

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Grand Canyon Skywalk Development, LLC, a Nevada limited liability company

(b) COUNTY OF RESIDENCE OF FIRST LISTED

PLAINTIFF Clark County, Nevada

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT

The Hualapai Indian Tribe of The Hualapai Indian Reservation, Arizona; Grand Canyon Resort Corporation, a tribally-chartered corporation established under the laws of the Hualapai Indian Tribe, et al.

County of Residence of First Listed Defendant: Mohave County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Pamela M. Overton (AZ Bar No. 009062)
GREENBERG TRAURIG, LLP
2375 E. Camelback Rd., Ste. 700
Phoenix, Arizona 85016
Telephone: (602) 445-8000
Facsimile: (602) 445-8100
E-mail: OvertonP@gtlaw.com

Mark Tratos (NV Bar No. 1086); TratosM@gtlaw.com
(Pro Hac Vice Admission Pending)
Donald L. Prunty (NV Bar No. 8230); pruntyd@gtlaw.com
(Pro Hac Vice Admission Pending)
Bethany L. Rabe (NV Bar No. 11691); rabebl@gtlaw.com
(Pro Hac Vice Admission Pending)
Moorea L. Katz (NV Bar No. 12007); katzm@gtlaw.com
(Pro Hac Vice Admission Pending)
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Ste. 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

ATTORNEYS (IF KNOWN)

Glen Hallman (SBN 05888); gh@gknet.com
Paul Charlton (SBN 012449); paul.charlton@gknet.com
Jeffrey D. Gross (SBN 011510); jeff.gross@gknet.com
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Telephone: (602) 530-8000
Facsimile: (602) 530-8500

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State** ☐1 ☐1 **PTF DEF**
- Incorporated or Principal Place of Business in This State** ☐4 ☒4 **PTF DEF**
- Citizen of Another State** ☐2 ☐2 **Incorporated and Principal Place of Business in Another State** ☐5 ☐5
- Citizen or Subject of a Foreign Country** ☐3 ☐3 **Foreign Nation** ☐6 ☐6

IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|-------------------------------------|------------------------------------|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> PERSONAL INJURY | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal | <input type="checkbox"/> 400 State |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 620 Other Food & | 28USC 158 | Reapportionment |

| | | | | |
|---|--|--|--|--|
| <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liab. | <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 423 Withdrawal 28USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 831 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 | <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates, etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge <input type="checkbox"/> 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions |
|---|--|--|--|--|

V. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

| | | | | | | |
|---|---|--|---|--|---|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | Transferred from <input type="checkbox"/> 5 another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | Appeal to District <input type="checkbox"/> 7 Judge from <input type="checkbox"/> Magistrate Judgment |
|---|---|--|---|--|---|---|

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING (Do not cite jurisdictional statutes unless diversity):

This is an action to compel the parties to participate in binding arbitration and for declaratory relief.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23
 DEMAND \$ Unspecified
 Check yes only if demanded in complaint: **JURY DEMAND:** ☐ YES ☒ NO
VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE Campbell DOCKET NUMBER 3:12-cv-08030-DGC
and 3:12-cv-08183-DGC

JUDGE _____ DOCKET NUMBER _____

DATE FOR OFFICE USE ONLY
SIGNATURE OF ATTORNEY OF RECORD /s/ **Pamela M. Overton**

| | | | | |
|-----------|--------|--------------|-------|------------|
| RECEIPT # | AMOUNT | APPLYING IFP | JUDGE | MAG. JUDGE |
|-----------|--------|--------------|-------|------------|

UNITED STATES DISTRICT COURT

GREENBERG TRAURIG, LLP
 3773 Howard Hughes Parkway
 Suite 400 North
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

Pamela M. Overton (AZ Bar No. 009062)
 GREENBERG TRAURIG, LLP
 2375 E. Camelback Rd., Ste. 700
 Phoenix, Arizona 85016
 Telephone: (602) 445-8000
 Facsimile: (602) 445-8100
 E-mail: overtonp@gtlaw.com

Mark G. Tratos (NV Bar No. 1086) (*Pro Hac Vice* Admission Pending)
 Donald L. Prunty, Esq. (NV Bar No. 8230) (*Pro Hac Vice* Admission Pending)
 Bethany L. Rabe, Esq. (NV Bar No. 11691) (*Pro Hac Vice* Admission Pending)
 Moorea L. Katz, Esq. (NV Bar No. 12007) (*Pro Hac Vice* Admission Pending)
 GREENBERG TRAURIG, LLP
 3773 Howard Hughes Parkway, Suite 400N
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002
 Email: tratosm@gtlaw.com
 pruntyd@gtlaw.com
 rabe@gtlaw.com
 katzm@gtlaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

GRAND CANYON SKYWALK
 DEVELOPMENT, LLC, a Nevada
 limited liability company,

Plaintiff,

vs.

THE HUALAPAI INDIAN TRIBE OF
 THE HUALAPAI INDIAN
 RESERVATION, ARIZONA; GRAND
 CANYON RESORT CORPORATION,
 a tribally-chartered corporation
 established under the laws of the
 Hualapai Indian Tribe; RICHARD
 WALEMA, SR., WYNONA
 SINYELLA, RUBY STEELE,
 CANDIDA HUNTER, BARNEY
 ROCKY IMUS, WAYLON HONGA,
 CHARLES VAUGHN, SR., SHERRY
 COUNTS, PHILBERT
 WATAHOMIGIE, RONALD
 QUASALA, SR., RUDOLPH CLARKE,
 HILDA COONEY, JEAN PAGILAWA,
 each individuals and members or former
 members of the Hualapai Tribal Council;
 CARRIE IMUS, DANIEL

No.

**COMPLAINT TO COMPEL
 ARBITRATION AND FOR
 DECLARATORY RELIEF**

ALVARADO, NEIL GOODELL,
VICTOR INGRAM, CAMILLE
NIGHTHORSE, MICHAEL VAUGHN,
each individuals and members of the
Grand Canyon Resort Corporation's
board of directors; and JENNIFER
TURNER, an individual and chief
operating officer of Grand Canyon
Resort Corporation,

Defendants.

For its complaint against Defendants Richard Walema, Sr., Wynona Sinyella, Ruby Steele, Candida Hunter, Barney Rocky Imus, Waylon Honga, Charles Vaughn, Sr., Sherry Counts, Philbert Watahomigie, Ronald Quasula, Sr., Rudolph Clarke, Hilda Cooney, Jean Pagilawa (the "Council Defendants"); Ruby Steel and Waylon Honga (the "Tribal Administrative Defendants"); Carrie Imus, Daniel Alvarado, Neil Goodell, Victor Ingram, Camille Nighthorse and Michael Vaughn ("GCRC Board Defendants"); Jennifer Turner ("GCRC Administrative Defendant"); Grand Canyon Resort Corporation ("GCRC") and the Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona (the "Tribe") (collectively, "Defendants"), Plaintiff Grand Canyon Skywalk Development, LLC ("GCSD") alleges as follow:

I. NATURE OF THE ACTION

1. This action is based upon a currently pending and stayed eminent domain action in the Hualapai Indian Tribe Tribal Court (the "Tribal Eminent Domain Action").

2. The Tribe initiated the Tribal Eminent Domain Action on February 8, 2012 by filing a complaint in condemnation in Hualapai Tribal Court and filing a declaration of taking that purported to take Plaintiff GCSD's intangible contractual rights in a 2003 Development and Management Agreement (the "2003 Agreement") relating to the world-famous Grand Canyon Skywalk tourist attraction.¹

3. After motion practice in the Tribal Eminent Domain Action, the Honorable Judge King requested supplemental briefing from the parties regarding, among other things,

¹ By filing the Tribal Eminent Domain Action, the Tribe waived its sovereign immunity, at least before the Tribal Court.

GREENBERG TRAURIG, LLP
 3773 Howard Hughes Parkway
 Suite 400 North
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

whether the contract rights that the Tribe purported to condemn were subject to government takings or whether instead, they were subject to the contractual remedies provided for by the 2003 Agreement that was purportedly condemned.

4. After evaluating the supplemental briefing on this issue, on March 5, 2013 Judge King entered an order staying the Tribal case until the parties have adjudicated their contractual remedies in Federal Court (Arbitration). *See* Minute Entry and Order, Case No. 2012-CV-017 (Hualapai Tribal Court March 5, 2013), attached as **Exhibit 1**.

5. The contract at issue contained an arbitration clause on page 42, section 15.4, under which the parties to the contract could compel arbitration in the United States Court for the District of Arizona. *See* 2003 Development and Management Agreement, attached as **Exhibit 2**, at § 15.4(a). While GCSD believes an order for arbitration is not required to proceed with arbitration under the agreement, out of an abundance of respect for the Tribal Court, GCSD is following the Tribal Court order and initiating the instant action.²

II. PARTIES

6. GCSD is a limited liability company, organized and existing under the laws of the State of Nevada, with its principal place of business in the State of Nevada. None of GCSD's members are residents of Arizona.

7. Defendant Tribe is a sovereign Indian tribe.

8. Defendant GCRC is a tribal corporation wholly owned by the Hualapai Nation under the laws of the Tribe with its principal place of business located in the State of Arizona.

9. Defendant Richard Walerma Sr., is an individual, an enrolled member of the Tribe, a resident of Arizona, and a former member of the Tribal Council.

10. Defendant Wynona Sinyella is an individual, an enrolled member of the Tribe, a resident of Arizona, and a former member of the Tribal Council.

11. Defendant Ruby Steele is an individual, an enrolled member of the Tribe, a

² GCSD's position regarding why a court order is not needed prior to initiating arbitration under the agreement is explained further in Note 3, *supra*.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

1 resident of Arizona, a former member of the Tribal Council, and an employee of GCRC.

2 12. Defendant Candida Hunter is an individual, an enrolled member of the Tribe,
3 a resident of Arizona, and a former member of the Tribal Council.

4 13. Defendant Barney Rocky Imus is an individual, an enrolled member of the
5 Tribe, a resident of Arizona, and a member of the Tribal Council.

6 14. Defendant Waylon Honga is an individual, an enrolled member of the Tribe,
7 a resident of Arizona, a former member of the Tribal Council, and interim CEO of GCRC.

8 15. Defendant Charles Vaughn, Sr. is an individual, an enrolled member of the
9 Tribe, a resident of Arizona, and a former member of the Tribal Council.

10 16. Defendant Sherry Counts is an individual, an enrolled member of the Tribe, a
11 resident of Arizona, and a member of the Tribal Council.

12 17. Defendant Philbert Watahomigie is an individual, an enrolled member of the
13 Tribe, a resident of Arizona, and a member of the Tribal Council.

14 18. Defendant Ronald Quasula, Sr. is an individual, an enrolled member of the
15 Tribe, a resident of Arizona, and a member of the Tribal Council.

16 19. Defendant Rudolph Clarke is an individual, an enrolled member of the Tribe,
17 a resident of Arizona, and a member of the Tribal Council.

18 20. Defendant Hilda Cooney is an individual, an enrolled member of the Tribe, a
19 resident of Arizona, and a member of the Tribal Council.

20 21. Defendant Jean Pagilawa is an individual, an enrolled member of the Tribe, a
21 resident of Arizona, and a member of the Tribal Council.

22 22. Defendant Carrie Imus is an individual, an enrolled member of the Tribe, and
23 a member of the GCRC board of directors.

24 23. Defendant Daniel Alvarado is an individual and a member of the GCRC
25 board of directors.

26 24. Defendant Neil Goodell is an individual and a member of the GCRC board
27 of directors.

28 25. Defendant Victor Ingram is an individual and a member of the GCRC board

1 of directors.

2 26. Defendant Camille Nighthorse is an individual, an enrolled member of the
3 Tribe, and a member of the GCRC board of directors.

4 27. Michael Vaughn is an individual and a member of the GCRC board of
5 directors.

6 28. Jennifer Turner is an individual and the CEO of GCRC.

7 **III. JURISDICTION AND VENUE**

8 29. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §
9 1332(a), as the parties are diverse in citizenship and the amount at issue exceeds \$75,000.

10 30. Venue is proper in this Court because this is a judicial district specified in the
11 underlying contract. *See Ex. 2*, at § 15.4(a).

12 **IV. FACTUAL ALLEGATIONS**

13 **A. Background**

14 31. Mr. David Jin (“Jin”), the managing member of GCSD, conceived and
15 developed the idea of constructing and operating a glass viewing platform (the “Skywalk”)
16 and related facilities on the edge of the Grand Canyon and proposed the project to the Tribe
17 as a revenue-sharing agreement.

18 32. The Tribe formed ‘Sa’ Nyu Wa, Inc. (“SNW”), a Hualapai tribally chartered
19 corporation, in 2003 for the express purpose of entering into a revenue-sharing agreement
20 with a company to be formed by Jin regarding the planning, construction and operation of
21 the Skywalk and related facilities.

22 33. Jin and other investors formed GCSD for the purpose of entering into a
23 relationship with the Tribe, whereby GCSD would manage the entire project and would
24 make an initial investment into the project and recoup that investment along with profits
25 from the management and operation of the Skywalk and related facilities under a
26 comprehensive management agreement.

27 34. Consistent with and to effectuate these purposes, SNW and GCSD entered
28 into the 2003 Agreement, which provided for, among other things, GCSD to construct,

1 manage and operate the Skywalk and associated facilities. *See generally* **Ex. 2**.

2 35. The 2003 Agreement provided that the Tribe, not SNW, would own all
3 project improvements and that the Tribe was an intended third-party beneficiary of the 2003
4 Agreement. *See* **Ex. 2**, §§ 2.2(s), 15.3.

5 36. The 2003 Agreement also provided that any controversies, claims or disputes
6 arising out of or related to the 2003 Agreement were to be decided by binding arbitration
7 before the American Arbitration Association (the “AAA”). *See* **Ex. 2**, at § 15.4(a).

8 37. The 2003 Agreement also provided that the agreement “shall be binding
9 upon and inure to the benefit of SNW and Manager *and their successors and assigns*.” *See*
10 **Ex. 2**, at § 15.3 (emphasis added).

11 38. GCSD paid approximately \$30 million for the benefit of the Tribe for the
12 purpose of constructing the Skywalk and related facilities under the 2003 Agreement.

13 39. The Skywalk opened to visitors on March 28, 2007, with GCSD operating
14 the facilities and SNW in charge of maintaining the books and records of the project. The
15 Tribe entered into a management agreement with SNW to manage the Skywalk on behalf of
16 the Tribe in 2007 before the Skywalk opened. *See* Management Agreement Between the
17 Tribe and SNW (Feb. 19, 2007), attached as **Exhibit 3**. Almost immediately from the outset
18 of the Skywalk’s operations, SNW breached material terms of the 2003 Agreement to which
19 it was bound.

20 40. GCSD and SNW initially attempted to negotiate their disputes and find a
21 satisfactory solution for both parties. When the attorneys for SNW refused to continue
22 negotiating with GCSD, GCSD demanded the parties arbitrate their disputes as provided for
23 by the 2003 Agreement. SNW refused GCSD’s demand for arbitration.

24 **B. Arbitration Between GCSD and SNW of Pre-2011 Claims**

25 41. On February 25, 2011, GCSD filed an action in Hualapai Tribal Court
26 seeking to compel arbitration on the outstanding management fee due GCSD and other
27 issues. The Tribe opposed the action and asserted that only a Federal Court could order
28 Arbitration. The Tribal Court ruled that only a Federal Court could compel arbitration and

GREENBERG TRAURIG, LLP
 3773 Howard Hughes Parkway
 Suite 400 North
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

that GCSD had exhausted its tribal remedies and could seek resolution in Federal Court. *See* Order: Motion to Dismiss, Case No. 2011-CV-006 (Hualapai Tribal Ct. July 29, 2011), attached as **Exhibit 4**.

42. In fall 2011, GCSD filed an arbitration complaint with the AAA as required under the 2003 Agreement. Initially, SNW asserted that the arbitrator did not have the ability to arbitrate the matter because the arbitration had not been ordered by a Federal Judge. Reviewing the parties' agreement, however, the arbitrator concluded that an Order by a Federal Court for arbitration was unnecessary and that the arbitration could proceed.³

43. SNW filed nineteen (19) counterclaims in the arbitration action, paid all arbitration fees and participated in arbitration discovery. However, SNW's participation in the arbitration proceedings came to an abrupt halt when the arbitrator ordered that SNW produce point-of-sale information related to monies received by the Tribe for Skywalk admissions and related discovery.

44. In an effort to avoid having SNW comply with the arbitrator's order that it produce vital point-of-sale information due the next day, on February 9, 2012, the Tribe passed a taking resolution and filed an action of taking in Tribal Court to seize control of GCSD's intangible contract rights and interests in the management operation of the famous Grand Canyon Skywalk under a purported exercise of eminent domain.

45. Shortly after the Tribe's purported exercise of eminent domain, Glen

³ GCSD's position is and has always been that no court order is required to compel the parties to participate in binding arbitration, and that either party can initiate arbitration by written notice to the other party. *See Ex. 2*, at § 15.4(a). Specifically, the 2003 Agreement dictates that all controversies, claims, or disputes arising from or relating to the 2003 Agreement "***shall be resolved through binding arbitration***," and provides that "[e]ither party may request and ***thus initiate*** arbitration . . . by written notice to the other party." *Id.* (emphasis added). However, out of an abundance of caution and respect for the Tribe, GCSD initially filed an action in Tribal Court to Compel Arbitration. As discussed, the Tribal Court held that only a Federal Court could compel arbitration pursuant to the terms in the 2003 Agreement, and that GCSD could seek to compel arbitration in Federal Court. *See Ex. 3*, at 3. Here, GCSD has already send a demand for arbitration to the Tribe, but in an effort to fully comply with the directives of the Tribal Court and Judge King, GCSD files the instant action to compel arbitration in Federal Court.

GREENBERG TRAURIG, LLP
 3773 Howard Hughes Parkway
 Suite 400 North
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

Hallman, who represents both the Tribe and SNW, informed the Federal District Court Judge Campbell that the Tribe was terminating the arbitration as it had taken over the contractual position of GCSD who was the Plaintiff in the AAA proceedings and that it, the Tribe, was terminating GCSD's litigation against the tribe's chartered corporate entity, SNW.

46. The Arbitrator delayed the final arbitration hearing to allow the Tribe to obtain an injunction from either Tribal or Federal Court to enjoin the arbitration. The Tribe failed to obtain an injunction and in fact, the Tribal Court issued an order declaring that the arbitration could proceed. *See* Minute Entry and Order, Case No. 2012-CV-017 (Hualapai Tribal Ct. July 15, 2012), attached as **Exhibit 5**, at 5. The arbitration proceeded in July 2012 as to amounts owed by SNW to GCSD up through December 31, 2011. Sixteen witnesses including Tribal members and officials testified and thousands of pages of documents were introduced into evidence. SNW failed to appear at the arbitration hearing.

47. The AAA Arbitrator determined that SNW had breached the 2003 Agreement in many ways and on multiple levels, and awarded approximately \$28.6 million in damages and fees to GCSD. *See* Final Arbitration Award, attached as **Exhibit 6**.

48. On February 11, 2013, the United States District Court for the District of Arizona entered an order confirming the Final Arbitration Award. *See* Order Granting GCSD's Application for Confirmation of Arbitration Award, Case No. CV-12-08183-PCT-DCG (Feb. 8, 2013), attached as **Exhibit 7**.

C. Purported Tribal Taking of GCSD's Intangible Contractual Interest in the 2003 Agreement

49. The Tribe's purported "taking" egregiously violated GCSD's constitutional rights, as the Tribe purportedly seized GCSD's intangible property located off the reservation without legal notice, posting a bond, or obtaining an immediate possession court order. *See* Hualapai Tribal Council Resolution No. 20-2011 ("Eminent Domain Ordinance" or "Ordinance"), attached as **Exhibit 8**.

50. In its Declaration of Taking, the Tribe claimed that it was exercising eminent domain because of “construction and operation concerns” relating to the Skywalk. *See* Declaration of Taking, Case No. 2012-CV-017 (Hualapai Tribal Ct. Feb. 8, 2012), attached as **Exhibit 9**. However, any construction and operation concerns relating to the Skywalk, by definition would “relate” to the 2003 Agreement, and would thus be subject to the binding arbitration as provided for in section 15.4 of the 2003 Agreement and resolvable through arbitration.

D. The Tribe’s Termination of SNW’s Interest in the 2003 Agreement

51. The Hualapai Tribal Council, in an October 5, 2012 letter to the editor of the Las Vegas Review Journal, Nevada’s most widely circulated newspaper, stated that **the Tribe** has been managing operations at the Skywalk since the time that the Tribe purported to take GCSD’s contractual rights in the 2003 Agreement. *See* Online Version of Letter to the Editor, Reviewjournal.com (Oct. 5, 2012), attached as **Exhibit 10**.

52. In the February 15, 2013 official Newsletter of the Hualapai Tribe, the Chairwoman of the Tribe informed the Tribe’s members that “[t]he Hualapai Tribe has been successfully managing operations at the Grand Canyon Skywalk since we terminated our contract with Mr. Jin.” *See* Official Newsletter of Hualapai Tribe (Feb. 15, 2013), attached as **Exhibit 11**; *see also* Official Newsletter of Hualapai Tribe (Dec. 14, 2012), attached as **Exhibit 12**.

53. On February 27, 2013, the Tribe purportedly removed from SNW all operational control of the Skywalk and designated GCRC to operate the Skywalk, making all SNW’s employees GCRC employees. *See* Declaration of Jennifer Turner in Support of Chapter 11 Filing and First Day Motions, Case No. 0:13-bk-02972-BMW (Mar. 4, 2013), attached as **Exhibit 13**, at ¶ 22.

54. On March 4, 2013, SNW filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Arizona along with a declaration in support of the Chapter 11 petition stating that SNW no longer has the ability or intention to continue its business operations. *See* **Ex. 13**, at ¶ 23.

1 55. Although legal counsel for both the Tribe and SNW represented in Federal
2 Court that Skywalk revenues were being placed in an escrow account pending the resolution
3 of the Tribal Eminent Domain Action, the Tribe's chief financial officer recently testified
4 the Tribe had already taken approximately \$2 million from SNW's bank accounts.
5 *Compare* Reporter's Transcript of Proceedings, Temporary Restraining Order Hearing, Case
6 No. CV 12-08030-PCT-DGC (D. Ariz. Feb. 24, 2012, excerpts attached as **Exhibit 14**, at
7 33:21-34:7, *with* Deposition of Wanda Easter (Dec. 13, 2012), excerpts attached as **Exhibit**
8 **15**, at 100:25-105:2.

9 56. As a result of the Tribe's intentional and deliberate taking of SNW's interest
10 in the 2003 Agreement, the Tribe, and its wholly owned corporation GCRC, are now subject
11 to the provisions of the 2003 Agreement, including the mandatory arbitration provisions and
12 waiver of sovereign immunity.

13 57. GCRC and the Tribe are the successors-in-interest to SNW's rights under the
14 2003 Agreement because the Tribe terminated and transferred SNW's rights under the 2003
15 Agreement, as well as SNW's employees and ticket sales, to GCRC and the Tribe.

16 58. Pursuant to Section 15.3 of the Agreement, the Tribe and GCRC are now
17 bound by the 2003 Agreement as successors-in-interest of SNW, including the 2003
18 Agreement's mandatory binding arbitration provision.

19 **CLAIMS FOR RELIEF**

20 **Count One: Request to Compel Arbitration**

21 **(Against the Tribe as Intended Third-Party Beneficiary under 2003 Agreement)**

22 59. Plaintiff realleges and incorporates by reference each of the preceding
23 paragraphs.

24 60. GCSD, by the 2003 Agreement, entered into a valid and enforceable written
25 agreement that contained a provision whereby all claims and controversies relating to the
26 agreement were required to be submitted to binding arbitration.

27 61. Specifically, Article 15.4 of the 2003 Agreement clearly states that "any
28 controversy, claim or dispute arising out of or related to the [2003 Agreement] shall be

GREENBERG TRAURIG, LLP
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resolved through arbitration” (the “Arbitration Provision”).

62. The Tribe was explicitly made an intended third-party beneficiary under the 2003 Agreement, and for this reason is bound by the Arbitration Provision.

63. The Tribe received direct benefits of over \$30 million under the 2003 Agreement, benefits which the Tribe accepted and never repudiated.

64. As a result of its status as an intended third-party beneficiary under the 2003 Agreement, the Tribe is bound by the terms of the 2003 Agreement, including the Agreement’s mandatory arbitration provision.

65. The Hualapai Tribal Court has stayed the Eminent Domain Action until GCSD and the Tribe have pursued their contractual remedies in Federal Court, contractual remedies which per the 2003 Agreement involve mandatory binding arbitration. *See Ex. 1.*

66. GCSD is entitled to a Court order compelling GCRC and the Tribe to arbitrate their disputes under the 2003 Agreement, disputes which include but are not limited to:

(a) The value of GCSD’s rights in the 2003 Agreement as of the date of the Tribe’s purported “taking,” February 9, 2012.

(b) Whether the Tribe may take GCSD’s rights under the 2003 Agreement by eminent domain as a means to avoid the contractual remedies dictated by the terms of the 2003 Agreement.

(c) Whether the Tribe’s use of the Ordinance to take GCSD’s rights under the 2003 Agreement violates the constitutions of the Hualapai Tribe and the United States of America.

Count Two: Request to Compel Arbitration

(Against the Tribe and GCRC as Successors and Assigns to SNW under the 2003 Agreement)

67. Plaintiff realleges and incorporates by reference each of the preceding paragraphs.

68. GCSD, by the 2003 Agreement, entered into a valid and enforceable written

1 agreement that contained a provision whereby all claims and controversies relating to the
2 agreement were required to be submitted to binding arbitration.

3 69. Specifically, Article 15.4 of the 2003 Agreement clearly states that “any
4 controversy, claim or dispute arising out of or related to the [2003 Agreement] shall be
5 resolved through arbitration” (the “Arbitration Provision”).

6 70. The Tribe intentionally and purposefully terminated SNW’s rights and
7 obligations under the 2003 Agreement and transferred the same to GCRC and the Tribe
8 itself.

9 71. The 2003 Agreement provided that the agreement “shall be binding upon and
10 inure to the benefit of SNW and Manager *and their successors and assigns.*” See **Ex. 2**, at
11 § 15.3 (emphasis added).

12 72. GCRC and/or the Tribe are successors-in-interest to SNW’s rights and
13 obligations under the 2003 Agreement and are thus bound by the Arbitration Provision.

14 73. The Hualapai Tribal Court has stayed the Eminent Domain Action until
15 GCSD and the Tribe have pursued their contractual remedies in Federal Court, contractual
16 remedies which per the 2003 Agreement involve mandatory binding arbitration. See **Ex. 1**.

17 74. GCSD is entitled to a Court order compelling GCRC and the Tribe to
18 arbitrate their disputes under the 2003 Agreement, disputes which include but are not
19 limited to:

20 (a) The value of GCSD’s rights in the 2003 Agreement as of the
21 date of the Tribe’s purported “taking,” February 9, 2012.

22 (b) Whether the Tribe may take GCSD’s rights under the 2003
23 Agreement by eminent domain as a means to avoid the contractual remedies
24 dictated by the terms of the 2003 Agreement.

25 (c) Whether the Tribe’s use of the Ordinance to take GCSD’s rights
26 under the 2003 Agreement violates the constitutions of the Hualapai Tribe and
27 the United States of America.
28

Count Three: Declaratory Relief

**(The Ordinance Is Unconstitutional/Defendants' Inability to Pay Just Compensation)
(Against All Defendants)**

75. Plaintiff realleges and incorporates by reference each of the preceding paragraphs.

76. Defendants' February 9, 2012 "condemnation" is designed to avoid paying past-due and future Manager's Fees and other compensation to GCSD, and to allow the Tribe to place an artificially low value on GCSD's contract rights, based on inaccurate revenue and profit information reported by SNW.

77. Upon information and belief, neither GCRC nor the Tribe has the financial ability to pay just compensation for any taking of GCSD's rights in the Skywalk project.

78. Defendants' "condemnation" is unlawful for a multitude of reasons, including, without limitation:

- (a) The Tribe's eminent-domain power (if any) does not extend to the property of non-Indians such as GCSD;
- (b) The Tribe's eminent domain power (if any) does not extend to GCSD intangible property located outside the Reservation.
- (c) There is no valid public use for which GCSD's intangible contract rights could be taken by way of the Tribe's eminent-domain power (if any);
- (d) For the Tribe to exercise eminent-domain power (if any) in this manner would constitute a gross abuse of discretion;
- (e) For the Tribe to exercise eminent-domain power (if any) in this manner would be arbitrary and capricious;
- (f) GCSD's contractual rights are not "property" that can validly be taken by the Tribe pursuant to their eminent-domain power (if any);
- (g) The Tribe lacks the financial means, wherewithal or ability to pay for the proposed taking of GCSD contractual rights;

GREENBERG TRAURIG, LLP
 3773 Howard Hughes Parkway
 Suite 400 North
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

(h) The Tribe purported to exercise eminent domain power against GCSD without providing just compensation or ensuring that just compensation will be paid violates GCSD's civil rights as a non-Indian; and

(i) The Tribe's purported exercise of eminent domain power against GCSD and physical takeover of operations without the posting of a bond to ensure that GCSD's share of the revenues generated by the Skywalk could be paid if the Tribe could not pay just compensation violates GCSD rights as a non-Indian.

79. GCSD is a non-Indian with constitutionally-protected rights which may not be infringed by a governmental body in which GCSD is not a member nor permitted to participate. The Defendants may not divest the non-Indian Plaintiff of constitutionally protected rights when Plaintiff neither resides on the Tribe's reservation and Plaintiff's only contact with the Tribe's reservation is an intangible contract right.

80. Defendants were not entitled to take possession of GCSD's interest in the Skywalk without substantiating that the Tribe was capable of paying just compensation for such taking.

81. The Tribe's illegal "taking" of GCSD's rights was at all times carried out and performed by the Council and Administrative Defendants.

82. As set forth herein, GCSD and Defendants have an actual case and controversy regarding the constitutionality of the Ordinance as applied to the 2003 Agreement and GCSD's contractual rights under the same.

83. Pursuant to 28 U.S.C. § 2201, this Court "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

84. Pursuant to 28 U.S.C. § 2202, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

85. Plaintiff requests, and is entitled to, a ruling that the Ordinance as applied to take GCSD's rights under the 2003 Agreement is unconstitutional and thus unenforceable.

86. Because the constitutionality of the Ordinance as applied to GCSD's rights under the 2003 Agreement is a controversy regarding the 2003 Agreement, GCSD requests the Court compel the issue of the Ordinance's constitutionality to arbitration.

87. In the event this Court does not compel the issue of the Ordinance's constitutionality to arbitration, GCSD requests the Court declare from which court, tribunal or forum Plaintiffs may properly seek such a determination.⁴

88. The Court is requested to grant Plaintiff any such "further necessary or proper relief," as appropriate.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, GCSD respectfully requests this Court compel the parties to participate in binding arbitration as required under the 2003 Agreement. Additionally, GCSD requests declaratory relief as set forth herein and for any further, necessary or proper relief as this Court deems appropriate.

Respectfully submitted this 15th day of March 2013.

GREENBERG TRAURIG, LLP

By: /s/ Pamela M. Overton

Pamela M. Overton, Esq.
2375 East Camelback Road, Suite 700
Phoenix, AZ 85016

⁴ GCSD has challenged in Tribal Court the constitutionality of the Ordinance as applied to GCSD's rights under the 2003 Agreement; however, rather than review the constitutionality of the Ordinance as applied to the 2003 Agreement, the Tribal Court has instead stayed the case so that the parties may pursue their contractual remedies in Federal Court. Because the constitutionality of the Ordinance as applied to the 2003 Agreement is a "claim or controversy" relating to the 2003 Agreement, pursuant to § 15.4(a) of the 2003 Agreement, GCSD believes the matter may properly be submitted to arbitration. Additionally, GCSD contends that determining the constitutionality of the Ordinance is paramount, as it has now been over thirteen (13) months since the Tribe seized possession and title of GCSD's rights in the 2003 Agreement, and the Tribe has failed to pay GCSD just compensation or take adequate protections to ensure that GCSD will eventually receive just compensation. Moreover, GCSD has since discovered that neither the Tribe nor GCRC has the financial capacity to ever pay GCSD just compensation for the taking.

GREENBERG TRAURIG, LLP

Mark G. Tratos, Esq.
Donald L. Prunty, Esq.
Bethany L. Rabe, Esq.
Moorea L. Katz, Esq.
3773 Howard Hughes Parkway, Suite 400
North
Las Vegas, NV 89169
Attorneys for Plaintiff

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002