IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY FLORIDA

CASE NO.:

Angelica Avila; Nicolas Bello;
Maria Beatriz Gutierrez;
Franah Vazir-Marino;
Robert H. Murphy;
Jeffrey Ulman and Shari Ulman;
Lazaro Fraga and Jacqueline S. Fraga;
and George Garcia,

Plaintiffs,

vs.

Biscayne 21 Condominium, Inc.,
a Florida not-for-profit corporation;
and TRD Biscayne, LLC, a Delaware
limited liability company,

Defendants.
_____/

COMPLAINT

Plaintiffs, Angelica Avila, Nicolas Bello, Maria Beatriz Gutierrez, Franah Vazir-Marino, Robert H. Murphy, Jeffrey Ulman and Shari Ulman, Lazaro Fraga and Jacqueline S. Fraga, and George Garcia, through their undersigned counsel, hereby file their Complaint against Defendants, Biscayne 21 Condominium, Inc. and TRD Biscayne, LLC, and, in support, state as follows:

INTRODUCTION

For almost the last half century, the Biscayne 21 Condominium has thrived on a piece of paradise on the Biscayne Bay waterfront. Following is a photograph of Biscayne 21 and an aerial diagram of its privileged location on Biscayne Bay.

But in recent years, a group of international speculators acquired a large number of units in the condominium and then manipulated, bullied, deceived and pressured other unit owners to

sell their respective units to developer TRD Biscayne, LLC ("TRD") – an entity, it turns out, the speculators partly own and/or have a financial interest in. Once this occurred, TRD gained control of the Association. Its end goal was simple: terminate the condominium form of ownership; evict any dissenters; demolish the existing building; and redevelop the waterfront site into massive ultra-luxury condominiums including "branded residences" by Marriott International for a profit in the hundreds of millions. Once TRD gained control of the Association, in collusion with the speculators, it sought to amend the Biscayne 21 Declaration to allow termination without unanimous consent and then submitted *ex parte* a Plan of Termination to the Florida Division of Condominiums, which Plaintiffs timely contested administratively. Faced with threats of imminent eviction by TRD, Plaintiffs now turn to this Court for protection and relief.

The Biscayne 21 Declaration and governing Florida law require unanimous consent of unit owners before the Condominium can be terminated. Fortunately for Plaintiffs, *and unlike any condominium termination case yet litigated in the Florida courts,* their rights are established by the 1974 version of Florida's Condominium Act, Chapter 711, Fla. Statutes (1974) ("the 1974 Law"), which was in effect at Biscayne 21's inception. The 1974 Law allows a condominium to be terminated only with the unanimous consent of unit owners. Critically, so too, the Biscayne 21 Declaration requires unanimous consent to terminate. Plaintiffs, the owners of eight units, all opposed the termination and thus it cannot occur. In an attempt to circumvent the unanimity requirement and render Plaintiffs' votes meaningless, the now TRD-controlled Association recently (and improperly) amended the Declaration to lower the requirement for termination from 100% to 80% and added missing *Kaufman* language to try and make the current provisions of the Condominium Act the governing law over the Condominium. But these amendments and the Plan of Termination, as well as other actions more particularly set forth herein, are contrary to the terms

of the Declaration, the governing termination statute, and binding precedent, and must be declared void.

PARTIES, JURISDICTION, AND VENUE

1. This is an action for declaratory and injunctive relief and damages in excess of the jurisdictional limits of this Court including the following:

a. Declaratory relief that the 1974 Law applies to any termination of the Condominium;

b. Declaratory relief that the Condominium Declaration lacks *Kaufman* language;

c. Declaratory relief that the Plan of Termination and the amendments to the Declaration adopted to try to terminate the condominium are null, void, and have no effect;

d. Declaratory relief that the Plan of Termination violates Plaintiffs' rights under the Florida Constitution relating to homesteads (forbidding forced sales and conferring certain tax benefits) or non-homestead property (conferring certain tax benefits), as applicable for each respective Plaintiff;

e. Injunctive relief to bar TRD and/or the Association from any attempt to dispossess Plaintiffs of their units, to require the Association to continue to provide all building services, and to resume proper forms of condominium governance that TRD has caused to be suspended;

f. Alternatively, declaratory relief that after any termination, the Condominium Property is owned in common by the unit owners;

g. Alternatively, in the event that the 2022 Law applies, declaratory relief that

the Plan of Termination is void for failure to meet the requirements of Section 718.117(3), Fla. Stat.;

h. Also alternatively, in the event that the 2022 Law applies, that the compensation to be paid to Plaintiffs for their units under the Plan of Termination is not fair and reasonable and inadequate under the requirements of the 2022 Law; and

i. A judgment against, and award of damages from, the Association for breach of fiduciary duty and breach of contract in connection with the illegal dissipation of $3 million in insurance proceeds.

2. Plaintiffs Angelica Avila, Nicolas Bello, Maria Beatriz Gutierrez, Franah Vazir-Marino, Robert H. Murphy, Jeffrey Ulman, Shari Ulman, Lazaro Fraga, Jacqueline S. Fraga, and George Garcia are all condominium unit owners within the Biscayne 21 Condominium (the "Biscayne 21" or "the Condominium") located at 2121 N. Bayshore Drive in Miami-Dade County, Florida, formed pursuant to that certain Declaration of Condominium recorded on December 10, 1974 in Official Record Book 8853, Page 528, Public Records of Dade County, Florida (the "Declaration"), a true copy of which is attached hereto as **Exhibit 1**.

3. The units owned by Plaintiffs Angelica Avila (#904), Nicolas Bello (#715), Maria Beatriz Gutierrez (#1002), Robert H. Murphy (#1019), and Jeffrey and Shari Ulman (#1210) are their permanent residences and have each been granted homestead exemption status by the Miami-Dade County Property Appraiser. The units are their respective constitutionally protected homesteads that are immune from forced sale and that enjoy "Save Our Homes" protections including caps on property tax increases.

4. The units owned by Plaintiffs Franah Vazir-Marino (#615), Lazaro Fraga and Jacqueline S. Fraga (#905), and George Garcia (Commercial Unit #1) are non-homestead

properties that enjoy caps on property tax increases pursuant to Article VII, Section 4(g) of the Florida Constitution

5. Defendant Biscayne 21 Condominium, Inc. ("Association") is a Florida not-for-profit corporation with its principal place of business at 2121 N. Bayshore Drive in Miami-Dade County, Florida. The Association was established to operate and manage the Condominium pursuant to the Declaration since its creation in 1974.

6. Defendant TRD Biscayne, LLC is a foreign limited liability company incorporated in Delaware but with its principal place of business in West Palm Beach, Florida. Two Roads Development, LLC and/or its members own a controlling interest in TRD. TRD currently owns 183 of the units in Biscayne 21. Two Roads Development, LLC and TRD Biscayne, LLC are hereafter referred to collectively as "Two Roads," except where useful or necessary to distinguish them.

7. The Court has subject matter jurisdiction over this action pursuant to §86.011, Fla. Stat.

8. The Court has personal jurisdiction over Defendants pursuant to §48.193(1)(a)(l), Fla. Stat., as Defendants are subject to the jurisdiction of thecourt because they have conducted business in the state of Florida, committed tortious acts within Florida, and caused injury to Plaintiffs within Florida.

9. Venue lies in this Court pursuant to §47.051, Fla. Stat., because the Defendants' principal places of business are in Miami-Dade County, Florida, the causes of action accrued in Miami-Dade County, Florida, and the subject Condominium is located within Miami-Dade County, Florida.

10. The amount in controversy is greater than $750,000 in that Plaintiffs' units are worth multiple millions of dollars within a condominium property that is worth hundreds of millions of dollars.

11. All conditions precedent to the filing of this action have been met, waived, or excused.

FACTUAL ALLEGATIONS

Biscayne 21 Condominium

12. The Biscayne 21 Condominium is a 13-story residential condominium with 192 units located on approximately 3.5 acres directly on Biscayne Bay at 2121 North Bayshore Drive in the Edgewater neighborhood of Miami-Dade County ("Biscayne 21" or "Condominium"). Common elements include the amenities of tennis courts, a large bayside pool, barbecue area, landscaped grounds, building-supplied central air conditioning, and wide parking spaces which are permanently assigned to Plaintiffs' respective units.

13. With 834 feet of water frontage – 312 feet to the east and 522 feet to the south – the Condominium site provides breathtaking unobstructed – and unobstructable – panoramas of Biscayne Bay, the Port of Miami, Miami Beach, a large city park, as well as close-up views of aquatic life such as dolphins, manatees, sea turtles and sharks. One of Two Roads' development partners has aptly touted Biscayne 21's "irreplaceable waterfront views."

14. The following photo shows typical views of the bay enjoyed from the balconies and windows of Biscayne 21:

15. Designed by the esteemed architect Melvin Grossman, Biscayne 21 is a fine exemplar of Miami Modernist design. For years, it was the home of Congressman Claude Pepper.

16. The Condominium has been professionally managed by First Service Residential for years and has been well maintained.

17. The Condominium completed its 40-year recertification in 2017 after carrying out substantial repairs financed with special assessments totaling $6,371,518, of which Plaintiffs have borne their respective shares. This investment in the future left the building in beautiful, sound condition. Plaintiffs are prepared to finance their respective shares of the cost of whatever incremental repairs may be necessary for the next recertification due in 2024, which should largely be paid for by the approximately $3 million in insurance proceeds which the Association illegally dissipated, as described below.

18. In 2021, after the Champlain Towers South building collapse, the City of Miami requested information from older condominiums, which included Biscayne 21. To comply, the Association commissioned engineers to assess the condition of the Biscayne 21 property and submitted various engineering reports to the Building Department of the City of Miami, demonstrating to the Building Department's satisfaction that the Condominium was in good

condition.

19. In 2022, the Association's Board of Directors certified to its membership that there are no life-safety issues in the building. Given its good physical condition, the Condominium has decades of useful life ahead of it. In fact, the Condominium has stood the test of time and is better maintained, more structurally sound and freer of construction defects than many recently constructed condominiums in the area.[1]

Biscayne 21's Governing Statute and Documents

20. The Declaration provides that the Condominium was submitted "to condominium ownership pursuant to Chapter 711, Florida Statutes, as amended." *See* **Exhibit 1.** The Declaration thereby established as its governing law the statute in effect on the date of recordation, December 10, 1974 ("the 1974 Law").[2]

21. The Declaration lacks what is known as "*Kaufman*" language ("as amended from time to time") through which a condominium declaration engrafts future amendments to the Florida Condominium Act.[3] Accordingly, Biscayne 21 is governed by the 1974 Law.

22. The Articles of Incorporation of the Association ("Articles") are attached to

[1] For example, Biscayne Beach Condominium, a Two Roads development in Edgewater, has been mired in litigation, including against Two Roads, over construction defects since its inception. Another recent luxury development in the neighborhood is reported to suffer flooding in its parking garage. Ten-to-fifteen-year-old condominium towers within eyesight of Biscayne 21 have already had to undergo substantial concrete restoration. In short, it is a canard promoted by developers looking to buy land on the cheap that older buildings ought to be indiscriminately terminated and redeveloped because they uniquely need expensive repairs.

[2] The 1974 version of Chapter 711 took effect on October 1, 1974. Chapter 711 of the Condominium Act was repealed and replaced by Chapter 718 effective January 1, 1977.

[3] *See Kaufman v. Shere,* 347 So. 2d 627 (Fla. 3d DCA 1977).

the Declaration as "Exhibit C". The By-Laws of the Association ("Bylaws") are attached to the Declaration as "Exhibit D". A list of the percentage of ownership of the common elements by unit is attached to the Declaration as "Exhibit G". *See* **Exhibit 1.**

23. The applicable termination section, §711.16, *Fla. Stat*., (1974), follows the Model Statute for Creation of Apartment Ownership promulgated by the Federal Housing Authority ("FHA Model") in 1962 (Florida's original condominium law, Chap. 711, was adopted in 1963). The FHA Model requires unanimity to terminate, as noted by various commentators, to wit:

> REMOVAL OF THE PROPERTY FROM THE ACT. The Model Statute provides a method by which an existing condominium may be converted into a tenancy in common. It provides that the property shall be owned as a tenancy in common if **all the owners** record an instrument evidencing an intent to remove the property from the provisions of the Act…

David S. Kenin, *Condominium: A Survey of Legal Problems and Proposed Legislation*, 17 U. Miami L. Rev. 145, at 163 (1962) (emphasis added).

24. Preventing speculators from forcing condominium unit owners out of their homes – precisely the situation here - was a principal reason that the condominium statutes at the time required unanimous consent of unit owners to terminate a condominium and was precisely to prevent the "snake in the garden" tragedy with which Plaintiffs are confronted at Biscayne 21. [4]

[4] Judges in this judicial circuit have recognized as a public policy issue this "snake in the garden" problem, in which predatory investors gain a strong enough interest in a condominium to make resistance seem futile to owners who would prefer not to sell, but for the snake. The Hon. Rodolfo Ruiz opined from the bench that "at the end of the day maybe what needs to be done is the Legislature should be talking about how many units can be owned by one person." *Adams v. Surf House*, Tr. at 80 (interpreting 1979 version of Condominium Act). The Hon. William Thomas noted, "I think that's what needs to happen, the Legislature needs to pass a law that says that when anybody purchases more than 10 units in a building, that all unit owners need to be made aware that that purchase is taking place. Because I think that this all sneaks up on everybody. Now all of

25. Consistent with the statutory mandate, the Declaration incorporated the same requirement as the 1974 Law and, as authorized by Section 711.16(1), Fla. Stat. (1974), further provided the following:

> The termination of the Condominium may be effected by the **unanimous agreement of the Unit Owners** and all institutional mortgagees, which agreement shall be evidenced by an instrument executed in the same manner as required for the conveyance of the land. The termination shall become effective when such agreement has been recorded in the Public Records of Dade County, Florida.

See **Exhibit 1**, Article XIII.A (emphasis added).

26. When the Plaintiffs and every other owner acquired their respective unit(s) in the Condominium (including TRD), they took subject to the provisions of 1974 Law and the Declaration, including the unanimous termination provision and the unanimous termination requirement of the 1974 Law which was incorporated into the Declaration.

27. Thus, they took ownership with the comfort of knowing the Declaration allowed for termination of the Biscayne 21 Condominium only with a unanimous vote of all unit owners.

28. Such statutory and contractual termination provisions requiring unanimity instilled in each unit owner the vested right to veto any termination of the Condominium by voting against it.

29. The 1974 Law provides that after termination, "the condominium property shall be deemed to be owned in common by the unit owners. … After a termination of a condominium in any manner, the liens upon condominium parcels shall be upon the respective undivided shares of

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a sudden somebody owns 300 units or 338 units in a building and nobody can really stop them from doing whatever they want to do…" *Farnik v. Shelborne Ocean Beach Hotel Condominium Ass'n, Inc*., Hearing Nov. 22, 2021, Tr. at 25-26 (interpreting 1993 version of Condominium Act).

the owners as tenants in common." Section 711.16(2, 3).

30. These statutory provisions also instilled in each unit owner the vested right to be treated as a tenant in common following any termination.

31. The Declaration also contains the following general amendment provisions:

> XII. AMENDMENT
>
> A. Declaration of Condominium. Except as herein otherwise provided, amendments to this Declaration shall be adopted as follows:
>
> 2. Resolution. A resolution adopting and approving a proposed amendment shall be proposed, adopted and approved by the Board of Directors of the Association, and, after being proposed, adopted and approved by the Board, it must be adopted and approved by the members. Directors and Unit Owners not present at the meeting considering the amendment may approve and adopt same in writing. Such proposals, adoptions and approvals must be by not less than fifty-one (51%) percent of the members of the Association, except as to **an amendment altering the percentage of ownership in the Common Elements or the voting rights of any of the Owners of the Condominium, any of which shall require the approval of one hundred (100%) percent of the Owners**.

See **Exhibit 1**, Art. XII (emphasis added).

32. Next, in Section XII.C, the Declaration states:

> Proviso. No amendment shall change any Condominium Unit nor the share of the Common Elements, Common Expenses or Common surplus attributable to any Unit, nor the voting rights appurtenant to any Unit, unless the record Owner or Owners thereof and all record owners of liens upon such Unit or Units shall join in the execution of such amendments. (Emphasis added.)

33. Section 3.4 of the By-Laws further provides that the approval of any action of the Association be by majority vote "except where approval by a greater number of members is required by the Declaration of Condominium or these By-laws."

34. Thus, any amendment to the Declaration that alters or changes the voting rights of any of the unit owners requires unanimous content of the owners.

Events Leading to the Attempt to Terminate Biscayne 21

35. The attempt to terminate Biscayne 21 came about after a group of speculative investors purchased approximately 60 units, or almost one-third of the units in the Condominium, from 2015 to 2021. Bragi Sigurdsson, a luxury real estate broker in Miami formerly employed by Douglas Elliman, Inc., led the group for himself and two of his wealthy real-estate clients, Howard Smuschkowitz and Gerald Jonas. Sigurdsson has described Smuschkowitz and Jonas respectively as "the biggest real estate investor in Toronto" and "the biggest real estate investor in Milwaukee."

36. The group purchased units in Biscayne 21 using entities including HUS LLC, Draumalod LLC, and 2121 Bayshore LLC. On information and belief, Sigurdsson and Smuschkowitz are the principal owners of HUS, Sigurdsson is the principal owner of Draumalod, and Jonas is the principal owner of 2121 Bayshore, but the exact ownership of these entities is not yet known by Plaintiffs. Sigurdsson purchased units using multiple entities and affiliates to conceal the scope and pace of his purchases from unit owners. Further obscuring Sigurdsson's purchases, the building manager and board of directors did not place required approval of sales on board meeting agendas but executed scores of approvals of Sigurdsson's purchases without notice to the membership.[5]

37. On information and belief, Sigurdsson secretly paid consideration or afforded business benefits to Biscayne 21's long-time building manager to steer to Sigurdsson owners the building manager learned were interested in selling their units.

38. In 2017, Sigurdsson became a member of the Board of Directors of the Association,

[5] Claims against past individual Board Members are reserved and may be added upon further discovery as appropriate.

a position he held until he tendered his resignation on May 19, 2022 when Two Roads formally took over the Board as part of the plan to terminate the Condominium as more fully discussed below.

39. In 2019, as the Edgewater neighborhood surged as a premier area in Miami real estate, several different developers began to make unsolicited "lowball" offers to purchase the Condominium property.

40. During a meeting Sigurdsson called with unit owners in June 2019, he announced to the membership of Biscayne 21 that he owned a large block of units, that he intended to take control of the Condominium and sell it to a developer for demolition and redevelopment, and that unit owners would have to fight him to try to maintain Biscayne 21 as their permanent homes.

41. Sigurdsson also boasted that Howard Lorber and Jay Parker, the top officials at Douglas Elliman, the real estate brokerage firm of which Sigurdsson is an agent, supported his attempt to take over Biscayne 21. Douglas Elliman supported Sigurdsson because it wanted to garner the lucrative sales and marketing rights for a future luxury development on the site. Not surprisingly, Douglas Elliman was able to secure those rights as part of the non-public deal to benefit Sigurdsson at the expense of other unit owners as further discussed herein.

42. By September 2019, unit owners Evelyn Bertolucci and Suzanne Pallot had identified and met with Michael Fay and other brokers at Avison Young Florida, LLC ("Avison Young"), a commercial real estate broker, as well as with Joseph Hernandez, Esq., an attorney who had worked closely with Avison Young on other termination projects.

43. Bertolucci and Pallot introduced Sigurdsson to Avison Young. Avison Young was willing to accept the mandate to market Biscayne 21 only if Sigurdsson, as owner of a large block of units, agreed.

44. Sigurdsson agreed with the plan and thereafter, by virtue of the number of units he and his investors owned, effectively controlled and directed the efforts of Avison Young, which in turn managed the marketing campaign to benefit Sigurdsson over other unit owners. Sigurdsson agreed to compensate the other members of the Liaison Group for promoting the bulk sale to unit owners at Biscayne 21.

45. Specifically, Avison Young devised with Sigurdsson a plan that would allocate disproportionate economic value to Sigurdsson and his investors while yielding a sale price just high enough to persuade enough unit owners to sell their units in a bulk sale – all the while deceiving unit owners into thinking they were achieving the best possible price in a fair auction process.

46. Avison Young provided unit owners with a low estimate of the value of the property based on the assumption that units in the future development would sell for a mere $695 per square foot for 517 units. However, units in neighboring ultra-luxury projects located on far inferior sites were already selling for up to $1,600 per square foot. Moreover, this estimate did not take into account the number of units that a developer would likely be able to construct after taking advantage of density credit and related benefits. In fact, Two Roads intends to construct not 517 but over 700 units on the property.

47. The misleading estimate grid supplied to Biscayne 21 unit owners showed possible sale values ranging from $122.4 million to $155.4 million.

48. Using more realistic figures as of the same date of $1,200 per square foot as the average price for future condominium units, and 700 as the number of units that could be constructed, would have yielded a sale value of $447.0 million to $523.8 million. Those figures are, in fact, consistent with other prices in the Miami market for redevelopment sites. Thus, the

estimates presented to Biscayne 21 owners set a price at less than a third of the true market value during 2020.

49. Avison Young's underestimate in pricing was designed to dampen the expectations of unit owners so that they would be more likely to agree to whatever bids came in, allowing for a completion of the bulk sale transaction and the capturing of a lucrative commission, while reserving a large part of the land's true economic value for Sigurdsson and his investors.

50. Sigurdsson formed a group of confederates within the Condominium including Javier Marquina, the president of the Association's board, who owned three units; Bertolucci, a marketing professional who owned one unit and who undertook a virtually full-time job as Sigurdsson's agent to push through his aims; Pallott; and at least one other member of the board of directors. Sigurdsson, Marquina, Bertolucci, and Pallott constituted the so-called "Liaison Group", which placed itself in a position of trust and confidence vis-à-vis the other unit owners.[6]

51. Sigurdsson and the Liaison Group falsely represented to unit owners that the group was acting for the common good, that it would seek the highest possible price for the property, and that the proceeds of the sale to a developer would be distributed fairly and equitably among all owners.

52. Despite representing that everyone would receive the same compensation for their units, Sigurdsson and the Liaison Group never disclosed that Sigurdsson and his investors were actually on both sides of the transaction; that they were, or would become, significant owners of

[6] Plaintiffs reserve the right to add as party defendants Sigurdsson, Marquina, Bertolucci, Pallott, and Avison Young, and add claims for damages against them for breaches of fiduciary duty, fraud, and conspiratorial conduct with the Association, TRD, and Two Roads.

TRD; and that they would reap far higher rewards than other owners by virtue of the profits from the planned ultra-luxury redevelopment project. Neither did TRD disclose these facts to unit owners from whom it purchased units in the bulk sale that eventually occurred in May 2022.

53. Consideration to Sigurdsson and his investors included not only the contract sale price of their units but also lucrative undisclosed side deals not enjoyed by other Biscayne 21 unit owners.

54. Such consideration included ownership interests and/or the right and opportunity to invest in TRD.

55. Indeed, in its Plan of Termination, TRD was forced to disclose that Sigurdsson and Smuschkowitz each directly or indirectly own or control at least 10 percent of TRD, for a minimum disclosed equity stake of 20% in the multi-billion dollar development project (not including whatever share has been secretly obtained by Jonas or members of the Liaison Group).

56. In addition, the side deal included exclusive listing rights for Sigurdsson's then-employer Douglas Elliman Development Marketing for the sale of the future ultra-luxury units, a concession worth at least tens of millions of dollars in commissions to be shared with Sigurdsson.

57. Neither Sigurdsson, a board member and a member of the Liaison Group, nor other members of the Liaison Group, nor Two Roads ever disclosed Sigurdsson's lucrative side deals to unit owners.

58. On information and belief, Avison Young waived brokerage commissions on the sale of Bertolucci and Pallot's units, providing them further compensation that they did not disclose to unit owners as they relentlessly pitched the supposed merits of the proposed bulk sale.

59. Avison Young told Biscayne 21 unit owners that it would require 80-85% of the unit owners to sign a listing agreement before Avison Young would undertake the assignment.

60. Focused on selling the overall Condominium by garnering a sufficient number of committed unit owners, at a meeting hosted by Sigurdsson in his office attended by Marquina and Bertolucci, Marquina urged that it was "time to start bullying people" to get unit owners to agree to sign a listing agreement with Avison Young.[7]

61. The Liaison Group thus began a relentless campaign of deception, pressure, and manipulation to stampede unit owners into signing the listing agreement as the first step in a bulk sale process.[8]

62. Unit owners were induced into signing the listing agreement by repeatedly being told that closing on the sale – and full payment for units – would occur mere weeks after signing a contract with a developer, even while the developer would be spending a year or more planning the development and obtaining city approvals. This was highly misleading because most developers would require City approval of a site plan before closing – a process that could take nine months to a year or more.[9]

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[7] At the same meeting, Sigurdsson and Bertolucci joked about using Biscayne 21 as practice for their next condo termination. In fact, public records suggest that Sigurdsson, using his HUS LLC vehicle, is mounting a predatory attack on the Clipper Condominium #1.

[8] Many longtime Biscayne 21 residents were elderly, suffered from illnesses or the infirmities of aging, and could not afford an expensive legal fight against what was perceived to be overwhelmingly powerful and coordinated interests. The Liaison Group also repeatedly told them the bulk sale was a *fait accompli* so they better get on board while they could, or suffer the consequences. Thus, although they had no desire to leave Biscayne 21 and indeed wished to live out their lives in their beloved homesteads, many of the unit owners of Biscayne 21 were vulnerable targets.

[9] In fact, Two Roads did not pay selling unit owners until May 23, 2022, 21 months after the deal price was struck. In the meantime, real estate prices soared in Miami, resulting in a sharp reduction

63. To get unit owners excited about sky-high profits and induce owners to sign the listing agreement, it was represented that it was expected that the marketing process would result in 8 to 15 serious initial bids for the property, not including lowball offers. From that group, it was represented that a bidding war was expected to take place among multiple developers with the possibility of a final price far above the estimated range.

64. To pressure unit owners to sign, the Liaison Group threatened that if the unit owners did not sign the listing agreement, they would not be able to participate in the bulk sale and falsely stated that they would be forced to sell at the then-current trading value of Biscayne 21 units. At one point, the Liaison Group falsely told unit owners that if they did not hurry up and sign the listing agreement, Avison Young would raise the commission rate.

65. The pressure and misrepresentations of the Liaison Group were highly effective and ultimately, approximately 91% of the unit owners (including Sigurdsson's approximately 30%) signed the listing agreement.

66. Many of these unit owners, including Plaintiffs, had always hoped to enjoy their retirement and live out their lives at Biscayne 21. These other unit owners reluctantly signed the listing agreement in the hopes that the Liaison Group together with Avison Young would skillfully market the property and make the best of a situation they felt that they were powerless to stop. They hoped that the marketing campaign would ignite the promised bidding war among developers and obtain a price that might, at a minimum, allow them to maintain the standard of living that they enjoyed at Biscayne 21 in a replacement apartment. But this was not to be.

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of wealth or standard of living for selling owners who hoped to replace their units with comparable waterfront apartments in Edgewater.

67. Avison Young launched its effort to market Biscayne 21 immediately after the onset of the COVID-19 pandemic, a world-shaking event that led to enormous financial market instability and severe declines in the real estate market. Aware of the unsettled market conditions, Avison Young conferred with Sigurdsson and the Liaison Group who, acting within the position of trust and confidence vis-a-vis other unit owners, instructed Avison Young to proceed with the marketing process.

68. At the very outset of the marketing effort in March 2020, Avison Young, in addition to Sigurdsson, engaged in multiple discussions with Two Roads but omitted several other prominent developers active in the Edgewater neighborhood from these talks and efforts.

69. The omitted groups included The Melo Group, the developer of Aria, Aria Reserve, and Skyview 22, all located near Biscayne 21; OKO Group, a deep-pocketed developer known for aggressive bids on desirable properties, and the developer of Missoni Baia on the bayfront about ten blocks north of Biscayne 21; and Terra Group, developer of the double towers of Quantum on the Bay, a stone's throw from Biscayne 21.[10]

70. Avison Young excluded these potential highly-motivated developers because Sigurdsson and the Liaison Group wanted to assure that Two Roads won the bid, thereby promoting Sigurdsson's lucrative side deals.

71. Despite Avison Young's representation to the unit owners that the process would yield 8-15 serious offers, Avison Young's initial call for offers yielded only a single bidder within the

[10] In periodic reports provided to the signers of the listing agreement, none of these prominent Edgewater developers are shown as even having signed non-disclosure agreements that would have allowed them to review marketing materials for the most desirable site in Edgewater.

estimated range – Two Roads.

72. Most remarkably, Avison Young excluded developer Michael Shvo ("Shvo") from the marketing campaign. Shvo had recently made an unsolicited offer far higher than any of the other "lowball" unsolicited bids, had stated to unit owners his willingness to increase his bid as necessary, and had already begun to spend money on the design of a redevelopment of the site with Kobi Karp, one of South Florida's most accomplished architects.

73. Despite the evidence that Shvo was a highly motivated bidder, Avison Young did not contact him until August 13, 2020, almost six months after the marketing effort began. Shvo made an initial offer at a price recommended by Avison Young. However, Two Roads then jumped ahead with an offer of $152 million, suspiciously close to but just above Shvo's.

74. Avison Young recommended to the signers of the listing agreement that they accept the Two Roads offer.

75. On or around September 15, 2020, Shvo's architect and representative Kobi Karp advised that Shvo wanted to submit a bid higher than the last bid and to continue bidding against Two Roads. As of that date, there was no binding agreement with Two Roads to preclude another developer from making a higher bid.

76. Avison Young told Karp that Shvo's new bid would not be permitted.

77. Despite the requirement of Florida's transactional broker statute, Avison Young did not inform unit owners who had signed the listing agreement that Shvo submitted a better and higher offer than the initial one from Two Roads and wanted to top Two Roads' latest offer but was not permitted to do so. *See* Chapter 475.278(2)(e), Florida Statutes. Nor did the members of the Liaison Group, despite their fiduciary duty of disclosure, disclose this critical information.

78. Although Avison Young and the Liaison Group had induced unit owners to sign

the Avison Young listing agreement by claiming that Avison Young's process would result in a bidding war that could achieve the highest possible price, at the exact moment when such a bidding war should have erupted, Avison Young and the Liaison Group (including two Board members) secretly squelched it in order to satisfy their own goals at the expense of Biscayne 21 unit owners. Specifically, at that time Sigurdsson had a commitment from Two Roads to award him and his investors a sizeable stake in the future development on favorable terms.

79. Sigurdsson had recently told Plaintiff Murphy that he believed the property could sell for much more than $200 million. On August 14, 2020, shortly before Two Roads made its successful bid, Plaintiff Murphy spoke to Sigurdsson, who, in response to Murphy's questions, stated his opinion that the units in a new development would sell for up to $1,200 per square foot, a figure that by the Avison Young formula presented to unit owners ought to have yielded a far higher price than was presented to unit owners.

80. Sigurdsson also told Murphy that, rather than leaving the sales process solely in the hands of Avison Young, he was personally and directly negotiating with Two Roads. However, rather than attempting to gain the best possible price for other unit owners to whom he owed a fiduciary duty, Sigurdsson secretly negotiated to secure lucrative side deals for himself, at the expense of other unit owners.[11]

[11] After the final Two Roads offer, Murphy complained to Avison Young that the $152 million price was far below Sigurdsson's estimates that the property was worth more than $200 million, and possibly hundreds of millions of dollars more when taking into account the value for prices in the future development. Murphy further protested that the Two Roads price would not allow him and other unit owners to afford apartments equivalent to their units at Biscayne 21. Although Avison Young had touted the deal to unit owners as being "life changing," Michael Fay of Avison Young conceded to Murphy that "sellers will always have a problem with replacement property"

81. As Sigurdsson's counterparty, Two Roads knew that as part of the overall deal Sigurdsson would receive highly valuable economic consideration that would not be shared by other unit owners. Two Roads never disclosed Sigurdsson's additional compensation to selling unit owners. On information and belief, Two Roads knew that the Liaison Group concealed Sigurdsson's additional compensation from unit owners. Two Roads colluded with Sigurdsson and the Liaison Group who acted in violation of their fiduciary duties.

Pressure Campaign to Agree to the Two Roads' Bulk Sale Offer

82. In August 2020, Avison Young coronated Two Roads as the winner of the "auction".

83. After prevailing in Avison Young's fraudulent auction, Two Roads sent unit owners a draft contract containing terms for the bulk purchase of units.

84. The draft contained a "Declaration Amendment Contingency" which "shall be satisfied only if the Association records a duly executed amendment to the Declaration, in form and substance first approved by Buyer, at or prior to closing to incorporate into the Declaration: (i) the latest version of Section 718.117, Florida Statutes …"

85. Two Roads thereby demonstrated that its eyes were wide open to the fact that the 1974 Law did not permit termination other than with unanimous consent of the unit owners.

86. The proponents of the bulk sale continued to bully unit owners to accept the Two Roads offer, stressing the menace posed by Sigurdsson's large ownership position. For example, in an email on August 19, 2020, Sigurdsson's agents Bertolucci and Pallot threatened

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and did not contest that the property was actually worth over $200 million even in August 2020 before the historic transformation of Miami's economy.

owners as follows:

> Also, let us all **remember clearly** that we have a large ONE BLOCK owner in the building, so the future of our building is ALREADY conditioned. At this time, we have this owner totally aligned with this process, and participating for the common good of all owners so that proceeds be split in a fair and equitable way…but this may not remain the case forever.
>
> Furthermore, think about what could happen if an unsympathetic developer acquires a significant block now and divides us all? They would certainly not have "financial fairness" interests or approach in mind.

87. At the same time, the Liaison Group deceptively told unit owners that the Two Roads deal would "maximize the financial benefit and proceeds FAIRLY to everyone in our community".[12]

88. But for the deceptive campaign by the Liaison Group, however, Two Roads would not have obtained the minimum percentage of unit owners as signatories specified in the Two Roads purchase-sale agreement.

89. Two Roads itself also joined in the pressure tactics. For example, on June 27, 2021, Beau Raich, Esq., the Vice President for Acquisitions and Associate General Counsel of Two Roads, wrote various unit owners as follows:

> Once Two Roads has closed on all the purchase and sale agreements for the Biscayne 21 units, the condominium documents allow for the termination of the condominium association and a partition sale of the remaining unsold units. This **"forced sale"** is a course of action that Two Roads would like to avoid, as it requires litigation, and could result in a lower purchase price set by the courts to those remaining unit owners. (Emphasis added)

[12] This was deceptive because, among other reasons, the sale price of the property was not "maximized" but instead was deliberately tamped down, the sales effort was not for the common good, and the economic value of the sales process was not fairly and equitably distributed because a huge portion of the economic value was diverted to Sigurdsson, with ancillary benefits to the other members of the Liaison Group that the other unit owners would not realize.

90. With that crude pressure tactic and using his status as an attorney to overbear the mostly non-lawyer recipients of the letter, a senior legal officer of Two Roads pronounced to recipients of the letter his (incorrect) legal view that the law would side with Two Roads to the detriment of those who refused to capitulate.

91. By sending this message, Two Roads' associate general counsel acknowledged that terminating the Condominium would result in a "forced sale" of condominium units, an outcome that is explicitly forbidden as to homesteads by Article X, Section 4 of the Florida Constitution.

92. Plaintiffs, not willing to succumb to the pressures of Two Roads and lose the homesteads they have lived in for a decade, especially at prices that would grossly diminish their standards of living, declined to sell their units.

The Illegal Dissipation of Insurance Proceeds

93. On October 17, 2019, after suffering damage to the Condominium from Hurricane Irma in 2017, the Association submitted an insurance claim to their windstorm insurance carrier.

94. On or about January 27, 2021, the Association settled the insurance claim with its carrier for the net sum (after payments to a public adjuster) of $3.15 million.

95. Pursuant to Article X.B. of the Declaration, the Association was obligated to deposit insurance proceeds with an Insurance Trustee charged with releasing the funds only for the purposes mandated by the Declaration. The Board of Directors instead deposited the insurance proceeds in a bank account controlled solely by the very directors who, as discussed below, misdirected and misappropriated the funds for their own benefit and gain.

96. The Association had a fiduciary, statutory and contractual obligation to use the insurance proceeds to make necessary repairs to the condominium property as mandated by the Declaration.

97. With respect to maintenance of units in the Condominium, the Declaration provides in pertinent part:

> VI. OWNERSHIP, MAINTENANCE AND ALTERATION OF CONDOMINIUM UNITS
>
> G. Maintenance. The responsibility for the maintenance of a Unit shall be as follows:
>
> 1. By the Association. The Association shall maintain and repair and replace at the Association's expense:
>
> a. All portions of any Unit, except interior wall surfaces not contributing to the support of the building , which portions shall include but not be limited to the roof, outside walls of the Condominium, interior boundary walls of Units, and load-bearing columns.
>
> b. All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained in the portions of the Unit contributing to the support of the building or within interior boundary walls, and all such facilities contained within a Unit, which service part or parts of the Condominium, other than the Unit within which contained.

98. With respect to maintenance of Common Elements of the Condominium, the Declaration provides in pertinent part:

> VII. COMMON ELEMENTS AND LIMITED COMMON ELEMENTS
>
> A. Common Elements. The ownership and the use of the Common Elements shall be governed by the following provisions:
>
> 5. Maintenance and Operation. The maintenance and operation of the Common Elements shall be the sole responsibility and expenditure of the Association …

99. Additionally, Article X of the Declaration, which addresses Insurance for the Condominium, states in relevant part as follows:

> X. INSURANCE
>
> D. Mandatory Repair. Unless there occurs actual or constructive total loss to the improvements on the Condominium Property … the Association and the Unit

> Owners **shall** repair, replace and rebuild the damage caused by casualty loss as their interests appear **and pay the cost of the same in full**. All repairs or replacements made by either the Association or the Unit Owners shall be made, as far as practical, to restore the damaged portion of the building to its condition immediately prior to the damage.

See **Exhibit 1** at 22 (emphasis added).

100. Similarly, Section X.E.2 of the Declaration provides that, absent total destruction of the Condominium (which did not occur), insurance benefits "**shall be expended** to repair, replace, and/or rebuild any damages to or destruction to the Condominium Property." *See* **Exhibit 1** at 23 (emphasis added).

101. Despite these maintenance obligations that required the Association to perform repairs with the insurance proceeds, because it was in bed with Two Roads for the bulk sale of a majority of the units with termination in mind, the Association Board, steered by its President and Liaison Group member Marquina, elected not to repair the property and instead approved the distribution to unit owners of $2,979,786, the vast majority of insurance proceeds received by the Association for damages suffered by the condominium property caused by Hurricane Irma.

102. The Association dissipated the insurance proceeds instead of using the money to make repairs to the Condominium as mandated by the Declaration. This was done despite receiving advice from Association legal counsel that a distribution of the insurance proceeds to owners rather than using it for repairs was impermissible. The Declaration authorizes distribution of insurance proceeds directly to unit owners ONLY when there is an excess of funds over the cost of repairs. Thus, the Board approved the distribution knowing that the funds would be used in a manner that violated the terms of the Declaration.

103. Upon information and belief, each unit was to receive between $13,000 and $25,000 depending on size.

104. The pretext for distributing the funds to unit owners, rather than using them to repair the roof, the seawall, and other actual damage to the building, was that there was damage to the interiors of units and that unit owners could themselves use the distributed money to repair their own units. However, as the directors of the Association knew, there was little to no such damage to the interiors of units so the Board knew this money would not be used for such repairs.

105. Moreover, the distribution was made very shortly before Two Roads' mass closing of units so the Board knew (and various members had admitted) that no owner would actually spend the distributed money on repairs to their units.

106. As an example, at a Board meeting held on June 16, 2021, Director Cristina Valdez stated that after the hurricane she caulked her windows, touched up some walls, and repainted some walls, yet admitted "It was not $23,000 [that I spent], I can assure you." By voting to distribute $23,000 to herself as the owner of a 3-bedroom unit, Valdez gratuitously awarded herself Association funds more than whatever expenditures she made that might be legitimately compensable out of the Settlement, after offsetting any claim she made to her own insurer.

107. Similarly, Board President Marquina identified some peeling paint near some of the windows as the only minor damage to the interior of his units which after several years he had not even bothered to repair. Such repairs certainly would not have cost close to the approximately $25,000 he received as part of the insurance distribution for owning three units.

108. Similarly, at the same meeting, Sigurdsson claimed (without evidence) that all of his units together had incurred total expenses of $100,000 in repairing damage from Hurricane Irma, far less than the approximately one-million dollars that Sigurdsson voted to distribute to the entities he controls.

109. At no point prior to or after approving the distributions did the Association do anything to ascertain what units suffered interior damage and if they did, the cost to repair the damage. Additionally, the Association did nothing to determine whether any unit owners whose units may have suffered interior damage received benefits from their own insurance carriers, which in equity would have to have been offset from any distribution.

110. The Directors all knew that the great majority of unit owners – including themselves -- would never use distributed insurance funds to actually make repairs, as required by the Declaration, because they and all but about 13 of the unit owners were under contract to sell their units to Two Roads to close within weeks.

111. Importantly, fearful of legal consequences because what the Board was doing was a clear violation of the Declaration, the Board refused to issue checks to unit owners unless they signed a release absolving the Board members and the Association for any liability for the decision to distribute the money instead of making the required repairs to the Building. A copy of the sample release is attached hereto as **Exhibit 2**.

112. Plaintiffs Murphy and Ulmans did not sign the release and therefore did not receive their pro rata share of the insurance proceeds. On July 1, 2022, they sent correspondence to the Association demanding that within ten days it take action to collect the $2,979,786 in insurance proceeds that were improperly disbursed to unit owners and use it to perform repairs to the Condominium in compliance with the Declaration, which would include payment by Two Roads to the Association of approximately 93% of the $2,979,786 for distributions to the units it recently purchased.

113. The Association, controlled and staffed wholly by Two Roads, has refused and/or failed to do so.

The Culmination of the Illegal Efforts to Terminate Biscayne 21 and Purported Amendments to the Declaration

114. On May 19, 2022, the Association Board, including Sigurdsson and Marquina, met and tendered their resignations conditional on the anticipated closing of Two Roads' bulk purchase of 176 units on Monday, May 23. Three individuals from Two Roads were conditionally appointed as directors to the new Biscayne 21 Board.

115. Despite Plaintiffs' refusal, the relentless campaign by Sigurdsson and his agents culminated in the bulk purchase of 176 units by TRD on or around May 23, 2022, and the sale of 183, or just over 95% of the units, to TRD by approximately August 15, 2022.

116. As a result, TRD is a "bulk owner" as defined in Fla. Stat. §718.117(3)(c).

117. The post-closing board of directors consisted initially of three Two Roads officers, who, at a board meeting held on August 2, 2022, voted four other Two Roads employees onto the board. The board promptly launched a series of illegal actions culminating in the attempt to terminate the condominium.

118. The proposed post-termination redevelopment will include 600 to 700 units, including "branded residences" using the "Edition" marque of Marriott International, with a sell-out value of approximately $1.5 - $2.5 billion.

119. The profit to TRD and its investors is anticipated to be in the hundreds of millions of dollars.

120. Upon information and belief, below is a rendering of TRD's proposed post-termination development on the site of the existing Condominium, depicting three luxury towers on the Biscayne 21 site:[13]

[13] *See* "Developer Submits Plans for 3 Luxury Towers With 750 Units, Replacing Biscayne 21 in

121. After Two Roads closed on its bulk purchase, it began a ceaseless barrage of telephone calls and text messages aimed at stampeding non-selling unit owners to change their minds. Two Roads enlisted Bertolucci – Sigurdsson's agent – to help mount a campaign of pressure and manipulation, even though she had already sold her unit and (but for the continuing business involvement of Sigurdsson in the future development) ought to have had no cause to intermeddle. Yet Bertolucci fired off numerous texts to non-selling owners seeking to cause division and fear among them. For example, on July 13, 2022, Bertolucci texted one non-selling owner that other non-sellers were already talking to Two Roads "and will end up with the last negotiated closing spots." According to Bertolucci, failure to contact Two Roads immediately would be an "unwise decision that will cost [them] hundreds of thousands."

Edgewater," The Next Miami, May 2, 2022. (https://www.thenextmiami.com/developer-submits-plans-for-3-luxury-towers-with-750-units-replacing-biscayne-21-in-edgewater/).

122. On June 17, 2022, the board of directors held a special meeting to consider a proposed amendment to the Declaration of Condominium of Biscayne 21 Condominium which sought to amend two key articles of the Declaration – Article X. Insurance and Article XIII. Termination. *See* **Exhibit 3.**

Insurance

123. With respect to Article X, the proposed amendment sought to eliminate the mandatory requirement to repair damaged Condominium Property. Specifically, it amended Article X.D. as follows:[14]

> X. INSURANCE
>
> * * *
>
> D. Mandatory Repair. Unless needed for the Condominium Property to comply with applicable life safety or health codes or other legal requirements for the same, and ~~there occurs actual or constructive total loss to the improvement of the Condominium Property,~~ subject to the provisions hereinafter provided, neither the Association nor~~and~~ the Unit Owners shall be required to repair, replace and rebuild the damage to the Condominium Property caused by casualty loss ~~as their interests appear and pay the cost of the same in full~~. All repairs or replacements made by either the Association or the Unit Owners shall be made, as far as practical, to restore the damaged portion of the building to comply with any life safety or health code or other legal requirements pertaining to the same~~its condition immediately prior to the damage~~. In the event that the insurance proceeds are insufficient to repair, replace and/or rebuild the damage caused by the casualty, and the repair, replacement, or rebuilding is required to comply with applicable life safety or health codes or other legal requirements for the same, the Association shall collect whatever additional moneys are required for such repair, replacement and/or rebuilding by means of a special assessment. Such special assessment shall be assessed and collected in the manner provided for special assessments generally and shall be treated in the manner set forth in paragraph F of Article VIII herein.

124. Similarly, it proposed to amend Article X.E.2. as follows:

[14] Text which is indicated by ~~lined through~~ with hyphens shall be omitted and text underlined shall be added in the Proposed Amendment.

2. The net insurance proceeds of all amounts collected by the Association or the Insurance Trustee shall be expended as required to repair and replace the Condominium Property damaged property to a condition that will comply with life safety and health codes or other legal requirements related to the same. ~~Unless there occurs actual or constructive total loss of the improvements on the Condominium Property, and as a result thereof the Unit Owners fail to elect to rebuild and repair as provided in Paragraph "F" below, both the net proceeds of all amounts collected by the Insurance Trustee and all funds collected by the Association from the special assessment provided for in paragraph "D" of this Article shall be expended to repair, replace and/or rebuild any damages to or destruction to the Condominium Property and a~~ Any balance remaining from the insurance proceeds shall be paid to the Unit Owners and their mortgagees, as their interests may appear. The proceeds of insurance and the funds collected by the Association from the insurance coverage~~Assessments as hereinabove provided~~ shall be held by the Insurance Trustee and/or the Association in trust for the use and purposes herein provided. The Insurance Trustee shall have no obligation or duty to see that the repairs, reconstruction or replacements required hereunder are performed or accomplished, but such duty shall be the Association's.

125. Thus, the Proposed Amendment to Article X and the restoration provisions are an obvious attempt to retroactively bless the prior action of the Board for distributing the insurance proceeds rather than making the mandatory repairs pursuant to the Declaration. The law does not excuse such retroactive efforts.

Termination

126. With respect to the unanimous termination requirement contained in Article XIII, the Proposed Amendment sought to amend the Declaration to eliminate the unanimity requirement to terminate the condominium form of ownership and instead require approval by only eighty percent (80%) of unit owners:

XIII. TERMINATION

The Condominium may be terminated in one of the following manners:

A. Agreement. The termination of the Condominium may be effected by the ~~unanimous~~ agreement of at least eighty percent (80%) of the Unit Owners ~~and all institutional mortgagees~~, which agreement shall be evidenced by an instrument executed in the same manner as required for the conveyance of the land. Upon termination of the Condominium, the condominium property shall be owned in common by the unit owners in the same undivided shares as each owner previously owned in the common elements. All liens shall be transferred to the undivided share in the condominium property attributable to the unit originally encumbered by the lien in its same priority. The termination shall become effective when such agreement has been recorded in the Public Records of Dade County, Florida.

127. The change from a unanimous provision to one requiring eighty percent was orchestrated by TRD to alter and change the voting rights of unit owners and deprive Plaintiffs of their vested veto power with respect to termination of the condominium.

128. On June 17, 2022, the Board of Directors approved the Proposed Amendment. Thereafter, on July 12, 2022, a Special Member's Meeting of the Association was held to consider and vote on the proposed amendment. At the Special Meeting, TRD cast 177 votes in favor and 9 unit owners, including each of the Plaintiffs, voted no in person or by proxy.

129. Since it was not a unanimous vote, the July 12 vote to amend the termination provision was contrary to the Declaration.

130. This amendment (the "Termination Amendment") was subsequently recorded on August 4, 2022, in Official Records Book 33322, Page 280, of the Public Records of Miami-Dade County, Florida. A true copy thereof is attached hereto as **Exhibit 4**.

131. Pursuant to Article XII of the Declaration, a vote of 100% of unit owners was required to amend the termination provision since the amendment to the termination provision altered the voting rights of the owners, which include supermajority and veto powers. See **Exhibit**

1, §XII.A.2.

132. The termination provision in the original Declaration gave every unit owner the voting power to block the termination of the Condominium.

133. The amendment to Article XIII of the Declaration not only altered but eviscerated the voting rights of unit owners in the Condominium by eliminating the power to veto a termination of the Condominium. A veto right is part of the unit owner's "voting rights" and eliminating each unit owner's veto power as to termination limits the unit owner's voting rights fixed at the time the Declaration was recorded and the time they purchased their units.

134. The amendment eliminating the Declaration's requirement for unanimous agreement to terminate the Condominium violates contractual guarantees in the Declaration that unit owners' voting rights shall not be altered or changed without their consent.

135. The amendment to the termination provision was in contravention of the Declaration as well as Section 3.4 of the By-Laws which requires that when amendments are being made to provisions that require greater than majority votes (such as the termination provision), those provisions can only be changed by that percentage of voting members joining in the action rather than just a majority.

136. The amendment also contravenes Section 711.16, Fla. Stat. (1974), which governs the Association with respect to termination.

137. Moreover, amending the termination provision in contravention of the Declaration and applicable law allows for the forced sale of homestead property in violation of Article X, Section 4 of the Florida Constitution.

138. An essential element of homestead rights and the value of a homestead are the tax benefits conferred by the Florida Constitution.

139. Article VII, Section 4(d) of the Florida Constitution, known as the "Save Our Homes" Amendment, caps increases in property tax assessments for homesteads. The purpose of the "Save Our Homes" amendment is to encourage the preservation of homestead property in the face of ever-increasing opportunities for real estate development, and rising property values and assessments. The amendment supports the public policy of this state favoring preservation of homesteads. Similar policy considerations are the basis for the constitutional provisions relating to homestead tax exemption (Article VII, Section 6, Florida Constitution), exemption from forced sale (Article X, Section 4(a), Florida Constitution), and the inheritance and alienation of homestead (Article X, Section 4(c), Florida Constitution).

140. As an example, the property taxes on Plaintiff Murphy's unit – a homestead property -- were $5,760 in 2021. Increases in the assessed value and the taxation of Murphy's property have, since the purchase of his unit in 2012, been limited by the Save Our Homes provision of the Florida Constitution. If Murphy were forced, by virtue of a termination, to sell his unit and transfer Save Our Homes benefits to a new homestead, the assessment on the new property would be based on the purchase price of the new unit. The assessed value would be reduced by a mere $4,939 (as of 2021) pursuant to the "portability" feature of the Save Our Homes protection. If, after a forced sale and in attempt to preserve his homestead, Murphy were to buy a roughly equivalent condominium, the property tax would be approximately $60,000 per year – about $54,000 more per year than Murphy now pays. That drastic incremental amount would continue annually and be subject to a three percent annual increase on a substantially greater base valuation.

141. The termination of the Condominium would therefore result in a forced sale of Plaintiffs' homesteads in violation of Article X, Section 4 of the Florida Constitution, and deprive

Plaintiffs of the tax-savings benefits accrued under Article VII, Section 4(d) of the Florida Constitution.

142. With the Declaration clearly lacking *Kaufman* language, on July 29, 2022, the Association held a Special Meeting of the Board of Directors on August 2, 2022. The agenda for that meeting included a vote on proposed amendments: (a) to Article I to insert after "as amended" the words "and/or renumbered from time to time;" and (b) adding Article II, Section 19, consisting of a new definition of "Condominium Act" as meaning "Chapter 718 of the Florida Statutes, as it may be amended from time to time." The agenda also included a vote on proposed amendments to the Articles of Incorporation and By-Laws to reduce the number of directors to three, and the nomination of four additional employees of the bulk owner, Two Roads, to be directors.

143. On August 2, 2022, the Board of Directors approved the proposed amendments. At the same meeting, the three directors, all officers of the bulk owner TRD, voted four other employees of Two Roads onto the board of directors. The new directors constituted a majority of the board. No unit owner other than the bulk owner held a seat on the board of directors.

144. Thereafter, on August 18, 2022, a Special Member's Meeting of the Association was held to consider and vote on the proposed amendments. At this special meeting, TRD cast 178 votes in favor and 9 unit owners, including each of the Plaintiffs, voted no in person or by proxy.

145. This amendment (the "Kaufman Amendment") was subsequently recorded on August 25, 2022, in Official Records Book 33355, Page 147, of the Public Records of Miami-Dade County, Florida. A true copy thereof is attached hereto as **Exhibit 5**.

146. The sole purpose of adopting the Kaufman Amendment was its attempt to create an argument whereby TRD and the Association could purport to invoke termination provisions of the

current version of Chapter 718 of the Florida Statutes that are inconsistent with the termination provisions of the governing 1974 Law, to wit: (a) Section 718.117(3), allowing termination of a condominium not by unanimous agreement but on a vote of 80 percent of the total voting interests of the condominium; and (b) various provisions in Section 718.117 treating unit owners following a termination not as tenants in common but as "former unit owners" with no continuing ownership rights in the condominium property nor the right to a partition action.

147. Indeed, less than a week after the recording of the Kaufman Amendment, TRD unilaterally approved a Plan of Termination of Biscayne 21 Condominium and sent a copy thereof to Plaintiffs on September 1, 2022. A true copy of said correspondence is attached hereto as **Exhibit 6**.

148. Plaintiffs objected to the Plan of Termination in writing, and thus its approval was not unanimous. True copies of Plaintiffs' objection letters are attached hereto as Composite **Exhibit 7**.

149. At that point in time, a majority of the board of directors had been voted onto the board by the bulk owner, TRD, but no election had been conducted for "unit owners other than the bulk owner [to] elect at least one-third of the members of the board of administration **before the approval of any plan of termination**" pursuant to Fla. Stat. §718.117(3)(d) (emphasis added).

150. On September 22, 2022, TRD submitted *ex parte* the Plan of Termination to the Division of Condominiums, apparently purporting to act under Chapter 718.117(3), Florida Statutes. TRD did not inform the Division that Chapter 711.16 was the applicable termination statute, rather than 718.117(3).

151. On October 27, 2022, the Division provided counsel for TRD with a highly qualified and contingent "Acceptance" stating that "the division … has determined that the plan

complies with the procedural requirements of section 718.117(3)." However, the notification went on to state: "This acceptance is based on information provided by your office and is accepted as submitted. The division's review of this information is limited to procedural compliance with the statutory requirements of a termination plan, and does not extend to its remaining content or other possible deficiencies. By issuing this acceptance, the division affirms procedural compliance, but neither endorses, nor favors, this termination plan."

152. Two Roads subsequently caused the Plan of Termination of Biscayne 21 Condominium to be recorded on November 29, 2022, in Official Records Book 33480, Page 4758, Public Records of Miami-Dade County, Florida. *See* **Exhibit 8**.

153. On December 6, 2022, Plaintiffs, through counsel, sent the Association, as well as TRD's counsel, a pre-arbitration demand letter pursuant to Section 718.1255(4)(b), Fla. Stat., detailing the numerous reasons why the Plan of Termination and the actions leading to it were defective, and demanding that they remove the Plan of Termination from the public records and void the illegal amendments to the Declaration that they alleged permitted them to terminate the Condominium. A copy of the correspondence is attached hereto as **Exhibit 9.**

154. Instead of complying with Plaintiffs' demands, the Association unabashedly attempted to steal the remaining unit owners' homes and convey the entirety of the Condominium property to TRD, including Plaintiffs' units, pursuant to that certain Trustee's Deed recorded December 9, 2022, in Official Records Book 33497, Page 1283, Public Records of Miami-Dade County, Florida. A true copy thereof is attached hereto as **Exhibit 10**.

155. On February 17, 2023, Plaintiffs (as Petitioners) timely filed with the Division of Condominiums a Petition for Mandatory Non-Binding Arbitration, pursuant to 718.117, against the Association and TRD (as Respondents) challenging the Plan of Termination on the grounds,

inter alia, that the required vote was not obtained and that mandatory disclosures were omitted, misleading, incomplete, or inaccurate.

156. On February 21, 2023, the Division arbitrator entered an order requiring Respondents to answer the Petition.

157. On March 13, 2023, TRD (as Respondent) filed an Answer. The Association joined the Answer on March 14, 2023.

158. That same day, at the direction of Two Roads, the property manager for the Condominium sent notice to all remaining tenants that they must vacate the premises by May 31, 2023, and copied Plaintiffs on the notice.

159. Far worse, they also made it clear to Plaintiff unit owners that they no longer owned their units and even planned to bar unit owners from entry to their homes without any judicial approval or process.

160. Moreover, Lawrence Pecan, on behalf of TRD, made it clear that it had every intention of executing self help and throwing the Plaintiff unit owners out of their homes, even though these unit owners' homes have not been purchased and no judicial process has occurred to permit them to do so.[15]

161. On May 2, 2023, the Parties mediated their dispute, but were unable to come to a resolution.

162. On May 11, 2023 the Parties filed a Joint Motion to Dismiss the Arbitration following an impasse at the mediation to which the parties had mutually agreed, meaning that any

[15] Plaintiffs reserve the rights to add tortious interference claims against Lawrence Pecan, individually, and TRD at the appropriate time.

party could proceed in a court of competent jurisdiction. See 718.1255(4)(h).

163. Plaintiffs then filed the instant action.

164. Plaintiffs have retained the undersigned counsel and have incurred attorney's fees and costs for which they are entitled to be reimbursed from the Association pursuant to Section 718.303, Fla. Stat.

COUNT I – DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(The 1974 Law Applies and The Plan of Termination is Void)

165. Plaintiffs hereby re-allege and incorporate the allegations contained in paragraphs 1 through 164 as if fully set forth herein.

The Declaration Recorded on Dec. 10, 1974 Did Not Contain "Kaufman" Language

166. This is a Count for Declaratory Relief under §86.011, Fla. Stat. Pursuant to §86.021, Fla. Stat. "any person claiming to be interested or who may be in doubt about his or her rights under a deed, will, contract or other article, memorandum or instrument in writing ... may have determined any question of construction or validity ... and obtain a declaration of rights, status, or other equitable or legal relations thereunder."

167. The Declaration of Condominium of Biscayne 21, recorded December 10, 1974, stated that the owner submitted the property to condominium ownership, "pursuant to Chapter 711, Florida Statutes, the Condominium Act, as amended."

168. Florida law is clear that "[t]he law in existence on the date of recording the declaration is as controlling as if engrafted onto the documents." *Suntide Condo. Ass'n, Inc. v. Div. of Florida Land Sales & Condominiums, Dept. of Bus. Regulation*, 463 So. 2d 314, 317 (Fla. 1st DCA 1984), *citing Sans Souci v. Division of Florida Land Sales & Condominiums*, 421 So.2d 623, 628 (Fla. 1st DCA 1982).

169. The version of the Condominium Act which was in effect when the Declaration was recorded in 1974 is Chapter 711, Fla. Stat. (1974) so it is the 1974 Law that governs Biscayne 21.

170. The Declaration lacks what is known as *Kaufman* language ("as amended from time to time") through which a condominium declaration automatically incorporates future amendments to the Florida Condominium Act, but instead submits the Condominium "to condominium ownership pursuant to Chapter 711, Florida Statutes, as amended."

171. Courts have repeatedly held that using the phrase "as amended" but omitting the phrase "as amended from time to time" is not *Kaufman* language.[16]

172. "Absent *Kaufman* language in the Declaration, any changes made by the Legislature to the Condominium Act subsequent to the effective date of the Declaration do not become a part of the Declaration automatically." *Tropicana Condo Ass'n, Inc. v. Tropical Condo. LLC*, 208 So. 3d 755, 756 (Fla. 3d DCA 2016). The 1974 Law thus applies to the termination of Biscayne 21, which requires unanimous approval to terminate the Condominium, which was not obtained.

173. Elsewhere in the Biscayne 21 Declaration and other condominium documents, the drafters used the phrase "as amended from time to time" rather than "as amended." *See* Article II,

[16] *See De Soleil South Beach Residential Condo. Ass'n, Inc. v. De Soleil South Beach Ass'n*, *Inc.* 322 So. 3d 1189, 1194 (Fla. 3d DCA 2021) ("The Declaration of Condominium here does not contain *Kaufman* language, i.e., the 'as amended from time to time' language subjecting it to future statutory changes to the Condominium Act."); *Adams v. Surf House Condominium Association, Inc.,* Miami-Dade County Circuit Court Case No. 2016-023813-CA-01, Amended Omnibus Order (October 17, 2018) ("the words "as amended" fall "short of an unequivocal statement that future amendments of the Condominium Act would be automatically incorporated.").

Section 1 ("Declaration… means this Declaration of Condominium, as it may be amended from time to time.); Article II, Section 3 ("By-laws mean the By-laws of the Association as they may exist from time to time."); Article III, Section 16 ("Condominium Documents refer to [specified documents], as the same may be amended from time to time."); Articles of Incorporation, Article III(1) ("The Corporation shall have all of the powers and privileges set forth and described in Chapter 617.021, Florida Statutes as amended from time-to-time, relating to corporations not for profit.").

174. The fact that the drafters of the Declaration chose to use only the words "as amended" when specifying the governing condominium law, but elsewhere used "as amended from time to time" demonstrates an emphatic choice to be governed only and forever by the condominium statute then in effect. The contrast is especially clear in the use of the phrase "as amended from time to time" in the specification of the governing not for profit corporate law. *Cf. De Soleil South Beach Residential Condominium Association, Inc., Appellant, vs. De Soleil South Beach Association, Inc.*, 322 So. 3d 1189, 1194 (Fla. 3d DCA 2021) (declaration that specifically incorporates only the version of the Condominium Act that existed when the Declaration was recorded "expressly disavow[s] the application of later amendments to the Condominium Act.").

175. The 1974 version of Chapter 711 took effect on October 1, 1974, just over two months prior to the recording of the Biscayne 21 Declaration. The phrase "as amended" is a reference to the amendments to the law that had become effective such a short time before.

176. Nevertheless, the Association has ignored the governing statute, the Declaration, and Florida Law and has proceeded with all deliberate speed to amend the Declaration in an effort to terminate the Condominium and kick Plaintiffs out of their homes in willful violation of Florida law.

177. The varying uses in the Declaration of the phrases "as amended" and "as amended from time to time" foreclose any conclusion that there is any "express" or "unequivocal" agreement to be bound by future revisions of the Condominium Act.

178. The 1974 Statute, §711.16(1), which was in effect when the Biscayne 21 Declaration was recorded in 1974, required *unanimous* consent for termination of the Condominium.

179. Consistent with the statutory requirement, Article XIII.A. of the Condominium Declaration states that "the termination of the Condominium may be effected by the unanimous agreement of the Unit Owners." The statutory requirement was a covenant incorporated within the Declaration.

180. Given the lack of *Kaufman* language, Plaintiffs contend, but Defendants deny, that the consent of 100% of unit owners is required to terminate the Condominium.

181. Moreover, Plaintiffs contend, but Defendants deny that termination of the Condominium would result in a forced sale of Plaintiffs' homesteads in violation of Article X, Section 4 of the Florida Constitution, and deprive Plaintiffs of the tax-savings benefits accrued as part of the value of their homesteads under constitutional Article VII, section 4(d) of the Florida Constitution.

182. Therefore, the parties to this action are in doubt as to their rights concerning whether The Plan of Termination is valid and whether termination may proceed.

183. As unit owners at Biscayne 21 and members of the Association, Plaintiffs have a bona fide, actual and present practical need for a declaration concerning the Plan of Termination.

184. This is an actual controversy and Plaintiffs do not seek an advisory opinion.

185. The Declaratory Judgment Act entitles Plaintiffs to further supplemental relief, including injunctive relief §86.061, Fla. Stat.

186. Plaintiffs have a clear legal right to relief, and a substantial likelihood of success on the merits, because there was not unanimous consent to amend the declaration and there is not unanimous consent to terminate the Condominium.

187. Failure to enjoin the Association, its directors, its officers, its agents, affiliates and assigns from taking further action to terminate the Condominium and the Association will result in irreparable harm to Plaintiffs in the form of termination of their property rights. Real property is unique, and monetary damages are wholly insufficient to compensate Plaintiffs for the permanent loss of their homes.

188. The balance of the equities and public interest favor an injunction. The Association has existed for 48 years and there will be no prejudice to the Association remaining in existence and Two Roads can lucratively lease out their units. Two Roads knew at the time it acquired units at Biscayne 21 with eyes wide open that unanimous consent to terminate was required.. On the other hand, there will be substantial and irreparable prejudice to Plaintiffs, resulting from the loss of their homes and permanent reduction in their standards of livings. Further, it is in the public interest to enjoin the amendment and attempted termination because it is the policy of Florida to preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium. Ch. 718.117(1)(d)(6).

WHEREFORE, Plaintiffs respectfully request this Court:

A. declare that the Declaration lacks the necessary Kaufman language and

that Section 711.16, Florida Statutes (1974) applies to the termination of the Condominium;

B. declare that any attempt to terminate the Condominium absent a unanimous vote is null, void and of no legal effect, on the grounds that it contravenes the requirements of Section 711.16, Florida Statutes (1974) and the Declaration;

C. declare that the Plan of Termination is null, void and of no legal effect;

D. declare that the Plan of Termination violates the Plaintiffs' Constitutional Homestead Protection against forced sales and limits on property tax increases;

E. declare that the Plan of Termination violates the Plaintiff's Constitutional Limits on property tax increases for non-Homestead property;

F. enjoin the Association, its directors, its officers, its agents, affiliates and assigns, from taking any action to terminate the Biscayne 21 Condominium or the Association including but not limited to recording any instrument purporting to terminate or reflecting a purported termination of the Condominium;

G. enjoin the Association, its directors, its officers, its agents, affiliates and assigns, from taking any action to sell Plaintiffs' units or divest Plaintiffs of title to their units;

H. award any supplemental relief this Court deems just and proper; and

I. award Plaintiffs their reasonable attorney's fees pursuant to Section 718.303, Fla. Stat., and their costs.

COUNT II – DECLARATORY JUDGMENT
(The Termination and Kaufman Amendments are Void and Invalid)

189. Plaintiffs hereby re-allege and incorporate the allegations contained in paragraphs 1 through 164 as if fully set forth herein.

190. This is a Count for Declaratory Relief under §86.011, Fla. Stat. with respect to the Termination Amendment and the Kaufman Amendment.

191. Contractual provisions in the Declaration require unanimous approval of any termination, no matter the applicable statute.

192. Consistent with the statutory mandate, the Declaration incorporated the same requirement as the 1974 Law and further provided the following:

> The termination of the Condominium may be effected by the **unanimous agreement of the Unit Owners** and all institutional mortgagees, which agreement shall be evidenced by an instrument executed in the same manner as required for the conveyance of the land. The termination shall become effective when such agreement has been recorded in the Public Records of Dade County, Florida.

See **Exhibit 1**, Article XIII.A (emphasis added).

193. When the Plaintiffs, as well as Defendant TRD, acquired their respective units in the Condominium, they took subject to the provisions of the 1974 Law and the Declaration, including the unanimous termination provision and the unanimous termination requirement of the 1974 Law which was incorporated into the Declaration. Such termination provision requiring unanimity instilled vested rights in each unit, as a single unit owner could veto any termination of the Condominium by voting against it. The termination provision in the original Declaration gives each and every unit owner the right to vote to block the termination of the Condominium by voting against termination, which Plaintiffs did.

194. The Declaration's general amendment provisions protect unit owners' voting rights:

> XII. AMENDMENT
>
> A. Declaration of Condominium. Except as herein otherwise provided, amendments to this Declaration shall be adopted as follows:
>
> 2. Resolution. A resolution adopting and approving a proposed amendment shall be proposed, adopted and approved by the Board of Directors of the Association, and, after being proposed, adopted and approved by the Board, it must be adopted and approved by the members. Directors and Unit Owners not present at the meeting considering the amendment may approve and adopt same in writing. Such proposals, adoptions and approvals must be by not less than fifty-one (51%) percent of the members of the Association, except as to **an amendment altering the percentage of ownership in the Common Elements or the voting rights of any of the Owners of the Condominium, any of which shall require the approval of one hundred (100%) percent of the Owners**.
>
> B. …
>
> C. Proviso. No amendment shall change any Condominium Unit nor the share of the Common Elements, Common Expenses or Common surplus attributable to any Unit, **nor the voting rights appurtenant to any Unit, unless the record Owner or Owners thereof and all record owners of liens upon such Unit or Units shall join in the execution of such amendments.**

See **Exhibit 1**, Art. XII (emphasis added).

195. Thus, any amendment to the Declaration that alters or changes the voting rights of any of the unit owners requires unanimous consent of all of the owners. Under Florida condominium and corporate law, the meaning of "voting rights" and "vote" is not limited to the bare right to cast a vote but includes the power, effect, and distribution of voting power. The Declaration establishes unit owners' "voting rights" in the plural. A veto right is part of the unit

owner's plural "voting rights" and "vote" and eliminating each unit owner's veto power as to termination alters and changes the unit owner's voting rights fixed at the time the Declaration was recorded and at the time they purchased their units.

196. Any ambiguity in the Declaration in the meaning of "vote" and "voting rights" in Biscayne 21's condominium documents must be resolved against the Association as successor in interest to the drafter. *Sans Souci v. Div. of Fla. Land Sales*, 421 So. 2d 623, 627 (Fla. 1st DCA 1982); *see also Kaufman v. Shere*, 347 So. 2d 627, 628 (Fla. 3rd DCA 1977). As such, the Declaration's incorporation of the specific unanimity requirement for termination cannot be removed by the general power to amend; rather the consent of 100% of unit owners was required to amend the termination provision of the Declaration because so doing alters and changes unit owners' voting rights without their consent.

197. Pursuant to Article XII of the Declaration, 100% of unit owners were required to adopt both the Termination Amendment and the Kaufman Amendment, as the same altered and changed the voting rights of unit owners, which include supermajority and veto powers, but neither the Termination Amendment nor the Kaufman Amendment received 100% approval. Declaration, Art. XII.A.2. These amendments eliminated the Declaration's requirement for unanimous agreement to terminate the Condominium which violates the contractual guarantees in the Declaration that unit owners' voting rights shall not be altered or changed without their consent.

198. Further, the approval of the Termination Amendment, the Kaufman Amendment, and the Plan of Termination without unanimous unit owner consent violated Section 3.4 of the By-Laws, which requires that the approval of any action of the Association be by majority vote "except where approval by a greater number of members is required by the Declaration of Condominium or these By-laws." As neither the Termination Amendment, the Kaufman Amendment, nor the

Plan of Termination received the approval of 100% of unit owners, they are void and of no force or effect.

199. Pursuant to the Declaration, an amendment altering or changing the voting rights of any of the Owners of the Condominium required the approval of one hundred (100%) percent of the Owners. *See* **Exhibit 1, Art. XII**.

200. At a Special Meeting, the Members of the Association voted to approve the Termination Amendment with Two Roads voting 177 units in favor and 9 unit owners, including all Plaintiffs, voting no in person or by proxy.

201. By lowering the percentage of unit owners required to terminate the Condominium, the amendment altered and changed the voting rights of the unit owners.

202. The termination provision in the original Declaration gave every unit owner the right to vote to block the termination of the Condominium.

203. The amendment eliminating the Declaration's requirement for unanimous agreement to terminate the Condominium violates contractual guarantees in the Declaration that unit owners' voting rights shall not be altered or changed without their consent.

204. A veto right is part of the unit holder's "voting rights" and eliminating each unit owner's veto power as to termination limits the unit owner's voting rights fixed at the time the Declaration was recorded and the time they purchased their units.

205. As such, Plaintiffs contend, but Defendants deny, that the Declaration's incorporation of the specific unanimity requirement for termination cannot be removed by the general power to amend and the consent of 100% of unit owners was required to amend the termination provision of the Declaration.

206. Plaintiffs also contend, but Defendants deny that the approval of the

Termination Amendment without unanimous unit owner consent violated Section 3.4 of the By-Laws.

207. Plaintiffs also contend, but Defendants deny that the approval of the Kaufman Amendment is invalid and does not apply retroactively to put the Condominium under the current statute.[17]

208. Plaintiffs further contend, but Defendants deny that the Termination Amendment and Kaufman Amendment are void and invalid because they contravene the 1974 Law.

209. Therefore, the parties to this action are in doubt as to their rights concerning whether the amendment to the Declaration is valid and whether termination may proceed.

210. As unit owners at Biscayne 21 and members of the Association, Plaintiffs have a bona fide, actual and present practical need for a declaration concerning the construction and validity of the amendment to the Declaration and termination.

211. This is an actual controversy and Plaintiffs do not seek an advisory opinion.

WHEREFORE, Plaintiffs respectfully request this Court:

A. declare that the amendment to Article XIII of the Declaration is null, void and of no legal effect, on the grounds that it contravenes the requirements of the 1974 Law and the Declaration;

B. declare that the amendment to Article XIII of the Declaration is null, void and of

[17] Even if the addition of *Kaufman* language is found to be appropriate, which it is not, it would only apply for amendments to the Condominium Act following the effective date of the amendment.

no legal effect, on the grounds that it contravenes Section 3.4 of the By-Laws;

C. declare that the amendment to the Declaration to add "Kaufman" language is null, void and of no legal effect, on the grounds that it contravenes the requirements of the 1974 Law and the Declaration;

D. declare that the amendment to the Declaration, or any version of Article XIII which removes the requirement of unanimous consent for termination which was incorporated into the Declaration at the time Plaintiffs purchased their units, cannot be applied to Plaintiffs, on the grounds that it attempts to remove the vested rights of unit owners who purchased prior to the passage of the amendment, and that therefore the amendment is null, void and of no legal effect, because 100% of the unit owners did not approve it;

E. award any other relief it deems just and proper; and

F. award Plaintiffs their reasonable attorney's fees pursuant to Section 718.303, Fla. Stat., and their costs.

COUNT III – DECLARATORY JUDGMENT
(Under 1974 Law, Condominium Property Is Owned in Common by Unit Owners After Any Termination)

212. Plaintiffs hereby re-allege and incorporate the allegations contained in paragraphs 1 through 164 as if fully set forth herein.

213. This is an alternative Count for Declaratory Relief under §86.011, Fla. Stat. to the extent the Court declares that termination was proper.

214. Plaintiffs contend, but Defendants deny, that the 1974 Law provides that after any termination, the unit owners own the condominium in common.

215. Section 711.16(2) states: "Upon removal of the property from the provisions of this

Act, the property shall be deemed to be owned in common by the apartment owners."

216. In 1965, the Legislature amended Section 711.16(3) by adding a second sentence: "After termination of a condominium in any manner, the liens upon condominium parcels shall be upon the respective undivided shares of the owners as tenants in common."

217. Accordingly, Plaintiffs seek a declaration that if Biscayne 21 is ever terminated in any manner, they shall be deemed to be tenants in common and entitled, as applicable, to a partition of the condominium property.

218. Specifically, Plaintiffs seek a declaration that the Plan of Termination is a "manner" of termination under Section 711.16(3) but violates that provision because it fails to preserve the respective undivided shares of the owners as tenants in common." Accordingly, the Plan of Termination must be declared void.

WHEREFORE, Plaintiffs respectfully request this Court:

A. declare that, in the event termination of the Condominium is permitted, Plaintiffs shall be deemed to be tenants in common and entitled, as applicable, to a partition of the condominium property;

B. declare that any attempt to terminate the Condominium that does not treat Plaintiffs as tenants in common following any termination, is null, void and of no legal effect;

C. compel a private sale of the Condominium;

D. award any other relief this Court deems just and proper; and

E. award Plaintiffs their reasonable attorney's fees pursuant to Section 718.303, Fla. Stat., and their costs.

COUNT IV– DECLARATORY JUDGMENT
(In the Alternative, if 2022 Law Applies, Plan of Termination Does Not Meet Requirements of Section 718.117(3) Thereof))

219. Plaintiffs hereby re-allege and incorporate the allegations contained in paragraphs 1 through 164 as if fully set forth herein.

220. This is an alternative Count for Declaratory Relief under §86.011, Fla. Stat. in the event it is declared that the 2022 Law and not the 1974 Law apply.

221. If the Court finds that Biscayne 21 is subject to the 2022 version of Florida's Condominium Act and that Section 718.117(3) ("Optional Termination") applies, Plaintiffs contend, but Defendants deny, that the Plan of Termination still must be voided because it does not conform to the requirements of the statute.

222. Section 718.117(3) states:

> (3) OPTIONAL TERMINATION.—The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. (Emphasis added.)

223. The Plan of Termination fails to meet the requirements of 718.117(3) in multiple ways and therefore must be declared void.

224. Section 718.117(3)(c)(5) requires certain disclosures in connection with a proposed termination "[i]f the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner." Two Roads is a bulk owner that owned more than 80 percent of the total voting interests at the time of the recording of the Plan of Termination.

225. The statutory disclosure requirements in Section 718.117(3)(c)(5) are as follows:

> Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written

disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 25 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 10 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

226. The statute requires that a Plan of Termination, if challenged, must be automatically voided "upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate." Section 718.117(16).

227. Exhibit F to the Plan of Termination contains certain disclosures purportedly to meet this requirement (the "Disclosures"); however, numerous required matters which are, or should have been, contained in these Disclosures are omitted, misleading, incomplete, and/or inaccurate. *See* **Exhibit 8.**

228. Some of the inaccurate, misleading or incomplete disclosures include:

a. The Disclosures are deceptive regarding compensation paid to Sigurdsson

and/or Mr. Smuschkowitz and their related entities as they do not in any way reflect any compensation exchanged with respect to the acquisition by Sigurdsson and Smuschkowitz of an ownership interest in TRD, or any other agreements which may have been reached with them.

b. Upon information and belief, Sigurdsson required and TRD agreed to contract with Sigurdsson's then-employer Douglas Elliman Inc. to market the future development with the understanding that Sigurdsson would receive commission-type compensation on the sale of units in the future development. This also constituted indirect compensation by TRD for the units in which Sigurdsson owned a beneficial interest, and the non-disclosure of same mandates voiding of the Plan of Termination.

c. Upon information and belief, TRD paid many unit owners who sold their units additional, undisclosed compensation in the form of under-market rent to lease back their units for a period of one year. On information and belief, the aggregate value of the rent concessions constituting undisclosed compensation is nearly $2 million. For example, in the case of units 1005 and 1207, undisclosed compensation in addition to the contract sale price included a post-sale lease for 11 months at a rent of only $1 per month for units with a fair market rental value of at least $2,200 per month, constituting undisclosed compensation of more than $20,000 for each of those two units.

d. Upon information and belief, some selling unit owners have been promised or otherwise received rights to own or to buy units in the planned future development on favorable terms, which constituted additional undisclosed indirect compensation.

e. Upon information and belief, TRD paid brokerage commissions for certain selling unit owners that they otherwise would have been obligated to pay themselves,

which constituted additional undisclosed indirect compensation.

f. The disclosure of compensation paid for Unit 711 is incomplete. It discloses compensation of $319,380.09, but public records indicate that TRD acquired Unit 711 at a foreclosure sale at which it paid total consideration of $200,100. Thus, at a minimum, TRD's Disclosure as to Unit 711 is misleading, incomplete, and/or inaccurate as it contains no explanation of the over $100,000 variance between the amount actually paid and the amount disclosed. The statute does not allow for explanations after the fact of the disclosure itself.

g. The Disclosure contains no information whatsoever pertaining to Unit 808 of the Condominium, and thus the Disclosure in that regard is omitted, misleading, incomplete, or inaccurate. Public records indicate that Unit 808 of the Condominium was acquired by TRD by virtue of that certain Corrective Warranty Deed recorded in Official Records Book 33245, Page 2652, Public Records of Miami-Dade County, Florida, a true copy of which is attached hereto as **Exhibit 11**[18]; however, no mention of Unit 808 is included within the Disclosures.

229. No doubt other improper disclosures exist which will be further developed and ferreted out during the discovery process.

230. The Disclosures do not in any way reflect any of the above-enumerated points concerning indirect compensation paid by TRD to unit owners. As a result, for each affected unit, TRD failed to fully disclose "the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit" as required by

[18] Due to filing size restrictions, all exhibits will be submitted under separate cover.

Fla. Stat. §718.117(3)(c)5.b.

231. Additionally, as part of its disclosures, the Plan of Termination is required to show how it supports the expressed public policies of the termination section. Specifically, §718.117(3)(c)5.d., *Fla. Stat*., requires disclosure in a sworn statement of "[t]he factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section."

232. TRD falls woefully short in this regard for among other reasons:

a. First, the statute articulates as one public policy concern "[p]reserv[ing] the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium." §718.117(1)(d)(6), *Fla. Stat.* The sole disclosure concerning homestead property rights contained in the Plan of Termination is that TRD will pay a relocation allowance equal to 1% of the appraised value. This is insufficient. The disclosures fail to address far more substantial homestead rights including but not limited to the large, permanent, recurring loss of the monetary value of tax benefits enjoyed by Plaintiffs whose units have been granted homestead exemption status or caps on property tax benefits for non-homestead units.[19] Thus, the Disclosures in the Plan of Termination concerning protection of homestead property and homestead property rights are "omitted, misleading, incomplete, or inaccurate" and the statute

[19] The nature and value of those benefits are discussed in greater detail in Count V of the Complaint in connection with the unfairness of the compensation that TRD proposes to pay Plaintiff unit owners and the apportionment of the sales proceeds.

mandates the automatic voiding of the Plan of Termination.

b. Second, the statute articulates as another public policy concern "[p]rovid[ing] fair treatment and just compensation for individuals." §718.117(1)(d)5., *Fla. Stat*. The Plan of Termination fails to disclose how it is "fair and just to provide radically different compensation (including numerous forms of undisclosed indirect compensation) to unit owners who voluntarily sold to TRD than to those whose units TRD is proposing to acquire pursuant to the condominium termination process. As a result, Disclosures in the Plan of Termination concerning "fair treatment and just compensation" are "omitted, misleading, incomplete, or inaccurate" and the statute directs the automatic voiding of the Plan of Termination pursuant to Fla. Stat. §718.117(16).

The Plan Was Not Properly Approved By Written Action

233. Section 718.117(16), *Fla. Stat*., permits a unit owner to contest a plan of termination based upon, *inter alia*, its contention "that the required vote to approve the plan was not obtained."

234. In this instance, the Plan of Termination was approved by written, unilateral, action of TRD. Section 718.117(9)(b), *Fla. Stat*., provides that if a plan of termination is approved by written consent, "the association [must notify] the nonconsenting owners, in the manner provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting." This was never done. Here, TRD, not the Association, sent a notice dated September 1, 2022 seeking joinders to the Plan of Termination. The Association has never given notice "that the plan of termination has been approved by written action in lieu of a unit owner meeting" as required by §718.117(9)(b), *Fla. Stat*.

235. As this notification is part of the approval process of the Plan of Termination, the

failure to comply therewith means "that the required vote to approve the plan was not obtained" and thus the Plan of Termination was not approved pursuant to the Declaration and Florida law.

WHEREFORE, Plaintiffs respectfully request this Court:

A. declare that, in the event Chapter 718 applies to the termination of the Condominium, that the Plan of Termination is null and void as it violates §718.117(3), Fla. Stat.;

B. prohibit Defendants from any new or continued attempt to terminate the Condominium for a period of 18 months pursuant to Fla. Stat. §718.117(9);

C. award any other relief this Court deems just and proper; and

D. award Plaintiffs their reasonable attorney's fees pursuant to Section 718.303, Fla. Stat., Section 718.117(16), Fla. Stat., and their costs.

COUNT V– DECLARATORY JUDGMENT
(In the Alternative, if 2022 Law Applies, the Apportionment of Proceeds Set Forth in the Plan of Termination is Not Fair and Reasonable for Plaintiffs' Units)

236. Plaintiffs hereby re-allege and incorporate the allegations contained in paragraphs 1 through 164 as if fully set forth herein.

237. Section 718.117(16), *Fla. Stat*., permits a unit owner to contest a plan of termination based upon, *inter alia*, "the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners."

238. The appraisal attached to the Plan of Termination as Exhibit E (the "TRD Appraisal"), which indicates fair market values for Plaintiffs' units of only $300,000.00 to $650,000.00 ($423.18 to $594.06 per square foot), is not fair and reasonable, as TRD acknowledges in its Disclosures having paid amounts up to $1,500,000 ($1,805 per square foot) for units as recently as August 2022. Indeed, purchases by TRD from Mr. Sigurdsson's and Mr.

Smuschkowitz's entities (discussed above) were for $830 per square foot, even without accounting for any indirect compensation those sellers received.

239. Additionally, the TRD Appraisal is not fair and reasonable as, among other things, the appraiser (i) did not use appropriate comparable properties; (ii) did not base its appraisal on similar units in other condominiums, including bulk sales; and (iii) did not take into account the substantial, costly improvements made by Plaintiffs to their units.

240. Moreover, the Disclosures indicate that just recently, TRD purchased 182 units in the Condominium, with 163, or about 90%, of those sales exceeding the $650,000.00 high-end of the appraised value pursuant to Exhibit E to the Plan of Termination. Accordingly, the TRD Appraisal is by no means a fair and reasonable valuation of the Condominium as required by the Condominium Act when TRD itself has nearly always paid more than even the highest appraised value to purchase similar units in the very same building on the open market.

241. Section 718.117(3)(c)3., *Fla. Stat*., requires that "all unit owners other than the bulk owner must be compensated **at least** 100 percent of the fair market value of their units" (emphasis added). Section 10(a) of the Plan of Termination reiterates this point. Section718.117(1)(d)5., *Fla. Stat*., further specifies that is the public policy of the State of Florida to "[p]rovide fair treatment and just compensation for individuals" facing termination. Relatedly, §718.117(15)(a), *Fla. Stat*., provides that a "unit owner or lienor has the right to contest the fairness of the plan.

242. These provisions require a fair and just payment to Plaintiffs for the termination of

their units, which is, at least,[20] the fair market value of their units as determined by §718.117(3)(c)3., *Fla. Stat*., but which is not limited by that amount, but instead by what is fair. Here, the TRD Appraisal fails to consider that TRD is not just buying condominium units, but has unequivocally expressed its intent to demolish the Condominium and construct a new development in its place with an estimated value of $1.5 billion to $2.5 billion, and thus the appraised values alone do not "[p]rovide fair treatment and just compensation for individuals.

243. Instead, using only the appraised values would permit TRD to buy out Plaintiffs only at the current appraised "condominium unit values" – without any regard for the actual value of the underlying development site (thus allowing TRD to pocket the difference). Upon information and belief, the Condominium Property – as a development site alone – is worth at least $500 million. This represents an average value of over $2.5 million per unit or at least $2,731 per square foot for existing Condominium units, which stands in stark contrast to the maximum payment of $650,000 ($423 per square foot) proposed by the Plan of Termination.

244. Fairness, particularly with respect to homestead unit owners, should result in a payment sufficient for the unit owner to be able to purchase an equivalent property (including purchase price and attendant tax increases, discussed below) in which to continue living. The public policies expressed in §718.117(1)(d)6., *Fla. Stat*., further supports this position (stating the public policy of "protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the

[20] Numerous cases in multiple legal contexts hold that the term "at least" means a minimum rather than an exact value -- a floor, not a ceiling. *See, e.g., Bell v. Warden, FCI Tallahassee*, 2022 WL 2132715, at *1 (N.D. Fla. June 14, 2022).

covenants of a declaration of condominium."). The payments proposed by the TRD Appraisal in no way permit the Plaintiffs to purchase equivalent properties.

245. Plaintiffs contend, but Defendants deny that the apportionment of proceeds in the Plan of Termination for their respective units is not fair and reasonable.

246. Therefore, the parties to this action are in doubt as to their rights concerning the fair market value of the Plaintiffs' units.

247. As unit owners at Biscayne 21 and members of the Association, Plaintiffs have a bona fide, actual and present practical need for a declaration concerning the fair market value of their units.

248. This is an actual controversy and Plaintiffs do not seek an advisory opinion.

WHEREFORE, Plaintiffs respectfully request this Court:

A. Declare that the apportionment of proceeds for Plaintiffs' units contained in the Plan of Termination is not fair and reasonable;

B. determine the fair value of Plaintiffs' condominium units;

C. award Plaintiffs their reasonable attorney's fees pursuant to Section 718.303, Fla. Stat., Section 718.117(16), Fla. Stat., and their costs;

D. award any other relief it deems just and proper.

COUNT VI – BREACH OF CONTRACT
(Plaintiffs Murphy and Jeffrey and Shari Ulman Against the Association for Insurance Proceeds)

249. Plaintiffs Robert Murphy and Jeffrey and Shari Ulman hereby re-allege and incorporate the allegations contained in paragraphs 1 through 164 as if fully set forth herein

250. The Association is governed by its Declaration.

251. Pursuant to the Declaration, the maintenance and operation of the Common

Elements shall be the sole responsibility and expenditure of the Association.

252. On October 17, 2019, after suffering damage to the Condominium from Hurricane Irma in 2017, the Association submitted an insurance claim to their windstorm insurance carrier.

253. On or about January 27, 2021, the Association settled the insurance claim with their carrier for the net sum (after payments to a public adjuster) of $3.15 million.

254. The Association had a contractual obligation to use the insurance proceeds to make necessary repairs to the condominium property.

255. Article X of the Declaration, which addresses Insurance for the Condominium, states as follows:

> X. INSURANCE
>
> D. Mandatory Repair. Unless there occurs actual or constructive total loss to the improvements on the Condominium Property … the Association and the Unit Owners **shall** repair, replace and rebuild the damage caused by casualty loss as their interests appear **and pay the cost of the same in full**. All repairs or replacements made by either the Association or the Unit Owners shall be made, as far as practical, to restore the damaged portion of the building to its condition immediately prior to the damage.

See **Exhibit 1** at 22 (emphasis added).

256. Similarly, Section X.E.2 of the Declaration provides that, absent total destruction of the Condominium (which did not occur), insurance benefits "**shall be expended** to repair, replace, and/or rebuild any damages to or destruction to the Condominium Property." *See* **Exhibit 1** at 23 (emphasis added).

257. Despite these maintenance obligations that required the Association to perform repairs with the insurance proceeds including such components as an eroding seawall, the roof, and windows all damaged by Hurricane Irma, the Association elected not to repair the property

and instead divide a majority of the insurance proceeds ($2.9 million) between all the unit owners.[21]

258. Knowing this was in contravention of the Declaration, the Association refused to issue checks to unit owners unless they signed a release absolving the Board members and the Association for any liability for the decision to distribute the money and not make the repairs.

259. When it approved the distribution, the Board made signing a release a condition of the distribution.

260. Plaintiffs Robert Murphy and Jeffrey and Shari Ulman did not sign the release and therefore did not receive their pro rata share of the insurance proceeds.

261. Disbursing the insurance proceeds to unit owners without performing mandatory repairs to the Condominium was in violation of the Declaration.

262. The Association's failure to distribute pro rata shares of the insurance proceeds to unit owners who refused to sign a release was also a violation of the Declaration.

263. Subsequent to disbursing the insurance proceeds to unit owners who signed a release, the Association sought to amend Article X of the Declaration to eliminate the mandatory requirement to repair damaged Condominium Property with insurance proceeds.

264. The amendments to Article X do not apply retroactively to bless the prior action of the Association for distributing the insurance proceeds rather than making the mandatory repairs pursuant to the Declaration.

265. As a direct and proximate result of the Association's breaches, Plaintiffs Robert

[21] Upon information and belief, each unit was to receive between $13,000 and $25,000 depending on size.

Murphy and Jeffrey and Shari Ulman have suffered damages.

WHEREFORE, Plaintiffs respectfully request this Court enter judgment against the Association and award Plaintiffs damages to be proven at trial plus interest, costs, and attorney's fees pursuant to the Declaration and Section 718.303, Fla. Stat., and any other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated this 12th day of May 2023.

Respectfully submitted,

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