

## **Abiqua Heights Homeowners Association**

### **RESOLUTION regarding Declarant and the Abiqua Heights Subdivision**

#### **WHEREAS:**

In 1996 the promises of the Abiqua Heights Subdivision are outlined in the CC&Rs Article II Section 3 Common Property and Article VII Common Property. However, the original Declarant, Design Home Construction Inc., ran into financial problems at which time the declarant rights reverted to the mortgage holder, Green Tree LLC on November 25, 2002.

In August of 2003 the declarant was excused from building a lodge and the three golf holes on the commons area. Even though the CC&Rs indicate that all common areas would be transferred to the association as Common Property, the association in fact purchased the common area at a price of \$100,000 as a result of a dispute with the Declarant (Green Tree LLC). The Association also received an additional loan of \$50,000 for the purpose of improvement to the commons. Both loans were payable to Green Tree LLC.

On November 2, 2005 the Declarant Rights were assigned to Anderson Homes Inc. and Black Construction Inc. On January 5, 2006 Black Construction Inc. assigned all of its Declarant Rights to Abiqua Homes LLC. Each of the assignments of declarant rights from Green Tree to Abiqua Homes LLC only referenced to phase I of the subdivision. As a result some association members have doubted if declarant rights for phases II and III had been properly and legally assigned to succeeding declarants down to and including Abiqua Homes LLC. The Board of Directors at its November 12, 2013 declared that it did not recognize Abiqua Homes as Declarant until the flaws in the paper work were corrected.

Since November 12, 2013 the Board and the agents of Abiqua Homes LLC have worked to correct the flaws with corrected Assignment of Declarant Rights to be signed by Green Tree LLC and then by Black Construction. The proposed paperwork was approved by the association attorney and presented to the agent of Green Tree LLC. At first this agent indicated he would sign the paper work and then later refused to sign, stating this was not his problem. Two Board members and the agents of Abiqua Homes LLC have made several attempts to get the cooperation of Green Tree LLC.

Considering the good faith effort of the agents for Abiqua Homes LLC to correct

the flawed paper work, the association attorney has indicated that the Board could or should recognize Abiqua Homes LLC on the “presumptive” transfer of the Declarant Rights in accordance with ORS Chapter 94 (94.623).

**THEREFORE**, the Board by this Resolution recognizes Abiqua Homes LLC as the Declarant of their remaining vacant lots in Abiqua Heights Subdivision Phase III. This Resolution is consistent with the advice and recommendation of the Association's attorney regarding “presumptive” transfer of the Declarant Rights in accordance with ORS Chapter 94 (94.623).

Motion to adopt Resolution made by: Tony Helbling; Second by: Steve Barrett

Vote: 4 – 0; Motion Passes

Date: June 10, 2014

/s/ Tony Helbling

Attest: Tony Helbling, Board President