IN THE COURT OF APPEALS OF VIRIGNIA

5800 HVB, LLC, Appellant, vs. HARBOUR VIEW COMMERCE ASSOCIATION, INC., Appellee.	: : : : : : : : : :	Record No.: 0625-23-1

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

COME NOW the Community Associations Institute ("CAI"), pursuant to Virginia Supreme Court Rule 5A:23(c), requests leave of Court to file a Brief Amicus Curiae and states the following:

1. The Brief Amicus Curiae is in support of a party, specifically Appellee Harbour View Commerce Association, Inc., who has consented in writing to the filing of a Brief Amicus Curae in support of their position.
2. On Friday August 25, 2023, counsel for the Appellant provided verbal consent to CAI filing a Brief Amicus Curiae in this matter.
3. Accordingly, I hereby certify that both parties have consented to my Motion for Leave to File Brief Amicus Curiae.
4. The proposed Brief Amicus Curiae is attached to this Motion.

Dated: September 11, 2023

Respectfully Submitted,

COMMUNITY ASSOCIATIONS INSTITUTE
By Counsel

/s/ Todd A. Sinkins

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Joint Motion to Dismiss was mailed, first-class, postage prepaid, and emailed this 11th day of September, 2023.

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In The

Court of Appeals of Virginia

RECORD NO. 0625-23-1

5800 HVB, LLC
***Appellant*,**

v.

HARBOUR VIEW COMMERCE ASSOCIATION, INC.
***Appellee*.**

Brief Amicus Curiae

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Community Associations Institute ("CAI") is an international organization dedicated to providing information, education, resources, and advocacy for community association leaders, members, and professionals with the intent of promoting successful communities through effective, responsible governance and management. CAI's more than 45,000 members include homeowners, board members, association managers, community management firms, and other professionals who provide services to community associations.[1] CAI is the largest organization of its kind, serving more than 74 million homeowners who live in more than 355,000 community associations in the United States. In Virginia alone, approximately 2,010,000 Virginians live in 786,000 homes in more than 8,890 community associations.[2] CAI represents not only itself, but also its tens of thousands of members on this important issue. *Id.*

STATEMENT OF THE CASE

At its core, this appeal concerns basic principles of contract law based on the interpretation of the provisions of the recorded Declaration of Protective Covenants

[1] CMTY. ASS'NS INST., https://www.caionline.org/AboutCAI/Pages/default.aspx (last visited Sept. 7, 2023).

[2] *Virginia Community Associations Facts & Figures*, CMTY. ASS'NS INST., https://www.caionline.org/Advocacy/LegalArena/Laws/Documents/Facts%20%26%20Figures/StateFactsFiguresVirginia.pdf (last visited Sept. 6, 2023).

for Harbour View Commerce Center (the "Declaration") governing the authority of Harbour View Commerce Association, Inc.'s (the "Association") Architectural Review Board ("ARB") to adopt development guidelines governing the acceptable uses for the commercial community. Specifically, this case is about whether the parties to a Declaration are bound by, and can rely upon, it being applied in a manner that complies with the plain meaning of the words used in the Declaration.

The trial court's decision is completely reconcilable with the plain meaning of terms of the recorded Declaration which empowers the ARB to regulate proposed uses in the community by adopting development guidelines that are applicable to the community as a whole. Nevertheless, the Appellant attempts to manipulate this Court into accepting a completely contradictory interpretation of the Declaration in this appeal in which it asserts two Assignments of Error that seek to challenge the trial court's judgment, including its construction of the plain terms of the recorded Declaration, and its ruling regarding basic principles of contract law. The Assignments of Error are unfounded and require a tortured interpretation of the Declaration that ignores the expressed and explicit authority granted to the governing body, the ARB to: (1) adopt and enforce development standards; and (2) consider the compatibility and harmony of uses of Lots that are subject to the Declaration.

In this appeal, the Appellant asks this Court to substitute its judgment for that of the trial court, and to rewrite the Declaration to impose a nonsensical interpretation completely irreconcilable with the plain meaning of its terms. It is respectfully submitted that this Court should decline to do so.

SUPPLEMENTAL STATEMENT OF THE FACTS

A. Overview of Association Documents

The Declaration of Protective Covenants for Harbour View Commerce Center (R. 1035-71, 1331-66) provides for the creation of an "integrated commercial project . . . with a planned mix of office and commercial uses." Rec. B. Section 1.2 of the Declaration states:

> Purpose. It is the purpose of this Declaration to create a planned commercial development of high quality, to assure the orderly and attractive development of the Property in an efficient and harmonious manner, to preserve and enhance property values, amenities and opportunities within the Property, to promote the health and safety of the Occupants and to maintain a harmonious relationship among the structures and the natural vegetation and topography thereon. This Declaration is designed to complement the Zoning Ordinance and other Laws, and where conflicts occur, the more restrictive requirement shall prevail.

In general, the purpose of the Declaration is to ensure that Harbour View Commerce Center is an attractive commercial development of high quality based upon a harmonious community that strives, among other things, to preserve and enhance property values. To accomplish the stated purpose, the restrictions provided

within the Declaration are designed to add to the restrictions of the Zoning Ordinance. The language in Section 1.2 clearly and explicitly states that if there is a conflict in the restrictions of the Declaration versus the restrictions of the Zoning Ordinance, the more restrictive covenant will control.

When determining whether a specific use may be categorized as compatible use to achieve the purpose of the Declaration, Article IV, Section 4.1 of the Declaration states the following "[n]o portion of the Property shall be used for any purpose other than a Permitted Use and uses accessory thereto." Article II of the Declaration defines Permitted Uses, "with respect to any portion of the Property the permitted uses applicable thereto as set forth on (i) Exhibit C to this Declaration with regard to that portion of the Property described in Exhibit A of the Declaration and (ii) Exhibit C to any Supplemental Declaration with regard to any other portion of the Property hereafter subjected to this Declaration." (R. 1045). Additionally, Exhibit C to the Declaration states: "The property *may be used for any use* which is unconditionally permitted under the current B-2 zoning classification of the Suffolk County Zoning Ordinance without any requirement for a use permit, without the prior written approval of the Declarant or its successors or assigns." (Emphasis added). (R. 1071).

Further, Section 5.1(a) of the Declaration states that after the Declarant [Harbourview Partners, an Illinois general partnership, or its successor or assign] no

longer owns property in the community or an earlier date as it may elect, the Association's Board of Directors shall appoint an ARB. The ARB is empowered to review and, as appropriate, approve or disapprove Plans submitted by Owners. Section 5.1(b) states that the ARB has the authority to promulgate Development Guidelines designed to implement the purpose and objectives of the Declaration. (R. 1048). Moreover, the Development Guidelines are to be considered with the Declaration, along with other Association governing documents, and identify specific uses permitted in building suites within the Association. (R. 1091-92). The Development Guidelines are available to any owner upon request. (R. 1048). These Guidelines are plainly referenced in the Declaration, and the ARB has full authority to approve or deny applications that are contrary to the Guidelines. (*Id.*).

Further emphasizing the ability of the Association to regulate use and promote harmonious development, Section 8.6 of the Declaration states: "[n]otwithstanding approval from any Governmental Entity, or the fact that the use in question is a Permitted Use, no use or operation will be permitted which creates objectionable noise, smoke, odors or which in any other way, in the opinion of the [ARB], will constitute a nuisance or degrade the value of the Property." (R. 1056).

B. Appellant's Proposed Use of the Property

On November 1, 2018, Harbourview Partners granted and conveyed Parcel 11-B1 located within the Association to the Appellant by general warranty deed.

(R. 1085-88). At the time of conveyance, the subject lot was zoned B-2 under the old Suffolk County Zoning Ordinance ("Zoning Ordinance") which allows for commercial use including gas stations and convenience stores. (R. 657).

The Appellant intended to build and operate a 7-Eleven, with fueling, and an automobile tire and service center on the subject lot. On or about October 15, 2020, the Appellant submitted an application ("Application") to the ARB to construct the 7-Eleven with a gas station and automobile tire and service center with parking. (R. 1098-114). An incomplete, informal application was submitted after the initial Application. The Appellant failed to submit a completed application for the ARB's review. (R. 1232-34). On or about November 4, 2020, the ARB denied the incomplete Application, citing the Declaration and Development Guidelines as some of the reasons for the denial. (R. 1116-17).

By letter dated November 3, 2022, the Appellee notified the Appellant that construction and development activities were observed on the subject lot in violation of the Development Guidelines. (R. 1523). Specifically, trees were being cleared without prior ARB approval and without following the required guidelines in violation of the Association's governing documents. The ARB demanded that Appellant cease and desist such activities until ARB approval was granted; otherwise, legal action would ensue. *Id.*

STANDARD OF REVIEW

Appellants' Assignments of Error involve the interpretation of the recorded Declaration and its covenants, which are questions of law and reviewed de novo. *See Fein v. Payandeh*, 284 Va. 599, 605, 734 S.E.2d 655, 659 (2012); *Palmer & Palmer Co., LLC v. Waterfront Marine Const., Inc.*, 276 Va. 285, 289, 662 S.E.2d 77, 80 (2008); *Pocahontas Mining L.L.C. v. CNX Gas Co., LLC*, 276 Va. 346, 352, 666 S.E.2d 527, 531 (2008).

ARGUMENT

A. The Trial Court Correctly Found that Where a Stated Purpose of the Declaration is to Ensure the Compatibility of Uses, then the Architectural Review Board is Empowered to Determine which Uses are Compatible (Assignment of Error 1).

The law governing contracts is clear that when, as in this case, a recorded declaration expressly states that an express purpose of development standards is to ensure the compatibility of uses amongst properties governed by such recorded declaration, then the architectural review board empowered by such recorded declaration to adopt and enforce such development standards has the power to determine which uses are compatible.[3] *See* (R. 1050).

[3] Section 5.4(a) of the Declaration states: "The Architectural Review Board shall have the right to disapprove the Plans submitted to it if (i) they are not in accordance with the Declaration or the Development Guidelines, (ii) they are incomplete; or (iii) the Architectural Review Board determines, in its sole discretion, that the Plans and specifications or details or any part thereof, are contrary to the best interest of the Property and the Owners. (R. 28).

It is said that courts generally disfavor covenants restricting the free use of property. *Shepherd v. Conde*, 293 Va. 274, 281, 797 S.E.2d 750, 753 (2017) (*citing Fein v. Payandeh*, 284 Va. 599, 605, 734 S.E.2d 655, 658-59 (2012)). However, in modern times such covenants, along with zoning laws and other public land use regulations, are an accepted part of community life. *Goodwin v. Hunter's Lodge Civic Ass'n*, 31 Va. Cir. 356, 1993 WL 946192 (1993). The purpose of restrictive covenants, especially when imposed on defined developments for the benefit and advantage of the landowners within the developments, is said to be lawful and laudable. *Id.* If the restrictions are reasonable, they will be upheld and enforced according to their purposes and design. *Id.; see also Shepherd v. Conde*, 293 at 288, 797 S.E.2d at 757.

In this case, the clear and unambiguous language of the Declaration states that among the factors that the ARB may consider in evaluating an application is whether the application complies with the provisions of the Development Guidelines **or** whether the plans are in "conformity and harmony of exterior design with neighboring Lots and types of operations and use thereof[.]" (R. 1050). Notwithstanding this clear and unambiguous language, the Appellant argues that the ARB lacks regulatory authority to determine whether the use of the Appellant's property is in conformance with the uses of the neighboring Lots. In essence, the Appellant is asking the court to ignore longstanding case law and redefine the

express language in the Declaration that permits the ARB to consider the compatibility of uses of lots subject to the Declaration when it renders its decisions on an application submitted under the development guidelines. "Words that the parties used are normally given their usual, ordinary, and popular meaning. No word or clause in the contract will be treated as meaningless if a reasonable meaning can be given to it, and there is a presumption that the parties have not used words needlessly." *City of Chesapeake v. States Self–insurers Risk Retention Grp., Inc.*, 271 Va. 574, 578, 628 S.E.2d 539, 541 9 (2006) (*quoting D.C. McClain, Inc. v. Arlington Cnty*., 249 Va. 131, 135-36, 452 S.E.2d 659, 662 (1995)).

Furthermore, Virginia courts have previously held that "if it is apparent from a reading of the whole instrument that the restrictions carry a certain meaning by definite and necessary implication, then the thing denied may be said to be clearly forbidden as if the language had been in positive terms of express inhibition." *Scott v. Walker*, 274 Va. 209, 213, 645 SE.2d 278, 281 (2007) (quoting *Bauer v. Harn*, 223 Va. 31, 39, 286 S.E.2d 192, 196 (1982)). For example, in *Bauer*, the Virginia Supreme Court held that because the relationship between an association and its members is contractual in nature, the association's authority to exercise broad powers was only limited by "the contractual obligations embodied in the restrictive covenants." *Bauer v. Harn*, 223 Va. 31, 36, 286 S.E. 2d 192, 194 (1982); *see also Kean v. Section I*, 31 Va. Cir. 331 (1993) ("Restrictive covenants 'limit the use of

property, restrictive or protective, in order to maintain or enhance property in the whole development by controlling its nature and use.'"). Therefore, the relationship between the Association's ARB and Appellant is contractual in nature, pursuant to the Association's governing documents.

In this case, the Appellant completely ignores the express provisions of the Declaration including its purpose in Section 1.2 which states:

> Purpose. It is the purpose of this Declaration to create a planned commercial development of high quality, to assure the orderly and attractive development of the Property in an efficient and harmonious manner, to preserve and enhance property values, amenities and opportunities within the Property, to promote the health and safety of the Occupants and to maintain a harmonious relationship among the structures and the natural vegetation and topography thereon. *This Declaration is designed to complement the Zoning Ordinance and other Laws, and where conflicts occur, the more restrictive requirement shall prevail.*

(R. 1042) (emphasis added).

Rather, the Appellant argues that the proposed use of the subject lot, as a convenience store with gasoline pumps, is permitted by right under the Zoning Ordinance because the B-2 zoning classification permits such uses. However, based on the language of Exhibit C to the Declaration, it establishes a category of uses but limits those uses by using the phrase "may be used for any use," meaning that the proposed uses under the B-2 classification are merely possible compatible uses for the subject lot. However, Section 1.2 of the Declaration allows the Appellee to further restrict the list of possible compatible uses under the B-2 classification uses

if such uses are not compatible with the purpose of the Declaration. (R. 1042). Moreover, Section 5.1(b) of the Declaration states that the ARB has the authority to promulgate development guidelines designed to implement the purpose and objectives of the Declaration. (R. 1048). Additionally, Section 8.6 of the Declaration states that "[n]otwithstanding approval of any Governmental Entity or the fact that use in question is a Permitted Use, no use or operation will be permitted which creates objectionable noise, smoke, odors or which any other way, in the opinion of the ARB, will constitute a nuisance or degrade the value of the Property." (R. 1056.)

Contrary to Appellant's argument, the Declaration, when read as a whole, does not provide that the Association must defer to the permitted uses as described in the Zoning Ordinance when determining compatibility of use amongst properties governed within the Association and by the Declaration. Instead, it provides the opposite. Notwithstanding that the use is permissible based on the approval of the Government Entity (by virtue of its zoning), the terms of the Declaration will govern whether a particular use is permitted. In that regard, the Declaration and the Development Guidelines provide substantial power for the ARB to regulate proposed uses within the Association to ensure harmonious development and to enhance property values within the community. If the Appellant seeks such a drastic departure from the terms and purposes of the restrictive covenants, then Appellant should abide by the amendment procedures provided in the Declaration instead of

asking this Court to change the restrictions. *Cf. Bauer v. Harn*, 223 Va. 31, 40, 286 S.E.2d 192, 196 (1982) (holding that in reading the entire Declaration of Restrictions for the community, the Board of Directors would have to amend the restrictive covenants pursuant to the governing documents to permit general public access to association's facilities).

To that end, the relevant Development Guidelines prescribe that the proposed use of a subject lot should be a consideration when determining whether it is compatible with the purpose of the Declaration. (R. 1384-90). Accordingly, Section 3 of the Development Guidelines limits compatible uses for the property development to the following:

> 3. **Uses**. All of the building suits are to be used for offices, display rooms, general administration, lodging (but not residences), light manufacturing, assembling or processing, wholesaling, warehousing, and businesses of a kindred nature, including auxiliary facilities that are necessary or directly related to the uses enumerated above, and for such other uses as the Declarant shall determine in its sole discretion to be in harmony with the general character and purposes of Harbour View Commerce Center. All uses must receive the prior written approval of Declarant, and shall not be contrary to the Declaration, these Design Guidelines or in violation of any laws of the United States, the statutes of Virginia, or applicable ordinances.

(R. 1385).

Simply put, the permitted uses as stated in the Zoning Ordinance for a particular property is but one factor that the ARB may consider when determining

whether a particular use is compatible to achieve the stated purpose of the Declaration. The Declaration explicitly states that the Zoning Ordinance and other laws are meant to complement it and if there are conflicts between the Declaration, zoning ordinance, or laws, the "more restrictive requirement shall prevail." (R. 1042.) Thus, the Zoning Ordinance is not, and should not be, the only factor the ARB considers in applications for improvements on property within the Association, and when the provisions of the Declaration are read as a whole, the Declaration empowers the ARB to adopt the Development Guidelines, in its sole discretion, to restrict certain compatible uses that may be contrary to the stated purpose of the Declaration despite those very uses being allowed under the Zoning Ordinance.

Furthermore, the Declaration provides the ARB with the authority to exercise its discretion in reviewing and approving applications. (R. 1048.) The ARB exercised its rights to deny the Application and did not breach the Declaration in exercising such rights. *See Charles E. Brauer Co. v. NationsBank of Virginia, N.A.*, 251, Va. 28, 35, 466 S.E.2d 382, 386 (1996); *Virginia Vermiculite, Ltd. v. W.R. Grace & Company-Connecticut*, 156 F.3d 535, 542 (4th Cir. 1998). The ARB was empowered to deny the application with consideration given to whether the use of the Lot was compatible and harmonious with those of other neighboring lots and did so under its authority; thus, Appellant's arguments are without merit.

B. The Trial Court Correctly Found that the Authority to Adopt Development Guidelines is set forth in the Recorded Declaration, and thus the Development Guidelines Do Not Need to be Recorded to be Enforceable (Assignment of Error 2).

The law in Virginia is clear. Where a recorded declaration provides authority for the adoption of development guidelines, the development guidelines do not have to be recorded for them to be binding on the property owners that are subject to the recorded declaration. In this case, it is incontrovertible that the recorded declaration contains language that empowers the ARB to adopt and enforce the Development Guidelines that apply to all properties subject to the recorded declaration. (R. 1058.)

The declaration is a contract that binds all property owners who purchase land within the association subject to said declaration. *Manchester Oaks Homeowners Ass'n v. Batt*, 284 Va. 409, 419 732 S.E.2d 690, 697 (2012); *see also Unit Owners Ass'n of BuildAmerica-1 v. Gillman*, 223 Va. 752, 766 (1982) ("The power exercised by the Association is contractual in nature and is the creature of the condominium documents to which all unit owners subjected themselves in purchasing their units.") As the parcel at issue in this litigation is subject to the Association's Declaration, the parcel's property owner, and its tenant, are then bound by the Declaration.

Moreover, while Virginia law makes clear that restrictive covenants are not favored and shall be narrowly construed, they are enforced based on their plain meaning when the covenants contain clear and unambiguous language. *Friedberg v.*

Riverpoint Bldg. Comm., 218 Va. 659, 665, 239 S.E. 2d. 106, 110 (1977); *see also White v. Boundary Ass'n*, 271 Va. 50, 55, 624 S.E. 2d 5, 8 (2007). When the meaning of language in a contract is clear and ambiguous, the contract needs no interpretation, and "[t]he intention of the parties must be determined by what they actually say and not from what it may be supposed they intended to say." *Sully Station II Community Ass'n, Inc. v. Dye*, 259 Va. 282, 284, 525 S.E.2d 555, 556 (2000) (quoting *Carter v. Carter*, 202 Va. 892, 896, 121 S.E.2d 482, 485 (1961)).

As a recorded declaration is binding on all owners, this Court is required to afford the Declaration its plain meaning. The clear and unambiguous language of the Declaration provides: (1) that the ARB has the authority to promulgate development guidelines designed to implement the purposes and objectives of the Declaration; and (2) that the ARB has the power to enforce such development guidelines. (R. 1048.) No authority has been cited and none can be found to support the Appellant's position that the ARB is required to record development guidelines for them to be binding. Instead, under the plain meaning of Section 5.1(b) of the Declaration, the only procedural obligation once the development guidelines are promulgated is to provide copies of the development guidelines and any supplements thereto upon request.

Appellant's strained interpretation of Section 5.1(b) to require an additional act of recordation of such development guidelines would require the court to

judicially modify the requirements of the plain meaning of the Declaration, which is binding on the owners as a matter of contract. In this case, the Appellant requests that the court insert into the recorded Declaration an additional requirement that the development guidelines be recorded to be binding and to provide notice to property owners of their contents. However, the plain meaning of the Declaration contradicts that assertion. Any property owner, upon receipt of the recorded Declaration, is on notice that the ARB may adopt development guidelines and that they have a right to request a copy of such development guidelines from the ARB. (R. 1048). The Declaration does not contain any additional requirement that the development guidelines also must be recorded. Accordingly, the Appellant's argument that the failure to record the Development Guidelines somehow prevents a property owner from receiving notice of the conditions contained therein is a stark contradiction of the plain language of the Declaration.

Virginia courts have long upheld the enforceability of development guidelines and other similar types of rules that are adopted by an architectural review board, board of directors, or other similar governing body which are empowered to enforce the provisions contained in a recorded declaration. In *Unit Owners Association of BuildAmerica-1 v. Gillman*, the Virginia Supreme Court examined the authority of a condominium unit owners association to impose fines for a violation of rules adopted by that association's executive board. *Unit Owners Ass'n of BuildAmerica-1 v.*

Gillman, 223 Va. 752, 292 S.E. 2d 378 (1982). In its examination, the Court recognized the executive board's authority to adopt, amend, and enforce its rules, notwithstanding the fact that such rules were not recorded in land records. *Unit Owners Ass'n of BuildAmerica-1*, 223 Va. at 766, 292 S.E. 2d at 385 (stating "the master deed conveyed the units to the Gillmans with the express understanding that the rules, regulations, and bylaws of the Association were subject to amendment.").[4]

Similarly, in *Sainani v. Belmont Glen Homeowners Association, Inc.*, the Virginia Supreme Court examined the enforceability of certain provisions contained in design guidelines that were adopted by the Belmont Glen Homeowners Association's ("Belmont Glen") Board of Directors. *Sainani v. Belmont Glen Homeowners Ass'n*, 297 Va. 714, 831 S.E.2d 662 (2019). Similar to the case at hand, the Belmont Glen's design guidelines were not recorded in the county's land records. Yet, the Virginia Supreme Court recognized and upheld the premise that rules and design guidelines adopted by the Board and not recorded in land records are enforceable. The Court, relying on *Gillman*, stated that "to be enforceable, such rules and regulations must be "within the scope of [Belmont Glen's] authority" under the

[4] See also RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 6.7, Comment b. Rationale (AM. LAW. INST., 2007) (stating that "[e]ven in the absence of an express grant of authority, an association enjoys implied power to make rules in furtherance of its power of the common property")

enumerated restrictive covenants and Belmont Glen must not "ha[ve] abused its discretion by promulgating arbitrary and capricious rules and regulations bearing no relation to [its] purposes." *Sainani*, 297 Va. at 728, 831 S.E.2d at 669.

It is clear that a long and unbroken line of cases have upheld the enforceability of rules and standards adopted by an architectural review board, executive board, or some other form of governing body without such rules and standards being recorded within the chain of title. Indeed, the Virginia General Assembly has recognized the validity and enforceability of such rules and standards by granting such authority to executive boards of common interest communities created pursuant to the recordation of a restrictive covenants when such power is expressed in the recorded instrument.[5] Virginia has tens of thousands of recorded instruments that contain authority for a governing body to adopt and enforce unrecorded rules and standards governing the use of property. If this Court were to require development standards or rules and regulations adopted pursuant to the power granted to a governing body be recorded for them to be enforceable, it essentially would be rewriting the contractual provisions governing the adoption of development standards in this case, reversing a long line of binding caselaw upon which thousands of recorded

[5] *See* Va. Code § 55.1-1819; Va. Code § 55.1-1859.

restrictive covenants are based, and invalidating the unrecorded design standards and rules and regulations now in effect in thousands of associations throughout Virginia.

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

For the foregoing reasons, and pursuant to Va. Code § 8.01-681, the Community Associations Institute (CAI) respectfully requests that this Court affirm the trial court's ruling.

Respectfully Submitted,

Dated: September 11, 2023

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CERTIFICATE OF SERVICE

Pursuant to Rule 5A:21(h), I hereby certify that I have this 11th day of September, 2023, served the foregoing Brief Amicus Curiae by delivering true and correct copies thereof by first-class U.S. mail, postage prepaid, and email to:

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This Brief contains 4,386 words, excluding those portions that by Rule 5A:19(a) do not count toward the word limit.

Counsel for Community Associations Institute respectfully waives oral argument.

/s/ Todd A. Sinkins
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