND AWARD**

5. GCSD and SNW entered into an agreement, wherein GCSD would build and operate a glass bridge and related facilities on the Hualapai Indian Reservation in Arizona in exchange for long-term management rights and fees. *See generally*, the 2003 Agreement, **Exhibit 1**.

6. Integral to the 2003 Agreement was a provision providing, “[a]ny controversy, claim, or dispute arising out of or related to this Agreement shall be resolved through binding arbitration. . . . Either party may request and thus initiate arbitration of the dispute by written notice (“Arbitration Notice”) to the other party. . . . The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, then in effect . . . . Judgment upon the award (as limited by Section 15.4(d)) rendered by the arbitrator may be enforced through appropriate judicial proceedings in any federal court having jurisdiction.” *See Exhibit 1*, 2003 Agreement § 15.4.

7. Controversies arose over management fees due under the 2003 Agreement and SNW’s failure to account for ticket sales proceeds or to provide required infrastructure to support the Skywalk and allow completion of the Visitor’s Center. *See* December 21, 2011 Amended Arbitration Complaint (the “Arbitration Complaint”) attached hereto as **Exhibit 2**.

8. After demanding arbitration, GCSD filed an action in Hualapai Tribal Court to compel arbitration. That tribal court presided over by Judge Wilbur ruled that SNW had expressly waived its sovereign immunity for the limited purpose of mandatory arbitration and that GCSD had exhausted all tribal court remedies. *See* August 2, 2011 Tribal Court order attached hereto as **Exhibit 3**, pg. 2 at ¶ 7 and pg 3 at ¶ 2.

9. Thereafter, GCSD filed an Arbitration Notice with the American Arbitration Association (the “AAA”) and delivered a copy of the notice to SNW in accordance with

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1 the 2003 Agreement § 15.4(a), **Exhibit 1**, which states in relevant part that “[e]ither party  
2 may request and thus initiate arbitration of the dispute by written notice (“Arbitration  
3 Notice”) to the other party”, thereby opening case 76 517 Y 00191 11 S1M before the  
4 AAA.

5 10. The AAA, after receiving input from both GCSD and SNW, appointed  
6 arbitrator Shawn K. Aiken (the “Arbitrator”) for the dispute. *See* Notice of Appointment  
7 of Arbitrator, **Exhibit 4**. No objections were voiced by SNW regarding the appointment  
8 of Mr. Aiken.

9 11. SNW initially contested jurisdiction of the Arbitrator and sought to have  
10 GCSD’s arbitration complaint dismissed, but pursuant to the Commercial Arbitration  
11 Rules of the AAA, which were specified in § 15.4(a) of the 2003 Agreement, **Exhibit 1**,  
12 the Arbitrator confirmed jurisdiction over the case, ruling that SNW had waived sovereign  
13 immunity and that there was no requirement under the 2003 Agreement to first obtain a  
14 court order to compel arbitration. *See* November 21, 2011 Order Re Respondent’s  
15 Motion to Dismiss GCSD’s Arbitration Complaint of Arbitrator Aiken, attached hereto as  
16 **Exhibit 5**.

17 12. SNW participated in the arbitration paying arbitration fees, filing its answer  
18 and counterclaims, participating in Tribunal hearings, producing discovery and  
19 subpoenaing witnesses and documents. *See* Answer to GCSD’s Arbitration Complaint  
20 and SNW’s Notice of intent to Assert Counterclaims; Subpoena to David J. Emry,  
21 January 19, 2012 letter from Gallagher and Kennedy to Pam Overton, attached hereto as  
22 **Exhibits 6, 7 and 8** respectively, and August 16, 2012 AAA Final Award at 3, attached  
23 hereto as **Exhibit 9**.

24 13. A fatal turning point was reached, however, when the Arbitrator ordered  
25 SNW to produce its Point of Sale information showing the number and pricing of tickets  
26 sold by SNW and its affiliates by February 10, 2012. *See* February 7, 2012 Report of

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1 Preliminary Hearing and Scheduling Order, (no. 6), attached hereto as **Exhibit 10** at ¶ 1.  
2 This Point of Sale information would have detailed the amount of funds received but not  
3 turned over to GCSD by SNW and its affiliates.

4 14. SNW promised to work in good faith and turn over the Point of Sale  
5 information on the required date, but instead the Tribe, behind closed doors, passed a  
6 declaration of taking by eminent domain of GCSD management contract. *See* Declaration  
7 of Taking, **Exhibit 11**.

8 15. On February 9, 2012, rather than produce the Point of Sale information, the  
9 Hualapai Tribe also seized physical possession of the Skywalk through the attempted use  
10 of eminent domain, and filed an action in Hualapai Tribal Court (the “Tribal Takings  
11 Action”). SNW and the Tribe then attempted to unilaterally dismiss the arbitration case  
12 once again.

13 16. After expedited briefing was considered, the Arbitrator denied the attempt to  
14 dismiss the arbitration, on the basis that the Tribe was not a party to the 2003 Agreement,  
15 and the arbitration proceeded to a final hearing. *See* **Exhibit 9**, Final Order, at 10.

16 17. SNW and the Hualapai Tribe also sought to enjoin the arbitration in the  
17 Tribal Takings Action before the Hualapai Tribal Court. However, a second tribal court  
18 presided over by Judge King, also ultimately refused to enjoin the arbitration and on July  
19 15, 2012 ordered that the parties could proceed in arbitration. *See* August 3, 2012  
20 Hualapai Tribal Court Order, attached hereto as **Exhibit 12**.

21 18. A properly noticed arbitration hearing was held July 16-20, 2012 in  
22 Phoenix, Arizona. *See* **Exhibit 9**, Final Award at pg. 4. SNW failed to appear for the  
23 hearing, and GCSD proceeded, presenting documentary and testimonial evidence. *Id.*

24 19. After considering the testimony of more than a dozen witnesses including  
25 Tribal members and elected Tribal officials and former members of the Board of SNW,  
26 the exhibits admitted into evidence, and the parties’ briefs and arguments, the Arbitrator

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1 issued an Award on August 16, 2012, finding in favor of GCSD and against SNW on  
 2 substantially all claims in GCSD's arbitration complaint, including its request for  
 3 attorney's fees under the 2003 Agreement. *See generally*, **Exhibit 9**.

4 20. The Arbitrator also ordered that SNW "shall bear the costs of the  
 5 arbitration." Final Award, **Exhibit 9**, at 46.

6 21. A copy of the Final Award was served on both parties by the AAA on  
 7 August 17, 2012. *See* Notice of Final Award, **Exhibit 13**. Pursuant to the Commercial  
 8 Arbitration Rules of the AAA, SNW had 20 days after issuance of the Final Award to  
 9 request modification of the award. AAA Commercial Arbitration Rule R-46. SNW did  
 10 not request such a modification. As a result, the award became final on September 6,  
 11 2012. Thus, this Petition is filed timely within one year after the award was made  
 12 pursuant to Section 9 of the FAA.

13 22. To date, SNW has filed no action or request to modify, correct, or vacate the  
 14 Final Award.

### 15 LEGAL AUTHORITY

16 According to the Federal Arbitration Act, any party to an arbitration may, "at any  
 17 time within one year after the award is made," "apply to the court ... for an order  
 18 confirming the award." 9 U.S.C. § 9. "A confirmation proceeding under 9 U.S.C. § 9 is  
 19 intended to be summary; confirmation can only be denied if an award has been corrected,  
 20 vacated, or modified in accordance with the Federal Arbitration Act." *Taylor v. Nelson*,  
 21 788 F.2d 220, 225 (4th Cir. 1986); *see also Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552  
 22 U.S. 576, 582, 128 S.Ct. 1396, 1402 (2008) ("An application for any of these orders will  
 23 get streamlined treatment as a motion, obviating the separate contract action that would  
 24 usually be necessary to enforce or tinker with an arbitral award in court. § 6. Under the  
 25 terms of § 9, a court 'must' confirm an arbitration award 'unless' it is vacated, modified,  
 26 or corrected 'as prescribed' in §§ 10 and 11.") (footnote omitted). ("[T]he Court's

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1 function in confirming or vacating an arbitration award is severely limited. If it were  
2 otherwise, the ostensible purpose for resort to arbitration, *i.e.*, avoidance of litigation,  
3 would be frustrated.” *Amicizia Societa Navegazione v. Chilean Nitrate & Iodine Sales*  
4 *Corp.*, 274 F.2d 805, 808 (2d Cir. 1960). The grounds for vacatur and modification  
5 provided by 9 U.S.C. §§ 10 and 11 are exclusive under the FAA, and even manifest legal  
6 error does not constitute sufficient cause to disturb an arbitration award. *Hall Street*  
7 *Assocs.* 552 U.S. 576,583, 128 S.Ct. 1396, 140.

8 The Arbitrator rendered the Final Award on August 16, 2012. GCSD’s  
9 Application for an order confirming the Final Award is therefore timely. Furthermore, the  
10 arbitration Award has not been vacated, modified, or corrected, nor has any party to the  
11 arbitration filed or served a petition to vacate, modify, or correct the award pursuant to  
12 Sections 10 or 11 of the FAA to date.

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1 WHEREFORE, GCSD prays that:

2 A. This Court enter an order confirming the Final Award, as authorized by  
3 Section 9 of the FAA;

4 B. This Court enter a Judgment that conforms the Final Award of the  
5 Arbitrator;

6 C. GCSD be awarded its costs and disbursement in this proceeding; and

7 D. GCSD be awarded any and all other relief that the Court deems just and  
8 proper.

9 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of September, 2012.

10  
11 **GREENBERG TRAUIG, LLP**

12 By: /s/ Pamela M. Overton

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**CERTIFICATE OF SERVICE**

☒ I hereby certify that on September 11<sup>th</sup>, 2012, I sent the foregoing application for confirmation of arbitration award to be personally served on the following:

Glen Hallman  
Paul K. Charlton  
Jeffrey D. Gross  
Christopher W. Thompson  
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