Filing # 156704618 E-Filed 09/02/2022 12:50:41 PM

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**IN THE SUPREME COURT OF FLORIDA**

**BILL FURST, as Property Appraiser of Sarasota County, Florida,**
**Appellant,**

**v.**

**Case No.: SC2020-1479**
**Dist. Ct. Case No.: 2D18-3323**
**T/C Case No.:2015 CA 001039 NC**

**ROD REBHOLZ, as Trustee of Rod Rebholz Revocable Trust,**
**Appellee.**
**____________________________________/**

# APPELLANT, BILL FURST'S REPLY BRIEF

ICARD, MERRILL, CULLIS, TIMM, FUREN & GINSBURG, P.A.
2033 Main Street, Suite 600
Sarasota, FL 34237
Phone: (941)-366-8100
Fax: (941)-366-6384

***s/ Jason Lessinger***
________________________
J. Geoffrey Pflugner, Esq.
Florida Bar No. 0152304
Jpflugner@icardmerrill.com
Anthony J. Manganiello, Esq.
Florida Bar No. 0052307
Amanganiello@icardmerrill.com
Jason A. Lessinger, Esq.
Florida Bar No. 091601
Jlessinger@icardmerrill.com
Patrick Seidensticker, Esq.
Florida Bar No. 1018473
Pseidensticker@icardmerrill.com
***Counsel for Appellant***

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## PREFACE

In this brief, the Appellant, BILL FURST, as Property Appraiser of Sarasota County, Florida shall be referenced as the “Property Appraiser.” Appellee, ROD REBHOLZ, AS TRUSTEE OF THE ROD REBHOLZ REVOCABLE TRUST, shall be referenced as "Rebholz.”

The page number of the record on appeal will be indicated by the designation (R.____), followed by the appropriate page number of the record on appeal.

References to the Appellant’s Appendix, which includes the following document:

Tab 1- Notice of Tax Lien for Homestead Exemption and/or Limitation Exclusion, recorded in official records on November 6, 2014, as Instrument #2014133203. (R. P. 17), shall be referred to as: (A. Tab __, P. __).

# ARGUMENT

## I. REBHOLZ WAS USING THE PROPERTY FOR A COMMERCIAL PURPOSE.

Rebholz contends the Property Appraiser's factual position, that Rebholz had given up exclusive possession of a portion of the Property and was actively using it for commercial purposes, is not supported by the record; while at the same time acknowledging he often leased one or more rooms in the house to tenants, including one room for 15 years. This is a commercial purpose, as confirmed by Florida Statute Section 196.012(13). While Rebholz contends that statute should not apply to him, he cannot honestly argue the act of giving up exclusive possession to a potion of the Property and receiving 15 years' worth of rent is not a commercial activity. Rather, he can only contend that legally his activity does not impact his homestead. His legal position, however, does not re-write the facts of this case.

Rebholz also attempts to minimize his commercial rental activity by noting the lease agreements were one-page "Residential Family Agreements" in which the tenants acknowledge they would be living in the private residence of Rebholz. (Answer Brief at P. 2).

Regardless of what the agreement is called, its content controls what it is, not its title. See, e.g., City of Pensacola v. Seville Harbour, Inc., 219 So.3d 984, 987 (Fla. 1st DCA 2017). The lease agreement, as a matter of law, confirms a residential tenancy. In addition, it includes rights of self help in violation of Florida law. First, the tenant is obligated to "maintain ***my area*** and the common areas of the residence . . ."[1] (emphasis in original). Rebholz also had broad rights of inspection of any part of the residence. The lease further confirmed the "**RENTAL TERMS**" (emphasis in original) setting out the monthly rent, and, in violation of Florida law, provided that if the tenant did not pay rent by the 15th, the tenant's "unit is considered abandoned and the owner will change the locks, remove my property and discard it without legal recourse on my part." (emphasis in original). The tenant further confirmed in the lease that "only **ONE** person will be occupying my private area" (emphasis in original). (R.155).

[1] In footnote 1 of the Answer Brief Rebholz contends the tenant was only seeking his own bedroom not seeking his own place. As noted in the Initial Brief, the tenant clearly wanted his own place, as he testified that he moved in because "everything's included" and he was getting his own private living area and bathroom as well.

Furthermore, Rebholz did in fact file eviction actions to remove tenants as needed (R.199-202).

## II. THE MANNER IN WHICH THE PROPERTY APPRAISER INITIALLY "CLASSIFIED AND ASSESSED" THE PROPERTY DOES NOT PREVENT THE PROPERTY APPRAISER FROM FILING A LIEN FOR UNPAID TAXES UPON DISCOVERING A HOMESTEAD TAX EXEMPTION VIOLATION, EITHER FACTUALLY OR LEGALLY.

Rebholz takes issue with the Property Appraiser's argument that upon discovery of the facts preventing Rebholz from claiming the entire Property as his homestead, the Property Appraiser re-classified the portion Rebholz rented out as non-homestead. Rebholz first attempts to refute this argument factually by arguing that during the years in question the Property Appraiser "classified the Property as owner-occupied real property," and never went back and classified it as something else. (Answer Brief at P. 4). This argument attempts to use a distortion of the facts support a misapplication of the law. This case exists only because Rebholz claimed a Homestead Tax Exemption and received benefits of the homestead assessment limitation cap provided under Florida Statue Section 193.155(1)(a) ("the Homestead Assessment Limitation Cap") to which he was not fully entitled. Upon discovery of this violation, and pursuant to

Florida Statute Section 193.155(10), the Property Appraiser recorded the subject tax lien. The lien itself effectuated the Property Appraiser's re-classification and re-assessment of the Property. The lien specifically states Rebholz was not "legally entitled to receive [the Homestead Tax] exemption" because Rebholz had "rented 15% of property as of January 1, 2004.[2]" Upon filing the lien the Property Appraiser re-classified 15% of the Property as non-homestead. (A. Tab 1, P. 1). The Property Appraiser then included in the lien the adjusted assessment limitation values calculated under the 10% non-homestead assessment limitation cap provided under Florida Statute Section 193.1555 and the taxes due based on the difference between the 3% Homestead Assessment Limitation Cap and 10% non-homestead limitation cap. These actions were a re-assessment of the Property based on the change in classification. The fact that from October 27, 1993, through January 1, 2014, the Property Appraiser classified and assessed Property as owner-occupied residential property, has no bearing on the Property Appraiser's

[2] The lien date is 2004 because the violation was discovered in 2014 and the operative statutes only allow a lien for the prior ten years even though Rebholz had been renting that portion of the Property since 1996.

decision to file the lien upon the subsequent discovery that Rebholz was receiving benefits of the Homestead Assessment Limitation Cap to which he was not entitled in the ten years prior to the discovery. The Property Appraiser had no knowledge of the Homestead Assessment Limitation Cap violation until 2014, and no basis to reclassify and reassess the Property as anything other than owner-occupied residential property until then.

Rebholz also points to the purported fact that the evidence at trial reflected the Property Appraiser had not "retroactively" changed the classification of the Property. As noted above, when dealing with a homestead violation, it is simply the Property Appraiser's discovery of the violation that prompts the lien. There is no separate reclassification action that is required prior or subsequent to filing the lien. Furthermore, the lien itself and the very testimony cited by Rebholz (Answer Brief at P.5) confirms a "re-classification." Ms. Reardon testified that the Property Appraiser had "changed the homestead exemption allocation on the property to reflect a percentage." This was the only change in classification necessary, which then resulted in the lien to recover the taxes due on the portion

of property that was classified as non-homestead residential property due to its commercial use.

Rebholz contends under Section 196.031(4) that the Property Appraiser's classification and assessment of the property as owner-occupied residential property during the years at issue eliminates any ability to thereafter go back and classify it and assess it as something else, even when the Property Appraiser, under Florida Statute Section 193.155(10), "determines that for any year or years within the prior 10 years a person who was not entitled to the homestead assessment limitation . . . was granted the homestead assessment limitation," and then records a lien. The Property Appraiser's discovery of the wrongful receipt of the Homestead Assessment Limitation Cap and subsequent efforts to recover the unpaid taxes via the lien are not prevented by Florida Statute Section 196.031(4). This can be demonstrated by a very simple hypothetical scenario:

Assume Rebholz claimed the Property as his homestead, but instead of renting out a portion of the Property, he moves out of the Property entirely and establishes a permanent residence at another location but does not notify the Property Appraiser. As a result, the

Property Appraiser continues to classify and assess the Property as owner-occupied residential property for the next ten years and gives Rebholz all the benefits of the Homestead Tax Exemption and Homestead Assessment Limitation Cap. Upon discovery of the fact that Rebholz had abandoned his homestead and established permanent residency elsewhere, the Property Appraiser then properly determines Rebholz was not entitled to any Homestead Tax Exemption or Homestead Assessment Limitation Cap for the prior ten years and records a lien pursuant to Florida Statute Sections 193.155(10) and 196.161 to recover the unpaid taxes that should have been paid, plus penalties and interest. Based on Rebholz' position in this appeal, Rebholz would claim that since the Property was always classified and assessed as owner-occupied residential property during the years in which he was in violation, that the Property Appraiser cannot, ever, re-classify and re-assess the property in order to collect the past due taxes. If true, the Property Appraiser would never be able to file any liens to recover unpaid taxes upon the subsequent discovery of information which disqualifies the property owner from receiving the Homestead Tax Exemption.

The only difference between the present case and the hypothetical above, is that the homestead violation and lien relate to a portion of the residence instead of the entire residence. This difference, however, does not result in the language of Florida Statute Section 196.031(4) somehow preventing the filing of a lien. To the contrary, the actual language of Section 196.031 confirms apportionment is proper.

In addition, Properties are not classified as "owner-occupied residential." They are assessed, when appropriate, as "owner-occupied residential." Florida Statute Section 195.073, and Florida Administrative Code Section 12D-8.008, both address property use classifications. Section 195.073 states that "all items required to be on the assessment rolls must receive a classification based upon the use of the property" and further that "real property must be **classified** according to the **assessment** basis of the land" into the classes identified in the statute. One of those classifications is residential, which is then subclassified as either homestead or non-homestead property. See, Section 195.073(1)(a). Neither the statute nor the code provision includes an "owner-occupied" classification. Rather "owner-occupied," obviously, only relates to a determination

of the manner in which residential property is assessed, as either homestead or non-homestead. Section 196.031(4) then confirms the Homestead Tax Exemption only applies to the portion that is owner-occupied.[3]

Finally, as noted in the Initial Brief, when a single property has more than one applicable use code, the Property Appraiser is authorized to utilize a single use code based on the predominant use of the property, which in this case was still 85% owner-occupied residential property. The only change was that 15% of the Property was classified as non-homestead and assessed as such. Accordingly, even if the Property Appraiser were somehow required to re-classify the Property due to the commercial activity, "owner-occupied residential property" would still be a proper classification based on how 85% of the Property is used.

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[3] A property can be "owner-occupied" and be ineligible for a Homestead Tax Exemption if it is not the owner's permanent residence. A property cannot, however, qualify for a Homestead Tax Exemption if it is not "owner-occupied."

## III. REBHOLZ' PROPOSED READING OF THE FLORIDA CONSTITUTION WOULD ELIMINATE THE ABILITY TO APPORTION ANY PARCEL OF PROPERTY BETWEEN ITS HOMESTEAD AND NON-HOMESTEAD USE.

Rebholz contends that neither the Florida Constitution, nor Florida statutes, authorize apportionment of a Homestead Tax Exemption between a property's commercial use and use as a homestead. Rebholz bases this constitutional argument on a word play that defines the second "thereon" in Article VII, Section 6(a) as referring to the entirety of a parcel of real estate, regardless of its use, because, according to Rebholz, if the legislature had meant otherwise, they would have used more restrictive words such as "on the portion being used for." (Answer Brief at P. 14). This argument, however, defeats itself and confirms the Property Appraiser's argument advanced in the Initial Brief. If this Court were to adopt Rebholz' reading of the provision, the second "thereon" becomes useless surplusage, because the provision would read the same with or without the second "thereon," as in either case the entire parcel of real estate would be exempt as long as any portion of it is used as the owner's permanent residence/homestead. If this Court were to

adopt Rebholz' interpretation of Article VII, Section 6(a), the entirety of every parcel of real estate, regardless of its size or use, would be entitled to a Homestead Tax Exemption as long as the owner or a qualifying dependent lived somewhere on the parcel and claimed it as their homestead; and every statute suggesting otherwise, would be unconstitutional. This would include Section 196.031(4), which was not even challenged as unconstitutional in this case.

## IV. BOTH SECTIONS 196.031(4) AND 196.012(13) APPLY TO REBHOLZ, WITH ANY AMBIGUITIES CONSTRUED NARROWLY, AGAINST THE EXEMPTION AND AGAINST THE TAXPAYER AND IN FAVOR OF THE STATUTE'S CONSTITUTIONALITY.

Rebholz argues Sections 196.031(4) and 196.012(13) simply do not apply to his activities. Without any citation to authority, Rebholz simply states Section 196.031(4) was only intended to apply to properties other than single family residences; and that this Court then should contort Section 196.012(13) so that it only applies to additional exemptions beyond the Homestead Tax Exemption. Both arguments ask this Court to construe the purported statutory ambiguities Rebholz has attempted to create broadly in his favor and in favor of the exemption, even though Rebholz admits in his brief

that these statutes should be strictly construed against him and against the exemption (See Answer Brief at P. 15).

As argued above, Section 196.031(4) confirms the Homestead Tax Exemption only applies to the portion of property classified and assessed as owner occupied residential property. Concerning Section 196.012(13), Rebholz argues it only applies to 100% exemptions and not the Homestead Tax Exemption, while ignoring the fact that it fits perfectly into any analysis of a parcel utilized as both a home and for other commercial purposes, such as the apartment building in Karayiannakis v. Nikolits, 23 So.3d 844 (Fla. 4th DCA 2009). At page 20 of the Answer Brief, Rebholz argues, inexplicably, that the legislature understood the Homestead Tax Exemption to include portions of property used for commercial purposes. This quantum leap is necessary so that Rebholz can then argue Section 196.012(13) was never intended to apply to the Homestead Tax Exemption. Once again, however, Rebholz falls into his own trap as this argument acknowledges the flaw in his constitutional interpretation. If this Court were to agree with Rebholz' argument that the Homestead Tax Exemption was intended to include portions used for commercial

purposes, all properties on which an owner maintains their permanent residence would be exempt in their entirety, regardless of size or any commercial use. Rebholz does not get to pick and choose the manner in which the Florida Constitution is interpreted to suit his needs. It must be interpreted consistently and uniformly as to all parcels of property.

Section 196.012(13) confirms the Homestead Tax Exemption only applies to real estate that is both used and owned as a homestead. The statute is completely consistent with Article VII Section 6, which confirms the exemption only applies to property that is both <u>owned by the taxpayer and also used</u> by that taxpayer as a permanent residence ("maintains thereon"). Section 196.012(13) therefore confirms the obvious: the exemption only applies to real property actually owned, and then used as a homestead by the owner; specifically excluding any portion of property used for commercial purposes. The statute then specifically confirms a factual presumption in favor of the Property Appraiser in this very case: "Property rented for more than 6 months is presumed to be used for

commercial purposes," keeping in mind Rebholz rented out a portion of the Property for 15 years.

Likewise, Section 196.012(13) does not set forth a more restrictive standard than that contained in the Florida Constitution. Rather, it is consistent with the Florida Constitution's pronouncement that a taxpayer is only entitled to a Homestead Tax Exemption on the portion of property (whether within a single-family residence or otherwise) on which they actually maintain their permanent residence. Even if, however, this Court were to be uncertain as to whether Section 196.012(13), or 196.031(4), for that matter, apply to Rebholz based on some perceived ambiguity, this Court should follow well established Florida law (as admitted by Rebholz) and construe any ambiguities in those statutes against Rebholz and against the exemption.[4]

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[4] Rebholz takes issue with this Court's holding in Steuart v. State, 161 So. 378 (Fla. 1935) and suggests it is incorrect, relying on Rast v. Hulvey, 80 So. 750 (Fla. 1919), to argue only statutory exemptions are construed strictly. To the contrary, however, the Rast Court confirmed that "all laws exempting property must be subjected by the courts to a strict construction." Id at 85(quoting City of Chicago v. City of Chicago, 207 Ill. 37,69 N.E. 580), while analyzing the reasons and rationale for the strict construction which applies equally to statutory and constitutional exemptions.

Courts are required to find statutes constitutional if there is any way to interpret them as such. Gray v. Central Fla. Lumber Co., 104 Fla. 446, 451 (Fla. 1932). Rebholz argues the exact opposite. While there may be "a" way to read the statutes in the manner forwarded by Rebholz, as long as there is ***any*** way to read them as consistent with the Florida Constitution, this Court must uphold the statutes.

Rebholz argues that if Article VII, Section 6(a) is read in the manner he wants it to be read, the statute is unconstitutional because it restricts Rebholz' right to a Florida Homestead Tax Exemption by substantively altering or materially limiting the class of individuals entitled to same. Rebholz then argues the legislature is limited to enacting statutes addressing the procedure for obtaining an exemption and cannot enact statutes that create substantive restrictions beyond the Florida Constitution, citing Sparkman v. Scott, 58 So.2d 431 (Fla. 1952)(cited for the proposition that "the legislature cannot require applicants for the homestead exemption to have resided in Florida for one year.); and Garcia v. Andonie, 101 So. 3d 339 (Fla. 2012)(cited for the proposition that "now that the Constitution allows exemptions for persons who are dependent on

the owner, the legislature cannot require the owner to reside on the homestead property").

Both Sparkman and Andonie involved legislative enactments that were directly in conflict with the Florida Constitution. In this case, however, no such conflict exists. Furthermore, despite some dicta in Andonie, the legislature is not limited to ministerial, procedural matters in implementing ad valorem real property tax exemptions. See, e.g. Haddock v. Carmody, 1 So. 3d 1133, 1135 (Fla. 1st DCA 2009)(confirming that the legislature can in fact enact statutes establishing how real property is to be treated under the Homestead Tax Exemption).

Furthermore, the legislature may refine and redefine constitutional terms and concepts. Sebring Airport Auth. v. McIntyre, 718 So. 2d 296, 298 (Fla. 2d DCA 1998). To the extent the meaning of the second "thereon" in Article VII, Section 6(a) needs any refinement, the legislature's statutory enactments have refined it to confirm it only applies to the portion of property actually used as the permanent residence and not the entire parcel. Legislative enactments are presumed to be constitutional and should be

construed whenever possible to affect a constitutional outcome. Id; Endsley v. Broward Cty., 189 So. 3d 938, 942 (Fla. 4th DCA 2016)(additionally confirming that the party challenging the constitutionality of a statute bears a heavy burden of establishing its invalidity).

## V. REBHOLZ RAISES COMPLETELY INACCURATE POINTS AND INAPPLICABLE STATUTES IN AN ATTEMPT TO DISTRACT ATTENTION FROM THE STATUTORY PROVISIONS THAT ACTUALLY APPLY IN THIS CASE.

At Page 18 of his brief, Rebholz advances an argument attempting to differentiate between the Homestead Tax Exemption and other tax exemptions. In doing so he analyzes Florida Statue Section 196.192 and comments at footnote 4 that “the Property Appraiser frequently references Section 196.192 as support for his position.” To the contrary, however, the Property Appraiser **never** cited that section in any prior appellate brief in this cause, or in its dispositive motions or trial brief before the trial court.

Similarly, Rebholz attempts to divert attention to Florida Statute Section 197.122 and suggests that somehow the Property Appraiser illegally changed his judgment in this case by determining Rebholz was not entitled to 100% of the Homestead Assessment

Limitation Cap due to his use of the Property. (Answer Brief at P. 24) The Property Appraiser made no change in judgment. Rather, the Property Appraiser simply discovered a violation and recorded a lien under Section 193.155(10).

## VI. SECTION 196.061 ADDRESSES A TOTAL LOSS OF THE HOMESTEAD TAX EXEMPTION AND IS IN NO WAY INCONSISTENT WITH SECTION 196.012(13).

Rebholz suggests that the language of Section 196.061 confirms legislative intent to allow room rentals without impacting the Homestead Assessment Limitation Cap. Section 196.061, however, addresses complete abandonment of the homestead due to rental of all or substantially all of the dwelling. Rental of less than substantially all of a homestead does not cause a loss of the Homestead Tax Exemption in its entirety. Rebholz did not rent out all or substantially all of the Property As a result, Rebholz did not abandon his homestead. 85% of the structure was still deemed his homestead and he received the full reduction in taxable value, and the benefit of the Homestead Assessment Limitation Cap on the portion that remained his permanent residence.

## VII. <u>REBHOLZ CANNOT CLAIM HOMESTEAD BENEFITS ON THE PORTION OF HIS PROPERTY THAT DOES NOT SERVE AS HIS RESIDENCE BECAUSE HE GAVE UP EXCLUSIVE USE AND POSSESSION TO A TENANT.</u>

Rebholz claims that since Article VII and Section 196.031(1)(a) refer to the taxpayer's residence, the entire residence must be exempted regardless of use in an effort to further distance himself from Section 196.031(4). Both the Florida Constitution and Section 196.031(1)(a), however, address the "permanent residence," not simply "a residence." Furthermore, as Justice Atkinson noted in his dissent in this case, the portion of the property that Rebholz rented out for 15 years was not, in fact, his residence. It was someone else's residence, to which Rebholz had given up any right of exclusive possession pursuant to a written lease. There is no functional difference between apportioning the exemption between the respective owners as contemplated by Section 196.031(1)(a) and apportioning that interest between an owner and a tenant.

## <u>CONCLUSION</u>

The Property Appraiser does not contend that simply sharing space with a friend, or having a home office, without more, amounts to a commercial purpose that would impact the Homestead

Assessment Limitation Cap. Rather, all of Florida's property appraisers must have the ability and discretion to review the facts of a particular case and determine whether a commercial purpose exists. Presumably, but not automatically, property rented for more than six months is commercial use. But each case must be examined on its own facts so that each property appraiser can make a determination based on the totality of the circumstances. The facts of the present case unquestionably confirm Rebholz was using a portion of the Property for commercial purposes.

The Homestead Tax Exemption was intended to protect the family home. It was not intended to protect the commercialization of the family home. Homeowners are certainly free to supplement their income by renting space within their homes. They are just not entitled to all of the benefits of the Homestead Tax Exemption on the portions they rent out. Rebholz received all of the benefits of the Homestead Tax Exemption to which he was entitled, only losing the Homestead Assessment Limitation Cap on 15% of the Property. Accordingly, this Court should reverse the Second District Court of Appeal, find the challenged statute and code provision constitutional as applied in this case, and remand to the trial court for entry of a

judgment confirming the commercial use of the Property, a loss of the Homestead Assessment Limitation Cap on 15% of the Property, and the validity of the tax lien at issue.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Florida Courts e-Filing Portal and delivered by e-service through to: Sherri L. Johnson, Esq., JOHNSON LEGAL OF FLORIDA, P.L., 2937 Bee Ridge Rd. Suite 1, Sarasota, FL 34239, sjohnson@johnsonlegalfl.com, **Attorneys for Appellee Rebholz**; Robert P. Elson at robert.elson@myfloridalegal.com, lisa.ryder@myfloridalegal.com, jon.annette@myfloridalegal.com, **Attorneys for Department of Revenue**; Bora S. Kayan, Esq., Assistant County Attorney, 1660 Ringling Boulevard, 2nd Floor, Sarasota, FL 34236 bkayan@scgov.net, **Attorneys for Tax Collector**; Loren E. Levy, THE LEVY LAW FIRM, 1828 Riggins Lane, Tallahassee, FL 32308, eservice@levylawtax.com, gsmith@levylawtax.com, **Counsel for The Property Appraisers' Association of Florida, Inc.**; Jennifer A. McClain and John C. Dent, Jr., DENT & MCCLAIN, CHARTERED, 3415 Magic Oak Lane, Sarasota, FL 34232, jmcclain@dentmcclain.com,

jdent@dentmcclain.com, **Attorneys for Ed Crapo, Property Appraiser of Alachua County, Florida and Scott P. Russell, Property Appraiser of Monroe County, Florida**; and Jorge Martinez-Esteve and Daija Page Lifshitz, ABIGAIL PRICE-WILLIAMS, 111 Northwest First Street, Stephen P. Clark Center, Suite 2810, Miami, FL 33128 **(via U.S. Mail)** and at jme@miamidade.gov, kih@miamidade.gov, daija@miamidade.gov, Jessica.Prieto@miamidade.gov, **Attorneys for Pedro Garcia, Property Appraiser of Miami-Dade County, Florida**, on September 2nd, 2022.

ICARD, MERRILL, CULLIS, TIMM, FUREN & GINSBURG, P.A.
2033 Main Street, Suite 600
Sarasota, FL 34237
Phone: (941)-366-8100
Fax: (941)-366-6384
***s/ Jason Lessinger***

_________________________
J. Geoffrey Pflugner, Esq.
Florida Bar No. 0152304
Jpflugner@icardmerrill.com
Anthony J. Manganiello, Esq.
Florida Bar No. 0052307
Amanganiello@icardmerrill.com
Jason A. Lessinger, Esq.
Florida Bar No. 091601
Jlessinger@icardmerrill.com
***Counsel for Appellant***

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply Brief of the Appellant complies with the applicable font, size, and word count requirements of the Florida Rules of Appellate Procedure 9.045 and 9.210.

***s/ Jason Lessinger***

______________________________

Jason A. Lessinger, Esquire
Florida Bar No. 091601