NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

RIVERCREST COMMUNITY ASSOCIATION, INC., a Florida nonprofit corporation,

Appellant,

v.

AMERICAN HOMES 4 RENT PROPERTIES ONE, LLC, a foreign limited liability company, AMERICAN HOMES 4 RENT PROPERTIES THREE, LLC, a foreign limited liability company, AMERICAN HOMES 4 RENT PROPERTIES SIX, LLC, a foreign limited liability company, AMERICAN HOMES 4 RENT PROPERTIES SEVEN, LLC, a foreign limited liability company, AMH 2014-1 BORROWER, LLC, a foreign limited liability company, AH4R PROPERTIES, LLC, a foreign limited liability company, AH4R-FL 11, LLC, a foreign limited liability company, AMH 2015-1 BORROWER, LLC, a foreign limited liability company, AMERICAN HOMES 4 RENT TRS, LLC, a foreign limited liability company, BEAZER PRE-OWNED HOMES, LLC, a foreign limited liability company, BEAZER PRE-OWNED HOMES II, LLC, a foreign limited liability company, AMERICAN RESIDENTIAL LEASING COMPANY, LLC, a foreign limited liability company, AH4R I FL, LLC, a foreign limited liability company, 2014-1 IH BORROWER L.P., a foreign limited partnership, 2014-3 IH BORROWER

Case No. 2D16-5301

L.P., a foreign limited partnership, 2013-1 IH BORROWER L.P., a foreign limited partnership, 2014-2 IH BORROWER L.P., a foreign limited partnership, 2015-2 IH2 BORROWER, L.P., a foreign limited partnership, 2015-1 IH2 BORROWER, L.P., a foreign limited partnership, 2015-3 IH2 BORROWER L.P., a foreign limited partnership, IH3 PROPERTY FLORIDA, L.P., a foreign limited partnership, THR FLORIDA, L.P., a foreign limited partnership, IH4 PROPERTY FLORIDA, L.P., a foreign limited partnership, IH5 PROPERTY FLORIDA, L.P., a foreign limited partnership, PROGRESS RESIDENTIAL 2015-1 BORROWER, LLC, a foreign limited liability company, PROGRESS RESIDENTIAL 2014-1 BORROWER, LLC, a foreign limited liability company, PROGRESS RESIDENTIAL 2015-2 BORROWER, LLC, a foreign limited liability company, PROGRESS RESIDENTIAL 2015-3 BORROWER, LLC, a foreign limited liability company, FREO FLORIDA, LLC, a foreign limited liability company, SBY 2014-1 BORROWER LLC, a foreign limited liability company, and 2015B PROPERTY OWNER LLC, a foreign limited liability company,

Appellees.

Opinion filed June 3, 2020.

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Claudia Rickert Isom, Judge.

Joshua P. Welsh (withdrew after briefing), Karen S. Cox, David C. Banker, Charles Evans Glausier, and Melissa J. Knight of Bush Ross, P.A., Tampa, for Appellant.

Robin I. Frank and Andrew B. Blasi of

Shapiro, Blasi, Wasserman & Hermann,
P.A., Boca Raton, for Appellees.

SALARIO, Judge.

Rivercrest Community Association, Inc. (the Association), a homeowners' association, appeals from two nonfinal orders enjoining it from enforcing provisions of its declaration—one granting a permanent injunction and one denying a motion for summary judgment. We are without jurisdiction to review the order denying summary judgment, and we dismiss the appeal to that extent.[1] See Chiandusse v. Grannis, 133 So. 3d 591, 593 (Fla. 2d DCA 2014). We reverse the order granting the permanent injunction and remand for further proceedings.

This appeal centers on the question of whether the Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Rivercrest was validly approved. Rivercrest is a residential community in Hillsborough County administered by the Association. At the time the second amended declaration was approved, the affairs of Rivercrest were regulated by the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Rivercrest. The second amended declaration purported to supersede the amended declaration and contained new regulations on the leasing of homes in Rivercrest that were significantly more restrictive than those in the amended declaration.

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[1]The Association has characterized the order denying its motion for summary judgment as one refusing to dissolve a temporary injunction that is immediately appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(B). Although the Association's motion for summary judgment requested that relief ancillary to its alleged entitlement to summary judgment, this is a case where "functionally the order . . . merely denies a summary judgment" and is not independently appealable. See Chiandusse v. Grannis, 133 So. 3d 591, 593 (Fla. 2d DCA 2014).

The appellees here are Rivercrest property owners who want to lease homes and thus are adversely affected by the changes in the second amended declaration. Alleging that the second amended declaration is invalid, they sued the Association for declaratory and injunctive relief and money damages. All of their claims hinge on the contention that the second amended declaration was not approved by the personal vote of lot owners representing sixty-seven percent of the lots in Rivercrest, which they say the amended declaration unambiguously required in order for the second amended declaration to be validly approved. On the appellees' motion for temporary injunction, the trial court agreed with their interpretation of the amendment provisions of the amended declaration and granted a temporary injunction that prohibited the Association from enforcing the new leasing restrictions.

The appellees later filed a motion for partial summary judgment in which they sought summary judgment on the declaratory judgment and permanent injunction components of their claims and on the liability portion of their damages claim. The Association filed a cross-motion for a final summary judgment. The central legal issue in both motions was again whether the second amended declaration was validly approved under the procedures set forth in the amended declaration. The appellees argued that the amendment provisions of the amended declaration unambiguously required the personal vote of lot owners representing sixty-seven percent of the lots in Rivercrest. The Association argued that they unambiguously did not. The trial court again agreed with the appellees, granted their motion for partial summary judgment, denied Rivercrest's motion for summary judgment, and, ultimately, entered an amended partial final judgment in which it (1) declared the lease restrictions in the second amended declaration invalid, (2) permanently enjoined the enforcement of those

restrictions, and (3) resolved the liability aspect of the appellees' damages claim in their favor. That leaves the question of damages to be decided in the trial court.

We have jurisdiction under rule 9.130(a)(3)(B) because the amended partial final judgment grants or continues an injunction.[2] Given that jurisdictional basis, the scope of our review is limited to the permanent injunction contained in the amended partial final judgment. See, e.g., Kountze v. Kountze, 996 So. 2d 246, 250 (Fla. 2d DCA 2008) (discussing scope of review in the context of an appeal from a nonfinal order listed in rule 9.130). The trial court's decision to grant that injunction hinged on its legal conclusion that terms of the amended declaration did not allow the second amended declaration to be adopted in the way that it was and, as a result, that the second amended declaration is invalid. As we shall see, this is purely a question of law—what does the text of the relevant provisions of the amended declaration mean?—and as such, our review is de novo.[3] See, e.g., Retreat at Port of Islands, LLC v. Port of Islands Resort Hotel Condo. Ass'n, 181 So. 3d 531, 532-33 (Fla. 2d DCA 2015) (holding

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[2]The Association has correctly not argued that the amended partial final judgment is appealable under rule 9.110(k)—rule 9.110(h) when this appeal was filed—governing appeals from partial final judgments. See, e.g., Fla. Farm Bureau Gen. Ins. Co. v. Peacock's Excavating Serv., Inc., 186 So. 3d 6, 8-10 (Fla. 2d DCA 2015).

[3]Determining the appropriate standard of review in the context of an injunction order rendered on motions for summary judgment can get tricky. See generally Shaw v. Tampa Elec. Co., 949 So. 2d 1066, 1068-69 (Fla. 2d DCA 2007) (describing the problem). It is not so here. The trial court's decision to grant summary judgment and issue a permanent injunction is dependent on its legal conclusion that the amended declaration unambiguously requires the personal vote of owners representing sixty-seven percent of the lots in Rivercrest to approve an amendment. Without that conclusion, there would be no injunction. As we have explained above, that conclusion is a pure question of law that we review de novo. See also Williams v. Victim Justice, P.C., 198 So. 3d 822, 826 (Fla. 2d DCA 2016) (holding that, to the extent an injunction rests on legal questions, it is reviewed de novo) (quoting Morgan v. Herff Jones, Inc., 883 So. 2d 309, 313 (Fla. 2d DCA 2004)).

that a trial court's interpretation of a condominium association's bylaws is reviewed de novo); Courvoisier Courts, LLC v. Courvoisier Courts Condo. Ass'n, 105 So. 3d 579, 580 (Fla. 3d DCA 2012) ("A trial court's interpretation of a condominium's declaration is also reviewed *de novo*.") (citing Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)).

We turn, then, to what the amended declaration says about the adoption of amendments. The definitions section of the amended declaration identifies three players in the governance of the Rivercrest community that are relevant here. First, there is an "Owner," who is simply the titleholder of any lot in the community. Second, there is a "Member," which refers to a member of the Association. There are two classes of membership, Class A and Class B: The developer and any lot-owning affiliate of the developer are treated as a single Class B Member, and every other Owner is a Class A Member. Third, there is a "Neighborhood Representative." The Rivercrest community is divided into several neighborhoods, and the Class A Members of each neighborhood select a Neighborhood Representative "to cast [the Class A Members'] votes on Association matters (except where Members are required to cast their own votes)."

Section 6.3 of the amended declaration governs how the Members vote on matters related to Association governance. Each Class A Member—in other words, each Owner other than the developer and its lot-owning affiliates—"has one equal vote for each lot they own." Section 6.3 does not provide for voting by the Class B Member, although it does provide that, for a period of time specified in the amended declaration, the Class B member gets to appoint a majority of the Association's board of directors.

Once Class B membership terminates, the developer and each of its affiliates who own a lot become Class A Members with one Class A vote for each lot they own.

The voting rights of the Class A Members are presumptively exercised by the Neighborhood Representatives those Members select. Section 6.3(c) provides as follows:

> Except as otherwise specified in this Declaration or the By-Laws, Neighborhood Representatives shall exercise the vote for each Lot a Class "A" Member owns; provided, until a Neighborhood Representative is first elected for a Neighborhood, each Owner within such Neighborhood may personally cast the vote attributable to his or her Lot on any issue requiring a membership vote. . . . A Neighborhood Representative may cast the number of votes corresponding to the number of eligible Class "A" votes within his or her Neighborhood.
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> Prior to any scheduled vote, a Neighborhood Representative shall poll the Owners within the Neighborhood and allow a reasonable time for response. . . . For each Lot for which specific written voting direction is given [by an Owner], the Neighborhood Representative shall vote as directed. For each Lot for which no direction or conflicting direction is given, the Neighborhood Representative may cast the vote for such Lot as he or she, in his or her discretion, deems appropriate. . . .
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> In any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(Emphasis added.) In sum, then, the votes of the Class A Members—i.e., all owners except the developer and its lot-owning affiliates—are to be cast by the Neighborhood Representatives "[e]xcept as otherwise specified" in the amended declaration and

bylaws, a situation which involves an Owner's entitlement "personally to exercise the vote for his or her lot."

The procedure for amending the amended declaration is specified in section 20, titled "Amendment of Declaration." Subsection 20.2, titled "By the Members," provides, in relevant part:

> Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing at least 67% of the Lots (with each Lot being allocated one vote regardless of whether owned by a Class "A" Member or a Class "B" Member).

(Emphasis added.) Amending the declaration thus requires an "affirmative vote," or a written consent in lieu of a vote, of Owners representing sixty-seven percent of the lots.

Here, there is no dispute that Neighborhood Representatives representing Class A Members who were Owners of at least sixty-seven percent of the lots voted in favor of the second amended declaration. What the appellees argued in the trial court, and what the trial court held, is that subsection 20.2 unambiguously requires that all of the Owners vote personally on the amendment and that a vote by the Neighborhood Representatives on behalf of those owners who are Class A Members is not sufficient. Both parties agree that we look to the rules governing the interpretation of contracts to assess this question. See Retreat at Port of Islands, 181 So. 3d at 533 (interpreting condominium bylaws under contract principles); Royal Oak Landing Homeowner's Ass'n v. Pelletier, 620 So. 2d 786, 788 (Fla. 4th DCA 1993) (interpreting homeowners' association declaration under contract principles). Here, two settled principles of contract interpretation resolve this case: (1) plain and unambiguous contract terms receive their plain and unambiguous meanings, see Hahamovitch v. Hahamovitch, 174

So. 3d 983, 986 (Fla. 2015), and (2) contractual provisions are to be interpreted in the context of the entire agreement, Retreat at Port of Islands, 181 So. 3d at 533.

The appellees' interpretation, which the trial court accepted, that section 20.2 requires the personal votes of Owners representing sixty-seven percent of the lots effectively plucks that subsection out of the amended declaration and ignores the plain language of section 6.3. Section 6.3 plainly and unambiguously provides that the votes on association matters by Owners who are Class A Members are to be exercised by the Neighborhood Representatives "[e]xcept as otherwise specified" in the amended declaration or the bylaws. That means that the Neighborhood Representatives' vote on the second amended declaration is proper unless something in section 20.2 specifies otherwise. To "specify" something is to state it specifically, precisely, or in detail. See Fla. League of Cities v. Smith, 607 So. 2d 397, 399 (Fla. 1992) (determining the meaning of the term "specified" in a constitutional provision); Specify, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/specify (last visited May 27, 2020) (defining "specify" as "to name or state explicitly or in detail"). Thus, as the Association argues, we should expect to see language that clearly excepts the amendment process from the general rule that the votes of Owners who are Class A Members are to be cast by the Neighborhood Representatives.

Section 20.2 contains no such language. That section says only that the amended declaration may be amended upon the "affirmative vote or written consent" of the Owners. An affirmative vote is simply a "yes" vote in favor of the amendment and says nothing about whether the vote must be cast by each and every individual Owner personally or whether the Neighborhood Representatives may cast the votes of those Owners who are Class A Members after polling them as provided in section 6.3.

Furthermore, neither the trial court nor the appellees have identified anything about the option of a written consent that could or should be interpreted as vesting voting authority solely in individual Owners as distinguished from the Neighborhood Representatives. Simply put, nothing in the text of section 20.2 provides any explicit indication that Owners who are Class A Members must personally cast ballots in favor of a proposed amendment to the amended declaration. To reach that result, we would have to incorporate such language into Section 20.2 ourselves, an exercise that the law of contracts does not permit us to undertake. See, e.g., 19650 NE 18th Ave. LLC v. Presidential Estates Homeowners Ass'n, Inc., 103 So. 3d 191, 194 (Fla. 3d DCA 2012) ("A court may not rewrite a contract to add language the parties did not contemplate at the time of execution."); BMW of N. Am., Inc. v. Krathen, 471 So. 2d 585, 587 (Fla. 4th DCA 1985) ("[W]here a contract is silent as to a particular matter, courts should not, under the guise of construction, impose on parties contractual rights and duties which they themselves omitted.").

The appellees point out that Rivercrest's original declaration provided for approval of amendments to be effective upon the affirmative vote or written consent of "Neighborhood Representatives representing at least 75% of the Association's total Class 'A' votes." From there, they argue the change from a vote of the Neighborhood Representatives in the prior declaration to a vote of the Owners in the amended declaration must mean that the personal votes of Owners are required. We disagree that the inference the appellees seek to draw is the sole inference one could draw from this change. The amended declarations also expanded the right to vote from solely Class A Members—whose votes are given by Neighborhood Representatives, unless specifically provided otherwise—to both Class A and Class B members, the latter of

which have no right to vote for Neighborhood Representatives under the amended declaration. That could explain the change. But possible interpretations of the reasons for the change are ultimately beside the point. The language of the amended declaration is unambiguous, and reviewing courts do not consider extrinsic evidence for the purpose of altering or varying the plain meaning of unambiguous contract terms. See SCG Harbourwood, LLC v. Hanyan, 93 So. 3d 1197, 1200 (Fla. 2d DCA 2012) (citing Jenkins v. Eckerd Corp., 913 So. 2d 43, 52 (Fla. 1st DCA 2005)).

The trial court's entry of a permanent injunction prohibiting the Association from enforcing the lease restrictions rested on an erroneous interpretation of the unambiguous language of the amended declaration. Accordingly, we reverse the amended partial final judgment to that extent and remand the case to the trial court for further proceedings consistent with this opinion. We dismiss this appeal to the extent the Association seeks relief from the order denying summary judgment.

Reversed in part; dismissed in part; remanded.

NORTHCUTT and BLACK, JJ., Concur.