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IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

BROADMOOR ENTERPRISES, LLC;
CYPRESS MIDWAY, LLC;
MANCHESTER COMMERCIAL LENDING, LLC;
FORTALEZA STORAGE, LLC; and
BROADMOOR VENTURES, LLC,

Appellants,

v.

SUPER HEAT AND AIR, LLC,

Appellee.

Case No. 2D23-1866

L.T. Case Nos. 20-CA-7063
20-CA-7334
21-CA-5989

ON APPEAL FROM THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANTS

JONATHAN B. SBAR
Florida Bar No. 131016
ANDREA K. HOLDER
Florida Bar No. 104756
ROCKE, McLEAN & SBAR, P.A.
2309 S. MacDill Ave.
Tampa, FL 33629
(813) 769-5600
jsbar@rmslegal.com
aholder@rmslegal.com
(S):mlamoureaux@rmslegal.com
Trial Counsel for Broadmoor Enterprises, LLC and Cypress Midway, LLC

JOSEPH T. EAGLETON
Florida Bar No. 98492
STEVEN L. BRANNOCK
Florida Bar No. 319651
BRANNOCK BERMAN & SEIDER
1111 W. Cass Street, Suite 200
Tampa, FL 33606
(813) 223-4300
jeagleton@bbsappeals.com
sbrannock@bbsappeals.com
(S): eservice@bbsappeals.com
Appellate Counsel for all Appellants

V. STEPHEN COHEN
Florida Bar No. 948756
JOHN J. AGLIANO
Florida Bar No. 503150
BAJO COHEN AGLIANO, P.A.
606 E. Madison Street
Tampa, FL 33602
(813) 223-3130
scohen@bcalaw.com
(S): lheckman@bcalaw.com
jagliano@bcalaw.com
(S): dcamacho@bcalaw.com
Trial Counsel for Manchester Commercial Lending, LLC; Fortaleza Storage, LLC; and Broadmoor Ventures, LLC

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STATEMENT OF THE CASE AND FACTS

The Short Story

This real-estate dispute about property on West Cypress Street adjacent to the recent Midtown Tampa development arrives in this Court after a four-day non-jury trial, along with an extensive post-judgment evidentiary hearing, in the Hillsborough County complex business division. (R. 2739-40, 5109). But there is nothing complex about this appeal. Although the parties took many issues to trial, the Appellants—five special-purpose entities affiliated with the Bromley Companies, the developer of Midtown (R. 5562-64)—have accepted much of the trial court's final judgment, including an order to transfer property ownership from Appellant Cypress Midway, LLC, to Appellee Super Heat and Air, LLC, based on the exercise of a purchase option in Super Heat's lease. (R. 2759, 4958). The Appellants appeal from just two erroneous legal rulings by the trial court.

First, despite clear contractual language in the purchase option providing that mortgages would take priority, the trial court erred in refusing to give effect to a mortgage Cypress Midway put on the property, in connection with becoming its prior owner, before Super

Heat exercised the purchase option. (R. 2754-57). *Second*, and similarly, the trial court erred in rewriting a contractual provision in the Super Heat lease to allow a perpetual renewal right, thereby invalidating a lease Cypress Midway entered into while it was the property-owner. (R. 2751-53). These two legal errors are straightforward and require little explanation beyond the relevant contract language.

After the judgment was entered in its favor, Super Heat attempted to expand the scope of its win at trial to encompass rights to additional real property not addressed by the final judgment. (R. 4859, 4956). The trial court rejected that effort. (R. 5111-12). Super Heat apparently intends to challenge the trial court's fact-based post-judgment ruling on cross-appeal. (R. 5114). Rather than complicate this simple legal appeal—as Super Heat would probably prefer—we leave it to Super Heat and our later briefing to explain what this Court needs to know for the cross-appeal.

The Property

Because this is a narrow appeal, only a few facts are necessary for this Court to resolve the two contract issues raised. But to make

sense of the record, and help set the stage for the legal issues, some brief background is helpful. Still, there is no need to pull out a map.

The backstory begins in 1996 when Bromley—a national real-estate investment, development, and management company—bought the first parcel, then home to an office building, that eventually would become Midtown Tampa. (R. 6048-49). Over the next two decades, Bromley acquired twenty-five to thirty parcels throughout the area surrounding Dale Mabry Highway, Cypress Street, and Himes Avenue. (R. 6049). Construction on the core of the Midtown development then took almost three years. (R. 6049).

Midtown is a multimillion-dollar, mixed-use project along Dale Mabry Highway and Cypress Street, near Interstate 275. (R. 6049, 5562). The development includes major national tenants like Whole Foods and REI, 200,000 square-feet of retail space, two hotels, two office buildings, award-winning restaurants, and high-end apartments. (R. 5562). As Bromley went about developing and leasing the project, and trying to attract local and national retailers, it had to pay special attention to the effect of the surrounding neighborhood—which at the time included an illicit business called the Venus Spa—on its marketing efforts. (R. 6050-51).

This case is about real property directly across the street from Midtown, located at 3652 (sometimes referred to in the record as Parcel A) and 3654 (sometimes referred to in the record as Parcel B) West Cypress Street. (R. 1591). The Venus Spa operated for many years out of the 3652 parcel, which fronts Cypress Street and a main entrance to Midtown. (R. 5649, 6050-51). Dating back to the 1970s, these parcels were owned by the local Dahl family, through the Darrell A. Dahl Revocable Family Trust. (R. 2834, 2861, 2890, 5523, 5940). Darrell Dahl was the trustee who managed the property. (R. 2740, 5523, 5763). He was more-or-less an absentee owner, due to his full-time job that required a lot of overseas travel. (R. 5940-41, 6052-53). Aside from collecting rent, Dahl found management of the property to be a hassle. (R. 5522, 5862, 5942-43).

The Super Heat Lease

Super Heat, a successful air-conditioning company owned by Denis Nuhic and his lawyer friend Robert MacKinnon, is the longtime tenant on the 3654 parcel. (R. 5761-62, 5827, 5955). As relevant to this appeal, the Super Heat lease contains three important provisions. (R. 2834).

One is a purchase option. (R. 2857). Super Heat claimed to be interested in buying the property, but at the time of entering into the lease, the Trust was concerned about the tax implications of selling. (R. 2741, 5763-64). So to alleviate the capital gains issues, the parties agreed to a purchase option tied to the death of the Trust beneficiary, Mr. Dahl's mother Jordis. (R. 5914, 5955). The relevant provision, set forth in paragraph 37 of the lease, provides that so long as Super Heat is not in default, it "shall have the option to purchase" the property for $1.2 million, "provided, however, [Super Heat] may not exercise this option during the lifetime of the [sic] Jordis H. Dahl, the beneficiary of the Darrell A. Dahl Revocable Family Trust." (R. 2741, 2857).

The second relevant provision is the lease's subordination clause. (R. 2837). Contained in paragraph 9, Super Heat agreed in this provision that its rights, including its right to purchase the property after Jordis Dahl's death if it so chose, were subordinate to the property-owner's right to encumber the property. (R. 2837). This clause states:

> This Lease is expressly made subject to and is subordinate to all current or future mortgages and liens upon the Premises or any part thereof by the Landlord or

> its successors, including purchasers or transferees, and any and all renewals, modifications, and extensions thereof. It is specifically understood and agreed by the parties hereto that this agreement and all rights, privileges, and benefits hereunder are and shall be at all times subject to and subordinate to the lien of any and all mortgages and the accompanying documents executed by the Landlord on behalf of the Premises.

(R. 2837-38).

The third and final provision of the Super Heat lease that is relevant here is the renewal clause. (R. 2835). The lease's original term was three years, through August 30, 2018. (R. 2835). In paragraph 3(d), the parties agreed as follows regarding renewal:

> Option to Renew. Provided Tenant is not in default under any of the terms, provisions or covenants of this Lease, Tenant shall have the option to extend the Term of this Lease for additional three year periods (the "Extension Term") to commence immediately upon the expiration of the initial term of this Lease, upon the same terms and conditions contained in this Lease, with the exception that the monthly rent shall increase to Six Thousand and No/100 Dollars ($6,000.00). In order to exercise the option to extend the term of this Lease, Tenant shall notify Landlord in writing no less than ninety (90) days prior to the expiration of the initial term that it is exercising its option to extend the term of this Lease. Tenant's Option to extend the term of this Lease shall be null and void and no further force and effect if Tenant fails to notify Landlord in writing of its desire to extend the term of this Lease within the time period required above. Furthermore, Landlord, in its sole and absolute discretion, may declare Tenant's option to extend the term of this Lease null and void and no further force and effect if Tenant, at the time

> it provides written notice of its desire to extend the term of this Lease or at any time thereafter prior to the scheduled commencement date of the Extension Term, is in default under any of the terms, provisions or covenants of this Lease. The Fixed Rent for the Extension Term shall be Six Thousand and No/100 Dollars ($6,000.00) per month, payable on the first day of each calendar month during the Extension Term.

(R. 2835). In 2018, Super Heat extended its lease under this provision through the end of August 2021. (R. 2743). Super Heat also attempted to renew the lease a second time, through the end of August 2024, but the parties disputed whether the lease authorized more than one option to renew. (R. 2753, 2757, 3185-86, 5893-95).

Jordis Dahl died on April 21, 2021. (R. 5946). Super Heat exercised its purchase option a few weeks later, on May 7, triggering this litigation. (R. 2745-46, 3041). But by that time, the Trust no longer owned the property. A few weeks before Jordis Dahl died, the Trust sold the property to Cypress Midway. (R. 2890).

The Manchester Mortgage

In late 2018, as Bromley ramped up development on Midtown, Appellant Broadmoor Enterprises, LLC, entered into an agreement with the Trust to become, essentially, the property manager. (R. 2861, 5656, 5674, 5862, 5941). Broadmoor Enterprises reviewed the

leases with the current tenants on the property, conducted inspections, and brought eviction actions as necessary, ultimately succeeding in removing the Venus Spa from the property. (R. 5879-80, 5916-17, 5965-67, 6009-10). In early April 2021, consistent with Bromley's ongoing efforts to ensure its control of the property to protect its nearby investment in Midtown, the Trust agreed to sell the property to Cypress Midway for about $1.8 million. (R. 2890, 5565, 5944-45, 6052).

In connection with the sale, Cypress Midway mortgaged $1.5 million of the purchase price with Appellant Manchester Commercial Lending, LLC. (R. 2913, 2919, 5027-28, 5579-80). Cypress Midway had several reasons for entering into the mortgage rather than simply paying cash for the property. (R. 5572-73, 5681-83, 6063). The primary reason was tax-related: another Bromley entity was selling a property in Kansas, and Bromley needed to keep an equivalent debt-to-equity ratio for tax purposes. (R. 3339, 3494, 6056).

Thus, Bromley essentially took the money it made on the sale of the Kansas property and transferred it to its purchase of the Cypress property. (R. 5572-73, 5682-86). Bromley used an affiliated entity, Manchester, to hold the mortgage—a not-uncommon practice

in the real-estate industry—because it wanted to avoid the complexity of trying to obtain financing from a commercial lender given the ongoing eviction actions and other issues related to the Venus Spa. (R. 6058-60). Cypress Midway recorded the mortgage, paid the stamp taxes, had a title policy issued in favor of Manchester, and otherwise treated it like any other mortgage. (R. 5566, 5579-80, 5685, 5687, 5591, 5593, 5691-92, 5708).

At trial, the parties sparred over issues related to Cypress Midway's acquisition of the property. But there is no dispute—none—that the Trust voluntarily sold the property to Cypress Midway in an arm's-length transaction, that Cypress Midway properly assumed ownership of the property, that the Manchester mortgage was recorded before Super Heat exercised its purchase option, and that Cypress Midway stepped into the shoes of the Trust with respect to the Super Heat lease. (R. 2744, 2890-91, 5565, 5591, 5655, 5671, 5694, 5713, 5742). When Cypress Midway closed the purchase, it had no idea—no one did—that Jordis Dahl would die a few short weeks later. (R. 5948, 6057).

The Fortaleza Storage Lease

Once Cypress Midway acquired ownership, it entered into a lease for the 3654 parcel, to begin September 1, 2021, at the conclusion of Super Heat's lease. (R. 2987). The new lease was with Bromley affiliate Fortaleza Storage, LLC, which intended to use the parcel for storage to support the Midtown development—things like equipment, tools, golf carts, fencing, and so on. (R. 5599).

Cypress Midway felt comfortable entering into the Fortaleza Storage lease because it understood the renewal provision in the Super Heat lease to authorize only one renewal term. (R. 5527, 5598-99). Later, Cypress Midway learned that Super Heat claimed that, although the renewal clause did not refer to Jordis Dahl like the purchase option, it could renew the lease at least twice and as many times as it wanted if Jordis Dahl was still alive. (R. 2705, 5733-36, 5838). Super Heat thus refused to vacate the 3654 parcel when its lease expired—although it subsequently left once the final judgment in this case was entered—pointing to one phrase in the renewal provision referring to its ability to renew for "additional three year periods" (plural). (R. 5318-19, 5598-99, 5733-36, 6010).

While acknowledging the use of the plural word "periods," Cypress Midway's view was that the provision, read in context, authorized only one renewal term because it otherwise used the singular word "option," referred only to the original lease's "term," and contained just one rent increase. (R. 1597-98). Cypress Midway's understanding mirrored Florida law—which disfavors an open-ended renewal right—and the understanding of the Trust's lawyer who drafted the provision. (R. 5901-05). After the trial court decided to consider parol evidence at trial, the Trust's lawyer testified that the use of the plural term "periods" was a scrivener's error, that the lease was intended to authorize only one renewal term, that he never would have drafted a provision authorizing multiple renewals with only one rent increase, and that the renewal provision was not tied to Jordis Dahl's death like the purchase option. (R. 5901-05).

Mr. Dahl himself had contemporaneously confirmed his own understanding, in connection with Cypress Midway's acquisition of the property, that the Super Heat lease authorized only one renewal term. (R. 3038). He said the same at trial. (R. 5950-51).

The Trial Court's Ruling

Much of the trial was devoted to the validity of Super Heat's exercise of the purchase option. *E.g.*, (R. 5641). The trial court ruled in Super Heat's favor on those issues, and we do not challenge them here. (R. 2747-51, 2753-54). Thus, Cypress Midway has agreed to transfer ownership of the property to Super Heat. (R. 4958).

But with respect to the Manchester mortgage and the Fortaleza Storage lease, the Appellants contend that the trial court erred. As for the mortgage, the trial court found that Cypress Midway had "actual notice" of Super Heat's purchase option before entering into the mortgage, meaning that Super Heat had "governing lien priority." (R. 2755). The trial court also went behind the recorded mortgage and questioned the transaction. (R. 2756).

As for the Fortaleza Storage lease, the trial court found that the Super Heat lease authorized more than one renewal term. (R. 2753). The trial court relied principally on the use of the plural word "periods," finding that the lease "granted Super Heat two lease renewal options." (R. 2753). The trial court did not explain why, if the lease authorized multiple renewals, it was limited to just two. (R. 2753).

This appeal followed. (R. 2792-93). It was then held in abeyance while Super Heat litigated an unusual post-judgment motion to "amend" the final judgment to include another parcel—3650 W. Cypress Street—in the purchase option. (R. 4859). After holding an evidentiary hearing, the trial court denied Super Heat's post-judgment motion, finding that the 3650 parcel was "separate from the property addresses at issue at trial," and that Super Heat could have, but did not, litigate the post-judgment issue at trial. (R. 4981, 5109-12). Super Heat has cross-appealed that ruling. (R. 5113-14). This Court has jurisdiction of the appeal and cross-appeal under Florida Rule of Appellate Procedure 9.110. *See Centennial Ins. v. Life Bank*, 953 So. 2d 1, 4 (Fla. 2d DCA 2006) ("[T]he district courts have always had jurisdiction of appeals from final orders.").

SUMMARY OF THE ARGUMENT

This is a simple appeal. Here's all this Court needs to know.

There are three parcels of property. Super Heat had an option to buy two of them. But that option was, by its plain text, subject to mortgages. Cypress Midway, the prior owner of the two parcels, placed a recorded mortgage on them before Super Heat exercised its purchase option. So Super Heat's ownership of the parcels is now subject to the mortgage.

One of the parcels also had a lease on it. That lease was set to commence when Super Heat's lease expired. Super Heat's lease had an option to renew. But the option provided just one extension term, not two. When Super Heat's one extension term concluded, the new lease kicked in. So the new lease is valid. End of story.

The trial court evaded this outcome by ignoring the text of the Super Heat lease. This was error, plain and simple. Cypress Midway owned the parcels and could do what it wanted with them, subject only to the restrictions in Super Heat's purchase option. Super Heat negotiated the extent of its option, included no language restricting the owner from mortgaging the property, and agreed that the lease, including the purchase option, was subordinate to future mortgages.

At trial, Super Heat raised a fuss about the mortgage transaction, claiming it was designed to undermine the purchase option. No matter. There was no restriction on a mortgage, whatever its purpose or structure. And anyway, the mortgage had nothing to do with the purchase option. The purchase option was contingent on the death of a trust beneficiary during the term of Super Heat's lease—something Cypress Midway never thought would come to pass. Regardless, Super Heat is bound by its lease. Cypress Midway's intentions in mortgaging the parcels are irrelevant.

The same is true of the renewal of the Super Heat lease. Against the backdrop of Florida's presumption disfavoring perpetual leases, Super Heat negotiated a renewal option containing just one increase in rent for one renewal term. There were no subsequent terms referenced, and both the lawyer who drafted the provision and the original landlord agreed that it authorized only one renewal. Super Heat cannot rely on either its subjective intentions, in hindsight, or on one word of the provision in isolation, to circumvent the lease it negotiated.

This Court should reverse.

STANDARD OF REVIEW

This appeal challenges the trial court's interpretation of a contract, the Super Heat lease. The standard of review is *de novo*. *See Foley & Lardner, LLP v. Unknown Heirs*, 300 So. 3d 786, 789 (Fla. 2d DCA 2020) ("Issues involving contract interpretation are . . . reviewed *de novo*."); *Wells v. Wells*, 239 So. 3d 179, 181 (Fla. 2d DCA 2018) ("This Court reviews *de novo* the trial court's interpretation of the contract.").

ARGUMENT

The biggest issue at trial was whether Super Heat properly exercised its purchase option. Having lost that issue, and recognizing the trial court's discretion to decide it, Cypress Midway accepts that it must transfer ownership of the property to Super Heat. That leaves just two straightforward legal issues for this appeal.

First, the trial court erred in invalidating the Manchester mortgage. The Super Heat lease was expressly made subordinate to any mortgages or encumbrances on the property, and the purchase option did not—as some purchase options do, and this one could have—say Super Heat was entitled to take the property free and clear of any liens. Super Heat therefore should take the property subject to the Manchester mortgage, of which it had notice at the time it chose to exercise the purchase option.

Second, the trial court erred in invalidating the Fortaleza Storage lease. Under the plain language of the Super Heat lease, confirmed by the parol evidence at trial, Super Heat was limited to one renewal term. Its ownership of the 3654 parcel is thus subject to the lease Cypress Midway entered to commence at the expiration

of the Super Heat lease, and Fortaleza Storage is entitled to occupy that parcel with Super Heat as the landlord. Super Heat has since moved out of the parcel anyway. (R. 5318-19).

I. The trial court erred in refusing to enforce the plain language of the Super Heat lease.

Contracts are interpreted according to their text. *Fla. Farm Bureau Gen. Ins. v. Worrell*, 359 So. 3d 890, 892-93 & n.1 (Fla. 5th DCA 2023); *Costello v. Olson*, 379 So. 3d 536, 538 (Fla. 6th DCA 2023). When that text is clear and unambiguous, it must be enforced. *KRG Oldsmar Project Co. v. CWI, Inc.*, 358 So. 3d 464, 468 (Fla. 2d DCA 2023). As Judge Soud has recently put it, in a passage emphasizing the importance of text:

> [A]s is the case with any legal instrument—whether it be a constitution, statute, ordinance, regulation, contract, or will—the text is supreme. *See Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020). Where the language of a contract is plain and unambiguous, it controls—full stop.
>
> Importantly, when interpreting legal texts, including contractual provisions, Florida courts do not engage in a merely robotic exercise; nor do we strain for a strict (or lenient) interpretation. "A text should not be construed strictly, and it should not be construed leniently; it should be construed *reasonably*, to contain all that it *fairly* means." Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 23 (new ed.) (emphasis added). Thus, the proper work of the court is to arrive at a "fair reading"

> of the contract; that is to say, "determining the application of a governing text to given facts on the basis of how a *reasonable* reader, fully competent in the language, would have understood the text at the time it was issued." *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012) (emphasis added).

Prop. Registration Champions, LLC v. Mulberry, 373 So. 3d 675, 679 (Fla. 5th DCA 2023) (footnote omitted).

Because contract interpretation is a legal exercise, this Court is "free to reach a construction or interpretation of the contract contrary to that of the trial court." *Charlotte 650, LLC v. Phillip Rucks Citrus Nursery, Inc.*, 320 So. 3d 863, 865 (Fla. 2d DCA 2021) (quotation omitted). "[T]he actual language used in the contract is the best evidence of the intent of the parties, and the plain meaning of that language controls." *Ebanks v. Ebanks*, 198 So. 3d 712, 715 (Fla. 2d DCA 2016) (quoting *Gibney v. Pillifant*, 32 So. 3d 784, 785 (Fla. 2d DCA 2010)). "It is never the role of a trial court to rewrite a contract to make it more reasonable for one of the parties, or, in the guise of interpretation, relieve a contracting party from the consequences of a bad bargain." *Famiglio v. Famiglio*, 279 So. 3d 736, 740 (Fla. 2d DCA 2019) (cleaned up).

But that's what the trial court did here. In two ways, the trial court enforced the lease Super Heat wanted, not the lease Super Heat had. The trial court disregarded the text of the Super Heat lease to, "in the guise of interpretation," *id.*, rewrite it to be more favorable to Super Heat. The trial court erred.

A. The trial court erred by invalidating the Manchester mortgage, contrary to the text of the lease's subordination clause.

The trial court's first interpretive error was its analysis of the Manchester mortgage, which rendered meaningless the subordination clause in the Super Heat lease. *See Fitness Int'l, LLC v. 93 FLRPT, LLC*, 361 So. 3d 914, 919 (Fla. 2d DCA 2023) (reciting and applying principle that a contract must be interpreted as a whole to give effect to all of its parts).

Super Heat's purchase option was expressly contingent on the right of the property-owner—including subsequent purchasers like Cypress Midway—to encumber the property. Many purchase options provide that the holder of the purchase option will take title free and clear of any liens, or that the holder of the purchase option must provide consent for a mortgage to be put on the property. *E.g.*, (R.

5529-30). But here, Super Heat's purchase option provided the opposite:

> This Lease is expressly made subject to and is **subordinate to all current or future mortgages and liens upon the Premises** or any part thereof **by the Landlord or its successors, including purchasers or transferees**, and any and all renewals, modifications, and extensions thereof. It is specifically understood and agreed by the parties hereto that this agreement and **all rights, privileges, and benefits hereunder are and shall be at all times subject to and subordinate to the lien of any and all mortgages and the accompanying documents** executed by the Landlord on behalf of the Premises.

(R. 2837-38) (emphasis added).

Thus, under the plain language of its own lease, Super Heat was bound by the Manchester mortgage Cypress Midway put on the property. This issue starts and ends with the text. The text of the subordination clause unambiguously made Super Heat's purchase option subordinate to future mortgages like the Manchester mortgage here. The trial testimony confirmed this plain-language interpretation. (R. 5913) (question to the lawyer who drafted the provision: "Is it your understanding that if the tenant Super Heat exercised the purchase option, that the exercise would be subject to

any existing mortgage on the property?" Answer: "Yes."). That should have been the end of the trial court's analysis.

Instead, the trial court strayed far from the text of the Super Heat lease. The trial court focused first on Cypress Midway's knowledge of what the trial court called Super Heat's "valid encumbrance"—the purchase option. (R. 2755). But Super Heat did not have any "valid encumbrance" when Cypress Midway bought the property.

In Florida, a lease purchase option "does not create a legal or equitable interest in property" until the option is exercised. *Old Port Cove Holdings, Inc. v. Old Port Cove Condo. Ass'n One*, 986 So. 2d 1279, 1286–87 (Fla. 2008). "[U]ntil an optionee exercises the right to purchase in accordance with the terms of his option he has no estate, either legal or equitable, in the lands involved." *Id.* (citing *Gautier v. Lapof,* 91 So. 2d 324, 326 (Fla. 1956)); *see also Leon Cnty. Educ. Facilities Auth. v. Hartsfield,* 698 So. 2d 526, 530 (Fla. 1997) ("[T]his Court has long held that the status of parties to the ordinary lease with an option to purchase remains that of landlord and tenant until the option is exercised and that the lessee has no equitable interest in the property."); *BancFlorida v. Hayward,* 689 So. 2d 1052, 1054

(Fla. 1997) ("Under Florida law, an option to purchase property creates neither an equitable interest nor an equitable remedy.").

More to the point, knowledge only goes as far as what the purchase option says. As the trial court's own cases recognize, the principle of "first in time is first in right" with respect to lien priority means that a subsequent purchaser is bound by the "specific language indicating that the lien . . . takes priority over intervening mortgages." *Holly Lake Ass'n v. F. Nat'l Mortg. Ass'n*, 660 So. 2d 266, 269 (Fla. 1995). Thus, even if Super Heat did have some kind of "valid encumbrance" based on a future right to exercise a contingent purchase option—which included a mandatory condition, the death of Jordis Dahl, occurring during the term of its lease—Super Heat's rights were circumscribed by the text of the purchase option itself. And here, what it said was that Super Heat's "encumbrance" was *subordinate* to future mortgages.

The trial court also focused on whether the Manchester mortgage was a "purchase money mortgage," citing *Ass'n of Poinciana Villages v. Avatar Properties, Inc.*, 724 So. 2d 585, 587 (Fla. 5th DCA 1998). (R. 2755-56). But a close reading of that case shows that it supports Cypress Midway's view, not Super Heat's.

For starters, whether the Manchester mortgage was a purchase money mortgage—it was, as the recorded real-estate documents show (R. 2919)—is a red herring. The trial court apparently considered this issue because of a common-law rule that a purchase money mortgage can sometimes trump a prior recorded mortgage. *See BancFlorida,* 689 So. 2d at 1054. But as *Poinciana Villages* shows, even that general principle is not always true when the language of the relevant documents says otherwise.

Case in point, in *Poinciana Villages*, the court rejected a mortgagee's argument that its purchase money mortgage was superior to a previously recorded homeowners' assessment. 724 So. 2d at 587. The court concluded that the language of the homeowners' association declaration explicitly provided that "each and every assessment of lien which the Association has authority to impose . . . shall be superior to any mortgage placed on any of the properties in this Village." *Id.* Thus, *Poinciana Villages* recognized that the specific language of the priority provision is controlling.

That holding applies with equal force here. In the same way the plain language of the declaration in *Poinciana Villages* resolved the priority issue, the express language of the subordination clause in

the Super Heat lease likewise dictates that Super Heat's purchase option was subject to the Manchester mortgage.

To get around what the lease says, Super Heat tried to turn this issue into a factual dispute at trial. It is not. The only facts that matter are the words of the Super Heat lease. "[T]he text is supreme." *Mulberry*, 373 So. 3d at 679.

Even so, Super Heat questioned the transaction itself, suggesting that the mortgage was put on the property to undermine Super Heat's lease. But as Cypress Midway's representatives testified, that was not true. The mortgage was a business decision, undertaken primarily for tax purposes, and had nothing to do with Super Heat. (R. 5650, 6056). Indeed, at the time Cypress Midway purchased and mortgaged the property, shortly before expiration of the Super Heat lease, Jordis Dahl was still alive, with no indication that her death was imminent, so Super Heat had no right to exercise the purchase option. (R. 5741, 6057). And with Super Heat's lease set to expire in mere months, Cypress Midway reasonably believed—not possessing the power to predict the imminent death of a human being—that the purchase option would never even come to fruition.

More importantly, this inquiry into the details of the mortgage transaction was flawed from the jump. Absent fraud, which was not alleged or found here, courts do not go behind recorded real-estate transactions to turn the interpretation of deeds and mortgages into swearing matches about the parties' intentions. *See generally City of Clearwater v. BayEsplanade.com, LLC*, 251 So. 3d 249, 254 (Fla. 2d DCA 2018) *Prezioso v. Cameron*, 559 So. 2d 423, 424 (Fla. 4th DCA 1990); *Cent. Bank & Tr. Co. v. Diaz*, 442 So. 2d 1005, 1006 (Fla. 3d DCA 1983).

It is undisputed that Cypress Midway negotiated at arm's length to purchase the property fair and square from the Trust. In connection with the purchase, it placed a mortgage on the property. The mortgage was recorded, the stamp taxes were paid, a title policy was issued in favor of Manchester, and all of this was public knowledge before Jordis Dahl's death and Super Heat's voluntary decision to exercise its purchase option. (R. 2913, 2919). Any other facts or motivations are beside the point.

Indeed, Cypress Midway had the right to do whatever it wanted with the property, subject only to what Super Heat's purchase option actually says. And what it actually says is that the purchase option

is subordinate to future mortgages. If Super Heat wanted to restrict a future property-owner's right to encumber the property, it could have negotiated for that right in the purchase option. It didn't. Super Heat's rights to the property—past, present, and future—are entirely circumscribed by the plain language of the option. Super Heat does not have additional equitable rights it did not bargain for.

In sum, the trial court's analysis of this issue missed the mark. It focused on whether the Manchester mortgage was a purchase money mortgage—which is irrelevant. It focused on whether Super Heat had a preexisting "encumbrance"—which is irrelevant. It focused on Cypress Midway's knowledge—which is irrelevant. And it focused on the facts of the mortgage transaction—which are irrelevant. The trial court focused on everything except the one thing that mattered—the plain language of the Super Heat lease. That language resolves this issue, and Super Heat must be held to it.

B. The trial court erred by allowing a right to more than one renewal term, contrary to the text of the lease's renewal clause.

The trial court's second interpretive error was its analysis of the renewal clause of the Super Heat lease. The trial court ruled that

Super Heat had two renewal options. (R. 2753). That conclusion finds no support in the text of the lease.

Read as it must be in the context of the full provision—all its words, their structure, and what they convey to a reasonable reader—the renewal provision authorized only one renewal term. *See Advisory Op. to Gov. re Implementation of Amd. 4*, 288 So. 3d 1070, 1078 (Fla. 2020) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012))).

The renewal provision says:

> Option to Renew. Provided Tenant is not in default under any of the terms, provisions or covenants of this Lease, Tenant shall have **the option to extend the Term of this Lease** for additional three year periods **(the "Extension Term") to commence immediately upon the expiration of the initial term of this Lease**, upon the same terms and conditions contained in this Lease, with the exception that **the monthly rent shall increase to Six Thousand and No/100 Dollars ($6,000.00)**. In order to exercise **the option to extend the term of this Lease**, Tenant shall notify Landlord in writing no less than ninety (90) days prior to the expiration of **the initial term** that it is exercising its **option to extend the term of this Lease**. Tenant's **Option to extend the term of this Lease** shall be null and void and no further force and effect if Tenant fails to notify Landlord in writing of its desire to extend **the term of this Lease** within the time period

> required above. Furthermore, Landlord, in its sole and absolute discretion, may declare Tenant's **option to extend the term of this Lease** null and void and no further force and effect if Tenant, at the time it provides written notice of its desire to extend **the term of this Lease** or at any time thereafter prior to the scheduled commencement date of **the Extension Term**, is in default under any of the terms, provisions or covenants of this Lease. The Fixed Rent for **the Extension Term** shall be Six Thousand and No/100 Dollars ($6,000.00) per month, payable on the first day of each calendar month during **the Extension Term**.

(R. 2835) (emphasis added).

Although the provision refers once to "additional three-year periods," which could be read in isolation to suggest that there is more than one option to renew, "courts must not read a single term or group of words in isolation." *Nabbie v. Orlando Outlet Owner, LLC*, 237 So. 3d 463, 466 (Fla. 5th DCA 2018) (quoting *Am. K-9 Detection Services, Inc. v. Cicero*, 100 So. 3d 236, 238-39 (Fla. 5th DCA 2012)). Rather, courts should "arrive at a reasonable interpretation of the text of the entire agreement." *Id.* (quoting the same).

Here, a fair reading of the full provision reveals that, aside from the one stray plural reference, it otherwise refers only to Super Heat's singular "option to extend," discusses only the lease's "initial term," and provides just one increase in rent (rather than an incremental

increase for each successive renewal). Indeed, it was this final feature—the singular rent increase—that led the provision's drafter to testify that it authorized only one renewal. (R. 5901-05). He called the use of the plural term "periods" a "scrivener's error." (R. 5904).

Cypress Midway's interpretation, shared by the provision's drafter and the Trust itself, (R. 3038, 5905, 5950), reflects Florida law, which disfavors open-ended renewal rights. *See Chessmasters, Inc. v. Chamoun*, 948 So. 2d 985, 986 (Fla. 4th DCA 2007) ("Leases in perpetuity are universally disfavored, thus the courts are loath to construe a right to renewal as perpetual, and will not do so unless the language of the agreement clearly and unambiguously compels them to do so."). "Generally, the courts have construed such covenants as providing for one renewal only." *Id.*

And while the trial court found that the lease here authorized two renewals, its finding is impossible to square with even Super Heat's understanding of the provision. Super Heat's position is that it could renew until Jordis Dahl's death—however long that took—despite the absence of any reference to Jordis Dahl in the renewal provision. (R. 2752, 5838).

At any rate, the text of the provision—the sole focus of the inquiry—says nothing about any of that. It does not refer to Jordis Dahl's death—something the parties knew how to do, since they tied the purchase option to that event. *See Storey Mountain, LLC v. George*, 357 So. 3d 709, 714 (Fla. 4th DCA 2023) (where the drafter "has included a specific provision in one part of a [text] and omitted it in another part," courts "are instructed to presume" that the drafter "knows how to say what it means" and that "the differentiation in the language is intentional" (quotation omitted)). Nor does it refer to two renewals, as Super Heat's principal conceded. (T. 234-38).

In short, the trial court rewrote the lease to "make it more reasonable" for Super Heat. *Famiglio*, 279 So. 3d at 740 (quoting *Barakat v. Broward Cnty. Hous. Auth.*, 771 So. 2d 1193, 1195 (Fla. 4th DCA 2000)). That was error.

CONCLUSION

This Court should reverse the trial court's legal ruling, in paragraph (v)(e) of the final judgment, that Super Heat does not take the property subject to the Manchester mortgage. This Court should also reverse the trial court's legal ruling, in paragraph (v)(b) of the final judgment, that Super Heat was entitled to two lease renewals, and its related legal rulings, in paragraphs (v)(f) and (v)(g), that the Fortaleza Storage lease is invalid and that Super Heat does not take the property subject to the Fortaleza Storage lease.

JONATHAN B. SBAR
Florida Bar No. 131016
ANDREA K. HOLDER
Florida Bar No. 104756
ROCKE, McLEAN & SBAR, P.A.
2309 S. MacDill Ave.
Tampa, FL 33629
(813) 769-5600
jsbar@rmslegal.com
aholder@rmslegal.com
(S):mlamoureaux@rmslegal.com
Trial Counsel for Broadmoor Enterprises, LLC and Cypress Midway, LLC

/s/Joseph T. Eagleton
JOSEPH T. EAGLETON
Florida Bar No. 98492
STEVEN L. BRANNOCK
Florida Bar No. 319651
BRANNOCK BERMAN & SEIDER
1111 W. Cass Street, Suite 200
Tampa, FL 33606
(813) 223-4300
jeagleton@bbsappeals.com
sbrannock@bbsappeals.com
(S): eservice@bbsappeals.com
Appellate Counsel for all Appellants

V. STEPHEN COHEN
Florida Bar No. 948756
JOHN J. AGLIANO
Florida Bar No. 503150

BAJO COHEN AGLIANO, P.A.
606 E. Madison Street
Tampa, FL 33602
(813) 223-3130
scohen@bcalaw.com
(S): lheckman@bcalaw.com
jagliano@bcalaw.com
(S): dcamacho@bcalaw.com
Trial Counsel for Manchester Commercial Lending, LLC; Fortaleza Storage, LLC; and Broadmoor Ventures, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts e-Filing Portal on all counsel in the Service List below, on this 20th day of September 2024.

/s/Joseph T. Eagleton
JOSEPH T. EAGLETON
Florida Bar No. 98492

SERVICE LIST

Gregory P. Brown
Sean P. Mullen
Marie A. Borland
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
gregory.brown@hwhlaw.com
(S): ann-marie.hallet@hwhlaw.com
sean.mullen@hwhlaw.com
(S): chelsea.bonetti@hwhlaw.com
marie.borland@hwhlaw.com
Counsel for Appellee

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limitation requirements of Florida Rule of Appellate Procedure 9.210(a)(2)(B). This brief contains 6,363 words.

/s/Joseph T. Eagleton
JOSEPH T. EAGLETON
Florida Bar No. 98492