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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

In re HUNTINGTON CONTINENTAL
TOWN HOUSE ASSOCIATION, INC.,

Petitioner.

CASE NO. 30-2022-01299074-CU-PT-CJC
Assigned for All Purposes
Judge Supervising

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

*[Filed concurrently with Declaration of
Margaret Rahm; Table of Exhibits; and
[Proposed] Order for Method of Notice and
Setting Hearing]*

Date:
Time:
Dept:

Petitioner HUNTINGTON CONTINENTAL TOWN HOUSE ASSOCIATION, INC.
("Association" or "Petitioner") brings this Petition pursuant to Civil Code section 4275 for an
Order authorizing reduction of the percentage of affirmative votes necessary to approve and
record the Association's First Amended and Restated Declaration of Covenants, Conditions,
Restrictions and Easements ("Restated CC&Rs").

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

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

2 1. The Association is a common interest development, as defined in the Davis-
3 Stirling Act, Civil Code §§ 4000, *et. seq.* (“Act”) and is a California nonprofit corporation
4 located in the City of Huntington Beach, Orange County.

5 2. Petitioner governs a community of 445 single family townhomes pursuant to a
6 Declaration of Restrictions (“CC&Rs”), recorded on February 28, 1963, in Book 6449 Page
7 238 of the Official Records of Orange County, California. Attached to the Table of Exhibits as
8 **Exhibit G** is a true and correct copy of the current CC&Rs. The CC&Rs, By-Laws, and
9 Articles of Incorporation comprise and are collectively referred to as the Governing
10 Documents. Attached to the Table of Exhibits as **Exhibits E** and **F** respectively are true and
11 correct copies of the Association’s Articles of Incorporation and current By-Laws.

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

18 4. The Association’s current CC&Rs are nearly 60 years old. They were created
19 and recorded over 20 years *before* the California Legislature adopted the Act on January 1,
20 1986. The Act’s provisions have been amended every year since it was enacted. Moreover, the
21 Act was completely reorganized and renumbered effective January 1, 2014. Thus, due to the
22 need to make extensive revisions to the CC&Rs, a complete restatement is necessary to
23 incorporate applicable statutory requirements and restrictions. Additionally, the Restated
24 CC&Rs includes necessary amendments to reflect the changing needs of the Association.

25 5. As evidenced by the Association’s recent votes on this issue, as discussed in
26 greater detail below, typical voter non-participation effectively prevents the Association from
27 taking important actions, including making it impossible to reach the minimum vote necessary
28 to amend or restate the CC&Rs. (*See* Declaration of Margaret Rahm (“Rahm Decl.”), ¶¶ 13-19,

1 23-24.) Specifically, pursuant to the current CC&Rs, an amendment requires approval of at
2 least seventy-five percent (75%) of the total voting membership. (*Id.*, ¶ 22 & *Exh. G.*)

3 6. The Association’s Board of Directors determined that having operative
4 documents that do not comply with the law nor reflect current Association practice is
5 confusing and misleading for all members who rely on them. (*See* Rahm Decl., ¶ 6.) The
6 current CC&Rs no longer fully serve their intended function, which is to inform homeowners
7 of the rights and restrictions attached to their property and the Association’s obligations.

8 7. As discussed in detail in the accompanying Declaration by the Association’s
9 managing agent, the Association expended considerable effort to inform the membership about
10 the proposed changes and encourage voter participation.

11 8. Starting as early as mid-December of 2020 and continuing through October
12 2022 (which is when the final vote occurred), the Association engaged in significant efforts to
13 provide its membership with information regarding the importance of the Restated CC&Rs, as
14 well as encourage participation and provide repeated opportunities for the vote. (*See* Rahm
15 Decl., ¶¶ 7-17 & *Exh. A, C-D.*) Such efforts included:

- 16 • Holding a series of Town Halls in person and by Zoom to answer questions
17 and address potential concerns (*id.*, ¶ 8 & *Exh. C*);
- 18 • Creating a “Get Out the Vote – Community Outreach Committee” to help
19 increase communication about the vote (*id.*, ¶ 9 & *Exh. C*);
- 20 • Placement of 50 signs and 2 extra large posters throughout the community;
- 21 • Preparation of a “How to complete your ballot” YouTube instructional
22 video to assist in the correct process of returning the vote by Secret Ballot
23 (*id.*, ¶ 11);
- 24 • Holding two “Singing Parties” and a separate “Movie Night” (*id.*, ¶¶ 12-14
25 & *Exh. D*);
- 26 • Multiple email blasts with specific attention provided to those owners that
27 had not yet returned a Ballot (*id.*, ¶¶ 12, 14, 16-17); and

- Door to door canvassing by members of the Board of Directors, the Association’s management company, and the Community Outreach Committee (*id.*, ¶¶ 14, 16-17)

9. In accordance with the Governing Documents and provisions of the Act, the Association mailed election materials to all 445 members, including the full text of the Restated CC&Rs, the Notice of Election (which included a summary and explanation for the reason and necessity for the proposed Amendments), and the Notice of Meeting which included voting instructions and the Secret Ballot. (*See id.*, ¶ 10, *Exh. A*)

10. The vote on the Restated CC&Rs was initially set for June 27, 2022. On that day, the Association received only 161 ballots, and due to poor voter turnout, the vote was adjourned to the second special meeting on August 29, 2022. (*Id.*, ¶ 13.) Understanding the practical challenge to obtain the required minimum membership vote, the Association continued to solicit votes and give its best effort to notify and inform the membership prior to the second special meeting. (*Id.*, ¶ 14 & *Exh. D.*)

11. At the second special meeting on August 29, 2022, again because of continuing low turnout (the Association had still only received a total of 247 ballots), the ballots were not opened, and the vote was again adjourned to the third special meeting on September 26, 2022. (*Id.*, ¶ 15.) Prior to the third meeting, members of the Board and management again made visits and direct telephone calls to each of the remaining owners who had not yet participated in the vote to emphasize the importance of voter participation and try to encourage return of the ballots. (*See id.*, ¶ 16.)

12. The Association still did not receive participation of 75% of its members, and the Board elected to extend the vote one final time to October 24, 2022, to allow owners additional opportunity to participate. (*Id.*, ¶ 17.)

13. At the extended special meeting on October 24, 2022, the appointed Inspector of Election, Ms. Joy Rogers from Accurate Voting Services, accepted, reviewed, and tabulated all the ballots received. (*See id.*, ¶¶ 18-19). Of the 445 total members, 294 ballots were returned. (*Id.* at ¶ 19 & *Exh. B.*). Of those votes, 263 members voted in favor of the Restated

1 CC&Rs (**89.5% of the votes received were in favor, or 59.1% of the total membership**).

2 (*Id.*) Pursuant to the CC&Rs, the Association needed a minimum 75% of the voting
3 membership, or 334 votes, in favor to approve the Restated CC&Rs (which ultimately was
4 more than the number of total ballots actually received). (*Id.* at ¶¶ 19, 22-23.)

5 14. The Act “consolidated the statutory law governing condominiums and other
6 common interest developments.” (*Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33
7 Cal.4th 73, 81.) Among other things, the Act contains provisions for amending the CC&Rs of a
8 common interest development like the Association. Civil Code section 4275 provides a
9 mechanism by which an association may petition the Court for relief when a supermajority
10 vote is required, but fails to effect, an amendment to the declaration.

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

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

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

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

5 As set forth above (*supra* ¶¶ 8-12) and more fully in the accompanying Rahm
6 Declaration (¶¶ 7-17), the Association has undertaken extensive efforts to encourage members
7 to participate in the voting process surrounding the Restated CC&Rs. This included holding
8 town halls, placing signs and posters throughout the community, holding signing parties and
9 movie nights to bring the community together, coordinating door-to-door canvassing events
10 and focused email blasts to try to remind about ballot returns, as well as extending the voting
11 deadline three times to permit additional time for members to return their ballots. Nevertheless,
12 due to clear voter apathy, which is not at all unusual in Associations such as this (*see id.*, ¶ 24),
13 the Association has been unsuccessful in obtaining the supermajority percentage to pass the
14 Restated CC&Rs.

15 19. **The number of affirmative and negative votes actually received:** Out of the
16 445 total Members, only 294 participated in the voting process. 263 voted in favor of the
17 Restated CC&Rs (89.5% of the votes received), with only 26 against and 5 abstaining.

18 20. **The number or percentage of affirmative votes required to effect the**
19 **amendment in accordance with the existing declaration (CC&Rs):** Pursuant to **Paragraph**
20 **13** of the CC&Rs, seventy-five (75%) of the voting membership, or at least 334 members, were
21 required to vote in the affirmative in order to adopt the Restated CC&Rs. (*See Exh. G.*)

- 22 21. **The Petition shall contain as exhibits copies of the following documents:**
- 23 a. ***The Governing Documents:*** The Association's Governing Documents consist of the
24 Articles of Incorporation, By-Laws, and CC&Rs, true and correct copies of which are
25 attached to the Table of Exhibits as ***Exhibits E, F, and G*** respectively.
 - 26 b. **A complete text of the amendment.** The proposed First Amended and Restated
27 Declaration of Covenants, Conditions, Restrictions and Easements is attached in its
28 entirety as ***Exhibit H*** to the Table of Exhibits.

1 c. **Copies of any notice and materials utilized in the solicitation of owner approvals.**

2 As stated above, copies of the notice and solicitation materials utilized in the voting
3 process, are described more fully in the Rahm Declaration and attached to the Table of
4 Exhibits as *Exhibits A, C, and D*.

5 d. **A short explanation for the reason for the amendment.** An explanation for the reason
6 for the Amendments and Restatement is set forth above *supra* ¶¶ 3-6. The Association's
7 Membership was also provided a summary and explanation for why the CC&Rs needed
8 to be amended and restated as part of the initial voting packet. (*See Exh. A*)

9 e. **Any other documentation relevant to the Court's determination.** None.

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

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

14 a. **The petitioner has given not less than 15-days written notice of the Court hearing**
15 **to all members of the association, to any mortgagee of a mortgage or beneficiary of**
16 **a deed of trust who is entitled to notice under the terms of the declaration, and to**
17 **the city, county, or city and county in which the common interest development is**
18 **located that is entitled to notice under the terms of the declaration.** Concurrent with
19 this Petition, the Association filed a Proposed Order for the Court to specify the method
20 of notice required in advance of the hearing on the Petition. The Association requests
21 that the hearing be set out far enough such that the Association's management may
22 provide the requisite 15-days written notice of the hearing. Proof of service will be
23 submitted in advance to the Court. The current CC&Rs do not require the Association to
24 provide notice to lenders or mortgagees, or the City or County, prior to amendment,
25 neither do the Restated CC&Rs attempt to revise or restrict any of the rights held by
26 such entities. (*See Rahm Decl.*, ¶ 20.)

27 b. **Balloting on the proposed amendment was conducted in accordance with all**
28 **applicable provisions of the Governing Documents.** Balloting was conducted in

1 accordance with current CC&Rs and statutory requirements, using the secret written
2 ballot method of voting by members and a minimum voting period of at least 30 days
3 was provided, as required by Civil Code section 5115.

4 c. **A reasonably diligent effort was made to permit all eligible members to vote on the**
5 **proposed Restatement.** The Association has been working closely with its Membership
6 on the Restated CC&Rs since December 2020. (*See* Rahm Decl., ¶ 7.) The Association
7 held four Town Hall meetings, available in person and by Zoom video conferencing,
8 prior to the initial vote, to answer questions and permit all Owners to voice any issues of
9 concern. (*Id.*, ¶ 8 & *Exh. C.*) The vote on the Restated CC&Rs was addressed in
10 multiple mailings, email blasts, and signs and posters throughout the community. (*Id.* at
11 ¶¶ 9-10, 12, 14-16 & *Exhs. C-D.*) The Association hosted two “Signing Parties,” as well
12 as a separate “Movie Night,” to further encourage voter participation. (*Id.* at ¶¶ 12, 14 &
13 *Exh. D.*) The Board postponed the vote three times so that members that had not yet
14 returned their ballots would have additional time to participate in the election. (*Id.* at ¶¶
15 13, 15-17.) After each of these periods, the Association’s Board, managing agents, and
16 the homeowner Voting Outreach Committee continued efforts to solicit return of the
17 remaining ballots, including communicating directly with those individual Members
18 who did not return a ballot by direct emails, phone calls, and door to door canvassing.
19 (*Id.*, ¶¶ 14, 16-17 & *Exh. D.*)

20 d. **Owners having more than 50% of the votes, in a single class voting structure, voted**
21 **in favor of the amendment.** The Association now has a single class voting structure. Of
22 the 445 total Members, 263 voted in favor of the Restated CC&Rs (*see Exh. B*), which
23 is over the 50% required.

24 e. **The amendment is reasonable.** Pursuant to established authority, CC&Rs are deemed
25 unreasonable if they are arbitrary and capricious, violate the law or fundamental public
26 policy, or impose an undue burden on property, but are otherwise considered reasonable
27 for purposes of Section 4275 unless it is shown to fall within one of the above criteria.
28 (*See, e.g., Mission Shores Assn. v. Pheil* (2008) 166 Cal. App. 4th 789.) Here, the

1 Restated CC&Rs meet this low threshold of reasonableness. The Restated CC&Rs were
2 carefully drafted by legal counsel to bring the Association into necessary compliance
3 with the Davis-Stirling Act, to make the language clearer for the membership, and to
4 address issues that have arisen since the original CC&Rs were first drafted in 1963.

5 None of the provisions therein contain arbitrary or capricious terms or restrictions or
6 purport to impose any undue burden on the membership as a whole or any of the
7 individual Owners or their separate interests.

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

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

- 12 a. **The request does not change provisions in the CC&Rs requiring the approval of**
13 **owners having more than 50% of the votes in more than one class to vote in favor of**
14 **an amendment.** There is only one class of voting rights under the CC&Rs and more than
15 50% of the Owners voted to approve the Restated CC&Rs. (*See Exhibit B.*) Further, the
16 proposed Restated CC&Rs also requires an “affirmative vote of at least a majority of the
17 Association’s total voting power” in order for any future amendment to be approved. (*See*
18 *Exh. H*, Section 12.02.)
- 19 b. **The request does not eliminate any special rights, preferences, or privileges**
20 **designated in the CC&Rs as belonging to the declarant, without the consent of the**
21 **declarant.** No special rights, preferences, or privileges in the CC&Rs belonging to the
22 Declarant will be eliminated by the Restated CC&Rs. The request does not change any
23 terms pertaining to the Declarant, whose rights expired long ago pursuant to the terms in
24 the current CC&Rs.
- 25 c. **The request does not impair the security interest of a mortgagee of a mortgage or**
26 **the beneficiary of a deed of trust.** The Restated CC&Rs do not attempt to revise, alter
27 or impair any of the rights or security interests held by the mortgagees of any of the
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1 properties or the beneficiaries of any corresponding deeds of trust, but instead actually
2 *increase* the level of protection afforded to these entities. (*See* Rahm Decl., ¶ 20.)

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

7 **PRAYER**

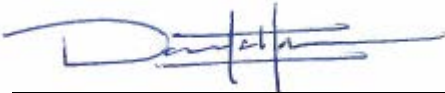
8 WHEREFORE, the Association requests an Order from this Court that:

- 9 1. The Petition complies with the requirements of Civil Code section 4275;
- 10 2. Notice was properly given in accordance with Section 4275;
- 11 3. Balloting on the Restated CC&Rs was conducted in accordance with the
12 Association's Governing Documents and Civil Code section 5100 *et seq.*;
- 13 4. The Restated CC&Rs is reasonable, there is no statutory basis for why it should
14 not be deemed approved, and it is hereby deemed approved.
- 15 5. Dispensing with the requirement in Paragraph 13 of the original CC&Rs that all
16 amendments to the CC&Rs be approved by a vote of at least seventy-five percent (75%) of the
17 voting membership, but instead approving the Restated CC&Rs on the basis of the affirmative
18 votes received during the balloting period.
- 19 6. The Restated CC&Rs in final form conforming to this Petition may, with a copy
20 of the final Order granted herein, be recorded in the Office of the Recorder of the County of
21 Orange, and a copy thereof shall be promptly served on the Association's membership.

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23 **Dated:** December 5, 2022

NORDBERG | DeNICHILLO, LLP

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25 By:



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