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14 **VINEYARD PROPERTIES, LLC,**  
15 **SHARON KRAMER VINEYARD PROPERTIES,**  
16 **LLC and SAMMY G'S INC.**

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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

LARRY KRAMER VINEYARD  
PROPERTIES, LLC, SHARON  
KRAMER VINEYARD PROPERTIES,  
LLC and SAMMY G'S INC.,

Plaintiffs,

vs.

CITY OF PALM SPRINGS, and DOES  
1 through 10,

Defendants.

Case No.: 5:20-cv-2050

**COMPLAINT FOR  
DECLARATORY RELIEF,  
INJUNCTIVE RELIEF, AND JUST  
COMPENSATION**

1. 14TH AMENDMENT DUE  
PROCESS;
2. 14TH AMENDMENT EQUAL  
PROTECTION;
3. FIFTH AMENDMENT  
TAKINGS;
4. CAL. CONST. ART. 1 § 1  
RIGHT TO LIBERTY;
5. CAL. CONST. ART. 1 § 7  
RIGHT TO PROPERTY; AND
6. CAL. CONST. ART. 1 § 19  
TAKINGS WITHOUT  
COMPENSATION.

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1 Plaintiffs LARRY KRAMER VINEYARD PROPERTIES, LLC, SHARON  
2 KRAMER VINEYARD PROPERTIES, LLC and SAMMY G'S INC.,  
3 (collectively, "Plaintiffs") by their undersigned attorneys, bring this civil action for  
4 Declaratory Relief, Injunctive Relief, and Just Compensation, and allege as follows:

### 5 INTRODUCTION

6 1. This lawsuit presents facial and as-applied constitutional challenges to  
7 approval of a partial closure of Palm Canyon Drive in the City of Palm Springs,  
8 California by Defendant City of Palm Springs ("the City" or "Defendant").

9 2. On August 20, 2020, the City approved a partial closure of Palm  
10 Canyon Drive between Tahquitz Canyon Way and Baristo Road to allow for an  
11 expansion of temporary outdoor dining into the public right-of-way ("the  
12 Approval").

13 3. The road closure took affect September 3, 2020 and is expected to last  
14 indefinitely, at least until the end of 2020.

15 4. The Approval violates Plaintiffs' rights under the United States  
16 Constitution and California Constitution by effectively isolating Plaintiffs from  
17 customer traffic in favor of other businesses. The Approval thus inflicts a regulatory  
18 taking by negating Plaintiffs' reasonable, investment-backed expectations in the  
19 property they own.

### 20 THE PARTIES

21 5. Plaintiff LARRY KRAMER VINEYARD PROPERTIES, LLC is a  
22 California corporation that owns and operates a shopping center known as "The  
23 Vineyard" located at 245 – 285 S. Palm Canyon Drive. This center includes such  
24 tenants as Sammy G's, LG's Steakhouse, Tutti Frutti and retailers including Ooh La  
25 La, Shoe La La, and Canyon Beachwear, among others. Its principal place of  
26 business in Palm Springs, California.

27 6. Plaintiff SHARON KRAMER VINEYARD PROPERTIES, LLC is a  
28 California corporation that owns and operates a shopping center known as "The

Vineyard” located at 245 – 285 S. Palm Canyon Drive. This center includes such tenants as Sammy G's, LG's Steakhouse, Tutti Frutti and retailers including Ooh La La, Shoe La La, and Canyon Beachwear, among others. Its principal place of business in Palm Springs, California.

7. Plaintiff SAMMY G’S INC. is a California corporation with its principle place of business in Palm Springs, California.

8. Defendant City of Palm Springs is a governmental body vested with the authority to enact ordinances and approve governmental action including the subject Approval.

9. Defendant Does 1 – 10 are individuals or entities responsible for the Approval whose identity is unknown to Plaintiffs at this time and are thus sued by such fictitious names.

10. Each Defendant has acted and continues to act under color of state law with respect to all acts or omissions herein alleged.

### **JURISDICTION AND VENUE**

11. This action is brought under 42 U.S.C. § 1983 in relation to Defendants' deprivation of Plaintiffs' constitutional rights to due process, equal protection, and just compensation for temporary takings under the Fifth and 14th Amendments to the U.S. Constitution.

12. Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under 42 U.S.C. §1988.

13. This Court has supplemental jurisdiction over the claims asserted under California's Constitution, statutes, and regulations.

14. The Central District of California is the appropriate venue for this action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is a District in which

Defendants exercise their authority in their official capacities, maintain offices, and where a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred. Additionally, a substantial part of a property which is a subject matter of this action is situated in this judicial district.

### FACTUAL ALLEGATIONS

15. On or about March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the potential threat of COVID-19.

16. On or about March 13, 2020, President Donald J. Trump proclaimed a National State of Emergency as a result of the threat of the emergence of a novel coronavirus, SARS-CoV-2, which causes the COVID-19 illness.

17. Various states, cities and other governmental entities have attempted to facilitate economic recovery to challenges resulting from the state and federal States of Emergency.

18. On August 20, 2020, Defendant City approved a partial closure of Palm Canyon Drive between Tahquitz Canyon Way and Baristo Road to allow for an expansion of temporary outdoor dining into the public right-of-way, and authorized the Palm Springs City Manager to execute all necessary contracts and agreements associated with the partial closure.

19. On information and belief, Plaintiffs allege the road closure began at approximately 7:00 a.m. on September 3, 2020 and remains in effect indefinitely, at least until the end of 2020.

20. The Approval allows restaurants fronting Palm Canyon Drive to obtain temporary land use permits allowing "al fresco" dining along the roadway for such establishments.

21. The Approval did not provide alternative access for other businesses or customers along the closed section of Palm Canyon Drive and did not provide a means of compensation for lost revenue for non-street fronting restaurant businesses.

22. Accordingly, the Approval essentially eliminates drive-by customer

1 traffic for businesses in the impacted stretch of Palm Canyon Drive. Plaintiffs have  
2 been denied full use and reasonable economic expectations to profit from their  
3 businesses as a result of the Approval. Specifically, the Approval has resulted in  
4 significant loss of customer traffic upon which Plaintiffs relied for continued  
5 business.

6 23. By drastically limiting customer access, the Approval has reduced the  
7 value of Plaintiffs' property and businesses. Such reduction in value will continue  
8 and increase exponentially. The Approval favors restaurant businesses fronting  
9 Palm Canyon Drive to the detriment of Plaintiffs' and similarly situated businesses.

10 24. The Approval thus unduly interferes with Plaintiffs' reasonable  
11 investment-backed expectations including preventing Plaintiffs from earning a  
12 reasonable return on their investments. The Approval therefore inflicts an  
13 uncompensated regulatory taking, both facially and as applied to Plaintiffs.

14 25. Moreover, the loss of business resulting from the Approval jeopardizes  
15 Plaintiffs' ability to continue management and operation of Plaintiffs' businesses.  
16 Plaintiffs are also threatened with a loss of tenants and ability to continue paying  
17 mortgage on their property. Reasonable alternatives to the complete road closure of  
18 Palm Canyon Drive exist, which would allow al fresco dining without the negative  
19 impact on Plaintiffs' businesses resulting from the Approval.

20 26. The Approval on its face effects a physical taking by depriving property  
21 owners, including Plaintiffs, of the right to possess, use and enjoy their property.

22 27. The Approval does not provide Plaintiffs with just compensation for  
23 these takings.

## 24 **CLAIMS FOR RELIEF**

### 25 **FIRST CLAIM**

### 26 **VIOLATION OF THE DUE PROCESS LAWS OF THE 14TH AMENDMENT**

27 *(By all Plaintiffs against all Defendants)*

28 28. Plaintiffs incorporate by reference each and every allegation set forth in

all preceding paragraphs as if fully set forth herein.

29. The Due Process Clause contains both a substantive and a procedural component. Substantive due process "forbids government to infringe certain 'fundamental' liberty interests at all, no matter what process is involved, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301–02 (1993); see also, *Daniels v. Williams*, 474 U.S. 327, 331 (1986)(explaining that substantive due process will "bar certain government actions regardless of the fairness of the procedures used to implement them."). Procedural due process "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 322 (1976).

30. The Approval violates Plaintiffs' substantive due process rights as follows:

a. Plaintiffs' fundamental property interest in conducting lawful business activities is protected by the Due Process Clause of the 14th Amendment. *Medina v. Rudman*, 545 F. 2d. 244, 250 (1<sup>st</sup> Cir. 1976).

b. Plaintiffs own businesses and property and have a right to lawfully pursue such businesses, a substantive due process right which is impaired by Defendants' actions.

c. Defendants lack any legitimate or compelling interest for depriving Plaintiffs of their right to lawfully pursue their businesses.

d. Even if such a legitimate, compelling interest existed, Defendants' Approval is not rationally related or narrowly tailored to further any such interests.

31. The Approval and Defendants' enforcement thereof violates procedural due process rights as follows:

1 a. The Approval is arbitrary and favors some businesses,  
2 such as street fronting restaurants, to the exclusion of other  
3 businesses without adequate protection.

4 b. The subject taking lasts indefinitely with the Approval  
5 not providing any mechanism or opportunity to review or  
6 challenge the need to continue the Approval in light of  
7 developing events.

8 32. Defendants' actions therefore have deprived Plaintiffs of both  
9 procedural and substantive due process.

10 33. Plaintiffs have no adequate remedy at law and will suffer serious and  
11 irreparable harm to their constitutional rights unless Defendants are enjoined from  
12 implementing and enforcing the Approval.

13 34. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
14 declaratory relief and temporary, preliminary, and permanent injunctive relief  
15 invalidating or restraining enforcement of the Approval.

16 35. Plaintiffs found it necessary to engage the services of private counsel to  
17 vindicate their rights under the law. Plaintiffs are therefore entitled to an Award of  
18 attorneys' fees pursuant to 42 U.S.C. § 1988.

19 **SECOND CLAIM**

20 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE 14TH**  
21 **AMENDMENT**

22 *(By all Plaintiffs against all Defendants)*

23 36. Plaintiffs incorporate by reference each and every allegation set forth in  
24 all preceding paragraphs as if fully set forth herein.

25 37. At its core, the Equal Protection Clause of the 14th Amendment to the  
26 U.S. Constitution requires states to govern impartially – not draw arbitrary  
27 distinctions between businesses based solely on differences that are irrelevant to a  
28 legitimate governmental objective.







1 requirements to obtain appropriate licenses and/or permits to conduct their  
 2 businesses and at all time relevant to this Complaint, Plaintiffs had the right to  
 3 continue to operate under their licenses and their related commercial activities were  
 4 continuous and lawful pursuant to California law.

5 46. The regulatory actions taken by the Defendants have resulted in  
 6 Plaintiffs being deprived of all economically beneficial or productive use of their  
 7 property including, without limitation, their licenses, their leased and owned  
 8 property, and further threatens the involuntary closing of their businesses and loss of  
 9 their property. The California Supreme Court has held: "While the police power is  
 10 very broad in concept, it is not without restriction in relation to the taking of  
 11 damaging of property. When it passes beyond proper bounds in its invasion of  
 12 property rights, it in effect comes within the purview of the law of eminent domain  
 13 and its exercise requires compensation." *House v. Los Angeles County Flood*  
 14 *Control Dist.*, 25 Cal. 2d 384, 388 (1944).

15 47. Defendants' Approval and the enforcement thereof have caused a  
 16 regulatory taking of Plaintiffs' property without just compensation in violation of the  
 17 Takings Clause of the Fifth Amendment to the U.S. Constitution. At a minimum,  
 18 the effect of Defendants' Approval constitutes a "partial" taking under *Penn Central*  
 19 *Trans. Co. v. City of New York*, 438 U.S. 104, 124 (1978). As a result, Defendants'  
 20 blatant violation of the Taking Clause of the Fifth Amendment has caused proximate  
 21 and legal harm to Plaintiffs.

22 48. Plaintiffs have no adequate remedy at law and will suffer serious and  
 23 irreparable harm to their constitutional rights unless Defendants are enjoined from  
 24 implementing and enforcing the Approval.

25 49. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
 26 declaratory relief and temporary, preliminary, and permanent injunctive relief  
 27 invalidating or restraining enforcement of the Approval.

28 50. Plaintiffs found it necessary to engage the services of private counsel to

vindicate their rights under the law. Plaintiffs are therefore entitled to an Award of attorneys' fees pursuant to 42 U.S.C. § 1988.

**FOURTH CLAIM**  
**VIOLATION OF THE CALIFORNIA CONSTITUTION RIGHT TO**  
**LIBERTY**  
**(CAL CONST. ART. 1 § 1)**

*(By all Plaintiffs against all Defendants)*

51. Plaintiffs incorporate by reference each and every allegation set forth in all preceding paragraphs as if fully set forth herein.

52. Since 1879, the California Constitution has provided intrinsic and unalienable rights and liberties to its citizens. Chief among those rights and liberties are those found in Article 1 of the California Constitution. Article 1, § 1 of the California Constitution provides, in pertinent part:

"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

53. Defendants' Approval has not only interfered with Plaintiffs' rights and liberties as set forth under Article 1 §§ 1, 7, and 19 of the California Constitution, but has deprived them of the use, enjoyment and ability to operate their respective businesses because of a discriminatory classification as detailed above.

54. Defendants' Approval has proximately and legally caused tremendous financial harm to Plaintiffs' businesses which will continue to have deleterious effects unless and until Defendants are enjoined by this Court from enforcing the Approval.

55. Restricting access to Plaintiffs' businesses violates Plaintiffs' California constitutional liberty rights. The burden is on state actors to prove these actions meet strict scrutiny, particularly when evidence shows Defendants' conduct

1 irrationally favors one type of business over others.

2 56. Left with no adequate remedy at law, Plaintiffs will suffer serious and  
3 irreparable harm to their constitutional rights unless Defendants are enjoined from  
4 implementing and enforcing the Approval.

5 57. Plaintiffs have found it necessary to engage the services of private  
6 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an  
7 Award of attorneys' fees and costs pursuant to California Code of Civil Procedure  
8 § 1021.5.

9 **FIFTH CLAIM**  
10 **VIOLATION OF THE CALIFORNIA CONSTITUTION RIGHT TO**  
11 **PROPERTY**

12 **(CAL. CONST. ART. 1 § 7)**

13 *(By all Plaintiffs against all Defendants)*

14 58. Plaintiffs incorporate by reference each and every allegation set forth in  
15 all preceding paragraphs as if fully set forth herein.

16 59. Article 1, § 7 of the California Constitution provides "[a] person may  
17 not be deprived of life, liberty or property without due process of law or denied  
18 equal protection of the laws".

19 60. Restricting Plaintiffs' ability to conduct lawful business in the State of  
20 California despite reasonable alternative measures available violates Plaintiffs'  
21 California constitutional liberty rights.

22 61. Plaintiffs have no adequate remedy at law, and will suffer serious and  
23 irreparable harm to their constitutional rights unless Defendants are enjoined from  
24 implementing and enforcing the Approval.

25 62. Plaintiffs have found it necessary to engage the services of private  
26 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an  
27 Award of attorneys' fees and costs pursuant to California Code of Civil Procedure  
28 § 1021.5.

**SIXTH CLAIM**  
**VIOLATION OF THE CALIFORNIA CONSTITUTION TAKINGS**  
**WITHOUT COMPENSATION**  
**(CAL. CONST. ART. 1 § 19)**

*(By all Plaintiffs against all Defendants)*

63. Plaintiffs incorporate by reference each and every allegation set forth in all preceding paragraphs as if fully set forth herein.

64. Article 1, § 19 of the California Constitution provides, in pertinent part:

"Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probably amount of just compensation."

65. California courts have routinely held that the California Constitution provides just compensation to property owners when their land is taken for public use, because the law seeks to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. *Jefferson Street Ventures, LLC v. City of Indio*, 236 Cal. App. 4th 1175 (2015).

66. The principle underlying just compensation for property taken for public use is to put the owner in as good a position monetarily as he or she would have occupied if his or her property had not been taken. *City of Carlsbad v. Rudvalis*, 109 Cal. App. 4th 667 (2003).

67. The constitutional guarantee of just compensation for property taken by the government is not only intended to protect the landowner (or business owner), but also protects the public by limiting its liability to losses that can fairly be

1 attributed to the taking. *Emeryville Redevelopment v. Harcros Pigments, Inc.*, 101  
2 Cal. App. 4th 1083 (2002).

3 68. Requiring Plaintiffs to bear the burden of the street closure while  
4 allowing restaurant businesses to take advantage of such closure, despite the  
5 availability of other reasonable measures which would not impair Plaintiffs' property  
6 rights, violates Plaintiffs' California constitutional liberty rights.

7 69. Plaintiffs have no adequate remedy at law, and will suffer serious and  
8 irreparable harm to their constitutional rights unless Defendants are enjoined from  
9 implementing and enforcing the Approval.

10 70. Plaintiffs have found it necessary to engage the services of private  
11 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an  
12 Award of attorneys' fees and costs pursuant to California Code of Civil Procedure  
13 § 1021.5.

14  
15 **PRAYER FOR RELIEF**

16 Plaintiffs respectfully request the following:

17 1. A declaration and judgment that the Approval violates the 14th  
18 Amendment Due Process Clause of the United States Constitution;

19 2. A declaration and judgment that the Approval violates the 14th  
20 Amendment Equal Protection Clause of the United States Constitution;

21 3. A declaration and judgment that the Approval violates the Fifth  
22 Amendment Takings Clause of the United States Constitution;

23 4. A declaration and judgment that the Approval violates the California  
24 Constitution Right to Liberty;

25 5. A declaration and judgment that the Approval violates the California  
26 Constitution Right to Property;

27 6. A declaration and judgment that the Approval violates the California  
28 Constitution Takings without Compensation;

1           7.     An Order temporarily, preliminarily, and permanently enjoining and  
2 prohibiting Defendants from enforcing the Approval;

3           8.     An Award of just compensation for Defendants' taking of Plaintiffs'  
4 property;

5           9.     An Award of damages or restitution for Defendants' violation of  
6 Plaintiffs' rights under the U.S. Constitution and California Constitution;

7           10.    Attorneys' fees and costs;

8           11.    Such other relief as the Court may deem just and proper.  
9  
10

11 DATED: October 1, 2020

**CALLAHAN, THOMPSON, SHERMAN  
& CAUDILL, LLP**

12  
13 By /s/ Robert W. Thompson  
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21 **PROPERTIES, LLC and**  
22 **SAMMY G'S INC.**  
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