

# **Exhibit 7**

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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8  
9 Grand Canyon Skywalk Development,  
10 LLC,

11 Petitioner,

12 v.

13 'Sa' Nyu Wa, Inc.,

14 Respondent.

No. CV-12-08183-PCT-DGC

**ORDER**

15  
16 Petitioner Grand Canyon Skywalk Development, LLC ("GCSD") has filed an  
17 application for confirmation of an arbitration award. Doc. 1. Respondent 'Sa' Nyu Wa,  
18 Inc. ("SNW") has filed a response and a motion to vacate the arbitration award and  
19 dismiss this matter. Doc. 7. The petition and motion are fully briefed. Docs. 12, 13, 14.  
20 The Court heard oral argument from both parties on January 24, 2012. For the reasons  
21 that follow, the Court will grant GCSD's petition, confirm the arbitration award, and  
22 deny SNW's motion to vacate and dismiss.

23 **I. Background.**

24 **A. Management Agreement.**

25 GCSD is a limited liability company with its principal place of business in Las  
26 Vegas, Nevada. Doc. 1, ¶ 1. SNW is a tribally chartered corporation of the Hualapai  
27 Tribe with its principal place of business in Arizona. *Id.*, ¶ 2. On December 31, 2003,  
28 the parties entered into a Development and Management Agreement ("the 2003

1 Agreement”) for the construction and operation of a glass viewing bridge (“the  
2 Skywalk”) and related facilities at the south rim of the Grand Canyon on the Hualapai  
3 Indian Reservation. Doc. 1, ¶ 5; *see* Doc. 1-1 at 1-50. The 2003 Agreement provides that  
4 “[a]ny controversy, claim or dispute arising out of or related to this Agreement shall be  
5 resolved through binding arbitration” pursuant to the rules of the American Arbitration  
6 Association (“AAA”). Doc. 1-1 at 43, 2003 Agreement, § 15.4(a).

7 **B. Arbitration.**

8 After the Skywalk opened to visitors in March of 2007, controversies arose  
9 between GCSD and SNW over such things as completion of infrastructure, bookkeeping,  
10 and payment of management fees. Doc. 1, ¶ 7; *see* Doc. 1-1 at 52-72, GCSD’s Amended  
11 Arbitration Complaint. In July of 2011, GCSD sought to compel arbitration of these  
12 issues in the Hualapai Tribal Court. Docs. 1, ¶ 8; 1-1 at 75, ¶¶ 1. That court found that  
13 SNW had waived its sovereign immunity for the limited purpose of mandatory  
14 arbitration, but had not waived its immunity in the Hualapai Tribal Court. Rather, the  
15 2003 Agreement provided that efforts to compel arbitration should be made in federal  
16 court. The Tribal Court therefore found that it was without jurisdiction to compel  
17 arbitration. Doc. 1-1 at 76-77, ¶¶ 7, 10-11, Aug. 2, 2011 Hualapai Tribal Court Order.

18 Thereafter, GCSD filed a notice of arbitration with the AAA and delivered a copy  
19 to SNW. Doc. 1, ¶ 9. SNW objected to the jurisdiction of the arbitration tribunal on the  
20 grounds that it had only waived sovereign immunity for purposes of arbitration when a  
21 federal court issued an order compelling arbitration. *See* Doc. 1-2 at 2. Arbitrator Shawn  
22 Aiken denied the objection and confirmed jurisdiction, finding that SNW had agreed to  
23 arbitration, and that while it had also waived sovereign immunity for a federal court to  
24 compel arbitration, the 2003 Agreement did not require an order compelling arbitration.  
25 Doc. 1-2 at 2, November 21, 2011 Arbitration Order.

26 The arbitration proceeded with SNW’s participation until early February of 2012,  
27 when the Hualapai Tribal Council passed a declaration of taking by eminent domain of  
28 GCSD’s interests in the 2003 Agreement and the Tribe took physical possession of the

1 Skywalk. Doc. 1, ¶¶ 14-15.<sup>1</sup> The Tribe then submitted a declaration of taking to the  
 2 Hualapai Tribal Court and requested that the court issue an order declaring that absolute  
 3 title in GCSD's contractual interests had vested in the tribe, subject to just compensation  
 4 estimated to be about \$11,040,000. Doc. 1-2 at 151-52. The Tribe also requested a  
 5 temporary restraining order ("TRO") to prevent GCSD from destroying or removing any  
 6 property from the Skywalk, which the Tribal Court granted. *See* Doc. 1-2 at 157.

7 The Tribe then filed a notice of dismissal in the arbitration action, attempting to  
 8 dismiss GCSD counsel and GCSD's arbitration claims on the grounds that the taking had  
 9 substituted the Tribe in the place of GCSD for all purposes under the 2003 Agreement.  
 10 *See* Doc. 7-2 at 182-83. The arbitrator ruled that the parties to the arbitration remained  
 11 the same and that the Tribe was a non-party and therefore without authority to dismiss the  
 12 arbitration. Doc. 7-2 at 185, March 14, 2012 Arbitration Order. The arbitrator ordered  
 13 arbitration to proceed with a final hearing scheduled for April 2012. *Id.*

14 On March 26, 2012, this Court issued an order in a related case in which GCSD  
 15 had sought to enjoin the Tribe's taking of its property and contract interests. *Grand*  
 16 *Canyon Skywalk Development, LLC. v. 'Sa' Nyu Wa, Inc.*, No. CV12-8030-PCT-DGC,  
 17 Doc. 58. The Court found that principles of comity required GCSD to exhaust its  
 18 remedies in tribal court and that GCSD had not shown that any of the recognized  
 19 exceptions to tribal court exhaustion applied. *Id.* at 14. The Court stayed the action and  
 20 required GCSD to exhaust its tribal court remedies. *Id.* at 15.

21 Following this Court's order, the arbitrator issued a supplemental order postponing  
 22 the final arbitration hearing until July 16-20 and July 23-27, 2012, in order to give SNW  
 23 and the Tribe an opportunity to obtain an order from either the Hualapai Tribal Court or  
 24 this Court that the Tribe had lawfully taken GCSD's interests in the 2003 Agreement,  
 25 including its intangible contract claims that had accrued prior to the Tribe's exercise of

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26  
 27 <sup>1</sup> SNW answered the complaint in arbitration, paid its portion of the arbitration  
 28 fee, and engaged in arbitration discovery before asserting that it had the right to terminate  
 the proceedings in light of the condemnation. Doc. 1, ¶ 12.

1 eminent domain. Doc. 12-5 at 30-31. The arbitrator stated that, in the absence of such an  
 2 order, he would proceed with the final hearing. *Id.* at 31.

3 The Tribe subsequently asked the Tribal Court to enjoin the arbitration. Doc. 1,  
 4 ¶ 17; *see* Doc. 1-2 at 156. Upon finding that the Tribal Council had authorized SNW to  
 5 waive its sovereign immunity for purposes of the 2003 Agreement, the Tribal Court  
 6 ordered that the arbitration could proceed. Doc. 1-2 at 160, Aug. 3, 2012 Hualapai Tribal  
 7 Court Minute Entry and Order.<sup>2</sup>

8 The final arbitration hearing was held on July 16-20, 2012. GCSD presented  
 9 extensive documentary and testimonial evidence. Doc. 1, ¶ 18. SNW did not attend. *Id.*  
 10 After considering the testimony of witnesses, the briefs of both parties, and the exhibits  
 11 admitted into evidence, the arbitrator ruled in favor of GCSD and against SNW on nearly  
 12 all of GCSD's claims. *Id.*, ¶ 19; *see* Doc. 1-2 at 84-130, August 16, 2012 Arbitration  
 13 Order. The arbitrator awarded GCSD \$28,572,810.25, including attorneys' fees and  
 14 costs. *Id.* at 130. Judgment of the award was transmitted to the parties on August 17,  
 15 2012. *See* Doc. 1-2 at 162.

16 SNW did not file any action to modify, correct, or vacate the award, and the award  
 17 became final on September 6, 2012. Doc. 1, ¶¶ 21-22. GCSD filed this petition for  
 18 confirmation of the award five days later.

## 19 **II. The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 et seq.**

20 Under the FAA, "[a] written provision in . . . a contract evidencing a transaction  
 21 involving commerce to settle by arbitration a controversy thereafter arising out of such  
 22 contract or transaction, or the refusal to perform the whole or any part thereof, . . . shall  
 23 be valid, irrevocable, and enforceable . . . ." 9 U.S.C. § 2; *see, e.g., Circuit City Stores,*  
 24 *Inc. v. Adams*, 532 U.S. 105, 113-19 (2001); *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*,  
 25 207 F.3d 1126, 1130 (9th Cir. 2000); *Tracer Research Corp. v. Nat'l Envtl. Servs. Co.*, 42

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 27 <sup>2</sup> Although the Hualapai Tribal Court entered this order on August 3, 2012, the  
 28 court rendered its opinion on July 15, 2012, one day prior to the commencement of the  
 rescheduled final arbitration hearing. *See* Doc. 1-2 at 160, Aug. 3, 2012 Hualapai Tribal  
 Court Minute Entry and Order.

1 F.3d 1292, 1294 (9th Cir. 1994), *cert. dismissed*, 515 U.S. 1187 (1995). “Although [a]  
 2 contract provides that [state] law will govern the contract’s construction, the scope of the  
 3 arbitration clause is governed by federal law.” *Tracer Research Corp*, 42 F.3d at 1294  
 4 (citing *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1463 (9th Cir.  
 5 1983)); *see Circuit City Stores, Inc. v. Adams*, 279 F.3d 889, 892 (9th Cir. 2002) (holding  
 6 that FAA “not only placed arbitration agreements on equal footing with other contracts,  
 7 but established . . . a federal common law of arbitrability which preempts state law”);  
 8 *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999) (“Federal substantive law  
 9 governs the question of arbitrability.”); *Chiron Corp.*, 207 F.3d at 1130-31 (holding that  
 10 “district court correctly found that the federal law of arbitrability under the FAA governs  
 11 the allocation of authority between courts and arbitrators” despite arbitration agreement’s  
 12 choice-of-law provision).<sup>3</sup>

13 “Notwithstanding the federal policy favoring it, ‘arbitration is a matter of contract  
 14 and a party cannot be required to submit to arbitration any dispute which he has not  
 15 agreed so to submit.’” *Tracer Research Corp*, 42 F.3d at 1294 (quoting *United*  
 16 *Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960)); *see*  
 17 *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 908 (9th Cir.  
 18 1986). Where the arbitrability of a dispute is in question, a court must look to the terms  
 19 of the contract. *See Chiron Corp.*, 207 F.3d at 1130. “‘Any doubts concerning the scope  
 20 of arbitrable issues should be resolved in favor of arbitration.’” *Simula*, 175 F.3d at 719  
 21 (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 (1983));  
 22 *see French*, 784 F.2d at 908.

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 25 <sup>3</sup>Although “‘courts may not invalidate arbitration agreements under state laws  
 26 applicable *only* to arbitration provisions,’ general contract defenses such as fraud, duress,  
 27 or unconscionability, grounded in state contract law, may operate to invalidate arbitration  
 28 agreements.” *Circuit City Stores*, 279 F.3d at 892 (quoting *Doctor’s Assocs., Inc. v.*  
*Casarotto*, 517 U.S. 681, 687 (1996)) (emphasis in *Doctor’s Assocs.*).

1 “If the parties in their agreement have agreed that a judgment of the court shall be  
 2 entered upon the award made pursuant to the arbitration, and shall specify the court, then  
 3 at any time within one year after the award is made any party to the arbitration may apply  
 4 to the court so specified for an order confirming the award[.]” 9 U.S.C. § 9. Upon  
 5 application, “the court must grant such an order unless the award is vacated, modified, or  
 6 corrected as prescribed [in the FAA.]” *Id.*

7 Courts will vacate an award only where there is evidence that it was (1) “procured  
 8 by corruption, fraud, or undue means”; (2) “there was evident partiality or corruption in  
 9 the arbitrators”; (3) “the arbitrators were guilty of misconduct . . . by which the rights of  
 10 any party have been prejudiced”; or (4) “the arbitrators exceeded their powers, or so  
 11 imperfectly executed them that a mutual, final, and definite award upon the subject  
 12 matter submitted was not made.” 9 U.S.C. § 10; *Coutee v. Barington*, 386 F.3d 1128 (9<sup>th</sup>  
 13 Cir). “[T]he court's function in confirming or vacating an arbitration award is severely  
 14 limited. If it were otherwise, the ostensible purpose for resort to arbitration, i.e.,  
 15 avoidance of litigation, would be frustrated.” *Amicizia Societa Navegazione v. Chilean*  
 16 *Nitrate & Iodine Sales Corp.*, 274 F.2d 805, 808 (2d Cir. 1960).

### 17 **III. Discussion.**

18 SNW asks the Court to deny GCSD’s petition, vacate the arbitration award, and  
 19 dismiss this action for several reasons. First, the Court has no jurisdiction to confirm the  
 20 arbitration award because the 2003 Agreement limited SNW’s waiver of sovereign  
 21 immunity to enforcing awards for specific performance only, not money damages.  
 22 Doc. 7 at 5-6. Second, the 2003 Agreement limited SNW’s waiver of sovereign  
 23 immunity in accordance with the Hualapai Constitution, and the Constitution requires a  
 24 special vote of tribal members to approve waivers for liability in excess of \$250,000. No  
 25 vote authorized a higher amount in this case. *Id.* at 6-7. Third, the arbitrator exceeded  
 26 his powers because the 2003 Agreement authorized arbitration to commence only when  
 27 ordered by a federal court, which did not occur in this case. Fourth, the arbitrator  
 28 exceeded his powers when he failed to terminate the arbitration after the Tribe

1 condemned GCSD's interests in the 2003 Agreement. *Id.* at 7-13. The Court will  
2 address each of these arguments in turn.

3 **A. Does the Court Have Jurisdiction to Enforce Money Damages?**

4 Section 15.4(d)(iii) of the 2003 Agreement states that SNW's waiver of sovereign  
5 immunity is limited to "an action in a federal court of competent jurisdiction in Arizona  
6 to either (i) compel arbitration or (ii) enforce a determination by an arbitrator requiring  
7 SNW to specifically perform any obligation under this Agreement (other than an  
8 obligation to pay any money damages under § 15.4(d)(ii))." Doc. 7 at 6; Doc. 7-1 at 95.  
9 Section 15.4(d)(ii), to which the parenthetical limitation in § 15.4(d)(iii) refers, states that  
10 "[a]ny money damages will be limited to the assets that are solely owned by SNW. No  
11 money damages, awards, fines, fees, costs or expenses can be brought or awarded against  
12 the Nation in arbitration, judicial, or governmental agency action." Doc. 7-1 at 95.

13 SNW argues that the parenthetical statement in § 15.4(d)(iii) acts as a limitation on  
14 its waiver of sovereign immunity and deprives the Court of jurisdiction to enforce any  
15 arbitration damages awards against it. Doc. 7 at 6. The Court is not persuaded.

16 There can be no doubt that SNW waived its sovereign immunity with respect to  
17 damages claims arising out of the 2003 Agreement that are asserted in arbitration.  
18 Section 15.4(a) of the 2003 Agreement states, in its opening sentence, that "[a]ny  
19 controversy, claim or dispute arising out of or related to this Agreement shall be resolved  
20 through binding arbitration." Doc. 7-1 at 94. The agreement does not say that damages  
21 claims are unavailable; it applies to *any* controversy, claim, or dispute.

22 Section 15.4(d) states that "SNW expressly waives its sovereign immunity with  
23 respect to all disputes arising out of this Agreement to the extent permitted under the  
24 Constitution of the Nation." Doc. 7-1 at 95. Like the opening statement in § 15.4(a), this  
25 provision is not limited to non-damages claims; it applies to "all disputes" arising under  
26 the agreement. Although the waiver is granted only "to the extent permitted" by the  
27 Tribal Constitution, SNW does not argue that the Constitution prohibits a waiver of  
28 sovereign immunity for damages awards in arbitration.



1       The next sentence of § 15.4(d) states that “SNW’s waiver of sovereign immunity  
2 from suit is specifically limited by the Constitution of the Nation to the following actions  
3 and judicial proceedings[.]” *Id.* The sentence is followed by three categories of actions –  
4 actions as to which SNW is waiving sovereign immunity.

5       The first category, contained in § 15.4(d)(i), consists of actions brought by the  
6 “Manager,” which is defined in the 2003 Agreement to mean GCSD. *Id.*; Doc. 7-1 at 53  
7 (§ 1.1). The first category thus makes clear that SNW is waiving its sovereign immunity  
8 for arbitration proceedings commenced by GCSD, as occurred in this case.

9       The second category, contained in § 15.4(d)(ii), reads as follows: “Any money  
10 damages will be limited to the assets that are solely owned by SNW. No money  
11 damages, awards, fines, fees, costs or expenses can be brought or awarded against the  
12 Nation in arbitration, judicial or government agency action[.]” Doc. 7-1 at 95. This  
13 provision makes clear that sovereign immunity is waived for money damages awarded  
14 against SNW in arbitration. Sovereign immunity is not waived for money damages  
15 claims against the Tribe.

16       The third category, contained in § 15.4(d)(iii), reads as follows: “[a]n action in a  
17 federal court of competent jurisdiction in Arizona to either (i) compel arbitration or (ii)  
18 enforce a determination by an arbitrator requiring SNW to specifically perform any  
19 obligation under this Agreement (other than an obligation to pay any money damages  
20 under § 15.4(d)(ii)).” *Id.* This provision specifically refers to § 15.4(d)(ii) and  
21 recognizes that it permits an award of “money damages.”

22       The Court concludes from these provisions that SNW clearly waived its sovereign  
23 immunity with respect to money damages awarded in an arbitration of claims arising  
24 under the 2003 Agreement. No other reading of the agreement is plausible. The  
25 arbitrator and Tribal Court both reached the same conclusion (*see* Docs. 1-1 at 76-77,  
26 Aug. 2, 2011 Hualapai Tribal Court Order, ¶¶ 10, 13; 1-2 at 3, Nov. 21, 2011 Arbitration  
27 Order; 1-2 at 159, Aug. 3, 2012 Hualapai Tribal Court Order), and counsel for SNW  
28 conceded at oral argument that SNW waived its sovereign immunity for money damages

1 in a properly commenced arbitration.<sup>4</sup>

2 The question, then, is whether the parties agreed that money damages could be  
3 awarded against SNW in an arbitration proceeding and, at the same time, agreed that such  
4 an award could not be enforced in any court. SNW has already successfully argued in  
5 Tribal Court – consistent with the language of § 15.4 – that actions regarding the  
6 arbitration provision must be brought in federal court. *See* Doc. 1-1 at 75-77, Aug. 2,  
7 2011 Hualapai Tribal Court Order. Thus, if an arbitration award cannot be enforced in  
8 federal court, it cannot be enforced in any court. Odd as it sounds, SNW takes the  
9 position in this litigation that § 15.4(d)(iii) means that SNW waived its sovereign  
10 immunity to permit money damages to be awarded in an arbitration proceeding, but did  
11 not waive its sovereign immunity to permit a court to enforce the award. Such a reading  
12 would, of course, render SNW’s explicit money-damages waiver wholly illusory. An  
13 award that is unenforceable is tantamount to no award at all.

14 In addition to the sheer implausibility of SNW’s interpretation, the Court finds that  
15 the interpretation conflicts with several key provisions in the 2003 Agreement.

16 First, § 15.4(a) is titled “Mandatory Arbitration” and its first sentence states that  
17 the parties agree to “binding arbitration.” Doc. 7-1 at 94. These phrases are entirely  
18 inconsistent with an agreement that permits arbitration of money damages but forbids the  
19 enforcement of any award. When asked during oral argument whether SNW’s reading of  
20 the arbitration provision renders the provision meaningless, SNW’s counsel suggested  
21 that the parties may have intended the arbitration to be merely advisory – that if the  
22 parties were cooperating, SNW might agree to pay GCSD an award granted by an  
23 arbitrator. This interpretation directly contradicts the parties’ agreement to “binding  
24 arbitration.” *Id.*

25 Second, as already noted, the agreement expressly contains two broad waivers of

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26 <sup>4</sup> Although the Court need not rely on them given the clear language of the 2003  
27 Agreement, cases have held that an express agreement to binding arbitration, as is  
28 contained in this agreement, itself constitutes a waiver of sovereign immunity. *See C & L Enterprises, Inc. v. Citizen Band, Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 420 (2001); *Rosebud Sioux Tribe v. Val-U Construction*, 50 F.3d 560 (8th Cir. 1995).

1 sovereign immunity by SNW. Section 15.4(a) authorizes arbitration of *any* claim arising  
2 out of the 2003 Agreement. Section 15.4(d) provides that SNW “expressly waives its  
3 sovereign immunity with respect to *all* disputes arising out of this Agreement[.]” Doc. 7-  
4 1 at 95 (emphasis added). Such broad waivers are inconsistent with a reading of the  
5 agreement which states that money damages for claims arising out of the agreement are  
6 unenforceable.

7 Third, the section of the 2003 Agreement that sets forth specific limitations on  
8 SNW’s waiver of sovereign immunity does not say that money damages are excluded.  
9 To the contrary, it recognizes that money damages may be recovered against SNW:  
10 “Any money damages will be limited to the assets that are solely owned by SNW.”  
11 § 15.4(d)(ii). The same provision states in emphatic language (“money damages, awards,  
12 fines, fees, costs or expenses”) that the Tribe is not waiving its immunity with respect to  
13 any form of money damages, a clarification that makes SNW’s waiver of such immunity  
14 even more overt and intentional.

15 Fourth, several provisions refer to possible actions in federal courts, and those  
16 provisions do not support SNW’s cramped reading. Section 15.4(b) provides broadly that  
17 “[t]he venue and jurisdiction for (x) any litigation under this Agreement and (y) all other  
18 civil matters arising out of this Agreement shall be the federal courts in the State of  
19 Arizona, and located in or around Peach Springs, Arizona.” Doc. 7-1 at 95. Section  
20 15.4(a) contains a statement about enforcement of any arbitration award: “Judgment  
21 upon the award (as limited by Section 15.4(d)) rendered by the arbitrator may be  
22 enforced through appropriate judicial proceedings in any federal court having  
23 jurisdiction.” *Id.* at 94. This sentence specifically refers to enforcement of arbitration  
24 awards. Although this sentence includes a cross-reference to § 15.4(d), it does not  
25 specify any particular provision of § 15.4(d). As noted above, that section expressly  
26 waives SNW’s sovereign immunity for “all disputes” under the 2003 Agreement and  
27 contains a provision specifically recognizing that money damages may be awarded  
28 against SNW to the extent of its assets. *Id.*, §§ 15.4(d), 15.4(d)(ii). Section 15.4(d)(iii)

contains the specific performance provision on which SNW relies for this argument, but the cross-reference in § 15.4(a) refers to all of § 15.4(d), not just the subpart upon which SNW focuses.

In summary, the Court cannot conclude that the 2003 Agreement permits an award of money damages against SNW in arbitration, as it clearly does, and yet prohibits enforcement of that award in any court at any time. Such a nonsensical reading does not comport with SNW's clear waiver of sovereign immunity with respect to money damages and cannot be squared with the provisions discussed above.

What then does § 15.4(d)(iii) mean when it limits the waiver of sovereign immunity to "[a]n action in a federal court of competent jurisdiction in Arizona to . . . 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 § 15.4(d)(ii))"? *Id.* The interpretation most consistent with the rest of § 15.4 is that the parenthetical refers to the prohibition in § 15.4(d)(ii) on money damage awards against the Tribe. Reading the language to prohibit federal court enforcement of an arbitration award of money damages against SNW – when the agreement specifically allows money damages awards against SNW – would create too great an incongruence among the clear statements in § 15.4.

The Court must interpret the 2003 Agreement "so that every part is given effect," and "each section of [the] agreement must be read in relation to each other to bring harmony, if possible, between all parts of the writing." *Aztar Corp. v. U.S. Fire Ins. Co.*, 224 P.3d 960, 973 (Ariz. 2010) (internal citations and quotation marks omitted). The reading of one provision "must not render a related provision meaningless." *Id.*; *see also Gesina v. Gen. Elec. Co.*, 780 P.2d 1384, 1386 (Ariz. App.1988) (Ariz. App. 1982) (accord); *Norman v. Recreation Ctrs. of Sun City, Inc.*, 752 P.2d 514, 517 (Ariz. App. 1988) (same). Construing the limiting clause in § 15.4(d)(iii) as a reiteration of the agreement's exclusion of money damages against the Tribe, and not as a prohibition against any enforcement of arbitration-awarded money damages against SNW, gives

1 effect to this provision in a manner consistent with the contract as a whole.

2 SNW argues that the Court must resolve any ambiguity against a waiver of  
3 sovereign immunity. Docs. 7 at 5; 14 at 3 (citing *Pan Am. Co. v. Sycuan Band of Mission*  
4 *Indians*, 884 F.2d 416, 418 (9th Cir. 1989); *Missouri River Services, Inc. v. Omaha Tribe*  
5 *of Nebraska*, 267 F.3d 848, 852 (8th Cir. 2001) (“[I]f a tribe ‘does consent to suit, any  
6 conditional limitation it imposes on that consent must be strictly construed and  
7 applied.’”) (internal citation omitted)). The Court concludes, however, that SNW’s  
8 waiver of sovereign immunity is not ambiguous. SNW plainly has waived its immunity  
9 with respect to an arbitration award of money damages that may be enforced against its  
10 assets. True, the Court must view waivers of sovereign immunity with care, but the  
11 Court need not indulge nonsensical readings of the parties’ agreement. The Court  
12 concludes that it has jurisdiction under the terms of the 2003 Agreement to enforce an  
13 arbitration award of money damages against SNW.

#### 14 **B. Does the Hualapai Constitution Limit SNW’s Damages to \$250,000?**

15 SNW’s express waiver of sovereign immunity is limited under the 2003  
16 Agreement “to the extent permitted under the Constitution of the Nation.” Doc. 7-1 at  
17 95; 2003 Agreement, § 15.4(d). SNW argues that this limitation encompasses Article  
18 XVI, Section 2 of the Hualapai Constitution, which states that “[e]xpress waivers of  
19 sovereign immunity shall require the approval of at least thirty (30) percent of eligible  
20 voters of the Tribe voting in a special election if the waiver may . . . expose the Tribe to  
21 liability in excess of \$250,000 or its equivalent.” Doc. 7 at 6-7; *see* Doc. 7-1 at 123,  
22 Hualapai Const., art. XVI, sec. 2(b)(1). SNW argues that because no such vote approving  
23 liability ever took place, the Court can at most confirm an arbitration award of \$250,000.  
24 Doc. 7 at 7. Again, the Court is not persuaded.

25 The 2003 Agreement makes no reference to a \$250,000 limitation. *See* Doc. 7-1  
26 at 95, § 15.4(d). If this limitation applies to the agreement, therefore, it is not because the  
27 parties expressly agreed to it, but because the 2003 Agreement waives sovereign  
28 immunity in § 15.4(d) only “to the extent permitted under the Constitution of the Nation.”

1 *Id.* The key question, therefore, is what the Constitution means. The language of the  
2 Constitution requires a vote of tribal members to approve waivers that would “expose the  
3 *Tribe* to liability in excess of \$250,000 or its equivalent.” Doc. 7-1 at 123 (emphasis  
4 added). The provision says nothing about tribal corporations, and SNW has cited no  
5 other provision of the Constitution and no tribal court decision suggesting that the word  
6 “Tribe” in the Hualapai Constitution includes all tribal business entities. Constitutional  
7 provisions generally are to be given their plain and ordinary meaning, *Martin v. Hunter’s*  
8 *Lessee*, 14 U.S. 304, 326 (1816); *Paulson v. City of San Diego*, 294 F.3d 1124, 1129 (9th  
9 Cir. 2002), and the word “Tribe” with a capital “T” clearly means the Hualapai Tribe.  
10 The Preamble to the Hualapai Constitution confirms this interpretation, stating that the  
11 Constitution is created by “the members of the Hualapai Tribe” to protect “the common  
12 good and well-being of the Tribe and its members,” to ensure “the political integrity of  
13 the Tribe,” and to preserve “the inherent sovereign rights and powers of an Indian Tribe.”  
14 Doc. 7-1 at 121. These introductory provisions clearly suggest that “Tribe” as used in the  
15 Constitution means the Hualapai Tribe.

16 Moreover, the structure of the 2003 Agreement suggests that the parties did not  
17 intend to protect the Tribe by incorporation of the \$250,000 limit. Instead, § 15.4(d)(ii)  
18 specifically states that the Tribe cannot be liable for money damages and that SNW can  
19 be liable only to the extent of its corporate assets. With this provision in place, the Tribe,  
20 which wholly owns SNW, could control its overall exposure by controlling the amount of  
21 assets in the corporation.

22 In addition, the Plan of Operation approved by the Tribal Council for SNW  
23 specifically authorized SNW to waive its own sovereign immunity “for any particular  
24 agreement, matter or transaction as may be entered into to further the purposes of the  
25 Corporation.” Doc. 12-2 at 9, SNW Plan of Operation, art. XI, § 11.2. The Plan states  
26 that such waivers do not require approval by the Tribe, and, consistent with the  
27 Constitutional provision, that “[a]ny waiver of immunity by the Corporation . . . shall not  
28 create any liability, obligation, or indebtedness either of the Hualapai Indian Tribe, or

1 payable out of assets, revenues, or, income of the Hualapai Indian Tribe.” *See* Doc. 12-2  
2 at 9, SNW Plan of Operation, art. XI, §§ 11.3 & 4. The Plan of Operation appears to deal  
3 with liability limits in this way rather than assuming that the \$250,000 limit on Tribal  
4 waivers somehow applies to SNW. To the extent SNW now asserts that it was not  
5 authorized by the Tribal Council or the Constitution to provide the waiver of sovereign  
6 immunity clearly set forth in the 2003 Agreement, the Court notes that SNW expressly  
7 represented and warranted in the agreement that it had “full power and authority under its  
8 organizational documents and from the Nation to enter into and perform its obligations  
9 under this Agreement.” Doc. 7-1 at 93 (§ 14.1(a)).

10 SNW’s citations to cases in which courts have found that a tribe’s sovereign  
11 immunity extended to tribal corporations do not compel a different conclusion. *See*  
12 Doc. 14 at 3. In *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046-47 (9th Cir. 2006),  
13 the Ninth Circuit found that a casino that operated as “an arm of the Tribe” and whose  
14 profits “inure[d] to the benefit of the Tribe” was entitled to the same sovereign immunity  
15 as the tribe. But in *Allen* there was no waiver of sovereign immunity as there is here, and  
16 the court found that no statutory exceptions to sovereign immunity applied. *Id.* at 1047-  
17 48. Similarly, in *Cook v. AVI Casino Enters. Inc.*, 548 F.3d 718, 726 (9th Cir. 2008), the  
18 Ninth Circuit affirmed on the basis of *Allen* that a casino whose profits inured to the  
19 Tribe enjoyed the same sovereign immunity as the Tribe. There was no question in *Cook*  
20 that the casino had ever waived its sovereign immunity. *Id.*

21 Although these cases stand for the general proposition that tribal immunity applies  
22 to tribal corporations, they do not address the specific question presented here – whether  
23 tribe-specific immunity provisions of a particular tribe’s constitution apply to all tribal  
24 entities, including those that never mention them in their governing documents and that  
25 give express waivers of sovereign immunity with the approval of tribal authorities. SNW  
26 cites no cases in which an issue such as this, that predates contract formation and rests on  
27 a question of interpretation of tribal law, serves as a defense to an express waiver of  
28 sovereign immunity contained in the contract to which both parties agreed. The Court



concludes that limitation on SNW's waiver of sovereign immunity is clear in the 2003 Agreement – the waiver applies only to the extent of the corporation's assets – and that the Constitutional provision cited by SNW, given its plain meaning, does not impose a greater limitation than this that is never mentioned in the 2003 Agreement.

### **C. Did the Arbitrator Exceed His Powers in Maintaining Jurisdiction?**

SNW argues that the arbitrator exceeded his powers when he found he had jurisdiction to hear GCSD's claims. SNW asserts that jurisdiction was not proper under the 2003 Agreement because GCSD did not first obtain a federal court order compelling arbitration, and that once the arbitration was underway, the Tribe's exercise of eminent domain over GCSD's contract rights resulted in the Tribe stepping into the shoes of GCSD with power to dismiss the arbitration. Doc. 7 at 7-14. The Court will address these arguments separately.

#### **1. Was a Court Order Required to Commence Arbitration?**

Section 15.4(a) of the 2003 Agreement describes how arbitration is to be commenced, the rules under which it is to be conducted, and how any award can be enforced. It reads:

##### 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 . . . Either party may request *and thus initiate* arbitration of the dispute by written notice ("Arbitration Notice") to the other party . . . . The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, 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[.]

Doc. 7-1 at 94 (emphasis added).

This section clearly states that a party may "initiate" arbitration by sending the Arbitration Notice. No court approval or court order is required.

SNW contends that arbitration can be commenced under the agreement only by



obtaining a court order compelling arbitration. SNW rests its argument on the § 15.4(d)(iii) provision that SNW's waiver of sovereign immunity is limited to "an action in a federal court of competent jurisdiction in Arizona to . . . compel arbitration[.]" Doc. 7 at 6; Doc. 7-1 at 95, 2003 Agreement, § 15.4(d)(iii). SNW reads this provision as modifying § 15.4(a) quoted above. The Court does not agree.

Section 15.4(a) clearly sets forth the parties' agreement to binding arbitration and how it could be initiated. Section 15.4(d) sets forth SNW's waiver of sovereign immunity and the limitations on waiver. The clear intent of these provisions is that either party may "initiate" arbitration by sending the notice required in § 15.4(a), and that if an action to compel the other party to participate becomes necessary, SNW waived its sovereign immunity for purposes of an action to compel brought in federal court. By providing for the contingency that a party may be unwilling to arbitrate, the parties did not alter the method by which arbitration could be commenced.

As the arbitrator noted when confronted with this issue, the fact that a federal court can compel arbitration does not mean that it must compel arbitration for the parties' agreement to have effect. *See* Doc. 1-2 at 3. SNW consented to binding arbitration in § 15.4(a), and GCSD followed the prescribed procedure for initiating arbitration. The arbitrator did not exceed his powers when he determined that AAA had jurisdiction under the 2003 Agreement to hear GCSD's claims.<sup>5</sup>

## **2. Did the Condemnation Action Moot the Arbitration?**

After the arbitration had commenced, the Hualapai Tribal Council passed a declaration of taking by eminent domain of GCSD's interests in the 2003 Agreement. Doc. 1, ¶¶ 14-15. In addition to taking physical possession of the Skywalk itself, the Tribe filed a notice of dismissal in the arbitration action, attempting to dismiss GCSD's

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<sup>5</sup> SNW's argument that the Tribal Court's decision denying GCSD's motion to compel arbitration somehow required GCSD to obtain a federal court order before proceeding with arbitration is wholly unconvincing. The Tribal Court was not asked to determine how arbitration could be commenced under the 2003 Agreement. It merely held that *if* a court order was sought to compel arbitration, it must be sought in federal court rather than tribal court as provided in § 15.4(d)(iii). Doc. 12-5 at 2-6.

1 counsel and arbitration claims on the ground that the taking had substituted the Tribe in  
2 the place of GCSD for all purposes under the 2003 Agreement. *See* Doc. 7-2 at 182-83.  
3 The arbitrator ruled under AAA rules that the parties to the arbitration were SNW and  
4 GCSD, that the Tribe had never intervened in the arbitration, and that the Tribe was  
5 therefore without authority to dismiss the arbitration. Doc. 7-2 at 185, March 14, 2012  
6 Arbitration Order. The arbitrator nonetheless gave SNW and the Tribe time to obtain an  
7 order from either this Court or the Tribal Court declaring the effect of the Tribe's  
8 condemnation on the ownership of GCSD's claims. Doc. 12-5 at 30-31, March 27, 2012  
9 Supplemental Arbitration Order. The Tribe asked the Tribal Court to enjoin the  
10 arbitration on the basis of the condemnation, but the Tribal Court declined. Doc. 1-2 at  
11 160, Aug. 3, 2012 Hualapai Tribal Court Minute Entry and Order. The Arbitrator  
12 proceeded with the final arbitration hearing.

13 SNW now argues that "[t]he legal and practical effects of the condemnation were  
14 that the Tribe immediately stepped into GCSD's shoes under the Skywalk Agreement."  
15 Doc. 7 at 12. It further argues that all rights that GCSD had under the 2003 Agreement  
16 immediately vested with the Tribe, including the right to arbitrate GCSD's claims, thus  
17 giving the Tribe power to fire GCSD's arbitration counsel and dismiss the arbitration. *Id.*  
18 SNW argues that the arbitrator exceeded his powers when he refused to terminate the  
19 arbitration on the basis of the Tribe's notice of dismissal. Doc. 7 at 13.

20 In previous proceedings initiated in this Court by GCSD, SNW took the position  
21 that the Court should not rule on the effect of the condemnation, but instead should  
22 require GCSD to exhaust Tribal Court remedies. The Court agreed, and required GCSD  
23 to litigate the effect of the condemnation in Tribal Court first. *Grand Canyon Skywalk*  
24 *Development, LLC. v. 'Sa' Nyu Wa, Inc.*, No. CV12-8030-PCT-DGC, Doc. 58 at 14.  
25 GCSD and SNW currently are engaged in Tribal Court litigation over the effect of the  
26 condemnation. As a result, the Court has considered whether it should defer resolution of  
27 GCSD's motion to enforce the arbitration award until after the Tribal Court has ruled on  
28 the issues pending before it. For several reasons, the Court has concluded that such delay

1 is not necessary or appropriate.

2 First, there is no question that jurisdiction over the arbitration award lies in this  
3 Court. The Court has subject-matter jurisdiction because the parties have diversity of  
4 citizenship<sup>6</sup> and both the FAA and the 2003 Agreement acknowledge the jurisdiction of  
5 this Court to enforce the arbitration award.<sup>7</sup> Additionally, both parties have asked this  
6 Court to rule on motions respecting such enforcement. SNW has specifically asked the  
7 Court to deny enforcement of the arbitration award on the basis of the condemnation, and  
8 has not asked the Court to defer ruling on this issue until after the Tribal Court  
9 proceedings have been completed.

10 Second, although principles of comity require tribal court exhaustion even when  
11 there is federal court jurisdiction, *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 n. 8  
12 (1987); *Stock West*, 873 F.2d at 1230, this is only to the extent that examination of “the  
13 existence and extent of a tribal court’s jurisdiction . . . be conducted in the first instance  
14 in the Tribal Court itself.” *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471  
15 U.S. 845, 856 (1985); *see also Iowa Mutual*, 480 U.S. at 16 (“[T]he federal policy  
16 supporting tribal self-government directs a federal court to stay its hand in order to give  
17 the tribal court a full opportunity to determine its own jurisdiction.”). Here, the Hualapai  
18 Tribal Court has already ruled that it lacks jurisdiction concerning arbitrations under the  
19 2003 Agreement: “The express limited waiver combined with the Choice of Law for  
20

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21 <sup>6</sup> For purposes of federal court jurisdiction, an Indian corporation is the citizen of  
22 the state in whose borders its reservation is located. *Stock West, Inc. v. Confederated  
23 Tribes of the Coleville Reservation*, 873 F.2d 1221, 1226 (9th Cir. 1989). SNW is  
24 therefore a citizen of Arizona, and GCSN is a citizen of Nevada.

25 <sup>7</sup> The FAA provides that “[i]f the parties in their agreement have agreed that a  
26 judgment of the court shall be entered upon the award made pursuant to the arbitration,  
27 and shall specify the court, then at any time within one year after the award is made any  
28 party to the arbitration may apply to the court so specified for an order confirming the  
award[.]” 9 U.S.C. § 9. As discussed in relation to the 2003 Agreement, SNW  
specifically waived its sovereign immunity for “[a]n action in a federal court of  
competent jurisdiction in Arizona to . . . enforce a determination by an arbitrator[.]”  
Doc. 7-1 at 95, 2003 Agreement, § 15.4(d)(iii). Even without such specification, the  
FAA goes on to state that “[i]f no court is specified in the agreement of the parties, then  
such application may be made to the United States court in and for the district within  
which such award was made.” 9 U.S.C. § 9.

1 arbitration constitutes a mutually agreed upon forum selection. This negotiated forum  
2 selection eliminates enforcement of arbitration in Hualapai court in this case only.”  
3 Doc. 1-1 at 76, ¶ 10, Aug. 2, 2011 Hualapai Tribal Court Order. The Tribal Court  
4 expressly recognized that, for purposes of compelling arbitration, “[t]he Plaintiff has  
5 exhausted all tribal court remedies and may seek resolution in federal court pursuant to  
6 § 15.4 of the Agreement.” *Id.* at 77. Jurisdiction over enforcement of an arbitration  
7 award rests on the same provision of the 2003 Agreement cited by the Tribal Court.  
8 Doc. 1-1 at 43, 2003 Agreement, § 15.4. The fact that litigation over the effect of the  
9 Tribe’s condemnation action is currently pending before the Tribal Court does not mean  
10 that the Court must stay its hand in deciding the effect of the condemnation as it relates  
11 solely to the validity of the arbitration process – a process over which the Tribal Court  
12 has already found it has no jurisdiction.

13 Third, the issue presented in this case is much narrower than the issues pending in  
14 Tribal Court. The Tribal Court action will address the validity of the condemnation  
15 ordinance and action under the Tribe’s constitution and tribal procedures, the effect of the  
16 condemnation on the Skywalk and assets related to the Skywalk, and the valuation of the  
17 property condemned by the Tribe. For purposes of deciding whether the arbitrator  
18 exceeded his authority, this Court need decide only a narrow question: assuming (without  
19 deciding) that the Tribe validly condemned GCSD’s contract rights under the 2003  
20 Agreement, did the taking extend to GCSD’s chose in action for breach of contract and  
21 its right to arbitrate that claim? Deciding this issue will not interfere to any significant  
22 degree in the litigation of broader condemnation issues in Tribal Court.

23 Fourth, SNW and GCSD agreed that arbitration issues should be decided  
24 promptly. The 2003 Agreement states that “[p]rompt disposal of any dispute is important  
25 to the parties” and provides for arbitration under the agreement to be completed within  
26 120 days. *See* Doc. 7-1 at 94, § 15.4(a). Although the arbitration in this case took more  
27 than 120 days because of the complexity of the issues and the Tribe’s attempt to have the  
28 arbitration dismissed, further delay in entering final judgment on the arbitration award

1 would be contrary to the parties' clear intent to resolve arbitration issues quickly.

2 For these reasons, the Court concludes that it should rule now on the  
3 condemnation issue presented by SNW. The Court need not await completion of Tribal  
4 Court proceedings on broader issues.

5 **a. Did the Tribe Take GCSD's Cause of Action?**

6 "Eminent Domain is the power of the sovereign to take property for 'public use'  
7 without the owner's consent." *Nichols on Eminent Domain* § 1.11 (3d ed. 1980); *see, e.g.*  
8 *United States v. Jones*, 109 U.S. 513, 518 (1883) ("The power to take private property for  
9 public uses, generally termed the right of eminent domain, belongs to every independent  
10 government."). This power extends to all property within the jurisdiction of the  
11 sovereign. *Nichols*, § 2.01. Both real and personal property are within the scope of  
12 eminent domain. *See id.*, § 2.01[1] & [2]. "Intangible property, such as choses in action,  
13 patent rights, franchises, charters, or any other form of contract, are within the scope of  
14 this sovereign authority as fully as land or other tangible property." *Id.*, § 2.01[2] (citing  
15 cases); *see, e.g., City of Cincinnati v. Louisville & Nashville R.R. Co.*, 223 U.S. 390, 400  
16 (1912) ("Every contract, whether between the state and an individual, or between  
17 individuals only, is subject to this general law."). The payment of just compensation is  
18 an essential element of the valid exercise of this power. *Nichols*, § 1.11.

19 Courts have specifically recognized the power of the sovereign to take the  
20 intangible contract rights of business enterprises operating within their jurisdiction. *See,*  
21 *e.g., City of Oakland v. Oakland Raiders*, 646 P.2d 835, 843 (Cal. 1982) (recognizing the  
22 operation of a sports franchise as an appropriate municipal function for purposes of the  
23 City's exercise of eminent domain); *c.f. Mayor & City Council of Baltimore v. Baltimore*  
24 *Football Club*, 624 F.Supp. 278, 284-87 (D. Md. 1985) (finding NFL franchise that had  
25 moved its operations outside the jurisdiction of Baltimore was no longer subject to the  
26 City's power of eminent domain).

27 As previously noted, however, the question to be decided is not whether the  
28 Tribe's purported taking of the physical property of the Skywalk and GCSD's contract

rights to manage the operation of that enterprise are within the Tribe's eminent domain authority, but whether such authority extends to the taking of GCSD's cause of action that had already accrued under the 2003 Agreement and had been asserted in arbitration prior to the Tribe's condemnation. The right to sue for breach of contract is a personal property right that is separate from, and generally survives the sale, assignment, or termination of, the contract itself. *See, e.g., Wesco v. Kern*, 59 P. 548, 549 (Or. 1900) ("There is no merit . . . in the contention that the foreclosure and sale . . . is a bar to plaintiff's right of action to recover damages for a breach occurring prior to the commencement of the foreclosure suit."); *Welch v. Monroe*, 2004 WL 2474504, \*2 (Ct. App. Tex. Nov. 3, 2004) (holding that previous owner of property retained standing to sue for injury to the property during his ownership, despite the fact that he had later sold the property). The right to sue also does not ordinarily pass to the successor of a contract unless it has been expressly assigned. *Welch*, 2004 WL 2474504, \*2-3; *Wallace v. Paulus Bros. Packing Co.*, 231 P.2d 417, 419 (Or. 1951) ("As grantees, plaintiffs acquired no rights in and to the said cause of action, because it is not alleged nor claimed that the corporation assigned the same to them. Though the covenant to repair runs with the land, a cause of action for a breach thereof does not."); *Gibbons v. Tenneco, Inc.*, 710 F. Supp. 643, 648-49, 652 (E.D. Ky. 1988) (distinguishing between a clause in a right-of-way agreement that runs with the land and a chose in action for breach of that clause that does not run with the land unless specifically assigned).

SNW argues that unlike an ordinary assignee to a contract, the Tribe by virtue of its power of eminent domain assumed the position of GCSD as the original party to the 2003 Agreement, thus vesting in itself all of GCSD's property rights under the agreement, including causes of action that had accrued prior to the taking. Doc. 14 at 9. SNW rests its argument on the wording of the Tribe's eminent domain ordinance – drafted and enacted after the arbitration had commenced – which provides that "the Tribe becomes 'the party thereto in the full place and stead of the defendant, to the full extent as if the Tribe and not the defendant were the *original signator or party thereto*.'"



1 Doc. 14 at 8 (quoting Hualapai Law & Order Code § 2.16(F)(4)(a), Doc. 7-2 at 152)  
 2 (emphasis added by SNW). This language also appears in the Tribe’s declaration of  
 3 taking submitted in the Hualapai Tribal Court after the arbitration commenced. Doc. 1-2  
 4 at 152 (“the Tribe shall be the party [to the Skywalk Agreement] in full place and stead of  
 5 GCSD”).

6 But even if the Court were to read the broad language of the Tribe’s ordinance and  
 7 its declaration of taking as meaning that GCSD’s existing cause of action immediately  
 8 became the property of the Tribe as if the Tribe, not GCSD, had been the contracting  
 9 partner with SNW from the beginning – in effect, writing GCSD out of the contract for  
 10 all purposes except just compensation – the Court is not persuaded that the sovereign  
 11 power of eminent domain is expansive enough to support such a purported statutory right.  
 12 Although *Nichols* refers to choses in action as being within the scope of a sovereign’s  
 13 eminent domain power, *Nichols* relies on *City of Cincinnati v. Louisville & Nashville*  
 14 *R.R. Co.*, 223 U.S. 390, 400 (1912), which states only in dicta that the sovereign power of  
 15 eminent domain “extends to tangibles and intangibles alike. A chose in action, a charter,  
 16 or any kind of contract, are, along with land and movables, within the sweep of this  
 17 sovereign authority.” The Court included virtually no analysis as to when a chose in  
 18 action might be subject to eminent domain. *City of Cincinnati* dealt with the City’s  
 19 taking of a railroad’s asserted contract right to build a bridge across public land. 223  
 20 U.S. at 399-400. The Court found that the City had the right to take the railroad’s  
 21 contract right for a public purpose, subject to just compensation. *Id.* at 407. No pre-  
 22 existing causes of action under the contract were at issue. *Nichols* itself merely cites to  
 23 *City of Cincinnati* without further elaboration as to when a chose in action is a proper  
 24 subject for taking under eminent domain. § 2.01[2].

25 SNW offers no additional support for the proposition that a chose in action that  
 26 would not otherwise run with either the physical property or the 2003 Agreement can  
 27 nonetheless be taken as part of an eminent domain action taking the physical property and  
 28 the contract. As already noted, choses in action for breach of contract are separate

1 property rights from the rights existing under a contract.

2 Moreover, even if the Tribe could condemn a chose in action, it could do so only  
3 with respect to a chose in action located within its jurisdiction. *See Nichols*, § 2.01  
4 (condemnation power extends to all property within the jurisdiction of the sovereign).  
5 GCSD is not a corporation located on tribal land. It is a Nevada corporation with its  
6 principal place of business in Las Vegas, well outside the geographical boundaries of the  
7 Tribe. The chose in action that arose from SNW's breach of the 2003 Agreement belongs  
8 to GCSD. It is personal property of a Nevada corporation and is not physically located  
9 on the Tribe's land like a truck or desk GCSD placed at the Skywalk. True, the chose in  
10 action is related to events that occurred on tribal land, but so are the computer servers in  
11 GCSD's Las Vegas office that were used to store information related to Skywalk  
12 operations, and the Tribe certainly cannot claim that its condemnation power extends to  
13 computer servers in Las Vegas. Thus, even if the Tribe had power to condemn a chose in  
14 action, this power would not reach a chose in action belonging to a Nevada corporation  
15 with its principal place of business well outside the boundaries of the tribe.

16 SNW disputes that the chose in action at issue in the arbitration is outside of the  
17 Tribe's jurisdiction. It argues that the Ninth Circuit has rejected a bright line rule that  
18 contract rights are sited with the contract owner and has, instead, adopted a multi-factor  
19 test to determine the locus of a contract. Doc. 14 at 10 (citing *R.J. Williams Co. v. Fort*  
20 *Belknap Housing Auth.*, 719 F.2d 979, 985 (9th Cir. 1983)). But the case to which SNW  
21 points dealt with the locus of a contract *dispute* for purposes of determining a tribal  
22 court's jurisdiction to hear the controversy. It did not deal with the locus of a foreign  
23 corporation's intangible breach of contract claims for purposes of exercising eminent  
24 domain over such claims. Similarly, none of the cases relied on by the Tribe in its  
25 supplemental briefing to the Tribal Court, to which SNW points (Doc. 14 at 10), dealt  
26 with the locus of a party's chose in action for purposes of exercising eminent domain.  
27 *See* Doc. 14-3 at 5-7. *Curry v. McCanless*, 307 U.S. 357, 367 (1939), dealt with whether  
28 a non-resident had sufficiently availed himself of the protection of a state to be subject to



1 its authority to tax, not its power of eminent domain. *City of Oakland*, 646 P.2d 835, and  
 2 *Mayor & City Council of Baltimore*, 624 F.Supp. 278, the two takings cases noted above,  
 3 dealt with whether a sovereign had jurisdiction to take ongoing management rights – not  
 4 accrued choses in action – under a franchise agreement. And neither case upheld the  
 5 jurisdiction of the cities to effectuate the takings. *City of Oakland* denied summary  
 6 judgment because factual issues remained as to the applicability of the City’s statutory  
 7 limitations on the purported taking. 646 P. 2d at 844. *Mayor & City Council of*  
 8 *Baltimore* specifically rejected the theory put forth by the City that minimum contacts  
 9 between a sports franchise and the City gave the City jurisdiction to take the owners’  
 10 intangible contract rights. 624 F.Supp. at 284.

11 Even if the location of the Skywalk on tribal land gave the Tribe jurisdiction and a  
 12 sufficient public interest to exercise eminent domain over GCSD’s management rights of  
 13 the Skywalk operation, this is not a basis for concluding that the separate chose in action  
 14 belonging to GCSD is subject to the Tribe’s jurisdictional reach. Any reliance SNW  
 15 places on the wording of the Tribe’s own ordinance to enlarge the reach of the Tribe’s  
 16 eminent domain power is misplaced. Eminent domain is “an incident of sovereignty,”  
 17 not of statutory creation. *Jones*, 109 U.S. at 518. Statutory or constitutional provisions  
 18 may limit this power, but they may not enlarge it beyond the domain of the sovereign.  
 19 Significantly, the Tribe in the above-referenced brief argued only that it had the right to  
 20 take GCSD’s license to build and manage the Skywalk on tribal land, not its claims then  
 21 subject to arbitration. Doc. 14-3 at 5-5, 7-8. The above-referenced takings cases cited by  
 22 the Tribe also pertained only to the right to operate and manage a franchise. The situs  
 23 analysis employed in those cases and urged by SNW here simply does not apply to  
 24 GCSD’s chose in action. The chose in action has no bearing on GCSD’s right to operate  
 25 the Skywalk under the 2003 Agreement and no bearing on the use of Hualapai land. It  
 26 pertains only to damages resulting from SNW breaches of the 2003 Agreement that  
 27 occurred prior to the Tribe’s exercise of eminent domain power.

1 Nor has SNW put forth any public purpose that would be served by the Tribe's  
 2 taking of GCSD's breach of contract claim. Taking the Skywalk itself could arguably  
 3 serve the public purpose of preserving a valuable tribal asset that is essential to the  
 4 Tribe's financial welfare. Taking contract management rights over the Skywalk likewise  
 5 could arguably be viewed as preserving the Tribe's ability to preserve the Skywalk. But  
 6 the breach of contract claim against SNW does not implicate the Tribe's ability to  
 7 preserve or manage the Skywalk. It is a claim for money damages, and the Tribe's can  
 8 hardly claim that permitting such a claim is contrary to the public interest when SNW,  
 9 with Tribal Council approval, agreed to permit such a claim in the 2003 Agreement.  
 10 Doc. 1-1 at 43, § 15.4(a).

11 For these reasons, the Court concludes that there is no basis for finding that  
 12 GCSD's chose in action is subject to the Tribe's eminent domain action.

13 **b. Did the Tribe Take GCSD's Right to Arbitrate?**

14 Contrary to the position argued in its briefs, SNW asserted at oral argument that  
 15 the Tribe did not take GCSD's chose in action, but instead took GCSD's right to arbitrate  
 16 the chose in action under the 2003 Agreement. This argument has a familiar ring. SNW  
 17 again is suggesting that GCSD has a right under the 2003 Agreement that it cannot  
 18 enforce. A finding that GCSD retained its breach of contract claim under the 2003  
 19 Agreement, but lost the right to arbitrate that claim when the Tribe exercised its eminent  
 20 domain power, would render the claim valueless and would defeat the contracting  
 21 parties' express intent for how claims between SNW and GCSD were to be resolved.

22 The Court has already found that GCSD validly commenced arbitration under the  
 23 2003 Agreement before the condemnation action occurred. SNW argues that the Tribe  
 24 not only had the power through eminent domain to take GCSD's ongoing and future  
 25 contract rights under the 2003 Agreement, but also to take a remedy that GCSD had  
 26 already exercised under the agreement. The Court finds no authority for the proposition  
 27 that a sovereign may retroactively take intangible contract rights from a party that has  
 28 already exercised them.

1 And, as with the claim that the Tribe condemned GCSD's chose in action, SNW  
2 fails to identify what public good would be served by depriving GCSD of its agreed-upon  
3 method for resolving its pre-existing contract disputes. The Tribe has disavowed any  
4 intention itself to arbitrate those disputes in GCSD's stead. *See* Doc. 7-2 at 170. In short,  
5 the Court finds no basis for SNW's position that the Tribe took GCSD's right to arbitrate  
6 its claims.

### 7 3. Conclusion.

8 The arbitrator did not exceed his authority when he found that the arbitration had  
9 been properly commenced. Additionally, the Tribe's eminent domain action did not take  
10 GCSD's chose of action or its right under the 2003 Agreement to arbitrate its claims.  
11 The Court therefore concludes that the arbitrator did not exceed his powers when he  
12 permitted the arbitration to proceed to a final hearing and issued a final judgment for  
13 GCSD and against SNW.

14 Because SNW has presented no other grounds for vacating the award, the Court  
15 will deny SNW's motion to vacate and dismiss the award. Pursuant to 9 U.S.C. § 9,  
16 under which the Court must enforce an arbitration award "unless the award is vacated,  
17 modified, or corrected[,]" the Court will grant GCSD's petition. The Court will confirm  
18 the award as set forth in the arbitration order.

### 19 IT IS ORDERED:

- 20 1. Petitioner Grand Canyon Skywalk Development, LLC's application for  
21 confirmation of an arbitration award (Doc. 1) is **granted**.
- 22 2. Respondent 'Sa' Nyu Wa, Inc.'s motion to vacate the arbitration award and  
23 dismiss this matter (Doc. 7) is **denied**.



# **Exhibit 8**

HUALAPAI TRIBAL COUNCIL  
RESOLUTION NO. 20-2011  
OF THE GOVERNING BODY OF THE  
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION  
PEACH SPRINGS, ARIZONA

(Enactment of Law and Order Code Section 2.16, Eminent Domain)

WHEREAS, the Hualapai Tribal Council is the legislative body of the Hualapai Tribe and is empowered by inherent sovereign rights and powers, and the Constitution of the Hualapai Indian Tribe to exercise eminent domain over all property subject to the jurisdiction of the Hualapai Tribe; and

WHEREAS, it has been the law, customs and tradition from a time beyond memory that the Hualapai People, acting through their leaders, may take the property of an individual within its territory for the public good, provided a fair trade is made for such property; and

WHEREAS, the Hualapai Tribal Council is empowered by the Constitution of the Hualapai Indian Tribe to take any and all actions necessary and proper to the exercise of its powers and duties under the Constitution, and those powers and duties vested in the Tribal Council through its inherent sovereignty; and

WHEREAS, the Hualapai Tribal Council has a duty under the Constitution of the Hualapai Indian Tribe and the traditions of the Hualapai People to ensure just compensation for the taking of private property for a public use; and

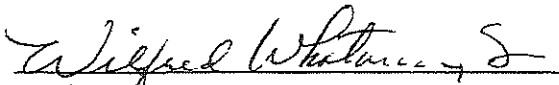
WHEREAS, to ensure due process and equal protection under the law, the Hualapai Tribal Council finds it necessary to create procedures for the exercise of its listing and inherent power of eminent domain.

NOW, THEREFORE, BE IT RESOLVED that the Hualapai Tribal Council assembled this 4<sup>th</sup> day of April, 2011, does hereby approve and enact Section 2.16 of the Hualapai Tribe Law and Order Code, attached hereto as Ex. A; and


BE IT FINALLY RESOLVED that Section 2.16 shall go into effect immediately upon passage by the Tribal Council.

### CERTIFICATION

I, the undersigned, as Chairman of the Hualapai Tribal Council, hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is composed of nine (9) members of whom (9), constituting a quorum, were present at a Special Council meeting held on the 4<sup>th</sup> day of April, 2011; and that the foregoing resolution was duly adopted by a vote of (9) in favor, (0) opposed, (0) not voting, (0) excused, pursuant to authority of Article V, Section (a) of the Constitution of the Hualapai Tribe, approved March 13, 1991.

  
Wilfred Whatoname, Sr., Chairman  
HUALAPAI TRIBAL COUNCIL

ATTEST:

  
Adeline Crozier, Assistant Secretary  
HUALAPAI TRIBAL COUNCIL

Sec. 2.16

A. Definitions

1. Throughout this Section, "public use" means any of the following:

a. The possession, occupation, use and/or enjoyment of property by the general public or the Tribe;

b. The use of property for the creation or functioning of utilities;

c. The acquisition of property to eliminate (i) a threat or hazard to public health or safety, (ii) a blight or detriment to an area possessed, occupied, used and/or enjoyed by the general public, or (iii) an obstacle or hindrance, whether tangible or intangible, to the possession, occupation, use and/or enjoyment by the general public of property belonging to the Tribe, caused in any such case by the property in its current condition or by an encumbrance, tangible or intangible, affecting such property, including elimination by means of (a) the removal of a structure that is or is foreseeably beyond repair at a reasonable expense or unfit for human habitation or use, (b) completion of a structure in order to facilitate human habitation or use, and/or (c) the removal of the obstacle, hindrance or encumbrance;

d. The acquisition of abandoned property; or

e. The public benefit of economic development, including an increase in tax base, tax revenues, general revenues, tourism, employment or general economic health.

2. Throughout this Section, "take," "taken" and "taking" mean the transfer of ownership or use from a property owner to the Tribe.

3. Throughout this Section, "include," "included" and "including" denote a partial definition, by way of illustration and not by way of limitation, and have the same effect as if the phrase "without limitation" (or any variation thereof) were added thereto.

4. Throughout this Section, "Tribe" means and refers to the Hualapai Indian Tribe, a federally recognized Indian Tribe, its governmental departments and agencies, and/or its tribally owned businesses. This definition shall not be construed to limit the definition of "Tribe" or its variants in other portions of the Hualapai Law and Order Code.

B. Purposes For Which Eminent Domain May Be Exercised

Subject to the provisions of this Section, the right of eminent domain may be exercised by the Tribe, through action of the Tribal Council, for the following uses:

1. All public uses authorized by the government of the United States or the Tribe.

2. Buildings, grounds and other facilities for the use of the Tribe.

3. All property interests, tangible or intangible, for any use of the Tribe, or any other use authorized by the Tribal Council.

4. Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge.

5. Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge.



6. Water systems for domestic, industrial, irrigation, tribal government or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal.

7. Electrical systems, including generation, storage, transmission, and distribution of electrical power.

8. Telecommunications systems, including all forms of telecommunications equipment, towers, receivers, transmitters, lines, antennae, and dishes.

9. Highways, streets, roadways and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking.

10. Areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking.

11. Pedestrian malls, parks, performance venues, views, vistas, outlooks and other prospects, recreational facilities, stadiums, other structures, facilities and improvements, and open space areas for use of members of the public for entertainment, assembly, tourism and recreation.

12. Landscaping, including earthworks, structures, lakes and other water features, plants, trees, and related water delivery systems.

13. Lighting systems.

14. Traffic control systems and devices, including signals, controls, markings and signage.

15. Wharves, docks, piers, ramps, marinas, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads and highways.

16. Railroads, railways, transit lines, and trolley lines, including rights of way, station grounds, pits, yards, sidetracks and other necessary facilities for the foregoing.

17. Pipe lines used for carrying gas, petroleum, petroleum products or any other gas or liquid.

18. All transportation, transmission and intercommunication facilities of public service agencies.

19. Aviation fields.

20. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, and outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, or any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

#### C. Estates in Land Subject to Condemnation

All estates and interests, including rights, assignments, easements, encumbrances and other interests, in, on or to land located on or within the boundaries of the Hualapai Reservation are subject to be taken for public use.

#### D. Private Property Subject to Condemnation

In addition to the estates and interests in land in subsection C, estates and interests in private property which may be taken includes:

1. All property located on or within the boundaries of the Hualapai Reservation belonging to any person.
2. All property subject to the jurisdiction of the Tribe having an effect on the Hualapai Reservation, the Tribe or a Hualapai Tribal Member.
3. All tangible or intangible property, including intangibles such as contracts, franchises, licenses, leases, patents, trade routes, and other types of property, including contracts pertaining to the possession, occupation, use, design, development, improvement, construction, operation and/or management of property, including property owned by the Tribe.
4. Property appropriated to public use.
5. All other classes of private property not enumerated may be taken for public use.

E. Right of Tribe to Enter, and Examine, Survey, Inspect or Inventory

1. Where land is required for public use, the Tribe, through its agent(s), may enter upon the land, and make examinations, surveys and maps thereof.
2. Where property other than land is required for public use, the Tribe, through its agent(s), may subject the property to examination, inventory or inspection, including any property that is associated with a contract, franchise, license, lease, patent, trade route or other type of property which is subject to being taken. The person in control of such property shall cooperate with the Tribe, or its agent(s), in making the property available for examination, inventory or inspection.
3. A person authorized by the Tribal Council to seek to acquire property for any of the public uses authorized by this Section is an agent of the Tribe. The Tribe, or its agent(s), may exclude other persons, including the person in control of the property, from the property or portions thereof as and to the extent deemed necessary or appropriate by the Tribe, or its agent(s), to facilitate any examination, survey, mapping, inventory or inspection.
4. No one shall have a cause of action against the Tribe, or its agent(s), for exercising the authority granted under this subsection.
5. The Tribal Council may, but is not required to, enforce this subsection through judicial process or its inherent contempt power. The Tribal Council is not required to obtain a writ, subpoena or other judicial process prior to exercising its rights under this subsection. If deemed necessary or appropriate, the Tribal Council may, but is not required to, issue one or more subpoenas and/or enlist the assistance of the Hualapai Nation Police Department in exercising its rights under this subsection.

F. Actions for Condemnation; Declaration of Taking

1. All actions for condemnation shall be brought as other civil actions in the Hualapai Tribal Court.
2. At the time of filing the complaint, or at any time after filing the complaint, the Tribe may file with the tribal court a declaration of taking, signed by the Tribal Chairperson, the Tribal Vice-Chairperson, or the Tribal Council's authorized agent, declaring that the property described in the Complaint is taken for the use of the Tribe.

3. The declaration of taking shall contain or have annexed to it:

a. A statement of the public use for which the property is taken, which declaration may take the form solely of citing the pertinent category or categories of public use set forth in subsection A of this Section;

b. A description of the property sufficient to identify it;

c. A statement of the estate or interest in the property taken, which statement may be identical or similar to the description provided pursuant to paragraph 3(b) of this subsection; and

d. A statement of the amount of money estimated by the Tribe to be just compensation for the property taken.

e. The declaration of taking is not required to, and need not, contain or have annexed to it any other statement or other material.

4. On filing the declaration of taking:

a. title to the estate or interest specified in the declaration of taking shall vest in the Tribe, and such vesting shall include that, if the property is an estate or interest in an intangible such as a contract, franchise, license, lease, patent, trade route or other types of property, the Tribe shall be the party thereto in the full place and stead of the defendant, to the full extent as if the Tribe and not the defendant were the original signator or party thereto, and the defendant shall no longer be a party thereto;

b. the property is condemned and taken for the use of the Tribe;

c. the parties in possession of the property shall be deemed to have surrendered possession to the Tribe, and any attempt by such parties to remain in possession of the property or otherwise to exert control over or with respect to the property shall be deemed a trespass against the Tribe; and

d. the right to just compensation vests in the person(s) entitled to just compensation.

5. The Court shall not require the Tribe to post a bond or deposit any money as a condition of filing a declaration of taking or initiating a condemnation proceeding; however, if the Tribal Council, in its sole and absolute discretion, deems a deposit necessary or appropriate under the circumstances, the Tribe may elect to deposit in the court the amount of estimated compensation listed in the declaration of taking.

a. The making of a deposit shall not be a condition to the effectiveness of matters set forth in subsections F(4)(a) through (4)(d) of this Section.

b. The absence of a deposit at the time of the filing of the declaration of taking shall not preclude the Tribe from subsequently electing to make such a deposit.

6. Within ten (10) days of the filing of the declaration of taking, the defendant may file a motion to dismiss the condemnation action and declaration of taking solely for the purpose of challenging the validity of the taking as not being for a public use.

a. The motion to dismiss and hearing on the motion to dismiss shall be limited to a judicial determination on whether the taking is for a public use. The motion to dismiss shall not contain and the court shall not adjudicate any other challenge or issue at this stage of the

proceeding, including any claim that the defendant is not a real party in interest, that the defendant does not hold title to any estate or interest in the property, or that there are other persons who might hold an estate or interest in the property or might otherwise be interested in the taking.

b. Within twenty (20) days of the filing of the motion to dismiss, the Tribe may respond to the motion to dismiss.

c. The court shall set a hearing on the matter, which hearing shall be held within forty (40) days of the filing of the declaration of taking, and the court shall rule on the matter within sixty (60) days of the filing of the declaration of taking. The taking shall be presumed in all cases to have been for a public use. The defendant(s) shall have the burden of proving and establishing by clear and convincing evidence facts rebutting the presumption.

d. During the period of defendant(s)' challenge to the taking as not being for an authorized public use, the Tribe shall hold a defeasible title to the property listed in the declaration of taking. The Tribe shall have the full right and authority to possess and use the property, including acting as the party to the contract or other intangible property, described in the declaration of taking. The Tribe's right and authority to possess and use the property, including acting as the party to the contract or other intangible property, described in the declaration of taking shall not be delayed or prevented through any court action.

e. If, after a hearing, the court determines that the taking is for a public use, fee simple absolute title to the property described in the declaration of taking shall vest in the Tribe and, in the case of a contract or other intangible property, the Tribe shall be the party thereto in the full placement and stead of the defendant(s), all as provided in paragraph 4(a) of this subsection, and the right to just compensation shall vest in the defendant(s).

f. No subsequent proceedings shall affect the title acquired by the Tribe to the property, or its status as a party to the contract or other intangible property, described in the declaration of taking.

7. Just compensation shall be determined and awarded as prescribed in subsection L of this Section.

a. If compensation finally awarded is more than the amount of money, if any, deposited in the court at the time of the filing of the declaration of taking, the court shall enter judgment against the Tribe in the amount of the deficiency.

b. If compensation finally awarded is less than the amount of money deposited in the court at the time of the filing of the declaration of taking, the court shall immediately refund the excess to the Tribe.

8. If the Tribe elected to make a deposit as provided in subsection F(5) of this Section, on application of the defendant, the court may order that any part of the money deposited in the court, if any, be paid immediately to the defendant as compensation for the taking, subject to the following conditions:

a. The application must contain (i) a statement of the defendant's interest in the property described in the declaration of taking, how much money the defendant is seeking as compensation for that interest, a representation that the defendant has not conveyed or become obligated to convey the defendant's interest in such property to any other person, and the names and addresses of all other persons having an interest in such property, and (ii) an indemnity in form and substance satisfactory to the Tribe in its sole and absolute discretion regarding the true and complete nature of such statement.

b. In addition to the application, the defendant shall file with the court a stipulation that the money applied for constitutes full and just compensation for the taking.

c. Payment of the money to the defendant shall constitute a complete settlement of the case with respect to that defendant, a full relinquishment of that defendant's claims arising in connection with the action or proceeding and of that defendant's right, title and interest in and to the property described in the declaration of taking, and an abandonment of that defendant's defenses to the action or proceeding, other than the right to the just compensation described Section 2.16(F)(7)(b).

d. Any other defendant having an interest in the property described in the declaration of taking may contest the amount of compensation sought by the defendant filing an application for an award out of the deposited funds. The court shall determine the respective rights of the defendants seeking compensation for the taking.

9. On the filing of the declaration of taking, the court may make just and equitable orders, not inconsistent with the other provisions of this subsection, with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges.

10. Any information contained in the declaration of taking and the amount of money, if any, deposited by the Tribe into the court shall not be introduced in evidence or used to the prejudice of any party on the trial of the action.

11. In the event of any inconsistency or conflict between subsection F of this Section and any other provision of this Section, subsection F shall control and govern the matter.

#### G. Complaint

The complaint shall set forth:

1. The Tribe and, if applicable, the name of the Tribe's agent(s), as plaintiff.
2. The names of all persons having an interest in the property, if known, or a statement that they are unknown, as defendants.
3. A statement of the right of the Tribe, including a statement of the public use for which the property is sought, which statement may take the form solely of citing the pertinent category or categories of public use set forth in subsection A of this Section.
4. A general description of the property subject to condemnation sufficient to identify it.
5. A statement of the estate or interest in the property taken, which statement may be identical or similar to the description provided pursuant to paragraph 4 of this subsection.
6. The Tribe is not required to, and need not, plead or prove any other matter, including that the public use is "necessary."

#### H. Joint or Separate Actions; Consolidation

All separate property required for the same public use may be included in the same or separate proceedings, at the election of the Tribe, but the court may consolidate or separate them for convenience of the parties.

#### I. Summons; Contents; Service



1. Upon receiving the Complaint for filing, the clerk of the court shall follow the procedures for issuance of a summons and notice of hearing prescribed by Sections 4.4 and 4.5 of this Code.

2. Notice to defendants shall include a statement for them to appear and show cause why the property described should not be condemned as prayed for in the Complaint.

3. Failure of the clerk of the court to follow any of the specialized procedures in this Section shall not constitute grounds for dismissal of the action or affect the consequences of a declaration of taking; however, the court may remedy the procedural error in a manner equitable to the parties.

#### J. Right to Defend Action

1. All persons occupying, or having or claiming an interest in any of the property described in the Complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend such interest in the property or damages as if named in the complaint.

2. This Section provides the sole and exclusive means to defending one's interest in any of the property described in the Complaint. The Court shall issue no injunction, stay or other order, or provide any right or remedy not provided for in this Section.

#### K. Powers of Court: Precedence over Other Actions

1. No pro tem judge shall hear or adjudicate actions arising under this Section. Only judges appointed to full-time positions on the Hualapai Tribal Court may adjudicate actions arising under this action.

2. The court shall hear and determine all adverse or conflicting claims to the property sought to be condemned and the claim of damages therefor, and shall determine the respective rights of different parties seeking condemnation of the same property.

3. The court shall, at the request of any party, give the condemnation action precedence over other civil actions.

#### L. Ascertainment and Assessment of Value, Damages and Benefits

1. The court shall ascertain and assess:

a. The value of the property sought to be condemned.

b. The value of all improvements on or to the property, if applicable.

c. The value of each and every separate estate or interest in the property.

d. The value of each parcel or portion, and each separate estate or interest in the parcel or portion, if the property consists of different parcels or portions.

e. The damages that will accrue to the portion of the property not sought to be condemned by reason of its severance from the portion sought to be condemned, if the property sought to be condemned constitutes only a part of a larger whole.

f. How much the portion not sought to be condemned and each estate or interest in such portion will be benefited, if at all, by the condemnation proposed by the Tribe. If the benefit is equal to the damages assessed, the owner of the parcel shall be allowed no

compensation except for the value of the portion taken. If the benefit is less than the damages so assessed, the benefit shall be deducted from the damages, and the remainder shall be the only damages allowed in addition to the value.

g. Any effect on the value of the property due to the condition of improvements on the property, or of the defendant's performance or failure to perform all of its obligations pertaining to or arising in connection with the property

2. As far as practicable, compensation shall be assessed for each source of damage separately. In ascertaining and assessing value, the court shall take into all of the applicable items listed in subsection L(1) of the Section.

3. Value shall be determined by ascertaining the most probable price estimated in terms of cash in United States dollars or comparable market financial arrangements that the property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable.

4. Defendant(s) shall have the burden of proving the amount of just compensation.

#### M. Accrual of Right to Compensation and Damages; Limitation

1. For the purpose of assessing compensation and damages, the right to compensation and damages shall be deemed to accrue at the date of the summons, and its actual value at that date shall be the measure of compensation and damages.

2. If there was a declaration of taking filed, the compensation and damages awarded shall draw interest from the date of the declaration of taking at the weekly average one-year constant maturity (nominal) Treasury yield, as published by the United States Federal Reserve System. Interest shall not be allowed on as much of the compensation as has been deposited into the court at the time of the filing of the declaration of taking. Amounts deposited with the court shall not be charged with commissions, fees, or poundage.

3. No improvements placed upon or made in connection with the property, and no performance by defendant of any of its obligations pertaining to or arising in connection with the property, subsequent to the date of service of the summons or, if later, filing of the declaration of taking shall be included in the assessment of compensation or damages.

#### N. Payment of Compensation; Effect of Failure to Pay

1. Payment of compensation and damages may be made to a defendant or defendants entitled thereto, or the money may be deposited with the court and distributed to the defendant or defendants entitled thereto.

2. If the Tribe does not pay the compensation and damages ordered by the court within one hundred eighty (180) days of such an order, upon a showing to that effect, the court shall set aside and annul the entire proceedings, and restore possession and title of the property to defendant or defendants, if possession has been taken by the Tribe.

3. The Tribe shall be granted extensions of time for payment of compensation for good cause shown.

#### O. Final Order of Condemnation; Vesting of Property

1. When the final judgment has been satisfied, the court shall make a final order of condemnation, describing the property condemned and the purposes of the condemnation.

2. Upon issuance of the final order of condemnation, all interest in the property described shall vest in the Tribe for the purposes therein specified.

3. This subsection does not apply when the Tribe has filed a declaration of taking.

P. Possession by the Tribe After Judgment or Pending Appeal; Receipt of Payment as Abandonment; Custody of Money Paid into Court; Costs of New Trial

1. Unless a declaration of taking has been filed, at any time after judgment is entered, or pending an appeal from the judgment, when the Tribe has paid into court for defendant or defendants the full amount of the judgment, and such other amounts as required by the court as a fund to pay further damages and costs which may be recovered in the proceedings, as well as all damages that may be sustained by defendant or defendants if for any cause the property is not finally taken for public use, the court may, upon notice of not less than ten days, authorize the Tribe, if already in possession, to continue therein (including, in the case of a contract or other intangible property, to continue as the party thereto in the full place and stead of the defendant(s)), or if not, then to take possession of and use the property (including, to act as the party to and otherwise perform such contract or other intangible property) until final conclusion of the litigation.

2. The defendant or defendants who are entitled to the money paid into court upon any judgment may demand and receive the money at any time thereafter upon an order of the court. The court shall, upon application, order the money so paid into court delivered to the party entitled thereto upon his filing with the Court either a satisfaction of the judgment or a receipt for the money, as well as a stipulation fully relinquishing that defendant's claims arising in connection with the action or proceeding and that defendant's right, title and interest in and to the property, and abandoning all defenses to the action or proceeding except as to the amount of damages to which he may be entitled if a new trial is granted. Such payment shall be deemed an abandonment of all defenses and claims, except the party's claim for greater compensation.

3. The money paid into court on final judgment may be placed by order of court in the custody of the clerk to be held or disbursed upon order of court.

4. When a new trial is granted upon application of a defendant, and he fails upon the trial to obtain greater compensation than was allowed upon the first trial, the costs of the new trial, plus a penalty in the amount of thirty percent (30%) of such costs, shall be taxed against him.

Q. Costs and Fees

Except as provided in Section 2.16(P)(4), each party shall be responsible for its own costs and fees, and no party shall be entitled to recover such costs and fees from any other party.

R. Dismissal of Condemnation Action

1. If the Tribe causes a condemnation action under this article to be dismissed without prejudice before payment of the compensation and damages awarded the defendant by the court, the Tribe shall not initiate any eminent domain proceeding with respect to the same property for the same or a related project for at least one year after the date of the verdict or judgment.

2. At any time after service of the Complaint and before the court renders judgment on the issues of compensation and damages, the Tribe may dismiss the action without prejudice upon motion to the court.



3. The Tribe may not dismiss the condemnation action if a declaration of taking has been filed unless the defendant(s) have agreed to the just compensation offered by the Tribe as a settlement of the action or the Tribe revokes the declaration of taking prior to the defendant(s) receiving just compensation.

S. Applicability

If a conflict arises between this Section and any other law, this Section controls.

T. Severability

If any provision of this Section or its application to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of this Section that can be given effect without the invalid provision or application, and to this end the provisions of this Section are severable.

U. Sovereign Immunity

Nothing in this Section shall be construed as a waiver of the Hualapai Tribe's inherent sovereign immunity, or any other immunity or privilege.

# **Exhibit 9**

HUALAPAI TRIBAL  
COURT

2012 FEB -8 PM 3:56

FILED

1 Glen Hallman (SBN 05888)  
 2 Paul Charlton (SBN 012449)  
 3 Christopher W. Thompson (SBN 026384)  
 4 **GALLAGHER & KENNEDY, P.A.**  
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 10 paul.charlton@gknet.com  
 11 chris.thompson@gknet.com  
 12 *Attorneys for Plaintiff*

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

12 THE HUALAPAI INDIAN TRIBE OF THE  
 13 HUALAPAI INDIAN RESERVATION,  
 14 Arizona,

Plaintiff,

v.

17 GRAND CANYON SKYWALK  
 18 DEVELOPMENT, LLC, a Nevada limited  
 19 liability company,

Defendant.

Case No. 2012-CY-017

**DECLARATION OF TAKING**

(Eminent domain)

22 Plaintiff, the Hualapai Indian Tribe (the "Tribe"), by and through its  
 23 attorneys, pursuant to Section 2.16(F)(2-4) of the Hualapai Tribe Law and Order Code,  
 24 hereby declares that it has taken possession of all interests of Grand Canyon Skywalk  
 25 Development, LLC ("GCSD") in that certain Development and Management Agreement  
 26 by and between GCSD and 'Sa' Nyu Wa, a tribally chartered corporation, dated

GCSD010882

GALLAGHER & KENNEDY, P.A.  
 2575 EAST CAMELBACK ROAD  
 PHOENIX, ARIZONA 85016-9225  
 (602) 530-8000

1 December 31, 2003, and that certain first amendment to Development and Management  
2 Agreement by and between GCSD and 'Sa' Nyu Wa, a tribally chartered corporation,  
3 dated September 10, 2007 (hereinafter individually and collectively referred to as the  
4 "Skywalk Agreement").

5 Accordingly, the Tribe is entitled to an order from the Court that absolute title in  
6 such contractual interests vests in the Tribe and that the Tribe shall be the party to the  
7 Skywalk Agreement in full place and stead of GCSD, with the right to just compensation  
8 vesting in GCSD.

9 The public use for which the property is taken is the construction and management  
10 of the Skywalk located at Eagle Point within the Hualapai Tribal Reservation, which  
11 construction and operation concerns the entirety of the Hualapai Indian Tribe and its  
12 people and promotes the general interest of the Hualapai Indian Tribe and its peoples.

13 The amount of money estimated by the Tribe to be just compensation for the  
14 property taken is \$11,040,000.

15 Now, therefore, the Tribe requests the Court enter an order vesting absolute title in  
16 GCSD's contractual interests in the Skywalk Agreement and that the Tribe shall be the  
17 party thereto in full place and stead of GCSD, with the right to just compensation vesting  
18 in GCSD.

19  
20 Respectfully submitted this 8 day of February, 2012.

21 **GALLAGHER & KENNEDY, P.A.**

22 By:   
23

Glen Hallman

Paul Charlton

24 Christopher W. Thompson

25 2575 East Camelback Road

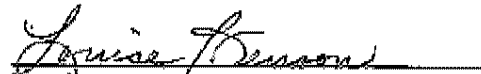
Phoenix, Arizona 85016-9225

26 *Attorneys for Plaintiff*

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**Tribal Certification**

I, Chairwoman, Louise Benson hereby certify this Declaration of Taking, and declare that the property described in the Complaint is taken for the Tribe.

  
Louise Benson

1 ORIGINAL of the foregoing filed  
2 this 8<sup>th</sup> day of February, 2012 with:

3 The Hualapai Tribal Court  
4 960 Rodeo Way  
5 P.O. Box 275  
6 Peach Springs, AZ 86434

7 COPY sent via U.S. Mail  
8 this same day to:

9 Pamela M. Overton  
10 GREENBERG TRAURIG, LLP  
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14 AND

15 Mark Tratos  
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20 AND

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24 Denver, CO 80202  
25 E-mail: EidT@gtlaw.com

26 *Attorneys for Grand Canyon Skywalk Development, LLC*

27   
28 Deborah Yanazzo

# **Exhibit 10**



Tribe can manage Skywalk without developer - Opinion - ReviewJournal.com

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## Opinion

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### LETTERS

## Tribe can manage Skywalk without developer

Posted: Oct. 5, 2012 | 2:07 a.m.

To the editor:

Your conclusions in Saturday's editorial about the Grand Canyon Skywalk dispute were ill-informed and misleading to your readers. The Hualapai Tribal Council and I wanted to share some important facts and address any concerns in the Las Vegas community.

It was recently reported that the American Arbitration Association awarded Las Vegas developer David Jin millions of dollars as part of the ongoing contract dispute over management of the Skywalk. This unenforceable arbitration "award" is just another example of Mr. Jin's army of attorneys attempting to confuse the issues in order to undermine our right to economic self-determination. We were disappointed that the Review-Journal editorial board failed to see through their spin machine, choosing instead to quote a tribal member disparaging his fellow Hualapai - without mentioning that this individual is Mr. Jin's employee and has received thousands of dollars from the developer.

Here are the facts: Arbitration in this case can only be ordered by a federal court of competent jurisdiction. In our case, as a federally recognized sovereign nation, that would require an order from a U.S. District Court judge. That has not happened. The AAA has no authority in this matter, and we did not participate in the arbitration. As you'll recall, each time Mr. Jin has brought lawsuits before the federal and tribal courts, he has seen his cases dismissed.

Another fact: We have always considered an array of legal options to bring this painful and avoidable matter to a resolution. That includes paying Mr. Jin fair-market value for the Skywalk management agreement. We remain eager to move forward and find a resolution to this situation, but Mr. Jin has refused to negotiate in good faith.

It is also a fact that the Hualapai Tribe has been successfully managing operations at the Grand Canyon Skywalk since we terminated our contract with Mr. Jin. We are proud of this accomplishment and believe it bodes well for completing the work Mr. Jin failed to complete, while giving our tens of thousands of

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### This Week

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visitors the experience they deserve.

This issue has always been about fairness, about right and wrong. We entered into our development agreement with Mr. Jin nearly a decade ago with high hopes and in good faith. Since the Skywalk's 2007 opening, Mr. Jin has failed to complete a single project improvement other than the glass bridge. Worse, he indicated that he had no intention of ever doing any further construction of the project improvements.

After the Skywalk opened, Mr. Jin's company accepted the responsibility of handling all money paid by visitors to the unfinished attraction. The accountability for these funds has been nonexistent and was an abuse of Mr. Jin's fiduciary trust.

Put simply, nothing that occurred during AAA's invalid arbitration hearings changes any of those facts.

Please be confident that the Skywalk is being well-managed, and now has the potential to become the world-class attraction that we envisioned. We sincerely hope Las Vegas residents and people across our region will come see the majesty of Grand Canyon West for themselves.

Sherry J. Counts

Peach Springs, Ariz.

The writer is chairwoman of the Hualapai Tribe.

Another Obama visit

To the editor:

It is indeed curious that President Obama, who not very long ago was bad-mouthing Las Vegas as a tourism and business destination, has himself been spending a good amount of time here, particularly recently. In fact, he once again enjoyed the splendors of the Las Vegas Valley (at Lake Las Vegas) while preparing for his debate with Republican nominee Mitt Romney.

It is perhaps poignant that Lake Las Vegas happens to be the site of the only Ritz-Carlton hotel to have ever closed. That event occurred during the devastating economic downturn, while Mr. Obama was in the second year of his presidency.

Mr. Obama, now that the overall economy has been established to be "moving in the right direction" (according to your calculations), please give all Las Vegans a boost by encouraging tourism as a means toward helping our local economy, as well.

Nicholas J. Feduska, M.D.

Henderson

Helicopter noise

To the editor:

In response to your Wednesday story, "Obama's three-day stay pinches pockets of helicopter tour operators":

I was amused by Nigel Turner's complaints of airspace restrictions because of the president's visit to Southern Nevada. If Mr. Turner had to listen to his own helicopters flying over his home from daylight to sundown, maybe he wouldn't be so quick to whine about them being temporarily relocated.

The only respite we homeowners receive is when there is inclement weather, which is rare, or a dignitary's visit. So President Obama, I would like to offer you an extended stay in the Las Vegas Valley. Six months or longer would be nice.

Gary Luther

Las Vegas

Lost Advantage

To the editor:

With ObamaCare and health care in general at the forefront of

#### Hot Tickets

The Addams Family | Tue 11/20 7:30 p.m.

Bob Dylan | Sat 10/27 7:30 p.m.



# **Exhibit 11**



## Newsletter of the Hualapai Tribe

## GAMYU



Issue #04

February 15, 2013

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other; in doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the purples in the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.



The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible - plants don't grow there will be no life - nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai - PEOPLE OF THE TALL PINES.

### HUALAPAI TRIBE OFFICE OF THE CHAIRPERSON

Sherry J. Counts  
Chairwoman

P.O. Box 179 • Peach Springs, Arizona 86434 • (928) 769-2216  
1-888-769-2221

Philbert Watahomigie, Sr.  
Vice Chairman

Feb. 12, 2013

Members of the Hualapai Tribe:

Thank you for contacting me with your questions about the U.S. District Court decision regarding the Grand Canyon Skywalk dispute. I wanted to share some important facts with our community and address any of your concerns.


I'm very proud of the Hualapai Tribe and our many successes over the last several months:

- In December, Grand Canyon West saw its highest visitor count in history, with more than 5,200 tourists from around the world coming to GCW.
- The Hualapai Tribe has been successfully managing operations at the Grand Canyon Skywalk since we terminated our contract with Mr. Jin. We are proud of this accomplishment and believe it bodes well for finishing the work Mr. Jin failed to complete, while giving our visitors the experience they deserve.
- The Tribe has taken over management of our pontoon operation and the Ranch. This is a critical step for our economic self-determination and helps ensure success in those business ventures for decades to come.
- We recently broke ground on the Tribe's child-care facility, which will give dozens of children the opportunity to learn and grow in a beautiful environment. We all look forward to the completion of that important project.
- Our culture, arts and language classes are thriving, and it gives me great joy to know that so many children are learning the Hualapai language.

Regarding the U.S. District Court ruling on Monday, the Tribal Council is discussing a variety of legal options. As you know, we have always considered an array of possibilities to bring this painful and avoidable matter to a resolution. That includes paying Mr. Jin fair-market value for the Skywalk management agreement, which he has repeatedly turned down in an effort to take more money from the Hualapai people.

The Tribal Council remains eager to find a resolution to this situation with Mr. Jin. I will, of course, keep you posted as we move forward with this process. Please let me know if you have any questions or feedback.

Sincerely,

  
Sherry J. Counts  
Chairwoman, Hualapai Tribe

# **Exhibit 12**



December 21, 2012

Gamyu



Newsletter of the Hualapai Tribe

Issue #26

From the Office of Chairwoman, Sherry Counts

December 14, 2012

Dear Hualapai Community members,

Greetings to all! I would like to take this opportunity to wish each and everyone a Merry Christmas and A Wonderful 2013 New Year. I hope and pray that you will all be blessed, healthy, and prosperous. We look forward as a tribal council to work on meeting the needs of the future for the Hualapai community.

The distribution of the \$5.4 million has been done and we are still trying to identify current addresses of tribal members. It is important to update your address with the tribe when you move or make a change please contact enrollment. I hope that this disbursement has helped this holiday season.

The Water Rights issue is moving forward and we will continue to work diligently after the first part 2013.

The Tribal Council has begun working on the 2013 budgets the General Fund budget has been approved. This budget receives requests from departments for support of programs. We receive General Fund money from the business part of the tribe. The money goes to help programs that are not supplemented by grants and to help pay for the resources that benefit the Hualapai community.

We will work on the Gaming Budget the GCRC, GCW, and SNW Budgets. Please remember that it takes a lot of money to run the tribal departments we have 23 departments that we supplement. I know some people believe that the money just sits there and the tribal council uses as they wish. The reality is that there are clearly defined budgets with line items that are in place to ensure the money is utilized correctly. We have over 350 employees that work for the tribe.

The Gaming Revenue provides the Social Gaming for Hualapai Tribal Members which includes utility assistance for 18-65, elderly utility assistance for 65 and older, clothing allowance for those attending school, emergency rental assistance, emergency medical assistance, glasses assistance, and various other assistance. Please pick up your Social Gaming information at the Tribal Office for more information.

In the Skywalk litigation we are still waiting for the Ninth Circuit judge to render their decision. It is important to know that the Skywalk is still having visitors and provides jobs. We will continue to make progress and will recover from the impact of the litigation.

The Hualapai Tribal Council is working together as a team to ensure that we are addressing the needs of the community. Please attend our council meetings and listen to the things that we are doing to provide services to the Hualapai Community. We welcome you to stop by you can ask questions and we will gladly work to give you the answer. Be assured that the we are working for the best interest of the Hualapai Tribe.

Respectfully Submitted,

Sherry J. Counts, Chairwoman of Hualapai Tribe



## Inside this issue:

Community Events & Information	2
Education, Training & Job Opportunities	12
Health & Safety	15
Community Messages	19

Merry  
X-mas  
& Happy  
New Year!!

# **Exhibit 13**



1 Quarles & Brady LLP  
Firm State Bar No. 00443100  
2 Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004-2391  
3 TELEPHONE 602.229.5200

4 Proposed Attorneys for Debtor and Debtor-in-  
Possession

5 John A. Harris (#014459)  
john.harris@quarles.com  
6 Kelly Singer (#022024)  
kelly.singer@quarles.com  
7

8 **IN THE UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE DISTRICT OF ARIZONA**

10  
11 'SA' NYU WA, INC.,

12 Debtor.

In Proceedings Under Chapter 11

Case No. 0:13-bk-02972-BMW

13 **DECLARATION OF JENNIFER**  
14 **TURNER IN SUPPORT OF CHAPTER**  
15 **11 FILING AND FIRST DAY**  
16 **MOTIONS**

17 I, Jennifer Turner, hereby declare, under penalty of perjury of the laws of the  
18 United States as follows:

19 1. I make this Declaration in connection with the voluntary petition for relief  
20 under Chapter 11 of the United States Bankruptcy Code filed by 'SA' NYU WA, INC. ("SNW" or  
21 the "**Debtor**") on March 4, 2013 (the "**Petition Date**").

22 2. I am over the age of 21 years, and competent to testify in this case. I am a  
23 resident of Mohave County, Arizona. All of the statements I have made herein are true and  
24 correct to the best of my personal knowledge, information, and belief.  
25  
26

1           **A. Background Of SNW.**

2           3. I am the Chief Executive Officer of SNW. SNW's main office is located at  
3 16500 E. Highway 66, Peach Springs, Arizona, which is on the reservation of the Hualapai Indian  
4 Tribe (the "**Nation**"). I have been the Chief Executive Officer of SNW since October 1, 2012.

5           4. The Nation is a federally recognized Indian tribe.

6           5. SNW was created in 2003, and it is a tribally-chartered corporation  
7 chartered by the Nation.

8           6. SNW was created to assist in the development and operation of the glass  
9 viewing bridge overlooking the Grand Canyon commonly referred to as "Skywalk" and its related  
10 facilities (the "**Skywalk**").

11          7. The Skywalk is located on the reservation of the Nation.

12          8. SNW is a tribal corporation that is separate from the Nation and from other  
13 corporations or instrumentalities of the Nation.

14          9. SNW's sole shareholder is the Nation. SNW has a six-person board of  
15 directors.

16           **B. SNW's Agreement With Grand Canyon Skywalk Development, LLC**  
17 **And Disputes Regarding That Agreement.**

18          10. In 2003, SNW entered into a Development and Management Agreement  
19 (the "**GCSD Agreement**") with Grand Canyon Skywalk Development, LLC ("**GCSD**"). GCSD  
20 is an entity owned and controlled by David Jin.

21          11. The GCSD Contract between SNW and GCSD related to the construction,  
22 development, operation and management of the Skywalk.

23          12. The only parties to the GCSD Agreement are GCSD and SNW. To the  
24 best of my knowledge and information, there is no contract or agreement between GCSD and the  
25 Nation or any other tribal corporation.

26          13. The Skywalk was opened for business in 2007.

1           14. After the Skywalk operations began, disputes arose between GCSD and  
2 SNW - SNW asserted (and continues to assert) that GCSD was (and is) in breach of its duties and  
3 obligations under the GCSD Agreement, and GCSD asserted that SNW was in breach of its duties  
4 and obligations under the GCSD Agreement. Efforts by the parties to resolve their disputes  
5 consensually, including through possible amendments to the GCSD Agreement, failed.

6           15. In the summer of 2011, GCSD initiated an arbitration proceeding against  
7 SNW to pursue GCSD's claims that SNW was in breach of the GCSD Agreement (the  
8 "**Arbitration Proceeding**"). After a number of procedural activities, and on August 16, 2012, an  
9 Arbitration Award in favor of GCSD and against SNW was issued in the Arbitration Proceeding,  
10 in the amount of approximately \$28 million (the "**Arbitration Award**").

11           16. On February 11, 2013, the Federal District Court for the District of Arizona  
12 entered an Order confirming the Arbitration Award (the "**Confirmation Order**" and, together  
13 with the Arbitration Award, the "**Arbitration Rulings**").

14           17. The Arbitration Rulings state expressly that the Arbitration Award is  
15 against SNW only (not against the Nation or any other tribal or non-tribal entity), and that the  
16 award is recoverable only from assets of SNW (and not from assets of the Nation or any other  
17 tribal or non-tribal entity).

18           18. SNW filed a timely appeal of the Arbitration Rulings on February 27,  
19 2013, and SNW intends to prosecute its appeal and obtain a reversal and vacatur of the  
20 Arbitration Rulings.

21           **C. The Condemnation Proceeding Initiated By The Nation.**

22           19. The Nation is the owner of the Skywalk. In February of 2012, the Nation,  
23 pursuant to its powers under applicable tribal law, condemned GCSD's interests in the GCSD  
24 Agreement (the "**Condemnation**"). The Condemnation is the subject of proceedings between the  
25 Nation and GCSD that are pending in Hualapai Tribal Court, Case No. 2012-cv-017 (the  
26 "**Condemnation Action**").

1           **D.     GCSD's Efforts To Seize SNW's Assets.**

2           20.     Although the Arbitration Rulings are on appeal, GCSD has begun to pursue  
3 collection actions against SNW. GCSD has attempted to serve writs of garnishment on SNW's  
4 bank accounts. GCSD is seeking to compel a debtor's examination of SNW. Representatives of  
5 GCSD have stated in newspaper articles that GCSD may pursue other actions against SNW and  
6 its assets.

7           21.     In light of GCSD's actions, in particular efforts to seize SNW's bank  
8 accounts and funds, SNW is unable to continue business operations.

9           22.     In light of the Arbitration Rulings and GCSD's efforts to seize SNW assets,  
10 and pursuant to, among other things, a letter dated February 27, 2013, the Nation notified SNW  
11 that all operational responsibilities of SNW with respect to the Skywalk have been and are  
12 terminated by the Nation. Hwal'bay Ba:j Enterprises, Inc., dba Grand Canyon Development  
13 Corporation ("**GCRC**") - another separate tribal corporation - has been designated by the Nation  
14 to operate the Skywalk going forward on an interim basis.

15          23.     Under all of the circumstances, SNW does not have the ability or intention  
16 to continue its business operations.

17          24.     To minimize claims against SNW in light of its cessation of business  
18 operations, SNW terminated its employees effective February 27, 2013. SNW understands that  
19 the former SNW employees have been hired by GCSD.

20          25.     In an effort to preserve and maximize its remaining personal property  
21 assets, SNW also negotiated and executed a Letter Agreement with GCRC, effective as of  
22 February 28, 2013 (the "**Letter Agreement**") under which: (a) SNW sold and assigned on hand  
23 perishable goods (mainly food items) to GCRC for a cash payment in the amount of \$27,864  
24 (which is SNW's cost of acquiring such perishable goods); (b) consigned on hand non-perishable  
25 goods and photography supplies for sale by GCRC for a 90 day period, with GCRC to remit to  
26 SNW cash amounts for each sale as specified in the agreement; and (c) SNW leased to GCRC for

1 a 90 day term certain equipment with GCRC to pay a market lease rate to SNW. At the  
2 expiration of the 90 day term of the Letter Agreement, all unsold goods which are the subject of  
3 the agreement will be returned to SNW and the leases will expire. Any returned property and the  
4 leased equipment will be administered by SNW through appropriate proceedings in the Chapter  
5 11 bankruptcy case.

6 **E. The Chapter 11 Case And SNW's Initial Motions.**

7 26. SNW has filed this Chapter 11 case to prevent further collection efforts by  
8 GCSD for its sole benefit; to collect and preserve SNW's remaining assets for the benefit of all  
9 creditors and interested parties; to identify and administer claims asserted against SNW; and to  
10 prosecute an orderly liquidation and wind-up of its affairs through the Chapter 11 process.

11 27. To assist SNW in these efforts, SNW has retained qualified and  
12 experienced restructuring and bankruptcy counsel - Quarles & Brady, LLP (the "**Quarles Firm**"),  
13 and qualified and experienced third party financial consultants and advisors, MCA Financial  
14 Group, Ltd. ("**MCA**").

15 28. SNW requires the immediate and continuing assistance of the Quarles Firm  
16 and MCA in order to expeditiously assemble and preserve SNW's assets, to identify and assess  
17 claims asserted against SNW, and to take other actions necessary for SNW to proceed with its  
18 Chapter 11 case.

19 29. SNW fully supports and asks the Court to approve SNW's respective  
20 applications to employ the Quarles Firm and MCA in SNW's Chapter 11 bankruptcy case.

21 30. SNW also asks the Court to approve SNW's Motion to extend the deadline  
22 for SNW to file its bankruptcy Statement of Financial Affairs and Schedules. SNW's  
23 professionals, in particular MCA, are working diligently to complete a thorough analysis of  
24 SNW's books and records and other materials to assess and report on SNW's assets and potential  
25 creditors. SNW asks for additional time to file its Statement and Schedules to ensure that SNW  
26 and its professionals can complete their analysis and provide a full and accurate report in the

1 Statement and Schedules for the review and benefit of the Court, creditors, and other interested  
2 parties.

3 31. To move its case along efficiently, SNW intends to file a proposed  
4 Chapter 11 plan and disclosure statement promptly after it completes the above-described  
5 analysis of its books and records, and assets and liabilities.

6 If called to testify, I would testify as I have stated in this declaration.

7 DATED this 4th day of March, 2013.

8  
9 /s/ Jennifer Turner  
Jennifer Turner

# **Exhibit 14**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Grand Canyon Skywalk Development, LLC, )  
Plaintiff, ) CV 12-08030-PCT-DGC  
vs. ) Phoenix, Arizona  
'Sa' Nyu Wa, Inc., et al., ) February 24, 2012  
Defendants. )

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TEMPORARY RESTRAINING ORDER HEARING

Official Court Reporter:  
Patricia Lyons, RMR, CRR  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
401 West Washington Street, SPC 41  
Phoenix, Arizona 85003-2150  
(602) 322-7257  
Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared with Computer-Aided Transcription

10:44:43 1 MR. HALLMAN: The tribal court. Judge Yellowhawk as  
2 the chief judge.

3 THE COURT: And what kinds of individuals does the  
4 tribe usually choose as pro tems?

10:44:57 5 MR. GROSS: Mr. Hallman can answer that question.

6 MR. HALLMAN: They're non-tribal members. There's  
7 basically an independent group of pro tem judges that handle  
8 tribal matters for a variety of tribes. I'm not exactly clear  
9 just how that panel is formed, but they're not Hualapai  
10:45:18 10 members; they are independent.

11 THE COURT: Okay. Go ahead, Mr. Gross.

12 MR. GROSS: So it's our position, Your Honor, they  
13 haven't showed any exceptions to the exhaustion doctrine  
14 applied. They should at least go through the tribal court  
10:45:40 15 process. While that may not be decided until March or April,  
16 that's not futility. That doesn't rise to the level of  
17 futility. That is simply part of the eminent domain process  
18 in tribal court. They're obligated to go through that, and at  
19 least, at minimum, allow the tribal court to determine whether  
10:45:58 20 it has jurisdiction to proceed in the meantime.

21 Another thing that are not in the pleadings that, I  
22 guess, go to irreparable harm, in some respects go to this  
23 issue of futility, is that the revenues from the Skywalk are  
24 being placed in an escrow account in the meantime as this  
10:46:20 25 is -- as this process is proceeding. So there is a mechanism

10:46:26 1 for the money to be preserved, and in terms of is it -- is the  
2 tribal court going to decide now, is the tribal court going to  
3 decide in March, is the tribal court going to decide in April,  
4 that's a process that has to play out in tribal court as it  
10:46:44 5 would in any court, but in the meantime the money from  
6 Skywalk, the revenues from Skywalk would be deposited into an  
7 escrow account, as they have been since 2010.

8 THE COURT: Would you address Mr. Eid's argument that  
9 the fourth exception to exhaustion applies because it is plain  
10:47:03 10 that this is a very different case from *Water Wheel* --

11 MR. GROSS: And it's not --

12 THE COURT: -- and therefore the tribal court clearly  
13 lacks jurisdiction.

14 MR. GROSS: And it's not. This is *Water Wheel*, it's  
10:47:18 15 not *Montana*. The Ninth Circuit has set forth a very clear  
16 jurisdiction tree, based on whether this is Indian land or  
17 non-Indian land, *Montana* applies to actions over nonmembers on  
18 Indian land, *Water Wheel* applies to actions over nonmembers on  
19 Indian land.

10:47:38 20 And I would add that *Merrion*, the *Merrion* case  
21 Mr. Eid talks about simply reinforces that, because that was  
22 an issue about a sovereign tribe's ability to tax arising out  
23 of activities on Indian land. And the Court in *Merrion* didn't  
24 apply the *Montana* factors; the Court in *Merrion* looked at  
10:47:58 25 whether the taxation is a sovereign power held by the tribe

# **Exhibit 15**

WANDA EASTER  
HUALAPAI vs. GRAND CANYON SKYWALK

December 13, 2012

Page 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,

Defendants.

~~~~~

CASE NO.

2012-CV-017

VIDEODEPOSITION OF

WANDA EASTER

December 13, 2012

9:27 a.m.

Greenberg Traurig LLP  
2375 East Camelback Road  
Suite 700  
Phoenix, Arizona 85016

Ernie J. Ambort, Jr., RPR, CM  
Arizona CSR-50731  
Esquire Assignment No. 489576

1 A. I would assume so.

2 Q. And with the oversight that you had in 2009,  
3 weren't you at least curious of what was happening  
4 with the money?

5 A. Yes. It -- I was aware at the time and I  
6 have seen records of how much was sold. We were  
7 trying to compile financial statements for 2007, '8,  
8 in order to get the audits. I don't know those  
9 numbers at this point. I didn't review them before I  
10 came here. I didn't look at them.

11 Q. What is your best estimate of the -- of the  
12 sales volume during 2009?

13 A. I -- I would assume that -- estimate that it  
14 was around 2 to 3 million dollars for ticket sales.

15 Q. Okay. And where was that money physically  
16 located during that time frame? Was it transferred  
17 from GCRC to SNW?

18 A. Yes, into the -- their Wells Fargo account.

19 Q. And it was the Wells Fargo operating account?

20 A. I think there was only one SNW account.  
21 Maybe there were two.

22 Q. Okay. Was there ever any more than one SNW  
23 account?

24 A. I don't think so.

25 Q. Okay. Where are the funds -- since the



1 taking of the Skywalk by the tribe in 2012, where are  
2 those funds going now?

3 A. Into a SNW account.

4 Q. Okay. And is that the same operating account  
5 that we just discussed?

6 A. No. That one was closed and a new one  
7 opened.

8 Q. Okay. So when you said before that --

9 A. I am pretty sure of that.

10 Q. When you said before that there has only been  
11 one account --

12 A. Oh. Sorry!

13 Q. -- the new -- when was the new account  
14 opened?

15 A. When the whole operation became handled by  
16 SNW again.

17 Q. And is that bank account located at Wells  
18 Fargo?

19 A. Yes.

20 Q. And do you know what branch it is located out  
21 of?

22 A. No, I don't.

23 Q. Okay.

24 A. I don't think they are in a specific branch,  
25 per se.



1 I mean your -- your money is not just  
2 sitting in a --

3 Q. Okay.

4 A. -- the one bank at whatever location.

5 Q. But usually there is a branch location that  
6 handles the account, I mean?

7 A. Well, they work with someone I think out of  
8 Albuquerque. I work with someone out of Havasu, but  
9 yet I go to the bank in Kingman, so I -- I couldn't  
10 tell you.

11 Q. Okay. What goes into that account now?

12 A. The sales for Skywalk tickets.

13 Q. Does that include the sales by GCRC?

14 A. Yes.

15 Q. And there is no problem now having the money  
16 transferred from GCRC to that account now, right?

17 A. I still don't think it is done like on a  
18 daily basis. I think it is done on a weekly basis.

19 Q. Okay.

20 A. I don't do the books.

21 Q. And are the operational expenses paid out of  
22 that account?

23 A. Yes.

24 Q. And is payroll paid out of that account?

25 A. There may be a separate payroll account. I

1 -- but Skywalk payroll is kept separate. I do know  
2 that. I don't know if there was a -- if there is a  
3 separate payroll account. Typically we -- you keep a  
4 separate payroll account and transfer into it.

5 Q. Okay. So it is possible that there is an SNW

6 --

7 A. Yeah. Maybe there was --

8 Q. -- payroll account that is just funded by the  
9 operating account?

10 A. Yeah.

11 Q. Are there any other accounts now owned by SNW  
12 other than that one -- those possibly two accounts?

13 A. Not to my knowledge.

14 Q. Okay. Has there been any transfers of money  
15 out of those accounts to the tribe?

16 A. Yes.

17 Q. And what monies have been transferred out of  
18 those accounts to the tribe?

19 A. Sales tax revenue.

20 Q. Okay.

21 A. And net revenue.

22 Q. Okay. When you say net revenue has been  
23 transferred out, could you explain to me what you are  
24 talking about.

25 A. Net revenue is, you know -- I am sure you

1 know what net revenue is. It is what is left at the  
2 end after, you know, all of the expenses are paid and  
3 a capital amount is withheld for operations.

4 Q. So --

5 A. There are some guidelines so they keep  
6 operating capital.

7 Q. So the tribe is taking out the -- essentially  
8 the net profits from the operation and that's being  
9 transferred to the tribe currently?

10 A. A portion.

11 Q. How much money has been taken out of the  
12 account and transferred to the tribe since they took  
13 over in February?

14 A. I don't know the answer to that for sales  
15 tax. I would have to go back and --

16 Q. Okay.

17 A. -- and look at each -- you know, each month.

18 Q. Setting aside the sales tax issue, how much  
19 net profit has been transferred from SNW's operating  
20 account or any other account to the tribe for the net  
21 profit of the Skywalk operations?

22 A. 2 million dollars.

23 Q. And how much money remains in that account?

24 A. I don't know the balance.

25 Q. Do you have an estimate of the balance at

1 this point?

2 A. In excess of 3 million dollars.

3 Q. Who would know those answers?

4 A. Jackie Dugan.

5 Q. Do you have signatory ability over that  
6 account?

7 A. No.

8 Q. Does Jackie?

9 A. I believe so. I think she is a check signer.

10 Q. Okay. The account that was closed, when was  
11 that account closed?

12 A. I don't know. I would assume it was closed  
13 during the -- once the trust account -- I don't --  
14 maybe -- I can't tell you. I apologize. I don't  
15 know for sure when it was closed and now I am  
16 wondering if it was closed or if it's the same one  
17 and it just was inactive for a time period. She  
18 would have better answers to that.

19 Q. Okay. To the best of your knowledge, how  
20 much money was in the account when it was closed?

21 A. Well, when the trust was opened, I think  
22 \$400,000 plus was transferred into the trust account,  
23 so I would say that was the money.

24 Q. Was that all of the money that remained in  
25 the account at the time?

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5 BE IT KNOWN that the foregoing  
6 deposition was taken before me, Ernie J. Ambort, Jr.,  
7 an Arizona Certified Reporter, 50731; that the  
8 witness before testifying was duly sworn by me to  
9 testify to the whole truth; that the questions  
10 propounded to the witness and the answers of the  
11 witness thereto were taken down by me in machine  
12 shorthand and thereafter reduced to computer print  
13 under my direction; that the foregoing 254 pages  
14 numbered 1 through 254, inclusive, constitute a true  
15 and accurate transcript of all proceedings had upon  
16 the taking of said deposition, all done to the best  
17 of my skill and ability; that the witness did not  
18 waive review and signature of transcript.

19 I FURTHER CERTIFY that I am in no way  
20 related to any of the parties hereto, nor am I in any  
21 way interested in the outcome hereof.

22 DATED this 20th day of December 2012.

23 

24 Ernie J. Ambort, Jr.

25 Arizona CSR No. 50731

