

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Circuit Court Judge

Appellant Case No. 2025-001031
Case No. 2021-CP-07-01085
Case No. 2020-CP-07-00989

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SC Court of Appeals

R.V. Resort and Yacht Club Owners'
Association, Inc., Securitas Services,
Inc., Mike Morales, and Sunset, Inc.

Respondents,

v.

Turner's Marina, LLC

Appellant.

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO CONSOLIDATE APPEALS
AND STAY PROCEEDINGS PURSUANT TO RULE 214, SCACR

The Respondents, R.V. Resort and Yacht Club Owners' Association, Inc., ("POA") and Sunset Inc. ("Sunset"), (collectively "Respondents"), hereby file this Return to Appellant's Motion to Consolidate Appeals and Stay Proceedings Pursuant to Rule 214, SCACR ("Motion").¹

As discussed in detail below, Appellants' effort to consolidate appeals in a matter in which there is only one (1) appeal should be denied on numerous grounds.

A. Argument

Rule 214 SCACR sets forth the requirements for consolidation of appeals as follows:

¹ The additional Respondents' listed by Appellant in its caption, Mike Morales and Securitas Services, Inc. are not parties to this appeal, having resolved their involvement in this matter through settlement with the Appellant.

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.

A cursory review of the requirements for consolidation under this Rule indicates Appellant has failed to meet any of the required conditions.

1. Is there more than one pending Appeal?

Rule 214 SCACR requires there be more than one (1) pending appeal. In this matter, the only appeal pending is Appellant Case No. 2025-001031 (“Pending Appeal”). The case Appellant wants to consolidate with the Pending Appeal, Turner’s Marina LLC v R.V. Resort and Yacht Club Owners’ Association, Inc., C.A. 2020-CP-07-989 (“Turner 1”) is a case tried before the Honorable Marvin H. Dukes III, over a period of nine(9) days, with the last day of trial being on November 8, 2022 – well over two(2) years ago. Judge Dukes still has the case under advisement. Thus, not only is there no other pending appeal, but there is also not even a Circuit Court Order in Turner 1. Obviously, no Motion for Reconsideration under Rule 59 SCRCR has been filed in Turner 1. It is pure speculation that either party in that case will ever file any appeal. Of the approximately twenty (20) reported cases citing Rule 214 SCACR, there has never been an instance where a consolidation took place between an actual appeal and a circuit court action. The rule simply does not allow for consolidation under the current facts with only one appeal pending.

2. Even if there was another appeal pending in Turner 1, consolidation would not be appropriate under Rule 214 SCACR

Assuming, *arguendo*, that Judge Dukes had issued a final Order in Turner 1, and then assume someone filed an appeal, no consolidation under the rule would be

appropriate be appropriate. Since the Court would be dealing with two (2) entirely separate Orders, Appellant must show "...the same question is involved in two or more appeals...." Rule 214 SCACR, *Crawford v Central Mortgage Company*, 404 S.C. 39, 44, 744 S.E. 2d 538, 540 (2013)- the Court consolidated two cases involving the same legal issues, in an unauthorized practice of law dispute, applying Rule 214 SCACR.

The Pending Appeal involves the Respondents' successful efforts to enforce a written Settlement Agreement reached by the parties in mediation. Three (3) separate Orders are being challenged by Appellant, namely: (1) Order Ruling on Plaintiffs' and Defendants' Settlement Agreement, dated August 5, 2024 (Exhibit 1, attached); (2) Order Granting Defendants' Motion to Enforce Settlement Agreement as to Amended Easement (Exhibit 2, attached); and (3) Order Denying Turner's Motion to Set Aside Settlement Agreement Due to Mutual Mistake (Exhibit 3, attached). Thus, the Pending Appeal will be determined by well-established rules as to the enforcement of written settlement agreements executed by counsel, their clients, and the mediator, as well as on the elements needed to rescind an executed agreement due to mutual mistake. There were never any dispositive motions, hearings, or a trial - simply a mediated settlement agreement. Thus, there are no substantive issues before this Court as to covenants, leases, easements, conduct of the parties, etc in the Pending Appeal.

In contrast, Turner 1 involves very extensive trial testimony and documentary evidence presented over the course of nine(9) days during a very contested non-jury trial. A complex series of issues were presented before Judge Dukes as to the history of the development of the subject property, covenants recorded in 1981, numerous easements, and many issues arising from the parties conduct over a long period of time. Thus, the

issues in dispute in the two cases are wholly different- with no substantive overlap. The ultimate resolution of each case will have no impact on the other case. In the Pending Appeal, if this Court decides the Settlement Agreement executed by all parties and counsel at mediation is somehow not enforceable, the most likely result is the settlement is overturned and the issues in said matter would be remanded for a separate trial. Such a result would have no impact on Turner 1. Thus, there are no issues or questions in common with the two cases.

3. Other Factors to Consider

Two other points should be noted. Appellant, who is the Plaintiff in both cases filed in circuit court, filed said actions separately, and never sought to consolidate for trial (or for discovery purposes) this case and Turner 1, but elected to proceed separately. Second, the Pending Appeal involves different parties. Sunset, which operates a high-end restaurant on the subject property, is a party in the Pending Appeal, but is not a party in Turner 1.

B. Conclusion

The Appellant's efforts to consolidate this appeal with a pending Circuit Court case where there is not even an Order issued by the Trial Judge should be denied. Such an effort is a not so well disguised effort to delay the completion of the Pending Appeal, which is ready for briefs to be submitted, and eventually be decided by this Court. The Motion should be denied.

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson

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Club Owners' Association, Inc. and Sunset, Inc.*

Hilton Head Island, South Carolina
August 28, 2025

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 TURNER'S MARINA LLC,)
)
 Plaintiff,)
)
 vs.)
)
 R. V. RESORT AND YACHT CLUB)
 OWNERS' ASSOCIATION, INC.,)
 SECURITAS SERVICES, INC.,)
 MIKE MORALES, and SUNSET, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2021-CP-07-01085

**ORDER RULING ON PLAINTIFF'S AND
 DEFENDANTS' MOTIONS TO
 ENFORCE SETTLEMENT
 AGREEMENT**

(Amendments to Lease-Armed Guards/Gates)

This matter comes before me upon Plaintiff's Motion to Enforce Mediation Settlement Agreement, dated February 23, 2024, supported by the Affidavit of Neil Turner, dated April 2, 2023 (collectively "Plaintiff's Motion") and Defendants' Motion to Enforce Settlement, dated March 4, 2024, supported by the Affidavit of Christopher Sibley, dated April 8, 2024 (collectively "Defendants' Motion"). In addition, all parties provided various legal memoranda to the Court, which the Court has carefully reviewed and considered.

A hearing was held in my chambers at the Beaufort County Courthouse on April 11, 2024 at which time the Court heard and considered arguments from all counsel. Thereafter, this Court conducted additional virtual conferences with the parties and their counsel on May 8, 2024 and on June 26, 2024. As is set forth in the parties' Motions, a dispute has arisen as to the documentation required in connection with the Settlement Agreement, dated December 13, 2023, reached in mediation ("Settlement Agreement"). The Defendants have asserted that

EXHIBIT 1

as a result of the Settlement Agreement, one or all the parties must sign in recordable form three (3) documents; (1) Amended and Restated Easement; (2) Second Amendment to Lease; and (3) Agreement as to Gates and Security Guards. The Plaintiff agrees that an amendment to the Lease and Easement in recordable form is necessary, but disagrees with the language suggested by the Defendants, and further asserts no further documentation is needed as to the agreement concerning armed guards and gates.

This Order only deals with the parties' dispute as to the issues related to the Second Amendment to the Lease and the Agreement as to Gates and Security Guards. The issue as to the language in the Amended and Restated Easement is subject to a separate Order issued or to be issued by the Court.

1. Issues Under Second Amendment to Lease

The Defendants' counsel, on or about January 18, 2024, sent to Plaintiff's counsel a proposed Second Amendment to Lease which the Defendants asserted was consistent with the terms and conditions of the Settlement Agreement. Thereafter, on or about April 17, 2024 defense counsel sent to Plaintiff's counsel a second version of the Second Amendment to Lease ("April 17, 2024 Second Amended Lease"), updating the date of the agreement and correcting a typographical error in reference to certain recording information. As set forth in the May 13, 2024 Turner's Marina LLC's Memo In Response to Defendants' Supplemental Memo of May 8, 2024 ("Plaintiff's May 13, 2024 Memo"), Plaintiff objected to the Defendants' April 17, 2024 Second Amendment to Lease as to §5 (Use of Pool); §6 (Operating hours of Restaurant), §7 (Premises includes laundry room, mail room, exercise room,); and certain Whereas provisions not being fully accurate. Plaintiff attached as Exhibit 1 to its Memo its

proposed Second Amendment to Lease (“Plaintiff’s May 13, 2024 Second Amendment to Lease”). Each of these issues are addressed below.

A. Restaurant Hours of Operation Issue

Plaintiff argues that the Settlement Agreement restricts the hours of operation that the Sunset Grill, operated by the Defendant Sunset Inc. (“Restaurant”) can be open based on references in §§ 2(b) and 6 and of the Settlement Agreement as to “Business Hours”.

The term “Business Hours” is defined in §6 of the Settlement Agreement as “Tuesday through Sunday 5:00pm to 10:00pm and Sunday 10:30 am to 2:00pm”. As used in §§ 2(b) and 6 in the Settlement Agreement, the use of the term “Business Hours” is only applied when describing the use of the parking spaces during those hours. This Court finds and concludes there is no language in the Settlement Agreement that states the Restaurant is only allowed to operate during those hours. It would have been very easy for the parties to insert such language if that was the intention of the parties. Further, there are two parking spaces in the Settlement Agreement that are restricted for the use of the Restaurant 24x7x365.(§§2(c) and 2(d)). The existence of this language is inconsistent with the Plaintiff’s argument that the definition of “Business Hours” was meant to restrict the time that the Restaurant could be open. The Plaintiff has argued these two parking spaces were reserved to be used only by the Restaurant staff outside of “Business Hours”, but there is nothing in the Settlement Agreement that restricts these two spots to Restaurant staff. Furthermore, all parking spaces not explicitly reserved for use by the Restaurant, as well as those spaces that are reserved but outside of “Business Hours”, per the terms of the Settlement Agreement, are available for use on a “first come, first served” arrangement and can be used “without restriction or reservation.”(§2(h))

There is no language in the Settlement Agreement that states those spaces cannot also be used by Restaurant patrons or staff outside of “Business Hours”.

The rules concerning the Court’s role in construing contracts, like the subject Settlement Agreement, are well recognized in South Carolina. These rules are applicable to all of the issues facing the Court as to the interpretation of the Settlement Agreement. The Court in *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 497-498, 649 S.E.2d 494, 501-502 (2007) sets forth an excellent summary of said rules, as follows:

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties.” *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 8081, 562 S.E.2d 482, 484 – 4855 (Ct.App. 2005) . . . (cites omitted). Contracts should be liberally construed so as to give them effect and carry out the intention of the parties. *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47(1958)

The parties’ intention must, in the first instance, be derived from the language of the contract. *Schulmeyer v. State Farm Fire & Cas.*, 10, 353 S.C. 491, 495, 579 S.E.2d 132,134 (2003) (cites omitted) . To discover the intention of a contract, the court must first look to its language – if the language is perfectly plain and capable of legal construction, it alone determines the document’s force and effect. *Superior Auto. Inc. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions. *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct.App. 2004); *accord Kable v. Simmons*, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

* * *

If a contract’s language is plain, unambiguous, and capable to only one reasonable interpretation, no construction is required and its language determines the instrument’s force and effect. *Jordan v. Security Group, Inc.* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley* at 72, 221 S.E.2d at 769¹. “Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it.” *Ellie* at 93, 594 S.E.2d at 493 (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App. 2001). However, where an agreement is ambiguous, the court

should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E. 2d 271, 274 (Ct.App. 2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 185, 187 (Ct.App. 1998).

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Ellie* at 94, 594 S.E.2d at 493; *accord Bruce* at 160, 127 S.E.2d at 441; *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App. 1997). "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968) (citation omitted).

"Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, the court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

It is this Court's opinion the language of §§ 2(b) and 6 of the Settlement Agreement is clear and unambiguous and does not restrict the hours of operation of the Restaurant. Plaintiff's Motion is denied as to this issue. The language under the Defendants' April 17, 2024 Second Amended Lease is adopted by the Court as to this issue.

B. Claim of Control Over Additional Properties

The Plaintiff asserts that the language in § 8 of the Settlement Agreement, which affirms that the Plaintiff is the rightful holder of the 99-year Lease, amounts to an agreement by the Defendants that the definition of Recreational Facilities as used in the 99-year Lease explicitly includes the mail room, exercise room, and laundry room in the Recreational Building. (§8). This Court finds and concludes there is nothing in the Settlement Agreement that refers to those areas at all, and there is certainly no language evidencing an admission or

agreement by the Defendants that the 99-year Lease includes those areas contained in the Settlement Agreement. This Court finds and concludes that the language in §8 simply affirms that Plaintiff is the rightful holder of the Lease- nothing more.

Based on the legal authorities discussed above in section 1(A) of this Order, this Court does not have the authority to change or rewrite the parties Settlement Agreement to add new language, as the Plaintiff now requests. Plaintiff's motion as to this issue is denied. The language under the Defendants' April 17, 2024 Second Amended Lease is adopted by the Court as to this issue.

C. Claim that Settlement Agreement Strips Right of Owners to Use Pool

The Plaintiff argues that the language in the Settlement Agreement restricting the use of the pool to "non-Commercial Patrons of the complex " (§5) somehow "negotiated away" the rights of the 200 RV lot owners ("Owners") to use the pool. It is this Court's finding and conclusion that all lot Owners clearly meet the definition of "non-Commercial Patrons" under §5 of the Settlement Agreement. They did not need to be specifically listed under the language used by the parties.

Further, the Court has taken into consideration that the entire 99 Year Lease is subject to the terms of the 1981 restrictive covenants recorded at Deed Book 325 at Page 920 , in the Beaufort County Register of Deeds ("Covenants"). Under § 12.5 of the Covenants and § 9 of the 99 Year Lease, the Recreational Facilities , including the pool, are for the use and benefit of the lot Owners and are made available to the lessee under the 99 Year Lease, subject to the rights of Owners to use, occupy, and enjoy the same. Nothing in the Settlement Agreement states that these provisions in the Covenants or the 99 Year Lease have been modified or invalidated in such fashion. Plaintiff's Motion is denied as to this issue. The

language under the Defendant's April 17, 2024 Second Amended Lease is adopted by the Court as to this issue.

D. **Plaintiff's Claim that "Whereas" Provisions in Defendant's Proposed Second Amended Lease are Factually Incorrect**

The Plaintiff asserts that the 4th and 5th "Whereas" provisions in the Defendant's April 17, 2024 Second Amendment to Lease are factually incorrect and that 4th through 7th Whereas provisions in the Plaintiff's May 13, 2024 Second Amendment to Lease should be used instead.

This Court has read the disputed Whereas provisions and has determined to adopt the Whereas provisions in Defendants April 17, 2024 Second Amended Lease, with the following changes:

- a. Defendants' April 17, 2024 Second Amendment to Lease- The 5th Whereas provision is **deleted**.
- b. The following Whereas provisions are **substituted** in its place, as follows:
 - i. 5th – "Whereas, as a result of said disputes, Tenant filed litigation against the Landlord, and others in the Beaufort County Court of Common Pleas on June 21, 2021(C. A. No: 2021-CP-07-1085- "Litigation")";
 - ii. 6th - Whereas, Tenant sent a letter notifying Sunset, Inc. that they are no longer allowed to use said parking spaces and bathrooms.

- iii. 7th- “Whereas, Sunset petitioned the court to join the Lawsuit to defend its rights to use the parking spaces and bathrooms, which petition was granted”.

All other provisions of the Defendants’ April 17, 2024 Second Amended Lease are approved and adopted by the Court as to this issue.

Based upon the above, this Court finds and concludes the Defendants’ April 17, 2024 Second Amended Lease, as modified by this Court’s findings in Section 1 (C) above (“Whereas” provisions), attached hereto as Exhibit 1, is consistent with the stated intention of the parties to the Settlement Agreement. Within ten (10) days of the issuance of this Order the Plaintiff is directed to execute same before two (2) witnesses, one of which is a notary, and deliver the original to defense counsel for recording.

2. Plaintiff’s Assertion that Terms Related to Gates and Armed Security Guards was only a Personal Commitment

The Plaintiff asserts that the terms it agreed to in the Settlement Agreement restricting its ability to place gates on its property and restricting its ability to use armed security guards (§§10, 11, and 12) are not restrictions that should run with the land but rather were simply “personal commitments” of the Plaintiff. While the Court agrees with the Defendants that these obligations and restrictions are clearly and explicitly set forth in the Settlement Agreement, there is no provision requiring the Plaintiff to execute any document to place on record said commitments. While the Court is not making any finding or decision on the exact nature of these obligations, under the same legal authority cited in section 1(A) above, this Court does not have the authority to add language to the parties written Settlement Agreement to require the Plaintiff to record a separate document to place on record these obligations. As

to this issue, Plaintiff's Motion is granted. Plaintiff is not required to sign any additional documentation as to this issue.

AND IT IS SO ORDERED.

Marvin H. Dukes
SC Circuit Court Judge

Beaufort, South Carolina
_____, 2024



Beaufort Common Pleas

Case Caption: Turners Marina Llc VS R V Resort And Yacht Club Owners Association Inc , defendant, et al
Case Number: 2021CP0701085
Type: Master/Order/Other

So Ordered

s/Marvin H. Dukes III #2785

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known as the Sunset Grille ("Restaurant"), located on the second floor of the two (2) story "Rec Bldg" depicted in PB 29 at P 184 recorded in the ROD ("Rec. Bldg."), was part of the Premises; (2) whether the "Ship's Store" (currently used as the Landlord's office), located on the first floor of the Rec. Bldg. was part of the Premises; (3) who had the right to use certain parking spaces on the property owned by the Landlord, as described as "TENNIS-COMPLEX", consisting of 0.84 acres on PB 57 at P 168 recorded in the ROD, and further described as "Parcel A" on PB 148 at P 60; as well as the rights of the Landlord, its members, the RV Lot Owners, the Restaurant, Sunset, LLC ("Sunset"), the operator of the Restaurant, and said parties' patrons, guests and invitees to cross certain property at the RV Resort owned by the Tenant;

WHEREAS, as a result of said disputes, Tenant filed litigation against the Landlord, and others in the Beaufort County Court of Common Pleas on June 21, 2021(C. A. No: 2021-CP-07-1085- "Litigation");

WHEREAS, Tenant sent a letter notifying Sunset, Inc. that they are no longer allowed to use said parking spaces and bathrooms;

WHEREAS, Sunset petitioned the court to join the Lawsuit to defend its rights to use the parking spaces and bathrooms, which petition was granted;

WHEREAS, on December 13, 2023 a settlement was reached between the parties as to the Litigation and incorporated into a formal Settlement Agreement ("Settlement Agreement"). That portion of the Settlement Agreement involving the 1981 Lease is set forth in this Addendum.

NOW, THEREFORE, for ten (\$10.00) Dollars and other good and valuable consideration, the parties agree as follows:

1. **WHEREAS Provisions** – The above WHEREAS provisions are incorporated herein by reference as if fully set forth. Said provisions are important and material terms and conditions of this Addendum.

2. **Rent (§ 3)** – The existing rent language in Section 3 of the Lease and Section 3 of the Modification is deleted and the following inserted in its place.

“In consideration of this Lease of the Recreational Facilities to the Lessee, Lessee agrees to pay Lessor monthly Rent in the amount of the base monthly assessment charged for a lot owner in the RV Resort multiplied by 5. Such Rent shall be payable at such places as Lessor shall direct in writing. The amount of Rent shall be automatically increased per the aforementioned formula (monthly dues for a lot owner in the RV Resort multiplied by 5) with any increase of assessments as determined by the Board of Directors of the Association pursuant to Article VI, Section 3 of the By-Laws of the R. V. Resort and Yacht Club Owners’ Association, Inc.”

3. **Parking**

I. 23 Parking Spaces – Exhibit A.

With regards to the right to use and access the parking area referenced on attached Exhibit A, consisting of twenty-three (23) spots or spaces, the parties agree:

- a. Spot 2 on Exhibit A will be reserved for Landlord use.
- b. Spots 5 and 6 on Exhibit A will remain short term parking until 5:00 p.m., at which time these spots will be reserved for use by the Restaurant and its patrons and guests during “Business Hours,” defined as Tuesday through Sunday, 5:00 p.m. to 10:00 p.m., and Sunday 10:30 a.m. to 2:00 p.m.

- c. Spot 3 on Exhibit A will be for the exclusive use of the Restaurant, its patrons and guests twenty-four hours a day, seven days a week, 365 days a year ("24/7/365").
- d. Spot 4 on Exhibit A will be for the exclusive use of the Restaurant, its patrons and guests 24/7/365.
- e. Spots 19, 20 and 21 will be for the exclusive use of the Restaurant, its patrons and guests from Tuesday through Sunday 6:00 p.m. to 10:00 p.m. and Sunday 10:30 a.m. to 2:00 p.m.
- f. Spot 23 on Exhibit A is a parking spot under a tree. The parties agree that Spot 23 will be for the exclusive use of the Tenant or its designee.
- g. Spot 22 on Exhibit A will be reserved for Tenant's use until 6:00 p.m. Following that time, Spot 22 will be available as a first come, first served parking place.
- h. All other Spots enumerated on Exhibit A (including the handicap spot denoted as Spot 1) are first come, first served parking spots that can be utilized without restriction or reservation.
- i. The Parties agree that no parking spot can be utilized by anyone for overnight parking.

II. Reconfigured Parking Spaces

a. **Reconfigured Parking Spaces or Spots** – It is agreed by the Landlord and the Tenant that the Landlord may seek to reconfigure the enumerated parking spots denoted on Exhibit A, including reconfiguration of the picnic table area pictured thereon, subject to the RV Lot Owners' approval of this change of use. In the event the Landlord reconfigures or adds additional parking spaces to the twenty-three (23) parking spaces currently enumerated on Exhibit A, fifty percent (50%) of any new spaces, above twenty-three (23), created as a result of the

reconfiguration - up to a maximum of seven (7) new spaces - will be reserved for the Restaurant and its patrons and guests during Business Hours. Any such new configuration cannot interfere with direct and open access to the dumpster, including for emptying and removal of the dumpster, installed on Tenant's land adjacent to the former tennis courts. All other newly created spaces shall be available on a **first come, first served basis**.

b. If the Landlord reconfigures the parking lot as outlined above, Spots numbered 19, 20, and 21 will no longer be deemed the Restaurant's spaces; instead, from the new spaces created, there will be three (3) new replacement spaces - and up to seven (7) spaces as contemplated above - in a single line, resulting in ten (10) spaces in a row for Restaurant use. These new spaces will be for the exclusive use of the Restaurant, its patrons and guests during Business Hours as defined above.

4. **Restrooms** – The restrooms located on the first floor of the Rec. Bldg. are available to everyone.

5. **Pool**

a. The pool on Exhibit A shall be available to all non-Commercial Patrons of the RV complex. It is agreed and understood that slip lease holders at the marina and RV lot renters and their guests are not included in the definition of Commercial Patrons and that those classes of patrons are permitted access to the pool. Commercial Patrons includes those enjoying the commercial activities of the marina operated by the Tenant, either directly or through leases, agreements, or licenses from the Tenant, including but not limited to any boat clubs, jet ski

rentals, tours, charter fishing, parasailing, and other similar activities. Commercial Patrons are not allowed to use the pool.

- b. If the Landlord determines that it wants to implement an "arm band" type system to denote those that are appropriately within the pool area, it is understood and agreed that the marina slip lease holders and the RV owners/renters will receive one (1) arm band each for pool access for themselves and their guests.

6. Tenant's Affirmation of Landlord's Rights/Restriction on Use of Restaurant and Ship's Store – Tenant, as the lessee, acknowledges and affirms the Restaurant and former Ship's Store are not part of the Premises or subject to the 1981 Lease. Tenant further affirms that the ownership and lease rights to the Restaurant space and Ship's Store space are exclusively held, owned and controlled by the Landlord. However, the Landlord agrees that it will not permit the Ship's Store space to be utilized for commercial purposes.

7. Affirmation of Tenant's Rights – The Landlord and Sunset, Inc. acknowledge and affirm that Tenant is the rightful holder of the rights of the Tenant and lessee under the 1981 Lease and the rights and responsibilities arising therefrom not otherwise addressed in this Addendum. Said parties agree to not bring upon the leased Premises any means of restricting Tenant from the use and enjoyment of its leasehold property.

8. Binding Effect - This Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

9. Conflict- In the event of any conflict of the provision of this Addendum and the Settlement Agreement, the provisions of this Addendum shall control.

10. Lease Signed Per Court Order - This Second Amendment To Lease

is not voluntarily executed by Turner's Marina, LLC. It is being executed pursuant to that Court Order of Circuit Judge Marvin Dukes, III dated _____, 2024, directing the Plaintiff to execute this document. It is signed under protest, but in compliance with Judge Dukes' Order."

WITNESSES:

**LANDLORD: R.V. Resort and Yacht Club
Owner's Association, Inc.**

By: _____
Its: _____

TENANT: Turner's Marina, LLC

By: _____
Its: _____

SUNSET, INC.

By: _____
Its: _____

For purposes of Section 7 only

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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)
)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the within Turner's Marina, LLC, by _____ its _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the ____ day of ____, 2024.

Notary Public for: South Carolina
My Commission Expires: _____

Name of Notary: _____

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

LEASE

THIS LEASE is made this 12 of JUNE, 1981,
by and between R.V. RESORT AND YACHT CLUB OWNERS' ASSOCIATION,
INC., a South Carolina non-profit corporation (hereinafter
referred to as "Lessor"), and OUTDOOR RESORT, R.V. RESORT
AND YACHT CLUB, a South Carolina general partnership (herein-
after referred to as "Lessee").

WHEREAS, Lessor is a non-profit corporation organized
and existing under the laws of the State of South Carolina
for the purpose of administering and maintaining certain
real property known as OUTDOOR RESORT, R.V. RESORT AND YACHT
CLUB; and

WHEREAS, Lessee is the developer of said property and
also the owner and developer of a marina adjacent and contig-
uous to the property; and

WHEREAS, Lessor and Lessee desire that certain common
properties of OUTDOOR RESORT, R.V. RESORT AND CAMPGROUND,
owned by the Lessor, shall be entitled to be used by OUTDOOR
RESORTS, R.V. RESORT AND YACHT CLUB, a South Carolina partner-
ship, its successors, assigns, guests and invitees.

NOW, THEREFORE, in consideration of the agreements
to be performed by each other, Lessor and Lessee agree as
follows:

1. Upon the terms and conditions herein set forth
and in consideration of the prompt and continuous performance
by the Lessee of each and every of its covenants and promises
herein made, Lessor does hereby let, lease and demise unto
the Lessee and Lessee does hereby lease of and from the Lessor
property situate in Beaufort County, South Carolina, and
described on EXHIBIT "A" which is attached hereto and thereby
made a part hereof.

EXHIBIT 1

The premises described in the above legal description are hereinafter referred to as the Recreational Facilities which include, among other things, a swimming pool, two tennis courts, decking, bathhouse, and certain portions of the Clubhouse complex. The lease of the above described Recreational Facilities shall be together with its appurtenances, tenements and hereditaments, and together with all improvements, buildings and structures now or hereafter placed thereon, and all furniture, furnishings, fixtures, machinery and equipment now thereon and hereafter brought or placed thereon or intended for the use thereon and all additions thereto.

2. The term of this Lease shall commence on the date first above mentioned and shall end on JUNE 12, 2030. This is an exclusive Lease to the Lessee, under circumstances where the Lessor shall not be entitled to enter into any other leases with any other lessees while this Lease is in effect without the prior written consent of the Lessee. Lessee, however, may at any time assign any and all of its interest in this Lease and upon such assignment taking place, the Lessee shall be relieved of any and all liability under this Lease subject to the Lessee's complying with all terms and conditions of the Lease at the time of said assignment.

3. In consideration of this Lease of the Recreational Facilities to the Lessee, Lessee agrees to pay Lessor the sum of FIVE (95.00) DOLLARS per month per boat slip at the marina which is shown and designated on EXHIBIT "B" which is attached hereto and thereby made a part hereof. The payment of said rent, however, shall not begin until the improvements described as the Recreational Facilities in Paragraph 1 have been completed. Such rent shall be payable at such places as Lessor shall direct in writing. The amount of rent shall not in any way be increased through the term of this Lease without the prior written consent of Lessee.

4. Use of the Recreational Facilities shall be subject to all laws, statutes, ordinances, rules and regulations of all appropriate governmental authorities and agencies, covenants and restrictions of record, as well as all rules and regulations adopted by the Association from time to time pursuant to the Declaration of Covenants and Restrictions, however, which rules and regulations shall not discriminate in any manner whatsoever against the Lessee or the invitees of the Lessee.

The persons who may use and enjoy the Recreation Facilities through and under the Lessee shall be limited to agents, officers, employees and guests of the Lessee or its assigns.

5. If any part of the Recreational Facilities is taken pursuant to the law of eminent domain of the State of South Carolina during the term of this Lease, the rent herein provided for shall continue unaffected as to amount unless such taking materially destroys the usefulness of the Recreational Facilities for all purposes leased. In such event, the Lessee shall have the right to terminate this Lease by written notice to the Lessor within thirty (30) days after such taking or to continue in possession of an undivided interest in the remainder of the leased premises under all the terms and conditions hereof. All damages awarded such taking shall belong to and be the property of Lessor whether such damages shall be awarded as compensation for the diminution of the value to the Lease or to the fee of the Recreational Facilities.

6. Lessor shall, throughout the term of this Lease, keep enforced insurance policies as follows: (a) insurance against loss or damage to the buildings and improvements now of hereafter located upon the Recreational Facilities and all of the personal property, including pictures, furniture, machinery, equipment and furnishings located upon the Recreational Facilities. All insurance shall provide against any

and all loss or damage to the Recreational Facilities by fire, windstorm or causes insured by extended coverage; (b) comprehensive general public liability insurance in which the Lessor and Lessee shall be named, insureds against claims of bodily injury, sickness or disease, including death, at any time resulting therefrom and for injury to or destruction of property, including the loss or use thereof arising out of ownership, maintenance, use or operation of the Recreational Facilities or any building or improvement or personalty located thereon with a minimum limitation of \$100,000/\$500,000/\$10,000; and (c) in the event that Lessor shall undertake any construction upon the premises, Lessor shall maintain and pay for a builders risk insurance policy in such amounts and with such companies as Lessor determines proper.

The Lessor shall also pay for and maintain such further and additional insurance policies, including but not limited to workman's compensation insurance. The amount of the required insurance shall be equal to the maximum insurable replacement value as determined annually by Lessor. The Lessee may require the Lessor to provide proof of existence of insurance coverage required herein as Lessee may reasonably request from time to time. All insurance required to be carried shall be under policies written in such form and issued by such companies as shall be approved by the Lessee, said Lessee, said approval, shall not be unreasonably withheld.

7. In the event of damage or destruction of the Recreational Facilities or the buildings and improvements located thereon by any casualty for which insurance is payable, the Lessor shall promptly make application for the benefits under the insurance policy, which benefits shall be deposited in a bank account and be available to the Lessor for the reconstruction or repair of the Recreational Facilities or that portion thereof which was damaged. Such insurance money shall

be paid from the account in amounts based upon the estimate of a licensed architect in the State of South Carolina having supervision of such construction work or repair. Said architect shall certify that the amount of such estimate is being applied to the payment for reconstruction or repair and at a reasonable cost. It is the intent hereunder that reconstruction or repair shall take place if covered by insurance, but it is the further intent that Lessor shall not assume the burden of reconstruction or repair if not covered by insurance, unless Lessor chooses to do so. In the event the cost of repair or reconstruction exceeds the insurance benefits, Lessor shall reconstruct or repair those items for which insurance is available; but only at its option must Lessor do any further reconstruction or repair for which there is not adequate insurance proceeds. If Lessor chooses not to reconstruct or repair due to inadequate insurance proceeds, then Lessee, at its option, may either continue this Lease in full force and effect or cancel this Lease upon fifteen (15) days' notice in writing to Lessor, at which time Lessee shall be obligated to perform its covenants and promises hereunder up to the date of notification. For reconstruction or repair for which there are adequate insurance proceeds, or with which Lessor desires to proceed despite the lack of insurance proceeds, it shall be the obligation and duty of Lessor to cause such showing to be made and such to be accomplished as often as said Recreational Facilities, including buildings, improvements or personal property may be destroyed, damaged or lost; and all of such work shall be completed and paid for as promptly as the exercise by the Lessor of due diligence makes possible. The work when completed shall restore the Recreational Facilities substantially to the condition in which it existed before such destruction, damage or loss took place, and in

any event, the premises as restored shall have a value which is not less than the value which the Recreational Facilities had or possessed prior to the loss or damage which made such reconstruction or repair necessary. Lessee shall have the right to require Lessor to obtain a completion, performance and payment bond in amount and in form and with a company licensed to do business in the State of South Carolina, approved by Lessee. When after the payment of repair or replacement of damage there shall remain any surplus of insurance proceeds, said surplus shall belong to the Lessor.

8. Any demolition or new construction on the Recreational Facilities or major alteration in the buildings located in the Recreational Facilities shall be at the sole expense of the Lessor; nothing in this Paragraph 8 shall ever be construed to relieve Lessor of its obligation to maintain and repair the improvements located upon the Recreational Facilities. The Lessor shall, during the term of this Lease, keep the Recreational Facilities in a good state of repair and shall maintain all of the buildings and other improvements located thereon for the normal and customary use thereof. Lessor shall not suffer or permit any waste, neglect or deterioration of any of the premises, buildings or improvements of the Recreational Facilities and shall replace, renovate and repair the Recreational Facilities and improvements thereon as often as may be necessary in order to keep the Recreational Facilities and such buildings and improvements in a good state of repair and for the use and enjoyment of the Lessor and Lessee.

9. Lessor covenants and agrees with Lessee that so long as the Lessee keeps and performs all of its covenants herein made the Lessee shall have quiet and undisturbed and continued possession of the premises subject only to the rights of Lot Owners to use, occupy and enjoy the same along with

such other persons as provided in the Declaration of Covenants and Restrictions.

10. Subject to Paragraph 7 hereinabove, no damage or destruction to buildings, structures, improvements or furniture, furnishings, fixtures, machinery or equipment now or hereafter located upon the Recreational Facilities by fire, windstorm, or any other casualty, shall entitle the Lessee to surrender possession or to terminate this Lease or to violate any of its provisions or cause any rebate, abatement or adjustment in the rent then due or that thereafter becoming due under the terms hereof.

11. The Lessor and its agents shall have the right of entry upon the Recreational Facilities at all reasonable times to examine the condition and use thereof; provided that only such rights shall be exercised in such a manner as to not interfere with the conduct of the operation of said Recreational Facilities; and if said premises are damaged by any casualty which causes the premises to be exposed to the elements, then the Lessor may enter upon the premises to make emergency repairs.

12. Where not otherwise provided in this Lease, all sums of money coming due from the Lessee to the Lessor shall bear interest at the rate of one and one-half (1 1/2%) percent per month, commencing fifteen (15) days from the date the same shall become due until the date the same shall be paid.

13. Lessee shall not do or suffer any waste or damage, disfigurement or injury to the Recreational Facilities or any property now or hereafter placed or brought thereon.

14. Except for non-payment of rent which is discussed below, if default shall be made by the Lessee in the performance of any covenants herein set forth, which default is not cured by Lessee within thirty (30) days after receiving written

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notice of such default by Lessor, then in addition to any other rights or remedies which Lessor may have, the Lessor shall have the right to declare this Lease cancelled and terminated and re-enter upon the Recreational Facilities, in which case the Lessee shall peacefully surrender and deliver the Recreational Facilities to Lessor. However, nothing in this Lease shall be construed as authorizing the Lessor to declare this Lease in default where the default consists solely of non-payment of rent, until such non-payment is in violation of Paragraphs 4 or 5 hereinabove.

In the event that Lessor defaults in the terms of this Lease, Lessee shall have all rights or remedies provided by law which shall include but not be limited to specific performance of this Lease by Lessor, and/or recovery of damages due to the default of Lessor.

Any and each remedy available to the Lessor or Lessee for the enforcement of any term or provision hereof shall be construed as cumulative and no single such remedy shall be construed as being exclusive or as preventing the parties from electing such other or additional remedies. In addition to all the remedies set forth above, the Lessee, at its option, may request of a court of competent jurisdiction and receive therefrom the appointment of a receiver to stand in the place and stead of the Lessor and to operate the Recreational Facilities. Said receiver shall fully perform and keep all of the covenants, terms and conditions of this Lease. In connection with any litigation arising from this Lease, the prevailing party shall be entitled to recover all costs incurred including a reasonable attorney's fee.

15. The Recreational Facilities are subject to such easements for public utilities as now appear in public records and Lessor shall have, at all times, the right to create upon

or over such of the Recreational Facilities for any and all public utilities, easements from time to time as the Lessor, in its discretion, shall deem appropriate, free and clear of this Lease.

16. At the termination of this Lease by lapse of time or otherwise, the Lessee will peacefully and quietly deliver possession of the Recreational Facilities and all improvements situated thereon, including all personal property therein and thereon, to the Lessor and all buildings, improvements and personal property then situated upon the premises shall become and remain the property of the Lessor.

17. Time is of the essence in every particular and especially where the obligation to pay money is involved.

18. No waiver, extension or indulgence granted by either party to the other on any one occasion as to any breach shall be construed as a waiver, extension or indulgence of any succeeding breach of the same covenant.

19. This is the entire Lease and there shall be no modification, release or discharge or waiver of any provision hereof unless in writing signed by both parties.

20. Whenever a provision is made for notice of any kind under this Lease, it shall be deemed sufficient notice and service thereof if such notice to either party is in writing, addressed to such party at its last known address and sent by certified mail with postage prepaid.

21. This Lease is to be construed in accordance with the laws of the State of South Carolina. The invalidity in whole or in part of any covenant, promise or undertaking or any section, subsection, sentence, clause, phrase or word or any of the provisions of this Lease shall not affect the validity of the remaining portions thereof. Whenever the context so permits, the use of the plural shall include the

singular, and the singular the plural, and the use of any gender shall be deemed to include all genders.

22. It is specifically recognized and understood that some or all of the persons comprising the original Board of Directors and the officers of the Lessor, and the partners of the Lessee, are also officers, directors, employees and/or partners of the Lessor and Lessee under this Lease, and that such circumstances of interlocking Boards of Directors, officers, employees, stockholders and/or partners shall not and cannot be considered as a breach of their duties nor as a conflict of interest between the Lessor and Lessee, nor as possible grounds to invalidate this Lease in whole or in part. Each and every person, whether real or corporate, who shall take any interest whatsoever in or to the Lot or any of the Property, or in or to any Lot in the Property, after the recording of this Lease, by acceptance, delivery or the recording of the deed, contract, grant, assignment or such other instrument granting, conveying or providing for such interests; or by the exercise of the rights or uses granted herein, shall be deemed to specifically consent to and ratify without further act being required, the provisions of this Lease to the same effect and extent as if such person or persons had executed this Lease with the formalities required in deeds, for the purpose of subordinating and/or subjecting such person's or persons' interest, in full, to the terms of this Lease and granting the rights to the parties provided for herein, absolutely without exception.

WITNESSES:

[Handwritten signatures]
Edward M. Hyde

LESSOR:
H.V. RESORT AND YACHT CLUB
OWNERS' ASSOCIATION

BY *[Handwritten signature]*

By: _____

963

WITNESSES:

A. Kelly
Edward H. Hoff

LESSEES:

OUTDOOR RESORT, R.V. RESORT
AND YACHT CLUB

BY: *[Signature]*

BY: _____

RECORDED THIS 22nd DAY OF JULY 1981
IN BOOK 11 PAGE 717
FILED TRAIL DAN SANDERSON
CLERK OF COURT BEAUFORT COUNTY S. C.

RECORDED IN Virginia
BEAUFORT COUNTY S. C.
JUN 18 1981
PAGE 920
FILED AT 2:00 O'CLOCK P.M.
CLERK OF COURT OF BEAUFORT PLEAS



EXHIBIT A



PLEASE VISIT WWW.COMMON.PLEAS.CASE#2021CP0701085
OR CALL 1-800-762-2263
COMMON PLEAS CASE#2021CP0701085

EXHIBIT C

953

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

LEASE

6/14/81

THIS LEASE is made this 12 of JUNE, 1981,
by and between R.V. RESORT AND YACHT CLUB OWNERS' ASSOCIATION,
INC., a South Carolina non-profit corporation (hereinafter
referred to as "Lessor"), and OUTDOOR RESORT, R.V. RESORT
AND YACHT CLUB, a South Carolina general partnership (hereinafter
referred to as "Lessee").

WHEREAS, Lessor is a non-profit corporation organized
and existing under the laws of the State of South Carolina
for the purpose of administering and maintaining certain
real property known as OUTDOOR RESORT, R.V. RESORT AND YACHT
CLUB; and

WHEREAS, Lessee is the developer of said property and
also the owner and developer of a marina adjacent and contiguous
to the property; and

WHEREAS, Lessor and Lessee desire that certain common
properties of OUTDOOR RESORT, R.V. RESORT AND CAMPGROUND,
owned by the Lessor, shall be entitled to be used by OUTDOOR
RESORTS, R.V. RESORT AND YACHT CLUB, a South Carolina partnership,
its successors, assigns, guests and invitees.

NOW, THEREFORE, in consideration of the agreements
to be performed by each other, Lessor and Lessee agree as
follows:

1. Upon the terms and conditions herein set forth
and in consideration of the prompt and continuous performance
by the Lessee of each and every of its covenants and promises
herein made, Lessor does hereby let, lease and demise unto
the Lessee and Lessee does hereby lease of and from the Lessor
property situate in Beaufort County, South Carolina, and
described on EXHIBIT "A" which is attached hereto and thereby
made a part hereof.

ELECTRONICALLY FILED - 2021 Jun 11 4:14 PM - BEAUFORT COMMON PLEAS CASE#2021CP0701085
ELECTRONICALLY FILED - 2024 Aug 02 2:36 PM - BEAUFORT COMMON PLEAS CASE#2021CP0701085
ELECTRONICALLY FILED - 2024 Aug 05 3:44 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701085

EXHIBIT

1

The premises described in the above legal description are hereinafter referred to as the Recreational Facilities which include, among other things, a swimming pool, two tennis courts, decking, bathhouse, and certain portions of the Clubhouse complex. The lease of the above described Recreational Facilities shall be together with its appurtenances, tenements and hereditaments, and together with all improvements, buildings and structures now or hereafter placed thereon, and all furniture, furnishings, fixtures, machinery and equipment now thereon and hereafter brought or placed thereon or intended for the use thereon and all additions thereto.

2. The term of this Lease shall commence on the date first above mentioned and shall end on JUNE 12, 2080. This is an exclusive Lease to the Lessee, under circumstances where the Lessor shall not be entitled to enter into any other leases with any other lessees while this Lease is in effect without the prior written consent of the Lessee. Lessee, however, may at any time assign any and all of its interest in this Lease and upon such assignment taking place, the Lessee shall be relieved of any and all liability under this Lease subject to the Lessee's complying with all terms and conditions of the Lease at the time of said assignment.

3. In consideration of this Lease of the Recreational Facilities to the Lessee, Lessee agrees to pay Lessor the sum of FIVE (\$5.00) DOLLARS per month per boat slip at the marina which is shown and designated on EXHIBIT "B" which is attached hereto and thereby made a part hereof. The payment of said rent, however, shall not begin until the improvements described as the Recreational Facilities in Paragraph 1 have been completed. Such rent shall be payable at such places as Lessor shall direct in writing. The amount of rent shall not in any way be increased through the term of this Lease without the prior written consent of Lessee.

4. Use of the Recreational Facilities shall be subject to all laws, statutes, ordinances, rules and regulations of all appropriate governmental authorities and agencies, covenants and restrictions of record, as well as all rules and regulations adopted by the Association from time to time pursuant to the Declaration of Covenants and Restrictions, however, which rules and regulations shall not discriminate in any manner whatsoever against the Lessee or the invitees of the Lessee.

The persons who may use and enjoy the Recreation Facilities through and under the Lessee shall be limited to agents, officers, employees and guests of the Lessee or its assigns.

5. If any part of the Recreational Facilities is taken pursuant to the law of eminent domain of the State of South Carolina during the term of this Lease, the rent herein provided for shall continue unaffected as to amount unless such taking materially destroys the usefulness of the Recreational Facilities for all purposes leased. In such event, the Lessee shall have the right to terminate this Lease by written notice to the Lessor within thirty (30) days after such taking or to continue in possession of an undivided interest in the remainder of the leased premises under all the terms and conditions hereof. All damages awarded such taking shall belong to and be the property of Lessor whether such damages shall be awarded as compensation for the diminution of the value to the Lease or to the fee of the Recreational Facilities.

6. Lessor shall, throughout the term of this Lease, keep enforced insurance policies as follows: (a) insurance against loss or damage to the buildings and improvements now of hereafter located upon the Recreational Facilities and all of the personal property, including pictures, furniture, machinery, equipment and furnishings located upon the Recreational Facilities. All insurance shall provide against any

and all loss or damage to the Recreational Facilities by fire, windstorm or causes insured by extended coverage; (b) comprehensive general public liability insurance in which the Lessor and Lessee shall be named, insureds against claims of bodily injury, sickness or disease, including death, at any time resulting therefrom and for injury to or destruction of property, including the loss or use thereof arising out of ownership, maintenance, use or operation of the Recreational Facilities or any building or improvement or personalty located thereon with a minimum limitation of \$200,000/\$500,000/\$10,000; and (c) in the event that Lessor shall undertake any construction upon the premises, Lessor shall maintain and pay for a builders risk insurance policy in such amounts and with such companies as Lessor determines proper.

The Lessor shall also pay for and maintain such further and additional insurance policies, including but not limited to workmen's compensation insurance. The amount of the required insurance shall be equal to the maximum insurable replacement value as determined annually by Lessor. The Lessee may require the Lessor to provide proof of existence of insurance coverage required herein as Lessee may reasonably request from time to time. All insurance required to be carried shall be under policies written in such form and issued by such companies as shall be approved by the Lessee, said Lessee, said approval, shall not be unreasonably withheld.

7. In the event of damage or destruction of the Recreational Facilities or the buildings and improvements located thereon by any casualty for which insurance is payable, the Lessor shall promptly make application for the benefits under the insurance policy, which benefits shall be deposited in a bank account and be available to the Lessor for the reconstruction or repair of the Recreational Facilities or that portion thereof which was damaged. Such insurance money shall

be paid from the account in amounts based upon the estimate of a licensed architect in the State of South Carolina having supervision of such construction work or repair. Said architect shall certify that the amount of such estimate is being applied to the payment for reconstruction or repair and at a reasonable cost. It is the intent hereunder that reconstruction or repair shall take place if covered by insurance, but it is the further intent that Lessor shall not assume the burden of reconstruction or repair if not covered by insurance, unless Lessor chooses to do so. In the event the cost of repair or reconstruction exceeds the insurance benefits, Lessor shall reconstruct or repair those items for which insurance is available, but only at its option must Lessor do any further reconstruction or repair for which there is not adequate insurance proceeds. If Lessor chooses not to reconstruct or repair due to inadequate insurance proceeds, then Lessee, at its option, may either continue this Lease in full force and effect or cancel this Lease upon fifteen (15) days' notice in writing to Lessor, at which time Lessee shall be obligated to perform its covenants and promises hereunder up to the date of notification. For reconstruction or repair for which there are adequate insurance proceeds, or with which Lessor desires to proceed despite the lack of insurance proceeds, it shall be the obligation and duty of Lessor to cause such showing to be made and such to be accomplished as often as said Recreational Facilities, including buildings, improvements or personal property may be destroyed, damaged or lost, and all of such work shall be completed and paid for as promptly as the exercise by the Lessor of due diligence makes possible. The work when completed shall restore the Recreational Facilities substantially to the condition in which it existed before such destruction, damage or loss took place, and in

any event, the premises as restored shall have a value which is not less than the value which the Recreational Facilities had or possessed prior to the loss or damage which made such reconstruction or repair necessary. Lessee shall have the right to require Lessor to obtain a completion, performance and payment bond in amount and in form and with a company licensed to do business in the State of South Carolina, approved by Lessee. When after the payment of repair or replacement of damage there shall remain any surplus of insurance proceeds, said surplus shall belong to the Lessor.

8. Any demolition or new construction on the Recreational Facilities or major alteration in the buildings located in the Recreational Facilities shall be at the sole expense of the Lessor; nothing in this Paragraph 8 shall ever be construed to relieve Lessor of its obligation to maintain and repair the improvements located upon the Recreational Facilities. The Lessor shall, during the term of this Lease, keep the Recreational Facilities in a good state of repair and shall maintain all of the buildings and other improvements located thereon for the normal and customary use thereof. Lessor shall not suffer or permit any waste, neglect or deterioration of any of the premises, buildings or improvements of the Recreational Facilities and shall replace, renovate and repair the Recreational Facilities and improvements thereon as often as may be necessary in order to keep the Recreational Facilities and such buildings and improvements in a good state of repair and for the use and enjoyment of the Lessor and Lessee.

9. Lessor covenants and agrees with Lessee that so long as the Lessee keeps and performs all of its covenants herein made the Lessee shall have quiet and undisturbed and continued possession of the premises subject only to the rights of Lot Owners to use, occupy and enjoy the same along with

such other persons as provided in the Declaration of Covenants and Restrictions.

10. Subject to Paragraph 7 hereinabove, no damage or destruction to buildings, structures, improvements or furniture, furnishings, fixtures, machinery or equipment now or hereafter located upon the Recreational Facilities by fire, windstorm, or any other casualty, shall entitle the Lessee to surrender possession or to terminate this Lease or to violate any of its provisions or cause any rebate, abatement or adjustment in the rent then due or that thereafter becoming due under the terms hereof.

11. The Lessor and its agents shall have the right of entry upon the Recreational Facilities at all reasonable times to examine the condition and use thereof, provided that only such rights shall be exercised in such a manner as to not interfere with the conduct of the operation of said Recreational Facilities; and if said premises are damaged by any casualty which causes the premises to be exposed to the elements, then the Lessor may enter upon the premises to make emergency repairs.

12. Where not otherwise provided in this Lease, all sums of money coming due from the Lessee to the Lessor shall bear interest at the rate of one and one-half (1 1/2%) percent per month, commencing fifteen (15) days from the date the same shall become due until the date the same shall be paid.

13. Lessee shall not do or suffer any waste or damage, disfigurement or injury to the Recreational Facilities or any property now or hereafter placed or brought thereon.

14. Except for non-payment of rent which is discussed below, if default shall be made by the Lessee in the performance of any covenants herein set forth, which default is not cured by Lessee within thirty (30) days after receiving written

notice of such default by Lessor, then in addition to any other rights or remedies which Lessor may have, the Lessor shall have the right to declare this Lease cancelled and terminated and re-enter upon the Recreational Facilities, in which case the Lessee shall peacefully surrender and deliver the Recreational Facilities to Lessor. However, nothing in this Lease shall be construed as authorizing the Lessor to declare this Lease in default where the default consists solely of non-payment of rent, until such non-payment is in violation of Paragraphs 4 or 5 hereinabove.

In the event that Lessor defaults in the terms of this Lease, Lessee shall have all rights or remedies provided by law which shall include but not be limited to specific performance of this Lease by Lessor, and/or recovery of damages due to the default of Lessor.

Any and each remedy available to the Lessor or Lessee for the enforcement of any term or provision hereof shall be construed as cumulative and no single such remedy shall be construed as being exclusive or as preventing the parties from electing such other or additional remedies. In addition to all the remedies set forth above, the Lessee, at its option, may request of a court of competent jurisdiction and receive therefrom the appointment of a receiver to stand in the place and stead of the Lessor and to operate the Recreational Facilities. Said receiver shall fully perform and keep all of the covenants, terms and conditions of this Lease. In connection with any litigation arising from this Lease, the prevailing party shall be entitled to recover all costs incurred including a reasonable attorney's fee.

15. The Recreational Facilities are subject to such easements for public utilities as now appear in public records and Lessor shall have, at all times, the right to create upon

or over such of the Recreational Facilities for any and all public utilities, easements from time to time as the Lessor, in its discretion, shall deem appropriate, free and clear of this Lease.

16. At the termination of this Lease by lapse of time or otherwise, the Lessee will peacefully and quietly deliver possession of the Recreational Facilities and all improvements situated thereon, including all personal property therein and thereon, to the Lessor and all buildings, improvements and personal property then situated upon the premises shall become and remain the property of the Lessor.

17. Time is of the essence in every particular and especially where the obligation to pay money is involved.

18. No waiver, extension or indulgence granted by either party to the other on any one occasion as to any breach shall be construed as a waiver, extension or indulgence of any succeeding breach of the same covenant.

19. This is the entire Lease and there shall be no modification, release or discharge or waiver of any provision hereof unless in writing signed by both parties.

20. Whenever a provision is made for notice of any kind under this Lease, it shall be deemed sufficient notice and service thereof if such notice to either party is in writing, addressed to such party at its last known address and sent by certified mail with postage prepaid.

21. This Lease is to be construed in accordance with the laws of the State of South Carolina. The invalidity in whole or in part of any covenant, promise or undertaking or any section, subsection, sentence, clause, phrase or word or any of the provisions of this Lease shall not affect the validity of the remaining portions thereof. Whenever the context so permits, the use of the plural shall include the

singular, and the singular the plural, and the use of any gender shall be deemed to include all genders.

22. It is specifically recognized and understood that some or all of the persons comprising the original Board of Directors and the officers of the Lessor, and the partners of the Lessee, are also officers, directors, employees and/or partners of the Lessor and Lessee under this Lease, and that such circumstances of interlocking Boards of Directors, officers, employees, stockholders and/or partners shall not and cannot be considered as a breach of their duties nor as a conflict of interest between the Lessor and Lessee, nor as possible grounds to invalidate this Lease in whole or in part. Each and every person, whether real or corporate, who shall take any interest whatsoever in or to the Lot or any of the Property, or in or to any Lot in the Property, after the recording of this Lease, by acceptance, delivery or the recording of the deed, contract, grant, assignment or such other instrument granting, conveying or providing for such interests, or by the exercise of the rights or uses granted herein, shall be deemed to specifically consent to and ratify without further act being required, the provisions of this Lease to the same effect and extent as if such person or persons had executed this Lease with the formalities required in deeds, for the purpose of subordinating and/or subjecting such person's or persons' interest, in full, to the terms of this Lease and granting the rights to the parties provided for herein, absolutely without exception.

WITNESSES:

[Handwritten signatures of witnesses]
Edward M. H. Ke

LESSOR:
H.V. RESORT AND YACHT CLUB
OWNERS' ASSOCIATION

By *[Handwritten signature]*

By _____

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WITNESSES:

A. [Signature]
Edward M. [Signature]

LESSEE:

OUTDOOR RESORT, R.V. RESORT
AND YACHT CLUB

By: *[Signature]*

By: _____

RECORDED THIS 22nd DAY
OF JUNE 1981
IN BOOK 100 PAGE 717
FILED BY Maui Ann Groulx
CLERK, BEAUFORT COUNTY, S. C.

FILED AT BEAUFORT COUNTY S. C. RECORDED IN BOOK 100 PAGE 720
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CLERK OF COURT OF COMMON PLEAS

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10/8/81

STATE OF OHIO
COUNTY OF CLATSOP

MODIFICATION OF LEASE AGREEMENT

WHEREAS, on June 17, 1981 a Lease Agreement was entered into by and between R.V. Resort and Yacht Club Owners' Association, Inc., a South Carolina non-profit corporation (herein and hereinafter referred to as "Lessor"), and Outback Resorts, R.V. Resort and Yacht Club, a South Carolina general partnership (herein and hereinafter referred to as "Lessee"), a copy of which is attached hereto as Exhibit "A" for reference; and

WHEREAS, the aforesaid Lease was recorded with the Declaration of Covenants and Restrictions for Outback Resorts, R.V. Resort and Yacht Club in Book 125 at Page 970 in the Office of the Clerk of Court, Beaufort County, South Carolina; and

WHEREAS, the provisions of Paragraph 19 of the aforesaid Lease require that any modifications in the Lease Agreement be in writing and signed by both parties; and

WHEREAS, the Lessor and Lessee have agreed that the following modification to Paragraph 3 be made.

IN CONSIDERATION of the sum of five and 00/100 (\$5.00) Dollars and other valuable consideration, Paragraph 3 of the aforesaid Lease is modified to read as follows:

In consideration of this Lease of the Recreational Facilities to the Lessor, Lessee agrees to pay Lessor the sum of five (\$5.00) Dollars per month per boat slip at the marina which is shown and designated on Exhibit "B" which is attached hereto and thereby make a part hereof. The payment of said rent, however, shall not begin until the improvements described as the Recreational Facilities in Paragraph 1 have been completed. Such rent shall be payable at such place as Lessor shall direct in writing. The amount of rent shall be automatically increased proportionately with any increase of assessments as determined by the Board of Directors of the Association pursuant to Article VI, Section 3 of the By-Laws of the R.V. Resort and Yacht Club Owners' Association, Inc.

WITNESS my hand and seal of the 10th day of October, 1981.

WITNESSES:

LESSOR:
R.V. Resort and Yacht Club
Owners' Association, Inc.,
a South Carolina non-profit
corporation

By: [Signature]
By: _____

[Signature]
Edward M. Byrd

EXHIBIT 2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 TURNER'S MARINA LLC,)
)
 Plaintiff,)
)
 vs.)
)
 R.V. RESORT AND YACHT CLUB)
 OWNERS' ASSOCIATION, INC.,)
 SECURITAS SERVICES, INC.,)
 MIKE MORALES, and SUNSET, INC.,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2021-CP-07-01085

**ORDER GRANTING DEFENDANTS'
 MOTION TO ENFORCE SETTLEMENT
 AS TO AMENDED EASEMENT**

This matter comes before me upon Plaintiff's Motion to Enforce Mediation Settlement Agreement, dated February 23, 2024, supported by the Affidavit of Neil Turner, dated April 2, 2023 (collectively "Plaintiff's Motion") and Defendants' Motion to Enforce Settlement, dated March 4, 2024, supported by the Affidavit of Christopher Sibley, dated April 8, 2024 (collectively "Defendants' Motion").

A hearing was held in my chambers at the Beaufort County Courthouse on April 11, 2024 at which time the Court heard and considered arguments from all counsel. As is set forth in the parties' Motions, a dispute has arisen as to the documentation required as to the Settlement Agreement, dated December 13, 2023, reached in mediation ("Settlement Agreement"). The Defendants have asserted that as a result of the Settlement Agreement, one or all the parties must sign in recordable form three (3) documents; (1) Amended and Restated Easement; (2) Second Amendment to Lease; and (3) Agreement as to Gates and Security Guards. The Plaintiff agrees an Amended Easement and an amendment to the Lease in

EXHIBIT 2

recordable form is necessary, but disagrees with the language suggested by the Defendants, and further asserts no further documentation is needed as to agreement concerning armed guards and gates.

This Order only deals with the parties' dispute as to the Amended Easement Agreement. The other two (2) issues will be subject to a separate Order by the Court.

A. Proposed Amended Easement Agreement

Section 9 of the Settlement Agreement reads as follows:

“9. The 1984 easement recorded at Book 397 at Page 1612 will be updated to include granting access to the Association, Owners of the Property, and each of their guests, lessees, invitees and licensees to Parcel “B”. The Parties agree that Parcel B is referenced in Plat Book 148 at Page 60.”

This Court has reviewed the 1984 Easement recorded at Book 397 at Page 612 and the referenced Plat Book 148 at Page 160 (“Parcel B Plat”). Defendants submitted to Plaintiff on January 31, 2024 a proposed Amended and Restated Easement Agreement with language virtually identical to the above when describing the easement rights granted. (Exhibit 1 attached hereto).

It is this Court’s opinion the language of Section 9 of the Settlement Agreement is clear and unambiguous. The agreed-upon language clearly provides an express easement to the Association (defined in the Settlement Agreement as the Defendant R.V. Resort and Yacht Club Owners Association, Inc.), Owners of the Property, and each of their guests, lessees, invitees and licensees over Parcel “B”, as set forth on Plat Book 148 P 60. All of the terms and conditions of this easement are carefully and fully defined pursuant to the referenced recorded documents.

Plaintiff, relying on the Affidavit of Neil Turner, dated April 2, 2023, states it was the intent of the Plaintiff and/or the parties to only grant an easement over the roadways or paved roads on Parcel B, not Parcel B in its entirety. In the Amended Easement proposed by the Plaintiff, dated January 3, 2024, the easement to the Association is stated as “a permanent, non-exclusive right-of-way, on, over, and across the paved roads . . .” located on Exhibit 1 attached thereto, which is a marked-up survey of the Parcel B Plat (emphasis added).

This Court does not adopt the position of the Plaintiff since there is no language in Section 9 of the Settlement Agreement restricting or limiting the easement to “roads” or “paved roads” as Plaintiff now asserts.

The rules concerning the Court’s role in construing contracts, like the subject Settlement Agreement, are well recognized in South Carolina. The Court in *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 497-498, 649 S.E.2d 494, 501-502 (2007) sets forth an excellent summary of said rules, as follows:

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties.” *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 8081, 562 S.E.2d 482, 484 – 4855 (Ct.App. 2005) . . . (cites omitted). Contracts should be liberally construed so as to give them effect and carry out the intention of the parties. *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47(1958)

The parties’ intention must, in the first instance, be derived from the language of the contract. *Schulmeyer v. State Farm Fire & Cas.*, 10, 353 S.C. 491, 495, 579 S.E.2d 132,134 (2003) (cites omitted) . To discover the intention of a contract, the court must first look to its language – if the language is perfectly plain and capable of legal construction, it alone determines the document’s force and effect. *Superior Auto. Inc. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions. *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct.App. 2004); *accord Kable v. Simmons*, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

* * *

If a contract's language is plain, unambiguous, and capable to only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. *Jordan v. Security Group, Inc.* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley* at 72, 221 S.E.2d at 769¹. "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie* at 93, 594 S.E.2d at 493 (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App. 2001)). However, where an agreement is ambiguous, the court should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E. 2d 271, 274 (Ct.App. 2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 185, 187 (Ct.App. 1998).

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Ellie* at 94, 594 S.E.2d at 493; *accord Bruce* at 160, 127 S.E.2d at 441; *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App. 1997). "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968) (citation omitted).

"Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, the court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

As stated above, this Court finds § 9 of the Settlement Agreement is clear, direct, specific and unambiguous. There is no need to refer or rely upon the Affidavits of Neil Turner, Christopher Sibley or any testimony. If the Court were to adopt Plaintiff's position, the Court would be required to insert the words "road" or "paved road" into the Settlement Agreement, terms not used by the parties. This Court refuses to make said changes under the authorities cited above.

This Court finds and concludes the Amended and Restated Easement prepared by Defendants, attached hereto as Exhibit 1, is consistent with the stated intention of the parties under §9 of the Settlement Agreement. Within ten (10) days of the issuance of this Order the Plaintiff is directed to execute same before two (2) witnesses, one of which is a notary, and deliver the original to defense counsel for the Association for recording.

AND IT IS SO ORDERED.

Marvin H. Dukes

Beaufort, South Carolina
_____, 2024



Beaufort Common Pleas

Case Caption: Turners Marina Llc VS R V Resort And Yacht Club Owners
Association Inc , defendant, et al
Case Number: 2021CP0701085
Type: Master/Order/Other

So Ordered

s/Marvin H. Dukes III #2785

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
) **AMENDED AND RESTATED EASEMENT**
)

THIS AMENDED AND RESTATED EASEMENT ("Amended Easement") is executed this ___ day of ___ 2024, by Turner's Marina LLC, ("Grantor") and RV Resort and Yacht Club Owners' Association, Inc. ("Grantee" or "POA").

WHEREAS Outdoor Resorts RV Resort and Yacht Club, a South Carolina joint venture, consisting of ORA of Carolina, Inc. and Six Ess Corporation ("Developer"), granted to the POA on the 1st day of January, 1984, an Easement, as recorded in the Beaufort County Register of Deeds ("ROD") in Deed Book 397 at page 1611 ("Original Easement").

WHEREAS, as a result of the Mediated Settlement Agreement And Dismissal Of All Claims And Counterclaims With Prejudice, reached and executed in C. A. 2021-CP-07-01085 pending in the Beaufort County Court of Common Pleas on December 13, 2023 ("2023 Settlement"), Grantor, as the successor-in-interest or assignee to the Developer, and the POA agreed to amend, replace and supersede the Original Easement pursuant to the terms and conditions of this Amended Easement:

NOW, THEREFORE, in consideration of the execution of the 2023 Settlement and the sum of Ten and 00/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Whereas Provisions-** The above Whereas provisions are incorporated as if completely set forth herein. Said provisions are material and important terms of this Amended

EXHIBIT 1

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Easement.

2. Grant of Easement

(a) Grantor does hereby grant, bargain, sell and convey to Grantee, a permanent, perpetual, non-exclusive right-of-way on, over, and across that certain property owned by Grantor as more particularly depicted as "Parcel B" on that certain plat or survey entitled "Boundary & As-Built Survey of Parcel "B", a portion of Hilton Head Marina & Outdoor Resorts", dated July 24, 2017 and recorded in the ROD in Plat Book 148 at Page 160, as prepared by Terry G. Hatchell, a South Carolina Registered Land Surveyor (SC Reg. No. 11059) ("2017 Survey").

(b) This Amended Easement is granted for use by the POA, owners of the two-hundred (200) individual RV lots at the RV Resort, and their collective guests, lessees, invitees, successors, successors in title, agents, employees, servants, contractors, administrators, mortgagees, and licensees.

(c) This Amended Easement is for the benefit of and is appurtenant to all those certain pieces, parcels or tracts of land lying, situate and being on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 200 RV Lots (1 - 200), the roadways, tennis court(s), pool(s), building(s), parking, open spaces, and the well site, all as shown on that certain plat or survey entitled "R.V. Resort & Yacht Club, Hilton Head Island, South Carolina Plot Plan" dated September 7, 1981, and last revised July 26, 1983, recorded in the ROD in Plat Book 29 at Page 184, as prepared by Forrest F. Baughman, a South Carolina Registered Land Surveyor (S.C. Reg. No. 4922) and that certain property owned by Grantee as more particularly depicted as "Parcel A" on the 2017 Survey.

3. **Running with Land** - This Amended Easement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and all persons or entities aforementioned.

4. **Assignment**- Grantee shall have the right to assign its rights and obligations, if any, under this Amended Easement, in whole or in part.

5. **Modification of Roadways**- Grantor may, at its option, change the location of the paved roadways from time-to-time, as depicted on the 2017 Survey, provided that Grantor shall always provide to Grantee sufficient and reasonable ingress and egress access for motor vehicles, recreational vehicles, pedestrians, golf carts, and bicycles.

6. **Replacement of Original Easement** - This Amended Easement is specifically intended by the Grantor and Grantee to replace and supersede that Original Easement. Further, this Amended Easement is subject to all matters of record in Beaufort County, South Carolina.

7. **Non-Exclusive** - This Amended Easement is non-exclusive and is further subject to the right of Grantor and all persons acting on Grantor's behalf to have access on, over, or across the Amended Easement granted herein to Parcel B shown on the 2017 Survey owned by Grantor.

8. **Purchaser(s) of Parcel B Bound**- Each party agrees that upon any conveyance or transfer of all or any part of Parcel B on the 2017 Survey, said purchaser or transferee by accepting such conveyance will thereby be bound by this Amended Easement.

9. **Modifications-** This Amended Easement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors, successors-in-title and assigns.

10. **Choice of Law-** This Amended Easement will be construed in accordance with the laws of the State of South Carolina.

11. **Rights to Public-** Nothing contained in this Amended Easement will be deemed to constitute a gift, grant, or dedication to the general public.

12. **Authority-** Each individual executing this Amended Easement on behalf of Grantee and Grantor, respectively, represents and warrants that he or she is duly authorized to execute and deliver this Amended Easement in accordance with duly adopted resolutions and approvals or in accordance with organizational or incorporation documents, and that this Amended Easement is binding upon Grantee and Grantor in accordance with its terms.

13. **Severability** - If any provision of this Amended Easement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Amended Easement (or the application of such provision to persons or circumstances other than those in respect to which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Amended Easement will be valid and enforceable to the fullest extent permitted by law.

14. **Drafting Agreement** - The parties acknowledge and agree that each was actively involved with the negotiation and drafting of this Amended Easement. Further, each party's legal counsel reviewed, or had the opportunity to review the Amended Easement prior to its execution. The parties agree that any Court, arbitrator or mediator which may hereinafter interpret this

Amended Easement will not construe the Amended Easement against any particular party which may have originated, typed or prepared any particular provision.

15. **Attorney Fees-** In any legal action to enforce the terms and provisions of this Amended Easement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

16. **Entire Agreement** - This Amended Easement constitutes the entire agreement among the parties hereto and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, among the parties hereto relating to the transactions contemplated hereby or the subject matter herein.

17. **Counterparts-** This Amended Easement may be executed in one or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Amended Easement or its terms to produce or account for more than one of such counterparts.

18. **Lease Signed Per Court Order** - This Amended Easement is not voluntarily executed by Turner's Marina, LLC. It is being executed pursuant to that Court Order of Circuit Judge Marvin Dukes, III dated _____, 2024, directing the Plaintiff to execute this document. It is signed under protest, but in compliance with Judge Dukes' Order.

IN WITNESS WHEREOF, Turner's Marina LLC, a South Carolina limited liability company has caused this Amended Easement to be signed and sealed on _____, ____ 2024.

SIGNED, SEALED, AND
DELIVERED IN THE PRESENCE
OF:

Turner's Marina LLC, a South
Carolina limited liability company

By: _____ (L.S.)
Neil Turner, Manager

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Neil Turner personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal on __ , __ , 2024.

_____(SEAL)
Notary Public for South Carolina
My Commission Expires: _____
Name of Notary: _____

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ELECTRONICALLY FILED - 2024 Aug 05 3:46 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701085

IN WITNESS WHEREOF, the R.V. Resort And Yacht Club Owners' Association, Inc., a South Carolina nonprofit corporation has caused this Amended Easement to be signed and sealed on __ , __ , 2024

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

R.V. Resort And Yacht Club Owners' Association, Inc., a South Carolina nonprofit corporation

By: _____(L.S.)
Christopher Sibley,
President

STATE OF _____)
COUNTY OF _____,

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Christopher Sibley personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal on __ , __ , 2024.

_____(SEAL)
Notary Public for _____
My Commission Expires: _____
Name of Notary: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
TURNER'S MARINA LLC,)
)
)
Plaintiff,)
)
vs.)
)
)
R. V. RESORT AND YACHT CLUB)
OWNERS' ASSOCIATION, INC.,)
SECURITAS SERVICES, INC.,)
MIKE MORALES, and SUNSET, INC.,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2021-CP-07-01085

**ORDER DENYING TURNER'S
MOTION TO SET ASIDE
SETTLEMENT AGREEMENT
DUE TO MUTUAL MISTAKE**

This matter comes before me upon Turner's Marina LLC's ("Turner") Motion to Set Aside Settlement Agreement Due to Mutual Mistake, dated May 7, 2024 ("Motion"). In support of said Motion, Turner submitted the Affidavit of Neil Turner, dated April 2, 2024 ("Turner Affidavit"). In response, the Defendants submitted the Affidavit of Chris Sibley, dated April 8, 2024 ("Sibley Affidavit"), the Affidavit of Linda Lockman, dated September 19, 2024 ("Lockman Affidavit"), and the Defendants' Memorandum of Law dated January 17, 2025 ("Defendants' Memorandum.") A hearing was held on the Motion in the Beaufort County Courthouse on Tuesday, January 21, 2025, at 9:30 a.m. Appearing was Thomas C. Taylor for the Plaintiff, Christopher D. Lizzi from the Defendant R.V. Resort and Yacht Club Owners' Association, Inc. ("POA") and Russell P. Patterson for the Defendant Sunset Inc. ("Sunset.") For the reasons discussed below, this Court denies said Motion.

A. Procedural Background

After three (3) years of litigation, the parties reached a settlement of all outstanding issues in this matter at mediation. All terms and conditions of the settlement were set forth in a written Settlement Agreement ("Settlement Agreement"-Exhibit 1 to Defendants' Memorandum) signed

EXHIBIT 3

by all parties and their counsel at the end of mediation. The mediation process started at 10:00am on Tuesday, December 12, 2024, and ended some sixteen (16) hours later, ending at 2:00am on December 13, 2024 (Sibley Aff. § 2(b); Lockman Aff. § 3(b)). As with most mediations of a complex case, many different settlement proposals and offers were exchanged between the parties and the mediator.

Shortly after the December 13, 2024 Settlement Agreement was executed, counsel for the parties began work on preparing legal documentation required to formalize said settlement pursuant to an Amended 99 Year Lease and an amendment to the 1984 Easement. Turner thereafter asserted the Amended Lease and the Amended Easement prepared by the Defendants were not consistent with the Settlement Agreement and filed a Motion to Enforce Mediation Settlement Agreement, on February 23, 2024. The Defendants filed their Motion to Enforce Settlement Agreement on May 4, 2024, asserting the proposed documents were in compliance with the Settlement Agreement. After extensive hearings, the Court, pursuant to two (2) orders issued August 5, 2024, agreed with the Defendants that the Amended Lease and Amended Easement were consistent with the Settlement Agreement. The only change the Court made to the Amended Lease was that the Court found Turners' obligation to not install gates and employ armed security guards set forth in the Settlement Agreement did not require the Plaintiff to record a separate document to place on record these obligations. (See: Order Ruling on Plaintiff's and Defendant's Motion to Enforce Settlement Agreement, dated August 5, 2024 ("Settlement Agreement Order") , and Order Granting Defendants' Motion to Enforce Settlement as to Amended Easement, dated August 5 , 2024 ("Easement Order").

Turner filed the subject Motion seeking to overturn in its entirety the Settlement Agreement on the grounds of mutual mistake on May 7, 2024.

B. Turner Has Not Met the Required Elements to Prove a Mutual Mistake

The law involving overturning or reforming a contract on the grounds of a mutual mistake is well established in South Carolina. There are two (2) required elements Turner must show, as follows.

1. The mistake is in reference to facts upon which the contract is based, or where there is an omission or insertion of some material element affecting the subject matter or terms and stipulations of the contract, inconsistent with the true agreement of the parties; and
2. The mistake must be common to both parties and, by reason of it, each has done what neither intended.

King v. Oxford, 282 S.C. 307, 313, 318 S.E.2d 125, 128 (1984); *Truck South, Inc. v. Patel*, 339 S.C. 40, 50, 528 S.E.2d 424, 429 (2000). Turner has the burden of proof to establish these elements by clear and convincing evidence. *King*; *Truck South*.

1. No evidence of a mistake

Turner's evidence of a mistake falls short of the above standards. Turner's Affidavit provides no explanation how he and his experienced, learned counsel signed the Settlement Agreement, negotiated over sixteen (16) hours, containing language they now assert months later, was entered into based on a mistake in reference to facts or a material element of the settlement. Nothing in the Turner Affidavit evidences a mistake in reference to any facts or the subject matter dealing with the Amended Easement. The Turner Affidavit also does not state the agreement signed was inconsistent with the true agreement of the parties. The word "mistake" does not appear anywhere in his affidavit.

Turner's reliance on the "draft" proposed Settlement Agreement prepared by Mr. Neil Turner ("Draft Settlement Agreement") does not support any finding of a mutual mistake for at least six (6) reasons (Turner Aff. § 6, Ex. A). First, the Draft Settlement Agreement was

apparently generated on December 12, 2023 at 10:28pm, some three and one-half (3^{1/2}) hours before the actual Settlement Agreement was signed. (Sibley Aff. §§ 3(b),(c),(d),(e); Lockman Aff. §§ 3(b),(c),(d),(e). What might have occurred that long prior to the final Settlement Agreement being reached is simply not relevant to the wording of the Final Settlement Agreement.

Second, the Turner Draft Settlement Statement bears little resemblance to what was, hours later, agreed to and signed by all parties. Attached as Exhibit 2 to the Defendants' Memorandum is a redline showing the changes from the Turner Draft Settlement Agreement (Turner Aff. §6, Ex. A) and the final Settlement Agreement signed three and one-half (3^{1/2}) hours later. Very little of the language in Turner's Draft Settlement Agreement actually was incorporated into the Settlement Agreement signed by the parties.

Third, the Draft Settlement Agreement was never sent to the Defendants. Having never seen said document, it is not possible the Defendants agreed to any such language which later was somehow mistakenly not transcribed into the final Settlement Agreement. There can be no mutual mistake if the Defendants never saw the proposed language Turner purportedly had agreed to in mediation.

Fourth, a simple comparison of what Turner "expected" to be in the Settlement Agreement verses what was actually in the Settlement Agreement he and his counsel signed confirm this is not a case of a simple change in punctuation or the addition of one or two words that could have been mistakenly overlooked by said parties. Turner's December 12, 2023, 10:28pm Draft Settlement Agreement contains the following language as to the easement (Turner Aff. Ex. A, §6):

" 6. The 1984 easement will be updated to include access to parcel "B" by roadway."

The actual agreed to language some 3 ½ hours later in the fully executed Settlement Agreement (Ex. 1 to Defendants' Memorandum of Law §9) states as follows:

"9. The 1984 easement recorded at Book 397 at Page 1612 will be updated to

include granting access to the Association, Owners of the Property, and each of their guests, lessees, invitees, and licensees to Parcel "B". The parties agree the Parcel B is referenced in Plat Book 148 at Page 60."

Even a cursory review of §9 by Turner and his counsel would have easily shown the agreed upon language was completely different than Turner's private, internal draft completed 3 ½ hours earlier.

Fifth, under Turner's version of the agreed upon settlement language as to the 1984 Easement, the Defendants would simply be afforded ingress and egress over the paved roads. Under the original 1984 Easement, Defendants already had these rights. (Easement Order; Sibley Aff. §3(f); Lockman Aff. §3(f)). Turner's position would mean there was no change in the 1984 Easement, which would be an illogical conclusion, since the parties inserted language stating the 1984 Easement was to be "updated" pursuant to §9 of the Settlement Agreement.

Finally, Turner states in its Motion there was a mistake in the executed Settlement Agreement because Turner was "under the belief that the wording of Paragraph 9 provided for the preparation and filing of an Amended Easement that would follow South Carolina law with a required easement entry and terminus...." No such reference to this ground of mistake is found in the Turner Affidavit, and thus there is no evidence before the Court to support this argument. In addition, pursuant to the Court's Easement Order, this legal argument has previously been rejected.

Based upon the above, Plaintiff has failed to present clear and convincing evidence of a mistake under *King* and *Truck South*.

2. No Evidence of a Mutual Mistake

Assuming, *arguendo*, Turner had somehow satisfied the above first element, there is no evidence, clear, convincing, or otherwise, of any mutual mistake. Pursuant to the Affidavits of

Sibley (§§3(d),(f) and Lockman (§§3(d),(f), 4, 5), the Defendants have unequivocally stated there was no mistake in the language in §9 of the Settlement Agreement. The right to cross over all of Parcel B referenced in §9 was the subject of prior disputes, which was resolved under the terms of the agreed language. In other words, this was a concession reached in extensive settlement negotiations.

At best, Turner may have shown a **unilateral** mistake on his part, and that of his counsel, both of whom signed the Settlement Agreement. No relief has been requested by Turner based on such a unilateral mistake, which would require clear and convincing evidence of fraud, deceit, misrepresentation, or concealment. Evidence of a mistake by one party is not sufficient to reform or void a contract (*Hann* at p. 424).

For the above reasons, Plaintiff's Motion is denied.

AND IT IS SO ORDERED.

Marvin H. Dukes III
South Carolina Circuit Court Judge

Beaufort, South Carolina
March __, 2025



Beaufort Common Pleas

Case Caption: Turners Marina Llc VS R V Resort And Yacht Club Owners Association Inc , defendant, et al
Case Number: 2021CP0701085
Type: Order/Other

So Ordered

s/Marvin H. Dukes III #2785

Electronically signed on 2025-04-25 11:26:34 page 7 of 7

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Circuit Court Judge

RECEIVED
SEP 04 2025
SC Court of Appeals

Appellant Case No. 2025-001031
Case No. 2021-CP-07-01085
Case No. 2020-CP-07-00989

R.V. Resort and Yacht Club Owners'
Association, Inc., Securitas Services,
Inc., Mike Morales, and Sunset, Inc.

Respondent,

v.

Turner's Marina, LLC

Appellant.

PROOF OF SERVICE

I certify that I have served the Respondents' Return to Appellant's Motion to Consolidate Appeals and Stay Proceedings Pursuant to Rule 214, SCACR, dated August 29, 2025, by emailing, on August 28, 2025 a copy to its attorney of record, Gregory M. Alford, gregg@alfordlawsc.com.

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson

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Hilton Head Island, South Carolina
August 28, 2025

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SC Court of Appeals

August 28, 2025

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

E-mail and Mail
ctappfilings@sccourts.org

Re: Turner's Marina, LLC, Appellant v. R.V. Resorts and Yacht Club Owners' Association, Inc., et al Respondents.
Appellant Case Number: 2025-001031

Dear Ms. Kitchings,

Please find enclosed for filing the following two (2) documents in the above matter.

1. Respondents' Return to Appellant's Motion to Consolidate Appeals and Stay Proceedings Pursuant to Rule 214 SCACR.
2. Proof of Service

Please don't hesitate to contact us with any questions.

Sincerely,
RUSSELL P. PATTERSON, P.A.
/s/ Russell P. Patterson
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Cc: Gregory M. Alford via e-mail only gregg@alfordlawsc.com

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