

**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**

This 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 is made and entered to this 18th day of May, 2015, by TELlico LAKE PROPERTIES, L.P., a Tennessee limited partnership ("TLP") acting by and through STERLING P. OWEN, IV (the "Receiver"), in his capacity as Receiver for TLP, and RARITY MANAGEMENT COMPANY, LLC, a Tennessee limited liability company ("Rarity Management") acting by and through STERLING P. OWEN, IV in his capacity as Receiver for Rarity Management, to and in favor of SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company ("Purchaser"), whose address is 428 Shelbville Rd., Knoxville, TN 37922-3538.

WITNESSETH:

WHEREAS, the original Master Declaration of Covenants, Conditions, and Restrictions for Rarity Bay is dated October 1, 1998, and appears of record in Book T444, Page 248, in the Office of the Register of Deeds for Loudon County, Tennessee, and in Book M112, Page 323, in the Office of the Register of Deeds for Monroe County, Tennessee (which, as amended and supplemented of record from time to time, is hereinafter referred to as the "Master Declaration"); and

WHEREAS, the First Amendment to the Master Declaration is dated January 1, 2010, and appears of record in Book T1057, Page 890, in the Office of the Register of Deeds for Loudon County, Tennessee, and in Book M208, Page 715, in the Office of the Register of Deeds for Monroe County, Tennessee (the "First Amendment"); and

WHEREAS, the Second Amendment to the Master Declaration is dated May 14, 2010, and appears of record in Book T1064, Page 244, in the Office of the Register of Deeds for Loudon County, Tennessee and in Book M248, Page 433, in the Office of the Register of Deeds for Monroe County, Tennessee (the "Second Amendment"); and

WHEREAS, the Third Amendment to the Master Declaration is dated March 27, 2012, and appears of record in Book T1131, Page 553, in the Office of the Register of Deeds for Loudon County, Tennessee, and in Trust Book M225, Page 78, in the Office of the Register of Deeds for Monroe County, Tennessee (the "Third Amendment"); and

WHEREAS, the Fourth Amendment to the Master Declaration is dated August 28, 2012, and appears of record in Book T1147, Page 923, in the Office of the Register of Deeds for Loudon County, Tennessee, and in Trust Book M228, Page 448, in the Office of the Register of Deeds for Monroe County, Tennessee (the "Fourth Amendment"); and

This instrument prepared by:
WOOLF, McCLANE, BRIGHT, ALLEN & CARPENTER, PLLC
900 Riverview Tower, 900 S. Gay Street, Knoxville, Tennessee 37902-1810

WHEREAS, the Bylaws for the Rarity Bay Community Association, Inc., are dated September 28, 1998, and appear of record in Book T979, Page 216, in the Office of the Register of Deeds for Loudon County, Tennessee, and in Book M192, Page 481 in the Office of the Register of Deeds for Monroe County, Tennessee (which, as amended and supplemented of record from time to time, are hereinafter referred to as the "Bylaws"); and

WHEREAS, by virtue of the Court's Order attached hereto as Exhibit A and incorporated herein by reference, the Receiver has been named the Receiver for Rarity Management and TLP in the matter styled *Stooksbury v. Ross, et al.*, Case No. 3:09-CV-498-TAV-HBG (the "Lawsuit"), in the United States District Court Eastern District of Tennessee at Knoxville (the "Court"), with all of the rights of TLP and/or Rarity Management to act as Declarant under the Master Declaration and Bylaws; and

WHEREAS, the Fourth Amendment names "Tellico Lake Properties, LP, a Tennessee limited partnership acting by and through STERLING P. OWEN, IV in his capacity as Receiver for TLP" as the owner and holder of all rights as Declarant as set forth in the Master Declaration and Bylaws (the "Declarant Rights"); and

WHEREAS, the Court's Order attached hereto as Exhibit B and incorporated herein by reference held that the Declarant Rights are assets of the Receivership that are vested in RARITY MANAGEMENT COMPANY, LLC; and

WHEREAS, Section 1.12 of the Master Declaration defines Declarant as Tellico Lake Properties, L.P., a Tennessee limited partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) "Declarant" at any one time; and

WHEREAS, the Court's Order attached hereto as Exhibit C and incorporated herein by reference authorizes and directs the Receiver to assign the Declarant Rights to Purchaser under the terms of this Instrument in conjunction with Purchaser's acquisition of portions of the property described on Exhibits "A" or "B" of the Master Declaration for the purposes of development and/or sale; and

WHEREAS, in conjunction with the Assignment of the Declarant Rights to Purchaser, the Receiver wishes to effect certain amendments to the Master Declaration and Bylaws as hereinafter stated.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, with full power as Declarant under the Master Declaration, hereby amends the Master Declaration, as the same may have been supplemented or amended from time to time, as follows:

1. Amendment of Master Declaration. Pursuant to the Receiver's right to do so as Declarant under the Master Declaration, the Receiver, in his capacity as Receiver for TLP and Rarity Management, hereby amends the Master Declaration as follows:

(a) Section 1.12 of the Master Declaration, as amended, is hereby modified by deleting the phrase, "TELLICO LAKE PROPERTIES, L.P., a Tennessee limited partnership," and replacing it with the phrase, "SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company."

(b) General references in the Master Declaration to the Declarant are amended to refer to the following:

From and after the date hereof, all references in the Master Declaration to Declarant shall mean "SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company."

2. Amendment of the Bylaws. Pursuant to the Receiver's right to do so as Declarant under the Master Declaration, the Receiver, in his capacity as Receiver for TLP and Rarity Management, hereby amends the Bylaws as follows:

(a) Section 2.10 of the Bylaws, as amended, is hereby modified by deleting the phrase, "TELLICO LAKE PROPERTIES, L.P., a Tennessee limited partnership," and replacing it with the phrase, "SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company."

(b) General references in the Bylaws to the Declarant are amended to refer to the following:

All references in the Bylaws to Declarant shall, from and after the date hereof, mean "SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company."

3. Assignment of Declarant Rights.

(a) In his capacity as Receiver for TLP and Rarity Management, as their interests appear, the Receiver does hereby set over, assign, and transfer the Declarant Rights to Purchaser, without representations, warranties, or recourse of any kind.

(b) Purchaser has received no representations or warranties with respect to the assignment of the Declarant Rights, and in entering into this transaction, Purchaser is not relying upon any information other than Purchaser's own independent investigation.

4. Miscellaneous.

(a) The Master Declaration, as previously amended and as supplemented by this Amendment, is to remain in full force and effect and is to be deemed superseded by this Amendment only to the limited extent necessary to implement the terms hereof. In all other cases and for all purposes, the Master Declaration, as supplemented by this Amendment, shall be construed and treated as a single instrument and to the extent that they are not inconsistent therewith, all the terms and provisions herein contained shall be defined and interpreted in conjunction with all of the terms and the provisions of the Master Declaration as supplemented by this Amendment.

(b) Paragraph headings herein are for convenience only and shall not limit in any way the scope or interpretation of any provision of this Amendment.

(c) This Amendment shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(d) If any provision of this Amendment, or the application of any provision to any circumstance is held invalid or unenforceable under any applicable law of any jurisdiction, the remainder of and the application of such provision to other circumstances shall remain valid and enforceable.

(e) This Amendment may be executed in several counterparts, each of which shall be deemed to be an original.

[Signatures begin on next page]

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date set forth above.

TELLICO LAKE PROPERTIES, L.P., a Tennessee limited partnership acting by and through Sterling P. Owen, IV, Receiver

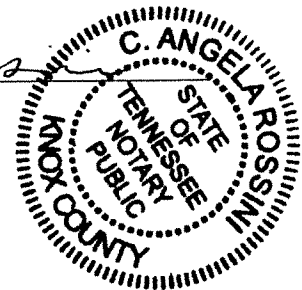
By: *Sterling P. Owen IV* Receiver
Sterling P. Owen, IV, Receiver

STATE OF TENNESSEE)
COUNTY OF KNOX)

Before me, a Notary Public in and for the state and county aforesaid, personally appeared STERLING P. OWEN, IV, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Receiver of TELLICO LAKE PROPERTIES, L.P., a Tennessee limited partnership, the within named bargainor, and that he, as such Receiver, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited partnership by himself, as Receiver.

Witness my hand and seal, this 12th day of May, 2015.

C. Angela Ross
Notary Public



My Commission Expires:
9-11-17

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date set forth above.

RARITY MANAGEMENT COMPANY, LLC, a Tennessee limited liability company acting by and through Sterling P. Owen, IV, Receiver

By: *Sterling P. Owen IV Receiver*
Sterling P. Owen, IV, Receiver

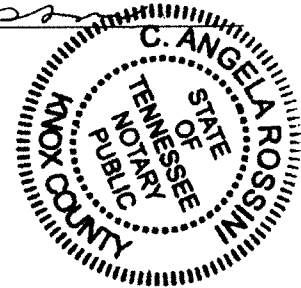
STATE OF TENNESSEE)
COUNTY OF KNOX)

Before me, a Notary Public in and for the state and county aforesaid, personally appeared STERLING P. OWEN, IV, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Receiver of RARITY MANAGEMENT COMPANY, LLC, a Tennessee limited liability company, the within named bargainor, and that he, as such Receiver, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself, as Receiver.

Witness my hand and seal, this 12th day of ^{May} ~~March~~, 2015.

C. Angela Rossini
Notary Public

My Commission Expires:
9-11-17



IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date set forth above.

PURCHASER:

SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company

By: [Signature]
Its: President

STATE OF TENNESSEE)
COUNTY OF Knox)

Before me, a Notary Public in and for the state and county aforesaid, personally appeared Michael Ayres, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of, the within named bargainor SALEM POINTE CAPITAL, LLC, a Tennessee limited liability company, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as President.

Witness my hand and seal, this 14th day of May, 2015.

[Signature]
Notary Public

My Commission Expires:
4-24-2017

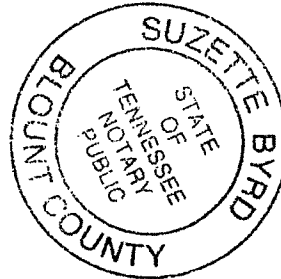


EXHIBIT A
COPY OF RECEIVERSHIP ORDER

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ROBERT T. STOOKSBURY, JR..)	
Plaintiff,)	
)	No. 3:09-CV-498
)	(VARLAN/GUYTON)
v.)	
)	
MICHAEL L. ROSS,)	
LTR PROPERTIES, INC.,)	
RPL PROPERTIES, LLC,)	
LC DEVELOPMENT COMPANY, LLC,)	
MICHAEL L. ROSS doing business as)	
RARITY REALTY doing business as)	
RARITY POINTE REALTY,)	
REBECCA ROSE ROSS JORDAN,)	
RARITY COMMUNITIES, INC.,)	
TELLICO LAKE PROPERTIES, L.P.,)	
NICKAJACK SHORES HOLDINGS, LLC,)	
RARITY INVESTMENT COMPANY, LLC,)	
RARITY CORPORATION,)	
RARITY MANAGEMENT COMPANY, LLC,)	
RARITY PROPERTY MANAGEMENT, INC.,)	
RARITY RIDGE CLUB, INC.,)	
RARITY CLUB CORPORATION,)	
BROADBERRY DEVELOPMENT COMPANY, LLC,)	
HIA WASSEE PROPERTIES LLC,)	
RM COMPANY, LLC,)	
LOM DEVELOPMENT COMPANY, LLC,)	
VPI COMPANY, LLC,)	
PATRICIA ROSS ON THE BEHALF OF ESTATE OF)	
DALE M. ROSS, and)	
TELLICO COMMUNITIES, INC.,)	
Defendants.)	

MEMORANDUM AND ORDER

This case came before the undersigned pursuant to 28 U.S.C. § 636, the Rules of this Court, and the order of the District Judge [Doc. 485]. In a Memorandum and Order entered May 23, 2012, the Court granted the Plaintiff's Motion for Order Precluding Transfer of Assets and to Appoint Receiver [Doc. 548].

The Court gave the parties an opportunity to file objections to the Order Precluding the Transfer or Dissipation of Any Assets of the Defendants and Order Appointing Receiver [Doc. 535-1], proposed by the Plaintiff, or to propose parameters of the receivership. The parties have made their filings [Docs. 566, 577]. The Court, having considered the filings submitted, the applicable law, and the record as a whole, ORDERS as follows.

1. Based upon his education, background, and experience, Sterling P. Owen IV is an appropriate receiver for this case, and Sterling P. Owen IV is **APPOINTED** to serve as receiver for all of the Defendants in this case;
2. Pursuant to the inherent equitable powers of the Court to enforce its Judgments, Defendants are hereby **PRECLUDED** and **ENJOINED** from transferring, selling, pledging, assigning, donating, financing, encumbering, injuring, destroying, deleting, or dissipating any of their assets, including but not limited to any and all interests in property of whatever kind or nature, including but not limited to real property, declarants or developer's rights in real property, interests in and/or payments from property owners' association and/or clubs, whether for fees, dues, memberships or otherwise; stock; any and all personal property; commercial paper; any marketable asset of any kind; furniture, fixtures and equipment; computers; phones; and any and all records and/or data, whether in paper form and/or stored as computer data and/or as electronically stored information, concerning any of the Defendants and any business or association in which any of the Defendants have ownership and control, except to the extent of the natural (non-corporate) defendants who shall be entitled to use their lawfully exempt property and their future labors for their personal support and necessary living expenses without first obtaining approval from the Court;

3. Mr. Owen is hereby appointed to identify, take possession of, and control of any and all of Defendants' assets in the manner best suited to preserve Defendants' assets, except to the extent a natural (non-corporate) defendant lawfully exempts such assets, up to the amount of the Plaintiff's Judgment¹, and for such other purposes as the Court may direct; that Mr. Owen is hereby vested with the following authority and shall have the following duties and responsibilities, subject to the further orders of the Court:

- a. To take possession of all assets, except for assets exempt under law, documents and property of every kind whatsoever belonging to each Defendant, including, but not limited to, all real property, personal property, bank accounts, financial and business accounts, records and electronically stored information, (excluding attorney-client and other privileged communication), accounts receivable, commercial paper, causes of action in law or equity, options and contracts concerning any interests in real property or personal property, income or payments due, all interests in real property, including but not limited to all membership fees, dues and any other payments due or receivable on account of any interest in any real estate association, whether by ownership, control, contract, or otherwise, stocks, bonds, debentures, mortgages, earned and unearned commissions or service fees due and not paid, together with all furniture, fixtures, equipment, files, records, correspondence or any other documentation, and office supplies, and to hold all such items referenced above, up to the amount of the Plaintiff's Judgment, in trust, pending further orders of this Court;

¹ The amount of the Judgment, at this time, is in excess of \$25 million [Docs. 390, 562]. However, Plaintiff still has pending motions for attorney fees and costs [Docs. 250; 399; 403].

- b. To be compensated out of the funds or assets of the Defendants which either are in the possession of Mr. Owen or which come into his possession:
- i. For his time at a rate of \$175 per hour plus reimbursement for expenses, including but not limited to travel expenses². Mr. Owen shall submit periodic applications for compensation, which shall be supported by adequate documentation of the services rendered, and thereafter, the Court will determine the compensation to be rendered to Mr. Owen;
 - ii. For employment of legal counsel, accountants, clerks, and such assistance as he deems necessary, and to receive and/or authorize the payment of such reasonable and necessary costs and expenses, as approved by the Court;
- c. To evaluate and operate the business of each Defendant corporation, partnership or limited liability company, and each business entity or association owned and/or controlled by each Defendant as Mr. Owen deems necessary, including but not limited to any property owners' association or entity operating or controlling any asset, real property or association with any interest in real property, to avoid waste or dissipation and to protect and to maximize the value of each business entity and each association pending sale or other disposition upon approval of this Court;
- d. To commence, defend, and/or intervene in any legal action in which any Defendant or any related entity is a party, may become a party, or should be a party, whether any such action is pending or is commenced before or after the

² The Court relies on the recent order of the U.S. District Court for the Eastern District of Tennessee (Defining Powers of Receiver) in Raceday Center, LLC v. RL BB Financial, LLC, et al., No.:2:11-CV-17 [Doc. 28] (E.D.Tenn., Greer, filed March 8, 2011).

entry of this Order, if Mr. Owen determines that commencing, defending, and/or intervening in any such legal action is in the best interests of preserving assets up to the amount of the Plaintiff's Judgment (this shall not preclude any Defendant in this case from continuing to pursue any right, defense or appeal in this case independently of Mr. Owen);

- e. To commence, defend, intervene in, and/or maintain any and all legal actions as deemed necessary by the Receiver for the proper administration and/or disposition of any of the assets of Defendants in order to preserve assets up to the amount of the Plaintiff's Judgment;
- f. To direct and/or discharge forthwith any and all officers, directors, agents, accountants, and employees of any or all business or association owned and/or controlled by each Defendant, to the extent Mr. Owen deems it necessary or advisable to prevent the dissipation of assets up to the amount of the Plaintiff's Judgment;
- g. To identify and to report to the Court regarding any improper and/or fraudulent conveyances involving any property and/or assets of any of the Defendants and to prosecute and/or facilitate the prosecution of any and all appropriate legal proceedings to secure and take possession of any and all such property and/or assets in order to preserve assets up to the amount of the Plaintiff's Judgment;
- h. To maintain records of any and all assets, except for lawfully exempt assets, of the Defendants which Mr. Owen identifies, to be able to account for any and all such assets and any and all expenses Mr. Owen incurs, and to report such matters to the Court on a quarterly basis, or as the Court hereafter directs;

- i. If necessary, to maintain a separate account with a federally insured banking institution with offices in the State of Tennessee in the Receiver's own name, as Receiver; and
 - j. To apply to this Court as Mr. Owen finds or deems it necessary for any further guidance and/or instructions for the discharge of his duties.
4. Mr. Owen, upon taking possession of any of Defendants' assets, shall obtain a bond in an amount equivalent with the amount of liquid assets taken in his possession, but in no event less than \$50,000, the cost of which is to be paid by Plaintiff. However, the Receiver shall not be individually liable for losses provided that the Receiver has acted in good faith to perform his duties, and has not committed gross negligence or intentional misconduct.
 5. Defendants are hereby enjoined from initiating any litigation of any kind, including but not limited to any bankruptcy proceeding, without leave of this Court;

The Court shall retain jurisdiction of this cause for the purpose of granting such other further relief as the Court finds to be equitable and just.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge

EXHIBIT B
COPY OF ORDER REGARDING OWNERSHIP
OF RARITY BAY DECLARANT RIGHTS

Property in Monroe County

- d. Rarity Bay Declarant Rights. *See id.* at 12.
- e. certain Rarity Bay golf course tracts and the Rarity Bay clubhouse. *See id.* at 13.
- f. acreage on Rarity Bay Pkwy. *See id.* at 13.
- g. certain Rarity Bay lots and undeveloped tracts. *See id.* at 13-14.

Property Owned by Judgment Debtor Tellico Lake Properties, LP

Property in Loudon County

- h. certain Rarity Bay lots. *See id.* at 11.

Property in Monroe County

- i. certain Rarity Bay lots. *See id.* at 11.
- j. certain Rarity Bay golf course tracts and the cart path. *See id.* at 11.
- k. Rarity Bay common area. *See id.* at 11.

Property Owned by Judgment Debtor LTR Properties, Inc.

Property in Monroe County

- l. 11 condos on Rarity Bay Pkwy. *See id.* at 9.

The property referenced above is hereafter referenced as the "Rarity Bay Receivership Assets."

Distributing receivership assets through a private sale is expressly authorized by statute. *See* 28 U.S.C. § 2001(b). The statute directs certain procedures, including appointing three disinterested appraisers and providing a confirmation process that allows the winning private offer to be supplanted by a bona fide offer that guarantees a ten percent increase over the price offered in the private sale. *Id.* The procedures proposed by the Receiver comply with Section 2001(b). *See* [Doc. 1398] at 2.

Mr. Stooksbury asserts that a private sale of the Rarity Bay assets would “conserve[]” the “best interests of the [receivership] estate,” 28 U.S.C. § 2001(b). He says that the subject assets are at particular risk of depreciation and dissipation. In court filings, Rarity Bay property owners have explained that the continued uncertainty regarding disposition of these assets has caused property values to decline, that the condominium units have a mold problem that needs immediate remediation, and that the property taxes have not been paid for some time and continue to accrue. *See* Rarity Bay Community Association, Inc. Amicus Briefs [Docs. 1377, 1077]; Renaissance at Rarity Bay Amicus Briefs [Docs. 1278, 1113]; Receiver’s Report on Property Taxes on Certain Assets [Docs. 1367, 1367-1].

Mr. Stooksbury also asks to be allowed to credit bid in the confirmation process, consistent with the procedures recommended in the Receiver’s liquidation plan. *See* [Doc. 1259] at 19 (“the process will accommodate the ability of the Plaintiff, Robert T. Stooksbury, Jr., to credit bid”).

The Receiver has filed a response in support of Mr. Stooksbury’s motion. [Doc. 1427].

The United States initially filed a limited objection to Mr. Stooksbury’s motion, with respect to whether or in what manner Mr. Stooksbury would be permitted to credit bid. [Doc. 1429]. Subsequently, however, the United States, Mr. Stooksbury, and the Receiver jointly submitted a stipulation in which the United States withdrew its opposition, conditioned on the Court’s order granting Mr. Stooksbury’s motion including certain conditions. *See* the referenced Stipulation, paragraphs 1 – 5 [Doc. 1434]. Under those conditions, Mr. Stooksbury will be permitted to credit bid, as long as (i) any credit bid is not made until after the Receiver has submitted appraisals of the property, (ii) any credit bid is no less than the fair-market value of the assets as determined by the highest appraisal provided by the Receiver to the Court, and (iii) any

successful credit bid is offset first against the compensatory damages portion of the Plaintiff's judgment before reducing the punitive damages awards against the Judgment Debtors who own the Rarity Bay Receivership Assets. *See id.* ¶ 4.

Section 2001(b) allows the Court to order a private sale "upon such terms and conditions as the court approves." 28 U.S.C. § 2001(b). The Court finds that the conditions in the Stipulation are appropriate and approves the same.

Further, the Court observes that no other opposition has been filed to Mr. Stooksbury's motion and accordingly, any such objections have been waived.

Accordingly, Mr. Stooksbury's motion is **GRANTED**, with the following conditions:

1. The sale of the Rarity Bay Receivership Assets shall be conducted pursuant to 28 U.S.C. § 2001(b).
2. The Rarity Bay Receivership Assets will be sold free and clear of any lien or encumbrance, including the interests of the United States and the Plaintiff, except local property taxes due on the particular property being sold.
3. Mr. Stooksbury may credit bid against the judgment entered by the Court in his favor in this case, but only after the appraisals have been presented to the Court and before confirmation of the sale. In addition, any credit bid shall be no less than the fair-market value of the assets as determined by the highest appraisal provided by the Receiver to the Court. Any successful credit bid shall be offset first against the compensatory damages portion of the Plaintiff's judgment before it is offset against the punitive damages awards.
4. The Court observes that the Receiver has determined that Mr. Stooksbury's judgment lien in this case is the senior lien encumbering the Rarity Bay Receivership Assets; accordingly, if the Rarity Bay Receivership Assets are purchased with cash, Mr. Stooksbury's

judgment lien shall attach to the proceeds of the sale of said assets. Further, the United States' position with respect to the existence or priority of any lien or encumbrance it may assert against said proceeds, if any, shall be preserved and shall not be prejudiced by the Stipulation it entered into with Mr. Stooksbury and the Receiver.

The Receiver is **DIRECTED** to conduct a private sale of the above referenced Rarity Bay Receivership Assets forthwith in the manner approved herein and otherwise in the manner the Receiver determines to be the most efficient, expeditious, and appropriate.

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT C
COPY OF ORDER REGARDING ASSIGNMENT
OF RARITY BAY DECLARANT RIGHTS

Based upon the evidence presented, the testimony of the receiver and the procedures outlined by 28 U.S.C. § 2001(b), the Court has determined that the receiver has implemented the necessary steps to comply with the statutory requirements to include the following:

1. As authorized by the Order entered on December 30, 2014 [Doc. 1436], the receiver published Notices of Private Sale of Assets and Solicitation of Bids on January 21, 2015 (Exhibits 1 and 2).

2. On or before 5:00 p.m. on February 27, 2015, five (5) bids were presented for consideration, and from those bids, the receiver selected the bid filed on behalf of Salem Pointe Capital, LLC (Exhibit 7).

3. Consistent with the provisions of 28 U.S.C. § 2001(b), the receiver obtained three (3) independent appraisals of the subject property (Exhibit 6).¹

4. On March 15, 2015, the receiver published the Notice of Hearing to Confirm Sale of Receivership Assets and Implementation of Procedures Pursuant to 28 U.S.C. § 2001(b) (Exhibit 4).

5. The bid process contemplated by 28 U.S.C. § 2001(b) was concluded on March 31, 2015, and no *bona fide* offers or credit bids were presented to supplant the offer submitted by Salem Pointe Capital, LLC.

¹ Although the receiver appeared at the hearing with complete copies of the appraisals, the Court allowed the receiver to introduce summaries of the appraisals as an exhibit to the hearing, without objection. The receiver's counsel informed the Court that he would retain copies of the appraisals.

6. Upon review of the appraisals, the receiver sought the Court's confirmation of the Real Estate Contract of Purchase and Sale (Exhibit 8).

7. The appraisal reports relating to the Rarity Bay property subject to this private sale yielded an average appraisal value of Eight Million Five Hundred Fifty-Three Thousand Three Hundred Thirty-Three and no/100 Dollars (\$8,553,333.00) (Exhibit 6); therefore, after applying the two-thirds standard set forth at 28 U.S.C. § 2001(b), any purchase price equal to or greater than Five Million Seven Hundred Two Thousand Two Hundred Twenty-Two and no/100 Dollars (\$5,702,222.00) qualifies under the statute.

The assets to be sold are as follows:

- (1) The certain tracts of land located in Monroe and Loudon Counties, Tennessee more fully described on Exhibit A attached to the Real Estate Contract of Purchase and Sale (Exhibit 8);
- (2) The declarant rights under the Master Declaration of Covenants, Conditions and Restrictions for Rarity Bay dated October 1, 1998 as recorded in Trust Book 444, page 248, in the office of the Register of Deeds for Loudon County, Tennessee and in Book M112, page 323, in the office of the Register of Deed for Monroe County, Tennessee as amended on January 1, 2010, May 14, 2010, March 27, 2012 and August 28, 2012 as more fully described in the Amendment and Assignment of Declarant Rights to be entered into between the receiver and Salem Pointe Capital, LLC as part of the subject sale and transfer of property; and
- (3) Any and all fixtures, furniture, equipment and personal property which forms a part of the Rarity Bay Golf and Country Club.

Pursuant to 28 U.S.C. § 754, Congress authorized federal receivers to exercise broad powers in administering, retrieving, and disposing of assets belonging to the receivership "situated in different districts." 28 U.S.C. § 754. The statute "extends the receiver's jurisdiction to civil actions or proceedings involving property, real, personal or

mixed” and “gives the receiver complete jurisdiction over all involved property and the right to take possession of it.” *U.S. Small Bus. Admin. v. Cottonwood Advisors, LLC*, No. 3:13-CV-1222-K, 2012 U.S. Dist. LEXIS 172345, at *6 (N.D. Tex. Dec. 4, 2012). This Court’s territorial jurisdiction is in “any district of the United States where property believed to be that of the receivership estate is found, provided that the proper documents have been filed in such district as required by Section 754.” *Haile v. Henderson Nat’l Bank*, 657 F.2d 816, 823 (6th Cir. 1981). The receivership assets that are subject to the private sale as authorized by the Court are located within the Eastern District of Tennessee (Loudon and Monroe Counties, Tennessee) and no party or non-party objected to the identification of any of these assets as part of the receivership estate. Accordingly, the Court finds that it has *in rem* jurisdiction over the property at issue. See *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133, 1142–43 (9th Cir. 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998).

The distribution of receivership assets through a private sale is expressly authorized by statute. 28 U.S.C. § 2001(b). The statute directs certain procedures, including appointing three (3) disinterested appraisers and providing a confirmation process that allows the winning private offer to be supplanted by a *bona fide* offer that guarantees a ten-percent increase over the price offered in the private sale. *Id.* Pursuant to § 2001(b), the Court is authorized to order a private sale “upon such terms and conditions as the court approves.” *Id.* The right to sell real estate assets is within the scope of the receiver’s complete control over receivership assets under 28 U.S.C. § 754.

See S.E.C. v. Am. Capital Invs., 98 F.3d 1133, 1144 (9th Cir. 1996) (“[W]e conclude that the power of sale is within the scope of a receiver’s ‘complete control’ of receivership assets under Section 754, a conclusion firmly rooted in the common law of equity receiverships.”) In the case of a private sale, 28 U.S.C. § 2001(b) requires a hearing, with notice to all interested parties and a finding by the Court that a private sale would be in the best interest of the estate.

The receiver’s request to confirm the proposed sale of receivership assets to Salem Pointe Capital, LLC and the evidence presented during the hearing on April 15, 2015, have demonstrated that, prior to the receiver’s request for confirmation, the receiver engaged in commercially reasonable efforts to obtain a purchaser for the best possible terms under the circumstances including, but not limited to, the publication of the proposed sale and bid process, the maintenance of a web page to provide information to prospective bidders, and the review and analysis of multiple bids consistent with the statutory process set forth within § 2001(b).

As established by the evidence presented, the testimony of the receiver, equitable principles applicable to federal receiverships and the statutory guidelines of § 2001(b), the Court hereby approves and deems the Real Estate Contract of Purchase and Sale as proposed by the receiver (Exhibit 8) to be fair, reasonable, and in the best interests of the receivership estate. It is therefore **ORDERED** and **ADJUDGED** that the private sale of receivership assets by the receiver to Salem Pointe Capital, LLC is **CONFIRMED** consistent with the terms of the agreement and the following conditions:

- (1) The receiver shall deliver title to the aforementioned assets by receiver's deed, bill of sale and/or assignment without representation or warranty of any kind;
- (2) Title to the assets is deemed free and clear of any liens, including the interests of the United States and the plaintiff in this action, but subject to (i) all matters shown on any applicable recorded plan or plat; (ii) and unpaid real property taxes that exist as a lien against the premises; (iii) any matter that an accurate survey might disclose and (iv) those other matters, if any, affecting title to the premises that are set forth in title commitments obtained by Salem Pointe Capital, LLC in accordance with the Real Estate Contract of Purchase and Sale (Exhibit 8);
- (3) The total purchase price for the aforementioned assets in the amount of Five Million Seven Hundred Fifty Thousand and no/100 Dollars (\$5,750,000.00) is deemed to be fair and reasonable consideration for the sale of the assets and shall be paid pursuant to the terms of the Real Estate Contract of Purchase and Sale (Exhibit 8); and
- (4) The cash proceeds resulting from the private sale shall be paid promptly to the plaintiff, Robert T. Stooksbury, Jr., through his counsel of record, subject only to the receiver retaining an amount sufficient to pay the receiver's projected administrative fees and expenses and an amount sufficient to satisfy any claim asserted to be due on account of one or more purportedly valid and priority liens by the Renaissance at Rarity Bay Condominium Association, Inc. and/or the Rarity Bay Community Association, Inc. Once the receiver's final report is filed and the receiver has calculated the *pro-rata* share of the remaining receivership administrative fees and expenses properly allocated to the private sale, any remaining balance due to Mr. Stooksbury from the private sale shall be forwarded to Mr. Stooksbury promptly, through his counsel of record.

All right, title and interest of the judgment debtors, and all other parties to this action, in and to the property more fully described on Exhibit A attached to the Real Estate Contract of Purchase and Sale (Exhibit 8), legally and equitably, shall be conveyed by receiver's deed to Salem Pointe Capital, LLC upon payment of the consideration as set forth within the terms of the Real Estate Contract of Purchase and Sale. In addition to the real property, the receiver shall convey all right, title and interest of the judgment debtors,

and all other parties to this action, in and to the declarant rights for Rarity Bay together with any and all fixtures, furniture, equipment and personal property which form a part of the Rarity Bay Golf and Country Club to Salem Pointe Capital, LLC. The proposed sale from the receiver to Salem Pointe Capital, LLC is hereby confirmed in all respects.

The receiver is **DIRECTED** to complete and close the transaction involving the private sale of the subject assets forthwith in the manner set forth within the agreement as approved herein and otherwise consistent with the most efficient, expeditious and appropriate manner as deemed necessary by the receiver.

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

BK/PG: M249/346-373
15002681

28 PGS:AL-AMENDED RESTRICTIONS	
DEB BATCH: 53903	
05/19/2015 - 08:45 AM	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	140.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	142.00

STATE OF TENNESSEE, MONROE COUNTY
MILDRED ESTES
REGISTER OF DEEDS