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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF COCONINO**

10 **FOOTHILLS PROPERTY**  
11 **MANAGEMENT, INC, an Arizona**  
12 **Corporation; SUE MEYER, an individual;**  
13 **PAUL KANTER, an individual,**  
14 Plaintiff,

15 vs.

16 **CITY OF SEDONA; JOHN DOES I-V;**  
17 **JANE DOES I-V; AND BLACK ENTITIES**  
18 **I-V,**  
19 Defendant

) Case No.:

) **VERIFIED COMPLAINT FOR**  
) **DECLARATORY RELIEF, INJUNCTIVE**  
) **RELIEF AND COMPLAINT FOR**  
) **DAMAGES**

20 **PLAINTIFFS, FOOTHILLS PROPERTY MANAGEMENT, INC., SUE MEYER**  
21 **and PAUL KANTER, sue Defendant CITY OF SEDONA and allege as follows:**

22 **PARTIES, JURISDICTION AND VENUE**

23 1. PLAINTIFF, FOOTHILLS PROPERTY MANAGEMENT, INC. (hereinafter  
24 “FOOTHILLS”) is an Arizona Corporation. FOOTHILLS advertises and manages single family  
25 residences for rental located in the City of Sedona, Coconino County, Arizona, and has entered  
26 into rental contracts on behalf of the owners of single family residences for the rental of those  
27 residences. FOOTHILLS requires written contracts for the rental of those single family  
28 residences.

1 residences. The contracts require that the use be for a residential purpose and not for a business  
2 or commercial purpose.

3 2. PLAINTIFFS SUE MEYER (hereinafter “MEYER”) and PAUL KANTER (hereinafter  
4 “KANTER”) at all times material, were and are the owners of real property, single family  
5 residences, located the City of Sedona, Coconino County, Arizona. PLAINTIFFS MEYER and  
6 KANTER purchased single family residences in Sedona, Arizona, for the purpose of providing  
7 short term rentals to visitors in the resort area.  
8

9 3. Hereinafter, the single family residences owned and/or managed by PLAINTIFFS shall be  
10 referred to as “Residences”.  
11

12 4. PLAINTIFFS purchased the Residences and expended funds for improvements,  
13 maintenance and advertising based on the reasonable expectation that they could rent the  
14 Residences to seasonal visitors. As a result of the application of certain codes and ordinances of  
15 the City of Sedona to the Residences, PLAINTIFFS have been deprived of the right to utilize the  
16 Residences consistent with their reasonable investment-backed expectations.  
17

18 5. PLAINTIFFS own and/or advertise for the rental of Residences located in Coconino  
19 County, Sedona, Arizona. PLAINTIFFS are beneficially interested in and aggrieved by the acts,  
20 decisions and conduct of Defendant, as alleged herein. PLAINTIFFS have interests and  
21 fundamental vested rights in the use of the Residences, which are adversely affected by the acts,  
22 decisions and conduct of Defendant as alleged herein.  
23

24 6. Defendant City of Sedona (hereinafter CITY) is a municipality of the State of Arizona and  
25 subject to the jurisdiction of this Court. Defendant is a “person” within the meaning of 42  
26 U.S.C. §1983. The acts of Defendant as set forth below were performed under color of law. The  
27  
28

1 acts and omissions alleged herein occurred and took place in, and the Defendant has their  
2 principal place of business in and conducts business in the County of Coconino.

3  
4 7. John Does I-V, Jane Does I-V and Black Entities I-V are fictitious defendants, the true  
5 names of which are unknown to PLAINTIFFS. PLAINTIFFS will amend the complaint to assert  
6 their true names when and if they become known.

7 8. This Court has jurisdiction over the matter pursuant to A.R.S. § 12-123.

8 9. Venue is proper in Coconino County pursuant to A.R.S. § 12-401.

9  
10 **BACKGROUND**

11 10. The CITY has adopted the Land Development Code of the City of Sedona (hereinafter  
12 “LDC”).

13 11. The Residences are located within Single-Family Residential Districts within the CITY  
14 and Coconino County.

15 12. Due to its location and climate, the tourism industry makes up a large part of the  
16 CITY’s economy. An outgrowth of the tourist industry has traditionally included private homes  
17 rented to tourists on a weekly or monthly basis. The CITY’s website, <http://www.sedonaaz.gov>,  
18 provides links to advertisements for vacation rental homes. Visitors, who desire a “home-like”  
19 atmosphere for their vacation destination, typically rent “single family homes”. Many  
20 homeowners have recognized this demand and have rented their residences to tourists, thereby  
21 maximizing the economic potential of their property. Many real estate agents have recognized  
22 this demand and have made a part of their real estate business the advertisement and rental of  
23 single family homes on a short term basis. The rental of the single family residences provides an  
24 economic benefit to the CITY, the promotion of tourism which makes up a large part of the  
25 CITY’s economy and the providing of a revenue stream for local merchants.  
26  
27  
28

1 13. PLAINTIFFS advertised the rental of the Residences in the CITY and in Coconino  
2 County, through the internet and print advertisements through local media.

3 14. PLAINTIFFS enter into contracts for the rental of the Residences well in advance the  
4 rental period. People enter into rental contracts well in advance of their vacations, usually six (6)  
5 months to one (1) year in advance. People plan their yearly vacation around their ability to rent a  
6 Residence for the duration of their vacation in Sedona.  
7

8 15. Before May 1995, there was no prohibition in the LDC of rental of single family  
9 residences based on duration.  
10

11 16. In May 1995, the CITY amended the LDC to prohibit the rentals of single-family  
12 residences for periods of less than thirty (30) consecutive days (hereinafter the "CODE").  
13 Although the CITY enacted the CODE, it was not enacted with any legislative objective.  
14

15 17. After enacting the CODE, the CITY did not enforce the prohibition against rental of a  
16 single family residence for less than thirty (30) days (hereinafter "STRs").

17 18. Notwithstanding the enactment of the CODE, representatives and employees of the  
18 CITY, acting within the course and scope of their employment, represented to prospective real  
19 estate property purchasers, including PLAINTIFFS, who inquired about STRs, that the  
20 prohibition was not enforced by the CITY, nor would it be enforced.  
21

22 19. In justifiable reliance on those representations as set forth in the Paragraph 18 regarding  
23 enforcement of the CODE, prospective real estate purchasers, including PLAINTIFFS,  
24 purchased real property in the CITY with the reasonable investment backed expectations of  
25 renting the single family residence for less than thirty (30) days.  
26

27 20. In justifiable reliance on the representations of the CITY as set forth in Paragraph 18, real  
28 estate professionals, including PLAINTIFFS, assisted persons to purchase single family

1 residences in the CITY to rent on a short term basis and entered into contracts for the rental of  
2 the single family residences after purchase and advertised those single family residences for  
3 rental to persons and families who desired to vacation in the CITY.  
4

5 21. After more than twelve (12) years, the CITY is seeking to enforce the ban on STRs,  
6 notwithstanding the representations made by the CITY and that persons, including  
7 PLAINTIFFS, purchased single family residences with the reasonable investment backed  
8 expectation of renting the single family residence for less than thirty (30) days.  
9

10 22. On July 11, 2007, during the City Council Work Session, the City Council discussed  
11 regulation of short term rentals in residential areas. The CITY staff met with some residents who  
12 complained about the effects of short term rentals in their neighborhoods. No effort was made  
13 by the CITY to distinguish the renters and the complaints based on the duration of stay.  
14

15 23. During that work session, an ordinance was proposed that would make it a crime to assist  
16 families in finding a single family residence to rent for family vacations or to advertise the  
17 availability of such rentals in the CITY. Ostensibly, the ordinance was designed to reduce the  
18 number of property management companies and real estate companies that appear to be actively  
19 advertising and facilitating short term rentals in the CITY.  
20

21 24. Plaintiffs are informed and believe that the CITY recognized that such a prohibition was  
22 contrary to the property rights of the owners of single family residences who purchased the  
23 residences with the reasonable investment backed expectation of renting the single family  
24 residence for less than thirty (30) days and was contrary to the representations of the CITY. In  
25 view of such recognition, the City Council discussed permitting the rental of single family  
26 residences for seven to thirty days upon obtaining a permit from the CITY and drafted an  
27 Ordinance to that effect.  
28

1 25. Notwithstanding the CITY's view that enforcement of the ban on STRs violated property  
2 rights, the CITY was presented with an ordinance that would not only prohibit STRs but would  
3 also prohibit the advertisement of rentals and facilitation of assisting families who desire to rent  
4 a single family residence for a vacation in the CITY for less than thirty (30) days and would  
5 impose a criminal penalty against any person or company, including the PLAINTIFFS, who  
6 advertised such rentals or assisted those families.  
7

8 26. On or about January 22, 2008, the CITY enacted Ordinance No. 2008-01 (hereinafter  
9 "ORDINANCE") which amends the LDC by adding article 8-4 "2008 Enforcement Provisions  
10 Concerning Short-Term Vacation Rentals" which provides:  
11

12 Section 8-4-4 Prohibited Rental Duration:

13 Rental of a short-term vacation unit or units by a person, operator,  
14 managing agency or rental agent for less than 30 consecutive days in  
15 duration to any transient within any residential zoning district or planned  
16 residential development district in violation of the Sedona Land  
Development Code is prohibited.

17 Section 8-4-5 Advertisement of Illegal Short-term Rentals Prohibited:

18 It is a class 1 misdemeanor for any person, enterprise, managing agency  
19 or rental agent to advertise, solicit or facilitate the rental for less than 30  
20 consecutive days of short-term vacation unit located within residential  
21 districts where such short-term rentals are prohibited by the Sedona Land  
22 Development Code. Such activity is prohibited whether by mailings,  
print advertisements, internet listings, or other means.

23 Section 8-4, Section 4 Penalty Clause:

24 Violations of Article 8-4 shall constitute a class 1 misdemeanor, and upon  
25 conviction, shall be punished by a fine not to exceed \$2,500 plus applicable  
26 surcharges or by imprisonment for a period not to exceed 6 months, or by both  
27 such fine and imprisonment. Each day that any such violation continues shall  
28 be a separate offense punishable as described herein. In the alternative, an  
action may be commenced as a civil violation.

1 27. The ORDINANCE imposes criminal penalty for advertising and/or renting of single  
2 family residences for less than 30 consecutive days.

3 28. After enacting the ORDINANCE, the CITY sent out emails to persons and/or companies  
4 who advertise for the rental of single family residences for less than thirty (30) days, advising  
5 that such rentals are prohibited. The CITY has sent these emails not only to people and/or  
6 corporations who advertise for rentals in the CITY but also to persons and/or corporations who  
7 advertise for rental of single family residences located outside the CITY limits.  
8

9 29. The ORDINANCE deprives property owners and real estate professionals of their due  
10 process under law and prescribes unequal treatment for in-state and out-of -state real estate  
11 professionals and property owners to satisfy the ill conceived complaints of a few property  
12 owners.  
13

14 30. The CODE that prohibits the rental of single family residences on a durational basis for  
15 less than 30 consecutive days is invalid and unconstitutional, facially and/or as applied to  
16 PLAINTIFFS. The CODE also prevents persons who rent single family residences on a month  
17 to month basis from renting their single family residences.  
18

19 31. The CODE and its enforcement, constitutes a regulatory taking. It forces PLAINTIFFS  
20 to endure substantial interference with their rightful use of, enjoyment of, and reasonable  
21 investment backed expectation for the Residences without advancement of any legitimate  
22 interest of government and which bears no rational and/or essential connection or nexus to the  
23 public health, safety or welfare.  
24

25 32. The CODE and ORDINANCE violate PLAINTIFFS' right to equal protection of the laws  
26 in violation of the Fourteenth Amendment to the United States Constitution and bear no rational  
27 relationship to a legitimate government purpose. The CODE and ORDINANCE discriminates  
28

1 against persons who own single family residences within the CITY and those persons or  
2 corporations who own single family residences outside the CITY. The CODE and  
3 ORDINANCE and their enforcement, discriminate against persons who rent their property on a  
4 month to month basis, a less than thirty (30) day basis, a yearly basis and those who rent without  
5 restriction; discriminates against persons and/or corporations who advertise for the rentals of  
6 properties located out of state, in a different city or county and those who advertise for rental in  
7 the CITY, discriminates against persons and/or corporations who are subject to the jurisdiction of  
8 the City by imposing criminal penalties and those who are outside the jurisdiction of the CITY  
9 and discriminates by making it a crime to rent a residence for less than thirty (30) days and not a  
10 crime to rent for thirty (30) days or greater.  
11

12  
13 33. Instead of prohibiting rental of a single family residence for any duration and conducting  
14 research and investigation into rentals on a citywide basis, the CITY has selectively enforced the  
15 CODE and ORDINANCE against those whom the CITY received complaints by residents who  
16 live near a residence that was rented for periods of less than thirty (30) days, those who  
17 advertised either by internet or print, and those who opposed the CODE and ORDINANCE.  
18 Enforcement is an effort by the CITY to appease a few residents unrelated to any legitimate  
19 objective of the CITY.  
20

21  
22 34. The Defendant has conducted and/or relied upon insufficient, inadequate, and/or  
23 irrational studies and/or findings in enacting the CODE and ORDINANCE, such that the  
24 prohibition on duration of rental for less than 30 days and the imposition of criminal penalties for  
25 the renting and/or advertisement of such rental lacks any rational basis.  
26  
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1 35. The CODE and ORDINANCE subject PLAINTIFFS to criminal penalty, deprives  
2 PLAINTIFFS of property rights and PLAINTIFFS of their reasonable investment backed  
3 expectation for the Residences.  
4

5 36. Since the acts of the CITY will continue unless restrained, PLAINTIFFS have no  
6 adequate remedy at law. The CITY's acts have caused PLAINTIFFS irreparable harm by  
7 unlawfully depriving them of their vested right to rent their Residences without restriction on  
8 duration. The Ordinance contains no applicable exceptions, opt out provisions, or provisions for  
9 an administrative variance of which PLAINTIFFS can avail themselves, therefore, there are no  
10 administrative remedies to exhaust and this action is ripe for adjudication and is timely filed.  
11

12 37. PLAINTIFFS have exhausted any and all administrative remedies available to them with  
13 respect to all claims presented by this Complaint.  
14

15 38. All conditions precedent to each of the claims brought by PLAINTIFFS in this Complaint  
16 have been satisfied or waived. The claims pleaded in this Complaint are also pleaded in the  
17 alternative.  
18

## 19 **COUNT I**

### 20 **DECLARATORY RELIEF AND INJUNCTIVE RELIEF**

21 39. This is an action against the CITY seeking declaratory and injunctive relief pursuant to  
22 A.R.S. §§ 12-1831 *et seq.* and 12-1801 *et seq.*

23 40. PLAINTIFFS incorporate by reference paragraphs 1 through 38 above as if fully set forth  
24 herein.

25 41. PLAINTIFFS contend that:

26 a. The CODE and ORDINANCE are in error, improper and are not supported by law or  
27 fact.  
28

1           b. PLAINTIFFS are lawfully entitled to rent their Residences and advertise their  
2 Residences for rent without restriction on duration.

3           c. The enforcement of the CODE and ORDINANCE violate due process and equal  
4 protection under the law.

5           d. The CODE and ORDINANCE constitutes a taking of the Residences; are  
6 unconstitutional, void and cannot be applied to PLAINTIFFS' Residences pursuant to the Fifth  
7 and Fourteenth Amendments to the United States Constitution and Art. 2, § 17 of the Arizona  
8 Constitution.  
9  
10

11         42. The CITY contends that it has the lawful right, under the CODE and ORDINANCE, to  
12 restrict the duration and frequency of rental of a single family dwelling unit within the Single-  
13 Family Residential Districts to less than 30 consecutive days. Any residence that is rented for  
14 less than 30 consecutive days or advertised for rental for less than 30 consecutive days, is in  
15 violation of the CITY CODE and ORDINANCE and is subject to criminal penalty.  
16

17         43. As a result of the above dispute, PLAINTIFFS are in doubt and are uncertain as to their  
18 rights regarding the rental and advertisement for rental of their Residences in the CITY.  
19 PLAINTIFFS are entitled to have such doubt and uncertainty removed.  
20

21         44. Pursuant to A.R.S. § 12-1801 *et seq.* upon declaration from this Court confirming that the  
22 Plaintiff's legal position as referenced above is the correct legal position, PLAINTIFFS will have  
23 no adequate remedy at law and are therefore entitled to supplemental relief in the form of a  
24 permanent injunction requiring the CITY to cease enforcement of the CODE and ORDINANCE  
25 until such time as a determination has been made as to whether the CODE and ORDINANCE are  
26 proper.  
27  
28

1 WHEREFORE, PLAINTIFFS respectfully request that this Court grant the following  
2 relief:

3 (a) Issuance of a declaratory judgment as follows:

4 i. Declaring the CODE and ORDINANCE are unconstitutional, erroneous, void  
5 and unenforceable.

6 ii. Declaring that PLAINTIFFS have the right to rent and/or advertise their  
7 Residences for rent, without restriction as to duration of rental.

8 (b) Issuing a permanent injunction in favor of PLAINTIFFS and against the CITY  
9 requiring the CITY to cease any enforcement of the CODE and ORDINANCE and to allow  
10 PLAINTIFFS to rent their Residences and/or advertise their Residences for rent without any  
11 restriction on duration; and,

12 (c) Providing such further and additional relief as the Court deems just and proper.  
13

14 **COUNT II**

15 **DECLARATORY AND INJUNCTIVE RELIEF**

16 45. PLAINTIFFS incorporate by reference paragraphs 1 through 38 above as if fully set forth  
17 herein.

18 46. This is an action brought by PLAINTIFFS against the CITY seeking declaratory  
19 judgment pursuant to A.R.S. § 12-1831 *et seq.*

20 47. PLAINTIFFS have entered into rental contracts with certain individuals for the rental of  
21 the Residences. The contracts were entered into before the enactment of the ORDINANCE.

22 48. The contracts that PLAINTIFFS have entered into with certain individuals are for rental  
23 periods after the ORDINANCE. However, at the time the contracts were entered into the  
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1 advertisement of such rentals did not carry with it a criminal penalty and the PLAINTIFFS  
2 justifiably relied on the representations of the CITY that the CODE was not enforced.

3 49. The CODE and ORDINANCE are erroneous and there is no basis to restrict the duration  
4 of rental of a residence in the Single Family Residential Districts.

5 50. It is the legal position of the PLAINTIFFS that since the contracts were entered into  
6 before enactment of the ORDINANCE, the contracts are valid, and that PLAINTIFFS are  
7 required to honor the contracts.  
8

9 51. If this Court does not prohibit the CITY from enforcing the CODE and ORDINANCE, it  
10 will create irreparable harm and injury to the reputation of PLAINTIFFS who entered into the  
11 contracts on behalf of homeowners, besides disrupting the plans of persons who have lawfully  
12 entered into contracts to rent the Residences. It will create harm to PLAINTIFFS ability to  
13 continue to rent the Residences and harm the ability of PLAINTIFFS to meet their reasonable  
14 investment backed expectations.  
15

16 52. It is the CITY's contention that PLAINTIFFS are in violation of the CITY CODE and  
17 ORDINANCE if they rent the Residences pursuant to these contracts.  
18

19 53. As a result of the above dispute, PLAINTIFFS are in doubt and are uncertain as to their  
20 right to rent their Residences pursuant to the pre-existing contracts.  
21

22 54. As a result of the above dispute, PLAINTIFFS are in doubt and uncertain as to their right  
23 to enter into any future contracts for the rental of the Residences.

24 55. PLAINTIFFS are entitled to have such doubt and uncertainty removed regarding the  
25 rental of their Residences.  
26

27 WHEREFORE, PLAINTIFFS respectfully request that this Court grant the PLAINTIFFS  
28 the following relief:

1 (a) Declaring that the CITY may not interfere with contracts entered into prior to the  
2 enactment of the ORDINANCE by taking actions, including criminal action, against  
3 PLAINTIFFS;  
4

5 (b) Enjoining the CITY from interfering with contracts entered into before the  
6 ORDINANCE on the basis that the CODE and ORDINANCE are erroneous and unenforceable;

7 (c) Enjoining the CITY from interfering with contracts entered into after ORDINANCE  
8 on the basis that the CODE and ORDINANCE are erroneous and unenforceable; and  
9

10 (d) Providing such further and additional relief as this Court deems just and proper.

11 **COUNT III**

12 **DECLARATORY RELIEF**

13 **(Based on CITY's violation of PLAINTIFFS' Substantive Due Process Rights)**

14 56. PLAINTIFFS incorporate by reference paragraphs 1 through 38 above as if fully set forth  
15 herein.  
16

17 57. This is an action brought by PLAINTIFFS against the CITY seeking declaratory  
18 judgment pursuant to A.R.S. § 12-1831 *et seq.*

19 58. At all times relevant to the claims set forth herein, PLAINTIFFS maintained an interest  
20 protected by Art. 2 § 4 of the Arizona Constitution, and the Fifth and Fourteenth Amendments to  
21 the United States Constitution.  
22

23 59. PLAINTIFFS contend that:

24 (a) the CODE and ORDINANCE constitute an arbitrary and capricious exercise  
25 of power which violates PLAINTIFFS substantive due process rights as they relate to the  
26 PLAINTIFFS use of their real property; and  
27  
28

1 (b) The CODE and ORDINANCE are unfair, arbitrary, without rational basis,  
2 and violates PLAINTIFFS' substantive due process rights concerning PLAINTIFFS' use of their  
3 real property.  
4

5 60. The CITY contends that the CODE and ORDINANCE are constitutional and in  
6 conformance with proper zoning regulations.

7 61. As a result of the above dispute, PLAINTIFFS are in doubt and are uncertain as to their  
8 rights regarding the rental of their Properties and/or the advertisement of their Properties for rent.  
9 PLAINTIFFS are entitled to have such doubt and uncertainty removed.  
10

11 WHEREFORE, PLAINTIFFS respectfully requests that this Court grant PLAINTIFFS  
12 the following relief:

13 i. Declaring that the CODE and ORDINANCE are unconstitutional and constitute a  
14 violation of PLAINTIFFS' due process rights protected by Art. 2, § 4 of the Arizona  
15 Constitution as well as by the Fifth and Fourteenth Amendments to the United States  
16 Constitution; and,  
17

18 ii. Providing such further and additional relief as this Court deems just and proper.  
19

20 **COUNT IV**

21 **DECLARATORY RELIEF**

22 **(Based on CITY's Violation of PLAINTIFFS Constitutional**  
23 **Guarantee of Equal Protection)**

24 62. PLAINTIFFS incorporate by reference paragraphs 1 through 38 above as if fully set forth  
25 herein.

26 63. This is an action brought by PLAINTIFFS against CITY seeking declaratory judgment  
27 pursuant to A.R.S. § 12-1831 *et seq.*  
28

1       64. At all times relevant to the claims set forth herein PLAINTIFFS maintained an interest  
2 protected by Art. 2, § 13 of the Arizona Constitution and the Fourteenth Amendment to the  
3 United States Constitution.  
4

5       65. The CODE and ORDINANCE discriminate against persons who own single family  
6 residences within the CITY and those persons or corporations who own single family residences  
7 outside the CITY. The CODE and ORDINANCE and their enforcement, discriminate against  
8 persons who rent their Residences on a month to month basis, a less than thirty (30) day basis, a  
9 yearly basis and those who rent without restriction; discriminates against persons and/or  
10 corporations who advertise for the rentals of properties located out of state, in a different city or  
11 county, and those who advertise for rental in the CITY; discriminates against persons and/or  
12 corporations who are subject to the jurisdiction of the CITY by imposing criminal penalties and  
13 those who are outside the jurisdiction of the CITY; and discriminates by making it a crime to  
14 rent a residence for less than thirty (30) days and not a crime to rent for thirty (30) days or  
15 greater.  
16  
17

18       66. Instead of prohibiting rental of a single family residence for any duration and conducting  
19 research and investigation into rentals on a citywide basis, the CITY has selectively enforced the  
20 CODE and ORDINANCE against those whom the CITY received complaints by residents who  
21 live near a residence that was rented for periods of less than thirty (30) days, those who  
22 advertised either by internet, mail or print, and those who opposed the CODE and  
23 ORDINANCE. Enforcement is an effort by the CITY to appease a few residents unrelated to  
24 any legitimate objective of the CITY.  
25  
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27  
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1 67. The selective enforcement against PLAINTIFFS constitutes a discriminatory exercise of  
2 power thereby treating PLAINTIFFS differently than others similarly situated without any  
3 reasonable basis for such disparate treatment.  
4

5 68. The CITY acted with discriminatory intent in violation of PLAINTIFFS' constitutional  
6 guarantee of equal protection under the laws as articulated in Art. 2 § 13 of the Arizona  
7 Constitution, and the Fourteenth Amendment to the United States Constitution.

8 69. The CITY contends that PLAINTIFFS were not treated differently and the CITY did not  
9 violate the constitutional guarantee of equal protection.  
10

11 70. As a result of the above dispute, PLAINTIFFS are in doubt and are uncertain as to their  
12 rights. PLAINTIFFS are entitled to have such doubt and uncertainty removed.

13 WHEREFORE, PLAINTIFFS respectfully request this Court grant PLAINTIFFS the  
14 following relief:

15 (a) Declaring that the CODE, ORDINANCE and enforcement of the CODE and  
16 ORDINANCE constitute a violation of PLAINTIFFS constitutional guarantee of equal  
17 protection under the law as articulated in Art. 2 §13 of the Arizona Constitution and in the  
18 Fourteenth Amendment to the United States Constitution.  
19

20 (b) Providing such further and additional relief as this Court deems just and proper.  
21

22 **COUNT V**

23 **COMPLAINT FOR DAMAGES**

24 **(Based Upon CITY's violation of PLAINTIFFS' Rights Guaranteed by the Fifth and**  
25 **Fourteenth Amendments to the United States Constitution)**

26 71. PLAINTIFFS incorporate by referenced paragraphs 1 through 38 above as if fully set  
27 forth herein.  
28

1 72. This is an action brought by PLAINTIFFS against CITY seeking damages pursuant to 42  
2 USC §1983 *et seq.*

3 73. In issuing and upholding the CODE and ORDINANCE, the CITY acted under color of  
4 State law.

5 74. At all times relevant to the claims set forth herein, PLAINTIFFS maintained an interest  
6 protected by the Fifth and Fourteenth Amendments to the United States Constitution.  
7

8 75. The CODE and ORDINANCE is facially unconstitutional and denies PLAINTIFFS their  
9 rights and privileges secured by the Fifth and Fourteenth Amendments to the United States  
10 Constitution.  
11

12 76. The CODE and ORDINANCE is not supported by case law, statutory law or the United  
13 States Constitution.

14 77. The CITY has established a custom, policy, pattern and practice of enforcing the CODE  
15 and ORDINANCE under color of law, and has deprived Plaintiffs of their use of their  
16 Residences in violation of the Fifth and Fourteenth Amendments to the United States  
17 Constitution.  
18

19 78. Defendant actions have resulted in the taking of Plaintiffs' Residences under the multi-  
20 pronged test established by *Penn Central Trans. Co. v. New York City*, 438 U.S. 104 (1978).  
21

22 79. Since the purchase of their Residences, Plaintiffs have continuously used their  
23 Residences as STRs and have continuously advertised the Residences as STRs. Such use has  
24 been open and notorious and with the justifiable reliance on the representations of the CITY.  
25 Therefore, Plaintiffs possess a vested right to continue operating the Residences as a lawful  
26 STRs. The CODE and ORDINANCE severely restrict these rights and are an unlawful violation  
27 of Plaintiffs' substantive due process rights under the United States Constitution.  
28

1 80. The serious restriction on the duration of rental is unreasonable and unfairly singles out  
2 Plaintiffs and others who rent single family residences to tourists. The discrimination against  
3 single family residences based on the duration of rental has no foundation in reason and is an  
4 arbitrary exercise of power having no substantial relation to the public health, safety and welfare.  
5 Such treatment violates Plaintiffs' guarantee of equal protection and is an unreasonable ban on  
6 the lawful use of property.  
7

8 81. The actions of the CITY constitute an arbitrary and capricious exercise of power which  
9 deprived PLAINTIFFS of their substantive due process rights and privileges secured by the Fifth  
10 and Fourteenth Amendments to the United States Constitution.  
11

12 82. In issuing and upholding the CODE and ORDINANCE, the CITY acted with  
13 discriminatory intent and treated PLAINTIFFS differently than others similarly situated without  
14 any reasonable basis for such disparate treatment. The CITY's action constituted a  
15 discriminatory and unfair exercise of power which deprived PLAINTIFFS of their constitutional  
16 guarantee of equal protection secured by the Fourteenth Amendment to the United States  
17 Constitution.  
18

19 83. As a result of the CITY's deprivation of PLAINTIFFS' rights and privileges secured by  
20 the Fifth and Fourteenth Amendments to the United States Constitution as stated above,  
21 PLAINTIFFS have suffered damages in excess of \$50,000 exclusive of interests and costs.  
22 PLAINTIFFS' damages include, but are not limited to, the loss of rental/use of the Residences,  
23 costs and fees associated with challenging the improper and unconstitutional actions of the CITY  
24 and such other damages as may be proven at trial of this matter.  
25

26 84. As a result of CITY's deprivation of PLAINTIFFS' rights and privileges secured by the  
27 Fifth and Fourteenth Amendments to the United States Constitution as stated above,  
28

1 PLAINTIFFS have been required to retain the services of the undersigned counsel for the  
2 purpose of prosecuting this action and have agreed to pay counsel a reasonable fee. Pursuant to  
3 42 U.S.C. §1988 *et seq.*, CITY is liable for the attorneys fees incurred by PLAINTIFFS in  
4 prosecuting this action.  
5

6 WHEREFORE, PLAINTIFFS respectfully request that this Court grant PLAINTIFFS the  
7 following relief:

8 (a) Providing compensatory damages sufficient to compensate PLAINTIFFS for their  
9 loss occasioned by CITY's violation of PLAINTIFFS rights and privileges secured by the Fifth  
10 and Fourteenth Amendments to the United States Constitution; and  
11

12 (b) Providing reasonable attorneys fees, court costs and expenses, including paralegal  
13 fees and the costs/fees of prosecuting this action and the underlying actions/appeals, incurred by  
14 PLAINTIFFS in the prosecution of this action; and  
15

16 (c) Providing such further and additional relief as this Court deems just and proper.  
17

18 **DEMAND FOR JURY TRIAL**

19 PLAINTIFFS demand a trial by jury on all issues so triable.  
20

21 **DATED** on this \_\_\_\_\_ day of February, 2008.  
22

23  
24  
25 \_\_\_\_\_  
26 Frederick M. Aspey (003018)  
27 **ASPEY, WATKINS & DIESEL, P.L.L.C.**  
28 123 N. San Francisco Street, Suite 300  
Flagstaff, Arizona 86001  
Telephone (928) 774-1478  
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Attorneys for Plaintiffs

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- AND -

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Attorneys for the Plaintiff

(Application for *Pro Hac Vice* Appearance  
has been completed and submitted to the  
State Bar of Arizona.)

**VERIFICATION**

STATE OF ARIZONA )  
 ) ss.  
County of \_\_\_\_\_ )

Bradley Plomer, President of Foothills Property Management, Inc., being first duly sworn upon his oath, deposes and states:

That he is the President of Foothills Property Management, Inc., who is a Plaintiff in the above and foregoing matter; that he has read the foregoing Complaint; that the allegations stated therein are true to the best of his knowledge, except as those statements made upon information and belief, and as to those, he believes them to be true.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bradley Plomer

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My Commission Expires:

1 **VERIFICATION**

2  
3 STATE OF ARIZONA )  
4 ) ss.  
5 County of \_\_\_\_\_ )  
6

7 Sue Meyer, being first duly sworn upon her oath, deposes and states:

8 That she is a Plaintiff in the above and foregoing matter; that she has read the  
9 foregoing Complaint; that the allegations stated therein are true to the best of her  
10 knowledge, except as those statements made upon information and belief, and as to those,  
11 she believes them to be true.  
12  
13  
14

15 \_\_\_\_\_ Sue Meyer  
16 Date

17 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.  
18  
19

20 \_\_\_\_\_  
21 Notary Public

22 My Commission Expires:  
23  
24  
25  
26  
27  
28

1 **VERIFICATION**

2  
3 STATE OF ARIZONA )  
4 ) ss.  
5 County of \_\_\_\_\_ )  
6

7 Paul Kanter, being first duly sworn upon his oath, deposes and states:

8 That he is a Plaintiff in the above and foregoing matter; that he has read the  
9 foregoing Complaint; that the allegations stated therein are true to the best of his  
10 knowledge, except as those statements made upon information and belief, and as to those,  
11 he believes them to be true.  
12  
13  
14

15 \_\_\_\_\_  
16 Date

\_\_\_\_\_ Paul Kanter

17 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.  
18  
19

20 \_\_\_\_\_  
Notary Public

21 My Commission Expires:  
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