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13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 AZPB LIMITED PARTNERSHIP, doing  
16 business as the Arizona Diamondbacks,  
17 formerly known as Arizona Professional  
18 Baseball Team Limited Partnership, a  
19 Delaware limited partnership; AZPB REM  
20 LIMITED PARTNERSHIP, a Delaware  
21 limited partnership; AZPB FM LIMITED  
22 PARTNERSHIP, a Delaware limited  
23 partnership; and ARIZONA  
24 DIAMONDBACKS FOUNDATION, INC.,  
25 formerly known as Arizona Diamondbacks  
26 Charities, Inc., an Arizona non-profit  
27 corporation,

28 Plaintiffs,

vs.

MARICOPA COUNTY STADIUM  
DISTRICT, a tax levying public improvement  
district and political taxing subdivision of the  
State of Arizona; and DENNY BARNEY,  
STEVE CHUCRI, ANDY KUNASEK,  
CLINT HICKMAN, and STEVE  
GALLARDO, in their official capacities as  
members of the Maricopa County Board of  
Supervisors and the Board of Directors of the  
Maricopa County Stadium District,

Defendants.

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Irasema Garcia, Deputy  
Date 01/03/2017 Time 16:47:53

Description	Amount
CASE# CV2017-000323	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 25663377	

Case No.: CV 2017-000323

**COMPLAINT**

1 For their complaint against Maricopa County Stadium District and Denny Barney, Steve  
2 Chucuri, Andy Kunasek, Clint Hickman, and Steve Gallardo, in their official capacities as  
3 members of the Maricopa County Board of Supervisors and Board of Directors of the Maricopa  
4 County Stadium District, Plaintiffs allege as follows:

5 **NATURE OF THE CASE**

6 1. Since 1998, the Arizona Diamondbacks (through an entity now called AZPB  
7 Limited Partnership) have been using certain areas of the ballpark now known as Chase Field  
8 under a series of agreements with the Maricopa County Stadium District (the "District").

9 **The Parties Intended that the Diamondbacks and the District**  
10 **Would Each Receive Certain Benefits from Their Contractual Relationship;**  
11 **The District Has Received Its Intended Benefits, But the Diamondbacks Have Not.**

12 2. Since at least 2005, the District has correctly acknowledged in its annual  
13 Comprehensive Annual Financial Reports the parties' intent that, to meet the contractual  
14 requirement of keeping the ballpark in "good repair" and to be fit for use as a Major League  
15 ballpark, Chase Field must be maintained as a state-of-the-art facility. The District's 2015  
16 report states:

17 *The Stadium District is now focused on funding financial*  
18 *reserves for future capital needs of the stadium and capital*  
19 *improvements to remain a state-of-the-art facility to*  
20 *accommodate future world-class national and international*  
21 *sports or championship events.*

22 (Emphasis added.)

23 3. In order to fund the reserve accounts that would pay for certain capital  
24 improvements and repairs ("Capital Repairs") to keep Chase Field a "state-of-the-art facility"  
25 that would accommodate "world-class" sporting events, and to generate additional funds for the  
26 District, the parties agreed and intended, and the District insisted, that it would assume the  
27 responsibility of booking Chase Field for non-baseball events during the significant portion of  
28 the year it is not being used for Major League Baseball ("MLB") games each year.

1 The parties knew and intended that the citizens of Arizona, and in particular  
2 Maricopa County, would benefit from the employment and related spending and from the tax  
3 dollars the Diamondbacks would generate from being located in downtown Phoenix.

1           5.     The parties also knew and intended that having the Diamondbacks in downtown  
2 Phoenix would revitalize and strengthen the downtown area.

3           6.     The District has achieved all of its intended benefits including keeping control  
4 over the booking of Chase Field for non-baseball events and revitalizing and strengthening  
5 downtown Phoenix as a result of the Diamondbacks' presence there. The District has also  
6 obtained \$3.8 billion in economic benefits for the State of Arizona and Maricopa County and  
7 received an infusion of \$511 million in tax revenues and license fees for the state and county  
8 through 2015, as calculated in a recent study conducted by the Seidman Research Institute of  
9 the W.P. Carey School of Business, Arizona State University ("ASU-Seidman").

10          7.     On the other hand, the Diamondbacks will be deprived of their intended benefit  
11 of playing baseball in a "state-of-the-art" facility in "good repair" as Capital Repairs come due  
12 and the intended source of funding for these repairs is depleted.

13                   **A Report Commissioned by the District in 2011 Projected**  
14                   **Tremendous Unanticipated Costs to Keep Chase Field Suitable for Its Intended Purpose**

15          8.     In 2011, the District commissioned a Facilities Assessment Report by TRK  
16 Architecture & Facilities Management, Inc. ("TRK"). In that report, TRK concluded that over  
17 \$147 million in repairs and improvements would be needed through January 1, 2028, the date  
18 of the termination of the Facility Use Agreement between the Diamondbacks and the District.

19          9.     Most of this \$147 million constituted Capital Repairs as defined in Article 17 of  
20 the Facility Management Agreement between the Diamondbacks and the District. Section  
21 17.2.2 of that same Agreement states that Capital Repairs are to be funded only from available  
22 financial reserves.

23                   **Capital Repairs Were Intended to Be Funded**  
24                   **Through the District's Booking of Chase Field for Non-Baseball Uses**

25          10.    A critical source of funds for these reserves is, and was always intended to be,  
26 money generated through the District's fulfillment of its contractual responsibilities to book  
27 Chase Field for non-baseball events during the significant portion of each year when no home  
28 baseball games are being played and the facility is otherwise available. In the parties' contract

1 negotiations, the District insisted upon having, and ultimately obtained, responsibility for this  
2 booking function.

3 11. In the District's 2015 annual report (and in similar reports dating back over a  
4 decade) prepared without any input from the Diamondbacks, the District acknowledged that the  
5 intent of the parties was to pay for future Capital Repairs through the District's event-booking  
6 efforts:

7 It is anticipated that *all future capital repairs or improvements*  
8 *will be funded through charges for use of the ballpark.*

9 (Emphasis added.)

10 12. If the District had fully and responsibly utilized Chase Field to book non-  
11 baseball events during the significant portion of the year the facility is available for such  
12 events, the reserves would be adequate to fund future Capital Repairs that will be necessary.

13 13. Unfortunately, that has not happened. The District has booked *fewer than ten*  
14 events per year. The District's booking revenues, averaging less than \$650,000 annually, are  
15 far below those achieved at comparable facilities. From 2011 to 2015, Major League Baseball  
16 teams that actively booked their own facilities generated net revenues totaling \$271 million.  
17 Those teams averaged \$5.5 million in net revenues from bookings in 2015. The New York  
18 Yankees averaged \$9 million per year over those five years. The Los Angeles Angels of  
19 Anaheim, which operate in a more comparable market and region, have averaged over \$6  
20 million per year. The San Diego Padres, located in an even smaller market than metro Phoenix,  
21 have averaged over \$2.4 million per year.

22 14. Chase Field thus is not being utilized to anywhere near its potential for  
23 generating revenue through hosting non-baseball events.

#### 24 **The District Has Insufficient Reserves to Fund Future Capital Repairs**

25 15. Despite the District's repeated commitment to make up the funding shortfall for  
26 Capital Repairs through its booking of Chase Field for non-baseball events, it became obvious  
27 that this simply was not going to happen.

28 16. As of June 30, 2011, the available reserves for Capital Repairs totaled  
approximately \$9 million. Instead of providing enough funding to keep the facility in "good

1 repair” as intended by the parties, under the current state of financial affairs the ballpark could  
2 potentially become unsafe and unfit for its intended purposes, which include hosting MLB  
3 games and non-baseball events, anchoring downtown Phoenix, and bolstering the Arizona  
4 economy.

5 17. Projecting a shortfall of funding for Capital Repairs, the Diamondbacks  
6 proactively approached the District at that time to seek a solution to the problem.

7 **The Diamondbacks Offered to Take Over Full Financial Responsibility for the**  
8 **Needed Capital Repairs to Chase Field**

9 18. During the ensuing discussions with the District, the Diamondbacks proposed to  
10 continue playing their home games at Chase Field, to assume the entire financial  
11 responsibilities for Capital Repairs, and to assume the District’s non-baseball event-booking  
12 responsibility, which the Diamondbacks believed they could perform much more effectively.  
13 In return, the Diamondbacks requested a reduction of their license fees paid to the District  
14 (currently \$4.3 million per year, which is at least three times greater than what any other major  
15 professional sports franchise is paying in Arizona).

16 19. Because a large portion of the Diamondbacks’ license fee payments went to  
17 fund the reserves for Capital Repairs, it seemed only fair that if the Diamondbacks were to  
18 assume the obligation of funding Capital Repairs, that they receive a reduction in their  
19 payments to at least partially defray this additional expense.”

20 20. A draft term sheet that the Diamondbacks presented to the District in 2012  
21 provided in part:

- 22 • The Diamondbacks would, “[a]t [the Diamondbacks’] expense, maintain the  
23 Ballpark [Chase Field] in a condition suitable for use (i) as [the Diamondbacks’]  
24 home field for playing Major League Baseball (‘MLB’) games (‘Home Games’)  
25 and (ii) as the venue for ... non-MLB events ....”
- 26 • The Diamondbacks would “maintain the Ballpark in a condition equal to that of  
27 other like facilities with similar numbers of years of service, based on  
28 independent facility assessments ....”
- The District would “transfer the Booking Manager Services Agreement to the  
[Diamondbacks].”

- 1           • The Diamondbacks would “play [their] Home Games at the Ballpark unless the  
2 Ballpark is unavailable for the playing of Home Games due to a catastrophe.”
- 3           • The Diamondbacks would “pay to the District an annual license fee in the  
4 amount of \$200,000. The license fee [would] increase by \$50,000 every fifth  
5 year ....”

6           21. The Diamondbacks proposed to take on the enormous unfunded liability for  
7 necessary Capital Repairs because, in the highly competitive market for sports entertainment,  
8 the Diamondbacks could not risk finding themselves in a deteriorating or even unsafe ballpark  
9 with no adequate funding mechanism in place and with no available alternative.

10           22. The District refused this and all of the Diamondbacks’ proposals to resolve the  
11 problem of how to pay for necessary Capital Repairs and have made no viable counterproposal.

12                                   **As Early as 2012, the District Admitted**  
13                                   **The Reserves May Prove Insufficient for Future Repairs**

14           23. Daren Frank, Executive Director Representative of the District, publicly  
15 admitted as early as July 21, 2012, that there might not be enough in the reserves to “preserve”  
16 or “maintain” the ballpark:

17                                   The concern is over the asset and how we best preserve the  
18 asset,” Frank said. “At some point, there is a possibility the  
19 *amount of money that will be needed to maintain the asset might*  
20 *be more than what we have.* At that point, we would have to  
21 work within the partnership to define a way to do it.

22           *(D-Backs push stadium deal, Arizona Republic, July 21, 2012, at A1 (emphasis added).)*

23           24. The same news article accurately reports, paraphrasing Arizona Diamondbacks’  
24 President and CEO, Derrick Hall, that the Diamondbacks have never asked the taxpayers to  
25 fund the anticipated shortfall of funds for Capital Repairs:

26                                   Hall said the Diamondbacks are not looking to leave downtown.  
27 *nor is the team seeking a government payment* to operate Chase  
28 Field. Instead, it wants more control over the building it plays in  
and more control over the money it is required to set aside for  
improvements.

*(Id. (emphasis added).)*

1 **Projected Costs for Necessary Capital Repairs Increased in 2013**

2 25. The District retained TRK again in 2013 to prepare a Facilities Assessment  
3 Report. TRK concluded that Chase Field's future repairs and improvements had increased to  
4 \$185 million over the remaining fifteen years of the Diamondbacks' license, despite the fact  
5 that the remaining license period was now shorter. Over \$135 million of the necessary repairs  
6 and improvements consisted of Capital Repairs.

7 **The District Refuses to Seek a Resolution**

8 26. The District has rejected all of the Diamondbacks' proposals concerning how to  
9 fund the needed Capital Repairs.

10 27. On March 16, 2016, the Diamondbacks delivered a letter to the District stating  
11 at length the reasons for their concern that it will be impossible to perform their obligation to  
12 play home games at Chase Field if reserves for the needed Capital Repairs are not adequately  
13 funded.

14 28. The District responded on March 23, 2016, with a terse, one-page letter refusing  
15 to release the Diamondbacks from any contractual obligations and failing even to acknowledge  
16 the looming problem of inadequate funds for Capital Repairs.

17 29. On April 28, 2016, District board member Andy Kunasek hand-delivered a letter  
18 containing personal attacks on Derrick Hall, the Diamondbacks' President and CEO. After  
19 delivering the letter to Mr. Hall's office at Chase Field, Mr. Kunasek confronted Mr. Hall and  
20 Tom Harris, the Diamondbacks' Executive Vice President and CFO, in the elevator and  
21 parking lot. During that confrontation, Mr. Kunasek stated (among other things) the following:

22 If it were up to me, take it all and go to f\*\*\*ing West Virginia or  
23 wherever.

24 \* \* \*

25 If it were up to me, I'd let you take your stupid baseball team and  
26 get out.

27 30. After more than four years of unsuccessful negotiations, the projected funding  
28 shortfall remains – and will soon have a tangible impact on the condition of Chase Field.  
Nevertheless, the District has refused all of the Diamondbacks' proposals while providing no

1 practical alternative. Instead, the District continues to press its unrealistic claim that it can fund  
2 future Capital Repairs from existing revenue sources, which include an average of less than  
3 \$650,000 annually from the District's booking efforts.

#### 4 **The Diamondbacks' Franchise is at Risk**

5 31. The Diamondbacks can wait no longer to at least look into alternative  
6 arrangements for playing their home games. Summer and early fall is the Major League  
7 Baseball season, and in that season in Arizona, a climate-controlled facility (i.e., a stadium with  
8 a roof and air conditioning) is necessary for both the players and the fans. No other climate-  
9 controlled facility suitable for Major League Baseball exists in the State of Arizona. Thus, if  
10 Capital Repairs continue to be deferred due to lack of funding and Chase Field becomes  
11 unsuitable for use by the Diamondbacks' team and its fans, the Diamondbacks will have to  
12 either build a new stadium or leave Arizona. The construction of a new stadium would require  
13 a minimum four or five years of lead time before the stadium would be ready for play, and that  
14 assumes a suitable site has been located and is for sale. Plans must be drawn up, funding  
15 secured, land acquired, and permits obtained before ground is even broken. Because of the  
16 impending funding deficiency and the necessary lead time to find an alternative to playing  
17 baseball at Chase Field, any further delay in searching for a new location will put the  
18 Diamondbacks' MLB franchise at risk of having no suitable place to play in Arizona.

19 32. In addition, the Diamondbacks (like the potential Chase Field purchaser  
20 described below) have concluded that it makes no economic sense to invest \$135 million for  
21 Capital Repairs, plus additional maintenance costs, into an aging ballpark that does not meet  
22 today's design and function requirements. That is why the Atlanta Braves, for example,  
23 recently constructed a new ballpark rather than attempting to reconfigure their existing  
24 ballpark, which was built just one year before Chase Field.

25 33. This declaratory action, therefore, asks the Court to grant the Diamondbacks  
26 equitable relief from § 11.2.1.2 of the Chase Field Facility Use Agreement. In this provision,  
27 the District restricts the Diamondbacks from taking "any action to move or to play its Baseball  
28 Games in another location other than [Chase Field]." The Diamondbacks seek relief from this



1 provision to protect their franchise by exploring what other options or partnerships may exist to  
2 secure the best facility possible in the limited time available before Chase Field becomes  
3 unusable.

4 **As Intended by the Parties, the Diamondbacks Have Generated**  
5 **Enormous Economic and Fiscal Benefits to the Citizens of Arizona and Maricopa County**

6 34. Having the Diamondbacks in downtown Phoenix has generated an enormous  
7 economic return to the citizens of Arizona, including those who funded a portion of the  
8 construction of Chase Field by a Maricopa County sales tax of one quarter of one cent per  
9 dollar for the period of 1994 to 1997.

10 35. As calculated in the ASU-Seidman study referenced above, during the life of the  
11 franchise (including the initial construction of Chase Field, Spring Training games, and  
12 ongoing baseball operations through 2015), the Diamondbacks have generated *\$3.8 billion* of  
13 economic activity ("Gross State Product" or "GSP," defined as the final value of all goods and  
14 services) in the State of Arizona and *\$511 million* in license fees and taxes collectively paid to  
15 the state and its counties and cities.

16 36. From the taxpayers' investment of \$238 million in Chase Field, the \$511 million  
17 in resulting tax revenues and license fees generated represents, to date, a *10.2% internal rate of*  
18 *return* to Arizona taxpayers. This 10.2% return is significantly higher than the 4.2% return  
19 earned by investors in the 10-year U.S. Treasury Bond, from 1996 to 2015.

20 37. The following graphic prepared by ASU-Seidman illustrates the fiscal return on  
21 the taxpayers' \$238 million investment and the economic activity (or GSP) generated:  
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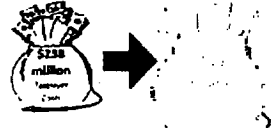
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**TAXPAYERS' CURRENT RETURN ON INVESTMENT: 1996-2015**

To help finance the construction of an MLB ballpark in downtown Phoenix, Maricopa County imposed a special sales tax levied at rate 0.25% on tax revenues. There are at least 7 ways to evaluate the internal rate of return for taxpayers on the State of Arizona.

**TAXES & REVENUES GENERATED**

One way to calculate the internal rate of return compares taxpayers' and \$738 million investment in Chase Field with the \$111 million state and local government tax revenues received (including licensing received due to the presence of the Arizona Diamondbacks in downtown Phoenix).

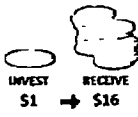


The tax comparison produces a 10.2% annual return to date, which is significantly higher than the 4.2% return earned by investors in the 10-year U.S. Treasury bond, 1996-2015.

**10.2% INTERNAL RATE OF RETURN**

**TOTAL ECONOMIC BENEFITS GENERATED**

Another way to calculate the internal rate of return compares the \$238 million sales tax distribution for Chase Field with the \$1.8 billion GDP directly and indirectly generated in the statewide economy because of the Arizona Diamondbacks, 1996-2015.



Taxpayers to date have received approximately \$16 in economic benefits for every \$1 invested in Chase Field.

If the Diamondbacks' \$44 million charitable donations and \$17 million in state-shared revenues paid to local governments outside Maricopa County are additionally included as benefits, the high internal rate of return to the State of Arizona increases from 10.2% to 11.9%.

Maricopa County taxpayers alone receive an internal rate of return of 7.1% excluding, or 8.3% including, the Diamondbacks' charitable donations through 2015.

38. The \$3.8 billion in Gross State Product generated by the Diamondbacks means that, for each dollar of investment in Chase Field, the taxpayers collectively have received *sixteen* dollars in economic benefits.

39. The \$511 million in state and local government tax revenues and license fees collected from the construction of Chase Field, and the ongoing operations of the Diamondbacks' Spring Training and regular and post-season games through 2015, was generated from such things as:

- Sales taxes on the purchase of construction materials like concrete, rebar, steel beams, glass, paint, air conditioning systems, retractable roof, electronic screens, sound systems, and ballpark seating;
- Sales taxes, bed taxes, and car-rental surcharges paid by out-of-town visitors;
- Sales taxes on the sales of tickets, merchandise, and food and beverage. Such sales include, for example, baseball jerseys and hats, hot dogs, popcorn, beer, and soda. Through 2015, tax revenues on just ticket and stadium sales totaled \$71.9 million;
- Income taxes paid by the Diamondbacks employees, including income taxes on Diamondbacks players' salaries. Through 2015, income taxes paid by Diamondbacks' employees totaled \$52.7 million;

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- Annual license fee payments from the Diamondbacks to the District for the use of Chase Field.

40. The \$3.8 billion in GSP generated through 2015 from the construction of Chase Field and the ongoing operations of the Diamondbacks Spring Training and regular and post-season games through 2015, arose from such things as:

- Income generated from hiring workers to build Chase Field, including architects, engineers, contractors, masons, carpenters, electricians, plumbers, concrete workers, landscapers, and many more, together with the associated multiplier effect. The total increase in GSP from the construction of Chase Field equals \$432 million;
- Income generated by Diamondbacks Spring Training games in the Arizona lodging and restaurant industries and other jobs impacted by related visitor spending. The total increase in GSP from Diamondbacks Spring Training games equals \$265.8 million;
- Income generated from the Diamondbacks' ongoing annual operations including the signing of baseball players and hiring of management, stadium concession and merchandise employees, ticket takers, ground crews, and many more, together with the associated multiplier effect. The total increase in GSP from the Diamondbacks' ongoing operations equals \$3.1 billion.

41. The Diamondbacks take great pride in the economic and fiscal benefits that they have generated for the community.

**The Diamondbacks Have Helped to Revitalize Downtown Phoenix**

42. The Diamondbacks have also been a key component and contributor to the vitality of downtown Phoenix, bringing in a huge influx of visitors here for each of their events. As the District described in its 2015 Comprehensive Annual Financial Report:

Chase Field is a cornerstone of downtown Phoenix. The building of the ballpark was one of the catalysts for revitalization of the downtown area.

The District has made similar statements in its prior reports.

**The Diamondbacks Have Contributed More than \$50 Million to Local Charities**

43. The Diamondbacks enthusiastically embrace their social responsibility. The Diamondbacks, through their operations and the Arizona Diamondbacks Foundation, have contributed over \$50 million to Arizona communities through charitable donations to date.

1 This amount is in addition to the \$511 million in tax revenue and license fees and the \$3.8  
2 billion in GSP generated through 2015.

3 **The Diamondbacks Have Paid More than their Contractual Share for Chase Field**

4 44. The Diamondbacks have invested more than \$200 million into Chase Field,  
5 including certain Capital Repairs that the Diamondbacks had no obligation to pay for. This  
6 number will grow to at least \$250 million by the end of the term of the Facility Use Agreement.  
7 On top of this, the Diamondbacks spend millions each year on repairs, maintenance, facility  
8 operations, and game operations for Chase Field to be safe, secure, and presentable. For the  
9 nineteen years of operations to date, this latter expenditure totals more than \$241 million.

10 **The Diamondbacks' Owners Have Taken No Return on Their Investment**

11 45. The Diamondbacks' existing ownership group has not taken out any money for a  
12 return on its investment. (A recent distribution was made to satisfy certain of the owners' tax  
13 liabilities.) All net revenues earned under current ownership have been reinvested to maintain  
14 and improve Chase Field, to enhance the quality of the product on the field, and to support  
15 local charities.

16 46. The Diamondbacks do not want to abandon this investment but will be forced to  
17 do so if there is no other viable option.

18 47. Therefore, the Diamondbacks seek declaratory relief from § 11.2.1.2 of the  
19 Facility Use Agreement to protect their franchise and to safeguard their ability to continue  
20 providing the highest level of sports entertainment, supporting local charities, generating  
21 billions of dollars in economic activity and hundreds of millions of dollars in state and local tax  
22 revenues, and otherwise benefiting the community in a safe, state-of-the-art facility that both  
23 the District and the Diamondbacks intended, but which the present contractual framework no  
24 longer supports.

1 **PARTIES, JURISDICTION, AND VENUE**

2 **I. Plaintiffs.**

3 48. Plaintiff AZPB Limited Partnership d/b/a the Arizona Diamondbacks ("AZPB"),  
4 formerly known as Arizona Professional Baseball Team Limited Partnership, is a Delaware  
5 limited partnership having its principal place of business in Maricopa County, Arizona.

6 49. Plaintiff AZPB REM Limited Partnership ("AZPB REM") is a Delaware limited  
7 partnership having its principal place of business in Maricopa County, Arizona.

8 50. AZPB FM Limited Partnership ("AZPB FM") is a Delaware limited partnership  
9 having its principal place of business in Maricopa County, Arizona.

10 51. Arizona Diamondbacks Foundation, Inc., formerly known as Arizona  
11 Diamondbacks Charities, Inc., ("Diamondbacks Foundation" and, collectively with the above-  
12 named Plaintiffs, the "Diamondbacks" or "Plaintiffs") is an Arizona non-profit corporation  
13 having its principal place of business in Maricopa County, Arizona.

14 52. Although the Diamondbacks specifically seek equitable relief from § 11.2.1.2 of  
15 the Facility Use Agreement, because all of the Agreements (as defined below) are interrelated,  
16 the parties to all of the Agreements are included in this Complaint.

17 **II. Defendants.**

18 53. Maricopa County Stadium District (the "District") is a tax levying public  
19 improvement district and political taxing subdivision of the State of Arizona. The Maricopa  
20 County Board of Supervisors serves as the District's board of directors.

21 54. Pursuant to Arizona Revised Statutes § 48-4202(D), the Maricopa County Board  
22 of Supervisors ("Board of Supervisors") serves as the Board of Directors of the District  
23 ("Board of Directors"). Arizona Revised Statutes § 42-4203(A)(2) provides that the Board of  
24 Directors may sue and be sued on behalf of the District. Denny Barney, Steve Chucri, Andy  
25 Kunasek, Clint Hickman, and Steve Gallardo are therefore named as Defendants in their  
26 official capacities as members of the Board of Supervisors and the Board of Directors.

27  
28

1 **III. Personal jurisdiction.**

2 55. Personal jurisdiction over Defendants is proper under Rule 4.2(a) of the Arizona  
3 Rules of Civil Procedure because Defendants are domiciled in the State of Arizona.

4 **IV. Venue.**

5 56. The parties entered into the contracts that are the subject of this action in  
6 Maricopa County, Arizona. The parties' respective obligations under these contracts were to  
7 be performed in Maricopa County, Arizona.

8 57. Venue in this Court is therefore proper under Arizona Revised Statutes  
9 §§ 401(5) and 401(15).

10 **V. Arbitration is not required.**

11 58. The Facility Use Agreement ("FUA") excepts from mandatory arbitration  
12 claims for equitable relief, including those that seek "declaratory relief" as is sought by this  
13 Complaint. (FUA § 21.5.)

14 59. In addition, disputes arising out of Section 11.2.1 of the FUA are described as  
15 "Discretionary Permitted Litigation," not subject to mandatory arbitration:

16 Discretionary Permitted Litigation. The following disputes may,  
17 at the election of the Team (as to Section 21.3.1.3 and 21.3.1.4)  
18 or the District (as to Section 21.3.1.1, 21.3.1.2, 21.3.1.3, and  
19 21.3.1.4) not be subject to Use ADR:

20 \* \* \*

21 21.3.1.2 Playing of Home Games. Any dispute arising out of  
22 Section 11.2.1; ... .

23 (FUA §§ 21.3.1 – 21.3.1.2.)

24 60. On March 16, 2016, the Diamondbacks sent a letter setting forth their concerns  
25 as outlined in this Complaint and requesting that the District release the Diamondbacks from  
26 their obligations under the Facility Use Agreement § 11.2.1.2. The District responded on  
27 March 23, 2016, refusing to execute such a release and confirming that the present dispute  
28 arises under § 11.2.1 (of which § 11.2.1.2 is a subsection) of the FUA.

1 **VI. Presentation of a notice of claim to Maricopa County is not required.**

2 61. The Diamondbacks did not present a notice of claim to Maricopa County  
3 pursuant to A.R.S. § 12-821.01 before filing this Complaint. Because the Diamondbacks do  
4 not seek by this Complaint to obtain an award of damages, they were not required to present a  
5 pre-suit notice of claim. *See Martineau v. Maricopa County*, 207 Ariz. 332, 335-37, ¶¶ 18-24  
6 (App. 2004) (construing A.R.S. § 12-821.01 and holding notice of claim requirement does not  
7 apply to claim for declaratory relief because the claim “does not seek damages and would not  
8 result in any monetary award against the County even if successful (absent possible costs and  
9 attorneys’ fees)”); *State v. Mabery Ranch, Co., L.L.C.*, 216 Ariz. 233, 244-45, ¶¶ 45-53 (App.  
10 2007) (notice of claim requirement does not apply to claim for injunctive relief).

11 **FACTUAL ALLEGATIONS**

12 **I. The Diamondbacks and the District entered into a series of Agreements, the**  
13 **central purpose of which was to build and operate a state-of-the-art ballpark.**

14 62. Through a complex set of interrelated agreements (the “Agreements”) entered  
15 into in the 1990s, the District and the Diamondbacks entered into a business relationship to  
16 build and operate what all parties intended to be and to continue as a state-of-the-art baseball  
17 facility for the purpose of accommodating a new MLB franchise: the Arizona Diamondbacks.

18 63. The business relationship among the parties is memorialized by the following  
19 Agreements:

- 20 • Memorandum of Understanding (“MOU”), dated February 17, 1994, between  
21 the District and Arizona Professional Baseball Team Limited Partnership (now  
AZPB);
- 22 • Facility Development Agreement (“FDA”), dated June 17, 1994, between the  
23 District and AZPB;
- 24 • Facility Use Agreement (“FUA”), dated March 20, 1996, between the District  
25 and AZPB;
- 26 • Facility Management Agreement (“FMA”), dated March 20, 1996, between the  
27 District on the one hand and AZPB, AZPB REM, Diamondbacks Foundation,  
28 and AZPB FM on the other hand;
- Activities Agreement (“AA”), dated March 20, 1996, between the District and  
AZPB;

- 1 • Baseball Team Area Lease ("BTAL"), dated June 30, 1997, between the District  
2 and AZPB;
- 3 • Real Estate Management Agreement ("REMA"), dated June 30, 1997, between  
4 the District on the one hand and AZPB, AZPB REM, and AZPB FM on the  
5 other hand;
- 6 • Tour Operator Agreement ("TOA"), dated December 17, 1997, between the  
7 District and Diamondbacks Foundation; and
- 8 • Nine amendments to these Agreements.

9 64. Under the Agreements, the parties shared the cost of developing and building  
10 the ballpark; and the District now owns the ballpark. The District agreed to pay the first \$238  
11 million of construction costs, which it funded through a quarter cent per dollar sales tax. This  
12 sales tax expired in 1997.

13 **II. The Diamondbacks paid far more than their anticipated share of construction**  
14 **costs for Chase Field.**

15 65. The ballpark was completed in 1998. Originally known as Bank One Ballpark,  
16 the ballpark became Chase Field after Bank One was bought by JPMorgan Chase.

17 66. When the Diamondbacks and the District entered into the Agreements, they did  
18 so with the understanding that the budgeted construction cost for the ballpark would be less  
19 than \$300 million. The Agreements provided that no more than \$238 million was to be paid by  
20 the District from county-wide sales tax receipts for project costs. Although the Diamondbacks  
21 agreed to pay all excess project costs, those costs were estimated to be no more than \$40  
22 million.

23 67. The Diamondbacks' share of the construction costs dramatically exceeded the  
24 anticipated budget, resulting in the Diamondbacks contributing a total of \$128 million. This  
25 was \$88 million more than anticipated.

26 68. Over time, the Diamondbacks' required financial commitment has only become  
27 progressively greater than originally projected.

28



1 **III. Under the Agreements, the District owns Chase Field, and the Diamondbacks**  
2 **license areas of Chase Field from the District.**

3 69. The District is the owner of Chase Field and the land on which it is located.  
4 Under the 30-year Facility Use Agreement, the District allows – indeed, requires – the  
5 Diamondbacks to play all of its home games at Chase Field, and the Diamondbacks pay the  
6 District agreed amounts as “License Fees,” as well as certain other payments. (*See* FUA art.  
7 10.)

8 70. The ballpark and its uses are the central feature and purpose of the Agreements.  
9 The Agreements state that they were “negotiated on the basis of certain assumptions, including  
10 the assumption that the District and the Team [Diamondbacks] will act to facilitate the uses to  
11 be made of the [ballpark] as described in the Agreements.” (FUA § 20.1.2.1.) In order to  
12 facilitate such uses, the Agreements “contemplate cooperation among the Team  
13 [Diamondbacks] and the District.” (FUA § 20.1.2.1.)

14 71. Indeed, the Agreements expressly require each of the Diamondbacks and the  
15 District to “act in good faith” in “exercising its rights and fulfilling its obligations” under the  
16 Agreements. (*Id.*)

17 72. As set forth in the Agreements, the District gave the Diamondbacks a license to  
18 use the ballpark for baseball games for a period of 30 years, or through the 2027 baseball  
19 season. In return, the Diamondbacks agreed to give the District License Fee payments that  
20 currently total \$4.3 million per year. The Diamondbacks’ scheduled License Fee payments to  
21 the District vary somewhat each year, primarily based on average baseball ticket price increases  
22 or decreases, with a small payment variance stemming from the level of attendance at games.

23 73. In addition to this License Fee, as described earlier, the Diamondbacks and the  
24 District understood that having the ballpark in Arizona and in Downtown Phoenix would  
25 generate important financial benefits in the form of ongoing stimulus to economic activity and  
26 the generation of tax dollars that would go directly to State and local governments, including  
27 Maricopa County.

28 74. The Diamondbacks also agreed not to take any action to move to another  
location, including preparatory actions, except that, during the last four years of the Facility

1 Use Agreement, the Diamondbacks are allowed to make plans to move to another facility upon  
2 the expiration of that agreement. (FUA §§ 11.2.1.2 through 11.2.1.4.)

3 75. On its insistence, the District has contractually assumed the obligation to  
4 generate additional revenue by booking non-baseball events at the ballpark. (AA § 4.1; FUA  
5 §§ 5.1.1 – 5.1.2.) The Agreements obligate the District to put a substantial portion of these  
6 revenues, generally 50 percent of what remains after paying certain District expenses, into  
7 segregated “Facility Reserve Accounts” which are used to fund Capital Repairs needed to  
8 maintain the ballpark. (AA § 8; FMA §§ 17.2.2 – 17.3.3.)

9 76. As both the Diamondbacks and the District understood in entering into the  
10 Agreements, Chase Field is a depreciating asset requiring regular infusions of cash for repairs,  
11 replacements, and improvements to keep the facility safe, in “good repair,” and up to MLB  
12 standards – in short, a “state-of-the-art facility.”

13 77. All such repairs, replacements, and improvements initially in excess of \$50,000  
14 are defined as “Capital Repairs” in § 17.1 of the Facility Management Agreement. Capital  
15 Repairs are to be funded from the Facility Reserve Accounts as set forth in § 17.2 of that  
16 Agreement.

17 **IV. As the District has acknowledged, the ballpark must be maintained as a “state-of-**  
18 **the-art” facility in order to compete for consumers’ entertainment dollars.**

19 78. In Arizona, there is substantial competition to attract the limited discretionary  
20 spending of the consumer. That competition includes:

- 21 • Four other major professional sport franchises – the Arizona Cardinals, the  
22 Phoenix Suns, the Phoenix Mercury, and the Arizona Coyotes – which play their  
23 home games in the Phoenix area;
- 24 • Other professional sports teams such as the Arizona Rattlers and the Phoenix  
25 Rising Football Club;
- 26 • Major college sporting events through Arizona State University, the University  
27 of Arizona, and Grand Canyon University;
- 28 • Major college football bowl games, including the Fiesta Bowl, the Cactus Bowl,  
and the College Football Playoff National Championship (which replaces the  
Bowl Championship Series National Championship Game) on a rotating basis;
- Golf tournaments including the Waste Management Phoenix Open;

- 1 • Cactus League Spring Training games for the fifteen Major League Baseball
- 2 teams that make their spring training home in Arizona;
- 3 • The Arizona Fall League (baseball);
- 4 • Auto racing at the Phoenix International Raceway, including two NASCAR
- 5 Sprint Cup Series race weekends annually;
- 6 • Major sporting events that are held from time to time in Arizona, including the
- 7 Super Bowl (2008 and 2015), the NFL Pro Bowl (2015), the MLB All Star
- 8 Game and related events (2011), and the NCAA Men's Final Four (scheduled
- 9 for 2017);
- 10 • Other sporting events including motocross races, marathons, triathlons, and
- 11 rodeos; and
- 12 • Non-sporting events such as concerts, festivals, and car shows.

11 79. As Chase Field ages, it is necessary to invest substantial sums in Capital Repairs  
 12 to maintain it as a safe, first-class, state-of-the-art facility, in order to stay financially  
 13 competitive in such an environment.

14 80. The District's recognition of this intent is reflected in its Comprehensive Annual  
 15 Report for each fiscal year from 2005 through 2015. Each of those reports states, in essentially  
 16 identical language, that the District is "focused on funding financial reserves for future capital  
 17 needs of the stadium and capital improvements to remain a state-of-the-art facility to  
 18 accommodate future world class national and international sports or championship events."

19 81. In the section of the 2012 Comprehensive Annual Report containing  
 20 Management's Discussion and Analysis, the District further recognizes:

21 Competition from other venues in the area increases the need to  
 22 ensure that the ballpark remains a state-of-the-art facility by  
 23 making necessary capital improvements ....

23 (2012 Annual Report, MDA at p. 17.)

24 82. Consistent with the parties' intent to maintain a "state-of-the-art facility," the  
 25 Agreements set forth the minimum standard for the condition of Chase Field.

26 83. The FMA assigns an affiliate of the Diamondbacks, AZPB FM (the "Facility  
 27 Manager"), the responsibility of performing (but not funding) routine maintenance of, as well  
 28 as Capital Repairs to, the ballpark. The FMA describes the minimum standard:

1 10.2 *General Performance Standard.* At all time, the Facility  
2 Manager shall:

3 (i) operate, maintain, repair and clean the Facility as  
4 necessary to preserve and keep the Facility *in good repair, order*  
5 *and condition;*

6 (ii) operate, maintain, repair and clean the Facility so that it is  
7 *safe* and can readily be made *available for the playing of Home*  
8 *Games* and the conducting of District Events, Day Uses and Tour  
9 Activities; and

10 (iii) operate, maintain, repair, and clean the Facility *in*  
11 *compliance with all applicable government requirements.*

12 The Facility Manager shall discharge such duties *in a manner*  
13 *customary for* an entity experienced in operating, maintaining,  
14 repairing and cleaning *comparable* (taking into account the age  
15 of the structure, the presence or absence of a retractable roof and  
16 the climate controlled nature of the Stadium) *MLB facilities....*

17 (FMA § 10.2 (emphasis added).)

18 16.2 *Maintain the Facility in a Satisfactory Condition.* The  
19 Facility Manager shall undertake, either by using its own forces  
20 or by retaining and overseeing third party contractors, *Capital*  
21 *Repairs ... so that the Facility is ready for the conducting of*  
22 *Home Games* and District Events; provided, however, the  
23 obligation to fund such Capital Repairs shall be as set forth in  
24 Article 17....

25 (FMA § 16.2 (emphasis added).)

26 16.4 *MLB Requirements.* The Facility Manager shall undertake  
27 such *Capital Repairs* as may be *necessary to comply with any*  
28 *MLB requirements that pertain to health or safety concerns.*

(FMA § 16.4 (emphasis added).)

16.5 *Preparation of Capital Repairs Component.* As part of the  
Capital Repairs Component, the Facility Manager must propose  
to undertake *Capital Repairs it deems necessary.*

(FMA § 16.5 (emphasis added).)

**V. Existing reserve funds for Capital Repairs are inadequate.**

84. To provide funds for Capital Repairs, the Agreements establish various "Facility Reserve Accounts," which are funded from revenue derived from the use of the ballpark. (See

1 FMA § 17.2.2; *cf.* 2012 Annual Report at 3 (“It is anticipated that all future capital repairs or  
2 improvements will be funded through charges for use of the ballpark.”).

3 85. For example, the Agreements establish a “Project Reserve Account” (funded,  
4 beginning after six years, by annual \$250,000 payments from the Diamondbacks) which may  
5 be used for Capital Repairs, and other “Capital Reserve Accounts” linked to specific subareas  
6 of the ballpark, which accounts must be used only for Capital Repairs. (*See* FMA §§ 17.3.1,  
7 17.3.3; FUA § 10.3.3.)

8 86. Further, the Agreements generally obligate the District to put fifty percent (after  
9 payment of expenses and certain other deductions) of the revenue it receives from the  
10 Diamondbacks and other ballpark uses into a “Long-Term Project Reserve Account,” which  
11 may be used for Capital Repairs to the ballpark after all funds in the Project Reserve Account  
12 have been exhausted. (*See, e.g.*, AA § 8.)

13 87. The District is also obligated to put certain monies into a “Non-Obsolescence  
14 Account,” which the District may use “solely for updating, refurbishing, repairing or otherwise  
15 improving” the ballpark, subject to the reasonable approval of the Diamondbacks. (*Id.*  
16 § 8.2.3.1.)

17 88. The Agreements require that all Capital Repairs to the ballpark must be paid for  
18 out of these Facility Reserve Accounts, so that if a Capital Repair is required and all funds have  
19 been withdrawn from the Facility Reserve Accounts, neither the Diamondbacks nor the District  
20 can be required to pay additional funds for Capital Repairs:

21 If at any time after the Team and the District have withdrawn all  
22 funds from the applicable Facility Reserve Accounts any portion  
23 of the Facility requires a Capital Repair, neither the District, the  
24 Team nor any Related Entity of the Team will be required  
pursuant to this FMA or any of the other Related Use  
Agreements to fund such Capital Repair ....

25 (FMA § 17.2.2.)

26 89. Section 27.6 of the FMA underscores the problem. That section states:

27 Notwithstanding anything else in this FMA to the contrary, all  
28 obligations of the District pursuant to this FMA shall be payable  
from only (i) the District’s share of proceeds under this FMA and  
the other Related Use Agreements, (ii) any other proceeds

1 derived from or attributable to the District's use or ownership of  
2 the Facility, or (iii) [certain] funds in the Non-Obsolescence  
3 Account [as described]; and there shall be no other recourse  
4 against the District for payments or obligations outside of the  
5 payment sources referenced in this Section 27.6.

6 90. Section 27.6 of the FMA goes on to state that no obligations of the District shall:  
7 be payable from any other source of funds available to the  
8 District, including, without limitation, (i) the proceeds of ad  
9 valorem taxes, (ii) any general funds of the District, or (iii) the  
10 revenues payable to the District pursuant to the Related Use  
11 Agreements that are necessary to pay the District Loan.

12 91. The Agreements thus fail to address the current problem: what are the parties'  
13 duties and obligations when the Facility Reserve Accounts contain inadequate funds to pay for  
14 needed Capital Repairs? Other than generally requiring the parties to "cooperate" and to work  
15 in "good faith" to "facilitate the uses to be made" of the ballpark, the Agreements are wholly  
16 silent on the matter. The Agreements nowhere state what would happen if the ballpark needed  
17 Capital Repairs but the Facility Reserve Accounts were depleted.

18 92. Yet this is now the precise situation faced by the parties. The 2013 Facility  
19 Assessment Report commissioned by the District identifies \$185 million of repairs and  
20 maintenance that need to be performed. Of this amount, more than \$135 million is for Capital  
21 Repairs. More than \$30 million of these Capital Repairs relate directly to safety, structural  
22 integrity, and/or potential building code violations. However, as of June 30, 2016, a total of  
23 only \$8.1 million was available in the Facility Reserve Accounts for Capital Repairs.

24 93. The 2013 Facility Assessment Report sets forth a recommended schedule for  
25 repairs, with the most immediately needed repairs to be done in 2013-14 and others scheduled  
26 for 2014-15, 2015-16, 2016-17, and so on until the end of the lease on January 1, 2028. The  
27 report also provides the estimated cost for each repair, which estimates have proven to be  
28 reasonably reliable in the past.

94. The 2013 Facility Assessment Report contains spreadsheets many pages long  
listing the Capital Repairs that are needed. A few important examples include the following:

- *Repair precast tread to riser connections in suite & upper level* – The concrete forming the steps between seating sections is crumbling and cracking. In some

1 places the rebar is visible and rusting. This deteriorated condition, besides being  
2 unattractive, could result in a guest tripping and falling down the steep stairs and  
3 sustaining serious injury. Further, if the deterioration is allowed to continue, it  
4 could affect the structural integrity of the concrete. The 2013 Facility  
5 Assessment Report recommended that repairs to the stair treads be completed  
6 during the 2013–14 offseason at an estimated cost of \$570,400. These repairs,  
7 however, have not been completed.

- 8 • *Replace railing posts* – The concrete holding certain railings, including many of  
9 the railings in the upper deck of the ballpark, is cracking. The railing posts need  
10 to be replaced together with their concrete footings. Railings in the seating areas  
11 are an important safety feature, and it is critical that they be kept in good repair.  
12 The failure of a railing could result in a fatal accident if a guest were to fall from  
13 an upper deck. The 2013 Facility Assessment Report recommended that the  
14 railing posts and footings be replaced by 2016 at an estimated cost of \$205,000,  
15 but these repairs have not been completed.
- 16 • *Repair Dywidag at caulk joint locations* – “Dywidag” is a proprietary term for  
17 the system of pre-tensioned steel rods and anchors that hold together the  
18 concrete structures of the ballpark, including the seating areas. At the time of  
19 construction, each Dywidag was protected from the elements by being placed in  
20 a sleeve and caulked at each joint location. Some of the ballpark’s Dywidags  
21 have been exposed to the elements due to water seeping through deteriorated or  
22 defective concrete and caulk joints. The affected Dywidags need to be repaired  
23 or replaced and resealed to maintain the structural integrity of the ballpark. The  
24 2013 Facility Assessment Report recommended that this be done by 2016 at an  
25 estimated cost of \$5,915,355. These repairs have not been completed.
- 26 • *Upgrade fire alarm system* – The fire alarm system at Chase Field is the same  
27 one that was installed when the ballpark was first constructed. The  
28 Diamondbacks have been performing, at their own expense, ad hoc repairs and  
maintenance to the system. The 2013 Facility Assessment Report recommended  
that the old fire alarm system be replaced with a new one in the 2014–15  
offseason at an estimated cost of \$454,284. This has not been done.
- *Replace/overhaul centerfield sound system* – The ballpark’s main sound system  
in center field was last renovated in 2006 and is at the end of its useful life.  
Stadium announcements are unintelligible in certain areas of the ballpark.  
Besides its negative impact on the fan experience, the condition of the sound  
system is a safety issue because emergency announcements may not be clearly  
understood by everyone in the building. The 2013 Facility Assessment Report  
recommended that the sound system be replaced in the 2016–17 offseason at an  
estimated cost of \$4,815,715. This one item alone will use up more than half of  
the existing reserves for Capital Repairs.
- *Uninterrupted power source (“UPS”)* – A UPS is essentially a battery backup  
for critical emergency systems in the event of a power outage. If the UPS does  
not perform its function properly, a simple power outage could result in the  
failure of the fire alarm system, security systems, safety lights, and other  
systems. The 2013 Facility Assessment Report recommended that the UPS be

1 replaced in the 2013–14 offseason at an estimated cost of \$83,395, but this has  
2 only been partially done.

- 3 • *Sports light fixtures* – In 2015, MLB assessed the lighting at Chase Field and  
4 ranked it dead last among all of the ballparks in MLB in terms of brightness,  
5 color, and evenness. The worst part of the lighting covered the infield, which  
6 was measured at 15% below minimum MLB requirements. The Diamondbacks,  
7 at their own expense, made some improvements to the infield lighting so that it  
8 now meets the minimum standard, albeit only barely. The lighting at Chase  
9 Field still ranks among the worst in MLB and is overdue for replacement to a  
10 full LED (light-emitting diode) system, which provides more even and  
11 consistent light and is much more energy efficient than a traditional system. The  
12 2013 Facility Assessment Report recommended that this be done in the 2018–19  
13 offseason at an estimated cost of \$1,261,323, but the Diamondbacks (and MLB)  
14 believe this should be done immediately because of, among other reasons, the  
15 increasing frequency and expense of maintenance and the unavailability of parts  
16 and inventory for the current lighting system.
- 17 • *Replace out-of-town scoreboards* – The out-of-town scoreboards at Chase Field  
18 are non-functional. These scoreboards have burnt-out bulbs and, because  
19 replacement bulbs cannot be purchased, the scoreboards will continue to  
20 deteriorate in appearance over time. The 2013 Facility Assessment Report  
21 recommended that the out-of-town scoreboards be replaced in the 2014–15  
22 offseason at an estimated cost of \$1,293,750, but this has not been done.
- 23 • *Upgrade video control room to 4K* – The standard for video production is  
24 currently transitioning from HD to 4K. The equipment in the video control  
25 room at Chase Field is all HD and will become unusable in the very near future  
26 because, among other reasons, it will be incompatible with current technology.  
27 The 2013 Facility Assessment Report recommends replacing the existing  
28 equipment with 4K equipment in 2016 at an estimated cost of \$6,336,467, but  
this has not been done and currently is not scheduled to be done.

95. As set forth above, § 11.2.1.1 of the FUA requires the Diamondbacks to play all  
of their home games at Chase Field, and § 11.2.1.2 prevents the Diamondbacks from even  
exploring other options. Given the present circumstances, and the District's refusal to engage  
in good faith discussions to locate funding for the needed Capital Repairs and updates to the  
existing facility, the Diamondbacks asked to be released from these obligations.

**VI. The failure to perform Capital Repairs on a timely basis will result in Chase Field becoming unfit for its intended purpose and not in "good repair."**

96. Some of the Capital Repairs listed above and in the 2013 Facility Assessment  
Report do not relate to the structure of the building but nevertheless affect the inhabitability and  
fitness of the building for its intended use as a venue for professional baseball and other events.



1 For example, the Diamondbacks cannot play their home games at Chase Field long-term if the  
2 lighting is not up to MLB standards. The Diamondbacks cannot host tens of thousands of fans  
3 each game without fully functioning fire alarm and sound systems. And fans will be less  
4 inclined to attend games at Chase Field if the facility starts to look run down due the inability to  
5 replace major items, such as the out-of-town scoreboard.

6 97. On the other hand, some of the necessary Capital Repairs do relate to the  
7 structure of Chase Field, and the failure to perform such repairs on a timely basis will result in  
8 the structure deteriorating and becoming unsafe.

9 98. The structure of Chase Field includes the following elements:

- 10 • Deep concrete footings form the base of the structure.
- 11 • Steel-reinforced concrete columns stand on the footings and support the  
12 structure.
- 13 • Horizontal and diagonal precast beams connect the columns.
- 14 • Raker beams rest on top of the horizontal beams at each level. The raker beams  
15 rise up in an outward direction from the playing field, determining the overall  
16 shape of each level.
- 17 • Precast concrete panels and risers fill the space between the horizontal beams  
18 and raker beams, comprising the treads and risers known as the "seating bowl."
- 19 • These columns, beams, and panels are tied together in certain locations by a  
20 series of embedded weld plates that prevent movement between the components.  
At other locations, where it is necessary for the components of the structure to  
21 move independently, slide bearings are placed between the components of the  
22 structure.
- 23 • The structure below the treads and risers is protected from moisture by a series  
24 of caulk joints along the side, end, top, and bottom of each precast panel.
- 25 • Each level of the building is divided into nine sectors. Between the sectors are  
26 expansion joints that allow for building movement from forces such as thermal  
27 expansion and seismic movement. The expansion joints are designed to provide  
28 a watertight seal.

99. As long as this system remains in good repair, the structure is very strong. It can  
withstand the elements while being flexible enough to expand and contract with temperature  
change, direct sunlight, and possible seismic activity.

1           100. Over time, however, the caulk and expansion joints deteriorate from sunlight,  
2 movement, and wear, allowing water from pressure washing (which is no longer used in the  
3 most impacted areas, at greater expense to the Diamondbacks) and rain to migrate between the  
4 concrete panels and onto the steel connection points and slide bearings that tie the concrete  
5 components together. Such water intrusion causes the components to corrode, resulting in the  
6 need for repairs.

7           101. Ongoing maintenance therefore includes replacing faulty joints (both caulk and  
8 expansion joints) when identified as deteriorating or leaking.

9           102. The original gutter system that was installed during construction was designed  
10 to collect and redirect the water. While this is good in theory, the design of the gutter system  
11 hides leaks.

12           103. Unfortunately, water has made its way through joints, over weld plates and slide  
13 bearings, and into the gutter systems. This process has already done damage by leaving  
14 standing water in and on materials that were never intended to have long-term exposure to  
15 moisture.

16           104. Long-term exposure of water seeping through joints, cracks, and patches in the  
17 concrete has resulted in the rusting of weld plates, shim stacks between the weld plates, slide  
18 bearings and plates, and even the rebar that is buried in the concrete.

19           105. Once rust forms on the surface of a metallic object, the corrosion rate tends to  
20 accelerate due to pitting that holds moisture on the surface. This ongoing process corrodes  
21 more and more material, weakening the structural steel.

22           106. Furthermore, because steel expands when it rusts, the rusting of steel that is  
23 buried or semi-buried in concrete causes swelling, delamination, cracking, and spalling of the  
24 concrete. This phenomenon further accelerates the process of corrosion as it allows more water  
25 to seep through the structure.

26           107. As rust continues, imbed plates can break loose from the concrete structure,  
27 allowing movement at a location that was intended to be fixed. Conversely, hardware and slip  
28

1 points that were intended to be flexible can become seized from rust, causing them to tear out  
2 of the concrete during natural building movement.

3 108. Without adequate funds to perform the Capital Repairs listed in the 2013  
4 Facility Assessment Report, Chase Field soon will not be suitable for its intended purpose, in  
5 "good repair," or up to MLB standards. It certainly will not be a "state-of-the-art" facility.

6 **VII. A potential buyer of Chase Field recognized that the facility is not in good repair  
7 and may become unfit for its intended purpose.**

8 109. On or about August 17, 2016, Stadium Real Estate Partners II ("Buyer") and  
9 Maricopa County executed a Letter of Intent ("LOI") under which the Buyer agreed, subject to  
10 certain conditions, to purchase Chase Field for a minimum of \$60 million and was granted a  
11 period of time in which to inspect Chase Field and perform other due diligence.

12 110. The Buyer was represented by Martin J. Greenberg of Milwaukee, Wisconsin,  
13 and locally by Nicholas J. Wood of the law firm Snell & Wilmer L.L.P. The Buyer also  
14 retained, among other professionals, the same structural engineering firm that had been retained  
15 by the District to perform the 2013 Facility Assessment Report.

16 111. After reviewing the 2013 Facility Assessment Report and performing an  
17 inspection of Chase Field, the Buyer determined that the costs of necessary repairs to the  
18 facility would be so great that constructing a new facility would be a more economically viable  
19 approach. Mr. Wood was quoted as follows by the Arizona Republic on October 28, 2016:

20 "For decades the Arizona taxpayer has funded billions of dollars  
21 for the construction and renovation of stadiums and arenas."  
22 wrote Nick Wood, a Valley attorney for the private investors,  
23 Stadium Real Estate Partners II LLC. "Today, my client,  
24 together with real estate developer Egbert Perry, Chairman of  
25 Fannie Mae and President of Integral Group LLC, has stepped up  
26 to relieve the taxpayer of that extraordinary expense and *seeks to  
27 not only purchase Chase Field, but to also construct a brand  
28 new, state-of-the-art, downtown baseball stadium for the  
Diamondbacks using all private money.*"

(Emphasis added.)

112. Ultimately, the Buyer apparently concluded that the economics of the deal did  
not make sense and, on November 21, 2016, sent the District a notice of termination of the  
LOI. The Buyer publicly stated that its reason for termination was the Diamondbacks' refusal

1 to meet in person with the Buyer's representatives, but in fact the Diamondbacks informed  
2 them that the Diamondbacks' owner, CEO, and other representatives were willing to meet in  
3 person with the Buyer's representatives after the Buyer provided certain fundamental  
4 information including, for example, the identity of the principals, the location of the proposed  
5 new facility, and how the buyer would finance the proposed construction of a new facility. The  
6 Buyer never provided any of the requested information.

7 **VIII. The District has failed to build sufficient reserves to fund Capital Repairs that the**  
8 **District has identified as necessary for the future maintenance of Chase Field.**

9 **A. The Diamondbacks have generated nearly all of the funds for capital**  
10 **reserves.**

11 113. To date, the Diamondbacks have paid over \$68 million in License Fees to the  
12 District for baseball-only use of the ballpark. In comparison, the District has generated a mere  
13 \$12 million in revenue from its booking of the ballpark for non-baseball events.

14 **B. The District is obligated to generate funds through booking Chase Field for**  
15 **non-baseball events.**

16 114. As set forth above, the District is generally required to set aside fifty percent  
17 from certain of its revenues (after payment of certain expenses) to build and replenish reserves  
18 for the funding of Capital Repairs. A critical source of such revenues is the District's booking  
19 of Chase Field for non-baseball events.

20 115. In its annual reports dating back to at least 2009, the District admits its  
21 obligation to generate sufficient revenues from its booking of Chase Field for non-baseball uses  
22 to fund Capital Repairs:

23 *Maricopa County Stadium District's primary revenue source for*  
24 *Stadium District operations and capital maintenance of Chase*  
25 *Field is the use of Chase Field. The Stadium District generates*  
26 *revenue through use agreements with the Arizona Diamondbacks*  
27 *and the Stadium District's Booking Manager, Select Artists'*  
28 *Associates/SMG. These agreements provide base levels of*  
*revenue plus additional revenues which increase/decrease with*  
*ticket prices or attendance.*

(Emphasis added.)

116. The District's annual reports for each of these years further state:

1 The Stadium District can handle multi-sized events such as  
2 meetings, trade shows, banquets and concerts drawing 40,000+  
3 attendees. The Stadium District has been used for such events as  
4 holiday parties by local corporations, galas by organizations  
5 hosting conferences at the Phoenix Convention Center and  
6 graduations hosted by local universities and colleges. *Revenue  
7 generated by these events is used to make capital repairs and  
8 improvements to the ballpark and for Stadium District  
9 operations.*

10 (Emphasis added.)

11 117. The District's annual reports for each of these years further state:

12 The construction of the ballpark was primarily funded by a ¼ of  
13 1 percent sales tax which ended in November 1997, five months  
14 prior to the opening of the ballpark. Since that time, all Stadium  
15 District operations have been funded through charges for use of  
16 the ballpark. It is anticipated that *all future capital repairs or  
17 improvements will be funded through charges for use of the  
18 ballpark.*

19 (Emphasis added.)

20 118. Although the District insisted assuming the responsibility of booking the  
21 ballpark during the significant portion of each year it is not used by the Diamondbacks for  
22 home baseball games, the District's failure to perform is causing the reserves for projected  
23 Capital Repairs to be hopelessly underfunded.

24 **C. The District is failing to generate sufficient funds through booking Chase  
25 Field for non-baseball events.**

26 119. As noted above, the District has delegated its responsibility to book the ballpark  
27 for non-baseball events ("District Events") by entering into an agreement with its Booking  
28 Manager, Select Artists' Associates/SMG.

1 The Booking Manager's past bookings for non-baseball events, along with the  
2 inadequate terms of the Booking Manager Agreement, have not produced adequate funds for  
3 the reserves.

4 121. Indeed, the District, through the Booking Manager, has not produced revenue  
5 even close to what would be considered normal for a venue with comparable opportunities to  
6 host non-baseball events.

1 122. While other MLB facilities maximize non-baseball revenues by booking  
2 concerts and other revenue generating events, the District's Booking Manager has only booked  
3 three stand-alone concerts in the ballpark in 18 years.

4 123. From 2011 to 2015, MLB teams that actively booked their own facilities  
5 generated net revenues totaling \$271 million. Those teams averaged \$5.5 million in net  
6 revenue from bookings in 2015. The New York Yankees are the highest with an average of \$9  
7 million per year over those five years. The Los Angeles Angels of Anaheim, which operate in  
8 a more comparable market and region, have averaged over \$6 million per year. The San Diego  
9 Padres, located in an even smaller market than metro Phoenix, have averaged over \$2.4 million  
10 per year. In contrast, the District has averaged less than \$650,000 per year.

11 124. Although the Booking Manager has previously arranged for and hosted college  
12 bowl games, it had lost all bowl games since 2006, until only recently hosting bowl games in  
13 January and December 2016. And, incredibly, the Booking Manager lost two of its long-  
14 standing, highest revenue-generating events, Supercross and Monster Trucks. To the best of  
15 the Diamondbacks' knowledge, there are no plans to replace these events.

16 125. Since fiscal 2006, the District has never booked more than nine events and has  
17 not had a combined total attendance of more than 190,783 in a fiscal year. According to the  
18 District's annual report for the fiscal year ended June 30, 2016, for example, the District  
19 booked only five events in fiscal 2016 with a combined total attendance of 133,508. The  
20 following chart, compiled from the District's annual reports, illustrates the District's booking  
21 efforts over the last ten years:

<b>Fiscal Year</b>	<b>Number of District Events</b>	<b>Attendance</b>
2007	7	128,119
2008	2	82,346
2009	3	108,303
2010	2	72,174
2011	5	98,305
2012	5	109,679
2013	9	190,783
2014	4	108,708
2015	5	132,481
2016	5	133,508

1           126. Such paltry numbers for District-booked events have led to paltry revenues,  
2 which in turn have led to paltry District contributions to the Facility Reserve Accounts.

3           127. Thus, the total amount held in the District's Chase Field Capital Projects  
4 Reserve Fund as of June 30, 2016, was \$8.1 million. This amount is grossly inadequate for the  
5 more than \$135 million of projected Capital Repairs identified in the District's 2013 Facility  
6 Assessment Report.

7           128. Worse, as a general trend, the amounts held in reserve are diminishing rather  
8 than growing. The amounts currently held in the District's Chase Field Capital Projects  
9 Reserve Fund are nearly \$2 million below their peak of just over \$10 million as of June 30,  
10 2010.

11           129. Because, according to § 8.1 of the Activities Agreement, revenues from District  
12 Events provide a direct source of funding for the Facility Reserve Accounts, the District's  
13 ongoing failure to responsibly meet its contractual obligation to book Chase Field for non-  
14 baseball events will inevitably result in these reserves being insufficient to fund Capital Repairs  
15 as they come due.

16           130. The Diamondbacks' continuing ability to contribute to the Arizona economy, to  
17 revitalize downtown Phoenix, and to fund local charities is therefore at risk.

18           131. In order to continue and build on its positive impact to the community, it is  
19 critical that the Diamondbacks obtain immediate relief from FUA § 11.2.1.2 so that they can  
20 pursue other options or partnerships.

21                                   **CAUSES OF ACTION**

22   **COUNT I**

23                                 **Declaratory Relief Due to Impracticability or Impossibility of Performance**

24           132. The Diamondbacks reassert and incorporate by reference all of the foregoing  
25 allegations in their entirety and further allege:

26           133. Under the Facility Use Agreement, the Diamondbacks are obligated, among  
27 other things, to play all of their regular season and postseason home games each year at Chase  
28

1 Field. Further, the Diamondbacks are prohibited from exploring any alternative location for  
2 playing their home games.

3 134. Under the Facility Management Agreement, an affiliate of the Diamondbacks,  
4 AZPB FM (the "Facility Manager"), is obligated, among other things, to perform (but not fund)  
5 Capital Repairs to Chase Field such that the ballpark remains safe, suitable for its intended  
6 uses, up to MLB standards, and in "good repair."

7 135. Under the Agreements, the sole source of funds for Capital Repairs to Chase  
8 Field is certain reserves that are funded, in large part, with a percentage set aside from the  
9 District's revenues.

10 136. A basic assumption upon which the Agreements were made was that such  
11 reserves, derived in significant part from bookings of Chase Field by the District for non-  
12 baseball events, would be sufficient to perform Capital Repairs as they come due. The  
13 Agreements provide no other source of funding and expressly state that the parties are not  
14 required to pay for Capital Repairs other than through the reserves.

15 137. The 2013 Facility Assessment Report commissioned by the District identifies  
16 \$185 million in repairs and maintenance that are necessary or will become necessary before the  
17 Agreements terminate on January 1, 2028. Of these, more than \$135 million are Capital  
18 Repairs as defined in the Agreements. Without such repairs, Chase Field will soon cease to be  
19 safe, suitable for its intended uses, in "good repair," and up to MLB standards, let alone "state-  
20 of-the-art." As of June 30, 2016, however, only \$8.1 million was available in the Facility  
21 Reserve Accounts for these Capital Repairs. Absent a dramatic and unprecedented increase in  
22 bookings by the District, there is no foreseeable increase in revenues that would cause the  
23 Facility Reserve Accounts to grow to an amount that would be adequate to pay for the Capital  
24 Repairs needed over the remaining term of the Agreements.

25 138. Without sufficient funds for the Capital Repairs necessary to maintain the  
26 ballpark in a condition that is safe, suitable for its intended uses, in "good repair," and up to  
27 MLB standards, and without an alternative means within the existing Agreements to pay for the  
28



1 necessary Capital Repairs, the Facility Manager's performance of its duty to make such Capital  
2 Repairs is impracticable or impossible.

3 139. Likewise, without sufficient funds for the Capital Repairs necessary to maintain  
4 the ballpark in a condition that is safe, suitable for its intended uses, in "good repair," and up to  
5 MLB standards, and without an alternative means within the existing Agreements to pay for the  
6 necessary Capital Repairs, the Diamondbacks' performance of their duty to play their home  
7 games at Chase Field, and to refrain from exploring any alternative location for their home  
8 games, is impracticable or impossible.

9 140. The District owns Chase Field. It cannot be inferred from either the language of  
10 the Agreements or the circumstances that the risk of losses due to the lack of reserves for  
11 Capital Repairs, including a ballpark that is not safe, suitable for its intended uses, up to MLB  
12 standards, or in "good repair," should properly be placed on the Diamondbacks.

13 141. The Diamondbacks therefore seek a judicial determination that they are relieved  
14 of their covenants and obligations under the Agreements, including § 11.2.1.2 of the Facility  
15 Use Agreement prohibiting the Diamondbacks from exploring alternative options or  
16 partnerships.

17 **COUNT II**  
18 **Declaratory Relief Due to Frustration of Purpose**

19 142. The Diamondbacks reassert and incorporate by reference all of the foregoing  
20 allegations in their entirety and further allege:

21 143. The central purpose of, and intent of the parties to, the interrelated Agreements  
22 was and is to provide the Diamondbacks' players and fans a baseball facility – Chase Field –  
23 that is safe, suitable for its intended uses, in "good repair," up to MLB standards, and "state-of-  
24 the-art."

25 144. Chase Field can be maintained in such condition only through the expenditure of  
26 funds sufficient to perform Capital Repairs as they come due.

27 145. Under the Agreements, the sole source of funds for Capital Repairs to Chase  
28 Field is certain reserves that are funded, in large part, with a percentage set aside from the  
District's revenues.

1           146. A basic assumption upon which the Agreements were made was that such  
2 reserves, derived in significant part from bookings of Chase Field by the District for non-  
3 baseball events, would be sufficient to perform Capital Repairs as they come due. The  
4 Agreements provide no other source of funding and expressly state that the parties are not  
5 required to pay for Capital Repairs other than through the reserves.

6           147. The 2013 Facility Assessment Report commissioned by the District identifies  
7 \$185 million in repairs and maintenance that are necessary or will become necessary before the  
8 Agreements terminate on January 1, 2028. Of these, more than \$135 million are Capital  
9 Repairs as defined in the Agreements. Without such repairs, Chase Field will soon cease to be  
10 safe, suitable for its intended uses, in "good repair," and up to MLB standards, let alone "state-  
11 of-the-art." As of June 30, 2016, however, only \$8.1 million was available in the Facility  
12 Reserve Accounts for these Capital Repairs. Absent a dramatic and unprecedented increase in  
13 bookings by the District, there is no foreseeable increase in revenues that would cause the  
14 Facility Reserve Accounts to grow to an amount that would be adequate to pay for the Capital  
15 Repairs needed over the remaining term of the Agreements.

16           148. Without sufficient funds for the Capital Repairs necessary to maintain the  
17 ballpark in a condition that is safe, suitable for its intended uses, in "good repair," and up to  
18 MLB standards – let alone "state-of-the-art" – and without an alternative means within the  
19 existing Agreements to pay for the necessary Capital Repairs, the central purpose of the  
20 Agreements will have been frustrated.

21           149. This frustration of purpose is substantial; it is so severe that it should not be  
22 regarded as within the risks assumed under the Agreements.

23           150. The District owns Chase Field. It cannot be inferred from either the language of  
24 the Agreements or the circumstances that the risk of losses due to the lack of reserves for  
25 Capital Repairs, including a ballpark that is not safe, suitable for its intended uses, in "good  
26 repair," or up to MLB standards, should properly be placed on the Diamondbacks.

27           151. The Diamondbacks therefore seek a judicial determination that they are relieved  
28 of their covenants and obligations under the Agreements, including § 11.2.1.2 of the Facility

1 Use Agreement prohibiting the Diamondbacks from exploring alternative options or  
2 partnerships.

3 **COUNT III**  
4 **Declaratory Relief for Anticipatory Breach or Repudiation of Contract**

5 152. The Diamondbacks reassert and incorporate by reference all of the foregoing  
6 allegations in their entirety and further allege:

7 153. Under the Agreements, the sole source of funds for Capital Repairs to Chase  
8 Field is certain reserves that are funded, in large part, with a percentage set aside from the  
9 District's revenues.

10 154. A critical source of such revenues is the District's booking of Chase Field for  
11 non-baseball events. Indeed, the District insisted on having the exclusive contractual right, and  
12 assumed the contractual obligation, to book Chase Field for such purposes.

13 155. The District has failed to book sufficient events to fund reserves for the Capital  
14 Repairs that the District has identified as necessary during the remaining term of the  
15 Agreements. The funding of such repairs and improvements to provide players and fans a  
16 baseball facility that is safe, suitable for its intended uses, in "good repair," up to MLB  
17 standards, and "state-of-the-art" was and is a central purpose of the Agreements.

18 156. The District is in anticipatory breach and has repudiated its duties under the  
19 Agreements by refusing to take measures to increase bookings to meet any reasonable standard,  
20 or the industry standard, and refusing to meet its admitted responsibility to fund sufficient  
21 reserves for anticipated Capital Repairs. The District has positively and unequivocally  
22 manifested that it cannot and will not render its required performance when due.

23 157. The Diamondbacks have performed all of their obligations under the  
24 Agreements and are ready, willing, and able to continue performing such obligations subject to  
25 the District's performance of its duties under the Agreements.

26 158. The Diamondbacks therefore seek a judicial determination that they are relieved  
27 of their covenants and obligations under the Agreements, including § 11.2.1.2 of the Facility  
28 Use Agreement prohibiting the Diamondbacks from exploring alternative options or  
partnerships.

1 **COUNT IV**  
2 **Declaratory Relief for Anticipatory Breach or Repudiation of Explicit and Implicit**  
3 **Covenants of Good Faith and Fair Dealing**

4 159. The Diamondbacks reassert and incorporate by reference all of the foregoing  
5 allegations in their entirety and further allege:

6 160. "The law implies a covenant of good faith and fair dealing in every contract.  
7 The duty arises by virtue of a contractual relationship. The essence of that duty is that neither  
8 party will act to impair the right of the other to receive the benefits which flow from their  
9 agreement or contractual relationship." *Rawlings v. Apodaca*, 151 Ariz. 149, 153 (1986)  
(citations omitted).

10 161. In addition, as set forth in greater detail above, the Agreements explicitly require  
11 each party to cooperate and "act in good faith" to fulfill the purposes of the Agreements. (*See,*  
12 *e.g.*, FUA § 20.1.2.1.)

13 162. The central purpose of, and intent of the parties to, the Agreements was and is to  
14 provide players and fans a baseball facility that is safe, suitable for its intended uses, in "good  
15 repair," up to MLB standards, and "state-of-the-art."

16 163. Under the Agreements, the sole source of funds for Capital Repairs to Chase  
17 Field is certain reserves that are funded, in large part, with a percentage set aside from the  
18 District's revenues.

19 164. A critical source of such revenues is the District's booking of Chase Field for  
20 non-baseball events. Indeed, the District assumed the contractual obligation to book Chase  
21 Field for such purposes.

22 165. The long-term success of Chase Field as a venue for Diamondbacks baseball,  
23 and the fulfillment of the purposes of the Agreements, is therefore dependent on the District's  
24 good faith efforts to maximize revenues from non-baseball bookings.

25 166. The 2013 Facility Assessment Report commissioned by the District identifies  
26 \$185 million in repairs and maintenance that are necessary or will become necessary before the  
27 Agreements terminate on January 1, 2028. Of these, more than \$135 million are Capital  
28 Repairs as defined in the Agreements. Without such repairs, Chase Field will soon cease to be

1 safe, suitable for its intended uses, in "good repair," and up to MLB standards, let alone "state-  
2 of-the-art." As of June 30, 2016, however, only \$8.1 million was available in the Facility  
3 Reserve Accounts for these Capital Repairs. Absent a dramatic and unprecedented increase in  
4 bookings by the District, there is no foreseeable increase in revenues that would cause the  
5 Facility Reserve Accounts to grow to an amount that would be adequate to pay for the Capital  
6 Repairs needed over the remaining term of the Agreements.

7 167. The District is in anticipatory breach and has repudiated its duties of good faith  
8 and fair dealing by refusing to put forth a good faith effort to increase future bookings or  
9 otherwise generate adequate revenues to fully fund the reserves for future Capital Repairs. The  
10 District has positively and unequivocally manifested that it cannot and will not render its  
11 required performance when due.

12 168. The District also is in anticipatory breach and has repudiated its duties of good  
13 faith and fair dealing by admitting to the shortage of reserves to fund future Capital Repairs but  
14 failing to act in good faith to find any other satisfactory resolution.

15 169. The District's breach of its duties of good faith and fair dealing will deprive the  
16 Diamondbacks of the benefits which flow from the Agreements, including the ability to play  
17 home games in a ballpark that is safe, suitable for its intended uses, in "good repair," up to  
18 MLB standards, and state-of-the-art.

19 170. The Diamondbacks have performed all of its obligations under the Agreements  
20 and are ready, willing, and able to continue performing such obligations subject to the District's  
21 performance of its duties under the Agreements.

22 171. The Diamondbacks therefore seek a judicial determination that they are relieved  
23 of their covenants and obligations under the Agreements, including § 11.2.1.2 of the Facility  
24 Use Agreement prohibiting the Diamondbacks from exploring alternative options or  
25 partnerships.

26 **COUNT V**  
27 **Declaratory Relief Due to Unenforceability of the Agreements**

28 172. The Diamondbacks reassert and incorporate by reference all of the foregoing  
allegations in their entirety and further allege:

1           173. The central purpose of, and intent of the parties to, the Agreements was and is to  
2 provide players and fans a baseball facility that is safe, suitable for its intended uses, in “good  
3 repair,” up to MLB standards, and “state-of-the-art.”

4           174. Under the Agreements, the sole source of funds for Capital Repairs to Chase  
5 Field is certain reserves that are funded, in large part, with a percentage set aside from the  
6 District’s revenues.

7           175. The 2013 Facility Assessment Report commissioned by the District identifies  
8 \$185 million in repairs and maintenance that are necessary or will become necessary before the  
9 Agreements terminate on January 1, 2028. Of these, more than \$135 million are Capital  
10 Repairs as defined in the Agreements. Without such repairs, Chase Field will soon cease to be  
11 safe, suitable for its intended uses, in “good repair,” and up to MLB standards, let alone “state-  
12 of-the-art.” As of June 30, 2016, however, only \$8.1 million was available in the Facility  
13 Reserve Accounts for these Capital Repairs. Absent a dramatic and unprecedented increase in  
14 bookings by the District, there is no foreseeable increase in revenues that would cause the  
15 Facility Reserve Accounts to grow to an amount that would be adequate to pay for the Capital  
16 Repairs needed over the remaining term of the Agreements.

17           176. Neither the Diamondbacks nor the District anticipated or foresaw such a  
18 shortage at the time they entered into the Agreements.

19           177. The Agreements thus leave unaddressed the critical question of how to fund  
20 Capital Repairs in the present circumstances where the funds in the Facility Reserve Accounts  
21 are grossly inadequate to fulfill the central purpose of the Agreements, namely, to keep Chase  
22 Field safe, suitable for its intended uses, in “good repair,” up to MLB standards, and “state-of-  
23 the-art.”

24           178. In the absence of such critical terms, the Agreements collectively are an  
25 unenforceable “agreement to agree” on how to provide for Capital Repairs at some future date  
26 when they can no longer be put off. The central purpose of the Agreements cannot be fulfilled  
27 without some agreement on such terms, and such terms cannot be supplied by the Court.  
28

1           179. In order to form an enforceable contract, the terms of the contract must be  
2 “reasonably certain.” RESTATEMENT (SECOND) OF CONTRACTS § 33(1). “The terms of a  
3 contract are reasonably certain if they provide a basis for determining the existence of a breach  
4 and for giving an appropriate remedy.” *Id.* § 33(2).

5           180. The terms of the Agreements are not “reasonably certain” in the situation where  
6 the Facility Reserve Accounts do not contain sufficient funds to pay for necessary Capital  
7 Repairs.

8           181. The Agreements do not specify the parties’ duties when there is such a funding  
9 shortfall. There is no agreement on who will pay for Capital Repairs, where additional funds  
10 may be obtained, whether the needed Capital Repairs will simply not be done, or whether the  
11 Diamondbacks will be required to play in a stadium that is subpar, unsafe, in disrepair, in  
12 violation of the building code, or in violation of MLB standards. Because the Agreements do  
13 not specify the parties’ duties in this situation, they do not provide the basis for determining the  
14 existence of a breach.

15           182. Further, the Agreements specifically state that all Capital Repairs must be paid  
16 out of the Facility Reserve Accounts and that neither party can be required to pay for needed  
17 Capital Repairs. As such, the Agreements do not provide a basis for giving an appropriate  
18 remedy for a funding shortfall.

19           183. The Diamondbacks therefore seek a judicial determination that the Agreements  
20 are unenforceable, in whole or in part, and that the Diamondbacks are relieved of their  
21 covenants and obligations under the Agreements, including § 11.2.1.2 of the Facility Use  
22 Agreement prohibiting the Diamondbacks from exploring alternative options or partnerships.

23   **JURY DEMAND**

24           Plaintiffs demand a trial by jury on all claims so triable.

25   **PRAYER FOR RELIEF**

26           WHEREFORE, Plaintiffs pray for declaratory relief against Defendants as follows:

27           A.     Declaring that Plaintiffs are relieved of their obligations under § 11.2.1.2 of the  
28 Facility Use Agreement;

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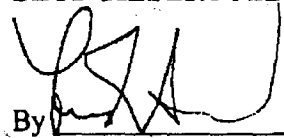
B. Declaring that, upon quitting and surrendering possession of Chase Field, Plaintiffs are not thereafter liable to pay license fees or any other payments to Defendants, or any of them, and are relieved of all other covenants and obligations under the Agreements;

C. Awarding Plaintiffs their attorneys' fees and costs and expert witness fees and costs, *see* FUA § 21.3.4; A.R.S. §§ 12-341, -341.01, -349; and

D. For such other and further relief as the Court deems just and proper.

DATED this 3rd day of January 2017.

**BEUS GILBERT PLLC**



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