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DEPUTY

Case No. C20155575
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6 **Attorneys for Plaintiff**
7 **Pasadera Behavioral Health Network**

8 **ARIZONA SUPERIOR COURT**

9 **PIMA COUNTY**

10 PASADERA BEHAVIORAL HEALTH
11 NETWORK, an Arizona non-profit
12 corporation,

13 Plaintiff,

14 vs.

15 CITY OF SOUTH TUCSON, a Municipal
16 corporation,

17 Defendant.

Case No. _____

COMPLAINT FOR DAMAGES

Assigned to: _____

18
19 Plaintiff Pasadera Behavioral Health Network ("Pasadera") alleges as follows:

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21 **Parties, Jurisdiction and Venue**

22 1. Pasadera is an Arizona non-profit with its principal place of business in
23 Pima County, Arizona. Pasadera provides behavioral health and substance abuse
24 prevention and treatment facilities.

25 2. Defendant City of South Tucson ("City") is an Arizona municipal
26 corporation and political subdivision of the State of Arizona, located in Pima County,
27 Arizona.
28

1 12. Pasadera (then known as Compass Health Care, Inc.) placed an offer to
2 purchase the Property on February 13, 2014, and entered into a purchase contract with
3 ACA on March 3, 2014. The purchase contract provided for a period of due diligence to
4 allow Pasadera to verify that its intended uses were permitted on the Property.

5 13. During the Summer 2014, Pasadera received multiple assurances from the
6 Zoning Administrator that it could continue ACA's uses, specifically the Residential
7 Facility.
8

9 14. At a meeting on or about May 28, 2014, the City's Zoning Administrator
10 (the "Administrator"), in his official capacity and on behalf of the City, stated to Pasadera
11 representatives that Pasadera's intended use is grandfathered, as a legal nonconforming
12 use.

13 15. On June 2, 2014, the City's Mayor and Council held a special meeting for
14 the purpose of discussing in public the sale of the Property to Pasadera, which was
15 attended by the Administrator. At that meeting, the speakers discussed Pasadera's
16 intended use of the Residential Facility in detail, including Pasadera's adult inpatient
17 rehabilitation services. Toward the end of the meeting Mr. Gastelum was asked to
18 comment on the legal nonconforming use. He stated:
19

20 [The] company is not being grandfathered in. The use is being
21 grandfathered in. It has nothing to do with Children's Home being there.
22 It's being that that use has been grandfathered in. It could be an auto repair
23 shop, for example. If our zoning code was adopted in '78 and that shop has
24 been there since '64 and it's in a middle of a neighborhood, we can do
25 nothing to change the zoning. That is against the law.

26 16. On July 14, 2014, Pasadera requested that the Zoning Administrator provide
27 a formal Zoning Compliance Certificate ("Certificate") to ensure that Pasadera's proposed
28 uses would be permitted at the Property.

1 17. On July 16, 2014, the Administrator responded in writing, reiterating his
2 prior position that Pasadera's uses would be permitted as legal nonconforming uses (the
3 "First Determination"). He wrote that the City "acknowledges that the proposed use by
4 Pasadera is not changing and therefore it is a legal nonconforming use and Pasadera will
5 have no issue receiving a Zoning Compliance Certificate." He added that the Certificate
6 would be issued after Pasadera completed its purchase of the Property and secured a
7 business license, which the City would not issue until Pasadera owned the Property.
8

9 18. On August 5, 2014, the Administrator again stated to Pasadera's legal
10 counsel in a telephone conversation that the content of his First Determination was
11 accurate. Although there was political opposition to Pasadera operating on the Property,
12 he confirmed his decision regarding the Property's legal nonconforming status.
13

14 19. Over the next five months, Pasadera had numerous conversations with City
15 Manager Luis Gonzales (the "City Manager") and Mayor Paul Diaz (the "Mayor") to
16 discuss obtaining the Certificate and business license prior to Pasadera owning the
17 Property with ACA's consent. The City responded that such permitting and licensing
18 would be issued once Pasadera obtained title ownership, and continued to provide
19 assurances that the Certificate would be issued based on the Property's legal
20 nonconforming status.
21

22 20. Based on the First Determination and the City's continued assurances that
23 Pasadera would receive the Certificate and building permits when it owned the Property,
24 Pasadera closed on the purchase contract and purchased the Property on December 24,
25 2014, for approximately \$2,025,000.00.
26

27 21. Also in reliance on the statements and First Determination described above,
28 Pasadera sold its administrative facility on Jackrabbit Avenue, entered into a contract to
sell its residential facility at 302 West Ventura, offered its facility at 2950 North Dodge

1 Boulevard for sale, and initiated the process of moving and consolidating its operations at
2 the Property.

3 22. In early January 2015, Pasadera requested to meet the newly-appointed
4 interim City Manager Benny Young to introduce him to Pasadera.

5 23. On January 2, 2015, Pasadera representatives met with Mr. Young and
6 expected to discuss the issuance of the Certificate and permits. Instead, Mr. Young
7 notified them that no Certificate or business license would be issued. Mr. Young
8 informed them for the first time that the Certificate and building permits would only be
9 issued if Pasadera served clients under 18 years old, a distinction not recognized in the
10 Zoning Code, nor in the Level II License.

11 24. The City confirmed Mr. Young had reversed the City's position in a January
12 5, 2015 letter from the Administrator to Pasadera (the "January 5 Letter"). This letter
13 stated that Pasadera had been approved for a business license for "administrative and
14 family outpatient services." The letter stated that "Pasadera Behavioral Health Network is
15 not permitted to provide adult residential services at this site as indicated by Mr. Benny
16 Young late last week."

17 25. The City, in both the meeting and the January 5 Letter, failed to provide
18 Pasadera with any basis or justification for its reversal, or any new facts that led it to its
19 new position.

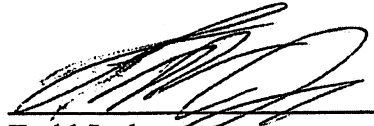
20 26. Pasadera requested a formal clarification letter, which the Administrator
21 issued on January 21, 2015 and Pasadera received on January 26, 2015 (the "Second
22 Determination"). The January 21, 2015 letter reversed the First Determination on the
23 grounds that the clients served at the Residential Facility by Pasadera would change from
24 "youth to adult" and because ACA's Residential Facility use had been discontinued for
25 more than six months.
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d. Such other and further relief to Pasadera as the Court deems just and proper.

DATED: December 11, 2015.

JACKSON & ODEN, P.C.

By: 

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Pasadera Behavioral Health Network