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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**

v.

**CITY OF PHOENIX, a municipal
corporation;**

Defendant.

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:

...

...

1 10. Lot 116-27-050 was originally purchased by the City on June 25, 2009 for
2 \$46,007.00. They now intend to sell this lot for \$5,000.00.

3 11. Lot 116-27-097 was originally purchased by the City on October 15, 2007 for
4 \$292,731.80. They now intend to sell this lot for \$5,000.00.

5 12. Lot 116-19-051 was originally purchased by the City on July 20, 2007 for
6 \$99,222.00. They now intend to sell this lot for \$5,000.00.

7 13. Lot 116-26-057 and Lot 116-26-056 were originally purchased by the City on
8 March 5, 2009 for a total of \$151,333.00. They now intend to sell this lot for \$5,000.00 apiece.

9 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
11 original purchase value.

12 15. That is, not including carrying costs or other expenses, the City will lose
13 \$878,081.84 under the Agreement with Trellis.

14 16. The ten (10) City owned lots were part of a Request for Proposal (“RFP”) which
15 originally included thirteen (13) vacant, City-owned lots that were part of the Garfield
16 Neighborhood Initiative Area (“NIA”).

17 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.

19 18. The City authorized the sale of the other three vacant parcels in the Garfield NIA
20 for \$390,000.16.

21 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
24 on sales terms that “discourage[] or prevent resale”.

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

1
2 26. Plaintiffs incorporate by this reference all allegations of this Complaint as if fully
3 set forth herein.

4 27. A dispute exists in this case regarding whether the Agreement is a violation of
5 Article, IX, section 7 of the Arizona Constitution (the “Gift Clause”).

6 28. The Gift Clause makes it illegal for the City of Phoenix to “make any donation or
7 grant, by subsidy or otherwise, to any individual, association, or corporation.”

8 29. An expenditure of taxpayer money violates the Gift Clause unless (1) it serves a
9 public purpose and (2) the consideration taxpayers receive in exchange is not “grossly
10 disproportionate.” *See Turken v. Gordon*, 223 Ariz. 342, 347 – 48 (2010).

11 30. The City’s Agreement to sell \$668,000.00 of City-owned land for \$50,000.00 to
12 Trellis, a private organization, does not serve a public purpose because the primary beneficiaries
13 of the transaction are private parties, including the developer, Trellis.

14 31. The City also receives insufficient consideration for this transaction by selling
15 City-owned real property originally purchased for \$928,081.84 and appraised at \$668,000 for
16 \$50,000.

17 32. The actual consideration received by the City/taxpayers—approximately seven
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.

21 33. In exchange for the sale of the City-owned land for \$50,000, the City does not
22 receive any additional direct benefits under the City’s Agreement.

23 34. The City’s Agreement also violates the Gift Clause because the City exercises
24 insufficient ownership and control over the development of the parcels.

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1 35. The City's alleged expectation of collecting more taxes from third party buyers
2 after Trellis sells homes to them, or even merely because Trellis later sells homes to middle
3 class families is at best an indirect benefit which cannot be objectively valued and does not
4 qualify as consideration for purposes of the Gift Clause.

5 36. Because the Agreement does not serve a public purpose, and/or the consideration
6 is grossly disproportionate, the City's sale of the ten City-owned lots for at least \$618,000.00
7 less than their fair market value is an unlawful gift of public funds in violation of the Arizona
8 Constitution's Gift Clause.

9 37. Because Plaintiffs will be required to pay a share of the cost of replenishing the
10 public treasury for the illegal expenditure of public funds for the benefit of Trellis, Plaintiffs are
11 directly injured by the illegal and unconstitutional Agreement.

12 38. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief preventing
13 the sale under, or execution of, the Agreement.

14 **COUNT TWO**
15 **(INJUNCTIVE RELIEF – ARIZ.REV.STAT. § 12-1801)**

16 39. Plaintiff incorporates by this reference all allegations of this Complaint as if fully
17 set forth herein.

18 40. Pursuant to Ariz.Rev.Stat. § 12-1801 *et seq.* and Ariz.R.Civ.P. 65, Plaintiff seeks a
19 permanent injunction as prayed for herein.

20 41. Plaintiff seeks permanent injunctive relief to enjoin the City from selling under or
21 executing the Agreement, or entering into future agreements which would dispose of City
22 owned assets for well-below their appraised value.

23

24 ...

25 ...

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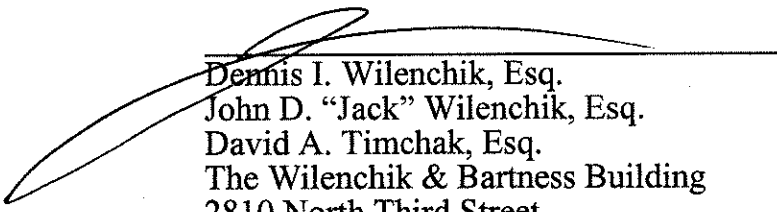
1 **REQUEST FOR RELIEF**

2 **WHEREFORE**, Plaintiffs pray for judgment against Defendant as follows:

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

11 **RESPECTFULLY SUBMITTED** this 10th day of October, 2018.

12 **WILENCHIK & BARTNESS, P.C.**

13 
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Attorneys for Plaintiff

21
22 **ORIGINAL** of the forgoing filed
this 10th day of October, 2018, with:

23 Clerk of the Superior Court
 24 Maricopa County Superior Court
 101/201 West Jefferson Street
 25 Phoenix, Arizona 85003

26 By 