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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. 2026-000707
Case No. 2020-CP-07-00989

Turner's Marina, LLC

Respondent/Appellant,

v.

R.V. Resort and Yacht Club
Owners' Association, Inc.,,

Appellant/Respondent.

RESPONDENT/APPELLANT'S INITIAL BRIEF

ALFORD LAW FIRM, LLC

Gregory M. Alford (S.C. Bar No. 6932)

Post Office Drawer 8008

Hilton Head Island, South Carolina 29938

Telephone: (843) 842-5500

gregg@alfordlawsc.com

Attorneys for Respondent/Appellant

Turner's Marina, LLC

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RECORDED INSTRUMENTS

Declaration of Covenants and Restrictions for Outdoor Resorts, R.V. Resort and Yacht Club (June 12, 1981), Beaufort County R.M.C. Book 325, Page 920 - Preamble; Articles I (§ 1.13), VII, VIII (§§ 8.1, 8.8, 8.9, 8.10, 8.11), X, XII (§ 12.4), XIII, XIV	
By-Laws of R.V. Resort and Yacht Club Owners' Association, Inc. (Declaration, Exhibit "B") - Articles IV (§ 11(d), (j)), VIII (§§ 1, 3, 4, 5), X, XVI (§§ 1, 2, 3, 4)	

STATEMENT OF ISSUES ON APPEAL

Turner's Marina is dissatisfied with the Association's statement of the issues and states them as follows. Rule 208(b)(1)(B), (b)(2), SCACR.

A. Issues Raised by the Association, Restated

1. Whether the Covenants impose on the Association an affirmative duty to enforce the Declarant's rental rights and the occupancy restrictions, including the prohibition against any structure or vehicle "**used as permanent living quarters**" and whether the Association may take a litigation position contrary to that express obligation.
2. Whether the prior *BillyBob's* judgments, applied to both parties, confirm that the 1981 Covenants are valid and enforceable as written rather than establishing that any provision of Article VIII has been abandoned.
3. Whether Section 8.10 entitles Turner's Marina, as successor Declarant, to enforce the Covenants without authorization from the Association's Board, and whether Section 8.9 subjects Common Element rules to the Declarant's approval.
4. Whether travel trailers commonly called "fifth wheels" are "travel trailers" under Article 8.1.
5. Whether the evidence supports the denial of the Association's seven counterclaims and its request for fees.

B. Issues on Cross-Appeal

6. Whether the Master erred in decreeing the Article 8.1 length and width restrictions "unenforceable because of laches and . . . judicially declared an abandoned provision of the Covenants," where waiver and abandonment were never pleaded, where Article X(d) provides that a failure to enforce "shall not constitute a waiver

of the right to do so thereafter,” where Articles VII and XIII permit modification only by three-fourths vote and the Declarant’s written consent, where the Association is precluded by the judgment it invokes, and where no prejudice to the Association was proved.

7. Whether the Master exceeded his equitable authority by writing into the Declaration a 48-hour biannual clearance requirement, a 48-hour notice requirement, and a 10-day storage limitation, none of which appears in the instrument.
8. Whether the Master erred in imposing a fiduciary duty running to non-party Lot Owners and in ordering cancellation fees divided as “rental.”
9. Whether the Master erred in denying Turner’s Marina its costs and fees as prevailing party without the findings South Carolina law requires.
10. Whether the Master erred in adjudicating the applicability of Beaufort County ordinances in an action to which the County was not a party.

STATEMENT OF THE CASE

A. The Overriding Intent of the Covenants

“Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document.” *S.C. Dep’t of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). “The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution.” *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006).

One need look only to Article VII of the Covenants themselves to ascertain one of the primary intentions of the Declarant:

“The Association and Lot Owners recognize and hereby specifically agree to the rights granted to the Developer herein, which rights being exclusive in nature essential to the preservation of the integrity of the overall rental program administered by the Developer. The Association and Owners being cognizant of the need for consistent administration and uniform promotion and maintenance of the Developer’s image as a leader in the recreation vehicle industry, hereby acknowledge that the right of the Developer set forth in this Paragraph **constitutes the essence of the Developer’s agreement with the Association** as set forth in this Declaration. The Association and Owners further recognize that **the intention of this Declaration is to create and maintain a luxury recreation vehicle resort in which there are not permanent or semipermanent structures on Lots and in which the Lots, in the absence of use by the Owner or his designated and approved guest, are to be made available for rental by the Developer** as set forth above.”

That intention is not left to the Developer alone to vindicate. The Association was created to enforce it. The Declaration’s opening recitals state that the Developer “deems it desirable, for the efficient preservation of the values and amenities in said property to create an Association to which should be delineated and assigned the power and authority of maintaining and administering the Common Properties **and administering and enforcing the covenants and restrictions** governing the same.” (Covenants, Preamble.) The Master put the same point in a sentence: the

Association “exists for the sole purpose of administering the resort and enforcing the resort’s Master Deed or Declaration of Covenants and Bylaws.” (Order at 6; R. p. ____) (citing *Spur at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. 72, 781 S.E.2d 115 (Ct. App. 2015)).

And the mantra is repeated in the final Article of the Covenants, which provides:

“XIV The Association, Lot Owners and Developer specifically acknowledge hereby **the intent of this Declaration to include the creation and maintenance of a luxury resort for the camping public**, pursuant to the provisions of this Declaration. Accordingly, the Association hereby acknowledges and agrees to assume and carry out its **affirmative duty**, both now and after control of the Association has been turned over from the Developer to the Lot Owners, **to maintain the integrity of the Property including enforcement of the Developer’s rental rights and the occupancy restrictions** including the prohibition against the erection or placing on any Lot **of any structure or vehicle designed or used as permanent living quarters.**”

The same intent is stated again at the opening of the use-and-occupancy Article: “It is the specific intent of this Declaration to create and maintain a luxury resort for recreation vehicles and to prohibit permanent or semi-permanent structures as well as any structure or vehicle which is used as, or designed for use as, **permanent living quarters** on any Lot.” (Covenants § 8.1.) And Article VII forecloses any dilution of the bargain it describes: “This entire paragraph is not subject to amendment in any way whatsoever without the prior written consent of the Developer.”

Two features of the instrument deserve emphasis. The Association’s enforcement function frames the entire Declaration: it is announced in the opening recitals and it is the subject of the closing Article. And the drafters ended the Declaration, the last words of its last sentence, immediately above the signature and seal, on the prohibition they evidently regarded as the one most in need of protection: “**or used as permanent living quarters.**” Whatever else the parties to this instrument disagreed about in 1981, they placed the Association’s affirmative duty to enforce the Developer’s rental rights and the occupancy restrictions in the position of a final, summarizing covenant.

It is through the lens of original intent that this Court is required to interpret the Covenants.

Read through that lens, the Declaration's parts are interdependent. A resort of transient campers is what makes an exclusive rental program possible; the rental program is what the Developer bargained for and what Article VII calls the essence of the agreement; and the Association's affirmative duty under Article XIV is the mechanism by which both are preserved. Remove the size restrictions and vehicles approach the scale of the mobile homes Article 8.1 was written to exclude. Remove the occupancy restrictions and the Lots are occupied rather than available. Relieve the Association of its affirmative duty and nothing enforces either. The Master found the intent precisely: "The Covenants are clear in showing that the intention of the original Developer in creating the R.V. Resort 200 lot campground, was to create and maintain a transient, luxury resort for the camping public, and that the Developer intended to preserve its exclusive rental rights over the 200 lots when the Owners were not using them. The Developer and the Covenants intended for the prohibition against any structure or vehicle being used as permanent living quarters to be enforced." (Order at 13; R. p. ____.) Turner's Marina asks only that the Covenants be given the effect the Master found they were intended to have.

B. The Property and the Operative Provisions

Outdoor Resorts, R.V. Resort and Yacht Club (the "Developer" or "Declarant") developed a 200-lot recreational vehicle resort on Jenkins Island, Hilton Head Island, and on June 12, 1981 recorded a Declaration of Covenants and Restrictions in Beaufort County R.M.C. Book 325, Page 920. (Order at 1; Pl. Ex. 1; R. p. ____.) The Supreme Court confirmed the 1981 Covenants as controlling in *RV Resort & Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc.*, 386 S.C. 313, 688 S.E.2d 555 (2010).

Beyond the provisions quoted above, four operative terms govern this appeal. **Article VII** fixes the economics of the rental program: the Developer retains fifty percent of “the gross amount of rental collected on any Lot,” with the remainder to the Lot Owner, and as partial consideration “shall undertake an advertising program to promote the rental of said Lots.” **Section 8.1(b)** prohibits “travel trailers longer than thirty-five (35) feet or wider than eight (8) feet in their fully installed condition (which eight (8) feet includes tipouts or slideouts) . . . notwithstanding that any county, state or federal government or agency identifies or licenses such trailers prohibited hereunder as ‘recreation vehicles.’” **Article X(d)** provides that “[t]he failure of the Developer, the Association, or any Lot Owner to enforce any covenant, restriction of this Declaration . . . shall not constitute a waiver of the right to do so thereafter.” And **Section 13.1** permits amendment of the Declaration only by the affirmative vote of three-fourths of the Lot Owners and “the expressed written consent of the Developer.”

The By-Laws are attached to the Declaration as Exhibit “B” and “thereby made a part hereof.” (Covenants § 1.13.) Four of their provisions bear on this appeal. **Article IV, Section 11(j)** empowers the Board “[t]o enforce by legal means the provisions of the Declaration, the Articles of Incorporation, the By-Laws of the Association, and the rules and regulations for the use of the Property.” **Article VIII, Section 1** prescribes the enforcement procedure on a Lot Owner’s violation and provides that “[f]ailure on the part of the Association to maintain such an action at law or in equity within thirty (30) days from the date of a written request, signed by a Lot Owner, sent to the Board of Directors, shall authorize any Lot Owner to bring an action in equity or suit at law on account of the violation.” **Article VIII, Section 3** provides that in any proceeding “brought by the Association, Developer or another Lot Owner to enforce the provisions of the Declaration, the By-Laws or any rules and regulations promulgated thereunder arising because of an alleged

default by a Lot Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the court," and adds that "[t]his provision may not be amended without written consent of the Developer." And **Article VIII, Section 4**, captioned "No Waiver of Rights," provides that the failure of the Association, the Developer or a Lot Owner "to enforce any right, provision, covenant or condition which may be granted by the Declaration and these By-Laws shall not constitute a waiver of the right . . . to enforce such right, provision, covenant or condition of the future."

C. The Prior Litigation

In 2000 the Association and seven owners sued BillyBob's Marina, Inc., which had acquired the Developer's rights in 1999. Special Referee Thomas Kemmerlin, Jr., sitting with finality, entered a thirty-one page order on March 19, 2004 and a Final Order of Judgment on June 28, 2006 incorporating it verbatim and awarding \$264,919.05. (Pl. Ex. 6; R. p. ____.)

The Association obtained holdings that the 1981 Covenants are "the only Covenants which are currently valid and applicable" (Kemmerlin Order ¶ 24; R. p. ____); that Article VII confers the exclusive rental right and the fifty percent split (*id.* ¶ 25(A); R. p. ____); that Section 8.1 contains "specific provisions regarding the length, width, and height of recreational vehicles which are permitted to be placed on lots" (*id.* ¶ 25(B); R. p. ____); that Section 8.10 and Article X authorize enforcement and fees (*id.* ¶¶ 25(D), (F); R. p. ____); and that the Developer's assignee takes the Developer's "rights **and obligations**" (*id.* ¶ 43; R. p. ____). Critically, the Referee held that the predecessor Declarant **violated** the Covenants by "[a]dopting and publishing to others a rule that vehicles 40 feet in length with two-le[ft] side slide-outs may be kept on lots," and by "[f]ailing to make any effort to ensure that vehicles and trailers belonging to renters are in compliance with the

restrictions set forth in the Covenants.” (*Id.* ¶¶ 45(G), (J); *see also id.* ¶ 33; R. p. ____.) The Association sued to compel enforcement of the size restrictions, and won.

This Court affirmed in part and reversed in part, reversing only the fee award, Op. No. 2007-UP-556 (S.C. Ct. App. filed Dec. 14, 2007), and the Supreme Court reversed as to certain fees, 386 S.C. 313, 688 S.E.2d 555 (2010). A second action produced an unpublished opinion affirming Special Circuit Court Judge Ellis B. Drew, Jr., and holding that “[t]he Covenants do not place any limit on the amount of time owners may use or occupy their lots” where, as there, the owners “own travel trailers that are not restricted by the Covenants.” *BillyBob’s Marina, Inc. v. Blakeslee*, Op. No. 2008-UP-332 (S.C. Ct. App. filed July 1, 2008). Neither appellate decision addressed the enforceability of the Article 8.1 size restrictions.

D. This Action and the Final Order

Turner’s Marina acquired the Declarant rights on December 21, 2017, demanded enforcement by letter beginning May 1, 2018, and the Association having declined filed this declaratory judgment action on May 1, 2020. (Order at 12; Trial Tr. Day 1, pp. 36, 104; Day 2, pp. 7, 12; Pl. Ex. 2; R. p. ____.) The Association answered with seven counterclaims. The case was referred to the Master in Equity with finality on August 19, 2021. By Amended Order for Summary Judgment of November 8, 2022, the Master held Turner’s Marina the lawful owner of the Declarant Rights. Trial consumed nine days and produced a 1,711-page transcript; the Master directed verdicts against two counterclaims and declared Turner’s Marina’s exclusive right to operate the rental program. (Order at 1–3; Trial Tr. Day 7, pp. 37–44; R. p. ____.)

The Final Order, entered October 17, 2025, granted Turner’s Marina the substance of its case. It declared that Turner’s Marina may enforce the Covenants “without the approval of the Board of Directors”; that the Association “must enforce the written terms and conditions of the

Covenants uniformly and consistently”; that fifth wheels are travel trailers under Article 8.1; that use of any structure or vehicle as permanent living quarters is prohibited; that Common Element rules require Declarant approval under Section 8.9; that the Association “may not adopt Rules nor Regulations in contravention of the Declaration”; and that Turner’s Marina may register Owners’ approved guests. (Order at 9, 15–16, 18–21; R. p. ____.) It denied all seven counterclaims. (Order at 22–28; R. p. ____.)

Four rulings are cross-appealed. The Master decreed that “[t]he length and width restrictions on travel trailers (including 5th wheels) in Article 8.1 . . . are unenforceable because of laches and, is judicially declared an abandoned provision of the Covenants” (Order at 15; R. p. ____), while acknowledging that “the YCOA never raised ‘waiver’ or ‘abandonment’ as an actual defense in its Answer” (Order at 12; R. p. ____). He created three numerical rules absent from the Declaration: a 48-hour biannual clearance requirement, a 48-hour owner notice requirement, and a rule that “[n]o recreational vehicle shall be left upon any Lot for more than ten (10) days without being used for regular overnight accommodations.” (Order at 14–15; R. p. ____.) He found a fiduciary duty running from Turner’s Marina to individual Lot Owners and directed that cancellation fees be “considered as a portion of the rental fees in the future, and split with the Owner.” (Order at 23; R. p. ____.) And, finding that “both . . . have prevailed on certain of their claims,” he held “equitably both sides should absorb their own attorney’s fees and costs,” without findings. (Order at 28; R. p. ____.) He also declared Beaufort County Code § 78-68(c) enforceable and § 4.1.190 inapplicable, though the County was not a party. (Order at 16–17; R. p. ____.)

Both parties moved under Rule 59(e). The Master heard argument November 25, 2025 and denied both motions by Form 4 Order received February 12, 2026. The Association appealed March 16, 2026; Turner’s Marina cross-appealed March 17, 2026.

STANDARD OF REVIEW

An action to enforce restrictive covenants by injunction is in equity, and this Court may find facts in accordance with its own view of the preponderance of the evidence, while recognizing that the trial judge was better positioned to assess credibility. *Cedar Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct. App. 2006); *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010).

Construction of an unambiguous restrictive covenant is a question of law reviewed de novo, *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006), as is whether a court sitting in equity had authority to enter the relief granted, *Lowcountry Open Land Trust v. Charleston Southern University*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). This Court may affirm on any ground appearing in the Record. Rule 220(c), SCACR.

ARGUMENT

PART ONE: RESPONSE TO THE ASSOCIATION'S ISSUES

I. The Association's paramount obligation under the Covenants is to enforce the Declarant's rental rights and the occupancy restrictions, and it may not litigate to defeat what it covenanted to uphold.

The Association argued below that “[t]here is nothing in the covenants that says we have a duty or obligation” to enforce, and that “we don’t have an obligation for doing anything.” (Nov. 25, 2025 Hr’g Tr. 79:15–80:3; R. p. ____.) That position cannot be reconciled with the instrument. The duty is not implied, incidental, or inferred from structure. It is written, and written repeatedly.

The Declaration’s **opening recitals** create the Association and assign it “the power and authority of maintaining and administering the Common Properties and administering and enforcing the covenants and restrictions governing the same.” **Article VII** records the Association’s agreement to the Declarant’s rental rights, which it “recognize[s] and hereby specifically agree[s]” are “exclusive in nature essential to the preservation of the integrity of the overall rental program,” and which it acknowledges “constitute[] the essence of the Developer’s agreement with the Association.” **Section 8.10** names the Association among those who “may bring any proceeding at law or at equity against the person violating or attempting to violate any such covenant or restriction.” **Article X** provides that a Lot Owner’s failure to comply “shall entitle the Association . . . to the following relief,” and empowers the Association to “enforce this Declaration, By-Laws, rules and regulations.” The **By-Laws**, made part of the Declaration by Section 1.13, empower the Board “[t]o enforce by legal means the provisions of the Declaration, the Articles of Incorporation, the By-Laws of the Association, and the rules and regulations for the use of the Property,” (By-Laws art. IV, § 11(j)); direct that on a Lot Owner’s violation the Association “shall have the right to treat such violation as an intentional and inexcusable and material breach” and may elect an action at law, “an action in equity to enforce performance on

the part of the Lot Owner,” or an action “for such equitable relief as may be necessary under the circumstances, including injunctive relief,” (*id.* art. VIII, § 1); and impose on every Lot Owner the obligation to “obey said rules and regulations and . . . use their best efforts to see that they are faithfully observed,” (*id.* art. XVI, § 3). And **Article XIV**, the final Article, states the obligation in terms and calls it by its name:

“[T]he Association hereby acknowledges and agrees to assume and carry out its **affirmative duty**, both now and after control of the Association has been turned over from the Developer to the Lot Owners, **to maintain the integrity of the Property including enforcement of the Developer’s rental rights and the occupancy restrictions** including the prohibition against the erection or placing on any Lot of any structure or vehicle designed **or used as permanent living quarters.**”

Those are the last words of the Declaration. The drafters did not bury the Association’s duty in a housekeeping clause; they closed the instrument with it and closed it on the prohibition against using any structure or vehicle as **permanent living quarters**. A covenant given that position in a document is not a nullity, and the Master did not treat it as one. He declared that the Association “is prohibited from conducting its business in derogation of the Covenants and must enforce the written terms and conditions of the Covenants uniformly and consistently,” (Order at 9; R. p. ____), and found that the Association “exists for the sole purpose of administering the resort and enforcing the resort’s Master Deed or Declaration of Covenants and Bylaws,” (Order at 6; R. p. ____). Those rulings should be affirmed.

The Association’s position in this litigation has been the opposite of the position its own covenant requires. Article XIV obliges it to enforce the occupancy restrictions; it declined to enforce them and then asked a court of equity to declare a part of them abandoned. Article VII obliges it to recognize the Declarant’s rental rights as exclusive and essential; it litigated for an unlimited right of storage that would leave those rights with little to operate on. A party that has

expressly covenanted to enforce a restriction should not be heard to argue that the restriction has ceased to exist, and should not profit in equity from its own failure to perform the duty the instrument assigns it. *See* Part Two, Sections VI.D and VI.E, below.

The Master's related declarations follow from the same text. Section 8.9 makes Common Element rules "subject to the right of the Developer to approve such rules and regulations," which Declaration 10 tracks. (Order at 19; R. p. ____.) Section 8.11 permits the Association to adopt other rules "which do not alter or are not in contravention of any of the foregoing provisions" without Developer consent; Declaration 12 states the express negative of that grant. (Order at 20; R. p. ____.) The two sections are complementary, and the Master gave each its office.

II. The prior judgments bind both parties, and so applied they support the Master's rulings.

The Association's central complaint is that the Master treated the *BillyBob's* judgments as "instructive" rather than binding. Turner's Marina does not quarrel with the premise and accepts that those judgments bind it as successor. What the Association cannot do is invoke preclusion selectively.

BillyBob's I is a declaration of the Covenants' validity, not of their partial invalidity. It holds the 1981 Declaration the only operative instrument, catalogues Section 8.1's "specific provisions regarding the length, width, and height of recreational vehicles," voids two attempted amendments by applying Section 13.1 as written, and binds the Declarant's assignee to the Developer's obligations. (Kemmerlin Order ¶¶ 24, 25(B), 43, 47; R. p. ____.) Far from treating non-enforcement as extinguishing the size restrictions, it treats non-enforcement as a *breach*: BillyBob's "did not enforce or require the enforcement of Covenant provisions including provisions regarding . . . that only vehicles of certain sizes and types would be allowed on lots," and its failure to police compliance was enumerated as a violation. (*Id.* ¶¶ 33, 45(J); R. p. ____.)

BillyBob's II answered a different question. Construing Section 8.1, this Court held that “[t]he Covenants do not place any limit on the amount of time owners may use or occupy their lots,” reasoning that the covenant “is intended to exclude mobile homes and permanent structures” rather than to limit occupancy, and noting that the owners there “own travel trailers **that are not restricted by the Covenants.**” *BillyBob's Marina, Inc. v. Blakeslee*, Op. No. 2008-UP-332 (S.C. Ct. App. filed July 1, 2008). Turner's Marina accepts that reading. But the holding is conditioned on the vehicle being one the Covenants do not restrict; it presupposes that Section 8.1's restrictions remain in force, and it cannot simultaneously be authority for their abolition. Rule 268(d)(2), SCACR, moreover, permits an unpublished opinion to be given effect in the proceeding it decided; it does not convert that disposition into a rule of decision on questions it never reached.

Applied evenhandedly, the prior judgments defeat the Association's abandonment theory. See Part Two, Section VI, below.

III. Turner's Marina may enforce the Covenants without the Board's permission.

Section 8.10 is unqualified: “If any person violates or attempts to violate any of the covenants or restrictions of this Declaration, **any Lot Owner, the Association or Developer** may bring any proceeding at law or at equity . . . and either prevent such Lot Owner from so doing or to recover costs of the suit and reasonable attorneys' fees.” Article X provides relief “in addition to other remedies provided in this Declaration,” and its subsection (a) empowers “[t]he Association, Developer and appropriate employees, pursuant to authorization from the Board of Directors,” to enforce. The Board-authorization phrase constrains the Association's own agents. Read as the Association would read it, it nullifies Section 8.10 and gives the Association a veto over enforcement directed at itself. Covenants are construed as a whole to give effect to the parties'

intent, *S.C. Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001), and no such intent can be inferred here. (Order at 22; R. p. ____.)

The By-Laws confirm the point twice over. Article VIII, Section 5 provides that all rights and remedies granted “to the Association, Developer or Lot Owner” are “cumulative,” that their exercise “shall not be deemed to constitute an election of remedies,” and that exercising one does not “preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted . . . by the Declaration, the By-Laws, or at law or in equity.” A scheme of cumulative remedies is not one in which a single clause silently conditions every other. And Article VIII, Section 1 supplies the answer to the Association’s theory on its own terms: where the Association is asked in writing to enforce and does not act within thirty days, its inaction “shall authorize any Lot Owner to bring an action in equity or suit at law on account of the violation.” The Covenants thus contemplate precisely what happened here, the Association was asked to enforce, beginning May 1, 2018; it did not; and enforcement passed to a party willing to undertake it. (Order at 12; Pl. Ex. 2; R. p. ____.)

IV. Fifth wheels are travel trailers under Article 8.1.

Covenant language carries “the plain and ordinary meaning attributed to it at the time of execution.” *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). The Master found that a “fifth wheel” names the hitch, not the trailer; that South Carolina statutes from 1985 through the 2017 recodification defined “travel trailer” to include fifth wheels; and that the Recreation Vehicle Industry Association, which both parties accepted as the standard, lists them as “5th wheel travel trailers.” (Order at 15–16; Pl. Ex. 10; Def. Ex. 3; R. p. ____.) Article 8.1 forecloses the contrary argument in terms, prohibiting oversized trailers “notwithstanding that any county, state or federal government or agency identifies or licenses such trailers prohibited hereunder as ‘recreation

vehicles.”” The Association conceded below that fifth wheels are permitted at the resort and asked only that the Master delete his explanation of the term. (Nov. 25, 2025 Hr’g Tr. 24:21–25:7; R. p. ____.) That identifies no reversible error.

V. The counterclaims failed for want of proof, and the Association is not a prevailing party.

A Rule 59(e) motion is not a vehicle for reargument, *Hickman v. Hickman*, 301 S.C. 455, 456–57, 392 S.E.2d 481, 482 (Ct. App. 1990), and “[a] party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial,” *Miller Construction Co. v. PC Construction of Greenwood, Inc.*, 418 S.C. 186, 206, 791 S.E.2d 321, 332 (Ct. App. 2016). The Association’s motion offered neither new evidence nor a change in law.

The abuse of process counterclaim failed because no recipient of a trespass notice and no deputy testified that any notice was ever issued. (Order at 22; R. p. ____.) The fiduciary duty counterclaim failed because the Covenants contain no provision creating such a relationship and because a fiduciary relationship “cannot be created unilaterally.” *Steele v. Victory Savings Bank*, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988); see *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990); (Order at 22; R. p. ____). The breach-of-covenant counterclaim failed on findings by the judge who heard nine days of testimony, including that Turner’s Marina “had the right under the recorded Covenants to decline” a proposed amendment, a right Articles VII and XIII confer expressly, and that several particulars are pending in the separate Lease Case, No. 2022-CP-07-01085. (Order at 26–27; R. p. ____.) The UTPA counterclaim failed for four independent reasons: no practice declared unlawful by S.C. Code Ann. § 39-5-20, no public interest, no unfair or deceptive conduct, and no ascertainable loss; and the Act permits an action “individually, but not in a representative capacity.” (Order at 27–28; R. p. ____); S.C. Code Ann. § 39-5-140(a). Any one ground sustains the ruling. Rule 220(c), SCACR.

The Association's fee request fails on the same record. A prevailing party is "one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue." *Heath v. County of Aiken*, 302 S.C. 178, 182–83, 394 S.E.2d 709, 711 (1990). The Association lost all seven counterclaims and the substance of the declaratory case. It prevailed on one unpleaded defense, which is the subject of the cross-appeal.

PART TWO: CROSS-APPEAL

VI. The decree that Article 8.1's size restrictions are unenforceable by laches and abandoned is error.

The Final Order's first decretal paragraph holds the length and width restrictions "unenforceable because of laches and, is judicially declared an abandoned provision of the Covenants." (Order at 15; R. p. ____.) That sentence does two things. It applies an unpleaded personal defense whose elements were not established and which the Declaration expressly disclaims. And it converts that defense into a declaration of *in rem* invalidity extinguishing a recorded servitude as to all 200 Lots, in perpetuity. Neither is available on this record.

A. Waiver and abandonment were never pleaded.

Rule 8(c), SCRCP, requires a party to plead affirmatively "estoppel, . . . laches, . . . waiver, and any other matter constituting an avoidance or affirmative defense." This Court has said so in terms: "Laches is an affirmative defense and must be pled." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004) (citing Rule 8(c), SCRCP). The Association pleaded none of them. The Master said so: "Although the YCOA never raised 'waiver' or 'abandonment' as an actual defense in its Answer, I find that the issue was raised at trail [sic] by the testimony of several YCOA witnesses." (Order at 12; R. p. ____.) Laches itself appeared only in the Association's closing memorandum of March 31, 2023. (*Id.*)

Trial by implied consent under Rule 15(b), SCRCP, requires that the parties understood the issue to be in the case. Testimony about vehicle sizes was Turner's Marina's own affirmative proof that many units exceed thirty-five feet or eight feet, and bore on the permanent-living-quarters claim. Evidence admissible on a pleaded issue does not, without more, inject an unpleaded affirmative defense.

B. Article X(d) forecloses the defense by contract.

Covenants are contractual. *McClellanville*, 345 S.C. at 622, 550 S.E.2d at 302. These parties addressed non-enforcement and fixed its consequence: “The failure of the Developer, the Association, or any Lot Owner to enforce any covenant, restriction of this Declaration . . . **shall not constitute a waiver of the right to do so thereafter.**” (Covenants, Art. X(d).) They said it a second time in the By-Laws, which Section 1.13 makes part of the Declaration. Article VIII, Section 4, captioned “No Waiver of Rights,” provides that the failure of “the Association, the Developer or of a Lot Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration and these By-Laws shall not constitute a waiver of the right . . . to enforce such right, provision, covenant or condition of the future.” The Final Order mentions neither provision. Its holding that the restrictions “have been abandoned” because the predecessor Declarant did not enforce them and Turner’s Marina did not fully enforce until September 1, 2020 (Order at 12; R. p. ____) describes the precise sequence both provisions say shall not constitute a waiver. Where an instrument twice addresses the consequence of non-enforcement and twice says the consequence is *not* waiver, a court applying the parties’ intent may not supply the opposite rule.

General principles are to the same effect. “[T]he violation of some of the restrictions by some of the purchasers of lots in the tract, without action by appellant, does not affect his right to enforce the restrictions against the respondents.” *Circle Square Co. v. Atlantis Development Co.*, 267 S.C. 618, 628–29, 230 S.E.2d 704, 708–09 (1976) (quoting *Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538 (1949)). An association does not waive enforcement by failing to police compliance where it acts once the issue is presented. *Spur at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. 72, 91–92, 781 S.E.2d 115, 125–26 (Ct. App. 2015). And acquiescence in minor violations does not surrender the right to object to substantial ones. *Kneale v. Bonds*, 317 S.C. 262, 265, 452

S.E.2d 840, 842 (Ct. App. 1994); *Gibbs v. Kimbrell*, 311 S.C. 261, 268, 428 S.E.2d 725, 729 (Ct. App. 1993).

C. The Declaration may be modified only by vote and written Declarant consent.

Section 13.1 requires “the affirmative vote of voting members casting not less than three-fourths (3/4) of the Lot Owners” and “the expressed written consent of the Developer.” Article VII adds that the rental paragraph “is not subject to amendment in any way whatsoever without the prior written consent of the Developer.” Special Referee Kemmerlin enforced Section 13.1 strictly, voiding the 1999 amendments for want of Developer consent and the 2000 amendments for want of the requisite vote. (Kemmerlin Order ¶¶ 24, 47; R. p. ____.) The Final Order accomplishes by decree what Section 13.1 forbids the owners to accomplish by supermajority: it strikes a recorded restriction with no vote and over the Declarant’s objection. Courts enforce covenants; they do not amend them. *Lowcountry Open Land Trust*, 376 S.C. at 407, 656 S.E.2d at 779 (quoting *Amick v. Hagler*, 286 S.C. 481, 485, 334 S.E.2d 525, 527 (Ct. App. 1985)) (courts “do not have the authority to alter contracts or to make new contracts for the parties”); *Taylor*, 332 S.C. at 4–5, 498 S.E.2d at 863–64 (declining to adjust a covenant’s dollar threshold for inflation); *Hardy*, 369 S.C. at 167, 631 S.E.2d at 543.

D. The Association is precluded and judicially estopped.

The Association urged below that the *BillyBob*’s judgments bind. They do, and they defeat it. In *BillyBob*’s I the Association sued the predecessor Declarant *for failing to enforce the size restrictions*, and obtained findings that non-enforcement of “provisions regarding . . . that only vehicles of certain sizes and types would be allowed on lots” was a breach (¶ 33; R. p. ____); that publishing “a rule that vehicles 40 feet in length with two-le[ft] side slide-outs may be kept on lots” violated the Covenants (¶ 45(G); R. p. ____); and that failing “to ensure that vehicles and

trailers . . . are in compliance with the restrictions” violated the Covenants (§ 45(J); R. p. ____). It obtained a declaration that the Declarant “must honor and adhere to the provisions of the Covenants” and a judgment of \$264,919.05. Those determinations were actually litigated and necessary to the judgment; they establish as between these parties that the size restrictions were live and enforceable and that non-enforcement was a breach, not an abandonment.

Judicial estoppel independently applies. *Cothran v. Brown*, 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004). The Association’s earlier position that the restrictions bound the Declarant and that a contrary 40-foot rule violated the Covenants is totally inconsistent with its present position that the same restrictions had been abandoned by non-enforcement; it prevailed on the first and collected on it. Turner’s Marina acknowledges that the doctrine is generally confined to inconsistent statements of fact, *Carrigg v. Cannon*, 347 S.C. 75, 82–83, 552 S.E.2d 767, 771 (Ct. App. 2001); the inconsistency here is factual at its core whether these restrictions were, during the relevant years, live obligations the Declarant was bound to enforce.

There is also a simpler estoppel, grounded in the instrument rather than in the prior litigation. The Association did not merely fail to enforce the size restrictions; it had covenanted to enforce them. Article XIV binds it to “assume and carry out its affirmative duty . . . including enforcement of the Developer’s rental rights and the occupancy restrictions”; the By-Laws empower its Board “[t]o enforce by legal means the provisions of the Declaration” (By-Laws art. IV, § 11(j)); and Article VII records its specific agreement that the Declarant’s rights are “exclusive in nature essential to the preservation of the integrity of the overall rental program.” A party to a contract may not accept the benefit of the bargain and then ask a court to extinguish the obligation it undertook. The Association’s request that Article 8.1 be declared abandoned asks precisely that: it asks the court to relieve it of a duty it promised to perform, on the strength of its own failure to

perform it. Article X(d) forecloses that result as a matter of contract, and equity should not supply what the contract denies.

E. The elements of laches were not established, and equity was misapplied.

Laches is “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done,” *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988), and the party asserting it must show “(1) delay, (2) unreasonable delay, and (3) prejudice,” *Emery*, 361 S.C. at 215, 603 S.E.2d at 602; *accord Kelley v. Kelley*, 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct. App. 2006). The burden of proof “is on the party who seeks to be protected by such a defense.” *Circle Square*, 267 S.C. at 628, 230 S.E.2d at 708. Turner’s Marina acquired the rights on December 21, 2017, demanded enforcement within five months, and sued within thirty. (Order at 12; R. p. ____.) That is diligence. The delay the Master relied on was the predecessor’s, from 2006 to 2017 (Order at 12; R. p. ____), a period in which, on the Association’s own prior judgment, non-enforcement was a breach.

Prejudice is the dispositive failure. The Association, not any individual Owner, is the defendant. It owns no recreational vehicle and occupies no Lot, and no evidence showed it would suffer any detriment from enforcement. Prejudice to non-parties is not prejudice to the party asserting the defense. As to owners who bought oversized units, they did so with record notice; South Carolina courts do not discharge a covenant because compliance has become financially inconvenient for one who purchased subject to it. *Spur*, 415 S.C. at 88–90, 781 S.E.2d at 124–25; *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 393, 680 S.E.2d 289, 291 (2009).

Changed conditions supply no alternative ground. A party seeking to annul a covenant on that basis “must show the change of conditions represented so radical a change that the original

purpose of the restrictive covenant can no longer be realized.” *Menne v. Keowee Key Property Owners’ Ass’n, Inc.*, 368 S.C. 557, 564, 629 S.E.2d 690, 694 (Ct. App. 2006); *accord Shipyard Property Owners’ Ass’n v. Mangiaracina*, 307 S.C. 299, 308–09, 414 S.E.2d 795, 801 (Ct. App. 1992). The Master found the opposite that the Covenants intended “a transient, luxury resort for the camping public” and that the **prohibition on permanent living quarters** was “intended . . . to be enforced.” (Order at 13; R. p. ____.) Where the essential purpose survives, so does the covenant.

Nor does *Buffington* support the decree. *Buffington* holds that an injunction does not issue as a matter of law upon a finding of violation; the remedy remains discretionary. 383 S.C. at 393, 680 S.E.2d at 291. That is a holding about *relief*. Laches bars a claimant; it does not extinguish a servitude. The distinction is not academic: declining an injunction leaves the restriction enforceable in the future and against other violators, while this decree erases it as to every Lot, forever, without a vote, without the Declarant’s consent, and with 199 Lot Owners absent. Finally, equity should not have been extended to this defendant. Unclean hands “precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *First Union National Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998). Article XIV made enforcement of the Declarant’s rental rights and the occupancy restrictions the Association’s affirmative duty, the obligation on which the Declaration closes, and its own counsel conceded that no one enforced the size restrictions for roughly two decades. (Nov. 25, 2025 Hr’g Tr. 75:25–76:3; R. p. ____.) The party asking equity to erase the restriction is the party the instrument charged with enforcing it.

Decretal paragraph 1 (Order at 15; R. p. ____) and the supporting findings (Order at 12–13; R. p. ____) should be reversed, and the Section 8.1(b) restrictions declared valid and enforceable.

VII. The Master exceeded his authority in writing three numerical rules into the Declaration.

The Final Order imposes obligations found nowhere in the recorded instrument: each Lot must be “cleared of the Owner or his/her guest’s Recreational Vehicle . . . for at least forty-eight (48) consecutive hours, a[t] least one time every 180 days,” with the vehicle “physically removed from the RV Resort”; the Owner must give “at least 48-hours’ notice prior to this 48-hour period”; and “[n]o recreational vehicle shall be left upon any Lot for more than ten (10) days without being used for regular overnight accommodations.” (Order at 14–15; R. p. ____.)

The Master was candid about the exercise, explaining that he was construing “these forty four year old, oft-conflicting Covenants to embrace today’s modern world and provide a workable framework for the operation in 2025” (Order at 13–14; R. p. ____), and acknowledging at the Rule 59(e) hearing that “some of it is arbitrary. Some of it was written from . . . an equity perspective trying to split the baby.” (Nov. 25, 2025 Hr’g Tr. 62:10–16; R. p. ____.) The impulse was understandable; the authority was absent. “Courts only have the authority to specifically enforce contracts that the parties themselves have made; they do not have the authority to alter contracts or to make new contracts for the parties.” *Lowcountry Open Land Trust*, 376 S.C. at 407, 656 S.E.2d at 779 (quoting *Amick v. Hagler*, 286 S.C. 481, 485, 334 S.E.2d 525, 527 (Ct. App. 1985)). So *Taylor* declined to adjust a covenant’s dollar threshold for inflation, 332 S.C. at 4–5, 498 S.E.2d at 863–64; *Hardy* declined to read a duration-extension power into an amendment clause, 369 S.C. at 167, 631 S.E.2d at 543; *McClellanville* declined to read an unstated prohibition into a deed restriction the drafter “could have effortlessly written,” 345 S.C. at 623–24, 550 S.E.2d at 303; and *Mangiaracina* declined to alter express fixed-assessment terms despite changed circumstances, 307 S.C. at 308–09, 414 S.E.2d at 801.

The intrusion here is greater, because the numbers displace rather than supplement the instrument. Article VII entitles the Declarant to rent each Lot “in the absence of use by the Owner or his registered and approved guest.” The Order substitutes a quantitative floor of forty-eight hours twice a year four days out of three hundred sixty-five, or roughly one percent of the calendar across 200 Lots. A right the Declaration calls “the essence of the Developer’s agreement with the Association” cannot survive that reduction. The 48-hour notice rule fails for the same reason and one more: having declared the rental program the Declarant’s exclusive province (Order at 3, 21; R. p. ____), the Order cannot consistently dictate its mechanics.

Turner’s Marina attacks the 10-day rule as well, though as written it operates in Turner’s Marina’s commercial favor, because it has no more textual basis than the others. What the Declaration supplies is Article VII’s own standard: a Lot is available for rental whenever it is not in use by the Owner or a registered and approved guest. An unoccupied vehicle parked on a Lot is not the Owner’s “use” of the Lot; were it otherwise, an Owner could defeat a ninety-nine-year rental right in perpetuity by leaving a vehicle in place. Section 8.1’s provision that the prohibition on visible personal property “shall not apply to any permissible vehicle or trailer which may be allowed to remain on the Lot even though not in use” addresses the aesthetic restriction; it is not a grant of a right to withhold a Lot from the rental pool and says nothing about Article VII.

The Association also asked the Master to strike the 48-hour and 10-day rules, arguing that no such language exists in the Covenants. (Nov. 25, 2025 Hr’g Tr. 22:1–8; 25:23–26:5; R. p. ____.) On the question of authority the parties agree; they differ only on what fills the space. The Association urges an unlimited right of storage no provision confers. Turner’s Marina urges the standard the Declaration states.

VIII. The fiduciary duty and the cancellation-fee split should be reversed.

Having correctly held that the Covenants create no fiduciary relationship between Turner's Marina and the Association (Order at 22; R. p. ____), the Master held in the next paragraph that they "create a fiduciary duty between the Developer's successor/assignee and the individual Lot owners" as to rentals, rental monies, and advertising. (Order at 23; R. p. ____.)

The reasoning that defeated the counterclaim defeats this holding. A fiduciary relationship arises where "one reposes special confidence in another," *SSI Medical Services*, 301 S.C. at 498, 392 S.E.2d at 792, and cannot be created by the unilateral action of one party, "[t]he other party must have actually accepted or induced the confidence placed in him." *Steele v. Victory Savings Bank*, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). The Master identified no covenant provision creating one and no evidence of confidence reposed and accepted. Article VII creates a bargained-for exclusive contractual right, reserved by the Declarant and acknowledged by the Association and the Owners. *Goddard v. Fairways Development General Partnership*, 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993), is not to the contrary. *Goddard* analogized a developer to a corporate promoter and imposed a duty arising from the **formation** of a planned unit development specifically, to convey common areas in good repair with sufficient funds to maintain them. It did not hold that a declarant who has reserved an arm's-length commercial right owes a continuing fiduciary duty to lot owners in exercising it.

The duty also runs to persons who are not before the Court. The individual Lot Owners are not parties, as the Master recognized in a different context. (Order at 12; R. p. ____.) A declaratory judgment creating a continuing fiduciary obligation to 200 absent persons adjudicates rights the pleadings did not present. And the practical effect is to subordinate an exclusive right to those against whom it is held: a fiduciary must prefer the beneficiary's interests, while Article VII gives Turner's Marina the exclusive right to set rates and administer the program. The Master found no

breach of the duty he created (Order at 23; R. p. ____), confirming that the declaration was unnecessary.

The cancellation-fee directive fails on the text. Article VII fixes the split by a defined measure, fifty percent of “**the gross amount of rental collected on any Lot.**” A cancellation fee is charged when no rental occurs, no Lot is occupied, and no Owner asset is used. The Master acknowledged “there is no guidance in the old Covenants as to this point” (Order at 23; R. p. ____); that is the answer, not the license. The Supreme Court construed this same provision in *RV Resort & Yacht Club Owners Ass’n, Inc. v. BillyBob’s Marina, Inc.*, 386 S.C. 313, 688 S.E.2d 555 (2010), holding the successor Developer not obligated as to charges never fixed by the Covenants or by a duly adopted Association regulation. A charge the Covenants do not define cannot be divided by decree.

IX. The denial of costs and attorney’s fees to Turner’s Marina was error.

The instrument contains three fee provisions, and the most specific was written for this case. **By-Laws Article VIII, Section 3** provides: “In any proceeding brought by the Association, Developer or another Lot Owner to enforce the provisions of the Declaration, the By-Laws or any rules and regulations promulgated thereunder arising because of an alleged default by a Lot Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney’s fees as may be determined by the court.” The drafters thought the provision important enough to armor it: “This provision may not be amended without written consent of the Developer.” **Article X(c)** of the Declaration is to the same effect, entitling “the prevailing party” to costs and fees “including in actions brought by the Developer to enforce such documents,” and **Section 8.10** permits the Developer to “recover costs of the suit and reasonable attorneys’ fees.” The Master denied fees to both sides in a sentence: because “both Turner’s Marina and the

Defendant Association have prevailed on certain of their claims,” he found “equitably both sides should absorb their own attorney’s fees and costs.” (Order at 28; R. p. ____.)

The premise is inconsistent with the Order’s dispositions. A prevailing party is one “prevailing on the main issue, **even though not to the extent of the original contention.**” *Heath*, 302 S.C. at 182–83, 394 S.E.2d at 711. Turner’s Marina obtained declarations as to its independent enforcement authority, the Association’s duty to enforce, the status of fifth wheels, the prohibition on permanent living quarters, the Declarant’s approval rights, the limits on Association rulemaking, and its exclusive right to operate the rental program and register guests, and defeated all seven counterclaims. The Association prevailed on one unpleaded defense.

Independently, the Order contains none of the required findings. Where a contract authorizes fees, the court “must make specific findings of fact on the record for each of the required factors.” *Griffith v. Griffith*, 332 S.C. 630, 646, 506 S.E.2d 526, 534–35 (Ct. App. 1998); *accord Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). The factors are those in *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). The absence of such findings required reversal of the fee award in the prior litigation between these parties; it requires reversal here. Turner’s Marina asks that the denial be reversed and the matter remanded for determination in light of this Court’s mandate.

X. The ordinance declarations should be vacated.

The Final Order declares Beaufort County Code § 78-68(c) “enforceable at the R.V. Resort” (Order at 16; R. p. ____) and § 4.1.190 “not applicable” (Order at 17; R. p. ____). Beaufort County was not a party. No ordinance was sought to be enforced, and no permit, citation, or zoning determination was before the Master; the County’s Zoning Director testified the County awaited the outcome of this litigation. (Trial Tr. Day 5, p. 34; R. p. ____.)

The declarations resolve no controversy between these parties and do not bind the entity whose ordinances they construe. The ground given for holding § 4.1.190 inapplicable was frankly equitable, “having set an equitable requirement that every Lot be cleared and rentable for at least forty-eight (48) consecutive hours at least once every 180 days, I further find that equity requires that I hold this . . . section inapplicable” (Order at 17; R. p. ____), and a court sitting in equity between private parties does not suspend a county ordinance. The two rulings are also in tension: the 48-hour clearance rule rests on the 180-day requirement of § 78-68(c) while the 60-day-in-90 limitation of § 4.1.190 is set aside, so the ordinance framework simultaneously supplies and yields to the Order’s central remedial term. The Association took the same position below. (Nov. 25, 2025 Hr’g Tr. 78:5–9; R. p. ____.)

The declarations at pages 16 and 17 should be vacated, leaving enforcement of the County’s ordinances to the County and leaving intact each Lot Owner’s obligation under Section 8.8 not to “commit or permit any nuisance, immoral or illegal act in or about the Property,” and the Association’s corresponding duty under Article XIV.

CONCLUSION

Turner's Marina, LLC respectfully requests that this Court **AFFIRM** the Final Order as to Turner's Marina's independent enforcement authority, the Association's duty to enforce, the status of fifth wheels, the prohibition on permanent living quarters, the Declarant's approval rights under Section 8.9 and the limits on Association rulemaking under Section 8.11, the exclusive right to operate the rental program and register approved guests, and the denial of the Association's counterclaims and fee request; **REVERSE** the decree that Article 8.1's length and width restrictions are unenforceable and abandoned, and declare them valid and enforceable; **STRIKE** the 48-hour clearance requirement, the 48-hour notice requirement, and the 10-day storage limitation, and hold Article VII applicable according to its terms; **REVERSE** the fiduciary-duty declaration and the cancellation-fee directive; **REVERSE** the denial of costs and fees and **REMAND** for findings under *Griffith*, *Blumberg* and *Glasscock*; **VACATE** the declarations concerning Beaufort County Code §§ 78-68(c) and 4.1.190; and grant such other relief as is just and proper.

Respectfully submitted,

Alford Law Firm, LLC

By: s/Gregory M. Alford

Gregory M. Alford

Post Office Box 8008

Hilton Head Island, SC 29938

(843)842-5500

Attorney For Respondent/Appellant

Hilton Head Island, South Carolina
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