

1 Robert M. DeNichilo, SBN 166280
Daniel C. Heaton, SBN 262232
2 Racheal E. Solomon, SBN 319993
RICHARDSON | OBER | DeNICHILLO
3 234 E. Colorado Blvd., Suite 800
Pasadena, CA 91101
4 Telephone (877) 446-2529

5 Attorneys for Petitioner
CHAPMAN TOWNHOMES, INC.

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

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11 In re CHAPMAN TOWNHOMES, INC.,
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13 Petitioner.
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CASE NO. 30-2022-01269315-CU-PT-CJC

**PETITION TO REDUCE PERCENTAGE
OF AFFIRMATIVE VOTES TO AMEND
DECLARATION OF RESTRICTIONS
(CC&Rs) (CIVIL CODE § 4275)**

*[Filed concurrently with Declarations of Josh
Scott, Candy Case, and Walter W. Burrows;
Table of Exhibits; and [Proposed] Order for
Method of Notice and Setting Hearing]*

Date:
Time:
Dept:

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21 Petitioner CHAPMAN TOWNHOMES, INC. (Association” or “Petitioner”) brings this
22 Petition pursuant to Civil Code section 4275 for an Order authorizing reduction of the
23 percentage of affirmative votes necessary to approve and record the Association’s First
24 Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements
25 (“Restated CC&Rs”).

26 Pursuant to Civil Code section 4275(b), upon filing this Petition, the Court shall set the
27 matter for hearing and issue an *ex parte* order setting forth the manner for giving notice. The
28 Association has concurrently filed a Proposed Order to assist the Court.

RICHARDSON | OBER | DeNICHILLO
234 E Colorado Blvd., Suite 800
Pasadena, CA 91101

1 **REQUEST TO REDUCE THE VOTING PERCENTAGE TO RESTATE THE CC&RS**

2 1. Association is a “condominium project” as defined in the Davis-Stirling
3 Common Interest Development Act, Civil Code sections 4000, *et. seq.* (herein “Act”) and is a
4 California nonprofit corporation located in the City of Orange, Orange County.

5 2. Petitioner governs a community of sixty-six (66) multifamily condominium
6 units pursuant to the Declaration of Restrictions for Chapman Townhomes, Inc (“CC&Rs”),
7 recorded on May 8, 1978, in Book 12665 Page 926 of the Official Records of Orange County,
8 California. Attached to the Table of Exhibits as ***Exhibit E*** is a true and correct copy of the
9 current CC&Rs. The CC&Rs, By-laws, and Articles of Incorporation comprise and are
10 collectively referred to as the Governing Documents. Attached to the Table of Exhibits as
11 ***Exhibits C and D*** respectively are true and correct copies of the Association’s Articles of
12 Incorporation and current By-Laws.

13 3. As detailed below, the Association’s current CC&Rs require a complete and
14 comprehensive restatement for several reasons. The Restated CC&Rs make non-substantive
15 changes, such as presentation and organization to reflect the Act, as well as necessary
16 substantive changes to comply with the Act and current law. Attached to the Table of Exhibits
17 as ***Exhibit F*** is a true and correct copy of the proposed First Amended and Restated
18 Declaration of Covenants, Conditions, Restrictions and Easements in its entirety.

19 4. The Association’s current CC&Rs were created and recorded around eight years
20 *before* the California Legislature adopted the Act on January 1, 1986. The Act’s provisions
21 have been amended every year since it was enacted. Moreover, the Act was completely
22 reorganized and renumbered effective January 1, 2014. Thus, due to the need to make
23 extensive revisions to the CC&Rs, a complete restatement is necessary to correct the cited
24 Code sections and numeration. Additionally, the Restated CC&Rs includes necessary
25 amendments to certain sections, including but not limited to, insurance provisions, use
26 restrictions, and maintenance obligations to reflect the changing needs of the Association.

27 5. The Restated CC&Rs address and revise inconsistencies with current law and
28 clarify obligations and restrictions. For example, Article IV, Sections 1 through 16, “Use

1 Restrictions” of the current CC&Rs prohibit antenna installations, the ability for owners to
2 have a pet without approval and contain potentially problematic rental restrictions that may
3 conflict with current statutory requirements. The Restated CC&Rs revise such out-out-date
4 restrictions to reflect modern statutes. Also, regarding insurance coverage, the Restated
5 CC&Rs clarify current standards and coverage and provide detailed provisions to help guide
6 the Association’s Board of Directors and management.

7 6. As evidenced by the Association’s recent votes on this issue, as discussed in
8 greater detail below, typical voter non-participation effectively prevents the Association from
9 taking important actions, including making it impossible to reach the minimum vote necessary
10 to amend or restate the CC&Rs. (*See* Declaration of Jeff Scott (“Scott Declaration”), ¶¶ 19-20.)
11 Specifically, pursuant to the current CC&Rs, an amendment requires approval of at least
12 seventy-five percent (75%) of the total membership. (*Id.*, ¶ 16 & *Exhibit B.*)

13 7. The Association’s Board of Directors determined that having operative
14 documents that do not comply with the law nor reflect current Association practice is
15 confusing and misleading for all members who rely on them. (*See* Declaration of Walter W.
16 Burrows, Jr. (“Burrows Declaration”), ¶ 4.) The current CC&Rs no longer fully serve their
17 intended function, which is to inform homeowners of the rights and restrictions attached to
18 their property and the Association’s duties and obligations.

19 8. As discussed in detail in the accompanying Declarations of the Association’s
20 managing agent and Board members, the Association expended considerable effort to inform
21 the membership about the proposed changes and encourage voter participation.

22 9. Starting as early as February 2021 and continuing through May 2022 (which is
23 when the final vote occurred), the Association sent the membership newsletters which
24 provided details about the Restated CC&Rs, reasons for the necessary changes, and reminders
25 to return the ballots. (Scott Declaration, ¶ 9 & *Exhibit B.*) Moreover, on November 11, 2021,
26 the Association held a community town hall meeting to discuss the proposed Amendments and
27 to give the membership an opportunity to ask the Board of Directors and legal counsel
28 questions. (*See* Burrows Declaration, ¶ 8.)

1 10. In accordance with the Governing Documents and provisions of the Act, in
2 January 2022, the Association mailed election materials to all 66 members, including, the full
3 text of the Restated CC&Rs, the Notice of Election (which included a summary and
4 explanation of all the proposed Amendments), and the Notice of Meeting which included
5 voting instructions and the Secret Ballot. (See Scott Declaration, ¶ 7, *Exhibit A*)

6 11. The vote on the Restated CC&Rs was initially set for March 15, 2022. On that
7 day, the Association received only 23 ballots for the vote on the proposed Restated CC&Rs,
8 and due to poor voter turnout, the vote was adjourned to the second special meeting on April
9 19, 2022. (*Id.*, ¶¶ 10-11.) Understanding the practical challenge to obtain the required
10 minimum membership vote, the Association continued to solicit votes and give its best effort
11 to notify and inform the membership prior to the second special meeting. (Burrows
12 Declaration, ¶¶ 7-10 & *Exhibit G*.)

13 12. At the second special meeting on April 19, 2022, again because of continuing
14 low turnout (*i.e.*, the Association had still only received a total of 37 ballots), the ballots were
15 not opened, and the vote was again adjourned to the third special meeting on May 17, 2022.
16 (Scott Declaration, ¶ 12.) Prior to the third meeting, on April 19, 2022, the Board of Directors
17 communicated directly with each of the individual members who had not yet returned a ballot.
18 (*See* Declaration of Candy Case (“Case Declaration”), ¶¶ 3-4 & *Exhibit H*.)

19 13. At the extended special meeting on May 17, 2022, Mr. Sean Fipps who was
20 appointed to serve as the independent Inspector of Election, accepted, reviewed, and tabulated
21 all the ballots received. (*See* Scott Declaration, ¶¶ 14-15). Of the 66 total members, 46 ballots
22 were returned. (*Id.* at ¶ 15 & *Exhibit I*). Of those votes, 38 members voted in favor of the
23 Restated CC&Rs (*i.e.*, **82.6% of the votes received were in favor, or 57.6% of the total**
24 **membership**). (*Id.*) Pursuant to the CC&Rs, the Association needed a minimum of 50 votes in
25 favor to approve the Restated CC&Rs (which ultimately was more than the number of total
26 ballots actually received). (*Id.* at ¶ 16.)

27 14. The Act “consolidated the statutory law governing condominiums and other
28 common interest developments.” (*Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33

1 Cal.4th 73, 81.) Among other things, the Act contains provisions for amending the CC&Rs of a
2 common interest development like the Association. Civil Code section 4275 provides a
3 mechanism by which an association may petition the Court for relief when a supermajority
4 vote is required, but fails to effect, an amendment to the declaration.

5 15. Section 4275 provides “that a homeowners association, or any member, may
6 petition the superior court for a reduction in the percentage of affirmative votes required to
7 amend the CC&Rs if they require approval by ‘owners having more than 50 percent of the
8 votes in the association....’ The court may, but need not, grant the petition if it finds all of the
9 following: Notice was properly given; the balloting was properly conducted; reasonable efforts
10 were made to permit eligible members to vote; ‘[o]wners having more than 50 percent of the
11 votes, in a single class voting structure, voted in favor of the amendment’; and ‘[t]he
12 amendment is reasonable.’” (*Mission Shores Assn. v. Pheil* (2008) 166 Cal. App. 4th 789, 794.)

13 16. Section 4275 was enacted “to give a property owners’ association the ability to
14 amend its governing documents when, because of voter apathy or other reasons, important
15 amendments cannot be approved by the normal procedures authorized by the declaration. In
16 essence, it provides the association with a safety valve for those situations where the need for a
17 supermajority vote would hamstring the association.” (*Blue Lagoon Community Assn. v.*
18 *Mitchell* (1997) 55 Cal. App. 4th 472, 477.)

19 17. As set forth above, pursuant to Civil Code section 4275(a), the Association may
20 petition the Court for an order authorizing amendment or restatement of the CC&Rs when the
21 requisite number of membership approvals cannot be obtained, provided certain requirements
22 are first met. For relief to be granted, Section 4275(a) requires the Petition to allege and/or
23 provide as exhibits the following matters (**emphasized in bold**):

24 18. **The Petition shall describe the effort that has been made to solicit the**
25 **approval of the Association members in the manner provided in the Declaration:**

26 As set forth above (*supra* ¶¶ 8-12) and more fully in the accompanying Scott
27 Declaration (¶¶ 7-13), the Association has undertaken extensive efforts to encourage members
28 to participate in the voting process surrounding the Restated CC&Rs. As detailed above,

1 monthly newsletters were distributed for a total of approximately 15 months leading up to the
2 final special meeting and vote on May 17, 2022, a community town hall meeting was held to
3 discuss the Restated CC&Rs, additional notices were emailed urging participation, non-
4 participating members were directly contacted, and the voting deadline was extended twice to
5 permit additional time for members to return their ballots. Nevertheless, due to clear voter
6 apathy, which is not at all unusual in Associations such as this (*see* Scott Declaration, ¶ 20),
7 the Association has been unsuccessful in obtaining the requisite supermajority percentage to
8 pass the Restated CC&Rs.

9 19. **The number of affirmative and negative votes actually received:** Out of the
10 66 total Members, only 46 participated in the voting process. 37 voted in favor of the Restated
11 CC&Rs (82.6% of the votes received), with only 7 against.

12 20. **The number or percentage of affirmative votes required to effect the**
13 **amendment in accordance with the existing declaration (CC&Rs):** Pursuant to **Article**
14 **XIV, Section 6** of the CC&Rs, seventy-five (75%) of the membership, or at least 50 members,
15 are required to vote in the affirmative in order to adopt the Restated CC&Rs. (*See Exhibit E.*)

16 21. **The Petition shall contain as exhibits copies of the following documents:**

- 17 a. ***The Governing Documents:*** The Association’s Governing Documents consist of the
18 Articles of Incorporation, By-Laws, and CC&Rs, true and correct copies of which are
19 attached to the Table of Exhibits as ***Exhibits C, D, and E*** respectively.
- 20 b. **A complete text of the amendment.** The proposed First Amended and Restated
21 Declaration of Covenants, Conditions, Restrictions and Easements is attached in its
22 entirety as ***Exhibit F*** to the Table of Exhibits.
- 23 c. **Copies of any notice and solicitation materials utilized in the solicitation of owner**
24 **approvals.** As stated above, copies of the notice and solicitation materials utilized in the
25 voting process, are described more fully in the Scott Declaration, Walter Declaration,
26 and Case Declaration and attached to the Table of Exhibits as ***Exhibits A, B, G, and H.***
- 27 d. **A short explanation for the reason for the amendment.** An explanation for the reason
28 for the Amendments and Restatement is set forth above *supra* ¶¶ 3-7. The Association’s

1 Membership was also provided a summary and explanation for why the CC&Rs needed
2 to be amended and restated as part of the initial voting packet. (See *Exhibit A.*)

3 e. **Any other documentation relevant to the Court’s determination.** None.

4 22. **Upon filing of the Petition, the Court shall set the matter for hearing.** The
5 Association has concurrently filed a Proposed Order by which the Court may set the requisite
6 hearing on the Petition, as well as the method of notice required to be provided to all Members.

7 23. **The Court may grant the Petition if it finds all of the following:**

8 a. **The petitioner has given not less than 15-days written notice of the Court hearing**
9 **to all members of the association, to any mortgagee of a mortgage or beneficiary of**
10 **a deed of trust who is entitled to notice under the terms of the declaration, and to**
11 **the city, county, or city and county in which the common interest development is**
12 **located that is entitled to notice under the terms of the declaration.** Concurrent with
13 this Petition, the Association filed a Proposed Order for the Court to specify the method
14 of notice required in advance of the hearing on the Petition. The Association requests
15 that the hearing be set out far enough such that the Association’s management may
16 provide the requisite 15-days written notice of the hearing. Proof of service will be
17 submitted in advance to the Court. The mortgagees are not entitled to notice under the
18 terms of the CC&Rs, and the Association provided notice of the Restated CC&Rs to the
19 City Attorney and Planning Commissioner. The Restated CC&Rs do not attempt to
20 revise or alter the rights that may be held by mortgagees or the City or County. (See
21 Scott Declaration, ¶ 17.)

22 b. **Balloting on the proposed amendment was conducted in accordance with all**
23 **applicable provisions of the Governing Documents.** Balloting was conducted in
24 accordance with current CC&Rs and statutory requirements, using the secret written
25 ballot method of voting by members and a minimum voting period of at least 30 days
26 was provided, as required by Civil Code Section 5115.

27 c. **A reasonably diligent effort was made to permit all eligible members to vote on the**
28 **proposed Restatement.** The Association has endeavored to obtain the minimum

1 number of votes since November 2021. (*See* Scott Declaration, ¶ 8.) The Restated
2 CC&Rs were addressed in multiple mailings, newsletters, and notices. (*See Id.* at ¶¶ 7-9
3 & *Exhibits A-B*.) The vote was postponed twice in an effort to permit the members
4 additional time to participate in the election and in hopes of receiving the minimum
5 number of ballots to amend the CC&Rs. (*Id.* at ¶¶ 10-12.) Moreover, the Association
6 sent multiple meeting notices and reminders regarding the election (*see* Burrows
7 Declaration, ¶¶ 7-10 & *Exhibit G*) and communicated directly with individual members
8 who did not return a ballot. (*See* Case Declaration, ¶¶ 3-4 & *Exhibit H*.)

- 9 **d. Owners having more than 50% of the votes, in a single class voting structure, voted**
10 **in favor of the amendment.** The Association now has a single class voting structure. Of
11 the 66 total Members, 38 voted in favor of the Restated CC&Rs (*see Exhibit I*), which is
12 over the 50% required.
- 13 **e. The amendment is reasonable.** Pursuant to established authority, CC&Rs are deemed
14 unreasonable if they are arbitrary and capricious, violate the law or fundamental public
15 policy, or impose an undue burden on property, but are otherwise considered reasonable
16 for purposes of Section 4275 unless it is shown to fall within one of the above criteria.
17 (*See, e.g., Mission Shores Assn. v. Pheil* (2008) 166 Cal. App. 4th 789.) Here, the
18 Restated CC&Rs meet this low threshold of reasonableness. As indicated further above,
19 the Restated CC&Rs were carefully drafted by legal counsel to bring the Association
20 into necessary compliance with the Davis-Stirling Act, to make the language clearer for
21 the membership, and to address issues that have arisen since the original CC&Rs were
22 drafted in 1978. Additionally, the Restated CC&Rs clarify modern use restrictions (such
23 as acceptable signs, pet ownership without approval, leasing provisions, and satellite
24 dish policies, etc.) and expected maintenance obligations (by adding a Maintenance
25 Matrix illustrating Member and Association responsibilities). None of the provisions
26 therein contain arbitrary or capricious terms or restrictions or purport to impose any
27 undue burden on the membership or any individual Owners.

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1 f. **Granting the Petition is not improper for any reason stated in subdivision (e).** The
2 Association is not aware of any reason why the Petition is improper, as discussed below.

3 24. None of the exceptions found in **Section 4275(e)** prevent the Court from
4 granting the requested reduction in voting percentage for approving the Restated CC&Rs.

5 a. **The request would change provisions in the CC&Rs requiring the approval of**
6 **owners having more than 50% of the votes in more than one class to vote in favor of**
7 **an amendment.** There is only one class of voting rights under the CC&Rs (*see* Scott
8 Declaration, ¶ 16) and more than 50% of the Owners approved the Restated CC&Rs.

9 b. **The request would eliminate any special rights, preferences, or privileges designated**
10 **in the CC&Rs as belonging to the declarant, without the consent of the declarant.**

11 No special rights, preferences, or privileges in the CC&Rs belonging to the Declarant
12 will be eliminated by the Restated CC&Rs. The request does not change any terms
13 pertaining to the Declarant, whose rights expired long ago pursuant to the terms in the
14 current CC&Rs. Declarant no longer owns any of the units.

15 c. **The request would impair the security interest of a mortgagee of a mortgage or the**
16 **beneficiary of a deed of trust.** The Restated CC&Rs do not attempt to revise, alter or
17 impair any of the rights or security interests held by the mortgagees of any of the
18 properties or the beneficiaries of any corresponding deeds of trust, but instead actually
19 *increase* the level of protection afforded to these entities. (*See* Scott Declaration, ¶ 17.)

20 25. The Association Petitions the Court to authorize reduction of the voting
21 approval requirement to adopt the Restated CC&Rs. The Association has complied with all
22 statutory requirements necessary for granting this Petition, and the proposed changes therein
23 are not unreasonable or otherwise improper.

24 **PRAYER**

25 WHEREFORE, the Association requests an Order from this Court that:

- 26 1. The Petition complies with the requirements of Civil Code section 4275;
27 2. Notice was properly given in accordance with Section 4275;

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3. Balloting on the Restated CC&Rs was conducted in accordance with the Association’s Governing Documents and Civil Code section 5100 *et seq.*;

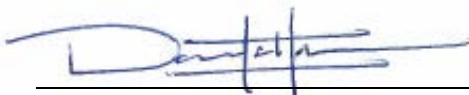
4. The Restated CC&Rs is reasonable, there is no statutory basis for why it should not be deemed approved, and it is hereby deemed approved.

5. Dispensing with the requirement in Article XIV, Section 6 of the original CC&Rs that all amendments to the CC&Rs be approved by a vote of seventy-five percent (75%) of the members, and instead approving the Restated CC&Rs on the basis of the affirmative votes received during the balloting period.

6. The Restated CC&Rs in final form conforming to this Petition may, with a copy of the final Order granted herein, be recorded in the Office of the Recorder of the County of Orange, and a copy thereof shall be promptly served upon each of the Association’s membership.

Dated: June 29, 2022

RICHARDSON | OBER | DeNICHILLO

By: 
ROBERT M. DeNICHILLO
DANIEL C. HEATON
Attorneys for Petitioner
CHAPMAN TOWNHOMES, INC.