

February 12, 2010

VIA E-MAIL

Bill Noland
President, Silver Springs Masters Homeowners Association
Park City, UT

Re: The Quail Meadows Townhomes Owners Association (QM II)

Dear Mr. Noland:

This letter serves to follow-up on the notice previously provided to you and the Silver Springs Master Homeowner's Association (SSMHA) regarding the fact that The Quail Meadows Townhomes Owners Association (QM II) is not a member of the SSMHA, in light of the fact that you continue to copy our association president, Tracy Phillips, on SSMAH e-mail communications.

The SSMHA was created pursuant to Articles of Incorporation dated February 14, 1990, and recorded on February 16, 1990. Article IV of the Articles identifies with particularity the members of SSMHA, namely,

"[e]very person or entity who is a record owner of a fee or undivided fee interest, or is a contract purchaser for such interest, in any lot or condominium unit located within any of the following homeowners associations, to wit: Northshore Silver Springs 1-G Subdivision Homeowners Association; Silver Springs Townhouse Condominium (Silver Meadows Phase) Homeowners Association; Willow Bend West Homeowners Association; Meadow Springs Homeowners Association; Quail Meadows Homeowners Association; Meadow Wild Homeowners Association; Silver Springs Townhouse (Willow Bend East) Homeowners Association (hereinafter collectively referred to as the "Member Associations") shall be a member of the association.

Thus, individuals and entities as defined above are members of the SSMHA. It is worth noting at this juncture that the Member Associations are not automatically members by virtue of their existence, but rather each qualifies as a member if, and only if, it satisfies the record owner or contract purchaser requirements for membership. Conspicuously absent from this comprehensive list of Member Associations is any mention of QM II. Of course, QM II could not have been included on that list because it was not even in existence at the time the Articles were written and recorded; QM II was formed in 1996, six years after the formation of the SSMHA.

The Articles of Incorporation for SSMHA also provide a particular procedure for the addition of members. Additional allowed members, however, are not individuals, but rather homeowners associations. Specifically, Article IV provides that any subsequently formed homeowners association which satisfies specified geographical parameters has

the right to become a member if, and only if, it consents to be bound by the authority of the SSMHA, its Bylaws, and duly enacted rules and regulations. The SSMHA's governing documents do not provide for any other subsequent members, and further do not provide for any other manner or method of membership.

QM II, a subsequently formed homeowners association, has never been authorized to, and has never consented, to be bound by the authority of the SSMHA, its Bylaws, and duly enacted rules and regulations. It is not, therefore, a member of SSMHA. Historically, the SSMHA has operated independently from QM II as well as other non-member associations, although the SSMHA has accepted annual contributions from those associations. Indeed, the SSMHA conducted meetings on a regular basis and did not provide notice of such to QM II. The lack of notice to QM II is consistent with its non-member status. Only recently has QM II been invited to SSMHA meetings, and QM II attendance at such meetings was based upon invitation, not upon a duly exercised right. QM II is not a member, *de jure* or *de facto*, of the SSMHA. The fact that SSMHA has chosen to ignore QM II's confirmation of non-membership does not constitute acquiescence on the part of QM II.

QM II has seen various e-mail correspondence with respect to upcoming assessments, and SSMHA's intention to impose such assessments upon QM II and/or its individual members. We have also seen communication discussing a concern over whether Member Associations have standing to collect from their respective members for the SSMHA, and enforce lien rights. Such discussions raise significant concerns with respect to QM II, and not only because of our non-membership status. Assuming *arguendo* that QM II is considered a member of SSMHA, because QM II is a subsequently formed homeowner's association, it, and not its individual members, would be a member of the SSMHA. The nine individual townhome owners are by definition not members of the SSMHA, regardless of the status of QM II. (Please refer back to the discussion of Article IV of the SSMHA Articles of Incorporation. This is further confirmed by the lack of any exception on individual owners' title insurance policies with respect to the SSMHA.) Thus, any effort to collect dues from the individual owners (who have never paid individual dues to the SSMHA), including the filing of liens, would constitute a slander of title upon the individuals property. QM II will not seek to collect SSMHA imposed dues from individual owners who comprise its association. And if SSMHA attempts to enforce collection by filing liens upon individual properties, such action would constitute slander of title, and expose SSMHA, its directors, and officers, to liability. Given the state of facts, and notice provided to SSMHA, punitive, as well as compensatory damages, may be recovered. While the SSMHA may have D & O coverage, such policies typically exclude coverage for punitive damage awards, thus leaving the individual officers' and directors' assets subject to attachment in order to enforce such a judgment.

The issue of QM II's status vis-à-vis the SSMHA, is one that has been internally resolved by both QM II and SSMHA. Unfortunately, those respective resolutions conflict with each other. Based upon the membership dispute, and without waiving any and all rights and specifically reserving all such rights, and pursuant to the restrictions imposed

by applicable law, including but not limited to Utah Rule of Evidence 408, with respect to the use of this correspondence, QM II suggests that SSMHA and it reach an amicable resolution. We propose that the resolution agreement be in recordable form, and include the following terms:

(1) agreement by QM II and SSMHA that QM II is not, has not been, and will not be, a member of SSMHA;

(2) agreement by QM II and SSMHA that the individual owners are not, have not been, and will not be, members of SSMHA;

(3) agreement by QM II and SSMHA that QM II make an annual contribution to SSMHA in the amount of \$1,500.00 for a period of five (5) years, commencing in the year 2010;

(4) agreement by QM II and SSMHA that QM II owners are entitled to use the park and tennis courts located across the street from the QM II complex; and,

(5) agreement by QM II and SSMHA that neither admits or concedes the merits of the positions of the other party.

We look forward to hearing from you.

Very truly yours,

The Quail Meadows Homeowners Association

By: Tracy Phillips
Tracy Phillips, Director

By: Harvey Shapiro
Harvey Shapiro, Director

By: Steven Hogroian
Steven Hogroian, Director