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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ORANGE**  
10

11 In re:  
12 CHAPMAN TOWNHOMES, INC.,  
13 Petitioner.

Case No.: 30-2022-01269315-CU-PT-CJC

**DECLARATION OF JOSH SCOTT IN  
SUPPORT OF PETITION TO REDUCE  
PERCENTAGE OF AFFIRMATIVE  
VOTES TO AMEND CC&RS (CIV. CODE  
§ 4275)**

*[Filed concurrently with Petition to Reduce  
Voting Percentage, Table of Exhibits, and  
(Proposed) Order Specifying Notice & Hearing]*

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

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21 **DECLARATION OF JOSH SCOTT**

22 I, Josh Scott, declare:

23 1. I am a Director of Community Management with Powerstone Property  
24 Management, the managing agent for Petitioner Chapman Townhomes, Inc. (“Association”).

25 2. I make this Declaration in support of the Association’s Petition to Reduce  
26 Percentage of Affirmative Votes Required to Amend the CC&Rs (“Petition”). I have personal  
27 knowledge of the facts set forth in this Declaration and, if called as a witness, I could and would  
28 competently testify thereto.

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1           3.       I am responsible for supervising the day-to-day management of the Association and  
2 assisting in carrying out responsibilities to its members under the current Articles of Incorporation  
3 (“Articles”), Bylaws, and Declaration of Restrictions (“CC&Rs”) recorded on May 8, 1978, in  
4 Book 12665 Page 926 of the Official Records of Orange County, California (collectively  
5 “Governing Documents”). True and correct copies of each are attached to the accompanying Table  
6 of Exhibits as *Exhibits C (Articles), D (Bylaws) and E (CC&Rs)* respectively.

7           4.       I am responsible for maintaining the Association's records and distributing notices  
8 to members as required by law, such as budgets, financial statements, insurance summaries, and in  
9 this particular instance, all notices, ballots, and other relevant communications pertaining to the  
10 vote on the Amendments. I am generally familiar with the Association's Governing Documents. I  
11 attend the Association Board and membership meetings.

12           5.       The Association has sixty-six (66) members who each individually own a  
13 condominium unit, and for each unit one ballot may be cast. Pursuant to the current CC&Rs as  
14 stated further below, an amendment to the CC&Rs requires approval by seventy-five percent  
15 (75%) of the total voting power (i.e., at least fifty (50) membership votes).

16           6.       The current CC&Rs need to be Amended and Restated, as detailed in the proposed  
17 First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements  
18 (“Restated CC&Rs”). A true and correct copy of the Restated CC&Rs is attached in its entirety to  
19 the accompanying Table of Exhibits as *Exhibit F*.

20           7.       The vote on the Restated CC&Rs was initially set for March 15, 2022. The  
21 membership was provided the full text of the Restated CC&Rs, as well as a Notice of Election  
22 (which included a brief description of all the proposed Amendments). Additionally, a Notice of  
23 Meeting including Voting Instructions and Secret Ballot was provided to the membership in  
24 January 2022. True and correct copies of the initial Notice of Election, Notice of Meeting, and  
25 Secret Ballot are collectively attached to the accompanying Table of Exhibits as *Exhibit A*.

26           8.       Prior to the above election materials being distributed, the Association held a  
27 community town hall meeting in November 2021 to discuss the proposed Amendments and to  
28 give the membership an opportunity to ask the Board and legal counsel questions.

1           9.       Additionally, each month, I sent each member of the Association the “Chapman  
2 Townhomes Newsletters.” Beginning as early as February 2021 and continuing through May 2022  
3 when the final vote occurred, the Newsletters contained a brief section providing information  
4 regarding the proposed Amendments, the reasons for the necessary changes, and reminders to  
5 return the ballots and attend the election meetings. True and correct copies of applicable sections  
6 of these monthly Newsletters sent to the full membership are collectively attached to the  
7 accompanying Table of Exhibits as *Exhibit B*.

8           10.       At the first special meeting for the vote, on March 15, 2022, the Association  
9 received only twenty-three (23) ballots for the vote on the proposed Restated CC&Rs. Given the  
10 voter apathy, the ballots were not opened, and the vote was adjourned to April 19, 2022, to permit  
11 the members additional time to return their ballots.

12           11.       Understanding the practical challenge to obtain the required membership vote to  
13 amend the CC&Rs, the Association continued to solicit votes and the Board of Directors gave its  
14 best effort to notify and inform the membership prior to the second special meeting.

15           12.       Even after the Association’s efforts to encourage voter participation, at the second  
16 special meeting on April 19, 2022, the Association had received only a total of thirty-seven (37)  
17 ballots. Again, the Board elected to not open the ballots and instead extend the vote until May 17,  
18 2022, in hopes of receiving the return of sufficient ballots.

19           13.       In an effort to encourage the minimum number of votes (i.e., at least fifty (50)  
20 votes), the Association communicated directly with individual members who had not yet returned  
21 a ballot. One of the Board Directors emailed each of these individuals and emphasized the  
22 required number of votes needed to approve the amendments to the CC&Rs. The goal was to  
23 emphasize the importance of voter participation and again encourage each of the members to vote  
24 before the meeting on May 17, 2022.

25           14.       Sean Fipps was appointed to serve as the Inspector of Election in connection with  
26 the vote on the Proposed Amendments to the CC&Rs. He is not a member of the Board of  
27 Directors or otherwise currently employed or under contract to the Association. As Inspector of  
28 Election, his duties included acceptance, review, and tabulation of the ballots.

1           15.     At the extended special meeting on May 17, 2022, Mr. Fipps accepted, reviewed,  
2 and tabulated all of the ballots received. Of the sixty-six (66) total members, forty-six (46) ballots  
3 were returned. For the Restated CC&Rs, thirty-eight (38) members voted to approve (which is  
4 57% of the total voting power), and seven (7) members voted against, with one member abstaining  
5 so the ballot only counted for purposes of meeting quorum. A true and correct copy of the Report  
6 of Inspector of Elections, certified by Mr. Fipps under penalty of perjury, is attached to the  
7 accompanying Table of Exhibits as *Exhibit I*.

8           16.     **Article XIV, Section 6 of the CC&Rs** currently states the Declaration may be  
9 amended only by an affirmative vote of not less than seventy-five percent (75%) of the members  
10 (as there is no longer a two-class voting structure that includes the original Declarant). Thus, fifty  
11 (50) out of the sixty-six (66) members would have been required to vote in favor of the Restated  
12 CC&Rs, absent the Court’s assistance.

13           17.     The current CC&Rs do not require the Association to provide notice to lenders or  
14 mortgagees prior to amendment. Further, the Restated CC&Rs do not attempt to revise or alter any  
15 of the rights held by mortgagees, but instead actually increase the level of protection afforded to  
16 them.

17           18.     The voting and solicitation for ballots for the Restated CC&Rs was conducted in  
18 accordance with the Association’s Governing Documents and the provisions of the Davis-Stirling  
19 Act (specifically Civil Code sections 5100 through 5135).

20           19.     As a result of the above requirement in the Governing Documents, the Association  
21 did not achieve the required approval for the Restated CC&Rs due to general voter apathy and  
22 clear difficulty in even obtaining seventy-five percent (75%) of members to participate at all in the  
23 election, let alone to cast an approving vote.

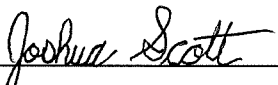
24           20.     In my experience and the experience of those I work with, it is generally difficult in  
25 most common interest developments to get members to participate in votes or attend meetings.  
26 Only a small number of members in the Association attend regularly scheduled Board meetings  
27 and annual meetings. The Board and my office attempted to encourage a strong voter turnout for  
28 this election but based on my experience in the community and the number of attempts made to

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get members to vote, including numerous reminders and ballot extensions, I do not believe that further efforts would result in a significant increase in voter participation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29 day of June 2022 at Anaheim, California.

  
\_\_\_\_\_  
Josh Scott  
Director of Community Management