

1 how to use very scarce resources (\$8 million) in the coming off-season 2017/2018 to
2 tackle a rapidly increasing list of needed repairs (now approaching \$60 million). The
3 Court will recall that on 25 June 2017, the chilled water pipes, that carry water needed
4 for the Chase Field air conditioning, burst throughout three-quarters of the stadium just
5 hours before a home game. The District's response was that the problem was easily
6 resolved by mopping up the water. Further, if necessary, the process of locating a
7 replacement facility takes a minimum of four years. In light of Chase Field's
8 deteriorating condition, the Diamondbacks should be permitted to immediately explore
9 other options.

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11 **I. THE PROCEDURE IN THE AGREEMENTS FOR SELECTING A THREE-
PERSON ARBITRATION PANEL HAS FAILED.**

12 As the Court is aware, in 1996 the Diamondbacks and the District entered into a
13 series of documents regarding the use of Chase Field that contain arbitration provisions.
14 Those provisions provide for the selection of an arbitration panel that would be in place
15 to handle ongoing disputes. The selection by the Diamondbacks and the District was to
16 have begun over twenty years ago by agreeing on a Neutral Evaluator and Chairman
17 180 days prior to the FUA commencement date. (FUA § 21.4.2). Both the
18 Diamondbacks and the District would then select an additional neutral, disinterested
19 person to be on the arbitration panel. (FUA § 21.4.5.1). The arbitration panel was
20 never put into place.²

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22 That selection process was never followed and now, twenty years later, the
23 parties have been unable to agree on how to proceed to arbitration. It is unrealistic to
24 believe that now that a major dispute has erupted that they could jointly agree on a
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27 ² Although the FUA also contemplated the selection of a "chairman," the chairman
28 would only participate in the arbitration proceedings and would not be entitled to vote.
(FUA § 21.4.5.1).

1 Neutral Arbitrator (or much of anything else). Further, the FUA states that: “If the
2 District and the Team fail to select a Neutral Evaluator ... with[in] such time period, the
3 selection of the Neutral Evaluator ... shall be made by Development ADR **using the**
4 **business panel.**” (§ 21.4.2, emphasis added). Unfortunately, nothing in the
5 Development ADR provisions of the FDA explain what a “business panel” is and the
6 provisions do not even contain that term. And the definitions do not contain this term.
7 Although § 14.2 of the FDA describes selection of a 12-person “Arbitration Pool,” there
8 is nothing that describes a “business panel.” And in any event, no 12-person Arbitration
9 Pool has ever been selected.

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11 **II. BECAUSE THE PROCESS FOR CHOOSING AN ARBITRATION PANEL IN**
12 **SECTION 21.4 OF THE FUA HAS FAILED, THE COURT HAS THE**
13 **AUTHORITY TO ORDER THE SELECTION OF A PANEL.**

14 A.R.S. § 12-3011(A) states the following:

15 If the parties to an agreement to arbitrate agree on a method
16 for appointing an arbitrator, that method must be followed
17 unless the method fails. **If the parties have not agreed on a**
18 **method, the agreed method fails** or an arbitrator appointed
19 fails or is unable to act and a successor has not been
20 appointed, **the court**, on motion of a party to the arbitration
21 proceeding, **shall appoint the arbitrator.** An arbitrator so
22 appointed has all the powers of an arbitrator designated in
23 the agreement to arbitrate or appointed pursuant to the
24 agreed method.

25 (Emphasis added).

26
27 **III. THE DIAMONDBACKS REQUEST THAT THE COURT EXERCISE ITS**
28 **AUTHORITY UNDER A.R.S. § 12-3011(A) BY ORDERING THE SELECTION**
OF A THREE-PERSON ARBITRATION PANEL.

The FUA requires the selection of a three-person arbitration panel. In addition,
in the parties’ arbitration negotiations, they agreed on the three-person panel. And all
for a good reason—a three-person panel will add the additional safeguard that the
ultimate arbitration award will result from a fully reasoned process.

1 Therefore, the Diamondbacks propose that the Court adopt the method of
2 choosing the three-person panel the parties had originally negotiated.

3 The following selection process comes from an email from the District's
4 attorney, John Williams. Although the agreement was not finalized, the arbitration
5 portion provides a helpful template that is consistent with the three-person panel
6 required by the FUA:

7 Selection of Panel:

8 Each party selects one arbitrator within fifteen (15) days.

9 Those two arbitrators attempt to pick a third arbitrator who
10 must be from an out-of-state location, and must not be a
11 former judge.

12 If after two weeks they cannot agree, the parties will obtain
13 a list of 10 arbitrators from JAMS who would be willing to
14 accept the assignment and have been screened for conflicts.
(same qualifications as above, no more than three per state).

15 Parties attempt to agree on the third. If not:

16 Simultaneously, each party strikes three arbitrators and
17 discloses its strikes to the other. Parties then rank the
18 remaining arbitrators, and simultaneously disclose their
rankings to each other. Top ranked becomes the third
19 arbitrator.

20 Panel expected to be in place by August 15, 2017.

21 Proposed Arbitration Provisions, email from John Williams to Richard Williams,
22 18 Jul 17, attached hereto as **Exhibit A**.

23 Unfortunately, the 15 August 2017 date originally contemplated for the selection
24 of the three-person panel has come and gone. The Diamondbacks request that the Court
25 order the three-person panel be in place by 30 September 2017. With that revision, the
26 Diamondbacks request that this Court adopt the parties' negotiated method of selecting
27 a three-person panel, which is fully consistent with the express intent of the FUA.
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1 The parties included a provision that the third arbitrator be from out-of-state to
2 avoid a bias potential and that the arbitrator not be a former judge to avoid the potential
3 of increased influence over the other two arbitrators.

4 **IV. CONCLUSION.**

5 Time is of the essence. An arbitration panel must be put into place immediately
6 to make critical, time-sensitive decisions regarding the Stadium as dramatically
7 evidenced by the failure of the chilled water pipes. Among other time-sensitive
8 disputes, the panel must immediately arbitrate how much of the existing \$8 million
9 Capital Repairs Reserve is used during this 2017/2018 coming off-season and what
10 critical repairs must be made.
11

12 Therefore, the Diamondbacks request the Court to order the creation of the three-
13 person panel consistent with the FUA and the parties' negotiated methodology.

14 DATED this 29th day of August, 2017.

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23 Efiled this 29th day of August, 2017 with
24 a copy sent via the TurboCourt e filing system to:

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