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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 BRAMLEY PAULIN; AUSTIN SHEA
14 [ARIZONA] – 7TH STREET AND VAN
15 BUREN LLC; AND CULVER PARK –
16 1129 NORTH FIRST STREET, LLC; MAT
17 ENGLEHORN; HOPELESSLY URBAN,
18 LLC,

19 Plaintiffs,

20 vs.

21 CITY OF PHOENIX, a municipal
22 corporation of the State of Arizona; JEFF
23 BARTON, in his official capacity as City
24 Manager of the City of Phoenix,

25 Defendants.

CASE NO.

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

26 **INTRODUCTION**

27 1. This lawsuit challenges the constitutionality of a \$7.3 million gift to a
28 private real estate developer to construct and operate a high-rise residential building that
impairs the public fisc and grants special privileges to private interests in violation of
Arizona Constitution article IX, sections 1 (Gift Clause) and 2 (Conveyance to Evade
Taxation Clause).

2. In the heart of downtown Phoenix, in one of the state's most desirable real
estate markets, the City of Phoenix has agreed to an elaborate tax scheme with the
Hubbard Street Group ("Developer") which subsidizes the Developer to the tune of

1 taxes to the City of Phoenix. Plaintiff Mat Englehorn pays *ad valorem* property taxes to
2 the City of Phoenix.

3 7. As City of Phoenix taxpayers, Plaintiffs are responsible for paying property,
4 sales, and other taxes. Plaintiffs are also liable for replenishing the public coffers for
5 unlawful government expenditures, gifts, and loans.

6 8. Plaintiff taxpayers have sustained or will sustain pecuniary loss and will
7 bear a share of the burden for replenishing the public coffers of the City and State for
8 revenues lost from the unlawful expenditures, gifts, and loans made by the City to or for
9 the benefit of the Developer.

10 9. Property within the City's Central Business District that do not have GPLET
11 tax abatements, including Plaintiffs' property, are subject to a higher tax levy to offset
12 favorable tax treatment provided by the City with GPLET abatements.

13 10. Defendant City of Phoenix ("City") is a political subdivision of the State of
14 Arizona.

15 11. Jurisdiction is proper pursuant to Arizona Constitution art. VI, § 14, and
16 A.R.S. §§ 12-123, 12-1831, and 12-1801.

17 12. Venue is proper pursuant to A.R.S. § 12-401.

18 **FACTS COMMON TO ALL CLAIMS**

19 **The Development Agreement**

20 16. In 2017, the City of Phoenix published a "2017-2018 Downtown
21 Development Request for Proposals" ("GPLET RFP") that allowed private real estate
22 developers to submit development proposals for which the City can provide favorable tax
23 treatment under the GPLET. Exhibit 1 is an accurate copy of the GPLET RFP.

24 17. On December 27, 2019, Developer submitted a development proposal
25 ("Hubbard RFP Response") to the City for a high-rise, 26-story multi-family residential
26 development located on the southeast corner of Sixth and Garfield Streets in downtown
27 Phoenix ("Hubbard Project"). Exhibit 2 is an accurate copy of the Hubbard RFP
28 Response.

1 18. On October 7, 2020, the Phoenix City Council approved City Ordinance S-
2 46966, which accepted the Hubbard RFP Response and authorized the City Manager, or
3 his designee, to enter a development, lease, and other agreements with Developer for the
4 Hubbard Project. Exhibit 3 is an accurate copy of City Ordinance S-46966.

5 19. On May 14, 2021, pursuant to Ordinance S-26966, the City and the
6 Developer entered into a Disposition and Development Agreement pertaining to the
7 Hubbard Project (“Development Agreement”). That agreement was recorded on May 17,
8 2021. Exhibit 4 is an accurate copy of the Development Agreement.

9 20. The Hubbard Project is planned on an 18,000 square foot piece of vacant
10 land at the southeast corner of Sixth and Garfield streets in the Central Business District in
11 Downtown Phoenix.

12 21. The site of the Hubbard Project is currently owned by the Developer and is
13 located at 813, 817, and 821 North Sixth St., Phoenix AZ (“Hubbard Project Site”). Ex.
14 4at 2 § 103.

15 22. The Developer currently pays property taxes on the Hubbard Project Site.

16 23. On information and belief, the Developer currently pays *ad valorem*
17 property taxes on the Hubbard Project Site in an amount of approximately \$9,429.04.

18 24. Pursuant to the Development Agreement, the Developer plans to construct a
19 26-story high-rise at a cost of \$86,900,000, which will include 6,600 square feet of
20 commercial space, 201 structured parking spaces, and 309 residential apartments. *Id.*

21 25. Upon completion, the Development Agreement provides that the Developer
22 will convey title to the Hubbard Project to the City, thereby temporarily converting it to
23 “government property.” *Id.*

24 26. The Development Agreement further provides that City will lease the
25 Hubbard Project back to the Developer for eight years, thereby completely abating the
26 Developer’s taxes for the duration of the 8-year lease (“GPLET Lease”). *Id.* at §§ 103,
27 202.1, 202.6.

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1 *valorem* property tax on the completed Hubbard Project during the 8-year GPLET Lease.
2 *Id.*

3 36. The Pollack Report estimates that the total value that the Developer receives
4 because of the GPLET abatement of *ad valorem* property taxes on the Hubbard Project
5 during the GPLET Lease is approximately \$6,608,800. *Id.*

6 37. On information and belief, the City concurs with the Pollack Report's
7 estimates that the total value that the Developer receives because of the GPLET abatement
8 of *ad valorem* property taxes on the Hubbard Project during the GPLET Lease is
9 approximately \$6,608,800. *Id.*

10 38. On information and belief, the total value that the Developer receives
11 because of the GPLET abatement of *ad valorem* property taxes on the Hubbard Project
12 during the GPLET Lease is approximately \$7,300,000.

13 **Subsidy**

14 39. As a result of the GPLET Lease, the Developer will not owe, and the City
15 will not collect *ad valorem* property taxes for the Hubbard Project Site, and the Developer
16 will pay *no* property taxes and *no* GPLET taxes on the Hubbard Project during the lease
17 period.

18 40. Were it not for the GPLET tax treatment described herein, multiple taxing
19 jurisdictions would receive portions of the *ad valorem* property tax payments from the
20 Hubbard Project. These include the City itself as well as Maricopa County, Maricopa
21 County Community College District, Phoenix Elementary School District, Phoenix Union
22 School District, Central Arizona Project, Maricopa Special Healthcare District, Fire
23 District Assistance Tax, and special taxing districts for library and flood control.

24 41. The City possesses the exclusive statutory authority to abate the entire *ad*
25 *valorem* property tax burden for the Hubbard Project during the 8-year GPLET Lease.
26 A.R.S. § 42-6209.

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1 42. As a result of the GPLET Lease, several taxing jurisdictions will not receive
2 tax revenue they otherwise would have received if the City did not provide the benefits to
3 the Developer that are described herein.

4 43. Under the GPLET Lease, the Developer makes annual rent payments to the
5 City in the following amounts: \$25,000 for each of years one and two, \$50,000 in each of
6 years 3 and 4, \$75,000 for year five, and \$100,000 for each of years 6, 7, and 8. Ex. 4,
7 Ex. C at 6 § 3.1.

8 44. The rent payments described in Section 3.1 of the GPLET Lease are the
9 only direct payments the Developer makes to the City under the Development Agreement
10 and the GPLET Lease.

11 45. Under the Development Agreement, the Developer will make annual
12 donations of \$2,000 to each of the Phoenix Elementary School District and the Phoenix
13 Union High School District for each year of the 8-year lease. Ex. 4 at 22 § 309.

14 46. The payments to the Phoenix Elementary School District and Phoenix
15 Union High School District go to those school districts and not to the City.

16 47. On information and belief, the payments to the Phoenix Elementary School
17 District and Phoenix Union High School District are intended to “compensate” the school
18 districts for tax revenue they would otherwise receive had the City not provided to the
19 Developer the GPLET tax benefits described herein.

20 48. Under the Development Agreement, the Developer agrees to make 10% of
21 the Hubbard Project residential units available for “Workforce Housing” during the 8-year
22 GPLET Lease. *Id.* at 23 § 311.

23 49. The Developer does not have to provide any “Workforce Housing” units
24 after the GPLET Lease expires. Ex. 4, Ex. C at 13 § 6.4.

25 50. Any person who meets income-based eligibility criteria can rent a
26 Workforce Housing unit at a rate that is lower than rent charged to other tenants. *Id.*

27 51. On information and belief, a person does not need to be a City resident to
28 rent a Workforce Housing unit.

1 62. Although the deal is structured to give the appearance that the City will
2 acquire title to the Hubbard Project as a condition of providing the Hubbard Developer a
3 GPLET tax abatement, on information and belief, the City is essentially a “straw owner”
4 and the City does not consider the Hubbard Project a City asset.

5 63. The City has provided GPLET tax treatment to some property owners who
6 have requested it and declined to provide GPLET tax treatment to other property owners
7 who have requested it.

8 64. For example, in or around 2015-2016, the developers of the “Stewart
9 Project,” a high-rise residential building, requested a GPLET, claiming that without it, the
10 Stewart Project would not proceed.

11 65. The City agreed that the Stewart Project would not go forward without a
12 subsidy in the form of a GPLET abatement and extended a GPLET abatement to the
13 developers of the Stewart Project.

14 66. However, the City later withdrew the GPLET tax treatment for the Stewart
15 Project.

16 67. Nevertheless, the Stewart Project was completed without a GPLET
17 abatement or other subsidy from the City.

18 68. In or around 2015-2016, Amstar/McKinley LLC (“Amstar”) requested
19 GPLET tax treatment to develop a high-rise residential building.

20 69. The Amstar developers claimed that the project would not go forward
21 without a subsidy in the form of a GPLET tax arrangement.

22 70. The City agreed that the Amstar Project could not be completed without that
23 subsidy and approved a GPLET abatement for Amstar.

24 71. This Court enjoined the GPLET tax treatment for the Amstar development
25 as unconstitutional in *Englehorn v. Stanton*, Case No. CV2017-001742, 2020 WL
26 7487658 (June 19, 2020).

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1 resources in the absence of adequate and direct consideration for “economic development
2 activities,” like the Hubbard Project tax abatement.

3 79. On October 29, 2021, attorneys for Plaintiffs sent the City a second letter
4 indicating that a GPLET abatement for the Developer would violate the Gift Clause if the
5 final Development Agreement did not comply with the *Schires* decision. Exhibit 8 is an
6 accurate copy of Plaintiffs’ October 29, 2021 letter.

7 80. On December 1, 2021, having received no reply, attorneys for Plaintiffs sent
8 the City a follow-up email asking if it had received and reviewed the October 29, 2021
9 letter. Exhibit 9 is an accurate copy of Plaintiffs’ December 1, 2021 email
10 communication. That day, Assistant City Attorney Thomas Stack responded that the City
11 had received the letter and “should be getting a response out in the next week or two.”
12 Exhibit 10 is an accurate copy of Mr. Stack’s December 1, 2021 email response.

13 81. On January 5, 2022, attorneys for Plaintiffs had still not received a response
14 from the City, and again emailed Mr. Stack to request a response. Exhibit 11 is an
15 accurate copy of Plaintiffs’ January 5, 2022 email communication. On January 6, 2022,
16 Mr. Stack responded that “one is coming.” Exhibit 12 is an accurate copy of Mr. Stack’s
17 January 6, 2022 email response.

18 82. Neither Plaintiffs nor Plaintiffs’ attorneys ever received a response to the
19 December 1, 2021 letter.

20 **Injunctive Relief Allegations**

21 83. Plaintiffs have an equitable interest in the City’s tax revenues and suffer an
22 injury remediable in equity when the City either spends or misuses public funds for
23 unconstitutional purposes or foregoes tax revenues for unconstitutional purposes, because
24 Plaintiffs must replenish the public coffers for these public funds and valuable advantages.

25 84. Accordingly, unless Defendants are permanently enjoined by this Court,
26 Plaintiffs and others similarly situated are and will continue to be subjected to equitable
27 injuries due to the City’s extension of donations, grants, subsidies, and/or valuable
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1 advantages to the Developer pursuant to Ordinance S-46966 and the Development
2 Agreement.

3 85. Thus, Ordinance S-46966 and the Development Agreement are causing, and
4 will continue to cause, Plaintiff to suffer irreparable injury. Plaintiff has no plain, speedy,
5 and adequate remedy at law for such an injury. Injunctive relief is therefore appropriate.

6 **Declaratory Relief Allegations**

7 86. An actual and substantial controversy exists between Plaintiffs and
8 Defendants as to their respective legal rights and duties. Plaintiffs contend that Ordinance
9 S-46966, and the extension of donations, grants, subsidies and/or valuable advantages
10 from the City to the Developer under the Development Agreement violate the Arizona
11 Constitution’s Gift Clause and Evasion Clause. Plaintiffs are informed and believe, and
12 on that basis allege, that Defendant contends otherwise on all counts. Accordingly,
13 declaratory relief is appropriate.

14 **Count One—Gift Clause**

15 **Ariz. Const. art. IX, § 7**

16 87. Plaintiffs incorporate the allegations in the preceding paragraphs.

17 88. Article 9, section 7 of the Arizona Constitution (the “Gift Clause”) provides
18 that neither the State nor any city “shall ever give or loan its credit in the aid of, or make
19 any donation or grant, by subsidy or otherwise, to any individual, association, or
20 corporation.”

21 89. An agreement by the State or a subdivision violates the Gift Clause unless
22 (1) the agreement serves a public purpose and (2) reflects adequate consideration. *Turken*
23 *v. Gordon*, 223 Ariz. 342, 345 ¶ 7, 348 ¶ 22 (2010); *Schires*, 250 Ariz. at 376 ¶ 14.

24 90. A government expenditure does not advance a public purpose if it is used
25 “to foster or promote the purely private or personal interests of any individual.” *Kromko v.*
26 *Ariz. Bd. of Regents*, 149 Ariz. 319, 321 (1986).

27 91. The City must exercise sufficient control and supervision over use of public
28 resources to ensure a public purpose is accomplished. *Id.*

1 92. The Hubbard Project is entirely privately owned and is intended and
2 expected to generate substantial profit for its private owners and investors.

3 93. The City does not exercise control and supervision over the operations of
4 the Hubbard Project to ensure a public purpose is realized.

5 94. Taxpayer support for a privately owned high-rise apartment complex, for
6 which the profits will inure completely to the benefit of private owners and investors, and
7 over which the City exercises insufficient control, does not constitute a public purpose.

8 95. By releasing the Developer from the obligation to pay and forgoing the
9 collection of property taxes, the City has granted a subsidy and donation to the Developer.

10 96. Any benefits the Developer is contractually obligated to provide to the City
11 are not equivalent to the benefits the City has provided and are grossly disproportionate to
12 the public benefits conferred upon the Developer under the Development Agreement.

13 97. The rent payments required by the GPLET Lease will never exceed the
14 value of the favorable tax treatment created by the Development Agreement and are
15 grossly disproportionate to the public benefits conferred upon the Developer under the
16 Development Agreement.

17 98. Through the Development Agreement and GPLET Lease, the City gives
18 advantages and benefits to the Developer, depletes the public treasury, gives funds and
19 other valuable advantages to a private industry, and provides a donation, grant, and/or
20 subsidy to the Developers.

21 99. As City of Phoenix taxpayers, Plaintiffs will bear a share of the burden for
22 replenishing the public coffers of the City for public funds misused by Defendants for the
23 benefit of the Developer.

24 100. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief
25 preventing enforcement of City Ordinance S-46966 and the tax abatement in the
26 Development Agreement, and the GPLET Lease.

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Count Two—Conveyance to Evade Taxation

Ariz. Const. art. IX, § 2

101. Plaintiffs incorporate the allegations in the preceding paragraphs.

102. Article 9, section 2(12) of the Arizona Constitution provides that “No property shall be exempt which has been conveyed to evade taxation.”

103. Under the Development Agreement and GPLET Lease, the Hubbard Project is exempt from *ad valorem* property tax.

104. The “intention of the Parties” in entering the Development Agreement and GPLET Lease was to convey the Developer’s private property to the City for the purpose of evading *ad valorem* property tax for the duration of the 8-year lease. Ex. 4at 19 § 303.

105. Exempting the Hubbard Project from property taxes by transforming private property into “government property” for the sole purpose of evading *ad valorem* property taxes violates Article 9, section 2(12) of the Arizona Constitution.

REQUEST FOR RELIEF

Plaintiffs request that this Court award the following relief:

- A. Declare that City of Phoenix Ordinance S-46966 is unconstitutional and enjoin its further effect;
- B. Declare the tax abatement provisions of the Development Agreement and the GPLET Lease violate Plaintiffs’ constitutional rights and enjoin their enforcement;
- C. Preliminarily and permanently enjoin the City from providing taxpayer resources and special tax advantages to the Developer under the Development Agreement and GPLET Lease.
- D. Award costs pursuant to A.R.S. § 12-341 and attorney fees pursuant to the private attorney general doctrine; and
- E. Order such additional relief as may be just and proper.

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DATED this 4th day of May, 2022.

GOLDWATER INSTITUTE

By: /s/ Jonathan Riches
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VERIFICATION

I, Bramley Paulin, being duly sworn upon my oath, state that I am familiar with the allegations in the foregoing complaint and verify that the allegations contained therein are true and correct, except for those counts alleged upon information and belief, which I reasonably believe to be true.

Dated this 2nd day of May, 2022

By 
Bramley Paulin

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VERIFICATION

I, Mat Englehorn, being duly sworn upon my oath, state that I am familiar with the allegations in the foregoing complaint and verify that the allegations contained therein are true and correct, except for those counts alleged upon information and belief, which I reasonably believe to be true.

Dated this 29 day of April, 2022

By  _____
Mat Englehorn