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5 HUNTINGTON CONTINENTAL TOWN  
HOUSE ASSOCIATION, 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 HUNTINGTON CONTINENTAL  
TOWN HOUSE ASSOCIATION, INC.,

12  
13 Petitioner.  
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Case No. 30-2022-01299074-CU-PT-CJC  
Assigned: Dept C12 (Hon. Layne H. Melzer)

**EX PARTE APPLICATION FOR ORDER  
SPECIFYING METHOD OF NOTICE  
AND SETTING HEARING ON PETITION  
TO REDUCE PERCENTAGE OF VOTES  
TO AMEND CC&RS; DECLARATION OF  
DANIEL C. HEATON, ESQ.**

*[Per Civil Code § 4275(b)]*

**Date: January 3, 2023**  
**Time: 1:30 p.m.**  
**Dept: C12**

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21 **Statutory Notice of Ex Parte Not Required:** Pursuant to C.R.C., Rule 3.1204(b)(3),  
22 the Association is unable to provide advanced notice of this *Ex Parte* Application, as no other  
23 parties have appeared in the matter, and the requested Order itself is necessary to instruct the  
24 Association on the required manner of notice for the upcoming hearing on the Petition.  
25 (Heaton Decl., ¶ 8.)

26 Petitioner HUNTINGTON CONTINENTAL TOWN HOUSE ASSOCIATION, INC.  
27 (“Petitioner” or “Association”) filed its underlying Petition, pursuant to Civil Code section 4275,  
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1 seeking judicial authorization to reduce the voting approval requirements to adopt a proposed  
2 First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements  
3 (“Restated CC&Rs”).

4 Per Civil Code section 4275(b), Petitioner asks the Court to (1) prescribe the manner in  
5 which notice shall be given to each of the Association’s members for the anticipated hearing on  
6 the Petition, and (2) schedule the hearing for final adjudication of the Petition.

7 **Civil Code section 4275(b) states: “Upon filing the petition, the court shall set the**  
8 **matter for hearing and issue an ex parte order setting forth the manner in which notice**  
9 **shall be given.”**

10 Petitioner proposes that notice be provided to its members as set forth in the [Proposed]  
11 Order Specifying Method of Notice For and Setting Hearing on Petition, which the Association  
12 previously submitted to the Court. (See *Exhibit 1*.) This recommendation consists of the  
13 Association sending a copy of the Court’s Order along with a summary letter describing the  
14 nature of the proceeding, the members’ right to attend the hearing and oppose the proposed relief,  
15 and providing the address of a website maintained by the Association’s counsel where all of the  
16 pleadings and exhibits can be accessed and downloaded. (See Heaton Decl., ¶ 5; *Exhibit 1*.)

17 **Irreparable Harm**: Absent granting the relief requested by this *Ex Parte*, Petitioner will  
18 suffer irreparable harm, as there is no other statutory vehicle except for the present request per  
19 Civil Code section 4275(b) by which the required method of notice for the underlying Petition  
20 may be set. (See Heaton Decl., ¶¶ 6-7.)

21 **MEMORANDUM**

22 The *Ex Parte* Application is based upon the following:

23 1. The Association is a “common interest development” as defined in the Davis-  
24 Stirling Common Interest Development Act, and a California nonprofit mutual benefit  
25 corporation located in Orange County. Petitioner governs a community of 445 single family  
26 townhomes, subject to a set of CC&Rs.

27 2. On December 5, 2022, the Association filed its Petition in accordance with Civil  
28 Code section 4275 to obtain an Order from this Court authorizing a one-time reduction in the

1 number of votes necessary to adopt a proposed Restated CC&Rs. The Association also filed its  
2 [Proposed] Order Specifying Method of Notice For and Setting Hearing on the Petition, as  
3 contemplated by Section 4275(b). (See Heaton Decl., ¶ 3; *Exhibit 1*.)

4 3. As noted in the Petition, non-participation by the membership (or “voter apathy”)  
5 is not uncommon in common interest developments, and effectively renders it impossible for  
6 most associations, including this one, to undertake important actions, such as making necessary  
7 amendments to their CC&Rs. Here, despite long-term efforts to encourage Association members  
8 to participate in the voting process, only 294 out of the 445 total members returned their ballots.  
9 While approximately 90% of the ballots received voted in favor of the Restated CC&Rs, the  
10 total amount was still insufficient to adopt the Amendments in accordance with the existing  
11 super-majority approval requirement of the CC&Rs. Hence, judicial assistance is necessary.

12 4. The actual merits of the Petition are not yet at issue. Instead, the *ex parte* merely  
13 requests an Order setting forth the manner of notice to be provided to Association homeowners,  
14 as required by Civil Code section 4275(b): “[T]he court shall set the matter for hearing and  
15 issue an ex parte order setting forth the manner in which notice shall be given.”

16 5. Guidance for the method of notice can be found in Corporations Code § 7515(b),  
17 which states that the Court shall “provide for a method of notice reasonably designed to give  
18 actual notice to all parties who would be entitled to notice of a meeting held pursuant to the  
19 articles, bylaws and this part, whether or not the method results in actual notice to every such  
20 person, or conforms to the notice requirements that would otherwise apply.”

21 6. **Proposed Manner of Notice:** Given the voluminous nature of the Exhibits  
22 accompanying the Petition (approximately 90 pages), which by statute must include a full copy  
23 of the Association’s Governing Documents and the Restated CC&Rs, the Association requests  
24 that the Court authorize notice to be provided by the method set forth in the [Proposed] Order  
25 (*see Exhibit 1*), which is typical in this type of proceeding.

26 7. The Association proposes to send via First Class mail to each of its members a  
27 copy of the executed Order and Notice of Hearing, along with a letter describing the nature of  
28 the proceeding, the members’ right to attend the hearing and oppose the Petition, and the address

1 of a website where all the pleadings, papers and exhibits can be accessed and downloaded. (*See*  
2 Heaton Dec., ¶ 5; *Exhibit 1*.) Petitioner will also offer to provide hardcopies of any of the  
3 documents at the Association’s expense, upon written request. (*Id.*)

4 8. **Request to Set Hearing on the Petition**: The Association also respectfully  
5 requests that the Court set the hearing on the Petition, per Civil Code § 4275(b), approximately  
6 20 days out, so that the Association may satisfy the required statutory notice to the members and  
7 obtain a final decision from the Court enabling it to move forward with the Restated CC&Rs.

8 9. Pursuant to Section 4275(c)(1), the Association is required to give at least 15 days  
9 written notice of the Court hearing to all members of the Association.

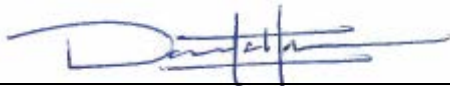
10 10. **Statutory Notice of Ex Parte Not Required**: Under California Rules of Court,  
11 Rule 3.1204(b)(3), the Association was unable to provide advanced notice of this *Ex Parte*. None  
12 of the 445 owners have appeared in the matter, and the requested Order itself is necessary per  
13 applicable statutes to instruct the Association on the required method of notice to all of the  
14 owners, so that they may choose whether they wish to participate in the upcoming hearing on  
15 the Petition, once scheduled by the Court. (*See* Heaton Decl., ¶ 8.)

16 11. It is both necessary and appropriate for the Court at this time to issue an Order  
17 setting the manner of Notice required for the pending Petition. The Association also requests  
18 that the final hearing on the Petition be scheduled. Based on the foregoing, the Association  
19 respectfully requests that the Court execute the previously filed [Proposed] Order.

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21 **Dated:** December 30, 2022

NORDBERG | DeNICHILLO, LLP

22  
23 By:



24 ROBERT M. DeNICHILLO  
25 DANIEL C. HEATON  
26 Attorneys for Petitioner  
27 HUNTINGTON CONTINENTAL  
28 TOWN HOUSE ASSOCIATION, INC.

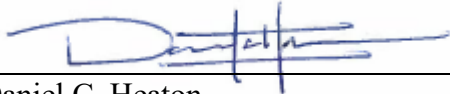


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7. Irreparable harm will result if the *ex parte* is not granted because there is no other statutory vehicle other than Civil Code section 4275(b) that provides for setting the required method of notice on the underlying Petition.

8. **Notice Not Required for the *Ex Parte* (CRC 3.1204(b)(3))**: Pursuant to California Rules of Court, Rule 3.1204(b)(3), the Association is unable to provide advanced notice of this *Ex Parte* Application, as no other parties have appeared in the matter, and the requested Order itself is necessary to set the required method of notice for the anticipated hearing on the Petition.

I declare under penalty of perjury under the laws of the State of California that this is true and correct. Executed this 30th day of December, 2022, at Pasadena, California.

  
\_\_\_\_\_  
Daniel C. Heaton

***EXHIBIT 1***

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

10 In re: HUNTINGTON CONTINENTAL  
11 TOWN HOUSE ASSOCIATION, INC.,

12 Petitioner.

Case No.: 30-2022-01299074-CU-PT-CJC

**[Proposed] ORDER SPECIFYING  
METHOD OF NOTICE FOR AND  
SETTING HEARING ON PETITION  
TO REDUCE PERCENTAGE OF  
AFFIRMATIVE VOTES TO AMEND  
CC&RS (CIV. CODE § 4275)**

**Date:**  
**Time:**  
**Dept:**

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999 Corporate Drive, Suite 100  
Ladera Ranch, California 92694  
Telephone: 949.654.1510

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19 The Petition of HUNTINGTON CONTINENTAL TOWN HOUSE ASSOCIATION,  
20 INC (“Association”) for an Order to Reduce the Percentage of Affirmative Votes Necessary to  
21 Amend its existing Declaration of Restrictions (“CC&Rs”) was filed pursuant to Civil Code § 4275.  
22 The Court having conducted a preliminary review of said Petition upon filing, and for good cause  
23 appearing therein due to statutory requirements, sets the matter for hearing and issues the present  
24 Order pertaining to manner of notice, as required by Section 4275(b).

25 **IT IS HEREBY ORDERED** that the foregoing Petition be set for hearing on  
26 \_\_\_\_\_, 2023, at \_\_\_\_\_, in Department \_\_\_\_\_ of the above-captioned Court,  
27 located at 700 Civil Center Drive West, Santa Ana, CA 92701.

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The Association shall give Notice of the hearing by serving on each of the Members by first class mail a copy of this signed Order and a letter in the form attached hereto as *Exhibit A* (collectively “Notice”), no less than 15 days before the date of the above hearing.

Copies of the Notice, the Petition, and all related documents and exhibits (collectively “Pleadings”) served by or on the Association in connection with this action shall be posted by the Association on a website to be maintained by Association’s counsel, the address of which shall be provided in the above mailed Notice. The Notice shall also be posted in the area designated for general notice, if any, pursuant to Civil Code § 4045. Association’s counsel will provide hardcopies of the Pleadings to any interested party upon written request.

Opposition to the Petition, if any, shall be filed and served on the Association, care of its attorney, by electronic mail (daniel@ndhoalaw.com) or first-class mail to Daniel C. Heaton, Esq., Nordberg | DeNichilo, LLP, 999 Corporate Drive, Suite 100, Ladera Ranch, CA 92694, before 4:00 p.m. on \_\_\_\_\_, 2023.

Any Reply must be filed and served on the opposing party by return email or first-class mail, as appropriate, as well as posted to the website, before 4:00 p.m. on \_\_\_\_\_, 2023, with courtesy copies submitted to the Court the same day as filing.

**SO ORDERED.**

DATED:

\_\_\_\_\_  
Judge of the Superior Court

# **EXHIBIT A**



\_\_\_\_\_, 2023

Re: *Notice of Judicial Hearing to Approve Restatement of the Association's CC&Rs*  
*In re HUNTINGTON CONTINENTAL TOWN HOUSE ASSOCIATION, INC.*  
*Orange County Sup. Ct. (Case No. \_\_\_\_\_)*  
*Hearing Date/Time: \_\_\_\_\_, 2023, at \_\_\_\_\_*  
*Location of Hearing: Orange County Superior Court, Dept. \_\_\_\_\_*  
*700 Civil Center Drive West, Santa Ana, CA 92701*

Dear Members of the Huntington Continental Town House Association, Inc.:

We are the attorneys for your Association. The Association's membership voted on whether to approve and adopt a First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements ("Restated CC&Rs"). Passage required approval of at least 75% of the member voting rights (334 out of 445 members). Despite the Association's significant efforts to increase voter participation, only 294 members participated in the process, with 263 votes cast in favor, falling short of that necessary.

California law permits the Association to file a petition requesting the Court to authorize the Restated CC&Rs. At the request of your Board of Directors, we filed this Petition, which the Court will consider at a hearing on the date and time set forth above. You may support, oppose or refrain from participating in this proceeding. You may file papers in opposition, but you must adhere to the timelines and procedures described in the attached Order.

The Order also indicates that copies of the Petition and all related documents and exhibits in connection with this hearing will be posted by the Association on a website maintained by this office. These documents may be accessed at: \_\_\_\_\_.

Very truly yours,

**Nordberg | DeNichilo, LLP**

Daniel C. Heaton, Esq.

Enclosure: Court Order