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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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

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

Respondents,

v.

Turner's Marina, LLC,

Appellant.

Record on Appeal

Volume III

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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

**R.V. RESORT AND YACHT CLUB
 OWNERS’ ASSOCIATION, INC.
 AND SUNSET, INC.’S
 SUPPLEMENTAL MEMORANDUM
 OF LAW IN SUPPORT OF THEIR
 MOTION TO ENFORCE
 SETTLEMENT**

TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, THOMAS C. TAYLOR, ESQUIRE:

Defendants, R.V. Resort and Yacht Club Owners’ Association, Inc. and Sunset, Inc. (collectively “Defendants”) submit this Supplemental Memorandum of Law in Support of their Motion to Enforce Settlement Agreement, dated March 4, 2024. (“Defendants’ Motion to Enforce.”)

This Court heard oral arguments on April 11, 2024, and thereafter conducted a status conference on May 3, 2024 on Plaintiff’s Motion to Enforce Mediation Settlement Agreement, dated February 23, 2024 (“Plaintiff’s Motion to Enforce”) and Defendants’ Motion to Enforce. At said hearing, there were three (3) main issues in dispute in connection with the Mediated Settlement Agreement, dated December 13, 2023 (“Settlement Agreement”), as follows:

1. What should be the terms and conditions of the Amended Easement for Parcel B, as set forth in section 9 of the Settlement Agreement? (“Easement Issue”);

2. Should there be a recorded amendment to the 99 year Lease incorporating sections 1, 2, 3, 4 , 5 6, 7, and 8 of the Settlement Agreement? (“Lease Issues”);
3. Should there be a recorded agreement executed by the Plaintiff to place on record its agreement as to armed security guards and the construction of one or more gates, under sections 10, 11 and 12 of the Settlement Agreement? (“Armed Guards/Gate Issue”).

1. Easement Issue

The Court advised at the status conference on May 4, 2024 that it had agreed with the Defendants’ position and that it would require the Plaintiff to execute the Amended Easement Agreement prepared by the Defendants, a copy of which was attached to the Defendants’ Motion to Enforce. The Court requested defense counsel to prepare a proposed order for circulation and approval. Thus, the Easement Issue has been resolved. A proposed Order will be circulated shortly.

2. Lease Issue

At the end of the Defendants’ oral arguments during the April 11, 2024 hearing, Plaintiffs’ counsel advised that it agreed that the Lease provisions in the Settlement Agreement should be included in a recorded document, but wished to review the proposed language suggested by the Defendants. On April 17, 2024, defense counsel sent to Plaintiff’s counsel a proposed Second Amendment to Lease, and requested the Plaintiff’s consent, or advise of any changes or needed erections. Having received no response, on May 2, 2024

defense counsel sent for the second time a proposed Second Amendment to Lease, requesting consent or identification of any needed changes. (Ex. 1). Plaintiff's counsel's response of May 3, 2024 stated that until the Plaintiff received the court ruling on the Easement Issue, Plaintiff would not agree to any proposed language to an Amended Lease. Further, if the Court adopted the Plaintiff's position on the Amended Easement, Plaintiff's counsel represented that would it work with the Defendants on language of a recordable Second Amendment to Lease. (Ex. 2).

After the court status conference of May 3, 2024, defense counsel emailed Plaintiff's counsel for the third time with the proposed Second Amended to Lease requesting Plaintiff's consent or specific revisions. (Ex. 3). Plaintiff responded to said request on May 7, 2024 with the attached blackline of the Second Amended Lease. (Ex. 4). Plaintiff requested two (2) changes to the Second Amendment to Lease, neither of which are included in the Settlement Agreement, as follows:

1. Section 6, last sentence- Plaintiff attempts to restrict the hours of operation for the Sunset Restaurant. No such restriction exists under the Settlement Agreement and said provision was not agreed to by the Defendants.
2. Section 7, last sentence- Plaintiff attempts to assert control over the "Laundry Room", "Mail room" and "exercise room", Again no such language exists in the Settlement Agreement to support these additions and said provision was not agreed to by the Defendants.

Defendants would request that the Court adopt the language contained in the Defendants' proposed Second Amendment to Lease, and order the Plaintiff to execute same consistent with the terms and conditions of the Settlement Agreement.

3. Armed Guards/Gate Issue

Defense counsel sent to the Plaintiff on April 17, 2024 a proposed “Agreement as To Gates and Security Guards” (Ex. 5). Having received no response from the Plaintiff, on May 2, 2024 Defense counsel sent an e-mail to the Plaintiff requesting a response to said draft document. (Ex 6). By e-mail on May 3, 2024, Plaintiff’s counsel advised “Turner’s Marina will not agree to the execution or recording of anything like the proposed Agreement as to Gates and Security Guards.” Plaintiff asserted no additional documentation is needed, other than what is set forth in the written Settlement Agreement. (Ex. 7)

As was the case for all the settlement terms and conditions concerning the amendments to the 99-year Lease, the agreement by Turner to prohibit armed security guards, and rules and restrictions on gates on its property in the Settlement Agreement are clearly covenants and restrictions on its property. These restrictions must be recorded in order be enforceable under the South Carolina Recording Act, and long-standing case law. Defendants request the Court require the Plaintiff to execute the proposed Agreement as to Gates and Security Guards.

LIZZIE LAW FIRM, P.C.

/s/ Christopher D. Lizzi

Christopher D. Lizzi

2170 Ashley Phosphate Rd., Ste. 402

N. Charleston, South Carolina
May 8, 2024

N. Charleston, SC 29406
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*Attorneys for the Defendant, R.V. Resort
and Yacht Club Owners Association, Inc.*

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson
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*Attorneys for the Defendant,
Sunset, Inc.*

Hilton Head Island, South Carolina
May 8, 2024

5/2/24
3:57P~

Russell

From: Russell
Sent: Thursday, May 2, 2024 3:57 PM
To: Tom Taylor
Cc: Chris Lizzi (lizzilawfirm@aol.com)
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards

Importance: High

Tom-

I understand we have a virtual hearing tomorrow, May 3, 2024, at 3 pm before Judge Dukes in connection with the above matter concerning the two motions to enforce settlement argued on April 11, 2024.

On April 17, 2024, per my email below, I sent to you a package of documents addressing what I understood to be agreed upon provisions of an amendment to the lease and a separate document concerning security guards and gates. I have not received any response from your office as to these documents.

Can you please advise me of your client's position on said documents. If we have an agreement on same, we can advise the court those issues do not need to be decided. Obviously, if we have no agreement, we will need the Judge to decide these issues as well.

I look forward to your response. Thanks

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EXHIBIT 1

CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any US Federal Tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the internal revenue code or (II) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent.

CONFIDENTIALITY NOTICE: This communication (including any attachments) is being sent by or on behalf of a lawyer or law firm and may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease (“Amendment”) is entered into this _____ day of April, 2024 by R.V. Resort and Yacht Club Owner’s Association, Inc. (“Landlord”) and Turner’s Marina, LLC (“Tenant”).

WHEREAS, on or about June 12, 1981, the Landlord and Outdoor Resort, R.V. Resort and Yacht Club, a South Carolina general partnership (“Original Tenant”) entered into that certain Lease recorded in the Beaufort County Register of Deeds (“ROD”) at DB 325 at Page 953 on June 18, 1981, a copy of which is attached hereto as Exhibit 1 (“Lease”);

WHEREAS, on October 8, 1981, the Landlord and the Original Tenant entered into that certain Modification of Lease Agreement, a copy of which is attached as Exhibit 2 (“Lease Amendment”). That the Lease and Lease Amendment are collectively referred to as the “1981 Lease”;

WHEREAS, the interest of the Original Tenant in the 1981 Lease was sold, transferred or assigned on various occasions thereafter, with the Tenant, Turner’s Marina, LLC (“Tenant”) since December 21, 2017 holding the interest of Tenant under the 1981 Lease;

WHEREAS, at some point after the Tenant acquired its interest under the 1981 Lease, various disputes arose with the Landlord as to the definition of the leased premises (“Premises”) described in the 1981 Lease under § 1, and other provisions, including, (1) whether the restaurant,

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, Sunset and others in the Beaufort County Court of Common Pleas on June 21, 2021 (C.A. No.: 2021-CP-07-1085 – “Litigation”);

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. The parties acknowledge and agree the use of the Ship's Store space for the Landlord's office shall be permitted.

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. Drafting of the Agreement. The parties acknowledge and agree that each was actively involved with the negotiation and drafting of this Addendum. Further, each party's legal counsel reviewed, or had the opportunity to review the Addendum prior to its execution. The parties agree any Court, arbitrator or mediator which may hereinafter interpret this Addendum will not construe the Addendum against any particular party which may have originated, typed or prepared any particular provision.

9. 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.

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

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) ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the within R.V. Resort and Yacht Club Owner's Association, Inc., 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 April , 2024.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the within Sunset, Inc., 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 April , 2024.

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

STATE OF SOUTH CAROLINA

)

)

ACKNOWLEDGMENT

COUNTY OF BEAUFORT

)

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 January, 2024.

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

5/7/24

9:29 am

Russell

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Friday, May 3, 2024 9:29 AM
To: Russell
Cc: Chris Lizzi (lizzilawfirm@aol.com); neil@hiltonheadharbor.com; Donna Taylor
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards

Russell – Good morning. In response to the below email and to your reminder of yesterday, Turner’s Marina’s position is as follows:

- a. In response to your and Mr. Lizzi’s arguments on your Motions to Enforce the Settlement Agreement by Order interpreting the Settlement Agreement to provide carte blanche access by the Association members to Turner’s Marina’s property at any time, Turner’s Marina made a motion to set aside the Settlement Agreement. Although you argued that it was improper for some reason for me to make such a verbal motion, I cited you then to the Rules and again point out that Rule 7 SCRPC provides a motion can be made verbally during a hearing or trial in open court with a court reporter present. Thus, Turner’s Marina has a pending motion to set aside the Mediated Settlement Agreement contingent upon Judge Dukes’ ruling on the three competing Motions to Enforce the Settlement Agreement. Until we receive his ruling, Turner’s Marina will not agree to any particular related documents.
- b. Assuming Judge Dukes rules in favor of Turners’ Marina on that matter and orders the Association to execute the proposed Amended Easement that we drafted, we will be glad to work with you and Chris to execute a recordable Second Amendment to Lease that contains the relevant information from the Mediated Settlement Agreement. Most of that relevant information is in your draft, except we need to add a provision making it clear that the remaining portions of the Rec Building not addressed in the Mediated Settlement Agreement, are in fact a part of Turner’s Marina’s 99-year lease. (The mail room, the exercise room and the laundry room.)
- c. Turner’s Marina will not agree to the execution or recording of anything like the proposed “Agreement as to Gates and Security Guards.” That agreement by Turner’s Marina relating to gates and armed guards is clearly set forth in the to-be-filed if not set aside Mediated Settlement Agreement, and does not need further “confirmation.” Turner’s Marina is bound by its commitment and will live by it.

Thank you. Please let me know if you have any questions.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
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PLEASE NOTE OUR NEW MAILING ADDRESS:
 P.O. Box 1808, Bluffton, SC 29910-

EXHIBIT 2

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this

Russell

From: Russell
Sent: Friday, May 3, 2024 3:43 PM
To: Tom Taylor
Cc: Chris Lizzi (lizzilawfirm@aol.com)
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards

5/3/24

3:43

Tom-

As requested by Judge Dukes during our call a few minutes ago, I would ask that you review the Second Amendment to Lease document I forwarded to you on 4/17/24 and advise if you have any needed changes, corrections, or additions to said document.

I understand you do object as to the separate Agreement As to Gates and Security Guards , and the Amended Easement Agreement. I am **not** asking for any comments as to these two documents, just the Second Amendment to Lease .

Please send no to me your response no later than May 7, 2024, at 5:00pm. If we cannot resolve any outstanding issues on the Second Amendment to Lease, we will argue our respective positions at the next hearing on 5/8/24 at 2:00pm

Thanks

Russell P. Patterson
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HHI SC 29938
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Street Address: 107 Watersedge @ Shelter Cove, HHI SC 29928

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From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Friday, May 3, 2024 9:29 AM

EXHIBIT 3

Russell

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Tuesday, May 7, 2024 3:20 PM
To: Russell
Cc: Chris Lizzi (lizzilawfirm@aol.com); neil@hiltonheadharbor.com; Donna Taylor
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards
Attachments: 2nd Amendment to Lease with Turner's Marina's redline additions, 5.7.2024.docx

Mr. Patterson--In reply to your request for Turner's Marina's input on your draft 2nd Amendment to Lease, I am attaching hereto your draft with redlined additions from Turner's Marina. With this additional language, Turner's Marina LLC will agree to execute the 2nd Amendment to Lease and have it appropriately filed.

Thank you.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
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843-301-6900 (cell)

PLEASE NOTE OUR NEW MAILING ADDRESS:
P.O. Box 1808, Bluffton, SC 29910-

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From: Russell <russell@russellpattersonlaw.com>
Sent: Friday, May 3, 2024 3:43 PM
To: Tom Taylor <tom@thomastaylorlaw.com>
Cc: Chris Lizzi (lizzilawfirm@aol.com) <lizzilawfirm@aol.com>
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards

1 EXHIBIT 4

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, Sunset and others in the Beaufort County Court of Common Pleas on June 21, 2021 (C.A. No.: 2021-CP-07-1085 – “Litigation”);

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 **in anyway**. The parties acknowledge and agree the use of the Ship's Store space for the Landlord's office shall be **permitted only**. Landlord agrees that the Restaurant space will be limited to only operate during the hours of Tuesday through Sunday 5:00 p.m. to 10:00 p.m. and Sunday 10:30 a.m. to 2:00 p.m.

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. Landlord acknowledges the "Laundry room", "mail room" and exercise room are all part of the leased space and under the sole control of the Tenant.

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

interpret this Addendum will not construe the Addendum against any particular party which may have originated, typed or prepared any particular provision.

9. 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.

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

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: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the within R.V. Resort and Yacht Club Owner's Association, Inc., 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 May, 2024.

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

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that the within Sunset, Inc., 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 May, 2024.

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

STATE OF SOUTH CAROLINA

)

ACKNOWLEDGMENT

COUNTY OF BEAUFORT

)

)

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 May, 2024.

Notary Public for: South Carolina

My Commission Expires: _____

Name of Notary: _____

4/17/24 9:43

Russell

From: Russell
Sent: Wednesday, April 17, 2024 9:43 AM
To: Tom Taylor
Cc: Chris Lizzi (lizzilawfirm@aol.com)
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards
Attachments: 2nd Amendment to Lease Lizzie 1-18-24 .docx; 2nd Amendment to Lease Patterson 4-18-24 .docx; Blackline Sec Amended Lease Lizzie 1-8-24 to Patterson 4-18-24.docx; Agreement as to gates- Security Guards -Patterson 4-18-24.docx; Exs to Second Amended Lease 4-18-24 Exs A,1,2.pdf

Tom-

As I noted on my e-mail to you of 4/15/24 at 9:07 am, it was brought to my attention that my e-mail below of 4/12/24 at 6:13 pm with draft settlement documents contained several errors. I have now corrected said errors and am re-sending a corrected package of documents and information.

“Near the end of the motion hearing before Judge Dukes on Thursday, April 11, 2024, you advised that your client agreed to the Defendants’ position that the terms and conditions of the Settlement Agreement of 12/13/24 related to the amendments to the 99-year lease should be in a recordable document. I understood that you and your client wanted a few days to review the specific terms of Chris Lizzi’s January 18, 2024, version of the Lease (Lizzi Lease 1/18/24) to make sure it was acceptable.

As was brought up during Defendants’ presentation to the Judge, we requested to be allowed to add to the settlement documents to be recorded the provisions of sections 10 (No armed guards) and 11 and 12 (gates) of the Settlement Agreement that were inadvertently omitted. It was my recollection that this additional amendment is before the court, and that the Plaintiff did not consent at said motion hearing that these two sections could be added.

To expedite your review of the Defendants’ proposed settlement documentation as to the above issues, I’ve attached the following:

1. Lizzi's 1/18/24 Lease in Word
2. My revisions to the Second Amended to the Lease, dated April 18, 2024, in Word, and a blackline from Chris Sibley’s version of 1/18/24. As you will note, I only made two changes: 1) Changed the date of the agreement on the first page; and 2) corrected the recording information of the referenced plat on page 2 (PB 148/160 to PB 148/60). I have also attached another copy of the 3 Exhibits referenced in said Lease, fyi.
3. New Agreement As to gates and Security Guards – This agreement sets forth in recordable form the agreement by the Plaintiff as to security guards and gates found in sections 10, 11 and 12 of the Settlement Agreement. During the motion hearing the Defendants pointed out to the court that these issues had been inadvertently omitted from the Second Amended Lease. Upon further review, we have concluded these obligations should not be incorporated into the lease as they impact only the Plaintiff’s property. Thus, we have drafted a separate agreement to document these provisions of the Settlement

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AGREEMENT AS TO GATES AND SECURITY GUARDS

This Agreement as to Gates and Security Guards is entered into this ____ day of April , 2024 by R.V. Resort and Yacht Club Owner’s Association, Inc., 43B Jenkins Island Road, Hilton Head Island SC 29926(“Association”) and Turner’s Marina, LLC., P. O. Box 23753, Hilton Head Island, SC 29925 (“Turner”).

WHEREAS, Turner filed litigation against the Association and others in the Beaufort County Court of Common Pleas on June 21, 2021 (C.A. No.: 2021-CP-07-1085 – “Litigation”);

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 the portion of the Settlement Agreement involving armed security guards and gates on the property of Turner, consisting of 1.41 acres, designated as “Parcel B” on Plat Book 71 at Page 93 in the Register of Deeds, as more particularly described on Exhibit A hereto (“Turner Property”) is set forth in this Agreement to be recorded.

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 Agreement.

2. **Armed Security Guards** – Turner agrees to not use, hire or employ **armed** security guards on the Turner Property.

3. **Installation of Gates on Lands of Landlord**- On the Turner Property, Turner agrees as follows

- a. It shall not undertake any efforts to erect a vehicular gate on the interior portion of the Turner Property.
- b. With regard to this Agreement only, the Association takes no position as to the propriety of the placement of a gate at the entrance to the Turner Property; instead, should anyone desire to erect a gate at the entrance of the Turner Property, the Association shall be given thirty (30) days’ written notice prior to the submission of the application seeking authority to erect a gate.

4. **Drafting of the Agreement**. The parties acknowledge and agree that each was actively involved with the negotiation and drafting of this Agreement. Further, each party’s legal counsel reviewed, or had the opportunity to review the Agreement prior to its execution. The parties agree any Court, arbitrator or mediator which may hereinafter interpret this Agreement will not construe the Agreement against any particular party which may have originated, typed or prepared any particular provision.

5. **Binding Effect** - This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns. Said provisions shall run with the land.

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

7. Notice- Whenever notice is required or permitted under the terms of this Agreement, it shall be in writing and personally delivered or sent postage or delivery charges prepaid to the address set forth above for each party by either (a) United States mail, certified, return receipt requested, in which case notice shall be deemed given on the certified date of delivery or rejection of delivery, or (b) by any national express delivery service which provides evidence of delivery. Notice by other methods, such as by facsimile or email transmission, shall be valid if receipt is acknowledged (i) in writing or (ii) by written electronic confirmation of delivery and such electronic confirmation notice is also followed by notice as set forth in (a) or (b), above, in which case notice shall be deemed to occur on the date of confirmed facsimile or electronic transmission. Addresses may be changed by written notice to the other parties.

WITNESSES:

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

By: _____

Its: _____

Turner's Marina, LLC

By: _____

Its: _____

STATE OF SOUTH CAROLINA

)

COUNTY OF BEAUFORT

)

)

ACKNOWLEDGMENT

EXHIBIT A- LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land, with improvements thereon, including, but not limited to, dock and boat slips, lying and being in Beaufort County, South Carolina, consisting of 1.41 acres, more or less, and being shown and designated as "PARCEL 'B' 61,465 Sq. Ft. 1.41 Ac.,, on a plat entitled "A Plat of Parcel 'B' Hilton Head Marina at Outdoor Resorts, A Section of Jenkins Island" prepared by Coastal Surveying Co., Inc., dated August 26, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 71 at Page 93.

This being the same property being shown and designated as "Parcel B, 1.411 Ac. , 61,463.28 Sq. Ft. " on that certain survey entitled "Boundary & Asbuilt Survey of Parcel "B", prepared by Surveying Consultants, Terry G. Hatchell, SCRLS 11059, dated July 24, 2017, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 148 at Page 60.

Deviation : DB 3632 P 1436 and DB 3632 P 1439; Deeds from BillyBob's Marinas, Inc, dated 12/21/2017

TMS: R501-006-00A-0307-0000

5/2/24 3:57 PM

ELECTRONICALLY FILED - 2024 May 08 8:34 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701085

Russell

From: Russell
Sent: Thursday, May 2, 2024 3:57 PM
To: Tom Taylor
Cc: Chris Lizzi (lizzilawfirm@aol.com)
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards

Importance: High

Tom-

I understand we have a virtual hearing tomorrow, May 3, 2024, at 3 pm before Judge Dukes in connection with the above matter concerning the two motions to enforce settlement argued on April 11, 2024.

On April 17, 2024, per my email below, I sent to you a package of documents addressing what I understood to be agreed upon provisions of an amendment to the lease and a separate document concerning security guards and gates. I have not received any response from your office as to these documents.

Can you please advise me of your client's position on said documents. If we have an agreement on same, we can advise the court those issues do not need to be decided. Obviously, if we have no agreement, we will need the Judge to decide these issues as well.

I look forward to your response. Thanks

Russell P. Patterson
 Russell P. Patterson P. A.
 P. O. Box 8047
 HHI SC 29938
 Ph: 843-341-9300
 Fax: 843-341-9301
 E-Mail: russell@russellpattersonlaw.com
 Street Address: 107 Watersedge @ Shelter Cove, HHI SC 29928

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5/3/24 9:29 a-

ELECTRONICALLY FILED - 2024 May 08 8:34 AM - BEAUFORT - COMMON PLEAS - CASE# 2021CP0701085

Russell

From: Tom Taylor <tom@thomastaylorlaw.com>
Sent: Friday, May 3, 2024 9:29 AM
To: Russell
Cc: Chris Lizzi (lizzilawfirm@aol.com); neil@hiltonheadharbor.com; Donna Taylor
Subject: RE: Turner v. RV Resort- CA 21-1085- Second Amendment Lease - Agt as to Gates/Armed Guards

Russell – Good morning. In response to the below email and to your reminder of yesterday, Turner’s Marina’s position is as follows:

- a. In response to your and Mr. Lizzi’s arguments on your Motions to Enforce the Settlement Agreement by Order interpreting the Settlement Agreement to provide carte blanche access by the Association members to Turner’s Marina’s property at any time, Turner’s Marina made a motion to set aside the Settlement Agreement. Although you argued that it was improper for some reason for me to make such a verbal motion, I cited you then to the Rules and again point out that Rule 7 SCRPC provides a motion can be made verbally during a hearing or trial in open court with a court reporter present. Thus, Turner’s Marina has a pending motion to set aside the Mediated Settlement Agreement contingent upon Judge Dukes’ ruling on the three competing Motions to Enforce the Settlement Agreement. Until we receive his ruling, Turner’s Marina will not agree to any particular related documents.
- b. Assuming Judge Dukes rules in favor of Turners’ Marina on that matter and orders the Association to execute the proposed Amended Easement that we drafted, we will be glad to work with you and Chris to execute a recordable Second Amendment to Lease that contains the relevant information from the Mediated Settlement Agreement. Most of that relevant information is in your draft, except we need to add a provision making it clear that the remaining portions of the Rec Building not addressed in the Mediated Settlement Agreement, are in fact a part of Turner’s Marina’s 99-year lease. (The mail room, the exercise room and the laundry room.)
- * c. Turner’s Marina will not agree to the execution or recording of anything like the proposed “Agreement as to Gates and Security Guards.” That agreement by Turner’s Marina relating to gates and armed guards is clearly set forth in the to-be-filed if not set aside Mediated Settlement Agreement, and does not need further “confirmation.” Turner’s Marina is bound by its commitment and will live by it.

Thank you. Please let me know if you have any questions.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
 10 Pinckney Colony Road
 1808
 Building 400
 Bluffton, SC 29909
 843-785-5050 (office)
 843-301-6900 (cell)

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1 EXHIBIT 5

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., and)
 MIKE MORALES, and)
 SUNSET, INC.,)
)
 Defendants.)
 _____)

**IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT**

Case No. 2021-CP-07-01085

**PLAINTIFF TURNER’S MARINA LLC’S
 MEMO IN RESPONSE TO
 DEFENDANTS’ SUPPLEMENTAL
 MEMO OF MAY 8, 2024**

With permission of this Court, the Plaintiff, Turner’s Marina LLC, submits this Memo in reply to the Defendants’ Supplemental Memorandum Of Law In Support Of Their Motion To Enforce Settlement, as was dated and filed May 8, 2024, hours before a status conference.

This Court heard the Plaintiff’s Motion to Enforce the Mediated Settlement Agreement and the Defendants’ later filed similar motions, on April 11, 2024, and conducted a status conference on May 3, 2024. In the course of the hearing, the Defendant Association’s counsel made the argument that the clause in the Mediation Agreement for the easement was to read as to the entire property they would get access on, over and across, rather than just “to” parcel B from parcel A. The Mediated Settlement Agreement has additional clauses in it that the Defendants now claim don’t say what they say, reversing their earlier arguments and stating that the Court should not embrace and uphold the luggage restricting the Defendants that is set out in the Agreement, but continue to argue that the restrictions of Plaintiff should be dramatically expanded based on a “plain reading” of the document .

In the Defendants’ proposed version of the Amended Lease, they seek to restrict the Plaintiff to the fullest extent possible by adding verbiage to the Amended Lease that is not included in the Settlement Agreement and then renegotiate portions to allow further use of the property than what was agreed to in the Settlement Agreement. From the Plaintiff’s perspective, the issues surrounding this case are purely about the use of the leased property which Turner’s Marina LLC is the exclusive lease holder to and that was affirmed in the Mediated Settlement Agreement.

Specifically replying to the three issues raised by the Defendants' Supplemental Memo of May 8, 2024, the Plaintiff shows the Court:

1. Easement Issue

The Defendants argue that the language in the Mediated Settlement Agreement grants them access on, over and across Turner's Marina's private property without restriction, so as the Defendants' Attorney said in the hearing "they can look at the water". An easement by law must have a terminus and the settlement agreement makes clear the intention of the parties was to amend the existing easement to show access from Jenkins Island Road, across the Plaintiff's private property to termini at both the entrance to campground (the terminus of the current easement) AND NOW the entrance to Turner's Marina's leasehold property. When the Plaintiff agreed to this language of the settlement agreement, it was to grant access to the recreational facilities on that 99-year leasehold premise. But the Defendants argue the agreement supposedly actually grants a permanent license to the Defendants to wonder the entirety of Turner's Marina's private property—not an easement which, by definition, requires a terminus and is always given for access to an adjoining property (here the leasehold premises).

2. Lease Issue

At the end of the oral arguments during the April 11, 2024, hearing, the Plaintiff's counsel stated the Plaintiff did not have a problem recording the lease amendments if it made things move forward. As stated in the Defendants memorandum, that was subject to the Plaintiff and its attorney reviewing the language of the proposed amended lease. After reviewing the language of the proposed amended agreement, many errors and omissions were found, and after further review, even some new additions were placed in the draft Second Amended Lease by the Defendants. The Plaintiff herein addresses each one:

- A. Section 6. Restriction of operational hours for Restaurant space . This was a major reason the Plaintiff agreed upon during negotiations regarding the Plaintiff relinquishing parking spaces. Business hours for the restaurant are defined multiple times in the settlement agreement and the parking space time restrictions correspond accordingly. The hours for the restaurant are currently Tuesday - Sunday 6:00 pm to 9:00 pm and Sunday 11:00 am to 1:30 pm. In paragraph 6 of the settlement agreement, it specifically spells out the business hours for the restaurant as: "As used in this agreement, **Business Hours are agreed to be Tuesday through Sunday 5:00pm to 10:00pm and Sunday 10:30am to 2:00pm.**" In addition to the directly agreed upon business hours, each parking space negotiated was for that time frame for the restaurant to use. The two spots for the restaurant were agreed so that they can have dedicated spots for their employees, contractors or service workers to have access throughout the day.
- B. Section 7. Affirmation of Lease: The Defendants affirmed that "Turner's Marina is the rightful holder of the 99-year exclusive lease and the right and responsibilities arising

- therefrom not **otherwise addressed in this Settlement Agreement**” (emphasis added). The 99-year Lease states: “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** (emphasis added).” There are only seven (7) portions of the clubhouse complex: the bathhouse, “laundry room”, “mail room”, “exercise room”, ship’s store, restaurant and owners lounge. In the only deposition taken in this lawsuit, the SCRCP 30(b)(6) of Turner’s Marina, the owners lounge was not in question of being part of the lease, but all other portions of the club house complex were. The bathhouse, swimming pool, tennis courts (parking), ship’s store and restaurant are all addressed in the settlement agreement and all other portions are affirmed to be a part of the lease that are not addressed in the Mediated Settlement Agreement. The attempt of the Defendants to not allow the Lessee to have and utilize the remaining leased portions flies directly in the face of the agreement and the plain wording of the Mediated Settlement Agreement. Just as the Defendants argue strenuously to define the easement as a license based on the plain wording of the Mediated Settlement Agreement, the Plaintiff insists upon the Agreement being defined as the wording states.
- C. Section 5. Pool restrictions: The Defendants seek to add additional use to the pool that was not agreed upon. A large reason for the Plaintiff to agree to such restrictions of the pool was the specific intent and wording to only allow the non-commercial patrons as defined in the Mediated Settlement Agreement, to use the pool. The Defendants seek to add additional uses by the Owner’s of the RV lots to use the pool, when they negotiated that right away. In the Defendants’ rendition of the amended lease, they attempt to add “RV Owner” and “RV Complex” to the pool restrictions. This was not negotiated and a further attempt of the Defendants to agree to something and then seek to change it once they have decided it would not sit well with the owner body. The “RV Complex” was not once spoken of or in connection to this settlement agreement. The complex was the leased property only. Additionally, when making the concession to limit the use of pool to only the slip holders, etc., the compromise was it would only be for them, and the RV lot owners would no longer use it. It is very clearly laid out to not include anyone except the very specific people identified. One of the big things in this lawsuit was the specific use of the leased properties and the definition of who could use it.
- D. Additionally, the “Whereas” clause of how this lawsuit transpired is incorrect as well. A true and accurate copy of the settlement agreement and the historical events is reflected in the updated amended easement, as is attached hereto as Exhibit 1.

3. Armed Guards/Gate Issue

Plaintiff specifically wrote into the draft of the Mediated Settlement Agreement, that Turner's Marina would not hire armed security guards or erect a gate on the interior portion of its property. That was never agreed to be a covenant running with the land nor a commitment that is binding to anyone other than Turner's Marina personally. This was a personal commitment to try and put the water under the bridge and move on. It was not agreed to or negotiated to restrict further successors or heirs. The Defendants are, once again, trying to convince this Court to embrace something that was never negotiated nor agreed to.

In conclusion, the Plaintiff requests this Court either set aside the Mediated Settlement Agreement as per the Plaintiff's pending motion, or order the parties to sign and file the proposed Amended Lease Agreement as attached as Exhibit 1.

Respectfully submitted,

Law Office of Thomas C. Taylor, LLC

Thomas C. Taylor

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ATTORNEY FOR THE PLAINTIFF
TURNER'S MARINA LLC

May 13, 2024
Bluffton, SC

Exhibit 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **SECOND AMENDMENT TO LEASE**

This Second Amendment to Lease (“Amendment”) is entered into this ____ day of May , 2024 by R.V. Resort and Yacht Club Owner’s Association, Inc. (“Landlord”) and Turner’s Marina, LLC (“Tenant”).

WHEREAS, on or about June 12, 1981, the Landlord and Outdoor Resort, R.V. Resort and Yacht Club, a South Carolina general partnership (“Original Tenant”) entered into that certain Lease recorded in the Beaufort County Register of Deeds (“ROD”) at DB 325 at Page 953 on June 18, 1981, a copy of which is attached hereto as Exhibit 1 (“Lease”);

WHEREAS, on October 8, 1981, the Landlord and the Original Tenant entered into that certain Modification of Lease Agreement, a copy of which is attached as Exhibit 2 (“Lease Amendment”). That the Lease and Lease Amendment are collectively referred to as the “1981 Lease”;

WHEREAS, the interest of the Original Tenant in the 1981 Lease was sold, transferred or assigned on various occasions thereafter, with the Tenant, Turner’s Marina, LLC (“Tenant”) since December 21, 2017 holding the interest of Tenant under the 1981 Lease;

WHEREAS, at some point after the Tenant acquired its interest under the 1981 Lease, various disputes arose with the Landlord as to the definition of the leased premises (“Premises”) and who may use the leased premises described in the 1981 Lease under § 1, and other provisions;

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, as a result of the Landlord restricting all persons that could use the leased facilities, tenant sent a letter notifying Sunset INC. that they are no longer allowed to use said parking spaces and bathrooms as directed by the Landlord.

WHEREAS, as a result of the notification of the Landlord’s notice Sunset petitioned the court to join the Lawsuit that was granted to do so in order to ensure the status quo until the end of the litigation.

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 the base monthly 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 only to all non-Commercial Patrons of the complex. It is agreed and understood that non-Commercial Patrons are defined as slip lease holders at the marina, RV lot renters and their guests. 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 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 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 in anyway. The parties acknowledge

and agree the use of the Ship's Store space for the Landlord's office shall be permitted only and not for any commercial purposes. Landlord agrees that the Restaurant space will be limited to only operate during the hours of Tuesday through Sunday 5:00 p.m. to 10:00 p.m. and Sunday 10:30 a.m. to 2:00 p.m.

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. Landlord acknowledges the “Laundry room”, “mail room” and “exercise room” are all part of the leased space and under the sole control of the Tenant.

8. Drafting of the Agreement. The parties acknowledge and agree that each was actively involved with the negotiation and drafting of this Addendum. Further, each party's legal counsel reviewed, or had the opportunity to review the Addendum prior to its execution. The parties agree any Court, arbitrator or mediator which may hereinafter interpret this Addendum will not construe the Addendum against any particular party which may have originated, typed or prepared any particular provision.

9. 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.

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

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)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that the within R.V. Resort and Yacht Club Owner's Association, Inc., 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 April , 2024.

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

STATE OF SOUTH CAROLINA

)

ACKNOWLEDGMENT

)

COUNTY OF BEAUFORT

)

I, the undersigned Notary Public, do hereby certify that the within Sunset, Inc., 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 April , 2024.

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

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

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 January, 2024.

Notary Public for: South Carolina
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

**R.V. RESORT AND YACHT CLUB
 OWNERS’ ASSOCIATION, INC.
 AND SUNSET, INC.’S
 REPLY MEMORANDUM IN
 RESPONSE TO PLAINTIFF’S
 MEMORANDUM OF MAY 13, 2024**

TO: THE PLAINTIFF ABOVE NAMED AND ITS ATTORNEY, THOMAS C. TAYLOR, ESQUIRE:

Defendants, R.V. Resort and Yacht Club Owners’ Association, Inc. and Sunset, Inc. (collectively “Defendants”) submit this Reply Memorandum in response to the Plaintiff’s Memorandum dated May 13, 2024. (“Plaintiff’s Memorandum.”). The Plaintiff sets forward several defenses and **new claims** in its Memorandum, as discussed below.

1. Issues as to Amended Easement

The Court has already ruled on May 3, 2024 the proposed Amended Easement prepared by the Defendant was consistent with the Settlement Agreement. This Court has before it a proposed Order confirming said ruling. No further arguments are appropriate at this stage of the proceeding.

2. Issues Under Second Amended Lease Agreement

A. Restaurant Hours of Operation Issue

For the first time, in Plaintiff's Memorandum, Plaintiff argues that the Settlement Agreement somehow restricts the hours of operation that the Restaurant can be open. No such language exists in the Settlement Agreement, no such agreement was made during mediation, the issue of business hours was never brought up in mediation discussions, nor has it ever been an issue in this litigation.

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. **There is nothing in the Settlement Agreement that states the Restaurant is only allowed to operate during those hours.** 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). This fact alone refutes 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 be used by Restaurant patrons or staff outside of “Business Hours”.

The Defendants request that the Court adopt the language contained in the Defendants’ proposed Second Amendment to Lease which is effectively a verbatim copy of the language in the Settlement Agreement and order the Plaintiff to execute same consistent with the terms and conditions of the Settlement Agreement.

B. Claim of Control Over Additional Property Issue

The Plaintiff makes a new assertion that the language in paragraph 8 of the Settlement Agreement, which simply affirms that Turner’s Marina is the rightful holder of the 99-year Lease, amounts to an agreement 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) There is nothing in the Settlement Agreement that refers to those areas at all, and there is certainly no admission or agreement by the Defendants that the 99-year Lease includes those areas. The language in §8 simply affirms that Turner’s Marina is the rightful holder of the Lease, nothing more. Furthermore, the issue of control over the mail room, exercise room, or laundry room was not an issue that either party asked for the Court to decide in the Plaintiff’s Complaint or the Defendant’s Answer and Counterclaims. This lawsuit and the Settlement Agreement only addresses the issue of control over the Restaurant and Ship’s Store areas. If the Plaintiff now wishes to make a new claim that the 99-year Lease includes these additional areas, it should be required to file a new lawsuit to address the issue of control over those areas.

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

The Plaintiff argues that the language in the Settlement Agreement restricting use of the pool to “non-Commercial Patrons of the complex “ (§5) somehow “negotiated away” the rights of Owners to use the pool. 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.

In addition, the Association’s Eleventh and Fourteenth Defense and Counterclaim specifically related to the misuse of the recreational facilities by the lessee and the language in the Settlement Agreement was obviously aimed at resolving that conflict. It is simply ludicrous for the Plaintiff to assert the Association would negotiate away the right for Owners to use the “crown jewel”, most frequently used amenity in the Resort.

Further, and most importantly, the Court needs to take into consideration that the entire 99 Lease is subject to terms that the Recreational Facilities made available to the lessee is **subject only to the rights of Owners to use, occupy, and enjoy the same**. See Sections 12.5 of the Restrictive Covenants and Section 9 of the 99-year Lease. Nothing in the Settlement Agreement states that these provisions in the Restrictive Covenants or the 99-year Lease have been modified or invalidated in such fashion.

**D. Claim that “Whereas” Provision in Defendant’s Proposed
Second Amended Lease is Factually Incorrect**

The Plaintiff asserts that the “Whereas” language in the Defendant’s Proposed Amended and Restated Lease are factually incorrect and that the language in the Plaintiff’s should be used instead. The Plaintiff offers no further commentary or evidentiary proof to support his claim.

The Defendant’s represent that the Whereas language contained in the Defendant’s Proposed Second Amended Lease is factually accurate and request that the Court adopt this language.

**3. Plaintiff’s Assertion that Terms Related to Gates and Armed
Security Guards was only a Personal Commitment is Without Merit**

The Plaintiff asserts that that the terms it agreed to in the Settlement Agreement restricting its ability to place gates on the interior of his 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 a “personal commitment.” These terms in the Settlement Agreement are very clearly restrictions on the use of land and as such must be recorded in accordance with the South Carolina Recording Act and long-standing case law. If these restrictions are not recorded, there is nothing to prevent the Plaintiff from selling the property, or even transferring the property to another LLC that he owns/controls and thereafter claiming that his “personal commitment” no longer applies.

Defendants request the Court require the Plaintiff to execute the proposed Agreement as to Gates and Security Guards.

LIZZIE LAW FIRM, P.C.

/s/ Christopher D. Lizzi

Christopher D. Lizzi

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*Attorneys for the Defendant, R.V. Resort
and Yacht Club Owners Association, Inc.*

N. Charleston, South Carolina
May 30, 2024

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson

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*Attorneys for the Defendant,
Sunset, Inc.*

Hilton Head Island, South Carolina
May 30, 2024

In the Defendants' proposed version of the Amended Lease, they seek to restrict the Plaintiff to the fullest extent possible by adding verbiage to the Amended Lease that is not included in the Settlement Agreement and then renegotiate portions to allow further use of the property than what was agreed to in the Settlement Agreement. From the Plaintiff's perspective, the issues surrounding this case are purely about the use of the leased property, which Turner's Marina LLC is the exclusive lease holder to and that was affirmed in the Mediated Settlement Agreement.

Specifically replying to the three issues raised by the Defendants' Supplemental Memo of May 30, 2024, the Plaintiff shows the Court:

1. Easement Issue

The proposed order is yet again another attempt for the Defendants to take more than they were granted. The plaintiff did not approve of the draft order. Then Defendants argue the easement should no longer be addressed when it is their same argument that defeats their new claims of not surrendering the portions of the settlement agreement they agreed to. As such the Plaintiff responds again as follows: The Defendants argue that the language in the Mediated Settlement Agreement grants them access on, over and across Turner's Marina's private property without restriction, so as the Defendants' Attorney said in the hearing "they can look at the water". An easement by law must have a terminus and the settlement agreement makes clear the intention of the parties was to amend the existing easement to show access from Jenkins Island Road, across the Plaintiff's private property to termini at both the entrance to campground (the terminus of the current easement) AND NOW the entrance to Turner's Marina's leasehold property. When the Plaintiff agreed to this language of the settlement agreement, it was to grant access to the recreational facilities on that 99-year leasehold premise. This entire case was about the parcel leased as the recreational facilitates which is the "from" segment in the agreement. The agreement is very straight forward the easement is **to** "parcel B" and to follow the logic of anyone is where is it **from**? But the Defendants now argue the agreement supposedly actually grants a permanent license to the Defendants to wonder the entirety of Turner's Marina's private property—not an easement which, by definition, requires a terminus and is always given for access to an adjoining property (here the leasehold premises). It is nonsensical that the Defendants are arguing for no restrictions for the easement but then arguing the lease is to be held with the absolute highest restrictions but only to the Plaintiff.

2. Lease Issue

The plaintiff reiterates the following: At the end of the oral arguments during the April 11, 2024, hearing, the Plaintiff's counsel stated the Plaintiff did not have a problem recording the lease amendments if it made things move forward. As stated in the Defendants memorandum, that was subject to the Plaintiff and its attorney reviewing the language of the proposed amended lease. After reviewing the language of the proposed amended agreement, many errors and omissions were found, and after further review, even some new additions were placed in the draft Second Amended Lease by the Defendants. The Plaintiff herein addresses each one:

- A. Section 6. Restriction of operational hours for Restaurant space . This was a major reason the Plaintiff agreed upon during negotiations regarding the Plaintiff relinquishing parking spaces. Business hours for the restaurant are defined multiple times in the settlement agreement and the parking space time restrictions correspond accordingly. The hours for the restaurant are currently Tuesday - Sunday 6:00 pm to 9:00 pm and Sunday 11:00 am to 1:30 pm. In paragraph 6 of the settlement agreement it specifically spells out the business hours for the restaurant as: “As used in this agreement, **Business Hours are agreed to be Tuesday through Sunday 5:00pm to 10:00pm and Sunday 10:30am to 2:00pm.**” In addition to the directly agreed upon business hours, each parking space negotiated was for that time frame for the restaurant to use. The two spots for the restaurant were agreed so that they can have dedicated spots for their employees, contractors or service workers to have access throughout the day. To restate the obvious, there is no language that can be used to make an agreement for limited hours except for the language used above.
- B. Section 7. Affirmation of Lease: The Defendants affirmed that "Turner's Marina is the rightful holder of the 99 year exclusive lease and the right and responsibilities arising therefrom not **otherwise addressed in this Settlement Agreement**" (emphasis added). The 99-year Lease states: “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** (emphasis added).” There are only seven (7) portions of the clubhouse complex: the bathhouse, “laundry room”, “mail room”, “exercise room”, ship’s store, restaurant and owners lounge. In the only deposition taken in this lawsuit, the SCRCP 30(b)(6) of Turner’s Marina, the owners lounge was not in question of being part of the lease but all other portions of the club house complex were. The bathhouse, swimming pool, tennis courts (parking), ship’s store and restaurant are all addressed in the settlement agreement and the all other portions are affirmed to be a part of the lease that are not addressed in the Mediated Settlement Agreement. The attempt of the Defendants to not allow the Lessee to have and utilize the remaining leased portions flies directly in the face of the agreement and the plain wording of the Mediated Settlement Agreement. Just as the Defendants argue strenuously to define the easement as a license based on the plain wording of the Mediated Settlement Agreement, the Plaintiff insists upon the Agreement being defined as the wording states. The defendants now claim that this lawsuit was not for the entire lease it was just for the portions they want to “fix” and take away from the Plaintiff, and “new claims” have been added which is categorically and absolutely incorrect. All other amenities of the lease were absolutely affirmed and discussed in the settlement as every portion of this exclusive lease was, it is absurd that the defendants take the position is that after 16 hours of mediation we did not address every part of the complaint and then some. They seek to force the plaintiff to file another lawsuit and continue to fight for its plainly written rights in the exclusive lease after it has already done so and mediated a settlement that they do not like after the fact.

- C. Section 5 Pool restrictions: The Defendants seek to add additional use to the pool that was not agreed upon. A large reason for the Plaintiff to agree to such restrictions of the pool was the specific intent and wording to only allow the non-commercial patrons as defined in the Mediated Settlement Agreement, to use the pool. The Defendants seek to add additional uses by the Owner's of the RV lots to use the pool, when they negotiated that right away. In the Defendants' rendition of the amended lease, they attempt to add "RV Owner" and "RV Complex" to the pool restrictions. This was not negotiated and a further attempt by the Defendants to agree to something and then seek to change it once they have decided it would not sit well with the owner body. The "RV Complex" was not once spoken of or in connection to this settlement agreement. The complex was the leased property only. Additionally, when making the concession to limit the use of pool to only the slip holders, etc., the compromise was it would only be for them and the RV lot owners would no longer use it. It is very clearly laid out to not include anyone except the very specific people identified. One of the big things in this lawsuit was the specific use of the leased properties and the definition of who could use it. The simple fact that the defendants are now adding additional usage into the new amended lease proves directly against any claim they have that the owners would still have the right to use the Pool. The non-commercial tenets are clearly defined in the settlement agreement and they are now trying to back paddle and add to the agreement so they can take all they want and give nothing they agreed to. While the defendants seek to use only a portion of a sentence yet again to secure what they negotiated away they fail to give the court once again all of the facts, wording and context. This lease is an **EXCLUSIVE LEASE** subject to the rights of owners to use occupy and enjoy the same. The portions of this lease that are clearly written into this settlement agreement are to change this exact sentence for the lease and the perimeters of the lease in its entirety. The pool use was heavily discussed and a large reason to allow the addition restrictions on the Plaintiff was the concession that those would be the only ones allowed to use the pool.
- D. Additionally, the "Whereas" clause of how this lawsuit transpired is incorrect as well. A true and accurate copy of the settlement agreement and the historical events is reflected in the updated amended easement. The Plaintiff did not file against the Sunset Grille, Inc. They sought to join the lawsuit and the plaintiff allowed them in to **help** them keep the status quo. Among other things, the Defendants proposed language is just factually inaccurate and egregiously misleading.

3. Armed Guards/Gate Issue

Armed guards and gate issues were not even part of this Complaint and any reference in the settlement agreement was simply an act of good faith on the Plaintiffs part. But as the saying goes, no good deed goes unpunished. Plaintiff specifically wrote into the draft of the Mediated Settlement Agreement, that Turner's Marina would not hire armed security guards or erect a gate on the interior portion of its property. That was never agreed to be a covenant running with the land nor a commitment that is binding to anyone other than Turner's Marina personally. This

was a personal commitment to try and put the water under the bridge and move on. It was not agreed to or negotiated to restrict further successors or heirs. The Defendants are, once again, trying to convince this Court to embrace something that was never negotiated nor agreed to. This is one more attempt for the defendant to restrict the property of its neighbor by leveraging the lease it held and breached with the plaintiff.

In conclusion, the Plaintiff requests this Court either set aside the Mediated Settlement Agreement as per the Plaintiff's pending motion, or order the parties to sign and file the Plaintiff's proposed Amended Lease Agreement, as was attached as Exhibit 1 to the Plaintiff's Motion to Enforce.

Respectfully submitted,

Law Office of Thomas C. Taylor, LLC

Thomas C. Taylor

Thomas C. Taylor

SC Bar No.: 5499

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Email: tom@thomastaylorlaw.com

ATTORNEY FOR THE PLAINTIFF

TURNER'S MARINA LLC

May 31, 2024

Bluffton, SC

Settlement Agreement does not affirm Turner's Marina's control over its leasehold interest to include the mail room, the exercise room and the laundry room in the Recreational Building. Third, the Court made an error of law in holding that the Settlement Agreement did not provide that the RV Lot owners were not entitled to use the pool located on the leasehold premises. And fourth, the Court erred in ordering the Plaintiff to execute the Second Amendment to Lease as is attached to the Order as Exhibit 1.

As to the Order Granting Defendants' Motion To Enforce Settlement As To Amended Easement, that Order is also based upon clear errors of law in several instances. The most glaring error is that the Court ruled that the language found in the Settlement Agreement at Section 9, which provided that the 1984 easement 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'," somehow expanded into the language placed in the Order stating that the 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...." The Order is also in error in that its Order effectively grants a license to the Defendant Association and its members to enter upon and loiter upon the Plaintiff's business property when the law of easements in South Carolina provides that an easement is for moving across the property to a defined exit point. The Order is also in error in that it contains a provision at paragraph 14 stating that each party was "actively involved with the negotiation and drafting of this Amended Easement," when the Plaintiff did not negotiate over and help draft the Amended Easement and is being ordered to sign same under protest.

A motion under Rule 59(e) is often used to correct a factual error or address an error of law, but it is also proper to use a Rule 59 motion not only as a vehicle to request the Court "alter

or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments. Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004). (“[i]t is absolutely necessary to justice, that there should, upon many occasions, be opportunities of reconsidering the cause by a new trial.” 11 *Wright, Miller & Kane*, Section 2801 (quoting a 1757 opinion written by an English judge); 12 *Moore’s Federal Practice* 59 App. 102 (even before the 1946 amendment adding subdivision (e) to Rule 59, courts routinely found that motions seeking such relief as rehearing or reconsideration were proper under Rule 59, although the motions were not literally or technically, motions for a new trial.)

The Plaintiff moves the Court to reconsider both of the above-referenced Orders, and alter or amend the Orders as per these arguments. This Motion may be supported by a Memorandum In Support to be submitted at least five (5) days prior to a hearing on this Motion.

I SO MOVE.

Law Office of Thomas C. Taylor, LLC

S/Thomas C. Taylor _____

Thomas C. Taylor

SC Bar No.: 5499

P.O. Box 1808

Bluffton, SC 29910

Phone: 843-785-5050

Fax: 843-738-4502

Email: tom@thomastaylorlaw.com

ATTORNEY FOR PLAINTIFF
TURNER’S MARINA LLC

Bluffton, South Carolina
August 15, 2024

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

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

**AFFIDAVIT OF
 LINDA LOCKMAN**

PERSONALLY APPEARED before me Linda Lockman, who, being first duly sworn, does state as follows:

1. **Adult-** She is an adult and competent to make this affidavit.
2. **Owner of Sunset** – That at all times relevant she was the owner of the Defendant Sunset, Inc. (“Sunset”), which has operated the Sunset Grille, a high-end restaurant located at the Outdoor Resort.
3. **Mediation**
 - a. **Attendance-** That she, along with her attorney Russell P. Patterson, attended the mediation in Beaufort South Carolina conducted by Jack G. Gresh, Esquire (“Mediator”)

b. Length of Mediation - That the mediation commenced at 10 am on Tuesday, December 12, 2022 and did not end until Wednesday, December 13, at approximately 2:15 am. **Thus, said mediation lasted a total of over 16 continuous hours**

c. Numerous Settlement Offers/Proposals- During the 16+ hour mediation process, many, many different settlement proposals were discussed and presented by the four(4) different parties in the litigation, including their respective attorneys.

d. Final Settlement Agreement - All parties and their legal counsel negotiated every specific detail of the many disputed issues, which were eventually incorporated around 2 am into the final, fully executed Settlement Agreement, a copy of which is attached as Exhibit 1 hereto (“Settlement Agreement”). All parties and their counsel had ample opportunity to review each and every single word of the Settlement Agreement and did so during this marathon mediation proceeding.

e. Turner Internal E-mail and Draft Settlement Outline- That she, nor her counsel, ever saw the purported Tuesday, December 12, 2023 email sent by Mr. Turner at 10:26 pm, directly to the Mediator. (Turner Aff. Ex. 1). Not only was the e-mail never presented to her or her attorney, said parties never agreed to the outline of a settlement purportedly attached to same. It should be further noted that this purported e-mail, was sent at 10:26 pm, **some 3 ½ hours before** the final Settlement Agreement was fully executed around 2:15 am the following day. Finally, a cursory review of the purported settlement agreement shows many, many differences from the final Settlement Agreement that was actually signed by the parties.

f. Turner Seeking to Re-Write Parties’ Agreement - It appears, based on the Turner Affidavit, Plaintiff’s Motion to Enforce Settlement, and Plaintiff’s Motion to set Aside

Settlement Agreement Due to Mutual Mistake, that Turner is suffering from “buyer’s/seller’s remorse”, or is simply seeking to completely rewrite, alter and change the specific language it agreed to in Section 9 as to the new, additional easement rights to be granted to Sunset and Defendant, R.V. Resort and Yacht Club Owner’s Association, Inc. (“POA”). Plaintiff appears to be attempting to re-write the Settlement Agreement negotiated during the Mediation by limiting said easement right to just **paved roads** or voiding the entire Settlement Agreement if that change is not made. .

Section 9 of the Settlement Agreement reads as follows:

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.

Under the January 1, 1984 Easement granted to the POA by the prior owners of the RV Resort, recorded at Book 397 at Page 1611 (Ex 2 attached hereto), the POA prior to this litigation clearly held easement rights over all paved roads located within Parcel B. Ever since the Plaintiff took over ownership of its property, there has been continual disputes about the POA and patrons, employees and suppliers of Sunset Grill using sidewalks and **other areas within Parcel B**. All of these access issues were resolved when the Plaintiff, by its counsel, reviewed and executed the Settlement Agreement, which clearly granted an easement for access to Sunset, the POA and others over all Parcel B-not just the paved roads.

4. **No Mistake** – Sunset, nor its counsel, made any error or mistake in the execution of the Settlement Agreement. All of the terms and conditions, including Section 9 dealing with the changes to the 1984 Easement, were fully agreed to by all parties. Sunset fully intended to agree to and be bound by said language.

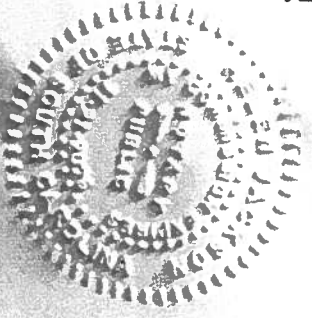
5. Enforcement of Settlement Agreement – Sunset simply wants the Court to enforce the Settlement Agreement as it was written, negotiated over 16 hours, and that was executed by the Plaintiff and its attorney, as well as other parties and their counsel.

Further Sayeth Affiant Not.

Linda Lockman
Linda Lockman

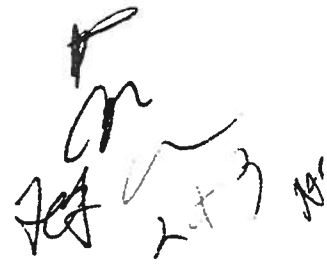
~~SWORN~~ to before me this
20 day of September, 2024.

[Signature]
Notary Public for South Carolina
My Commission Expires 11-21-26
Name of Notary HELEN JOHNSON



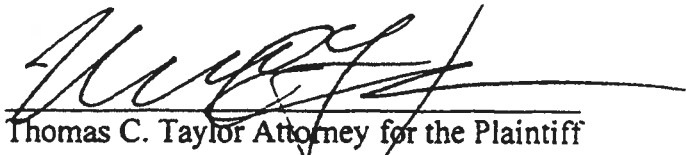
ELECTION IN RAIL FIELD 2022# MAR 24 0600 PM - BEAUFORT - COMMON PLEAS - CASE# 2021 CP 0701085

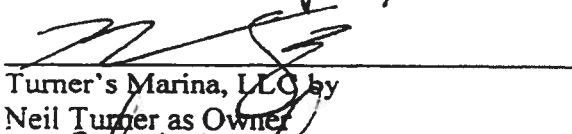
- h. All other Spots enumerated on Exhibit A (including the handicap spot denoted as Spot 1) are first come, first served parking spots that can be utilized without restriction or reservation.
- 3. The Parties agree that no parking spot can be utilized by anyone for overnight parking.
- 4. The bathrooms are available to everyone.
- 5. The pool on Exhibit A shall be available to all non-Commercial Patrons of the complex. It is agreed and understood that slip lease holders at the marina and RV 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 the commercial activities of the marina, including any boat clubs, jet ski rentals, tours, charter fishing and the like.
 - a. If the Association 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 owners and the RV renters will receive one (1) armband each for pool access for them and their guests.
- 6. It is agreed by all of the below signatories that the Association may seek to reconfigure the enumerated parking spots denoted on Exhibit A, including reconfiguration of the picnic table area pictured there (subject to the Owner's approval in this change of use). In the event the Association reconfigures or adds additional parking spaces to the 23 parking spaces currently enumerated on Exhibit A, fifty percent (50%) of any new spaces created as a result of the reconfiguration - up to a maximum of 7 new spaces - will be reserved for the restaurant during Business Hours. As used in this agreement, Business Hours are agreed to be Tuesday through Sunday 5:00pm to 10:00pm and Sunday 10:30am to 2:00pm. Any new configuration cannot interfere with direct and open access to the Dumpster, including for emptying and removal of the dumpster, installed on Turner's Marina land adjacent to the former tennis courts. All other newly created spaces shall be available on a first come, first served basis.
 - a. If the Association reconfigures the parking lot, Spots 19, 20, and 21 will no longer be the restaurant's spaces; instead, from the new spaces created, there will be three new replacement spaces - and up to seven spaces as contemplated above - in a single line. These new spaces will be the exclusive use of the restaurant space during Business Hours as defined above.
- 7. Turner's Marina LLC as the lessee acknowledges and affirms the restaurant and former ship store are not part of the 99-Year Lease, recorded at Deed Book 325, page 953 (hereinafter referred to as the 99-Year Lease). Turner's Marina LLC further affirms that the ownership and lease rights to the restaurant space and Ship Store space are controlled by the Association. However, the Association agrees that it will not permit the Ship Store space to be utilized for commercial purposes.

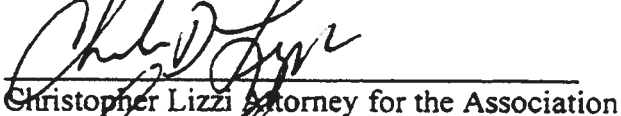


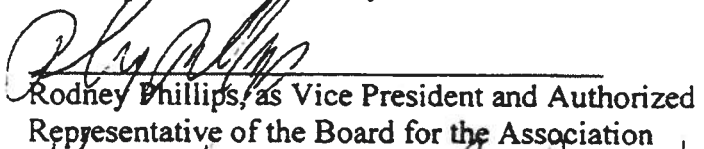
- 8. The Association and Sunset, Inc. acknowledge and affirm that Turner's Marina is the rightful holder of the 99-Year Lease and the rights and responsibilities arising therefrom not otherwise addressed in this Settlement Agreement and they agree to not bring upon the leased property any means of restricting lessee from use and enjoyment of the leasehold property.
- 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.
- 10. Turner's Marina commits to not use, hire or employ **armed** security guards.
- 11. Turners Marina further agrees that it shall not undertake any efforts to erect a vehicular gate on the interior portion of the Marina's land.
- 12. With regards to this agreement only, the Association takes no position as to the propriety of the placement of a gate at the entrance to the marina property; instead, should anyone desire to erect a gate at the entrance of the marina property, the Association shall be given thirty (30) days' written notice prior to the submission of the application seeking authority to erect a gate.
- 13. In exchange for the above agreements, the Parties will dismiss Civil Action File Number 2021-CP-07-01085 with prejudice.


So agreed, this 13 day of December, 2023.


Thomas C. Taylor Attorney for the Plaintiff

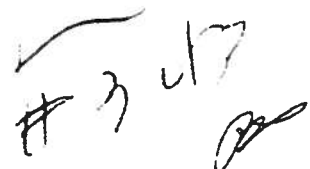

Turner's Marina, LLC by
Neil Turner as Owner


Christopher Lizzi Attorney for the Association


Rodney Phillips, as Vice President and Authorized
Representative of the Board for the Association


Linda Lochman for Defendant Sunset Inc.


Russell Patterson as Attorney for Sunset Inc.



397/1611
C(1/184)

A.17 HMA304

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) EASEMENT

This Agreement is made this 1st day of January, 1984, by and between OUTDOOR RESORTS RV RESORT AND YACHT CLUB, a South Carolina joint venture consisting of ORA OF CAROLINA, INC. AND SIX ESS CORPORATION (hereinafter referred to as "Grantor"), and RV RESORT AND YACHT CLUB OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation, its successor and assigns (hereinafter referred to as "Grantee").

FOR AND IN CONSIDERATION of the sum of TEN AND 00/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, non-exclusive right-of-way, on, over, and across the paved roads located on that certain property owned by Grantor as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

This Easement is granted to allow and facilitate general access from the entrance of the RV Resort and Yacht Club to the boundary of the lots by those persons or entities who are owners of the property described in Exhibit "B" or any interest therein or portions thereof, their guests, lessees, invitees, and licensees of Grantee employed to operate and maintain the improvements constructed on the property described in Exhibits "A" or "B" and their employees, Grantee's successors and assigns, and property managers.

This Easement is for the benefit of and is appurtenant to the property more particularly described as Exhibit "B". This grant of

FILED IN DEEDS - BOOK 397 PAGE 1611
FILED AT 124500 ON 26/29/84

EXHIBIT 2

A.17 HMA304

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.

This Easement is restricted to the paved roadways only. Grantor may, at its option, change the location of the roadways, provided that the Grantor shall always provide access as stated above with said access sufficient for motor vehicle traffic.

This grant of Easement is subject to all matters of record in the Office of the Clerk of Court for Beaufort County, South Carolina.

This grant of Easement herein 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 Easement granted herein to properties owned by Grantor adjacent to the Easement granted herein.

IN WITNESS WHEREOF, Grantor and Grantee have executed the Easement effective the day and year first above written.

WITNESSES:

GRANTOR:

OUTDOOR RESORTS RV RESORT AND
YACHT CLUB, a South Carolina
Joint Venture

Ronald W. Petty

By: [Signature]
its _____

[Signature]

By: _____
its _____

FILED IN DEEDS - BOOK 397 PAGE 1612
FILED AT 104500 ON 06/28/84

A.17 HMA304

GRANTEE:

RV RESORT AND YACHT CLUB OWNERS
ASSOCIATION, INC., a South
Carolina non-profit organization

~~Robert S. [unclear]~~
~~Paul D. [unclear]~~

Susan J. Flynn
William E. [unclear]

By: William E. [unclear]
its authorized signatory

5/7/84

6/26/84

FILED IN DEEDS - BOOK 397 PAGE 1613
FILED AT 194500 ON 06/28/84

A.13 HMC257

STATE OF TENNESSEE }
Davidson COUNTY }

PERSONALLY appeared before me Ronald W. Petty
and made oath that (s)he saw the within named Outdoor Resorts R.V.
Resort and Yacht Club, a South Carolina Joint Venture, consisting of
Outdoor Resorts of Carolina, Inc., and Six Ess Corporation by and
through E. Randall Henderson, its president and authorized signatory,
sign, seal and as its act and deed, deliver the within Easement and that
(s)he with Guadalupe E. Burt witnessed the
execution thereof.

Ronald W. Petty
/

SWORN TO AND SUBSCRIBED BEFORE ME
This 20th day of June, 1984.

Guadalupe E. Burt
Notary Public for Tennessee

My Commission Expires: July 21, 1985

FILED IN DEEDS - BOOK 397 PAGE 1614
FILED AT 104500 ON 06/28/84

A. 13 HMC257

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DeThane Johnson

PERSONALLY appeared before me Rex C. Cochrane

and made oath that (s)he saw the within named R.V. Resort and Yacht Club Owners Association, Inc., a South Carolina non-profit organization by and through William E. Littell, its authorized signatory, sign, seal and as its act and deed, deliver the within Easement and that (s)he with JAMES C. RAGAN Susan J. Flynn witnessed the execution thereof.

DeThane Johnson
W. E. Littell

SWORN TO AND SUBSCRIBED BEFORE ME
This 21st day of JUNE, 1984.

W. E. Littell (L.S.)
Notary Public for South Carolina

My Commission Expires:
My Commission Expires September 12, 1988

Sworn to & subscribed before me
this 26th day of June, 1984
Susan J. Flynn (L.S.)
Notary Public for South Carolina
My commission expires April 15, 1993.

FILED IN DEEDS - BOOK 397 PAGE 1615
FILED AT 104500 ON 06/28/84

A.18 HMA304

EXHIBIT "A"

ALL that certain piece, parcel or tract of land lying, situate and being on Hilton Head Island, Beaufort County, South Carolina, as shown on that certain plat of survey entitled "R. V. Resort and Yacht Club, Hilton Head Island, South Carolina, Plot Plan" dated September 7, 1981, and last revised July 26, 1983, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 29 at Page 184, as prepared by Forrest F. Baughman, a South Carolina registered land surveyor (S.C. Reg. L.S. No. 4922) and being more particularly described as follows:

BEGINNING at a point located at the northeastern boundary of Lot #65 where it joins an unnamed right-of-way approximately 22 feet in width; running thence along the northerly boundary of Lot #65 and N 73 degrees 40 minutes 45 seconds W a distance of 77.53 feet to a point; running thence N 43 degrees 12 minutes 50 seconds W a distance of 14.13 feet to a point; running thence 46 degrees 47 minutes 10 seconds E a distance of 88.64 feet to a concrete monument running thence N 25 degrees 20 minutes 20 seconds E a distance of 95.884 feet to a point; running thence S 65 degrees 34 minutes 00 seconds E a distance of 199.449 feet to a point; Said point being the southeasterly point of the boundaries of the tennis courts; running thence along the Easterly boundary of the tennis courts N 24 degrees 26 minutes 00 seconds E a distance of 120.00 feet to a point; Said point being the northeasterly most boundary of the tennis courts; running thence along the northerly boundary of the tennis courts N 65 degrees 34 minutes 00 seconds W a distance of 86.468 feet to a point; running thence N 24 degrees 26 minutes 00 seconds E a distance of 73.550 feet to a concrete monument; running thence S 68 degrees 29 minutes 50 seconds E a distance of 59.14 feet to a concrete monument; running thence S 16 degrees 25 minutes 55 seconds E a distance of 91.47 feet to a point across the boat ramp to a concrete monument; running thence S 20 degrees 07 minutes 25 seconds E a distance of 68.18 feet to a concrete monument; running thence S 70 degrees 05 minutes 35 seconds E a distance of 35.32 feet to a concrete monument; running thence S 25 degrees 26 feet 50 minutes W a distance of 243.10 feet to a concrete monument; running thence S 43 degrees 58 minutes 50 seconds W a distance of 10.681 feet to a point; running thence N 51 degrees 09 minutes 10 seconds W a distance of 40.32 feet to a point; running thence along the northernmost boundary of Lots 1, 2, 3, 4, 5, 6, 7, and 8 N 65 degrees 19 minutes 35 seconds E a distance of 320.00 feet to a point; running thence S 34 degrees 36 minutes 31 seconds W a distance of 19.51 feet to a point; running thence across the unnamed right-of-way S 56 degrees 16 minutes 49 seconds W a distance of 68.593 feet to a POINT OF BEGINNING.

FILED IN DEEDS - BOOK 397 PAGE 1616
FILED AT 104500 ON 06/28/24

A.4 HMA304

EXHIBIT "B"

ALL that certain piece, parcel or tract of land lying, situate and being on Hilton Head Island, South Carolina, Beaufort, County, as shown on that certain plat of survey entitled "R.V. Resort and Yacht Club, Hilton Head Island, South Carolina Plat Plan" dated September 7, 1981, and last revised July 26, 1983, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 29 at Page 184, as prepared by Forrest F. Baughman, a South Carolina Registered Land Surveyor (S.C. Reg. No. 4922).

Hughes & Winters
FILED IN DEEDS - BOOK 397 PAGE 1617
FILED AT 124500 ON 26/28/84 43518
BOOK NUMBER 397 PAGES 1611- 1617
FILING FEE 7.00
STATE STAMPS .00
COUNTY STAMPS .00
TOTAL FEES 7.00
HENRY JACKSON
CLERK OF COURT 6TH CNTY. SC

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 with an Amended 99 Year Lease, and the amendment to the 1984 Easement. Turner thereafter asserted the Amended Lease and the Amended Easement prepared by the Defendants was 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. These issues were before the Court during numerous hearings and extensive Affidavits and briefing, as follows:

1. Affidavit of Neil Turner, dated April 4, 2024
2. Affidavit of Chris Sibley, dated April 8, 2024
3. Memo in Support of Plaintiff Turner's Marina LLC's Motion to Enforce Mediation Settlement Agreement, dated May 3, 2024.
4. Defendants' Memorandum in Opposition to Plaintiff's Motion in Support of Defendants' Motion to Enforce Mediated Settlement Agreement, dated April 11, 2024.
5. On April 11, 2024 the Court heard extensive in- person oral arguments from all parties.
6. On May 3, 2024 the Court conducted an extensive status conference with all parties.
7. Defendants' Supplemental Memorandum of Law in Support of Their Motion to Enforce Settlement, dated May 8, 2024.
8. Plaintiff Turner Marina LLC's Memo in Response to Defendants' Supplemental Memo of May 8, 2024, dated May 13, 2024.

9. Defendants' Reply Memorandum in Response to Plaintiff's Memorandum of May 13, 2024, dated May 30, 2024.
10. Plaintiff Turner Marina LLCs Memo in Response to Defendants' Reply Memo e of May 30, 2024, dated May 31, 2024.
11. On May 3, 2024 the Court conducted an extensive status conference with all parties.
12. On August 5, 2024 the Court issued "Order Granting Defendant's Motion to Enforce Settlement Agreement as to Amended Easement." (Ex. 2)
13. On August 5, 2024 the Court issued "Order Ruling on Plaintiff's and Defendant's Motions to Enforce Settlement Agreement (Amendments to Lease- Armed Guards/Gates) ." (Ex.3)
14. Plaintiff's Rule 58(e) SCRCP Motion to Alter or Amended Orders dated August 5, 2024.

To state the obvious, this Court has carefully considered all factual and legal arguments of counsel during the above six(6) months' of hearings and extensive legal briefings. Each of the arguments presented in Plaintiff's Motion have previously been rejected by the Court, and should be denied again at this time.

B. August 5, 2024 Order to Enforce Settlement Agreement (Amendments to Lease- Armed Guards/Gates) – Ex. 3

Plaintiff's Motion list three (3) separate claimed errors in connection with this Order, each discussed separately below:

1. **Business Hours Restaurant-** The Court's Order correctly concluded that the reference to "Business Hours" in the Settlement Agreement only applied to the use of the parking spaces during those hours- not the operating hours of the restaurant. As noted by

the Court, there simply is no language that states directly or indirectly that the restaurant can only be open and in operation during “Business Hours”. It would have been very easy for the parties to include such a provision if they so intended. The Court correctly concluded the language in the Settlement Agreement on this issue was clear and unambiguous and simply does not restrict the hours of operation of the restaurant.

2. **Claim of Control Over Additional Properties** - Plaintiff’s Motion claims error by the Court for failing to find the Settlement Agreement provided to the Plaintiff control over the mail room, the exercise room and the laundry room in the Recreational Building under the 99-year Lease. Just like the Business Hours issue discussed above, there simply is no language whatsoever that would support such a conclusion in the Settlement Agreement. The three(3) subject rooms are not even mentioned in the Settlement Agreement.

3. **Lot Owners use of Pool** - Finally, the Plaintiff asserts the imaginative argument that for some reason the POA negotiated away the rights of its 200 lot owners/ members to use the pool pursuant to the terms of the Settlement Agreement. The Court properly rejected this argument, finding that the lot owners clearly met the definition of “Non-Commercial Patrons” under § 5 the Settlement Agreement, and did not need to be specifically listed as permitted users. In addition, the Court properly noted that the lot owners under §12.5 of the Covenants recorded at DB 325 P 920, and §9 of the 99- Year Lease, have from day one of this development the right to use the pool. Nothing in the Settlement Agreement reflects any intention to take away this long-standing right.

Based upon the above, all three grounds of Plaintiff’s Motion as to this Order should be denied.

C. August 5, 2024 Order to Enforce Settlement Agreement as to Amended Easement

(Ex. 2)

Plaintiff's Motion lists three(3) grounds for the Court to reconsider its Order as to the Amended Easement. Each is discussed below.

1. Language in Order is Inconsistent with Language in § 9 of the Settlement Agreement

Plaintiff's Motion asserts the Court erred when it ruled that the language in § 9 of the Settlement Agreement "... somehow expanded into the language placed in the Order stating that the Grantor 'does hereby grant, bargain, and convey to Grantee, a permanent, perpetual, non-exclusive right-of-way on, over and across that certain property owned by the Grantor as more particularly depicted as" Parcel B.'" As with similar issues discussed above, the Court basically adapted the exact language agreed to by the parties in § 9 of the Settlement Agreement. § 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."(emphasis added)

The Court found said language clear and unambiguous and ordered the Plaintiff to execute an Amended Easement, attached as Exhibit 1 to the Order, with the same basic language set forth above in § 9 of the Settlement Agreement, with the only substantive difference including a more accurate description of Plat Book 148 Page 60. Said language is found in §2(a) of the Amended Easement attached as Exhibit 1 to the Order(Ex. 2):

1. 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").

The Court did not “expand” or “change” the agreement reach by the parties. This ground of Plaintiff’s Motion should be denied.

2. Language in the Order Improperly Provides Defendants to Move Around Plaintiff’s Property- Not Moving Across Same

Plaintiff asserts the Court Order effectively grants a license to the Defendants to loiter upon the Plaintiff’s business property “... when the law of easements in South Carolina provides that an easement is for moving across property to a defined exit point”. Although the Plaintiff does not cite any legal authority in its Motion, Defendants assume the Plaintiff is asserting that the Amended Easement does not meet the terminus requirement of an appurtenant easement. The elements for an appurtenant easement are as follows:

1. the easement must in here in the land;
2. concerning the premises;
3. **have one terminus on the land of the party claiming it; and**
4. being essentially necessary to the enjoyment thereof.

Shia v. Pendergrass, 222 S.C. 342, 351, 72 S.E.2d 699, 703((1952); *Windham v. Riddle*, 381 S.C. 192, 202, 672 S.E.2d 578 (2009). There is no question that Amended Easement approved by the Court terminates on property owned by the POA. In fact, the Amended Easement

terminates not in one(1) location on POA property, but in two(2) locations, as discussed below.

As the Court is aware, the POA owns two separate parcels of land separated by Plaintiff's 1.43 acres parcel. The Amended Easement is needed to allow the POA and its members, guests and invitees to go from one parcel it owns to the other, and to the public road. The POA owns 4.46 acres, as shown in the shaded area on Plat Book 57 a Page 168(Ex. 4 pursuant to the September 9, 1996 deed from Ora of Carolina, as recorded in Deed Book 893 at Page 671(Ex.5) . As noted above, the Plaintiff only owns Parcel B, 1.43 acres per PB 57 P 168.(Ex. 4). Attached as Exhibit 6 is a color coded plat showing the ownership of the three(3) parcels in questions. § 2(c) of the Amended Easement (Ex. 1) clearly states the easement over Parcel B , owned by the Plaintiff, is as follows:

“2(c) The 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.”

It is thus clear the POA owns property at the end of the easement in both directions- not just one. The requirement of a terminus under *Shia* and *Windham* is thus met.

Finally, it should be noted by the Court that the language of §9 of the Settlement Agreement simply expanded the scope of the easement over the Plaintiff's land and did not in reality create a new easement. The original 1984 Easement (DB 397 P 1611- Ex. 7) provided a permanent, non- exclusive right-of-way over and across the “paved roads” on

Plaintiff's property, consisting of 1.4 acres. The original 1984 Easement made it very clear that the POA and its members had the a right to use only the **paved roads** on Plaintiff's property to access not only the roads within the RV campground area, but the tennis courts, recreational building and all other property in the entire development show on PB 29 P 184 (Ex. 8). To resolve prior disputes and allegations by Plaintiff of a claimed trespass against the POA and its members, (i.e. POA members who were not always using the paved roads), the scope of the easement was expanded in the Settlement Agreement to allow for said easement rights to cover the entirety of the Plaintiff's 1.4 acre parcel- not just the paved roads.(Sibley Aff. §3). Just as in the original 1984 Easement, the Amended Easement has "end points" to the POA's roadways around the RV lots to the South of Plaintiff's parcel and the POA's 0.83 acre Parcel A to the North. The only substantive change made by the Settlement Agreement is the easement is no longer limited to "paved roads".

3. **Order States Plaintiff was involved with Negotiations of Amended Easement**

While through Plaintiff's participation in the very extensive court proceedings and arguments it could reasonably be asserted the Plaintiff did have significant input in the final language of the Amended Easement, Defendants do not object if §14 of the Second Amended Easement is deleted in its entirety.

Based upon the above, the first two (2) grounds of Plaintiff's Motion as to this Order should be denied. Defendants agree to Plaintiff's request number three as to deleting §14 of the Second Amended Easement

LIZZIE LAW FIRM, P.C.

/s/ Christopher D. Lizzi

Christopher D. Lizzi

2170 Ashley Phosphate Rd., Ste. 402

N. Charleston, SC 29406

(843) 797-0222

lizzilawfirm@aol.com

*Attorneys for the Defendant, R.V. Resort
and Yacht Club Owners Association, Inc.*

N. Charleston, South Carolina
January 17, 2025

RUSSELL P. PATTERSON, P.A.

/s/ Russell P. Patterson

Russell P. Patterson, SC Bar #4375

P.O. Box 8047

Hilton Head Island, SC 29938

(843) 341-9300

russell@russellpattersonlaw.com

*Attorneys for the Defendant,
Sunset, Inc.*

Hilton Head Island, South Carolina
January 17, 2025

ELECTRONICALLY FILED 2021 FEB 23 10:09 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701085

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., and)
MIKE MORALES, and)
SUNSET, INC.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-07-01085

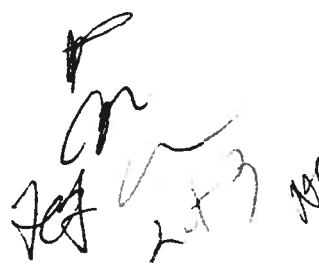
MEDIATED SETTLEMENT AGREEMENT
AND DISMISSAL OF ALL CLAIMS AND
COUNTERCLAIMS WITH PREJUDICE

AS A RESULT OF CONFIDENTIAL MEDIATION, THE PARTIES HEREBY AGREE TO THE FOLLOWING.

1. The rental obligations under the 99-Year Lease of Turner's Marina to R.V. RESORT AND YACHT AND CLUB OWNERS' ASSOCIATION, INC. (the "Association") has changed. Now the rent owed by Turner's Marina to the Association will be the base monthly dues amount charged for a lot owner in the RV Resort multiplied by 5 (formerly it was 10).
2. With regards to the parking area and the disputed parking spaces, the area in question is referenced in Exhibit A, which is attached hereto. As to those twenty-three spots, the Parties agree:
 - a. Spot 2 on Exhibit A will be reserved for Association use.
 - b. Spots 5 and 6 on Exhibit A will remain short term parking until 5:00PM at which time these spots will be reserved for restaurant patrons and guests during Business Hours.
 - c. Spot 3 on Exhibit A will be for the exclusive use of the restaurant 24/7/365.
 - d. Spot 4 on Exhibit A will be for the exclusive use of the restaurant 24/7/365.
 - e. Spots 19, 20 and 21 are for the exclusive use of the restaurant on Tuesday through Sunday 6:00pm to 10:00pm and Sunday 10:30am to 2:00pm.
 - f. Spot 23 on Exhibit A is a spot under a tree. The Parties agree that Spot 23 will be for the exclusive use of the Marina or its designee.
 - g. Spot 22 on Exhibit A will be reserved for Marina use until 6:00PM. Following that time, Spot 22 will be available as a first come, first served parking place.

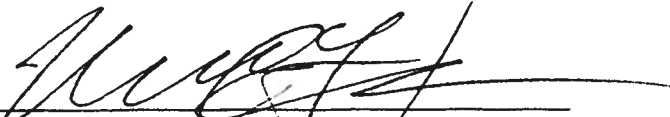
EXHIBIT 1

- 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.
- 3. The Parties agree that no parking spot can be utilized by anyone for overnight parking.
- 4. The bathrooms are available to everyone.
- 5. The pool on Exhibit A shall be available to all non-Commercial Patrons of the complex. It is agreed and understood that slip lease holders at the marina and RV 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 the commercial activities of the marina, including any boat clubs, jet ski rentals, tours, charter fishing and the like.
 - a. If the Association 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 owners and the RV renters will receive one (1) armband each for pool access for them and their guests.
- 6. It is agreed by all of the below signatories that the Association may seek to reconfigure the enumerated parking spots denoted on Exhibit A, including reconfiguration of the picnic table area pictured there (subject to the Owner's approval in this change of use). In the event the Association reconfigures or adds additional parking spaces to the 23 parking spaces currently enumerated on Exhibit A, fifty percent (50%) of any new spaces created as a result of the reconfiguration - up to a maximum of 7 new spaces - will be reserved for the restaurant during Business Hours. As used in this agreement, Business Hours are agreed to be Tuesday through Sunday 5:00pm to 10:00pm and Sunday 10:30am to 2:00pm. Any new configuration cannot interfere with direct and open access to the Dumpster, including for emptying and removal of the dumpster, installed on Turner's Marina land adjacent to the former tennis courts. All other newly created spaces shall be available on a first come, first served basis.
 - a. If the Association reconfigures the parking lot, Spots 19, 20, and 21 will no longer be the restaurant's spaces; instead, from the new spaces created, there will be three new replacement spaces - and up to seven spaces as contemplated above - in a single line. These new spaces will be the exclusive use of the restaurant space during Business Hours as defined above.
- 7. Turner's Marina LLC as the lessee acknowledges and affirms the restaurant and former ship store are not part of the 99-Year Lease, recorded at Deed Book 325, page 953 (hereinafter referred to as the 99-Year Lease). Turner's Marina LLC further affirms that the ownership and lease rights to the restaurant space and Ship Store space are controlled by the Association. However, the Association agrees that it will not permit the Ship Store space to be utilized for commercial purposes.

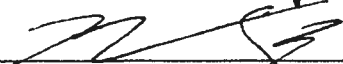


8. The Association and Sunset, Inc. acknowledge and affirm that Turner's Marina is the rightful holder of the 99-Year Lease and the rights and responsibilities arising therefrom not otherwise addressed in this Settlement Agreement and they agree to not bring upon the leased property any means of restricting lessee from use and enjoyment of the leasehold property.
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.
10. Turner's Marina commits to not use, hire or employ **armed** security guards.
11. Turners Marina further agrees that it shall not undertake any efforts to erect a vehicular gate on the interior portion of the Marina's land.
12. With regards to this agreement only, the Association takes no position as to the propriety of the placement of a gate at the entrance to the marina property; instead, should anyone desire to erect a gate at the entrance of the marina property, the Association shall be given thirty (30) days' written notice prior to the submission of the application seeking authority to erect a gate.
13. In exchange for the above agreements, the Parties will dismiss Civil Action File Number 2021-CP-07-01085 with prejudice.

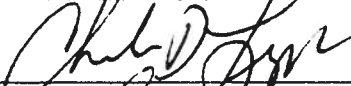
So agreed, this 13 day of December, 2023.



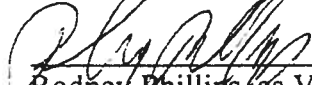
 Thomas C. Taylor Attorney for the Plaintiff



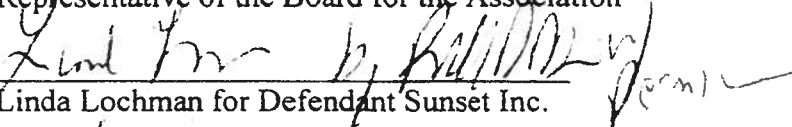
 Turner's Marina, LLC by
 Neil Turner as Owner



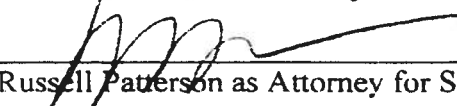
 Christopher Lizzi Attorney for the Association



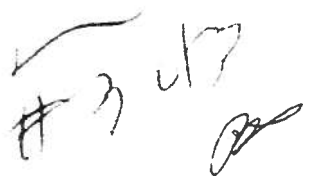
 Rodney Phillips, as Vice President and Authorized
 Representative of the Board for the Association



 Linda Lochman for Defendant Sunset Inc.



 Russell Patterson as Attorney for Sunset Inc.



8/5/24

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 I 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

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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 Grantee and Grantor, 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

ELECTRONICALLY FILED - 2024 Aug 02 1:52 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701085
ELECTRONICALLY FILED 2024 AUG 06 03:46 PM BEAUFORT COMMON PLEAS - CASE#2021CP0701085

ELECTRONICALLY FILED - 2024 Aug 02 1:52 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701085
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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: _____

ELECTRONICALLY FILED - 2024 Aug 02 1:52 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0701085
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: _____

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 I(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

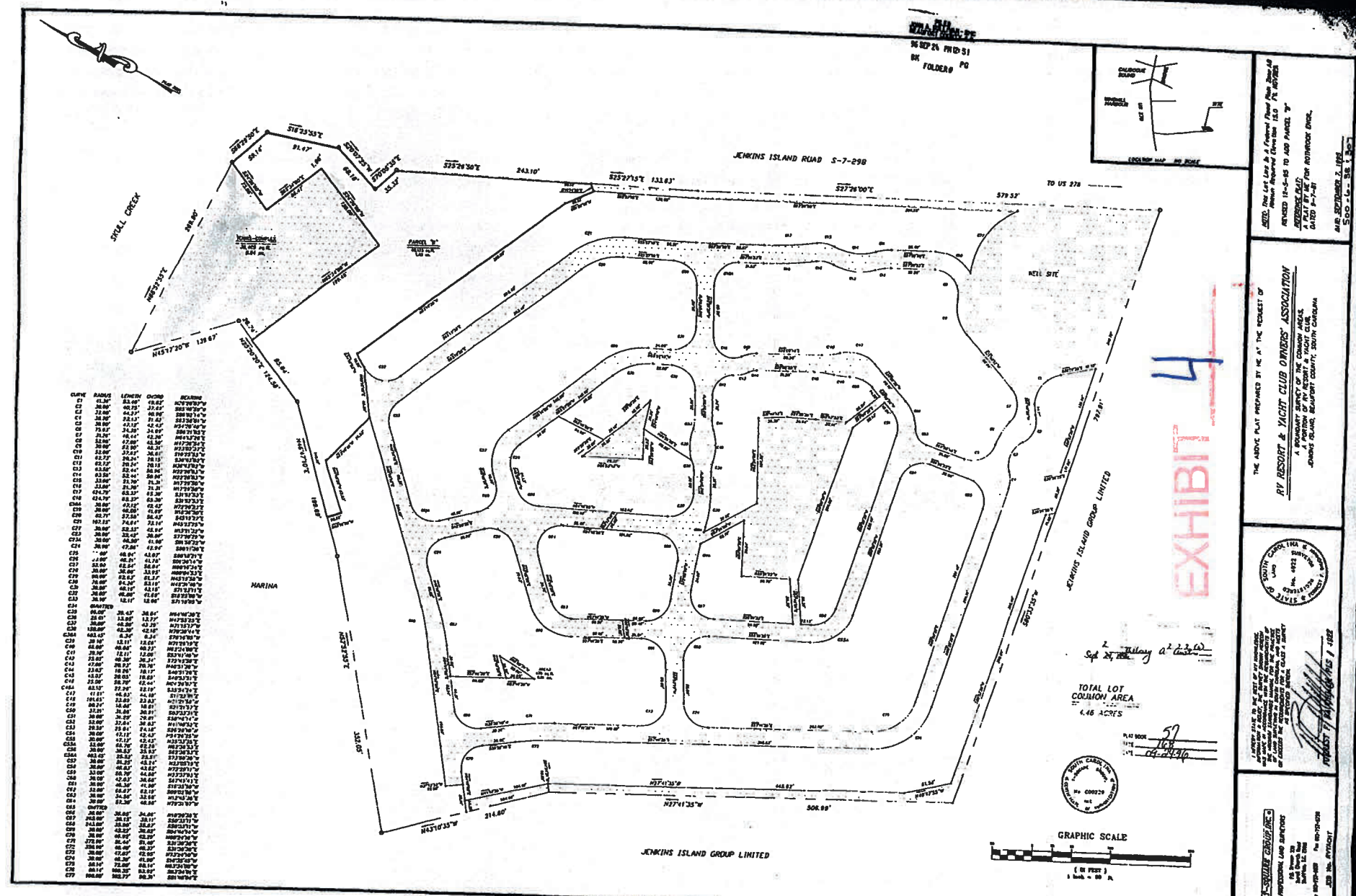
So Ordered

s/Marvin H. Dukes III #2785

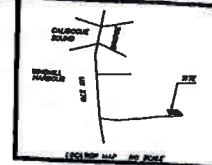
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COPIE	AMOUNT	LENGTH	WIDTH	BEARING
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C02	20.00'	40.00'	20.00'	N00°00'00"W
C03	12.00'	24.00'	12.00'	N00°00'00"W
C04	20.00'	40.00'	20.00'	N00°00'00"W
C05	20.00'	40.00'	20.00'	N00°00'00"W
C06	20.00'	40.00'	20.00'	N00°00'00"W
C07	20.00'	40.00'	20.00'	N00°00'00"W
C08	20.00'	40.00'	20.00'	N00°00'00"W
C09	20.00'	40.00'	20.00'	N00°00'00"W
C10	20.00'	40.00'	20.00'	N00°00'00"W
C11	20.00'	40.00'	20.00'	N00°00'00"W
C12	20.00'	40.00'	20.00'	N00°00'00"W
C13	20.00'	40.00'	20.00'	N00°00'00"W
C14	20.00'	40.00'	20.00'	N00°00'00"W
C15	20.00'	40.00'	20.00'	N00°00'00"W
C16	20.00'	40.00'	20.00'	N00°00'00"W
C17	20.00'	40.00'	20.00'	N00°00'00"W
C18	20.00'	40.00'	20.00'	N00°00'00"W
C19	20.00'	40.00'	20.00'	N00°00'00"W
C20	20.00'	40.00'	20.00'	N00°00'00"W
C21	20.00'	40.00'	20.00'	N00°00'00"W
C22	20.00'	40.00'	20.00'	N00°00'00"W
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C27	20.00'	40.00'	20.00'	N00°00'00"W
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C30	20.00'	40.00'	20.00'	N00°00'00"W
C31	20.00'	40.00'	20.00'	N00°00'00"W
C32	20.00'	40.00'	20.00'	N00°00'00"W
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C34	20.00'	40.00'	20.00'	N00°00'00"W
C35	20.00'	40.00'	20.00'	N00°00'00"W
C36	20.00'	40.00'	20.00'	N00°00'00"W
C37	20.00'	40.00'	20.00'	N00°00'00"W
C38	20.00'	40.00'	20.00'	N00°00'00"W
C39	20.00'	40.00'	20.00'	N00°00'00"W
C40	20.00'	40.00'	20.00'	N00°00'00"W
C41	20.00'	40.00'	20.00'	N00°00'00"W
C42	20.00'	40.00'	20.00'	N00°00'00"W
C43	20.00'	40.00'	20.00'	N00°00'00"W
C44	20.00'	40.00'	20.00'	N00°00'00"W
C45	20.00'	40.00'	20.00'	N00°00'00"W
C46	20.00'	40.00'	20.00'	N00°00'00"W
C47	20.00'	40.00'	20.00'	N00°00'00"W
C48	20.00'	40.00'	20.00'	N00°00'00"W
C49	20.00'	40.00'	20.00'	N00°00'00"W
C50	20.00'	40.00'	20.00'	N00°00'00"W
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C54	20.00'	40.00'	20.00'	N00°00'00"W
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C56	20.00'	40.00'	20.00'	N00°00'00"W
C57	20.00'	40.00'	20.00'	N00°00'00"W
C58	20.00'	40.00'	20.00'	N00°00'00"W
C59	20.00'	40.00'	20.00'	N00°00'00"W
C60	20.00'	40.00'	20.00'	N00°00'00"W
C61	20.00'	40.00'	20.00'	N00°00'00"W
C62	20.00'	40.00'	20.00'	N00°00'00"W
C63	20.00'	40.00'	20.00'	N00°00'00"W
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C65	20.00'	40.00'	20.00'	N00°00'00"W
C66	20.00'	40.00'	20.00'	N00°00'00"W
C67	20.00'	40.00'	20.00'	N00°00'00"W
C68	20.00'	40.00'	20.00'	N00°00'00"W
C69	20.00'	40.00'	20.00'	N00°00'00"W
C70	20.00'	40.00'	20.00'	N00°00'00"W
C71	20.00'	40.00'	20.00'	N00°00'00"W
C72	20.00'	40.00'	20.00'	N00°00'00"W
C73	20.00'	40.00'	20.00'	N00°00'00"W
C74	20.00'	40.00'	20.00'	N00°00'00"W
C75	20.00'	40.00'	20.00'	N00°00'00"W
C76	20.00'	40.00'	20.00'	N00°00'00"W
C77	20.00'	40.00'	20.00'	N00°00'00"W
C78	20.00'	40.00'	20.00'	N00°00'00"W
C79	20.00'	40.00'	20.00'	N00°00'00"W
C80	20.00'	40.00'	20.00'	N00°00'00"W



THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION OR FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.

DATE: 8-7-21

MR. SEYMOUR J. JONES

500 - G - 88 - 107

THE ABOVE PLAN PREPARED BY ME AT THE REQUEST OF

RY RESORT & YACHT CLUB OWNERS' ASSOCIATION

A PARTNER OF RY ACCENT & YACHT CLUBS

JENKINS ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA



DATE: 8-7-21

PROJECT: JENKINS ISLAND

EXHIBIT 4

Tuesday at 2:30

Sept 27, 2021

TOTAL LOT COLLISION AREA

4.46 ACRES

PLAN BOOK 57

171

09-23-16



22x



ORIGINAL DOCUMENT

FOUR COPIES ON CONTRACT

ROA 560

897/671

9/26/96

2/1003

39563

PLEASE CONTACT THE COUNTY REGISTER'S OFFICE FOR FURTHER INFORMATION

Smart 91

671

Tax Map Number: District R501, Map 006, Submap 00A, Parcel 0306, Block 0000

QUIT CLAIM DEED

YOUR TAX NOTICE WILL BE SENT TO THE ADDRESS SHOWN ON Y.O.S. IF YOUR DEED WAS RECORDED SEPTEMBER 16. IF THE ADDRESS IS INCORRECT, PLEASE NOTIFY THE COUNTY ASSESSOR

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, THAT ORA OF CAROLINA, INC. (Grantor) in the state aforesaid, in consideration of the sum of Ten Dollars and other valuable considerations to it in hand paid by R. V. RESORT AND YACHT CLUB, OWNERS' ASSOCIATION, INC., 43 Jenkins Road, Hilton Head Island, SC 29926 (Grantee) the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by the presents does grant, bargain, sell and release unto Grantee, Grantee's Successors, Heirs and Assigns, forever, the following property(Property), to wit:

ALL that certain piece, parcel or tract of land located on Jenkins Island, Beaufort County, South Carolina containing 4.46 acres and designated as TOTAL LOT COMMON AREA on a plat thereof prepared by Forrest F. Baughman, P.L.S. #4922 dated September 7, 1995 and entitled "RV RESORT & YACHT CLUB OWNERS' ASSOCIATION", which said plat has been recorded in Plat Book 57 at Page 168 in the RMC Office for Beaufort County, South Carolina. According to said plat, said area is identified as the shaded area and includes, among other things, the road right-of-way, the well site, and the tennis complex (0.84 acre).

This conveyance is made subject to all applicable covenants, easements and restrictions of record in the Office of the Register of Mesne Conveyance, Beaufort County, South Carolina. The Property described is a portion of the property heretofore conveyed to the Grantor by limited warranty deed recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Deed Book 644 at Page 207 on the 11th day of August 1993, by a quit claim deed in Deed Book 644, Page 211 on the same date. Substantially all the property described was included in the "common areas", 1/200th undivided interests of which were conveyed by individual lot conveyances of record from time to time.

The described property and properties owned by the Grantor, or Grantee, or individual condominium lot owners adjoining the described property are subject to and/or benefitted by various easements of record for utilities, common use, ingress and egress, pedestrian and vehicular access, and vehicular parking, all as described and set forth in instruments of record; this Quit Claim Deed is not intended to and does not quitclaim, vary, modify, restrict, convey or otherwise affect any and/or all such easements, rights, obligations, and burdens of such easements whether benefitting or burdening the Grantor, Grantee, and/or individual lot owners, or their successors or assigns.

BEAUFORT COUNTY TAX MAP INFORMATION
Map Section Block Parcel
501 6 A 38
306
307

EXHIBIT 5

672

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Property belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD all the singular Property under Grantee and Grantee's Successors, Heirs and Assigns, forever, so that neither Grantor nor its heirs, nor any other person or persons claiming under Grantor or any of them shall at anytime hereafter, by any way or means have, claim or demand any right or title to the Property or any part or parcel thereof forever.

Whenever the context so requires, references herein to the neuter gender shall include the masculine and/or feminine gender, and the singular number shall include the plural.

Witness its Hand and Seal this 26th day of September in the year of our Lord One Thousand Nine Hundred Ninety-Six.

Signed, Sealed and Delivered in Presence of

(2) [Signature]
(Signature of Witness)
(3) [Signature]
(Signature of Notary)

ORA OF CAROLINA, INC.

By: [Signature]

STATE OF TENNESSEE
COUNTY OF (5) Sumner

PERSONALLY appeared before me the First Witness who, on oath, says that (s)he saw the within named Grantor(s) sign the within Deed, and as its act and deed, deliver the same, and that (s)he with the Second Witness witnessed the execution thereof.

SWORN before me this 26th day of September, 1996.

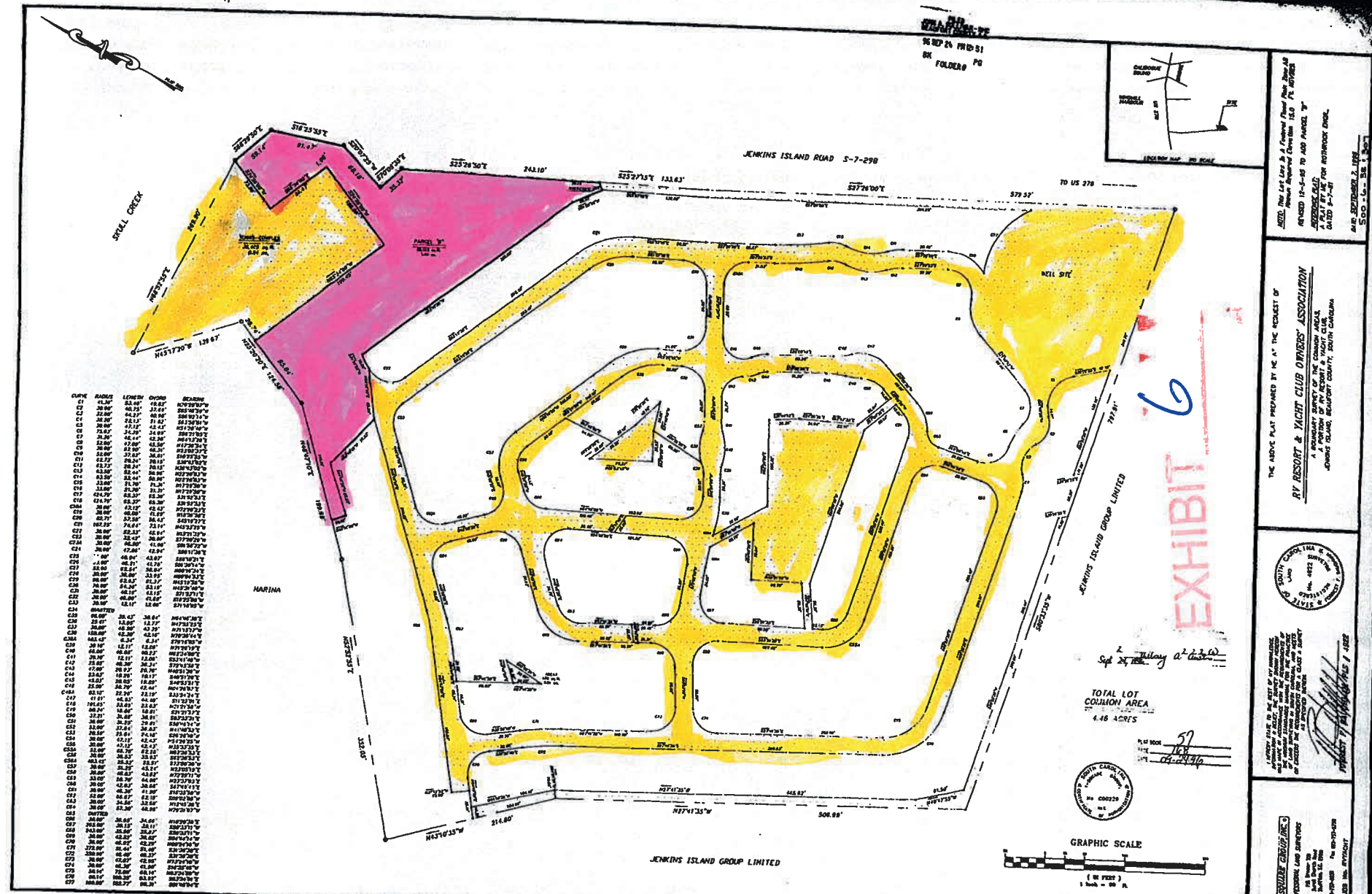
(7) [Signature]
Notary Public for Tennessee
My Commission Expires: 11/2/99

[Signature]
(Signature of Witness)

This Deed was prepared by the law offices of Smoot & Pitts, P.O. Drawer 23439, Hilton Head Island, SC 29925.

PB 57/168

ROA 563



COVE	ANGLE	LENGTH	GROUP	BEARING
C01	41.36°	52.65'	00000	S89°37'30"W
C02	22.80°	40.73'	00000	S80°30'30"W
C03	32.80°	40.90'	00000	S80°30'30"W
C04	30.80°	32.13'	01101	S81°30'30"W
C05	30.80°	41.21'	01101	S81°30'30"W
C06	30.80°	24.20'	01101	S81°30'30"W
C07	30.80°	40.73'	01101	S80°30'30"W
C08	30.80°	40.73'	01101	S80°30'30"W
C09	30.80°	40.73'	01101	S80°30'30"W
C10	30.80°	40.73'	01101	S80°30'30"W
C11	30.80°	40.73'	01101	S80°30'30"W
C12	30.80°	40.73'	01101	S80°30'30"W
C13	30.80°	40.73'	01101	S80°30'30"W
C14	30.80°	40.73'	01101	S80°30'30"W
C15	30.80°	40.73'	01101	S80°30'30"W
C16	30.80°	40.73'	01101	S80°30'30"W
C17	30.80°	40.73'	01101	S80°30'30"W
C18	30.80°	40.73'	01101	S80°30'30"W
C19	30.80°	40.73'	01101	S80°30'30"W
C20	30.80°	40.73'	01101	S80°30'30"W
C21	30.80°	40.73'	01101	S80°30'30"W
C22	30.80°	40.73'	01101	S80°30'30"W
C23	30.80°	40.73'	01101	S80°30'30"W
C24	30.80°	40.73'	01101	S80°30'30"W
C25	30.80°	40.73'	01101	S80°30'30"W
C26	30.80°	40.73'	01101	S80°30'30"W
C27	30.80°	40.73'	01101	S80°30'30"W
C28	30.80°	40.73'	01101	S80°30'30"W
C29	30.80°	40.73'	01101	S80°30'30"W
C30	30.80°	40.73'	01101	S80°30'30"W
C31	30.80°	40.73'	01101	S80°30'30"W
C32	30.80°	40.73'	01101	S80°30'30"W
C33	30.80°	40.73'	01101	S80°30'30"W
C34	30.80°	40.73'	01101	S80°30'30"W
C35	30.80°	40.73'	01101	S80°30'30"W
C36	30.80°	40.73'	01101	S80°30'30"W
C37	30.80°	40.73'	01101	S80°30'30"W
C38	30.80°	40.73'	01101	S80°30'30"W
C39	30.80°	40.73'	01101	S80°30'30"W
C40	30.80°	40.73'	01101	S80°30'30"W
C41	30.80°	40.73'	01101	S80°30'30"W
C42	30.80°	40.73'	01101	S80°30'30"W
C43	30.80°	40.73'	01101	S80°30'30"W
C44	30.80°	40.73'	01101	S80°30'30"W
C45	30.80°	40.73'	01101	S80°30'30"W
C46	30.80°	40.73'	01101	S80°30'30"W
C47	30.80°	40.73'	01101	S80°30'30"W
C48	30.80°	40.73'	01101	S80°30'30"W
C49	30.80°	40.73'	01101	S80°30'30"W
C50	30.80°	40.73'	01101	S80°30'30"W
C51	30.80°	40.73'	01101	S80°30'30"W
C52	30.80°	40.73'	01101	S80°30'30"W
C53	30.80°	40.73'	01101	S80°30'30"W
C54	30.80°	40.73'	01101	S80°30'30"W
C55	30.80°	40.73'	01101	S80°30'30"W
C56	30.80°	40.73'	01101	S80°30'30"W
C57	30.80°	40.73'	01101	S80°30'30"W
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C59	30.80°	40.73'	01101	S80°30'30"W
C60	30.80°	40.73'	01101	S80°30'30"W
C61	30.80°	40.73'	01101	S80°30'30"W
C62	30.80°	40.73'	01101	S80°30'30"W
C63	30.80°	40.73'	01101	S80°30'30"W
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C77	30.80°	40.73'	01101	S80°30'30"W
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C80	30.80°	40.73'	01101	S80°30'30"W
C81	30.80°	40.73'	01101	S80°30'30"W
C82	30.80°	40.73'	01101	S80°30'30"W
C83	30.80°	40.73'	01101	S80°30'30"W
C84	30.80°	40.73'	01101	S80°30'30"W
C85	30.80°	40.73'	01101	S80°30'30"W
C86	30.80°	40.73'	01101	S80°30'30"W
C87	30.80°	40.73'	01101	S80°30'30"W
C88	30.80°	40.73'	01101	S80°30'30"W
C89	30.80°	40.73'	01101	S80°30'30"W
C90	30.80°	40.73'	01101	S80°30'30"W
C91	30.80°	40.73'	01101	S80°30'30"W
C92	30.80°	40.73'	01101	S80°30'30"W
C93	30.80°	40.73'	01101	S80°30'30"W
C94	30.80°	40.73'	01101	S80°30'30"W
C95	30.80°	40.73'	01101	S80°30'30"W
C96	30.80°	40.73'	01101	S80°30'30"W
C97	30.80°	40.73'	01101	S80°30'30"W
C98	30.80°	40.73'	01101	S80°30'30"W
C99	30.80°	40.73'	01101	S80°30'30"W
C00	30.80°	40.73'	01101	S80°30'30"W



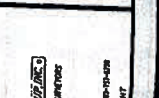
OWNERSHIP OF PROPERTY

THE ABOVE PLAN PREPARED BY ME AS THE REQUEST OF
 RY RESORT & YACHT CLUB OWNERS' ASSOCIATION
 A PORTION OF MY ACCOUNT OF CHARGE HEREIN
 IS A STATEMENT OF MY ACCOUNT FOR INTEREST ONLY.
 DATED 9-1-21

THE ABOVE PLAN PREPARED BY ME AS THE REQUEST OF
 RY RESORT & YACHT CLUB OWNERS' ASSOCIATION
 A PORTION OF MY ACCOUNT OF CHARGE HEREIN
 IS A STATEMENT OF MY ACCOUNT FOR INTEREST ONLY.
 DATED 9-1-21



DATE OF SURVEY: 2/23/20
 TOTAL LOT COMBINATION AREA: 6.46 ACRES



GRAPHIC SCALE
 (IN FEET)
 1 Inch = 60 Feet

ORIGINAL DOCUMENT
FOOT CONDITION OR CONTACT

397/1611
11/84

A.17 HMA304

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) EASEMENT

This Agreement is made this 1st day of January, 1984, by and between OUTDOOR RESORTS RV RESORT AND YACHT CLUB, a South Carolina joint venture consisting of ORA OF CAROLINA, INC. AND SIX ESS CORPORATION (hereinafter referred to as "Grantor"), and RV RESORT AND YACHT CLUB OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation, its successor and assigns (hereinafter referred to as "Grantee").

FOR AND IN CONSIDERATION of the sum of TEN AND 00/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, non-exclusive right-of-way, on, over, and across the paved roads located on that certain property owned by Grantor as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

This Easement is granted to allow and facilitate general access from the entrance of the RV Resort and Yacht Club to the boundary of the lots by those persons or entities who are owners of the property described in Exhibit "B" or any interest therein or portions thereof, their guests, lessees, invitees, and licensees of Grantee employed to operate and maintain the improvements constructed on the property described in Exhibits "A" or "B" and their employees, Grantee's successors and assigns, and property managers.

This Easement is for the benefit of and is appurtenant to the property more particularly described as Exhibit "B". This grant of

FILED IN DEEDS - BOOK 397 PAGE 1611
FILED AT 124500 ON 06/28/84

EXHIBIT

A.17 HMA304

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.

This Easement is restricted to the paved roadways only. Grantor may, at its option, change the location of the roadways, provided that the Grantor shall always provide access as stated above with said access sufficient for motor vehicle traffic.

This grant of Easement is subject to all matters of record in the Office of the Clerk of Court for Beaufort County, South Carolina.

This grant of Easement herein 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 Easement granted herein to properties owned by Grantor adjacent to the Easement granted herein.

IN WITNESS WHEREOF, Grantor and Grantee have executed the Easement effective the day and year first above written.

WITNESSES:

GRANTOR:

OUTDOOR RESORTS RV RESORT AND
YACHT CLUB, a South Carolina
Joint Venture

Ronald W. Petty
Carol E. Burt

By: [Signature]
Its [Signature]

By: _____
Its _____

FILED IN DEEDS - 300K 397 PAGE 1612
FILED AT 104500 ON 06/28/84

A.17

HMA304

GRANTEE:

RV RESORT AND YACHT CLUB OWNERS
ASSOCIATION, INC., a South
Carolina non-profit organization

~~William E. Lueck~~
~~J. C. Smith~~

By: William E. Lueck
its authorized signatory

5/7/84

Susan J. Flynn
Deane Johnson

6/26/84

FILED IN DEEDS - BOOK 397 PAGE 1613
FILED AT 194500 ON 06/28/84

A.13 MMC257

STATE OF TENNESSEE }
Davidson COUNTY }

PERSONALLY appeared before me Ronald W. Petty
and made oath that (s)he saw the within named Outdoor Resorts R.V.
Resort and Yacht Club, a South Carolina Joint Venture, consisting of
Outdoor Resorts of Carolina, Inc., and Six Ess Corporation by and
through E. Randall Henderson, its president and authorized signatory,
sign, seal and as its act and deed, deliver the within Easement and that
(s)he with Garage E. Quate witnessed the
execution thereof.

Ronald W. Petty

SWORN TO AND SUBSCRIBED BEFORE ME
This 20th day of June, 1984.

Garage E. Quate
Notary Public for Tennessee

My Commission Expires: July 21, 1985

FILED IN DEEDS - BOOK 397 PAGE 1514
FILED AT 104500 ON 06/28/84

A.13 HMC257

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DeThane Johnson

PERSONALLY appeared before me ~~Rex E. Coe~~

and made oath that (s)he saw the within named R.V. Resort and Yacht Club Owners Association, Inc., a South Carolina non-profit organization by and through William E. Littell, its authorized signatory, sign, seal and as its act and deed, deliver the within Easement and that (s)he with ~~JAMES C. RAGAN~~ Susan J. Flynn witnessed the execution thereof.

DeThane Johnson
Rex E. Coe

SWORN TO AND SUBSCRIBED BEFORE ME
This 21st day of JUNE, 1984.

Walter B. Schul (L.S.)
Notary Public for South Carolina

My Commission Expires:

My Commission Expires September 12, 1988

Sworn to & subscribed before me
This 26th day of June, 1984
Susan J. Flynn (L.S.)
Notary Public for South Carolina
My commission expires April 15, 1993.

FILED IN DEEDS - BOOK 397 PAGE 1615
FILED AT 184500 ON 06/28/84

A.18 HMA304

EXHIBIT "A"

ALL that certain piece, parcel or tract of land lying, situate and being on Hilton Head Island, Beaufort County, South Carolina, as shown on that certain plat of survey entitled "R. V. Resort and Yacht Club, Hilton Head Island, South Carolina, Plot Plan" dated September 7, 1981, and last revised July 26, 1983, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 29 at Page 184, as prepared by Forrest F. Baughman, a South Carolina registered land surveyor (S.C. Reg. L.S. No. 4922) and being more particularly described as follows:

BEGINNING at a point located at the northeastern boundary of Lot #65 where it joins an unnamed right-of-way approximately 22 feet in width; running thence along the northerly boundary of Lot #65 and N 73 degrees 40 minutes 45 seconds W a distance of 77.53 feet to a point; running thence N 43 degrees 12 minutes 50 seconds W a distance of 14.13 feet to a point; running thence 46 degrees 47 minutes 10 seconds E a distance of 88.64 feet to a concrete monument running thence N 25 degrees 20 minutes 20 seconds E a distance of 95.884 feet to a point; running thence S 65 degrees 34 minutes 00 seconds E a distance of 199.449 feet to a point; Said point being the southeasterly point of the boundaries of the tennis courts; running thence along the Easterly boundary of the tennis courts N 24 degrees 26 minutes 00 seconds E a distance of 120.00 feet to a point; Said point being the northeasterly most boundary of the tennis courts; running thence along the northerly boundary of the tennis courts N 65 degrees 34 minutes 00 seconds W a distance of 86.468 feet to a point; running thence N 24 degrees 26 minutes 00 seconds E a distance of 73.550 feet to a concrete monument; running thence S 68 degrees 29 minutes 50 seconds E a distance of 59.14 feet to a concrete monument; running thence S 16 degrees 25 minutes 55 seconds E a distance of 91.47 feet to a point across the boat ramp to a concrete monument; running thence S 20 degrees 07 minutes 25 seconds E a distance of 68.18 feet to a concrete monument; running thence S 70 degrees 05 minutes 35 seconds E a distance of 35.32 feet to a concrete monument; running thence S 25 degrees 26 minutes 50 seconds W a distance of 243.10 feet to a concrete monument; running thence S 43 degrees 58 minutes 50 seconds W a distance of 10.681 feet to a point; running thence N 51 degrees 09 minutes 10 seconds W a distance of 40.32 feet to a point; running thence along the northernmost boundary of Lots 1, 2, 3, 4, 5, 6, 7, and 8 N 65 degrees 19 minutes 35 seconds E a distance of 320.00 feet to a point; running thence S 34 degrees 36 minutes 31 seconds W a distance of 19.51 feet to a point; running thence across the unnamed right-of-way S 56 degrees 16 minutes 49 seconds W a distance of 68.593 feet to a POINT OF BEGINNING.

FILED IN DEEDS - BOOK 397 PAGE 1616
FILED AT 104502 ON 06/28/84

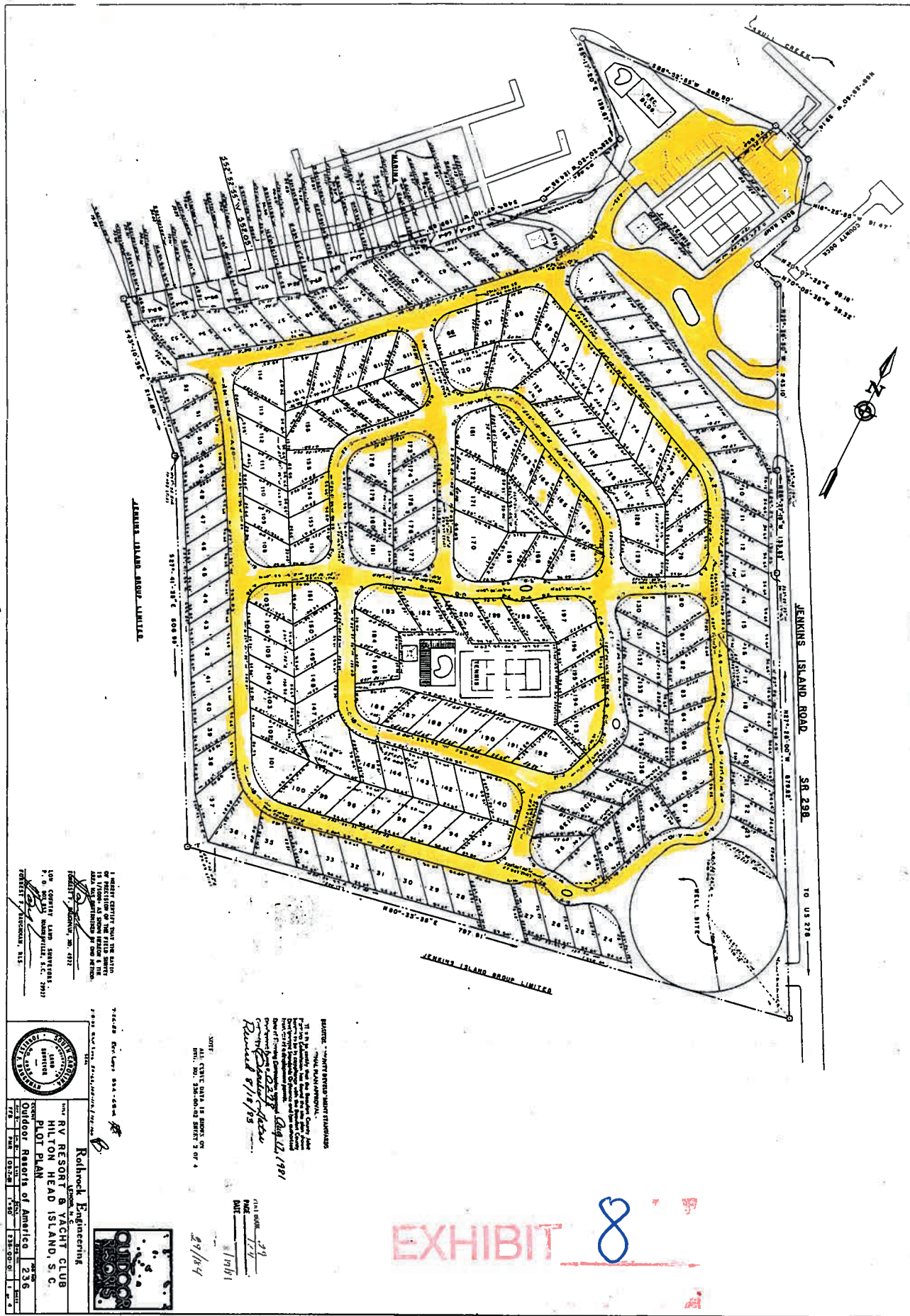
A.4 HMA304

EXHIBIT "B"

ALL that certain piece, parcel or tract of land lying, situate and being on Hilton Head Island, South Carolina, Beaufort, County, as shown on that certain plat of survey entitled "R.V. Resort and Yacht Club, Hilton Head Island, South Carolina Plot Plan" dated September 7, 1981, and last revised July 26, 1983, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 29 at Page 184, as prepared by Forrest F. Baughman, a South Carolina Registered Land Surveyor (S.C. Reg. No. 4922).

Hughes & Winters
FILED IN DEEDS - BOOK 397 PAGE 1617
FILED AT 124500 ON 06/28/84 43518
BOOK NUMBER 397 PAGES 1611- 1617
FILING FEE 7.00
STATE STAMPS .00
COUNTY STAMPS .00
TOTAL FEES 7.00
HENRY JACKSON
CLERK OF COURT BEAUFORT COUNTY, SC

29/184



A UNDEVELOPED TRACT OF LAND BEING THE SOUTH 1/2 OF SECTION 16, TOWNSHIP 33 NORTH, RANGE 80 WEST, BEAUFORT COUNTY, SOUTH CAROLINA, IS HEREBY OFFERED FOR SALE BY THE BEAUFORT COUNTY BOARD OF LANDS AND FORESTRY. THE OFFER IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE OFFER DOCUMENTS AND THE OFFER DOCUMENTS ARE AVAILABLE FOR REVIEW AT THE BEAUFORT COUNTY COURTHOUSE, 100 COUNTY LANE, BEAUFORT, SOUTH CAROLINA 29915.



Rotlock Engineering
 100 COUNTY LANE, BEAUFORT, SOUTH CAROLINA 29915
 P. O. BOX 100, BEAUFORT, SOUTH CAROLINA 29915
 (843) 735-1111

NOTICE
 ALL CERT. DATA IS BASED ON THE FOLLOWING DATA:
 1. THE SURVEY WAS CONDUCTED BY THE BEAUFORT COUNTY BOARD OF LANDS AND FORESTRY.
 2. THE SURVEY WAS CONDUCTED ON 08/14/84.
 3. THE SURVEY WAS CONDUCTED BY THE BEAUFORT COUNTY BOARD OF LANDS AND FORESTRY.
 4. THE SURVEY WAS CONDUCTED ON 08/14/84.
 5. THE SURVEY WAS CONDUCTED BY THE BEAUFORT COUNTY BOARD OF LANDS AND FORESTRY.
 6. THE SURVEY WAS CONDUCTED ON 08/14/84.

EXHIBIT 8

29/184

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
Turner’s Marina LLC,	)	C/A No. 2021-CP-07-01085
)	
	)	<i>Plaintiff,</i>
)	
Versus	)	STIPULATION OF DISMISSAL OF
	)	DEFENDANTS SECURITAS SERVICES,
	)	INC., AND MIKE MORALES
R.V. Resort and Yacht Club Owners’)	
Association, Inc., Securitas Services, Inc.,)	
Mike Morales, and Sunset, Inc.)	
)	
	)	<i>Defendants.</i>

The Plaintiff does hereby agree and consent to the DISMISSAL of its complaint, with prejudice, against the Defendants Securitas Services, Inc. and Mike Morales only in the above-captioned matter with each party to bear its own attorney’s fees and costs. Further the Defendants Securitas Services, Inc. and Mike Morales agree to dismiss any and all crossclaims including any possible claims against the remaining above-named Defendants.

Submitted this 17th day of March, 2025.

WE CONSENT FOR DEFENDANTS
Securitas Services, Inc., and Mike Morales:

WE CONSENT FOR THE PLAINTIFF:

/s/ Evan M. Sobocinski
Jennifer F. Nutter (69348)
jennifer.nutter@hoodlaw.com
Evan M. Sobocinski (SC #104259)
evan.sobocinski@hoodlaw.com
HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Ph: (843) 577-4435 / Fax: (843) 722-1630

/s/ Thomas C. Taylor
Thomas C. Taylor (5499)
Tom@ThomasTaylorLaw.com
Law Office of Thomas C. Taylor, LLC
P.O. Box 1808
Bluffton, SC 29910
Ph: 843-785-5050 / F: 843-785-5030

WE CONSENT FOR DEFENDANT
R.V. Resort and Yacht Club Owners' Association,
Inc.:

/s/ Christopher D. Lizzi
Christopher D. Lizzi (64325)
lizzlaw@aol.com
Lizzi Law Firm, PC
2170 Ashley Phosphate Rod, Suite 402
Charleston, SC 29406
P: 843-797-0222/F: 843-797-0202

WE CONSENT FOR THIRD-PARTY
DEFENDANT, *Sunset, Inc. d/b/a Sunset Grille:*

/s/ Russell P. Patterson
Russell P. Patterson (4375)
russell@russellpattersonlaw.com
Russell P. Patterson, PA
P.O. Box 8047
Hilton Head Island, SC 29938
843-341-9300

NOTICE OF APPEAL IN A CIVIL CASE

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

Case No. 2021-CP-07-01085

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

v.

Turner's Marina, LLC, Appellant.

NOTICE OF APPEAL

Turner's Marina, LLC, appeals the following orders of the Honorable Marvin H. Dukes III:

- 1) Order Granting Defendants' Motion to Enforce Settlement as to Amended Easement dated and received August 5, 2024;
- 2) Order Ruling on Plaintiff's and Defendants' Motions to Enforce Settlement Agreement dated and received August 5, 2024;
- 3) Order Denying Plaintiff's Rule 59(e), SCRCPC dated and received April 25, 2025; and
- 4) Order Denying Plaintiff's Motion to Set Aside Settlement Agreement Due to Mutual Mistake dated and received April 25, 2025.

May 23, 2025.

Alford Law Firm, LLC
s/Gregory M. Alford
Gregory M. Alford
Post Office Box 8008
Hilton Head Island, SC 29938
(843)842-5500
Attorney For Appellant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2021-CP-07-01085
)	
TURNER’S MARINA LLC,)	
)	
Plaintiff,)	
)	
vs.	)	ORDER DENYING PLAINTIFF’S
	)	RULE 59(e) <u>SCRCP</u> MOTION
)	
R.V. RESORT AND YACHT CLUB)	
OWNERS’ ASSOCIATION, INC.,)	
SECURITAS SERVICES, INC.,)	
MIKE MORALES, and SUNSET, INC.,)	
)	
Defendants.)	
_____)	

This matter comes before me upon the Plaintiff’s Rule 59(e) Motion to Alter or Amend Orders Dated August 5, 2024. (“Motion”). In response to the Motion, the Defendants filed on or about January 17, 2025, the R.V. Resort and Yacht Club Owners’ Association, Inc., and Sunset Inc.’s Memorandum of Law Opposing Plaintiff’s Rule 59(e) SCRCP, Motion (“Defendants’ Memorandum of Law.”) A hearing was held on the 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 for the Defendant, R.V. Resort and Yacht Club Owners’ Association, Inc. (“POA”) and Russell P. Patterson for the Defendant Sunset, Inc. (“Sunset”). After careful and due consideration of the Motion, Defendants’ Memorandum of Law, and oral arguments of counsel, for the reasons discussed below, the Court denies said Motion.

A. August 5, 2024 Order to Enforce Settlement Agreement (Amendments to Lease- Armed Guards/Gates)

Plaintiff’s Motion lists three (3) separate claimed errors in connection with this Order dealing with the Court’s findings and conclusions on “Business Hours”, claim of control of additional properties, and the use of the pool. This Court finds and concludes its August 5, 2024 Order properly disposed of these issues.

B. August 5, 2024 Order to Enforce Settlement Agreement as to Amended Easement

Plaintiff's Motion lists three(3) grounds for the Court to reconsider its Order as to the Amended Easement. The Plaintiff's argument that the language in the Order is inconsistent with the language in § 9 of the Settlement Agreement is adequately addressed in the Court's first Order and no further discussion is necessary.

Plaintiff's second ground of its Motion asserts the Court's Order effectively grants a license to the Defendants to loiter upon the Plaintiff's business property "... when the law of easements in South Carolina provides that an easement is for moving across property to a defined exit point." Although the Plaintiff does not cite any legal authority in its Motion, based on the oral arguments, the Court understands the Plaintiff is asserting that the Amended Easement does not meet the *terminus* requirement of an appurtenant easement. The elements for an appurtenant easement are as follows:

1. the easement must inhere in the land;
2. concerning the premises;
3. **have one terminus on the land of the party claiming it; and**
4. being essentially necessary to the enjoyment thereof.

Shia v. Pendergrass, 222 S.C. 342, 351, 72 S.E.2d 699, 703((1952); *Windham v. Riddle*, 381 S.C. 192, 202, 672 S.E.2d 578 (2009). There is no question that the Amended Easement approved by the Court terminates on property owned by the POA. In fact, the Amended Easement terminates not in one(1) location on POA property, but in two (2) locations, as discussed below.

The POA owns two (2) separate parcels of land separated by Plaintiff's 1.43 acres parcel. The Amended Easement allows the POA and its members, guests, and invitees to go from one parcel it owns to the other, and to the public road. The POA owns 4.46 acres, as shown in the shaded area on Plat Book 57 at Page 168(Exhibit 4 to Defendants' Memorandum of Law) pursuant to the September 9, 1996 deed from Ora of Carolina, as recorded in Deed Book 893

at Page 671 (Exhibit 5 to Defendants' Memorandum of Law) . As noted above, the Plaintiff owns Parcel B, 1.43 acres per PB 57 P 168. Attached as Exhibit 6 to Defendants' Memorandum of Law is a color-coded plat showing the ownership of the three(3) parcels in questions. § 2(c) of the Amended Easement (Exhibit 1 to Defendants' Memorandum of Law) clearly states the easement over Parcel B , owned by the Plaintiff, is as follows:

“2(c) The 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.”

The POA owns property at the end of the easement in both directions- not just one. The requirement of a terminus under *Shia* and *Windham* is thus met.

In addition, the Court finds and concludes that the language of §9 of the Settlement Agreement simply expanded the scope of the easement over the Plaintiff's land and did not in reality create a new easement. The original 1984 Easement (DB 397 P 1611) provided a permanent, non- exclusive right-of-way over and across the “**paved roads**” on Plaintiff's property, consisting of 1.4 acres. The original 1984 Easement made it clear that the POA and its members had the right to use only the **paved roads** on Plaintiff's property to access not only the roads within the RV campground area, but the tennis courts, recreational building and all other property in the entire development show on PB 29 P 184 (Ex. 8 to the Defendants' Memorandum of Law). As set forth in the Sibley Affidavit, to resolve prior disputes and allegations by Plaintiff of a claimed trespass against the POA and its members, (i.e. POA members who were not always using the paved roads), the scope of the easement was expanded in the Settlement Agreement to allow for said easement rights to cover the entirety of the Plaintiff's 1.4-acre parcel-

not just the paved roads.(Sibley Aff. §3). Just as in the original 1984 Easement, the Amended Easement has “end points” to the POA’s roadways around the RV lots to the South of Plaintiff’s parcel and the POA’s 0.83-acre Parcel A to the North. The only substantive change made by the Settlement Agreement is the easement is no longer limited to “paved roads.”

The final ground of Plaintiff’s Motion is its objection to wording in the Court’s Order which states Plaintiff was involved with drafting of the Amended Easement. With the consent of the Defendants, Section 14 of the Amended and Restated Easement, attached as Exhibit 1 to the Court’s Order of August 5, 2024, is deleted. In its place, the following is inserted.

“14. Intentionally Blank.”

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 11:26:55 page 5 of 5

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2021-CP-07-01085
)	
TURNER’S MARINA LLC,)	
)	
Plaintiff,)	
)	
vs.	)	ORDER DENYING TURNER’S
	)	MOTION TO SET ASIDE
	)	SETTLEMENT AGREEMENT
	)	DUE TO MUTUAL MISTAKE
R.V. RESORT AND YACHT CLUB)	
OWNERS’ ASSOCIATION, INC.,)	
SECURITAS SERVICES, INC.,)	
MIKE MORALES, and SUNSET, INC.,)	
)	
Defendants.)	
)	

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

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

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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

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

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STATE OF SOUTH CAROLINA)
) **AMENDED AND RESTATED EASEMENT**
COUNTY OF BEAUFORT)

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

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 Grantee and Grantor, 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: _____

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: _____

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

Electronically signed on 2024-08-05 09:08:29 page 10 of 10

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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

)

)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the within R.V. Resort and Yacht Club Owner's Association, Inc., 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

)

ACKNOWLEDGMENT

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COUNTY OF BEAUFORT

)

I, the undersigned Notary Public, do hereby certify that the within Sunset, Inc., 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: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **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: _____

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, 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 signature]
[Handwritten signature]
Edward M. Hyde

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

By: *[Handwritten signature]*

By: _____

WITNESSES:

A. Sullivan
Edward M. Hill

LESSEE:

OUTDOOR RESORT, R.V. RESORT
AND YACHT CLUB

By: [Signature]

By: _____

RECORDED THIS 22nd DAY
OF June 1981
IN BOOK 70 PAGE 717

FILED AT	BEAUFORT COUNTY S. C.	RECORDED IN BOOK
2:00		325
O'CLOCK	JUN 18 1981	PAGE
P. M.		920

CLERK OF COURT OF COMMON PLEAS

FILED BY Mary Ann Graubert
AUDITOR, BEAUFORT COUNTY, S. C.

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

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 Outdoor 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 Outdoor Resorts, R.V. Resort and Yacht Club in Deed Book 325 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 to 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 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 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 our hand and seal of the 25th day of October, 1981.

WITNESSES:

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

Edward M. Dyer
Edward M. Dyer

By: *[Signature]*
[Name]

EXHIBIT 2

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EXHIBIT A

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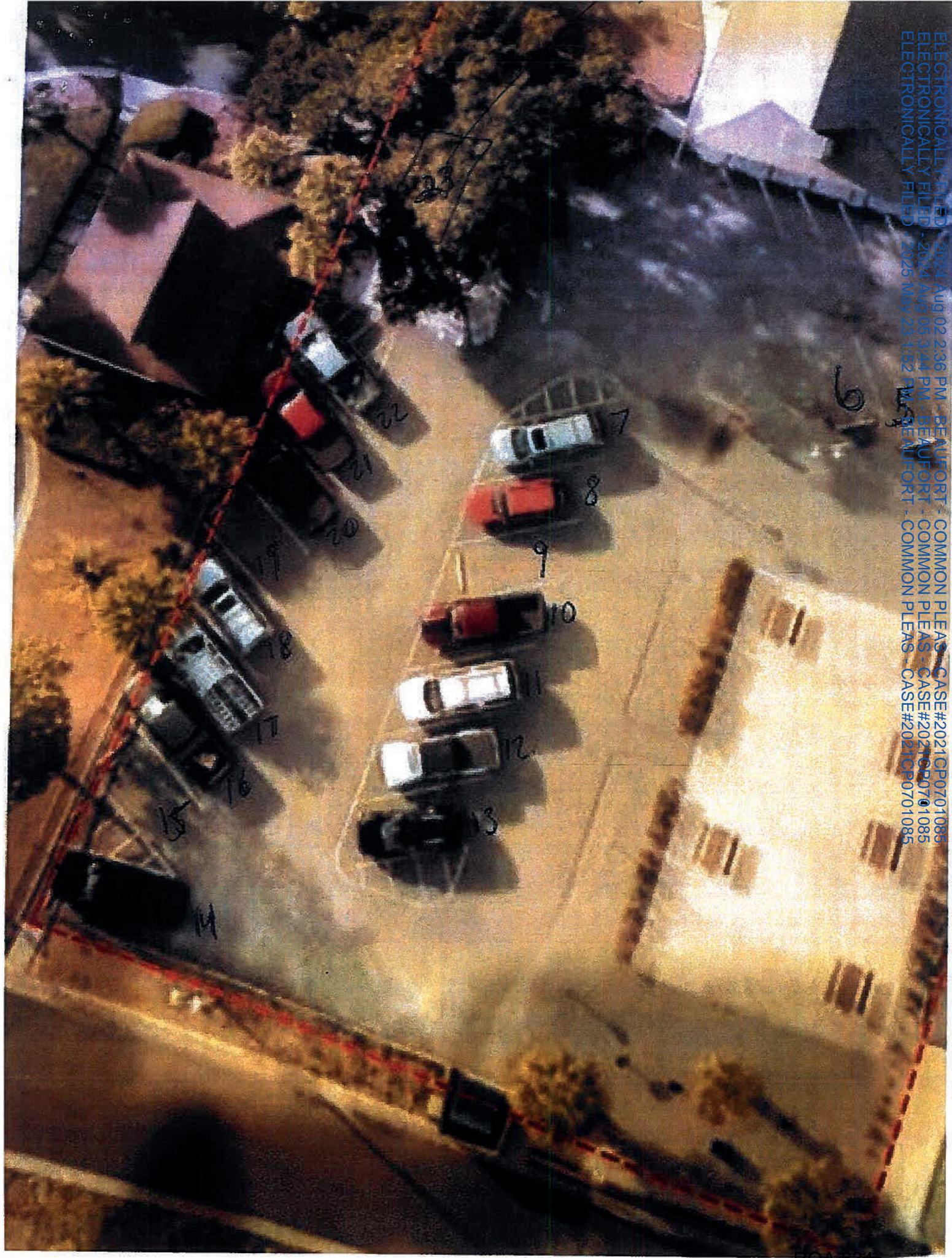


Exhibit C

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 (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.

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EXHIBIT

1

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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 (\$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.

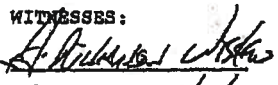
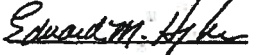
20. Whenever a provision is made for notice of any kind under this Lease, it shall be deemed sufficient notice and service thereof if such notice to either party is in writing, addressed to such party at its last known address and sent by certified mail with postage prepaid.


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

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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:



LESSOR:
R.V. RESORT AND YACHT CLUB
OWNERS' ASSOCIATION
By: 
By: _____

WITNESSES:

A. J. ...
Edward M. ...

LESSEE:

OUTDOOR RESORT, R.V. RESORT
AND YACHT CLUB

By: *[Signature]*

By: _____

RECORDED THIS 23rd DAY OF June 1981 IN BOOK MD PAGE 717 FEES Manuel Ann Graybe
JUDITOR, BEAUFORT COUNTY, S. C.

FILED AT	BEAUFORT COUNTY S. C.	RECORDED IN BOOK
2:00		325
P M	JUN 18 1981	PAGE 920

CLERK OF COURT OF COMMON PLEAS *[Signature]*

ELECTRONICALLY FILED - 2024 JUN 18 11:36 AM BEAUFORT COMMON PLEAS CASE#2021CP0701085
ELECTRONICALLY FILED - 2024 Aug 05 3:44 PM - BEAUFORT - COMMON PLEAS CASE#2021CP0701085
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11/8/81

WITNESSES: } MODIFICATION OF LEASE AGREEMENT
COUNTY OF BEAUFORT }

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 Outdoor 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 Outdoor Resorts, R.V. Resort and Yacht Club in Deed 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 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 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 County of Beaufort, South Carolina, this 11th day of October, 1981.

WITNESSES:

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

Edward M. Dyer
Edward M. Dyer

By: *[Signature]*
By: _____

EXHIBIT 2