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7
 8 **IN THE HUALAPAI TRIBAL COURT**
HUALAPAI RESERVATION, STATE OF ARIZONA

9	WD AT THE CANYON, LLC, an Arizona)	Case No. 2014-CV-005
10	limited liability company, JAMES R.)	
11	BROWN, a married man,)	MEMORANDUM OF POINTS AND
12	Plaintiffs,)	AUTHORITIES IN SUPPORT OF
13	vs.)	SPECIALY APPEARING
14)	RESPONDENTS' MOTION TO DISMISS
15	HWAL'BAY BA:J ENTERPRISES, INC.,)	FOR LACK OF SUBJECT MATTER
16	d.b.a. GRAND CANYON RESORT)	JURISDICTION
17	CORPORATION, ET AL.,)	
	Respondents.)	

18 **I. INTRODUCTION**

19 Moving Respondents are Hwal'bay Ba:j Enterprises, Inc. (d.b.a. Grand Canyon Resort
 20 Corporation), (hereinafter "GCRC") a wholly-owned economic enterprise of the Hualapai Indian
 21 Tribe (hereinafter "Tribe"); individual members or former members of GCRC's Board of
 22 Directors (hereinafter the "Board"); and Jennifer Turner, GCRC's Chief Executive Officer
 23 (hereinafter "Turner") (collectively "Respondents"). The Tribe is a federally-recognized Indian
 24 Tribe. Respondents specially appear to move to dismiss this action on the grounds that this
 25 Court lacks subject matter jurisdiction over Respondents. As a wholly-owned economic
 26 enterprise of the Tribe, GCRC possesses sovereign immunity from unconsented suit, which
 27 prevents this Court from exercising subject matter jurisdiction over GCRC. GCRC's sovereign
 28 immunity extends to the Board and Turner. Consequently this action must be dismissed.

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II. STATEMENT OF FACTS

In March 2005, GCRC contracted with Plaintiff James R. Brown ("Brown") to construct and operate certain tourism facilities at Grand Canyon West within the exterior boundaries of the Tribe's Reservation, including an old-west themed resort facility (the "Western Town"), pursuant to a Development and Management Agreement (the "Original Agreement"). In September 2006, GCRC contracted with Plaintiff Brown to construct and operate overnight cabins at Grand Canyon West, to be used in conjunction with the Western Town pursuant to a second Development and Management Agreement (the "Cabins Agreement"). Plaintiff Brown was paid in full for his work related to the design, development, and construction of the Western Town and cabins at Grand Canyon West (collectively the "Facilities"), and in accordance with the Original Agreement and the Cabins Agreement. *See Development and Management Agreement, January 1, 2010, Article 2.2 (the "Superseding Agreement") (attached hereto as Exhibit "A").*

Eventually, Plaintiff Brown and GCRC mutually negotiated the Superseding Agreement, dated January 1, 2010, in order to amend and restate both the Original Agreement and the Cabins Agreement in their entirety. GCRC entered the Superseding Agreement with WD At the Canyon, LLC ("WD"), a newly formed limited liability company whose President is Plaintiff Brown. The Superseding Agreement constituted the entire agreement and understanding between GCRC and Plaintiff WD (collectively "the Parties") and superseded all prior agreements or undertakings, oral or written, amongst the Parties. *Superseding Agreement, Section 15.8.*

By letter dated December 13, 2012, GCRC provided proper notice to WD that WD was in default of its obligations set forth in the Superseding Agreement. GCRC's notice to WD came after an investigation of the condition of the facilities constructed and operated by WD and Brown at Grand Canyon West. Through the investigation, which was undertaken by GCRC and other qualified professionals, GCRC determined that critical safety issues existed at the Facilities, which made the Facilities and the surrounding property unsafe and not suitable for use by the Hualapai Indian Tribe, GCRC employees, or the general public. Due to the potential health and safety issues involved, GCRC acted in accordance with the terms of the Superseding Agreement to protect the safety and well-being of all those who work at or visit the Facilities.

1 In accordance with the terms of the Superseding Agreement, the only existing agreement
2 between the parties, GCRC provided written notice to WD of the above described events of
3 default and provided proper notice to WD that WD had thirty days or until January 12, 2013, to
4 cure the events of default. GCRC further gave proper notice to WD that WD's failure to cure the
5 events of default in accordance with the terms of the Superseding Agreement would result in
6 GCRC terminating the Superseding Agreement effective February 1, 2013. WD failed to cure
7 the events of default in accordance with its duties under the Superseding Agreement prior to
8 January 12, 2013, and the Superseding Agreement terminated on February 1, 2013. Following
9 termination of the Superseding Agreement, GCRC assumed management of the Facilities and
10 has invested significantly in reconstructing and repairing many elements of the Facilities.

11 III. LEGAL ARGUMENT

12 As a wholly-owned economic enterprise of the Tribe, GCRC possesses sovereign
13 immunity from unconsented suit, which prevents this Court from exercising subject matter
14 jurisdiction over Respondents.

15 A. The Hualapai Tribe Enjoys Sovereign Immunity From Unconsented Suit

16 It is a well settled legal principle that Indian Tribes are immune from unconsented suit.
17 *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991); *Kiowa*
18 *Tribe v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998); *Three Affiliated Tribes of the Ft.*
19 *Berthold Reservation v. Wold Eng'g, P.C.*, 476 U.S. 877, 890-91 (1986). This well settled legal
20 doctrine has been wholly adopted and embraced by the Courts of the Hualapai Tribe. *Hualapai*
21 *Indian Nation v. Mukeche*, SWITCA No. 97-019 (Dec. 19, 1997) SWITCA Rep., Vol. 9, p. 21.
22 Therefore, the Hualapai Indian Tribe, as a federally recognized Indian tribe, possesses sovereign
23 immunity from suit absent a clear waiver or congressional abrogation. *See Okla. Tax Comm'n.*
24 at 505. Indeed, the Tribe's Constitution recognizes and reaffirms the Tribe's sovereign
25 immunity. ARTICLE XVI, SEC. 1 ("the Tribe is immune from suit except to the extent that the
26 Tribal Council expressly waives sovereign immunity")¹ (attached hereto as **Exhibit "B"**). The

27
28 ¹ Plaintiffs assert this Court maintains jurisdiction over Respondents pursuant to a provision contained in the Amended Corporate Charter of the Hualapai Tribe of 1955. Aside from numerous legal authorities which hold that such a provision does not constitute an express waiver, the Corporate Charter was explicitly superseded by the Constitution of the Hualapai Tribe, effective February 14, 1991 (see Preamble). Thus, Petitioner's argument is without merit.

1 Hualapai Tribal Courts have rightly recognized tribal sovereign immunity is a bar to jurisdiction,
2 which denies a court jurisdiction to adjudicate or hear a matter. *Hwal'bay Ba:j Enterprises, Inc.*
3 *v. Beattie*, No. 2008-AP-007 (Hualapai Apr. 2, 2009) ([http://www.tribal-](http://www.tribal-institute.org/opinions/2009.NAHU.0000001.htm)
4 [institute.org/opinions/2009.NAHU.0000001 .htm](http://www.tribal-institute.org/opinions/2009.NAHU.0000001.htm)). Consequently, the Court should dismiss this
5 matter as it has no jurisdiction to hear it.

6 **B. The Court Lacks Subject Matter Jurisdiction Over Respondents Based on the**
7 **Tribe's Sovereign Immunity.**

8 It is also well settled that a Tribe's sovereign immunity extends to business activities of
9 the Tribe and to subordinate entities the Tribe creates to carry out those activities, such as
10 GCRC. *Hwal'bay Ba:j Enterprises, Inc. v. Vaughn*, SWITCA No. 95-004-HTC (Nov. 15, 1995),
11 SWITCA Rep., Vol.6, p.21; *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006);
12 *Kiowa* at 760. Indeed, the Hualapai Courts have recognized that as a tribal entity, GCRC is
13 entitled to the protections of the Tribe's sovereign immunity. *See Beattie* at ¶ 39. This
14 immunity also extends to Hualapai Tribal officials, acting within the scope of their duties, and
15 Hualapai Tribal Corporations and the members of their Boards of Directors. *Beattie* at ¶ 29, ¶
16 39; *see also Lineen v. Gila River Indian Community*, 276 F.3d 489, 492 (9th Cir. 2002); *Hardin*
17 *v. White Mountain Apache Tribe*, 779 F.2d 476, 479-80 (9th Cir. 1985).

18 GCRC's sovereign immunity from suit is reaffirmed in GCRC's Second Amended and
19 Restated Plan of Operation, which was duly enacted by the Hualapai Tribal Council: "GCRC
20 shall be entitled to all the privileges and immunities of the Hualapai Indian Tribe." ARTICLE XI,
21 SEC. 11.1. Further, GCRC's sovereign immunity has been explicitly affirmed by the Appellate
22 Division of this Court. *Beattie*. Further, as the Court stated in *Beattie*,

23 A motion to dismiss based on sovereign immunity raises the issue of whether the
24 court has jurisdiction over the case and/or defendants. The Tribal Court must
25 make a determination on jurisdiction **before** addressing the merits of a case.

26 *Beattie* at ¶ 18 (emphasis added).

27 In an apparent attempt to establish the jurisdiction of this Court, Plaintiffs assert that "on
28 information and belief" the individual Respondents acted outside the scope of their duties in

1 determining to terminate the Superseding Agreement. *Plaintiffs' Amended and Verified*
2 *Complaint* at ¶¶ 258. Contrary to Plaintiffs' oblique assertions, it is precisely these Respondents'
3 duty to investigate and consider facts related to the Superseding Agreement and GCRC's
4 contractual relationship with Plaintiffs in order to act in the best interests of GCRC, as charged.
5 Plaintiffs incomprehensibly characterize Respondents' investigation and fact finding as
6 "knowingly perpetuating fraud and misrepresentations." *Id.* Such assertions are both
7 preposterous and illogical. Consequently, such assertions cannot and do not demonstrate
8 Respondents acted outside the scope of their duties, or that this Court maintains jurisdiction over
9 Respondents. Respondents also point out that at the writing of this pleading GCRC has no
10 evidence that the individual Respondents have been properly served and/or summoned to appear
11 before this Court.

12 Based upon the clear, well settled tenets of both Hualapai law and federal law, it is
13 obvious that all Respondents are protected by the Tribe's sovereign immunity. Accordingly, this
14 Court lacks jurisdiction to hear this matter, and the case must be dismissed in its entirety.

15 **C. There Are No Facts Which Show That Respondents Have Waived Sovereign**
16 **Immunity or Consented to Suit.**

17 Plaintiffs bear the burden of proof in asserting jurisdiction of this Court by establishing a
18 waiver of sovereign immunity. *Beattie* at ¶ 31; *see, Kokkonen v. Guardian Life Ins. Co.*, 511
19 U.S. 375, 377 (1994). "There is a strong presumption against waiver of tribal sovereign
20 immunity." *Demontiney v. U.S. ex rel. Dep't of Interior, Bureau of Indian Affairs*, 255 F.3d 801,
21 811 (9th Cir. 2001). Accordingly, a waiver of sovereign immunity must be unequivocally
22 expressed and cannot be implied. *Beattie* at ¶ 31; *C&L Enters., Inc. v. Citizen Band Potawatomi*
23 *Indian Tribe*, 532 U.S. 411, 419 (2001); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59
24 (1978).

25 In this case, Plaintiffs have failed to identify any express congressional action abrogating
26 the Tribe's sovereign immunity or any express waiver by the Tribe as a basis for this lawsuit.
27 Indeed, no such congressional legislation exists and the Tribe has never taken any action to
28 waive its sovereign immunity to allow Plaintiffs' suit. To the contrary, the sovereign immunity

1 of the Tribe is reaffirmed in the Constitution of the Hualapai Indian Tribe and Respondents'
2 sovereign immunity is affirmed in the Tribal Corporation's Second Amended and Restated Plan
3 of Operation, and has been explicitly reaffirmed by the Courts of the Hualapai Tribe. In sum,
4 Plaintiffs have not and cannot show that Respondents have waived their sovereign immunity to
5 allow this action.

6 To the contrary, the Superseding Agreement explicitly provides:

7 [n]othing in this Agreement will be deemed or interpreted to be a waiver of
8 GCRC's or the Hualapai Tribe's sovereign immunity from suit, it being
9 acknowledged by [Plaintiffs] that GCRC and the Hualapai Tribe are entitled to
10 sovereign immunity with respect to disputes and other matters arising in
connection with this Agreement.

11 *Superseding Agreement*, Section 15.4. Thus, the only valid agreement between the Parties does
12 not contain a waiver by GCRC, rather the Superseding Agreement reaffirms GCRC's sovereign
13 immunity, a fact that Plaintiffs explicitly acknowledged and affirmed upon execution of that
14 Agreement. Plaintiffs admit the Superseding Agreement was entered by the Parties pursuant to
15 extensive negotiation and discussion. *See Plaintiffs' Amended and Verified Complaint* at ¶¶ 55-
16 61. Plaintiffs explicitly acknowledge the Superseding Agreement is a valid contract. *Plaintiffs'*
17 *Amended and Verified Complaint* at ¶ 207. Further, Plaintiffs explicitly acknowledged through
18 the Superseding Agreement that the negotiated agreement was a fully-integrated agreement
19 which "constitute[d] the entire agreement between the [P]arties" thereby "superseding all prior
20 agreements or undertakings, oral or written." *Superseding Agreement*, Section 15.8 (also see
21 additional signature line at p. 25, which specifically and individually references Section 15.8 and
22 this acknowledgement).

23 Plaintiffs allege that various representatives of GCRC made statements to Plaintiffs
24 promising that GCRC would not claim sovereign immunity in the event of a dispute arising from
25 the Superseding Agreement. *Plaintiffs' Amended and Verified Complaint* at ¶¶ 60-62. Such
26 statements would be contrary to the explicit terms of the Superseding Agreement, as set forth
27 above. Further, even assuming such alleged statements were made, they would not and could
28 not rise to the level of an unequivocally express waiver of sovereign immunity to allow

1 Plaintiffs' suit. *See United States v. United States Fidelity and Guaranty Co.* 309 U.S. 506, 513
2 (1940) ("this immunity cannot be waived by officials. If the contrary were true, it would subject
3 the [Tribe] to suit in any court in the discretion of its responsible officers. This is not
4 permissible."). A waiver of sovereign immunity cannot be implied in this manner. Thus, the
5 alleged statements could not constitute an express waiver by Respondent to allow this suit.

6 Plaintiffs offer an affidavit as proof of such statements purportedly made by GCRC's
7 representatives regarding a waiver of sovereign immunity, and assert the affidavit supports the
8 allegation that "GCRC representatives expressly promised that GCRC would not claim sovereign
9 immunity in the event of a dispute." *Plaintiffs' Amended and Verified Complaint* at ¶¶ 60-62.
10 First, as set forth above, even if such statements were made, they would not constitute an express
11 and unequivocal waiver of GCRC's sovereign immunity. Second, the Superseding Agreement,
12 the only valid written contract between GCRC and WD, clearly states that no such waiver exists,
13 a fact Plaintiffs explicitly acknowledged upon execution of the Agreement. Third, and more
14 importantly, the affidavit Plaintiffs offer as proof only provides that upon execution of the
15 Superseding Agreement "[Plaintiff] Brown was verbally assured that the contract would be
16 honored in its entirety." *Affidavit of Robert Bravo* at ¶ 8 (emphasis added).

17 It is clear Plaintiffs mischaracterize the nature of the statements contained in the Bravo
18 Affidavit. In fact, the Affidavit does not contain a statement that GCRC had or would waive its
19 sovereign immunity to allow a suit by Plaintiffs. Instead, the Affidavit provides **only that** "the
20 contract would be honored in its entirety," thus, including the provisions which make explicit
21 that "[n]othing in [the Superseding] Agreement will be deemed or interpreted to be a waiver of
22 GCRC's or the Hualapai Tribe's immunity from suit." *Superseding Agreement*, Section 15.4.
23 Plaintiffs' assertions are not relevant to a waiver of sovereign immunity and even assuming such
24 statements were made, they would not be enough to establish an unequivocal and express waiver
25 of GCRC's immunity from suit.

26 Plaintiffs also assert this Court maintains jurisdiction over Respondents according to
27 broad provisions in the Tribe's Constitution and Law and Order Code, which pertain to
28 "jurisdiction" of the Tribe. *Plaintiffs' Amended and Verified Complaint* at ¶¶ 17-18. The

1 problem with simply reprinting various provisions of Hualapai law is that it suggests an
2 incoherent and illogical conflation of the **regulatory** jurisdiction of the Tribe, set forth in the
3 Constitution and the Law and Order Code, with the more limited **adjudicatory** jurisdiction of
4 the Hualapai Courts, as clearly set forth in decisions of the Courts, which Respondents readily
5 cite. Although these two types of jurisdictional authority may overlap in some cases, *Beattie*
6 makes clear this is not one of those cases. Further, *Beattie* makes clear that the Tribe's
7 Constitution and Law and Order Code do not contain any express waivers of the Tribe's or
8 Respondents' immunity from suit. *Beattie* at ¶ 40 ("the Tribe's Law and Order
9 Code...specifically states that the Tribal Court cannot construe any provision of the Law and
10 Order Code as a waiver of [GCRC's] immunity except as specifically stated in Tribal law").

11 Plaintiffs also recklessly mischaracterize sworn testimony of Hualapai Tribal Officials
12 before various Congressional Committees regarding the concept of sovereign immunity and the
13 ability of Hualapai Courts to resolve conflicts occurring within their jurisdiction. *Plaintiffs'*
14 *Amended and Verified Complaint* at ¶¶ 19-24. The broad statements Plaintiffs cite clearly do not
15 amount to a waiver of the Tribe's and therefore the Respondents' immunity from suit. It is
16 frankly shocking that Plaintiffs would attempt such absurd legal arguments while playing fast
17 and loose with the facts. The testimony to which Plaintiffs cite is generally accurate with regard
18 to how disputes **may** be resolved with the Tribe and Tribal entities, and how Hualapai Court
19 **may** exercise jurisdiction over such disputes and parties. Nonetheless, the fact remains that in
20 order for such processes to occur, the Tribe or Tribal entity **must first provide an unequivocal**
21 **and express waiver of immunity**. Hualapai Law makes this abundantly clear.

22 The Hualapai Constitution provides clear requirements for how the Tribe may waive its
23 sovereign immunity generally and with regard to particular liabilities. ARTICLE XVI, SEC. 11.1;
24 *see also Beattie* at ¶ 40. The Constitution makes clear that the **Tribal Council** is the body vested
25 with the authority to waive the Tribe's immunity. *Id.* Further, the Constitution requires that a
26 special election occur with regard to waivers that may expose the Tribe to losses above a certain
27 threshold, as would have been necessary in this case. *Id.* Plaintiffs' absurd argument that the
28 very general statements contained in the testimony constitutes an unequivocal and express

1 waiver of Respondents' immunity from suit, must fail. Indeed, the Hualapai Courts have never
2 recognized such statements as waiving the Tribe's or Respondents' immunity. *See Beattie;*
3 *Mukeche* at 24 ("A decision to waive immunity is an exercise of sovereignty by the Hualapai
4 Nation Council"). Respondents' sovereign immunity remains intact. The Superseding
5 Agreement does not contain a waiver and Plaintiff has not demonstrated that any other waiver
6 exists. Consequently, this matter must be dismissed in its entirety as the Court does not maintain
7 jurisdiction over Respondents.

8 **D. Due to Respondents' Sovereign Immunity, Plaintiffs Cannot Succeed in Their**
9 **Claims as the Court has No Jurisdiction to Proceed or Provide a Remedy.**

10 As set forth above, Respondents have not waived their sovereign immunity to allow
11 Plaintiffs' suit and therefore this Court is without jurisdiction to hear the matter. "Without
12 jurisdiction the court cannot proceed at all in any case. . ." and the only function left for the
13 Court is to announce that fact and dismiss the case. *Beattie* at ¶19. Plaintiffs attempt to
14 circumvent Respondents' intact sovereign immunity by claiming a fraudulent conspiracy that
15 spans several years and persisted despite several leadership and personnel changes during that
16 time. However, even assuming that such a conspiracy could be possible, this Court lacks
17 jurisdiction to hear Plaintiffs' claims that they were fraudulently induced by Respondents to enter
18 the Superseding Agreement, or any of the other causes of action contained in Plaintiffs'
19 Complaint. *Id.*

20 Plaintiffs admit the Superseding Agreement was a valid contract and concede they have
21 no adequate remedy at law to address their claims regarding alleged misrepresentations
22 concerning GCRC's sovereign immunity. *Plaintiffs' Amended and Verified Complaint* at ¶ 207
23 and ¶ 442. Basically, as part of the fraudulent inducement claim, Plaintiffs allege that Plaintiffs
24 are harmed by their inability to bring a lawsuit for damages due to sovereign immunity.
25 Consequently, Plaintiffs essentially acknowledge Respondents' sovereign immunity exists as
26 evidenced by the Superseding Agreement, and that such immunity deprives the Court
27 jurisdiction to provide a particular remedy.

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1 Respondents agree that sovereign immunity bars Plaintiffs from bringing any claim at
2 law. However, Respondents' intact sovereign immunity not only deprives the Court jurisdiction
3 necessary to provide legal remedies, it also deprives the Court jurisdiction to provide injunctive
4 relief and declaratory relief. *Beattie at* ¶ 28. Interestingly, Plaintiffs' first cause of action is a
5 request to compel arbitration through injunctive relief. As noted above, the Superseding
6 Agreement, under whose terms the Parties performed for over three years, is a fully-integrated
7 agreement and does not contain a waiver of Respondents' sovereign immunity from suit or any
8 right to compel arbitration. Consequently, the Court lacks jurisdiction to compel arbitration or
9 provide any other equitable remedy.

10 Plaintiffs appear to understand this legal dilemma as Plaintiffs have requested
11 "alternative remedies" under prior agreements with a different party. Plaintiffs request that the
12 Superseding Agreement "be rescinded, that the Town and Cabin Agreements be deemed valid
13 and enforceable, and that Plaintiffs are entitled to damages for the following breaches."
14 *Plaintiffs' Amended and Verified Complaint* at ¶ 443. The "following breaches" consist of
15 several causes of action under prior agreements, which the Parties voluntarily and jointly
16 terminated. *Plaintiffs' Amended and Verified Complaint* at ¶¶ 444-487. Interestingly, the
17 Original Agreement would have terminated by its own terms on December 31, 2011. *See*
18 *Development and Management Agreement*, Article 1. Thus, even a rescission by the Court
19 would not provide an adequate remedy for Plaintiffs. Moreover, the fundamental legal bar
20 remains, this Court does not possess jurisdiction to rescind the Superseding Agreement and
21 therefore, does not possess jurisdiction to declare any of the prior contracts valid and
22 enforceable. Consequently, all of Plaintiffs' causes of action are barred by sovereign immunity.

23 **E. The Court Has Sufficient Evidence Before it to Rule on Respondents' Motion to**
24 **Dismiss.**

25 Plaintiffs bear the burden of proving this Court's jurisdiction over Respondents to survive
26 this Motion to Dismiss. *Beattie at* ¶ 31; *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d
27 495, 499 (9th Cir. 2001)("the plaintiff has the burden of proving jurisdiction in order to survive
28 the motion"). In addition to asserting through their Amended and Verified Complaint that this

1 Court maintains jurisdiction over Respondents, Plaintiffs have provided evidence purportedly in
2 support of such claims. This evidence includes governing documents of the Tribe, public
3 documents, an affidavit, and the most recent and only valid agreement amongst the Parties.

4 In general, when a court determines whether it has jurisdiction to hear a matter it is not
5 restricted to the four corners of a complaint. *McCarthy v. United States*, 850 F.2d 558, 560 (9th
6 Cir. 1988). Rather a court may "review any evidence, such as affidavits and testimony, to
7 resolve factual disputes concerning the existence of jurisdiction." *Id.* In other words, a court is
8 "free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving
9 factual disputes *where necessary*, [and] no presumptive truthfulness attaches to plaintiff's
10 allegations." *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) (emphasis added). A
11 court may also take judicial notice of documents either (1) generally known within the court's
12 territorial jurisdiction, or (2) capable of accurate and ready determination by resort to sources
13 whose accuracy cannot reasonably be questioned to resolve factual issues. *See Holder v. Holder*,
14 305 F.3d 854, 866 (9th Cir. 2002). Furthermore, "documents whose contents are alleged in a
15 complaint and whose authenticity no party questions...may be considered in ruling on...a
16 motion to dismiss." *Branch v Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).

17 When ruling on a factual attack on subject matter jurisdiction, a court "has wide
18 discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve
19 disputed jurisdictional facts" without converting the motion into a motion for summary
20 judgment. *See Stuart v. Colorado Interstate Gas Co.*, 271 F.3d 1221, 1225 (10th Cir. 2001). A
21 court may base its disposition of a motion to dismiss for lack of subject matter jurisdiction on (1)
22 the complaint alone; (2) the complaint supplemented by undisputed facts; or (3) the complaint
23 supplemented by undisputed facts, plus the court's resolution of disputed facts. *See Kelly v.*
24 *Syria Shell Petroleum Dev. B.V.*, 213 F.3d 841 (5th Cir. 2000). However, any discovery
25 authorized to determine whether immunity bars jurisdiction must proceed with circumspection,
26 lest the evaluation of the immunity itself encroach unduly on the benefits the immunity was to
27 ensure. *Id.*; *Beattie* at ¶ 29 ("sovereign immunity protects tribal officials because they need to be
28 free from intimidation, harassment and the threat of lawsuits when conducting tribal business.")

1 In the present case, the only evidence this Court requires to rule on Respondents' Motion
2 to Dismiss is the Superseding Agreement, which both Plaintiffs and Respondents have provided
3 for the Court's review. Both Plaintiffs and Respondents acknowledge the Superseding
4 Agreement is the valid agreement between the parties and thus, no party questions the
5 authenticity or the applicability of the Superseding Agreement. Consequently, this court is free
6 to take judicial notice of the existence and content of the Agreement and may consider the
7 Superseding Agreement in the context of Respondents' Motion to Dismiss.

8 In that regard, the Superseding Agreement clearly provides that it "constitutes the entire
9 agreement between the parties" and that it supersedes "all prior agreements or undertakings, oral
10 or written." *Superseding Agreement*, Section 15.8. Further, the Superseding Agreement affirms
11 Respondents' immunity from suit has not been waived to allow this action. *Id.* at Section 15.4.
12 Therefore, based on the evidence before the Court, and clear tenets of Hualapai law, this case
13 must be dismissed. Accordingly, it is not necessary that the Court obtain any further evidence or
14 hold an evidentiary hearing on this matter because the evidence before it resolves the issue of
15 subject matter jurisdiction.

16 **F. Sound Policy Supports Upholding Sovereign Immunity in This Matter.**

17 The Hualapai Courts have determined that an "essential attribute" of sovereign immunity
18 is an "entitlement not to stand trial" and the right "to be free from the 'crippling interference' of
19 litigation." *Beattie* at ¶ 23. Such immunity exists, in part, to allow tribal governments and
20 businesses to act freely without the threat of harassing lawsuits. *Beattie* at ¶ 29. In the present
21 case, Plaintiffs attempt to circumvent Respondents' sovereign immunity by creating a virtual
22 parade of outlandish accusations of fraud, going so far as to accuse Respondents' former CEO of
23 racism "on information and belief." *Plaintiffs' Amended and Verified Complaint* at ¶¶ 71-73.

24 In addition, Plaintiffs were not and are not unsophisticated parties to the initial
25 agreements and the Superseding Agreement. Rather, Plaintiffs possess years of business
26 expertise and experience with contracts. As a general rule, where sophisticated parties negotiate
27 and enter an agreement, courts disfavor claims of fraud to defeat such an agreement. *Pinnacle*
28 *Peak Developers v. TRW Investment Corp.*, 129 Ariz. 385, 389 (Ariz. Ct. App. 1980) (holding

1 that parol evidence which contradicted the written agreement was properly excluded to prove
2 fraudulent inducement where the contract was "the result of negotiation between parties with
3 some expertise and business sophistication.").

4 In the present case, Plaintiffs have admitted the Superseding Agreement resulted from
5 negotiations amongst the Parties. Although the doctrine of sovereign immunity would be a bar
6 to jurisdiction in any case, the policy behind the doctrine is especially germane in this matter.
7 Allowing Plaintiffs' claims would defeat the entire purpose for which the Parties negotiated and
8 reduced their agreement to writing. Therefore, the Court should ensure the policy behind the
9 doctrine of sovereign immunity is given proper respect and thus, the Court should dismiss
10 Plaintiffs' claims based upon controlling precedent.

11 IV. CONCLUSION

12 Well-settled Hualapai Law affirms that Respondents enjoy sovereign immunity from
13 unconsented suit. The only valid agreement between the Parties clearly states that Respondents
14 did not waive their sovereign immunity to allow Plaintiffs' action. Plaintiffs have not proven an
15 express waiver of Respondents' sovereign immunity. Accordingly, Plaintiffs' Amended and
16 Verified Complaint should be dismissed for lack of subject matter jurisdiction.

17 V. RELIEF REQUESTED

18 Based on the foregoing, we respectfully request that this court dismiss Plaintiffs'
19 Amended and Verified Complaint with prejudice.

20
21 Respectfully submitted this 23rd day of April, 2014.

22 KEWENVOYOUMA LAW, PLLC

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25 Jason M. Croxton
26 Verrin T. Kewenvoyouma
27 *Attorneys for Specially Appearing Respondents*
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing MEMORANDUM IN SUPPORT OF SPECIALLY APPEARING RESPONDENTS' MOTION TO DISMISS was mailed via first-class mail on April 23, 2014 to:

Ali J. Farhang
Farhang & Medcoff, PLLC
4801 E. Broadway Blvd., Suite 311
Tucson, Arizona 85711
Attorney for Plaintiffs



Jason M. Croxton
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Tempe, AZ 85283

Exhibit A

**AMENDED AND RESTATED
DEVELOPMENT AND MANAGEMENT AGREEMENT**

This AMENDED AND RESTATED DEVELOPMENT AND MANAGEMENT AGREEMENT (the "Agreement"), dated January 1, 2010 (the "Effective Date"), is between HWAL'BAY BA:J ENTERPRISES, INC., dba GRAND CANYON RESORT CORPORATION, a tribally chartered corporation of, and owned by, the Hualapai Indian Tribe ("GCRC"), and WD AT THE CANYON, LLC, an Arizona limited liability company ("Manager").

RECITALS

- A. The Nation is the owner of the real property described on Exhibit A (the "Site").
- B. GCRC has the right to utilize the Site for development of the Project, to enter into this Agreement, and to perform its obligations under this Agreement.
- C. Manager is a newly-formed limited liability company. Manager's member, employees and Affiliates are experienced in the tourism business and have the financial strength, proven track record, and past and current business relationships necessary and appropriate to undertake the operation of the Project in accordance with the terms of this Agreement.
- D. GCRC and Jim Brown, the owner of Manager, previously entered into a Development and Management Agreement, dated March 2005, in which Mr. Brown performed certain obligations related to the development, construction and management of the Western Town (as defined below) (the "Original Agreement").
- E. GCRC and Jim Brown previously entered into a Development and Management Agreement, dated September 26, 2006, in which Mr. Brown performed certain obligations related to the development, construction and management of the Cabins (as defined below) (the "Cabins Agreement").
- F. The parties and Jim Brown now desire to amend and restate the Original Agreement and the Cabins Agreement in their entirety through the execution and delivery of this Agreement.
- G. GCRC desires to have Manager manage the Project in accordance with the terms and conditions and subject to the limitations contained in this Agreement.

AGREEMENT

NOW, THEREFORE, GCRC and Manager agree as follows:

**ARTICLE 1
DEFINITIONS, TERMS AND REFERENCES**

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

"Affiliate" means any entity owned or controlled by a party, owning or controlling a party or under common ownership and control with a party, with "control" meaning direct or indirect ownership of five percent (5%) or more of outstanding interests in terms of value or voting power. Without limiting the generality of and notwithstanding the foregoing, the Nation shall be deemed an Affiliate of GCRC.

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

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

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

"Authorities" means all government agencies and authorities, including the Nation, having jurisdiction with respect to the Project.

"Bankruptcy," with respect to a party to this Agreement means any of: (a) the filing by such party of a voluntary petition in bankruptcy under Title 11 of the United States Code, or the issuing of an order for relief against such party under Title 11 of the United States Code; (b) the filing by such party of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors; (c) such party's seeking or consenting to or acquiescing in the appointment of any custodian, trustee, receiver, conservator or liquidator of such party or of all or substantially all of its assets; (d) the making by such party of any general assignment for the benefit of creditors; or (e) the entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against such party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the date of entry thereof.

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

"Cabins" means the 26 cabins and related infrastructure located at the Site.

"Canyon Creek Ranch" means that certain old-west themed resort facility, operated by Manager, and located in Canyon Creek, Arizona.

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

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

"Effective Date" means the date listed in the caption of this Agreement.

"Fiscal Year" means a fiscal year which ends on December 31. The words "full Fiscal Year" mean any Fiscal Year containing not fewer than 364 days. A partial Fiscal Year after the

end of the last full Fiscal Year and ending with the expiration or earlier termination of the Operating Term shall constitute a separate Fiscal Year.

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

"GCRC" means Hwal'bay Ba:j Enterprises, Inc., dba Grand Canyon Resort Corporation, a tribally chartered corporation of, and owned by, the Nation, and its successors and assigns.

"GCRC Contribution Amount" means (a) the product of two dollars (\$2.00) multiplied by the number of customers visiting Grand Canyon West during a Fiscal Year; provided, however, such amount shall not exceed \$900,000 per Fiscal Year; and (b) three dollars (\$3.00) multiplied by the number of customers visiting Grand Canyon West during a Fiscal Year; provided, however, that the parties shall meet prior to the beginning of each fiscal year to re-evaluate whether this additional GCRC Contribution Amount is appropriate and shall agree on such figure for each fiscal year, and, in making such evaluation, shall take into account various factors, including, without limitation, visitation, transportation and other service-related issues.

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

"Gross Operating Expenses" means (but only if and to the extent (i) the item and the aggregate amount thereof for any Fiscal Year are contemplated as a Gross Operating Expenses by the Annual Operating Budget for such Fiscal Year, or (ii) in the case of a specific invoice that does not satisfy such criteria, otherwise expressly identified and approved as a "Gross Operating Expense" in a writing signed by GCRC and Manager) all salaries and employee expenses and taxes (including salaries, wages, bonuses, and other compensation and benefits which shall include, but not be limited to, life, medical and disability insurance and retirement benefits) of the employees who perform services exclusively at the Western Town in connection with Western Town operations; repair and maintenance costs and expenses and costs and expenses for Furniture and Equipment (all to the extent not constituting capital expenditures under generally accepted accounting principles); operational supplies and utility expenses and fees; governmental fees and assessments, including the taxes and assessments to be paid pursuant to Section 8.1; insurance premiums for the insurance required to be carried pursuant to Section 7.1; the cost of Inventories; advertising and marketing expenses (including reservation system expenses, if a reservation system is used); and any and all other operating expenses as are reasonably necessary for the proper and efficient operation of the Western Town and which are incurred in accordance with the provisions of this Agreement, excluding, however: (a) federal, Nation, state and municipal excise, sales and use taxes collected directly from customers or as a part of the sales price of any goods or services; (b) amounts paid into the Operating Reserve, (c) the Manager's Fee; (d) any federal, Nation, state, or local income taxes of GCRC or Manager; (e) capital expenditures pursuant to Article 6; (f) costs and expenses for Furniture and Equipment and for maintenance and repairs, to the extent constituting capital expenditures, except as otherwise provided in Section 9.1(a); (g) depreciation and amortization, all determined in accordance with generally accepted accounting principles (except as specifically modified by the terms of this Agreement); (h) incurred Manager construction costs; and (i) Manager Overhead. For purposes of clarification, no part of Manager Overhead shall be deemed to be a part of Gross Operating Expenses, except to the limited extent provided in Section 5.4. Gross Operating Expenses shall be determined on an accrual basis. For purposes of this definition, all of the expenses listed above shall be only those expenses incurred in the furtherance of the Western Town.

"Gross Operating Expenses for the Cabins" means (but only if and to the extent (i) the item and the aggregate amount thereof for any Fiscal Year are contemplated as a Gross Operating Expenses for the Cabins by the Annual Operating Budget for such Fiscal Year, or (ii) in the case of a specific invoice that does not satisfy such criteria, otherwise expressly identified and approved as a "Gross Operating Expense for the Cabins" in a writing signed by GCRC and Manager) all salaries and employee expenses and taxes (including salaries, wages, bonuses, and other compensation and benefits which shall include, but not be limited to, life, medical and disability insurance and retirement benefits) of the employees who perform services exclusively at the Cabins in connection with Cabins operations; repair and maintenance costs and expenses and costs and expenses for Furniture and Equipment (all to the extent not constituting capital expenditures under generally accepted accounting principles); operational supplies and utility expenses and fees; governmental fees and assessments, including the taxes and assessments to be paid pursuant to Section 8.1; insurance premiums for the insurance required to be carried pursuant to Section 7.1; the cost of Inventories; advertising and marketing expenses (including reservation system expenses, if a reservation system is used); and any and all other operating expenses as are reasonably necessary for the proper and efficient operation of the Cabins and which are incurred in accordance with the provisions of this Agreement, excluding, however: (a) federal, Nation, state and municipal excise, sales and use taxes collected directly from customers or as a part of the sales price of any goods or services; (b) amounts paid into the Operating Reserve, (c) the Manager's Fee; (d) any federal, Nation, state, or local income taxes of GCRC or Manager; (e) capital expenditures pursuant to Article 6; (f) costs and expenses for Furniture and Equipment and for maintenance and repairs, to the extent constituting capital expenditures, except as otherwise provided in Section 9.1(a); (g) depreciation and amortization, all determined in accordance with generally accepted accounting principles (except as specifically modified by the terms of this Agreement); (h) incurred Manager construction costs; and (i) Manager Overhead. For purposes of clarification, no part of Manager Overhead shall be deemed to be a part of Gross Operating Expenses for the Cabins, except to the limited extent provided in Section 5.4. Gross Operating Expenses shall be determined on an accrual basis.

"Gross Revenues" means all revenues, receipts and income of any kind derived directly or indirectly by Manager as agent for and for payment to GCRC, including, without limitation, the GCRC Contribution Amount, from or in connection with the Project (including revenues from customers using Western Town, gift shop sales receipts, and payments from any licensees or concessionaires [but not including their gross receipts]), whether on a cash basis or credit, paid or collected, determined in accordance with generally accepted accounting principles, excluding, however: (a) any other funds furnished by GCRC such as a capital contribution (excluding the GCRC Contribution Amount) or Manager (excluding Manager's Investment); (b) interest accrued on amounts in the Operating Reserve and any capital reserve, (c) federal, state and municipal excise, sales, transaction privilege, and use taxes collected directly from customers or as part of the sales price of any goods or services; (d) proceeds from the sale, condemnation or other disposition of non-Inventory assets; (e) returned deposits or refunds to customers, (f) imputed value of goods or services furnished on a complimentary basis, and (g) proceeds of insurance (except as otherwise provided for business interruption insurance under Section 7.1). Gross Revenues shall be determined on an accrual basis.

"Gross Revenues for the Cabins" means all revenues, receipts and income of any kind derived directly or indirectly by Manager as agent for and for payment to GCRC from or in connection with the Cabins, including receipts, and payments from any licensees or concessionaires specifically related to the Cabins [but not including their gross receipts]), whether on a cash basis or credit, paid or collected, determined in accordance with generally accepted accounting principles, excluding, however: (a) funds furnished by GCRC or Manager (excluding

Manager's Investment); (b) interest accrued on amounts in the Operating Reserve and any capital reserve, (c) federal, state and municipal excise, sales, transaction privilege, and use taxes collected directly from customers or as part of the sales price of any goods or services; (d) proceeds from the sale, condemnation or other disposition of non-Inventory assets; (e) returned deposits or refunds to customers, (f) imputed value of goods or services furnished on a complimentary basis, and (g) proceeds of insurance (except as otherwise provided for business interruption insurance under Section 7.1). Gross Revenues for the Cabins shall be determined on an accrual basis.

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

"Manager" means WD at the Canyon, LLC, an Arizona limited liability company, and any permitted assignee of Manager's rights under this Agreement who assumes the obligations of Manager hereunder pursuant to the terms of this Agreement.

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

"Manager's Investment" means an amount equal to the sum of the aggregate total of all Manager construction costs actually incurred by Manager. In order for a particular eligible cost or expenditure to be included as part of Manager's Investment, Manager shall have provided to GCRC written receipts or other evidence of payment of the amount of such cost or expenditure. The total amount of Manager's Investment shall be determined by the parties as of the Effective Date. The parties expressly acknowledge and agree that the Manager's Investment has been recouped by Manager prior to the Effective Date.

"Manager Overhead" means all of Manager's general corporate, administrative or overhead costs and expenses, including (a) the overhead of its central office and other locations, (b) all payroll, salaries and employee expenses and taxes (including salaries, wages, bonuses, travel and entertainment expenses [except to the extent constituting Project-related advertising and marketing expenses], and other compensation and benefits, including life, medical and disability insurance and retirement benefits), (c) general costs and expenses of maintaining Manager's business, and (d) costs and expenses not directly, readily and clearly traceable to the Project. An item of expense associated with Manager's officers or employees is presumed to be Manager Overhead unless the item clearly constitutes a Gross Operating Expense. The parties expressly acknowledge and agree that the treatment and allocation of the salary and related expenses of the General Manager of the Western Town Operations, an employee of Manager, shall be mutually agreed between the parties each year in each Annual Operating Budget.

"Nation" means the Hualapai Indian Tribe.

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

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

"Net Revenue Schedule" means the schedule set forth in Exhibit B.

"Net Revenue Percentage Amount" means the percentage of Net Revenues and Net Revenues for the Cabins payable by GCRC to Manager based upon the Net Revenue Schedule.

"Operating Term" means the period commencing on the Effective Date and terminating on December 31, 2017, unless the Agreement is terminated earlier as provided in this Agreement.

"Operations Fee" has the meaning provided in Section 3.5.

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

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

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

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

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

"Standards of Operation" means the standards of quality for the maintenance and operation of a first-class tourist facility for the Western Town and the Cabins as agreed to between the parties. The Standards of Operation have been prepared by Manager and delivered to GCRC.

"Tour Operator" means a Person who has an agreement with Manager to arrange, provide, or conduct organized, commercial group tours by fixed wing to Grand Canyon West, or by bus or other means of transportation to future facilities at Grand Canyon West.

"Western Town" means the old-west themed resort facility, including the gift shop therein, constructed at the Site and operated by Manager pursuant to the terms of this Agreement.

1.2 **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders. The singular shall include the plural, and the plural shall include the singular; the part includes the whole; the terms "include" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The titles of articles, sections, and subsections in this Agreement are for convenience only and neither limit

nor amplify the provisions of this Agreement, and all references in this Agreement to "Articles," "Sections," and "Exhibits" shall refer to the corresponding Article or Section of or Exhibit to this Agreement, unless otherwise specifically provided.

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

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

ARTICLE 2 ENGAGEMENT OF MANAGER; MANAGEMENT DUTIES

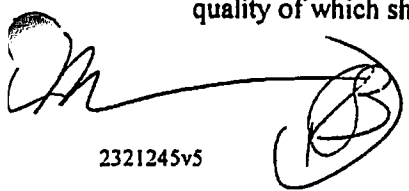
2.1 Engagement. GCRC hereby appoints and engages Manager to act as the developer and manager of the Project throughout the Operating Term in accordance with the terms of and having the duties set forth in this Agreement. Manager hereby accepts its appointment as the developer and manager of the Project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

2.2 Prior Construction. Manager has arranged for the design, development and construction of the Project. Manager has been paid in full by the Nation for any and all work related to the design, development and construction of the Project. Manager represents and warrants that the Site and the Project: (a) are suitable for use by the Nation and the general public as a Western Town and as and for the Cabins, (b) was in full compliance with the laws, rules, regulations and ordinances of the Nation and any other applicable authority at the time of completion, and Manager is not aware of any violation thereof as of the Effective Date, and (c) are hereby certified for occupancy. Ownership of the Site, the Project and any and all improvements thereto shall be and remain in the Nation throughout the Operating Term.

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

(a) Manage the Project in manner consistent with the Standards of Operation and the requirements of this Agreement, including, without limitation: (i) providing a minimum of eight (8) horses, each certified by a veterinarian, for use in providing horseback rides to visitors, and (ii) managing the gift shop at the Project, including handling all ordering, inventory and fulfillment;

(b) Schedule, manage and provide, daily Western entertainment, the number and quality of which shall be approved by GCRC;

A handwritten signature, possibly 'JH', is written in black ink. To its right, there are large, stylized initials 'GB' enclosed in a circular scribble.

(c) Meet with Chief Executive Officer of GCRC on a monthly basis (or as otherwise required by GCRC) to discuss the operations of the Western Town and the Cabins and to work on establishing efficient operations, effective cost management and strategies to increase revenues, among such other topics as determined by the parties;

(d) Subject to GCRC's prior written approval, determine, establish, and maintain advertising, public relations and promotional policies appropriate for the Project and all pricing for visits to the Western Town;

(e) Cause all ordinary and necessary repairs and maintenance to be made to the Project and after prior notification and approval by GCRC cause all such other things to be done in or about the Project as shall be necessary to comply with all requirements of governmental Authorities, boards of fire underwriters and other bodies exercising similar functions, provided, however, that (1) repairs the costs of which are properly capitalized shall be made by Manager only to the extent that (i) such costs are included within an Annual Capital Budget that has been approved by the parties, or (ii) emergency conditions require the performance of capitalized repairs in order to prevent damage or injury to persons or property before approval by GCRC of an appropriate modification of the Annual Capital Budget can be reasonably obtained, and (2) GCRC shall have the right to inspect and approve of any and all repairs and maintenance conducted at the Project;

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

(g) When specifically requested by GCRC, collect all Gross Revenues and Gross Revenues at the Cabins at the point of sale or service and, on a daily basis, after the total amount of Gross Revenues and Gross Revenues for the Cabins for such day have been determined jointly by a representative of Manager and GCRC, such Gross Revenues and Gross Revenues for the Cabins shall be transferred and delivered to GCRC at the Western Town facility. Following transfer of the daily Gross Revenues and Gross Revenues for the Cabins to GCRC as provided above, Manager shall have no further responsibility for security for such daily Gross Revenues and Gross Revenues for the Cabins.

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

(i) Within 3 days of receipt of invoices and other documentation that relate to the Project, provide to GCRC copies of all such invoices and other documentation, including all documentation relating to Gross Operating Expenses, Gross Operating Expenses for the Cabins and capital expenditures that need to be paid. All such invoices and other documentation must be sent to GCRC via facsimile within the 3-day period, with copies to also be sent simultaneously by mail or other method of delivery authorized pursuant to Section 15.10. Manager will have all such invoices and other documentation sent directly to GCRC;

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

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

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

(m) Western Town shall be operated and available for use by the public throughout the Operating Term at the following times:

(A) Daily, starting each day at: (i) 8:00 AM Arizona time and ending at 6:00 PM Arizona time during the period commencing on April 1 through October 31; and (ii) 9:00 AM Arizona time and ending at 5:00 PM Arizona time during the period commencing on November 1 through March 31; and

(B) At such other times as GCRC and Manager shall mutually agree upon from time to time, as necessary or appropriate to facilitate and encourage visits to Western Town.

(n) The Cabins shall be operated and available for use by the public throughout the Operating Term at such times as GCRC and Manager shall mutually agree upon from time to time, as necessary or appropriate to facilitate and encourage use of the Cabins.

(o) Manager shall require that all vendors must purchase a meal from Grand Canyon West and are not allowed to bring their own meal on the Site.

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

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

2.6 Employees of the Project.

(a) Employment. With the exception of the chief executive officer of Manager and certain other employees as agreed between the parties, all personnel employed from time to time

to render services at and in connection with the Project will be employees of GCRC and not employees of Manager.

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

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

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

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

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

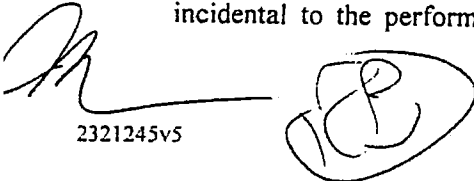
(d) Incur any liability on behalf of GCRC for the purchase of goods, supplies or services from Manager or any of its Affiliates unless the price and terms thereof are competitive with those obtainable from unrelated vendors, or are the subject of competitive bidding, or are regulated by governmental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

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

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

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

(h) Do any act obligating GCRC to any third party that is not reasonably related or incidental to the performance of Manager's responsibilities in accordance with the terms and

Handwritten signature and initials in black ink. The signature is a stylized 'M' followed by a horizontal line. The initials are 'JP' inside a circle.

conditions of this Agreement, including the then effective approved Annual Operating Budget and Annual Capital Budget;

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

(j) Set the prices for customers to visit Western Town, or set the prices for customers to use the Cabins and maximum length of stay at the Cabins; or

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

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

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

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

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

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

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

(d) Manager shall supervise the Qualified Subsidiary in all aspects of the services performed by the Qualified Subsidiary, and Manager agrees to indemnify, defend, and hold GCRC and its Related Parties harmless for, from and against any and all Claims arising out of or resulting from the services performed by the Qualified Subsidiary or the actions of the Qualified

Subsidiary, to the extent such services or actions are not in compliance with the terms of this Agreement, which indemnity shall survive the expiration or termination of this Agreement; and

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

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

2.11 Filming and Other Activities to be Referred to GCRC. Manager will not enter into any agreements with third persons pertaining to filming, photography or other recording or capturing of images, sounds or data with respect to or from the vantage point of the Project (whether in the nature of motion picture or television production, creation of streaming video, images or audio for the internet, commercial photography or otherwise, and whether involving images, sounds or other data of the Project or a portion thereof, views of the Grand Canyon or other vistas, or other things). Manager will refer any and all inquiries regarding such images to GCRC. Manager acknowledges that the sights, sounds and other images and things that can be seen or otherwise sensed, experienced, recorded or captured at or from the Project are deemed by the Hualapai Indian Tribe to have cultural and proprietary significance and value, and Manager agrees not to commercially exploit such rights and other images and things or otherwise engage in the filming, photographing, recording or other capturing thereof (or permit others to exploit same or engage in the filming, photographing, recording or other capturing of same). Any agreement entered into in contravention of this Section is void and of no force or effect.

ARTICLE 3 MANAGER'S FEE; DISBURSEMENT TO GCRC

3.1 Amount of Manager's Fee. In consideration of Manager's performance hereunder, GCRC shall pay to Manager a Manager's Fee equal to the following: Commencing on the first day of the Operating Term and ending on the last day of the Operating Term, an amount equal to: (a) the Net Revenue Percentage Amount for each Fiscal Year multiplied by Net Revenues, and (b) Net Revenue Percentage Amount for each Fiscal Year multiplied by Net Revenues for the Cabins.

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

3.3 Interim Payments. Within 45 days following the end of each calendar month occurring within a particular Fiscal Year, GCRC shall pay to Manager an interim amount equal to 90% of the percentage set forth in Section 3.1 applicable to the fiscal year in which such calendar month occurs of

the excess, if any, of Gross Revenues over Gross Operating Expenses and Gross Revenues for the Cabins over Gross Operating Expenses for the Cabins for such month, as determined by GCRC (each such payment being referred to as an "Interim Payment").

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

3.5 Operations Fee. GCRC will pay Manager a base operations fee (the "Operations Fee") each month during the Operating Term in an amount equal to \$3,000 per month.

ARTICLE 4 BOOKS AND RECORDS; ACCOUNTING

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

4.2 Accounting.

(a) GCRC shall deliver to Manager within 30 days after the end of each month an interim accounting showing the results of the operation of the Project for such quarter and for the Fiscal Year to date (including a computation of Gross Revenues, Gross Revenues for the Cabins, Gross Operating Expenses and Gross Operating Expenses for the Cabins). Such interim accounting and the annual accounting referred to below shall: (i) be taken from the books and records maintained by GCRC for the Project in the manner hereinafter specified; and (ii) separately state the amount of the Manager's Fee.

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

(c) The annual financial statements for the Project shall be audited by an independent firm of certified public accountants selected by GCRC. If the audit is conducted by

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

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

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

ARTICLE 5 OPERATING BUDGET; OPERATING EXPENSES

5.1 Annual Operating Budget. The "Annual Operating Budget" for each Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, shall consist of reasonable estimates of Gross Revenues, Gross Revenues for the Cabins, Gross Operating Expenses and Gross Operating Expenses for the Cabins for such Fiscal Year, itemized in a reasonable format, together with the assumptions, in narrative form, forming the basis of such estimates. The Annual Operating Budget shall also include provisions for an operating reserve (the "Operating Reserve"), with the Operating Reserve to be funded as provided in this Agreement; provided, however, that the Operating Reserve shall be consistent with the operating reserves established by GCRC and the Tribe generally. At least 60 days prior to the commencement of each Fiscal Year, commencing with the Fiscal Year in which the Operating Term commences, GCRC shall prepare and submit the Annual Operating Budget for such Fiscal Year to Manager for its review and approval. Once both Manager and GCRC are in agreement on the terms of the Annual Capital Budget for a particular Fiscal Year, Manager shall be authorized to implement such approved Annual Capital Budget. The Annual Operating Budget will include an amount for reimbursement for each meal ticket redeemed at the Western Town, which will be agreed upon by the parties each year during the budget process. In addition, any revenue derived from on-site sales of meal

tickets will be directly recorded as revenue for the Western Town at whatever amount was collected for the meal tickets.

5.2 Payments; Timing; and Penalties. GCRC shall pay all Gross Operating Expenses and Gross Operating Expenses for the Cabins (to the extent consistent with the approved Annual Operating Budget) on or before the date such expenses are due and payable without incurring any additional fees, premiums, interest, or penalties.

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

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

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

ARTICLE 6 CAPITAL EXPENDITURES

6.1 Annual Capital Budget. The "Annual Capital Budget" for each Fiscal Year shall consist of reasonable estimates of expenditures for any and all capital improvements (including initial purchases of Furniture and Equipment, replacements and repairs with respect to the Project) for such Fiscal Year, itemized in a reasonable format, together with the assumptions, in narrative form, forming the basis of such estimates. The Annual Capital Budget shall also include provisions for appropriate reserves for future capital expenditures, including for replacement of existing capital assets, with such reserves to be funded on an on-going basis, and the amounts so set aside shall be considered capital expenditures in the month in which such funds are to be placed in such reserves; provided, however, that any reserves shall be consistent with the operating reserves established by GCRC and the Tribe generally. At least 60 days prior to the commencement of each Fiscal Year, GCRC shall prepare and submit the Annual Capital Budget for such Fiscal Year to Manager for its review and approval. The Annual Capital Budgets shall be prepared with a view to providing facilities consistent with the requirements of this Agreement, including the Standards of Operation.

ARTICLE 7 INSURANCE

7.1 Required Insurance. GCRC shall maintain insurance for the Project based on such policies and in such amounts as determined by GCRC in its sole and absolute discretion. Manager shall throughout the Operating Term provide and maintain for and on behalf of Manager, as a separate expense of Manager insurance for the use of horses at the Western Town and the Cabins.

ARTICLE 8 TAXES AND UTILITIES

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

8.2 Utilities. GCRC shall promptly pay all fuel, gas, light, power, water, sewage, garbage disposal, telephone and other utility bills currently as they are incurred in connection with the Project and such amounts shall be charged as Gross Operating Expenses or Gross Operating Expenses as the case may be. Manager shall promptly deliver to GCRC all bills for utilities which are received by Manager.

ARTICLE 9 DAMAGE OR DESTRUCTION; CONDEMNATION

9.1 Damage or Destruction.

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

(b) Timing. Manager shall commence any Reconstruction required under this Section 9.1 within a reasonable time (not to exceed 60 days) after the occurrence of damage or destruction and shall complete such Reconstruction diligently.

9.2 Condemnation.

(a) Partial Taking. If only a part of the Project shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority ("Taking"), and in the reasonable opinion of GCRC and Manager, the Project can be altered, restored or repaired so as to make it a satisfactory architectural unit, capable of functioning as a first class tourist attraction of similar type and class as prior to the Taking, Manager shall so alter, restore and replace the Project to the extent that the proceeds of such

Taking are sufficient to pay for the costs of same, and such proceeds shall be made available to Manager for such purpose. Such work shall be commenced within 90 days after such proceeds become available to GCRC and shall be diligently pursued to completion.

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

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

ARTICLE 10 TERMINATION OF AGREEMENT

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

(a) Upon the death or disability of Jim Brown; provided, however, that this provision shall not give rise to the right of GCRC to terminate this Agreement in the event of Jim Brown's death or disability, so long as either Mike Brown or Chris Brown remain in managerial control of Manager, but in the event of Jim Brown's death or disability, if and when Mike Brown or Chris Brown are no longer in managerial control of GCRC, then GCRC shall have the right to terminate this Agreement. As used herein, "disability" shall mean the inability of Jim Brown to perform substantial gainful activity for a period of 90 days.

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

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

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

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

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

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

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

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

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

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

ARTICLE 11 EVENTS OF DEFAULT; REMEDIES

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

(a) Any failure by such party to pay any amount due and payable pursuant to this Agreement within 30 days following receipt of written notice of such failure given to such party by the other party.

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

period and thereafter prosecutes such cure to completion with all due diligence, then no Event of Default by such party shall exist.

(c) The Bankruptcy of such party.

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

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

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

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

ARTICLE 12 ASSIGNMENTS; OWNERSHIP CHANGES

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

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

12.3 Requirements: Release. Each assignment permitted under this Article 12 will be evidenced by an instrument in writing executed by the assignor and assignee. Each assignee will also agree in writing to assume, to be bound by, and to perform the terms, covenants, and conditions of this Agreement to be done, kept, and performed by the assignor. One executed copy of such written instrument will be delivered to the non-assigning party. No such assignment will release the assigning party from such party's obligations under this Agreement unless the non-assigning party agrees in writing to such release, except that in the case of an assignment pursuant to Section 12.2, upon execution by the assignor and assignee of a writing satisfying the assumption requirements of this Section 12.3, the assignor shall be automatically released from any further liability under this Agreement. A non-assigning party's consent to an assignment on one occasion will not be deemed consent to any subsequent assignment.

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

ARTICLE 13 ADDITIONAL COVENANTS

13.1 Non-Competition Provisions.

(a) Other Competing Businesses of Manager. During the Operating Term and for a period of 10 years after expiration of the Operating Term or its earlier termination for any reason other than by Manager as a result of an Event of Default by GCRC, neither Manager nor any Affiliate of Manager shall operate a Manager Competing Business or have a direct or indirect ownership interest in any Person that operates a Manager Competing Business within the Restricted Area. The provisions of this Section 13.1(b) shall survive the expiration or termination of this Agreement.

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

(c) Certain Definitions. As used in this Section 13.1:

(i) "GCRC Competing Business" means any business similar to the Project at the rim of the Grand Canyon;

(ii) "Manager Competing Business" means any business enterprise that is similar to or would otherwise be competitive with any business at any time owned by the Nation or its Affiliates, including all businesses currently operating at Grand Canyon West; and

(iii) "Restricted Area" means and includes the Hualapai Reservation, the Havasupai Reservation, Grand Canyon National Park, and any privately-owned land located within 50 miles of the borders of the Hualapai Reservation, the Havasupai Reservation, or Grand Canyon National Park.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

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

(a) Organizational Status. GCRC is a tribally chartered corporation of, and owned by, the Nation, duly organized, validly existing and in good standing under the laws of the Nation and has full power and authority under its organizational documents and from the Nation to enter into and to perform its obligations under this Agreement. The person(s) executing this Agreement on behalf of GCRC have full power and authority to do so and to execute and deliver

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

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

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

(a) Organizational Status. Manager is an Arizona limited liability company duly organized, validly existing and in good standing under the laws of the State of Arizona and has full power and authority under its organizational documents to enter into and to perform its obligations under this Agreement. Manager is solely owned and controlled by Jim Brown. The person executing this Agreement on behalf of Manager has full power and authority to do so and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby.

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

ARTICLE 15 GENERAL PROVISIONS

15.1 Indemnity. Each party to this Agreement agrees to indemnify the other party and such other party's Related Parties and hold each of them harmless for, from and against all Claims attributable, directly or indirectly, to the breach by such indemnifying party of any obligation hereunder or the inaccuracy of any representation or warranty made by such indemnifying party herein or in any instrument delivered pursuant hereto or in connection with the transactions contemplated hereby; provided, however, that nothing in this Section 15.1 shall constitute a waiver of sovereign immunity, which shall be governed by Section 15.4. This indemnity shall survive the expiration or termination of this Agreement.

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

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

15.4 Venue; No Waiver of Sovereign Immunity. The validity, meaning and effect of this Agreement will be determined in accordance with the laws of the Tribe. The venue and jurisdiction for (a) any litigation under this Agreement, and (b) all other civil or criminal matters arising out of the services provided hereunder will be the Hualapai Tribe, Peach Springs, Arizona. Manager consents and agrees to be subject to the civil jurisdiction of the Tribe and the Tribe's Court. Manager agrees that service of pleadings and other documents required to be served may be affected by mail to Manager's address. Manager agrees that no defect in service may be raised if service is effected in the manner provided herein. Manager, will, either in writing or orally, notify its agents, employees, invitees, and

passengers that they consent and become subject to the civil jurisdiction of the Tribe and the Tribe's Court upon entrance to and while remaining on the Hualapai Tribe Reservation. Nothing in this Agreement will be deemed or interpreted to be a waiver of GCRC's or the Hualapai Tribe's immunity from suit, it being acknowledge by Manager that GCRC and the Hualapai Tribe are entitled to sovereign immunity with respect to disputes and other matters arising in connection with this Agreement.

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

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

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

15.8 Entire Agreement. This Agreement, which includes the attached Exhibits, constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written. Specifically, this Agreement amends and restates the Original Agreement and the Cabins Agreement in their entirety.

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

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

TO MANAGER:

Jim Brown
[ADDRESS]
Fax No.: [NUMBER]
Telephone No.: [NUMBER]

TO GCRC:

Grand Canyon Resort Corporation
887 Highway 66
P.O. Box 538
Peach Springs, AZ 86434
Fax No.: 520-769-2372
Telephone No.: 888-255-9550

with a copy to:

Gallagher & Kennedy, P.A.

2575 East Camelback Road
Phoenix, Arizona 85016
Attention: Terence W. Thompson, Esq.
Fax No.: 602-382-8500
Telephone No.: 602-530-8515

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

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

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

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

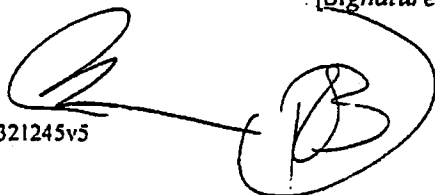
15.14 Interest on Unpaid Amounts. Amounts due and owing from a party to the other party under this Agreement shall bear interest from the date due until paid at the Default Rate.

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

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

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

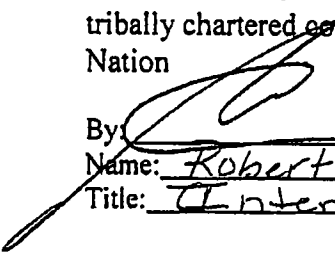
[Signature blocks appear on the following page.]

Two handwritten signature blocks are present. The first is a stylized signature, and the second is a signature that appears to be 'TB' enclosed in a circle.

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

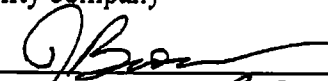
GCRC:

HWAL'BAY BA:J ENTERPRISES, INC., dba
GRAND CANYON RESORT CORPORATION, a
tribally chartered corporation of, and owned by, the
Nation


By: 
Name: Robert Branco Jr.
Title: Interim CEO

MANAGER:

WD AT THE CANYON, LLC, an Arizona limited
liability company

By: 
Name: James Brown
Title: Pres

AGREED AND ACCEPTED AS TO SECTION 15.8:



Jim Brown

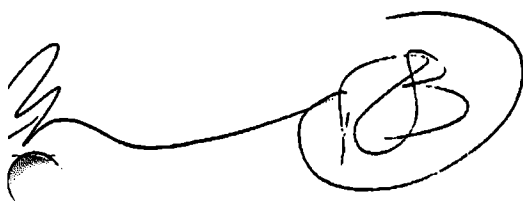


EXHIBIT A
DESCRIPTION OF THE SITE

EXHIBIT B

NET REVENUE SCHEDULE

For purposes of the Net Revenue Percentage Amount for Net Revenues Related to Western Town:

<u>Profit Amount</u>	<u>GCRC %</u>	<u>Manager %</u>
\$0 - \$200,000	40%	60%
\$200,001 - \$400,000	60%	40%
\$400,001 - \$600,000	70%	30%
\$600,001 and beyond	80%	20%

For purposes of the Net Revenue Percentage Amount for Net Revenues for the Cabins:

<u>Profit Amount</u>	<u>GCRC %</u>	<u>Manager %</u>
All	65%	35%

A handwritten signature in black ink, consisting of a large, stylized initial 'B' followed by a horizontal line extending to the right.

Exhibit B



CONSTITUTION OF THE HUALAPAI INDIAN TRIBE
OF THE
HUALAPAI INDIAN RESERVATION, ARIZONA

141 - YES
33 - NO
FEBRUARY 14, 1991

PREAMBLE

We, the members of the Hualapai Indian Tribe of the Hualapai Indian Reservation, a federally recognized sovereign Indian Tribe, do hereby adopt this constitution in order to:

- govern ourselves under our own laws and customs for the common good and well-being of the Tribe and its members,
- protect our lands and natural resources for ourselves and our children,
- maintain our culture, language and tribal identity,
- ensure the political integrity of the Tribe,
- protect the individual rights of our members,
- maintain peace and order through the establishment and administration of justice,
- preserve, secure and exercise all the inherent sovereign rights and powers of an Indian Tribe.

This constitution shall supersede the Amended Constitution and Bylaws of the Hualapai Tribe of the Hualapai Reservation, Arizona, adopted October 22, 1955, and approved by the Secretary of the Interior on January 16, 1956, and shall govern the Hualapai Tribe from its effective date.

ARTICLE I - JURISDICTION

The jurisdiction of the Hualapai Tribe shall extend to all lands within the boundaries of the Hualapai Indian Reservation as established by Executive Orders of January 4, 1883 and June 2, 1911, and Public Law 93-560, December 30, 1974 and to any and all lands held by the Tribe, trust allotments located outside the reservation boundaries to the extent permitted by Federal law, and to any additional lands acquired by the

Tribe or by the United States for the benefit of the Tribe. It is hereby declared that the title to these lands includes but is not limited to all the surface rights, subsurface rights, tenements, hereditaments, all water rights and all accretions and that such lands are held by the United States of America in trust for the Hualapai Tribe. Except as prohibited by Federal law, the Hualapai Tribe shall have jurisdiction over all persons, property, lands, water, air space, resources and all activities occurring within the boundaries of the reservation or on other lands within the jurisdiction of the Tribe, notwithstanding the issuance of any right-of-way. Nothing in this article shall be construed to limit the ability of the Tribe to exercise its jurisdiction based upon its inherent sovereignty as an Indian Tribe.

ARTICLE II - MEMBERSHIP

Section 1. Requirements. The membership of the Hualapai Tribe shall consist of:

(a) All persons of Hualapai blood who qualified for and were accepted into membership in the Hualapai Tribe under the membership requirements contained in the original constitution approved by the Secretary of the Interior December 17, 1938, and the amended constitution approved January 16, 1956;

(b) All persons one-fourth (1/4) degree or more Hualapai Indian blood.

Section 2. Admission Procedures. Applications for enrollment shall be made according to an enrollment ordinance adopted by the Tribal Council. Applicants denied admission can appeal to the Tribal Court in accordance with appeal procedures established by the Tribal Council.

Section 3. Enrollment Committee. An enrollment committee of five (5) eligible voters shall be appointed and supervised by the Tribal Council. The enrollment committee shall have the duty to maintain a current and accurate official tribal membership roll which shall include the names and addresses of all tribal members.

Section 4. Loss of Membership and Reinstatement. The following terms and conditions shall apply to loss of membership in the Hualapai Tribe:

(a) No person who is enrolled as a member of any other Indian tribe shall be eligible for enrollment in the Hualapai Tribe unless the person in question has first renounced his membership in the other tribe and unless the person has first provided the Hualapai Tribe with satisfactory evidence that his name has been stricken from the roll of the other tribe.

- (b) Any member of the Hualapai Tribe who becomes a member of any other Indian Tribe shall automatically forfeit his membership in the Hualapai Tribe. Any person adversely affected by this section shall have a right to appeal to the Tribal Court in accordance with the appeal procedures established by the Tribal Council.

- (c) Any person who has lost his membership in the Hualapai Tribe may apply for reinstatement after a period of two (2) years has elapsed from the date of removal from the membership roll, Provided, That the person in question submits adequate proof to the Tribal Council that he has given up his membership in the other tribe involved.

Section 5. Honorary Membership. The title of "honorary member" of the Hualapai Tribe may be granted to any person by the Tribal Council. Honorary membership does not qualify a person for any benefits, assets, the right to vote, or any other rights or privileges.

Section 6. Enforcement. The Tribal Council shall enforce this Article by ordinance, Provided, That the Tribal Council shall have no power to establish substantive requirements for membership in addition to those established in Section 1 of this Article nor to waive or alter any of those requirements in Article II, or deny an applicant the right to appeal an adverse decision to Tribal Court.

ARTICLE III - ORGANIZATION OF THE GOVERNMENT

The Hualapai tribal government shall be divided into two separate and independent branches of government: the Legislative Department, consisting of the Tribal Council and the Tribal Administration, and the Judicial Department. The Tribal Administration shall be subordinate to the Tribal Council and shall operate in accordance with Article VII.

ARTICLE IV - THE TRIBAL COUNCIL

Section 1. Legislative Body. The legislative body of the Hualapai Tribe shall be known as the Hualapai Tribal Council and shall consist of nine (9) members.

Section 2. Terms of Office. The terms of office for all Tribal Council members including the Chairperson and Vice Chairperson shall be four (4) years except as provided in Section 3 of this article. All Tribal Council members, including Chairperson and Vice Chairperson, shall be eligible to serve two (2) consecutive terms, whether full

or partial terms. At the completion of his second consecutive term, a council member shall not be eligible to run for re-election or be eligible to fill a vacancy until a period of one (1) year has elapsed.

Section 3. The First Election. The first election of council members under this constitution shall be held on the first Saturday in June 1992. All nine (9) council positions shall be declared vacant for purposes of the first election. There shall be no primary election for purposes of the first election. The candidate receiving the highest number of votes shall be offered the position of Chairperson. The candidate receiving the next highest number of votes shall be offered the position of Vice Chairperson. If either person offered the position of Chairperson or Vice Chairperson declines, then the candidate(s) receiving the next highest number of votes shall be offered the position(s). Both the Chairperson and Vice Chairperson shall serve for four (4) years. The next three (3) candidates receiving the next highest number of votes shall serve as council members for four (4) years. The other four (4) candidates receiving the next highest number of votes shall serve for two (2) years. The first election shall be held in accordance with all other applicable provisions of this constitution and applicable ordinances.

Section 4. Selection of Secretary and Treasurer. The Tribal Council shall choose a Secretary and a Treasurer from within or without the Tribal Council membership.

Section 5. Meetings of the Council.

- (a) A regular meeting of the Tribal Council shall be held on a date designated by the Chairperson during the first ten (10) days of each month.
- (b) Special meetings of the Tribal Council may be called by the Chairperson. The Chairperson shall call a special meeting upon the written request of three (3) or more members of the Tribal Council.

Section 6. Quorum. A quorum shall exist if six (6) or more members of the Tribal Council are present. A quorum is required at all meetings in order to conduct official business of the Tribal Council.

Section 7. Voting. The Tribal Council shall make decisions by a majority vote of those present, unless otherwise stated in the constitution. The Tribal Council may vote by voice vote unless the Chairperson or any two (2) members of the Tribal Council request a secret vote. All members of the Tribal Council, including the Chairperson and Vice Chairperson, shall have the right to vote unless otherwise stated in this constitution. If the Secretary or Treasurer is appointed from outside the Tribal Council

membership, they shall not vote.

Section 8. Conflict of Interest. Any council member who may have a direct personal or financial interest in any matter before the Hualapai Tribal Council not similarly shared by all members of the Tribal Council shall not vote on such matter without the consent of the remaining members of the Tribal Council. A council member shall reveal a direct personal or financial interest to the other members of the Tribal Council and failure to do so may constitute a violation of Section 9 of this article.

Section 9. Code of Ethics. The Tribal Council shall have the power to adopt a Code of Ethics governing the conduct of tribal officials. The Code of Ethics may include disciplinary procedures so long as the tribal official in question is afforded full due process rights.

Section 10. Removal and Suspension from Office.

(a) The Tribal Council shall remove a council member for:

(1) failing to attend three (3) regular or special meetings consecutively absent good cause as defined by ordinance;

(2) converting tribal property or monies without authorization through the omission or misrepresentation of facts;

(3) final conviction by any Tribal, Federal or State Court of any of the following offenses:

(A) felony;

(B) three (3) misdemeanors while serving on the Tribal Council;

(C) contempt of court.

(b) A council member appealing a felony conviction shall be suspended pending the outcome of the final appeal.

Section 11. Removal - Due Process Required. In all removal proceedings under Sections 9 and 10, the council member in question shall be afforded full due process

rights including a written statement of the charges, the right to respond to those charges and the right to present witnesses and other evidence in his defense. The decision of the Tribal Council shall be final and shall be appealable to the Tribal Court only if a claim is made that the tribal constitution has been violated or due process rights not afforded. A council member removed from office must wait at least four (4) years from the official date of removal to run for office again.

Section 12. Recall.

- (a) Any member of the Hualapai Tribe of voting age shall have the power to initiate recall proceedings against a council member by filing with the Election Board a written statement giving specific reasons why the council member in question should be recalled;
- (b) In order to force a recall election, the tribal member(s) circulating the petitions shall collect the signatures from twenty (20) percent of the eligible voters of the Tribe;
- (c) A maximum of three (3) members of the Tribal Council may be recalled at a time;
- (d) Individual petitions shall be circulated for each council member who is subject to recall;
- (e) A council member who is successfully recalled shall not be returned to office and must wait four (4) years from his final day in office before being eligible to run for office again or to be appointed to fill a vacancy;
- (f) The Tribal Council shall adopt ordinances to carry out the details of this section.

Section 13. Vacancies.

- (a) If a Council member should die, resign, or be removed or recalled from office, the Tribal Council shall declare the position vacant. The Tribal Council shall fill a vacancy by special election unless less than ninety (90) days remain in the term, in which case the Tribal Council shall leave the position vacant. The person who fills the vacant position shall only serve out the term of the person whom he is replacing.
- (b) All resignations from the Tribal Council shall be in writing. A voluntary

resignation, once submitted, cannot be withdrawn.

ARTICLE V - THE POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall have all of the legislative powers vested in the Hualapai Tribe through its inherent sovereignty and Federal law and shall, in accordance with established customs of the Hualapai Tribe and subject to the express limitations contained in this constitution and the applicable laws of the United States, have the following powers:

- (a) to represent the Tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to this constitution and applicable Federal law;
- (b) to negotiate and make contracts with the Federal, State and local governments;
- (c) to advise the Secretary of Interior or his representative on all activities that may affect the Hualapai Tribe, and on all appropriation estimates and Federal projects for the benefit of the Tribe before such estimates and projects are submitted to the Office of Management and Budget and to Congress;
- (d) to employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of Interior, but only so long as such approval is required by Federal Law;
- (e) to prevent or veto the sale, disposition, lease or encumbrance of tribal lands, tribal funds or other tribal assets without the formal consent of the Tribe;
- (f) to protect and preserve the wildlife and natural resources of the Tribe through the adoption of appropriate regulations and ordinances;
- (g) to regulate hunting, fishing, trapping, camping, recreation, rafting, hiking and all other related activities on all lands within the jurisdiction of the Tribe;
- (h) to administer charity;
- (i) to purchase or accept any land or property for the Tribe;
- (j) to regulate the use and disposition of all land within the jurisdiction of the Tribe, in conformity with Article XI;

- (k) to request the Secretary of Interior to confer trust or reservation status on lands reserved for, granted to or purchased by the Tribe;
- (l) to negotiate and issue leases for business purposes, and to otherwise regulate all business activities within the jurisdiction of the Tribe, in conformity with this constitution,
- (m) to manage all tribal economic affairs and enterprises, (n) to lease tribal lands, natural resources, or other tribal assets within the jurisdiction of the Tribe, Provided, That leases involving more than one thousand (1000) acres or fifty thousand (\$50,000.00) dollars shall also need the approval of the eligible voters of the Tribe voting in a special election; and Provided, That all sales or exchanges of tribal lands, natural resources or other tribal assets shall be approved by the eligible voters of the Tribe voting at a special election, and Provided, That development of natural resources shall be done in accordance with Article XI, Section 4 of this constitution;
- (o) to levy and collect taxes, duties, fees and assessments;
- (p) to appropriate and regulate the use of tribal funds;
- (q) to regulate the domestic relations of persons within the jurisdiction of the Tribe;
- (r) to enact ordinances governing law enforcement on lands within the jurisdiction of the Tribe;
- (s) to enact ordinances providing for the appointment of guardians for minors and mental incompetents;
- (t) to enact ordinances to provide for regulating the inheritance of real and personal property of members of the Tribe within the jurisdiction of the Tribe.
- (u) to enact ordinances providing for the removal or exclusion of any non-member of the Tribe whose presence may be injurious to the members of the Tribe, and to prescribe conditions upon which non-members may remain within the territory of the Tribe, Provided, That all actions of exclusion or removal shall be done by court proceeding;
- (v) to regulate its own procedures;
- (w) to appoint subordinate committees, commissions, boards, tribal officials and

employees not otherwise provided for in this constitution, and to prescribe their salaries, tenure, duties, policies and procedures;

- (x) to establish and to regulate subordinate organizations for economic and other purposes;
- (y) to issue and to regulate motor vehicle license plates;
- (z) to accept grants or donations from any person, organization, State or the United States;
- (aa) to enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers;
- (bb) to determine all terms and conditions of employment for all persons employed by the tribe through the adoption of appropriate ordinances;
- (cc) to appoint a Junior Tribal Council comprised of members of the Tribe age twenty-five (25) or younger designed to make advisory recommendations to the Tribal Council on matters affecting youth;
- (dd) to take any and all actions necessary and proper for the exercise of the foregoing powers and duties, including those powers and duties not enumerated above, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribal Council through its inherent sovereignty.

ARTICLE VI - THE JUDICIAL DEPARTMENT

Section 1. The Judicial Department. The judicial power of the Hualapai Tribe shall be vested in the judiciary which shall consist of a Tribal Court and a Court of Appeals and such other lower courts as deemed necessary by the Tribal Council.

Section 2. Jurisdiction of the Court. The tribal courts shall exercise jurisdiction over all cases and controversies within the jurisdiction of the Tribe, in law and equity, whether civil or criminal in nature, that arise under this document, the laws of and customs of the Tribe, by virtue of the Tribe's inherent sovereignty, or which is vested in the tribal courts by Federal law.

Section 3. Power of the Courts. The Hualapai Judiciary shall have the power to:

- (a) interpret, construe and apply the laws of, or applicable to, the Hualapai Tribe;
- (b) declare the laws of the Hualapai Tribe void if such laws are not in agreement with this constitution;
- (c) issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and writs of habeas corpus to any part of the Hualapai Tribe upon petition by, or on behalf of, any person held in actual custody;
- (d) establish court procedures for the Hualapai judiciary, except that the Tribal Council may by ordinance alter such procedures consistent with this constitution.

Section 4. Composition of the Court. The Hualapai Tribal Court shall be composed of one Chief Judge and such Associate Judges as may be determined necessary by the Tribal Council.

Section 5. Appointment of Judges. The Chief Judge and Associate Judges shall be appointed by the Tribal Council. Should a vacancy occur through death, resignation, or otherwise, for the position of Chief Judge or Associate Judge(s), the Tribal Council shall appoint a person or persons to fill such vacancy or vacancies.

Section 6. Term of Office. Each Judge shall hold office for a period of two (2) years, unless sooner removed under section 11, or by reason of abandonment of the office; however, the Chief Judge or Associate Judge shall be eligible for reappointment.

Section 7. Court of Appeals. The Hualapai Tribal Court of Appeals shall consist of one or more Judges selected in sequential order from a list of available Court of Appeals Judges compiled by the Tribal Council. The list of Court of Appeals Judges shall be renewed every two (2) years and shall include at least three (3) names. The Court of Appeals shall always consist of an odd number of judges. No Judge shall sit on a Court of Appeals if he presided over the original proceedings or if disqualified under Article VI, Section 10.

Section 8. Qualifications of Judges. The qualifications for tribal Judges shall be established by ordinance enacted by the Tribal Council, but no additional requirements may be added during the tenure of a Judge already in office, unless the additions or changes exempt the present Judges during their term.

Section 9. Compensation. The Judge(s) shall receive for their services reasonable

compensation. The Tribal Council shall not diminish the compensation of a Tribal Judge during his term in office.

Section 10. Disqualification to Act. No Judge shall be qualified to act in any case wherein he has any direct interest or wherein any relatives by marriage or blood in the first degree are a party.

Section 11. Removal of Judges.

(a) Any Judge of the Tribal Court may be suspended, dismissed, or removed by the Tribal Council for any of the following reasons:

1. conviction of a felony in any Tribal, Federal or State Court;
2. conviction of any two misdemeanors in any Tribal, Federal or State Court;
3. performing his official duties while under the influence of alcoholic beverages: *illegal drugs/substance*
4. conviction, in any Tribal, Federal or State Court, of driving under the influence of alcohol, or the equivalent crime;
5. failure to disqualify himself under Article VI, Section 10;
6. unnecessary and repeated lengthy delays in hearing and adjudicating matters filed in the Tribal Court;
7. violating Article VIII, Section 13, of this constitution;
8. for good cause by at least seven (7) members of the Tribal Council;

(b) A Judge shall be given full and fair opportunity to reply to any and all charges for which he may be suspended, dismissed or removed from judicial office:

(c) A Judge suspended, dismissed or removed under Article VI, Section 11(a) (1-7) may appeal directly to the Tribal Court of Appeals which shall have jurisdiction over such matters. Removal of a Judge under Article VI, Section 11 (a) (8), shall be determined solely by the Tribal Council.

Section 12. Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict may appeal therefrom to the

Tribal Court of Appeals. All matters of law and procedure may be decided by the Court of Appeals. Findings of fact shall be made by the Trial Court and shall be reviewable only when arbitrary or capricious.

Section 13. Rights of Defendants. The Hualapai Tribe, in exercising its powers of self-government, shall not:

- (a) subject any person for the same offense to be twice put in jeopardy;
- (b) compel any person in any criminal case to be a witness against himself;
- (c) deny to any person in a criminal proceeding the right to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of an advocate for his defense admitted to practice before the Tribal Courts;
- (d) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
- (e) pass any bill of attainder or ex post facto law; or (f) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Section 14. Court Rules. The duties and procedures of the tribal court system, and all other court matters not enumerated in this article of the constitution, shall be established by the Hualapai Judiciary, except that the Tribal Council may by ordinance alter such procedures consistent with this constitution.

ARTICLE VII - THE TRIBAL ADMINISTRATION

Section 1. Executives. The tribal administration shall consist of the Chairperson, Vice Chairperson, Secretary and Treasurer of the Tribal Council and such other persons as the Tribal Council or their designee may find necessary for conducting tribal business. The Chairperson shall be in charge of the tribal administration in accordance with Section 2 of this article.

Section 2. Duties. The tribal administration shall oversee the administration of tribal business and shall exercise those authorities delegated to it by the Tribal Council.

ARTICLE VIII - ELECTIONS

Section 1. General Elections. General elections to vote for council members shall be held in even numbered years on the first Saturday in June beginning in 1992. The voting place shall be at Peach Springs, Arizona. General elections before 1992 shall be held in accordance with the Amended Constitution and Bylaws of the Hualapai Tribe effective October 22, 1955.

Section 2. Special Elections. Special elections shall be held when called for by the Tribal Council, by this constitution, or by the voters as provided in this constitution or appropriate ordinances. In all special elections, adequate notice shall be given to the voters and the Tribal Council shall specify the voting places.

Section 3. Election Board. At least one-hundred-twenty (120) days before each general election, or no less than ten (10) days before calling a special election, the Tribal Council shall appoint an Election Board. All members of the Election Board must be members and eligible voters of the Hualapai Tribe. The duties, procedures, structure and compensation of the Election Board shall be included in the election ordinance.

Section 4. Nominations. Any tribal member may submit his name to the Election Board as a candidate for tribal office in accordance with this article and the procedures outlined in the election ordinance.

Section 5. Qualifications for Office.

(a) Any member of the Hualapai Tribe shall be eligible to run for tribal office if he:

(1) is at least twenty-five (25) years of age, and

(2) is a resident of the reservation for at least one (1) year, and

(3) has never been convicted of a felony or been convicted of three (3) misdemeanors within the last twelve (12) months, whether by Tribal, Federal, or State Court.

(b) For purposes of this section, all reservation trust lands, and all trust allotments held for the Tribe or its members, shall be considered part of the reservation.

(c) Persons attending school full time or in the military shall be considered residents for purposes of this section.

Section 6. Voting Age. All tribal members who are eighteen (18) years of age or older on the date of any tribal election shall be entitled to vote in the election.

Section 7. Ballots. All elections shall be by secret written ballot.

Section 8. Absentee Voting. Absentee voting may be permitted by ordinance adopted by the Tribal Council.

Section 9. Selection of Chairperson and Vice Chairperson. The selection of Chairperson and Vice Chairperson shall be by popular vote in accordance with the applicable provisions of the election ordinance and Section 10 of this article.

Section 10. Primary Elections. In any general election where three (3) or more candidates are seeking the position of Chairperson, or the position of Vice Chairperson, there shall be a primary election held at least thirty (30) days before the general election. A person may not run for both positions of Chairperson and Vice Chairperson in the primary election. A primary election shall not be held for other council member positions but shall be limited to the positions of Chairperson and Vice Chairperson. The primary election shall narrow the list of candidates for Chairperson and Vice Chairperson down to two (2) candidates who shall run off in the general election. A primary which results in a tie between two (2) or more candidates shall be decided in the general election. Candidates eliminated during the primary election may still seek the position of council member in the general election. Candidates successful in the primary election may not run for the position of council member in the general election.

Section 11. Election Results. The candidates receiving the highest number of votes for the available positions shall be declared the winners for those positions. The Election Board shall certify all election results within three (3) days of the date of the election.

Section 12. Tie Votes. In the case of a tie vote between two or more candidates, a special runoff election shall be held after five (5) days but no more than forty-five (45) days after the election results are certified by the Election Board. All eligible voters shall be permitted to vote in any runoff election.

Section 13. Challenges to the Election Results. Any tribal member may challenge election results by filing a suit in Tribal Court within ten (10) days after the Election Board certifies the election results. The Tribal Court shall hear and decide election cases within thirty (30) days after the Election Board certifies the results, except where the party challenging the Election Board's decision requests additional time which may

be granted at the discretion of the Tribal Court, Provided, That only one extension of time may be granted. If the Tribal Court invalidates the election results, the Court shall order that a new election be held as soon as possible.

Section 14. Oath of Office. The oath of office for newly elected Tribal Council members shall be administered no later than sixty (60) days after the election results are certified. In the first election in 1992, the oath of office shall be administered immediately after the election results are certified.

Section 15. Election Ordinance. In all tribal elections, the Tribal Council shall have the power to prescribe ordinances governing the casting and canvassing of ballots, and other necessary details of election procedures.

ARTICLE IX - BILL OF RIGHTS

The Hualapal Tribe, in exercising its powers of self-government shall not:

- (a) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;
- (b) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and person or thing to be seized;
- (c) take any private property for a public use without just compensation; or
- (d) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

ARTICLE X - DUTIES OF THE OFFICERS

The duties of the Chairperson, Vice Chairperson, Secretary and Treasurer shall be established by ordinance enacted by the Tribal Council.

ARTICLE XI - LAND

Section 1. No Allotments. All lands within the jurisdiction of the Tribe shall remain

tribal property and shall not be divided by allotment in any way whatsoever to individuals, groups of individuals, or any other entity.

Section 2. Assignments. Assignment of land for private use may be made by the Tribal Council in conformity with ordinances which may be adopted on this subject. Provided, That assignments once granted shall not be revoked absent good cause. Title to the assigned lands shall not vest in the assignee.

Section 3. Land Use Ordinance. A comprehensive land use ordinance shall be adopted as soon as possible after the adoption of this constitution. The ordinance shall include sections on timber management and fuel wood cutting, zoning, wildlife management, cattle management, and other natural resources management.

Section 4. Limited Power to Develop Natural Resources. The Tribal Council shall not develop on a commercial or industrial basis any natural resources of the Tribe without the consent of the majority of the total number of eligible voters of the Tribe. Small scale development of natural resources involving less than \$50,000.00 may be approved by the Tribal Council without the approval of the voters so long as the intent of this provision is not violated. Any tribal member may enforce this section in Tribal Court which shall have jurisdiction over these matters.

ARTICLE XII - MEETINGS OF THE TRIBE

The Tribal Council may from time to time call general meetings of all voters of the Tribe to identify and discuss important tribal matters. A minimum of two general meetings shall be held each year.

ARTICLE XIII - REFERENDUM AND INITIATIVE

Upon petition of at least twenty-five (25) percent of the eligible voters of the Tribe, or upon the request of the majority of the members of the Tribal Council, any enacted or proposed ordinance, resolution or other official action of the Tribal Council shall be submitted by the Tribal Council to popular initiative or referendum and the vote of the majority of the qualified voters in such initiative or referendum shall decide whether the ordinance, resolution or other official action shall thereafter be in effect. Provided, That twenty-five (25) percent or more of the eligible voters shall vote in such initiative or referendum. Official petition forms shall be issued by the Tribal Secretary and shall be circulated and completed within one-hundred-twenty (120) days of the date of issuance. The Secretary shall notify the petitioners of the number of required signatures for a valid petition. The Tribal Council must act within thirty (30)

days of the receipt of a valid petition and must schedule an election on the proposed petition within ninety (90) days thereafter.

ARTICLE XIV - ORDINANCES AND RESOLUTIONS

Section 1. Ordinances. All final decisions on matters of permanent interest shall be embodied in ordinances. Such enactments shall be available for inspection by members of the Tribe during normal business hours.

Section 2. Resolutions. All final decisions on matters of temporary interest where a formal expression is needed shall be embodied in a resolution, noted in the minutes, and shall be available for inspection by members of the Tribe during normal business hours.

Section 3. Form. All ordinances and resolutions shall be dated and numbered and shall include a certificate showing the presence of a quorum and the number of members voting for and against the proposed enactment.

Section 4. Review. The Tribal Council shall submit Tribal laws and enactments to the Secretary of the Interior for his review, comment and approval only when required to do so by federal law.

ARTICLE XV - AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior. Provided, That at least thirty (30) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior or until deemed approved by the Secretary by operation of law. It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment at the request of the Tribal Council, or upon presentation of a petition signed by thirty (30) percent of the qualified voters of the Tribe.

ARTICLE XVI - SOVEREIGN IMMUNITY

Section 1. Tribe and Employees Immune from Suit.

- (a) The Hualapai Tribe hereby declares that, in exercising self-determination and sovereignty to its fullest extent, the Tribe is immune from suit except to the extent that the Tribal Council expressly waives sovereign immunity, or as provided by this constitution. No tribal employee or Tribal Council member

acting within the scope of his duties or authority is subject to suit.

Section 2. Waivers of Sovereign Immunity.

(b) Express waivers of sovereign immunity shall require the approval of at least thirty (30) percent of the total number of eligible voters of the Tribe voting in a special election if the waiver may:

- (1) expose the Tribe to liability in excess of \$250,000 dollars, or its equivalent, or
- (2) expose more than one-hundred (100) acres of land to possible foreclosure or encumbrance.

ARTICLE XVII - SAVINGS CLAUSE

All enactments of the Tribe adopted before the effective date of this constitution shall continue in effect to the extent that they are consistent with this constitution.

ARTICLE XVIII - SEVERABILITY

If any provision of this constitution shall in the future be declared invalid by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XIX - ADOPTION OF CONSTITUTION

This constitution, when adopted by a majority vote of the registered voters of the Hualapai Tribe of the Hualapai Indian Reservation, Arizona, voting at a special election authorized by the Secretary of the Interior in which at least thirty (30) percent of those registered in accordance with Secretarial regulations to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and, if approved by the Secretary of the Interior or by operation of law, shall be effective from the date of such approval.