IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

DCA CASE NO.: 3D2023-1616
L.T. CASE NO.: 2023-016774 CA 01

ANGELICA AVILA, NICOLAS BELLO, MARIA BEATRIZ GUTIERREZ, FRANAH VAZIR-MARINO, ROBERT H. MURPHY, JEFFREY ULMAN, SHARI ULMAN, LAZARO FRAGA, JACQUELINE FRAGA, and GEORGE GARCIA,

Appellants,
v.

BISCAYNE 21 CONDOMINIUM, INC., and TRD BISCAYNE, LLC,

Appellees.
_____/

UNOPPOSED MOTION FOR LEAVE TO APPEAR AS *AMICUS CURIAE* AND TO ACCEPT AS FILED *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLEES' MOTION FOR REHEARING, REHEARING *EN BANC*, AND CERTIFICATION OF QUESTIONS OF GREAT PUBLIC IMPORTANCE

Pursuant to Florida Rules of Appellate Procedure 9.300 and 9.370(c), the Florida Chamber of Commerce ("Florida Chamber") respectfully moves for leave to appear as *amicus curiae* and further respectfully requests that the Court accept as filed the attached *Amicus Curiae* Brief in Support of Appellees' Motion for Rehearing, Rehearing *En Banc*, and Certification of Questions of Great Public

Importance regarding this Court's opinion dated March 13, 2024 ("Opinion"). *See also Demars v. Vill. of Sandalwood Lakes Homeowners Ass'n, Inc.*, 625 So. 2d 1219, 1220 (Fla. 4th DCA 1993) (accepting a post-opinion amicus brief to address a motion for rehearing).

Interest of Amicus Curiae. The Florida Chamber is a not-for-profit corporation that serves as Florida's business advocate. It is the largest federation of businesses, local Chambers of Commerce, and business associations in Florida. This federation represents more than 150,000 member businesses with more than three million employees across the state and frequently appears as *amicus curiae* in litigation that is likely to impact its members. Although varied in purpose, all Florida Chamber members have this in common: their very existence will be imperiled if they cannot count on Florida's courts to contextually construe contracts—based on their actual terms—rather than to judicially rewrite them. The Florida Chamber is seeking leave to appear as *amicus curiae* on rehearing because the stakes of rightly resolving the issues that this Court overlooked and misapprehended to rewrite the contract in this case could scarcely

be higher for Florida's businesses and the contracts that sustain them.

Issues the Amicus Will Address and How Amicus Can Assist the Court. If this Court fails to revisit its Opinion in this case, the impacts will not be limited to the parties to the case, or even to the development industry. By departing from decades of precedent to rewrite the contract in this case, the Opinion will destabilize the development industry, which will in turn impact housing, jobs, and all of Florida's economy. Moreover, by reasonable extension, the Opinion's departure from contextualism will threaten all manner of Florida contracts and the businesses that count on them.

If granted leave to appear as *amicus curiae*, the Florida Chamber can assist this Court in understanding the key reliance interests that the Opinion fails to address by parting ways, as it does, with decades of precedent that demands the contextual interpretation of contracts. The Florida Chamber can further assist the Court in understanding three critical ways in which its Opinion departs from contextualism by: (1) rewriting the contract; (2) eschewing context for a bright-line rule for determining contractual intent; and (3) dismissing a crucial

provision of the contract as a "mere recital" in contravention of a whole-text construction.

Certificate of Consultation. The undersigned has communicated with counsel for the parties and is authorized to represent that Appellees consent to and Appellants do not oppose the Florida Chamber's filing of an *amicus curiae* brief.

WHEREFORE, the Florida Chamber respectfully requests leave to appear as *amicus curiae* and further respectfully requests that the Court accept as filed its attached *amicus curiae* brief.

Dated: April 2, 2024

Respectfully submitted,

/s/ Frank A. Shepherd

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CERTIFICATE OF SERVICE

I CERTIFY that on April 2, 2024, a true and correct copy of the foregoing was filed and served via the Florida Courts E-Filing Portal upon:

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Appellants,

v.

BISCAYNE 21 CONDOMINIUM, INC., and TRD BISCAYNE, LLC,

Appellees.

BRIEF OF *AMICUS CURIAE* FLORIDA CHAMBER OF COMMERCE IN SUPPORT OF APPELLEES' MOTION FOR REHEARING, REHEARING *EN BANC*, AND CERTIFICATION OF QUESTIONS OF GREAT PUBLIC IMPORTANCE

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Florida Chamber of Commerce ("Florida Chamber") is a not-for-profit corporation that serves as Florida's business advocate. It is the largest federation of businesses, local Chambers of Commerce, and business associations in Florida. This federation represents more than 150,000 member businesses with more than three million employees across the state and frequently appears as *amicus curiae* in litigation that is likely to impact its members. Although varied in purpose, all Florida Chamber members have this in common: their very existence will be imperiled if they cannot count on Florida's courts to contextually construe contracts—based on their actual terms—rather than to judicially rewrite them.

The Opinion in this case impacts the contracts and interests of the broad swath of residential and commercial real estate developer members of the Chamber. Developers rely on the courts to preserve the consistent and predictable legal regime that has remained in place for nearly fifty years since this Court's decision in *Kaufman v. Shere*, 347 So. 2d 627 (Fla. 3d DCA 1977). There, this Court recognized that condominium declarations may incorporate Florida's Condominium Act, chapter 718, Florida Statutes, not only as it exists

on the date a declaration is recorded, but also its future amendments. Here, by departing from *Kaufman* and by conflating voting rights with voting thresholds, this Court's Opinion rewrites the declaration and destroys contractual reliance interests. If this Court fails to revisit this Opinion, its impact will not be limited to the parties in this case, or even to the development industry. The Opinion will have immediate and far-reaching effects on the housing market overall—and hence all of Florida's economy.

Moreover, by reasonable extension of the Opinion, no contract is safe. In just a few lines of text and a single footnote, the Opinion rewrites the declaration of Biscayne 21, which is a contract, and dismisses a key provision as a mere recital. In doing so, the Opinion retreats from the Court's commitment to contextualist contract interpretation. Unless the Court grants the Appellees' motion, the consequences of its Opinion will extend well beyond condominium law and threaten contracts for all Florida businesses.

SUMMARY OF ARGUMENT

To survive, Florida's businesses count on courts to contextually construe their contracts. Before the issuance of this Opinion, this Court had firmly established itself as a contextualist court. But in a few lines of text and a lengthy footnote in this case, it shatters the contextualist lens through which all Florida contracts must be read. In doing so, the Opinion overlooks the key reliance interests that have for decades depended upon a consistent, contextualist interpretation of condominium declarations. And in upending those interests, the Opinion threatens Florida contracts in at least three ways: (1) it rewrites the contract; (2) it eschews context for a bright-line rule for determining contractual intent; and (3) it dismisses a crucial provision of the contract as a "mere recital" in contravention of a whole-text construction. Op. at 4-6 & n.2. The stakes of rightly resolving the issues that this Court has overlooked or misapprehended in rewriting the contract in this case could not be higher for Florida's businesses and the contracts that sustain them. Accordingly, the Florida Chamber respectfully requests that the Court grant Appellees' Motion for Rehearing, Rehearing *En Banc*, and Certification of Questions of Great Public Importance.

ARGUMENT

In retreating from the Court's commitment to contextualism by rewriting the contract in this case, the Opinion overlooks critical reliance interests and threatens all Florida contracts and the businesses they sustain.

I. The Opinion Departs From Contextualist Precedent and Overlooks Key Reliance Interests.

"[R]eliance interests are 'at their acme in cases involving property and contract rights.'" *State v. Poole*, 297 So. 3d. 487, 507 (Fla. 2020) (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)). Yet, in just a few lines of text and a footnote, the Opinion shortsightedly rewrites the condominium declaration in this case. In doing so, it not only destroys the private rights at issue here, but it also undoes decades of deals and agreements made in reliance on this Court's contextualist interpretation of condominium declarations. In breaking with its own precedent, the Court overlooks and misapprehends these reliance interests and the sweeping impact that upending them will have on Florida business.

More businesses are moving their headquarters to Florida than any other state in the country. *See* Caden De Lisa, *Florida emerges*

as corporate migration magnet: headquarters influx surges by 86 percent, THE CAPITOLIST (June 23, 2023), https://thecapitolist.com/florida-emerges-as-corporate-migration-magnet-headquarters-influx-surges-by-86-percent (last visited Apr. 2, 2024). This trend shows no sign of slowing, and more businesses mean more residents. In its recently released economic predictions for 2024, the Florida Chamber Foundation forecasted the arrival of another 225,000 to 275,000 new Floridians this year alone. *See Florida Chamber Foundation Economists Predict Another Year of Positive Economic Growth for the World's 15th Largest Economy in 2024*, FLORIDA CHAMBER OF COMMERCE (Jan. 25, 2024), https://www.flchamber.com/florida-chamber-foundation-economists-predict-another-year-of-positive-economic-growth-for-the-worlds-15th-largest-economy-in-2024 (last visited Apr. 2, 2024).

More residents, in turn, mean a greater need for housing. This need is especially acute in population centers like South Florida. Limited available land mass necessitates vertical construction in the form of condominium developments. According to the Florida Housing Data Clearinghouse, there are more than one thousand condominium developments with at least seventy-five units in Miami-

Dade County alone. *See Geographic Areas: Condos & Manufactured Housing*, FLORIDA HOUSING DATA CLEARINGHOUSE, http://flhousingdata.shimberg.ufl.edu/condos-and-manufactured-housing (last accessed Apr. 2, 2024). Many are nearing end-of-life.

Florida's condominium developers play an indispensable role in keeping up with South Florida's housing needs, promoting the efficient use of limited land resources, and responding to safety concerns highlighted by the horrific collapse of Champlain Towers South in Surfside. *See* Elizabeth Wolfe, *Surfside condo collapse investigators provide key insights into possible causes of the disaster. Here are the top takeaways*, CNN (Mar. 9, 2024), https://www.cnn.com/2024/03/08/us/surfside-condo-collapse-investigation-takeaways (last visited Apr. 2, 2024). A major component of this role is the buyout, in which developers target dilapidating or inefficient condominium complexes for transformation into newer, safer, and more efficient structures.

Buyouts, however, are legally complicated. Condominiums are an unnatural form of property ownership foreign to the common law. They "are strictly creatures of statutes." *Woodside Vill. Condo. Ass'n, Inc. v. Jahren*, 806 So. 2d 452, 455 (Fla. 2002). Under Florida's

Condominium Act, "[a] condominium is created by recording a declaration" that establishes, among other things, the voting rights of unit owners (not to be confused, as discussed *infra*, with voting thresholds). § 718.104(2), (4)(j), Fla. Stat. Declarations, in turn, are treated by the law as private contracts that must be interpreted under contract principles. *See Bal Harbour Tower Condo. Ass'n, Inc. v. Bellorin*, 351 So. 3d 96, 99-100 (Fla. 3d DCA 2022).

The Florida Legislature has amended the Condominium Act from time to time to keep up with the proliferation and subsequent aging of condominiums across Florida. For example, the original statute required a unanimous vote to terminate a condominium unless otherwise contracted for in a given condominium declaration's termination provision. This changed in 2007, when the Legislature, responding to changing times, amended the Condominium Act to facilitate termination through alternative means—i.e., statutorily, upon a vote of at least eighty percent of unit owners, unless a statutorily set percentage (currently five percent) object. *See* § 718.117(3), Fla. Stat. (2023). The 2007 amendment helped ensure that developers can partner with unit owners who want and need relief from the shackles afflicted upon them by the fact of small or

modest sized ownership interests in aging buildings to facilitate buyouts despite small pockets of holdouts.

Because declarations are routinely drafted to incorporate the Condominium Act—not only as it exists when the declaration is recorded, but also its future amendments—developers executing buyouts rely on the statutory termination process as a matter of course. Such reliance is grounded in a fair reading of the declaration as recognized in this Court's decision in *Kaufman*. There, this Court established the general rule that whether a declaration expresses an intent for the Condominium Act, as amended, to become part of the declaration turns on the text of the declaration itself. *See Kaufman*, 347 So. 2d at 628.

For decades, condominium law in South Florida has been governed by this common understanding of *Kaufman* language, its effect on condominium declarations, and the critical distinction between voting rights and voting thresholds in the contractual context. But, with little explanation, this Court's Opinion topples this predictable legal regime in which words have consistent meanings, contractual terms act with consistent force, and statutes have consistent applications. And in retreating from the contextualist

reading of condominium declarations that underpins it all, the Opinion says nothing about the key reliance interests it destroys.

II. The Opinion Rewrites the Declaration and In Doing So Threatens All Florida Contracts.

The Opinion also does not account for how its rewriting of the declaration in this case will impact all Florida contracts. Since context is crucial in interpreting every contract, this Court's abandonment of this core principle of legal interpretation will reverberate far beyond the context of condominium governance. *See Fla. Farm Bureau Gen. Ins. Co. v. Worrell*, 359 So. 3d 890, 892 (Fla. 5th DCA 2023) ("Florida courts have recognized the 'supremacy-of-text principle'" for interpreting statutes and contracts, "which means that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" (quoting *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946-47 (Fla. 2020) (alteration in original)); *see also Residences at Bath Club Condo. Ass'n, Inc. v. Bath Club Ent., LLC*, 355 So. 3d 990, 996 (Fla. 3d DCA 2023) (recognizing that courts must examine the whole contract to discern intent). Three examples illustrate how the Opinion rewrites the declaration and, in doing so, retreats from the stability

and predictability afforded by contextualism in a way that threatens all Florida contracts.

A. The Opinion Rewrites the Contract By Conflating Voting Rights with Voting Thresholds.

A declaration of condominium is a contract that is subject to interpretation under contract principles. *Bal Harbour*, 351 So. 3d at 99-100. Although "well-settled contractual principles" preclude courts from "'rewrit[ing] contracts, add[ing] meaning that is not present, or otherwise reach[ing] results contrary to the intentions of the parties,'" the Opinion rewrites the contract here and, in doing so, threatens scores of contracts. *Rogers v. State*, No. 3D22-2047, 2024 WL 1080046, at *1 (Fla. 3d DCA Mar. 14, 2024) (quoting *Harrington v. Citizens Prop. Ins. Corp.*, 54 So. 3d 999, 1002 (Fla. 4th DCA 2010)).

By statute, every condominium declaration contains provisions governing voting rights, which are defined based on ownership of individual units, overall square footage, or other factors. Most declarations also set voting thresholds, which are separately defined to set forth the percentage of votes required to amend the declaration or effect other changes to the condominium. These are distinct

concepts subject to distinct definitions and must be read in harmony to avoid rendering either definition meaningless.

But the Opinion conflates them. The Court redefines "voting rights"—which the Biscayne 21 governing documents define as one vote per unit[1]—to encompass the declaration's original voting threshold of one hundred percent to approve an amendment to the termination provision. Simultaneously, the Court transmogrifies the contractual majority approval necessary to pass virtually all other types of amendments, including changes to voting thresholds, into a requirement for unanimity. *See* Op. at 5. In conflating "voting rights" with voting thresholds, the Court discards the bargained-for language of the declaration and instead creates a new contract with new definitions. This renders the declaration's actual definition of "voting rights" and the actual majority vote necessary to change a voting threshold meaningless—both in the termination context and beyond.

[1] As the Appellees explain in their Motion (on page 3), this definition is found in the bylaws of the Biscayne 21 association, which are expressly incorporated into its declaration.

Moreover, instead of basing its contractual "voting rights" analysis on a contextual reading of the declaration, the Court cites its decision in *Tropicana Condominium Ass'n, Inc. v. Tropical Condominium, LLC*, 208 So. 3d 755 (Fla. 3d DCA 2016), to support this judicial rewrite of the declaration:

> The change to the termination vote threshold materially altered unit owners' voting rights. By requiring a unanimous vote for termination, the declaration originally gave every unit owner an effective veto over any termination plan, which would be lost if the amendments at issue here were enforced." *See Tropicana*[, 208 So. 3d at 759] (finding that non-unanimous amendments to declaration reducing vote threshold for termination of condominium could not be applied where declaration expressly required unanimous vote to amend termination provision and the '*amendment, if retroactively applied*, would eviscerate the . . . owners' contractually bestowed veto rights").

Op. at 5 (emphasis added).

But, in parenthetically explaining why *Tropicana* purportedly supports this holding, the Court misapprehends that the "amendment" that the *Tropicana* Court held would "eviscerate . . . contractually bestowed veto rights" if it were "retroactively applied" was a legislative amendment to the Condominium Act. 208 So. 3d at 759. It was not an amendment to a voting threshold that (as here)

the declaration permitted by simple majority vote. Same word, different thing—i.e., a contractual amendment in this case versus a statutory amendment in *Tropicana*.[2]

Words matter. And unit owners, including developers that purchase units in anticipation of pursuing the condominium's termination, must be able to rely on the definitions contained in declarations to understand their rights and conduct business accordingly. The Opinion thus threatens critical redevelopment by creating mass uncertainty as to what rights condominium owners have pursuant to the plain language of their declarations. And, by

[2] In 2022, a majority of the owners of Biscayne 21 amended the voting threshold of the declaration's termination provision, reducing it from one hundred percent to eighty percent. Op. at 3. Appellees argue in their motion (at page 10) that although this amendment is valid because it occurred as authorized by the declaration, it is also irrelevant to the outcome because the termination occurred under section 718.117(3) of the Florida Statutes, not under declaration's termination provision. The Opinion does not address this argument. Instead, the Court appears to misapprehend that the Appellees are advocating for the retroactive application of a statute, when they are actually arguing for application of the statutory termination provision that was automatically incorporated in their declaration when it became part of the Condominium Act—as bargained-for in the 1974 declaration (because the declaration expressly incorporates the Condominium Act "as amended").

reasonable extension, it signals that bargained-for terms no longer matter.

B. The Opinion Eschews Context in Favor of an Unreasonable Bright-Line Rule for Determining Whether a Declaration Incorporates Amendments to the Condominium Act.

Consistent with contextualism, *Kaufman* recognizes that whether a declaration incorporates future amendments to the Condominium Act depends on the parties' intent as expressed in the declaration. 347 So. 2d at 628.[3] Yet, despite *Kaufman*'s emphasis on intent, this Court's Opinion establishes an unreasonable bright-line

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[3] The *Kaufman* Court held that the following language was sufficient to infer such intent:

> Except where variances permitted by law appear in the Declaration or in the annexed By-Laws or in the annexed Charter of FIFTH MOORINGS CONDOMINIUM, INC., or in lawful amendments thereto, the provisions of the Condominium Act as presently existing, or as it may be amended from time to time, including the definitions therein contained, are adopted and included herein by express reference.

347 So. 2d at 628. The Florida Supreme Court later agreed. *See Century Village, Inc. v. Wellington, E, F, K, L, H, J, M, & G, Condo. Ass'n*, 361 So. 2d 128, 133 (Fla. 1978). The "as amended from time to time" language has since become known as "*Kaufman* language." *See, e.g.*, *Beacon Hill Homeowners Ass'n, Inc. v. Colfin Ah-Florida 7, LLC*, 221 So. 3d 710, 713 n.2 (Fla. 3d DCA 2017).

rule that itself creates uncertainty about whether even declarations that include language identical to that of *Kaufman*'s declaration will be read to incorporate amendments to the Condominium Act. *See* Op. at 4–5 & n.2.

Kaufman was decided in 1977. Of course, the myriad declarations that existed prior to *Kaufman*—such as that of Biscayne 21—lacked the benefit of foresight on what language courts would consider sufficient to incorporate the Condominium Act as amended. And, even when addressing declarations recorded after *Kaufman*, courts have looked at the declaration as a whole to infer such intent rather than slavishly applying a bright-line rule as to what specific words trigger incorporation of future statutory amendments. *See, e.g.*, *Tropicana*, 208 So. 3d at 756 (discussing that a declaration may incorporate the Condominium Act as amended merely by "referenc[e]"); *De Soleil S. Beach Residential Condo. Ass'n, Inc. v. De Soleil S. Beach Ass'n, Inc.*, 322 So. 3d 1189, 1194 (Fla. 3d DCA 2021) (distinguishing *Kaufman* language that demonstrates the intent to subject a declaration "to future statutory changes to the Condominium Act" from language that "specifically incorporates only the version of the Condominium Act <u>that existed when the</u>

Declaration was recorded, expressly disavowing the application of later amendments to the Condominium Act").

For almost fifty years, condominium stakeholders have relied on the stable and predictable regime afforded by the courts' contextualist constructions of declaration language. As the Florida Legislature has amended the Condominium Act to remove barriers to redevelopment, developers have counted on courts enforcing declarations that incorporate future amendments to the Condominium Act in executing buyouts and exercising their rights as unit owners under the provisions of older declarations. And they have done so regardless of whether the declarations expressed intent to submit to condominium ownership "subject to," "under" or "pursuant to" the Condominium Act, as amended, or similar variations.

But the Opinion pronounces, in a footnote, that such "generic" language which "merely acknowledges that the declaration gets its authority from the Condominium Act as amended" is no longer sufficient. Op. at 4 n.2. Rather than reading the declaration as a whole to infer its intent, the Opinion purports to establish that "more muscular language . . . which incorporate[s], 'adopt[s] and include[s]

herein by express reference' the Condominium Act as amended from time to time" is now required for a declaration to incorporate future amendments to the statute. *Id.* Perhaps even more remarkably, the Opinion appears to limit the efficacy of even this language to situations where a future statutory "amendment render[s] an existing [declaration] provision void as against public policy." *Id.* at 5 n.2.

The Opinion's departure from precedent, including *Kaufman*, which requires courts to discern intent from a contract's terms, will undo decades of progress the Legislature has made in promoting and facilitating necessary redevelopment. It will also send hundreds, if not thousands, of aging condominiums back through time to be governed by whatever law was in effect when their declarations were executed regardless of what those declarations—read in context—say. That, in turn, will strip unit owners who want and need to sell of what they reasonably thought was a statutory right to terminate that was automatically incorporated into their declarations, chilling much-needed redevelopment. And, by reasonable extension, it will send the message that, in construing contracts, this Court has determined to henceforth eschew context for bright-line rules.

C. The Opinion Fails to Read the Declaration as a Whole By Holding That "Mere Recitals" Are Not "Substantive" Parts of a Contract.

"To ascertain the intention of the parties to a contract, the trial court must examine the whole instrument, not just particular portions, and reach an interpretation consistent with reason, probability, and the practical aspects of the transaction between the parties." *Bucacci v. Boutin*, 933 So. 2d 580, 585 (Fla. 3d DCA 2006).

Perhaps the most striking example of the Opinion's departure from the whole-text canon is its holding that certain parts of the declaration are "substantive" while others are not. Specifically, the Opinion dismisses the declaration's reference to the Condominium Act, as amended—which is identical to that found in many declarations of older condominiums—as a "mere recital" that is not "a substantive part of the contract." Op. at 5 n.2.

True, this Court has held that "prefatory recitations contained in the various 'whereas' clauses" are not necessarily "binding, operative provisions to [an] otherwise unambiguous contract." *Johnson v. Johnson*, 725 So. 2d 1209, 1212 (Fla. 3d DCA 1999). But that precedent is irrelevant here for at least two reasons.

First, the reference to the Condominium Act, as amended, in Biscayne 21's declaration is not in a "whereas" clause or other prefatory recitation. It is smack dab in the middle of the operative section "I. ESTABLISHMENT OF CONDOMINIUM," tucked between a representation of ownership in fee simple and a provision stating that the declaration shall run with the land. (A-279).

Second, even if it were a recital clause, such a clause is disregarded only if there is a "discrepancy" between it and "an operative clause of the agreement." *Johnson*, 725 So. 2d at 1213; *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 217 (2012) (explaining the "Prefatory-Materials Canon," under which "[a] preamble, purpose clause, or recital is a permissible indicator of meaning"). But there is no such discrepancy because there is no provision indicating that the parties intended *not* to incorporate the Condominium Act, as amended, into the declaration. Indeed, as the Appellees point out in their motion (at page 20), the declaration invokes the Condominium Act, as a defined term introduced in that initial reference to the Condominium Act, as amended, in at least a half dozen other places.

Thus, because this reference is not in a prefatory recitation, and because incorporation does not conflict with any other provision of the declaration, the reference to the Condominium Act, as amended, is just as much a part of the contract as any other provision. In holding that it is not, the Opinion disregards the declaration's intent along with its text.

Moreover, perhaps because of the Court's fixation on its "mere recital" reasoning, the Court mistakenly failed to address a 2022 amendment that further underscores the intent for the declaration to incorporate amendments to the Condominium Act. That amendment, which Appellees call the *Kaufman* Amendment, amends the 1974 declaration to add the exact language used in the 1977 *Kaufman* decision. Although amendments to a contract are part of the contract, the Opinion does not consider how the *Kaufman* Amendment informs the interpretation of the declaration. For example, even assuming the intent to integrate statutory amendments is not clear from the original declaration, the Opinion does not explain why the Association has not resolved any ambiguity through the *Kaufman* Amendment (which passed by the majority vote required by the declaration). In other words, the Court has

overlooked that a whole-text reading applies to the contract and its amendments.

Ultimately, to interpret a contract, courts must decide what its text means in the context it is used. In dismissing the declaration's express incorporation of amendments to the Condominium Act as a "mere recital"—instead of using this provision (or the related 2022 *Kaufman* Amendment) to discern intent—the Court substitutes its own judgment for that of the parties and, by doing so, invites courts to rewrite contracts.

CONCLUSION

Business thrives on certainty. Certainty requires stability and predictability in law. Florida businesses cannot long survive if courts disregard their longstanding, faithful commitment to construe contracts "consistent with reason, probability, and the practical aspects of the transaction between the parties" by "examin[ing] the whole instrument" governing the transaction. *Bucacci*, 933 So. 2d at 585. The Opinion in this case overlooks and misapprehends this commitment by rewriting the contract. In doing so, the Opinion deals a devastating blow to contextualism that upsets decades' worth of reliance interests and threatens all Florida contracts. Accordingly,

the Florida Chamber respectfully requests that the Court grant Appellees' Motion for Rehearing, Rehearing *En Banc*, and Certification of Questions of Great Public Importance.

Dated: April 2, 2024

Respectfully submitted,

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Florida Chamber of Commerce

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.370(b) because it was prepared using Bookman Old Style 14-point font and contains 3,982 words.

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CERTIFICATE OF SERVICE

I CERTIFY that on April 2, 2024, a true and correct copy of the foregoing was filed and served via the Florida Courts E-Filing Portal upon:

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