

THE STATE OF SOUTH CAROLINA

APPEAL FROM YORK COUNTY
Master in Equity

S. Jackson Kimball, Master in Equity
2014-CP-46-03819

Appeal Case No. 2016-001696

RECEIVED

JUL 19 2018

Knightsbridge Property
Owners Association, Inc.,

Respondent,

S.C. SUPREME COURT

v.

Paul A. Nadeau,

Petitioner.

APPENDIX FOR WRIT OF CERTIORARI

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Spartanburg, SC 29306
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

DOCKET NO. 204CP4603819

Knightsbridge Property Owners Association,
Inc ,

Plaintiff,

**COMPLAINT
(NON-JURY)
FORECLOSURE OF REAL ESTATE
NON-ELIGIBLE FOR HOME
MODIFICATION PROGRAM**

v.

Paul A. Nadeau ,

Defendant(s).

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NOV 20 AM 10:15
CLERK OF COURT
COURT OF COMMON PLEAS
COUNTY OF YORK
SOUTH CAROLINA

The Plaintiff herein, complaining of the acts or omissions of the Defendant(s) would show unto this Honorable Court as follows:

1. Upon information and belief, the Defendant(s) is/are a resident of the County of York, State of South Carolina and the subject of this action is real property located in the County of York, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and has the right to bring this action.
3. Heretofore, on or about 06/29/2001 the Defendant(s) took possession of the property described in Exhibit A attached to this Complaint and incorporated herein by reference.
4. The herein described property is subject to governing documents for Knightsbridge Property Owners Association, Inc attached hereto as Exhibit B and incorporated herein by reference.
5. By taking possession of the property, Defendant(s) agreed to pay assessments and other charges allowed by the governing documents.
6. Pursuant to the governing documents a lien arises in favor of Plaintiff to secure payment of the unpaid charges.
7. Plaintiff's duly elected corporate directors have properly levied assessments and other charges against Defendant's property pursuant to Exhibit B. Those charge are currently unpaid.
8. Heretofore, on or about 07/16/2012, Plaintiff filed a Notice of Lien in connection with unpaid assessments on the herein referenced property owned by the Defendant(s).
9. Pursuant to the governing documents Plaintiff is entitled to foreclose on the aforementioned lien.

10. The Defendant(s) has failed to make consistent payments of the assessments and interest, although demand for payment has been made, and the Plaintiff after giving all required notices, has and does hereby elect to declare the entire balance payable at once. There is now due, owing and unpaid the sum of \$1362.45 in principal, late fees, interest and other charges. Plaintiff is further entitled to recover reasonable attorney's fees and the cost of litigating this proceeding.

11. If Plaintiff secures the premises being foreclosed herein, Plaintiff's cost of securing said premises should be added to any judgment rendered on its behalf. If Plaintiff pays any utility charges constituting a lien on said premises, Plaintiff's advances should be added to any judgment rendered on its behalf.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein:

1. Under the direction of this Court, ascertain and determine the amount due to Plaintiff as outlined by the governing documents, together with interest of 18.00% Per annum and reasonable attorney's fees and costs as outlined in the governing documents.

2. That said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and for the costs of this proceeding.

3. That the premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

- a. First, to the costs and expenses of the within proceeding and said sale;
- b. Second, to the payment and discharge of the amount due under the governing documents, together with attorney's fees as aforesaid; and
- c. Third, the surplus, if any, be distributed pursuant to Rule 71, of the South Carolina Rules of Civil Procedure.

4. Plaintiff have judgment against the Defendant(s) for the full amount found to be due Plaintiff.

5. For such other and further relief as may be just and proper.

MCCABE, TROTTER & BEVERLY, P.C.



Stephanie C. Trotter
140 Stoneridge Drive, Suite 650
Post Office Box 212069 (29221)
Columbia, SC 29210
Phone: 803-724-5000
Fax: 803-724-5001
Email: Stephanie.Trotter@mccabetrotter.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
November 12, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Knightsbridge Property Owners)
Association, Inc.)
Plaintiff)

v.)

Paul A. Nadeau)
Defendant)

ANSWER
2014-CP-46-03819

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

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Defendant, answering the complaint herein, would respectfully show unto the court:

1. Defendant denies each and every allegation contained in the complaint unless specifically admitted hereafter.
2. Defendant admits the allegations of paragraphs one, two, three, four, five, six, and eight.
3. Defendant lacks sufficient information to admit or deny the allegations of paragraphs seven and therefore denies the same.
4. Defendant denies the allegations of paragraphs nine, ten, and eleven

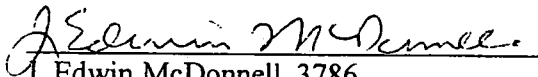
AS A SECOND DEFENSE
(failure to add necessary party)

5. Defendant realleges the allegations of paragraphs one through four as if fully set forth herein.
6. The subject property is encumbered by a mortgage currently due to Chase.
7. The mortgage to Chase has priority over any amount due to Plaintiff.
8. Any foreclosure or sale of the subject property would substantially impact the

rights of Chase.

9. Chase is a necessary party to this action.
10. If Chase is not added as a party, this action should be dismissed.

WHEREFORE, defendant respectfully requests that Plaintiff be granted no relief.

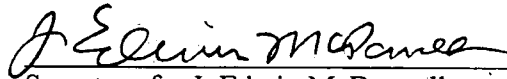

J. Edwin McDonnell, 3786
South Carolina Legal Services
Attorney for Defendant
148 East Main Street
Spartanburg, South Carolina 29306
864-699-0303
864-582-0302 (fax)

December 13, 2014

CERTIFICATE OF SERVICE

This answer was served by mailing a copy of the same, on the date below, postage pre-paid, to the attorney stated below at the address given:

Stephanie C. Trotter, Esq.
McCabe, Trotter & Beverly, P.C.
PO Box 212069
Columbia SC 29221
Attorney for Plaintiff


Secretary for J. Edwin McDonnell

December 13, 2014

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Knightsbridge Property Owners Association,
Inc,

Plaintiff,

v.

Paul A. Nadeau,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-46-03819

**ORDER FOR JUDGMENT OF
FORECLOSURE AND SALE**

FILED-RECEIVED
2016 MAR -1 AM 10:21
J. EDWIN McDONNELL
CLERK OF COURT
SOUTH CAROLINA
YORK COUNTY, SC

Pursuant to Circuit Court Rule 53(b), SCRPC, and by Order of Reference dated February 10, 2016, this case was referred to me to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the case. A hearing on the merits was held on January 11, 2016. Plaintiff was represented by Stephanie C. Trotter. Defendant was represented by J. Edwin McDonnell. From the testimony, documents and records received into evidence, I make the following findings and conclusions.

BACKGROUND

This is an action for foreclosure of Plaintiff's lien for homeowners' assessments and charges assessed against Defendant, and due to Plaintiff pursuant to the "Knightsbridge Master Declaration", which are the restrictive covenants encumbering Knightsbridge Subdivision in York County (hereinafter "Declaration"). Defendant answered Plaintiff's Complaint asserting a general denial of Plaintiff's claim. He has asserted no affirmative defense to the claim, but has asserted by way of answer that Plaintiff has failed to name a necessary party as a defendant, namely, the holder of the first mortgage on Defendant's property.

Defendant's basis for denying the claim is that Plaintiff has not followed a mandate of the Declaration in setting the amount of assessments to be paid by property owners. Based on that assertion, Plaintiff asserts that he does not owe assessments, as they have been wrongly promulgated by the Plaintiff's Board of Directors ("Board").

FINDINGS OF FACT

The following are findings of fact, recited in narrative format, which I find based on all the evidence, and after consideration of any applicable burden of proof. I have also considered

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the credibility of the witnesses in reaching these findings.

Article V, Section 1, of the Declaration establishes, in typical fashion, the obligation of any owner of a lot in Knightsbridge to pay assessments to the Knightsbridge Property Owner's Association, Inc. ("Association"). It further establishes a lien in favor of the Association for the collection of such assessments or charges, along with attorneys' fees and costs incurred in the collection process.

Pursuant to Article V, Section 3, of the Declaration, the Board of Directors unilaterally establishes the operating budget for Knightsbridge, so long as the annual budget does not increase more than 10% above the prior year. Only where the Board proposes an increase of more than 10% is the general membership entitled to vote on the budget. Per Article V, Section 5, of the Declaration, once the budget is established the annual assessment is uniformly set for all lots. The Declaration provides that the Board "... shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each calendar year."

Minutes of the Board establish that it approved or ratified budgets for 2011 through 2015.¹ The proposed 2013 budget was approved on November 28, 2012. The budgets for the remaining years at issue were approved sometime in December of the preceding year, and thus, the annual assessment was not established at least thirty days in advance of the calendar year for the years in question.

Although not set within the time limitations set by the Declarations, the budgets, and the resulting calculated per-lot assessment amounts, were clearly established in adequate detail, and communicated to lot owners in Knightsbridge in time for the owners to make timely payment of the assessments. Further, it may be reasonably inferred from the testimony and evidence that lot owners paid those assessments as determined, so that the Association could fulfill its obligations to the owners.

At trial, Defendant presented no evidence contesting the amount of assessment based on the budgets, or disputing that these budgets were in fact the operating budgets used by the Association for assessment of each lot. Rather, Defendant's position is that any assessment based on a budget that was not approved by the Board at least thirty days in advance of the next succeeding calendar year was a nullity, and results in Defendant having no obligation to pay.²

¹ Plaintiff is seeking payment for 2012-2015. The 2011 budget was included at trial to establish that the 2012 rate was less than 110% of the 2011 budget and could therefore be set by the Board of Directors without a Member vote.

² By extension of this argument, no lot owner would have an obligation to pay assessments due to the late promulgation of a budget, with the result that the Association could not perform its assigned functions.



From the record presented, it is clear that Defendant knew of the assessments, and the amounts thereof. Further, he was given, and received, notice of his default in payments. In fact, Defendant paid a portion of the assessments in 2011, 2012, and 2014, without complaint regarding the untimely adoption of the budget. Thus, the only legitimate issue presented is whether the delay by the Board in approving budgets and establishing assessments absolves Defendant from his obligation to pay.

Although the Board did not establish budgets and assessments in strict compliance with the Declaration, I conclude that it met its responsibility to approve a budget, and to communicate the amount of annual assessments to the lot owners of Knightsbridge. The noncompliance of the Board in regard to the date specified for formulating the budget and assessments is inconsequential, and no party, including Defendant, has suffered prejudice as a result.

The Association offered evidence at trial of unpaid assessments, interest, late charges, and partial attorneys' fees, totaling \$3016.94 through January, 2016. However, as there is no establishment of late charges in either the Declaration, or the Association's By Laws, those charges are properly deducted from the total due. Additionally, since total attorneys' fees and costs will be determined by subsequent hearing if necessary, those charges are likewise to be deducted. After adjustment the balance of unpaid assessments from May, 2013, through January, 2016, totals \$1,516.94.

CONCLUSIONS OF LAW

Based on the findings of fact above, I make the following conclusions of law.

"Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). Courts often use equitable maxims as guidance in balancing equitable considerations. "The principle 'equity regards as done that which ought to be done' applies in cases where the party seeking equitable relief establishes 'a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.'" *Id.*, 394 S.C. at 253, 715 S.E.2d at 354, quoting *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)).

The notion 'equity looks to substance rather than form' evolved out of judicial regard for that which ought to be done. This maxim applies by 'dispensing with pure formalities which would otherwise defeat the equity. After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity.' *Id.* (Internal citations omitted.)

AM
#3

In *Regions Bank*, the court looked at the substance of the agreement between the parties to give an equitable lienholder under a contract of sale priority over the bank's prior recorded mortgage lien. Specifically, the court held that even though the lienholder's contract deposit was not paid until after the bank's mortgage was recorded, the bank knew of the lienholder's pending payment. Rather than establishing priorities strictly based on the timing of the recording and payment, the court found that the equities of the situation favored granting the lienholder priority over the bank's mortgage.

The case at hand is analogous. Defendant was well aware that, as a lot owner, he was responsible for paying assessments to fund the operation the Association, and did not contend otherwise at trial. Nor did he contest the substance of the operating budget or corresponding annual assessments. Defendant's sole argument is that the budgets for the relevant years were not timely approved by the Board in strict compliance with the Declarations. Defendant presented no evidence or argument of how this delay prejudiced him, or otherwise caused him to change his position in regard to payment of assessments.

The Board's failure to meet and approve the annual budget before December 1st of each year in no way deprived Defendant of some right to vote or to contest the assessments levied against his lot. Defendant's remedy against Board for loss suffered due to tardy action would be to recover any damages he suffered as a result the Board's failure act in timely fashion, but that does not invalidate the assessments. Instead of contesting the substance of the Plaintiff's claim, Defendant attacks the budget approval process, which has caused him no harm.³

Thus, I conclude that equity requires that Defendant's obligation to pay properly calculated assessments be enforced. To hold otherwise, would place form over substance and defeat the Association's right in equity to enforce its lien for assessments.

CONCLUSION

Based on the findings and conclusions herein, it is ordered as follows:

1. Plaintiff is granted judgment for foreclosure of its lien for unpaid assessments in the amount of \$1,516.94 through January, 2016, plus attorneys' fees and costs to be determined as set forth below.

³ Defendant's reliance on *Seabrook Island Property Owners Association v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct.App.1987) is misplaced. In *Seabrook*, the issue decided by the court was whether the Property Owners Association exceeded its authority by calculating a special assessment in a manner not authorized by the restrictive covenants. In that case, the property owner contested the Association's power to assess his lot in a manner contrary to that of the restrictive covenants, and the court upheld that contest. Here, Defendant does not assert that the calculation of assessments was in violation of the Declaration.

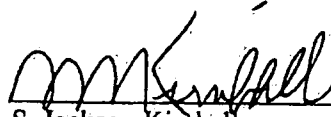
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2. Plaintiff is entitled to go forward with a foreclosure sale of Plaintiff's property in accordance with applicable statute and rule.

3. Plaintiff's counsel shall submit to the court and Defendant's counsel an affidavit of attorneys' fees and costs, together with appropriate documentation. Defendant shall have fifteen days from the date of receipt of such affidavit to raise objection to the charges made. If necessary, the court will hold a separate hearing to determine reasonable fees and costs. If no objection is made, the amount of fees and costs claimed shall be added to the judgment amount stated above, and said amount shall be collectable through sale of the subject property as part of the total amount due.

AND IT IS SO ORDERED.

February 29, 2016


S. Jackson Kimball
Master-in-Equity
York County

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STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

2016 JUL 28 / AM 9:05

Knightsbridge Property Owners Association, Inc.,

DAVID HAMILTON
Clerk of Court & GS
YORK COUNTY, SC

Case No.: 2014-CP-46-03819

Plaintiff,

v.

Paul A. Nadeau,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

This matter came before me on April 20, 2016 on Defendant's Motion to Reconsider. Plaintiff was represented by Stephanie C. Trotter. Defendant was represented by Edwin McDonnell. Defendant argues that Plaintiff was not authorized to levy assessments against him because the budget and assessments were not approved thirty days before the start of the calendar year pursuant to the restrictive covenants. Specifically, Defendant argues that such assessments were *ultra vires*, and should not be allowed, based on the case of *Seabrook Island Property Owners' Association v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct. App. 1987).

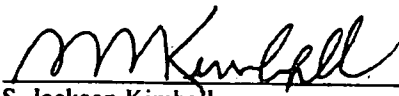
I find *Seabrook* to be distinguishable from the present case. The association in *Seabrook* attempted to levy assessments using a calculation not authorized by the restrictive covenants. In this case, Defendant has not contested Plaintiff's ability to levy assessments, or the assessment calculation used by Plaintiff. Instead Defendant merely contests the timing of the budget approval, which I find not to be an *ultra vires* act.

Defendant is unable to articulate any harm caused by the Board's late adoption of the budget. Additionally, Defendant did not raise any objection to the Board's budget adoption process prior to commencing this action. Due to Defendant's failure to complain about the budget process, he has waived his objection, and is estopped to now assert such an objection.

Other than the foregoing clarification, I find no matter presented that was not addressed expressly, or by clear implication, in the prior order. Therefore, it is ordered that Defendant's Motion pursuant to Rule 59(e), SCRCP, be denied.

AND IT IS SO ORDERED.

July 27, 2016


S. Jackson Kimball
Master in Equity
York County

KNIGHTSBRIDGE PROPERTY OWNERS ASSOCIATION, INC. vs. PAUL A. NADEAU
Trial Proceedings on 01/11/2016

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

3

ORIGINAL

4 KNIGHTSBRIDGE PROPERTY)
OWNERS ASSOCIATION, INC.,)

5)
6 PLAINTIFF,)

7 VS)

CASE NO. 2014-CP-46-03819

8 PAUL A. NADEAU,)

9 DEFENDANT.)

10

11

12

13 TRANSCRIPT OF TRIAL PROCEEDINGS BEFORE

14 THE HONORABLE S. JACKSON KIMBALL, III

15 YORK, SOUTH CAROLINA

16 JANUARY 11, 2016

17

18

19

20

21

22 REPORTER: KELLY L. REITER
DALLAS REPORTING, A HUSEBY COMPANY

23

24

25

1 call our first witness, Mary Thaxton.
2 Judge Kimball - Give me just a minute, please,
3 ma'am.
4 Court Reporter - And that's Thaxton, T-h-a-x-t-
5 o-n?
6 Ms. Thaxton - Yes.
7 Court Reporter - Mary, M-a-r-y?
8 Ms. Thaxton - M-a-r-y.
9 Court Reporter - Thank you.
10 Mr. McDonnell - I apologize, Your Honor. I
11 couldn't hear that spelling.
12 Ms. Thaxton - M-a-r-y, T-h-a-x-t-o-n.
13 Judge Kimball - Ms. Thaxton, will you please
14 stand up and raise your right hand?
15 Ms. Thaxton - Yes, sir.
16 Whereupon, Mary Thaxton, having been first duly affirmed,
17 was examined and testified as follows:
18 Judge Kimball - Have a seat. Ms. Trotter?
19 Ms. Trotter - Thank you, Your Honor.
20 DIRECT EXAMINATION
21 BY MS. TROTTER:
22 Q Mary, can you tell me where you're employed?
23 A Kuester Management Group.
24 Q And what's your job duty there?
25 A I'm the - - -

1 Judge Kimball - Let's do this. So everybody
2 hears everybody, let's get - - - If you would,
3 please, ma'am, get that stand and put it right
4 there in the middle, so she'll be looking at Mr.
5 McDonnell, and me, and you. There we go.
6 That's good. Well, put it this way some, so he
7 can see the witness.

8 Ms. Trotter - Okay.

9 Judge Kimball - What I would like for you to do
10 is put it right here.

11 Ms. Trotter - Okay. Okay.

12 Judge Kimball - There we go. Now, she'll look
13 at everybody.

14 FURTHER EXAMINATION

15 BY MS. TROTTER:

16 Q Ms. Thaxton, can you tell me what your job duties are
17 with Kuester?

18 A I'm a community manager. My responsibilities are
19 that I'm a liaison between the board of directors,
20 the homeowners, and the vendors. I work on behalf of
21 the board of directors for the day-to-day operations
22 for the association, and I attend board meetings for
23 the association, as well as the annual meetings.
24 Then I also help with the annual budgets and the
25 preparation of those budgets.

1 Q And is Knightsbridge one of the clients that you work
2 for?

3 A Yes.

4 Q All right. I'm going to hand you what's been marked
5 as Exhibit Number 1.

6 Ms. Trotter - And, Judge, this is a copy of all
7 of the exhibits we submitted for you.

8 Judge Kimball - Thank you.

9 FURTHER EXAMINATION

10 BY MS. TROTTER:

11 Q Do you recognize that?

12 A I do.

13 Q What is that?

14 A These are the declarations of covenants, conditions,
15 and restrictions for the Knightsbridge community.

16 Q Does it appear to be recorded?

17 A It is.

18 Q Can you tell where?

19 A It's recorded in York County on Page - - - in Book
20 1559, Page 117.

21 Q Okay. Can you turn to Page 6 and read the
22 highlighted portion of Article 5, Section 1, for me?

23 A Each owner of each lot by acceptance of the deed
24 therefore, whether or not it shall be so expressed in
25 such deed, is deemed to covenant, and agree to pay to

1 the association, annual assessments, charges, damage
2 assessments, and special assessments for capital
3 improvements, established and collected as
4 hereinafter provided. Any such assessment or charge,
5 together with interest costs and reasonable
6 attorney's fees, shall be charged and a - - - and a
7 continuing lien upon the lot against which each such
8 assessment charge is made.

9 Q Thank you. Can you turn to Page 7 and read the
10 highlighted portion of Article 5, Section 3?

11 A Any assessment not paid within thirty days after the
12 date shall bear interest from the due date at the
13 rate of eighteen percent per annum, or the maximum
14 rate of interest allowed under the then-laws of the
15 State of South Carolina, whichever is less. In
16 addition to such interest charge, the delinquent
17 owner shall also pay such late charge as may have
18 been theretofore established by the board of
19 directors of the association to defray the cost
20 arising because of late payment. The association may
21 file a lien against the delinquent owner's lot and
22 bring an action at law against the delinquent owner
23 and foreclose the lien against the lot, and interest,
24 late payment charge, costs, and reasonable attorney's
25 fees of such action or foreclosure shall be added to

1 the amount of such assessment.

2 Q All right, and one more thing. If you will, turn to
3 Page 8 and read Article 5, Section 9, for me.

4 A I think I might have just reversed what I was
5 supposed to do. Forgive me.

6 Q Sorry. So just to be clear, what you just read was
7 Article 5, Section 9?

8 A That is correct.

9 Q All right.

10 A I apologize.

11 Q Let's do Article 5, Section 3, now.

12 A Okay. Except as herein expressly stated, the board
13 of directors shall have the authority to fix the
14 annual assessments for each calendar year thereafter
15 provided. However, in the event the proposed annual
16 assessment for any calendar year is in excess of a
17 hundred and ten percent of the annual assessment for
18 the immediate preceding year, the same must be
19 provided - - - must be approved by two-thirds
20 majority of the outstanding votes represented at a
21 duly-called membership meeting, either in person or
22 by proxy, where a quorum of the membership is
23 represented at such meeting - - -

24 Judge Kimball - (To the court reporter) - You
25 need for her to slow down?

1 A Either in person or by proxy.

2 Judge Kimball - (To the court reporter) - Do you
3 need her to slow down?

4 Court Reporter - No, I got it.

5 Judge Kimball - Okay.

6 A I'm sorry?

7 Judge Kimball - If you would, ma'am, when you
8 read, read a little more slowly. This - - -

9 A Yes.

10 Judge Kimball - This young lady is trying to
11 take down everything you say.

12 A So sorry.

13 Ms. Trotter - I think we've gotten the bulk of
14 it out of the way.

15 FURTHER EXAMINATION

16 BY MS. TROTTER:

17 Q You mentioned a little bit earlier that you help the
18 association create their budgets every year?

19 A I do.

20 Q Can you tell me how that process works?

21 A Sure. I look at the previous year's expenses. I
22 pull out the budget for that previous year, and I
23 provide that, along with the previous year's actual
24 expenses. Then they take those numbers, and they
25 look at the projects that are coming up for the

1 following year, and then they - - - They estimate
2 what the assessments will be for that year, whether
3 or not they'll increase or stay the same. But they
4 look at all of the expenses for the year, and that's
5 how they make the budget.

6 Q And how is each individual home - - - How is it
7 decided how much they will pay in assessments?

8 A They - - - They come up with that final tally number,
9 and then they divide it equally amongst every single
10 lot. So everybody pays the same.

11 Q Okay. I'm going to hand you what's been marked as
12 Exhibit 2, and I'll leave this up here - - -

13 A Okay.

14 Q Because I don't want to take it. Can you tell the
15 Court what Exhibit 2 is?

16 A These are the approved budgets and minutes from 2010
17 to 2014.

18 Q Okay.

19 A Is that right? I'll check. 2015, forgive me, yes.

20 Q And do these appear to be the budgets that are in the
21 business records of the association?

22 A They are.

23 Q Can you take a look at each of those and tell me,
24 does it appear that the board approved the budget
25 every year for 2011 through 2015, the budget for Year

1 2011 and through 2015?

2 A Yes, ma'am. Yes.

3 Q Do any of those assessments - - -

4 A That's right.

5 Q Appear to be - - - Well, let's back up. Let's look

6 at the first budget.

7 A (Indicating yes)

8 Q Can you tell me, the budget for 2011 - - -

9 A For a total - - -

10 Q Do you see where the assessment rate is listed?

11 A Yes.

12 Q Can you point the Court in that direction?

13 A It is on Page 1, and it says Item Number 4010, HOA

14 fees. It shows February, March, April, and May of

15 equal received monies in, fifty thousand two hundred

16 and seventy dollars. So it's that first line item.

17 Q Okay. What about up at the top? Does it say what

18 the annual dues for each lot will be?

19 A It doesn't say what the ann - - - Well, excuse me, it

20 does. Four hundred and forty dollars.

21 Q And are you looking at the upper left-hand corner - -

22 -

23 A I am.

24 Q Of the second page of Exhibit 2?

25 A Yes, I am.

1 Q Okay. Let's go to the budget for 2012.

2 A Got it.

3 Q Do you see the annual dues for 2012 listed there?

4 A I do.

5 Q And what does it say?

6 A It appears they are the same.

7 Q Four hundred and forty?

8 A Yes, ma'am.

9 Q What about for 2013?

10 A They remained the same.

11 Q All right. What about for 2014? Can you tell?

12 A The numbers are the same.

13 Judge Kimball - I don't see the monthly - - -

14 A The association assessments haven't changed.

15 Q Let's back up.

16 Judge Kimball - My question is, where is it

17 shown?

18 Q Mary, when you look under income, Account Number

19 4010, association assessments - - -

20 A (Indicating yes)

21 Q On the 2014 budget, what is that total number at the

22 end?

23 A Two hundred and one thousand dollars and - - - Two

24 hundred and one and eighty.

25 Q Okay. Let's go back to 2013.

1 A (Indicating yes)

2 Q Is that the same number - - -

3 A It is.

4 Q As the 2014?

5 Judge Kimball - So the division is just not
6 there?

7 A It is.

8 Judge Kimball - Right?

9 Ms. Trotter - Yes, Your Honor.

10 Judge Kimball - Okay. Thank you.

11 FURTHER EXAMINATION

12 BY MS. TROTTER:

13 Q Mary, will you look at the minutes for the 2015 dues?

14 A Okay.

15 Q Do you see some indication that the assessments were
16 going to be increased?

17 A Yes.

18 Q And what were they going to be increased by?

19 A Five percent.

20 Q Okay. Can you tell me how the owners are notified
21 every year about the new budget and the assessment
22 rate?

23 A They receive annual meeting notices that let them
24 know that we'll be discussing the forthcoming budget
25 year, so they receive that via US mail. Also, the

1 budgets are available for them online, as are the
2 minutes, and so that's - - - That's accessible for
3 all of the homeowners to see.

4 Q When is the budget usually established?

5 A Octo - - - Well, we start working on it in July, and
6 it's usually October, November.

7 Q And when you say that notice is sent out and it's
8 posted online, how close to approving the budget do
9 you normally send that stuff out?

10 A We send the annual meeting notice out between fifteen
11 and forty-five days before the meeting takes place,
12 which takes place the second week in February, and
13 the meeting - - - But the budget is actually posted
14 online probably within two weeks after the budget is
15 approved.

16 Q And does every member of the community have access to
17 that online portal?

18 A They do, unless an account is in arrears. They can't
19 see their specific account if they're in collections.
20 But everyone has access to the covenants, to the
21 governing documents, and to the budgets and minutes.

22 Q Okay. Do you know if the association also sends out
23 payment reminders to owners?

24 A Yes, we do.

25 Q Once that budget is approved?

1 A Yes.

2 Ms. Trotter - Okay. Your Honor, that's all that
3 I have for this witness at this time.

4 Judge Kimball - All right. Mr. McDonnell?

5 Mr. McDonnell - Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. MCDONNELL:

8 Q Just one moment, please. Ms. Thaxton, on the budgets
9 for 2010, '11, and '12, you noted that there was a
10 column that said, annual dues, X amount?

11 A (Indicating yes)

12 Q Correct?

13 A (No response)

14 Q You have to answer yes or no, so the - - -

15 A Yes, sir.

16 Q I'll hand you the minutes from December 5, 2013 for
17 the 2014 budget discussion, and ask if you see any
18 such figure on that statement?

19 A No, sir.

20 Judge Kimball - This would be what - - - What
21 Bates stamp number, please, Mr. McDonnell?

22 Mr. McDonnell - It - - -

23 Judge Kimball - It is 105?

24 Mr. McDonnell - 96, Your Honor - - - Or 98 and
25 99 are the actual budgets.

1 Judge Kimball - Okay, hang on. All right. I'm
2 getting there. Okay. I'm sorry. Go ahead.

3 FURTHER EXAMINATION

4 BY MR. MCDONNELL:

5 Q That was it for that. Part of that same document are
6 the minutes from - - - I don't know the - - -

7 A They took close - - -

8 Q Dates of these minutes, because there isn't a date on
9 here. I'll hand you what I have attached to it, the
10 2015 budget, and ask if you can tell from this
11 document when that meeting was held?

12 A Prior to February 3rd, 2015.

13 Q So was it held in 2015 or 2014?

14 A Customarily, it's handled - - - Excuse me, forgive
15 me. January 7th, 2015 is the most recent available
16 date, so it was - - - The meeting took place in 2014.

17 Q How can you tell from that document?

18 A Because customarily, the meetings take place - - -

19 Q I didn't ask you customarily.

20 A (Indicating yes)

21 Q I asked if you can see anything on that document that
22 indicates the date that meeting was held?

23 A No, sir.

24 Q Look at the budget for that - - - Now, I believe
25 attached to that document is the budget for 2015.

1 A (Indicating yes)

2 Q Does it have any number for annual dues on that
3 budget?

4 A It doesn't have the specific annual dues for - - -
5 for each individual, no, sir, but it has the total
6 annual accounts.

7 Q Do you have a copy of any documents sent to Mr.
8 Nadeau concerning these assessments?

9 A I do not have them in my possession, sir.

10 Q And then the 2011 - - - Referring to the 2011 meeting
11 minutes, which is Bates Number nine - - - Page 91, I
12 believe that shows that the budget was approved by
13 email?

14 A Yes, sir.

15 Q Is there any provision in the declarations allowing
16 for approval by email?

17 A Yes, sir.

18 Q I'm going to hand you a copy of what's been marked as
19 Plaintiff's Exhibit Number 1, and ask if you'll let
20 me know where in the declaration there's approval by
21 email.

22 A It - - -

23 Judge Kimball - Can I ask a question while she's
24 looking?

25 Mr. McDonnell - Yes, sir.

1 Judge Kimball - The caption at the top says,
2 Knightsbridge POA Meeting Minutes, as does - - -
3 And that's true for '10, '11 - - - '10 and '11.
4 Is this the entire POA or just the board?

5 FURTHER EXAMINATION

6 BY MR. MCDONNELL:

7 Q I'll ask you. On these meetings that we have the
8 minutes from, are they not just a board meeting?
9 A They are the executive and - - - the executive
10 sessions of the board meetings, as well as the - - -
11 If there were any guests there, they would have had a
12 open meeting and then a closed meeting.

13 Q And at the closed meeting - - - You said just the
14 executive meeting, which is normally just the
15 officers, correct?

16 A Yes, sir.

17 Q And so these minutes are just from the executive
18 committee meeting, not from - - -

19 A Well, it's - - - it's a - - -

20 Q A full board meeting?

21 A It is a full board meeting, sir. They have a closed
22 meeting with the membership - - - with the board
23 present, the entire board present. They call it an
24 executive session just because it's closed, because
25 they're discussing confidential information about

1 collections and assessments - - -
2 Q Is it - - -
3 A And such.
4 Q Is the budget approved in this closed session?
5 A Yes, sir.
6 Q I'm sorry. Going back to my - - -
7 A Thank you.
8 Q If I can remember my - - - Yeah, the email.
9 Judge Kimball - I'm sorry.
10 Q Will you look in the declaration, and let us know
11 where that provision for voting by email is?
12 A If it's not included in this, it may be included in
13 the bylaws, sir.
14 Q I think that's my copy there.
15 A Yes, sir.
16 Q Thank you. Now you said, I believe, that the notice
17 of - - - I thought you said the annual meeting?
18 A (Indicating yes)
19 Q Was sent out fifteen to forty-five days?
20 A Yes, sir.
21 Q The annual meeting is actually in February, correct?
22 A Yes, sir.
23 Q So the meeting you're talking about the notification
24 is a February meeting, correct?
25 A Yes, sir.

1 Q There's also been some late fees charged, correct, on
2 - - -
3 A To the best of my knowledge, yes.
4 Q On whatever account might be late?
5 A Yes.
6 Q Where is the authority for late fees?
7 A It's in the declarations and covenants.
8 Q Where is the authority for the amount of - - -
9 A Eighteen. It's in the declarations and covenants.
10 Q I believe that's interest, correct?
11 A Late fees and interest charges. The late fees should
12 be established in - - - either in the declarations
13 and covenants or in the bylaws.
14 Q Do you see them anywhere in the declaration, the
15 amount of the late fee? I mean - - - Yeah, the late
16 fee.
17 A It states late fees, but it doesn't give a specific
18 amount.
19 Mr. McDonnell - If I may, just a minute, Your
20 Honor.
21 Judge Kimball - (Indicating yes)
22 FURTHER EXAMINATION
23 BY MR. MCDONNELL:
24 Q And I just wanted to make sure that also - - - When
25 you talked about the notice of the annual meeting and

1 providing the budget meeting online for members to
2 see - - -

3 A Yes, sir.

4 Q Again, that was for the February meeting, correct?

5 A Yes, sir. That's the annual - - - That's the annual
6 meeting notice.

7 Mr. McDonnell - Thank you, Your Honor. That's
8 all I have.

9 Judge Kimball - Any redirect?

10 Ms. Trotter - Yes, please, Your Honor.

11 FURTHER EXAMINATION

12 BY MS. TROTTER:

13 Q Mary, let's look at the 2014 budget.

14 Ms. Trotter - Your Honor, may I approach the
15 witness?

16 Judge Kimball - Ma'am?

17 Ms. Trotter - May I approach the witness?

18 Judge Kimball - Certainly.

19 Ms. Trotter - I'm going to hand her a
20 calculator.

21 Judge Kimball - You don't have to ask.

22 FURTHER EXAMINATION

23 BY MS. TROTTER:

24 Q For the clarity of the record, we are looking at
25 Exhibit 2. That is Bates labeled page eighty - - -

1 I'm sorry, Page 98. I believe your earlier testimony
2 was that the annual assessment is established by
3 taking the total figure listed under 4010,
4 association assessments, and dividing it by the total
5 number of lots in the community?

6 A Yes.

7 Q Do you know how many lots there are in Knightsbridge?

8 A One moment, please. Four hundred and fifty-seven
9 units.

10 Q And you did that by working backwards?

11 A Yes, ma'am.

12 Q All right. Let's look at - - -

13 Judge Kimball - I'm sorry. She said four
14 hundred and fifty-seven units.

15 A Four hundred and fifty-seven lots, sir.

16 Judge Kimball - So there are four hundred and
17 fifty-seven lots?

18 A Yes, sir.

19 Judge Kimball - All right.

20 FURTHER EXAMINATION

21 BY MS. TROTTER:

22 Q Let's look at the part of Exhibit 2 that's labeled
23 Page 105. That is the 2013 budget. I believe that's
24 the last budget that we have that actually breaks out
25 the annual dues as four hundred and forty dollars?

1 A (Indicating yes)

2 Q Do you see a line item on there that says, total
3 units?

4 A Four hundred and fifty-seven.

5 Judge Kimball - What page?

6 Ms. Trotter - Page - - -

7 Judge Kimball - The Bates stamp.

8 Ms. Trotter - 105.

9 Judge Kimball - Okay. And where's the number of
10 units?

11 Ms. Trotter - Directly underneath the months - -
12 -

13 Judge Kimball - I see.

14 Ms. Trotter - Listed at the top.

15 Judge Kimball - Okay.

16 FURTHER EXAMINATION

17 BY MS. TROTTER:

18 Q And, Mary, I think you've already done that math, but
19 that math works out for 2014, correct?

20 A Yes, ma'am.

21 Q Two thousand - - - I'm sorry. Two hundred one
22 thousand and eighty dollars divided by four hundred
23 and fifty-seven units is an annual assessment of four
24 hundred and forty dollars?

25 A That is correct.

1 Q Okay. When we look at the 2015 minutes, which is
2 Bates labeled 100, there is an indication that the
3 annual dues are going to increase by five percent.
4 Is that right?

5 A Yes, ma'am.

6 Q Would I be correct in assuming it's increasing from
7 2014, so the 2015 will be five percent higher?

8 A Yes, ma'am.

9 Q Can you do the math for me and tell me what the
10 assessments would be for 2015, either by a five
11 percent increase or with the budget that's attached?

12 A Forgive me. I'm finding the budget.

13 Q Okay.

14 A Four hundred and sixty-two dollars per unit - - - per
15 lot.

16 Q Okay. Still looking at that same stapled packet,
17 Plaintiff's 101 Bates stamp, is there a date on that
18 budget?

19 A December 10th, 2014.

20 Q Does that date help refresh your memory or help you
21 answer Mr. McDonnell's question about when the budget
22 approval meeting would have been?

23 A The budget approval meeting would have taken place in
24 November.

25 Q Okay. How do you know that?

1 A Because when I looked at the minutes, found the
2 minutes, they were dated specifically on the file
3 description as November meeting.

4 Q Okay. And is that typical for the annual - - -

5 Mr. McDonnell - Objection, Your Honor. I
6 believe that would be hearsay. She's testifying
7 from a file that's not here for a date that
8 she's already testified she didn't know and
9 couldn't tell from the documents presented to
10 the Court.

11 Judge Kimball - What part is hearsay?

12 Mr. McDonnell - The November - - -

13 Judge Kimball - From the time she said November?

14 Mr. McDonnell - Yes, sir.

15 Judge Kimball - Ms. Trotter, I'm going to ask
16 you, for one, to move that thing up to there - -
17 -

18 Ms. Trotter - Okay.

19 Judge Kimball - So I can see both of you all the
20 time. There, stop right there. All right.

21 Now, lay a foundation for her testimony. Go
22 back and ask it again - - -

23 Ms. Trotter - Sure.

24 Judge Kimball - And lay a foundation, if you
25 can.

1 FURTHER EXAMINATION

2 BY MS. TROTTER:

3 Q Ms. Thaxton, did I - - - How did you get these
4 documents to me?

5 A I looked at our shared file online at the office, as
6 well as the Knightsbridge website..

7 Q And these shared files, what are they for Kuester?
8 How does Kuester use them?

9 A They're all the documentation for the communities,
10 all of the governing documents, everything associated
11 with the - - - with the operations of the community..

12 Q And how do things get added to that shared file?

13 A When you create a document, you save them to that
14 specific drive.

15 Q When you say you, who would be saving things to these
16 files?

17 A Myself, the collections department, the CSMs, anyone
18 who has access to the Kuester network.

19 Q What's a CSM?

20 A Community support manager.

21 Q So an employee of Kuester?

22 A Yes.

23 Q Okay. Why would they save them to this shared file?
24 Does Kuester keep the business records for the
25 association?

1 A That's one of - - - That's our - - - one of our
2 primary responsibilities.

3 Q So if someone wanted - - - For example, in this
4 litigation, I asked you to gather several documents
5 for me. Where did you go look?

6 A I went to the shared drive and pulled those
7 documents. I can also go to - - - Those that are in
8 paper form, we store those documents, and then there
9 was also documents available on the Knightsbridge
10 website.

11 Q And when you went and looked at this, what I assume
12 is a long list of documents in this computer file,
13 how did you find what was marked as Plaintiff's
14 Exhibit 100 (sic)?

15 A I looked at all of the minutes for 2014 and found
16 these minutes there.

17 Q And what were they called in your system?

18 A In the system, they would be November - - - This
19 particular file would be called November meeting
20 minutes, board meeting minutes.

21 Q And does that mesh with what's on this paper? It
22 looks like the next meeting was in January, with an
23 annual meeting in February?

24 A That is correct.

25 Judge Kimball - Now, Mr. McDonnell, your

1 objection was to what testimony?

2 Mr. McDonnell - The November - - - Specifically,
3 the November date. Her earlier testimony was,
4 from the document itself that she presented into
5 evidence, she could not tell when that meeting
6 was held.

7 Judge Kimball - Right.

8 Mr. McDonnell - Now all of a sudden, she's
9 saying that it's in this computer record that
10 they didn't bring with them. So I'm objecting
11 to it as hearsay.

12 Judge Kimball - Well, I think that there has not
13 been a foundation laid to establish her position
14 and authority with respect to the business
15 records of the company. Thus, there's no
16 foundation laid for her to testify to that.

17 Ms. Trotter - Okay.

18 FURTHER EXAMINATION

19 BY MS. TROTTER:

20 Q Ms. Thaxton - - -

21 Judge Kimball - I sustain the objection.

22 Q Ms. Thaxton, when is the first installment for the
23 annual dues due? Do you know?

24 A They are due the first of February.

25 Q Okay. When you look at this meeting notice, does it

1 indicate when - - -

2 Mr. McDonnell - I'm sorry - - -

3 Q The next meeting will be?

4 Mr. McDonnell - Your Honor, I hate to interrupt,
5 but which meeting are we talking about?

6 Ms. Trotter - Plaintiff's 100.

7 Mr. McDonnell - Thank you.

8 Judge Kimball - 100? You mean Page 100?

9 Ms. Trotter - Yes. Exhibit 2, PLF 100.

10 Judge Kimball - Thank you.

11 Ms. Trotter - Sorry.

12 FURTHER EXAMINATION

13 BY MS. TROTTER:

14 Q Does it indicate when the next board meeting will be?

15 A January 7th, 2015.

16 Q Mr. McDonnell had some questions for you about these
17 minutes. And when I say, these minutes, I mean
18 everything in Exhibit 2. What kind of meeting, was
19 it an annual meeting of the members or a board
20 meeting, that each of these minutes is taken on?

21 A Those are the board meeting minutes.

22 Q Okay. You also talked about the annual meeting
23 notice, and I want to clarify. When you set - - -
24 When the board establishes the budget, is that budget
25 mailed out? What happens with that budget? How do

1 the members first get notice of it?

2 A The budg - - - It is mentioned - - - It is stated

3 specifically in the meeting notice that they will be

4 reviewing the budget for the current - - - for - - -

5 for the upcoming year, and that the - - - The budget

6 is made available to them online.

7 Q Do you wait to put the budget online until you send

8 out the annual meeting notice, or do you do that

9 ahead of time?

10 A We post it as soon as it's completed, as soon as it's

11 approved.

12 Q All right. I'm going to hand you - - -

13 A Within two weeks. Excuse me, I'm sorry.

14 Q I'll ask you if you recognize that document.

15 A Yes, ma'am.

16 Q Can you tell me what it is?

17 A These are the bylaws of the Knightsbridge POA.

18 Q And how did I get these?

19 A We - - - Kuester provided them to you.

20 Q Does Kuester maintain a copy of these for the

21 association?

22 A We do.

23 Q Is that part of their job as the management company

24 for Knightsbridge?

25 A Yes.

1 Q How would Kuester get a copy of the bylaws?

2 A They are provided to us when we take the account from
3 one management company to the next. They are also
4 available through York County, where they are
5 registered.

6 Q Okay.

7 Judge Kimball - Where what?

8 A Where they're - - - Where they're filed, in the
9 county where they're filed.

10 Q Do you see any indication on the copy that I've
11 handed you that these are filed?

12 A Excuse me one moment. I'm reading this. I do not
13 see the stamp on it for the filing.

14 Q But in any event, when Kuester takes over the
15 management of a community, the board of directors
16 will provide these to Kuester?

17 A Yes.

18 Q Would you ever use these as the community manager for
19 Kuester?

20 A Yes.

21 Q In what circumstances might you use these?

22 A The Article 3, membership, place of meeting, the
23 annual meetings, the quorum, the notice of meeting,
24 proxy information, the specific powers of the board
25 of directors, about the officers and committees,

1 everything about the assessments, amendments. It's -
2 - - It's all of it, but maybe a few little sections.

3 Q When Kuester gets a copy of these bylaws, what would
4 the property manager do with them?

5 A We read them.

6 Q How would Kuester maintain them? Would they save
7 them to a computer file, stick them in a drawer?
8 What would they do?

9 A If we have a paper copy of it, we file it in the - -
10 - in a box available to the association membership
11 whenever they request it. But we also keep an
12 electronic copy of it on file.

13 Q And is that something that Kuester does regularly for
14 every association that it manages?

15 A Yes.

16 Q And is it something that they've specifically done
17 for Knightsbridge?

18 A Yes.

19 Q If you were to get a new community as a property
20 manager, would you be responsible for getting the
21 bylaws?

22 A Yes. That's part of the responsibility of - - - of
23 Kuester.

24 Q And you would be responsible for uploading them to
25 the electronic file?

1 A If not me, then one of my coworkers would, yes.

2 Q Okay. And how does it get uploaded to the shared
3 file, the electronic file?

4 A We scan it, and then we save it specifically to the
5 shared file.

6 Ms. Trotter - Your Honor, at this time, I would
7 move the bylaws into evidence as Plaintiff's
8 Exhibit 8.

9 Judge Kimball - Any objection?

10 Mr. McDonnell - Yes, sir.

11 Judge Kimball - What?

12 Mr. McDonnell - The witness testified that these
13 are supposed to be recorded. There's no
14 indication on the copy I have that they've ever
15 been recorded with any county. Without a copy
16 that has been recorded, I'd object to it. It's
17 not authentic.

18 Judge Kimball - Well, I'll overrule that
19 objection. I don't know that bylaws have to be
20 recorded.

21 Mr. McDonnell - I don't either, but the witness
22 testified to that.

23 Judge Kimball - Well, she did, and mine are not
24 - - - They don't show any stamp. But I'll
25 overrule that objection. So what number?

1 Ms. Trotter - Eight.

2 Judge Kimball - All right. These will be marked
3 then as Exhibit 8, Plaintiff's Exhibit 8.

4 Whereupon - A document was marked as Plaintiff's
5 Exhibit Number 8.

6 FURTHER EXAMINATION

7 BY MS. TROTTER:

8 Q Mary, can you turn to Page 7 of Plaintiff's Exhibit
9 8?

10 A (Indicating yes)

11 Q Actually, strike that. Can you turn to Page 10 of
12 Plaintiff's Exhibit 8? Look at Section 12.

13 A Yes.

14 Q Does that section indicate any method by which the
15 board may take an action without having a meeting?

16 A The directors shall have the right to take any action
17 in the absence of a meeting which they could take at
18 a meeting by obtaining the written approval of all
19 the directors.

20 Ms. Trotter - Your Honor, that's all that I have
21 at this time.

22 Judge Kimball - Thank you, ma'am. Do you want
23 to step - - -

24 Mr. McDonnell - Your Honor, if I might, could I
25 have recross?

1 Judge Kimball - There wasn't anything new.

2 Mr. McDonnell - Yes, sir. The bylaws were brand
3 new.

4 Judge Kimball - I'm sorry. You're correct. Go
5 ahead.

6 Mr. McDonnell - Thank you.

7 FURTHER EXAMINATION

8 BY MR. MCDONNELL:

9 Q Do you still have a copy of the bylaws?

10 A I do.

11 Q Okay. Would you look in there and find any section
12 in that that would allow for a thirty dollar late
13 fee?

14 Court Reporter - And, I'm sorry, you said thirty
15 dollar?

16 Mr. McDonnell - Yes, ma'am. I'm sorry.

17 Court Reporter - Thank you.

18 A It does not.

19 FURTHER EXAMINATION

20 BY MR. MCDONNELL:

21 Q Okay. Also on Page 10 again, Section 12, action
22 without a meeting, you just read that section?

23 A (Indicating yes)

24 Q Does that have anything in there about voting by
25 email?

1 A No, sir.

2 Q And does it have a process by which there is written
3 approval required from all the directors to have such
4 a meeting - - - action without a meeting?

5 A Obtain the written approval of all the directors.

6 Q And I'm going to refer back to the board meeting
7 minutes of December 13th, 2010. I believe that is
8 the meeting where they voted on the budget by email
9 supposedly?

10 A (Indicating yes)

11 Q You have to - - - I'm sorry. You have to answer yes
12 or no.

13 A Yes.

14 Q Thank you. Is there any written documentation
15 attached to that showing approval of all the
16 directors for such a vote?

17 A There is not any attachment to it, no.

18 Mr. McDonnell - Thank you. If I can have just a
19 second, Your Honor. That's all I have, Your
20 Honor.

21 Judge Kimball - Thank you, ma'am. You may step
22 down. Ms. Trotter, call your next witness.

23 Ms. Trotter - Thank you, Judge. We call Roberta
24 Whitner.

25 Judge Kimball - Ms. Whitner?

1 per unit, I guess.

2 Q All right. When we talked about - - - Sorry. I want
3 to look at it to make sure I quote the right exhibit.
4 When you talked about Exhibit 4, you said it began in
5 May of 2013?

6 A Yes.

7 Q Can you explain to the Court why it started in May of
8 2013?

9 A This would have started in May of 2013, after we were
10 apprised of the bankruptcy filing.

11 Q Do you know when the defendant filed bankruptcy?

12 A November of 2012.

13 Q Okay. How do you know that?

14 A I know it from examining the account and actually
15 seeing the notes of the account, that he filed
16 bankruptcy in November of 2012.

17 Q And what happened in May of 2013 that prompted you to
18 enter all of those charges that are listed on Exhibit
19 4?

20 A Well, what we would have done is, after we would - -
21 - After we were apprised of the bankruptcy filing, we
22 would split the account between the pre- and post-
23 petition accounts. So essentially, he would have two
24 accounts, two account ledgers. All the charges post-
25 petition filing, post-petition bankruptcy filing,

1 will be a list - - - will be listed as the post-
2 petition account, i.e. Exhibit 4. You know, all of
3 the information here is after filing bankruptcy.

4 Q Okay. When you look at Exhibit 4, there are several
5 line items that say May of 2013. Is there some way
6 on that statement that you can tell what those
7 charges are for?

8 A Yes.

9 Q And what do you look at to figure out what those
10 charges are for? Where should Judge Kimball be
11 looking?

12 A On the left side, I guess, under code - - - Oh, I'm
13 sorry. There's two - - - There's two places you can
14 look. The coded items are the name of the fees, and
15 the memo line is the status of the account. The
16 correlating fees are the events that occur with that,
17 that line item.

18 Q Okay. So let's look at the memo.

19 A (Indicating yes)

20 Q The first line is thirty-seven sixty-five. Can you
21 tell me what that's for?

22 A That's the prorated assessment for December of 2012.

23 Q And why did you prorate that assessment?

24 A There was a bankruptcy filing in November of 2012, so
25 the proration of that for the annual dues began in

1 A Yes.

2 Q The next one for one ten, is that the assessment as
3 well?

4 A Yes.

5 Q What is the - - - Strike that. I'm sorry. Do you
6 see any payments listed on Exhibit 4?

7 A Yes. There is a payment in the amount of one hundred
8 and ten dollars. That was received on March 4th,
9 2014. Then another payment of one hundred and ten
10 dollars for March 11, 2014, and then a final payment
11 received April 14, 2014 in the amount of a hundred
12 and ten dollars.

13 Q To your knowledge, did the defendant make any
14 payments to Kuester between November of 2012 and May
15 of 2013?

16 A May of 2013? No. 2012 to 2013? No.

17 Q If the defendant had made any payments, would they be
18 listed on that pre-bankruptcy account ledger, or
19 would they be listed on the post-bankruptcy account
20 ledger that is Exhibit 4?

21 Mr. McDonnell - Your Honor, I apologize, but I'm
22 not sure which one - - - If we're going by the
23 exhibit number, it would help me a lot knowing
24 which accounting we're talking about.

25 Ms. Trotter - Four.

1 Q 85.

2 A Oh. The date on that is April 4, 2011.

3 Q Okay. Does the address block that is printed on the

4 statement appear to be the same address?

5 A Yes.

6 Q Is it formatted the same?

7 A Yes.

8 Q How is it formatted? What's the first line?

9 A The first line is the defendant's name.

10 Q Okay. What's the second line?

11 A The second line is the correlating property address.

12 Q Is that the property in Knightsbridge?

13 A Yes.

14 Q And what's the third and fourth line?

15 A The defendant's mailing address.

16 Q Okay. Let's go to the next set of statements that

17 begins with Plaintiff 32 through 38.

18 A Okay.

19 Q Is the address block on each of those the same as it

20 was on the 2011 statements that we just looked at?

21 A Yes.

22 Q And specifically by saying - - - You mean the

23 property address of the Knightsbridge property is

24 listed as Line 2?

25 A That's correct.

1 Q The same documents I was just referring to, 32
2 through 38 of Exhibit 6, what physical year are those
3 for?

4 A 2012.

5 Q And how many invoices were sent to the defendant?

6 A Four.

7 Q I'm going to hand you - - - Did the defendant ever
8 respond to any of those statements?

9 A No, not to my knowledge.

10 Q Did he ever make a payment?

11 A No.

12 Q Let me rephrase the question. Did he make - - -
13 Well, strike that. I'm going to hand you what's been
14 marked as Plaintiff's Exhibit 7. Do you recognize
15 that document?

16 A Yes.

17 Q What is it?

18 A This is the final notice of delinquency that is sent
19 to the owner prior to turning the account over to the
20 attorney to file a lien.

21 Q And how is that statement addressed - - - or that
22 letter? I'm sorry.

23 A To the owner's mailing address.

24 Q Does it have any mention of the Knightsbridge
25 property in the actual address block?

1 A Not in the address block, no.

2 Q Okay. Did Kuester ever receive any of those - - -
3 The 2012 statements or Exhibit 7, were any of those
4 returned by the post office as undeliverable?

5 A 2012? No.

6 Q Did you review the account notes in preparation for
7 today?

8 A Yes.

9 Q If Kuester gets mail returned, what do they do?

10 A We would send it to a corresponding forwarding
11 address that we have on file.

12 Q Do you make a note anywhere that mail was returned?

13 A Yes.

14 Q Where would you put that?

15 A In the correspondence notes within the case account
16 in the case management system.

17 Q Are you aware of any statements that were returned as
18 undeliverable by the post office on Mr. Nadeau's
19 account?

20 A Yes. There was a statement returned, I believe, in
21 2006 where, you know - - - Or thereafter, there was
22 correspondence with the owner calling in to advise us
23 that he was renting this property, and I believe
24 there was returned mail in 2013, I believe. I don't
25 know offhand. I apologize for that, but I am certain

1 of the 2006 return mail notification.

2 Q And are you certain there was no returned mail in
3 2012?

4 A Yes.

5 Q When did the association decide to take legal action
6 in this matter?

7 A July 2012.

8 Q Okay. And what did you do?

9 A We've been - - - sent your office a referral,
10 indicating that there is a delinquent owner, and
11 provided an account statement and the last fifteen-
12 day demand letter that was sent to the owner.

13 Judge Kimball - Can you speak up just a little
14 bit, please, ma'am?

15 A Oh, I'm sorry.

16 Judge Kimball - You're soft-spoken.

17 A Okay.

18 Ms. Trotter - Nobody's ever told me I had that
19 problem.

20 Judge Kimball - Repeat your last answer, please.

21 A Okay. Prior to turning the account over - - - or
22 sending the account to your - - - to your office, we
23 would, you know, send along with - - - Via email, we
24 would send the account statement, as well as the
25 final demand notice that was sent to the owner.

1 missed that.

2 A Can I - - - Can I clarify?

3 Ms. Trotter - It's okay.

4 FURTHER EXAMINATION

5 BY MS. TROTTER:

6 Q Take a look at what's been marked as Exhibit 5. It's
7 this, Exhibit 5. What date does that statement end
8 at?

9 A July 1st, 2012.

10 Q Okay. Would this be about the time that you referred
11 Mister - - - the defendant's account to legal for a
12 lien?

13 A That's correct.

14 Q What did he owe the association at that time?

15 A Six hundred and thirteen dollars and ten cents.

16 Q Okay. Do you know what the association's fee
17 agreement is with me regarding legal fees for filing
18 a lien?

19 A Yes. For filing a lien, the legal fees are four
20 hundred and twenty-five dollars.

21 Q Do you know what all of that includes?

22 A It will include reviewing the - - - the file,
23 reviewing the account statement, the delinquency
24 notice. I believe that also includes filing a
25 cancellation of lien should the owner reinstate the

1 Nadeau or Nadeau?
2 Mr. Nadeau - Nadeau.
3 Judge Kimball - Nadeau?
4 Mr. Nadeau - Yes, sir.
5 Judge Kimball - Doe. That's right. That's what
6 I said the first time. If you will come around,
7 please, and raise your right hand.

8 Whereupon, Paul Nadeau, having been first duly sworn, was
9 examined and testified as follows:

10 Judge Kimball - Have a seat. Ms. Trotter?

11 Ms. Trotter - Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. TROTTER:

14 Q Mr. Nadeau - - - or Nadeau, you had a zero dollar
15 balance with the association before the beginning of
16 2012. Is that right?

17 A Yes.

18 Q Did you pay your 2012 assessments - - -

19 A Yes.

20 Q Before their due date?

21 A Ah, no.

22 Q Why not?

23 A Besides helping my - - - I took time out of work,
24 lost the job, to help my father care for my mother
25 who was passing, or was ill. So I was unemployed at

1 the time and unable to make the full assessments.

2 Q Okay. I'm going to hand you what's been marked as
3 Plaintiff's Exhibit 7. Do you recognize that
4 document?

5 A Yes.

6 Q Does it have a balance due on it?

7 A It - - - A current amount due. It doesn't have a
8 balance due. It has a current amount due.

9 Q Okay. What is the current amount due?

10 A Five hundred and thirty-nine ninety.

11 Q And what's the date on that letter?

12 A 5-2-2012.

13 Q Does the letter give you a certain time frame that
14 you have to pay this balance before legal action?

15 A It says within fifteen days.

16 Q Okay. So is - - -

17 A However, it says, if you are unable to pay the
18 balance due in full, you may contact Kuester
19 Management, and I did contact Kuester Management.

20 Q What date did you contact Kuester Management?

21 A It would have been after I received the notice. So
22 it would have been after it was mailed to me, and I
23 received it. I can't tell you which actual date
24 because that was back in 2012.

25 Q When you were first turned over to my office, you

1 informed my office that you never received any of
2 those notices, isn't that correct?

3 A No. I - - - I contacted Kuester - - -

4 Q That wasn't my question. When you contacted my
5 office in the summer of 2012, after receiving a lien,
6 isn't it true that you told my office and me
7 specifically that you never received any notices for
8 your 2012 assessments?

9 A I did not receive any notices of the 2012 assessment.
10 You didn't ask me if I received the delinquency
11 notification. But I did not receive the assessment
12 fees that are scheduled to be delivered thirty days
13 before the calendar year in December, which I don't
14 receive from you - - - from Kuester. They have never
15 mailed - - - From 2012 until now, they still haven't
16 mailed me the assessments, so - - -

17 Q You've gotten no notice of what the assessments are
18 for 2015?

19 A No, ma'am, and I have not gotten them for 2016 as
20 well.

21 Q Okay. Hold on just a second.

22 A And - - -

23 Ms. Trotter - Hold on. You already have a copy,
24 correct?

25 Mr. McDonnell - Yeah. Thank you.

1 FURTHER EXAMINATION

2 BY MS. TROTTER:

3 Q I'm going to hand you four pages. Tell me if you
4 recognize those.

5 A It says, April dues. That was sent to me in March,
6 when I was supposed to be notified before the end of
7 December of the previous year.

8 Q So your testimony just a minute ago that you've never
9 been notified of the assessments for 2012 was
10 incorrect. Is that right?

11 A This - - - This just tells me that there's an
12 assessment that's due. It does not tell me what
13 year. It does not give me any information that,
14 according to the bylaws - - -

15 Q Mr. Nadeau - - -

16 A I'm supposed to receive this before the end of the
17 calendar year.

18 Q Is that your - - -

19 A This - - -

20 Q Hold on. Is that your email address?

21 A I don't know. It doesn't have an email address. It
22 just says, Paul.

23 Q Is that a copy of what you produced to me in
24 discovery?

25 A I - - - I - - - It could be. I - - - I don't have

1 the copy.

2 Q Does it look like what you've produced to me - - -

3 A It looks like - - -

4 Q In discovery?

5 A One of the notices I received.

6 Q Okay. So you admit you received this document?

7 A I did receive one in - - - this year, but I'm not
8 sure.

9 Q Let me hand you a different copy. Do you recognize
10 that document?

11 A Yeah, I do recognize it.

12 Q Is that your email address?

13 A That is my email address.

14 Q What's the date on it?

15 A March 2015. It's the first time I'm notified - - -

16 Q Thanks for answering my question.

17 A Of anything.

18 Ms. Trotter - Your Honor, at this time, we would
19 like to move all of these emails into evidence
20 as Exhibit Number 9.

21 Judge Kimball - Are these the ones you've handed
22 me?

23 Ms. Trotter - I have - - -

24 Judge Kimball - Are they the same thing?

25 Ms. Trotter - I'm sorry, Your Honor. I only

1 have one copy of this one. This one just lists
2 out Mr. Nadeau's email address.

3 Judge Kimball - All right. Any objection, Mr.
4 McDonnell?

5 Mr. McDonnell - No objection, Your Honor.

6 Judge Kimball - No objection. They're admitted.

7 Whereupon - Documents were marked as Plaintiff's
8 Exhibit Number 9.

9 Mr. McDonnell - I'm sorry. Is that Number 8?

10 Ms. Trotter - Yes.

11 Judge Kimball - It will be 9.

12 Ms. Trotter - Oh, 9. I'm sorry. Your Honor, if
13 you'll give me just a second. I think I've
14 mixed up the exhibits with my other stuff, and I
15 don't want to lose them. Here we go.

16 FURTHER EXAMINATION

17 BY MS. TROTTER:

18 Q So to recap, you admit that you've received what has
19 been marked as Exhibit 7?

20 A In 2012, yes, I did receive something, and I - - -

21 Q Thank you.

22 A Called Kuester, per the - - - per the letter.

23 Q Did you make any payments to the association in two
24 thousand - - -

25 A I made a payment to you.

1 Q Mr. Nadeau - - -

2 Ms. Trotter - Your Honor, could you direct the
3 witness to let me finish my question?

4 Judge Kimball - Mr. Nadeau - - -

5 A Yes, sir.

6 Judge Kimball - Or Nadeau, permit the lawyer to
7 finish her questions, and I'll see that you are
8 entitled to finish your answers. However, I
9 want your answers to be responsive. Go ahead.

10 Ms. Trotter - Thank you, Your Honor.

11 FURTHER EXAMINATION

12 BY MS. TROTTER:

13 Q Prior to July the 1st, 2012, you did not make any
14 payments to the association for your 2012
15 assessments. Is that true?

16 A I believe so. Your Honor, can I clarify one of my
17 answers?

18 Judge Kimball - Yes, sir.

19 A This letter was included in a package you mailed to
20 me after July.

21 Q Okay. So you did not contact Kuester - - -

22 A I did call Kuester.

23 Ms. Trotter - Your Honor - - -

24 Judge Kimball - Let her finish her question, Mr.
25 Nadeau.

1 FURTHER EXAMINATION

2 BY MS. TROTTER:

3 Q You did not contact Kuester before the deadline
4 listed in the letter that is marked as Exhibit - - -
5 Judge Kimball - 7.

6 Q 7, isn't that true?

7 A I contacted Kuester, but there was a copy of this in
8 the package you mailed to me as well.

9 Judge Kimball - That wasn't the question, Mr.
10 Nadeau. Listen to the question.

11 Q Did you contact Kuester and request alternate payment
12 arrangements before the deadline listed in Exhibit 7?

13 A Yes.

14 Q How did you know what the assessments were if nobody
15 sent you notice?

16 A I called on them.

17 Q Did the association grant you alternate payment
18 arrangements?

19 A Not that I'm aware of. Mr. Kuester, I believe,
20 mentioned he would bring it up at the next board
21 meeting.

22 Q And you don't have anything in writing about this - -
23 -

24 A No, ma'am.

25 Q Alleged conversation, do you?

1 A No, ma'am.

2 Q And when did this conversation with Mr. Kuester
3 happen?

4 A It would have been about the time I received the
5 notice, and I believe I asked Mr. Kuester if he would
6 sign - - - I may have even emailed him, if he would
7 sign any of the notifications or the fee schedules to
8 me certified mail, because there was a problem with
9 mail.

10 Q Let's talk about that. I'm going to hand you an
11 email that I'll represent that you produced to me,
12 and tell me if you recognize it.

13 A Yes. This email is to Bryan Kuester.

14 Q Who sent that email?

15 A I would have.

16 Q And what year was that sent?

17 A 2010.

18 Q Does that appear to be a true and accurate copy of
19 the email that you produced to me?

20 A No. It's missing another page.

21 Q What page is missing? What information is missing?

22 A Well, it's missing - - - I don't know what's on Page
23 2, but there would be another page to that email.

24 Q Okay. Let's look at just the reply part from Bryan.
25 Does that appear to be an accurate and complete copy

1 of his reply to you?

2 A Yes.

3 Ms. Trotter - Your Honor, we would move this
4 email into evidence as Exhibit Number 10.

5 Judge Kimball - Mr. McDonnell?

6 Mr. McDonnell - Object on relevancy, Your Honor.
7 This is 2010. It's already been testified to
8 there's nothing before 2012. I - - -

9 Judge Kimball - What's the relevance?

10 Ms. Trotter - The reference to certified mail.

11 Mr. Nadeau's argument - - -

12 Judge Kimball - I haven't - - - Hold on a
13 second. I haven't read it. All right. I'm
14 sorry. Now, tell me what you - - - What is this
15 saying?

16 Ms. Trotter - I believe that Mr. Nadeau has,
17 several times, indicated that the association
18 should send him mail via certified mail. We're
19 entering this email to establish that he was on
20 notice as early as 2010 that the association did
21 not send certified mail. It also, to me, is a
22 little bit - - - Mr. Nadeau has testified about
23 a conversation he had with Bryan Kuester, in
24 which he asked for alternate payment
25 arrangements, and he talks about sending

1 certified mail. I'd also like to question the
2 witness about whether he could be mistaken about
3 the date of that conversation with Bryan
4 Kuester, in light of the fact that it seems to
5 be an identical conversation in 2010.
6 Judge Kimball - Let me see if I can clarify
7 something for myself. Based on the testimony so
8 far, it appears that Mr. Nadeau - - - And he
9 doesn't deny that he was in default in the
10 making of payments about what remained to
11 Knightsbridge Association. Is that accurate,
12 Mr. McDonnell?
13 Mr. McDonnell - He said he made no payments in
14 2012, Your Honor.
15 Judge Kimball - That's right.
16 Mr. McDonnell - Yes, sir.
17 Judge Kimball - Thus, he was in default. He
18 certainly has - - - As we've already said, the
19 bankruptcy has extinguished whatever debt he had
20 through almost all of 2012. I've already said
21 that my present understanding, subject to being
22 disabused of the notion by counsel, is that the
23 homeowners' association's lien, nevertheless,
24 survives.
25 Ms. Trotter - (Indicating yes)

1 Judge Kimball - So what difference does it make
2 about all of this?

3 Ms. Trotter - The discovery that I have received
4 from Mr. Nadeau is that he shouldn't have to pay
5 attorney's fees. He never should have been in
6 legal - - -

7 Judge Kimball - If he was in default and the
8 covenants and/or bylaws that are in evidence
9 provide that he has an obligation to, what he
10 thinks doesn't matter.

11 Ms. Trotter - Well, I agree with you. I'm just
12 trying to refute the information that we've
13 received in - - - the arguments that we've been
14 given notice of in discovery.

15 Judge Kimball - Well, maybe I need to ask Mr.
16 McDonnell. What is the legal argument, Mr.
17 McDonnell, about all of this?

18 Mr. McDonnell - About the certified mail?

19 Judge Kimball - No, no, no. About default,
20 attorney's fees - - -

21 Mr. McDonnell - Okay. One - - -

22 Judge Kimball - And the obligations that are
23 created under the - - - I'm not talking about
24 amounts now.

25 Mr. McDonnell - No, sir. One - - -

1 Judge Kimball - The obligations under the
2 covenants and bylaws.

3 Mr. McDonnell - There's nothing as far as
4 obligations because the assessments have never
5 been properly instigated. They've never been
6 properly assessed. Therefore, there are no
7 assessments due from - - - you know, at all.
8 The late fees were not properly assessed because
9 they were made up by Kuester, so Kuester can - -
10 -

11 Judge Kimball - I'm not addressing whether or
12 not - - - I said I wasn't addressing any amount
13 of anything.

14 Mr. McDonnell - Well, he denies - - -

15 Judge Kimball - How can he deny that he was in
16 default and that he owes something?

17 Mr. McDonnell - Because the assessments have
18 never been properly - - - They've never complied
19 with their own declaration in assessing, making
20 the assessment, period. So there are no
21 assessments due, period. So he couldn't be in
22 default. He made no payments. That's what he
23 testified to, but he's not in default because
24 there was nothing actually due because they
25 didn't follow their own process.

1 Judge Kimball - You're referencing, for example,
2 the business of using email?

3 Mr. McDonnell - No, sir. I'm - - -

4 Judge Kimball - Or voting by email?

5 Mr. McDonnell - No, sir. I will use that. But
6 actually their process is, they have to have a
7 meeting where they approve the assessment.

8 Because there's been no proof that they actually
9 proved the assessment, except the passing of a
10 budget. Then they have to give written notice
11 thirty days before the end of the calendar year.

12 That's in their declaration. They have never -

13 - - They have given no proof whatsoever that
14 they have given written notice - - -

15 Judge Kimball - Let's - - - Let's - - -

16 Mr. McDonnell - Of each year's assessments.

17 Judge Kimball - That's your legal argument?

18 Mr. McDonnell - Yes, sir.

19 Judge Kimball - I want to know what I need to -
20 - - what I need to know about the facts of the
21 case all the way back to 2010.

22 Mr. McDonnell - I'm having a - - -

23 Judge Kimball - I'm asking Ms. Trotter.

24 Mr. McDonnell - I'm sorry, Your Honor.

25 Ms. Trotter - Judge, Mr. Nadeau just testified -

1 - - I mean, my understanding of the defendant's
2 argument was that they were never in default, so
3 there should have been no carryover balance
4 after the bankruptcy, and the lien should have
5 been released, and we never should have been
6 here. If that's not the argument that they're
7 going to make today, I'm happy to move on.

8 Judge Kimball - I find that he was in default.
9 Now, whether he owes anything or not is a
10 different story.

11 Mr. McDonnell - If I might, Your Honor, by
12 default, you mean he did not make payments?

13 Judge Kimball - Yes.

14 Mr. McDonnell - Okay. I'm - - -

15 Judge Kimball - He's admitted that.

16 Mr. McDonnell - I just wanted to clarify.

17 Judge Kimball - He's in default.

18 FURTHER EXAMINATION

19 BY MS. TROTTER:

20 Q You paid the annual assessment for 2011, correct?

21 A As far as I can recall, yes.

22 Judge Kimball - What does that matter? I'm
23 losing my patience.

24 Ms. Trotter - Because he has stated that they
25 never sent notice of the assessments. The

1 argument that Mr. Nadeau made to me was that the
2 way the address block was printed on the
3 statement caused him never to get it. However,
4 he paid the 2011, which was formatted exactly
5 the same. So I am attempting to refute this
6 argument that the assessments were never
7 properly levied because no notice was sent. So
8 even if he didn't make payment - - -

9 Judge Kimball - Go ahead.

10 Ms. Trotter - They weren't properly levied.

11 Judge Kimball - Go ahead.

12 A Can I - - - Can I add to my answer?

13 Judge Kimball - No, sir. She hasn't asked you a
14 question yet.

15 FURTHER EXAMINATION

16 BY MS. TROTTER:

17 Q I'm going to hand you Exhibit Number 6. Can you tell
18 me - - -

19 Judge Kimball - Did you - - - And I'm sorry, I
20 did gum up the works. Did you offer this, this
21 email, into evidence?

22 Ms. Trotter - I'll strike it, Your Honor, in
23 light of the - - - Thank you.

24 FURTHER EXAMINATION

25 BY MS. TROTTER:

1 Q Exhibit Number 6, do you see the statement that's
2 listed as March of 2011?

3 A I do.

4 Q How is your address printed on that statement?

5 A It's got - - - It's malformed. It's two addresses
6 for one city. That doesn't have a 727 West Cheval
7 Drive in Shelton. So I would say that's a malformed
8 mailing address.

9 Judge Kimball - Mr. Nadeau, that is plainly
10 wrong. Go ahead and ask the question.

11 FURTHER EXAMINATION

12 BY MS. TROTTER:

13 Q Was your mailing address in March of 2011, 36 Richard
14 Boulevard, Shelton, Connecticut, 06484?

15 A Yes, it was.

16 Q And to your knowledge, did you pay the assessments
17 for 2011 within the 2011 year?

18 A (No response)

19 Q You did, didn't you?

20 A I did pay them, but I - - - I believe it was through
21 the - - - The amount that I received was from the
22 online service that I was locked out of in 2012.

23 Q You paid in 2011. Can you flip to the 2012 statement
24 of Exhibit Number 2? It is Plaintiff's 32 through
25 38. It's printed in very tiny letters at the bottom.

1 Those have the same address block as the 2011
2 statements, right?

3 A Yes.

4 Q But it's your testimony that you didn't get any of
5 these because they included a RE line of 727 Cheval
6 Drive?

7 A I didn't get the notices, but that doesn't mean I
8 didn't - - - I - - - I did talk to somebody that
9 lived there, and I asked them what the assessments
10 were, because I did not want to be delinquent.

11 Q For 2012?

12 A On - - - On - - - On some of it, yes. I can't tell
13 you exactly which year, because when - - - Once the
14 bankruptcy process - - - I didn't - - - I didn't
15 focus on bankruptcy - - - or pre-bankruptcy.

16 Q So is it your testimony here today that you knew the
17 assessments were one ten for February, March, April,
18 and May of 2012?

19 A No. No, I didn't know. I asked the person who - - -

20 Q Who did you ask?

21 A I asked a neighbor of mine.

22 Q When did you ask them?

23 A I can't recall.

24 Q Would it be before or after you got - - -

25 A I can't recall.

1 Q The letter from me?

2 A It - - - I can't recall. Because there was a four
3 hundred and forty dollar payment I made to you
4 towards the lien.

5 Q Okay.

6 A And I don't know if that was in the conversation,
7 because you sent me an email with attachments that
8 had the bills all out. So, I mean, I can't testify
9 one hundred percent. Because in the email that you
10 did mail to me, you included statements like this.
11 So I can't say I didn't receive them because you sent
12 them to me after I was already delinquent, not before.
13 - - -

14 Q Okay. Okay.

15 A I was delinquent.

16 Q Did you - - -

17 Judge Kimball - Let him finish his answer.

18 Q I'm sorry. I'm sorry. Did you receive - - -

19 Judge Kimball - Did you finish your answer?

20 A Yes, Your Honor.

21 Ms. Trotter - I'm sorry. I was going to try to
22 clarify my question.

23 FURTHER EXAMINATION

24 BY MS. TROTTER:

25 Q I understand that your testimony is that I sent you

1 copies of these, so you technically received them.
2 My question is limited to, did you receive the
3 January, February, March, and April statements for
4 2012 prior to my office contacting you with a lien?
5 A I can't testify to that, because I got them with your
6 letter and they were in your email. There was a
7 whole email conversation that went between you and I,
8 when you were at the other law firm, that - - - You
9 know, it went back and forth. So, you know, to - - -
10 To say whether or not I received these, I don't
11 recall receiving these until you sent me the
12 attachments. Then in your email, you pointed out the
13 thing about the addresses, and I had indicated in my
14 email that I had talked to the post office, and you -
15 - - and you - - - And I had made a phone call to the
16 post office, but - - - (No further response)
17 Q Okay. Let's look at what has been marked as
18 Plaintiff's Exhibit 7. Do you see anything wrong
19 with that address block?
20 A This one here?
21 Q (Indicating yes)
22 A No.
23 Q So the association did send you notice in 2012 that
24 you owed assessments?
25 A I - - - I would have to look at the paperwork that

1 came with the lien. I can't - - - I can't tell you
2 yes or no, because it wasn't that I got one single
3 communication. I received - - - I was served with
4 lien paperwork, so I - - - I just - - - I - - - I
5 don't know.

6 Q Mr. Nadeau, you did not make any payments to the
7 association in the year 2013, did you?

8 A I was notified of the delinquency - - -
9 Judge Kimball - The question - - - Listen to the
10 question.

11 A No, sir. No. No, ma'am.

12 Q Thank you. In 2014, you did make several payments,
13 didn't you?

14 A Yes, ma'am.

15 Q And I want to give you the right number. I see on
16 Exhibit 4 - - - And I'll bring it back to you, so you
17 can look at it. Two payments in March of 2014 of one
18 hundred and ten dollars each?

19 A That's correct. When the VA paid me what they owed
20 me, I paid the association that amount.

21 Q And I see a payment in April of 2014 for one hundred
22 and ten dollars?

23 A Again, the VA, when I got the money - - - my
24 disability from the VA, I made the payments.

25 Q Did you make a payment for May of 2014?

1 A Not that I recall.

2 Q Okay. I'm going to hand you Exhibit 3. I see five
3 different ten-dollar payments. Is that right?

4 A Correct.

5 Q Why didn't you pay all of the assessment for 2014?

6 A Because I was not being notified by the board of what
7 the upcoming assessment fees were, so that I could
8 budget for them. That when I was making payments, I
9 wasn't getting receipts. I worked with you, or tried
10 to work with you, in verifying the debt. When - - -
11 And it got to a point where, you know, I'm making
12 payments, but I'm not receiving any statements saying
13 that the payments are being applied. In - - - And
14 the ten-dollar ones, I was acting in good faith. I
15 was making something, and when - - - When my father
16 passed away, the bank closed out my account under a
17 mistake, and it stopped the September payment, which
18 was - - - they sent out in October. But at which
19 point, you had - - - you had - - - We had begun this
20 process where you had sent something to my wrong
21 address, requesting I either make payment
22 arrangements or I pay the full amount. I was making
23 the ten-dollar payments. However, I was out of town
24 because my father had passed away.

25 Q So you didn't finish paying the 2014 assessment?

1 A After I was served with the - - - the civil suit, I
2 was advised that I would have to pay - - -

3 Judge Kimball - What's the answer to the
4 question?

5 A Oh.

6 Judge Kimball - Listen to the question.

7 A No, I did not finish paying the assessments.

8 FURTHER EXAMINATION

9 BY MS. TROTTER:

10 Q And you did not make any payments in 2015. Is that
11 right?

12 A I was - - - I did not make payments in 2015.

13 Q You referenced earlier that you had been locked out
14 of your account - - -

15 A Yes, ma'am.

16 Q Online. Isn't it true that you were merely locked
17 out of the payment portal? That you could still
18 access all of the minutes and budgets?

19 A No. When I called Kuester for support, they said I
20 was locked out because I was delinquent, and that my
21 account was transferred to the debt collector, which
22 was you or - - - or was your previous firm, and that
23 I would have to follow up with the attorney and - - -
24 to find out what I could do for the payments. I sent
25 a letter to the previous law firm, who then tracked

1 you down. Then I was notified of what the
2 assessments for - - - were six months after I should
3 have been notified the first time.

4 Q So you were notified in 2013 of what the assessments
5 were?

6 A Yes, I was, after I received a letter in June.

7 Q So your testimony earlier that you had no idea what
8 the 2013 assessments were, that's not true?

9 A I - - - I can guess what the est - - - esti - - - The
10 - - -

11 Q No, wait a minute. You just told me that you were
12 notified months after they were due by my office,
13 right?

14 A They - - - They didn't appear to change. They were
15 four forty for several years, so I assumed that four
16 forty was what the assessment was. So I made
17 payments in good faith, because I was not being
18 notified, and I attempted to contact Kuester, because
19 that's the management company. I attempted to
20 contact the board of directors. I was notified by
21 Kuester that they would forward my letter to the
22 board of my association, which I was a homeowner and
23 a member of, because I was - - - I was out of town at
24 the time.

25 Q I don't even remember what my question was. Did you

1 contact my office in 2013 to ask what the assessments
2 were?

3 A No. Your - - - Your office was contacted by the
4 previous - - -

5 Q Did you contact - - -

6 A Firm.

7 Q Can I rephrase? Did you attempt to contact me
8 personally?

9 A I - - - I - - - I attempted to contact the law firm
10 that had been assigned the account, which is what
11 Knightsbridge - - - or Kuester told me I had to do.
12 Not you specifically - - -

13 Q Who did you - - -

14 A Just whoever was the case manager on my account.
15 They forwarded it to you. I assumed that if you
16 didn't work there anymore, they would have given it
17 to the next person who took over your account. I
18 wasn't informed that the Knightsbridge account moved
19 - - -

20 Ms. Trotter - Okay. Objection. That answered
21 my question.

22 FURTHER EXAMINATION

23 BY MS. TROTTER:

24 Q I'm going to hand you - - -

25 Ms. Trotter - And, Your Honor, I don't have an

1 extra copy. I apologize. I didn't anticipate
2 this. That was produced by the defendant in
3 discovery.

4 Judge Kimball - Are you going to offer it?

5 Ms. Trotter - Yes.

6 Judge Kimball - He hasn't identified it.

7 Ms. Trotter - I was just giving you a heads up
8 before we started talking about it.

9 FURTHER EXAMINATION

10 BY MS. TROTTER:

11 Q Mr. Nadeau, do you recognize this document?

12 A Yep, I do.

13 Q What is it?

14 A It's the June 4th notification of what I owed - - -

15 Q And what - - -

16 A To Knightsbridge.

17 Q I'm sorry. What year?

18 A 2013.

19 Q Did you receive a copy of that letter?

20 A I believe I did. It was at - - - It was sent to 36
21 Richard Boulevard.

22 Q Is it a true and accurate copy of the letter that you
23 received?

24 Judge Kimball - He's already said he received
25 it.

1 Ms. Trotter - Your Honor, we would like to move
2 it into evidence as Plaintiff's Exhibit - - -
3 Judge Kimball - 11.
4 Court Reporter - 10.
5 Judge Kimball - 10?
6 Court Reporter - Because we didn't mark that
7 last one.
8 Judge Kimball - Oh, we didn't?
9 Court Reporter - No, sir. You gave that back.
10 Judge Kimball - Okay. All right. Thank you.
11 A As a matter of fact, according to this, the
12 assessment - - -
13 Judge Kimball - Hold on a second. Any
14 objection, Mr. McDonnell?
15 Mr. McDonnell - No objection.
16 Judge Kimball - Without objection, that's
17 Plaintiff's Exhibit Number 10, and it is a
18 letter from McCabe Trotter.
19 Whereupon - A document was marked as Plaintiff's
20 Exhibit Number 10.
21 Judge Kimball - What's the date of the letter,
22 please?
23 Ms. Trotter - June 4th, 2013.
24 A As a matter of fact, it notifies me - - -
25 FURTHER EXAMINATION

1 BY MS. TROTTER:

2 Q I haven't asked you any questions. You indicated you
3 had been making payments, and nobody was telling you
4 where they were applied. You had no idea that they
5 were even being applied. Do you see a line item on
6 that letter that says, payments?

7 A I see one from you at McCabe, Trotter, and Beverly.
8 I don't see one from Knightsbridge.

9 Q Had you made anything that's to Knightsbridge as of
10 June - - -

11 A No. I made a payment - - -

12 Q 4th, 2013?

13 A I made a payment to the previous debt collector,
14 which was the firm that you worked at previous to
15 McCabe, Trotter, and Beverly.

16 Q Let me see this, please. Now, I'll have you look at
17 Exhibit 3. Tell me why you don't owe the amount
18 listed there.

19 A This is - - -

20 Q Do you admit that the association - - -

21 A Exhibit - - -

22 Q Has established a - - -

23 Judge Kimball - Let him answer one question at a
24 time.

25 Q Okay.

1 A Exhibit 3, where am I looking?

2 Q The bottom of the statement.

3 A On Page 2?

4 Q (Indicating yes)

5 A Okay. And your question again, please?

6 Q Why don't you owe the amount listed? What charges on
7 here - - - To specify my question, which charges on
8 here do you believe are incorrect?

9 Judge Kimball - That's more than one question.

10 Ask one question at a time.

11 Q Which charges, on Exhibit 3, do you believe are not
12 correct?

13 A What's the previous balance for? There's - - - It
14 has a previous balance, but it doesn't indicate to me
15 any breakdown of what the previous balance of one
16 thousand four hundred and fifty-three dollars is.

17 Q Okay. What else don't you - - -

18 A It indicates to me that on - - -

19 Q Agree with?

20 A I was assessed for the first time for the one hundred
21 and ten, and - - -

22 Q Do you agree with that?

23 Mr. McDonnell - Objection. Objection, Your
24 Honor.

25 Judge Kimball - Yes, sir?

1 Mr. McDonnell - The reason why he doesn't owe
2 these amounts or does owe these amounts is a
3 legal conclusion, and he's not qualified to make
4 a legal conclusion.

5 Judge Kimball - He's been testifying now for
6 quite awhile that he doesn't owe it because - -
7 - for reasons that he thinks are sufficient.

8 I'm going to let him - - - I'm going to receive
9 that testimony. It's a legitimate question, in
10 light of his testimony.

11 FURTHER EXAMINATION

12 BY MS. TROTTER:

13 Q All right. The May 1st, 2014 one hundred and ten
14 dollars, why don't you owe that?

15 A I'm supposed to be notified thirty days before the
16 end of the calendar year. When I get this statement,
17 this is after the - - - the assessments have already
18 gone through. It's notifying me that there are late
19 fees associated with amounts that - - - If I'm
20 notified of them, then I - - - Again, I can budget
21 them, but what - - - What happened here was, I was
22 served the - - - the civil suit in November, and then
23 in - - -

24 Q Can - - -

25 A December, I wasn't issued any notification of what

1 the upcoming assessments were for 2014. How can I
2 pay something that I'm not told what the amount is
3 that's due?

4 Q I just want to clarify. You said you didn't get
5 anything in November or December. What year do you
6 mean?

7 A Two thousand and - - - In - - - In two thousand and -
8 - - In December of 2012, I didn't receive the
9 assessments for 2013 until six months after, which
10 was in your letter. The board - - -

11 Q My question was - - -

12 A The board - - - The bylaws stated I was supposed to
13 receive those - - -

14 Ms. Trotter - Objection. He's not answering the
15 question which is, when he referenced November
16 and December, I just want to know what year
17 we're talking about.

18 A November was when I received the civil suit from you.
19 When I was issued - - - When I was notified - - -
20 Judge Kimball - November of what year?

21 A 2014.

22 FURTHER EXAMINATION

23 BY MS. TROTTER:

24 Q Okay. So how does the November 2014 date affect you
25 paying one hundred and ten dollars in May of 2014

1 (sic)?

2 A December rolled around. There was no notification of
3 what the assessments were. I had the civil suit that
4 was pending, and it was my - - - my - - - my
5 understanding that that would be figured out in the -
6 - - in this matter. I was never provided the
7 notices. So, you know, if - - - If I'm given a
8 statement here that's printed January 7th of this
9 year, but I haven't seen this and I'm - - - I'm being
10 asked right off the cuff to look at something that
11 was created on January 7th, and yet, the history of
12 the payment - - - Or the notification of the fee
13 schedules again, once this came out - - - Once the
14 court case was filed, I stopped receiving - - - I
15 didn't receive any - - - any fee assessments for
16 2014. I haven't received them for 2015, and I
17 haven't received them for 2016. My assumption was
18 that this is going to address that.

19 Q Okay. So you just testified that you didn't receive
20 any statements for 2014. I'd like for you to look at
21 Exhibit 6, which I'm going to hand to you - - -

22 A Excuse me, Attorney Trotter - - -

23 Judge Kimball - No, sir. Let her ask the
24 question.

25 Q Exhibit 6, I'm going to hand it to you. I just want

1 to read the Bates label for everybody, 78, 81, 84,
2 and 87. That goes with this. I don't want to
3 separate them. Take a look at those statements, and
4 tell me what year they are.

5 Judge Kimball - Which exhibit?

6 Ms. Trotter - Exhibit 6.

7 A My fee - - -

8 FURTHER EXAMINATION

9 BY MS. TROTTER:

10 Q What year are they for?

11 A Assessment schedule, not - - - not the - - -

12 Judge Kimball - Listen to the question, Mr.

13 Nadeau. Ask the question.

14 Q What year are the statements for that I just read
15 out? I believe it starts with 78 at the bottom,
16 Plaintiff's 78.

17 Mr. McDonnell - What - - - I'm sorry. What
18 exhibit are we talking about?

19 Judge Kimball - I'm not sure now.

20 Ms. Trotter - Plaintiff's - - - It's Plaintiff's
21 - - -

22 Judge Kimball - I thought she said 6.

23 Ms. Trotter - It's Plaintiff's Exhibit 6. It's
24 the statement - - -

25 Mr. McDonnell - It starts with Page Number 88?

1 Judge Kimball - Bates Number 88.

2 Ms. Trotter - The back of them starts with 78,
3 the last grouping.

4 Mr. McDonnell - I don't have any back of them.

5 A This isn't marked as an exhibit, Attorney Trotter.

6 Ms. Trotter - It was included with the
7 paperclipped copy of Exhibit 6. Your Honor,
8 does your copy include the back of it, the 2014
9 statements?

10 Judge Kimball - I have a Bates Stamp Page 078.

11 Ms. Trotter - Okay. That's what was - - - They
12 were all stapled together.

13 Mr. McDonnell - Oh, okay. I'm sorry.

14 Ms. Trotter - Okay.

15 Mr. McDonnell - My fault, Your Honor.

16 FURTHER EXAMINATION

17 BY MS. TROTTER:

18 Q So Bates Stamp 78, 81, 84, and 87 of Exhibit 6, what
19 year are those for?

20 A Two - - - This package that you've handed me was
21 2011, 2012.

22 Judge Kimball - No, sir. Look at the page
23 numbers that she gave you, and tell her what
24 year the statements - - - they represent.

25 A All right. Your Honor, I see what - - - I see. So

1 88 - - - Could you repeat your question?

2 Judge Kimball - Look, do this. Show him the
3 pages, one by one - - -

4 Ms. Trotter - Yes, Your Honor.

5 Judge Kimball - That you want him to confirm or
6 deny, and let's have him confirm or deny it.

7 Ms. Trotter - I've got it.

8 A I now see it on the bottom.

9 FURTHER EXAMINATION

10 BY MS. TROTTER:

11 Q This is Plaintiff's 78 of Exhibit 6. What year is
12 that for?

13 A 2014.

14 Q Sorry. Plaintiff's 81 of Exhibit 6, what year is
15 that for - - - month and year? I'm sorry.

16 A 2014.

17 Q Is that February?

18 A February. February 2014.

19 Q Plaintiff's 84 of Exhibit 6, is that March 5th, 2014?

20 A March 5th, 2014, correct.

21 Q And Plaintiff's 87 of Exhibit 6, is that April 3rd,
22 2014?

23 A Yes.

24 Q And what does it say right above the date that we've
25 been reading out?

1 A Knightsbridge POA.

2 Q I'm sorry. This right here, in the black.

3 A Billing date.

4 Q And it's your testimony that you were never sent

5 notice of the 2014 assessments?

6 A That's correct.

7 Q I'm going to show you Exhibit 9. Is it still your

8 testimony that you were never sent notice of the 2015

9 assessment?

10 A Email, I received this, yes.

11 Q Okay. Mr. Nadeau, in your bankruptcy - - - Strike

12 that, please. All right. We were going through

13 Exhibit 3.

14 Judge Kimball - Let me stop you. I'm not going

15 to go through - - - I'm not going to permit you

16 to go through, item-by-item, Exhibit 3.

17 Ms. Trotter - I'm not, Your Honor.

18 Judge Kimball - Either that - - - The only way

19 I'll do that is to adjourn, continue this

20 matter, and you'll come back tomorrow.

21 Ms. Trotter - I'm not, Your Honor. I'm going to

22 hit the assessments. That's it.

23 Judge Kimball - I don't want to - - -

24 Ms. Trotter - One question.

25 Judge Kimball - Ask him - - - It's plain to me

1 what he claims. Mr. McDonnell has a legal
2 argument to make that I've got to hear and
3 understand.

4 Ms. Trotter - Okay.

5 Judge Kimball - There's no point in - - - I do
6 not need to receive any more evidence about
7 whether he thinks he owes it or not.

8 Ms. Trotter - Okay.

9 Judge Kimball - He doesn't. He doesn't think
10 it.

11 Ms. Trotter - I was going to say - - -

12 Judge Kimball - I didn't say he doesn't owe it.

13 Ms. Trotter - Yes, Your Honor. Then I have no
14 further questions.

15 Mr. McDonnell - I have no questions, Your Honor.

16 Ms. Trotter - Your Honor, can I make one
17 request?

18 Judge Kimball - Yes.

19 Ms. Trotter - One of my witnesses needs to leave
20 to go pick up her child. Is that okay?

21 Judge Kimball - Certainly.

22 Ms. Trotter - You can go. It's okay.

23 Judge Kimball - No questions?

24 Mr. McDonnell - No, Judge. No questions.

25 Judge Kimball - You may step down, Mr. Nadeau.

1 A Attorney Trotter, do you want these back?

2 Judge Kimball - You need to leave those right
3 where they are.

4 Ms. Trotter - All exhibits stay on the stand.

5 A Okay.

6 Judge Kimball - Anything else from the
7 plaintiff?

8 Ms. Trotter - No, Your Honor.

9 Judge Kimball - All right. Mr. McDonnell?

10 Mr. McDonnell - Yes, sir. Your Honor, I'd move
11 for a directed verdict for a couple of different
12 reasons or a partial directed verdict. One, the
13 only notice of delinquency - - - The final
14 notice of delinquency sent was in May of 2012.
15 They - - -

16 Judge Kimball - It would be helpful if you would
17 refer to an exhibit number.

18 Mr. McDonnell - I'm sorry. Exhibit Number 7,
19 the final notice of delinquency dated May 2nd,
20 2012.

21 Judge Kimball - Yes, sir.

22 Mr. McDonnell - It's been testified that there
23 was nothing owed as of November - - - or
24 December of 2012. Therefore, this letter
25 doesn't effectuate a final notice because, after

1 that, it was deemed current. There was no
2 additional final notice produced by the
3 plaintiff.

4 Judge Kimball - I disagree with that. The
5 reason I do is, as I've already said on the
6 record, while certainly there is no debt due, no
7 money owed by Mr. Nadeau - - - Unless I'm shown
8 otherwise by the law, this notice effects a
9 notice of default that would trigger the filing
10 of a lien. I agree with you. There's no - - -
11 He doesn't owe any money through that - - -
12 through whatever it is, November of - - - most
13 of December, apparently, of 2012.

14 Mr. McDonnell - Yes, sir.

15 Judge Kimball - But I think this notice of
16 default - - - Just dealing narrowly now with
17 this letter, I think this - - - This is a notice
18 of default that triggers their right to claim a
19 lien, regardless of whether he's discharged the
20 debt in bankruptcy.

21 Mr. McDonnell - Secondly, Your Honor, the late
22 fees, there's been no testimony as to how the
23 late fees were determined. There's nothing in
24 the bylaws, nothing in the declaration, nothing
25 to show any determination by the board of

1 directors. So we move to strike all the late
2 fees from any amount due.

3 Judge Kimball - Ms. Trotter, what about that?

4 Ms. Trotter - Your Honor, I believe the
5 declaration, which is Exhibit 1, Page 8,
6 provides that the owner shall pay late charges
7 as have been theretofore established to defray
8 the costs arising of the late payment. Ms.
9 Whitner's testimony was that thirty - - - Ms.
10 Whitner and I believe Ms. Thaxton's testimony
11 was that the thirty dollars was established by
12 the board. It was told to Kuester. Kuester
13 entered it, and - - -

14 Judge Kimball - I don't think she - - -

15 Ms. Trotter - It was charged to the account.

16 Judge Kimball - I don't think she testified that
17 the thirty dollars was established by the board.
18 I don't recall that.

19 Ms. Trotter - I thought I recalled that she did.

20 Judge Kimball - Go ahead. I'm listening.

21 Ms. Trotter - And Ms. Whitner also testified
22 that, in her experience as a collections
23 manager, thirty dollars a month was certainly a
24 reasonable late fee to defray the costs of
25 collection.

1 Judge Kimball - That doesn't make a bit of
2 difference. It doesn't matter what's
3 reasonable. What matters is what they,
4 according - - - in accordance with the bylaws
5 and/or the covenants, lawfully established.
6 Ms. Trotter - Correct, and I think Ms. Whitner's
7 test - - - I only mentioned that because it
8 says, to defray the cost because of late
9 payment. But Ms. Whitner's testimony, I
10 believe, was that the board instructed Kuester
11 on the late fee, and it was entered thereafter.
12 Judge Kimball - I think it's implicit that she
13 believes that the board established it, but
14 there's no proof of it. So I'll strike the late
15 fees. There's no proof of any schedule of late
16 fees. Go ahead, Mr. McDonnell.
17 Mr. McDonnell - And further, Your Honor, there
18 are no assessments due because the board never
19 properly made any assessments. The declaration
20 in Section 7, starting on Page 7 - - -
21 Judge Kimball - Okay. Hang on one minute.
22 Okay. Go ahead.
23 Mr. McDonnell - In Section 7, Page 7, it starts
24 - - - And they say that the board is talking
25 about the annual determination of assessments.

1 They shall do so - - -

2 Judge Kimball - Wait, wait, hold on. Which
3 section? You're in section what?

4 Mr. McDonnell - Section 7, Page 7.

5 Judge Kimball - Page 7?

6 Mr. McDonnell - Page 7, Section 7.

7 Judge Kimball - Record Page Number 125?

8 Mr. McDonnell - Yes, sir.

9 Judge Kimball - All right. The date of
10 commencement of annual assessments?

11 Mr. McDonnell - Yes, sir.

12 Judge Kimball - Go ahead.

13 Mr. McDonnell - The annual assessments provided
14 for herein shall commence on all lots, and it
15 goes on to say the first annual assessment board
16 of directors shall fix the amount of the annual
17 assessment against each lot at least thirty days
18 in advance of each calendar year. Written
19 notice of the annual assessment shall be sent to
20 every owner. If the Court were to review the
21 board minutes that were produced into evidence,
22 all board meetings, except the one we don't have
23 a date for, were in December. By definition,
24 that could not have been done thirty days before
25 the end of the calendar year. There's also been

1 no evidence to show that any written notice has
2 been provided to any of the lot owners. Her
3 testimony was, a budget is passed. One line
4 item in the budget says assessment, and that
5 this is - - - These - - - This is placed on the
6 internet after the board meeting and within a
7 couple of weeks of the annual meeting, which is
8 February of each year. So the assessments were
9 not done according to their own declaration, and
10 it doesn't provide - - - Unless the person - - -
11 Unless the lot owner is otherwise notified or
12 otherwise knows about it, it's just this is when
13 they're supposed to do it. They haven't done it
14 in any of the years. Therefore, there is no
15 assessment due by any of the lot owners, and
16 therefore, there's no assessments due in this
17 case.

18 Judge Kimball - Are you trying to say that
19 there's no - - - In effect, there's no carry
20 forward from last year's - - - from a prior
21 year's proper setting of assessment amounts?

22 Mr. McDonnell - That's correct. Because it
23 says, the board of directors shall fix the
24 amount of the annual assessment against each lot
25 at least thirty days in advance of each calendar

1 year. Not we'll just think about it and say, oh
2 gee, it's the same as last year, so we don't
3 have to worry about it. It is stated, thirty
4 days before the end of each calendar year. All
5 of these meetings, again except for the one we
6 don't have a date for, are in December of the
7 previous year. Therefore, they couldn't have
8 been done thirty days before the end of the
9 calendar year.

10 Judge Kimball - And you're saying, the failure
11 to meet that thirty-day time period, regardless
12 of whether or not written notice was sent, is
13 fatal to the claim?

14 Mr. McDonnell - Correct. I also - - - Our
15 second position is that they didn't send written
16 notice of anything within thirty days of the
17 calendar year.

18 Judge Kimball - What is written notice? If you
19 get a bill, isn't that written notice?

20 Mr. McDonnell - Not - - - You do, but none of
21 these bills are thirty days before the end of
22 the calendar year. They're all in - - - I
23 believe from February - - - Or no. The earliest
24 one is January of one year, February of another,
25 and then they go through April, May, and

1 something like that. But none of them are in
2 December of the previous year. And again, this
3 doesn't say, if you otherwise know. It just
4 says, written notice within thirty days of the
5 calendar year. So there's two stages to that.
6 There's one, they have to assess it within
7 thirty days. They didn't. Then they have to
8 give written notice, which they didn't. So
9 there's no assessment. There's no assessment
10 due. Move to dismiss.

11 Judge Kimball - All right. Ms. Trotter, what
12 about that argument?

13 Ms. Trotter - Well, Your Honor - - -

14 Judge Kimball - As I understand the argument, it
15 is because - - - No, I'm going to say it this
16 way. That the board of the HOA - - - If the
17 board of the HOA does not establish the amount
18 of the annual assessment at least thirty days in
19 advance of each year, they can't charge anything
20 at all, right?

21 Mr. McDonnell - Yes, sir.

22 Judge Kimball - All right. What about that?

23 Ms. Trotter - Well, Your Honor, that's not what
24 the covenants say. It just says that they will
25 fix it. I think that, at best - - -

1 Judge Kimball - No. It says, they shall fix it.
2 Ms. Trotter - They shall fix it. There's no
3 corresponding sentence that says, if they don't,
4 then we will default to the last one, or if they
5 don't, the association won't pay their bills for
6 the coming year. It just says they shall fix
7 it. I think, at best, the defendant has an
8 argument that if it's not fixed thirty days in
9 advance of the calendar year or if he doesn't
10 receive notice thirty days in advance, that he
11 shouldn't be penalized with late fees. Well,
12 the Court has stricken the late fees.
13 Judge Kimball - Well, we're not talking about
14 late fees. We're talking about the right to
15 charge any assessments at all, according to Mr.
16 McDonnell.
17 Ms. Trotter - Correct, Your Honor. My argument
18 would be, there's nothing in the covenants that
19 say, if the board fails to meet that thirty days
20 in advance of each calendar year, that no
21 assessments will be due from every lot owner.
22 What it does say is, the association shall levy
23 assessments to pay the bills of the association.
24 The testimony has - - - that was entered,
25 included budgets showing every line item of

1 where those assessments came from.

2 Judge Kimball - I'm sorry. Say that again,
3 please.

4 Ms. Trotter - The testimony and the budgets
5 entered included line items showing every
6 expense that makes up those assessments. Mr.
7 McDonnell's statement that none of these budgets
8 were before thirty days of the calendar year is
9 also incorrect. Plaintiff's 104 and 105 - - -

10 Judge Kimball - Of which exhibit?

11 Ms. Trotter - Of Exhibit - - - I apologize, Your
12 Honor. The minutes, I believe it's 2.

13 Judge Kimball - 2? The minutes are 2. Yes,
14 ma'am.

15 Ms. Trotter - Plaintiff's 104 and Plaintiff's
16 105, they're it's showing - - -

17 Judge Kimball - Hang on. Somehow or another,
18 they're not in - - - Okay. Here we go. Yes,
19 ma'am. What about that now? Go ahead.

20 Ms. Trotter - The email on the front page - - -

21 Judge Kimball - Yes.

22 Ms. Trotter - Says it's dated November the 28th,
23 2012. It says, attached is the final and
24 approved 2013 budget.

25 Judge Kimball - Okay.

1 Ms. Trotter - That matches the as of 11-28-12
2 date on the attached budget. That's well in
3 advance of thirty days of the calendar year.
4 The testimony was also that the 2015 budget,
5 which is Plaintiff's 100, 101, 102, and 103,
6 that meeting was held in November, which would
7 obviously be more than thirty days before the
8 calendar year. The remaining years were all
9 done in mid or early - - - Well, let me back up.
10 The 2012 budget, which is Plaintiff's 91 - - -
11 Judge Kimball - Go back and tell me what your
12 position is about 101, -2, and -3.
13 Ms. Trotter - The testimony was that this budget
14 was approved in two - - - in November. The
15 budget meeting was in November.
16 Judge Kimball - Okay.
17 Ms. Trotter - This is the one without a date on
18 it.
19 Judge Kimball - All right.
20 Ms. Trotter - Plaintiff's 91, 92, and 93, which
21 is the December 14th, 2011 meeting to approve
22 the 2012 assessments, indicates that the budget
23 was approved via email presumably prior to the
24 meeting. I don't know how you would approve a
25 budget via email at a meeting, so it would have

1 had to have been before that, and the other two
2 are from mid or early December. I would point
3 out that all of these are more than thirty days
4 in advance of the due date of the first
5 assessment, because the testimony has been that
6 the assessments are not due until February of
7 each calendar year. I think the relief
8 requested by the defendant is inequitable and
9 essentially puts form over substance, in that
10 they were not passed thirty days or that there
11 is no proof they were passed thirty days before
12 January 1st of the following year. However,
13 they were passed well in advance of thirty days
14 before the due date of the assessment. So I
15 think equity would favor the association.
16 Particularly in light of the evidence before the
17 Court, that these were actual expenditures made
18 by the association. The other four hundred and
19 fifty-six lots were also assessed these amounts,
20 and presumably, most of the neighbors paid them
21 because - - -
22 Mr. McDonnell - Objection, Your Honor. This is
23 not in evidence at all.
24 Judge Kimball - I understand.
25 Ms. Trotter - My argument was merely that I'm

1 not up here every week seeing you on a
2 Knightsbridge case. But you can review the
3 budgets for the association, and you'll see
4 there's line items for a pool. A pool is a very
5 real expense that the association has had, and
6 that they've paid for without Mr. Nadeau's - - -
7 Nadeau's contribution. The argument that the
8 defendant is making is essentially a
9 technicality. They didn't meet the thirty day
10 calendar year, so my client doesn't have to pay
11 anything. I don't think that that's what the
12 equities would favor in this case.
13 Judge Kimball - Here's what I'm going to do. I
14 believe that the - - - that in some instances,
15 that the board of directors are pretty sloppy in
16 how they do business in accordance with the
17 covenants. My experience has been that every
18 single board of directors is sloppy in how they
19 do business according to the covenants. I've
20 heard plenty of HOA cases in various contexts,
21 but I want to - - - I want to properly consider
22 Mr. McDonnell's argument. Therefore, I want the
23 two of you - - - I want each of you to submit to
24 me a memo on that question, and it needs to go
25 beyond merely the - - - I understand - - - Let

1 me say it that say. I understand that the black
2 letter of contract law says that, you know, if
3 it's plain and unmistak - - - If the language is
4 plain and unmistakable, then that's what the
5 contract means. I understand that. But it does
6 strike me as manifestly inequitable to permit a
7 person to say, I don't owe anything because they
8 didn't form this - - - They didn't notify me of
9 this, of what the assessments would be. Because
10 plainly, the HOA has paid bills. So which is to
11 say, I want each of you to submit me a memo
12 addressing the question of, what happens if they
13 don't strictly comply with the language of the
14 covenants in establishing the assessments
15 according to the language of the covenants?
16 Clearly, they didn't do that. They didn't
17 follow the language. What I'm interested in is,
18 what happens if they don't, the law about what
19 happens if they don't. So that will save you,
20 Mr. McDonnell, from having to go through the
21 sort of basic contract law - - -
22 Mr. McDonnell - Yes, sir.
23 Judge Kimball - That we all understand. So in
24 that connection, what I want to do is, since I'm
25 not going to rule on the motion, I suppose I'll

1 take it under advisement and ask you, do you
2 have any other evidence - - -
3 Mr. McDonnell - No, sir.
4 Judge Kimball - Mr. McDonnell?
5 Mr. McDonnell - No, sir.
6 Judge Kimball - All right. So that will
7 conclude the hearing.
8 Whereupon - The trial was concluded at 4:15 p.m.

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KNIGHTSBRIDGE PROPERTY OWNERS ASSOCIATION, INC. vs. PAUL A. NADEAU
Motion Hearing on 04/20/2016

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

ORIGINAL

4 KNIGHTSBRIDGE PROPERTY)
OWNERS ASSOCIATION, INC.,)

5)
6 PLAINTIFF,)

7 VS)

CASE NO. 2014-CP-46-03819

8 PAUL A. NADEAU,)

9 DEFENDANT.)

10

11

12

13

TRANSCRIPTION OF MOTION TO RECONSIDER BEFORE

14

THE HONORABLE S. JACKSON KIMBALL, III

15

YORK, SOUTH CAROLINA

16

APRIL 20, 2016

17

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19

20

21

22 AUDIO TRANSCRIBED BY: KELLY L. REITER
DALLAS REPORTING, A HUSEBY COMPANY

23

24

25

1 Appearances: For the Plaintiff -

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14 Email: eddiemcdonnell@sclegal.org

15 I N D E X

16 Motion to Reconsider

17 Page 3

1 Hearing proceedings, audio recorded by the Court, at
2 the Master-in-Equity Court, 1 North Congress Street, York,
3 South Carolina, commencing on April 20, 2016. Please note
4 the audio recording did not include the beginning time of
5 the hearing. The Honorable S. Jackson Kimball, III,
6 presiding.

7 * * * * *

8 Judge Kimball - This is Case Number 2014-CP-46-
9 3819, Knightsbridge Property Owners Association,
10 Inc. against Paul A. Nadeau. I hope I've said
11 that right. I know I can get it wrong. Present
12 and representing the plaintiff is Ms. Stephanie
13 Trotter. Also present is Mr. Edwin McDonnell,
14 representing the defendant. This is the
15 defendant's motion for reconsideration of my
16 order.

17 Mr. McDonnell - Yes, sir.

18 Judge Kimball - Mr. McDonnell - - -

19 Mr. McDonnell - Thank you, Your Honor. We ask
20 the Court to reconsider a couple of findings of
21 fact that the Court's conclusions were based on.
22 The first finding of fact was that the 2013
23 budget was approved on November 28th, 2012. As
24 we pointed out in the trial, that was done by
25 email, and there's no provision in the contract

1 or in the bylaws that provide for any such vote.
2 Therefore, we ask the Court to find that in fact
3 there was never an approval, a proper approval,
4 of the 2013 budget. The Court did say that the
5 other budgets for the years - - -

6 Judge Kimball - Wait, wait, hold on one second,
7 Mr. McDonnell.

8 Mr. McDonnell - Yes, sir.

9 Judge Kimball - I do not - - - He owed
10 assessments for May - - - from May 2013 through
11 January 2016. Is that right?

12 Mr. McDonnell - Yes, sir. I believe that is
13 correct.

14 Judge Kimball - All right. All right. Go
15 ahead.

16 Mr. McDonnell - The 2013 budget, the Court found
17 that in the other years, the budgets were not
18 established within thirty days of the calendar
19 year. Of course, when I objected to that
20 because we disagreed with that, the Court found
21 that the noncompliance by the board, by not
22 having it done within thirty days of the
23 calendar year, is inconsequential. Of course,
24 we'd ask the Court to reconsider that. Because
25 there's a direct breach of the contract, the

1 original declarations and the bylaws, it can't
2 be inconsequential. Therefore, we'd ask the
3 Court to reconsider that.

4 Judge Kimball - What harm did he suffer?

5 Mr. McDonnell - The improper assessment.

6 Judge Kimball - What harm did he - - -

7 Mr. McDonnell - The improper - - -

8 Judge Kimball - What harm or prejudice did he
9 suffer?

10 Mr. McDonnell - Improper assessments, Your
11 Honor. Again, the improper assessment of - - -
12 the improper imposition of those assessments.

13 Once the contract is breached, equity can't - -
14 - can't change that. It's as - - -

15 Judge Kimball - Well, equity, that's exactly
16 what equity can do.

17 Mr. McDonnell - Again, we're asking the Court to
18 reconsider because the case has shown that
19 equity can't - - - It can't do - - - undo a
20 noncompliance of a contract. That's not what
21 equity is - - - is - - - is to do. In fact,
22 Regions Bank on Page 5 - - - Or Page 5, the way
23 I have it printed out. It's Page 355 of the
24 Southeast version. The rule that equity
25 considers as done that which should be done

1 cannot be invoked to create a right contrary to
2 the agreement of the parties. The agreement is
3 that those assessments be done within thirty
4 days of the calendar year. So they're - - -

5 Judge Kimball - Let me stop you, Mr. McDonnell.

6 Mr. McDonnell - Yes, sir.

7 Judge Kimball - What damage did Mr. Nadeau, or
8 Nadeau, suffer as a result of any breach of
9 contract, even if we assume there was a breach
10 of contract?

11 Mr. McDonnell - By being imposed and being
12 charged and being foreclosed upon for not paying
13 assessments that weren't valid. They weren't -
14 - - They didn't comply with their contract, and
15 now they're saying they enforced the contract.
16 If it's outside of the contract, if it's ultra
17 vires action by the board, they don't count.
18 Equity can't undo those. If there was any rules
19 and they bent the rules or did something of that
20 nature, maybe. But if they could just outright
21 not-comply with the contract, equity can't undo
22 that.

23 Judge Kimball - So - - -

24 Mr. McDonnell - It should not be allowed to undo
25 that.

1 Judge Kimball - So the argument is that he
2 doesn't have to pay things that he had agreed to
3 pay before, and had paid before, because the
4 budget wasn't approved in accordance with the
5 strict language of the covenants or bylaws?

6 Mr. McDonnell - Yes, sir, exactly. Because they
7 made them outside the power of the board,
8 therefore, they were in nullity. So we ask the
9 Court to reconsider that.

10 Judge Kimball - All right.

11 Mr. McDonnell - Thank you.

12 Judge Kimball - Ms. Trotter?

13 Ms. Trotter - Your Honor, as to the finding of
14 fact about the 2013 budget, I would object.
15 That's not listed in the defendant's motion to
16 reconsider. The motion to reconsider merely
17 says restrictions or contractual - - - It talks
18 about the Regions Bank, the act of fixing
19 assessments is a matter of contract, ultra
20 vires, you can't fix with equity. So we were
21 not on notice today that the defendant was
22 contesting that finding of fact from Your Honor.
23 Nonetheless, I believe we covered it at the
24 trial, that the defendant did not present any
25 evidence that the budget was not properly

1 adopted for any of the relevant years. I
2 believe the plaintiff's memorandum submitted
3 after trial, as well as Your Honor's order,
4 covers everything appropriately. The Regions
5 Bank case clearly says equity can - - - can fix
6 an irregularity. The association is not
7 intending to do anything that wasn't authorized
8 by the covenants. They set the assessments.
9 They set the assessments more than thirty days
10 in advance of the due date. The defendant had
11 plenty of notice of the assessments, plenty of
12 opportunity to pay the assessments. The
13 defendant did not contest the line items in the
14 budget, did not contest the manner of
15 calculating the assessments under the budget.
16 He admitted he paid them here and there, partial
17 payments. He had no answer for why partial
18 payments were made if the assessments that were
19 levied were, in fact, in nullity. The Seabrooke
20 case is not applicable. The Seabrooke case, the
21 association said, we know we're supposed to
22 charge assessments under this rate tied to the
23 tax value, but we just think it's a better
24 business method to charge it as a fixed rate.
25 So we're going to use our business judgment to

1 do the exact opposite of what the covenants say
2 we have to do. The Court said, you don't have
3 the power to calculate assessments in a manner
4 different than what the restrictions say. In
5 this case, it just said, the board shall set the
6 budget. There was no penalty. There was no, if
7 the board doesn't, none of the expenditures are
8 approved. I think the Court was correct in
9 holding that the defendant suffered no harm.
10 Certainly, a foreclosure can't be prejudiced or
11 harm that you suffered for not paying
12 assessments that were levied by the association.
13 For these reasons, we would ask the Court to
14 uphold your original ruling.
15 Judge Kimball - Mr. McDonnell, any reply?
16 Mr. McDonnell - Well, yes, sir, just briefly.
17 Just going back to the Seabrooke case, Your
18 Honor, the courts specifically said a system of
19 charges that violates the requirement cannot be
20 defended on the grounds that it is a reasonable
21 alternative. There's not even a reasonable
22 alternative here. It's just that they didn't
23 comply with the bylaws and until - - -
24 Judge Kimball - I distinguished the Seabrooke
25 case myself. I read it thoroughly. It has to

1 do with charging assessments that they weren't
2 authorized to charge at all. In this case, the
3 assessments that were charged were well within
4 that which was authorized.

5 Mr. McDonnell - That's where we disagree with
6 the Court.

7 Judge Kimball - Well, you just said - - -

8 Mr. McDonnell - If they're not - - -

9 Judge Kimball - Listen to me.

10 Mr. McDonnell - Yes, sir.

11 Judge Kimball - You just said that's because a
12 budget wasn't approved on time.

13 Mr. McDonnell - Yes, sir.

14 Judge Kimball - Well, that's different from
15 saying they charged something that they were not
16 authorized to charge - - -

17 Mr. McDonnell - Yes, sir.

18 Judge Kimball - To compare it with the Seabrooke
19 case. When did Mr. Nadeau first assert this
20 defense? Not until he came to you?

21 Mr. McDonnell - As far as I'm aware, that's
22 correct, Your Honor.

23 Judge Kimball - So he sat on this all these
24 years without ever raising that defense. You,
25 as a good lawyer, looked at it all and presented

1 what you believed to be, in good faith, a
2 defense. But it's something that he never
3 raised in failing to pay his dues.
4 Mr. McDonnell - Again, Your Honor, I can't say.
5 Judge Kimball - Oh, I know you can't.
6 Mr. McDonnell - I can't say yes because I don't
7 remember, so - - -
8 Judge Kimball - Well, you weren't involved. I
9 think that is - - - were, at best, unclean
10 hands, to add to what I've already said, and an
11 estoppel. He's received the benefits of the
12 functions that the HOA performs on behalf of all
13 the residents for those years, and not until he
14 has a lawyer who reviews this thoroughly and
15 raises this defense. Certainly, I have no
16 objection to your raising the issue. But he
17 raised it for the first time when they
18 foreclosed because he hadn't paid. So I think
19 that, in and of itself, is a matter of equity.
20 Unclean hands is certainly an equitable defense.
21 Estoppel is certainly an equitable defense, or
22 sword as the case may be, and I'm going to stick
23 by my ruling.
24 Mr. McDonnell - Yes, sir.
25 Judge Kimball - Just as is.

1 Mr. McDonnell - Yes, sir.

2 Judge Kimball - Thank you. I'll do an order.

3 Mr. McDonnell - Thank you.

4 Judge Kimball - Actually, Ms. Trotter, I want
5 you to email me an order in Word format,
6 including the findings that I made with respect
7 to estoppel and unclean hands and add to that
8 waiver.

9 Mr. McDonnell - Your Honor, for the record, I
10 apologize. I'm not arguing with your decision
11 obviously, but I just want to put on the record
12 - - -

13 Judge Kimball - You're entitled to argue with my
14 decision. I'm not - - -

15 Mr. McDonnell - But the unclean hands and the
16 estoppel were not brought up by the plaintiff,
17 and I have to at least object to that being a
18 part of your decision, just for a potential
19 appeal on the - - -

20 Judge Kimball - I - - - I am raising that.

21 Mr. McDonnell - I'm not arguing with the Court
22 at this point.

23 Judge Kimball - That is raised by me for the
24 further - - -

25 Whereupon - The audio recording abruptly stops.

1 Please note the audio recording did not include
2 the time of conclusion.

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EXHIBIT 1

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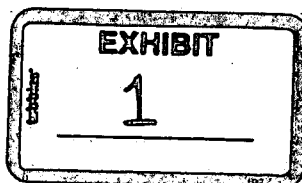
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KNIGHTSBRIDGE MASTER DECLARATION INDEX

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RBCWM:35353_1/6-20-96



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STATE OF SOUTH CAROLINA

COUNTY OF YORK

KNIGHTSBRIDGE
MASTER DECLARATION

This MASTER DECLARATION of Covenants, Conditions, Restrictions and Easements (herein "Declaration") is made and entered into to be effective the 19TH day of JUNE, 1996 by The Howey Co., Inc., a North Carolina corporation duly licensed to do business in the State of South Carolina (herein "Declarant"), and the undersigned owners and holders of Notes (herein "Lenders") secured by mortgages on some or all of the "Master Tract" hereinafter defined.

RECITALS

A. The "Master Tract", as said quoted words are used herein, shall mean all of that property (consisting of approximately 253.91 acres) described in Deeds to 184 Joint Venture recorded in Book 666 at Page 190, Book 676 at Page 84 and Book 676 at Page 80 in the Office of the Clerk of Court of York County, South Carolina (herein "Public Registry"), which descriptions are incorporated herein by reference.

B. Declarant acquired an approximately 56.17 acres portion of the Master Tract from 184 Joint Venture by Deed recorded in Book 649 at Page 215 in the Public Registry, which description is incorporated herein by reference.

C. Declarant intends to develop said portion of the Master Tract as well as additional portions of the Master Tract it hereafter acquires according to a uniform scheme of development to be known as KnightsBridge. Said Development will be for single-family residential lots.

D. Said development will be done in phases. The initial phase is known as KnightsBridge Phase 1, Map I and Map 2 as shown on plats thereof recorded in Plat Book A-88 at Pages 3 and 4 in the Public Registry, which plats are incorporated herein by reference and all properties included therein are collectively referred to herein as "Phase 1".

E. Declarant reserves the right (but not the obligation) to annex and subject additional phases of KnightsBridge to the provisions of this Declaration in the manner hereinafter set forth.

F. Lenders deem the adoption of this Declaration to be in their respective best interest and do authorize the Declarant to annex and subject additional portions of the Master Tract described in their respective mortgages to the terms hereof without the necessity of Lenders executing any further documents with respect thereto.

NOW, THEREFORE, pursuant to the matters set forth in the RECITALS which form an integral part hereof and in consideration thereof, Declarant and Lenders do by these presents hereby subject Phase 1 to the terms of this Declaration and declare that subject to certain rights of amendment, as hereinafter described, all of the Property within Phase 1 shall be held, sold and conveyed subject to the covenants, conditions, restrictions, charges and liens hereinafter set

forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of KnightsBridge and the provisions of this Declaration shall be binding upon all parties having or acquiring any right, title or interest in Phase 1 and any other property hereafter annexed and subjected to the terms hereof in the matter hereinafter set forth.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to KnightsBridge Property Owner's Association, Inc., a South Carolina non-profit, non-stock, membership corporation, its successors and assigns.

Section 2. "Bylaws" shall mean the Bylaws of the Association.

Section 3. "Declarant" shall mean and refer to The Howey Co., Inc. and any successor entity by way of name change, merger, incorporation or consolidation. "Declarant" shall also mean any person or entity to whom the rights of the Declarant herein have been assigned by The Howey Co., Inc. or its successor provided said Assignment is made by written instrument and recorded in the Public Registry.

Section 4. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, shown upon any recorded subdivision map subjected to the terms of this Declaration. In the event any Lot is increased or decreased in size by resubdivisions, through recordation of new subdivision plats, or otherwise, any such newly platted Lot shall thereafter constitute a Lot for the purpose of this Declaration. In the event two or more Lots are combined to form one building Lot, the resulting building lot shall constitute one "Lot" for all purposes hereof.

Section 5. "Map" or "Plat" shall mean and refer to that Map of "KnightsBridge - Phase 1, Maps 1 and 2" recorded in Map Book A-88 at Pages 3 and 4 in the Public Registry and all other subdivision Maps of KnightsBridge subjected to the terms of this Declaration in accordance with the terms set forth in ARTICLE II hereof.

Section 6. "Master Tract is defined in paragraph A of the RECITALS.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 9. "Property" shall mean and refer to all real property within the boundaries of all Lots, abutting streets, easement areas and common areas as shown on each Map now or hereafter subjected to the terms of this Declaration.

Section 10. "Common Area" shall mean all real property depicted as such on the Maps. Common Areas shall exclude all Lots and all public streets shown on the Maps.

ARTICLE II ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation. Additional portions of the Master Tract as well as other real estate contiguous thereto may be brought within the scheme of this Declaration and subjected hereto.

Section 2. Procedure - Time Frame - Power-of-Attorney. Declarant reserves the right, but shall have no obligation, to subject said additional properties to this Declaration by filing one or more "Supplemental Declarations". Provided, all such Supplemental Declarations must be filed for record no later than fifteen (15) years after the date of the filing for record of this Declaration. By the execution of this instrument, Lenders do by these presents hereby irrevocably designate and appoint for themselves and their successors in interest the Declarant as their attorney-in-fact for them and in their stead to execute all of such Supplemental Declarations so long as each such Supplemental Declaration substantially conforms to the terms set forth herein.

Section 3. FHA/VA Approval. As long as there is a "Class B" membership classification in the Association,, no additional properties other than portions of the Master Tract may be annexed and subjected to this Declaration without the prior written approval of either the Federal Housing Administration ("FHA") or Veterans Administration ("VA") and said written approval is recorded in the Public Registry.

Section 4. Supplemental Declarations. Notwithstanding anything herein to the contrary, however, nothing herein shall be deemed to subject any other property to this Declarant at this time other than that portion of the Master Tract within Phase 1 until such time as said other property is brought within the scheme of this Declaration by means of a Supplemental Declaration hereto as provided herein.

Section 5. Development of Annexed Property. All additional property annexed to and subjected to this Declaration shall be developed in a manner substantially similar to the development of Phase 1, i.e., Lots and streets of substantially the same size, etc.

ARTICLE III MEMBERSHIP, MAINTENANCE OF COMMON AREA, VOTING RIGHTS AND CONTROL OF THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Availability of Documents/Financial Records. The Association shall maintain at the Association's principal office, current copies of the Declaration, the Bylaws and

rules/regulations concerning the development and use of the Property as well as its own books, records and financial statements. All of such documents shall be available for inspection by Owners, mortgagees, insurers and guarantors of Mortgages relating to one or more Lots upon reasonable notice and during normal business hours.

Section 3. Maintenance. Certain features that are deemed common amenities, being of benefit to all Lots, shall be maintained exclusively by the Association. Said common amenities shall include without limitation, Common Areas, entrance areas, landscaping, street lighting, recreational facilities and other amenities. The Association shall not be responsible for the maintenance of any Lots or the improvements within the boundaries thereof, and the owners thereof shall be responsible for maintenance of same.

Section 4. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all improvements to common amenities which the Association is obligated to maintain. Such reserve fund shall be maintained out of the annual assessments described in ARTICLE V hereof.

Section 5. Voting Rights and Classes or Lots. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) **Class A Lots.** Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person or entity owns an interest (other than a leasehold or security interest) in any Lot, all such persons or entities shall be Members and the voting rights appurtenant to said Lot shall be exercised as they - among themselves determine but, in no event, shall more than one (1) vote be cast with respect to any Class A Lot.

(b) **Class B Lots.** Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers. The Declarant shall be entitled to five (5) votes for each Class B Lot it owns. The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of:

- (1) When the total number of votes appurtenant to the Class A Lots equal the total number of votes appurtenant to the Class B Lots, or
- (2) When Declarant owns 25 % or less of the Lots then subject to the Declarations, or
- (3) On December 31, 2006.

Section 6. Board of Directors. The Association shall be governed by its Board of Directors and officers elected in accordance with the Bylaws.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots (Class A and Class B) agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument. PROVIDED, this subsection shall not preclude the Board of Directors of the Association from granting easements to public authorities or others for the installation and maintenance of sewage, water, electrical or other utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not unreasonably interfere with the use and enjoyment of the Common Area by the Owners and are reasonably necessary for the convenient use and enjoyment of the Lots and/or Common Area;

(b) The rights of Owners to the exclusive use of parking spaces as provided in Section 3 of this Article IV;

(c) The right of the Association, with the written assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots (Class A and Class B), to mortgage, pledge, or otherwise hypothecate any or all of its real property as security for money borrowed or debts incurred;

(d) The right of the Association to charge uniform and reasonable admission and other fees for the use of any recreational facility situated upon the Common Area; and

(e) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during any assessment against his Lot remains unpaid and for a period not to exceed sixth (60) days for any infraction of its published rules and regulations.

Section 2. Delegation of Use.

(a) **Family.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owner's family

who occupy the residence of the Owner located on the Owner's Lot as their principal residence.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be delegated by the Owner to his tenants or contract purchasers who occupy a residence on the Owner's Lot, or a portion of said residence, as their principal residence.

(c) Guests. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be delegated to guests of Owners, tenants, or the contract purchasers subject to the rules and regulations of the Association, as may be established by its Board of Directors, governing use of the Common Area by guests.

Section 3. Parking Rights. The owners of each Lot shall park their automobile(s) on their Lot in their garage, carport or parking area designated therefor. Limited parking may be provided for recreation areas located on the Common Area. Otherwise, no vehicles of any type or recreational equipment may be driven on, across or parked within the Common Area, except for roadways designated as such and in spaces reserved for parking, subject to Association regulations. The Association through its Board of Directors may issue regulations from time to time restricting or prohibiting the parking of boats, trailers, campers, R.V.'s or motorcycles which would be in public view.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot it owns, hereby covenants, and each Owner of each Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association annual assessments, charges, damage assessments and special assessments for capital improvements, established and collected as hereinafter provided. Except as set forth in Section 10 of this ARTICLE V, any such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used as follows:

- (a) To promote the recreation, health, safety, and welfare of the residents of the Lots;

(b) To maintain the Common Areas, entrance areas, streets, lighting fixtures, recreation facilities and other common amenities which the Association is now or hereafter obligated to maintain; and

(c) To maintain a contingency reserve fund in an amount deemed adequate by the Board of the Association to repair and replace capital improvements in the Common Areas and to meet unanticipated expenses of the Association of the year immediately following the conveyance of the first Lot to an Owner.

Section 3. Maximum Annual Assessments. Until January 1, 1997, the maximum annual assessment for each Lot shall be Two Hundred Sixty Five (\$265.00) Dollars. Except as herein expressly stated, the Board of Directors shall have the authority to fix the annual assessments for each calendar year thereafter. Provided, however, in the event the proposed annual assessment for any calendar year is in excess of 110% of the annual assessment for the immediate preceding year, the same must be approved by a two-thirds (2/3) majority of the outstanding votes represented at a duly called Membership Meeting either in person or by proxy where a quorum of the Membership is represented at such meeting, either in person or by proxy.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in or for any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon a common amenity including fixtures and personal property related thereto, payable as determined by the Board. Provided, if the total of the special assessment plus the annual assessment for the subject year exceeds 120 % of the annual assessment for the immediate preceding year, approval by the Membership shall be required as set forth in Section 3 of this ARTICLE.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots.

Section 6. Notice and Quorum For Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action requiring Membership approval under Section 3 or 4 above shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty (60%) percent of all the votes of each Class of Membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called, subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments/Payments/Due Dates. The annual assessments provided for herein shall commence as to all Lots on the date the first Lot is

conveyed to an Owner from Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each calendar year. Written notice of the annual assessment shall be sent to every Owner. The due dates shall be established by the Board of Directors, and said annual assessments may be payable, as determined by the Board, in monthly, quarterly or annual installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Common Area Damage Assessment. In the event the Association finds that an Owner has damaged any of the common amenities, the Association may levy an assessment on such Owner's Lot for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the common amenities including the sidewalks and street lighting fixtures serving KnightsBridge, and the amount of said assessment shall be a lien with respect to said Lot. Provided, However, nothing in this Section is intended in any manner to impose absolute liability upon any Owner for damage to the Common Area unless and except to the extent said damage was caused by the subject Owner's negligence or intentional act.

Section 9. Effect of Nonpayment of Assessments/Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen (18%) per annum or the maximum rate of interest allowed under the then laws of the State of South Carolina, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association may file a lien against the delinquent Owner's Lot and bring an action at law against the delinquent Owner and foreclose the lien against the Lot, and interest, late payment charge, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Area or abandoning his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a first mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an annual or a special assessment, as applicable, collectible prorata from all Owners, excluding the foreclosure sale purchaser or recipient of Deed in lieu of foreclosure. The extinguishment of the lien shall not release the defaulting Owner from continuing personal liability for the unpaid assessment. Such prorata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3. No sale or transfer shall relieve the purchaser of such

Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any first mortgage.

Section 11. Mortgagees Exempt. Mortgagees may—but shall not be required—to collect assessments. The failure to pay assessments shall not constitute a default under any mortgage unless the subject Mortgagee otherwise elects.

Section 12. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Duration of Control. Because Declarant may develop other portions of the Master Tract as well as areas adjoining the same within the scheme of this Declaration, Declarant shall retain the right of architectural control for fifteen (15) years from the date of filing this Declaration even though the Declarant at the time may own no Lot subject to the Declaration. However, the Declarant may - at its sole option - surrender such right of architectural control at any time by a duly recorded written instrument and, within twelve months thereafter, the then Owners of the Lots by a majority vote, shall have the power through an additional duly recorded written instrument to appoint an architectural review board (the "Architectural Review Board"), which Architectural Review Board, if so appointed, shall have the right of architectural control as described in this Article and shall retain such right until said Architectural Review Board is terminated by a duly recorded instrument and approved by a majority vote of the then Owners of the Lots. Said required majority vote as set forth in the preceding sentence must be made by a majority vote taken at a duly called special or annual membership meeting where a quorum is present and the Notice of the subject meeting must contain a statement that said subject matter will be brought before and acted upon at the subject meeting.

Section 2. Extent of Control. No building, fence, wall, sidewalk, hedge, obstruction, driveway or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition, change or alterations herein (including change of color) be made without the prior written approval of Declarant. The areas over which Declarant shall have control shall include, but shall not be limited to, the size and plan of the principal residential structure, the location of the principal residential structure on the Lot, the size and plan of any attached or unattached garage, the location and manner of construction of any driveway, swimming pool, utility building, patio, mailbox or other exterior improvements, the composition and color of all material used on the exterior of any structure and the location and type of any shrubbery. Declarant shall also have control over the removal of any type tree or other vegetation from any Lot, and no party shall grade, excavate upon or otherwise alter the topography of any Lot or remove any tree or other vegetation therefrom without obtaining the prior written approval of

Declarant. It is provided, however, that nothing herein contained shall be construed to permit interference with the development of the Property by Declarant in accordance with its general plan of development. In order to assure that the locations of houses will be staggered where practical and appropriate, the structures will be located with regard to the ecological constraints and topography of each individual Lot, taking into consideration topography, the location of large trees and similar considerations. The Declarant reserves the right to control absolutely and solely to decide the precise site and location of any house or dwelling or other structure upon all Lots, provided however, that such locations shall be determined only after reasonable opportunity is afforded the Lot Owner to recommend a specific site.

Section 3. Procedure. Any party requiring approval of any proposed improvements to any Lot shall submit to Declarant plans and specifications showing in such detail and manner as Declarant shall require the nature, shape, height, materials and location of any such improvement. Declarant, in its sole and absolute discretion, may require in particular instances that such plans and specifications be accompanied by a plat prepared by a registered surveyor showing the location of the proposed improvements on the Lot. All decisions by Declarant shall be based on Declarant's discretionary determination as to whether any particular improvement is suitable and harmonious with the development of the subdivision. Declarant's approval or disapproval of any proposed improvement shall be in writing. In the event that Declarant fails to approve or disapprove any such proposed improvements within thirty (30) days after plans and specifications in such detail as Declarant may require have been submitted to it, such plans and specifications shall be deemed approved. Subsequent to the approval of any plans and specifications, the Owner shall have the responsibility for making such improvements in accordance with the plans and specifications as approved. Approval by Declarant of any proposed improvements shall not constitute or be construed as approval of the structural stability, design or quality of any improvement or the compliance of any such improvement with applicable laws and codes. Refusal or approval of plans, specifications, builder or location may be based upon any grounds, including purely aesthetic considerations, which - in the opinion of and the sole and uncontrolled discretion of Declarant - shall be deemed sufficient.

Section 4. Completion of Improvements. The exterior of all houses and other structures and site work and landscaping must be completed within one (1) year after the construction of said improvements shall have commenced except where completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergencies or natural calamities. All driveways, turning areas and parking areas shall be paved and must be completed prior to the occupancy of any dwelling on the Lot. In the event any Owner violates the terms of this section, Declarant or its duly appointed agent shall, after thirty (30) days written notice to Owner to cure such violation and failure of Owner within said 30-day period to so cure, be entitled to enter upon the Lot(s) of Owner and cure such defect including the removal of any structure built in violation hereof, all at the cost and expense of Owner. Declarant shall have the right to institute any litigation against the defaulting Owner to cure the default, including the right of Specific Performance, plus damages and Owner shall be personally liable for all cost incurred by Declarant in connection therewith, including cost of Court and reasonable attorney fees. This right of the Declarant or its agent shall be in addition to all other

general enforcement rights which the Declarant may have for a breach or violation of the terms of this Declaration and shall not be deemed a trespass by Declarant or its agent.

Section 5. Rights of Association. The Association shall have the right and privilege to enforce all of the provisions set forth in this ARTICLE VI. In the event the Declarant relinquishes its right of architectural control as set forth in Section 1 of this ARTICLE VI and the Membership appoints an Architectural Review Board upon such appointment, the Association through its Architectural Review Board shall have all of the discretionary authority of the Declarant as set forth in this ARTICLE VI.

ARTICLE VII COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

Section 1. Subdivision of Lots. Except as provided herein, no Lot shall be subdivided by sale of a portion thereof or otherwise so as to reduce the total Lot area shown on the Map without the written consent of the Declarant and provided same is also permitted under applicable governmental regulations. Provided, a portion of a Lot may be conveyed to the Owner of an adjoining Lot to accommodate for a driveway or portion thereof or portion of a structure for the adjoining Lot which inadvertently encroaches upon the Lot from which the portion is to be conveyed or to straighten a boundary line between the subject Lot and the adjoining Lot. However, in all events, the remaining portion of the Lot must not violate the minimum size requirements of any then applicable zoning ordinances.

Section 2. Right of First Refusal Respecting Unimproved Lots. Before any unimproved Lot may be sold or resold to any person, firm or corporation by any Owner thereof except Declarant or its successors, the Owner of such Lot first shall offer in writing to sell the Lot to Declarant or its successors at the price and at terms offered by the third party. If Declarant, or its successors, does not accept or reject in writing said offer of sale within seven business (7) days of its receipt of the same, then the Owner of such Lot shall have the right to sell the Lot to the third party; provided, however, the sale of said Lot to such third party shall be at a price and on the terms and conditions not less favorable than the offer made to Declarant.

Section 3. Transfer to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 2 hereof, the closing of the conveyance of such Lot shall occur within sixth (60) days after receipt by the Owner of written notice from Declarant that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall pay the purchase price either in the same manner as the third party purchaser was to pay the same or payment in full at closing. Owner shall deliver to Declarant a General Warranty Deed conveying the Lot free and clear of all encumbrances except this Declaration and easement of record. In the event the closing occurs after the death of an Owner, Declarant may - in its discretion - require the personal representative of the Owner's estate to post such bonds or other assurances as the Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state estate or inheritance tax or the

failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 4. Reserved Easements. The Declarant reserves for itself, its successors and assigns, a permanent easement in and the right at any time in the future to grant a permanent right-of-way over, under and along an area uniformly ten (10) feet in width along the rear and five (5) feet in width along the sidelines of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, telephone service, television service and other utilities, as well as within those areas shown as easements on the Map. Within such areas, no structures, planting, fences or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in such areas. The area of each Lot containing the easement and all improvements thereon shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible. In the event any Lot is subdivided pursuant to Section I hereof, an easement uniformly ten (10) feet in width shall exist both along the rear and five (5) feet in width along the sidelines of the Lot both as shown on the Map and along the rear and sidelines as exist upon the Lot as so subdivided; provided, however, that upon request by the Owner of the subdivided Lot, the Declarant may release the easement reserved along the rear or sidelines of the Lot as shown on the Map if doing so would not interfere with the installation or maintenance of any utilities or the drainage within the Property. In the event two or more Lots are combined into one building Lot with the residence to be constructed over the common interior Lot lines, the easements reserved along sidelines shall be released provided that the easements have not previously been used for the installation of utilities and their release shall not interfere with the drainage within the Property.

Declarant, its successors and assigns, hereby reserves and shall have temporary easements for itself, its contractors, its agents and employees over all Common Areas for the purpose of constructing improvements thereon for the benefit of all Owners and which is reasonably necessary for Declarant to complete the full development of KnightsBridge.

Section 5. Residential Use of Property. All Lots shall be used for residential purposes only, and no structure shall be erected, placed or permitted to remain on any Lot other than one single-family dwelling and any necessary structure customarily incident to such residential use. No garage constructed on any Lot shall be used for living quarters of any kind either for guests, members of the family or domestic employees. The construction and maintenance of "garage apartments" on any Lot is expressly prohibited.

Section 6. Minimum Size of Dwelling. Each single-family dwelling unit erected on each Lot shall contain a minimum of 1,200 square feet of heated floor area exclusive of basements, attached porches, garages and carports. Each one-story dwelling shall have said minimum square footage of heated area on the ground floor exclusive of said enumerated areas, and each single-family dwelling of more than one story shall have a minimum of 850 square feet of heated ground floor area exclusive of said enumerated areas.

Section 7. Obstructions to View at Intersections. The lower branches of trees or other vegetation in sight line approaches to any street or street intersection shall not be permitted to obstruct the view of said approach.

Section 8. Building Setback Lines. No building on a Lot shall be located nearer to either the front line, side line or rear line thereof than as shown or described to be the building setback lines on the Map except with the Declarant's written permission. For the purposes of this covenant, eaves and stoops shall not be considered as a part of a building; provided, however, this shall not be construed to be deemed to permit encroachment of any improvement onto another Lot.

The minimum setback lines as shown or described on the Map are not intended to create uniformity of setback. They are meant to create a sense of spaciousness and to avoid monotony. For such purposes, it is the Declarant's intent that setback lines as to any Lot may be changed by Declarant where appropriate. The Declarant reserves the right to select the precise site location of each house or other structures on each Lot and to arrange the same in such manner and for such reasons as the Declarant deems sufficient; provided however, the Declarant shall make such determination so as to assure that the development of the Lots subject to this Declaration is consistent with the provisions set forth herein.

Each variance of the setback lines consented to by the Declarant shall, nevertheless, conform to then applicable zoning ordinances.

Section 9. Outbuildings/Similar Structures/Wells. No trailer, camper or other structure of a temporary nature shall be erected or allowed to remain upon any Lot, and no trailer, camper, shack tent, garage, barn or other structure of a similar nature shall be used as a residence either temporarily or permanently upon any Lot; provided, however, that this Section shall not be construed to prevent the Declarant from permitting any party building a structure upon any Lot to erect temporary structures during construction. No wells shall be installed, used or maintained on any Lot for human domestic water consumption nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling which furnish domestic water from sources beyond the boundaries of the Lots.

Section 10. Nuisances/Animals. No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. No person may keep an animal upon any part of the Lot except that any Owner occupying a residence upon a Lot may keep customary household pets upon such Lot provided that such pets are not kept, bred, or maintained for any commercial purposes or in such a manner as to become a nuisance to the other Owners or residents of the subdivision.

Section 11. Maintenance of Lots/Unsightly Materials. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair promptly repairing any damage thereto caused by fire or other casualty. No clothesline may be erected or maintained on the Lot. No Lot shall be used in whole or in part for storage of rubbish of any

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character whatsoever no for the storage of any property or thing that will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish or other debris for collection by governmental or other similar garbage and trash removal units. In the event that any Owner fails or refuses to comply with any of the foregoing, the Association or the Declarant may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner's last known address and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Association or the Declarant may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot(s) subject to these restrictions, agrees to pay such cost (including reasonable attorneys' fees) promptly upon demand by the Association or the Declarant. No such entry as provided herein shall be deemed a trespass.

Section 12. Attractive Premises. Garbage containers, trash cans, wood piles, dog houses, pet yards or cages, and clothes drying areas must be so located that they will not be visible from the front street. The yards of each Lot shall be maintained by its Owner so as to be neat and clean at all times.

Section 13. Use of Common Area. Every Owner shall have the right and easement of enjoyment of the Common Area, which shall be appurtenant to the title to his lot. However, the Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Association for the uniform use applicable to all Owners.

Section 14. Access to Lot. The Association, its agents or employees shall have access to all Lots from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair, or replacement of any portion of the Common Area. The Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area.

Section 15. Signboards. No signboard, billboard or advertising sign of any description shall be displayed upon or above any Lot with the exception of:

(a) Signs stating "For Rent" or "For Sale", which signs shall not exceed 2'x3' in dimension, shall refer only to the Lot on which displayed and shall be limited to one sign per Lot, and

(b) The name of the resident of any Lot and the street address, the design of which shall be furnished to Declarant or the Architectural Review Board and shall be subject to approval by Declarant or the Architectural Review Board.

Section 16. Antennas. No satellite dishes or similar structure nor any radio or television aerial or antenna in excess of 18" in diameter or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot or elsewhere upon any Lot or within the Property without the prior written approval of Declarant or the Architectural Review Board which approval Declarant or the Architectural Review Board may withhold in its sole and absolute discretion.

Section 17. Builder Qualifications. Any builder performing any work on the Property must be approved by the Declarant as to financial stability, building experience and ability to build structures of a class and type of those which are to be built on the Property. No person, firm or entity shall be approved as a builder unless such person, firm or entity obtains its income primarily from construction of the type which the builder is to perform upon the Property. No Owner shall be permitted to act as his own builder or contractor for the exterior of any structure except where such Owner obtains his income primarily from the construction of the type of structure to be constructed upon the Property and otherwise meets the qualifications for approval by the Declarant as hereinabove set forth.

ARTICLE VIII INSURANCE

Section 1. Authority to Purchase Insurance. Insurance policies upon the Common Area (except title insurance) shall be purchased by the Association in the name of the Association, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation against Owners.

Section 2. Insurance Coverage to be Maintained - Use and Distribution of Insurance Proceeds.

(a) The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Common Area:

(1) Casualty insurance covering the buildings and all improvements upon the Common Area and all of Association's personal property located thereon shall be procured in an amount equal to 100% of the insurance replacement value thereof (exclusive of excavation, foundations, streets and parking facilities) with a replacement cost endorsement as determined annually. If coverage is provided by an insurance policy in which there is a co-insurance clause applying, every effort will be made to obtain an agreed amount endorsement or its equivalent. Such coverage shall afford protection against: (a) loss or damage by fire or other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location, and use, including vandalism and malicious mischief

(2) Bodily Injury Liability and Property Damage Liability insurance in such amounts and in such forms as shall be required by the Association, covering all premises and operations necessary or incidental to the conduct of the business of the Association, including hired automobile and non-owned automobile bodily injury and property damage liability coverages.

(3) All liability policies shall contain a severability of interest (cross-liability) endorsement. The insurance afforded under the liability section of the policy applies separately to each insurance claim made or suit brought, except with respect to this company's limit of liability.

(4) Fidelity coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget and projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

(b) Premiums upon insurance policies purchased by the Association shall be paid by the Association as common expenses to be assessed and collected from all of the Owners.

(c) All insurance policies purchased by the Association shall be for the benefit of the Association, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. Proceeds payable on account of damage to the Common Area shall be held by the Association to repair or rebuild the Common Area. If the property is not rebuilt, then the funds shall be held by the Association and applied to its general expenses.

(d) Immediately after the casualty causing damage to property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems appropriate.

(e) Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications.

(f) Each Owner, at his expense, shall keep in force fire and extended coverage insurance insuring his residence against loss for a reasonable amount of insurance.

(g) In the event of a hazard loss, each Owner shall repair or rebuild his residence, if advisable. The reconstructed or repaired residence shall be substantially identical to the destroyed residence, unless a change shall be approved by the Declarant or the Architectural Review Board prior to construction. In the event a dwelling is damaged or destroyed, and the Owner does not begin repair or reconstruction within sixty (60)

days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from Lot, so that it shall be placed in a neat, clean and safe condition; and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Lot until paid by the Owner.

(h) Each Owner, at his expense, shall keep in force comprehensive personal liability insurance covering liability for damages to person or property of others located within such Owner's Lot in such amounts as the Association shall, from time to time, determine, but in no case less than \$100,000.00 for each occurrence. Each Owner, at his expense, may obtain such additional insurance coverage on his Lot, personal property, and personal liability and any additional insurance shall contain waive of subrogation clause.

Section 3. Mortgages. The owners and holders of first mortgages on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms, or corporations making such payments shall be owed immediate reimbursement therefore from the Association. PROVIDED, Mortgagees shall not be required to pay said taxes, charges or insurance premiums.

ARTICLE IX APPROVALS BY OWNERS OF FIRST MORTGAGES

Section 1. Approval by Owners and Holders of First Mortgages. Unless at least seventy-five (75%) percent of the owners and holders of first mortgages on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause,

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against a Owner,

(c) by act or omission change, waive, or abandon any plan of regulation, or enforcement thereof, pertaining to the architectural design of residences located on Lots,

(d) fail to maintain fire and extended coverage insurance on improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, or

(e) use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner or any other person, firm or corporation owning any interest in a Lot shall have the right to enforce by any proceeding at law or equity all conditions, covenants and restrictions now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any such covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of the covenants, conditions or restrictions of this Declaration by Judgment or Court Order shall in no way affect any of the other provisions not expressly held to be void, and such remaining provisions shall remain in full force and effect.

Section 3. Effective Period. The covenants, conditions and restrictions of this Declaration shall run with the land and bind the Owners of Lots for a period of twenty-five (25) years from the date this Declaration is recorded, after which time, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years until terminated as herein provided. The reserved easements shall run permanently with each Lot.

Section 4. Amendment and Termination. This Declaration may be altered, modified, canceled or changed at any time in any manner by a written document executed by all of the following: (a) the Declarant, (b) the Owner or Owners of two-thirds of the Lots then owned by persons other than the Declarant, and (c) the Mortgagees affecting said majority of Lots not owned by the Declarant. Any such amendment must be recorded in the Public Registry and shall not be effective until recorded. After the initial 25-year term hereof, this Declaration may be modified or terminated by a vote of the Owners of a majority of the Lots. PROVIDED, HOWEVER, and notwithstanding the foregoing, the provisions set forth in Section 10 of ARTICLE V and the easement rights reserved in Section 4 of ARTICLE VII shall survive any termination or amendment unless and until such termination or amendment with respect thereto is approved by the unanimous, written, recorded consent of all Owners and all mortgagees of all Lots.

Notwithstanding the foregoing, the Declarant shall have the right by instrument duly recorded with the Public Registry, which need only be signed by the Declarant, and the holder of all mortgages on any portion of the Property subject to this Declaration then owned by the Declarant to modify the provisions of this instrument if the modification is required by the Veterans Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage

Association or any successor agencies thereto as a condition of the approval by such agency of the Property or any part thereof or any Lot thereon for approved mortgage financing purposes under applicable Veterans Administration, Federal Housing Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, or similar programs, and the consent to the modification by an Owner or of the holder of any mortgage on such Owner's Lot shall not be required even though the modification relates to portions of the Property no longer owned by the Declarant.

Section 5. FHA/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with FHA/VA insured mortgage loans, any of which as not been fully paid, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administrator or the Veterans Administration: Annexation of additional properties other than portions of the Master Tract, and amendment or termination of this Declaration.

Section 6. Conveyance of Common Area to Association. All Common Areas depicted on the Map(s) then subjected to the terms of this Declaration shall be conveyed to the Association free and clear of all encumbrances (except the terms of this Declaration and enforceable easements of record) prior to any entity mentioned in the immediate preceding Section 5 insuring any mortgage loan secured by a Lot within KnightsBridge. By way of explanation, all Common Areas within Phase I shall be conveyed to the Association prior to any such entity insuring any mortgage of a Lot within Phase 1. The same shall be applicable to the conveyance of the first Lot in each additional phase as the requirement for the conveyance of Common Areas shall apply on a phase by phase basis.

Section 7. Person/Gender. Reference to a "person" in this Declaration shall mean and include any entity which is the Owner of a Lot, e.g., corporation, partnership, trust, estate, limited liability company, etc. Reference to masculine pronouns shall include, where applicable, female pronouns and pronouns of the subject entities.

IN WITNESS WHEREOF, the parties do execute this Declaration to be effective as of the day and year first above written.

(signature lines and notaries on following pages)

Signed, Sealed and Delivered
in the Presence of:

Audrey C. Hedrick
Witness

Paul E. Richardson
Witness

DECLARANT:

The Howey Co., Inc.

By: David S. Howey
David S. Howey, President

Attest: Joseph P. Williamson
Joseph P. Williamson, Asst. Secretary

(CORPORATE SEAL)



LENDERS:

FIRST UNION NATIONAL BANK OF
NORTH CAROLINA

By: Burt B. Burt
Vice President

Attest: [Signature]
Secretary

(CORPORATE SEAL)

Signed, Sealed and Delivered
in the Presence of:

Audrey C. Hedrick
Witness

Paul E. Richardson
Witness

Ralph F. Howey (SEAL)
Ralph F. Howey

Dolores S. Howey (SEAL)
Dolores S. Howey

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

PERSONALLY appeared before me Audrey Hedrick (first witness) who, being duly sworn, says that he/she say the corporate seal of The Howey Co., Inc. affixed to the foregoing instrument and he/she also saw David S. Howey, President and Joseph P. Williamson, Assistant Secretary of said The Howey Co., Inc. sign and attest to same and that he/she with (second witness) witnessed the execution and delivery thereof as the act and deed of the said The Howey Co., Inc.

Audrey C. Hedrick
First Witness

SWORN to and subscribed before me this 19 day of June, 1996.

Kim R. Marshall (SEAL)
Notary Public for Mecklenburg County North Carolina

My Commission Expires: 11-16-99
(NOTARIAL SEAL)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

PERSONALLY appeared before me Linda Cates (first witness) who being duly sworn, says that he/she say the corporate seal of First Union National Bank of North Carolina affixed to the foregoing instrument and he/she saw Bill G. Bickett, Vice President and Burch Mison, Asst. Secretary of said First Union National Bank of North Carolina sign and attest to same and that he/she with Sonja Kombs (second witness) witnessed the execution and delivery thereof as the act and deed of the said First Union National Bank of North Carolina.

Linda Cates
First Witness

SWORN to and subscribed before me this 19th day of June, 1996.

Karen L. Hatley (SEAL)
Notary Public for Mecklenburg County North Carolina

My Commission Expires: 9-30-97

(NOTARIAL SEAL)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

PERSONALLY appeared before me Audrey Hedrick (first witness)
being duly sworn says that he/she saw the within Ralph F. Howey and Dolores S. Howey
sign, seal and as their act and deed, deliver the foregoing instrument and he/she with
Carol E. Richardson (second witness) witnessed the execution thereof

Audrey C. Hedrick
First Witness

SWORN to and subscribed before me this 19 day of June 1996.

Kim R. Marshall (SEAL)
Notary Public for Mecklenburg County North Carolina

My Commission Expires: 11-16-99

(NOTARIAL SEAL)

EXHIBIT 2

Knightsbridge POA Meeting minutes 12/13/2010

Attendees: Dawn Picarillo, Russ Southard, Lane Crockett, April Lattig, Chris Teal, Don Tankersley, Steve Sapp, and Bryan Kuester

Regular Meeting called to order 7:03 pm

Review meeting minutes from last month – Done via Email

New Business

- Review Financial Report
 - Reviewed Delinquents
 - #9018 Utilities – Incorrect item coding, Kuester to correct error
- New Projects – Being tabled
 - Clubhouse Window Treatments
 - Clubhouse & pool concrete / fencing made to look nicer
 - Repair cracks in pool deck – Get 3 Quotes
 - Tennis courts
 - Card-key entry system to pool – tabled until next year
- ARC Guidelines – Modification Request Forms
 - Majority voted to approve of publishing revised guidelines on website
- Kuester Action Item Review
- Renewed/Approved contract with USA Aquatics
- Renewed/Approved Smith Lawn Care Contract
 - Review proposed improvements next month
- Budget approved for 2011
 - To be posted on website this week

Old business

- Welcome Committee
- Common areas – deeds
- Report from CPP
- Delinquency Report
- Speed Humps
- Yard and property violations – rules enforcement
- Speed bump email and signatures – tabled until September

The next meeting will be Monday, January 17, 2010 at 7:00 PM at the clubhouse.
The "Annual Meeting" will take place Tuesday, February 1, 2010 at 8PM.

Meeting adjourned at 7:49 PM.

Knightsbridge POA
2011 Approved Budget

As of 12/14/10
Annual Due: \$540.00
Delinquency rate:

12/15/2010
11:42 AM

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Total
Total Units	457												457
INCOME:													
4010 HOA Fees		50,270	50,270	50,270	50,270								201,080
4170 Legal Fee Income													
Delinquency Losses		(1,625)	(1,625)	(1,625)	(1,625)								
4100 Late Fees													(6,500)
4200 Boat Storage 46X175		8,050											8,050
4500 Pool/Clubhouse Rental	125	125	125	125	125	125	125	125	125	125	125	125	1,500
4160 Interest Income	100	100	100	100	100	100	100	100	100	100	100	100	1,200
Total Income	225	56,820	48,870	48,870	48,870	225	225	225	225	225	225	225	205,330
EXPENSES:													
Admin Expenses:													
5010 Mgmt Fee	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	19,951
Mgmt Collections													
5220 Payment Coupons													
5155 Website Admin Exp	29	29	29	29	29	29	29	29	29		1,900		1,900
5110 Office Supplies	208	208	208	208	208	208	208	208	208	208	208	208	2,500
5120 Newsletter & Postage	66	66	66	66	66	66	66	66	66	66	66	66	800
5130 Postage & Delivery	150	150	150	150	150	150	150	150	150	150	150	150	1,800
9040 Telephone	55	55	55	55	55	55	55	55	55	55	55	55	660
9090 Cable	52	52	52	52	52	52	52	52	52	52	52	52	624
Total Admin Expense	2,223	2,171	2,171	2,171	2,171	2,171	2,171	2,171	2,171	2,171	4,071	2,171	27,961
Operating Expense:													
Utilities													
9010 Electricity	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	33,600
9020 Water & Sewer	708	708	708	708	708	708	708	708	708	708	708	708	8,500
9030 Natural Gas	60	60	60	60	60	60	60	60	60	60	60	60	720
Total Utilities	3,568	3,568	3,568	3,568	3,568	3,568	3,568	3,568	3,568	3,568	3,568	3,568	42,820
Tax Preparation													
7010 Landscape Contract	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	23,759
Landscape Extras/Beautification	397	397	397	397	397	397	397	397	397	397	397	397	4,765
Janitorial (includes supplies)	166	166	166	166	166	166	166	166	166	166	166	166	2,000
Trash Collection	63	63	63	63	63	63	63	63	63	63	63	63	750
Pool Contract	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Pool Supplies													
Pool Repairs & Maintenance	375	375	375	375	375	375	375	375	375	375	375	375	4,500
Irrigation & Repair	167	167	167	167	167	167	167	167	167	167	167	167	2,004
5140 Bank Charges	25	25	25	25	25	25	25	25	25	25	25	25	300
Legal Expense	625	625	625	625	625	625	625	625	625	625	625	625	7,500
Property Taxes	240	240	240	240	240	240	240	240	240	240	240	240	2,879
Fees & Permits	400												400
Property Insurance	1,500												6,500
5025 Club Fixtures & Repair	400	400	400	400	400	400	400	400	400	400	400	400	4,800
Security Patrol	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	16,020
Social Expense	533	533	533	533	533	533	533	533	533	533	533	533	6,400
Boat Storage Repairs	83	83	83	83	83	83	83	83	83	83	83	83	1,000
Pest Control	200												800
Total Oper. Exp.	10,990	8,890	8,890	11,090	9,390	9,380	11,090	8,890	8,890	11,090	8,890	8,890	117,187
Contingency & Reserves													
Contingency	175	175	175	175	175	175	175	175	175	175	175	175	2,493
Reserves	757	757	757	757	757	757	757	757	757	757	757	757	9,080
Total Conting & Res	932	932	932	932	932	932	932	932	932	932	932	932	11,673
Capital Expenditures:													
Improvements	482	482	482	482	482	482	482	482	482	482	482	482	5,789
Irrigation Improvements													
Total Capital Expenses	482	482	482	482	482	482	482	482	482	482	482	482	6,789
Total Expenses	16,196	16,044	16,844	16,244	16,644	16,644	16,244	16,044	16,044	16,244	17,944	16,437	205,330

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Knightsbridge POA Meeting minutes from 12/14/2011

***** No meeting was held in October *****

Attendees: April Lattig, Don Tankersley, Lori Ann Davidson, Steve Sappe, Bryan Kuester, Chris Teal

Meeting called to order at 7:10 pm

Review of meeting minutes from last month – completed and approved via Email

2012 proposed budget approved via email

Review of financials including delinquencies

New Business

- Reviewed proposal for pool entry systems.
- Reviewed lifeguard proposals.
- Steve Sappe made a motion to approve the installation of the Brivo system at the pool and the tennis courts, April Lattig seconded the motion – motion passed.
- April made a motion to approve the proposal to proceed with no lifeguards for the 2012 pool season. Instead we will employ a pool attendant daily and have a maintenance contract. Seconded by Don Tankersley. Motion passed.
- Reviewed proposal to replace screening at the Storage lot with PVC slats instead.
- April Lattig made a motion for installation of the slats at the storage lot, seconded by Chris Teal, motion passed.
- Once year end operating surplus is reviewed additional amenity upgrades will be evaluated.
- Discussed ARC application regarding the stairs at the front of a residence on that was completed without ARC approval. Board decided to have the county inspect structure as to its impediment into county right of way and to confirm its ADA compliance.
- Homeowner request to add trees in a common area adjacent to his home pending submittal of plan that is to scale to include planned materials.
- Annual meeting date is February 7 at 8 pm.

Action Items

- Bryan Kuester to get final numbers for Attendant only contract.
- Bryan Kuester to provide the board with cost to install new, stronger gate at the pool entrance.
- Bryan Kuester to provide Board with list of completed improvements made this year in the community.
- Dawn Piccirillo to contact Smiths regarding repairing concrete at court entrance.
- Kuester to replace locks at pool bathrooms.

PLF 000048

- Lori Davidson to draft paragraph addressing Article 6 Section 2 of the CCR outlining acceptable replacement design for neighborhood mailboxes.
- Bryan Kuester to call county to have a building inspector check stair project.

Old Business

- Chris Teal to get a quote for the pool decking from concrete company in addition to the curbing and sidewalk – THIS PROJECT IS ON HOLD UNTIL THE COUNTY FIXES THE ROADS.

Next meeting 01/16/2012 at 7:00 pm

Meeting adjourned at 8:43 pm

Mary Thaxton

From: Tankersley, Don L (PG GT MGN CLT OEN) <don.tankersley@siemens.com>
Sent: Monday, December 14, 2015 2:22 PM
To: Bryan Kuester; Mary Thaxton
Cc: aedwards311@yahoo.com; Bill Johnsen; Jon Alion (jba265@yahoo.com); Kim Fisher; loriannd@gmail.com; Steve Sappe (ssappe@essexhomes.net)
Subject: FW: 2013 Knightsbridge Budget
Attachments: KB 2013 Budget.pdf

We approved them via email.

From: Tankersley, Don L (E F PR GN CLT OM 1)
Sent: Wednesday, November 28, 2012 4:20 PM
To: 'Larry'
Cc: bkuester@kuester.com; aedwards311@yahoo.com; April Lattig; CHRIS TEAL; loriannd@gmail.com; Lynne Cicero; Steve Sappe; wpjohnsen@nrg-llc.com
Subject: 2013 Knightsbridge Budget

Hello Larry,

A couple of things for you to post for us please:

Attached is the final and approved 2013 budget for Knightsbridge; the Board approved it today.

Next, please post that there was no formal Board meeting in November, and there will not be one in December.

The Board will reconvene in January 2013.

Thank you!

Don Tankersley
President, Knightsbridge POA

This message and any attachments are solely for the use of intended recipients. The information contained herein may include trade secrets, protected health or personal information, privileged or otherwise confidential information. Unauthorized review, forwarding, printing, copying, distributing, or using such information is strictly prohibited and may be unlawful. If you are not an intended recipient, you are hereby notified that you received this email in error; and that any review, dissemination, distribution or copying of this email and any attachment is strictly prohibited. If you have received this email in error, please contact the sender and delete the message and any attachment from your system. Thank you for your cooperation.

Knightsbridge POA 2013 Budget

As of 11/28/12
Annual Dues \$440.00
Delinquency rate 201060

Total Units	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Total
4010 Association Assessments													
4045 Assessments to Reserves		50,270	50,270	50,270	50,270								
4100 Late Fee Income													
4101 Late Interest Income													201,080
4160 Interest Income	100	100	100	100	100	100	100	100	100	100	100	100	
4170 Legal Fee Income													
4200 Boat Storage 46x175													
Total Income	100	50,470	50,370	50,370	50,370	100	100	100	100	100	100	100	1,200
													8,050
													210,330

EXPENSES:

Admin Expense:

5010 Mgmt Fee													
5110 Office Supplies	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	19,951
5112 Mgmt Admin	225	225	225	225	225	225	225	225	225	225	225	225	2,700
5120 Newsletter	250	250	250	250	250	250	250	250	250	250	250	250	3,000
5130 Postage & Delivery	100	100	100	100	100	100	100	100	100	100	100	100	1,200
5155 Website Admin Exp	150	150	150	150	150	150	150	150	150	150	150	150	1,800
5205 Bad Debt	30	30	30	30	30	30	30	30	30	30	30	30	360
5220 Statements	417	417	417	417	417	417	417	417	417	417	417	417	5,000
9040 Telephone	55	55	55	55	55	55	55	55	55	55	55	55	2,200
Total Admin Expense	2,889	2,889	2,889	2,889	2,889	2,889	2,889	2,889	2,889	2,889	2,889	2,889	36,071

Operating Expense:

Utilities													
9010 Electricity	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
9020 Water & Sewer	708	708	708	708	708	708	708	708	708	708	708	708	8,500
9030 Natural Gas	60	60	60	60	60	60	60	60	60	60	60	60	720
9050 Trash Removal	62	62	62	62	62	62	62	62	62	62	62	62	740
Total Utilities	3,768	3,768	3,768	3,768	3,768	3,768	3,768	3,768	3,768	3,768	3,768	3,768	45,220
5124 Legal/Litigation Fees	83	83	83	83	83	83	83	83	83	83	83	83	1,000
5125 Legal/Collection Fees	625	625	625	625	625	625	625	625	625	625	625	625	7,500
5127 Tax Preparation			800										800
5140 Bank Charges	25	25	25	25	25	25	25	25	25	25	25	25	300
5150 Property Insurance	1,500			1,500			1,500			2,000			6,500
5170 Permits/License/Fees	400												400
5180 Property Taxes	167	167	167	167	167	167	167	167	167	167	167	167	2,000
5190 ARC Review													
5210 Committee - Social	532	532	532	532	532	532	532	532	532	532	532	532	6,384
5400 1/2 Late/Fines Fees to Mgmt Co													
6125 Pest Control	200												200
6177 Security Patrol	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	1,335	16,020
6310 Storage Area - Repair & Maint	83	83	83	83	83	83	83	83	83	83	83	83	996
7010 Landscape Contract	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	23,772
7030 Irrigation & Repair	167	167	167	167	167	167	167	167	167	167	167	167	2,004
7035 Landscape Repair and Maintenance	397	397	397	397	397	397	397	397	397	397	397	397	4,764
8210 Pool Contract	1,833	1,833	1,833	1,833	1,833	1,833	1,833	1,833	1,833	1,833	1,833	1,833	22,000
8220 Pool Repairs & Maintenance	375	375	375	375	375	375	375	375	375	375	375	375	4,500
8240 Pool - Passes/Supplies/Furn													
8303 Athletic Court Repair & Maint													
8504 Janitorial (includes supplies)	167	167	167	167	167	167	167	167	167	167	167	167	2,004
8505 Club Fixtures & Repair	667	667	667	667	667	667	667	667	667	667	667	667	8,000
Total Oper. Exp	10,537	10,537	10,537	10,537	10,537	10,537	10,537	10,537	10,537	10,537	10,537	10,537	127,444

Contingency & Reserves:

Contingency													
4045 Reserves	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	17,495
Total Conting & Res	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	1,458	17,495
Total Expenses	18,653	18,653	18,653	18,653	18,653	18,653	18,653	18,653	18,653	18,653	18,653	18,653	210,330

Knightsbridge POA Meeting minutes from 12/05/2013

Attendees: Don Tankersley, Lori Ann Davidson, Austin Edwards, Chris Teal, Steve Sappe

Also present: Bryan Kuester

Absent: David Lattig, Bill Johnsen, Kurt Meullner

Meeting called to order at 7:16 pm

Meeting minutes from previous meeting had been approved and posted.

Motion made to approve the 2014 Operating Budget with the small amendment of the name of account 4160 from the general ledger. The name will change to LATE FEE INCOME. Motion seconded and passed.

Review of financials including delinquencies.

- Motion made to proceed with foreclosures on aging accounts. Motion seconded, motion passed.

New Business

- Trees around the storage lot will be limbed up and or removed in the next few weeks.
- **Timeline completed as requested. Motion was made to file a notice with the Registrar of Deeds stating that the property is in violation of community covenants and restrictions.** Motion seconded. Motion passed. Said property has been out of compliance and has not cooperated with POA efforts to rectify the situation.
- Community debit/credit card will be issued to the Knightsbridge POA with authorized users. Cards will be issued for 2014.
- Exit button at the pool gate was vandalized. Kuester will send someone out to repair.
- Annual meeting is set for Tuesday February 4, 2014 at 8 pm.

Action Items

- Still actively collecting quotes for clubhouse flooring.
- Kuester is collecting competing quotes for pool repairs for pool tiles and cover repairs.
- Chris Teal will contact county about possibly moving one of the traffic signs in the front of the neighborhood next to the speed table to deter motorist from circumventing the speed table.
- Kuester will help identify a better method to secure the pool furniture from the elements during the off season. IN PROCESS.
- Dawn Picirillo to get quotes for erosion issues at the pool and playground will be sent for proposal.
- Mulch for playground – tabled until spring.

Completed Action Items

- Back flow valve at the front of the neighborhood was inspected and adjusted to correct level. Debris was removed from the line as well. System has been winterized so we cannot test until next spring.
- Kuester representative gathered all necessary information and parcels to make sure our non-profit status is linked with all property/common are applied correctly.
- David Lattig will work with pool company to have No Smoking signs installed permanently.

Old Business

PLF 000053

- CCP Report

Next meeting Monday 1/14/2013 at 7:00 pm

Meeting adjourned at 8:09 pm

Knightsbridge POA
GL Ledger Budget Key Fiscal Year 2014

Operating Department													
Date: 1/1/2014 - 12/31/2014	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
INCOME													
Income													
4010 Association Assessments	0	50,270	50,270	50,270	50,270	0	0	0	0	0	0	0	201,080
4045 Assessments to Reserves	(1,396)	(1,396)	(1,396)	(1,396)	(1,396)	(1,396)	(1,396)	(1,396)	(1,396)	(1,396)	(1,396)	(1,399)	(15,755)
4100 Late Fee Income	100	100	100	100	100	100	100	100	100	100	100	100	1,200
4200 Storage Lot Rental Income	0	8,050	0	0	0	0	0	0	0	0	0	0	8,050
Total Income	(1,296)	57,024	48,974	48,974	48,974	(1,296)	(1,296)	(1,296)	(1,296)	(1,296)	(1,296)	(1,299)	193,575
TOTAL INCOME	(1,296)	57,024	48,974	48,974	48,974	(1,296)	(1,296)	(1,296)	(1,296)	(1,296)	(1,296)	(1,299)	193,575
EXPENSE													
Administrative													
5010 Management Fees	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,663	1,658	19,951
5110 Office Supplies	167	167	167	167	167	167	167	167	167	167	167	163	2,000
5112 Mgt Co-Admin Fees	250	250	250	250	250	250	250	250	250	250	250	250	3,000
5115 Website Fees	30	30	30	30	30	30	30	30	30	30	30	30	360
5120 Bult Mailings/Newsletter	167	167	167	167	167	167	167	167	167	167	167	163	2,000
5124 Legal/Litigation Fees	83	83	83	83	83	83	83	83	83	83	83	87	1,000
5125 Legal/Collection Fees	625	625	625	625	625	625	625	625	625	625	625	625	7,500
5127 Audit/Tax Preparation	0	0	400	0	0	0	0	0	0	0	0	0	400
5130 Postage/Delivery/Courier/S&H	108	108	108	108	108	108	108	108	108	108	108	112	1,300
5140 Bank Service Charges	8	8	8	8	8	8	8	8	8	8	8	12	100
5150 Property Insurance - Policy/Premium	0	0	0	0	0	0	0	0	0	0	0	5,550	5,550
5170 Permits/License/Fees	275	0	0	0	0	0	0	0	0	0	0	0	275
5180 Property Taxes	0	0	0	0	0	0	0	0	2,700	0	0	0	2,700
5205 Foreclosure/Bankruptcy <Bad Debt>	417	417	417	417	417	417	417	417	417	417	417	413	5,000
5210 Committee - Social	398	398	398	398	398	398	398	398	398	398	398	397	4,775
5220 Payment Coupons	0	550	550	550	550	0	0	0	0	0	0	0	2,200
Total Administrative	4,191	4,466	4,866	4,466	4,466	3,916	3,916	3,916	6,616	3,916	3,916	9,460	58,111
Buildings & Grounds													
6125 Extermination Common/Termite Bond	200	0	0	200	0	0	200	0	0	200	0	0	800
6177 Security Guard/Patrol	1,418	1,418	1,418	1,418	1,418	1,418	1,418	1,418	1,418	1,418	1,418	1,422	17,020
6310 Storage Area - Repair & Maint.	83	83	83	83	83	83	83	83	83	83	83	83	996
7010 Landscape - Contract	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	1,981	23,772

Knightsbridge POA

GL Ledger Budget Key Fiscal Year 2014

Operating Department	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Date: 1/1/2014 - 12/31/2014													
EXPENSE													
Buildings & Grounds													
7030 Landscape - Irrigation Repair	250	250	250	250	250	250	250	250	250	250	250	250	3,000
7035 Landscape - Repair & Maint.	479	479	479	479	479	479	479	479	479	479	479	481	5,750
Total Buildings & Grounds	4,411	4,211	4,211	4,411	4,211	4,211	4,411	4,211	4,211	4,411	4,211	4,217	51,338
Community Amenities													
8210 Pool - Contract	1,360	0	0	4,710	4,710	4,710	4,710	1,800	0	0	0	0	22,000
8220 Pool - Repair & Maint.	375	375	375	375	375	375	375	375	375	375	375	375	4,500
8240 Pool - Passes/Supplies/Furniture	0	0	0	250	250	250	250	0	0	0	0	0	1,000
8504 Clubhouse - Janitorial	167	167	167	167	167	167	167	167	167	167	167	169	2,006
8505 Clubhouse - Repair & Maint.	667	667	667	667	667	667	667	667	667	667	667	663	8,000
Total Community Amenities	2,569	1,209	1,209	6,169	6,169	6,169	6,169	3,009	1,209	1,209	1,209	1,207	37,506
Utilities													
9010 Electricity - General Usage	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	36,000
9020 Water/Sewer - General Usage	708	708	708	708	708	708	708	708	708	708	708	712	8,500
9030 Gas - General Usage	60	60	60	60	60	60	60	60	60	60	60	60	720
9040 Telephone	55	55	55	55	55	55	55	55	55	55	55	55	660
9050 Trash Removal - Collection	62	62	62	62	62	62	62	62	62	62	62	58	740
Total Utilities	3,885	3,885	3,885	3,885	3,885	3,885	3,885	3,885	3,885	3,885	3,885	3,885	46,620
TOTAL EXPENSE	15,056	13,771	14,171	18,931	18,731	18,181	18,381	15,021	15,921	13,421	13,221	18,769	193,575

Reserve Department	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Date: 1/1/2014 - 12/31/2014													
INCOME													
Income													
4045 Assessments to Reserves	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,399	16,755
Total Income	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,399	16,755
TOTAL INCOME	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,396	1,399	16,755

Attendees: Don Tankersley, Lori Ann Davidson, Chris Teal, Bill Johnsen, Steve Sappe, Taylor Nugent, Bryan Kuester.

Absent: David Lattig, Austin Edwards

Meeting called to order at 7:20 pm

Chris Teal makes a motion made to increase annual dues by 5%, motion seconded by Steve Sappe. Motion passed.

Budget presented by Bryan Kuester. Motion made by Chris Teal to approve the budget as presented, motion seconded by Bill Johnsen. Motion passed.

Next meeting scheduled for January 7, 2015 followed by a brief meeting to prep for the Annual meeting January 19, 2015 at 7:00 pm.

Annual meeting scheduled for February 3, 2015

Meeting adjourned at 7:45 pm

Budget Summary - Operating
Knightsbridge Property Owners Association, Inc.
2015

Date: 12/10/2014
Time: 4:12 pm
Page: 1

Account	January	February	March	April	May	June	July	August	September	October	November	December	Total
INCOME													
Income													
4010-00 Association Assessments	\$-	\$52,783.50	\$52,783.50	\$52,783.50	\$52,783.50	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$211,134.00
4045-00 Assessments To Reserves	(1,171.90)	(1,171.50)	(1,171.92)	(1,171.92)	(1,171.92)	(1,171.92)	(1,171.92)	(1,171.92)	(1,171.92)	(1,171.92)	(1,171.92)	(1,171.92)	(14,063.00)
4100-00 Late Fee Income	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	2,400.00
4200-00 Storage Lot Rental Income	8,050.00												8,050.00
Total Income	\$7,078.10	\$51,811.60	\$51,811.58	\$51,811.58	\$51,811.58	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	\$207,521.00
Total OPERATING INCOME:	\$7,078.10	\$51,811.60	\$51,811.58	\$51,811.58	\$51,811.58	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	(\$971.92)	\$207,521.00
EXPENSES													
Administrative													
5010-00 Management Fees	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	1,663.00	19,956.00
5110-00 Office Supplies	185.00	185.00	185.00	185.00	185.00	185.00	185.00	185.00	185.00	185.00	185.00	185.00	2,220.00
5112-00 Mgt Co Admin Fees	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	275.00	3,300.00
5115-00 Website Fees	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	360.00
5120-00 Bulk Mailings/Newsletter	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	1,992.00
5124-00 Legal/Litigation Fees	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
5125-00 Legal/Collection Fees	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	450.00	5,400.00
5127-00 Audit/Tax Preparation	-	-	400.00	-	-	-	-	-	-	-	-	-	400.00
5130-00 Postage/Delivery/Courier/S&H	118.00	118.00	118.00	118.00	118.00	118.00	118.00	118.00	118.00	118.00	118.00	118.00	1,416.00
5140-00 Bank Service Charges	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	60.00
5150-00 Property Insurance - Policy/Premium	-	-	-	-	-	-	-	-	-	-	-	5,000.00	5,000.00
5170-00 Permits/License/Fees	275.00	-	-	-	-	-	-	-	-	-	-	-	275.00
5180-00 Property Taxes	-	-	-	-	-	-	-	-	3,000.00	-	-	-	3,000.00
5190-00 ARC Review	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
5205-00 Foreclosure/Bankruptcy <Bad Debt>	667.00	667.00	667.00	667.00	667.00	667.00	667.00	667.00	667.00	667.00	667.00	667.00	8,004.00
5210-00 Committee - Social	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	3,600.00
5220-00 Payment Coupons	-	500.00	500.00	500.00	500.00	-	-	-	-	-	-	-	2,000.00
Total Administrative	\$4,234.00	\$4,459.00	\$4,859.00	\$4,459.00	\$4,459.00	\$3,959.00	\$3,959.00	\$3,959.00	\$6,959.00	\$3,959.00	\$3,959.00	\$8,959.00	\$58,183.00
Buildings & Grounds													
6125-00 Extermination Common/Termite Bond	100.00	-	-	100.00	-	-	100.00	-	-	100.00	-	-	400.00
6177-00 Security Guard/Patrol	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	14,400.00
6310-00 Storage Area - Repair & Maint.	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
6550-00 Maintenance - General	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00

Budget Summary - Operating
 Knightsbridge Property Owners Association, Inc.
 2015

Date: 12/10/2014
 Time: 4:12 pm
 Page: 2

Account	January	February	March	April	May	June	July	August	September	October	November	December	Total
6553-00 Plumbing- Repair and Maintenance	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$1,200.00
7010-00 Landscape - Contract	1,500.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	21,600.00
7020-00 Landscape-Improvement	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	6,000.00
7030-00 Landscape - Irrigation Repair	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00	2,400.00
7035-00 Landscape - Repair & Maint.	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	1,800.00
Total Buildings & Grounds	\$4,250.00	\$4,150.00	\$4,150.00	\$4,250.00	\$4,150.00	\$4,150.00	\$4,250.00	\$4,150.00	\$4,150.00	\$4,250.00	\$4,150.00	\$4,150.00	\$50,200.00
Community Amenities													
8210-00 Pool - Contract	1,038.00	-	-	4,150.00	4,150.00	4,150.00	4,150.00	3,112.00	-	-	-	-	20,750.00
8220-00 Pool - Repair & Maint.	670.00	670.00	670.00	670.00	670.00	670.00	670.00	670.00	670.00	670.00	670.00	670.00	8,040.00
8221-00 Pool - Security Gate	477.00	250.00	-	477.00	250.00	-	477.00	250.00	-	477.00	250.00	-	2,908.00
8240-00 Pool - Passes/Supplies/Furniture	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	1,800.00
8302-00 Athletic Court-Improvement	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	1,200.00
8504-00 Clubhouse - Janitorial	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	166.00	174.00	2,000.00
8505-00 Clubhouse - Repair & Maint.	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	833.00	837.00	10,000.00
Total Community Amenities	\$3,434.00	\$2,169.00	\$1,919.00	\$6,546.00	\$6,319.00	\$6,069.00	\$6,546.00	\$5,281.00	\$1,919.00	\$2,396.00	\$2,169.00	\$1,931.00	\$46,698.00
Utilities													
9010-00 Electricity - General Usage	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	3,240.00	38,880.00
9020-00 Water/Sewer - General Usage	965.00	965.00	965.00	965.00	965.00	965.00	965.00	965.00	965.00	965.00	965.00	965.00	11,580.00
9030-00 Gas - General Usage	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00	55.00	660.00
9040-00 Telephone	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	60.00	720.00
9050-00 Trash Removal - Collection	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
Total Utilities	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$4,370.00	\$52,440.00
Total OPERATING EXPENSE	\$16,288.00	\$15,148.00	\$15,298.00	\$19,626.00	\$19,298.00	\$18,548.00	\$19,125.00	\$17,760.00	\$17,398.00	\$14,975.00	\$14,648.00	\$19,410.00	\$207,521.00
Net - Operating Totals	(\$9,209.90)	\$36,663.60	\$36,513.58	\$32,186.58	\$32,613.58	(\$19,619.92)	(\$20,096.92)	(\$18,731.92)	(\$18,369.92)	(\$15,946.92)	(\$16,619.92)	(\$20,381.92)	\$0.00



Budget Summary - Reserve
 Knightsbridge Property Owners Association, Inc.
 2015

Date: 12/10/2014
 Time: 4:12 pm
 Page: 3

Account	January	February	March	April	May	June	July	August	September	October	November	December	Total
INCOME													
Income													
4045-01 Assessments From	\$1,171.90	\$1,171.90	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$14,063.00
Operating													
Total Income	\$1,171.90	\$1,171.90	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$14,063.00
Total RESERVE INCOME	\$1,171.90	\$1,171.90	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$14,063.00
Net - Reserve Totals	\$1,171.90	\$1,171.90	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$1,171.92	\$14,063.00

PLF 000060

EXHIBIT 3



Transaction History	
Knightsbridge Property Owners Association, Inc.	
Transaction Detail: 5/1/2014 - 1/7/2016	

Date:	1/7/2016
Time:	11:21 am
Page:	1

Name: Paul Nadeau Address: 727 Cheval Drive

Homeowner Account: 72904 Homeowner Status: Owner

Date	Description	Batch	Amount	Paid	Balance
	Previous Balance		\$1,046.53		\$ 1,046.53
05/01/2014	Assessment - Homeowner 2014	1234	110.00	-	1,156.53
05/01/2014	Late Fees Income (Delinquent Fee) 2014	1346	30.00	-	1,186.53
05/01/2014	Late Interest Income (Delinquent Interest) 2014	1346	12.11	-	1,198.64
07/08/2014	Late Fee (Delinquent Fee) 2014	4806	30.00	-	1,228.64
07/08/2014	Late Interest (Delinquent Interest) 2014	4876	13.76	-	1,242.40
08/02/2014	Late Fee (Delinquent Fee) 2014	6865	30.00	-	1,272.40
08/02/2014	Late Interest (Delinquent Interest) 2014	6938	13.76	-	1,286.16
08/06/2014	Check # 43758855	0	-	10.00	1,276.16
09/01/2014	Late Fee (Delinquent Fee) 2014	8756	30.00	-	1,306.16
09/01/2014	Late Interest (Delinquent Interest) 2014	8827	13.76	-	1,319.92
10/01/2014	Late Fee (Delinquent Fee) 2014	10948	30.00	-	1,349.92
10/01/2014	Late Interest (Delinquent Interest) 2014	11016	13.76	-	1,363.68
10/20/2014	Check # 66517512	0	-	10.00	1,353.68
10/20/2014	Check # 66517513	0	-	10.00	1,343.68
11/01/2014	Late Fee (Delinquent Fee) 2014	13709	30.00	-	1,373.68
11/01/2014	Late Interest (Delinquent Interest) 2014	13778	13.76	-	1,387.44
11/06/2014	Check # 71383014	0	-	10.00	1,377.44
12/01/2014	Late Fee (Delinquent Fee) 2014	15564	30.00	-	1,407.44
12/01/2014	Late Interest (Delinquent Interest) 2014	15636	13.76	-	1,421.20
12/08/2014	Check # 79908423	0	-	10.00	1,411.20
01/04/2015	Late Fee (Delinquent Fee) 2015	17980	30.00	-	1,441.20
01/04/2015	Late Interest (Delinquent Interest) 2015	18046	13.76	-	1,454.96
02/01/2015	Homeowner Assessment - 4 installments (Feb-May) 2015	18420	115.50	-	1,570.46
02/01/2015	Late Fee (Delinquent Fee) 2015	21341	30.00	-	1,600.46
02/01/2015	Late Interest (Delinquent Interest) 2015	21414	13.76	-	1,614.22
03/01/2015	Homeowner Assessment - 4 installments (Feb-May) 2015	18420	115.50	-	1,729.72
03/01/2015	Late Fee (Delinquent Fee) 2015	23802	30.00	-	1,759.72
03/01/2015	Late Interest (Delinquent Interest) 2015	23873	13.76	-	1,773.48
03/31/2015	McCabe Trotter Inv #24767 2015	26353	450.00	-	2,223.48
04/01/2015	Homeowner Assessment - 4 installments (Feb-May) 2015	18420	115.50	-	2,338.98
04/01/2015	Late Fee (Delinquent Fee) 2015	26506	30.00	-	2,368.98
04/01/2015	Late Interest (Delinquent Interest) 2015	26568	17.23	-	2,386.21
05/01/2015	Homeowner Assessment - 4 installments (Feb-May) 2015	18420	115.50	-	2,501.71
05/01/2015	Late Fee (Delinquent Fee) 2015	28921	30.00	-	2,531.71
05/01/2015	Late Interest (Delinquent Interest) 2015	28985	25.71	-	2,557.42
06/01/2015	Late Fee (Delinquent Fee) 2015	31339	30.00	-	2,587.42
06/01/2015	Late Interest (Delinquent Interest) 2015	31399	27.44	-	2,614.86
07/01/2015	Late Fee (Delinquent Fee) 2015	34160	30.00	-	2,644.86
07/01/2015	Late Interest (Delinquent Interest) 2015	34220	27.44	-	2,672.30
08/01/2015	Late Fee (Delinquent Fee) 2015	36568	30.00	-	2,702.30
08/01/2015	Late Interest (Delinquent Interest) 2015	36632	27.44	-	2,729.74
09/01/2015	Late Fee (Delinquent Fee) 2015	39067	30.00	-	2,759.74
09/01/2015	Late Interest (Delinquent Interest) 2015	39128	27.44	-	2,787.18
10/01/2015	Late Fee (Delinquent Fee) 2015	41529	30.00	-	2,817.18
10/01/2015	Late Interest (Delinquent Interest) 2015	41586	27.44	-	2,844.62
11/01/2015	Late Fee (Delinquent Fee) 2015	43671	30.00	-	2,874.62
11/01/2015	Late Interest (Delinquent Interest) 2015	43730	27.44	-	2,902.06
12/01/2015	Late Fee (Delinquent Fee) 2015	45920	30.00	-	2,932.06
12/01/2015	Late Interest (Delinquent Interest) 2015	45978	27.44	-	2,959.50



Transaction History
Knightsbridge Property Owners Association, Inc.
Transaction Detail : 5/1/2014 - 1/7/2016

Date:	1/7/2016
Time:	11:21 am
Page:	2

Name: Paul Nadeau Address: 727 Cheval Drive

Homeowner Account: 72904 Homeowner Status: Owner

Date	Description	Batch	Amount	Paid	Balance
01/01/2016	Late Fee (Delinquent Fee) 2016	48230	\$ 30.00	\$ -	\$ 2,989.50
01/01/2016	Late Interest (Delinquent Interest) 2016	48288	27.44	-	3,016.94
		Total	\$3,066.94	(\$50.00)	\$3,016.94

EXHIBIT 4

Knightsbridge POA
Kuester Management Group, LLC - Fort Mill
PO Box 3340
Fort Mill, South Carolina 29708

4

Paul Nadeau**
 36 Richard Blvd.
 Shelton, CT 06484

Property Address: 727 Cheval Drive
Account #: 72904

Code	Date	Amount	Balance	Check#	Memo
Balance Forward:		0.00			
Association Assessments - 20	5/23/2013	37.65	37.65		Prorated Assessment Dec 2012
Late Fees Income - 2013	5/23/2013	30.00	67.65		Lien on Property 12-1-12
Late Interest Income - 2013	5/23/2013	6.60	74.25		Lien on Property 12-1-12
Late Fees Income - 2013	5/23/2013	30.00	104.25		Lien on Property 1-1-13
Late Interest Income - 2013	5/23/2013	6.60	110.85		Lien on Property 1-1-13
Association Assessments - 20	5/23/2013	110.00	220.85		Assessments - Monthly
Late Interest Income - 2013	5/23/2013	6.60	227.45		Lien on Property 2-1-13
Association Assessments - 20	5/23/2013	110.00	337.45		Assessments - Monthly
Late Fees Income - 2013	5/23/2013	30.00	367.45		Lien on Property 2-1-13
Late Interest Income - 2013	5/23/2013	8.25	375.70		Lien on Property 3-1-13
Late Fees Income - 2013	5/23/2013	30.00	405.70		Lien on Property 3-1-13
Association Assessments - 20	5/23/2013	110.00	515.70		Assessments - Monthly
Late Interest Income - 2013	5/23/2013	9.90	525.60		Lien on Property 4-1-13
Late Fees Income - 2013	5/23/2013	30.00	555.60		Lien on Property 4-1-13
Association Assessments - 20	5/23/2013	110.00	665.60		Assessments - Monthly
Late Interest Income - 2013	5/23/2013	11.55	677.15		Lien on Property 5-1-13
Late Fees Income - 2013	5/23/2013	30.00	707.15		Lien on Property 5-1-13
Late Interest Income - 2013	8/1/2013	7.16	714.31		Reminder Notice
Late Fees Income - 2013	8/1/2013	30.00	744.31		Reminder Notice
Late Interest Income - 2013	9/1/2013	7.16	751.47		Warning Letter
Late Fees Income - 2013	9/1/2013	30.00	781.47		Warning Letter
Late Interest Income - 2013	10/1/2013	7.16	788.63		15 Day Demand
Late Fees Income - 2013	10/1/2013	30.00	818.63		15 Day Demand
Late Interest Income - 2013	11/1/2013	7.16	825.79		Reminder Notice
Late Fees Income - 2013	11/1/2013	30.00	855.79		Reminder Notice
Late Interest Income - 2013	12/1/2013	7.16	862.95		Warning Letter
Late Fees Income - 2013	12/1/2013	30.00	892.95		Warning Letter
Late Fees Income - 2014	1/1/2014	30.00	922.95		Reminder Notice
Late Interest Income - 2014	1/1/2014	7.16	930.11		Reminder Notice
Association Assessments - 20	2/1/2014	110.00	1,040.11		Assessments - Monthly
Late Fees Income - 2014	2/1/2014	30.00	1,070.11		Reminder Notice
Late Interest Income - 2014	2/1/2014	7.16	1,077.27		Reminder Notice
Association Assessments - 20	3/1/2014	110.00	1,187.27		Assessments - Monthly
Late Fees Income - 2014	3/1/2014	30.00	1,217.27		Warning Letter
Late Interest Income - 2014	3/1/2014	8.81	1,226.08		Warning Letter
Payment - Operating	3/4/2014	-110.00	1,116.08	5027199	KUE VMS CABLB030414.DAT
Payment - Operating	3/11/2014	-110.00	1,006.08	5771969	KUE VMS CABLB031114.DAT
Association Assessments - 20	4/1/2014	110.00	1,116.08		Assessments - Monthly

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10/6/2014

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Page 1 of 2

PLF000002

Knightsbridge POA
Kuester Management Group, LLC - Fort Mill
PO Box 3340
Fort Mill, South Carolina 29708

Code	Date	Amount	Balance	Check#	Memo
Late Fees Income - 2014	4/1/2014	30.00	1,146.08		Warning Letter
Late Interest Income - 2014	4/1/2014	10.46	1,156.54		Warning Letter
Payment - Operating	4/14/2014	-110.00	1,046.54	97794048	KUE VMS CABLB041414.DAT
Association Assessments - 20	5/1/2014	110.00	1,156.54		Assessments - Monthly
Late Fees Income - 2014	5/1/2014	30.00	1,186.54		Warning Letter
Late Interest Income - 2014	5/1/2014	12.11	1,198.65		Warning Letter
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance: 1,198.65	
0.00	0.00	0.00	1,198.65		

EXHIBIT 5

Knightsbridge POA

P.O. Box 3340

Fort Mill, South Carolina 29708

Code	Date	Amount	Balance	Check#	Memo
Payment - Operating	5/19/2008	-295.87	33.42		8715988-Lock Box: 05/19/2008
LF:CR	5/20/2008	-30.00	3.42		Late Fee Credit-Courtesy Waiver
LICR	5/20/2008	-3.42	0.00		Late Interest Credit-Courtesy Waiver
01	2/1/2009	105.00	105.00		Monthly Charges-Recurring Charges: 02/01
01	3/1/2009	105.00	210.00		Monthly Charges-Recurring Charges: 03/01
LF	3/5/2009	-30.00	240.00		Late Fee-Late Fee: 03/05/2009
LI	3/5/2009	3.15	243.15		Late Interest-Late Interest: 03/05/2009
01	4/1/2009	105.00	348.15		Monthly Charges-Recurring Charges: 04/01
LF	4/5/2009	-30.00	378.15		Late Fee-Late Fee: 04/05/2009
LI	4/5/2009	4.72	382.87		Late Interest-Late Interest: 04/05/2009
01	5/1/2009	105.00	487.87		Monthly Charges-Recurring Charges: 05/01
LF	5/5/2009	-30.00	517.87		Late Fee-Late Fee: 05/05/2009
LI	5/5/2009	6.30	524.17		Late Interest-Late Interest: 05/05/2009
Payment - Operating	6/9/2009	-420.00	104.17	8009068	KUE_VMS_060909.DAT
Payment - Operating	6/15/2009	-69.17	35.00	8014231	KUE_VMS_061509.DAT
Late Fee Credit	6/15/2009	-35.00	0.00		Courtesy Waiver
Association Assessments	2/1/2010	110.00	110.00		Assessments
Late Fees Income	3/1/2010	30.00	140.00		Reminder Notice
Late Interest Income	3/1/2010	3.30	143.30		Reminder Notice
Association Assessments	3/1/2010	110.00	253.30		Assessments
Late Fees Income	4/1/2010	30.00	283.30		Warning Letter
Late Interest Income	4/1/2010	4.95	288.25		Warning Letter
Association Assessments	4/1/2010	110.00	398.25		Assessments
Association Assessments	5/1/2010	110.00	508.25		Assessments
Payment - Operating	5/28/2010	-508.25	0.00	8353575	KUE_VMS_052810.DAT
Association Assessments	2/1/2011	110.00	110.00		Assessments
Late Fees Income	3/1/2011	30.00	140.00		Reminder Notice
Late Interest Income	3/1/2011	3.30	143.30		Reminder Notice
Payment - Operating	3/1/2011	-220.00	-76.70	8699005	KUE_VMS_CABLB030111.DAT
Association Assessments	3/1/2011	110.00	33.30		Assessments
Payment - Operating	3/30/2011	-143.30	-110.00	8740661	KUE_VMS_CABLB033011.DAT
Association Assessments	4/1/2011	110.00	0.00		Assessments
Association Assessments	5/1/2011	110.00	110.00		Assessments
Payment - Operating	5/27/2011	-110.00	0.00	8823366	KUE_VMS_CABLB052711.DAT
Association Assessments - 2011	2/1/2012	110.00	110.00		Assessments
Association Assessments - 2011	3/1/2012	110.00	220.00		Assessments
Late Fees Income - 2012	3/2/2012	30.00	250.00		Reminder Notice
Late Interest Income - 2012	3/2/2012	1.65	251.65		Reminder Notice
Association Assessments - 2012	4/1/2012	110.00	361.65		Assessments
Late Fees Income - 2012	4/1/2012	30.00	391.65		Warning Letter
Late Interest Income - 2012	4/1/2012	3.30	394.95		Warning Letter
Association Assessments - 2012	5/1/2012	110.00	504.95		Assessments
Late Fees Income - 2012	5/1/2012	30.00	534.95		15 Day Demand

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7/3/2012

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PLF000041

Knightsbridge POA

P.O. Box 3340

Fort Mill, South Carolina 29708

Code	Date	Amount	Balance	Check#	Memo
Late Interest Income - 2012	5/1/2012	4.95	539.90		15 Day Demand
Late Fees Income - 2012	6/1/2012	30.00	569.90		Attorney/Collections
Late Interest Income - 2012	6/1/2012	6.60	576.50		Attorney/Collections
Late Fees Income - 2012	7/1/2012	30.00	606.50		Lien on Property
Late Interest Income - 2012	7/1/2012	6.60	613.10		Lien on Property
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	613.10
36.60	36.60	144.95	394.95		

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7/3/2012

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PLF000042

EXHIBIT 8

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TO
BYLAWS
OF
KNIGHTSBRIDGE PROPERTY OWNERS ASSOCIATION, INC.

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BYLAWS
OF
KNIGHTSBRIDGE PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I
CONTROLLING DOCUMENTS/PURPOSE/DEFINITIONS

Section 1: Controlling Documents: In accordance with that KNIGHTSBRIDGE MASTER DECLARATION (herein "Declaration") recorded in Book 1159 at Page 117 in the Office of the Clerk of Court of York County, South Carolina, KnightsBridge Property Owners Association, Inc. (herein "Association") was formed by the filing of its Articles of Incorporation (herein "Charter") with the South Carolina Secretary of State on July 2, 1996. The Declaration and Charter are herein collectively referred to as the "Controlling Documents". In the event of any conflict between the terms of these Bylaws and the Controlling Documents, the provisions of the Controlling Documents shall take precedence and be determinative.

Section 2: Purpose: These Bylaws are the Bylaws of the Association and are adopted to carry out the purpose of the Association as set forth in its Charter.

Section 3: Definitions: All of the words and phrases used in these Bylaws shall have the same meanings as set forth in the Controlling Documents.

The words "Common Area", as used herein, shall mean all real estate as shown on the subdivision maps of KnightsBridge now or hereafter subjected to the Declaration except for the delineated Lots as shown on said maps.

The word "Board", as used herein, shall mean the Board of Directors of the Association.

The word "Code", as used herein, shall mean the South Carolina Nonprofit Corporation Act of 1994 as amended.

ARTICLE II
OFFICES/SEAFISCAL YEAR

Section 1: Registered Office: The registered office of the Association shall be located in York County, South Carolina at 1769 Harrisburg Road, Fort Mill, SC 29715.

Section 2: Principal Office: The principal office of the Association is located in Mecklenburg County, North Carolina at 6805-C Fairview Road, Charlotte, NC 28210.

Section 3: Other Offices: The Association may have other offices at such other places within or without the State of South Carolina as the Board may from time to time determine or as the affairs of the Association may require.

Section 4: Seal: The seal of the Association shall contain the name of the Association, the word "Seal" and such other words and figures as desired by the Board. When obtained and approved by the Board, said seal shall be impressed in the margin of this Section of the Bylaws.

Section 5: Fiscal Year: The fiscal year of the Association shall be the calendar year.

ARTICLE III MEMBERSHIP

Section 1: Qualification: Membership in the Association shall be confined to and consist of the Lot Owners. Membership shall be appurtenant to and inseparable from Lot ownership. No Lot Owner shall be required to pay any consideration whatsoever for his membership.

Membership in the Association shall inure automatically to Lot Owners upon acquisition of the fee simple title - whether encumbered or not - to any one or more Lots. The date of recordation of the conveyance in the Office of the Clerk of Court of York County, South Carolina, of the Lot in question shall govern the date of ownership of each particular Lot. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of Will in case of testacy. Until a decedent's Will is probated and a copy of same is received by the Association, the Association may rely on the presumption that a deceased owner died intestate.

Section 2: Place of Meetings: All meetings of the Membership shall be held within the KnightsBridge Subdivision at a place designated by the Board. Provided, by action duly taken by the Board or Membership, any one or more meetings may be held at any other location within either York County, South Carolina or Mecklenburg County, North Carolina.

Section 3: Annual Meetings: The first Annual Meeting of the Members shall be held at 8:00 P.M. on Tuesday, February 4, 1997. Thereafter, the Annual Meetings of the Members shall be held on the first Tuesday of February of each year, at 8:00 P.M., Eastern Standard Time. If the first Tuesday in February should be a legal holiday, the Annual Meeting shall be held at the same hour on the first business day (Monday through Friday) following which is not a legal holiday. At such meetings, the Board shall be elected in accordance with Section 3 of ARTICLE IV of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4: Substitute Annual Meetings: If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 5 and 6. A meeting so called shall be designated and treated for all

purposes as the Annual Meeting. "Annual Meeting", as referred to in these Bylaws shall mean the Substitute Annual Meeting, where applicable.

Section 5: Special Meetings : After the first Annual Meeting of the Members, Special Meetings of the Members may be called at any time by the President, Board of Directors, or by any Member pursuant to the written request of the owners of not less thirty (30%) percent of the votes of the Membership. Business to be acted upon at all Special Meetings shall be confined to the matters stated in the notice of such meeting.

Section 6: Notices of Meetings - Waiver: Written or printed notice stating the time and place of the meeting shall be delivered not less than fifteen nor more than forty five days before the date of any Membership meeting, either personally or by first class or registered mail, by or at the direction of the President, the Secretary, or other person calling the meeting, to each Member entitled to vote at such meeting. Notice shall be deemed given upon deposit in the mail depository of each Lot.

Notice given to any one tenant in common or tenant by entirety of a Lot shall be deemed notice to all co-owners of the subject Lot.

In the case of a Special Meeting, the notice of meeting shall specifically state the purpose of purposes for which the meeting is called; but, in the case of an Annual or Substitute Annual Meeting, the notice of meeting need not specifically state the business to be transacted thereat unless such a statement is required by the provisions of the Code.

Any Member may waive the necessity of formal notice to him by signing a written waiver either before or after the meeting and upon execution of said waiver, said Member shall not be entitled thereafter to object to the meeting being held or matters being passed upon at said meeting because of lack of notice thereof.

Section 7: Quorum: Except as otherwise provided in the Declaration, Charter, these Bylaws and as otherwise required by law, the presence in person or by proxy of Members holding at least ten (10%) percent of the total vote of each Class of Membership shall constitute a quorum at all meetings of the Members. It is noted that Section 6 of ARTICLE V of the Declaration requires a quorum of Members holding at least sixty (60%) percent of the total votes of each Class of Membership to approve of an increase in the Maximum Annual Assessment or pass a Special Assessment where said Special Assessment plus the Annual Assessment for the subject year exceed 120% of the Annual Assessment for the immediate preceding year. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented.

The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 8: Voting Rights: See Section 5 of ARTICLE III of the Declaration for votes allocated to Class A Lots and votes allocated to Class B Lots. As therein stated, each Class A Lot entitles the owner(s) thereof to one vote, and each Class B Lot entitles the owner(s) thereof to five votes.

In the case where a Lot is owned by two or more persons (whether individually or in a fiduciary capacity), the votes appurtenant to said Lot may be cast by any one of the Coowners, in person or by proxy. If more than one of the Co-owners vote, the unanimous action of all Co-owners voting shall be necessary to effectively cast the vote allocated to the subject Lot.

The Owners of life estates in the Lots shall be entitled to cast the votes appurtenant to such Lots as are so owned. The above provisions concerning co-ownership shall also apply to those owning joint or multiple life estates in any particular Lot.

No Member, other than Declarant, shall be entitled to vote at any meeting until such Member has presented to the Board of Directors or a voting inspector appointed at such meeting reasonable evidence of ownership, or partial ownership, or a life estate to a Lot.

Section 9: Proxies: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which it is to continue in force, or limits its use to a particular meeting, but no proxy shall be valid after three (3) years from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary or voting inspector either during or prior to the meeting in question.

All of the above provisions concerning the voting by Co-owners shall apply to the votes cast for any one Lot by two or more proxy holders.

Section 10: Majority Vote: The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a higher percentage vote is required by the Controlling Documents or by law or where a specified minimum percentage of the votes appurtenant to each Class of Membership is required by the Controlling Documents.

Section 11: Actions Without Meeting: Any action which may be taken at a meeting of the Membership may be taken without a meeting if a consent or ratification, in writing, setting

forth the action so taken or to be taken shall be signed by all of the then Owners and such consent is filed with the Secretary of the Association and inserted in the Minute Book of the Association. Further, action without meeting may be taken in accordance with Section 33-31-708 of the Code.

ARTICLE IV BOARD OF DIRECTORS

Section 1: General Powers: The business and affairs of the Association shall be managed by the Board or by such committees as the Board may establish pursuant to ARTICLE V of these Bylaws.

Section 2: Number, Term, Election and Qualification: The Board shall consist of not less than three individuals nor more than nine individuals as determined from time to time by the Board.

The initial Board shall consist of three persons appointed by the Incorporator (Lyn Bond, Jr.). Each appointed initial Director shall serve in office until replaced (if not reelected) at the first Annual Meeting of the Members or until otherwise replaced as provided in these Bylaws.

There shall be an election of all Directors at each Annual Meeting of the Membership to serve in office until replaced (if not re-elected) at the following Annual Meeting of the Membership.

No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.

Directors need not be Members and may succeed themselves in office.

Section 3: Nominations: Nominations for election to the Board shall be made by a Nominating Committee consisting of a Chairman, who shall be a Director and at least two (2) Members of the Association. The Nominating Committee shall be appointed by the Board prior to each Annual Meeting of the Members to serve from the close of such Annual Meeting until the close of the next Annual Meeting and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of Directors to be elected. Nominations may also be made from the floor at the Annual Meeting.

Section 4: Vote for Directors: If any Member so demands or if the presiding officer so directs, the election of Directors shall be by ballot. Otherwise, the election shall be by voice vote. Persons receiving the highest number of votes (see Section 8 of ARTICLE III) shall be elected. Cumulative voting is not permitted.

Section 5: Removal: Any Director may be removed from the Board, with or without cause, by a majority vote (Section 10 of ARTICLE III) of the Members of the Association at any Special Meeting or Annual Meeting of the Membership. Provided, the notice of the meeting must state that the question of such removal will be voted upon at the subject meeting. If any Directors are so removed, their successors as Directors may be elected by the Membership at the same meeting to fill the unexpired terms of the Directors so removed.

Section 6: Vacancies: A vacancy occurring in the Board may be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining Director; but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting or by written ballot in accordance with Section 33-31-708 of the Code. The Members may elect a Director at any time to fill any vacancy not filled by the Directors. As indicated in Section 5 of this ARTICLE, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Director.

Section 7: Chairman: There may be a Chairman of the Board elected by the Directors from their number at any meeting of the Board. The Chairman shall preside at all meetings of the Board and perform such other duties as may be directed by the Board. In the absence of the Chairman, the President shall preside at all meetings of the Board.

Section 8: Compensation: No Member of the Board shall receive any compensation from the Association for acting as such. Provided, however, each Director shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association when approved by the Board, and nothing herein shall prohibit the Board compensating a Director for unusual and extraordinary services rendered on the basis of quantum meruit. Further provided, each Director, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 9: Loans to Directors and Officers: No loans shall be made by the Association to its Directors or officers. The Directors of the Association who vote for or assent to the making of a loan to a Director or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 10: Liability of Directors: To the fullest extent permitted by the provisions of the Code in effect at the applicable time, each Director is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as a Director. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act or Code.

Section 11: Meetings of Directors:

A. Regular Meetings: Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

B. Special Meetings: Special Meetings shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) nor more than thirty (30) days written notice to each Director.

C. Notices of Special Meetings: The notice provided for herein may be waived by written instrument signed by those Directors who do not receive said notice. Except to the extent otherwise required by law, the purpose of the Directors' Special Meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mails with proper postage paid and addressed to the Director at his last known address on file with the Association, (2) deposit of same in his Lot mail box, or (3) delivery to the Director. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting unless the subject Director gives written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote of any resolution.

D. Approved Meeting Place: Each Director's meeting shall be held in either York County, South Carolina, or Mecklenburg County, North Carolina, at the place set forth in the notice of same unless a majority of the Directors then in office agree in writing to hold all of such meetings at a designated location either within or outside of said Counties. Provided, the Association shall not reimburse any Director for expenses incurred in attending a meeting outside of said Counties.

E. Quorum: A majority of the Directors then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 12: Action Without Meeting: The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 13: Presumption of Assent: A Director of the Association who is present at a meeting of the Board at which action on any Association matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is

otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 14: Powers and Duties: The Board shall have all powers and duties necessary for the administration of the affairs of the Association including, but not limited to, the following:

- A. Operate, care for, tend and maintain the Common Area;
- B. Contract for garbage collection until such responsibility is assumed by a governmental entity;
- C. Determine the funds required for operation, administration, maintenance and other affairs of the Association and collect the assessments from the Members as provided in the Controlling Documents;
- D. Employ and dismiss personnel necessary for the efficient operation and maintenance of the Common Area and the Association;
- E. Adopt rules and regulations covering the details of the operation and use of the Common Area;
- F. Open bank accounts on behalf of the Association and designate the signatories required therefor;
- G. Acquire in the name of the Association any Lot surrendered by its owner to the Association when the Board determines such to be in the best interest of the Association;
- H. Purchase Lots at foreclosure or other judicial sales for the collection of assessments in the name, of the Association, or its designee when the Board deems such to be in the best interest of the Association;
- I. Sell, lease, mortgage, vote the votes appurtenant to (other than for the election of Directors) or otherwise deal with Lots acquired by the Association or its as the Board deems appropriate;
- J. Obtain such insurance (including fidelity and liability insurance protecting the Directors or officers, or both) as the Directors deem necessary and appropriate to carry out the obligations of the Association;

- K. Keep detailed, accurate records of the receipts and expenditures of the Association; obtain, when desired, annual audits of the financial records of the Association and determine the amount of Annual Assessments in the manner set forth in ARTICLE V of the declaration. All books and records shall be kept in accordance with good and accepted accounting practices consistently applied, and the same shall be available for examination by all Members and their mortgagees or their duly authorized agents or attorneys during convenient hours on working days.
- L. Keep a complete record of the minutes of all meetings of the Directors and Membership in a Minute Book, in which shall be inserted actions taken by the Directors and/or Members by consent without meeting; and
- M. Supervise all officers, agents and employees of the Association and insure that their duties are properly performed.

Section 15: Independent Manager: The Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the Association. The Board may delegate to such person, firm or entity (herein referred to in these Bylaws as 'Independent Manager') such duties and responsibilities in the management of the Association as the Board deems appropriate. Provided, the Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Code or the Controlling Documents. The Independent Manager's contract shall always be subject to termination upon reasonable notice (not exceeding 60 days) given by the then Board of the Association. The Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Board and subject to their direction.

Section 16: Terms of Contracts: So long as Class B vote memberships are in existence, the Board shall not - without the expressed written permission of Declarant - execute any contracts or leases, including a management contract, unless there is a right of termination in such contract which is exercisable without penalty by the Association upon not more than 60 days notice to the other party. Provided, this Section shall not have any application to the granting of general utility easements, roadway easements, and cable television easements, or the granting of any other licenses, permits or easements, reasonably necessary or useful for the proper maintenance or operation of the Common Area and Association.

ARTICLE V COMMITTEES

Section 1: Creation: The Board, by resolutions adopted by a majority of the number of Directors then holding office, may create such committees as they deem necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Association. Each committee so created shall have such authorities and

responsibilities as the Directors deem appropriate and as set forth in the resolutions creating said committees except as limited by the Controlling Documents or the Code. In no event may a committee (a) authorize distributions; (b) approve or recommend to members dissolution, merger, or the sale, pledge or transfer of all or substantially all of the Association's assets; (c) select, appoint or remove Directors or fill vacancies on the Board or on any of its committees or (d) approve, amend or repeal any of the Controlling Documents or these Bylaws. The Directors shall elect the members of such committees. Each committee shall have in its membership at least two (2) members of the Board.

Section 2: Vacancy: Any vacancy occurring on a committee shall be filled by a majority of the number of Directors then holding office at a regular or special meeting of the Board.

Section 3: Removal: Any member of a committee may be removed at any time with or without cause by a majority of the number of Directors then holding office.

Section 4. Minutes: Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 5: Responsibility of Directors: The designation of committees and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility or liability imposed upon it or him by law. If action taken by a committee is not thereafter formally considered by the Board, a Director may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

ARTICLE VI OFFICERS

Section 1: Enumeration of Officers: The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board may from time to time elect. Except for the President, no officer need be a member of the Board.

Section 2: Election and Term: The officers of the Association shall be elected annually by the Board. Such elections shall be held at the first meeting of the Board next following the Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 3: Removal: Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 4: Vacancy: A vacancy in any office may be filled by the election by the Board of a successor to such office. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 5: Multiple Offices: The person holding the office of President shall not also hold the office of Secretary at the same time. Any other offices may be simultaneously held by one person.

Section 6: President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Board. He shall see that the orders and resolutions of the Board are carried out. He shall sign all written instruments regarding the Common Area and consign all promissory notes of the Association. He shall have all of the general powers and duties which are incident to the office of President of a non-profit corporation organized under the Code in the supervision and control of the management of the Association in accordance with these Bylaws and the Controlling Documents.

Section 7: Vice Presidents: The Vice Presidents in the order of their election, unless otherwise determined by the Board, shall - in the absence or disability of the President - perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board shall prescribe.

Section 8: Secretary: The Secretary shall keep the minutes of all meetings of Members and of the Board; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all duties incident to the office of Secretary of a corporation organized under the Code and the Controlling Documents.

Section 9: Treasurer: The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate, financial records in books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall prepare a proposed annual budget (to be approved by the Board) containing the Annual Assessments to be collected from the Members as required in the Declaration. He shall, in general, perform all duties incident to the office of Treasurer of a corporation organized under the Code and the Controlling Documents.

Section 10: Assistant Secretaries and Treasurers: The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

Section 11: Loans to Officers: The Association shall not make any loans, either directly or indirectly, to any officer of the Association. Any officer or officers participating in the making of such loan shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof. Nothing herein is intended to otherwise limit the liability of Directors in connection with such loans. See Section 9 of ARTICLE IV.

Section 12: Compensation: Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Board of Directors may, however, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer - by assuming office - waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 13: Indemnification: To the extent permitted by the provisions of the Code in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Code.

ARTICLE VII ASSESSMENTS

Section 1: Declaration Provisions: ARTICLE V of the Declaration pertaining to the manner of establishing and collecting of the maintenance assessments is specifically incorporated herein by reference.

Section 2: Owner's Non-Use: No Owner may exempt himself from liability for his contributions toward Common Expenses and his other obligations to the Association by waiver of the use or enjoyment of any portion of the Common Area or by the abandonment or sale of his Lot. Provided, no former Owner shall be liable for assessments accruing from the date of the recordation of his deed to any successor Owner.

ARTICLE VIII AMENDMENTS

Section 1: Amendments: These Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least sixty (60%) percent of the vote of the Association. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Controlling Documents or these By Laws, no amendment of a Bylaw pertaining to such action shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Properties shall be bound to abide by any amendment to these Bylaws upon the same being passed as provided herein.

Section 2: VA/FHA Approval: Notwithstanding the foregoing, either the Federal Housing Administration or the Veterans Administration shall have the right to veto any and all Amendments to these Bylaws made while there is a Class B membership.

ARTICLE IX MORTGAGEES

Section 1: Required Approval by Mortgagees: Unless and until at least seventy-five (75%) percent of the first mortgagees (based upon one vote for each first mortgagee) of the Lots have given their prior written approval, the Association shall not be entitled to:

- A. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause.
- B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner.
- C. By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural control as set forth in the Declaration.
- D. Fail to maintain fire and extended coverage insurance on improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value.
- E. Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.
- F. Dissolve or liquidate the Association.

Section 2: Examination of Books/Documents: Each first mortgagee or any holders, insurers, or guarantor claiming through first mortgagees shall have the right to examine the books, records, current Bylaws and Declaration of the Association and other rules of the Association at reasonable times and at reasonable intervals.

ARTICLE X MISCELLANEOUS

Section 1: Severability: Invalidation of any covenant, condition, restriction or other provision of the Controlling Documents or these Bylaws shall not effect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 2: Successors Bound: The rights, privileges, duties and responsibilities set forth in the Controlling Documents and these Bylaws, as amended from time to time, shall run with

the ownership of the Lots and shall be binding upon all persons who own or hereafter acquire any interest in the Lots.

Section 3: Gender, Singular, Plural: Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

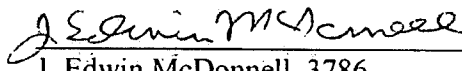
Section 4: Non-Profit Corporation: No part of the Association's assets or net income shall inure to the benefit of any of its Officers, Directors or Members or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared non-profit purposes as set forth in the Controlling Documents and these Bylaws.

Section 5: Owner's Examination of Books: Lot Owners shall have the right to examine the books, records, current Bylaws, Controlling Documents of the Association and other rules of the Association at reasonable times and at reasonable intervals.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 12, 2017


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Master in Equity

S. Jackson Kimball, Master in Equity
2014-CP-46-03819

Appeal Case No. 2016-001696

Knightsbridge Property
Owners Association, Inc.,

Respondent,

v.

Paul A. Nadeau,

Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL JUDGE ERR BY FINDING THAT EQUITY PROTECTS KNIGHTSBRIDGE HOMEOWNER'S ASSOCIATION FROM ACTING BEYOND ITS OWN DECLARATION?

DID THE TRIAL JUDGE ERR BY FINDING THAT NADEAU IS ESTOPPED FROM CHALLENGING THE FIXING OF THE ASSESSMENTS BECAUSE NADEAU DID NOT COMPLAIN BEFORE THE FORECLOSURE AND PAID SOME AMOUNT TOWARD THE ASSESSMENTS?

STATEMENT OF THE CASE

This is an action to foreclosure a homeowner's association assessment filed by Knightsbridge Property Owners Association, Inc. (Knightsbridge) on November 20, 2014. Paul Nadeau (Nadeau) properly filed an answer. The trial in this matter was held before the Master in Equity on January 11, 2016. The Court foreclosed on the assessment ordering the sale of Nadeau's home. The order was signed on February 29, 2016 and filed on March 1, 2016. Nadeau timely filed a motion to reconsider which was heard on April 20, 2016. The order denying the motion was signed on July 27, 2016 and filed on July 28, 2016. The Notice of Intent to Appeal was filed on August 15, 2016. Nadeau sought a stay of the foreclosure sale which was granted by order dated September 6, 2016. The order required Nadeau to post a bond of \$9,500. Nadeau complied with that order. The foreclosure sale has been stayed.

FACTS

Knightsbridge Property Owner's Association, Inc. was created by a Master Declaration (Declaration) dated June 19, 1996 and filed on June 20, 1996 (R. pp. 120-143). Each owner of property within Knightsbridge neighborhood is obligated to pay properly fixed assessments. (R. p. 127 Article V, Section 1). A Board of Directors governs Knightsbridge. (R. p. 125 Article III, Section 6). "The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty (30) days in advance of each calendar year." (R. p. 129, Article V, Section 7). This foreclosure action involves the assessments for 2012 through 2015. (R. p. 7, fn. 1). The board minutes show that the assessments were fixed by the approval of a budget that included a line item for the assessments on the following dates:

Meeting December 14, 2011 for 2012 (R. p. 147)

Meeting November 28, 2012 for 2013 by email vote (R. p. 149)

Meeting December 5, 2013 for 2014 (R. p. 151)

Meeting with No date in 2014 for 2015 (R. p. 155)

Neither the Master Declaration (R. p. 128 lines 10-13) nor the Bylaws (R. p. 44 line 9-p. 39 line 17) provide for a board of Directors vote by email.

Knightsbridge included late fees in the foreclosure amount. The Trial Court deducted late fees because late fees were not established in the Master Declaration or the Bylaws. (R. p. 8)

Nadeau did not pay all of the assessments for the years 2012 through 2015. He did pay some amount toward those assessments. (R. pp. 59 line 23-p. 60 line 16; R. p. 74 line 12-p. 75 line 4)

ARGUMENTS

I. THE ASSESSMENTS ARE A NULLITY BECAUSE KNIGHTSBRIDGE DID NOT FIX THE ANNUAL ASSESSMENTS WITHIN THIRTY DAYS OF ADVANCE OF THE FOLLOWING CALENDAR YEAR,

Knightsbridge seeks to force the sale of Nadeau's home for the alleged failure to pay assessments. Knightsbridge must show that the assessments are properly due before collection of such assessments can be enforced. The assessments sought to be collected were improperly fixed by Knightsbridge. The assessments are therefore unenforceable and uncollectible.

Assessments are authorized by the Knightsbridge Master Declaration. Article V, Section 7 sets forth the procedure to fix assessments for lots in the subdivision including Paul Nadeau's lot. (R. pp. 128-12) That section states: "The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each calendar year."

The evidence presented by Plaintiff included minutes from the Board of Directors meetings that allegedly fixed the amount of the assessments. Those documents show the following:

Minutes with no date but with a budget dated 12/10/2014 allegedly fixed the assessment for 2015. (R. p. 155)

The minutes dated 12/09/2013 allegedly fixed the assessment for 2014. (R. p. 151)

An email dated November 28, 2012 allegedly fixed the assessment for 2013. (R. p. 149)

The minutes dated 12/14/2011 allegedly fixed the assessment for 2012. (R. p. 147)

The minutes dated 12/13/2010 allegedly fixed the assessment for 2011. (R. p. 145)

Knightsbridge attempted to testify that the budget dated December 12, 2014 indicated that the budget was approved in November. This testimony was based on computer

records that were not in evidence and an objection to the testimony was sustained by the trial court. (R. p. 33 line 16- p. 37 line 21) Knightsbridge did not present any admitted testimony to show the date of the December 2014 meeting. Two other budgets between 2011 and 2014 had dates. Each of those budgets had dates that were within two days of the corresponding meeting (2011 and 2012) (R. pp. 145-158)

The Board of Directors did not comply with the Master Declaration in fixing any of the assessments for 2011 and beyond. The assessments for 2011, 2012, 2014, and 2015 were, at best, all fixed at meetings in December of the previous year. The assessments were not fixed in advance of thirty days of the end of each calendar year. For 2013, there is an email dated November 28, 2012 that states the budget was approved by email. (R. p. 149) The Master Declaration (R. pp. 120-143) does not have a provision for votes by email. The Bylaws of Knightsbridge (R. p. 169-185) does not authorize votes by email. The Bylaws do authorize the Board to take action without a meeting. The written approval of all Directors is necessary for such action (R. p. 178 Section 12). No such approval was presented by Knightsbridge. (R. p 44 line 7-p. 39 line 17)

It is clear that Knightsbridge did not properly fix the assessments for the years 2011 through 2015. If the assessments were not properly fixed, they cannot be collected by Knightsbridge. If they cannot be collected by Knightsbridge, the non-payment cannot be the basis of the foreclosure requested by Knightsbridge.

In Seabrook Island Property Owners Association v. Pelzer, 292 S.C. 343, 356 S.E.2d 411 (Ct.App.1987), the Association was attempting to collect assessments that had not been fixed in accordance with the restrictive covenants. The Court of Appeals held that:

The restrictive covenants and the bylaws require annual maintenance charges to be based on property values. A system of charges that violates this requirement cannot be defended on the ground that it is a reasonable alternative. The Association is bound to follow the covenants and its own bylaws.

Since the flat fee annual maintenance charge violates the restrictive covenants and the bylaws, we reverse the judgment against Pelzer for the 1984 charges on his two lots. P. 348

The Court of Appeals in *Seabrook* did not allow Pelzer a refund for previously paid assessments because of estoppel. Paul Nadeau does not seek any such refund. The Court of Appeals did stop the collection of unpaid assessments. The Court of Appeals also addressed the "business judgment" rule and found that it did not aid the Association.

The Association argues that its flat fee system of charges is reasonable and was adopted in good faith in the exercise of business judgment. This argument misses the point. Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as any other contract. *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct.App.1985). Moreover, a corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and by any bylaws made pursuant thereto; acts beyond the scope of the powers so granted are ultra vires. *Lovering v. Seabrook Island Property Owners Association*, 289 S.C. 77, 344 S.E.2d 862 (Ct.App.1986), *aff'd as modified*, 291 S.C. 201, 352 [292 S.C. 348] S.E.2d 707 (1987). The "business judgment" rule applies to intra vires action of the corporation, not to ultra vires acts. See *Dockside Association, Inc. v. Detyens*, 291 S.C. 214, 352 S.E.2d 714 (Ct.App.1987). p. 347

The Trial Court found that equity requires the foreclosure. (R. p. 9). The Trial Court did find that all assessments (except 2013) were fixed in December and were not fixed at least thirty days in advance of the calendar year. (R. p. 7) For 2013, the court found that

the assessment was fixed on November 28, 2012. (R. p. 7) The court failed to note that the November 28, 2012 vote was by email. (R. p. 149) There is no provision for an email vote in the Declaration or Bylaws of Knightsbridge. (R. pp. 120-143 and pp. 169-185 and R. p. 28 lines 10-13 and R. p. 44 line 9-p. 39 line 1).

The court found that Nadeau knew about the assessments and made some payment toward the assessments. (R. p. 8) The court decided that equity required that Nadeau had an obligation to pay the assessments and the failure to pay those assessments result in foreclosure. (R. p. 9). The court cited *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct App 2011) (*Regions*) for the proposition that a court can do anything to ensure that just results are reached. While the *Regions* court used equity to protect a purchaser's interest in real estate, the *Regions* court did note: "The rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties." *Regions* at page 254. The trial court found that "The noncompliance of the Board in regard to the date specified for formulating the budget and assessments is inconsequential, and no party, including Defendant, has suffered prejudice as a result." (R. p. 8)).

The Declaration specifies how Knightsbridge's is to fix the assessments. The fixing of the assessments is an *ultra vires* act. Equity should not allow Knightsbridge to deviate from the procedure set in the Declaration simply because what Knightsbridge did was inconsequential. In *Fisher v. Shipyard Village Council of Co-Owners, Inc.*, 409 S.C. 164, 760 S.E.2d 121 (Ct App 2014), the court stated "A homeowner's association is bound to

follow its covenants and bylaws and cannot defend something that violates those documents on the basis that is a reasonable alternative.” 760 S.E.2d 121, 130.

NADEAU IS NOT ESTOPPED FROM CHALLENGING THE FIXING OF THE ASSESSMENTS.

The Trial Judge, *sua sponte*, found that Nadeau is estopped from challenging the fixing of the assessments because Nadeau did not challenge the Board’s actions before the foreclosure was filed. (R. p. 11) Nadeau did nothing to the Board’s detriment.

Estoppel by silence “. . . arises where a person owing another a duty to speak refrains from doing so and thereby leads the other to believe in the existence of an erroneous state of facts The circumstance must have been such as to render it his duty to speak.”

Mayes v. Paxton, 313 S.C. 109, 437 S.E.2d 66 (1993), page 113. Nadeau did not have a duty to speak. Nadeau did not say anything that lead Knightsbridge to ignore the Declaration.

Promissory estoppel is a quasi-contractual remedy. “The elements of promissory estoppel are (1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance.” *North American Rescue Products, Inc. v P. J. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015), 769 S.E.2d at page 241. Nadeau did not make any promises to Knightsbridge that led Knightsbridge to ignore the Declaration.

Collateral estoppel and judicial estoppel requires prior litigation between the same parties. *Carrigg v Cannon*, 347 S.C. 75, 552 S.E.2d 767, (Ct. of App. 2001)

The essential elements of estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. . . . As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position. (cites omitted)

Southern Development Land and Golf Company, Ltd. v. South Carolina Public Service Authority, 311 S.C. 29, 426 S.E.2d 748 (1993) page 33

Nadeau did not make any false representations to Knightsbridge about the process to fix the assessments. Knightsbridge did not rely on any information from Nadeau in ignoring the Declaration. Nadeau is not estopped from requiring Knightsbridge to comply with the Declaration..

CONCLUSION

Knightsbridge did not comply with its own rules. Knightsbridge did not fix the assessments as required by the Master Declaration. The assessments sought by Knightsbridge are unenforceable. Foreclosure should be denied. Knightsbridge should not be excused from failing to comply with the Master Declaration because the Board was just sloppy. Knightsbridge acted outside its power. Knightsbridge's failure cannot be justified because it needs funds to properly operate. Estoppel should not be a consideration because it was brought up by the trial court at the hearing for reconsideration. If estoppel is considered, there are no facts to support a finding of estoppel by Nadeau.

The trial court should be reversed. The foreclosure should be stopped.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Master-In-Equity

Appellate Case No. 2016-001696

Paul A. Nadeau Appellant,

v.

Knightsbridge Property Owners' Association, Inc. Respondent,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court correctly hold that Knightsbridge Property Owners' Association acted properly in levying assessments and foreclosing liens for nonpayment of assessments by Nadeau?
- II. Did the trial court correctly hold that Nadeau is estopped from raising claims challenging the assessment rate because Nadeau did not raise this issue prior to the final judgment in the foreclosure proceeding and because Nadeau paid monies toward the assessment without protest?

STATEMENT OF THE CASE

Knightsbridge filed suit against Nadeau on November 20, 2014 seeking foreclosure of an unpaid homeowner's association assessment lien on Nadeau's property. On January 10, 2016, the Honorable S. Jackson Kimball, III conducted the trial in this matter. On March 1, 2016 the trial court entered judgment in favor of Knightsbridge in the amount of \$1,516.94 plus attorney's fees and costs. Subsequently, on March 10, 2016 Nadeau filed a Motion to Reconsider, which the trial court denied on July 27, 2016.

On August 15, 2016, Nadeau filed a Notice of Appeal. Execution of the underlying order has been stayed pending appeal after Nadeau posted a bond of \$9,500.00 on September 6, 2016..

STATEMENT OF FACTS

In June 2001 Nadeau, Paul A. Nadeau purchased and took possession of the real property located at 727 Cheval Drive in York County, South Carolina ("Property.") (R. p. 2.) The Property is encumbered by restrictive covenants contained in the Knightsbridge Master Declaration ("Declaration.") (R. p. 2.) The Declaration was recorded June 20, 1996 in the Office of the Register of Deeds for York County in Book 1559 at Page 117. Article V, Section 1, of the Declaration establishes the obligation of any owner of a lot in

Knightsbridge to pay assessments to the Knightsbridge Property Owner's Association, Inc. It further establishes a lien in favor of Knightsbridge for the collection of such assessments or charges, along with attorney's fees and costs incurred in the collection process. (R. pp. 127-129.)

Pursuant to Article V, Section 3 of the Declaration, the Knightsbridge Board of Directors unilaterally establishes the operating budget for Knightsbridge as long as the annual budget does not increase more than 10% above the prior year. Only where the Board proposes an increase of more than 10% is the general membership entitled to vote on the budget. Article V, Section 5 of the Declaration provides that the assessments are uniformly set for all lots. The Declaration further provides that the Board "shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each calendar year." (R. pp. 128-129.)

In December 2011 Knightsbridge established an annual assessment of \$440 per lot for 2012. (R. p. 15, l. 1-18.) The assessment was due in four monthly installments starting February 1, 2012. (R. pp. 159-161.) Nadeau did not pay that assessment and Knightsbridge referred his account to an attorney to file a lien against the property. (R. p. 49, l. 6-25; R. p. 53, l. 1-11; R. p. 55, l. 5-12.); At that time Knightsbridge incurred legal fees that were added to Nadeau's account pursuant to the Declaration. (R. p. 53, l. 19-20.) Subsequently, in November 2012, Nadeau filed for bankruptcy relief. (R. p. 46, l. 11-12.) When Knightsbridge learned of the bankruptcy it adjusted Nadeau's account to show only those charges accruing after his bankruptcy petition. (R. p. 25, l. 20-25; R. p. 46, l. 1-3.)

On November 28, 2012 the Knightsbridge Board approved the 2013 budget with an assessment rate of \$440.00. (R. p. 21, l. 9-10.) The assessment was again due in four

monthly installments starting February 1, 2013. (R. pp. 160-161.) Nadeau did not remit any payments in 2013. (R. p. 48, l. 13-16.)

On December 5, 2013 the Knightsbridge Board approved the 2014 budget with an assessment rate of \$440.00. (R. p. 21, l. 11-14.) The assessment was again due in four monthly installments starting February 1, 2014. (R. pp. 160-161.) Nadeau remitted payments totaling \$380.00 between March 2014 and December 2014. (R. p. 48, l. 7-12.)

In early December 2014, the Knightsbridge Board approved the 2015 budget with an assessment rate of \$462.00. (R. p. 33, l. 1-15.) The assessment was again due in four monthly installments starting February 1, 2015. (R. pp. 160-161.) Nadeau did not remit any payments in 2015. (R. pp. 160-161.)

At trial Knightsbridge submitted board meeting minutes ratifying or approving the annual budget for 2011 through 2015. The 2013 budget was approved on November 28, 2012. Knightsbridge's representatives testified that the budgets for the remaining years were approved sometime in December of the preceding year.

In October 2014 Knightsbridge instructed its attorney to begin foreclosure of Nadeau's property. Nadeau contested Knightsbridge's foreclosure arguing he did not owe any assessments because Knightsbridge's board of directors failed to establish the annual budget before December 1st of each year as required by the Declaration.

ARGUMENT

I. The trial court correctly exercised its equitable powers to uphold the budgets approved by Knightsbridge's Board of Directors and Nadeau's corresponding liability to pay assessments.

A. The trial court correctly held that Knightsbridge's failure to adopt a budget before December 1 of each year did not invalidate the budget and assessments levied by Knightsbridge between 2011 and 2015.

"Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." Regions Bank v. Wingard Prop., Inc., 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). Courts often use equitable maxims as guidance in balancing equitable considerations. "The principle 'equity regards as done that which ought to be done' applies in cases where the party seeking equitable relief establishes 'a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.'" Regions Bank v. Wingard Prop., Inc., 394 S.C. at 253, 715 S.E.2d at 354 (quoting Wilkie v. Phila. Life Ins. Co., 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). "The notion 'equity looks to substance rather than form' evolved out of judicial regard for that which ought to be done." Id. "This maxim applies by 'dispensing with pure formalities which would otherwise defeat the equity.'" Id. "After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity." Id.

In Regions Bank the court looked at the substance of the agreement between the parties to give an equitable lien holder priority over the bank's first-in-time recorded lien. Specifically, the court held that even though the lien holder's deposit was mistakenly not paid until after the bank's lien was recorded, the bank knew of the lien holder's pending payment. Rather than strictly enforcing the timing of the recording and payment, the

court found that equities favored granting the lien holder priority over the bank's mortgage.

The case at hand is analogous. Nadeau was well aware that he was responsible for paying his pro rata portion of the operating expenses of the Association and did not contest such at trial. Nadeau similarly did not contest the substance of the operating budget or corresponding annual assessments. In fact, Nadeau paid in 2011, 2012, and 2014 without complaint regarding the adoption of the budget. Nadeau did not dispute that he received the benefit of the services provided by Knightsbridge during these years. Nadeau's sole argument is that the budgets for the relevant timeframe were approved by the Board less than 30 days before the December 31st of each year. Nadeau presented no evidence or argument of how this delay prejudiced him or otherwise changed his course of action.

This case is exactly the type to which "substance over form" applies. Knightsbridge clearly established Nadeau's obligation to pay his pro rata share of the operating expenses of the Association. In every relevant year the Knightsbridge Board possessed sole authority to set the budget and assessment rate. Nadeau made no argument disputing the calculation of the assessment or the substance of the operating budget. Because the Board possessed the sole authority to set the budgets for the relevant years, the Board's failure to meet and approve the budget before December 1st of each year in no way deprived Nadeau of some right to vote or contest the assessments levied against his lot. Instead of contesting the substance of the Knightsbridge's claim, Nadeau asks this court to strictly apply the budget approval date to defeat the validly adopted budget and

assessment. This is the very definition of allowing a formality to defeat equity and the trial court was correct in denying Nadeau's requested relief.

B. The trial court correctly held that Seabrook v. Pelzer is inapplicable in this case because setting the budget and levying the assessment against Knightsbridge were both powers granted to Knightsbridge by the Declaration.

Nadeau argues that the Knightsbridge Board its authority by levying assessments that are based on a budget adopted after December 1st and are therefore unenforceable pursuant to Seabrook Island Property Owners Association v. Pelzer, 292 S.C. 343, 356 S.E.2d 411. (Cl.App.1987). Nadeau's reliance on Seabrook v. Pelzer is misplaced. In Seabrook, the issue decided by the court was whether the property owners' association exceeded its authority by calculating a special assessment in a manner not authorized by the restrictive covenants. Specifically, the property owner's association established a fixed rate of assessment for each lot despite the restrictive covenants' clear mandate that each lot's assessment be established based on that lot's taxable value. The property owners' association argued that, in its business judgment, the uniform rate of assessment was a reasonable alternative. The Court of Appeals held the board of directors lacked the power to levy the assessments in question because the restrictive covenants did not empower the board to establish a fixed rate assessment.

In this case Nadeau does not contest Knightsbridge's power to levy annual assessments and does not contest the amounts levied by the Association. Instead, Nadeau asks this Court to relieve him of his obligation based on a mere technical error in the timing of the minutes approving the budgets. To do so would frustrate the principles of equity and would require a level of strict scrutiny in no way advocated by Seabrook.

II. The trial court correctly held that Nadeau waived his right to challenge the budget approval process because Nadeau did not raise this issue prior to trial and because Nadeau paid monies toward the assessment without protest.

“A waiver is a voluntary and intentional abandonment or relinquishment of a known right.” Janasik v. Fairway Oaks Villas Horiz. Prop. Regime, 307 S.C. 339, 334, 415 S.E.2d 384, 387-388 (1992). “Where one dealing with another has, by its course of dealing, through leniency or otherwise, lulled that person into a sense of security, then the one doing those things cannot, when a loss occurs, in order to escape its liability, fall back upon the strict terms of a contract, the terms of which the one liable on the contract has led the other party to believe would not be strictly enforced.” Satcher v. Woodmen of the World Life Ins. Soc., 199 S.C. 59, 18 S.E.2d 523, 527-28 (1942).

Nadeau was on notice of the budget adoption timeline because the Declaration appears in his chain of title. Nadeau claims that he did not pay certain assessments because Knightsbridge was not following the correct assessment procedure. (R. p. 75.) The various budgets, notices, and minutes were all available to Nadeau through email and an online portal. (R. p. 16, l. 23; p. 30, l. 1-21.) Further, Nadeau testified that he did not receive notice of the 2012 assessment within the deadline established by the Declaration and that he has never gotten notice of the assessments. (R. p. 56, l. 4-16.) The evidence demonstrates that Nadeau was aware of his rights under the contract and aware of Knightsbridge’s assessment procedure. However, Nadeau presented no evidence that he raised the budget timing issue to the Knightsbridge at any time before trial. Instead, Nadeau testified that he originally failed to make payments because he lost his job and because his father was ill (R. p. 54, l. 18-25 - p. 55, l.1); that he contacted Knightsbridge’s agent to discuss a payment plan for the balance due (R. p. 61, l. 11-21); and that he made payments when he could afford to do so. (R. p. 74,

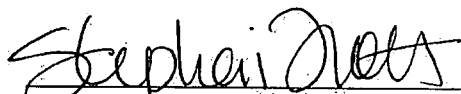
1. 15-24.) None of those communications would alert Knightsbridge that Nadeau objected to the assessment procedure and thus constitutes a waiver by Nadeau.

The trial court correctly held that Nadeau had waived his right to require strict compliance with the Declaration by failing to raise the issue in the three years preceding trial. Further, Nadeau's course of dealing with Knightsbridge, including sporadic payments without any reference to the budget process, could have reasonably led Knightsbridge to believe the assessment procedure would not be strictly enforced by Nadeau. By failing to exercise any of his rights to challenge the assessments and/or the process in which the assessment rate is fixed, Nadeau effectively and impliedly waived any argument he may have against the legitimacy of the assessments.

CONCLUSION

For the reasons stated herein Knightsbridge respectfully requests that this Court affirm the Master-in-Equity's ruling.

Respectfully submitted,



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March 14, 2017.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, III, Master-In-Equity

Appellate Case No. 2016-001696

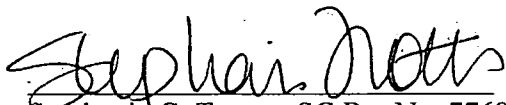
Paul A. Nadeau Appellant,

v.

Knightsbridge Property Owners' Association, Inc. Respondent,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** in the above-captioned matter complies with Rule 211(b).



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March 14, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Master in Equity

S. Jackson Kimball, Master in Equity
2014-CP-46-03819

Appeal Case No. 2016-001696

Knightsbridge Property
Owners Association, Inc.,

Respondent,

v.

Paul A. Nadeau,

Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENT

Nadeau testified that one of the reasons he failed to pay the assessments was because he was not given proper notice of the assessments. (R. p. 56 lines 11-21; p. 57 lines 5-17; p. 83 lines 15-21; p. 83 line 25 – p. 84 line 13; p. 85 lines 2-17) The other reason was because he did not have the money. (R. p. 54-p. 55 line 1) Nadeau did not testify that he refused to pay the assessments because Knightsbridge did not properly set the assessments. “A waiver is a voluntary and intentional abandonment or relinquishment of a known right.” *Janasik v. Fairway Oaks Villas Horizontal Property. Regime*, 307 S.C. 339, 344; 415 S.E.2d 384, 387 (1992). Nadeau did not lull Knightsbridge into any course of conduct that lead Knightsbridge to alter its actions. *Satcher v. Woodmen of the World Life Ins. Soc.*, 199 S.C. 59, 18 S.E.2d 523 (1942). Knightsbridge sent bills to Nadeau, filed a lien on Nadeau’s home, and sued for foreclosure. Knightsbridge was not lulled. Nadeau did not waive Knightsbridge’s failure to set the assessments as required by its own charter.

CONCLUSION

Nadeau did not waive Knightsbridge's failure to follow its own charter. The foreclosure should be reversed and Nadeau found to owe nothing to Knightsbridge for prior assessments.

Respectfully submitted,

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Knightsbridge Property Owners Association, Inc.,
Respondent,

v.

Paul A. Nadeau, Appellant.

Appellate Case No. 2016-001696

Appeal From York County
S. Jackson Kimball, III, Master-in-Equity

Unpublished Opinion No. 2018-UP-201
Submitted April 1, 2018 – Filed May 9, 2018

AFFIRMED

J. Edwin McDonnell, of South Carolina Legal Services,
of Spartanburg, for Appellant.

Stephanie Carol Trotter, of McCabe, Trotter & Beverly,
P.C., of Columbia, for Respondent.

PER CURIAM: Paul A. Nadeau appeals the master-in-equity's order granting foreclosure of Knightsbridge Property Owners Association, Inc.'s (Knightsbridge's) lien for unpaid assessments. On appeal, Nadeau argues the master erred by finding (1) Knightsbridge acted properly in levying assessments and foreclosing liens for

nonpayment of assessments and (2) Nadeau is estopped from raising claims challenging the assessment rate because he did not raise the issue before final judgment in the foreclosure proceeding and he paid monies toward the assessment without protest. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Issue 1: *Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 614, 799 S.E.2d 310, 315 (Ct. App. 2017) ("The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence." (quoting *Horry Cty. v. Ray*, 382 S.C. 76, 80, 674 S.E.2d 519, 522 (Ct. App. 2009))), *cert. denied* (Mar. 7, 2018); *Buffington v. T.O.E. Enters.*, 383 S.C. 388, 391, 680 S.E.2d 289, 290 (2009) ("While this standard permits a broad scope of review, an appellate court will not disregard the findings of the [master who] saw and heard the witnesses and was in a better position to evaluate their credibility."); *Belle Hall*, 419 S.C. at 615, 799 S.E.2d at 315 ("[It is the] burden [of the] appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the [master]." (third alteration in original) (quoting *Crossland v. Crossland*, 404 S.C. 443, 452, 759 S.E.2d 419, 424 (2014))); *Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987) ("[A] corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and by any bylaws made pursuant thereto; acts beyond the scope of the powers so granted are *ultra vires*.").

2. As to Issue 2: *Id.* at 348, 356 S.E.2d at 414 (holding the appellant was estopped from seeking a refund of fees paid when "he acquiesced in the method of assessment and paid the [fees]" despite his awareness the fees were "not being assessed in accordance with the [governing documents]").

AFFIRMED.¹

HUFF, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Master in Equity

S. Jackson Kimball, Master in Equity
2014-CP-46-03819

Appeal Case No. 2016-001696

Knightsbridge Property
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Paul A. Nadeau,

Appellant.

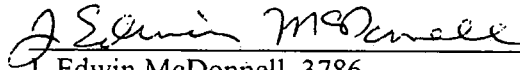
PETITION FOR REHEARING

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J. Edwin McDonnell, attorney for Appellant, petitions this Court pursuant to Rule 221(a), SCACR, for a rehearing or rehearing *en banc*. Appellant submits that the per curiam decision in this matter dated May 9, 2018 misapprehends the law in this case. *Seabrook Island Prop. Owner's Ass'n v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 is quoted correctly by this Court, but is misapplied to the facts of this case. A corporation may only exercise those powers given to it by its bylaws. The bylaws of Knightsbridge Property Owners Association, Inc. provides that the annual assessments are to be set at least thirty days in advance of each calendar year. The assessments that were not paid by Paul Nadeau were not set in the last month of the year. The only questionable assessment was for 2012 when the vote was by email. The bylaws do not provide for email votes. The assessment was not approved pursuant to the bylaws. All of these assessments were beyond the scope of the powers granted by the bylaws. The assessments were *ultra vires*. The assessments were invalid and therefore not collectible.

Seabrook held that the homeowner was estopped from seeking return of the fees that the homeowner had already paid, page 348. Estoppel was proper because the homeowner had paid the fees without protest. The fees owed by Paul Nadeau were never paid. He is not estopped from arguing that the assessment process was faulty because he never paid the assessments. The Court in *Seabrook* found that "Since the flat fee annual maintenance charge violates the restrictive covenants and the bylaws, we reverse the judgment against Pelzer for the 1984 charges on his two lots." , page 348. This Court should do the same for the assessments charged to Paul Nadeau.

For the reasons stated, the undersigned requests that this Court grant a rehearing or rehearing *en banc* with oral argument.



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May 19, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Master in Equity

S. Jackson Kimball, Master in Equity

Case No. 2014-CP-46-03819

Appeal case No 2016-001696

Knightsbridge Property
Owners Association, Inc.

Respondent

v.

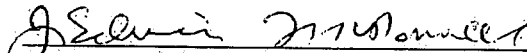
Paul A. Nadeau,

Appellant

CERTIFICATE OF SERVICE

Appellant's Petition for Rehearing was served by mailing a copy of the same, on
the date below, postage pre-paid, to the attorney stated below at the address given:

Stephanie C. Trotter, Esq.
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J. Edwin McDonnell

May 19, 2018

The South Carolina Court of Appeals

Knightsbridge Property Owners Association, Inc.,
Respondent,

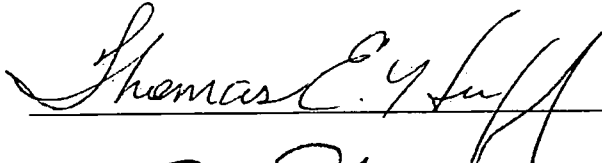
v.

Paul A. Nadeau, Appellant.

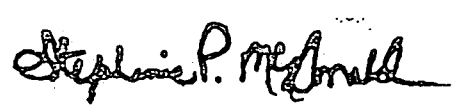
Appellate Case No. 2016-001696

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.


J.


J.

Columbia, South Carolina

cc:

J. Edwin McDonnell, Esquire
Stephanie Carol Trotter, Esquire
The Honorable S. Jackson Kimball, III

FILED

June 22, 2018