

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STONE RIVER LODGE, LLC, an Illinois limited liability company, et al.

Plaintiffs,

v.

THE VILLAGE OF NORTH UTICA, LaSalle County, Illinois, DAVID STEWART in his representative capacity as President of the Village of North Utica only, and RODNEY DAMRON in his representative capacity as Chief of Police of the Village of North Utica, only.

Defendant.

Case No.

Judge: _____

Magistrate Judge:_____

JURY DEMANDED

COMPLAINT

Plaintiffs, STONE RIVER LODGE, LLC, TAYCAN HOLDINGS LLC, T&S DEVELOPMENTS, LLC, BARBARA TOMCZAK, CHRISTOPHER FLOOD, ALAN GOLDFARB, TYLER TOMCZAK, BEATRIZ VALLE, FAYE DAVIS and STEVEN DAVIS, by and through their attorney, complaining of the Defendants, THE VILLAGE OF NORTH UTICA, LaSalle County, Illinois, DAVID STEWART, currently in his representative capacity as President of the Village of North Utica only, and RODNEY DAMRON, currently in his representative capacity as Chief of Police of the Village of North Utica only, allege and state as follows:

I.

NATURE OF THE CASE

1. Primarily this is a civil-rights action to remedy the violation of Plaintiffs' constitutional rights but it's more than just that and also seeks, among other things, Injunctive

and Declaratory Relief, based upon, among other things, Defendants' recent but continuing violation of Plaintiffs' express right, "running with the land", to use their North Utica Illinois Vacation Villas and Cabins for "residential, **rental**, vacation and/or recreational purposes" as accepted, in both form and substance by the Village attorney, and ultimately approval by the Village's Corporate Authorities in furtherance of various ordinances and special use agreements which were adopted, accepted and approved by the Village some sixteen (16) years ago and, until recently, which purposes were enjoyed by the Plaintiffs and other similarly situated.

II.

THE PARTIES

2. Plaintiffs, Stone River Lodge, LLC, Taycan Holdings LLC, T&S Developments, LLC, Barbara Tomczak, Alan Goldfarb, Christopher Flood, Tyler Tomczak, Beatriz Valle, Faye Davis and Steven Davis are all property owners in the Village of North Utica, Illinois.

3. The Village of North Utica, also referred in public at times merely as "Utica", is a village in Utica Township, LaSalle County, Illinois (herein the "Village" or "Utica").

4. David Stewart is, and at times relevant was, the President of the Village, and is presently being sued in his representative capacity only ("Stewart").

5. Rodney Damron is, and at times relevant was, the Village's Chief of Police, and is presently being sued in his representative capacity only ("Damron").

III.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States and pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983 because it seeks to redress the deprivation of civil and constitutional

rights. The suit also seeks declaratory relief pursuant to 28 U.S.C. § 2201 and recovery of attorney's fees pursuant to 28 U.S.C. § 1983. The Court has supplemental jurisdiction over any state law claims alleged herein pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because substantial part of the events or omissions giving rise to the claims occurred here, and the real property that is the subject of the litigation is located within LaSalle County which makes up a part of the Eastern Division of the United States District Court for the Northern District of Illinois.

IV.

STATEMENT OF FACTS COMMON TO ALL COUNTS

8. The Village is located in Utica Township, LaSalle County Illinois, near the interchange of Interstate 80 (I-80) and Interstate 39 (I-39). The Village rests in the epi-center of several major population centers (e.g., Chicago is approximately 90 miles east; Rockford is approximately 60 miles north; the Quad Cities are approximately 78 miles west; and Peoria, Bloomington/Normal is approximately 60 miles to the south).

9. Also located in LaSalle County on the banks of the Illinois River, southeast of the Village's downtown area is Starved Rock State Park ("Starved Rock"). According to the Illinois Department of Natural Resources, Starved Rock is one of Illinois' most beautiful destinations featuring, within its 2,630 acres, eighteen (18) canyons with vertical walls of moss-covered stone formed by glacial meltwater that slice dramatically through tree-covered St. Peter sandstone bluffs. Starved Rock boasts of more than thirteen (13) miles of trails allowing access to the park's waterfalls, fed season runoff or natural springs, sandstone overhangs, and spectacular overlooks. Lush vegetation supports abundant wildlife, while oak, cedar and pine grow on drier, sandy bluff tops. According to Wikipedia, Starved Rock is host to over two (2)

million visitors annually, the most of any Illinois state park. Visitors to Starved Rock looking for, and in need of, overnight accommodations routinely look in and around the LaSalle County area and primarily in Utica due to its proximity to Starved Rock.

10. In early 2004, LaSalle County Illinois suffered a natural disaster that destroyed the Village Hall and over 56 homes and other structures. Shortly thereafter, the Village, FEMA, and other governments and citizens formed committees and created plans to reconstruct the Village with a focus on restoring the community, improving the local economy and enhancing tourism.

11. Around this same time, an investment group, known as Grand Bear Lodge, LLC, that had recently purchased approximately 27 acres of undeveloped land (the “First Parcel”) in nearby Deer Park Township, approached the Village to discuss plans to annex the First Parcel in accordance with the applicable provisions of the Illinois Municipal Code. (65 ILCS 5/11-15.1-1 et seq.) At the time, the First Parcel was not within the corporate limits of any municipality but was contiguous to the Village.

12. In March 2004, a Village Ordinance, Ordinance No. 2003-50, was recorded with the LaSalle County Recorder’s Office (hereinafter “Ordinance 2003-50”). A true and correct copy of Ordinance 2003-50 recorded by the LaSalle County Recorder’s Office as Document R2004-07038 is attached hereto as **EXHIBIT 1**.

13. Ordinance 2003-50 authorized the Village’s execution of an annexation agreement to annex the First Parcel to the Village. A Pre-Annexation Agreement between Grand Bear Lodge, LLC and the Village dated September 2003 is attached to Ordinance 2003-50 as Exhibit “A” and incorporated within Ordinance 2003-50. (See, EXHIBIT 1 HERETO at 1st WHEREAS clause and Section 1 thereto.)

14. The incorporated Pre-Annexation Agreement stated that the Village would enact an ordinance classifying the First Parcel as “Special Uses for Large Scale Development”. (See ¶ 3 of Exhibit A to EXHIBIT 1 HERETO, entitled “ZONING OF THE PARCEL”)

15. More Specifically, paragraph 3 of Exhibit A to EXHIBIT 1 HERETO expressly states that the “Special Uses Zoning Classification” to be approved by the Village by subsequent ordinance was to “permit the Development of the following:

- A Hotel Lodge consisting of up to 145 Rooms
- ... [and]
- Twenty-Five (25) Buildings, each comprising of Four (4) Vacation Villa Units”.

(Exhibit A to EXHIBIT 1 HERETO at ¶ 3)

16. While the Vacation Villa Units would be subject to a homeowner’s association it was understood and agreed that each Unit was to be separately owned, and that each individual unit owner would own *a freehold estate interest* in a separate parcel of land that made up a portion of the First Parcel and which was improved with a dwelling place. In other words, Unit ownership was not in common with other unit owners. (See Exhibit A to EXHIBIT 1 HERETO at ¶ 17)

17. Exhibit A to Ordinance 2003-50 identifies additional terms that would be made a part of the ordinance. (Exhibit A to Ordinance 2003-50 at ¶ 17) These additional terms included the requirement that a “Declaration of Covenants” be prepared that was “**acceptable in form and substance to the Village attorney**” (See Exhibit C to Exhibit A to Ordinance 2003-50 at ¶ 3.) (Emphasis added) It was further stated that the aforementioned Declaration of Covenants “shall be recorded” and “**shall run with and bind**” the land. (*Id.* at ¶ 3 j.) (Emphasis added)

18. Ordinance 2003-50 also required that such Declaration of Covenants “**must be approved by the Corporate Authorities**” of the Village “prior to becoming effective” (Id at ¶ 3.)

19. A second Village Ordinance, Ordinance No. 2003-51(hereinafter “Ordinance 2003-51), was recorded in March, 2004 with the LaSalle County Recorder’s Office as Document R2004-07039 and is entitled “AN ORDINANCE ANNEXING CERTAIN TERRITORY TO THE VILLAGE OF NORTH UTICA, LASALLE COUNTY, ILLINOIS (GRAND BEAR LODGE, LLC AND STATE OF ILLINOIS PROPERTY). A true and correct copy of Ordinance 2003-51 is attached hereto as **EXHIBIT 2**.

20. Ordinance 2003-51 effectuated the annexation of the First Parcel and other land to the Village in accordance with the terms of the Pre-Annexation agreement attached as Exhibit A to prior Ordinance 2003-50.

21. A third Village Ordinance, Ordinance No. 2003-52 (hereinafter “Ordinance 2003-52), was also recorded in March, 2004 with the LaSalle County Recorder’s Office as Document R2004-07040 and is entitled “ AN ORDINANCE REZONING AND APPROVING THE DEVELOPMENT PLAN OF REAL PROPERTY OWNED BY GRAND BEAR LODGE, LLC.”. A true and correct copy of Ordinance 2003-52 is attached hereto as **EXHIBIT 3**.

22. According to Ordinance 2003-52 after “full consideration” the Village determined that the “Subject Property” should be rezoned “and shall be zoned as a **Special Use** Large Scale Development.” (EXHIBIT 3 HERETO at Section 1) (Emphasis added) The Special Use that was approved included the development of a Hotel and the 25 Buildings that would each house four (4) private Vacation Villas each. (See, EXHIBIT 3 HERETO at its “Exhibit B”).

23. In March 2004, as expressly required by and in furtherance of Ordinance 2003-50, a Declaration of Covenants, more formally known as the DECLARATION OF PARTY WALL RIGHTS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR GRAND BEAR VACATION VILLAS TOWNHOMES, was accepted by the Village Attorney, approved by the Corporate Authorities of the Village, recorded with the LaSalle County Recorder of Deeds, and thereby formally incorporated into Ordinance 2003-50. (A true and correct copy of the recorded Vacation Villas Declaration of Covenants is attached hereto as **EXHIBIT 4** and incorporated herein by reference.)

24. The March 2004 Vacation Villas Declaration of Covenants, which governs how the Villas would be allowed to operate and which delineates the rights conveyed to the owners of such Units (like the Plaintiffs herein), states in pertinent part as follows:

- That the declaration of covenants was established for the benefit of all future owners, tenants and occupants of the real estate and any part thereof, and for the establishment of **“certain easements or rights in, over, under, upon, along and across”** the real estate. (EXHIBIT 4 HERETO at Fifth Whereas Clause) (Emphasis Added)
- That the **“easements, covenants, restrictions, conditions, burdens, uses, privileges, charges and liens”** shall: **“(1) exist at all times hereafter** amongst all parties having or acquiring rights title or interest in any portions of the real estate which shall be subject to this declaration; **(2) to be binding upon and inure to the benefit of each Owner** (as hereinafter defined); and **(3) run with the land** subjected to this Declaration, to be held, sold and conveyed subject thereto.” (EXHIBIT 4 HERETO at pp 1-2) (Emphasis added)¹
- That each Villa **“shall constitute a freehold estate.”** (Exhibit 4 hereto at page 14, Section 10.01) (Emphasis added)²
- That each Villa shall be used for residential purposes except as to **“rental purposes as stated in section 10.22.”** (EXHIBIT 4 HERETO at page 14, Section 10.02) (Emphasis added)

¹ "Owner" is defined as record owner, whether One or More Persons or Entities, of the Fee Simple title to any Assessment Parcel a/k/a the Vacation Villas. (Id at p. 2)

² Black's Law Dictionary defines a Freehold Estate as an "Estate for life". (Black's Law Dictionary, 5th ed.)

- That there shall be no pets allowed and that the unit owners must “pass this restriction to their **tenants, guests and invitees.**” (EXHIBIT 4 HERETO at page 15, Section 10.08) (Emphasis added)
- That each “Vacation Villa and Lake Villa Unit shall be used for residential, **rental, vacation** and/or recreational purposes only.” (EXHIBIT 4 HERETO at page 18, Section 10.22) (Emphasis added)
- That an “**Owner shall not be prohibited from renting an Owner’s Unit.**” (EXHIBIT 4 HERETO at page 18, Section 10.22) (Emphasis added)
- That any Owner shall have the “right to enforce, by proceeding at law or in equity, all restrictions, easements, conditions, covenants, liens and charges as provided for now or hereinafter imposed by this Declaration. (EXHIBIT 4 HERETO at page 21, Section 13.01)
- That the “covenants and restrictions of this Declaration **shall run with and bind the land... for a term of fifty (50) years** from the date the declaration is recorded, **after which time said covenant shall be automatically extended for successive periods of ten (10) years.**” (Exhibit 4 hereto at page 22, Section 13.03) (Emphasis added)
- That all the easements, **rights, covenants, agreements**, reservations, restrictions and conditions herein contained **shall run with the land** and shall inure to the benefit of and be binding upon declarant **and each subsequent holder of any interest in any portion of the property** and the grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set out at length in each and every conveyance of the property or any part thereof. (Exhibit 4 hereto at page 23, Section 13.07) (Emphasis added)

25. Consistent with the Village’s ongoing effort to attract more tourism and in furtherance of the aforementioned rights set forth in the Declaration of Covenants, the marketing and sale of the Vacation Villas to the original owners in 2004 and beyond stressed the right of the Unit owner to be able to rent their Vacation Villa should they so choose and such representations, along with the rights found in the Declaration of Covenants, supra, were relied upon by Plaintiffs when deciding to buy such property.

26. In December 2004, a second group of Ordinances were passed by the Village. These three (3) additional ordinances were adopted in connection with the development of a

second parcel (the “Second Parcel”), which is, on information and belief, contiguous to the First Parcel. (The First Parcel and the Second Parcel are herein after collectively the “Subject Property”.)

27. A true and correct copy of the first of the three December 2004 Village Ordinances, Ordinance No. 2004-38, was recorded with the LaSalle County Recorder’s Office in July 2005 as Document R2005-18319 (hereinafter “Ordinance 2004-38”), a true and correct copy of which is attached hereto as **EXHIBIT 5** and incorporated herein by reference.

28. By Ordinance 2004-38, the Village: (i) approved the execution of a second annexation agreement, this time with Grand Bear Vacation Villas. LLC who, on information and belief, is an affiliate of, or successor to, Grand Bear Lodge, LLC (the original party to the first annexation agreement); (ii) zoned the Second Parcel as “Mixed Use Planned Unit Development” (a special use permit akin to the “Large Scale Development Plan” special use granted under the first annexation agreement); (iii) provided for the construction of a “Spa/Lodge consisting of up to 27 rooms” and a second set of “[t]wenty-seven (27) buildings each comprising of four (4) Vacation Villas” and (iv) approved the issuances of “**any licenses required to operate the following:** a Spa/Lodge consisting of up to 27 rooms” [and a second set] of “**[t]wenty-seven (27) buildings each comprising of four (4) Vacation Villas.**” (See Ordinance No. 2004-38 at page 2, ¶ 3) (Emphasis added)

29. A second December 2004 Village Ordinance, Ordinance No. 2004-39, annexing the Second Parcel to the Village was also recorded with the LaSalle County Recorder’s Office in July 2005 as Document R2005-18318 (hereinafter “Ordinance 2004-39”) and a true and correct copy is attached hereto as **EXHIBIT 6** and incorporated herein by reference.

30. Finally, a third Village Ordinance, Ordinance No. 2004-40 (hereinafter “Ordinance 2004-40”), was passed which granted the “**Special Use**” permit for the Second Parcel of the Subject Property and formally rezoned the Second Parcel as a “Mixed Use Planned Unit Development”. A true and correct copy of Ordinance 2004-40 is attached hereto as **EXHIBIT 7**.

31. Like its earlier counterpart (Ordinance 2003-50), Ordinance 2004-38 required that the second set of Vacation Villas also be governed by a Declaration of Covenants (See, Exhibit C referenced in ¶ 17 of Exhibit A to Ordinance 2004-38 which Ordinance is attached hereto as EXHIBIT 5)

32. Specifically, Paragraph 17 of Exhibit A to Ordinance 2004-38 identifies additional terms that would be made a part of Exhibit A and thus a part of Ordinance 2003-50. The additional terms made a part of Ordinance 2004-38, vis-à-vis Paragraph 17, are found in an “Exhibit C” to Exhibit A of Ordinance 2004-38.

33. These additional terms regarding the Second Parcel included the requirement that a “Declaration of Covenants” be prepared that was “**acceptable in form and substance to the Village attorney**”. (Exhibit C at ¶ 3.) (Emphasis added) Per the Village, the aforementioned Declaration of Covenants “shall be recorded” and “**shall run with and bind**” the land. (Exhibit C to Exhibit A at ¶ 3 j.)

34. Ordinance 2004-38 also acknowledged that such Declaration of Covenants would be, and were, reviewed and “approved by the Corporate Authorities” of the Village before recording. (See, Exhibit C to Exhibit A to Ordinance 2004-38)

35. The second Declaration of Covenants more formally known as the DECLARATION OF PARTY WALL RIGHTS, COVENANTS, CONDITIONS,

RESTRICTIONS AND EASEMENTS FOR GRAND BEAR LAKES TOWNHOMES which was accepted by the Village Attorney, approved by the Corporate Authorities of the Village, recorded with the LaSalle County Recorder of Deeds in July 2005 and thereby formally incorporated into Ordinance 2003-50. (A true and correct copy of the recorded Vacation Villas Declaration of Covenants is attached hereto as **EXHIBIT 8** and incorporated herein by reference.)

36. Like the First Declaration of Covenants, this second Declaration of Covenants accepted and approved by the Village also expressly provided that:

- That the declaration of covenants was established for the benefit of all future owners, tenants and occupants of the real estate and any part thereof, and for the establishment of “certain easements or rights in, over, under, upon, along and across” the real estate. (Exhibit 8 hereto at Fifth Whereas Clause)
- That the “**easements, covenants**, restrictions, conditions, burdens, **uses, privileges**, charges and liens” shall: “(1) **exist at all times hereafter** amongst all parties having or acquiring rights title or interest in any portions of the real estate which shall be subject to this declaration; (2) to be binding upon and inure to the benefit of each Owner (as hereinafter defined); and (3) **run with the land** subjected to this Declaration, to be held, sold and conveyed subject thereto.” (Exhibit 8 hereto at pp 1-2) (Emphasis added)³
- That each Villa “**shall constitute a freehold estate.**” (Exhibit 8 hereto at page 14, Section 10.01)
- That each Villa shall be used for residential purposes **except as to “rental purposes as stated in section 10.22.”** (Exhibit 8 hereto at page 14, Section 10.02) (Emphasis added)
- That there shall be no pets allowed and that the unit owners must “**pass this restriction to their tenants, guests and invitees.**” (Exhibit 8 hereto at page 15, Section 10.08) (Emphasis added)
- That each “Vacation Villa and Lake Villa Unit shall be used for residential, **rental**, vacation and/or recreational purposes only.” (Exhibit 8 hereto at page 18, Section 10.22) (Emphasis added)

³ "Owner" is defined as record owner, whether One or More Persons or Entities, of the Fee Simple title to any Assessment Parcel a/k/a the Vacation Villas. (Id at p. 2)

- That an **“Owner shall not be prohibited from renting an Owner’s Unit.”** (Exhibit 8 hereto at page 18, Section 10.22) (Emphasis added)
- That **any Owner shall have the “right to enforce, by proceeding at law or in equity, all restrictions, easements, conditions, covenants, liens and charges as provided for now or hereinafter imposed by this Declaration.** (Exhibit 8 hereto at page 21, Section 13.01)
- That the **“covenants and restrictions of this Declaration shall run with and bind the land... for a term of fifty (50) years from the date the declaration is recorded, after which time said covenant shall be automatically extended for successive periods of ten (10) years.”** (Exhibit 8 hereto at page 22, Section 13.03) (Emphasis added)
- That all the easements, **rights, covenants, agreements**, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon **declarant and each subsequent holder of any interest in any portion of the property** and the grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set out at length in each and every conveyance of the property **or any part thereof.** (Exhibit 8 hereto at page 23, Section 13.07) (Emphasis added)

37. Consistent with the Village’s ongoing effort to attract more tourism and in furtherance of the aforementioned rights set forth in the Declaration of Covenants, the marketing and sale of the Vacation Villas to the original owners in 2004 and beyond stressed the right of the Unit owner to be able to rent their Vacation Villa should they so choose and such representations were relied upon when deciding to buy such property.

38. In and around 2004 and thereafter, the Vacation Villas constructed on the First Parcel of the Subject Property initially sold for \$230,000.00 or more. With four Vacation Villas in each of the 27 buildings constructed, private ownership in the First Parcel had a conservative total initial investment of approximately \$25 Million Dollars.

39. In and around 2005 and thereafter, the Vacation Villas from the building of the second set of buildings (commonly referred to as “Cabins”) were sold and each Cabin, which

were larger than the First Parcel Vacation Villas, initially sold for well in excess of \$400,000.00 or so a piece. On information and belief, a total of 88 cabins were constructed and sold to private owners like Plaintiffs with a conservative total price tag of approximately \$35 million.

40. Also, sometime between 2004 and 2005, after the commencement of the construction of the initial set of Vacation Villas, the construction of the “Grand Bear Lodge” commenced to occur on the Subject Property which, after completion contained, among other things, ninety-two (92) Hotel Rooms, a two story lobby, and a 10,000 square feet of conference space (hereinafter the “Lodge”)

41. For the next sixteen (16) years or so, from the beginning of the Development through the beginning of 2020, the owners of the Vacation Villas and Cabins were able to rent their Units on their own, based upon their own terms and conditions without any mandates from the Village or involvement of the Lodge or its owner.

42. The expressed right to rent, and the right to do it on their own terms, benefited the Plaintiffs and other owners as it helped pay their mortgage, pay their monthly association fees, and allowed them to maintain and enhance their properties. Such a right also added value and helped to maintain the Units as an attractive investment for resale purposes.

43. The Plaintiffs and other Unit owner’s right to rent per the aforementioned Ordinances and Declarations of Covenants went unabated until very recently when the Village, its President, the Village Attorney, and the Village Chief of Police and others associated with the Village began to work in harmony with the new owner of the Lodge to intentionally and deliberately infringe upon the Plaintiffs’ rental rights, the rights and covenants that run with Plaintiffs’ land, and Plaintiff’s Constitutional Rights.

44. More specifically, on or about June 26, 2019, an entity known as Sonnenschein Investment Services Groupe, LLC (“Sonnenschein Groupe”) paid a mere \$4,500,000.00 to purchase the (i) Lodge, (ii) a 26,000 square foot indoor water park, (iii) an 18 hole miniature golf course, and (iv) restaurant facilities including an outdoor bar and grill which is basically in the center of the Subject Property that is surrounded by the Vacation Villas and Cabins.⁴

45. During the latter part of 2019 and early 2020, Sonnenschein Groupe and its affiliates, who publically boast “over 30 years in the Hospitality & HOA property management” business and “a history of proven success through development, acquisition and operation of strategic assets throughout North America and Western Europe” (<http://www.sonnenscheingroupe.com>), was privately telling the Village, the Plaintiffs and their representative something quite different.

46. Specifically, the Sonnenschein Groupe and/or its related entities were telling the Village and its representatives that Sonnenschein Groupe could not profitably operate its newly purchased Lodge, Water Park, Conference Center, and restaurants unless Sonnenschein Groupe also managed, through a “Rental Pool”, the renting of the Vacation Villas and Cabins owned by Plaintiffs and other like Unit owners even though Sonnenschein Groupe had no investment in these privately owned properties or legal right to rent.

47. Said another way, Sonnenschein Groupe and its affiliates, Sonnenschein Association Management, Ltd. and/or Sonnenschein Hospitality Groupe, were falsely stating: (i) that in order to ensure that both the business of the Unit owners and the business of the Lodge continued to grow it was necessary for the Unit owners to participate in the Rental Pool managed by a Sonnenschein Groupe affiliate or words to that effect; and (ii) that Sonnenschein Groupe’s affiliate and the Village believed that only the owner of the Lodge (Sonnenschein

⁴ By comparison, the completed Villas and Cabins are easily valued at 10 times that purchase price.

Groupe) had a right to rent the Vacation Villas and Cabins that were owned, purchased, paid for and maintained solely by the Plaintiff's and the other Unit owners.⁵

48. When the "Rental Pool Partner Benefits Program" met with opposition from the Unit Owners, the Sonnenschein Groupe shifted tactics and commenced a course of action that included efforts of intimidation against the Unit Owners and enticement of the Village in order to achieve Sonnenschein's business objectives.

49. In November, 2019, Walter Kosch ("Kosch"), CEO of the Sonnenschein Groupe, initiated contact with the Village President to discuss the "Rental Pool" and Kosch's need to have the Unit Owners participate in the Rental Pool so as to ensure the success of the Lodge. In response, the Village President agreed to provide Kosch a letter designed to be forwarded by Kosch, or at his direction, to the Unit Owners. A true and correct copy of the Village President's November 19, 2019 letter to Kosch is attached hereto, incorporated herein by reference, and marked as **EXHIBIT 9**.

50. The November 19, 2019 Letter from the Village President to Kosch was subsequently republished to the Unit Owners in furtherance of Sonnenschein Groupe and the Village's ongoing assault upon Plaintiffs and other Unit Owners to relinquish their private rights and enter a "Rental Pool" over which Sonnenschein Groupe and the Village wanted the Lodge to exclusively control.

51. To that end, the November 19, 2019 letter from the Village President falsely stated, in pertinent part, that: (i) "the individual private daily rental of a villa and/or a cabin by an individual villa owner is not allowed under Village Ordinance"; (ii) "[t]he area in which

⁵ Ironically and sadly, during this same time and times previous, Sonnenschein Groupe's related entity, Sonnenschein Association Management, Ltd. ("Sonnenschein Management"), was being highly compensated by the HOA's as their manager and had a fiduciary duty to look out for the best interests of the Unit owners, their property and the rental rights the Unit Owner's possessed per each of the HOA's Declaration of Covenants. On information and belief, Sonnenschein Management also shared private HOA member information with Sonnenschein Groupe.

these villas/cabins/units are located is not zoned for an individual to engage in daily rentals”; and (iii) only the operator of Grizzly Jack’s Grand Bear Resort (a/k/a the Lodge) is “authorized to rent villa/cabins at the location”.

52. The Village President, Sonnenschein Groupe, and Kosch knew or should have known that the Village President’s November 19, 2019 statements were false and misleading at the time made: (i) because the exact area the Village President referred to in the letter is where the Vacation Villas and Cabins are located, which property was previously granted “Special Use” zoning years ago; (ii) because the 2003 and 2004 Village Ordinances that granted that Special Use zoning also included the Village’s express approval and acceptance of the Unit Owner’s freehold estate and the expressed right running with the land to use the Vacation Villas and Cabins for “rental, vacation and/or recreational purposes” as the private owner so choose; (iii) because the 2003 and 2004 Ordinances that granted the Special Use zoning to Plaintiffs and others included the Village’s express approval and acceptance of the covenant that no Owner would ever be “prohibited from Renting an Owner’s Unit” (which right was accepted and approved without any licensing or Rental Pool participation limitations or requirements); and (iv) because only three weeks or so before the Village President published the November 19, 2019 letter the Village President had been directly advised by the Village Attorney that the Village Ordinances do not address “vacation dwelling overnight rentals”.

53. Contrary to what the Village President was espousing, the concept of Plaintiffs’ engagement in a mandatory Rental Pool Program is not, was not, and was never intended or required by law, by contract, or Ordinance.⁶

⁶ Indeed, a voluntary participation rental pool program was so poorly run by a prior owner of the Lodge that the old Lodge Owner unilaterally terminated the program years ago.

54. Simply put, the Village President had no legal or factual basis upon which to make the statements contained in his November 19, 2019 letter nor did Walter Kosch or the Sonnenschein Groupe have a legal or factual basis to republish such false statements.

55. Nonetheless, not satisfied with the results it thought it would achieve from the republishing the false statements of the Village President, yet hell bent on getting the Plaintiffs and other Unit Owners to succumb to Sonnenschein Groupe and its affiliate's self-serving business objectives, the Sonnenschein Groupe turned up the heat and turned next to heavy handed litigation tactics in an effort to intimidate Unit Owners and beat them into submission.

56. In December, 2019 Sonnenschein Groupe initiated a lawsuit seeking an injunction against two proprietors who own a total of six (6) Villas/Cabins alleging that these Unit Owners were operating unauthorized Bed & Breakfast operations which interfered with Sonnenschein Groupe's rights to run its "Water Park Hotel". See, *Sonnenschein Investment Services, Groupe, LLC v. Starved Rock Cabin Group LLC et al.*, Case No. 2019 CH 209, pending in the Circuit Court for the 13th Judicial Circuit, State of Illinois, County of LaSalle.

57. Sonnenschein Groupe, along with two of its affiliated entities, followed the December 2019 lawsuit with a second lawsuit against individuals who it claims have an ownership interest in Units or a personal relation to Unit Owners claiming defamation, even deigning so low as to name a then Female High School Senior as a Defendant, claiming she published postings to Facebook which the Sonnenschein Groupe and or its affiliates apparently take issue. See, *Sonnenschein Investment Services Groupe, LLC, Sonnenschein Hospitality Group, LLC and Sonnenschein Association Management, Ltd. v. Davis et al.*, Case No. 2020 L 000046, currently pending in the Circuit Court for the 13th Judicial Circuit, State of Illinois, County of LaSalle.

58. While lacking the requisite specificity or legal basis to sustain such an action, it is clear from the second lawsuit that the Sonnenschein Groupe seeks to squelch Unit Owner's First Amendment Right to Free Speech and expression of opinion concerning their "new neighbors" and Sonnenschein Groupe's ongoing efforts to infringe upon Plaintiff and other Unit Owner's property right and monopolize and control the short term vacation rental market in North Utica, Illinois.

59. Sonnenschein Groupe and its affiliates or agents also continued to pressure the Village to act. On information and belief, in order to entice the Village to act more expeditiously, and in order to apparently win favor with the Village Police Chief who purportedly believes he has sole and exclusive oversight over Ordinance enforcement, in or around January 2020, the Lodge owner, its affiliate(s), and/or their principals or other interested person(s), offered to donate funds to the Village, either directly or indirectly, in order to assist the Village in purchasing a brand new 4 x 4 Truck for use by the Village's Police Department that is valued at approximately \$40,000.00. Without much ado, the Village Board of Trustee's authorized and approved the Chief of Police's request for such a vehicle at the January 9, 2020 Village Board of Trustee's meeting.⁷

60. Shortly thereafter, at the February 9, 2020 Village Board of Trustees' meeting, the Village Police Chief reported that a brand new ax Truck was "ready to be picked up."

⁷ The Conduct of the Village Board in connection with this substantial purchase is consistent with it being funded by outside funds or donation(s) and not Village funds. The minutes from the January 9, 2020 Meeting of the Village's Board of Trustee's Meeting is void of: (i) any due diligence discussion regarding the need or purpose for such an expensive truck, (ii) any colloquy regarding any effort being asserted to obtain competitive bidding so as to insure best use of Village funds, or (iii) any discussion from the Village's "Finance Liaison" or "Village Treasurer" on how the Village intended to fund such a purchase. The minutes merely reflect a statement from the Chief of Police that "he would like to purchase a new 4 x 4 Truck for the Police Department [and] [t]he cost of the vehicle would be approx. \$40,000". Next, without any reference to any inquiry or discussion, a Board member motioned for approval and the motion carried without opposition. See, Village of North Utica Minutes from January 9, 2020 Board of Trustees meeting (www.utica-il.gov). This from a Village whose last recorded Treasurer's Report at the time showed deficit spending of roughly \$600,000.00 on revenues of less than \$3,000,000.00. (See, 3-31-19 Treasurer's Report filed with the County Clerk of LaSalle County on September 24, 2019.) (www.utica-il.gov).

61. Approximately two weeks later, at the February 27, 2020 Village Board Meeting, the Village Board of Trustees met to discuss the enactment of a Short Term Vacation Rental Ordinance prohibiting the rental of a “dwelling unit” for a period shorter than thirty (30) consecutive days to any person other than a member of the owner’s family.

62. At said, meeting an attorney for the Lodge Owner, Sonnenschein Groupe, represented to the Village that the Lodge owner was in favor of such an ordinance and claimed that, without such limitations being placed upon all Villa and Cabin Unit owners, the Lodge would be unable to financially thrive and survive, or words to that effect.

63. After supposedly determining that it was in the best interest of all citizens of North Utica, on February 27, 2020 the Village adopted Ordinance 2020-01 entitled “AN ORDINANCE REGULATING VACATION RENTALS IN VILLAGE OF NORTH UTICA, LASALLE COUNTY, ILLINOIS (Title 3– NEW Chapter 12 – Vacation Rental Unit), a copy of which is attached hereto, incorporated herein, marked as **EXHIBIT 10** and is hereinafter referred to as the “Vacation Rental Ordinance”).

64. The Vacation Rental Ordinance states, in pertinent part, that “Vacation rental unit licenses shall be permitted upon receipt of a Special Use as provided for in Section 10-10-1.” (See, page 11 of **EXHIBIT 10** hereto)

65. The aforementioned Section 10-10-1 is a part of the Village’s Zoning Regulations. Section 10-10-1 is the first section of Chapter 10 of the Village Zoning Regulations entitled “**SPECIAL USES**’. A true and correct copy of Chapter 10 of the Village Zoning Regulations entitled “**SPECIAL USES**’ is attached hereto, made a part hereof, and marked as **EXHIBIT 11**.

66. Part 10-1 of Section 10 of the Village's Zoning Ordinance provides that the "intent and purpose of this chapter is to provide a mechanism whereby certain structures and/or uses that are necessary and desirable part are of unique, special, or nonrecurring nature may be permitted within any zoning district." Paragraph C of Section 10-10-5 of the Special Use regulations makes it clear that a Special Use permit is for an entire parcel of land and that it is transfers to "any subsequent landowner". (Id.)

67. Despite the Unit Owners having prior receipt of a Special Use pursuant to Ordinances 2003-52 and 2004-40 (see, ¶¶22 & 28) The Village has failed and repeatedly refused to issue Short Term Vacation Rental Licenses to any Unit Owner seeking the same.

68. According to the Village, property owners like the Plaintiffs "who would like to rent out their property for overnight and short term vacation rental accommodations are required to utilize the rental pool provided directly by Grand Bear Lodge & Resort". (See. e.g., Village letter attached hereto, made a part hereof and marked as **EXHIBIT 12.**)

69. In other words, if a Unit Owner wishes to engage in the short term vacation villa rental business, the Village is demanding that Plaintiffs do business with Sonnenschein Groupe pursuant to an unconscionable, burdensome and one-sided Rental Pool Agreement drafted by Sonnenschein Groupe. (A true and correct copy of the Rental Pool Agreement drafted by Sonnenschein Groupe and presented to the Unit Owners is attached hereto, mad a part hereof and marked as **EXHIBIT 13.**)

70. The Village is requiring Plaintiffs and the like to appoint Sonnenschein Groupe as is agent granting it the exclusive right to solicit and choose potential renters and vacationers to stay in the Plaintiffs' Vacation Villas and Cabins, and for selecting which units the renters will occupy. In other words, the Village demands that Sonnenschein Groupe chooses who they want

to make money from that night of rental.⁸ The rental agreement also gives the Lodge preference to itself and its insiders on selecting which units are rented out first or rented it all for that matter. Who the renters are, how much rent they pay, is to be solely decided by the Lodge according to the village mandate.

71. Specifically this is what the Village is forcing upon Plaintiffs who wish to rent their Units:

- To elect Sonnenschein Groupe's Hotel Manager, Sonnenschein Hospitality Services, LLC ("Hotel Manager") as the Plaintiff's "exclusive rental agent". (Rental Pool Agreement at Recital B. 1)
- To allow Rental Rates to be established solely by Hotel Manager. (Rental Pool Agreement, ¶ 6)
- To pay Hotel Manager a commission of 50% of the net rental fee, which is a sum determined after Hotel Manager pays a booking fee of 18% to OTA's (online travel agencies) like Expedia, bookings.com etc., "in addition to any other compensation set forth in the [Rental Pool] Agreement". (Rental Pool Agreement, ¶8)
- To pay the "other compensation" to Hotel Manager referred to above, which includes a required minimum payment by the Unit Owner of a \$100 to \$150 for "Housekeeping Service" in connection with each rental (which Fee, after the agreement is signed, can be unilaterally changed by Hotel Manager), which amount goes directly to Hotel Manager as it is the one allowed to perform the housekeeping. (Rental Pool Agreement at ¶7) The rental revenue collected by Hotel Manager shall also be reduced by \$30-\$50 per month per Unit Owner to fund a "Keep Well" account.⁹ Likewise, without obtaining a Unit Owner's prior consent, Unit Owners also agree to Indemnify Hotel Manager and hold it harmless. (Rental Pool Agreement, ¶10)
- To be responsible, at Unit Owner's expense, for "furnishing and maintain the Unit" to the standards established by Hotel Manager, in the manager's sole and absolute discretion. Rental Pool Agreement, ¶3) In other words, the Hotel Manager restricts the type of furniture, electronics and decorations a Unit Owner may have in their Cabin or Villa. Hotel

⁸ In other words, nothing prevents Sonnenschein Groupe from renting out one of the Vacation Villas or Cabins it or its cronies own over those owned by Plaintiffs.

⁹ Funds that Unit Owners contribute into that fund are not guaranteed to be used on keeping their Units "well" but may be arbitrarily applied at the Lodge Manager's discretion.

Manager can also arbitrarily determine and undertake any “such maintenance, repair or replacement” under \$500.00 that it unilaterally determines is necessary in order to conform to the “standards” it has set. (Rental Pool Agreement, ¶4(d)) If the Unit Owner doesn’t comply or make demanded repairs, the Hotel Manager, in its sole discretion, can refuse to rent the Unit and/or prioritize the rental of other Units. (Rental Pool Agreement, ¶4 (d))

- To carry (and pay for) “property and liability insurance”. (Rental Pool Agreement, ¶10)
- To pay all expenses associated with their Unit including, mortgage, utilities, association dues and assessments, real estate taxes and any “other costs associated with the management, maintenance, repair, replacement, or alteration of the unit.” (Rental Pool Agreement paragraph 9.)
- To agree to allow Units, other than their own, to experience a higher rate of occupancy than others (allowing Hotel Manager to prefer insiders).
- To accept limitations on Unit Owner’s right to use and occupy their own property when and how a Unit Owner sees fit. Specifically, the Rental Agreement the Village demands Plaintiff’s execute in order to rent their Units specifically states that: “unit owners use of the unit shall not exceed five (five) days consecutively or in the aggregate during (i) the period from June 5 to Labor Day or ... on legal holidays (under the laws of the state of Illinois) including the day before or the day after”, or weekends during the winter months. To and insult to injury, when a Unit Owner choses to occupy their Property outside of those “blackout dates” they must notify Hotel Manager that Unit Owner is occupying their own Units!
- To do business with an entity that in not contributing any of its own money to the rental of the units rented under the rental pool agreement.
- To do business with the affiliate of an entity that actively engages in the suing of Unit Owners.
- Requiring Unit Owner’s to check in and out of their own Unit with the Hotel Manager at the beginning and end of their occupying their own property all the while abiding by “all policies of the resort.” (Rental Agreement ¶12)

72. If the aforementioned is not egregious enough, by requiring the Plaintiffs to be a part of the Rental Pool, the Village is also demanding that Unit Owner’s, like Plaintiffs, also

agree to permit the Lodge Manager the right to use the Owner's Unit **“free of charge for promotional purposes as opportunities arise...at such time of year that is deemed most beneficial to the resort.”** (Rental Agreement, Exhibit 13 hereto at paragraph 15) (Emphasis added)

73. Such rental control by the Village is not only an unreasonable restriction upon Plaintiffs' property it violates both the rights owned by Plaintiffs which run with their land and Illinois law. See, Illinois Rent Control Preemption Act., 50 ILCS 825/10 (A home rule unit may not regulate or control the amount of rent charged for leasing private residential or commercial property). After sixteen years of renting without an ordinance, no valid reason exists to alter or limit that right.

74. Such conduct also treats Plaintiff's unfairly under the mortgage lending guidelines of government sponsored enterprises (GSE's), like the Federal National Mortgage Association (“Fannie Mae”), which guidelines prohibit mortgagors from being a part of a Rental Pool arrangement.

75. The Village has been relentless in its efforts to favor one property owner (Sonnenschein Groupe) over another. In an effort to force the Plaintiffs and others like them to succumb to the Village's unlawful means, and in an attempt to make Plaintiffs and the like to pay for attempting to exercise their rights and liberties, the Village, thorough its Chief of Police, has engaged in a deliberate and targeted effort to harass Unit Owners unlawfully.

76. The harassment of Unit Owners by the Chief of Police started even before the Vacation Rental Ordinance's required ten (10) day publication period had expired. The Illinois Municipal Code is clear and unequivocal that any village ordinance imposing a fine, like the

Vacation Rental Ordinance, shall not “take effect until 10 days after it is published”. 65 ILCS¹⁰ 5/1-2-4. Specifically, the Chief of Police issued two (2) citations for alleged violations of the Vacation Rental Ordinance which the Chief of Police claims occurred on March 7, 2020 even though the Village and its Chief of Police knew or should have that the Illinois Municipal Code prohibited such enforcement as the Vacation Rental Ordinance had not yet taken effect.¹¹

77. The harassment by the Village continued thereafter with the Chief of Police issuing citations without just cause and in some cases without any basis in fact or law at all. For example, on two occasions the Chief of Police approached an Owner’s Unit, rang the bell and stated “I’m just curious if you’re renting this for the weekend” or words to that effect. Next, there were citations issued for alleged violations on days when neither the Chief of Police nor any other Village personnel had even visited the Units cited; yet the Unit owners and/or their managers are facing charges and \$750 fines (and more) for alleged unlawful conduct under the Vacation Rental Ordinance.

78. The Village and the Village Police’s favoritism of Sonnenschein Groupe and their unequal and unfair treatment of the Plaintiffs and other Unit Owners continues. Most recently, during the first few weekends of June 2020, Sonnenschein Groupe has set up barriers and otherwise has prevented Plaintiffs free ingress and egress to their properties in direct violation of the easements granted to Plaintiffs pursuant to the attached documentation. Sonnenschein Groupe has also allowed third parties to park on the right of ways thereby further infringing

¹⁰ This law applies equally to home rule villages. 715 ILCS 5/10.

¹¹ A publication date of February 27, 2020 is giving the Village the benefit of the doubt for now as the so called “publication” of the Vacation Rental Ordinance by the Village on that date is suspect. As of June 16, 2020 the Vacation Rental Ordinance is still not published on the Village’s Website with the other Village Ordinances under the Website’s “Codes & Ordinance” tab. Neither had the Village even published short term rental application forms as of March 7, 2020, the alleged violation date, such that someone who wanted to apply couldn’t even do so.

upon Plaintiffs' right of way and easement rights. When Plaintiffs sought assistance from the Police, the Village Police failed and refused to assist Plaintiffs.

79. Consequently Court intervention is required. Plaintiffs have invested substantial sums of money in the purchase and upkeep of their properties and they are and will be irreparably harmed if they were not allowed to enjoy the benefits of renting out their properties as short term rentals, which rental right runs with the land and constitute an equitable servitude, the protection of which warrants injunctive relief. The Plaintiffs' properties have previously been rented for the last 16 years and no legitimate reason exists for the Village's enactment and enforcement of the Vacation Rental Ordinance. Plaintiff's inability to rent and the persecution by the Village and its Chief of Police has caused and continues to immediate harm and such harm has caused and threatens to cause Plaintiffs irreparable harm.

80. The Village's favoring of the Sonnenschein Groupe and others who are allowed to engage in short term rentals under a previously granted special use is discriminatory, causes Plaintiffs to be treated differently from those who are similarly situated, violates the Special Use granted Plaintiffs and property rights that run with their land and must be enjoined.

81. There is substantial and continuing controversy between the parties as a result of the Village's wrongful conduct.

82. Plaintiffs will suffer irreparable harm with no adequate remedy at law if the Ordinance is enforced as written and/or the Village refuses to acknowledge Plaintiffs' rights. The Vacation Rental Ordinance should be declared null and void. Alternatively, the Village should be estopped from enforcing the ordinance against the Plaintiffs, their property and against others and their properties that are similarly situated to Plaintiffs. The Village, it's

President and Chief of Police should be ordered to refrain from either enforcing it and/or harassing Plaintiffs with threats of enforcement.

COUNT I – RELIEF REQUESTED UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION’S EQUAL PROTECTION CLAUSE AND 42 U.S.C. §1983 DUE TO DEFENDANTS’ UNEQUAL TREATMENT OF PLAINTIFFS

83. Plaintiff incorporates by reference paragraphs 1 through 82 above as if set forth in full herein as this paragraph of Count I of this Complaint.

84. Any person who deprives another person of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, 42 U.S.C. §1983.

85. The 14th Amendment of the U.S. Constitution guarantees people equal protection under the laws.

86. The purpose of the Equal Protection Clause of the 14th Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute, or by its improper execution through duly constituted agents.

87. The Equal Protection Clause of the U.S. Constitution guards against government discrimination on the basis of race and other immutable characteristics, and also extends to protect people from "class-of-one" discrimination, in which a government entity irrationally singles out one person for poor treatment.

88. A class-of-one equal-protection claim also exists when the principal characteristics of two individuals are the same, and one received more favorable treatment than the other.

89. The Plaintiffs, and being irrationally singled-out, discriminated against, and being treated unequally by the Village, its President and Chief of Police.

90. Sonnenschein Groupe, on the other hand, is receiving more favorable treatment than Plaintiffs. Sonnenschein Groupe, which owns at least four (4) of the Villas and is able to engage in short term vacation rentals of those properties while Plaintiffs cannot rent their properties.

91. Individual Unit Owners willing to execute the unconscionable Rental Pool Agreement and succumb to the arbitrary and capricious demands of the Village can also rent their Villas or Cabins on a short-term basis and as such are also being given more favorable treatment with no rational basis behind such right.

92. Additionally, other persons and entities owning property in North Utica Illinois are receiving more favorable treatment than the Plaintiffs as they are being granted Short Term Rental Licenses and the right to rent their properties on a short term basis from the Village without having to join the Sonnenschein Groupe's Rental Pool or being subject to the terms of such an arrangement including, but not limited to, paying over 50% of their rental revenue to Sonnenschein Groupe cause the Village says they must, or letting Sonnenschein dictate who rents and occupies their property and when the property owner can occupy their own property.

93. Likewise, other property owner's in the Village who were previously granted a Special Use to engage in short term and vacation rentals have, on information and belief, been granted a license while Plaintiffs have not resulting unequal treatment in violation of Plaintiffs' right to equal protection.

94. The Village's requirement that in order for Plaintiffs to rent their Villa or Cabin they must share their revenues with the Sonnenschein Groupe, favors one business over the other in an unfair, unequal and discriminatory manner.

95. Alternatively, a pattern of conduct by a defendant toward a plaintiff can demonstrate, on its own, the government's improper discriminatory purpose, sufficient to demonstrate an equal-protection violation.

96. The Vacation Rental Ordinance, as applied to Plaintiffs' property, has deprived Plaintiffs of private property rights and privileges that run with their land. Plaintiffs are and have suffered a substantial reduction of the previously granted and permissible use of their lands.

97. The enactment of the Vacation Rental Ordinance by the Village violates Plaintiffs' equal protection rights and was and is a classic arbitrary, irrational, discriminatory act by the Village in deliberate ignorance of the general welfare of the Village as a whole. The Village and its President sought to benefit one vocal business owner who seeks to increase and preserve its own property value, limit its competition, and otherwise profit at the direct expense of Plaintiffs by extinguishing or substantially limiting their property rights and privileges running with their land.

98. The Vacation Rental Ordinance was not passed as part of any comprehensive zoning plan. Its enactment did not promote the health, safety or general welfare of the public. In an area relying upon tourism, the enactment of the Vacation Rental Ordinance ignored the general welfare of the Village as a whole.¹² Indeed, by limiting the availability of short term

¹² A North Utica resident may have said it best when she previously advised the Village in connection with a Special Use Permit being sought by another resident that "Utica is known as a destination community and these private rentals help to bring additional tourism into the Village." (See, Village of North Utica Planning Commission Public Hearing Minutes for October 24, 2019 at page 3.)

rentals available the ordinance adversely impacts the Village, its businesses and its residents. All for the sole benefit of the new hotel owner.

99. The Vacation Rental Ordinance is not rationally related to any legitimate government interest and therefore is not a valid exercise of the Village's power to protect the public's health, safety or welfare. The Subject Property was designed, intended and approved for allowing individual owners to rent out their Cabins and Villas. The Subject Property is situated in a part of the Village such that no contiguous parcel or other area is negatively impacted by the rental of the Cabins and Villas. (See, Google Maps photos of the entire Subject Property including the Villas, Cabins and Hotel, true and correct copies of which are attached hereto, made a part hereof and marked as **EXHIBIT 14**.¹³

100. The Village simply has absolutely no reasonable basis for concluding that short term rentals of the Villas and Cabins pose a greater threat to the public's health, safety and welfare than would rentals located in the Village's Central Business, General Commercial or Highway Commercial Districts.

101. The Vacation Rental Ordinance also treats licensees differently than it treats licensees under the Village's Hotel and Motel licensing scheme.

102. Indeed, the Vacation Rental Ordinance bears no substantial relationship to the public health, safety or welfare. Rather, it is an arbitrary, irrational and capricious act resulting in discrimination against Plaintiffs and other Unit Owners alike.

103. No permissible interpretation or basis exists which justifies the adoption of the Vacation Rental Ordinance as applied to Plaintiffs' property.

¹³ One of the photo clearly depicts the location of the Lodge in the Orange box and in the same photo the blue and purple lines depict the roads leading up to the various Villas and Cabins.

104. The Village conspiring with Sonnenschein in an effort to protect Sonnenschein Groupe, the Lodge owner, from competition at the expense of the Plaintiff Unit Owners who would like to rent their Units and have the express right to rent their Units is not a valid exercise of the Village's police power to protect the public's health, safety and welfare.

105. The Vacation Rental Ordinance therefore violates Plaintiffs' right to equal protection and due process as guaranteed by State and Federal Law.

106. The Vacation Rental Ordinance will also harm Plaintiffs as they lose a potential source of revenue to pay for their property costs and the ordinances enforcement also will cause serious injury to homeowners by diminishing their property values and threatening them with serious fines and penalties including recovery of attorney's fees by the village, despite the Plaintiffs' unconditional right to rent that runs with their land.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief;

A. Enter a declaratory Judgment that the Vacation Rental Ordinance violates the U.S. Constitution, violates Plaintiffs' property and other rights, and is void in whole or part;

B. Enter a temporary restraining order, preliminary injunction and a permanent injunction prohibiting Defendants from violating such constitutional rights of the Plaintiffs and/or from violating Plaintiffs' property rights and enjoining Defendants, their affiliates, employees or agents from future violations of same and from among other things, conducting warrantless searches pursuant to the Vacation Rental Ordinance;

C. Enjoin the Defendants from any effort to enforce the Vacation Rental Ordinance;

D. Award Plaintiffs their reasonable costs, expenses. and attorney's fees pursuant to applicable law, including 42 U.S.C. 1988; and

E. Award Plaintiffs any additional relief the Court deems just and proper.

**COUNT II – RELIEF REQUESTED UNDER 42 U.S.C. §1983 and THE U.S.
CONSTITUTION’S 4th and 14TH AMENDMENTS BASED UPON
DEFENDANTS’ VIOLATION OF PLAINTIFF’S RIGHT TO DUE PROCESS**

107. Plaintiff incorporates by reference paragraphs 1 through 106 above as if set forth in full herein as this paragraph of Count II of this Complaint.

108. The Fourth Amendment to the United States Constitution states, in pertinent part, that “[n]o person shall be...deprived of life, liberty or property without due process of law”. U.S. Const., amend. IV.

109. The Fourteenth Amendment prohibits states from depriving a person of life, liberty, or property, without due process of law. U.S. Const., amend. XIV.

110. Once issued in 2003-2004, the Special Use permit became a property right for due process purposes.

111. Denial of the right to engage in Short Term Rentals is a violation of that right and the Plaintiffs’ right to due process.

112. Additionally, the procedure the Village enacted within the Vacation Rental Ordinance with regards to the Village’s ability to revoke a short term rental license once issued is also a per se violation of one’s due process rights. Once issued a licensee must be afforded the basis rights of procedural due process. Under the Vacation Rental Ordinance, the ability for either the Village Zoning Office or the Chief of Police to unilaterally revoke or suspend a license without notice or a chance to be heard or afforded the basis right of procedural due process is unconstitutional. See, e.g., *Club Misty, Inc. v. Laski*, 208 F. 3d 615, 619 (7th Cir. 2000); *Lopez v. Illinois Liquor Control Comm’n*, 120 Ill. App. 3d 756, 760 (1983) (“a licensee must be afforded the basic rights of procedural due process”).

113. The Vacation Rental Ordinance violates the Special Use previously granted Plaintiffs. The Cabins and Villas were created for the purpose of short term rentals and that use is the best use and did not, does not and will not negatively impact the surrounding properties as the Subject Property is surrounded by rural and agricultural (farm) land. Plaintiffs bought with the understanding that they could rent the properties on their own terms without any requirement that the Lodge manage and control that right. The limitations placed upon Plaintiffs and their properties greatly diminish the value of such property. The Vacation Rental Ordinance does not promote the health, safety, moral or general welfare of the public and in fact negatively impacts the Village as a whole for the sole benefit and gain of one property owner: Sonnenschein Groupe. The Vacation Rental Ordinance is contrary to the Land use development plans of the Village as created some 16 years ago. The community has functioned well without a Vacation Rental Ordinance and its enactment meets no need of the Village as a whole.

114. Plaintiffs' due process rights have been violated, Plaintiffs have been damaged and continue to be damaged warranting both legal and equitable relief.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief;

A. Enter a declaratory Judgment that the Vacation Rental Ordinance violates the U.S. Constitution, violates Plaintiffs' property and other rights, and is void in whole or part;

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from violating such constitutional rights, Plaintiffs' property rights and enjoining Defendants from future violations of same , from among other things, conducting warrantless searches pursuant to the Vacation Rental Ordinance;

C. Award Plaintiffs their reasonable costs, expenses. and attorney's fees pursuant to applicable law including 42 U.S.C. 1988;; and

D. Award Plaintiffs any additional relief the Court deems just and proper.

**COUNT III – RELIEF REQUESTED UNDER ILLINOIS CONSTITUTION’S
ARTICLE I, SECTION 2 GUARANTEEING PLAINTIFFS DUE PROCESS
AND EQUAL PROTECTION UNDER THE LAW**

115. Plaintiff incorporates by reference paragraphs 1 through 114 above as if set forth in full herein as this paragraph 109 of Count III of this Complaint.

116. Like the U.S. Constitution, Article I, Section 6 of the Illinois Constitution guarantees Plaintiffs equal protection under the laws, specifically providing as follows:

DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without
due process of law nor be denied the equal protection of the laws.

(Article 1, Section 2, Illinois Constitution)

117. Plaintiffs’ right to equal protection and due process under the Illinois Constitution have been violated warranting relief from this Court.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief;

A. Enter a declaratory Judgment that the Vacation Rental Ordinance violates Article I, Section 6 of the Illinois Constitution:

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from violating such constitutional rights and enjoining them, from among other things, conducting warrantless searches pursuant to the Vacation Rental Ordinance;

C. Award Plaintiffs their reasonable costs, expenses. and attorney’s fees pursuant to 740 ILCS 23/5(c); and

D. Award Plaintiffs any additional relief the Court deems just and proper.

**COUNT IV – RELIEF REQUESTED UNDER THE U.S. CONSTITUTION’S
4TH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE
SEARCHES, SEIZURES AND INVASIONS OF PRIVACY.**

118. Plaintiff incorporates by reference paragraphs 1 through 117 above as if set forth in full herein as this paragraph 118 of Count IV of this Complaint.

119. The Fourth Amendment to the United States Constitution states in relevant part as follows:

120. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

121. The Vacation Rental Ordinance enacted by the Village violates Plaintiffs and their guest’s constitutional rights to be free from unreasonable search and seizures invasions of privacy and interceptions of communications regarding personal data.

122. Without limitation, the short-term rental ordinance provides that every “rental unit shall be subject to inspection by members of the Utica Police Department, the Village Zoning Enforcement Officer, the Utica Fire Protection District, and the LaSalle County Health Department.” Vacation Rental Ordinance, **EXHIBIT 10** hereto at Section 3-12-4 B.

123. Without limitation, the short-term rental ordinance also provides that a vacation rental unit operator “shall keep a register in which shall be entered the name of every guest and his/her arrival and departure dates. Such register shall be maintained for at least a five year period. The operator shall make such register freely accessible to any officer of the Village Police Department and/or the zoning enforcement officer. Vacation Rental Ordinance, **EXHIBIT 10** hereto at Section 3-12-4 C. The Vacation Rental Ordinance does not require

Village officials to find reasonable suspicion, probable cause or to obtain a warrant or even identify a reason for demanding personal information before seizing it.

124. The Vacation Rental Ordinance does not require the Utica Police Department, the Village Zoning Enforcement Officer, the Utica Fire Protection District, and the LaSalle County Health Department to find probable cause or to obtain a warrant before engaging in inspection of a rental unit or the operator's books and records. Rather, through these provisions, the Village delegates unlimited and unbounded discretion to its officials to conduct, or to commission non-Village personnel to conduct, unrestricted searches of homes for any reason at any time in any manner.

125. A search of a person's home or property is presumptively unreasonable and unconstitutional if conducted without a warrant. *See v. City of Seattle*, 387 U.S. 541, 543 (1967). A businessman, like the occupant of a residence, also has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property. *Id.*

126. The constitutional guarantee against unreasonable searches is not just limited to the protection of homeowners and businessmen. The United States Supreme Court has held that a guest, in a place other than his own home, shall enjoy the same protection occupying a vacation rental or shared housing unit regardless of whether those premises are the personal residence of the owner. *See, e.g., Minnesota V Olson*, 495 U.S. 91, 97-98 (1990); *Hoffa v. United States*, 385 U. S. 293, 301 (1966).

127. The Constitution simply does not allow a village or city to grant their officials power to conduct warrantless or suspicion-less searches at any time or in any manner which is

what the Vacation Rental Ordinance provides and what the Village's Chief of Police has already done. See, *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978).

128. Through the aforementioned provisions, short-term rental ordinance delegates unlimited and unbounded discretion to village officials to seize personal information for any reason and at any time and does not require village officials to define reasonable suspicion, probable cause, or to obtain a warrant or even identify a reason for demanding before entering Plaintiff's property to search same or inquire of the occupants.

129. Through these provisions, the short-term rental ordinance delegates unlimited unbounded discretion to village officials to seize personal information for any reason, or no reason at all, and at any time.

130. The Ordinance authorizes warrantless searches of Plaintiffs' property and invades personal privacies and, thus, should be found unconstitutional.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief;

A. Enter a declaratory Judgment that the Vacation Rental Ordinance violates the U.S. Constitution, violates Plaintiffs' property and other rights, and is void in whole or part;

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from violating such constitutional rights, Plaintiffs' property rights and enjoining Defendants from future violations of same , from among other things, conducting warrantless searches pursuant to the Vacation Rental Ordinance;

C. Award Plaintiffs their reasonable costs, expenses. and attorney's fees pursuant to applicable law including 42 U.S.C. 1988;; and

D. Award Plaintiffs any additional relief the Court deems just and proper.

**COUNT V – RELIEF REQUESTED UNDER ILLINOIS CONSTITUTION'S
ARTICLE I, SECTION 6**

131. Plaintiff incorporates by reference paragraphs 1 through 124 above as if set forth in full herein as this paragraph 125 of Count V of this Complaint.

132. Like the 14th Amendment of the U.S. Constitution, Article I, Section 6 of the Illinois Constitution guarantees people equal protection under the laws stating in pertinent part as follows:

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

133. Article I, Section 6 of the Illinois Constitution explicitly guarantees a fundamental right of privacy with regards to private financial and business records, which right includes businesses, such as the short term rental efforts of the Plaintiffs. See, e.g., *People ex rel. Better Broad Council Inc. v. Keane*, 17 Ill.App.3d 1090, 1095, 309 N.E.2d 362,366 (1st Dist. 1973).

134. The conduct as described above, including the Vacation Rental Ordinance's requirements regarding access to homeowner records, violates Plaintiffs' rights under Article I, Section 6 of the Illinois Constitution and must be enjoined.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief;

A. Enter a declaratory Judgment that the Vacation Rental Ordinance violates the Fourth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 6 of the Illinois Constitution:

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from violating such constitutional rights and enjoining them, from among other things, conducting warrantless searches pursuant to the Vacation Rental Ordinance;

C. Award Plaintiffs their reasonable costs, expenses. and attorney's fees pursuant to 740 ILCS 23/5(c); and

D. Award Plaintiffs any additional relief the Court deems just and proper.

**COUNT VI – RELIEF REQUESTED FOR VIOLATION OF THE FEDERAL
ANTITRUST ACT**

135. Plaintiff incorporates by reference paragraphs 1 through 134 above as if set forth in full herein as this paragraph 135 of Count VI of this Complaint.

136. The Village, its President and Chief of Police, by conspiracy with Sonnenschein Groupe and/or its affiliates has unreasonably restrain trade or commerce in the short term rental industry in North Utica, Illinois and in particular in the area where the Subject Property is located.

137. The Village, its President, and Chief of Police, along with the Sonnenschein Group have established, maintained, used, or attempt to acquire monopoly power over part of the short rental trade or commerce in this State, and in particular North Utica, Illinois, for the purpose of excluding competition or of controlling, fixing, or maintaining prices in such trade or commerce.

138. The Defendants' conduct is in violation of the Sherman Antitrust Act, 15 U.S.C. 1 et seq., for which relief is request.

139. Plaintiffs, and other like them, have been damaged by such conduct in that they cannot rent their properties on their own and, otherwise, must rent through the Rental Pool Agreement which allows Sonnenschein Groupe to monopolize the market including the amount of rent to be charged and who and when Plaintiffs' Vacation Villas and Cabins.

WHEREFORE, Plaintiffs demands judgment in their favor for:

- (a) Injunctive Relief
- (b) Monetary Relief
- (c) Costs of suit;
- (d) Attorneys' fees; and

- (e) For such other relief as the court may deem equitable and just.

**COUNT VII – RELIEF REQUESTED FOR VIOLATION OF THE ILLINOIS
ANTITRUST ACT**

140. Plaintiff incorporates by reference paragraphs 1 through 139 above as if set forth in full herein as this paragraph 140 of Count II of this Complaint.

141. The Village, its President and Chief of Police, by conspiracy with Sonnenschein Groupe and/or its affiliates has unreasonably restrain trade or commerce in the short term rental industry in North Utica, Illinois and in particular in the area where the Subject Property is located

142. The Village, its President, and Chief of Police, along with the Sonnenschein Group have established, maintained, used, or attempt to acquire monopoly power over part of the short rental trade or commerce in this State, and in particular North Utica, Illinois, for the purpose of excluding competition or of controlling, fixing, or maintaining prices in such trade or commerce.

143. The Defendants' conduct is in violation of the Illinois Antitrust Act, 740 ILCS 10/1 et seq., for which relief is request.

WHEREFORE, Plaintiffs demands judgment in their favor for:

- (a) Injunctive Relief;
- (b) Monetary Relief;
- (c) Costs of suit;
- (d) Attorneys' fees under applicable law including 740 ILCS 10/7; and
- (e) For such other relief as the court may deem equitable and just.

COUNT VIII – EQUITABLE ESTOPPEL

144. Plaintiff incorporates by reference paragraphs 1 through 143 above as if set forth in full herein as this paragraph 144 of Count VIII of this Complaint.

145. The Village is equitably estopped from preventing Plaintiffs from continuing to rent their Villas and Cabins in violation of the Special Use granted Plaintiff some 16 years ago. See, e.g., *People ex. rel. Skokie Town Home Builders v. Village of Morton Grove*, 16 Ill. 2d 183, 191 (1993) (where there has been a substantial change of position, expenditures or incurrence of obligations under a permit, a party has a vested property right for the purposes originally authorized, irrespective of subsequent zoning or change in zoning classifications).

WHEREFORE, Plaintiffs demands judgment in their favor for:

- (a) Injunctive Relief;
- (b) Monetary Relief;
- (c) Costs of suit;
- (d) Attorneys' fees; and
- (e) For such other relief as the court may deem equitable and just

COUNT IX – PROMISSORY ESTOPPEL

146. Plaintiff incorporates by reference paragraphs 1 through 145 above as if set forth in full herein as this paragraph 146 of Count IX of this Complaint.

147. The Village is estopped from preventing Plaintiffs the right to rent their properties in violation of the rights that run with the Plaintiffs' land.

WHEREFORE, Plaintiffs demands judgment in their favor for:

- (a) Injunctive Relief;
- (b) Monetary Relief;

- (c) Costs of suit;
- (d) Attorneys' fees; and
- (e) For such other relief as the court may deem equitable and just.

COUNT X – SPECIFIC PERFORMANCE

148. Plaintiff incorporates by reference paragraphs 1 through 147 above as if set forth in full herein as this paragraph 148 of Count X of this Complaint.

149. The Village is estopped from preventing Plaintiffs the right to rent their properties in violation of the rights that run with the Plaintiffs' land.

WHEREFORE, Plaintiffs demands judgment in their favor for:

- (a) Injunctive Relief;
- (b) Monetary Relief;
- (c) Costs of suit;
- (d) Attorneys' fees; and
- (e) For such other relief as the court may deem equitable and just.

COUNT XI – DECLARATORY RELIEF UNDER 28 U.S.C. §2201

150. Plaintiff incorporates by reference paragraphs 1 through 149 above as if set forth in full herein as this paragraph 150 of Count XI of this Complaint.

151. This action presents an actual case or controversy between the parties concerning the validity and enforceability of the Vacation Rental Ordinance.

152. Since the Vacation Rental Ordinance violates Plaintiffs' Constitutional and Property rights, Plaintiffs ask this Court to declare that the Vacation Rental Ordinance is void, in whole or in part, that the Village is forever estopped from preventing Plaintiffs the right to rent their properties in violation of the rights that run with the Plaintiffs' land and that Plaintiffs'

right to rent shall not be infringed upon by the arbitrary, capricious and discriminatory conduct of the Village, the Village President and like Village representatives, and/or the Village police department including, but not limited to the Chief of Police.

153. Plaintiffs will suffer irreparable and imminent harm if the Vacation Rental Ordinance is enforced as written, as more fully described in detail above.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief;

A. Enter a declaratory Judgment that the Vacation Rental Ordinance violates the U.S. Constitution, violates Plaintiffs' property and other rights, and is void in whole or part;

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from violating such constitutional rights, Plaintiffs' property rights and enjoining Defendants from future violations of same, from among other things, conducting warrantless searches pursuant to the Vacation Rental Ordinance;

C. Award Plaintiffs their reasonable costs, expenses, and attorney's fees pursuant to applicable law; and

D. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT XII – WRIT OF MANDAMUS

154. Plaintiff incorporates by reference paragraphs 1 through 153 above as if set forth in full herein as this paragraph 154 of Count XII of this Complaint.

155. That this Court declare that the Vacation Rental Ordinance is void, in whole or in part, that the Village is forever estopped from preventing Plaintiffs the right to rent their properties in violation of the rights that run with the Plaintiffs' land and that Plaintiffs' right to rent shall not be infringed upon by the arbitrary, capricious and discriminatory conduct of the Village, the Village President and like Village representatives, and/or the Village police department including, but not limited to the Chief of Police.

156. That a Writ of Mandamus be issued.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief;

E. Enter a Writ that the Vacation Rental Ordinance violates the U.S. Constitution, violates Plaintiffs' property and other rights, and is void in whole or part;

F. Enter a Writ prohibiting Defendants from violating such constitutional rights, Plaintiffs' property rights and enjoining Defendants from future violations of same;

G. Award Plaintiffs their reasonable costs, expenses, and attorney's fees pursuant to applicable law; and

H. Award Plaintiffs any additional relief the Court deems just and proper.

JURY DEMANDED

PLAINTIFF DEMANDS TRIAL BY JURY

Dated: June 18, 2020
Lisle, Illinois

RESPECTFULLY SUBMITTED,

/s/ Michael A. Kraft

By: _____
Michael A. Kraft, Plaintiffs' attorney

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