

24-128,469-A

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**IN THE COURT OF APPEALS  
OF THE STATE OF KANSAS**

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**STONEGATE MOTOR PLAZA CONDOMINIUM  
ASSOCIATION, INC., *et al.*,**  
Plaintiffs-Appellees

vs.

**HP MOTORPLAZA, LLC,**  
Defendant-Appellant

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**BRIEF OF THE COMMUNITY ASSOCIATIONS INSTITUTE,  
*AMICUS CURIAE* IN SUPPORT OF THE PLAINTIFFS-APPELLEES**

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Appeal from the District Court of Johnson County, Kansas  
The Honorable David W. Hauber, Judge  
District Court Case No. 23CV4910

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Joshua J. Sipp  
Emily L. Cipra  
Lindsay M. Barash  
4600 Madison Avenue, Suite 1000  
Kansas City, MO 64112  
816-627-5332  
816-627-5532 (Fax)  
jsipp@sandbergphoenix.com  
ecipra@sandbergphoenix.com  
lbarash@sandbergphoenix.com

*Attorneys for Amicus Curiae  
Community Associations Institute*

## **TABLE OF CONTENTS**

<b>TABLE OF AUTHORITIES</b> .....	<b>iii</b>
<b>INTRODUCTION AND STATEMENT OF INTEREST</b> .....	<b>1</b>
<b>STATEMENT OF THE ISSUES</b> .....	<b>2</b>
<b>STATEMENT OF THE CASE</b> .....	<b>2</b>
<b>STATEMENT OF FACTS</b> .....	<b>3</b>
<b>ARGUMENT</b> .....	<b>3</b>
I.    THE DISTRICT COURT’S DECISION UPHOLDS THE PURPOSE OF THE KANSAS APARTMENT OWNERSHIP ACT .....	3
A.    Legislative History of the Kansas Apartment Ownership Act and the Uniform Condominium Act .....	3
B.    The Purpose of the Uniform Condominium Act (1977) .....	5
C.    Similarity of Phasing Concepts under the Uniform Condominium Act and the Kansas Apartment Ownership Act .....	6
D.    The Kansas Apartment Ownership Act and the Uniform Condominium Act (1977) Establish a Harmonious Scheme for Phased Condominiums Designed to Protect the Reasonable Expectations of Consumers .....	10
II.   THE DISTRICT COURT’S DECISION CONFORMS WITH THE PLAIN MEANING OF THE KANSAS APARTMENT OWNERSHIP ACT .....	11
<b>CONCLUSION</b> .....	<b>15</b>
<b>TABLE OF APPENDIX</b> .....	<b>A1</b>

## **TABLE OF AUTHORITIES**

### **Cases**

<i>American Condo. Ass’n, Inc. v. IDC, Inc.</i> , 870 A.2d 434 (R.I. 2005).....	13
<i>Board of Dir. of Bella Vista Condo. Unit Owners Ass’n v. Josephs, III, Inc.</i> , Chancery No. 95-280 (Arlington Cnty., Va., Aug. 23, 1996) .....	13–14
<i>Shepherds Hill Homeowners Ass’n, Inc. v. Shepherds Hill Dev. Co. LLC</i> , No. 2014-0306, 2015 WL 11071128 (N.H. Apr. 2, 2015) .....	14
<i>Corporate Vill. Owners Ass’n v. Corporate Vill., LLC</i> , No. SD 38649, 2025 WL 2451362 (Mo. App. S.D. Aug. 26, 2025) .....	14

### **Statutes**

K.S.A. § 58-3102 .....	4, 8
K.S.A. § 58-3103 .....	8
K.S.A. § 58-3111 .....	9–11
K.S.A. § 58-3113 .....	10
K.S.A. § 58-3115 .....	8–11

### **Legislative Materials**

H.B. 2505 Kansas Senate Judiciary Committee Notes .....	4
Virginia Real Estate Commission Report of the Committee to Study and Recommend Revision of the Condominium Laws.....	4
Uniform Condominium Act (1977) .....	5–10

## **INTRODUCTION AND STATEMENT OF INTEREST**

The *Amicus Curiae*, the Community Associations Institute (“CAI”), is a national non-profit research and education organization formed in 1973 by the Urban Land Institute and the National Association of Home Builders to provide the most effective guidance for the creation and operation of condominiums, co-operatives and homeowner associations. CAI represents more than 17,000 homeowners, community associations, community managers and affiliated professionals and service providers in 57 local chapters, including the Heartland chapter which covers Kansas, Missouri, Nebraska, Arkansas, Iowa, and southern Illinois with 540 members. CAI’s industry data estimates that there are approximately 68 million Americans living in over 26 million housing units in approximately 350,000 community associations. This number constitutes about 20% of the population of the United States (estimated at 340 million as of 2024).

Community associations are property developments in which a developer, as the “declarant,” files a condominium declaration (which serves generally as the governing document for the condominium), thereby submitting an interest in real property to some form of community association regime. The regimes include, among others, condominiums, homeowner associations, and cooperatives. The community association presents a unique form of ownership whereby responsibility for the submitted property is shared, on some level, between the individual owner or member, on the one hand, and an association, trust or corporation, on the other. The properties governed by community associations may be commercial or residential in nature. Community associations are usually governed by not-for-profit incorporated (or sometimes unincorporated) entities pursuant to articles of incorporation (or a similar document) and bylaws.

The case under consideration by this Court is one of substantial import to the body of law regarding the respective rights and obligations of the developer, the condominium board, and the

individual unit owners, as set forth in the Kansas Apartment Ownership Act (the “Condo Act”). After reviewing the record in this case, it is CAI’s belief that the District Court correctly interpreted the established Kansas statutory methodology for creating phased condominiums—including, most significantly, the time limitations imposed upon the completion of phased developments under the Condo Act.

The District Court’s decision is fully consistent with the express terms, meaning, and intent of the Condo Act, as well as the 1977 version of the Uniform Condominium Act, which contains terms substantially similar to those found in the Condo Act. Approximately 20 states and the District of Columbia have adopted some form of the Uniform Condominium Act, many of which utilize the 1977 version of the Uniform Condominium Act or include similar (sometimes identical) terminology as that found in the Condo Act. Accordingly, any decision reached by the Court in this case could impact condominium case law significantly, not just in Kansas, but in many other states. Therefore, in keeping with its longstanding interest in the operation and governance of community associations, CAI submits this brief for the Court’s consideration.

### **STATEMENT OF THE ISSUES**

CAI relies upon, and incorporates herein by reference, the Statement of the Issues contained in the Brief of Appellee, Stonegate Motorplaza Condominium Association, Inc. (“Appellee’s Brief”).

### **STATEMENT OF THE CASE**

CAI relies upon, and incorporates herein by reference, the Statement of the Case contained in the Appellee’s Brief.

## **STATEMENT OF FACTS**

CAI relies upon, and incorporates herein by reference, the Statement of Facts contained in the Appellee's Brief.

## **ARGUMENT**

### **I. THE DISTRICT COURT'S DECISION UPHOLDS THE PURPOSE OF THE KANSAS APARTMENT OWNERSHIP ACT.**

The District Court's construction of the Condo Act aligns with the statute's plain meaning and legislative intent, ensuring its provisions remain effective and protective of condominium unit owners. The District Court interpreted the Condo Act to require strict adherence to the seven-year statutory deadline for the conversion or expansion of land designated as convertible or expandable within a condominium project. This approach preserves the integrity of the Condo Act by giving full effect to consumer protection objectives: to prevent developers from retaining perpetual control over undeveloped land within a condominium and to ensure that unit owners' investment in the condominium project is not undermined by developer inaction. The District Court's decision ensures the statutory framework for condominium development in Kansas is not rendered meaningless or subject to manipulation, but instead operates as intended to balance developer flexibility with the rights and expectations of unit purchasers who become condominium association members. This faithful application of statutory construction principles upholds the Condo Act's deadlines and safeguards the interests of condominium consumers in Kansas.

#### **A. Legislative History of the Kansas Apartment Ownership Act and the Uniform Condominium Act**

The Condo Act was established by the Kansas Legislature in 1963. The original version laid the groundwork for the modern version, but did not include provisions for the expansion or staging of a project.

Kansas overhauled the Condo Act in 1975 by introducing a number of amendments as part of House Bill No. 2505. Among these changes was adding a provision to allow expansion and staging of a condominium project through convertible and expandable lands. *See* K.S.A. 58-3102 (establishing definitions for convertible land and expandable condominiums). The Kansas Senate Judiciary Committee Notes on H.B. 2505 expressly state that the provisions concerning expandable condominiums were based on a then-new Virginia law. *See* **Appx. 1**, H.B. 2505 Kansas Senate Judiciary Committee Notes.

Two years earlier in 1973, Virginia had directed the Virginia Real Estate Commission to appoint a committee to study its own condominium laws and recommend improvements. The committee noted that condominium laws at the time “unreasonably restrict the inherent flexibility of the condominium concept” while also “failing to provide an adequate measure of purchaser protection in this new field of real estate law.” **Appx. 2**, Report of the Committee to Study and Recommend Revision of the Condominium Laws, p. 3. The resulting legislation introduced the concepts of convertible, withdrawable, and expandable lands to solve these inherent problems with the former structure. *Id.* at pp. 5, 7.

Kansas was not alone in looking to the newly-enacted Virginia condominium statute for guidance. In 1977, the National Conference of Commissioners on Uniform State Laws released the Uniform Condominium Act. In creating these new model statutes, the drafters considered and borrowed from these “second-generation” condominium statutes, including the one in Virginia. As a result, similar language appears across the Kansas Condo Act, the Virginia Condominium Act, and the Uniform Condominium Act.

## **B. The Purpose of the Uniform Condominium Act (1977)**

The prefatory notes to the Uniform Condominium Act indicate that by 1977, a need had developed among the states to modernize the laws governing condominiums, most of which were patterned after the first known condominium act adopted in 1958 by Puerto Rico, or the 1962 Federal Housing Administration model condominium statute, both of which were enabling acts. The prefatory notes provide that the Uniform Condominium Act was enacted to address, among other things, a greater need for developer flexibility in the creation of phased condominiums and a perceived need for additional consumer protection. Specifically, the prefatory notes provide that Article 2 of the Uniform Condominium Act, which deals with the creation, alteration, and termination of condominiums, “provides great flexibility to a developer in creating a condominium project designed to meet the needs of a modern real estate market, while imposing reasonable restrictions on developers’ practices which have a potential for harm to unit purchasers.” **Appx. 3**, Uniform Condominium Act (1977), Prefatory Note, p. 2. These concepts are specifically stated in the comments to the Uniform Condominium Act:

The Act is designed to maximize the developers’ flexibility in creating condominiums. Thus, the Act significantly differs from “first generation” condominium statutes which, in many instances, require or attempt to require a single phase project with fixed allocations or common element interests, votes, and common expense liability.

Under this Act, as new units are added to a condominium, common element interests, votes in the association, and common expense liabilities will change, and may dramatically affect the liability of purchasers in the condominium’s early phases. As a result, disclosure of the conditions under which a flexible condominium may be developed is required [interior citation omitted], and a maximum limit of 7 years is suggested as the period during which such changes may be made by any declarant....While a time limit on the exercise of declarant’s rights and full disclosure of the nature of those rights are important protections to purchasers, flexibility in the Act is highly desirable in order to permit economically viable development of condominiums in a rapidly changing market.

Uniform Condominium Act (1977), Commissioners' Comments to Section 1-103 (definition of flexible condominium), note 9.

Thus, the Uniform Condominium Act includes significant provisions governing phased condominiums to provide flexibility to condominium developers that earlier condominium enabling acts did not provide. At the same time, the Act limited the time periods within which phased condominiums could be completed. It struck a measured balance between developer rights and consumer rights, a balance that is incorporated into the Condo Act. This balance would be inexorably skewed against consumers in favor of all future Kansas condominium developers if the District Court's decision is reversed.

**C. Similarity of Phasing Concepts under the Uniform Condominium Act and the Kansas Apartment Ownership Act**

There are two types of phased condominiums available to developers under the Condo Act to preserve the developer's ability to create additional units after the condominium has been created. In the first type, known as a convertible land condominium, the developer submits the entire parcel of land (which immediately becomes common area or common element—the terms are synonymous) to condominium status at its creation, creates an initial group of units upon the land, and then reserves the right to create additional units upon the “convertible” portion of the common area land in the future.

The second type recognized is called an expandable condominium, which allows a declarant to at some future date add land (which was not part of the land originally submitted to the condominium) and build units upon it. Having merely made a reservation of a right as to the unit owners, the declarant need not even own the additional land, and it is not an encumbrance on the additional land. The additional land can (1) come into the condominium with completed structures or additional units thereon; (2) be designated as convertible land and the units can be

constructed and added subsequent to the expansion by converting the convertible land (subject to the time limitations applicable to the creation of units on convertible land); or (3) be added as common area without creating any additional units.

The Condo Act and the Uniform Condominium Act each recognize both convertible and expandable condominiums. Each Act also imposes a seven-year time limit on the conversion of convertible land into units, and the addition of the expandable land into the condominium. Both Acts recognize the balance between developer flexibility and consumer protection for unit owners.

### *1. Phasing Definitions*

The 1977 version of the Uniform Condominium Act uses the following terms to recognize and govern condominium phasing:

- (1) Additional Real Estate: real estate that may be added to a flexible condominium. UCA (1977) § 1-103(1).
- (2) Convertible Real Estate: a portion of a flexible condominium not within a building containing a unit, within which additional units or limited common elements, or both may be created. UCA (1977) § 1-103(9).
- (3) Flexible Condominium: a condominium containing withdrawable or convertible real estate, a condominium to which additional real estate may be added, or a combination thereof. UCA (1977) § 1-103(13).

The Commissioners' Comments refine the definition of convertible real estate as follows (8 UCA (1977) § 1-103, comment 6) (emphasis added):

[C]onvertible real estate describes real estate which is part of the condominium, rather than outside its boundaries. As a result, **convertible real estate, until converted, is a part of the common elements**, and the legal ownership of the real estate resides in the unit owners. In that respect it differs from "additional real estate" which is not part of the condominium, and is not owned by the unit owners.

The Condo Act contains the following similar phasing terms and definitions:

- (1) Convertible land: shall mean a building site for one or more proposed additional condominium units within the submitted land which may

be created in accordance with the declaration and this act. K.S.A. § 58-3102(h).

- (2) Expandable condominium: shall mean a condominium to which additional real property may be added in accordance with the provisions of the declaration and of this act. K.S.A. § 58-3102(l).

Other portions of the Condo Act, much like the Commissioners' Comments to the Uniform Condominium Act (1977), add to the above phasing definitions, particularly as pertaining to convertible land. Specifically, K.S.A. § 58-3115a provides as follows: “**All convertible lands shall be deemed a part of the common area and facilities until converted.**” (emphasis added). The above phasing concepts and definitions are found in the Virginia Condominium Act as well as acts in other jurisdictions that follow the Uniform Condominium Act.

The Condo Act provides it is “applicable only to property, the sole owner or all of the owners of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided.” K.S.A. § 58-3103. Once a developer—who is the declarant under the condominium declaration—files a declaration submitting the property to the Condo Act, the Act controls the manner of development, including allowable phasing. There is no provision of the Act that contemplates phased condominiums separate and free from the requirements, limitations, and restrictions of the Act. Both expansion of the condominium and conversion of convertible land must be done in accordance with the condominium declaration and the Act. K.S.A. §§ 58-3102(h)(1).

Further, a developer cannot create a partial condominium or an “almost condominium.” Once land is submitted under the declaration and the Condo Act, the land is a condominium and all of the land, with the exception of the units, is owned by all unit owners in common. Undeveloped land once submitted is part of the common area, regardless of the lapse of development rights. The undeveloped land does not revert back to the fee simple ownership of the

developer. The comments to the Uniform Condominium Act make clear that common area cannot be owned by a condominium association or a developer and still be part of a condominium project:

Thus, for example, if the common elements were owned by an association in which each unit owner was a member, the project would not be a condominium. Similarly, if a developer sold units in a building but retained title to the common areas, granting easements over them to unit owners, no condominium would have been created. Such projects have many of the attributes of condominiums, but they are not covered by this Act.

Uniform Condominium Act (1977), Commissioner's Comments to Section 1-103(7), comment 4.

## **2. *Time Limitations***

The Uniform Condominium Act (1977) imposes a maximum seven-year time limit on both types of phased condominiums. This limit is contained in the body of the Uniform Condominium Act at Section 2-106 [Contents of Declaration: Flexible Condominiums], as follows (emphasis added):

The declaration for a flexible condominium shall include, in addition to the matters specified in Section 2-105:

- (1) an explicit reservation of any options to create units, limited common elements, or both, within convertible real estate, or to add additional real estate to or withdraw withdrawable real estate from the condominium;
- (2) a statement of the time limit, **not exceeding [7] years after the recording of the declaration**, upon which any option reserved under paragraph (1) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit;

Similarly, the Condo Act sets forth maximum seven-year periods for the exercise of convertible and expandable rights. K.S.A. 58-3115a; K.S.A. 58-3111.13(c). Unlike the Uniform Condominium Act, however, the Condo Act does not require a developer to state in the declaration the time limit by which the developer will exercise any convertible land rights. Instead, that right is conferred explicitly by statute, though the developer can provide a shorter time limit in the declaration if it so chooses. See K.S.A. § 58-3111.12.

### 3. *The Means and Methods for Exercising Phasing Rights and Creating or Adding New Units*

The Uniform Condominium Act and the Condo Act share nearly identical requirements regarding the items that must be stated in the declaration, plats, and plans concerning phased condominiums, *i.e.*, convertible or expandable/additional land. Among other things, they must identify how many additional units may be built, the time limit, and a description of the convertible or expandable land. *Compare* Uniform Condominium Act (1977) §§ 2-105, 2-106, 2-110 *with* K.S.A. §§ 58-3111, 58-3113 and 58-3115.

The obvious purpose of phased condominiums is to allow the developer time and the ability to create and add units beyond those established at the inception of the condominium, and to allow some flexibility due to market or financial conditions. The Uniform Condominium Act and the Condo Act set forth a nearly identical means and method to create and add new units in phased condominiums. The means and method involve the declarant preparing, executing, and recording an amendment to the declaration, and submitting new plats and plans that identify units by number and location *but within the applicable time limits*. *Compare* Uniform Condominium Act (1977) § 2-111 (cross referencing § 2-119 [amendments] and § 2-110 [plats and plans]) *with* K.S.A. § 58-3115a (conversion of convertible lands) and K.S.A. § 58-3115b (expansion of condominiums).

Simply put, under both Acts, the sole means to create and include additional units in the condominium is by recording a declaration amendment, together with an amendment to the plats and plans identifying and locating the newly created units pursuant to the exercise of phasing rights.

#### **D. The Kansas Apartment Ownership Act and the Uniform Condominium Act (1977) Establish a Harmonious Scheme for Phased Condominiums Designed to Protect the Reasonable Expectations of Consumers.**

Clearly, both the Condo Act and the Uniform Condominium Act establish a well-thought-out and harmonious statutory scheme for phased condominiums. Both acts identify and

differentiate the types and kinds of phased condominiums, adopt strict statutory requirements for what must be contained in the initial declaration, establish statutory time limits for different types of phased condominiums, set the manner by which those time limits may or may not be extended and the level of consent required, and prescribe the means and methods for properly exercising these phasing rights. Both Acts' phasing schemes recognize the need to provide greater planning flexibility to condominium developers while at the same time affording a greater measure of consumer protection to prevent developer abuses.

Given this similar purpose and intent, the District Court was correct in holding that the declarant's phasing rights at Stonegate Motorplaza Condominium are governed by the statutory seven-year time limit for convertible land condominiums, that the right to create or add additional units lapses if—as here—it is not exercised within the statutory deadline, and that the undeveloped property is “common area” property of the Condominium. The District Court's holding plainly aligns with the Kansas Legislature's intent to give developers flexibility, while still protecting the interests of the association members.

## **II. THE DISTRICT COURT'S DECISION CONFORMS WITH THE PLAIN MEANING OF THE KANSAS APARTMENT OWNERSHIP ACT.**

As explained above, the Condo Act sets forth a specific statutory scheme for phased condominiums. All phased condominiums in Kansas, whether convertible or expandable, have a statutory time limit by which those phasing rights must be exercised. If those rights are not exercised within seven years, the common area is fully vested in the unit owners and the declarant has no further rights in, to, or over it. *See*, K.S.A. 58-3115a; K.S.A. 58-3111.13(c). Notably, there are no exceptions to, and no way to avoid, the time limits established by the statutory scheme.

The Stonegate Motorplaza Condominium possesses all the hallmarks of a phased condominium. Both the Condo Act and the Declaration of Condominium for Stonegate Motorplaza

(the “Declaration”) subject the condominium to the seven-year statutory time limitation on development. The Declaration and recorded plats clearly identify certain parcels—specifically Lots 1, 4, and 5—as convertible land within the meaning of the Condo Act, and the Declaration contemplates the future development of additional units on these parcels. Under Kansas law, the convertible land is within the land submitted for condominium development and all convertible land remains part of the common area and facilities until it is lawfully converted into units within the prescribed seven-year period after the recording of the declaration. The statutory time limit is mandatory. Accordingly, the failure to convert the designated convertible land into units within the seven-year period results in the expiration of the declarant’s development rights, and the convertible land remains common area owned by the unit owners in accordance with the Act.

With respect to the land identified on the condominium plat as Tract B, which is the expandable land, the developer included this land in its identification of “Submitted Land” in the Declaration. (See Legal Description of Submitted Land, Exhibit A to the Declaration, R. 6, 77). The condominium project included all land identified as Submitted Land by the Declaration: all of Lot 1 covering the entire condominium subdivision, including Tract B. The developer submitted the entire condominium project to the Declaration and the Condo Act. By so submitting the land, it became common area in the same manner as the convertible land—and when the development rights lapsed, this land remained common area, owned by all the unit owners in common. This conclusion is required because once Tract B was designated as submitted land it could only be one of two things—unit or common area; there is no other alternative under the condominium form of ownership. All land within a condominium must be either a unit or common area. Whether the declarant intended to submit the additional land is irrelevant; it was submitted on Exhibit A to the Declaration and by law became common area.

Importantly, the land does not revert to common area ownership; rather, it is common area from the time the land is submitted to the condominium form of ownership, and remains as such after development rights lapse.

The District Court is not alone in its interpretation of the Condo Act and similar statutes. In *American Condo. Ass'n, Inc. v. IDC, Inc.*, 870 A.2d 434 (R.I. 2005), a developer retained a right to convert certain lands into additional units. The court there held that because the developer failed to convert these lands into units within the required timeframe, the lands were rightfully the property of the unit owners in common ownership. *Id.* at 442-43. Notably, the court found that these convertible lands “always were common elements, subject to the exercise of said development rights, and title rested with the unit owners in common ownership from the creation of the condominium.” *Id.*

In *Board of Dir. of Bella Vista Condo. Unit Owners Ass'n v. Josephs, III, Inc.*, Chancery No. 95-280 (Arlington Cnty., Va., Aug. 23, 1996) (**Appx. 4**), the court in an unreported decision interpreted the Virginia Condominium Act and its provisions regarding the conversion of convertible land. The Court made conclusions of law as follows:

5. The submitted land which was not part of the initial 54 condominium units was designated convertible land in the Declaration.
6. All convertible land is a part of the common elements except for such portions as are converted in accordance with Va. Code § 55-79.61.
7. As applied to this case, [n]o conversion of convertible lands can occur after five (5) years from the recordation of the Declaration or such shorter period as the Declaration specifies.

*Id.* This case involved a condominium building with some upper floors designated convertible land in the declaration. *Id.* The developer failed to amend the declaration to convert these floors into units. *Id.* Consequently, the court determined that the apartments and corridors on upper floors of

the building remained common elements, and were owned by the unit owners and not by the developer. *Id.*

Similarly, in *Shepherds Hill Homeowners Ass’n, Inc. v. Shepherds Hill Dev. Co. LLC*, No. 2014-0306, 2015 WL 11071128 (N.H. Apr. 2, 2015) (**Appx. 5**), the Supreme Court of New Hampshire upheld a lower court’s decision regarding a developer’s failure to convert units within a statutory time period. Specifically, the Court held the developer “violated the express wording as well as the spirit of RSA 356–B:23, III (2009), which states that a developer has no more than ten years to convert convertible lands,” “violated two purposes of the New Hampshire Condominium Act, RSA ch. 356–B (2009)—to protect buyers and establish reasonable expectations among parties,” and “violated both the plain wording and spirit of the condominium declaration.” *Id.* at \*1. Again, the key principles of developer flexibility and consumer protection once again weighed heavily on an examining Court.

Even more recently, and closer to home, the Missouri Court of Appeals found in favor of condominium owners when a developer attempted to build additional units on common area owned by the condominium owners. *Corporate Vill. Owners Ass’n v. Corporate Vill., LLC*, No. SD 38649, 2025 WL 2451362 at \*1-2 (Mo. App. S.D. Aug. 26, 2025). In this instance, the developer failed to develop the property within a 10-year period identified in the declarations. *Id.* The Court upheld the lower court’s decision barring development of the property after the period had run and quieting title in favor of the condominium owners. *Id.* Here, as in that case, the lower court’s decision reflects the general understanding that similar condominium acts and interpretations of declarations have produced similar results: findings in favor of condominium owners.

Accordingly, the District Court here did not err in finding that the contested property was subject to the Declaration and the Condo Act, and that the contested property when not converted

to units remained common area owned by all unit owners in common. This holding aligns with the general purpose of the Condo Act and similar acts, as well as the consensus interpretation of such acts by other courts across the country. Therefore, because the District Court's decision is supported by a well-reasoned interpretation of the relevant declaration and statute, its decision should not be disturbed on review.

### **CONCLUSION**

WHEREFORE, for all of the above reasons, and for the additional reasons set forth in the brief of the Appellee, CAI respectfully requests that this Court affirm the Judgment of the District Court.

Respectfully submitted,

COMMUNITY ASSOCIATIONS INSTITUTE,  
By its attorneys,

SANDBERG PHOENIX & von GONTARD P.C.

/s/ Joshua J. Sipp

Joshua J. Sipp, KS #30158  
Emily L. Cipra, KS #26946  
Lindsay M. Barash, KS #30272  
4600 Madison Avenue, Suite 1000  
Kansas City, MO 64112  
816-627-5332  
816-627-5532 (Fax)  
jsipp@sandbergphoenix.com  
ecipra@sandbergphoenix.com  
lbarash@sandbergphoenix.com