OCT 10 2018 CHRIS DEROSE, CLERK AS. ROMERO **DEPUTY CLERK**

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11 Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF MARICOPA COUNTY

IN AND FOR THE STATE OF ARIZONA

LYNNE WEAVER; and MARY SLIGER;

Case No.

CV 2018-012951

Plaintiffs,

COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF

PHOENIX, municipal corporation;

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Defendant.

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Plaintiffs Lynne Weaver and Mary Sliger, by and through counsel undersigned, hereby

file their Complaint against the City of Phoenix ("City") and hereby alleges as follows:

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GENERAL ALLEGATIONS/INTRODUCTION

- This case challenges the constitutionality of the City's de facto gift of at least 1. \$618,000.00 of taxpayer funds to a private entity, Trellis, in violation of the Arizona Constitution article IX, section 7.
- 2. The City has agreed to sell ten City-owned lots to Trellis (which purports be registered as a 501(c)(3) non-profit organization) for \$5,000.00 per lot, or \$50,000.00 in total (the "Agreement").
- 3. Specifically, the ten City-owned lots which have been agreed to be sold to Trellis 9 for \$50,000.00 include Lot numbers 116-18-012; Lot 116-24-076; Lot 116-32-119; Lot 116-27-10 052; Lot 116-27-051; Lot 116-27-050; Lot 116-27-097; Lot 116-19-051; Lot 116-26-057; and Lot 116-26-056.
- 4. Prior to the City's Agreement with Trellis, the City obtained an appraisal for these 13 ten City-owned lots which calculates their aggregate value as being \$668,000.00 (\$618,000.00 14 more than the sales price to Trellis), making the sales price only around seven percent (7%) of 15 the appraised value.
 - 5. Lot 116-18-012 was originally purchased by the City on August 30, 1995 for \$61,891.26. They now intend to sell this lot for \$5,000.00.
 - 6. Lot 116-24-076 was originally purchased by the City on September 24, 2010 for \$28,896.51. They now intend to sell this lot for \$5,000.00.
 - Lot 116-32-119 was originally purchased by the City on February 14, 2005 for \$47,421.50. They now intend to sell this lot for \$5,000.00.
 - 8. Lot 116-27-052 was originally purchased by the City on October 19, 2007 for \$51,007.00. They now intend to sell this lot for \$5,000.00.
- Lot 116-27-051 was originally purchased by the City on October 19, 2007 for 9. 25|| \$149,571.77. They now intend to sell this lot for \$5,000.00.

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- 10. Lot 116-27-050 was originally purchased by the City on June 25, 2009 for \$46,007.00. They now intend to sell this lot for \$5,000.00.
- Lot 116-27-097 was originally purchased by the City on October 15, 2007 for 11. \$292,731.80. They now intend to sell this lot for \$5,000.00.
- 12. Lot 116-19-051 was originally purchased by the City on July 20, 2007 for \$99,222.00. They now intend to sell this lot for \$5,000.00.
- Lot 116-26-057 and Lot 116-26-056 were originally purchased by the City on 13. March 5, 2009 for a total of \$151,333.00. They now intend to sell this lot for \$5,000.00 apiece.
- 14. In total, the City spent \$928,081.84 in purchasing the ten City-owned lots they 10 have agreed to sell to Trellis for \$50,000.00 total, i.e. only around five percent (5%) of their original purchase value.
- 15. That is, not including carrying costs or other expenses, the City will lose 13 \$878,081.84 under the Agreement with Trellis.
- 16. The ten (10) City owned lots were part of a Request for Proposal ("RFP") which originally included thirteen (13) vacant, City-owned lots that were part of the Garfield 16 Neighborhood Initiative Area ("NIA").
- 17. On May 16, 2018, the City Council authorized the City Manager to enter into a 18 Sale and Redevelopment Agreement for the other three vacant parcels in the Garfield NIA.
 - 18. The City authorized the sale of the other three vacant parcels in the Garfield NIA for \$390,000.16.
- 19. The City claims that in return for the \$878,081.84 loss and at least \$618,000.00 22 gift to Trellis, the City will ultimately receive tax benefits from "low income" buyers purchasing 23 from Trellis single-family homes in a design style similar to the existing Garfield Neighborhood on sales terms that "discourage[] or prevent resale".

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- 20. For seven of the properties, the City's definition of "low-income" means any homebuyer who is at or below 120% of area median income, which is \$82,900—hardly "low income," by any objective standard (and in fact, by definition upper-middle class income). For three of the properties, it means at or below 80% of area median income, or \$55,300, which is again a relatively generous standard.
- The Agreement constitutes a gift of at least \$618,000.00 from the City of Phoenix 21. to Trellis.

PARTIES

- 22. Plaintiff Lynee Weaver is a citizen of the United States and resident of the City of Phoenix in the state of Arizona. Plaintiff Mary Sliger is a citizen of the United States and resident of the City of Phoenix in the state of Arizona. Plaintiffs pay property tax and sales tax 12|| in the City of Phoenix.
- 23. As Phoenix taxpayers, Plaintiffs will bear a share of the burden for replenishing 14 the public coffers of the City for revenues lost from unlawful expenditures made by the City is 15 making to and for the benefit of Trellis. Because their taxes finance the City's subsidies to 16 Trellis, Plaintiffs are directly harmed by the City's illegal expenditure of public money.
 - 24. Defendant City of Phoenix is a political subdivision of the State of Arizona.

JURISDICTION AND VENUE

25. This Court has jurisdiction pursuant to Ariz.Rev.Stat. §§ 12-1831 et seq., 20 Ariz. Const. Art. VI § 14 and Ariz. Rev. Stat. §§ 12-123, 12-1801, and 12-1831. This Court is an appropriate venue as all parties are residents of Maricopa County and the actions complained of occurred in Maricopa County. Ariz.Rev.Stat. § 12-401.

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(DECLARATORY RELIEF - ARIZ.REV.STAT. § 12-1831)

- Plaintiffs incorporate by this reference all allegations of this Complaint as if fully 26. set forth herein.
- A dispute exists in this case regarding whether the Agreement is a violation of 27. Article, IX, section 7 of the Arizona Constitution (the "Gift Clause").
- The Gift Clause makes it illegal for the City of Phoenix to "make any donation or 28. grant, by subsidy or otherwise, to any individual, association, or corporation."
- An expenditure of taxpayer money violates the Gift Clause unless (1) it serves a 29. public purpose and (2) the consideration taxpayers receive in exchange is not "grossly disproportionate." See Turken v. Gordon, 223 Ariz. 342, 347 – 48 (2010).
- The City's Agreement to sell \$668,000.00 of City-owned land for \$50,000.00 to 30. 12 Trellis, a private organization, does not serve a public purpose because the primary beneficiaries of the transaction are private parties, including the developer, Trellis.
- The City also receives insufficient consideration for this transaction by selling 31. City-owned real property originally purchased for \$928,081.84 and appraised at \$668,000 for 16 \$50,000.
- The actual consideration received by the City/taxpayers—approximately seven 32. 18 percent (7%) of the appraised value—is also "grossly disproportionate" for Gift Clause 19 purposes. And the objective fair market value of the City-owned land greatly exceeds its sale 20 price.
 - In exchange for the sale of the City-owned land for \$50,000, the City does not 33. receive any additional direct benefits under the City's Agreement.
- The City's Agreement also violates the Gift Clause because the City exercises 34. 24 insufficient ownership and control over the development of the parcels.

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- The City's alleged expectation of collecting more taxes from third party buyers 35. after Trellis sells homes to them, or even merely because Trellis later sells homes to middle class families is at best an indirect benefit which cannot be objectively valued and does not qualify as consideration for purposes of the Gift Clause.
- Because the Agreement does not serve a public purpose, and/or the consideration 36. is grossly disproportionate, the City's sale of the ten City-owned lots for at least \$618,000.00 less than their fair market value is an unlawful gift of public funds in violation of the Arizona Constitution's Gift Clause.
- Because Plaintiffs will be required to pay a share of the cost of replenishing the 37. public treasury for the illegal expenditure of public funds for the benefit of Trellis, Plaintiffs are directly injured by the illegal and unconstitutional Agreement.
- Accordingly, Plaintiffs are entitled to declaratory and injunctive relief preventing 38. 13 the sale under, or execution of, the Agreement.

(INJUNCTIVE RELIEF – ARIZ.REV.STAT. § 12-1801)

- Plaintiff incorporates by this reference all allegations of this Complaint as if fully 39. set forth herein.
- Pursuant to Ariz.Rev.Stat. § 12-1801 et seq. and Ariz.R.Civ.P. 65, Plaintiff seeks a 40. permanent injunction as prayed for herein.
- Plaintiff seeks permanent injunctive relief to enjoin the City from selling under or 41. executing the Agreement, or entering into future agreements which would dispose of City owned assets for well-below their appraised value.

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REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- A. For a declaration and determination that the Agreement violates Article, IX, section 7 of the Arizona Constitution;
- B. For an order enjoining the City from selling under or executing the Agreement.
- C. For an order enjoining the City from entering into future agreements that would dispose of City owned assets for well-below their appraised value.
- D. For costs and expenses pursuant to A.R.S. § 12-341, and reasonable attorneys' fees incurred pursuant to the private attorney general doctrine;
- E. For such other relief as is just and proper.

RESPECTFULLY SUBMITTED this / day of October, 2018.

WILENCHIK & BARTNESS, P.C.

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ORIGINAL of the forgoing filed this Day of October, 2018, with:

Clerk of the Superior Court Maricopa County Superior Court 101/201 West Jefferson Street Phoenix, Arixona 85003

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