IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

JOZEF BENAK and wife, OTILIA BENAK,	)	
Plaintiffs,	)	
v.	)	Docket No. 21406
SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company,	)	
Defendant.	)	

FILED
DEC 20 2021
TIME 10:20
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

AFFIDAVIT OF JOZEF BENAK

STATE OF ILLINOIS)
:ss
COUNTY OF LAKE)

COMES the undersigned, after being first duly sworn according to law, and does hereby make oath as follows:

1. My name is Jozef Benak and I am one of the Plaintiffs in the captioned matter.

2. I have owned property in Rarity Bay since 2006, and I have personal knowledge of all matters set forth herein.

3. That I heard about the Sixth Amendment to the Master Declarations being recorded by the Defendant in this cause sometime in 2015. I initially took no action in that regard because the Homeowners Association undertook the matter on behalf of property owners such as ourselves, by voting to strike the Sixth Amendment and pursue litigation if necessary, as indicated in the Minutes of the Board Meeting dated November 24, 2015, attached hereto as Exhibit 1. The Homeowners Association subsequently entered into a Settlement Agreement with the Defendant agreeing to "accept" the Sixth Amendment, among other things, on December 17, 2015, a true and exact copy of which is attached hereto as Exhibit 2.

4. Furthermore, the Defendant communicated to other club members previous to sale of Rarity Bay assets, that the Sixth Amendment *had no impact on 'their' situation* in an email communication from one Michael Ayres, the Owner/General Manager of Rarity Bay Country Club, on July 2, 2016, a copy of which is attached hereto as Exhibit 3, wherein he indicated that the mandatory social membership requirement was only applicable to new buyers, not existing property owners.

5. Furthermore, in my continued communications with Defendant in 2017, I was advised that the basis of my alleged liability was my Deed, not the 6th Amendment. Defendant's

representative also indicated that an "updated copy (of the Club Membership Contract) will be distributed. . . . . in the coming weeks." See attached Exhibit 4.

Further, Affiant saith not.

This the 10 day of DECEMBER, 2021.

JOZEF BENAK

Sworn and subscribed before me this

10 day of December, 2021.

Notary Public

My Commission Expires: July 30, 2025

CAROLYN F MARTIN
Official Seal
Notary Public - State of Illinois
My Commission Expires Jul 30, 2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy hereof has been served upon all parties in interest or their counsel by delivering a copy hereof to Lewis S. Howard, Jr., Esq., 4820 Old Kingston Pike, Knoxville, Tennessee 37919, by hand or by United States Mail, properly addressed and with sufficient postage thereupon to carry the same to its destination, this 12 day of December, 2021.

Winchester, Sellers, Foster & Steele, P.C.

By: GORDON D. FOSTER

Minutes
Regular Board Meeting
Rarity Bay Community Association, Inc.
November 24, 2015

Date, Time, Location: Regular Board of Directors Meeting held on Tuesday, November 24, 2015 at 9:00 a.m. at the Rarity Bay CAC, 150 Rarity Bay Parkway, Vonore, TN 37885.

Quorum and Call to Order: The following Directors were present: Bart Whitman, Carl Noble, Bob Inderbitzen, Bob Knecht, Jim McCoy, Sandy Richard and Joy Tierney all of whom constitute a quorum of the authorized number of the Directors of the Association. Also present Tineall Nittolo, Office Manager. Bart Whitman, Chair called the meeting to order at 9:04 a.m. Tineall Nittolo acted as recording secretary.

President's Report: Salem Pointe Capital on November 20, 2015 sent a letter to the RBCAI Board President, Bart Whitman as a formal request to call a Special Meeting of the Association to be held on December 20, 2015 at the Rarity Bay Clubhouse. Said letter contained a statement that Salem Pointe Capital had unilaterally removed all of the Directors of the Board of the Community Association effective as of the date of the letter. The letter also demanded that Bart Whitman, in his capacity as President of RBCAI, call for a Special Meeting to elect new Directors, as noted above. The Board of Directors objected to the Special meeting called by SPC. Bart has responded in writing stating Salem Pointe's purported unilateral removal of all the Directors is inconsistent with and cannot be reconciled with its demand that the RBAI President call for a Special Meeting to elect new directors. Bart stated that he has not called for a Special Meeting to elect new Directors, but he would do so if presented with evidence that the holders of a majority of votes in the Community Association desired such a Special Meeting to be called. Bob K, Bob I and Carl, was not informed that Salem Pointe was going to send a notice to the community including their names as nominees for election at Salem Pointe's meeting. Letters will be attached as exhibits to the minutes.

Secretary Report: The October 27, 2015 Regular Board Meeting Minutes were distributed to all Board Members via email prior to today's meeting. Joy made a Motion to approve the minutes as written. Sandy seconded the Motion, passed unanimously.

Treasurer's Report: The cash summary for October was distributed. Bob Knecht reported that the RBCAI's operating cash balance is approximately $700,000. Bob recommend to put $250,000 of the operating cash into a CD. Bart entertained a Motion to transfer $250,000 of the operating cash into a one (1) year CD. Sandy seconded the Motion, passed unanimously.

2016 Budget – Bob Knecht's inquiry email sent to Mr. Ayres was read aloud pertaining to personnel costs, office rentals, lot mowing and infrastructure – roads, sewer. The 2016 Master Annual Assessment amount will be $756.00. Bart entertained a Motion to approve the 2016 Budget and Master Annual Assessment of $756.00. Jim seconded the Motion, passed unanimously.

Community Management Report: Work Orders & Noncompliance reports were distributed to all Board members for review. Walden Security has updated the post orders with new emergency contacts and phone numbers for the attendants. Sewer Maintenance reminders – still

waiting for Griffith Plumbing contract to send out to the residents. Last round of full lot mowing started November 2nd.

Construction Auditing Report – RJ reported on his daily inspections, verbal instructions were given to the builders to empty dumpsters, installing silt fence and cleaning job sites. No noncompliance letters were distributed, no fines imposed. Reinforcement for parking has also been verbalized.

TASS water leak at Wild Wing – TASS reported that large boulders that have settled were the culprit to breaking the line. Pipe fixed, metal sleeve was installed around pipe to try and aid for further preventative maintenance. Recommend for RJ to meet with TASS representative to gain a understanding of what TASS is directly responsible for. Tracer wires are not in place and that caused a delay of maintenance response. TASS' records of shut off valve locations are not accurate causing additional delays in getting the water turned off. A meeting is scheduled for December 10th.

Landscaping Infiltration Trenches update – The ARC landscape reviewer, Southwell Designs has reviewed the 15 homes in which flower beds were installed where downspouts should be. All plans are now in compliance and those owners have been notified.

CAC HVAC repair – The unit to be repaired controls room B at the CAC. It has been determined that the issue stems from a 4ton unit installed and a 5ton unit outside and the air exchange inside will need to be repaired. Dave Sharpe was present to discuss options of repairs. A meeting is scheduled for this afternoon with an additional HVAC company for their recommendations. A follow up with the Board will be set once all information is gathered.

Committee Reports: *Infrastructure* – Approval of Section 10-Fines for construction noncompliance: Carl noted that Resolution P15 does outline the fine process for any noncompliance item. Sandy made a Motion to add Section 10 into the RCAI ARC Design manual. Joy seconded the Motion, passed unanimously.

ARC Status of 17 homes – number in closeout, letters to be sent: Carl will be writing letters to those owners (8) whose sewer installation reports are not available and in which the tanks are now under ground and covered up. Builders will be encouraged to meet with RJ and Carl to discuss further and gain knowledge as to why the Builders did not follow the procedures in place.

Roads: It has been recommended from Ronnie Sharp that Rarity Bay Pkwy from the Gatehouse to Marsh Hawk is a major concern to top coat next year, 2016. It is an estimated cost of $222,000. The center seal on the Parkway is now starting to separate. There is another road repair on Cormorant Drive lot 718 in which a cross drain repair was previously done and no asphalt was applied leaving only gravel. It was noted that this area should be patched with the rest of the community road patching. These areas of concern will need to be addressed with the Declarant to gain clarity of responsibility.

Neighborhood budgets – 2016 Landscape bids have been presented to all neighborhood reps for approval prior to today's meeting. Sandy Motioned to approve the neighborhood landscape bids as presented. Joy seconded the Motion, passed unanimously. Budgets will be set by Jim and presented for approval.

Old Business: Mont Blanc water feature contract presented to approve. Carl motioned to approved contract as presented. Jim seconded. Motion passed unanimously. Owners will not be invoiced the special assessment until final costs are determined.

RB Nature Trails – On behalf of the hiking group and RBHOO new signs were installed on the master craft side of the trails and the walking trails for easier access.

New Business: Bart as Chair entertained a Motion to Amend the Bylaws approved the following Amendments:

1.) Striking all amendments to the Bylaws set forth in the Sixth Amendment of Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay and Amendment of Bylaws for Rarity Bay Community Association, Inc. recorded with the Monroe County Register of Deeds at Book M249 Page 374 et seq.
2.) Striking all amendments to the Bylaws set forth in the Seventh Amendment of Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay and Amendment of Bylaws for Rarity Bay Community Association, Inc. recorded with the Monroe County Register of Deeds at Book M252 Page 584 et seq.
3.) Strike Section 4.1 of the Bylaws entirely
4.) Strike Section 4.2 of the Bylaws entirely
5.) Strike Section 5.2 of the Bylaws entirely
6.) Strike Section 7.3 of the Bylaws entirely
7.) Strike the requirement for Declarant consent from Section 8.2 of the Bylaws
8.) Strike Section 8.5 of the Bylaws entirely
9.) Strike Section 8.19 of the Bylaws entirely
10.) Strike the second paragraph of Section 12.2 of the Bylaws entirely
11.) Strike the requirement for Declarant consent from Section 12.6 of the Bylaws
12.) Strike the last sentence of Section 12.8 of the Bylaws
13.) Strike the final three sentences of Section 13.1 of the Bylaws
14.) Strike the requirement for Declarant consent from Section 13.3 of the Bylaws
15.) Strike parts (a) and (b) from Section 13.10 of the Bylaws

Carl made a Motion to approve, Jim McCoy seconded. Motion passed unanimously. In order to enforce all governing documents of the RBCAI, it has authorized its Attorney to take all appropriate actions, including filing a lawsuit. The Board wanted the Minutes to reflect that it authorized the filing of a lawsuit with reluctance and its strong preference for resolving Salem Pointe's issues in meeting between the Board and Salem Pointe

Life at the Bay directory contract 2017 – Carol Brooks will be notified to provide a new contract.

Adjourn: With no further Association business the meeting was adjourned at 11:33 am.

Approval: These minutes were approved by the Secretary of the Association and submitted to the full Board of Directors for adoption at the next regular meeting of the Board on December 15, 2015.

Rarity Bay Community Association, Inc.

Date: 12/15/2015

Bob Inderbitzen, Secretary

Declarant's Acceptance: These minutes are hereby accepted by:

_____ Date: _____

Salem Pointe Capital, LLC.

Director	Signature	In Favor	Opposed	Abstained	Date
Bart Whitman President	Barton D. Whitman	✓			12-15-2015
Carl Noble Vice President	Carl Noble	✓			12-15-2015
Bob Inderbitzen Secretary	[illegible]	✓			12/15/2015
Bob Knecht Treasurer	[illegible]	✓			12-15-2015
Jim McCoy	[illegible]	✓			12-15-2015
Sandy Richard	Sandy Richard	✓			12-15-2015
Joy Tierney	Joy Tierney	✓			12-15-2015

Board Meeting Schedule for 2015 : The Regular meetings of the Board of Directors for calendar year 2015 will be held in room B at the Rarity Bay Community Activity Center on the 4th Tuesday every month at 9:00 a.m. with the exception of December which will be held on Tuesday, 12-15-2015.

determined in the former case. The Malissa Williams **[*565]** case was, first, to clear up title, and second, to sell for partition. S. H. Pile was before the court on that phase of the case, the purpose of which was to clear up title. He was not interested in the sale sought by complainant, for purposes of division; and we may assume that complainant did not in the pleadings seek to sell land which should be adjudged to be owned by the defendants, in which complainant had **[***9]** no interest. After final decree had been rendered so far as the case applied to him, confirming the report of the clerk and master finding he was the owner in fee of the 10,000 acres of land, the court, without correcting the decree on the report, six months afterward, ordered seventy-five acres of the land sold, and vested title in the purchaser, divesting title out of all the parties to the suit but without naming S. H. Pile.

The term of court had closed at which decree was entered in favor of S. H. Pile. When the decree was entered in his favor, there was nothing left under the issues for the court to further adjudicate as to him. When the term closed the decree became final. The court had then exhausted its jurisdiction as to Pile and could neither vacate **[**858]** nor modify its decree afterward without notice, and such proceedings as would give it jurisdiction anew. Works on Courts and their Jurisdiction, 674; Central Trust Co. v. Grant Locomotive Works, 135 U.S. 207, 10 S. Ct. 736, 34 L. Ed. 97; Prater v. Hoover, 1 Cold. 544; Allen v. Barksdale, 1 Head 238.

[*566] It was therefore not only in the face of **[***10]** the former decree recognizing S. H. Pile as the owner and antagonistic to that decree without correcting it, but was rendered after the case had terminated so far as S. H. Pile was concerned, and therefore void as to him.

The following authorities hold that the statute of limitations has no application to an action to remove cloud from title where the owner is in possession, or as in some, where the owner is not out of possession: Cooper v. Rhea, 82 Kan. 109, 107 P. 799, 29 L. R. A. (N. S.), 930, 136 Am. St. Rep., 100, 20 Ann. Cas., 42; Miner v. Beekman, 50 N.Y. 337; Batty v. Hastings, 63 Neb. 26, 88 N.W. 139; Mutual Life Ins. Co. v. Corey, 54 Hun 493, 7 N.Y.S. 939, reversed on other grounds in 135 N.Y. 326, 31 N.E. 1095; Schoener v. Lissauer, 107 N.Y. 111, 13 N.E. 741; Meier v. Kelly, 22 Ore. 136, 29 P. 265; Katz v. Obenchain, 48 Ore. 352, 85 P. 617, 120 Am. St. Rep., 821; Bailey v. Hopkins, 152 N.C. 748, 67 S.E. 569; Quinn v. Kellogg, 4 Colo. App. 157, 35 P. 49; Peck v. Sexton, 41 Iowa 566; **[***11]** Combs v. Combs, 99 S.W. 919, 30 Ky. L. Rep. 873; Cameron v. Lewis, 59 Miss. 134; Kennedy v. Sanders, 90 Miss. 524, 43 So. 913; Am. Emigrant Co. v. Fuller, 83 Iowa 599, 50 N.W. 48; Smith v. Matthews, 81 Cal. 120, 22 P. 409. See note in 29 L.R.A. (N.S.) 930.

In Haarstick v. Gabriel, 200 Mo., 237, 98, 98 S.W. 760 S.W. 760, it was said that since a suit to determine and quiet title to land falls under the head of real actions, the limitations applicable thereto govern, and the suit is not **[*567]** governed by the statute of limitations which relates to personal actions.

In Bailey v. Hopkins, 152 N.C. 748, 67 S.E. 569, it was said that a landowner cannot be expected to bring action against every man who, while not in possession, shall declare he claims an interest in the property, under penalty to the owner after the lapse of ten years of being barred of action for a later assertion of title.

In Cameron v. Lewis, 59 Miss. 134, Kennedy v. Sanders, 90 Miss. 524, 43 So. 913, American Emigrant Co. v. Fuller, 83 Iowa 599, 50 N.W. 48, **[***12]** and Combs v. Combs, 99 S.W. 919, 30 Ky. L. Rep. 873, the law is properly stated that if the plaintiff or the one through whom he holds has never been out of possession, the statute of limitations has no application.

We quote the following from Batty v. Hastings, 63 Neb. 26, 88 N.W. 139:

"Where a plaintiff out of possession brings the statutory action to quiet title, it is undoubtedly true that the statute begins to run from the time when defendant's possession became adverse. But, while a cause of action clearly accrues to the owner of real property in possession thereof whenever a cloud upon his title is created or an adverse title asserted, we do not think it necessarily follows that such cause of action accrues then once for all, so as to start the statute of limitations from that date. A cloud upon a title must always continue to operate as such during the period of its existence, and, as its effect upon the title is continuing, **[*568]** the cause of action resting on the right of the owner to have it removed would seem to be continuing also, and to be available at all times while the cloud remains. Miner v. Beekman, 50 N.Y. 337. **[***13]** 'The cause of action is not the creation of the cloud, but its existence, its effect upon the title of the owner, and his right to have it removed.' Schoener v. Lissauer, 107 N.Y. 111, 117, 13 N.E. 741. Hence there would seem good ground for holding that lapse of time after the creation of a cloud upon a title will not bar an action by

add rest of quote

an owner in possession to have it removed."

The court when making the foregoing observations was considering a ***statute of limitation*** of four years for commencing actions not otherwise provided for.

The ***statute of limitation*** begins to run against a suit to quiet title from the time defendant takes possession of the land. Moore v. Miller (C. C.), 43 F. 347.

The ***statute of limitation*** does not apply as respects the acquisition of title to property to any one not in possession. A mere claim, for whatever time, unaccompanied by actual possession, can give no right under the statute. 25 Cyc., 1012; 1 Cyc., 982, note 11 *et seq.; Smith* v. *Lee*, 1 Cold. 551; Snoddy v. Kreutch, 3 Head 301.

In the case of *Anderson* v. *Akard*, 15 Lea (83 Tenn.) 182, Judge Cooper **[***14]** delivered the opinion. That was a bill in equity to set up a lost deed and to enjoin the heirs of the alleged grantor from prosecuting a suit for the recovery of the land. The statute of limitations was a defense. The argument was that the right of **[*569]** action accrued at the time the deed was lost. The court said:

"The suit is not for the recovery of land, or the enforcement of a debt, contract, or liability of the ancestor. It is simply the assertion of an equitable remedy which the party is entitled to resort to at any time when the exigency may arise."

The court further said:

"Their right to set up their lost deed is one of those continuing equities, they being in legal possession, and holding against any adverse claim, of which we have several cases in our books, where the statutes of limitations have no application. 'Neither the statutes of limitations,' this court has said, 'nor lapse of time have any application to a bill in chancery, in which the complainant is not seeking to recover anything, but only resisting the demand of the defendants which they have been constantly opposing.' Lewis v. Brooks, 6 Yer. 167; Kirtland v. Railroad Co., 4 Lea 414, 418; **[***15]** Caldwell v. Palmer, 6 Lea 652."

See *Alsobrook* v. *Orr*, 3 Thompson (130 Tenn.) 120, *169 S.W. 1165*, Ann. Cas., 1915B, 627.

Our statute of limitations of ten years applicable to "all other cases not expressly provided for," originated with the Code of **[**859]** 1858, and was embraced in the chapter entitled "Limitations of Actions Other Than Real." It does not apply here.

There is to be found in the syllabus of one of our reports an expression as follows:

[*570] "Excepting alone suits between trustee and *cestui que trust* upon causes of action arising out of express trusts and cognizable alone in courts of equity, our general statutes of limitation apply to every cause or form of action, whether cognizable exclusively in courts of law, or concurrently in courts of law and equity, or exclusively in courts of equity." *Hughes* v. *Brown*, 4 Pick. (88 Tenn.) 578, 13 S.W. 286, 8 L.R.A. 480.

A careful reading of Judge Lurton's opinion will show that it contains no statement so broad, sweeping, and unqualified as the syllabus. The opinion deals with the subject of whether the remedy of complainant, being purely equitable, **[***16]** against a trust estate, was subject to the bar of the statute. It was held that:

"There is no more reason for holding that a bill to charge the payment of an equitable claim upon a trust estate should be taken out of the statute which bars all suits upon contracts within six years, than there was for holding that a suit upon an equitable title, or to declare and enforce a constructive or implied trust was without the statute."

The question of a continuing equity to which a party may resort when the exigency may arise, and which involves no question of recovery of land nor the enforcement of a debt, contract, or liability, was not being discussed.

Our statute of seven years applies where there is an adverse holding of real estate. There is no question of adverse holding in the present suit. This is an action to remove a cloud on title which affects the marketability **[*571]** of the land, or under which an adverse possession might be attempted and thus endanger the rights of complainant. It is to remove this apprehended future danger that complainant invokes the aid of the court of equity. The realty has not been touched.

We apprehend that it was never the intention to enact a **[***17]** statute of limitations in this State preventing an owner from removing or canceling an instrument or record which casts a cloud upon the title. Spurious claims have arisen in the past during the period when our wild and unoccupied lands were of little value and not actively looked after by any one. These consist of void grants and colors of title created for speculative purposes. ***HN4***[↑] Our legislature has not enacted any

SETTLEMENT AGREEMENT

This Agreement is made this 17 day of December, 2015, by and between Salem Pointe Capital, LLC and Salem Pointe Capital Partners, a Tennessee General Partnership (collectively "SPC") and Rarity Bay Community Association, Inc. ("RBCAI").

WHEREAS, RBCAI is a property owners association for the Rarity Bay community and serves as the entity responsible for maintenance, operation, and control of the Rarity Bay common areas. RBCAI is also responsible for administering and enforcing the requirements of the governing documents of Rarity Bay;

WHEREAS, on or about October 30, 1998, Tellico Lake Properties, L.P., acting as Declarant for the Rarity Bay Subdivision, recorded the Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay (the "Master Declaration") in Miscellaneous Book 112, Page 323, Monroe County Register of Deeds;

WHEREAS, on or about May 18, 2015, Sterling P. Owen, acting as Receiver for the Declarant for the Rarity Bay Subdivision, recorded the Fifth Amendment of Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay, Amendment of ByLaws for Rarity Bay Community Association, Inc., and Assignment of Declarant Rights Under Master Declaration (the "Fifth Amendment") in Miscellaneous Book 249, Page 346, Monroe County Register of Deeds. Pursuant to the Fifth Amendment, Salem Pointe Capital, LLC was named the Declarant of Rarity Bay under the Master Declaration;

WHEREAS, on or about May 18, 2015, Salem Pointe Capital, LLC, acting as Declarant for the Rarity Bay Subdivision, recorded the Sixth Amendment of Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay and Amendment of ByLaws for Rarity

EXHIBIT 2 1

Bay Community Association, Inc. (the "Sixth Amendment") in Miscellaneous Book 249, Page 374, Monroe County Register of Deeds;

WHEREAS, on or about October 22, 2015, Salem Pointe Capital, LLC, acting as Declarant for the Rarity Bay Subdivision, recorded the Seventh Amendment of Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay and Amendment of ByLaws for Rarity Bay Community Association, Inc. (the "Seventh Amendment") in Miscellaneous Book 252, Page 584, Monroe County Register of Deeds;

WHEREAS, the parties hereto have agreed to certain terms of settlement related to the governance of Rarity Bay; the enforcement of the governing documents of Rarity; the use, ownership, and maintenance of the common areas and amenities of Rarity Bay; and SPC's obligations and contributions to the Rarity Bay community; and

WHEREAS, the parties hereto desire to memorialize the terms of settlement herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and other good and valuable consideration, the parties agree as follows:

1. Assessment Exemption. The RBCAI acknowledges that any and all lots in Rarity Bay now owned or hereafter acquired by SPC (and any other qualifying Declarant-Related Entity or Exempt Person) shall be exempt from the RBCAI annual assessments. However, SPC agrees that it will self-impose a limited RBCAI annual assessment exemption for SPC (and any other qualifying Declarant-Related Entity or Exempt Person), being that RBCAI annual assessments will be paid by SPC (and any other qualifying Declarant-Related Entity) on all Rarity Bay lots held by SPC (and any other qualifying Declarant-Related Entity) *in excess of 250 Rarity Bay lots in inventory on the last day of the calendar year*. Any and all payment of annual assessment by SPC, if any, are to go to a mutually agreed upon infrastructure improvements.

2. Community Activity Center. SPC agrees that it will not seek to occupy, staff, use, or otherwise control the Rarity Bay Community Activity Center (and the office space located therein) in any manner during the 2016 calendar year only. Both parties expressly agree that certain "Rarity Bay promotional and marketing materials" for use by prospective residents shall be allowed to be placed in the Community Activity Center at all times.

3. Community Management Company. SPC agrees that RBCAI may continue to retain the services of First Service Residential under a new one (1) year contract, effective as of January 1, 2016, to serve as the community management company for Rarity Bay during the 2016 calendar year.

4. RBCAI Annual Election. SPC and the RBCAI agree that the 2016 RBCAI annual election will proceed as planned in April 2016, and SPC will not seek to remove any current members of the RBCAI Board, except in the event that a current member's actions may be determined by a vote of the Board to be "with cause," prior to the April 2016 RBCAI annual election. SPC agrees to formally rescind its November 20, 2015 request for a special meeting of RBCAI on December 20, 2015. SPC further agrees that SPC (and any other qualifying Declarant-Related Entity) will slate no more than 3 candidates (out of the 4 available RBCAI Board positions) for election to the RBCAI Board in the 2016 RBCAI annual election, as the parties acknowledge that SPC's representatives are not subject to the nomination process as set forth in the RBCAI ByLaws. The parties further agree that the 2016 RBCAI annual election will otherwise follow the normal nomination and election procedures as set forth in the ByLaws for the Rarity Bay Community Association, Inc. The parties further agree that SPC (and any other qualifying Declarant-Related Entity) may nominate any number of candidates, if it so chooses, for all open seats on the RBCAI Board commencing with the 2017 RBCAI annual election and thereafter. All

future nominations and elections shall continue to be held in accordance with the requirements of the ByLaws for the Rarity Bay Community Association, Inc.

5. Conveyance of Common Elements. RBCAI agrees that it will accept ownership and control of all infrastructure in Rarity Bay, including but not limited to, all roadways/streets, storm drains, sanitary sewer systems, and entranceways (the "Rarity Bay Infrastructure"). SPC agrees that it will formally convey any interest that may be held by SPC in such Rarity Bay Infrastructure to RBCAI pursuant to a Quit Claim Deed or Deeds, as necessary to memorialize RBCAI's ownership and control thereof. Thereafter, all maintenance, costs and expenses, of the Rarity Bay Infrastructure shall be the sole responsibility of RBCAI.

6. SPC Contribution to RBCAI. SPC will contribute $100,000.00 to RBCAI over a period of approximately seven (7) years to assist RBCAI with general operating and maintenance expenses with payments due as follows:

a. $5,000.00 due on or before February 1, 2016

b. $10,000.00 due on or before February 1, 2017

c. $10,000.00 due on or before February 1, 2018

d. $15,000.00 due on or before February 1, 2019

e. $20,000.00 due on or before February 1, 2020

f. $20,000.00 due on or before February 1, 2021

g. $20,000.00 due on or before February 1, 2022

7. SPC Payment for Enhancement of Rarity Bay Entrance. SPC agrees that it will pay all costs to enhance, improve, and modify the entrance area for Rarity Bay and its associated features in accordance with plans and specifications promulgated by SPC. SPC will further agree

to pay all costs to maintain, in accordance with the SPC plan, the entrance area for Rarity Bay and its associated features for the 2016 and 2017 calendar years only.

8. Board Removal. The parties agree that SPC will use its unilateral removal power as to current RBCAI Board members *only in such instances* as a Board member is being removed "with cause" as set forth in the Master Declaration and the RBCAI ByLaws. In the event that any RBCAI Board member is being removed on a "without cause" basis, such removal shall be in accordance with the Master Declaration and the RBCAI ByLaws.

9. Bay Builders Program Exemption. The parties agree that the "Bay Builder Program" will be modified to the extent that any duly qualified "Builder" as defined in Section 1.40 of Amendment 7 of the Master Declaration, as amended, that is an approved qualified participant in the "Bay Builders Program" shall only receive a one (1) year limited RBCAI annual assessment exemption beginning upon the pulling of the construction permit on any Unit purchased in Rarity Bay for the purpose of constructing improvements for later sale to consumers. In any event, such assessment exemption shall not exceed twenty four (24) months from the date of the purchase of the Unit.

10. RBCAI Acceptance of Sixth and Seventh Amendment. RBCAI acknowledges that the ByLaws and/or the Master Declaration grant SPC, as the Declarant, certain amendable powers and rights over the ByLaws and Master Declaration during the Development Period, as defined in the Master Declaration. RBCAI agrees that it will abide by the terms of both the Sixth and Seventh Amendments as written and further agrees not take any action to challenge the enforcement and validity of the terms contained in both the Sixth and Seventh Amendments and SPC's enforcement thereof now or at any time in the future.

11. Entire Agreement. The parties agree that this Agreement constitutes a full and final and complete settlement and release as to each of the parties hereto and contains the entire agreement and understanding of the parties with respect to the entire subject matter hereto, and there are no representations, inducements, promises warranties or agreements, oral or otherwise, not embodied herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the parties that are not referenced herein. This Agreement shall be binding on the parties' successors and assigns.

12. No Modification or Waiver. This Agreement shall not be modified or amended except by a further written document signed by all the parties hereto. No provision hereof may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision of this Agreement shall not be construed as a waiver of any other term or provision.

13. Advice of Counsel. The parties agree and represent that they have had the advice of counsel in executing this Agreement and no promise or representation of any kind, other than those contained in this Agreement, has been made by the parties released in this Agreement or anyone acting for them.

14. Severance. If any part of this Agreement is found unlawful or unenforceable, the remainder of this Agreement shall not be affected by that finding.

15. Effective Date. This Agreement shall become effective immediately upon execution by the parties.

16. Not Construed Against Any Party. Neither this Agreement nor its terms will be construed against any of the parties by reason of their participation in the drafting of this Agreement.

17. Enforcement of Agreement. This Agreement shall be governed by the laws of the State of Tennessee and shall be construed in accordance therewith. Any legal proceeding to enforce or interpret the terms of this Agreement shall be brought in the State and Federal Courts serving Monroe County, Tennessee. In the event any party initiates any legal proceeding to procure enforcement of any provision of this Agreement, the prevailing party in such proceeding shall be entitled to a judgment for reasonable expenses incurred in seeking enforcement of any provision of this Agreement including, but not limited to, attorneys' fees and costs.

18. Existence and Authorization. The parties hereto warrant and represent that they are individuals over the age of eighteen (18) or valid and existing legal entities at the time of the execution hereof and have appropriate authorization to enter into this Agreement.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, divisions, subsidiaries and related entities, and their officers, directors, employees, agents, and representatives.

20. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

21. Further Assurances/Other Agreements. The parties hereto agree to execute any documents, instruments, deeds, assignments, releases, resolutions, corrections, amendments, agreements or papers of any character that may be necessary to effectuate the terms of this Agreement.

22. Non-Disparagement. The parties hereto agree that neither party will not now or in the future make disparaging statements or comment negatively about the other, its officers and management, and/or current or former employees, with comments that either party knows to be false or with reckless disregard to the truth of such comments or statements.

23. Execution in Counterparts. This Agreement may be signed by the parties in counterparts and such counterparts shall be binding as if signed together.

[SIGNATURES ON THE FOLLOWING PAGES]

RARITY BAY COMMUNITY ASSOCIATION, INC.

By: Barton D. Whitman

Its: President

STATE OF TENNESSEE)
COUNTY OF Monroe)

Before me, a Notary Public of the State and County mentioned, personally appeared Barton D Whitman, (with whom I am personally acquainted or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged himself/herself to be the President of RARITY BAY COMMUNITY ASSOCIATION, INC., the within named corporation, and that he/she as such, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal this 18 day of December, 2015.

Brittany D. Stamey
NOTARY PUBLIC

My Commission Expires: 5-30-2016

BRITTANY D. STAMEY
STATE OF TENNESSEE NOTARY PUBLIC
MONROE COUNTY

SALEM POINTE CAPITAL, LLC

By: _____

Its: President

STATE OF TENNESSEE)
COUNTY OF Knox)

Before me, a Notary Public of the State and County mentioned, personally appeared Michael Ayers, (with whom I am personally acquainted or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged himself/herself to be the President of SALEM POINTE CAPITAL, LLC the within named limited liability company, and that he/she as such, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal this 17th day of December, 2015.

_____
NOTARY PUBLIC

STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

My Commission Expires: May 5, 2019

SALEM POINTE CAPITAL PARTNERS

By: _____

Its: Managing Partner

STATE OF TENNESSEE)
COUNTY OF TN)

Before me, a Notary Public of the State and County mentioned, personally appeared Matt Daniels, (with whom I am personally acquainted or proved to me on the basis of satisfactory evidence), and who upon oath, acknowledged himself/herself to be the Managing Partner of SALEM POINTE CAPITAL PARTNERS the within named General Partnership, and that he/she as such, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal this 17th day of December, 2015.

_____
NOTARY PUBLIC

My Commission Expires: My commission expires August 14, 2018

CARA B. SPEEGLE
STATE OF TENNESSEE NOTARY PUBLIC
KNOX COUNTY

Declarant response to prior Club Member

From Michael<michael@raritybayliving.com> 7/2/2016 11:52 AM
To xxxxxxx, Shalee and 2 others

Mr. xxxxx, thank you for your email and patience. After looking into the circumstances surrounding your membership, it has been determined that Amendment 6 has no impact on your situation. However, the *Club Membership Plan* is the document that has bearing on the *transferability* of your membership and it does not allow transfer or refunds. All new buyers from May 18, 2015 forward will become mandatory social members of the club by paying $5,000 for the Social Membership Initiation Fee at the closing of their purchase. The Club Memberships are bound to specific properties with in Rarity Bay and any prospect would not be able to "take" their Social Membership with them if they purchased again. Even if they had a Golf Membership, which could transfer, they would still be obligated to purchase a new Social Membership.

I hope this helps. If you have any questions or need anything else, please let us know.
Thanks and have a great weekend.

Michael D. Ayres
Owner/General Manager
Rarity Bay Country Club
403 Rarity Bay Parkway
Vonore, TN 37885
Office: (423) 884-3020
http://RarityBayLiving.com

EXHIBIT 3 1

From: Shalee <Shalee@RarityBayLiving.com>
To: "jozefbenak@sbcglobal.net" <jozefbenak@sbcglobal.net>
Sent: Tuesday, April 4, 2017 3:00 PM
Subject: RB Country Club Membership Plan

Good afternoon, Mr. Benak,

Our staff has attempted to contact you regarding your Mandatory Social Membership dues for your lot #1009, but I wanted to provide you an answer regarding your questions about the Club Membership Plan noted in your email below. Ideally you were provided a copy of the Membership Plan when you first became a Member. **The plan generally remains the same** except for only being edited to remove the out-of-date information involving multiple levels of Membership that no longer exist. As you may know, each week we are meeting with Residents for Neighborhood Meet and Greets and we are discussing a myriad of items including details such as this. We have let everyone know that **an updated copy will be distributed** to the

Membership in the coming weeks along with the Member Rules and Regulations handbook. As a Member, you will receive a copy in your inbox **when that communication is published.**

Regarding your balance of $3,199.92, I have attached the deeds for lot #1009 which has the mandatory language referenced above, for your convenience. Please feel free to contact me should you have any questions or would like to discuss a payment plan.

Thank you and have a great afternoon.

Shalee Tipton

Chief Operating Officer

Rarity Bay Country Club

403 Rarity Bay Parkway

Vonore, TN 37885

Office 423-884-3020

http://RarityBayLiving.com

EXHIBIT 4 , 1