

**INDEX OF DOCUMENTS ATTACHED TO FIRST AMENDED COMPLAINT**

Exhibit 1 – March 5, 2013 Order issued by Judge Lawrence C. King, Hualapai Tribal Court.

Exhibit 2 – December 31, 2003 Development and Management Agreement

Exhibit 3 – February 19, 2007 Management Agreement between Hualapai Indian Tribe and “Sa’ Nyu Wa, Inc.

Exhibit 4 – August 2, 2011 Order issued by Judge Ida B. Wilber, Hualapai Tribal Court

Exhibit 5 – July 15, 2012 Order issued by Judge Lawrence C. King, Hualapai Tribal Court

Exhibit 6 – August 16, 2012 Final Award issued by Shawn K. Aiken, American Arbitration Association

Exhibit 7 – February 11, 2013 Order issued by David G. Campbell, United States District Court, District of Arizona

Exhibit 8 – Hualapai Tribal Council Resolution No. 20-2011

Exhibit 9 – February 8, 2012 Declaration of Taking

Exhibit 10 – 10/5/12 article entitled Tribe can manage Skywalk without developer

Exhibit 11 – 2/12/13 letter by Sheri Counts (Gamyu #04)

Exhibit 12 – 12/14/12 letter by Sheri Counts (Gamyu #26)

Exhibit 13 – March 4, 2013 Declaration of Jennifer Turner in Support of Chapter 11 Filing and First Day Motions

Exhibit 14 – Excerpts from February 24, 2012 hearing before David G. Campbell

Exhibit 15 – Excerpts from December 13, 2012 deposition of Wanda Easter

# Exhibit 1



**IN THE HUALAPAI TRIBAL COURT  
PEACH SPRINGS, ARIZONA**

THE HUALAPAI INDIAN TRIBE OF THE )  
HUALAPAI INDIAN RESERVATION, )  
Arizona, )

Plaintiff, )

vs. )

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

Defendant. )

Case No.: 2012-CV-017

MINUTE ENTRY AND ORDER

Upon review of the recent filings, The Court finds that the parties will pursue contract remedies in Federal Court. Therefore the above captioned matter shall be stayed until the resolution of the contract issues.

IT IS ORDERED that the above captioned matter shall stayed until the resolution of the contract issues. All discovery shall cease as it relates to this matter until further order of this court.

SO ORDERED this 5<sup>th</sup> day of March 2013.

/s/ Lawrence C. King  
Honorable Lawrence King  
Judge, Hualapai Indian Tribe

# **Exhibit 2**

## DEVELOPMENT AND MANAGEMENT AGREEMENT

This DEVELOPMENT AND MANAGEMENT AGREEMENT is made and entered into as of the 31st day of December, 2003, between 'SA' NYU WA, a tribally chartered corporation, and GRAND CANYON SKYWALK DEVELOPMENT, LLC, a Nevada limited liability company.

### RECITALS:

- A. The Nation is the owner of the real property described on Exhibit A (the "Site").
- B. SNW has the right to utilize the Site for development of the Project, to enter into this Agreement, and to perform its obligations under this Agreement.
- C. Manager is experienced in the tourism business and has the financial strength, proven track record, and past and current business relationships necessary and appropriate to undertake the development and operation of the Project in accordance with the terms of this Agreement.
- D. SNW desires to have Manager develop and manage the Project in accordance with the terms and conditions and subject to the limitations contained in this Agreement.

NOW, THEREFORE, SNW and Manager agree as follows:

### ARTICLE 1 DEFINITIONS, TERMS AND REFERENCES

1.1 Definitions. In this Agreement and any exhibits, addenda or riders hereto, the following terms shall have the following meanings:

"Affiliate" means any entity owned or controlled by a party, owning or controlling a party or under common ownership and control with a party, with "control" meaning direct or indirect ownership of five percent (5%) or more of outstanding interests in terms of value or voting power. Without limiting the generality of and notwithstanding the foregoing, the Nation shall be deemed an Affiliate of SNW and each of Oriental Travel and Tours, Inc, a Nevada corporation, David Jin, and Yvonne Tang shall be deemed to be Affiliates of Manager.

"Agreement" means this Development and Management Agreement, as it may be amended, supplemented, or renewed from time to time.

"Annual Capital Budget" means the annual capital budget for the Project and certain other matters prepared and submitted by SNW to Manager pursuant to Section 6.1, as modified and approved from time to time in accordance with the provisions of Section 2.8.

"Annual Operating Budget" means the annual operating budget for the Project and certain other matters prepared and submitted by SNW to Manager pursuant to Section 5.1, as modified and approved from time to time in accordance with the provisions of Section 2.8.

"Bankruptcy," with respect to a party to this Agreement means any of: (a) the filing by such party of a voluntary petition in bankruptcy under Title 11 of the United States Code, or the issuing of an order for relief against such party under Title 11 of the United States Code; (b) the filing by such party of any petition or answer seeking or acquiescing in any reorganization,

arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors; (c) such party's seeking or consenting to or acquiescing in the appointment of any custodian, trustee, receiver, conservator or liquidator of such party or of all or substantially all of its assets; (d) the making by such party of any general assignment for the benefit of creditors; (e) such party's failure generally to pay its debts as such debts become due; or (f) the entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against such party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the date of entry thereof.

**"Business Day"** means any day other than Saturday, Sunday, or a legal holiday in the State of Arizona. In this Agreement, any reference to "days" means calendar days, unless the term "Business Day" is used with respect thereto.

**"Claims"** means any and all obligations, debts, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including reasonable attorneys' fees and litigation and court costs.

**"Construction Term"** means the period from the Effective Date to (but not including) the date that the Project Improvements are substantially complete and are first open to the general public, unless the Agreement is terminated earlier as otherwise provided in this Agreement.

**"Default Rate"** means the Prime Rate, as it varies from time to time, plus two percentage points.

**"Effective Date"** means the date of this Agreement.

**"Fiscal Year"** means a fiscal year which ends on December 31. The words "full Fiscal Year" mean any Fiscal Year containing not fewer than 364 days. A partial Fiscal Year after the end of the last full Fiscal Year and ending with the expiration or earlier termination of the Operating Term shall constitute a separate Fiscal Year.

**"Funding Change-Over Date"** means the first day of the fourth full Fiscal Year following commencement of the Operating Term.

**"Furniture and Equipment"** means all furniture, furnishings, wall coverings, fixtures, equipment and systems located at, or used in connection with the Project, together with all replacements therefor and additions thereto.

**"SNW"** means 'SA' Nyu Wa, a tribally chartered corporation, and its successors and assigns.

**"Glass Bridge"** means the glass viewing bridge at the rim of the Grand Canyon, to be constructed as part of the Project Improvements.

**"Grand Canyon West"** means the Grand Canyon West Airport and related facilities.

**"Gross Operating Expenses"** means all salaries and employee expenses and taxes (including salaries, wages, bonuses, and other compensation and benefits which shall include, but not be limited to, life, medical and disability insurance and retirement benefits) of the employees who perform services exclusively at the Project in connection with Project operations; repair and maintenance costs and expenses and costs and expenses for Furniture and Equipment (all to the extent not constituting capital expenditures under generally accepted accounting principles); operational supplies and utility expenses and fees; governmental fees and assessments, including the taxes and assessments to be paid pursuant to Section 8.1; insurance premiums for the insurance required to be carried pursuant to Section 7.1; the cost of Inventories; advertising and marketing expenses (including reservation system expenses, if a reservation system is used); the monthly Accounting Fee payable to SNW; and any and all other operating expenses as are reasonably necessary for the proper and efficient operation of the Project and which are incurred in accordance with the provisions of this Agreement, *excluding, however:* (a) federal, state and municipal excise, sales and use taxes collected directly from customers or as a part of the sales price of any goods or services; (b) amounts paid into either the Operating Reserve or the Capital Reserve, (c) the Manager's Fee; (d) and any federal, state, or local income taxes of SNW or Manager; (e) capital expenditures pursuant to Article 6; (f) costs and expenses for Furniture and Equipment and for maintenance and repairs, to the extent constituting capital expenditures, except as otherwise provided in Section 9.1(a); (g) depreciation and amortization, all determined in accordance with generally accepted accounting principles (except as specifically modified by the terms of this Agreement); and (h) Construction Costs incurred by Manager pursuant to Section 2.2. No part of SNW's corporate expenses or of Manager's central office overhead or general or administrative expense (as opposed to that of the Project), shall be deemed to be a part of Gross Operating Expenses, except to the limited extent provided in Section 5.7. Gross Operating Expenses shall be determined on an accrual basis.

**"Gross Revenues"** means all revenues, receipts and income of any kind derived directly or indirectly by Manager as agent for and for payment to SNW from or in connection with the Project (including revenues from customers using the Glass Bridge, gift shop sales receipts, and payments from any licensees or concessionaires [but not including their gross receipts]), whether on a cash basis or credit, paid or collected, determined in accordance with generally accepted accounting principles, *excluding, however:* (a) funds furnished by SNW or Manager; (b) interest accrued on amounts in the Operating Reserve or the Capital Reserve, (c) federal, state and municipal excise, sales, transaction privilege, and use taxes collected directly from customers or as part of the sales price of any goods or services; (d) proceeds from the sale, condemnation or other disposition of non-Inventory assets; (e) returned deposits or refunds to customers, (f) imputed value of goods or services furnished on a complimentary basis, and (g) proceeds of insurance (except as otherwise provided for business interruption insurance under Section 7.1). Gross Revenues shall be determined on an accrual basis.

**"Inventories"** means inventories of merchandise for the gift shop included as part of the Project and inventories of supplies used in the operation of the Project, such as restroom supplies, expendable office supplies, fuel, and other expended supplies and similar items.

**"Manager"** means Grand Canyon West Development, LLC, a Nevada limited liability company and any permitted assignee of Manager's rights under this Agreement who assumes the obligations of Manager hereunder pursuant to the terms of this Agreement.

**"Manager's Fee"** means the amounts to be paid to Manager for developing, operating and managing the Project pursuant to Article 3.



**"Manager's Investment"** means an amount equal to the sum of (a) the aggregate total of all Construction Costs actually incurred by Manager and described in Sections 2.2(j)(i) through (xii), inclusive; (b) total costs actually incurred by Manager for the construction of the Staging Lodge in the same categories as described in Sections 2.2(j)(i) through (xii), to the extent applicable to construction of the Staging Lodge; (c) the purchase price actually paid by Manager for the real property on which the Staging Lodge is constructed; and (d) the purchase price actually paid by Manager for the minimum number of Tour Vehicles that Manager is required to provide pursuant to Section 13.4(d). In order for a particular eligible cost or expenditure to be included as part of Manager's Investment, Manager shall have provided to SNW written receipts or other evidence of payment of the amount of such cost or expenditure. The total amount of Manager's Investment shall be determined and certified in writing to SNW within 120 days following the date of commencement of the Operating Term.

**"Nation"** means the Hualapai Indian Tribe.

**"Net Revenues"** means the excess (if any) of Gross Revenue over Gross Operating Expenses for any Fiscal Year.

**"Operating Term"** means the period commencing on the date that the Project Improvements are Substantially Complete and are first open to the general public term and terminating on the day immediately preceding the 25th anniversary of the Effective Date, unless the Agreement is terminated earlier as provided in this Agreement.

**"Person"** means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

**"Prime Rate"** means the "prime rate" of interest as announced from time to time by Wells Fargo Bank, N.A., or its successor, as its prime rate; *provided, however*, that if Wells Fargo Bank, N.A. or its successor, ceases to announce a prime rate, then the Prime Rate shall be the "prime rate" of interest as announced from time to time by another major national bank selected from time to time by Manager as its prime rate.

**"Project"** means the Project Improvements, the Site, all Furniture and Equipment, the Inventories, and all other items of real or personal property used in connection with the development, management, and operation of the Project.

**"Project Improvements"** means the Glass Bridge and adjacent building providing security and structural support for the Glass Bridge and which will also contain a gift shop, together with all related on and off-site improvements and infrastructure. The Project Improvements are more particularly described on Exhibit B.

**"Proprietary Marks"** means the name of the Project and all other trade names, service marks, trademarks or distinctive insignias and logos associated with the operation of the Project during the Operating Term.

**"Related Parties"** means the officers, directors, shareholders, members, partners, employees, agents, consultants, accountants, attorneys, successors, and assigns of a particular Person. For all purposes of this Agreement, the Nation and the members of the Hualapai Nation Council, their employees, agents, consultants, accountants, attorneys, successors, and assigns are deemed to be Related Parties of SNW.



**"Standards of Operation"** means the standards of quality for the maintenance and operation of first-class tourist facilities in the southwestern United States as commonly recognized in the hospitality industry regarding guest facilities, services and overall atmosphere.

**"Tour Operator"** means a Person who has an agreement with Manager to arrange, provide, or conduct organized, commercial group tours by bus to the Staging Lodge, by fixed wing to Grand Canyon West, or by bus or other means of transportation to future facilities at Grand Canyon West that are used as a staging area for the Shuttle Bus Service.

**1.2 Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders. The singular shall include the plural, and the plural shall include the singular; the part includes the whole; the terms "include" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The titles of articles, sections, and subsections in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to "Articles," "Sections," and "Exhibits" shall refer to the corresponding Article or Section of or Exhibit to this Agreement, unless otherwise specifically provided.

**1.3 No Presumption Against any Party.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by each of the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

**1.4 Exhibits.** All Exhibits attached to this Agreement are by reference made a part of this Agreement.

## ARTICLE 2

### ENGAGEMENT OF MANAGER; DEVELOPMENT AND MANAGEMENT DUTIES

**2.1 Engagement.** SNW hereby appoints and engages Manager to act as the developer and manager of the Project throughout the Construction Term and the Operating Term in accordance with the terms of and having the duties set forth in this Agreement. Manager hereby accepts its appointment as the developer and manager of the Project and agrees to develop, supervise, manage, and operate the Project during the Operating Term in accordance with the terms and conditions of this Agreement and in compliance with all applicable federal, Nation, state, and local laws, ordinances, rules, and regulations, including all employment laws and regulations.

#### **2.2 Development of Project.**

(a) **General Obligation.** During the Construction Term, Manager shall construct the Project Improvements in accordance with the requirements of this Agreement and the Approved Plans and Specifications (defined below). The Project Improvements shall be designed and constructed in compliance with (i) all federal laws of general applicability that relate to construction projects, including, without limitation, the Americans with Disabilities Act; and (ii) the building codes and other design and construction requirements that would be applicable to the design and construction of the Project Improvements if the Project Improvements were being

constructed on privately owned land located in Mojave County, Arizona; *provided, however*, that this requirement does not impose any obligation to obtain any licenses, consents, or approvals from Mojave County or any agency thereof, unless otherwise required by applicable law.

(b) Conceptual Design.

(i) Within 90 days following the Effective Date, with the Manager agreeing to exercise due diligence with respect thereto, Manager shall submit the following items to SNW (collectively, the "Design Items") for the review and approval of SNW. At the conclusion of the 90 day period, if substantial compliance has been accomplished and the Manager has progressed with due diligence, the parties agree to negotiate an extension to complete compliance with items below:

(A) A preliminary schedule for (1) site preparation and (2) construction of the Project Improvements (including proposed construction start date and completion date);

(B) A site plan of the Site that indicates the proposed location of all Project Improvements, including parking and landscape areas, all access restrictions, and all existing on-site or off-site features which affect the Site;

(C) Elevations for all of the Project Improvements;

(D) An ALTA/ACSM survey of the entire Site (including a topographical survey);

(E) A soils report for the soils in the building and parking areas on the Site;

(F) A full listing of any and all anticipated impact fees, assessments or other governmental fees that will be imposed on the Project, SNW or the Nation;

(G) A utility plan depicting utility mains and proposed service lines to the Site, showing lines types and sizes;

(H) A grading and drainage plan for the Site, as it will be developed, depicting both existing and proposed contours, slopes, drainage patterns and drainage structures, if any, such plan to be designed to mitigate any impact that may result if the Site is located in a flood zone;

(I) A landscape plan for the Site, as it will be developed, as proposed by Manager or otherwise required by the applicable governmental agencies, indicating at least type and size of plant materials; and

(J) Lighting and signage details, with dimensions and materials of sign areas proposed.

(ii) SNW shall promptly review each Design Item submitted to SNW and approve such Design Item unconditionally or subject to the resolution of any "SNW Comments" (defined later) with respect to such Design Item. If SNW unconditionally

approves a particular Design Item, it shall so indicate in writing to Manager. If Manager does not receive any SNW Comments as to a particular Design Item within twenty (20) Business Days of the date of SNW's receipt of such Design Item, SNW shall be conclusively deemed to have approved that particular Design Item and to have waived its right to make SNW Comments with respect to such Design Item. If SNW provides SNW Comments with respect to a particular Design Item, the SNW Comments shall be handled as provided in Section 2.2(e).

(c) Project Entitlements.

(i) Manager shall require that its engineers and architects be responsible, at Manager's expense, for obtaining any and all permits and licenses from any agency of the federal government, including any environmental permits, as are necessary to permit the development and operation of the Project at the Site in accordance with the Design Items approved by SNW (the "Federal Entitlements"). Manager shall require that its engineers and architects pursue obtaining the Federal Entitlements, if any, with due diligence and shall provide SNW with appropriate written evidence of such Federal Entitlements when they are received. SNW will cooperate with Manager, and its engineers and architects, in Manager's efforts to obtain the Federal Entitlements, including, but not limited to, completing, signing or otherwise executing applications or documents of like kind that any federal agency may require; *provided, however*, that all costs associated therewith shall be paid by Manager as part of Construction Costs.

(ii) SNW shall be responsible, at its expense, for obtaining any and all required permits and licenses from any governmental authority, including the Nation, other than agencies of the federal government (the "Non-Federal Entitlements"). SNW shall pursue obtaining the Non-Federal Entitlements with due diligence and shall provide Manager with appropriate written evidence of such Federal Entitlements when they are received. Manager will cooperate with SNW in SNW's efforts to obtain the Federal Entitlements. The date that all required Federal Entitlements and Non-Federal Entitlements have first been obtained is referred to as the "Entitlement Date".

(d) Preliminary Plans and Specifications. Within 90 days following the Entitlement Date, Manager shall cause a licensed architect selected by Manager and approved in writing by SNW (the "Architect") to prepare preliminary plans and specifications for the Project Improvements based on the approved Design Items and to deliver 3 sets of such plans and specifications to SNW. The terms of the contract between Manager and Architect (or of the contracts with any other design professionals, consultants, or engineers) pursuant to which Architect (or such other Person) is to provide services for the Project shall be subject to the prior written approval of SNW, with any such contract submitted to SNW being deemed approved by SNW unless SNW gives written notice of disapproval within 10 days of receipt of a complete copy of such contract and Manager's request for SNW's approval. Each of the architects, engineers, designers and/or other like professionals and consultants shall be registered and/or licensed in the State of Nevada in their respective specialties, as applicable, and, to the extent required by applicable law, in the State of Arizona. SNW shall promptly review such plans and specifications and approve them unconditionally or subject to the resolution of any SNW Comments with respect to the preliminary plans and specifications. If SNW unconditionally approves the preliminary plans and specifications, it shall so indicate in writing on all 3 sets thereof, and shall promptly return 1 set so approved to Manager. If Manager does not receive SNW Comments within 20 Business Days of the date of SNW's receipt of the preliminary plans and specifications, SNW shall be conclusively deemed to have approved the preliminary plans

and specifications and to have waived its right to make SNW Comments with respect to the preliminary plans and specifications.

(e) Agreement Process.

(i) "SNW Comments," if any, shall be a specific written statement of the concerns of SNW with respect to a particular item and shall be given to Manager in writing no later than 20 Business Days after the date of SNW's receipt of the particular item to which they relate. Manager and SNW shall communicate in good faith to resolve the SNW Comments. After the parties have resolved the SNW Comments, Manager shall, as appropriate, revise the particular item to reflect the agreed resolution of the SNW Comments.

(ii) If the parties have not agreed upon a resolution of the SNW Comments within 20 Business Days of the date such comments are provided to Manager, then the outstanding issues shall be resolved by the Architect (the "Architect's Resolution"), whose decision shall be final, except as provided in Section 2.2(e)(iii).

(iii) If either (A) the Architect has failed to make the Architect's Resolution within 10 days of the end of the 20 Business Day period described in Section 2.2(e)(ii), or (B) either party is dissatisfied, in its sole and absolute discretion, with the Architect's Resolution, then either party (in the case described in clause (A)) or the party dissatisfied with the Architect's resolution (in the case described in clause (B)) may, by written notice to the other party given within 7 days of expiration of the 10-day period described in clause (A) or within 7 days of receipt of the Architect's Resolution, as the case may be, refer the matter to arbitration. The arbitration shall be conducted by a sole arbitrator; *provided, however*, if the parties cannot agree upon an arbitrator within 7 days of referral of the matter to arbitration, each party will select an arbitrator and the two arbitrators will select a third arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, as limited by the provisions of Section 2.2(e)(iv). The decision of any two of the arbitrators shall be binding and conclusive on the parties. Each party shall bear the cost of the arbitrator selected by such party and the costs of the third arbitrator shall be shared equally by the parties. Other costs of arbitration shall be borne by the party incurring such costs.

(iv) Solely for the purposes of this Section 2.2(e), SNW expressly waives its sovereign immunity with respect to the matters within the coverage of this Section 2.2(e), to the extent permitted under the Constitution of the Nation. SNW's waiver of sovereign immunity from suit is specifically limited by the Constitution of the Nation to the following actions and judicial remedies:

(A) The action must be brought by Manager and not by any other person, corporation, partnership, government, governmental agency or entity whatsoever; and

(B) Any money damages will be limited to the assets that are solely owned by SNW. No money damages, awards, fines, fees, costs or expenses can be brought or awarded against the Nation in arbitration, judicial, or governmental agency action; and

(C) An action in a federal court of competent jurisdiction in Arizona to either (1) compel arbitration or (2) enforce a determination by an arbitrator requiring SNW to specifically perform any obligation under this Agreement (other than an obligation to pay any money damages under Section 2.2(e)(iv)(B)).

(v) The dispute resolution process described in this Section 2.2(e) is referred to as the "Agreement Process" and shall be used whenever this Agreement specifies that a matter shall be resolved by the Agreement Process.

(f) Governmental Approval. Manager shall, at its expense and with the Architect's assistance, promptly submit the preliminary plans and specifications on which Manager and SNW have agreed to all governmental agencies and authorities, including the Nation, having jurisdiction with respect thereto (collectively, "Authorities"). Manager shall use commercially reasonable, diligent efforts to have such plans and specifications promptly approved in writing by the Authorities and returned to SNW with such written approval. If any Authority disapproves the preliminary plans and specifications, Manager shall request the Authority to state the disapproval, together with a specific and detailed discussion of such Authority's concerns about such plans and specifications ("Issues"), in writing. Manager shall promptly provide to SNW a copy of the written approval or disapproval of all Authorities to SNW.

(g) Revised Plans and Specifications. In the event of any Authority's disapproval of the preliminary plans and specifications, the parties shall attempt to resolve all Issues with such Authority. SNW shall promptly review the Architect's revisions to the plans and specifications, if any, prepared pursuant to disapproval by any Authority and approved by Manager, and approve them unconditionally or subject to the resolution of SNW Comments with respect thereto. The SNW Comments, if any, shall be resolved by the Agreement Process. If Manager does not receive any SNW Comments within 20 Business Days of the date of SNW's receipt of the revised plans and specifications, SNW shall be conclusively deemed to have approved such plans and specifications and to have waived its right to make SNW Comments on them.

(h) Approved Plans and Specifications. Upon written approval by SNW, Manager and all Authorities of the plans and specifications, such approved plans and specifications shall be signed and dated by the parties and be the approved plans and specifications for all purposes of the Agreement (the "Approved Plans and Specifications").

(i) Construction Contract.

(i) Manager shall prepare the contract for construction of the Project Improvements according to the Approved Plans and Specifications ("Contract"), which Contract shall be between Manager and a licensed general contractor selected by Manager (the "Contractor"). SNW shall have the right to review and approve the Contract prior to execution. Once approved by SNW, the Contract shall not be modified without the prior written consent of SNW.

(ii) The Contract shall include the following (collectively, "Contract Requirements"):

(A) The work shall be performed in accordance with the Approved Plans and Specifications, and in a good and workmanlike manner in compliance with all applicable laws, orders and regulations of governmental authorities and



with the regulations of any board of fire insurance underwriters having jurisdiction;

(B) The Contractor shall commence and complete construction of the Project Improvements on or before those dates set forth herein for commencement and completion thereof and shall be required to pay liquidated damages to Manager for each day that the Contractor fails to meet the Substantial Completion Date;

(C) The Contractor shall defend and indemnify Manager, SNW, and the Related Parties of each of Manager and SNW for, from and against any and all liability arising out of the Contractor's acts or omissions, even if the liability is caused in part by Manager or SNW or their respective Related Parties;

(D) The Contractor shall obtain a bond, in form and substance satisfactory to SNW, from a surety which is "Treasury listed" and has a Best's rating of A+ or better, covering performance, completion and payment for labor and materials for the construction of the Project Improvements, which bond shall be in an amount equal to the full amount of the contract price for the construction of the Project Improvements and shall name the Contractor as principal and Manager and SNW, jointly and severally, as obligees;

(E) The warranties made by the Contractor shall be made to both Manager and SNW;

(F) SNW shall be an intended third party beneficiary of the Contract;

(G) All change orders must be on AIA forms and signed by both Manager and SNW;

(H) The Contract and all subcontracts shall be presently contingently assigned to SNW, subject to Manager's right to perform until such time as SNW exercises its remedies;

(I) All subcontracts must be on AIA forms and shall be subject to the prior written approval of SNW; and

(J) SNW shall have the right to review and approve shop drawings, product submittals and product samples.

(j) Construction Costs. "Construction Costs" are collectively the total costs incurred in connection with the design and construction of the Project Improvements, including, without limitation:

(i) All costs and fees incurred by Manager for the preparation and review of Design Items and the plans and specifications, including without limitation all services of the Architect and of any engineer and consultants employed by or on behalf of Manager;

(ii) All costs incurred in connection with obtaining the Federal Entitlements and the governmental approvals described in Section 2.2(f), including, without limitation, plan check fees, building permit fees, and certificate of occupancy fees;

(iii) Any consultant's fees (including in connection with the securing of all building permits, temporary and permanent certificates of occupancy and other governmental approvals to be obtained by Manager pursuant to the Agreement), and all construction management fees or costs of supervision;

(iv) Legal fees incurred by Manager in connection with the construction of the Project Improvements and insurance premiums;

(v) The cost of bringing adequate sanitary and storm sewers, water lines, and other utilities to the Project Improvements, and any tap in, connection, annexation, hook-up or similar fees or charges relating to utilities;

(vi) Any costs incurred for any required land balancing, filling, compaction or stripping;

(vii) The cost of any pumps required to increase water pressure to meet the requirements of the sprinkler system or domestic water in the Project Improvements;

(viii) The cost of excavation, footings, foundations and backfilling;

(ix) The cost of any soil borings and related services and the cost of modification to the foundation due to soils conditions;

(x) The cost of any remediation of hazardous materials as may be required pursuant to applicable environmental laws, rules and regulations;

(xi) All costs for labor and materials for construction of the Project Improvements;

(xii) Any costs associated with change orders that are approved as provided in Section 2.2(q), to the extent that, pursuant to Section 2.2(q), such costs are to be borne by Manager; and

(xiii) Any costs which are Manager's overhead or office or administrative expenses.

(k) Payment of Construction Costs. All Construction Costs shall be paid by Manager, without any reimbursement from SNW, as and when incurred. The provisions of this Section 2.2(k) shall not be construed to limit in any way the amount of the Manager's Fee payable to Manager pursuant to Article 3.

(l) Mechanics' Liens. Manager shall not permit the lien of any contractor, subcontractor, mechanic, materialman, laborer, architect or any other person or entity arising out of work, material or services performed or supplied or contracted for by Manager, or those claiming by, through or under Manager (whether such work, material or services performed or supplied or contracted for arise under this Section 2.2 or any other provision of this Agreement), to be or remain a lien upon the Site or the Project Improvements, but Manager shall have the right to contest the lien in good faith by appropriate judicial proceedings so long as (i) the proceeding operates to stay any execution or foreclosure on the lien, and (ii) Manager diligently pursues the contest to its conclusion. In any event, Manager shall indemnify, defend and save SNW and its



Related Parties harmless for, from and against any and all Claims with respect to any such lien. This indemnity shall survive the expiration or termination of this Agreement.

(m) Commencement and Completion of Project Improvements

(i) Upon SNW's written approval of the Contract, Manager shall cause the Contractor promptly to commence, and with due diligence, proceed to construct the Project Improvements in accordance with the Approved Plans and Specifications.

(ii) Manager agrees that Substantial Completion of the Project Improvements shall have occurred by that date (the "Completion Date") that is the earlier of (A) 365 days following the date that there are first Approved Plans and Specifications pursuant to Section 2.2(h) and SNW has approved the Contract; or (B) May 1, 2005, *provided, however*, that the Completion Date shall also be extended pursuant to change orders approved by SNW and Manager, as provided in Section 2.2(q)(i), and for force majeure events, as provided in Section 2.2(r). As used herein, "Substantial Completion" means completion of all items of construction in accordance with the Approved Plans and Specifications and the requirements of all governmental authorities and fire underwriters, except for Punchlist Items (defined later). In no event shall the Project Improvements be deemed Substantially Complete unless and until Manager shall have delivered to SNW the following: (A) a certificate from the Architect certifying that with the exception of the Punchlist items, the construction of the Project Improvements has been completed in compliance with the Approved Plans and Specifications; (B) copies of lien releases or lien waivers from all potential lien claimants, or other evidence reasonably satisfactory to SNW that the Project Improvements have been completed lien free; and (C) all permits, including, if applicable, a final certificate of occupancy, necessary for SNW's use and occupancy of the Site, except for usual and customary business licenses. "Punchlist Items" means items which are qualitatively minor and which do not impair the use of the Project Improvements for business operations. Manager shall, at its sole expense and with due diligence, promptly complete such Punchlist Items no later than 30 days after Manager's receipt of the punchlist in accordance with the Approved Plans and Specifications and to SNW's satisfaction.

(n) Certain Remedies.

(i) If Manager fails to achieve Substantial Completion by the Completion Date, Manager shall pay to SNW, in addition to all other sums which Manager is obligated to pay to SNW under this Agreement, as liquidated damages and not as a penalty, the sum of \$1,000 per calendar day for each calendar day commencing with the day after the Completion Date and concluding on, and including, the day on which Substantial Completion is achieved. In addition, if Manager fails to achieve Substantial Completion by the date which is 365 days after the Completion Date (the "Completion Date Anniversary"), Manager shall pay to SNW, in addition to all other sums which Manager is obligated to pay to SNW under this Agreement, as liquidated damages and not as a penalty, the sum of \$10,000 per calendar day for each calendar day commencing with the day after the Completion Date Anniversary and concluding on, and including, the day on which Substantial Completion is achieved. The liquidated damages represent a reasonable endeavor by the parties to estimate a fair compensation for the foreseeable losses which might result from such delay, it being understood that the amount of actual damages would be extremely difficult, impracticable or impossible to ascertain. The liquidated damages do not include and specifically exclude any costs, expenses and

damages to SNW caused by claims made against SNW by any Person as a consequence of such delay. SNW also reserves the right to prove and recover additional damages beyond the liquidated damages for breaches of its obligations under this Section 2.2 other than failure to complete the Project Improvements by the Completion Date.

(ii) If Manager fails to achieve Substantial Completion by the Completion Date, then SNW may, upon 60 days prior written notice to Manager complete construction of the Project Improvements, and Manager shall be liable to SNW for the cost of such construction and any additional costs or expenses reasonably incurred by SNW as a result of Manager's default. In such event, SNW shall have the right to assume or reject, as it deems advisable, any contracts previously executed by Manager in connection with the performance of the work (and all contracts shall permit such assumption) and Manager agrees to indemnify, defend and hold SNW and its Related Parties harmless from and against all Claims arising on account of any default under the contracts by Manager or on account of SNW's rejection of the contracts. This indemnity shall survive the expiration or termination of this Agreement.

(o) Permits, Certificates of Occupancy. All building permits, temporary and permanent certificates of occupancy and other governmental approvals required to construct and to permit the occupancy of the Project Improvements shall be obtained by Manager at its sole cost and expense.

(p) SNW's Right to Reject Work. While the Project Improvements are being constructed, SNW and its representatives shall, at all times, have access to the Work at the Site or wherever it may be in preparation, and Manager shall provide proper facilities for such access and inspection of the Work in accordance with the terms and conditions established by the Contractor. If SNW in its reasonable judgment rejects any Work or materials as failing to conform to the Approved Plans and Specifications, Manager shall, without cost to SNW, promptly remove all such rejected material and promptly replace all rejected Work and all Work damaged or destroyed by any defective workmanship and material or by removal of such Work or materials and shall replace the same with material or workmanship conforming to the Approved Plans and Specifications. Notwithstanding the foregoing, SNW's failure to reject Work shall not relieve Manager or the Contractor of responsibility to construct the Project Improvements in accordance with the Approved Plans and Specifications.

(q) Change Orders.

(i) If, at any time after there are Approved Plans and Specifications and prior to completion of the Project Improvements, either party proposes a change in the work (a "Proposed Change"), such change shall be made pursuant to a change order approved as provided in this Section 2.2(q). The party proposing the change shall give the other party written notice of the proposed change and Manager and the Architect shall promptly itemize any increase or decrease in the Construction Cost resulting from the proposal and will also determine what effect, if any, such change would have on the Completion Date (the "Change Analysis"), and the written Change Analysis shall be provided to each of the parties. The Proposed Change shall be subject to the approval of both Manager and SNW pursuant to the Agreement Process. If the Proposed Change is approved, the Completion Date shall be adjusted as provided in the Change Analysis, and, if the Proposed Change was initiated by SNW, then the costs of the Proposed Change as set forth in the Change Analysis, shall be borne by SNW; otherwise, the costs shall be borne by Manager as part of Construction Costs. If the parties do not approve

the Proposed Change, then the Project Improvements shall be completed in accordance with the Approved Plans and Specifications and any previously approved change orders, without the Proposed Change.

(ii) The provisions of Section 2.2(q)(i) do not apply to field change orders that do not materially alter either the Approved Plans and Specifications or the time for completion of the Project Improvements, including, without limitation, change orders relating to any changes in conditions discovered during construction, governmentally-required changes and claims by the Contractor, and Manager shall have the right, in its discretion and without any prior consent from SNW, to approve all such change orders, and the any increased costs associated therewith shall be borne by Manager as a part of Construction Costs.

(r) Force Majeure. Time is of the essence of the provisions of this Section 2.2. However, the required dates for beginning and completing construction of the Project Improvements shall be extended for a period or periods of time equal to any period of delay caused by fire or other casualty, acts of God, war, riot or insurrections, strikes, governmental regulations or any other cause (except financial) beyond the reasonable control of Manager; provided, in the event of any such delay, Manager shall promptly give written notice to SNW of the occurrence and cause of the delay and, upon the termination thereof, the termination of the delay. During any such delay period, Manager shall work with SNW to attempt to mitigate the delay.

(s) Ownership of the Project. Ownership of the Site and all Project Improvements shall be and remain in the Nation throughout the Construction Term and the Operating Term.

2.3 Management of Project. During the Operating Term, Manager shall manage the Project in accordance with the requirements of this Agreement, with full responsibility and authority to supervise, direct and control the management and operation of the Project, subject in every case to the authority limitations and other restrictions set forth in Section 2.7 and elsewhere in this Agreement and to the requirement that all such actions shall be consistent with the then effective approved Annual Operating Budget and Annual Capital Budget, such responsibility and authority (as so limited) to include, without limitation, the following:

(a) Manage the Project in manner consistent with the Standards of Operation and the requirements of this Agreement;

(b) Determine appropriate pricing for retail customers to use the Glass Bridge, subject to the prior written approval of such pricing by SNW. It is agreed that during the period from the date of commencement of the Operating Term to the first anniversary of such commencement date, the retail price will be not less than \$12 per individual, unless the parties otherwise agree;

(c) Determine appropriate pricing for Tour Operators or other organized, commercial tour groups for the use the Glass Bridge, subject to the prior written approval of such pricing by SNW. It is agreed that during the period from the date of commencement of the Operating Term to the first anniversary of such commencement date, the price to Tour Operators or other organized, commercial tour groups will be not less than \$9 per individual, unless the parties otherwise agree;

(d) Arrange, in SNW's name, for utility, telephone, pest control, security service, trash removal and other services reasonably necessary or appropriate for the operation of the Project;

(e) Determine, establish, and maintain advertising, public relations and promotional policies appropriate for the Project;

(f) Cause all ordinary and necessary repairs and maintenance to be made to the Project and after prior notification and approval by SNW cause all such other things to be done in or about the Project as shall be necessary to comply with all requirements of governmental Authorities, boards of fire underwriters and other bodies exercising similar functions, *provided, however*, that repairs the costs of which are properly capitalized shall be made by Manager only to the extent that (i) such costs are included within an Annual Capital Budget that has been approved by the parties or (ii) emergency conditions require the performance of capitalized repairs in order to prevent damage or injury to persons or property before approval by SNW of an appropriate modification of the Annual Capital Budget can be reasonably obtained;

(g) Purchase all Inventories and such other services and merchandise as are necessary for the proper operation of the Project in accordance with the Standards of Operation, to the extent the costs thereof are included within an approved Annual Capital Budget, and arrange for the purchase and installation of Furniture and Equipment (including additions to or replacements of such items) to the extent the costs thereof are included within an approved Annual Capital Budget;

(h) Institute and defend such proceedings at law or in equity in the name of SNW (to the extent that SNW is a party in any such proceeding) or Manager, using counsel selected by Manager and approved by SNW, as Manager shall deem reasonably necessary or proper in connection with the collection of accounts receivable and all other matters arising from the operation of the Project. Manager shall obtain SNW's written approval prior to filing any litigation on behalf of SNW;

(i) Collect all Gross Revenues at the point of sale or service and, on a daily basis, after the total amount of Gross Receipts for such day have been determined jointly by a representative of Manager and SNW, such Gross Receipts shall be transferred and delivered to SNW at the Glass Bridge facility. Following transfer of the daily Gross Receipts to SNW as provided above, Manager shall have no further responsibility for security for such daily Gross Receipts.

(j) Collect directly from customers any and all federal, Nation, state and municipal excise, sale, transaction privilege, and use taxes imposed on the sales price of any goods or services furnished (collectively, "Sales Taxes"), with such amounts to be handled in the same manner as provided above in Section 2.3(i) for Gross Revenues;

(k) Within 3 days of receipt of invoices and other documentation that relate to the Project, provide to SNW copies of all such invoices and other documentation, including all documentation relating to Gross Operating Expenses and capital expenditures that need to be paid. All such invoices and other documentation must be sent to SNW via facsimile within the 3-day period, with copies to also be sent simultaneously by mail or other method of delivery authorized pursuant to Section 15.11. Documentation provided pursuant to this Section 2.3(k) need not be sent to legal counsel for SNW. Manager will also use its commercially reasonable efforts to have all such invoices and other documentation sent directly to SNW;

(l) Comply with all laws, statutes, regulations and ordinances of all governmental authorities with respect to the management, use and operation of the Project, except that Manager shall be responsible for capital expenditures in connection therewith only as required by the Annual Capital Budget or Article 9;

(m) Bond over or make other adequate provision for the payment of any liens by mechanics, materialmen, suppliers, vendors or others producing labor or services to the Project from work for which SNW has made funds available in the Operating Account or otherwise; and

(n) Clean and maintain the Project, including the restrooms, floors, windows and parking facilities, on a daily basis in order to ensure a clean and sanitary environment.

(o) The Glass Bridge shall be operated and available for use by the public throughout the Operating Term at the following times:

(A) Daily, starting each day at 8:00 AM Arizona time and ending at 6:00 PM Arizona time during the summer, and starting at 9:00 AM Arizona time and ending at 5:00 PM Arizona time during the winter; and

(B) At such other times as SNW and Manager shall mutually agree upon from time to time, as necessary or appropriate to facilitate and encourage visits to the Glass Bridge.

2.4 Operating Licenses. Manager shall obtain and maintain all licenses and permits required under applicable laws and ordinances in order to operate the Project in accordance with the terms of this Agreement. SNW agrees to promptly execute and deliver any and all applications, certificates and other documents and information as may be reasonably requested by Manager from time to time for obtaining and maintaining such licenses and permits and to provide such additional assistance and cooperation as may be reasonably requested in connection therewith. Costs incurred in obtaining these licenses and permits and keeping them in full force and effect are considered Gross Operating Expenses.

2.5 General Standards of Operation. Manager shall perform its responsibilities and duties hereunder in a manner consistent with the requirements of this Agreement and the Standards of Operation.

2.6 Employees of the Project.

(a) Employment Policies. The parties shall jointly determine all labor policies, including wages and salary rates and terms, benefits, pension, retirement, bonus and employee benefit plans for employees at the Project, all of which policies shall be in compliance with the Standards of Operation, the provisions of this Section 2.6 and the other requirements of this Agreement.

(b) General Authority of Manager. Manager shall have the right to supervise and direct the personnel employed in the operation of the Project as Manager may reasonably deem necessary or desirable for the proper operation, maintenance and security of the Project. All hiring and promotion actions shall also comply with the requirements of Section 2.6(e); however, in addition to the requirements of Section 2.6(e), before an individual is hired or terminated by Manager, Manager shall first have obtained the prior written consent of SNW; *provided, however,* that such consent shall not be required with respect to the on-site manager and one supervisor nor shall the hiring (or promotion, if applicable) of the on-site manager and one



supervisor be subject to the provisions of Section 2.6(e); *provided, further*, that the prior consent of SNW to the termination of an employee shall not be required where the employee has committed an act of stealing, dishonesty, fraud, or moral turpitude, or where the employee has engaged in criminal or patently offensive conduct.

(c) Personnel are Manager's Employees. All personnel employed from time to time to render services in connection with the Project (including the general manager and supervisors) shall be employees of Manager and not employees of SNW. SNW shall not supervise or direct (or attempt to supervise or direct) the general manager or any of such Project employees, but shall have the right to communicate with the general manager and other managerial employees of the Project from time to time regarding the management policies and the operation of the Project.

(d) Indemnity. Manager shall pay, indemnify, defend, and hold harmless SNW and its Related Parties for, from and against any and all Claims arising in connection with any claim or other matter asserted by an employee, former employee or potential employee of the Manager who renders services in connection with the Project regarding hiring, discharge, supervision, pay and other employment matters including without limitation any workers' compensation, discrimination and personal injury claims, except that the foregoing indemnity shall not apply to the extent any such Claims arise from the acts of SNW, its agents, or any of SNW's Related Parties or are covered by insurance maintained pursuant to this Agreement. Manager shall also pay, indemnify, defend, and hold harmless SNW and its Related Parties for, from and against any and all Claims arising by reason of any claims of unfair labor practices or otherwise relating to attempts to cause any employees or Manager to join a union or other organized labor organization. This indemnity shall survive the expiration or termination of this Agreement.

(e) Employment Preferences.

(i) It is recognized that one of the basic factors involved in this Agreement is the fact that substantial and persistent Native American unemployment and underemployment exists, and the Project is reasonably calculated to provide more than a temporary alleviation of such unemployment and underemployment.

(ii) Eligible Individuals shall receive preference in hiring and in all other aspects of employment with Manager in connection with the operation of the Project in accordance with terms of this Lease. As used in this Agreement, "Eligible Individual" means an enrolled Native American and any other individual that, pursuant to federal law applicable to Native Americans, can be given preference in employment decisions.

(iii) Manager shall notify the Director of Human Resources for the Nation (the "Personnel Director") of all job openings at the Project and the required qualifications for such job openings. Manager shall not employ any person who is not an Eligible Individual without giving the Personnel Director at least three days prior notice so that a qualified Eligible Individual may be referred for employment.

(iv) Qualified Eligible Individuals shall have preference in promotions, and such openings shall be announced at least three days prior to filling them. Notice, together with the required qualifications for such open position, shall be given to the Personnel Director at least three days prior to the filling of any such vacancy if Manager proposes to fill said vacancy with a non-Eligible Individual.

(v) It is the purpose and intent of the provisions of this Section 2.6(e) that if there are two or more persons qualified for a job opening, and one of such persons is an Eligible Individual, the qualified person who is an Eligible Individual shall be selected. If no qualified Eligible Individual applies for the job opening, a person who is not an Eligible Individual may be selected for employment. It is not the intent and purpose of this Section 2.6(e) to establish quotas. If no qualified Eligible Individual is available for a job opening or promotion and a non-Eligible Individual is hired or promoted by Manager, such individual's employment or promotion shall not be terminated or rescinded solely upon the basis that a qualified Eligible Individual subsequently becomes available for hiring or promotion.

2.7 Limitations on Authority. Any other provision of this Agreement to the contrary notwithstanding, unless included within or otherwise contemplated by an approved Annual Operating Budget or Annual Capital Budget, Manager shall not, without SNW's specific approval in each instance:

(a) Enter into any agreement relating to the Project with a Tour Operator or with any other Person offering or providing tour services similar to those offered or provided by a Tour Operator;

(b) Enter into any lease with respect to any portion of the Project or any license or concession agreement for any portion of the Project;

(c) Contract for or otherwise incur any liability for any single Gross Operating Expense or capital expenditure in excess of \$10,000 unless such item is specifically contained in either an Annual Operating Budget or an Annual Capital Budget, except if emergency conditions require the performance of capitalized repairs in order to prevent damage or injury to persons or property before approval by SNW of an appropriate modification of the Annual Operating Budget or Annual Capital Budget can be reasonably obtained;

(d) Incur any liability on behalf of SNW for the purchase of goods, supplies or services from Manager or any of its Affiliates unless the price and terms thereof are competitive with those obtainable from unrelated vendors, or are the subject of competitive bidding, or are regulated by governmental agencies;

(e) Borrow any money on behalf of SNW (or for SNW's account) or sell (or agree to sell) any assets of the Project (other than Inventories and other than items of Furniture and Equipment being replaced in the ordinary course of business) that have not been specifically designated for sale in an approved Annual Capital Budget;

(f) Establish credit policies with respect to the operation of the Project or enter into policies and agreements with credit card organizations and travel organizations;

(g) Do any act affecting the Nation's ownership of the Project or the rights of SNW in the Project;

(h) Do any act obligating SNW to any third party that is not reasonably related or incidental to the performance of Manager's responsibilities in accordance with the terms and conditions of this Agreement, including the then effective approved Annual Operating Budget and Annual Capital Budget;



(i) Incur any expense for capital improvements, replacements, or repairs which is properly capitalized and which is not contained in the approved Annual Capital Budget, except to the limited extent permitted by Section 2.3(f)(ii);

(j) Set the prices for customers to use the Glass Bridge except for the prices that have been determined for the first year of the Operating Term, as set forth in Sections 2.3(b) and 2.3(c); or

(k) Do any other act or incur any expenditure that, pursuant to the terms of this Agreement requires the prior consent or approval of SNW unless and until such consent or approval is first obtained in writing.

2.8 Approval Process. Whenever in this Agreement the consent or approval of a party is required, unless otherwise provided in this Agreement with respect to such matter, the party requesting such approval or consent shall provide the other party with a written request for such approval or consent, providing sufficient detail to allow the other party to adequately and properly evaluate the request. Unless otherwise provided in this Agreement, a party shall not unreasonably withhold, delay, or condition its consent or approval; however, if a party fails to respond to a written request for consent or approval within 20 Business Days of receipt of the request and the detailed explanation, such party shall be deemed to have approved the matter. All disapprovals must be in writing and contain a detailed explanation for such disapproval.

2.9 Negation of Property Interest. The covenants of SNW and other provisions of this Agreement are not intended (and shall not be construed) to create or grant a leasehold or any other real property interest in favor of Manager with respect to all or any part of the Project, other than a license to use the Project as set forth in this Article 2 for so long as this Agreement remains in effect.

2.10 Performance of Management Services by Subsidiary. From time to time, Manager may provide its management services pursuant to this Agreement through a Qualified Subsidiary; subject in all cases to the following:

(a) Manager shall remain fully liable and obligated for all of the obligations and duties of Manager under this Agreement;

(b) Prior to performing any services under this Agreement, the Qualified Subsidiary shall agree in writing, for the benefit of SNW and Manager, to be bound by the terms of this Agreement applicable to Manager, as they relate to the services to be performed by such Qualified Subsidiary, and to perform those services in accordance with the terms and conditions of this Agreement;

(c) Manager shall not be entitled to delegate any right to approve or consent to any matter under this Agreement requiring the consent or approval of Manager, and under no circumstances will any consent or approval ever be required from the Qualified Subsidiary;

(d) Manager shall supervise the Qualified Subsidiary in all aspects of the services performed by the Qualified Subsidiary, and Manager agrees to indemnify, defend, and hold SNW and its Related Parties harmless for, from and against any and all Claims arising out of or resulting from the services performed by the Qualified Subsidiary or the actions of the Qualified Subsidiary, to the extent such services or actions are not in compliance with the terms of this Agreement, which indemnity shall survive the expiration or termination of this Agreement; and

(e) Any and all costs that are incurred in connection with the delegation permitted by this Section 2.10 that would not have been incurred but for the delegation, such as fees payable to the Qualified Subsidiary, shall be paid exclusively by Manager promptly when due, and under no circumstances shall such costs be deemed Gross Operating Expenses.

As used in this Section 2.10, a "Qualified Subsidiary" means an entity that is wholly owned by Manager, David Jin, Yvonne Tang, or a trust in which David Jin and/or Yvonne Tang are the sole trustees, or any combination of the foregoing and in which David Jin has primary management responsibility; *provided, however*, that, up to 10% of the ownership interests in the Qualified Subsidiary may be held by third parties that have been approved in writing by SNW, such approval not to be unreasonably withheld, delayed, or conditioned.

2.11 Discount to Manager During Operating Term. During the Operating Term, the usage fee to Manager, as a Tour Operator, for individual usage of the Glass Bridge at a particular time shall be equal to 85% of the lowest rate then being charged to any third party other than Manager.

2.12 SNW Customer Preference. Upon 30 days written notice from SNW, Manager will give preference to and schedule all of SNW's customers and special tours at the Glass Bridge and the Shuttle Bus Service based on availability.

### ARTICLE 3 MANAGER'S FEE; DISBURSEMENT TO SNW

3.1 Amount of Manager's Fee. In consideration of Manager's performance hereunder, including during the Construction Term, SNW shall pay to Manager a Manager's Fee equal to the following:

(a) For the Fiscal Year commencing on the first day of the Operating Term Date and ending on December 31 of that year and for the next five full Fiscal Years, an amount equal to 50% of Net Revenues;

(b) For the next five full Fiscal Years, an amount equal to 40% of Net Revenues for each such Fiscal Year;

(c) For the next five full Fiscal Years, an amount equal to 30% of Net Revenues for each such Fiscal Year; *provided, however*, that if, by the time of commencement of the period described in this subsection (c), Manager has not earned an aggregate total Manager's Fee pursuant to subsections (a) and (b) equal to the Manager's Investment, then, until such time as Manager has earned an aggregate total Manager's Fee pursuant to subsections (a) and (b) and this subsection (c) equal to the Manager's Investment, the amount paid to Manager pursuant to this subsection (c) shall be 50% of Net Revenues rather than 30% of Net Revenues; *provided, further, however*, that Net Revenues for the fiscal year in which Manager has finally earned a aggregate total Manager's Fee equal to Manager's Investment, shall, for purposes of the annual reconciliation pursuant to Section 3.4, be prorated for such year, based on a 365-day year, and Manager shall be deemed to have earned and shall be paid 50% of such Net Revenues on a daily basis, until the aggregate total Manager's Fee pursuant to subsections (a) and (b) and this subsection (c) equal to the Manager's Investment, and thereafter Manager shall be deemed to have earned and shall be paid 30% of such Net Revenues. If at the end of the 5-year period described in this subsection (c), Manager still has not received an aggregate total Manager's Fee

equal to Manager's Investment, there shall be no further adjustments to the amount of the Manager's Fee, but the Manager's Fee shall be payable pursuant to subsection (d) below.

(d) For the remainder of the Operating Term, an amount equal to 25% of Net Revenues for each Fiscal Year during the remainder of the Operating Term.

3.2 Net Revenues; Limitation; Disbursements. No Manager's Fee shall accrue or be payable unless the actual Gross Operating Revenues for a given Fiscal Year exceed the Gross Operating Expenses for that Fiscal Year, such that there are no Net Revenues for such Fiscal Year. If there are Net Revenues for a given Fiscal Year, as determined by the Annual Operations Statement provided by SNW for such Fiscal Year, 100% of such Net Revenues shall be distributed to SNW as soon as they are determined, but in any event within 60 days following the end of the Fiscal Year to which such Net Revenues relate.

3.3 Interim Payments. Within 60 days following the end of each calendar quarter occurring within a particular Fiscal Year, SNW shall pay to Manager an interim amount equal to 90% of the percentage set forth in Section 3.1 applicable to the fiscal year in which such calendar quarter occurs of the excess, if any, of Gross Revenues over Gross Operating Expenses for such quarter, as determined by SNW (each such payment being referred to as an "Interim Payment").

3.4 Annual Reconciliation. Within 60 days following the end of each Fiscal Year for which there are Net Revenues, SNW shall pay to Manager an amount equal to the Manager's Fee for such Fiscal Year less the aggregate total of the Interim Payments made to Manager pursuant to Section 3.3 with respect to such Fiscal Year; *provided, however*, that if the aggregate total of such Interim Payments exceeds the Manager's Fee for such year, then Manager shall pay the excess to SNW within the 60-day period.

#### ARTICLE 4 BOOKS AND RECORDS; ACCOUNTING

4.1 Books and Records. SNW shall keep full and adequate books of account and other records reflecting the results of operation of the Project, all in accordance with generally accepted accounting principles. The books of account and all other records relating to or reflecting the operation of the Project shall be kept at the offices of SNW and shall be available to Manager and its representatives and its auditors or accountants, at all reasonable times and upon reasonable notice for examination, audit, inspection, copying and transcription. All of such books and records pertaining to the Project at all times shall be the property of SNW. Within 30 days of Manager's written request and at Manager's expense, SNW will provide Manager with copies of all books of account and other records of the Project, which are reasonably available and not disposed of in accordance with SNW's document retention policy. Within 30 days of SNW's written request and at SNW's expense, Manager will provide SNW with copies of all invoices, books of account and other records relating to the construction phase of the Project, which are reasonably available and not disposed of in accordance with Manager's document retention policy.

#### 4.2 Accounting.

(a) SNW shall deliver to Manager within 20 days after the end of each calendar quarter an interim accounting showing the results of the operation of the Project for such quarter and for the Fiscal Year to date (including a computation of Gross Revenue and Gross Operating Expenses). Such interim accounting and the annual accounting referred to below shall: (i) be taken from the books and records maintained by SNW for the Project in the manner hereinafter specified; and (ii) separately state the amount of the Manager's Fee.

(b) Within 60 days after the end of each Fiscal Year, SNW shall deliver to Manager an unaudited annual income statement and balance sheet for the Project, prepared on an accrual basis, showing Gross Revenues, Gross Operating Expenses, Net Revenues, and any other information necessary to make the computations required hereby for such Fiscal Year (collectively, the "Annual Operations Statement").

(c) The annual financial statements for the Project shall be audited by an independent firm of certified public accountants selected by SNW. If the audit is conducted by a Qualified Accounting Firm, the cost of the audit shall be included within Gross Operating Expenses. Otherwise, the cost of the audit shall be borne by SNW. The audit shall be conducted in accordance with generally accepted accounting principles. As used in this Agreement, a "Qualified Accounting Firm" is an accounting services firm (i) approved by Manager, or (ii) meeting the following criteria: (A) having offices in at least three states; (B) having a regional or national reputation for high standards of professionalism within the accounting and auditing field; (C) having at least 75 partners or principals; (D) having expertise in the area of auditing within the hospitality industry; and (E) having one or more partners or principals licensed as certified public accountants within the State of Arizona. The parties agree that Moss Adams LLP qualifies as a Qualified Accounting Firm.

4.3 Accounting Fee to SNW. For its services pursuant to this Article 4, SNW shall be entitled to receive a monthly Accounting Fee (defined below), such Accounting Fee to be paid to SNW from Gross Operating Revenues within 10 days after the end of each calendar month during the Operating Term. As used herein, "Accounting Fee" means the sum of \$1,500 per month, with such Accounting Fee to be adjusted on each anniversary of the commencement date of the Operating Term to equal an amount equal to the greater of (a) the Accounting Fee in effect immediately prior to such anniversary multiplied by the CPI Adjustment Factor, and (b) the Accounting Fee in effect immediately prior to such anniversary and without any adjustment. As used herein, the "CPI Adjustment Factor" for a particular adjustment means a fraction, the numerator of which is the CPI index for the calendar month (the "Index Month") immediately preceding the calendar month in which the anniversary date occurs and the adjustment is to be made and the denominator of which is the CPI Index for the same Index Month one year earlier. As used herein, "CPI Index" means the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, U.S. City Average, All Items (1982-84=100). If, on a relevant date, the CPI Index does not exist in the above format, SNW will substitute any official index published by the Bureau of Labor Statistics, any successor agency, or similar governmental agency, which is then in existence and which is then most nearly comparable to the CPI Index.

4.4 Records Retention. Manager agrees to keep full, complete and proper invoices and records relating to the construction phase of the Project. SNW agrees to keep full, complete and proper books, records and accounts of Gross Revenues and Gross Operating Expenses and of capital expenditures as are normally examined and required to be kept by an independent accountant pursuant to accepted auditing standards in performing an audit of the same. All such books, records and accounts for a particular Fiscal Year shall be kept for a period of at least three years following the end of each Fiscal Year.

4.5 Right to Audit. At any time within two years after the end of a Fiscal Year, Manager may cause an audit of the books and records of the Project to be made, at Manager's sole expense and not as a Gross Operating Expense, for the purpose of verifying the accuracy of the Annual Operations Statement for such Fiscal Year and any other computations under this Agreement relating to such Fiscal Year. The audit shall be performed by a certified public accountant selected by Manager, and SNW agrees to make all records available for the audit at its offices, unless Manager agrees to a different location. If the results of the audit show any discrepancies that would affect amounts paid or payable by

Manager under this Agreement, then within 10 days of the completion of the audit and the determination of such discrepancy, Manager and SNW shall make any necessary adjusting payments between themselves to remedy the discrepancy.

## ARTICLE 5 OPERATING BUDGET; OPERATING EXPENSES

### 5.1 Annual Operating Budget; Marketing Budget.

(a) Annual Operating Budget. The "Annual Operating Budget" for each Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, shall consist of reasonable estimates of Gross Revenues and Gross Operating Expenses for such Fiscal Year, itemized in a reasonable format, together with the assumptions, in narrative form, forming the basis of such estimates. The Annual Operating Budget shall also include provisions for an operating reserve (the "Operating Reserve"), with the Operating Reserve to be funded as provided in this Agreement. At least 60 days prior to the commencement of each Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, SNW shall prepare and submit the Annual Operating Budget for such Fiscal Year to Manager for its review and approval. Once both Manager and SNW are in agreement on the terms of the Annual Capital Budget for a particular Fiscal Year, Manager shall be authorized to implement such approved Annual Capital Budget.

(b) Marketing Budget. The Annual Operating Budget shall include as a component thereof, a separate marketing budget (the "Marketing Budget") which shall be subject to review and approval by SNW. The Marketing Budget for a particular year shall be prepared by Manager and submitted to SNW for review at least 30 days prior to the date that SNW is required to submit to Manager the Annual Operating Budget for the same year, and, when approved by the parties, for inclusion in the Annual Operating Budget. Unless the parties otherwise agree, each in their sole and absolute discretion, total aggregate expenditures for marketing during the first Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, and the next five full Fiscal Years shall not exceed \$500,000 and thereafter, the annual Marketing Budget for a particular Fiscal Year shall not exceed 5% of Gross Revenues for the prior Fiscal Year. Once both Manager and SNW are in agreement on the terms of the Marketing Budget for a particular Fiscal Year, Manager shall be authorized to implement such approved Marketing Budget.

### 5.2 Operating Account and Operating Reserve.

(a) Establishment of Operating Account; Purpose. All Gross Revenues and additional funds supplied by either SNW or Manager pursuant to this Article 5, together with all collected Sales Taxes and other amounts designated for deposit into the Operating Account (including any amounts transferred to the Operating Account from the Capital Account in accordance with the provisions of Section 6.2(d)(ii)), but exclusive of funds deposited in the Operating Reserve, shall be deposited and held in the "Operating Account." The Operating Account shall be opened at a federally insured financial institution selected by SNW, and the Operating Account shall be maintained at all times by SNW, and checks or other documents of withdrawal therefrom shall be signed by employees or officers of SNW only for payment of Gross Operating Expenses, the Manager's Fee, Sales Taxes, payment of capital expenditures in accordance with the provisions of Section 6.2(d), and remittances to SNW in accordance with the terms of this Agreement.



(b) Establishment of Operating Reserve. Funds supplied by either Manager or SNW for deposit to the Operating Reserve shall be deposited in the Operating Reserve. The Operating Reserve shall be a separate account and shall be opened at a federally insured financial institution selected by SNW, and the Operating Reserve shall be maintained at all times by SNW, and checks or other documents of withdrawal therefrom shall be signed by employees or officers of SNW only for deposit to the Operating Account for the payment of amounts that are permitted to be paid from the Operating Account, such transfers from the Operating Reserve to the Operating Account to be made in accordance with the terms of Section 5.4.

(c) Investments. SNW shall temporarily invest funds held in the Operating Account and the Operating Reserve, with due regard for the cash needs of the Project as set forth in the approved Annual Operating Budget. All amounts earned from any such investments shall not constitute Gross Revenues but shall be accumulated in the Operating Account. Unless Manager otherwise agrees, funds in the Operating Account and the Operating Reserve may only be invested in accounts and instruments (such as certificates of deposit) that are federally insured. If funds are held in time deposits and, because of the cash needs of the Project, the time deposit must be liquidated to provide available funds, SNW shall be solely responsible for any penalty incurred for early withdrawal.

(d) Payments; Timing; and Penalties. SNW shall pay all Gross Operating Expenses (to the extent consistent with the approved Annual Operating Budget, including the Marketing Budget) from the Operating Account on or before the date such expenses are due and payable without incurring any additional fees, premiums, interest, or penalties. If any additional fees, premiums, interest, or penalties are incurred, all such amounts shall be paid directly by SNW from SNW's own funds and not out of the Operating Account, except to the extent that such amounts are incurred as a result of a default by Manager pursuant to this Agreement, including its obligations under Section 2.3(k) or Section 5.3, in which case Manager shall, at its sole expense and upon written demand from SNW, reimburse SNW for any such additional fees, premiums, interest, or penalties that are incurred.

(e) Operating Cash Flow Projections. Commencing on the first day of the month which is at least 90 days prior to the Completion Date (without giving any effect to extensions of the Completion Date by force majeure or change order) and continuing monthly thereafter, Manager shall prepare and submit to SNW, on or before the first day of each calendar month, Manager's cash flow projections for Gross Operating Expenses and Gross Revenues for the next one month, two month, three month and six month periods, which shall be subject to the review and approval by SNW (such projections, as approved by SNW from time to time being referred to as the "Operating Cash Flow Projections").

### 5.3 The Operating Reserve.

#### (a) Funding of the Operating Reserve prior to the Funding Change-Over Date.

(i) On a date to be designated by SNW, which shall not be more than 60 days in advance of the Completion Date (without giving any effect to extensions of the Completion Date by force majeure or change order), Manager shall pay to SNW for deposit to the Operating Reserve as the initial deposit an amount equal to the estimated Gross Operating Expenses for the first full calendar month of the Operating Term and for any partial calendar month in which the Operating Term commences, as set forth in the most current Operating Cash Flow Projections.

(ii) On the first day of each calendar month through the calendar month in which the Funding Change-Over Date occurs, commencing with the second full calendar month in the Operating Term, Manager shall pay to SNW for deposit into the Operating Reserve an amount such that, taking such deposit into account, the balance in the Operating Reserve is equal to the estimated Gross Operating Expenses for such calendar month, as set forth in the most current Operating Cash Flow Projections. If the existing balance in the Operating Reserve as of a funding date exceeds the estimated Gross Operating Expenses for such calendar month, as set forth in the most current Operating Cash Flow Projections, Manager shall not be required to make any payment to SNW for deposit into the Operating Reserve for that month. Such excess, however, shall not be returned to Manager but will be carried forward to succeeding months.

(b) Funding of the Operating Reserve after the Funding Change-Over Date. Beginning on the first day of the first full calendar month following the month in which the Funding Change-Over Date occurs and continuing on the first day of each calendar month thereafter through the remainder of the Operating Term, Manager shall pay to SNW, for deposit into the Operating Reserve, an amount equal to the Manager's Contribution Percentage for such month multiplied by the Contribution Amount for such month. On the day that Manager makes its payment to SNW as required in the preceding sentence, SNW shall also deposit from its funds an amount equal to the Contribution Amount for such month less the amount that Manager is required to pay to SNW for such month. If the existing balance in the Operating Reserve as of the first day of the month in which deposits are otherwise required pursuant to this subsection (b) exceeds the estimated Gross Operating Expenses for such month, as set forth in the most current Operating Cash Flow Projections, neither Manager nor SNW shall be required to make any funds available for deposit into the Operating Reserve for that month. Such excess, however, shall not be returned to Manager or SNW but will be carried forward to succeeding months. As used in this Section 5.3(b), (i) the "Manager's Contribution Percentage" for a given calendar month shall equal the percentage of Net Revenues to which Manager is entitled as Manager's Fee pursuant to Section 3.1 for the fiscal year in which such calendar month occurs; and (ii) the "Contribution Amount" for a given month means the estimated Gross Operating Expenses for that month, as set forth in the most current Operating Cash Flow Projections less the balance in the Operating Reserve as of the end of the prior month.

(c) Monthly Deficits. If at the end of any calendar month, there is a deficit in the Operating Account after application of all available funds in the Operating Reserve (as contemplated by Section 5.4), all determined on an accrual basis, then the amount of the Operating Account deficit shall be added by Manager either (i) to the amount that must otherwise be contributed to the Operating Reserve as of the first day of the month following the month in which there is a deficit pursuant to Section 5.3(a)(ii) or (ii) to the Contribution Amount under Section 5.3(b), whichever is then applicable. Upon the payment of such funds into the Operating Reserve, SNW shall immediately transfer to the Operating Account the amount necessary to eliminate the deficit in the Operating Account.

5.4 Use of Operating Reserve. If at any time there are insufficient funds in the Operating Account to pay Gross Operating Expenses or any other amount that is to be funded from the Operating Account on a current basis and without incurring any additional fees, premiums, interest, or penalties, SNW shall be entitled to transfer from the Operating Reserve to the Operating Account all amounts sufficient to pay such Gross Operating Expenses.

5.5 No Carry-Forward of Net Revenues. Under no event or circumstance will any amount of Net Revenues for a particular Fiscal Year be carried forward in subsequent Fiscal Years for the payment



of Gross Operating Expenses, regardless of whether such Net Revenues are then in the Operating Account, and such Net Revenues shall be distributed to SNW as provided in Section 3.2.

5.6 Operations on behalf of SNW. In performing its duties under this Agreement, Manager shall act solely for the account of SNW. All debts and liabilities to third persons incurred by Manager in the course of its operation and management of the Project, shall be pursuant to the terms and subject to the limitations of this Agreement, and shall be the debts and liabilities of SNW only, and Manager shall not be liable for any such obligations by reason of its management, supervision, direction and operation of the Project for SNW or for any other reason whatsoever. Manager may so inform third parties with whom it deals on behalf of SNW and may take any other steps to carry out the intent of this provision. The foregoing is not intended to relieve or release Manager from any of its funding obligations pursuant to any provision of this Agreement or from liability for damages or other Claims arising as a result of a default by Manager pursuant to this Agreement.

5.7 Manager's Indirect Costs and Expenses. SNW shall not bear or otherwise be responsible for Manager's general corporate or administrative costs and expenses, including its central office overhead and the payroll, other employee benefits, out-of-pocket travel expenses, and related costs of Manager's officers and employees who do not perform all of their services at the Project, except that Gross Operating Expenses shall include the reasonable compensation and other benefits and payroll costs of any such officer or management employee allocable to temporary emergency periods during which he or she is stationed at the Project and is performing services normally performed by Project employees.

5.8 Warranties and Guaranties. If any item for which Gross Operating Expenses are to be incurred shall be made necessary by any condition against the occurrence of which SNW or Manager has received a guaranty or warranty, then Manager shall invoke said guarantees or warranties in SNW's or Manager's name and SNW will cooperate with Manager in the enforcement thereof.

## ARTICLE 6 CAPITAL EXPENDITURES

6.1 Annual Capital Budget. The "Annual Capital Budget" for each Fiscal Year shall consist of reasonable estimates of expenditures for any and all capital improvements (including initial purchases of Furniture and Equipment, replacements and repairs with respect to the Project for such Fiscal Year, itemized in a reasonable format, together with the assumptions, in narrative form, forming the basis of such estimates. The Annual Capital Budget shall also include provisions for appropriate reserves for future capital expenditures, including for replacement of existing capital assets, with such reserves to be funded on an on-going basis, and the amounts so set aside shall, for purposes of the Capital Cash Flow Projections and determining amounts to be funded into the Capital Reserve (defined below), shall be considered capital expenditures in the month in which such funds are to be placed in such reserves. The Annual Capital Budget shall not include any Construction Costs with respect to the design and construction of the Project Improvements pursuant to Section 2.2. With respect to the initial Fiscal Year, SNW shall submit the Annual Capital Budget to Manager for its review and approval within 60 days following the Effective Date. At least 60 days prior to the commencement of each subsequent Fiscal Year, SNW shall prepare and submit the Annual Capital Budget for such Fiscal Year to Manager for its review and approval. The Annual Capital Budgets shall be prepared with a view to providing facilities consistent with the requirements of this Agreement, including the Standards of Operation. Once both Manager and SNW are in agreement on the terms of the Annual Capital Budget for a particular Fiscal Year, Manager shall be authorized to implement such approved Annual Capital Budget.

## 6.2 Capital Account and Capital Reserve.

(a) Establishment of Capital Account; Purpose. Funds deposited by either SNW or Manager pursuant to this Agreement for capital expenditures, including amounts to be deposited to the Capital Reserve, together with any other funds designated in this Agreement for deposit in the Capital Account shall be deposited and held in the "Capital Account." In addition, any proceeds from the sale or other disposition of a capital asset, including any property insurance or condemnation proceeds, shall be placed in the Capital Account. The Capital Account shall be opened at a federally insured financial institution selected by SNW, and the Capital Account shall be maintained at all times by SNW. Checks or other documents of withdrawal therefrom shall be signed by employees or officers of SNW only for payment of capital expenditures, in accordance with the Annual Capital Budget and otherwise in accordance with the terms of this Agreement.

(b) Establishment of Capital Reserve. A "Capital Reserve" shall be established and funded as provided in this Section 6.2, and this Capital Reserve is in addition to any reserves contained in an Annual Capital Budget, as described in Section 6.1. Funds supplied by either Manager or SNW for deposit to the Capital Reserve shall be deposited in the Capital Account and shall be separately accounted for in the Capital Account and shall be deemed to be restricted funds, to be used only as provided in Section 6.2(d)(iii). All other amounts in the Capital Account, other than the Capital Reserve, are unrestricted funds, to be used generally for the payment of capital expenditures in the manner provided in Sections 6.2(d)(i) and 6.2(d)(ii).

(c) Investments. SNW shall temporarily invest funds held in the Capital Account, with due regard for the cash needs of the Project as set forth in the approved Annual Capital Budget. All amounts earned from any such investments shall not constitute Gross Revenues but shall be accumulated in the Capital Account. Unless Manager otherwise agrees, funds in the Capital Account may only be invested in accounts and instruments (such as certificates of deposit) that are federally insured. If funds are held in time deposits and, because of the cash needs of the Project, the time deposit must be liquidated to provide available funds, SNW shall be solely responsible for any penalty incurred for early withdrawal.

### (d) Payments; Timing; and Penalties.

(i) SNW shall pay for all capital expenditures (to the extent consistent with the approved Annual Capital Budget) on or before the date such expenses are due and payable without incurring any additional fees, premiums, interest, or penalties. If any additional fees, premiums, interest, or penalties are incurred, all such amounts shall be paid directly by SNW from SNW's own funds, except to the extent that such amounts are incurred as a result of a default by Manager pursuant to its obligations under Section 2.3(k) or Section 6.3, in which case Manager shall, at its sole expense and upon written demand from SNW, reimburse SNW for any such additional fees, premiums, interest, or penalties that are incurred.

(ii) Payments for capital expenditures shall be made by transferring to the Operating Account the amount required to make such payments, whereupon SNW shall pay the capital expenditure from the Operating Account. Under no circumstances will any amount transferred from the Capital Account into the Operating Account be deemed to be Gross Revenues or be available for the payment of Gross Operating Expenses.

(iii) To the extent that funds in the Capital Account, without taking the Operating Reserve into account, are insufficient to make a capital expenditures payment

pursuant to this Section 6.2(d), SNW shall move such funds as are required to make the payment from the Capital Reserve to the unrestricted portion of the Capital Account

(e) Capital Cash Flow Projections. Commencing on the first day of the month which is at least 90 days prior to the Completion Date (without giving any effect to extensions of the Completion Date by force majeure or change order) and continuing monthly thereafter, Manager shall prepare and submit to SNW, on or before the first day of each calendar month, Manager's cash flow projections for capital expenditures for the next one month, two month, three month and six month periods, which shall be subject to the review and approval by SNW (such projections, as approved by SNW from time to time being referred to as the "Capital Cash Flow Projections").

### 6.3 The Capital Reserve.

#### (a) Funding of the Capital Reserve prior to the Funding Change-Over Date.

(i) On a date to be designated by SNW, which shall not be more than 60 days in advance of the Completion Date (without giving any effect to extensions of the Completion Date by force majeure or change order), Manager shall pay to SNW for deposit to the Capital Reserve as the initial deposit an amount equal to the estimated capital expenditures for the first full calendar month of the Operating Term and for any partial calendar month in which the Operating Term commences, as set forth in the most current Capital Cash Flow Projections.

(ii) On the first day of each calendar month through the calendar month in which the Funding Change-Over Date occurs, commencing with the second full calendar month in the Operating Term, Manager shall pay to SNW for deposit into the Capital Reserve an amount such that, taking such deposit into account, the balance in the Capital Reserve is equal to the estimated capital expenditures for such month, as set forth in the most current Capital Cash Flow Projections. If the existing balance in the Capital Reserve as of the first day of the month in which a deposit is otherwise required pursuant to this clause (ii) exceeds the estimated capital expenditures for such month, as set forth in the most current Capital Cash Flow Projections, Manager shall not be required to make any payment to SNW for deposit into the Capital Reserve for that month. Such excess, however, shall not be returned to Manager but will be carried forward to succeeding months.

(b) Funding of the Capital Reserve after the Funding Change-Over Date. Beginning on the first day of the first full calendar month following the month in which the Funding Change-Over Date occurs and continuing on the first day of each calendar month thereafter through the remainder of the Operating Term, Manager shall pay to SNW, for deposit into the Capital Reserve, an amount equal to the Manager's Contribution Percentage for such month multiplied by the Contribution Amount for such month. On the day that Manager makes its payment to SNW as required in the preceding sentence, SNW shall also deposit from its funds an amount equal to the Contribution Amount for such month less the amount that Manager is required to pay to SNW for such month. If the existing balance in the Capital Reserve as of the first day of the month in which deposits are otherwise required pursuant to this subsection (b) exceeds the estimated capital expenditures for such month, as set forth in the most current Capital Cash Flow Projections, neither Manager nor SNW shall be required to make any funds available for deposit into the Capital Reserve for that month. Such excess, however, shall not be returned to Manager or SNW but will be carried forward to succeeding months. As used in this Section

6.3(b), (i) the "Manager's Contribution Percentage" for a given calendar month shall equal the percentage of Net Revenues to which Manager is entitled as Manager's Fee pursuant to Section 3.1 for the fiscal year in which such calendar month occurs; and (ii) the "Contribution Amount" for a given month means the estimated capital expenditures for that month, as set forth in the most current Capital Cash Flow Projections less the balance in the Capital Reserve as of the end of the prior month.

(c) Monthly Deficits. If at the end of any calendar month, there is a deficit either in the Capital Account after application of all available funds in the Capital Reserve (as contemplated by Section 6.2(d)(iii)) or in the Operating Account (as a result of the payment of capital expenditures from the Operating Account pursuant to Section 6.2(d)(ii) after exhausting all of the funds in the Capital Account), all determined on an accrual basis, then the aggregate amount of such deficits (without any double counting) shall be added by Manager either (i) to the amount that must otherwise be contributed to the Capital Reserve as of the first day of the month following the month in which there is a deficit pursuant to Section 6.3(a)(ii) or (ii) to the Contribution Amount under Section 5.3(b), whichever is then applicable. Upon the payment of such funds into the Capital Reserve, SNW shall immediately transfer to the Capital Account, the amount necessary to eliminate the deficit in the Capital Account and to the Operating Account any amount necessary to eliminate the deficit in the Operating Account arising from the payment of capital expenditures from the Operating Account.

## ARTICLE 7 INSURANCE

7.1 Required Insurance. Manager shall throughout the Construction Term and the Operating Term provide and maintain, with the cost to be charged as a part of Gross Operating Expenses:

(a) Property Insurance. "All-risk" property insurance on the Project Improvements and their component parts and all Furniture and Equipment against damage from risks customarily covered by such policies (including earthquake insurance coverage, if available, and, at Manager's discretion, boiler and machinery insurance) on a full replacement cost basis, with limits and deductibles and other provisions as may be determined from time to time by Manager, with the approval of SNW;

(b) Business Interruption Insurance. Business interruption insurance covering loss of income from the Project for at least 12 months resulting from interruption of business caused by the occurrence of any of the risks insured against under the preceding sentence. The proceeds from business interruption insurance shall constitute Gross Revenue for purposes of this Agreement;

(c) Liability Insurance. Commercial general liability and business automobile liability insurance in amounts satisfactory to SNW, but in any event not less than a combined single limit of \$10,000,000 for each occurrence, and with deductibles and other provisions as may be determined from time to time by Manager, with the approval of SNW, for personal injury and death, and property damage, which shall, among other risks, including coverage against liability arising out of the ownership or operation of motor vehicles, as well as coverage in such amount against all claims brought anywhere in the world arising out of alleged (i) bodily injury, (ii) death, (iii) property damage, (iv) assault or battery, (v) false arrest, detention or imprisonment or malicious prosecution, (vi) libel, slander, defamation or violation of the right of privacy, or (vii) wrongful entry or eviction;

(d) Worker's Compensation Insurance. Worker's compensation insurance or insurance required by similar employee benefit acts as well as insurance having a minimum per occurrence limit as SNW may deem advisable against all claims which may be brought for personal injury or death of Project employees, but in no event less than amounts prescribed by applicable law; and

(e) Other.

(i) Fidelity bonds, with reasonable limits and deductibles to be determined by Manager and approved by SNW, for Manager's employees in job classifications normally bonded or otherwise required by law (except to the extent employee dishonesty with respect to such employees is otherwise covered under other insurance policies), and comprehensive crime insurance, if and to the extent that (i) such insurance does not duplicate existing comprehensive crime coverage in effect for the Project, and (ii) Manager reasonably deems such coverage to be necessary for the Project; and

(ii) Such other insurance as is customarily carried with respect to similar projects or as SNW may reasonably request from time to time.

SNW may require Manager to increase the limits of the above insurance coverage, or to establish, increase or decrease reasonable deductible amounts with respect to such coverage, and all premiums therefor shall be charged as part of Gross Operating Expenses.

7.2 Form of Policies. All insurance required by Section 7.1 shall be in such form and with such companies as shall be reasonably satisfactory to SNW and Manager and shall name both SNW, the Nation, and Manager as named insureds. All policies of insurance shall provide that (i) the insurance company will have no right of subrogation against the holder of any mortgage or other encumbrance on the Project, SNW, the Nation, Manager or any of their respective Affiliates (or the agents or employees thereof), and (ii) that the proceeds thereof in the event of loss or damage shall, to the extent payable to any holder of any such mortgage or other encumbrance, be payable notwithstanding any act of negligence or breach of warranty by SNW or Manager which might otherwise result in the forfeiture or non-payment of such insurance proceeds.

7.3 Certificates. Certificates of all policies shall be delivered to the party hereunder who is not required to purchase the insurance prior to the Effective Date and thereafter certificates of renewal shall be so delivered prior to the expiration date of such policies. All such certificates shall specify that the policies to which they relate cannot be cancelled or materially modified on less than thirty (30) days' prior written notice to such other party.

## ARTICLE 8 TAXES AND UTILITIES

8.1 Taxes. SNW shall pay, prior to delinquency, all real estate taxes, all personal property taxes and all betterment assessments levied against the Project or any of its component parts and such amounts shall be charged as Gross Operating Expenses. Manager shall promptly deliver to SNW all notices of assessments, valuations and similar documents to be filed by SNW or which are received from taxing authorities by Manager.

8.2 Utilities. SNW shall promptly pay all fuel, gas, light, power, water, sewage, garbage disposal, telephone and other utility bills currently as they are incurred in connection with the Project and



such amounts shall be charged as Gross Operating Expenses. Manager shall promptly deliver to SNW all bills for utilities which are received by Manager.

## ARTICLE 9 DAMAGE OR DESTRUCTION; CONDEMNATION

### 9.1 Damage or Destruction.

(a) Reconstruction. If the Project or any portion thereof shall be damaged, destroyed, or rendered unusable at any time or times after the Effective Date by fire, flood, ground subsidence, structural problems, or any other cause (whether insured or uninsured), Manager will, with due diligence, repair, rebuild, or replace the same ("Reconstruction"), utilizing any and all insurance proceeds payable on account of such casualty, so that after such Reconstruction, the Project shall be substantially the same as prior to such damage or destruction and in compliance with all applicable governmental laws or regulations. To the extent that any insurance proceeds payable with respect to the casualty loss are insufficient to complete the Reconstruction, then Manager agrees to pay the additional funds necessary to complete the Reconstruction; *provided, however*, that the amount of any deductible shall be charged as a Gross Operating Expense and paid from the Operating Account.

(b) Timing. Manager shall commence any Reconstruction required under this Section 9.1 within a reasonable time (not to exceed 90 days) after the occurrence of damage or destruction and shall complete such Reconstruction diligently.

### 9.2 Condemnation.

(a) Partial Taking. If only a part of the Project shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority ("Taking"), and in the reasonable opinion of SNW and Manager, the Project can be altered, restored or repaired so as to make it a satisfactory architectural unit, capable of functioning as a first class tourist attraction of similar type and class as prior to the Taking, Manager shall so alter, restore and replace the Project to the extent that the proceeds of such Taking are sufficient to pay for the costs of same, and such proceeds shall be made available to Manager for such purpose. Such work shall be commenced within 90 days after such proceeds become available to SNW and shall be diligently pursued to completion.

(b) Total Taking. If in SNW's or Manager's reasonable opinion the Project cannot be altered, restored or repaired so as to make it a satisfactory architectural unit, capable of functioning as a first class tourist attraction of similar type and class as prior to the Taking, or if the proceeds of such Taking will not be sufficient to pay for the costs of such alteration, restoration or repair, then either party to this Agreement may terminate this Agreement by written notice delivered to the other party within 90 days after such Taking.

(c) Condemnation Awards. All condemnation awards payable with respect to a taking of all or part of the Project shall belong solely to SNW (subject to the right of Manager to utilize such proceeds for rebuilding and restoration pursuant to Section 9.2(a)), but Manager shall be entitled to seek compensation with respect to its rights under this Agreement in connection with any such Taking, so long as such compensation does not reduce any award otherwise payable to SNW.

## ARTICLE 10 TERMINATION OF AGREEMENT

10.1 Termination. This Agreement may be terminated prior to the expiration of the Construction Term or the Operating Term upon the occurrence of one or more of the following events:

(a) Upon the occurrence of any Event of Default, at the option of the non-defaulting party, exercised by written notice of termination to the defaulting party given at least 20 days prior to the proposed termination date, if prior to the proposed termination date, the Event of Default remains uncured, with the 20-day termination notice to be in addition to any other notice or cure period provided with respect to such Event of Default.

(b) At the option of Manager exercised by written notice to SNW in the event of any suspension for a period in excess of 90 days or withdrawal or revocation of any material governmental license or permit required for Manager's performance under this Agreement or the operation of the Project in accordance with the terms hereof, but only if such suspension, withdrawal or revocation is due to circumstances beyond Manager's reasonable control.

(c) At the option of SNW, without cause, effective upon delivery of 30 days prior written notice to Manager, together with payment to Manager (or Manager's designee) in an amount equal to (i) \$25,000,000, if termination occurs during the Construction Term; (ii) \$50,000,000, if termination occurs after the Operating Term has commenced and prior to the 5th anniversary of commencement of the Operating Term; (iii) \$40,000,000, if termination occurs prior to the 10th anniversary of commencement of the Operating Term; (iv) \$30,000,000, if termination occurs prior to the 15th anniversary of commencement of the Operating Term; or (v) \$20,000,000, if termination occurs at any time following the 15th anniversary of commencement of the Operating Term.

(d) At the option of SNW and upon the death of David Jin or if David Jin becomes mentally incompetent such that he is unable to meaningfully participate in the management of Manager, upon delivery of 30 days prior written notice to Manager, together with payment to Manager (or Manager's designee) in an amount equal to (i) \$18,750,000, if termination occurs during the Construction Term; (ii) \$37,500,000, if termination occurs after the Operating Term commences and prior to the 5th anniversary of commencement of the Operating Term; (iii) \$30,000,000, if termination occurs prior to the 10th anniversary of commencement of the Operating Term; (iv) \$22,500,000, if termination occurs prior to the 15th anniversary of commencement of the Operating Term or contract continues to David Jin's designated survivor for the unexpired term of the contract; or (v) \$15,000,000, if termination occurs at any time following the 15th anniversary of commencement of the Operating Term; *or contract continues to David Jin's designated survivor for the unexpired term of the contract.*

(e) At the option of SNW and at such time as both David Jin and his wife, Yvonne Tang, are deceased or at such time as both David Jin and Yvonne Tang Gin become mentally incompetent such that neither is able to meaningfully participate in the management of Manager, upon delivery of 30 days prior written notice to Manager, together with payment to Manager (or Manager's designee) in an amount equal to (i) \$12,500,000, if termination occurs during the Construction Term; (ii) \$25,000,000, if termination occurs after the Operating Term has commenced but prior to the 5th anniversary of commencement of the Operating Term; (iii) \$20,000,000, if termination occurs prior to the 10th anniversary of commencement of the Operating Term; (iv) \$15,000,000, if termination occurs prior to the 15th anniversary of commencement of the Operating Term or contract continues to David Jin's designated survivor



for the unexpired term of the contract; or (v) \$10,000,000, if termination occurs at any time following the 15th anniversary of commencement of the Operating Term; *or contract continues to David Jin's designated survivor for the unexpired term of the contract. Attn R.*

(f) Upon the election of a party to terminate this Agreement pursuant to any right of *(Bentley)* termination otherwise provided in this Agreement.

10.2 Transition Procedures. Within 15 days following the expiration or termination of this Agreement for whatever reason, SNW and Manager shall do the following (and the provisions of this Section 10.2 shall survive the expiration or termination of this Agreement until they have been fully performed):

(a) Manager shall execute all documents and instruments necessary to transfer (if transferable) to SNW or its nominee all governmental permits and licenses held by Manager necessary to operate the Project, and all rights under third party warranties on property and services purchased by Manager for the Project.

(b) Manager shall assign to SNW or its nominee, and SNW and its nominee (if any) shall assume, all leases and concession agreements in effect with respect to the Project then in Manager's, rather than SNW's, name.

(c) Manager shall deliver to SNW all keys, safe combinations, and other property of SNW then in the possession of Manager's officers, employees and its Affiliates.

(d) Manager shall immediately grant and transfer, by instruments provided by SNW, any right and interest which Manager might claim in the good will which has arisen from the use prior to the expiration or termination of this Agreement of the Proprietary Marks. Manager acknowledges that it has no right, title or interest in any of SNW's Proprietary Marks, and Manager agrees that no right or remedy of Manager, nor any other provision of this Agreement, shall confer on Manager or any transferee, assignee, sublicensee or successor of Manager, or any person, firm, or corporation claiming through or by Manager, the right to use any of the Proprietary Marks whether before or after the expiration or termination of this Agreement. SNW shall have the right to seek injunctive or other relief in a court of competent jurisdiction to enforce the foregoing provisions, and if such enforcement shall be necessary, Manager shall bear all of SNW's cost, including attorneys' fees, of such enforcement.

(e) Manager shall immediately remit to SNW from the Operating Account and the Capital Account all funds remaining, if any, after payment of all accrued Gross Operating Expenses, the Manager's Fee and other amounts due Manager; *provided, however,* that if the termination is as a result of an Event of Default by Manager, in addition to any other remedies available to SNW, including the right to collect damages, any unpaid Manager's Fee will no longer be due and payable to Manager.

(f) SNW may interview and offer employment to any such persons who were performing services at the Project, and Manager shall cooperate with such efforts by SNW if requested by SNW.

### 10.3 Rights of Manager following Expiration of Term.

(a) Glass Bridge Rights. Following the expiration of the Operating Term, Manager shall have the following rights and benefits:

(i) For a period of 15 years following expiration of the Operating Term, Manager shall have the right, as a Tour Operator, to utilize 50% of the maximum capacity of the Glass Bridge on a daily basis; *provided, however*, that in order to utilize any such capacity, Manager must give SNW at least seven days prior written notice of the Glass Bridge capacity that Manager elects to reserve for a particular day, accompanied by payment for such capacity. If such notice is not given or such payment is not made, then Manager shall have no obligation to make such capacity available on such date. Amounts paid by Manager pursuant to this provision are non-refundable even if not used. By way of example, if Manager requests a capacity reservation for 40 individuals on September 8 of a particular year, Manager must give written notice of such reservation by September 1 and pay to SNW an amount equal to the individual usage fee determined pursuant to Section 10.3(a)(ii) multiplied by 40, and SNW shall be entitled to retain the full amount even if only 30 individuals actually use the reserved capacity.

(ii) For a period of 15 years following expiration of the Operating Term, the usage fee to Manager, as a Tour Operator, for individual usage of the Glass Bridge at a particular time shall be equal to 85% of the lowest rate then being charged to any third party other than Manager.

(b) Limitation. The rights provided in Section 10.3(a) shall only be available to Manager if the Operating Term expires in accordance with its terms; no Event of Default by Manager exists as of the expiration of the Operating Term and no event or circumstance has occurred that is continuing which, with the giving of notice or the passage of time, would constitute an Event of Default by Manager; and there has been no termination or expiration of the Operating Term for any reason other than the passage of time.

(c) Survival. The provisions of this Section 10.3 shall survive the expiration of the Operating Term; *provided, however*, that under no circumstances will the provisions of this Section 10.3 be construed to be a continuation of any right whatsoever of Manager to manage or operate the Project. Upon expiration of the term and the commencement of the rights of Manager under this Section 10.3, the parties shall, if requested by SNW, enter into a separate agreement dealing with rights of Manager under this Section 10.3, whereupon the provisions of this Section 10.3 shall be of no further force or effect but shall be governed solely by such separate agreement.

## ARTICLE 11 EVENTS OF DEFAULT; REMEDIES

11.1 Defaults. Each of the following shall constitute an "Event of Default" hereunder with respect to a party:

(a) Any failure by such party to pay any amount due and payable pursuant to this Agreement within 15 days following receipt of written notice of such failure given to such party by the other party.

(b) The failure of such party to perform, keep or fulfill any of its other covenants, undertakings or obligations set forth in this Agreement or the material breach of any of its representations or warranties hereunder, if such failure or breach is not cured within 30 days after written notice specifying such failure or breach is received by such party from the non-defaulting party; *provided, however*, that if such failure or breach is curable but is not reasonably capable of

being cured within such period, and such party commences to cure such default during such period and thereafter prosecutes such cure to completion with all due diligence, then no Event of Default by such party shall exist.

(c) The Bankruptcy of such party.

11.2 Remedies. Upon the occurrence of an Event of Default by a party, the non-defaulting party may pursue any or all of the following:

(a) Terminate this Agreement as provided in Section 10.1(a);

(b) Elect to make such payments or take any and all action deemed necessary by the non-defaulting party, in such non-defaulting party's sole and absolute discretion, to cure the default, and all sums expended by the non-defaulting party in connection therewith shall be paid by the defaulting party to the non-defaulting party within ten (10) days of receipt by the defaulting party of an invoice and demand therefor; or

(c) Pursue any other right or remedy which the non-defaulting party may have at law or in equity.

## ARTICLE 12 ASSIGNMENTS; OWNERSHIP CHANGES

12.1 Assignments. Except as otherwise provided in Section 12.2, neither party may assign its interest in this Agreement to any other Person without the prior written consent of the other party, not to be unreasonably withheld. Any attempted assignment without the required prior written consent will be void, will confer no rights upon any third person and will constitute a default under this Agreement.

12.2 Permitted Assignments. Notwithstanding the foregoing, SNW may assign its interest in this Agreement, without the consent of Manager to an entity that is separately managed but wholly owned, directly or indirectly, by the Nation or by its successor in interest as the owner of the Site. If SNW makes a permitted assignment pursuant to this Section 12.2, then, any other provision of this Agreement to the contrary notwithstanding, if the assignee gives a permissible notice of termination to Manager under Section 10.1(a) at any time within 30 days following the date of the assignment, whether on account of events or circumstances occurring prior to or subsequent to the assignment, and the notice of termination relates solely to an Event of Default under Section 11.1(b), the 20-day cure period described in Section 10.1(a) shall be 60 days. The foregoing provision shall not effect in any way any notice of termination given prior to the date of the assignment or to any notice of termination given more than 30 days following the date of the assignment.

12.3 Requirements; Release. Each assignment permitted under this Article 12 will be evidenced by an instrument in writing executed by the assignor and assignee. Each assignee will also agree in writing to assume, to be bound by, and to perform the terms, covenants, and conditions of this Agreement to be done, kept, and performed by the assignor. One executed copy of such written instrument will be delivered to the non-assigning party. No such assignment will release the assigning party from such party's obligations under this Agreement unless the non-assigning party agrees in writing to such release, except that in the case of an assignment pursuant to Section 12.2, upon execution by the assignor and assignee of a writing satisfying the assumption requirements of this Section 12.3, the assignor shall be automatically released from any further liability under this Agreement. A non-assigning

party's consent to an assignment on one occasion will not be deemed a consent to any subsequent assignment.

12.4 Indirect Transfers. Any sale, transfer, encumbrance, or other disposition of a Controlling Interest in a party will be deemed a prohibited assignment of this Agreement under this Article 12, unless the party has complied with the provisions of this Article 12. As used herein, "Controlling Interest" means an interest, the ownership of which empowers the holder to exercise a controlling influence over the management, policies or personnel of a Person. Ownership of 10% or more of the equity or voting securities or interests of a Person or ownership of any general partnership interest in a partnership will be deemed conclusively to constitute a Controlling Interest in the Person or partnership, as the case may be.

### ARTICLE 13 ADDITIONAL COVENANTS

13.1 Right of First Offer. If, during the Construction Term or the Operating Term, SNW decides to pursue development on the Hualapai Indian Tribe reservation of a destination resort, SNW shall send to Manager a written request for proposal (the "RFP"), stating in the RFP generally the type of services that SNW anticipates needing from third-parties in connection with development and operation of the resort. The RFP shall be sent to Manager at least 30 days prior to sending the RFP to any other Person, during which time, Manager may, but is not required to, present a proposal and offer to SNW in response to the RFP (the "Manager's Offer"). SNW will give due consideration, in the sole and absolute discretion of SNW, to Manager's Offer, if made; however, SNW is not required to accept Manager's Offer nor does the sending of the RFP by SNW or any consideration by SNW of Manager's Offer, if made, represent any commitment or agreement whatsoever that SNW will in fact develop the resort or that Manager has any rights in the resort.

#### 13.2 Non-Competition Provisions.

(a) The Gift Shop. During the Operating Term, Manager will not stock or offer for sale at the Project, including in the gift shop at the Project, any item or class of items that is then available for sale at the existing gift shop located at Grand Canyon West; provided, however, that this restriction shall not apply to any item advertising, depicting, or otherwise related to the Glass Bridge or the Project.

(b) Other Competing Businesses of Manager. During the Operating Term and for a period of 10 years after expiration of the Operating Term or its earlier termination for any reason other than by Manager as a result of an Event of Default by SNW, neither Manager nor any Affiliate of Manager shall operate a Manager Competing Business or have a direct or indirect ownership interest in any Person that operates a Manager Competing Business within the Restricted Area. The provisions of this Section 13.2(b) shall survive the expiration or termination of this Agreement.

(c) Competing Business by SNW. During the Operating Term, neither SNW nor any Affiliate of SNW, including the Nation, shall operate a SNW Competing Business or have a direct or indirect ownership interest in any Person that operates a SNW Competing Business.

(d) Certain Definitions. As used in this Section 13.2:

(i) "SNW Competing Business" means any business similar to the Project and which includes a viewing bridge at the rim of the Grand Canyon;

(ii) "Manager Competing Business" means any business enterprise that is similar to or would otherwise be competitive with any business at any time owned by the Nation or its Affiliates, including all businesses currently operating at Grand Canyon West; *provided, however*, that offering, arranging or conducting motorized or air tours at other tourist sites at the Grand Canyon, including at either the South Rim village or the North Rim village by Manager or an Affiliate of Manager on an incidental basis, not to exceed 10% of the gross revenues of such businesses, shall not be deemed a Manager Competing Business; and

(iii) "Restricted Area" means and includes the Hualapai Reservation, the Havasupai Reservation, Grand Canyon National Park, and any privately-owned land located within 25 miles of the borders of the Hualapai Reservation, the Havasupai Reservation, or Grand Canyon National Park

13.3 Eagle Point Road. Within seven years following commencement of the Operating Term, SNW agrees, at its sole expense, to pave the approximately two mile section of Eagle Point Road from the first existing turn off from the paved Guano Point Road (heading in the direction of Guano Point) past the Site and to the point where Eagle Point Road rejoins the Guano Point Road, such paving to be substantially similar in materials and width to the existing Guano Point Road. SNW shall not be required to install any curbs or gutters in connection with such paving unless otherwise required by applicable law.

13.4 Shuttle Bus Service.

(a) Agreement to Provide. Manager agrees that, from and after commencement of the Operating Term through the earlier of (i) the 10th anniversary following the Diamond Bar Road Completion Date, or (ii) the 25th anniversary of the Effective Date (the "Shuttle Service Term"), Manager will, at Manager's sole cost and expense, maintain and operate the Shuttle Bus Service in accordance with the terms, conditions and requirements of this Section 13.4. Under no circumstances will any costs or expenses associated with the Shuttle Bus Service, including, without limitation, costs to design and construct the Staging Lodge, costs for the Tour Vehicles, and ongoing operational costs be deemed to be Gross Operating Expenses or capital expenditures subject to Article 6.

(b) Description of the Shuttle Bus Service. The "Shuttle Bus Service" shall consist of a first class shuttle bus service meeting the requirements of this Section 13.4 and providing shuttle service for members of tour groups and other individuals to and from the Staging Lodge and the Project Improvements, including (i) a shuttle to and from the Staging Lodge and Grand Canyon West (the "Diamond Bar Shuttle"), (ii) a shuttle to and from Grand Canyon West and the Glass Bridge (the "Glass Bridge Shuttle"), and (iii) a shuttle to and from Grand Canyon West and Guano Point (the "Guano Point Shuttle").

(c) Staging Lodge: Hours of Operation.

(i) Prior to commencement of the Shuttle Service Term, Manager shall design and construct a first class staging and check-in facility of at least 4,000 square feet, with associated paved and lighted parking lot and ancillary improvements (all such improvements being referred to collectively as the "Staging Lodge"). The Staging Lodge shall be constructed in a good and workmanlike manner by a licensed general contractor on the real property owned by Manager, located on Pierce Ferry Road, near its intersection with the Diamond Bar Road, and more particularly described on Exhibit C.



The design of the Staging Lodge shall be subject to the prior review and approval of SNW, such approval not to be unreasonably withheld, delayed, or conditioned.

(ii) The Staging Lodge shall be operated and maintained in first class condition and repair throughout the Shuttle Service Term.

(iii) The Shuttle Bus Service and the Staging Lodge shall be operated and available for use by the public throughout the Shuttle Service Term at the following times (collectively, the "Hours of Operation"):

(A) Daily, starting each day at least 30 minutes prior to the first scheduled arrival of any organized tour group at the Staging Lodge and operating continuously thereafter throughout the day until the later of (1) 120 minutes following the last scheduled arrival of any organized tour group at the Staging Lodge and (2) 30 minutes following the last scheduled return of an organized tour group from the Glass Bridge to the Staging Lodge; and

(B) At such other times as SNW and Manager shall mutually agree upon from time to time, as necessary or appropriate to facilitate and encourage visits to the Glass Bridge.

(iv) All costs and expenses of design and construction of the Staging Lodge, as well as all operational costs and expenses, shall be borne exclusively by Manager.

(d) Required Tour Vehicles. Throughout the Shuttle System Term and during the Hours of Operation, Manager shall have ready and available the following tour vehicles (collectively, the "Tour Vehicles"):

(i) For use on the Diamond Bar Shuttle, at least four tour coaches, each with a minimum capacity of 40 persons, specially designed and built to handle the rigors of Diamond Bar Road with a minimal chance of breakdown; *provided, however*, that once the Diamond Bar Shuttle ceases to operate as stated in Section 13.4(e)(i), the tour coaches used for the Diamond Bar Shuttle shall be used for the other Shuttle Bus Service or, if not so used, they shall transferred to SNW as provided in Section 13.4(j), as if, on the Diamond Bar Road Completion Date, the Shuttle Service Term had ended with respect to such vehicles;

(ii) For use on the Glass Bridge Shuttle and Guano Point Shuttle, at least three high-end tour buses, each with a minimum capacity of 40 persons; and

(iii) For the use of VIP guests for both the Guano Point Shuttle and the Glass Bridge Shuttle, at least one VIP limousine bus, with a minimum capacity of 12 persons.

Each of the Tour Vehicles shall be continuously maintained by Manager in a first class, safe and clean condition and state of repair. All costs and expenses of acquiring, replacing, maintaining, repairing, and operating the Tour Vehicles shall be paid exclusively by Manager.

(e) Shuttle Operations.

(i) The Diamond Bar Shuttle shall be operated seven days a week, 365 days a year, with the Diamond Bar Shuttle ceasing operations on the Diamond Bar Road

**Completion Date.** While operating, the Diamond Bar Shuttle shall be operated on a daily basis during the Hours of Operation. Following the Diamond Bar Road Completion Date, the Diamond Bar Shuttle service will be permanently discontinued.

(ii) The Glass Bridge Shuttle and the Guano Point Shuttle shall be operated during the Hours of Operation seven days a week, 365 days a year during the entire Shuttle Service Term.

(f) Improvement of Diamond Bar Road. The federal government is involved in a project to completely pave Diamond Bar Road from its intersection with the Pierce Ferry Road to the border of the Nation's reservation (such improvements being referred to as the "Diamond Bar Road Improvements". The date of completion of the Diamond Bar Road Improvements is the date that the government has completed all work to completely pave Diamond Bar Road and all lanes of Diamond Bar Road are first open to the public (the "Diamond Bar Road Completion Date").

(g) Payments to Manager for Shuttle Bus Service.

(i) For each individual using the Diamond Bar Shuttle, SNW shall pay \$3 to Manager; *subject, however,* to increases in such per person amount permitted by Section 13.4(g)(iv). There shall be no additional fee for any individual using the Diamond Bar Shuttle who also uses either or both of the Glass Bridge Shuttle and the Guano Point Shuttle.

(ii) During the period that the Diamond Bar Shuttle is operating, SNW shall also pay to Manager the following amounts, each of which is subject to increase as permitted by Section 13.4(g)(iv), with respect to individuals who utilize either or both of the Glass Bridge Shuttle and the Guano Point Shuttle:

(A) \$6 for every individual that arrives at Grand Canyon West by private vehicle; *provided, however,* that there shall be no fee for any individual that takes a Jeep tour to Grand Canyon West.

(B) \$4 for every individual arriving at Grand Canyon West by a fixed wing Tour Operator; and

(C) \$5 for every individual arriving at the Staging Lodge by transportation provided by a bus Tour Operator.

(iii) After the Diamond Bar Shuttle no longer operates, SNW shall pay to Manager \$6 for every individual utilizing either or both of the Glass Bridge Shuttle and the Guano Point Shuttle; *subject, however,* to increases in such per person amount permitted by Section 13.4(g)(iv).

(iv) On each anniversary of the commencement of the Shuttle Service Term, Manager may increase the fees payable pursuant to Sections 13.4(g)(i), 13.4(g)(ii) and 13.4(g)(iii) to an amount equal to the fee in effect on the day preceding such anniversary multiplied by the CPI Adjustment Factor.

(v) Notwithstanding the foregoing, during the Shuttle Service Term, employees of SNW and/or Manager shall be entitled to use the Shuttle Bus Service without charge or payment to Manager from SNW on regularly scheduled routing.

(vi) Amounts due and payable by SNW under this Section 13.4(g), shall be payable no more frequently than once in a calendar month, within 15 days of receipt by SNW of a detailed invoice and statement of fees due from SNW for the period of time covered by the invoice.

(vii) Under no circumstances will amounts paid or otherwise collected by Manager pursuant to this Section 13.4(g) in connection with the Shuttle Bus Service be deemed to be Gross Revenues.

(viii) In lieu of payments from SNW to Manager under Section 13.4(g)(ii)(B) and (C) and upon SNW's written request, Manager shall, during the period that the Diamond Bar Shuttle is operating, be required to charge the amounts that SNW would have paid under Section 13.4(g)(ii)(B) and (C) from the Tour Operators.

(h) Compliance. Manager shall be responsible, at Manager's sole cost and expense, for obtaining and maintaining in full force and effect, any and all governmental permits, entitlements, licenses, and approvals necessary or appropriate to design, construct, maintain and operate all aspects of the Shuttle Bus Service, including the Staging Lodge and the Tour Vehicles. All of the activities of Manager pursuant to this Section 13.4 shall be undertaken and completed in compliance with all applicable governmental laws, rules and regulations.

(i) Operational Issues: Insurance and Indemnity.

(i) Throughout the Shuttle Service Term, the Shuttle Bus Service shall be advertised by Manager as free to the public, and other than the amounts to be paid to Manager pursuant to Section 13.4(g), Manager shall not charge or collect any other fees for the Shuttle Bus Service.

(ii) All of the individuals involved in providing the Shuttle Bus Service shall be employees of Manager and all labor costs associated with such personnel shall be borne exclusively by Manager. Such employees shall not be deemed to be Project employees and Manager shall not be subject to the requirements of Section 2.6 with respect to such employees. No individual shall be allowed to operate a Tour Vehicle unless such individual has a current, valid state vehicle operator's permit and is otherwise physically, mentally, and emotionally competent to safely and properly operate vehicles such as the Tour Vehicles.

(iii) Throughout the Shuttle Service Term, Manager shall provide and maintain commercial general liability and business automobile liability insurance in amounts satisfactory to SNW, but in any event not less than a combined single limit of \$5,000,000 for each occurrence, for personal injury and death, and property damage, which shall, among other risks, including coverage against liability arising out of the ownership or operation of motor vehicles, as well as coverage in such amount against all claims brought anywhere in the world arising out of alleged (i) bodily injury, (ii) death, (iii) property damage, (iv) assault or battery, (v) false arrest, detention or imprisonment or malicious prosecution, (vi) libel, slander, defamation or violation of the right of privacy, or (vii) wrongful entry or eviction. In providing and maintaining such insurance,

Manager shall comply with the requirements of Sections 7.2 and 7.3 with respect to such insurance; however, the insurance that Manager is required to carry pursuant to this Section 13.4(i)(iii) is in addition to the insurance required pursuant to Article 7, and the cost of the insurance required hereby shall be borne exclusively by Manager.

(iv) Manager agrees to indemnify SNW and its Related Parties and hold each of them harmless for, from and against any and all Claims attributable, directly or indirectly, to the operation by Manager of the Shuttle Bus Service, to any of the activities of Manager, its Related Parties, or their employees, agents, and contractors pursuant to this Section 13.4, or to the breach by Manager of any of its duties and obligation pursuant to this Section 13.4. This indemnity shall survive the expiration or termination of this Agreement.

(j) Ownership of Shuttle Assets. During the Shuttle Service Term, all of the real and personal property assets used in connection with the Shuttle Bus Service, including, without limitation, all Tour Vehicles, the Staging Lodge, the real property on which the Staging Lodge is constructed, and all other real and personal property owned by Manager and used in connection with the Shuttle Bus Service (collectively, the "Shuttle Assets") shall be owned by Manager. Upon expiration of the Shuttle Service Term, Manager agrees to convey and transfer title to all of the Shuttle Assets to SNW, free and clear of any and all liens and encumbrances and in the condition required by this Agreement, without further payment of any amount by SNW to Manager.

#### ARTICLE 14 REPRESENTATIONS AND WARRANTIES

14.1 Representations and Warranties of SNW. As of the date of execution of this Agreement by SNW, SNW warrants and represents to Manager as follows:

(a) Organizational Status. SNW is a tribal corporation duly organized, validly existing and in good standing under the laws of the Nation and has full power and authority under its organizational documents and from the Nation to enter into and to perform its obligations under this Agreement. The person(s) executing this Agreement on behalf of SNW have full power and authority to do so and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby.

(b) Entity Action. All corporate action on the part of SNW and the Nation (which is the sole shareholder of SNW) which is required for the execution, delivery and performance by SNW of this Agreement has been duly and effectively taken.

14.2 Representations and Warranties of Manager. As of the date of execution of this Agreement by Manager, Manager warrants and represents to SNW as follows:

(a) Organizational Status. Manager is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and is duly qualified and in good standing to conduct business in the State of Arizona and within the Nation. Manager has full power and authority under its articles of organization and operating agreement to enter into and to perform its obligations under this Agreement. The person(s) executing this Agreement on behalf of Manager have full power and authority to do so and to execute and



deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby.

(b) Entity Action. All company action on the part of Manager and its members which is required for the execution, delivery and performance by Manager of this Agreement has been duly and effectively taken.

## ARTICLE 15 GENERAL PROVISIONS

15.1 Indemnity. Each party to this Agreement agrees to indemnify the other party and such other party's Related Parties and hold each of them harmless for, from and against all Claims attributable, directly or indirectly, to the breach by such indemnifying party of any obligation hereunder or the inaccuracy of any representation or warranty made by such indemnifying party herein or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby. This indemnity shall survive the expiration or termination of this Agreement.

15.2 Further Assurances. SNW and Manager shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between them and as against third parties.

15.3 Successors and Assigns. Subject to the provisions of Article 12, this Agreement shall be binding upon and inure to the benefit of SNW and Manager and their successors and assigns. The Nation is a designated third-party beneficiary of the provisions of this Agreement intended for its benefit.

### 15.4 Arbitration; Governing Law; Jurisdiction.

(a) Mandatory Arbitration. Any controversy, claim or dispute arising out of or related to this Agreement shall be resolved through binding arbitration. The arbitration shall be conducted by a sole arbitrator; *provided, however*, if the parties cannot agree upon an arbitrator, each party will select an arbitrator and the two arbitrators will select the sole arbitrator to resolve the dispute. Either party may request and thus initiate arbitration of the dispute by written notice ("Arbitration Notice") to the other party. The Arbitration Notice shall state specifically the dispute that the initiating party wishes to submit to arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, as limited by Section 15.4(d). 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. Prompt disposal of any dispute is important to the parties. The parties agree that the resolution of any dispute shall be conducted expeditiously, to the end that the final disposition thereof shall be accomplished within 120 days or less.

(b) Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Arizona and the Hualapai Indian Tribe. The laws of the State of Arizona specifically exclude, however, any laws of the State of Arizona that may be interpreted to (i) waive SNW's or the Nation's sovereign immunity; (ii) require arbitration, other than as agreed to in Section 15.4(a); or (iii) require SNW or the Nation to appear in any courts or other proceedings in the State of Arizona, except federal courts. The 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, and located in or around Peach Springs, Arizona.

(c) Unenforceability. With respect to any provision of this Agreement finally determined by a federal court of competent jurisdiction to be unenforceable, such federal court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the parties shall abide by such federal court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision shall remain in full force and effect.

(d) Limited Waiver of Sovereign Immunity. SNW expressly waives its sovereign immunity with respect to all disputes arising out of this Agreement to the extent permitted under the Constitution of the Nation. SNW's waiver of sovereign immunity from suit is specifically limited by the Constitution of the Nation to the following actions and judicial remedies:

(i) The action must be brought by Manager and not by any other person, corporation, partnership, government, governmental agency or entity whatsoever; and

(ii) Any money damages will be limited to the assets that are solely owned by SNW. No money damages, awards, fines, fees, costs or expenses can be brought or awarded against the Nation in arbitration, judicial, or governmental agency action; and

(iii) An action in a federal court of competent jurisdiction in Arizona to either (i) compel arbitration or (ii) enforce a determination by an arbitrator requiring SNW to specifically perform any obligation under this Agreement (other than an obligation to pay any money damages under Section 15.4(d)(ii)).

15.5 Amendments. This Agreement may not be modified, amended, surrendered or changed, except by a written instrument executed by SNW and Manager.

15.6 Inspection Rights. SNW shall have the right to inspect the Project at any time during the Construction Term and the Operating Term to determine compliance by Manager with its obligations under this Agreement and otherwise in connection with the performance by SNW of its obligations under this Agreement.

15.7 Relationship. In the performance of this Agreement, Manager shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making Manager a partner or joint venturer with SNW, and each party agrees that it will not make any contrary assertion, contention, claim or counterclaim, in any action, suit or other legal proceedings involving Manager and SNW.

15.8 Entire Agreement. This Agreement, which includes the attached Exhibits, constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written.

15.9 Time of the Essence; Force Majeure. Time is of the essence of this Agreement; *provided, however,* that time limitations set forth in this Agreement (other than in Section 2.2, which shall be governed by the provisions of Section 2.2 rather than this Section 15.9), except with respect to monetary obligations, shall be extended for the period of any delay due to causes beyond the delayed party's control

or which cannot be reasonably foreseen or provided against, including, without limitation, strikes, governmental regulations or orders, or events of force majeure.

15.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the parties hereto and all of which shall constitute one and the same agreement.

15.11 Notices. Notices and other communications required or contemplated by this Agreement shall be in writing and shall be given by (a) personal delivery, (b) deposit in the United States mail, certified mail, return receipt requested (which receipt shall be preserved as evidence of delivery), postage prepaid, (c) overnight express delivery service, or (d) facsimile transmission, addressed or transmitted to the parties at the following addresses or telecopier numbers, or to such other address or telecopier number as a party may designate to the others in a writing delivered in accordance with the provisions of this Section:

TO MANAGER: GRAND CANYON WEST DEVELOPMENT, LLC  
530 South Eighth Street  
Las Vegas, Nevada 89101  
Attention: David Jin  
Fax No.: 702-693-6852  
Telephone No.: 702-212-9989

with a copy to: John C. Wawerna, Esq.  
614 South Sixth Street  
Las Vegas, Nevada 89101  
Fax No.: 702-382-1828  
Telephone No.: 702-382-3793

TO SNW: 'SA' NYU WA  
P.O. Box 359  
Peach Springs, Arizona 86434  
Fax No.: 928-769-2410  
Telephone No.: 928-769-2419

with a copy to: Mark D. Ohre, Esq.  
Snell & Wilmer  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202  
Fax No.: 602-382-6070  
Telephone No.: 602-382-6000

All notices and other materials shall be deemed to have been delivered and shall be effective upon the date on which the notice is actually received, if notice is given by personal delivery or by overnight express delivery service, on the third day after mailing if notice is sent through the United States mail, and on the date of transmission if sent by facsimile transmission prior to 2:00 p.m. (local time at point of sending) or the next day if sent after such time.

15.12 Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party will be entitled to recover attorneys' fees in such amount as the arbitrator or arbitration panel may judge reasonable.

15.13 Recording. Manager will not record this Agreement without the prior written consent of SNW; however, promptly following the execution of this Agreement, the parties will execute and record a memorandum of this Agreement, in form and content reasonably acceptable to the parties.

15.14 Remedies Not Exclusive. The various rights and remedies herein contained and reserved to each of the parties, except as herein otherwise expressly provided, are not exclusive of any other right or remedy of such party, but are cumulative and in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by either party, shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

15.15 Interest on Unpaid Amounts. Amounts due and owing from a party to the other party under this Agreement shall bear interest from the date due until paid at the Default Rate.

15.16 Time Periods. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (local Arizona time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a day other than a Business Day, the time for performance or taking such action will be extended to the next succeeding day which is a Business Day.

15.17 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; *provided, however*, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

15.18 Survival. To the extent that this Agreement provides that certain rights are to survive the expiration or termination of this Agreement, the provisions of this Article 15 shall also survive with respect to such rights.

IN WITNESS WHEREOF, Manager and SNW, acting by and through their proper and duly authorized officers or representatives, have each duly executed this Agreement the day and year first above written.

SNW:

'SA' NYU WA,  
a tribally chartered corporation

By [Signature]  
Its Chief Executive Officer

MANAGER:

SKYWALK S.B. DJ  
GRAND CANYON ~~WEST~~ DEVELOPMENT,  
LLC, a Nevada limited liability company

By [Signature]  
Its CEO

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

Within 45 days of executing the Development and Management Agreement, the Manager will provide SNW with an ALTA survey, which will include a legal description of the Glass Bridge site. Upon SNW's approval, such legal description will be attached hereto as Exhibit A by SNW.



**EXHIBIT B**

**DESCRIPTION OF THE PROJECT IMPROVEMENTS**

Construction of (i) a glass bridge at Eagle Point that is 6 feet in width, approximately 130 feet long, with approximately 30 feet over the edge of the rim of the Grand Canyon, (ii) an approximate 5500 square foot building that includes a VIP room, a gift shop, a coffee shop, a display area, at least 2 restrooms and a small kitchen, (iii) a 2000-3000 square foot outside seating area, (iv) a separate building to house the generator, (v) outdoor landscape and (vi) additional improvements required under the Development and Management Agreement or agreed upon by both parties.

**EXHIBIT C**

**LEGAL DESCRIPTION OF THE REAL PROPERTY  
ON WHICH THE STAGING LODGE WILL BE CONSTRUCTED**

The staging lodge property's address is: 26100 North Pierce Ferry Road, Mead View, Arizona 86444, and is approximately 1 acre. Within 10 days of executing the Development and Management Agreement, Manager will send to SNW the legal description of such Property, which, after SNW's approval, will be attached hereto as **Exhibit C** by SNW.

# **Exhibit 3**

# **MANAGEMENT AGREEMENT**

**between**

**HUALAPAI INDIAN TRIBE**

**and**

**'SA' NYU WA, INC.**

**Dated February 19, 2007**

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## TABLE OF CONTENTS

	Page
ARTICLE I      ENGAGEMENT .....	2
1.1      Appointment .....	2
1.2      Authority .....	2
ARTICLE II      OBLIGATIONS .....	2
2.1      Development, Construction, Operation and Management .....	2
2.2      Capital Costs and Operating Expenses .....	2
2.3      Personnel .....	2
2.4      Governmental Laws and Regulations .....	2
2.5      Loans .....	3
2.6      Grants .....	3
2.7      Marketing Program .....	3
2.8      Repair and Maintenance .....	3
2.9      Supplies and Equipment .....	3
2.10      Casualty Damage .....	3
2.11      Liens, Taxes, Assessments .....	3
2.12      Contracts .....	3
2.13      Utilities .....	4
2.14      Plans .....	4
2.15      Construction .....	4
2.16      Permits and Approvals .....	4
2.17      Tests .....	4
2.18      Continuing Standards .....	5
ARTICLE III      TERM .....	5
3.1      Term .....	5
3.2      Termination .....	5
ARTICLE IV      COMPENSATION .....	5
4.1      Distributions to Nation .....	5
4.2      Guarantee .....	5
4.3      Time of Disbursement .....	6
4.3.1      Fifty Percent .....	6



TABLE OF CONTENTS  
(continued)

	Page
4.3.2 Ninety Percent .....	6
4.3.3 One Hundred Percent.....	6
4.4 Enterprise Fee .....	6
4.5 Definitions .....	6
ARTICLE V FINANCIAL RECORDS AND REPORTS .....	7
5.1 Accounting System .....	7
5.2 Books and Records .....	7
5.3 Method of Accounting.....	7
5.4 Inspection.....	7
5.5 Audit .....	7
5.6 Financial Reports .....	8
5.7 Bank Accounts.....	8
5.8 Annual Operating Budget.....	8
5.9 Reports.....	9
5.10 Meetings .....	9
ARTICLE VI INSURANCE .....	9
6.1 Insurance.....	9
6.2 Requirements .....	10
ARTICLE VII LICENSE, NON-INTERFERENCE; CONFIDENTIALITY; INTEREST IN ASSETS.....	10
7.1 License to Operate and Manage .....	10
7.2 Non-interference .....	10
7.3 Confidentiality .....	10
7.4 Interest in Assets.....	10
ARTICLE VIII DEFAULT; TERMINATION .....	11
8.1 Default .....	11
8.2 Remedies.....	11
8.3 Payment Upon Termination.....	11
8.4 Actions Upon Termination .....	11
ARTICLE IX INDEMNIFICATION .....	12

TABLE OF CONTENTS  
(continued)

	Page
ARTICLE X DISPUTE RESOLUTION.....	12
10.1 Disputes Between the Parties.....	12
10.2 Jurisdiction.....	12
10.3 Attorneys' Fees.....	12
10.4 Waivers of Sovereign Immunity.....	12
10.5 Applicable Law.....	13
ARTICLE XI MISCELLANEOUS.....	13
11.1 Representatives.....	13
11.2 Due Authorization.....	13
11.3 Authority.....	13
11.4 The Duty of Parties to Respond.....	13
11.5 Waivers or Consents.....	13
11.6 Pledges of Credit.....	14
11.7 Assignment.....	14
11.8 Successors and Assigns.....	14
11.9 Further Assurances.....	14
11.10 Notices.....	14
11.11 Invalidity of Particular Provisions.....	15
11.12 Captions.....	15
11.13 Gender and Number.....	15
11.14 Entire Agreement; Amendments.....	15
11.15 Construction of Provisions.....	16
11.16 Counterparts.....	16

## MANAGEMENT AGREEMENT

This Management Agreement (the "*Agreement*") is entered into effective as of February 19, 2007 (the "*Effective Date*"), by and between the HUALAPAI INDIAN TRIBE, a federally recognized Indian tribe (the "*Nation*"), and 'SA' NYU WA, INC., a tribally chartered corporation (the "*Enterprise*").

### 1. RECITALS

A. The Nation is the beneficial owner of certain real property held in trust for the Nation by the United States of America (the "*Land*").

B. The Nation desires to develop, construct and operate a glass skywalk, gift shop, and other related facilities (the "*Facilities*") on the Land located on the rim of the Grand Canyon at Eagle Point (the "*Site*").

C. The Nation incorporated the Enterprise, pursuant to Hualapai Tribal Council Resolution No. 82-2003, for the purposes of developing and constructing the Facilities and operating and managing the glass skywalk project, shuttle service, gift shop and related business activities (excluding all businesses managed by Hwal'Bay Ba:J Enterprises, Inc., dba Grand Canyon Resort Corporation under its Management Agreement with the Nation dated May 21, 1996, as amended on May 8, 2002 (the "*HBE Management Agreement*")), on the Site (each a "*Business*" and, collectively, the "*Businesses*") free from political influence.

D. The Nation anticipates and supports the Enterprise's desire to further improve the Land by construction of Facilities on the Site and the updating, modernization, preservation and renovation of additional and related improvements at the Site (the "*Improvements*").

E. The Nation and the Enterprise desire to establish a written contractual relationship between the Nation as owner and the Enterprise as operator and manager of the Businesses and not to explicitly or implicitly create a lessor-lessee relationship or to convey an interest in the Land from the Nation to the Enterprise.

F. The Nation and the Enterprise desire to set forth in writing the terms and conditions under which the Businesses will be operated and managed by the Enterprise.

G. This Management Agreement has been prepared and negotiated pursuant to Resolution No. 82-2003, approved by the Nation's Tribal Council (the "*Tribal Council*") in December, 2003.

NOW, THEREFORE, in consideration for the promises of performance and payment set forth in this Agreement, the receipt and adequacy of which are hereby acknowledged, the parties more specifically agree as follows:

## ARTICLE I

### ENGAGEMENT

1.1 **Appointment.** Effective as of the date of this Agreement, the Nation hereby engages the Enterprise, and the Enterprise hereby accepts such engagement, to develop and construct the Facilities and to operate and manage the Businesses, on the terms and conditions set forth in this Agreement.

1.2 **Authority.** Subject to the terms and conditions set forth in this Agreement (including without limitation, Section 2.4), the Enterprise is hereby authorized and empowered to exercise all duties regarding the development and construction of the Facilities and respecting operation and management of the Businesses.

## ARTICLE II

### OBLIGATIONS

2.1 **Development, Construction, Operation and Management.** The Enterprise shall develop and construct the Facilities and operate and manage each of the Businesses and shall perform all of the services and duties necessary and appropriate to ensure the success of each of the Businesses in accordance with the requirements of this Agreement and the approved Plans and Specifications (as defined below). The Facilities shall be designed and constructed in compliance with (i) all and tribal federal laws of general applicability that relate to construction of projects similar to the Facilities, and (ii) the building codes and other design and construction requirements that would be applicable to the design and construction of the Facilities; *provided, however*, that compliance with tribal laws and regulations will be foremost, and provided that this requirement does not impose any obligation to obtain any licenses, consents, or approvals from any governmental agency, unless otherwise required by applicable law.

2.2 **Capital Costs and Operating Expenses.** The Enterprise shall be responsible for the payment of all operating expenses and capital costs of each Business and any Improvements for such Business, including, but not limited to, all of the costs and expenses set forth in this Article II.

2.3 **Personnel.** The Enterprise shall employ such personnel, including management and staff, as the Enterprise deems necessary for the proper operation and maintenance of each Business. All such personnel shall be employees of the Enterprise. The Enterprise shall afford employment preference to qualified members of the Nation and other Native Americans in accordance with the TERO Ordinance of the Nation. The Enterprise shall create and implement training programs for all employees to ensure that job performance commensurates with operation standards for each Business established by the Enterprise.

2.4 **Governmental Laws and Regulations.** The Enterprise shall comply and cause each Business to comply with all laws and regulations of any governmental authorities having jurisdiction over the Businesses and over the Land on which the Businesses operate, including, without limitation, the laws and regulations of the Nation, the State of Arizona and the United

States of America, and any political subdivision of any of the foregoing, and any agency, department, commission, board, bureau or instrumentality of any of them that now or hereafter lawfully exercises jurisdiction over the Enterprise, the Businesses or the Land; this includes compliance with the Enterprise's Plan of Operation dated December 31, 2003 ("*Governmental Authorities*").

**2.5 Loans.** The Enterprise may, in its own name, borrow funds. The Enterprise shall fully pay and perform, and otherwise comply with, the terms and provisions of any mortgages, loans or agreements affecting any Business.

**2.6 Grants.** The Enterprise may apply for and accept grants of money or in-kind contributions.

**2.7 Marketing Program.** The Enterprise shall create, implement, oversee and monitor an ongoing marketing program for each Business and for the Businesses as a whole.

**2.8 Repair and Maintenance.** The Enterprise shall maintain the Improvements in good repair and condition. The Enterprise shall, to the extent reasonably possible, complete any repairs or maintenance within 45 days after determining the need for such repairs or maintenance provided that completion of emergency repairs shall be expedited and shall be completed as soon as possible.

**2.9 Supplies and Equipment.** The Enterprise shall purchase supplies and equipment for the operation and management of each Business as it deems reasonably advisable or necessary. Where appropriate, the Enterprise shall utilize collective purchasing methods for all of the Businesses in order to reduce the operating expenses of the Businesses.

**2.10 Casualty Damage.** In the event of a fire or other casualty loss to any of the Improvements, property or assets of any Business, the Enterprise shall receive all casualty insurance proceeds and shall use those proceeds to re-establish such Business, including, without limitation, repairing and restoring the Improvements, constructing additional Improvements and acquiring new property or assets, in order to return such Business to its operating condition immediately before such casualty loss.

**2.11 Liens, Taxes, Assessments.** Unless the Enterprise has received the prior consent of the Nation, the Enterprise shall not permit to be enforced against any of the Land or the Improvements, or any Business, or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by the Enterprise. The Enterprise shall discharge any and all liens before any action is brought to enforce same, or with the written approval of the Nation may escrow funds sufficient to discharge any lien it chooses to contest. The Enterprise shall also pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied upon or against the Improvements or the Land.

**2.12 Contracts.** The Enterprise shall have the right to enter into contracts in its own name regarding the provision of goods and services to the Businesses, including, but not limited to, contracts for professional services. The Nation shall be a party to any contract regarding the operation and management of any of the Businesses by a third-party operator.



2.13 Utilities. The Enterprise shall make or cause to be made all requisite arrangements with private or public utilities in order to ensure that water and sewer services and other utilities, in capacities necessary to serve each Business, are, and will be, available to each Business, provided that the applicable utility service is already readily available to the Enterprise. The Enterprise will contract in its own name for the provision of these services.

2.14 Plans. The Enterprise shall engage reputable architects, engineers, designers and/or other like experts and consultants and such experts and consultants shall provide architectural, engineering, design and/or like services necessary for the construction of the Improvement, including, without limitation, the planning, designing and preparation of detailed plans, specifications and drawings therefor. Each of the architects, engineers, designers and/or other like experts and consultants shall be registered and/or licensed, as applicable, in their respective specialties and as may be required by the State of Arizona and shall meet the State of Arizona's licensing requirements. Once approved by the Enterprise ("*Approved Plans*"), a copy of all of the approved plans, specifications and drawings for the Improvements shall be sent to the Nation.

2.15 Construction. The Enterprise shall construct all Improvements in accordance with the Approved Plans. The Enterprise agrees to act diligently and use its best efforts to timely complete all Improvements in a good and workmanlike manner in accordance with the Approved Plans and all applicable governmental requirements and the requirements of any lender funding the cost of construction of such Improvements.

2.16 Permits and Approvals. The Enterprise shall: (A) conduct negotiations with, and enter into agreements with, all appropriate Hualapai Governmental Authorities with respect to the construction, installation or furnishing by any Hualapai Governmental Authority of infrastructure improvements relating to, or benefiting, each Business (including, without limitation, streets, curbs, sewers and utilities) and the portion of the costs, if any, thereof to which any such Hualapai Governmental Authority is willing to contribute, and (B) shall obtain all other necessary permits and approvals of Hualapai Governmental Authorities required for the construction and completion of the Improvements and the operation of the Businesses, including, without limitation, all special permits, variances or authorizations required under applicable zoning, building, and other applicable laws and regulations and all other permits (including, without limitation, monitoring of pending legislation which may affect any necessary approvals of Hualapai Governmental Authorities). Consistent with Article 5(b) of the Constitution of the Hualapai Indian Tribe, the Nation's Tribal Council shall, on behalf of the Enterprise, negotiate and make any contracts with any non-Hualapai Governmental Authorities, unless the Nation requests the Enterprise negotiate such contracts for the Tribe.

2.17 Tests. The Enterprise shall perform or cause to be performed all requisite environmental, soil and other necessary tests to insure that it is feasible both structurally and economically to construct the Improvements. Upon request, the Enterprise shall furnish to the Nation accurate, current and complete copies of all such reports (including, without limitation, environmental, soil and other test results) and other information and materials obtained by the Enterprise in connection therewith.



**2.18 Continuing Standards.** The Enterprise agrees, notwithstanding the authority granted herein, to confer fully and freely with the Tribal Council in the performance of its duties, and to continue to provide information regarding each of the Businesses to the Tribal Council in accordance with the Protocol for Communications attached as Exhibit A. Notwithstanding the authority granted herein, subject to the limitations set forth in **Section 7.2** below, the Enterprise further agrees to abide by those standards and instructions which the Tribal Council may reasonably issue from time to time regarding the operation and management of each Business.

### ARTICLE III

#### TERM

**3.1 Term.** The term (the "*Initial Term*") of this Agreement shall be for a 22 year period, commencing upon the Effective Date and ending on the 22nd anniversary of the Effective Date. This Agreement shall automatically be renewed for successive 5 year periods ("*Subsequent Terms*"), unless terminated in writing by either party, 180 days before the expiration of the current term.

**3.2 Termination.** Notwithstanding anything contained in this Agreement to the contrary, the Nation may terminate this Agreement as a result of a default by the Enterprise as more fully described in **Article VIII**.

### ARTICLE IV

#### COMPENSATION

**4.1 Distributions to Nation.** The Enterprise will make a distribution to the Nation every 6 fiscal months (the "*Distribution Period*") in an amount equaling 100% of Net Revenue for the previous Distribution Period (the "*Distribution*") commencing July 31, 2007. The Distribution will not be distributed to the Nation if the Distribution would cause the Enterprise to decrease its reserves below the minimum balances in the following accounts ("*Reserve Requirements*"):

- (a) the Improvement Reserve Account; and
- (b) the Operating Reserve Account.

If Distribution(s) for that fiscal year can not be distributed because of the Reserve Requirements, then such unpaid Distribution(s) will not be paid or carried over to a subsequent fiscal year, except as set forth in **Section 4.2**.

**4.2 Guarantee.** Notwithstanding anything contained in this Agreement to the contrary, the Enterprise hereby guarantees to the Nation that the Enterprise shall remit to the Nation for each calendar year not less than the projected annual Distribution to the Nation as approved by the Tribal Council in the Annual Budget (the "*Guaranteed Amount*"). All amounts due to the Nation for a calendar year shall be paid to the Nation within 30 days after the Audit (as defined in **Section 4.3.3**) is delivered to the Enterprise. Notwithstanding the foregoing if the payment of the Guaranteed Amount for any calendar year shall cause the Reserve Accounts to

fall below the Minimum Reserve Amount (as described in Section 4.5), then that portion of the Guaranteed Amount that causes the Reserve Accounts to fall below the Minimum Reserve Amount shall not be immediately paid, but shall accrue to the Nation's benefit, and shall be paid to the Nation, to the extent such accrued amounts are available for distribution pursuant to this section on the date(s) that the next Distribution(s) are made to the Nation, until all such accrued amounts are paid in full. The Guaranteed Amount is established by the Tribal Council in the Annual Budget each year, but is not considered to be a liability of the Enterprise that would require the Enterprise to carry a liability on its financial statements.

#### 4.3 Time of Disbursement.

4.3.1 **Fifty Percent.** On or before August 15<sup>th</sup> of each fiscal year, the Enterprise will pay to the Nation 50% of the estimated amount of the Distribution, if any, due to the Nation for the previous Distribution Period. The Estimated Distribution Amount will be calculated based on the financial reports as prepared and delivered to the Nation as set forth in Section 5.6 for the previous Distribution Period.

4.3.2 **Ninety Percent.** On or before March 1<sup>st</sup> of each fiscal year, the Enterprise will pay to the Nation 90% of the estimated amount of the Distributions ("*Estimated Distribution Amount*") for the previous calendar year, if any, due to the Nation for the previous Distribution Periods. The Estimated Distribution Amount will be calculated based on the financial reports as prepared and delivered to the Nation as set forth in Section 5.6 for the previous calendar year.

4.3.3 **One Hundred Percent.** On or before 30 days after the Independent Auditor's Report (as defined in Section 5.6) and annual financial reports ("*Audit*") are delivered to the Enterprise, the Enterprise will pay to the Nation any amounts owed to the Nation as a result of a difference between the Estimated Distribution Amount and the actual amount of the Distribution(s) due to the Nation. In the event that the Enterprise's Estimated Distribution Amount was greater than the Distribution due to the Nation ("*Overpayment*"), the Enterprise will deduct the Overpayment from subsequent Distributions.

4.4 **Enterprise Fee.** As the sole and total compensation for all services to be performed pursuant to this Agreement, the Enterprise shall retain the remaining amount of Net Income as its annual fee ("*Fee*"). The amount of the Fee will be equal to Net Income minus the Distribution(s), if any.

4.5 **Definitions.** For purposes of this Article IV, the following terms are defined as follows:

"*Improvement Reserve Account*" means the improvement reserve account funded each year by the Enterprise in a minimum amount equal to 1½% of the Enterprise's gross revenues generated by the Businesses for that year. The Improvement Reserve Account can be increased above the minimum percentage by the Nation in the relevant Annual Budget.

"*Net Income*" means the amount so designated in the Enterprise's financial reports or annual Audit, as applicable.

*"Net Revenue"* means Net Income minus any annual increase in the Operating Reserve Account as set forth in the relevant Annual Budget (as defined in Section 5.8) and approved by the Nation.

*"Minimum Reserve Amount"* means that amount equal to (a) the Improvement Reserve Account's minimum reserve amount (plus any future increase approved by the Nation in the relevant Annual budget), plus (b) the Operating Reserve Account's minimum reserve amount (plus any future increase approved by the Nation in the relevant Annual Budget).

*"Operating Reserve Account"* means the operating account funded by the Enterprise, with a minimum balance equaling a 6 month operating reserve, as set forth in the relevant Annual Budget. The Operating Reserve Account can be increased above the minimum by the Nation in the relevant Annual Budget.

*"Reserve Accounts"* means both the Improvement Reserve Account and the Operating Reserve Account.

## ARTICLE V

### FINANCIAL RECORDS AND REPORTS

5.1 **Accounting System.** The Enterprise shall maintain an accounting system of records and books of account in conformity with generally accepted accounting principles ("GAAP") acceptable to the Nation. The accounting system for the Enterprise shall include appropriate systems of internal control, operational procedures for accounts receivable, accounts payable, purchasing and receiving, a general ledger, a payroll account, and all other necessary records and books of account.

5.2 **Books and Records.** The Enterprise shall keep and maintain, for a 5 year period, complete and accurate records and books of account relating to the operation and management of each Business and the construction of the Improvements, together with copies of all contracts, subcontracts, bills, invoices, statements, supported or related vouchers and all other instruments and documents relating to construction of the Improvements.

5.3 **Method of Accounting.** The Enterprise shall maintain all financial reports, records and books of account on an accrual basis and in accordance with GAAP.

5.4 **Inspection.** All financial reports, records and books of account prepared or maintained by the Enterprise shall be available for, and subject to, audit, inspection and copying by the Nation or any representative or auditor of the Nation, or any Governmental Authority. The Nation shall give to the Enterprise not less than 5 business days' notice of any such audit or inspection. The audit or inspection shall be conducted during normal business hours at the Nation's cost and expense.

5.5 **Audit.** In the event the Nation disputes any amount due the Enterprise under this Agreement, the Nation may arrange for an audit of the books and records of the Enterprise. Such audit shall be conducted by a certified public accountant or other person acceptable to the Nation. If the audit discloses a misstatement of Gross Revenues by the Enterprise of 3% or more



of the actual Gross Revenues, then the Enterprise shall pay the costs of such audit. If the misstatement is less than 3%, the Nation shall pay the costs of such audit. Any underpayment to the Nation identified by the audit shall be corrected within 30 days by payment by the Enterprise to the Nation of the deficiency. Any overpayment to the Nation identified by the audit shall be corrected by subtracting the overpayment from the amounts to be paid the Nation in accordance with Section 4.3.

**5.6 Financial Reports.** The Enterprise shall prepare and deliver to the Nation, on or before 45 days following the close of each month beginning December 31, 2006, consolidated financial reports as follows: (A) a balance sheet; (B) an income statement; and (C) a cash flow statement. Each report shall cover the preceding month, shall include calendar year-to-date totals, shall be prepared in accordance with GAAP and shall be certified by the Enterprise to be true and correct to the best of its knowledge and belief. The Enterprise shall prepare and deliver to the Nation, on or before 180 days after the end of each calendar year, balance sheets and income statements and a statement of cash flows reflecting the financial condition of the Enterprise for the previous calendar year. These annual financial statements shall have been audited by an independent accounting firm (the "*Independent Auditor's Report*").

**5.7 Bank Accounts.** The Enterprise may open, maintain and close bank accounts in its own name, including, but not limited to, operating accounts, payroll accounts, and replacement reserve accounts. The Enterprise shall not commingle its funds and accounts with funds and accounts of the Nation or GCRC.

**5.8 Annual Operating Budget.** On or before November 15 of each year, the Enterprise shall prepare and submit to the Nation for approval, an annual operating budget for the Enterprise in preliminary draft form (the "*Annual Budget*"), itemizing the projected revenues and expenses for the subsequent calendar year. The Annual Budget shall include, without limitation, the estimated costs and expenses of maintaining and operating each of the Businesses, and shall set forth in one or more separate schedules each of the following: (A) Gross Revenues; (B) operating expenses; (C) maintenance and repairs; (D) replacements and capital improvements for each of the Businesses. Within 30 days following the receipt of the Annual Budget, the Nation shall notify the Enterprise, in writing, by resolution of the Nation's Tribal Council, of the Nation's approval or disapproval thereof. If the Nation disapproves the Annual Budget by written Tribal Council resolution, the Enterprise and the Nation shall immediately consult with each other and the Enterprise shall modify the Annual Budget to the extent necessary to make it reasonably acceptable to the Nation, which acceptance by the Nation shall be by resolution of the Nation's Tribal Council. Until such time as the Annual Budget is approved, the Enterprise shall operate using the previous year's Annual Budget, except to the extent that expenditures are required to prevent a default under an existing loan of the Enterprise. An approved Annual Budget shall form the basis on which the Enterprise shall operate and manage each of the Businesses and incur items of expense incident to the operation and management of each of the Businesses. The Nation acknowledges that actual results may vary from those budgeted because of corresponding variations between budget assumptions and actual conditions. The Annual Budget will represent the Enterprise's reasonable estimates of each of the schedules, and the Enterprise makes no warranty that the financial results projected in the Annual Budget will be achieved. The Enterprise shall be permitted to use its business judgment

incurring expenses set forth in the Annual Budget and may exceed a budgeted expenditure set forth in the Annual Budget if:

- (a) such expenditure is warranted by increased levels of business;
- (b) such expenditure does not exceed 110% of the budgeted line item;
- (c) such expenditure is required to meet emergency conditions; or
- (d) the Enterprise obtains the Nation's prior approval of such expenditure;

and if the Enterprise provides detailed notice to the Nation within 30 days after the end of the month in which the Enterprise exceeded a budget expenditure for the reasons described in (a), (b), or (c) above.

The parties specifically agree that any disputes concerning this Section 5.8 shall not be subject to the arbitration provisions in Article X hereof. Rather than arbitrate any ongoing dispute regarding any proposed or existing Annual Budget, the parties shall meet and confer concerning any dispute.

5.9 Reports. The Enterprise shall submit to the Nation from time to time any reports produced by the Enterprise regarding the Businesses.

5.10 Meetings. Members of the Tribal Council shall be entitled to attend meetings of the board of directors of the Enterprise. The Enterprise shall advise the Nation of the date, time and place of its board of directors' meetings.

## ARTICLE VI

### INSURANCE

6.1 Insurance. During the term of this Agreement the Enterprise shall purchase and maintain the following insurance in amounts satisfactory to the Nation:

(a) Liability insurance for claims for damages because of bodily injury, including death, and from claims for damages, other than to the Business itself, to property which may arise out of or result from the Enterprise's operations under this Agreement, whether such operations be by the Enterprise or another contractor, or anyone directly or indirectly employed by any contractor;

(b) Property insurance upon the Improvements to the full insurable value thereof which shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief;

(c) Workers' compensation insurance on all its employees;

(d) Fidelity bond or employee theft and dishonesty insurance covering the managers, controller, and such other employees as the Nation may reasonably request;

(e) Such other insurance as the Nation may reasonably request; and

(f) Such other insurance as may be required by any lender in connection with the development and operation of the Businesses.

6.2 **Requirements.** All insurance obtained by the Enterprise shall be noncancelable without 30 days' prior written notice to the Nation, and shall name the Nation and any lender for any Business as additional insureds. The Enterprise shall provide Nation with certificates of insurance for each of its policies.

## ARTICLE VII

### LICENSE, NON-INTERFERENCE; CONFIDENTIALITY; INTEREST IN ASSETS

7.1 **License to Operate and Manage.** During the term of this Agreement, the Nation hereby grants the Enterprise a non-revocable, nonexclusive license and right to enter upon the Land and the Improvements in order to operate and manage the Businesses in accordance with this Agreement and a non-revocable, exclusive license to operate and manage the Businesses in accordance with this Agreement. The non-exclusive license granted in this section is subject to the Enterprise's compliance with all of the Nation's laws, rules, and regulations. The Enterprise expressly recognizes that the license is non-exclusive and others may have the right to enter upon the Land and Improvements. Upon the termination of this Agreement, whether through expiration of the term or otherwise, the license to enter the Land and the Improvements and to operate and manage the Businesses shall be automatically revoked.

7.2 **Non-interference.** The Nation acknowledges and agrees that during the term of this Agreement, the Nation shall not interfere with or give orders or instructions to employees of the Enterprise, including, without limitation, the general manager of the Enterprise or any other managers of any of the Businesses, or involve itself in any way with the day-to-day operations of the Enterprise, warrants to the Enterprise uninterrupted, exclusive control of the operations, direction and management of the Businesses.

7.3 **Confidentiality.** The Enterprise agrees, for itself and all persons retained or employed by the Enterprise in performing its services, to hold in confidence and not to use or disclose to others any confidential or proprietary information of the Nation heretofore or hereafter disclosed to the Enterprise or any such persons and designated as such by the Nation, including, but not limited to; any data, information, plans, programs, plants, processes, equipment, costs, operations or customers which may come within the knowledge of the Enterprise or any such persons in the performance of, or as a result of, its services, except where: (A) the Nation specifically authorizes the Enterprise to disclose any of the foregoing to others; (B) such disclosure reasonably results from the performance of the Enterprise's duties hereunder; or (C) such written data or information shall have theretofore been made publicly available by parties other than the Enterprise or its agents.

7.4 **Interest in Assets.** Any and all Improvements, together with any furniture, fixtures, equipment and inventory, including, without limitation, all general intangible assets, (the "FFE&P") relating to the operation and management of the Businesses shall be assets of the



Enterprise and shall be properly reported as such on the financial reports of the Enterprise, during the term of this Agreement. Any sale or conveyance of the Improvements and/or the FFE&I outside the ordinary course of business shall require the Nation's prior approval. Upon the termination of this Agreement, whether through expiration of its term or otherwise, all interest of the Enterprise in the Improvements and the FFE&I shall terminate and shall automatically vest in the Nation, and the Enterprise shall have no further interest in the Improvements or the FFE&I.

## ARTICLE VIII

### DEFAULT; TERMINATION

8.1 **Default.** The Enterprise shall be in default of this Agreement if the Enterprise fails to perform any of its obligations set forth herein, and does not cure by performing within 30 days after receipt of notice from the Nation of such failure; provided, however, if such failure of performance cannot reasonably be cured within such 30 day period, the Enterprise shall not be in default hereunder if the Enterprise shall have commenced curing its failure of performance within said 30 day period and shall complete the cure within an additional 30 days or as soon thereafter as the Enterprise and Nation agree is necessary and appropriate to diligently complete the required performance.

8.2 **Remedies.** In the event of any default hereunder which is not cured by the Enterprise as provided in Section 8.1 above, the Nation may terminate this Agreement upon 30 days' prior written notice, and exercise any other remedies it may have.

8.3 **Payment Upon Termination.** Upon termination of this Agreement each party shall be entitled to receive all payments already paid or accrued as of the time of the occurrence of the default causing the termination.

8.4 **Actions Upon Termination.** Promptly upon termination of this Agreement, whether through expiration of its term or otherwise, the license and right to enter the Land and the Improvements and to operate and manage the Businesses described in Section 7.1 above shall terminate and the Enterprise shall: (A) forthwith surrender and deliver or cause to be surrendered and delivered to the Nation or to the Nation's designee possession and control of the Land, the Improvements, the FFE&I and the Businesses, all funds held by the Enterprise (other than Fees earned), if any, relating to this Agreement, together with a true and complete accounting thereof, (B) forthwith surrender and deliver to the Nation all records, plans, specifications, permits, contracts, receipts for deposits, unpaid bills, canceled checks, bank statements, payroll and employment records, accounting data, technical information, paid bills and all other records, papers and documents which relate to the Businesses; and (C) promptly furnish such other information and take such other actions as the Nation shall reasonably require (including, without limitation, cooperating with the Nation and any new management agent to effectuate an orderly and systematic transition of management responsibility for the Businesses).

## ARTICLE IX

### INDEMNIFICATION

The Nation hereby indemnifies the Enterprise and shall save the Enterprise harmless for, from, and against injuries to personal property and all other damage arising from any acts caused intentionally or by the negligence of the Nation, its officers, agents or employees, or any breach of any covenant of this Agreement, either in and about the Businesses or elsewhere, when the Enterprise is carrying out the provisions of this Agreement or acting under the express or implied directions of the Nation. The Enterprise hereby indemnifies and holds the Nation harmless for, from, and against injuries to personal property and all other damages arising from any acts caused intentionally or by the negligence of the Enterprise, its officers, agents or employees, or any breach of any covenant of this Agreement, except when the Enterprise is acting upon the express or implied direction of the Nation.

## ARTICLE X

### DISPUTE RESOLUTION

10.1 **Disputes Between the Parties.** If any disputes arise between the parties with respect to the relationship, obligations, and liabilities described in this Agreement, before resorting to litigation, the parties shall use their good faith efforts to resolve any disputes between themselves as set forth in this paragraph. Any disputes or claims necessitating injunctive relief are exempt from the provisions of this paragraph. When a dispute arises between the parties, the parties shall communicate the nature of the dispute to each other. If a party wants to pursue resolution of the dispute possibly through litigation it shall so advise the other party. Within 30 days thereafter (or such other timeframe as both parties agree), one or more decision makers from each of the parties shall have met face-to-face for a minimum of five hours (in one or more meetings), during which meeting(s) they shall work in good faith to resolve the dispute in a mutually amicable manner. During these meeting(s), the parties may invite a third party to act as a mediator to assist in the dispute resolution. Except as set forth in this paragraph, no party may bring litigation in any court or before any tribunal unless and until the procedures set forth in this subsection shall have been followed.

10.2 **Jurisdiction.** The sole jurisdiction and venue for actions related to the subject matter hereof shall be the Nation's Tribal Courts. All parties consent to the jurisdiction of such courts.

10.3 **Attorneys' Fees.** In the event either of the parties hereto shall institute any action or proceeding against the other party relating to this Agreement, each party in such action or proceeding shall bear its own costs and attorneys' fees.

10.4 **Waivers of Sovereign Immunity.** Neither party shall waive its immunity from suit other than to the extent allowed in the Constitution of the Hualapai Indian Tribe, and the Operating Agreement of the Enterprise.

**10.5 Applicable Law.** The laws of the Nation and applicable laws of the United States of America shall govern the construction, performance and enforcement of this Agreement. All questions with respect to this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the Nation and applicable laws of the United States of America. To the extent there are no tribal or applicable federal laws, the laws of the State of Arizona shall apply.

## ARTICLE XI

### MISCELLANEOUS

**11.1 Representatives.** The Nation and the Enterprise each agree to designate 1 individual who shall act as its designated representative in connection with the performance of such party's duties and obligations pursuant to this Agreement. The initial representative of the Nation shall be the Chairperson, and the initial representative of the Enterprise shall be the President, Board of Directors. Each party may change its representative by written notice to the other party.

**11.2 Due Authorization.** Each party hereby represents and warrants to the other party that all required action necessary to authorize and to enable such party to execute, deliver and perform and comply with the terms and conditions of this Agreement and consummate the transactions contemplated herein has been taken; and neither the execution and delivery by such party or the compliance by such party with the terms and conditions of this Agreement conflicts or constitutes, or will constitute, a default under, or results, or will result, in a violation of, any agreement or instrument to which such party is a party.

**11.3 Authority.** The Enterprise shall have no right or authority, express or implied, to commit or otherwise obligate the Nation in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by the Nation. The Nation and the Enterprise intend by this Agreement to effect the appointment of the Enterprise as a limited agent of the Nation as to the Businesses only, and not as to all the affairs of the Nation. No other relationship is intended to be created between the Nation and the Enterprise, and nothing in this Agreement shall be construed to be, or create, a partnership or joint venture between the Enterprise and the Nation, or entitle the Enterprise to control in any manner the conduct of the Nation's business or affairs, other than as specified in this Agreement.

**11.4 The Duty of Parties to Respond.** Except as otherwise provided herein, each party shall respond in writing within a commercially reasonable time after the receipt of any request from the other party for approval or directions. The parties acknowledge that prompt decisions are important to the success of operating and managing the Businesses and agree to make such decisions in a timely manner.

**11.5 Waivers or Consents.** No consent or waiver, express or implied, by either party hereto to or of any breach or default by the other party in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder.

The granting of any consent or approval in any one instance by or on behalf of the Nation or the Enterprise shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

**11.6 Pledges of Credit.** The Enterprise shall not pledge the credit of the Nation without the Nation's prior written consent. The Enterprise shall not, in the name of, or on behalf of the Nation, borrow money or execute any promissory note, bill of exchange, or other monetary obligations without the Nation's prior written consent.

**11.7 Assignment.** This Agreement is personal to the Enterprise, and the Enterprise shall have no right, power or authority to assign this Agreement, or any portion hereof or any monies due or to become due hereunder, either voluntarily, involuntarily or by operation of law, without the prior written approval of the Nation, which the Nation shall not unreasonably delay or withhold.

**11.8 Successors and Assigns.** All of the rights, benefits, duties, liabilities, and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective successors and permitted assigns, but shall not inure to the benefit of or be enforceable by any other person.

**11.9 Further Assurances.** Each party to this Agreement agrees that at any time and from time to time, it will, at its sole cost and expense, immediately following the reasonable request of the other party hereto, promptly execute, acknowledge (if necessary) and deliver, or cause to be promptly executed, acknowledged (if necessary) and delivered, such agreements, certificates, statements, instruments and documents, and promptly take, or promptly cause to be taken, such other and further steps and actions as may be required by law or as shall reasonably be deemed necessary by the other party hereto in order to more fully effect, evidence or carry out the intents and purposes of this Agreement.

**11.10 Notices.** All notices, demands, consents, approvals or other communications required or permitted under this Agreement shall be in writing and shall be delivered by hand delivery or by United States certified or registered mail, postage prepaid, return receipt requested, or by Federal Express or other overnight delivery service, or by facsimile to the applicable party at the address hereafter set forth:

To Nation:      The Chairperson  
                    Hualapai Tribal Council  
                    Post Office Box 179  
                    941 Hualapai Way  
                    Peach Springs, AZ 86434  
                    Facsimile: (928) 769-2343

With a copy to:  
Karen L. Liepmann, Esq.  
Gallagher & Kennedy, P.A.  
2575 East Camelback Road  
Suite 1100  
Phoenix, Arizona 85016  
Facsimile: (602) 530-8500



To Enterprise: President  
'SA' NYU WA, Inc.,  
Post Office Box 359  
Highway 66, Suite 889  
Peach Springs, AZ 86434  
Facsimile: (928) 769-2410

With a copy to:  
Mark D. Ohre, Esq.  
Snell & Wilmer, LLP  
One Arizona Center  
400 E. Van Buren Street  
Phoenix, AZ 85004-2202  
Facsimile: (602) 382-6070

Each party may, by notice to the other party, change the address or designate different recipients for the giving of future notices. All notices given as provided herein shall be deemed effective upon receipt if given by hand delivery, 3 days after mailing if given by United States mail, 1 day after deposit with an overnight delivery service if given by Federal Express or other overnight delivery service, and upon receipt if given by facsimile.

**11.11 Invalidity of Particular Provisions.** If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason or to any extent, be held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement, as well as the application of such provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected thereby, and this Agreement shall be legal and valid and be enforced to the fullest extent permitted by law as if such invalid, illegal or unenforceable provision had never been included herein, it being intended by the Nation and the Enterprise that each of the provisions hereof shall be severable. Moreover, it is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

**11.12 Captions.** The captions contained in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be part of this Agreement; nor do the same in any way define, limit, enlarge or describe the scope or intent of this Agreement or affect this Agreement or the interpretation or construction of any provision hereof.

**11.13 Gender and Number.** This Agreement shall be so construed that whenever applicable the use of the singular number shall include the plural number, and the use of the plural number shall include the singular number, and the use of the feminine, masculine or neuter gender shall include the other genders.


**11.14 Entire Agreement; Amendments.** This Agreement and Exhibits attached hereto embody the entire agreement and understanding between the parties pertaining to the subject matter hereof. This Agreement may not be altered, amended, canceled, changed, modified, supplemented or waived except by a written instrument dated and executed by both parties. There are no oral or written arrangements, promises, agreements, conditions, understandings, inducements, warranties or representations, express or implied, between the parties relating to the subject matter hereof other than as may be expressly set forth herein; the same, if they ever existed, having been superseded by, or incorporated into, this Agreement.

11.15 **Construction of Provisions.** The Nation and the Enterprise each agree that both it and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the party with primary drafting responsibility shall not apply to this Agreement or to any provision hereof or to any exhibits attached hereto.

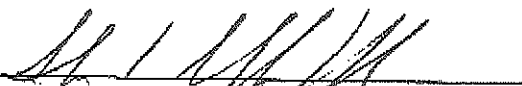
11.16 **Counterparts.** This Agreement may be executed in any number of separate identical counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HUALAPAI TRIBE, a federally recognized  
Indian tribe

  
By: Charles Vaughn  
Its: Chairman

'SA' NYU WA, INC., a tribally chartered  
corporation

  
By: Sheri Yellowhawk  
Its: President



**EXHIBIT A**

**Protocol for Communications  
between  
The Hualapai Tribe (the "Tribe")  
and**

**'SA' NYU WA, Inc., a tribally chartered corporation of, and owned by, the Tribe  
("Enterprise")**

**1. Introduction**

The Tribe and the Enterprise have executed the Management Agreement for the purpose of providing certain terms and conditions under which the Enterprise shall operate and manage certain business operations of the Tribe. The Management Agreement requires the Enterprise to confer fully and freely with the Tribal Council in the performance of its duties and to provide information regarding each of the businesses of the Enterprise to the Tribal Council. The Management Agreement also obligates the Enterprise to abide by the standard instructions issued by the Tribal Council regarding the operation and management of each business of the Enterprise, subject to the limitations that the Tribe agrees not to interfere with, or give orders or instructions to, the employees of the Enterprise, or to involve itself with the day-to-day operations of the Enterprise.

In an effort to clarify communication expectations and deepen the relationship between the Tribe and the Enterprise, the parties have agreed to follow the communication protocols described in this document. While it is important the Enterprise maintain its separate existence, it is equally important that both the Enterprise and the Tribe work together to ensure the success of the Tribe and its people.

**2. Communication Protocol**

A. Authorized Liaisons. All communications between the Enterprise and the Tribe shall be effected through authorized liaisons (the "*Authorized Liaisons*"). The Enterprise's Authorized Liaison shall be the President of the Enterprise. The Tribe's Authorized Liaison shall be the Chair of the Tribal Council, or in his or her absence, the Vice Chair of the Tribal Council.

B. Day-to-Day Operations. The parties intend to operate on the basic premise that the Enterprise shall be entitled to operate and manage the day-to-day operation of its business without intervention by the Tribe. The Tribe shall not involve itself in daily operating decisions of the Enterprise.

C. Enterprise Employees. The Tribe shall not communicate directly with employees of the Enterprise, except for those employees designated by the Enterprise's Authorized Liaison to be liaisons between the Enterprise and the Tribe. The Tribe will not interfere with employees of the Enterprise in the performance of their duties within the scope of their employment. The Tribe shall not give orders or instructions directly to employees of the Enterprise, except where noncompliance with tribal law or regulations by the Enterprise and/or its employees results in

enforcement actions being taken by the Tribe through its departments that have compliance responsibilities.

D. Requested Information. The Tribe may request information from the Enterprise by sending the Enterprise a written request for such information to the President of the Enterprise. Within five days after the delivery of such a request, the Enterprise shall deliver the requested information to the Tribe through the Office of the Chairperson of the Tribal Council. Notwithstanding the foregoing, if the request is designated as an "*Emergency Request*" by the Tribe, then the Enterprise shall deliver the requested information to the Tribe through the Office of the Chairperson of the Tribal Council within two business days after delivery of the request. All such requests by the Tribe under this section shall be limited solely to matters within the scope of the oversight duties of the Tribe.

E. Financial Requirements. Any proposed expenditure or incurrence of indebtedness of \$100,000 or greater (whether in a single transaction or the sum of multiple transactions combined for a single purpose) by the Enterprise must be specifically approved by the Tribe through a resolution of the Tribal Council. Notwithstanding the foregoing, the Enterprise is specifically authorized to make expenditures of greater than the amount set forth in the preceding sentence only to the extent such expenditures are explicitly set forth in the then-current Annual Budget, as defined in the Management Agreement, or if such expenditure is required to avoid a default of an existing approved loan or debt obligation of the Enterprise.

F. Actions Requiring Consent of the Tribe. The following actions of the Enterprise shall not be taken without the approval of the Tribal Council through a resolution of the Tribal Council:

Dissolution or winding up of the Enterprise;

Merger or consolidation of the Enterprise;

Entering into a transaction or a series of multiple transactions, the result of which is the sale or transfer of greater than 20% of the total assets or liabilities of the Enterprise; or

Adding new business enterprises or terminating any of the Enterprise's existing business enterprises.

G. Optional Consultation with the Tribe. In the Enterprise's discretion, the Enterprise's Authorized Liaison may consult with, and seek guidance from, the Authorized Liaison of the Tribe, and any other employees or departments of the Tribe to the extent authorized by the Tribe's Authorized Liaison, at any time on any issue, including, but not limited to, expenditure limitations, management structure, business operations, employment of personnel, and strategic development.

H. Annual Budget. The approval process of the Annual Budget is an important source of communication between the Enterprise and the Tribe. The terms and conditions of the Management Agreement concerning the approval of the Annual Budget shall be strictly followed by the parties.

I. Approval By Tribe. Each time the Management Agreement requires that the Enterprise take certain actions satisfactory to the Tribe, the Tribe's satisfaction will be obtained as set forth in this section. The Authorized Liaison of the Enterprise will, in writing, request the approval of the Tribe. Such written request will include a section reference to the Management Agreement, as well as set forth, in reasonable detail, any information necessary for the Tribe to approve the request. Within 15 days after receipt of any written request, the Authorized Liaison of the Tribe will, in writing, either accept the request for approval, reject the request for approval, or advise the Enterprise that the request for approval will be submitted to the Tribal Council. The Tribe will not unreasonably withhold any request for approval. Any written denial of a request for approval will set forth the reasons for such denial.

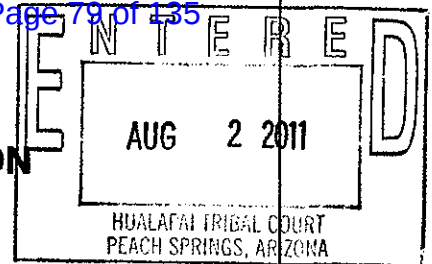
J. Tribal Council Meetings. Upon written notice delivered to the Secretary of the Tribe at least ten days prior to any regularly scheduled Tribal Council meeting, the Authorized Liaison of the Enterprise may request that the Enterprise be placed on the agenda for the upcoming Tribal Council meeting. All such notices shall provide a brief statement of the reason for the request to be placed on the agenda. At least three days prior to any Tribal Council meeting at which the Enterprise will make a presentation, the Enterprise shall provide the Secretary of the Tribal Council with such documents and information as may be necessary or appropriate in connection with the meeting. In addition, at any time, upon ten days prior written notice to the Authorized Liaison of the Enterprise, the Tribal Council may request the Enterprise's presence at a Tribal Council meeting. Such request shall provide a brief statement of the reason for the request. At least three days prior to any such Tribal Council meeting, the Enterprise shall provide the Secretary of the Tribal Council with such documents and information as may be necessary or appropriate in connection with the meeting.

In addition to the above, the Authorized Liaisons may, by mutual agreement in writing, call joint meetings of the Tribal Council and the Board of Directors of the Enterprise, upon at least ten days prior written notice to all members of each group.

### 3. Interpretation

This Protocol is to be read consistently with the terms of the Management Agreement. Nothing herein shall amend, narrow or limit any obligations set forth in the Management Agreement. If there exist any inconsistencies between the Management Agreement and this document, the terms of the Management Agreement will control.

# **Exhibit 4**



**IN THE COURT of THE HUALAPAI NATION  
HUALAPAI RESERVATION, ARIZONA, 86434**

**GRAND CANYON SKYWALK**  
DEVELOPMENT, LLC, a Nevada limited  
Liability company

Petitioner,

V.

**"SA' NYU WA, INC.,** a Hualapai Indian  
Tribally chartered corporation  
Respondent(s)

Case No. **2011-CV-006**

**ORDER: MOTION TO DISMISS**

**ARBRITRATION COMPLAINT**

**The Court Finds that:**

1. This matter came before the Court on July 8, 2011, on a Motion to Dismiss regarding a December 31, 2011 contract (Agreement) entered between the parties, in the above referenced matter.
2. Present and ready to proceed were Troy Eid and Mark Tratos on behalf of the Petitioner, Grand Canyon Skywalk Development, (GCSD) and Glen Hallman on behalf of the Respondent, 'SA NYU WA, (SNW).
3. Hualapai Tribal Court has jurisdiction to hear this matter pursuant to Article VI§ 2 of the Hualapai Constitution, Chapter 2.2 of the Hualapai Law and Order Code (Code).
4. It is well settled that only the United States Congress or a tribe can expressly waive sovereign immunity.
5. SNW expressly preserved its assertion of sovereign immunity in its April 1, 2011, Answer and then filed a Motion to Dismiss on June 14, 2011.
6. A Sovereign Nation has the right and power to state when and how it may be sued and must be free from interference from unconsented to

1 litigation. SNW is a subordinate economic arm of the government and is  
2 entitled to immunity.

3 7. There is no dispute that SNW expressly waived its sovereign immunity for  
4 the limited purpose of mandatory arbitration. The issue is whether it  
5 waived sovereign immunity in Hualapai Tribal Court.

6 8. The Plaintiff has the burden of proving that the claim falls under an  
7 express waiver.

8 9. SNW argued that it expressly waived sovereign immunity for the limited of  
9 purpose of mandatory arbitration in federal court only.

10 10. Article 15, General Provisions §§ 15.4 (a), (b), (c) and (d) read together  
11 support SNW's sweeping position. SNW is a subordinate economic arm  
12 of government and is entitled to immunity. SNW agreed to mandatory  
13 arbitration and expressly agreed to a limited waiver of sovereign  
14 immunity. The Governing Laws provision in § (b) identifies Hualapai and  
15 Arizona law as applicable, however, § (c) clarifies any ambiguity. This  
16 section indicates that any provision of the agreement determined to be  
17 unenforceable shall be reformed or severed by a federal court of  
18 competent jurisdiction. The express limited waiver combined with the  
19 Choice of Law for arbitration constitutes a mutually agreed upon forum  
20 selection. This negotiated forum selection eliminates enforcement of  
21 arbitration in Hualapai Court in this case only.

22 11. It counter-intuitive and disappointing, that the attorneys who negotiated  
23 the agreement advised SNW to specifically seek arbitration outside  
24 Hualapai jurisdiction. However, once the SNW asserts its sovereign  
25 immunity, the tribal court is deprived of jurisdiction.



1 12. The Plaintiff has acted with good faith, complied with each court order  
2 and was respectful of the tribal court.

3 13. SNW simply delays the inevitable because it conceded that it expressly  
4 waived sovereign immunity for the limited purpose of mandatory  
5 arbitration in Federal Court.

6  
7 **IT IS HEREBY ORDERED that:**

- 8 1. Granting SNW Motion to Dismiss based on Sovereign Immunity.  
9 2. The Plaintiff has exhausted all tribal court remedies and may seek resolution in  
10 federal court pursuant to §15.4 of the Agreement and as conceded by SNW.  
11  
12

13 Dated this 29<sup>th</sup> Day of July, 2011  
14

15 *Ida B. Wilber*

16 Ida B. Wilber, Judge Pro Temp

17 Distribution of copies to:

18 Petitioner, GCSD

19 Petitioner's Attorney(s)

20 Respondent, SNW

21 Respondent's Attorney(s),  
22  
23  
24  
25

# **Exhibit 5**



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

THE HUALAPAI INDIAN TRIBE OF THE  
HUALAPAI INDIAN RESERVATION,  
Arizona,

Plaintiff,

vs.

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

Defendant.

Case No.: 2012-CV-017

MINUTE ENTRY AND ORDER

This matter is before the Court on Plaintiff's Motions for to Enlarge the Court's Temporary Restraining Order to Enjoin Arbitration Proceedings. Defendant filed an Opposition, to which Plaintiff replied. The Court heard oral argument from the parties. Defendant is represented by counsel for the limited purpose of arguing jurisdiction.

**I. BACKGROUND**

A Development and Management Agreement was entered into in December 2003 between 'SA' NYU WA, a Hualapai Indian Tribe chartered corporation, and GRAND CANYON SKYWALK DEVELOPMENT, LLC, a Nevada limited liability company. This agreement was for the development and operation of the skywalk. Grand Canyon Skywalk Development, LLC filed a complaint in this Court arguing breach of contract and seeking an order to compel arbitration pursuant to the agreement. Grand Canyon Skywalk Development commenced the arbitration process in that matter.

1 The Hualapai Indian Tribe issued a declaration of takings concerning the  
2 Skywalk in February 2012. They also sought a temporary restraining order to prevent  
3 GCSD, its officers, agents, employees from destroying or damaging any property  
4 located at the Grand Canyon Skywalk and which is the subject of GCSD's contractual  
5 interest in that certain Development and Management Agreement, dated as of  
6 December 31, 2003, as amended, and from taking, removing, or absconding with such  
7 property from the Hualapai Reservation. The Court granted the TRO.

## 8 9 II. DISCUSSION

### 10 TRIBAL RULES OF CIVIL PROCEDURE

11 The Court finds that jurisdiction is proper in this matter.

12 Section 3.1 (D) of the Hualapai Law and Order Code provides that "[a]s to any  
13 matters that are not covered by the Tribal Constitution, codes, ordinances or resolutions  
14 of the Tribe or by Tribal Common Law or by applicable federal law or regulation, the  
15 Tribal Court may be guided by common law as developed by other Tribal, federal or  
16 state courts."

### 17 18 STANDARD FOR PRELIMINARY INJUNCTION AND A TEMPORARY RESTRAINING 19 ORDER

20 In the federal courts, temporary restraining orders are governed by Rule 65(b) of  
21 the Federal Rules of Civil Procedure. Rule 65 of the Federal Rules of Civil Procedure  
22 explains what injunctions are and the rules regarding them. Basically, there are two  
23 types of injunctions: a preliminary injunction and a temporary restraining order (TRO).  
24 The purpose of both is to maintain the status quo -- to insure a plaintiff that the  
25 defendant will not either make him or herself judgment-proof, or insolvent in some way,

1 or to stop him or her from acting in the harmful, complained-of way until further judicial  
2 proceedings are available.

## 3 4 CONTRACT ISSUES

### 5 Sovereign Immunity

6 "Indian tribes are unique aggregations possessing attributes of sovereignty over  
7 both their members and their territory ...; they are 'a separate people' possessing 'the  
8 power of regulating their internal and social relations ....' " *United States v. Mazurie*, 419  
9 U.S. 544, 557, 95 S.Ct. 710, 717, 42 L.Ed.2d 706, 716-17 (1975) (citations omitted).  
10 Sub-delegation of administrative authority to a sovereign entity is not per se improper.  
11 *Id.*; see *United States v. Matherson*, 367 F.Supp. 779, 781-83 (E.D.N.Y.1973)  
12 (upholding regulation issued by Superintendent of Fire Island National Seashore  
13 requiring persons seeking to operate motor vehicles on certain national seashore lands  
14 to secure first a permit from the local municipality), *aff'd mem.*, 493 F.2d 1399 (2d  
15 Cir.1974). Nor must such a sub-delegation rest on express statutory authority. See  
16 *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 120-22, 67 S.Ct. 1129,  
17 1134, 91 L.Ed. 1375 (1947); *Tabor v. Joint Bd. for Enrollment of Actuaries*, 566 F.2d  
18 705, 708 n. 5 (D.C.Cir.1977).

19 Suits against Indian Tribes are barred by Tribal sovereign immunity unless  
20 sovereignty is waived by Congress or the Tribe. *Kiowa Tribe v Manufacturing*  
21 *Technologies, Inc.*, 523 U.S. 751, 754 (1998); *Oklahoma Tax Comm'n v. Citizen Band*  
22 *of Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991). Immunity from suit extends to  
23 tribal contracts involving commercial or governmental activities and for contracts made  
24 both on and off a reservation. *Kiowa Tribe*, 523 U.S. at 760.



1 The United States Supreme Court has repeatedly stated that any waiver of a  
2 tribe's immunity must be unequivocally expressed and cannot be implied. "It is settled  
3 that a waiver of sovereign immunity 'cannot be implied but must be unequivocally  
4 expressed.'" *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978) (citing *United*  
5 *States v. Testan*, 424 U.S. 392, 399 (1976) which quotes *United States v. King*, 395  
6 U.S. 1, 4 (1969).

7 In the instant matter, the 2003 Agreement in Article 15, Section 15.4 (d) Limited  
8 Waiver of Sovereign Immunity, provides that SNW, a Hualapai Indian Tribe corporation,  
9 expressly waives its sovereign immunity with respect to all disputes arising out of the  
10 Agreement to the extent permitted un the Constitution of the Nation.

11 The Tribal Constitution provides that the Tribal Council may expressly waive the  
12 Tribe's sovereign immunity. The Constitution also requires that express waivers of  
13 sovereign immunity require the approval of at least thirty (30) percent of the total  
14 number of eligible voters of the Tribe voting in a special election if the waiver may  
15 expose the Tribe to liability in excess of \$250,000 dollars, or its equivalent.

16 Given that the Tribal Council authorized 'SA' NYU WA to enter into the  
17 agreement with GCSD with the provisions concerning sovereign immunity, the Court  
18 finds that the Council expressly waived sovereign immunity for the sole purpose of the  
19 2003 agreement.

20 **Breach of Contract**

21 The 2003 Agreement also provided in Article 15, Section 15.4 (a) that "any  
22 controversy, claim or dispute arising out of or related to the 2003 Agreement shall be  
23 resolved through binding arbitration. The governing law for disputes was agreed to be  
24 the State of Arizona laws and the Hualapai Indian Tribal Law. Also, any laws of the  
25 State of Arizona that may be interpreted to (1) waive SNW's or the Nation's sovereign

1 immunity; (2) require arbitration other than as agreed in Section 15.4(a); or (3) require  
2 SNW or the Nation to appear in any court or other proceeding in the State of Arizona,  
3 except federal courts are exclude. The venue and jurisdiction for any litigation under the  
4 Agreement was agreed to be the federal courts sitting in the State of Arizona and  
5 located in or around Peach Springs, Arizona.

6  
7 **III. ORDERS**

8 IT IS ORDERED that the TRO remain as it relates to the to prevent GCSD, its  
9 officers, agents, employees from destroying of damaging any property located at the  
10 Grand Canyon Skywalk and which is the subject of GCSD's contractual interest in that  
11 certain Development and Management Agreement, dated as of December 31, 2003, as  
12 amended, and from taking, removing, or absconding with such property from the  
13 Hualapai Reservation.

14 IT IS ORDERED that SNW and GCSD may proceed with the Arbitration as  
15 agreed to in the Development and Management Agreement, dated as of December 31,  
16 2003, as amended.

17 SO ORDERED this 15<sup>th</sup> day of July 2012.

18  
19 /s/ Lawrence C. King  
20 Honorable Lawrence King  
21 Judge, Hualapai Indian Tribe  
22  
23  
24  
25

# **EXHIBIT 6**

# AMERICAN ARBITRATION ASSOCIATION

## Commercial Panel

No. 76 517 Y 00191 11 S1M

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*In the Matter of the Arbitration of*

Grand Canyon Skywalk Development, LLC

and

'Sa' Nyu Wa, Inc.

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### FINAL AWARD

In this breach of contract case, the tribunal determines the rights to revenue from operation of the Grand Canyon Skywalk. Finding that 'Sa' Nyu Wa, Inc. ("SNW") wrongly withheld management and other fees due Grand Canyon Skywalk Development, LLC ("GCSD"), the tribunal awards contract damages and attorneys' fees to GCSD.

#### I.

#### BRIEF INTRODUCTION TO THE DISPUTE.

In 2003, The Hualapai Nation partnered with Mr. David Jin in the construction and management of a glass viewing bridge called the Grand Canyon Skywalk, located at Eagle Point. Mr. Jin and the Tribe agreed to share revenue from the operation of the Skywalk, including the sale of tickets and merchandise. In 2007, after four years of planning and construction, the Skywalk opened to rapturous praise from visitors who stood awestruck at the western edge of the Grand Canyon, over 4000 feet above and 70 feet out and over the Colorado River flowing below.

Despite (or perhaps because of) the immediate and enormous success of the Skywalk, disputes soon developed; over time, the Hualapai Tribe withheld millions of dollars in management fees (and other money) from Mr. Jin's company (GCSD). After hearing four days of testimony from members of the Tribe and many others,

and for the reasons below, the tribunal awards the sum of \$24,975,469 to GCSD and against SNW for amounts owed through December 31, 2011, plus other contract damages and attorneys' fees.

**The Parties, Grand Canyon West, and the Skywalk.** The Hualapai Tribal Nation is a federally recognized Indian Tribe, many of whose members live on the Hualapai Indian Reservation in northwestern Arizona. The Grand Canyon Resort Corporation ("GCRC") and its sister corporation, SNW, tribally chartered corporations owned by the Hualapai Indian Tribe, own the Skywalk, which lies within Grand Canyon West, a 9000-acre development and tourist destination on the southwestern rim of the Grand Canyon, about 120 miles southeast from Las Vegas, 70 miles north of Kingman, Arizona, and over 240 miles from the Grand Canyon National Park entrance to the east. The largely unpaved (and rugged) Diamond Bar Road serves as the primary road and access for most of the nearly 650,000 annual visitors to Grand Canyon West.

**The Parties' Agreement to Arbitrate Their Disputes.** In 2003, the Tribe chartered and allowed SNW to contract with GCSD for the construction and management of the Skywalk.<sup>1</sup> That agreement was described in GCSD's and SNW's *Development and Management Agreement*. The parties here – GCSD (Mr. Jin) and SNW (the Tribe) – agreed to arbitrate their disputes under the following provision of their 2003 *Development and Management Agreement*:

15.4 Arbitration; Governing Law; Jurisdiction.

(a) Mandatory Arbitration. Any controversy, claim or dispute arising out of or related to this Agreement shall be resolved through binding arbitration. The arbitration shall be conducted by a sole arbitrator; *provided however*, if the parties cannot agree upon an arbitrator, each party will select an arbitrator and the two arbitrators will select the sole arbitrator to resolve the dispute. Either party may request and thus initiate arbitration of the dispute by written notice ("Arbitration Notice") to the other party. The Arbitration Notice shall state specifically the dispute that the initiating party wishes to submit

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<sup>1</sup>SNW and the Tribe are referred to interchangeably.



to arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, as limited by Section 15.4(d).

\* \* \*

Exh. 3.<sup>2</sup> In 2011, GCSD sued SNW in the Court of the Hualapai Nation (Case no. 2011-cv-006). SNW moved to dismiss. On July 29, 2011, the Hon. Ida Wilber, Judge Pro Tem of the Tribal Court, granted SNW's motion to dismiss finding, in part, that "[t]here is no dispute that SNW expressly waived its sovereign immunity for the limited purpose of mandatory arbitration." *Order*, at 2.

Several days later, on August 9, 2011, GCSD demanded arbitration. *See* Letter from D. Prunty to American Arbitration Association (enclosing *Demand for Arbitration* to SNW, c/o Mr. Glen Hallman (Gallagher & Kennedy), counsel for SNW). In this arbitration proceeding, SNW raised the jurisdictional question whether GCSD was compelled to first seek an order compelling arbitration from the U.S. district court. Following motion practice in November 2011, this tribunal ordered that GCSD had properly demanded arbitration without first seeking permission from the federal court. *See Order re Respondent's Motion to Dismiss GCSD's Arbitration Complaint* (11.21.11).

The final arbitration hearing remained on calendar for April 2012. In January 2012, the parties continued preparation for that hearing, including, for example, Mr. Hallman's request for issuance of subpoenas to David J. Emry and David J. Emry & Associates (1.20.12).

Then, on February 9, 2012, the Tribe seized GCSD's interest in the Skywalk through eminent domain proceedings filed in the Hualapai Tribal Court. As a result of that condemnation proceeding, the Tribe claimed ownership of GCSD's claims in this arbitration and voluntarily dismissed GCSD's demand for arbitration with prejudice. GCSD objected. After expedited motion practice in February 2012, the

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<sup>2</sup> During the final hearing, GCSD offered and the tribunal received hearing exhibit nos. 1-95. The citations to "Exh. \_\_\_" refer to those exhibits.

tribunal upheld GCSD's objection. The arbitration proceeded. The final hearing was continued to July 2012. In the following months, neither the U.S. District Court nor the Hualapai Tribal Court enjoined this arbitration.<sup>3</sup> This matter therefore proceeded to final hearing on July 16-20, 2012. Claimant GCSD appeared and presented its proofs.<sup>4</sup>

**The Respondent SNW's Failure to Appear at the Final Hearing.** After due notice, respondent SNW failed to appear at the final hearing. Under the parties' agreement, the arbitration was governed by the *Commercial Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Commercial Disputes)* of the American Arbitration Association as amended and in effect on June 1, 2010. Under R-29 (Arbitration in the Absence of a Party or Representative) of those rules, "[u]nless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award." Under the Revised Uniform Arbitration Act as adopted in Arizona, A.R.S. 12-3015(C), "[t]he arbitrator may hear and decide the controversy on the evidence produced although a party who was duly notified of the arbitration proceeding did not appear." On April 13, 2012, the AAA forwarded to counsel for SNW and GCSD the *Notice of Hearing* setting the final hearing for July 16-27, 2012. Accordingly, under the governing rules and controlling law, the hearing proceeded after due notice to respondent SNW through its counsel, Gallagher & Kennedy (Phoenix, Arizona).

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<sup>3</sup> United States District Judge David G. Campbell (Case 3:12-cv-08030-DGC) and the Hualapai Tribal Court have considered aspects of the parties' dispute. Months before GCSD demanded arbitration here, the Tribal Court expressly declined to hear the parties' dispute. *See Order* of Hualapai Tribal Court (8.2.11). Still another motion to enlarge the Tribal Court's temporary restraining order in Case No. 2012-CV-017 remains pending after argument on June 1, 2012 before the Hon. Lawrence King, Judge Pro Tem.

<sup>4</sup> During the hearing, the following witnesses testified under oath: Mr. Jin; Mr. Steve Beattie (via recorded video statement (Exh. 31 (transcript))); Mr. Ted Quasula; Mr. Walter Mills; Ms. Sheri YellowHawk; Ms. Louise Benson; Ms. Kathryn Landreth (via recorded video statement (Exh. 79 (transcript))); Mr. Manuel Mojica; Mr. Barry Welch; Mr. Robert Bravo, Jr.; Mr. Jeff Whitaker; Ms. Jan Allen (via recorded video statement (Exh. 86 (transcript))); Mr. Erin Forest; Ms. Mia Jack; and, Mr. Steven Hazel.

## II.

**The Tribe's and SNW's Failure to Produce Financial and Other Records from 2008 to 2012.** Two preliminary matters deserve attention before turning to the merits. First, before GCSD demanded arbitration, and during the months leading up to the final hearing, the respondent SNW and the Tribe failed to produce financial, operational, and other important records and documents, including records of Skywalk ticket and merchandise sales. The record strongly suggests that the Tribe also blocked GCSD's lawyers' efforts to gather testimony and documents from third parties.

Briefly, in 2003, Mr. Jin agreed to construct the Skywalk, at his own expense; however, Mr. Jim agreed that the Tribe would own the structure. GCSD and SNW also agreed that, following Mr. Jin's construction of the Skywalk, both GCSD and SNW would sell tickets to Skywalk. Each side would account to one another for revenues and expenses and share net revenue. However, shortly after the Skywalk opened, at the Tribe's request, GCSD took on the job of accounting for all revenues and expenses of the operation.

Later, the Tribe and SNW hired the accounting firm of Kafoury Armstrong & Co. to audit the books and records. So, in late 2008 and 2009, GCSD turned over thousands of pages of financial records to Kafoury Armstrong. In his letter dated June 5, 2009 to lawyers for SNW and the Tribe (Mr. Ohre (Snell & Wilmer) and Mr. Thompson (Gallagher & Kennedy)), Mr. Teddy Parker, counsel for GCSD, summarized and confirmed GCSD's turnover of records. Exh. 81 ("I would like to start from the beginning with the [Tribe's] first request [for records from GCSD] which was received [from Kafoury Armstrong] on November 12, 2008 at approximately 4:31 p.m."). Over the following months, in late 2008 and early 2009, less than two years after the Skywalk had opened, Mr. David Emry, CPA<sup>5</sup> – GCSD's accountant who, after the Skywalk opened and at SNW's urgent request, kept the books of the Skywalk's operation – turned over thousands of pages of material to the

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<sup>5</sup> David J. Emry & Co., Ltd. Certified Public Accountants (Las Vegas).

Kafoury Armstrong accounting firm: ledgers, bank statements, and source documents. In early and mid-2009, Mr. Emry and his firm produced many more documents to the Kafoury firm, such as daily summaries and control sheets, including, for example, in January 2009, “original source documents and other financial information as requested.” *Id.* (GCSD007268).

For years, and to this day, after many requests, including subpoenas from this tribunal, the Tribe and SNW, together with the Kafoury firm and the Tribe’s lawyers, have refused to turn over copies of those same documents to GCSD, Mr. Jin, his accountants, or his lawyers. Over three years ago, Mr. Emry began requesting those records from the Tribe. *See, e.g.*, Exh. 81 (GCSD007270) (“As early as March 03, 2009, David Emry has requested from Jaci Dugan,<sup>6</sup> information relative to the balance of Skywalk monies held by SNW and GCRC as of February 28, 2009.”). For many, many months thereafter, Mr. Jin’s lawyers diligently sought copies of the Skywalk’s financial records from the Tribe, its accountants (Kafoury Armstrong and Moss Adams), and its lawyers (Snell & Wilmer and, later, Gallagher & Kennedy).

Meanwhile, during this same period, the Tribe withheld operating funds from GCSD, which Mr. Parker noted in his June 2009 letter:

“As stated above, GCRC and SNW have failed to release operating funds for purposes of the operating expenses of the Grand Canyon Skywalk Development. No funds have been released since November, 2008. Demand is hereby made for your clients to transfer the funds for the operating expenses of the Grand Canyon Skywalk Development. At a minimum, a transfer of \$800,000 is needed to cover operating expenses. Please ensure that this wire transfer is performed no later than June 10, 2009.”

Exh. 81 (GCSD007270). Those funds never arrived. Undeterred, Mr. Jin continued to fund the Skywalk’s operation on his own, without the required financial contribution let alone basic financial reports and documents from the Tribe.

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<sup>6</sup> During her testimony, Ms. Mia Jack explained that Ms. Dugan replaced Mr. Beattie as the chief financial officer of SNW and GCRC.

In preparing for this arbitration, Mr. Jin and his lawyers sought the financial records of the Skywalk from Kafoury Armstrong. The Kafoury firm refused to turn over those records. Neither the Tribe nor its lawyers authorized the Kafoury firm to produce the records. And, the Kafoury firm sought no guidance from this tribunal or court on the matter, even though in nearly every case the records at issue were originally turned over to the firm by GCSD and Mr. Jin. The Kafoury firm, in other words, with the apparent blessing of the Tribe and its lawyers, withheld documents under the cloak of the accountant-client privilege when, by all indications on this record, those documents were not their client's records to withhold.

In any event, still, as late as October 2010, Mr. Theodore Parker, counsel for GCSD, wrote in part as follows to Mr. Terence Thompson (Gallagher & Kennedy), counsel for SNW and the Tribe:

“Please allow this correspondence to confirm our conversation of October 11, 2010. I reiterated my concern over the lack of response to our many requests for the accounting information from Kafoury and Armstrong. As you are aware, for over eighteen (18) months, we have been requesting this information from GCRC/Sa Nyu Wa. These requests began while Mr. Ohre [Snell & Wilmer] was still counsel for the Tribal Enterprises, including Sa Nyu Wa. Mr. Ohre never provided the documentation and as a result, I began requesting this information directly from you, once you took over as counsel for not only the Tribe, but the Tribal Enterprises. During our meeting with the Tribal Counsel (sic), which took place on August 2 and 3 of this year, the Tribal Counsel (sic) mandated the exchange of accounting information from Kafoury and Armstrong. Specifically, we have been requesting the gross receipts from Skywalk ticket sales sold by GCRC/Sa Nyu Wa. We have also requested the expenditures by GCRC/Sa Nyu Wa from these proceeds. Finally, we requested the remaining balance of those proceeds. It was clear after the Counsel (sic) meeting that these documents were to be provided and to this date, we have not received the documentation.”

Exh. 64 (GCSD007274).<sup>7</sup> In short, nearly two years after Mr. Emry began requesting records, the Tribe finally promised to deliver the requested information (by October 15, 2010). *Id.* (GCSD007275). No record (or witness for that matter)

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<sup>7</sup> Letter from Teddy Parker to Terence Thompson (10.11.10)(GCSD007274-75),



suggested (let alone confirmed) that the Tribe, its lawyers, or accountants then or ever turned over any financial reports or source documents to GCSD. *Cf.* Exh. 65 (11.14.10) (“Again, we look forward to receiving Kafoury and Armstrong’s documentation immediately[.]”).<sup>8</sup> To this day, the Tribe and its professionals have withheld these documents, including records of gross receipts from Skywalk ticket sales and expenditures from those revenues.<sup>9</sup>

Instead, the Tribe not only refused to respond but also demanded that Mr. Jin sign a revised Skywalk Management Agreement and Construction Completion Agreement; then, the record suggests, the Tribe would turn over the financial records of the operation. *Cf.* Exh. 65 (“When Mr. Jin and GCSD have been asked for documentation, I have not suggested that the completion of these Agreements must come before the production of the requested information.”). Aside from the Skywalk Trust Agreement (Exh. 19) and shuttle bus agreement (Exhs. 20 and 21), which were signed in May 2010, SNW and GCSD never came to agreement on the proposed, superseding management agreement (Exh. 22 (12.28.10 redline draft)) or construction completion agreement (Exh. 23 (10.18.10 handwritten markup)).<sup>10</sup> And, the Tribe has produced none of the critical financial records.

Mr. Emry persisted. In May 2009, he sent an email to Ms. Dugan requesting, among other information, documentation of the 2007 proceeds from the sale of

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<sup>8</sup> Letter from Teddy Parker to Terence Thompson (10.14.10)(GCSD007277).

<sup>9</sup> The statement for an account that apparently holds at least some portion of the unaccounted-for ticket proceeds (U.S. Bank statement for account no. 136496000 (Exh. 60 (GCSD009364-37)) reflects a balance as of December 31, 2011 in the amount of \$10,164,569.75. During the period January 1, 2011 to December 31, 2011, the statement shows “[c]ontributions” in the amount of \$19,222,885.48 and “[d]istributions” in the amount of \$14,073,243.26. *See also* Exh. 61 (Trust Account Summary (GCSD07279)). In March 2010, SNW and GCSD signed the 112-page agreement with U.S. Bank, as trustee, that established and governed this joint trust account. *See* Exh. 19 (Skywalk Trust Agreement (GCSD006331-6442)) (“The Parties desire to enter into this Agreement to facilitate the collection and disbursement of funds relate to the operation of the bridge and the related facilities, and to have the Trustee administer the same.”). The Tribe has produced none of the records supporting these “contributions” or “distributions.”

<sup>10</sup> *See also* Exh. 25 (Letter from Paul Charlton to Mark Tratos ((1.31.11)(attaching redlined draft agreements)(GCSD007949-8105)). Mr. Charlton wrote in part: “Just as soon as the Tribe has fully considered all of the ramifications of the re-opening of numerous issues long thought to be resolved, we will contact you and Mr. Parker.” *Id.* (GCSD007950).

Skywalk tickets (total \$3,819,918) so that he could tie the ticket prices to the number of tickets sold. *See* Exh. 81 (GCSD007271)(describing request and email).<sup>11</sup> He also asked for the records concerning the 2007 payments made for and to Skywalk, including payments and supporting invoices for sales tax, marketing, insurance, office supplies, repairs, maintenance, and other expenses. In June 2009, when Mr. Parker wrote to Mr. Ohre, the Tribe's lawyer, Ms. Dugan still had not produced the records. *Id.* (GCSD007272)("Mr. Emry is still waiting for these documents, despite the many requests over the last several months."). To this day – over four years after Mr. Jin, his accountants, and his lawyers undertook the pursuit of these basic financial records – the Tribe, SNW, GCRC, Kafoury Armstrong, Snell & Wilmer, Gallagher & Kennedy, and every other advisor on behalf of the Tribe, steadfastly refuses to turn over these and every other important financial record to Mr. Jin and GCSD.

In the teeth of this sustained effort by the Tribe and its professional advisors to withhold documents, fees, and reimbursements, Mr. Emry nevertheless turned over records to the Kafoury firm. For example, in February 2009, he sent the following to Ms. Carlene Gaydosh, CPA, at Kafoury, Armstrong & Co.: Grand Canyon Skywalk Operations Document Transmittal Control Sheet; two CDs with Grand Canyon Skywalk Excel and PDF files; and, two boxes of original source documents as requested. *See* Exh. 85 (GCSD008128) (showing handwritten confirmation of receipt by "Carlene Gaydosh CPA 2/20/09").<sup>12</sup> Those records included monthly payroll registers, agreements, leases, contracts, payment details, inventory detail, and numerous compilations of source documents. *Id.*

For months during early to mid-2009, Mr. Emry sent financial and business records to Kafoury Armstrong, including original bank statements, daily sales reports, and point of sale documents. *See generally* Exh. 85 (collection of transmittal logs to and receipts by Kafoury Armstrong). Mr. Emry transmitted records in, for

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<sup>11</sup> Letter from Teddy Parker to Mark Ohre and Terence Thompson (6.5.09)(GCSD007266-72).

<sup>12</sup> Transmittal and acknowledgement of receipts of financials from David Emry (GCSD008127-94; 163-164).

example, March 2009 (GCSD008136), April 2009 (GCSD008145 (receipt confirming delivery and Kafoury firm's receipt of disc containing Skywalk revenue reports for February 2008), GCSD008150 (trial balances and check stubs), and GCSD008151 (2008 Year End for Grand Canyon Skywalk Development, LLC and the Trial Balance for 2007)), May 2009 (GCSD008159) ("20 discs containing requested information"), June 2009 (GCSD008176 (2 discs) and GCSD008178 (2 boxes)), July 2009 (GCSD008182 ("Original daily sales reports (see attached list.)"), GCSD008186 ("10 boxes containing original [point of sale] documents for March 2007 through December 2007"), and GCSD008191 (original bank statements, etc.)), and September 2009 (GCSD008193 ("Original cash disbursements for July 2009")). In every case, the documents confirm Mr. Emry's hand delivery and Kafoury Armstrong's receipt of these records. *See, e.g.*, Exh. 85 (GCSD008178 ("David J. Emry Co. Ltd Receipt" signed and date stamped by Mindy Roberts ("JUN 05 2009"))).

During these months in 2009, the record reflects the Kafoury firm's thorough requests for records and Mr. Emry's equally thorough, patient responses. As late as September 2009, Mr. Emry delivered one box "containing all of the items from the 'Open Items List – Sa' Nyu Was 7/20/09' excluding the construction costs"; his firm had already "provided the schedule of values which documented in excess of twenty million [dollars] in construction costs to the Tribal Council, its attorneys and a representative of the Grand Canyon Resort Corporation Board." Exh. 85 (GCSD000163).

All of this effort by the Kafoury firm (not to say Mr. Emry's) apparently resulted in an audit report. On March 30, 2009, Mr. Jeffrey Manuel, CPA, a manager at the Kafoury firm, wrote in an email to Mr. Emry asking for "the documents we requested earlier including the remaining 2008 (sic) and the additional request items." Exh. 85 (GCSD008153). Ms. Gaydosh wanted the items, she wrote in a related email, because "[t]he auditors are very anxious to get started." *Id.* As noted above, Mr. Emry not only produced those records but also hosted representatives of the Kafoury firm as part of that audit. Mr. Emry wrote in

an email that “Kafoury Armstrong and Co. representatives are scheduled to be in our office on May 4<sup>th</sup>, 5<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup>, 2009 to complete testing of internal accounting controls.” *Id.* (GCSD008160). But, since that time, in over three years, after having produced thousands of pages of records, many in original form, no one for the Tribe has ever turned over any audit report to Mr. Emry, Mr. Jin, GCSD, or its lawyers.<sup>13</sup>

**The Tribe’s Efforts to Interfere with the Gathering of Evidence for Presentation at the Final Hearing.** The second preliminary matter is the Tribe’s sustained effort to block GCSD’s gathering of evidence. Mr. Tratos, counsel for GCSD in this matter, sought accounting records from the Kafoury firm, including issuance of subpoenas to the firm for records and Ms. Gaydosh’s testimony. As noted above briefly, counsel for Kafoury Armstrong, McDonald Carano Wilson (Mr. Mark Dunagan), objected to the subpoena on privilege grounds. *See* Letter from M. Dunagan to M. Tratos, Exh. 92 (5.31.12) (“Kafoury has been instructed by SNW not to produce the requested documents on the basis of the accountant-client privilege.”). But, beyond that objection, however well taken, SNW also instructed the Kafoury firm to return the records to SNW. *Id.* (“Please be advised that the original version of SNW’s entire file is being returned to it by Kafoury, pursuant to SNW’s request. \*\*\* As a result, the best source from which to pursue production of the original documents is SNW.”). In turn, despite several requests, SNW never produced these financial records. So, in the months leading to the hearing, SNW possessed the core financial records, but refused to exchange those records with GCSD.<sup>14</sup> We turn now to the merits.

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<sup>13</sup> Mr. Mark Tratos (Greenberg Traurig), counsel for GCSD, wrote on February 3, 2011 to Mr. Terence Thompson (Gallagher & Kennedy), counsel for SNW, recapping Mr. Parker’s requests for the records, requesting again the accounting and other project records, and demanding the audit permitted under Section 4.5 of the 2003 agreement. *See* Exh. 27 (GCSD008125-26) (“This letter is to notify you that GCSD hereby requests access to the books and records of the project in SNW’s possession to conduct such an audit.”). Neither the Tribe nor SNW complied.

<sup>14</sup> According to counsel for GCSD, Mr. Tratos, the Tribe’s lawyers (Gallagher & Kennedy) also advised witnesses not to respond to subpoenas from this tribunal for records and testimony but, because those efforts were not relevant to the dispute here, nothing further need be discussed on that point.

### III.

#### **Mr. David Jin, Oriental Tours, Inc., and Tourism at Grand Canyon**

**West.** In 1995, Mr. David Jin formed Oriental Tours, Inc. (OTI) to bring travelers to the western United States from China, Hong King, Singapore, and Taiwan. Stops on those tours included San Francisco, Los Angeles, Las Vegas, and Grand Canyon West. Over the years, in cooperation with the Tribe, Mr. Jin developed helicopter rides, pontoon water trips, and shuttle bus tours for visitors to Grand Canyon West. Mr. Jin estimates that OTI brings perhaps one-third of all visitors to Grand Canyon West. Both the Tribe and Mr. Jin profited from this tourism.

Mr. Jin testified that, in the late 1990s, he conceived of and then developed the idea for a glass viewing bridge at Grand Canyon West. He formed GCSD (with other investors) to finance, construct, and manage the facility. The Tribe formed SNW to contract and share revenues with GCSD.<sup>15</sup> Over time, David Jin and Steve Beattie (for the Tribe) negotiated and came to agreement on the terms of the construction and management of the Skywalk.<sup>16</sup>

After four years of planning and construction, the Skywalk bridge opened in March 2007. Through June 7, 2009, GCSD had invested over \$28 million in the construction of the Skywalk bridge and adjacent Visitors' Center shell. Exh. 59 (Schedule of construction costs (GCSD003953-57)). The Visitor's Center remains largely but not fully completed. In June 2009, GCSD had budgeted \$1.25 million to complete the shell of the Visitor's Center (after the Tribe delivered utilities to Grand Canyon West) and \$5.022 million to build future tenant improvements at the Visitors' Center. Exh. 59 (GCSD003957). In order to provide an adequate return to Mr. Jin and his investors on their investment of over \$30 million in construction costs, the parties agreed that GCSD alone would manage the Skywalk and share

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<sup>15</sup> The Tribe is the sole shareholder of SNW, which, in turn, partially waived its sovereign immunity for purposes of the agreement with GCSD. *See* Exh. 3 (execution copy of agreement), at §15.4(d) ("SNW expressly waives its sovereign immunity with respect to all disputes arising out of this Agreement to the extent permitted under the Constitution of the Nation.").

<sup>16</sup> *See* Exhs. 4, 5, 6 and 7 for examples of the letters and notes between Mr. Jin and Mr. Beattie during 2004 and 2006.



revenue with the Tribe for 25 years (and an additional 15 years after termination of the agreement).

The GCRC, SNW's sister Tribal corporation, controls admission to Grand Canyon West and, therefore, to the Skywalk. Visitors must first stop at the reservation entrance where, in many cases, GCRC sells tickets for admission to the Skywalk (and meal tickets). Those sales make up perhaps half of all ticket sales, more or less, with GCSD selling the balance of the tickets at its Las Vegas offices. When the Skywalk opened in March 2007, the receipts from ticket sales were deposited into SNW's bank accounts; SNW then issued checks to GCSD for operating expenses. But, in 2008, SNW stopped accounting for revenues and reimbursements. GCRC may (or may not) have delivered ticket revenues to SNW. But, any event, SNW paid no manager's fee to GCSD for 2008 through today. During these years, therefore, GCSD redirected its portion of the ticket revenues to operating expenses. And, for its part, OTI advanced funds to GCSD for repairs and other operating expenses. Most importantly, as noted above, SNW turned over none of the records or audits of the operations.

**The Parties and the Relevant Terms of Their 2003 Agreement for the Construction and Management of the Skywalk Bridge and Visitor's Center.**

In their 2003 *Development and Management Agreement*, Grand Canyon Skywalk Development contracted with Sa Nyu Wa for the construction and management of the Skywalk glass bridge and Visitor's Center.<sup>17</sup> This dispute arises out of that agreement. Several terms of the agreement bear on this dispute, including the following provisions, which are excerpted together for ease of reference as follows:

**2.2 Development of Project.**

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<sup>17</sup> See Exh. 3 (execution copy of agreement (GCSD005563 – 5611)). The agreement defined the "Project Improvements" to mean "the Glass Bridge and adjacent building providing security and structural support for the Glass Bridge and which will also contain a gift shop, together with all related on and off-site improvements and infrastructure." Exh. 3, at 4 (GCSD005566) and Exh. B (Description of the Project Improvements)(referring in part to "an approximate 5500 square foot building that includes a VIP room, a gift shop, a coffee shop, a display area, at least 2 restrooms and a small kitchen[.]").

(c) Project Entitlements.

\* \* \*

(ii) SNW shall be responsible, at its expense, for obtaining any and all required permits and licenses from any governmental authority, including the Nation, other than agencies of the federal government (the “Non-Federal Entitlements”). SNW shall pursue obtaining the Non-Federal Entitlements with due diligence and shall provide Manager with appropriate written evidence of such Federal Entitlements when they are received. Manager will cooperate with SNW in SNW’s efforts to obtain the Federal Entitlements. The date that all required Federal Entitlements and Non-Federal Entitlements have first been obtained is referred to as the “Entitlement Date”.

\* \* \*

2.3 Management of Project. During the Operating Term, Manager shall manage the Project in accordance with the requirements of this Agreement, with full responsibility and authority to supervise, direct and control the management and operation of the Project, subject in every case to the authority limitations and other restrictions set forth in Section 2.7 and elsewhere in this Agreement and to the requirement that all such actions shall be consistent with the then effective approved Annual Operating Budget and Annual Capital Budget, such responsibility and authority (as so limited) to include, without limitation, the following:

(a) Manage the Project in manner consistent with the Standards of Operation and the requirements of this Agreement;

(b) Determine appropriate pricing for retail customers to use the Glass Bridge, subject to the prior written approval of such pricing by SNW. It is agreed that during the period from the date of commencement of the Operating Term to the first anniversary of such commencement date, the retail price will be not less than \$12 per individual, unless the parties otherwise agree;

(c) Determine appropriate pricing for Tour Operators or other organized, commercial tour groups for the use the Glass Bridge, subject to the prior written approval of such pricing by SNW. It is agreed that during the period from the date of commencement of the Operating Term to the first anniversary of such commencement date, the price to Tour Operators or other organized, commercial tour groups will be not less than \$9 per individual, unless the parties otherwise agree;

(d) Arrange, in SNW's name, for utility, telephone, pest control, security service, trash removal and other services reasonably necessary or appropriate for the operation of the Project;

(e) Determine, establish, and maintain advertising, public relations and promotional policies appropriate for the Project;

(f) Cause all ordinary and necessary repairs and maintenance to be made to the Project and after prior notification and approval by SNW cause all such other things to be done in or about the Project as shall be necessary to comply with all requirements of governmental Authorities, boards of fire underwriters and other bodies exercising similar functions, *provided, however*, that repairs the costs of which are properly capitalized shall be made by Manager only to the extent that (i) such costs are included within an Annual Capital Budget that has been approved by the parties or (ii) emergency conditions require the performance of capitalized repairs in order to prevent damage or injury to persons or property before approval by SNW of an appropriate modification of the Annual Capital Budget can be reasonably obtained;

(g) Purchase all Inventories and such other services and merchandise as are necessary for the proper operation of the Project in accordance with the Standards of Operation, to the extent the costs thereof are included within an approved Annual Capital Budget, and arrange for the purchase and installation of Furniture and Equipment (including additions to or replacements of such items) to the extent the costs thereof are included within an approved Annual Capital Budget;

(h) Institute and defend such proceedings at law or in equity in the name of SNW (to the extent that SNW is a party in any such proceeding) or Manager, using counsel selected by Manager and approved by SNW, as Manager shall deem reasonably necessary or proper in connection with the collection of accounts receivable and all other matters arising from the operation of the Project. Manager shall obtain SNW's written approval prior to filing any litigation on behalf of SNW;

(i) Collect all Gross Revenues at the point of sale or service and, on a daily basis, after the total amount of Gross Receipts for such day have been determined jointly by a representative of Manager and SNW, such Gross Receipts shall be transferred and delivered to SNW at the Glass Bridge facility. Following transfer of the daily Gross Receipts to SNW as provided above, Manager shall have no further responsibility for security for such daily Gross Receipts.

(j) Collect directly from customers any and all federal, Nation, state and municipal excise, sale, transaction privilege, and use taxes imposed on the sales price of any goods or services furnished (collectively, "Sales Taxes"), with such amounts to be handled in the same manner as provided above in Section 2.3(i) for Gross Revenues;

(k) Within 3 days of receipt of invoices and other documentation that relate to the Project, provide to SNW copies of all such invoices and other documentation, including all documentation relating to Gross Operating Expenses and capital expenditures that need to be paid. All such invoices and other documentation must be sent to SNW via facsimile within the 3-day period, with copies to also be sent simultaneously by mail or other method of delivery authorized pursuant to Section 15.11. Documentation provided pursuant to this Section 2.3(k) need not be sent to legal counsel for SNW. Manager will also use its commercially reasonable efforts to have all such invoices and other documentation sent directly to SNW;

(l) Comply with all laws, statutes, regulations and ordinances of all governmental authorities with respect to the management, use and operation of the Project, except that Manager shall be responsible for capital expenditures in connection therewith only as required by the Annual Capital Budget or Article 9;

(m) Bond over or make other adequate provision for the payment of any liens by mechanics, materialmen, suppliers, vendors or others producing labor or services to the Project from work for which SNW has made funds available in the Operating Account or otherwise; and

(n) Clean and maintain the Project, including the restrooms, floors, windows and parking facilities, on a daily basis in order to ensure a clean and sanitary environment.

(o) The Glass Bridge shall be operated and available for use by the public throughout the Operating Term at the following times:

(A) Daily, starting each day at 8:00 AM Arizona time and ending at 6:00 PM Arizona time during the summer, and starting at 9:00 AM Arizona time and ending at 5:00 PM Arizona time during the winter, and

(B) At such other times as SNW and Manager shall mutually agree upon from time to time, as necessary or appropriate to facilitate and encourage visits to the Glass Bridge.

\* \* \*

2.8 Approval Process. Whenever in this Agreement the consent or approval of a party is required, unless otherwise provided in this Agreement with respect to such matter, the party requesting such approval or consent shall provide the other party with a written request for such approval or consent, providing sufficient detail to allow the other party to adequately and properly evaluate the request. Unless otherwise provided in this Agreement, a party shall not unreasonably withhold, delay, or condition its consent or approval; however, if a party fails to respond to a written request for consent or approval within 20 Business Days of receipt of the request and the detailed explanation, such party shall be deemed to have approved the matter. All disapprovals must be in writing and contain a detailed explanation for such disapproval.

\* \* \*

2.10 Performance of Management Services by Subsidiary. From time to time, Manager may provide its management services pursuant to this Agreement through a Qualified Subsidiary; subject in all cases to the following:

(a) Manager shall remain fully liable and obligated for all of the obligations and duties of Manager under this Agreement;

(b) Prior to performing any services under this Agreement, the Qualified Subsidiary shall agree in writing, for the benefit of SNW and Manager, to be bound by the terms of this Agreement applicable to Manager, as they relate to the services to be performed by such Qualified Subsidiary, and to perform those services in accordance with the terms and conditions of this Agreement;

(c) Manager shall not be entitled to delegate any right to approve or consent to any matter under this Agreement requiring the consent or approval of Manager, and under no circumstances will any consent or approval ever be required from the Qualified Subsidiary;

(d) Manager shall supervise the Qualified Subsidiary in all aspects of the services performed by the Qualified Subsidiary, and Manager agrees to indemnify, defend, and hold SNW and its Related Parties harmless for, from and against any and all Claims arising out of or resulting from the services performed by the Qualified Subsidiary or the actions of the Qualified Subsidiary, to the extent such services or actions are not in compliance with the terms of this Agreement, which indemnity shall survive the expiration or termination of this Agreement; and



(e) Any and all costs that are incurred in connection with the delegation permitted by this Section 2.10 that would not have been incurred but for the delegation, such as fees payable to the Qualified Subsidiary, shall be paid exclusively by Manager promptly when due, and under no circumstances shall such costs be deemed Gross Operating Expenses.

As used in this Section 2.10, a “Qualified Subsidiary” means an entity that is wholly owned by Manager, David Jin, Yvonne Tang, or a trust in which David Jin and/or Yvonne Tang are the sole trustees, or any combination of the foregoing and in which David Jin has primary management responsibility; *provided, however*, that, up to 10% of the ownership interests in the Qualified Subsidiary may be held by third parties that have been approved in writing by SNW, such approval not to be unreasonably withheld, delayed, or conditioned.

\* \* \*

3.1 Amount of Manager’s Fee. In consideration of Manager’s performance hereunder, including during the Construction Term, SNW shall pay to Manager a Manager’s Fee equal to the following:

(a) For the Fiscal Year commencing on the first day of the Operating Term Date and ending on December 31 of that year and for the next five full Fiscal Years, an amount equal to 50% of Net Revenues;

(b) For the next five full Fiscal Years, an amount equal to 40% of Net Revenues for each such Fiscal Year;

(c) For the next five full Fiscal Years, an amount equal to 30% of Net Revenues for each such Fiscal Year; *provided, however*, that if, by the time of commencement of the period described in this subsection (c), Manager has not earned an aggregate total Manager’s Fee pursuant to subsections (a) and (b) equal to the Manager’s Investment, then, until such time as Manager has earned an aggregate total Manager’s Fee pursuant to subsections (a) and (b) and this subsection (c) equal to the Manager’s Investment, the amount paid to Manager pursuant to this subsection (c) shall be 50% of Net Revenues rather than 30% of Net Revenues; *provided, further, however*, that Net Revenues for the fiscal year in which Manager has finally earned an aggregate total Manager’s Fee equal to Manager’s Investment, shall, for purposes of the annual reconciliation pursuant to Section 3.4, be prorated for such year, based on a 365-day year, and Manager shall be deemed to have earned and shall be paid 50% of such Net Revenues on a daily basis, until the aggregate total Manager’s Fee pursuant to subsections (a) and (b) and this subsection (c) equal to the Manager’s Investment, and thereafter Manager shall be deemed to have earned and shall be paid 30% of such Net Revenues. If at the end of the 5-year period described in this subsection (c), Manager

still has not received an aggregate total Manager's Fee equal to Manager's Investment, there shall be no further adjustments to the amount of the Manager's Fee, but the Manager's Fee shall be payable pursuant to subsection (d) below.

(d) For the remainder of the Operating Term, an amount equal to 25% of Net Revenues for each Fiscal Year during the remainder of the Operating Term.

\* \* \*

3.4 Annual Reconciliation. Within 60 days following the end of each Fiscal Year for which there are Net Revenues, SNW shall pay to Manager an amount equal to the Manager's Fee for such Fiscal Year less the aggregate total of the Interim Payments made to Manager pursuant to Section 3.3 with respect to such Fiscal Year; *provided, however*, that if the aggregate total of such Interim Payments exceeds the Manager's Fee for such year, then Manager shall pay the excess to SNW within the 60-day period.

\* \* \*

4.1 Books and Records. SNW shall keep full and adequate books of account and other records reflecting the results of operation of the Project, all in accordance with generally accepted accounting principles. The books of account and all other records relating to or reflecting the operation of the Project shall be kept at the offices of SNW and shall be available to Manager and its representatives and its auditors or accountants, at all reasonable times and upon reasonable notice for examination, audit, inspection, copying and transcription. All of such books and records pertaining to the Project at all times shall be the property of SNW. Within 30 days of Manager's written request and at Manager's expense, SNW will provide Manager with copies of all books of account and other records of the Project, which are reasonably available and not disposed of in accordance with SNW's document retention policy. Within 30 days of SNW's written request and at SNW's expense, Manager will provide SNW with copies of all invoices, books of account and other records relating to the construction phase of the Project, which are reasonably available and not disposed of in accordance with Manager's document retention policy.

#### 4.2 Accounting.

(a) SNW shall deliver to Manager within 20 days after the end of each calendar quarter an interim accounting showing the results of the operation of the Project for such quarter and for the Fiscal Year to date (including a computation of Gross Revenue and Gross Operating Expenses). Such interim accounting and the annual accounting referred to below shall:

(i) be taken from the books and records maintained by SNW for the Project in the manner hereinafter specified; and (ii) separately state the amount of the Manager's Fee.

(b) Within 60 days after the end of each Fiscal Year, SNW shall deliver to Manager an unaudited annual income statement and balance sheet for the Project, prepared on an accrual basis, showing Gross Revenues, Gross Operating Expenses, Net Revenues, and any other information necessary to make the computations required hereby for such Fiscal Year (collectively, the "Annual Operations Statement").

(c) The annual financial statements for the Project shall be audited by an independent firm of certified public accountants selected by SNW. If the audit is conducted by a Qualified Accounting Firm, the cost of the audit shall be included within Gross Operating Expenses. Otherwise, the cost of the audit shall be borne by SNW. The audit shall be conducted in accordance with generally accepted accounting principles. As used in this Agreement, a "Qualified Accounting Firm" is an accounting services firm (i) approved by Manager, or (ii) meeting the following criteria: (A) having offices in at least three states; (B) having a regional or national reputation for high standards of professionalism within the accounting and auditing field; (C) having at least 75 partners or principals; (D) having expertise in the area of auditing within the hospitality industry; and (E) having one or more partners or principals licensed as certified public accountants within the State of Arizona. The parties agree that Moss Adams LLP qualifies as a Qualified Accounting Firm.

\* \* \*

4.5 Right to Audit. At any time within two years after the end of a Fiscal Year, Manager may cause an audit of the books and records of the Project to be made, at Manager's sole expense and not as a Gross Operating Expense, for the purpose of verifying the accuracy of the Annual Operations Statement for such Fiscal Year and any other computations under this Agreement relating to such Fiscal Year. The audit shall be performed by a certified public accountant selected by Manager, and SNW agrees to make all records available for the audit at its offices, unless Manager agrees to a different location. If the results of the audit show any discrepancies that would affect amounts paid or payable by Manager under this Agreement, then within 10 days of the completion of the audit and the determination of such discrepancy, Manager and SNW shall make any necessary adjusting payments between themselves to remedy the discrepancy.

\* \* \*

### 5.1 Annual Operating Budget; Marketing Budget.

(a) Annual Operating Budget. The “Annual Operating Budget” for each Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, shall consist of reasonable estimates of Gross Revenues and Gross Operating Expenses for such Fiscal Year, itemized in a reasonable format, together with the assumptions, in narrative form, forming the basis of such estimates. The Annual Operating Budget shall also include provisions for an operating reserve (the “Operating Reserve”), with the Operating Reserve to be funded as provided in this Agreement. At least 60 days prior to the commencement of each Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, SNW shall prepare and submit the Annual Operating Budget for such Fiscal Year to Manager for its review and approval. Once both Manager and SNW are in agreement on the terms of the Annual Capital Budget for a particular Fiscal Year, Manager shall be authorized to implement such approved Annual Capital Budget.

(b) Marketing Budget. The Annual Operating Budget shall include as a component thereof, a separate marketing budget (the “Marketing Budget”) which shall be subject to review and approval by SNW. The Marketing Budget for a particular year shall be prepared by Manager and submitted to SNW for review at least 30 days prior to the date that SNW is required to submit to Manager the Annual Operating Budget for the same year, and, when approved by the parties, for inclusion in the Annual Operating Budget. Unless the parties otherwise agree, each in their sole and absolute discretion, total aggregate expenditures for marketing during the first Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, and the next five full Fiscal Years shall not exceed \$500,000 and thereafter, the annual Marketing Budget for a particular Fiscal Year shall not exceed 5% of Gross Revenues for the prior Fiscal Year. Once both Manager and SNW are in agreement on the terms of the Marketing Budget for a particular Fiscal Year, Manager shall be authorized to implement such approved Marketing Budget.

\* \* \*

5.6 Operations on behalf of SNW. In performing its duties under this Agreement, Manager shall act solely for the account of SNW. All debts and liabilities to third persons incurred by Manager in the course of its operation and management of the Project, shall be pursuant to the terms and subject to the limitations of this Agreement, and shall be the debts and liabilities of SNW only, and Manager shall not be liable for any such obligations by reason of its

management, supervision, direction and operation of the Project for SNW or for any other reason whatsoever. Manager may so inform third parties with whom it deals on behalf of SNW and may take any other steps to carry out the intent of this provision. The foregoing is not intended to relieve or release Manager from any of its funding obligations pursuant to any provision of this Agreement or from liability for damages or other Claims arising as a result of a default by Manager pursuant to this Agreement.

\* \* \*

#### 13.4 Shuttle Bus Service.

(a) Agreement to Provide. Manager agrees that, from and after commencement of the Operating Term through the earlier of (i) the 10th anniversary following the Diamond Bar Road Completion Date, or (ii) the 25th anniversary of the Effective Date (the “Shuttle Service Term”), Manager will, at Manager’s sole cost and expense, maintain and operate the Shuttle Bus Service in accordance with the terms, conditions and requirements of this Section 13.4. Under no circumstances will any costs or expenses associated with the Shuttle Bus Service, including, without limitation, costs to design and construct the Staging Lodge, costs for the Tour Vehicles, and ongoing operational costs be deemed to be Gross Operating Expenses or capital expenditures subject to Article 6.

(b) Description of the Shuttle Bus Service. The “Shuttle Bus Service” shall consist of a first class shuttle bus service meeting the requirements of this Section 13.4 and providing shuttle service for members of tour groups and other individuals to and from the Staging Lodge and the Project Improvements, including (i) a shuttle to and from the Staging Lodge and Grand Canyon West (the “Diamond Bar Shuttle”), (ii) a shuttle to and from Grand Canyon West and the Glass Bridge (the “Glass Bridge Shuttle”), and (iii) a shuttle to and from Grand Canyon West and Guano Point (the “Guano Point Shuttle”).

(c) Staging Lodge; Hours of Operation.

(i) Prior to commencement of the Shuttle Service Term, Manager shall design and construct a first class staging and check-in facility of at least 4,000 square feet, with associated paved and lighted parking lot and ancillary improvements (all such improvements being referred to collectively as the “Staging Lodge”). The Staging Lodge shall be constructed in a good and workmanlike manner by a licensed



general contractor on the real property owned by Manager, located on Pierce Ferry Road, near its intersection with the Diamond Bar Road, and more particularly described on Exhibit C. The design of the Staging Lodge shall be subject to the prior review and approval of SNW, such approval not to be unreasonably withheld, delayed, or conditioned.

(ii) The Staging Lodge shall be operated and maintained in first class condition and repair throughout the Shuttle Service Term.

(iii) The Shuttle Bus Service and the Staging Lodge shall be operated and available for use by the public throughout the Shuttle Service Term at the following times (collectively, the “Hours of Operation”):

(A) Daily, starting each day at least 30 minutes prior to the first scheduled arrival of any organized tour group at the Staging Lodge and operating continuously thereafter throughout the day until the later of (1) 120 minutes following the last scheduled arrival of any organized tour group at the Staging Lodge and (2) 30 minutes following the last scheduled return of an organized tour group from the Glass Bridge to the Staging Lodge; and

(B) At such other times as SNW and Manager shall mutually agree upon from time to time, as necessary or appropriate to facilitate and encourage visits to the Glass Bridge.

(iv) All costs and expenses of design and construction of the Staging Lodge, as well as all operational costs and expenses, shall be borne exclusively by Manager.

(d) Required Tour Vehicles. Throughout the Shuttle System Term and during the Hours of Operation, Manager shall have ready and available the following tour vehicles (collectively, the “Tour Vehicles”):

(i) For use on the Diamond Bar Shuttle, at least four tour coaches, each with a minimum capacity of 40 persons, specially designed and built to handle the rigors of Diamond Bar Road with a minimal chance of breakdown; *provided, however*, that once the Diamond Bar Shuttle ceases to operate as stated

in Section 13.4(e)(i), the tour coaches used for the Diamond Bar Shuttle shall be used for the other Shuttle Bus Service or, if not so used, they shall be transferred to SNW as provided in Section 13.4(j), as if, on the Diamond Bar Road Completion Date, the Shuttle Service Term had ended with respect to such vehicles;

(ii) For use on the Glass Bridge Shuttle and Guano Point Shuttle, at least three high-end tour buses, each with a minimum capacity of 40 persons; and

(iii) For the use of VIP guests for both the Guano Point Shuttle and the Glass Bridge Shuttle, at least one VIP limousine bus, with a minimum capacity of 12 persons.

Each of the Tour Vehicles shall be continuously maintained by Manager in a first class, safe and clean condition and state of repair. All costs and expenses of acquiring, replacing, maintaining, repairing, and operating the Tour Vehicles shall be paid exclusively by Manager.

(e) Shuttle Operations.

(i) The Diamond Bar Shuttle shall be operated seven days a week, 365 days a year, with the Diamond Bar Shuttle ceasing operations on the Diamond Bar Road Completion Date. While operating, the Diamond Bar Shuttle shall be operated on a daily basis during the Hours of Operation. Following the Diamond Bar Road Completion Date, the Diamond Bar Shuttle service will be permanently discontinued.

(ii) The Glass Bridge Shuttle and the Guano Point Shuttle shall be operated during the Hours of Operation seven days a week, 365 days a year during the entire Shuttle Service Term.

(f) Improvement of Diamond Bar Road. The federal government is involved in a project to completely pave Diamond Bar Road from its intersection with the Pierce Ferry Road to the border of the Nation's reservation (such improvements being referred to as the "Diamond Bar Road Improvements". The date of completion of the Diamond Bar Road Improvements is the date that the government has completed all work to completely pave Diamond Bar Road and all lanes of Diamond Bar Road are first open to the public (the "Diamond Bar Road Completion Date").

(g) Payments to Manager for Shuttle Bus Service.

(i) For each individual using the Diamond Bar Shuttle, SNW shall pay \$3 to Manager; *subject, however*, to increases in such per person amount permitted by Section 13.4(g)(iv). There shall be no additional fee for any individual using the Diamond Bar Shuttle who also uses either or both of the Glass Bridge Shuttle and the Guano Point Shuttle.

(ii) During the period that the Diamond Bar Shuttle is operating, SNW shall also pay to Manager the following amounts, each of which is subject to increase as permitted by Section 13.4(g)(iv), with respect to individuals who utilize either or both of the Glass Bridge Shuttle and the Guano Point Shuttle:

(A) \$6 for every individual that arrives at Grand Canyon West by private vehicle; *provided, however*, that there shall be no fee for any individual that takes a Jeep tour to Grand Canyon West.

(B) \$4 for every individual arriving at Grand Canyon West by a fixed wing Tour Operator; and

(C) \$5 for every individual arriving at the Staging Lodge by transportation provided by a bus Tour Operator.

(iii) After the Diamond Bar Shuttle no longer operates, SNW shall pay to Manager \$6 for every individual utilizing either or both of the Glass Bridge Shuttle and the Guano Point Shuttle; *subject, however*, to increases in such per person amount permitted by Section 13.4(g)(iv).

(iv) On each anniversary of the commencement of the Shuttle Service Term, Manager may increase the fees payable pursuant to Sections 13.4(g)(i), 13.4(g)(ii) and 13.4(g)(iii) to an amount equal to the fee in effect on the day preceding such anniversary multiplied by the CPI Adjustment Factor.

(v) Notwithstanding the foregoing, during the Shuttle Service Term, employees, of SNW and/or Manager shall be entitled to use the Shuttle Bus Service without charge or payment to Manager from SNW on regularly scheduled routing.

(vi) Amounts due and payable by SNW under this Section 13.4(g), shall be payable no more frequently than once in a calendar month, within 15 days of receipt by SNW of a detailed invoice and statement of fees due from SNW for the period of time covered by the invoice.

(vii) Under no circumstances will amounts paid or otherwise collected by Manager pursuant to this Section 13.4(g) in connection with the Shuttle Bus Service be deemed to be Gross Revenues.

(viii) In lieu of payments from SNW to Manager under Section 13.4(g)(ii)(B) and (C) and upon SNW's written request, Manager shall, during the period that the Diamond Bar Shuttle is operating, be required to charge the amounts that SNW would have paid under Section 13.4(g)(ii)(B) and (C) from the Tour Operators.

(h) Compliance. Manager shall be responsible, at Manager's sole cost and expense, for obtaining and maintaining in full force and effect, any and all governmental permits, entitlements, licenses, and approvals necessary or appropriate to design, construct, maintain and operate all aspects of the Shuttle Bus Service, including the Staging Lodge and the Tour Vehicles. All of the activities of Manager pursuant to this Section 13.4 shall be undertaken and completed in compliance with all applicable governmental laws, rules and regulations.

(i) Operational Issues; Insurance and Indemnity.

(i) Throughout the Shuttle Service Term, the Shuttle Bus Service shall be advertised by Manager as free to the public, and other than the amounts to be paid to Manager pursuant to Section 13.4(g), Manager shall not charge or collect any other fees for the Shuttle Bus Service.

(ii) All of the individuals involved in providing the Shuttle Bus Service shall be employees of Manager and all labor costs associated with such personnel shall be borne exclusively by Manager. Such employees shall not be deemed to be Project employees and Manager shall not be subject to the requirements of Section 2.6 with respect to such employees. No individual shall be allowed to operate a Tour Vehicle unless such individual has a current, valid state vehicle operator's permit and is otherwise physically, mentally, and emotionally competent to safely and properly operate vehicles such as the Tour Vehicles.

(iii) Throughout the Shuttle Service Term, Manager shall provide and maintain commercial general liability and business automobile liability insurance in amounts satisfactory to SNW, but in any event not less than a combined single limit of \$5,000,000 for each occurrence, for personal injury and death, and property damage, which shall, among other risks, including coverage against liability arising out of the ownership or operation of motor vehicles, as well as coverage in such amount against all claims brought anywhere in the world arising out of alleged (i) bodily injury, (ii) death, (iii) property damage, (iv) assault or battery, (v) false arrest, detention or imprisonment or malicious prosecution, (vi) libel, slander, defamation or violation of the right of privacy, or (vii) wrongful entry or eviction. In providing and maintaining such insurance, Manager shall comply with the requirements of Sections 7.2 and 7.3 with respect to such insurance; however, the insurance that Manager is required to carry pursuant to this Section 13.4(i)(iii) is in addition to the insurance required pursuant to Article 7, and the cost of the insurance required hereby shall be borne exclusively by Manager.

(iv) Manager agrees to indemnify SNW and its Related Parties and hold each of them harmless for, from and against any and all Claims attributable, directly or indirectly, to the operation by Manager of the Shuttle Bus Service, to any of the activities of Manager, its Related Parties, or their employees, agents, and contractors pursuant to this Section 13.4, or to the breach by Manager of any of its duties and obligation pursuant to this Section 13.4. This indemnity shall survive the expiration or termination of this Agreement.

(j) Ownership of Shuttle Assets. During the Shuttle Service Term, all of the real and personal property assets used in connection with the Shuttle Bus Service, including, without limitation, all Tour Vehicles, the Staging Lodge, the real property on which the Staging Lodge is constructed, and all other real and personal property owned by manager and used in connection with the Shuttle Bus Service (collectively, the “Shuttle Assets”) shall be owned by manager. Upon expiration of the Shuttle Service Term, Manager agrees to convey and transfer title to all of the Shuttle Assets to SNW, free and clear of any and all liens and encumbrances and in the condition required by this Agreement, without further payment of any amount by SNW to Manager.



\* \* \*

15.4 Arbitration; Governing Law; Jurisdiction.

(a) Mandatory Arbitration. Any controversy, claim or dispute arising out of or related to this Agreement shall be resolved through binding arbitration. The arbitration shall be conducted by a sole arbitrator; *provided however*, if the parties cannot agree upon an arbitrator, each party will select an arbitrator and the two arbitrators will select the sole arbitrator to resolve the dispute. Either party may request and thus initiate arbitration of the dispute by written notice (“Arbitration Notice”) to the other party. The Arbitration Notice shall state specifically the dispute that the initiating party wishes to submit to arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, as limited by Section 15.4(d). 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. Prompt disposal of any dispute is important to the parties. The parties agree that the resolution of any dispute shall be conducted expeditiously, to the end that the final disposition thereof shall be accomplished within 120 days or less.<sup>18</sup>

(b) Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Arizona and the Hualapai Indian Tribe. The laws of the State of Arizona specifically exclude, however, any laws of the State of Arizona that may be interpreted to (i) waive SNW’s or the Nation’s sovereign immunity, (ii) require arbitration, other than as agreed to in Section 15.4(a); or (iii) require SNW or the Nation to appear in any courts or other proceedings in the State of Arizona, except federal courts. The 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, and located in or around Peach Springs, Arizona.

(c) Unenforceability. With respect to any provision of this Agreement finally determined by a federal court of competent jurisdiction to be unenforceable, such federal court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the parties shall abide by such federal court’s determination. In the event that any provision of this Agreement cannot be reformed, such provision shall

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<sup>18</sup> During the Preliminary Hearing No. 1 (10.31.11), “the parties agree[d] to waive that provision.” *Report of Preliminary Hearing and Scheduling Order (No. 1)*, at 1.

be deemed to be severed from this Agreement, but every other provision shall remain in full force and effect.

(d) Limited Waiver of Sovereign Immunity. SNW expressly waives its sovereign immunity with respect to all disputes arising out of this Agreement to the extent permitted under the Constitution of the Nation. SNW's waiver of sovereign immunity from suit is specifically limited by the Constitution of the Nation to the following actions and judicial remedies:

(i) The action must be brought by Manager and not by any other person, corporation, partnership, government, governmental agency or entity whatsoever; and

(ii) Any money damages will be limited to the assets that are solely owned by SNW. No money damages, awards, fines, fees, costs or expenses can be brought or awarded against the Nation in arbitration, judicial, or governmental agency action; and

(iii) An action in a federal court of competent jurisdiction in Arizona to either (i) compel arbitration or (ii) enforce a determination by an arbitrator requiring SNW to specifically perform any obligation under this Agreement (other than an obligation to pay any money damages under Section 15.4(d)(ii)).

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15.12 Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this agreement, the prevailing party will be entitled to recover attorneys' fees in such amount as the arbitrator or arbitration panel may judge reasonable.

**Arizona Standards for Finding and Resolving Ambiguity in Contract Language; Summary of Breaches of the Agreement.** The ultimate goal for the court is to "ascertain and give effect to the intentions of the parties." *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 153, 854 P.2d 1134, 1139 (1993). If the terms of a contract are clear and unambiguous, the court must enforce them as written. *Sparks v. Republic Nat. Life Ins. Co.*, 132 Ariz. 529, 534, 647 P.2d 1127, 1132 (1982); *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 302, 197

P.3d 758, 763 (App. 2008). A contract is ambiguous if its terms are reasonably open to more than one interpretation. *Id.* Here, the written terms of the parties' 2003 contract are unambiguous.

The testimonial and documentary record confirms and the tribunal finds that SNW breached the 2003 agreement by failing to: (a) allow GCSD to manage the Skywalk (§2.1); (b) keep adequate books and records (§4.1); (c) deliver interim accountings to GCSD within 20 days of each calendar quarter (§4.2(a)); (d) deliver unaudited annual income statements to GCSD within 60 days of the end of each fiscal year (§4.2(b)); (e) select an independent certified public accountant to perform annual audits (§4.2(c)); (f) make records available for GCSD to audit (§4.5); (g) pay business expenses of the Skywalk operations (§5.6); and, pay GCSD the manager's fee (§3.1(a)).

#### IV.

**The Agreement, Construction of the Skywalk, and Immediate Success: Increased Visitation to Grand Canyon West.** GCSD operates its headquarters in Las Vegas, not on the reservation. As a result, GCSD's sale of tickets, hiring and training of employees, and other management operations take place largely in Las Vegas. In contrast, SNW's operations occur at Grand Canyon West, including its sale of tickets, hiring of employees, and the like. Under the 2003 agreement, SNW would provide financial information to GCSD on a monthly basis; SNW would pay GCSD its management fee on a quarterly basis; and, the parties would undertake an annual reconciliation. Exh. 3, at §§3.3 and 4.1. GCSD had the right to examine and audit the books and records of the project on demand. *Id.*, at §4.5.

Following GCSD's completion of the Skywalk bridge in March 2007,<sup>19</sup> visitation to Grand Canyon West increased dramatically. Visitation to Grand Canyon West (GCW) had increased by 4 percent annually between 2002 and 2006

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<sup>19</sup> See Exh. 1 (*How We Did It* (DVD)(GCSD007549)) and 2 (photographs of bridge, visitor's center, and other facilities)(GCSD005670-90)).

before the Skywalk opened. Exh. 50 (GCSD007705). However, after the Skywalk opened, visitation to GCW increased by 156 percent for 2007. *Id.* For the full year 2008, total visitation increased to 535,000 people. *Id.* In 2008, visitors to GCW spent more than \$40 million. *Id.* (GCSD007706).

Mr. Walter Mills, who, from 2001 to 2008 served on the GCRC and SNW Boards of Directors, testified that the 2003 agreement turned out to be a “hell of an agreement” and “really a sweetheart deal” for the Tribe. Mr. Steve Beattie, the chief financial officer for both SNW and GCRC, and who negotiated the agreement for the Tribe, agreed that the 2003 agreement heavily favored the Tribe. Most counterparties in Mr. Jin’s position, Mr. Mills explained, would have negotiated for and received a long-term leasehold interest or some other form of semi-permanent interest in the project. Mr. Beattie skillfully avoided granting that to Mr. Jin.

Over four days of testimony, every witness agreed that the 2003 agreement, GCSD’s construction of the Skywalk, and resulting increase in tourism represented an unqualified success for the Tribe. Ms. Sheri YellowHawk, a member of the Tribe who has served on the Tribal Council since 1998, and who served as the chief executive officer of SNW and, for eight years, as CEO of GCRC, testified that annual revenues for GCRC were only \$2 million in 2002 but now total over \$53 million. She attributed “all of the growth [in revenue] to Skywalk.” In October 2008, she wrote that Skywalk, a “one of kind project,” would “not have happened without the investor, David Jin.” Exh. 69 (GCSD007941). “His patience,” she wrote, “persistence, and commitment made the project work. He, in good faith, invested millions of dollars from the first phase including testing and preparation. He attended thousands of hours of meetings with the management of the corporations to insure a quality project.” *Id.*

The Skywalk’s unquestioned success makes all the more puzzling, then, SNW’s and the Tribe’s refusal to disclose financial records, naked grab of management fees owed to Mr. Jin, and unfounded but carefully orchestrated campaign against him.

**The Root of the Dispute Over Management Fees: Mr. Jin Takes Over Accounting for the Skywalk from SNW.** After the immediate success of the Skywalk, in March 2007, SNW was unable to keep up and maintain records of the operation. The Tribe asked Mr. Jin for help. He agreed. Mr. Emry and his firm stepped in. In one of his later letters to Mr. Ohre, Mr. Parker explained in part as follows:

“Less than one (1) month into the operations of this business, my client was asked and agreed to take over the responsibility of performing the accounting and maintaining the books of this operation. It is my understanding that well over \$400,000 of sales had not been documented during the time period SNW performed the accounting for this project. Additionally, it is my understanding that a substantial amount of money was lost due to employee theft at the GCRC ticket sales, resulting in the prosecution of several employees (footnote omitted). Pursuant to the contractual agreement, SNW would be responsible for replacing these funds for the betterment of this project. At this point, my client has not instructed me to demand the reimbursement of these amounts. My client is strictly interested in continuing a cooperative effort towards the proper maintenance of these books, accounting records and promoting this project. My client has invested tens of millions of dollars into this project and does not relish the vulnerable position it has been placed in due to the uncertainly (sic) of SNW’s Board and current conduct.”

Exh. 80 (GCSD007263). As noted at length above, Mr. Teddy Parker, counsel for GCSD, asked for SNW’s audited financial statements. *Id.* (GCSD007264). As described above, the record confirms that SNW never supplied its own audited or even unaudited financial statements; and, SNW never turned over financial statements reflecting the company’s operations. With that decision, the dispute began.

Over the coming months and years, Mr. Jin asked for financial records from SNW. For its part, the Tribe refused to turn over the financial records and then, to make matters worse, and without apparent basis, beginning in 2008, refused to turn over *any* portion of the management fees due GCSD for its continued operation of the Skywalk. The Tribe also suspended reimbursements to GCSD and Mr. Jin’s companies (OTI and Y Travel) for expenses related to the operation of the Skywalk



(e.g., employee housing, transportation, advertising, etc., etc.). All of these developments, coupled with the Tribe's failure to supply utilities to the project, led to this proceeding.

**The Tribe's Case Against Mr. Jin and GCSD for Breach of the 2003 Management Agreement.** At this point, and for the sake of completeness, SNW's and the Tribe's position should be stated. But, because SNW did not appear at the hearing, the tribunal must rely on the Tribe's public relations firm, Scutari Cieslak, which stated the Tribe's case against Mr. Jin and his company most clearly. In one memorandum, the Scutari firm wrote as follows:

"Now four years after the Skywalk's grand opening, Jin has failed to abide by his contractual obligations and keep even the most basic promises he made to the Hualapai. The visitors' center is an empty shell – a ramshackle building that sits idle with exposed wiring hanging from the ceilings and holes in the floor. There are abysmal port-a-johns, not luxurious bathrooms, as Jin promised for the thousands of tourists who visit from around the world. Worse yet, there is no electricity, water or sewer utilities running to the attraction at all. It's an appalling breach of the contract's most critical terms, and tourists from around the world get a front-row view of this debacle every single day.

The Hualapai have begged Mr. Jin to keep his promises and complete the work. Instead, Jin and his various subsidiaries have behaved like Arizona's version of Leona Helmsley and Bernie Madoff, leaving uninhabitable buildings in his wake and ignoring the pleas of those who trusted him. The tribe has simply asked Jin to uphold his end of the bargain. Now, the Hualapai are forced to seek the court's assistance to protect what's left of their investment."

Exh. 29 (Scutari Cieslak's "Hualapai Nation: Skywalk and Beyond" (GCSD007354)(emphases in original)). Setting aside the outlandish references to Mr. Madoff and Ms. Helmsley, that is the Tribe's argument: Mr. Jin failed to complete construction of utilities. But, in fact, on nearly every point, the documentary and testimonial record flatly contradicted the Scutari memorandum. No available evidence even suggested that Mr. Jin failed to keep any promise or that the Tribe 'begged' him to do so. In fact, the Tribe failed to construct utilities,

blocked GCSD's efforts to complete the Visitor's Center and, more than that, as the Scutari memorandum demonstrates, worked to distort the public record.

**The Record Confirming Mr. Jin's Completion of the Visitor's Center: Meeting Minutes and the Testimony of Messrs. Mills, Forrest, Quasula, and Mojica.** GCSD completed construction of and opened the Skywalk in March 2007. Before and after the opening of the Skywalk, GCSD broke ground and constructed the nearby Visitor's Center. However, from 2006 to date, the Tribe failed to construct or otherwise deliver power, water, or wastewater service to Grand Canyon West and the Visitor's Center. As a result, GCSD could not, for example, install elevators at the Center, complete and test electrical installations, or otherwise fully complete the Center. Today, the Center stands an empty although nearly completely constructed shell because the Tribe failed for years to deliver sufficient water, electrical service, or wastewater treatment to Grand Canyon West.

To make matters worse, for whatever reason, the Tribe (or at least four members of the Tribal Council known locally as the "Gang of Four"), decided to withhold Mr. Jin's share of the management fees on the ground that Mr. Jin had been obligated to construct millions of dollars of infrastructure for the delivery of utilities to the reservation. Along the way, the Tribe withheld Mr. Jin's share of the management fees without any basis in the 2003 agreement (or otherwise) and despite the unqualified success of the Skywalk bridge that Mr. Jin had built.

The exhibits and witnesses confirmed this basic point: the Tribe, not Mr. Jin, was obligated to complete the construction of water, power, and wastewater treatment facilities to service the Visitor's Center. Every witness who testified on this point confirmed that fact.

One example illustrates the point. Mr. Walter Mills retired in 1996 from 25 years of service around the country with the Bureau of Indian Affairs. After retirement, at Mr. Quasula's invitation, Mr. Mills agreed to serve on the board of directors for Grand Canyon Resort Corporation, the tribal corporation in Peach Springs that owns the Tribe's enterprises, including Grand Canyon West. He served one complete and one partial term on the board, from November 2001 to September

2008, including four years as vice-president. During his years on the GCRC board, he served with Mr. Ted Quasula, Ms. Kathryn Landreth (the former U.S. Attorney for the District of Nevada), and others. More important for these purposes, he also served on the SNW board of directors (along with Mr. Quasula and Ms. Landreth (and others)).

Mr. Mills explained that the division of labor called for Mr. Jin to construct and then, after completion, manage the Skywalk; SNW would account for and report on its financial operations. But, he explained, the accounting system failed from the outset because of “too much business.” The accountants, he testified, explained that the system was set up to handle \$6-7 million in revenues but the Skywalk was on the verge of receiving \$30-50 million in business. In the days after the Skywalk opened, Tribal employees could not count the cash fast enough. They stuffed hundreds of bills into envelopes for haphazard safekeeping. Tribal employees lost thousands of dollars to theft.<sup>20</sup> The Tribe (SNW) simply could not keep up or even protect the money received so SNW asked GCSD and Mr. Jin to step in. GCSD agreed. From that point on, Mr. Emry accounted for the operations of the Skywalk – until, that is, the Tribe stepped in during 2008 and 2009, as noted above, took the records from Mr. Emry’s firm, and began withholding management fees due GCSD.

In any event, Mr. Mills testified, he and the other outside members of the board sought to address and solve the shortcomings of SNW’s accounting system (apart from hiring Mr. Emry). First, the members of the SNW board of directors asked Mr. Mills to locate an accounting firm to report on the problem. He found and hired Protiviti, a management and consulting firm, who prepared at least a draft report. *See* Exh. 46 (*Contract Management Process Review* (June 2008)). In that draft, Mr. Mills recalled, Protiviti reported that GCSD had the better accounting

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<sup>20</sup> *E.g.*, Exh. 35 (Schedule reflecting insurance proceeds (\$25,000) from theft of tickets (GCSD007259-61)); Exh. 33 (11.26.07)(email from Steve Beattie to GCRC board members)(“This is my report regarding the theft that took place at GCW.” (GCSD005505) and “The interview conducted with Jason Pullen indicated that he had been doing this for several months.” (GCSD005507)); and Exh. 34 (12.18.07)(email from Steve Beattie to GCRC board members)(update “as to our progress on the theft issue from October 26<sup>th</sup>.”).

systems (as compared to the Tribe's), but Mr. Mills could not testify to the action taken by SNW in response to Protiviti's report, if any, because, in September 2008, without notice, the Hualapai Tribal Council removed Mr. Mills (and the only other outside members of the board, Mr. Quasula and Ms. Landreth) before the board could take any action. Meanwhile, Mr. Jin and GCSD faithfully continued to finance and operate the Skywalk.

In 2007, during these first several months after the Skywalk opened, when Mr. Mills served on the SNW board with Mr. Quasula and Ms. Landreth, the chief executive officer of GCRC was Sheri YellowHawk and the chief financial officer was Steve Beattie. During the final hearing, these two (and other) witnesses – all of whom had firsthand knowledge of the Skywalk and its operations from the Tribe's point of view – confirmed every major point made by Mr. Mills.

Mr. Mills testified that Mr. Jin timely constructed the Skywalk. The agreement had no deadlines and, in any event, as he pointed out, the construction cost the Tribe nothing. Mr. Mills persuasively explained – just as the other witnesses testified – that water, power, roads, and wastewater always had been and forever remained the Tribe's obligation. Neither GCSD nor Mr. Jin took on that responsibility. No agreement, memorandum, email, supplement, amendment or any other reliable written record indicated otherwise. Mr. Mills also explained that the Tribe had received over \$30 million to pave and improve Diamond Bar Road, the only overland access to Grand Canyon West.<sup>21</sup> That project is still not complete.

The Scutari firm and others including, for example, some quoted in the Tribal newsletters,<sup>22</sup> suggested that Mr. Jin was obligated to build power and supply water. But, as Mr. Mills and others testified, those claims were unfounded. The construction of the power grid alone, Mr. Mills explained, would have cost about \$40 million. Why, Mr. Mills asked, would GCSD have agreed to build that

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<sup>21</sup> Cf. Exhs. 49 (10.27.11)(Diamond Bar Road Reconstruction Grant Application (GCSD005623)) and 50 (9.1.09)(Economic Impacts of Prospective Diamond Bar Road Improvements (GCSD07703-13)).

<sup>22</sup> Copies of excerpts from the *Gamyu* (Newsletter of the Hualapai Nation) from 2008, 2009 and 2011 were received as Exhs. 36 – 43, 67, and 91.

infrastructure? With no prospect for economic return? And what agreement obligated GCSD to do so? None. In any event, the Tribe also has not completed construction of the electrical power supply to Grand Canyon West.

There is of course nothing otherwise wrong with the Tribe's failure to construct power, water, wastewater treatment, and improved roads for Grand Canyon West. But, use of those Tribal failures as an excuse against Mr. Jin and GCSD was plainly wrong. Although no witnesses from the Scutari firm testified, the available record, as shown in the exhibits, and four days of sworn testimony from fourteen percipient witnesses, confirms at least this much: the work from the Scutari firm and the statements from tribal leaders in the *Gamyu* newsletter reflect either grossly misinformed points of view or an intentional effort to distort the public record (not to say slander of Mr. Jin). However, for reasons noted below, no relief is available in these proceedings against individual tribal leaders, the Scutari firm, or the national and international media outlets, including prominent U.S. newspapers (which accepted the Scutari firm's version of reality with, apparently, little journalistic effort).<sup>23</sup>

One more example illustrates the point. Mr. Robert Bravo, Jr. testified during the hearing and offered his affidavit (Exh. 66 (2.28.12)). In addition to other positions with the Tribe over the years, Mr. Bravo served as the interim chief executive officer of GCRC from September 2009 to 2011. Exh. 66, at 2 ((GCSD007252). In his affidavit, he testified in part as follows: "I know from being both a member of the Tribe and involved with GCRC in various capacities that it was always anticipated that the Tribe would solely be responsible for bringing utilities to Eagle Point and the Skywalk. \*\*\* Importantly, the Tribe has been attempting to get Federal funding to install these utilities for the time I have been involved with GCRC." *Id.*, at 2-3.<sup>24</sup>

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<sup>23</sup> The Scutari & Cieslak memorandum (GCSD007289) and media articles were exhibit nos. 29 and 30 respectively.

<sup>24</sup> During the final hearing, other witnesses testified similarly, including, for example, Ms. Louise Benson, who has twice served as Tribal Council chairwoman over a period of five years and once as vice chair for four years. She was on the council when SNW contracted with GCSD to build and manage the



The most telling documents were the “Skywalk Construction – Meeting Minutes,” Exhs. 9 – 14.<sup>25</sup> The minutes of the meeting on April 8, 2009, for example, reflect the following:

“Construction of the Base Shell is 99% complete, but requires power and water for testing of mechanical, electrical and plumbing, as well as installation of the elevator.”

Exh. 55 (GCSD00768). But the Tribe had not delivered the power and water. Three witnesses who attended that (and nearly every other) construction meeting testified at the final arbitration hearing: Erin Forrest, Ted Quasula, and Manuel Mojica. Mr. Forrest was the Hualapai Tribe’s Engineer and Director of Public Works. Mr. Quasula was GCSD’s representative. Mr. Mojica managed the construction project for Executive Construction Management (Las Vegas) on behalf of GCSD. These witnesses confirmed that the Visitor’s Center was complete but for the supply of utilities to the site, as the construction meeting minutes confirm. More important, these witnesses testified that the Tribe – not GCSD – was obligated to supply the power, water, and sewage treatment for the Center.

Even the Tribe’s own construction plans and internal documents show that the Tribe for years has planned to build water, power, and electricity to serve Grand Canyon West. *See* Exh. 51 (Grand Canyon Resort Corporation Board of Director Meeting Minutes (9.22.06)(GCSD006944-48)(“GCW Westwater Pipeline – Sheri was under the impression that we had \$750K from EPA. The line needs to be a domestic line. We’ll know in December if we get the money.” \*\*\* (GCSD006948)); Exh. 52 (Grand Canyon Resort Corporation Board of Director Meeting Minutes (10.27.10)(GCSD006948-53)(“Future Projects – towers at [G]uano [P]oint,

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Skywalk. In her affidavit submitted to the U.S. District Court, she testified in part as follows: “I saw a great opportunity for the Tribal members when the idea of building the Skywalk came about. I also recognized that the business would not profit immediately because of the infrastructure that would need to be completed. My belief and that of the Tribal Council members at the time was that the Tribe had two years to complete the building of roads and to get water and power to the site of the Skywalk at Eagle Point. The completion of the infrastructure at the Skywalk site was the Tribe’s responsibility. David Jin and his company were never obligated to bring the utilities to Eagle Point.” Exh. 74, at 2-3 (GCSD007347-8).

<sup>25</sup> The Skywalk construction meeting minutes included the following exhibits: nos. 9 (7.16.08), 10 (8.20.08), 11 (11.5.08), 12 (12.3.08), 13 (1.14.09), 14 (3.4.09), and 55 (4.8.09).

quartermaster, etc. Cameron [Daines] solicited civil engineering bids for the entire GCW area. How do we get from Masterplan to development? We need to quantify the needs of water, sewer, etc. at each site. We need to increase our capacity. \*\*\* We need road development, wastewater plans overlaid with power and telephone. Cameron broke CTW into four zones. Each zone has a site. Each site will go through a process. Prioritize the sites for the next five years.” (GCSD006950)); Exh. 47 (Grand Canyon West Infrastructure Plan (GCSD007714-24) (discussing water requirements [“assumes a 15-year build out period between 2005-20”], wastewater reclamation, power distribution [“Extending electric power to GCW will require approximately 21 miles of line from the closest electrical substation on the Pierce Ferry Road.”], telephone/internet requirements, and additional infrastructure)); and, Exh. 48 (Grand Canyon West Land Use Plan (GCSD007725-45)). Using original plans from Tribal offices showing detailed drawings for the construction of utility services to Grand Canyon West,<sup>26</sup> Mr. Forrest underlined the point in convincing fashion.

Finally, the public record also confirms the point. *See, e.g.*, Exh. 56 (*Daily Miner* newspaper (Kingman, Arizona) for Friday, July 31, 2009 (GCSD007571)) (“The Hualapai Tribe’s struggle to provide adequate water to the Grand Canyon West area may soon be over. The Tribe has contracted with Stantec to design a 30-mile, six-inch water pipeline that will replace a two-inch existing line. \*\*\* The Tribe has already applied for U.S. Department of Agriculture and Environmental Protection Agency grants to help with the cost, said Jack Ehrhardt, Hualapai Nation Planning and Economic Development director.”)).

In the end, SNW’s and the Tribe’s only defense falls under the weight of the evidence from witnesses on the scene and the contemporaneous, written record. Mr. Jin and GCSD kept his promises to the Tribe; breached no material provision of the 2003 agreement; and, in the bargain, suffered damages. The tribunal turns now to that aspect of the case.

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<sup>26</sup> Exh. 45 (4.3.09)(Grand Canyon West Eagle Point Utility Extension Plans (GCSD004858-4880)).

## V.

**The Claimant's Claims for Compensation: Components and Resolution.** The Skywalk opened on March 27, 2007. The 2003 agreement provides that SNW would pay a management fee to GCSD equal to one-half of "net revenues" from the operation of the Skywalk. *See* Exh. 3, at §3.1(a). GCSD contends that SNW has not done so. The record confirms that SNW has not paid the required portion of net revenues to GCSD. SNW also has not paid its share of shuttle bus and other expenses of the operation.

**Claimant's Claim for Contract Damages: the RGL Forensics Report.** Mr. Steven J. Hazel, CPA/ABV/CFF, ASA, CVA, CMC (CV-Exh. 77) testified to GCSD's claimed losses from these breaches of the 2003 agreement. Mr. Hazel offered his written report (Exh. 76), dated June 22, 2012, and over 1800 pages of supporting material (Exh. 78), including financial records, in support of his conclusions.

First, some background is in order. In 2008, GCSD submitted a proposal to SNW for approval to complete the shell and interior of the Visitor's Center, which GCSD had scheduled for June 1, 2009. SNW never gave that approval. In fact, on September 25, 2008, SNW issued a "stop work" order to halt construction of the Center altogether. *See* Exh. 17 (9.25.08)(Letter from Wilfred Whatoname Sr., Hualapai Tribal Chairman, to David Jin (GCSD007283)) and Exh. 18 (9.25.08)(Letter from William Allison (Gallagher & Kennedy) to Mr. David Jin (GCSD005445)). The record reveals no supportable reason for that stop work order.<sup>27</sup> GCSD nevertheless obliged and stopped work.

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<sup>27</sup> In his affidavit (Exh. 66), which he also submitted to the U.S. District Court, Mr. Bravo testified in part as follows: "I know also that the completion of the building was halted by the Tribal council and was never abandoned by GCSD or Mr. Jin. I was physically at a Tribal council meeting in December of 2010 where the Tribal council voted to allow Mr. Jin to complete only one floor of the existing structure. Surprisingly, just a week later, the Tribal council reversed itself and withdrew the authorization and has refused to allow Mr. Jin to complete the building. As the interim CEO of GCRC, I can tell the court this was frustrating to me because a completed visitor center would generate considerably more revenue and a better visitor experience for GCRC and the Tribe. It appears that some members of the Tribal council who have taken over and now manipulate the Tribal activities believed that they needed a basis for alleging a breach of contract."

To this day, although the shell of the Center remains almost 99% complete, the Center remains unfinished. As a result, today, GCSD must supply food and beverage to Skywalk visitors from kitchens in Las Vegas and food trucks on site. Exh. 76, at 2. The retail, photo and other facilities remain limited. Without permanent water, electricity, or even sewage treatment facilities, the Center operates at a much diminished capacity. GCSD must, for example, operate the facility with portable toilets.

Regarding completion of the Center, the Tribe's position remains unchanged. In fact, on March 8, 2012, the Hualapai Tribal Council adopted Resolution no. 29-2012, which provided in part that "GCSD (including any parent company, subsidiary or other affiliate of GCSD) is hereby prohibited from transacting or otherwise engaging in business or other activities on the Hualapai Reservation or otherwise within the jurisdiction of the Hualapai Tribe[.]" Exh. 95. That resolution permitted OTI to continue to perform under the two shuttle bus agreements. *Id.*

Turning to the claimant's damage case, Mr. Hazel's analysis proceeded from the reasonable assumption that, absent the wrongful stop work order in September 2008, GCSD would have timely completed the Visitor's Center and thereby generated increased revenue for both GCSD and SNW. For example, if GCSD had been allowed to complete the Center by June 1, 2009 – which, Mr. Mojica testified, his firm was scheduled to do – then GCSD would have:

- Implemented a new online photos sales system for personalized Skywalk photo souvenirs (mugs, clothing, caps, etc.);
- Increased retail space from the current, temporary size (2000 square feet) to the planned size (5000 square feet); and,
- Offered three dining options to visitors – the first restaurant on the second floor (8000 square feet with 5000 square feet of casual dining seating); the second restaurant on the rooftop (2000 square feet of patio space and full service dining); and, the third on the bottom floor, including a portion of the floor made of glass (offering a fine dining menu).

Mr. Hazel's work also proceeded from the knowledge that during 2008, 2009, 2010, and 2011, SNW reimbursed no expenses and made no distributions of the contractually required manager's fees to GCSD.

With these assumptions in mind, Mr. Hazel and his firm identified and calculated three components of damages: Historical Unpaid Management Fees Payable to GCSD; Historical Unpaid Shuttle Bus Fees Payable to GCSD; and, Additional Lost Management Fees Due to Interference. *See* Exh. 76, at 3 ff.

Based on RGL Forensics' review of the available records, all as more fully described in its report (Exh. 76), RLG Forensics and Mr. Hazel summarized the losses in these three categories through December 31, 2011 as follows (RGL's Schedule 1): unpaid management fees (Schedule 4) in the amount of \$12,147,244; unpaid shuttle bus fees (Schedule 5) in the amount of \$8,935,591; less other deductions (Schedule 4) in the amount of \$420,292, which results in historical unpaid management fees and shuttle bus fees owing to GCSD in the amount of \$20,662,544.<sup>28</sup> In addition, Mr. Hazel expressed his opinion that GCSD lost net revenues from the expected incremental sale of tickets, food and bar, retail, photo, and events (Schedule 8) in the amount of \$3,440,155; and, the lost sales of engraved tiles and structure tours in the amount of \$872,770 (Schedule 7). (During his testimony, Mr. Jin persuasively described visitors' demand for the tiles included in this latter category of consequential losses.) In total, Mr. Hazel testified to and his report described total losses in the amount of \$24,975,469. *See* Exh. 76, at 3 ("We have calculated total damages to be \$24,975,469 to December 31, 2011, as shown on Schedule 1, and summarized in the following table[.]" (table omitted)).

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<sup>28</sup> In Schedule 3 of the report, RGL Forensics summarized the restated income statements and balance sheets from GCSD for the years 2007 through 2011. Gross revenues for that four-year period stand at \$74,426,889. After deductions for the cost of goods sold and other gross operating expenses in the amount of \$50,132,401, the restated financial statements show net revenues of \$24,294,488, or, in other words, a management fee of one-half that amount due to GCSD in the amount of \$12,147,244. Exh. 76, at Schedule 3 (RGL00023). In Schedule 4 (RGL00024), RGL Forensics reconciled the amount due to GCSD and noted a difference of \$126,904, but adopted the lower amount due to GCSD per the financial statements (\$20,789,448) as shown on Schedule 3.



The GCSD financial statements and records were offered and admitted separately into evidence as Exhs. 82 (GCSD financials for 2007 – 2009), 83 (GCSD financials for 2010 – 2011) and 84 (period sales reports (GCSD006671 – 6745)).

Therefore, based on the entire record, including the testimony of and report from Mr. Hazel and his firm (RGL Forensics (Englewood, Colorado)), the tribunal hereby awards the sum of **\$24,975,469** to GCSD for those categories of contract and consequential losses.

In addition to the damages outlined in the report from Mr. Hazel and RGL Forensics, GCSD claimed these other, additional losses:

**Stop and Start Costs.** GCSD claims \$100,000 for these losses, which arise out of the Tribe's repeated orders allowing and stopping work at the Center site. This claim is granted. The tribunal hereby awards the sum of **\$100,000** for these losses.

**Salary for Mr. Quasula.** GCSD claims \$120,000 for the salary of Mr. Quasula to work on documents and for consultation. Mr. Quasula's effort and time were doubtless helpful, but the tribunal denies this claim.

**Construction Insurance Wasted.** GCSD claims the sum of \$250,000 for wasted construction insurance. This claim is denied.

**Costs of Housing Y Travel Employees, Transportation, and Advertising.** In this claim, GCSD seeks \$1.7 million for unreimbursed costs associated with Y Travel employee housing, transportation, and advertising. Mr. Jeff Whitaker testified to these losses. *See* Exhs. 88 (2010 unpaid invoices from Y Travel (\$917,725) and 89 (2011 unpaid invoices from Y Travel (\$821,000)). The tribunal grants this claim and awards the sum of **\$1.7 million** to GCSD.

**Retrofit Wasted Equipment.** Mr. Mojica testified to additional costs to repair the damage to the building in the amount of \$800,000, including the cost of repairing damage to the exterior walls, roof decks, and the electrical, mechanical, and plumbing installations that have been exposed to the weather since late 2008 at the site, when the Tribe stopped work. This claim is granted. The tribunal hereby awards the sum of **\$800,000** for these losses.

**GCSD's Claim for Defamation.** GCSD seeks recovery for defamatory remarks by members of the Tribal Council, the publisher of the *Gamyu* newsletter, newspapers, and others. He seeks the sum of \$1.44 to \$2.16 million for repair and \$2.12 million to \$3.18 million for damages suffered in the Chinese market.

In her affidavit to the U.S. District Court, Chairwoman Benson testified in part as follows:

“David Jin and his company were never obligated to bring the utilities to Eagle Point. The claims by certain Tribal Council members and the PR firm that represents the Tribal council are incorrect. GCSD was never required to provide the utilities to that site. GCSD was only required to hook up to the utilities once they were provided to Eagle Point. \*\*\* The public relations campaign of negative publicity that was undertaken to discredit GCSD and Mr. Jin is intended to persuade the members of the Tribe that they are justified in taking Mr. Jin's property. Charlie Vaughn and Waylon Honga were the council members who dealt with the public relations firm and were even trained by them on what to say regarding these issues.”

Exh. 74, at 3 (GCSD007348). As Chairwoman testified, the claims by certain Tribal Council members and the Scutari firm were incorrect, but one element of defamation requires proof that the defendant “knew the statement was false, acted in reckless disregard of whether the statement was true or false, or negligently failed to ascertain the truth or falsity of the statement.” *Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309, 315 (1977). SNW's campaign against Mr. Jin and GCSD was not only meritless but profoundly unjustified. Still, the record does not permit the tribunal to make a judgment on this third element of the claim. More to the point, and aside from the merits, the claim is outside the scope of the arbitration provision. Mr. Jin himself, who is not a party here, would presumably recover any defamation losses against others who also were not parties here. Finally, the original demand for arbitration does not describe this claim. For at least these reasons, the tribunal denies GCSD's claimed losses arising out of SNW's alleged defamation.

**The Alter Ego Claim.** Claimant GCSD asks to hold GCRC liable for the award. SNW had no employees. The board of SNW was also the board of the HBBE

Corp. dba Grand Canyon Resort Corporation (GCRC). *See* Exh. 80 (10.22.08) (same). Mr. Beattie served as the CFO for both SNW and GCRC. In other words, SNW was for all practical purposes the same as GCRC and the Tribe. In 2008, Mr. Jin's lawyer, Mr. Parker, discovered and expressed concern about this very point. *E.g.*, Exh. 80(GCSD007262) ("Quite simply, SNW appears to be a corporation in name only and in turmoil at this point."). Many of the proposed findings that were suggested on this point by GCSD in its post-hearing submission (7.25.12) were supported by the record.

Nevertheless, the claim is denied. First, section 15.4(d)(ii) of the agreement provides:

"Any money damages will be limited to the assets that are solely owned by SNW. No money damages, awards, fines, fees, costs or expenses can be brought or awarded against the nation in arbitration, judicial, or governmental agency action[.]"

So, although GCSD may in later collection efforts seek relief against GCRC, that contention is not at issue here. Second, the only parties to the arbitration agreement are GCSD and SNW. And, as to those parties, no alter ego or similar claim was made in the demand for arbitration. *See Arbitration Complaint*, at 6-12 (8.9.11). It would be unfair to entertain this claim now. So, for at least these reasons, and without passing on the merits, the tribunal denies this claim.

**The Claim for Attorneys' Fees.** R-43(d)(ii) provides that the award "may include . . . an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement[.]" In its response to the demand for arbitration (12.1.11), SNW requested an award of fees. And, in section 15.12 of the agreement, the parties agreed as follows:

"In the event of any action or proceeding brought by either party against the other under this agreement, the prevailing party will be entitled to recover attorneys' fees in such amount as the arbitrator or arbitration panel may judge reasonable."

GCSD claims over \$1.5 million in attorneys' fees and costs. *See* Exhs. 93 (Greenberg Traurig schedule of fees) and 94 (Greenberg Traurig invoices for legal work to David

Jin (288 pages)). The claim for fees related to the Tribal Court litigation (Exh. 93 (\$310,147.76)) for legal work from April to September 2011 is denied. Those fees may fall within the scope of the fee provision in the arbitration agreement (“any action or proceeding”), but, even so, the tribunal judges that GCSD was not the prevailing party in that portion of the wider litigation between these two parties.

Next, the requested fees for the arbitration total \$1,204,349.74 for work from August 2011 through July 26, 2012. Exh. 93, at 2. Mr. Jin has paid \$526,972.74 of those charges. In this arbitration, GCSD was unquestionably the prevailing party. After reviewing the statements, and considering the circumstances, the tribunal judges that an award of fees in the amount of **\$950,000** is reasonable.

**Fees of RGL.** Finally, GCSD claims reimbursement of the fees paid to RGL Forensics in the sum of over \$195,000. This claim is denied as outside the scope of the fees provision.

**Administrative and Other Costs of the Arbitration.** Respondent shall bear the costs of the arbitration. The administrative filing and case service fees of the AAA, totaling \$91,800, shall be borne entirely by 'Sa' Nyu Wa, Inc., a Hualapai chartered corporation. The fees and expenses of the arbitrators, totaling \$53,082.50, shall be borne entirely by 'Sa' Nyu Wa, Inc. Therefore, 'Sa' Nyu Wa, Inc. shall reimburse Grand Canyon Skywalk Development, LLC, the sum of **\$47,341.25**, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Grand Canyon Skywalk Development, LLC.

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**Summary of the award.** The tribunal awards the following sums to GCSD and against SNW: (a) **\$24,975,469** for unpaid management and shuttle bus fees; (b) **\$100,000** for start and stop costs; (c) **\$1,700,000** for reimbursement of costs for Y Travel employee housing, transportation, and bus advertising; (d) **\$800,000** to repair damage to equipment and other installations at the site; (e) **\$950,000** for attorneys' fees; and, (f) **\$47,341.25** for costs of the arbitration. These amounts result in and the tribunal does hereby award the total sum of **\$28,572,810.25** to GCSD and against SNW.

**Conclusion.** The tribunal denies all claims and any counterclaims (including SNW's intended counterclaims (12.1.11)) not otherwise addressed above.

Dated: August 16, 2012  
Phoenix, Arizona

Shawn  
Aiken

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Shawn K. Aiken, Arbitrator

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