

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

CASE NO. 8:20-CV-325-T-35AEP

Plaintiff,

v.

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;
Defendants, and

128 E. DAVIS BLVD, LLC; et al.,

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO APPROVE SALE OF REAL
PROPERTY VIA ONLINE AUCTION**

Burton W. Wiand, as Receiver (the “**Receiver**”) over the assets of the corporate and relief defendants,¹ moves the Court to approve the marketing and sale of certain real property, free and clear of any and all liens,

¹ The “**Receivership**,” “**Receivership Estate**,” or “**Receivership Entities**” includes the corporate defendants, the relief defendants, and the following entities: EquiAlt Qualified Opportunity Zone Fund, LP (“**QOZ**”); EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc. (“**REIT**”); EquiAlt Holdings LLC; EquiAlt Property Management LLC; and EquiAlt Capital Advisors, LLC (collectively, the “**REIT and QOZ Entities**”). See Doc 184 at 6-7. See also, Doc. 284 regarding EquiAlt Fund I, LLC.

encumbrances, and claims via online auction. As explained below, the Receiver believes the proposed manner of sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate. The Receiver also moves for relief from the requirements of 28 U.S.C. §§ 2001 and 2002 in connection with the sales.

BACKGROUND

The Securities and Exchange Commission (“SEC”) alleges that, prior to the appointment of the Receiver, Brian Davison and Barry Rybicki used the Receivership Entities to perpetrate a massive real estate Ponzi scheme that raised more than \$170 million from over 1,100 victim investors across the country.

At the request of the SEC, on February 14, 2020, the Court entered a temporary restraining order and asset freeze (Docs. 10 & 11). A preliminary injunction hearing was held on July 31, 2020. On August 17, 2020, the Court granted the SEC’s request for entry of a preliminary injunction. The Receiver is directed to “administer and manage the business affairs, funds, assets, choses in action and any other property of the Corporate Defendants and Relief Defendants; marshal and safeguard all of the assets of the Corporate Defendants and Relief Defendants and take whatever actions are necessary for the protection of investors” (Doc. 11 at p. 2). The Court specifically directed the Receiver to “[t]ake immediate possession of all property, assets and estates of

every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever located . . . and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court” and to “[i]nitially recover, control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds, and trusts if the Receiver deems appropriate.” Doc. 11 at p. 2-3 ¶¶ 2-3.

At the time of his appointment, the Receiver took possession of several hundred parcels of real property that Mr. Davison caused the Receivership Entities to purchase with investor funds. The Receivership continues to incur expenses associated with owning all of these properties. Many of these properties are occupied by tenants but some are not. To avoid incurring additional unnecessary expenses and to recoup investor funds, the Receiver requests the Court approve the marketing and sale of the following properties (collectively, the “**Properties**”):

St #	Address	City	State
604	W Azeele	Tampa	FL
7600	13th Ave N	St. Petersburg	FL
3310	38th St N	St. Petersburg	FL
647	N Keene Rd, Unit A	Clearwater	FL
5001	8th Ave N	St Pete	FL
2569	Queensboro Ave S	St. Petersburg	FL

357	S McMullen Booth Rd #120	Clearwater	FL
9503	Century Drive	Spring Hill	FL
3742	Carioca Rd	Holiday	FL
4619	Belfast Drive	New Port Richey	FL
6050	Ashland Drive	Spring Hill	FL
7503	S. Morton Street	Tampa	FL
6332	Newtown Cr, Unit 32B1	Tampa	FL
10530	77th Ter #222	Seminole	FL
8625	Fancy Finch Dr, Unit 203, 4223	Tampa	FL
12100	Seminole Blvd #312	Seminole	FL
2500	Harn Blvd, E4	Clearwater	FL
1300	Sylvia Avenue #B	Spring Hill	FL
1911	E Poinsettia Avenue	Tampa	FL
0	E Cedar St Lot 44	Tarpon Springs	FL
0	E Cedar St Lot 45	Tarpon Springs	FL
2917	E Columbus Dr	Tampa	FL
3501	35th Cir	Tampa	FL
3507	35th Cir	Tampa	FL
2302	Maki Rd #45	Plant City	FL
QOZ	6915 Delano Ave	Tampa	FL
418	N. Stella Ave	Lakeland	FL
308	N 13th	Haines City	FL
312	E Merrill Avenue	Dundee	FL
134	W Northside Drive	Lake Wales	FL

The Properties include parcels of vacant land, unfinished properties in renovation, and primarily single-family homes and condominiums.

Receiver's Plans for Sale of the Properties

The Receiver intends to auction the Properties in an online format. The Receiver has created a website for this purpose, www.receivership-

[auctions.com](https://www.auctions.com). Each Property will be listed as a separate “lot” in the auction. Each Property will have an initial bid amount and an undisclosed reserve that is customized for each particular Property. If a valid bid exceeds the reserve price, the highest bidder will enter into a Sale Procedures Agreement (“SPA”) in the form attached as Exhibit 1. The terms and conditions of the auction require the successful bidder to purchase the property, the SPA establishes the procedures for the closing of the transaction. When each SPA is signed, the Receiver will request, through a brief motion, an Order from the Court instructing the Receiver to transfer the Property to the highest bidder via Receiver’s deed as described in the SPA. These motions will be much simpler than the detailed motions the Receiver has submitted to date for previous sales of individual properties as the auction sale will have been previously approved through the Court’s review of this Motion.

The auction method has proven to be effective in previous Court-approved auctions of several high-end vehicles. *See* Docs. 109; 156; 208; 210. As with the online high-end vehicle auction, the Receiver has based the reserve pricing amounts on his review and evaluation of available public sources and recent transactions involving comparable properties. The Receiver also considered the opinions of his real estate professionals to determine a reasonable reserve amount for the Properties to ensure that they are not sold at prices that do not reflect or approach fair market value.

To prepare for the anticipated auction, the Receiver has publicized the sale of the Properties by listing them on Multiple Listing Service (“MLS”), which is the primary listing database for advertising the sale of real property for real estate professionals. The Receiver has also listed the Properties for sale on the Receiver’s website, www.equialtreceivership.com and the Properties will be advertised for sale on the popular real estate listing website www.zillow.com. Upon the Court’s approval of the auction process, the Receiver will run additional ads specifying the dates for the auction and providing the URL for the auction website. These ads will include a large print ad in the Tampa Bay Times and full–page advertisements in the Tampa Bay Times online edition. These ads will run ten days prior to the inception of the auction and the online ads will continue during the auction. The Receiver will also use other social media available in the Tampa Bay area to publicize the auction. Both MLS and Zillow will be updated with the specifics of the auction.

Since the appointment of the Receiver, numerous real estate professionals in the Tampa Bay Area who are interested in various properties have affirmatively reached out to the Receiver’s team to inquire about certain properties. Counsel for the Receiver has documented these contacts and compiled a list of potentially interested purchasers. These potentially interested purchasers will be notified about the auction as well. Word–of–mouth information about the auction has already resulted in over 150

registrations on the Receiver's website showing interest in the properties offered by the Receiver. The auction will be open for public participation at www.receivership-auctions.com and will be scheduled to begin ten days after initial publication, which will occur promptly after the entry of an Order approving the auction procedure as described in this motion. Although the auction website is not now active, already over 100 potential bidders have registered on the site. Bidding will begin and remain open for ten business days. During this time, the Receiver will have the option to accept any bid or offer he deems appropriate and in the best interests of the Receivership Estate prior to the end of the ten-day period.

The Receiver believes that this procedure of marketing the Properties through www.receivership-auctions.com (and the various other methods described above) will be an efficient and economical method of marketing the Properties. Conducting the auction on the Receiver's auction website will save money by eliminating the normal commissions and fees that accompany other auctions performed by outside entities. He also believes it will result in prompt sales and good prices for these assets. The Receiver requests approval to proceed with the sale via online auction of the Properties to avoid incurring additional expenses associated with continued ownership, and to maximize the amount recovered to eventually distribute funds to the Receivership creditors, primarily the victim investors. The Receiver has determined that the selected

Properties are suitable for sale via online auction format. Other properties in the Receivership Estate will be sold individually as they have been previously, and the Receiver may seek Court approval for future auctions.

ARGUMENT

I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in

the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

II. AUCTIONING THESE PROPERTIES IS IN THE BEST INTEREST OF THE RECEIVERSHIP ESTATE

The Court should approve the proposed auction of the Properties because this plan is in the best interest of the Receivership Estate. The Receiver has previously obtained Court approval for the private sale of individual parcels of real property. *See* Docs. 142; 189; 190; 200; 221; 228; 243; 261; 286; 314. The Receiver has also previously obtained Court approval to sell high-end vehicles via blind auction (Doc. 156) and via online auction (Doc. 210) as contemplated in this motion. Both methods have proven to be effective. To date, the Receiver has recovered almost \$6.5 million from the sale of real estate.² The previous

² This figure includes the net sale prices for the real property that has been sold, but it does not include the incidental closing expenses and commissions that accompany those sales. However, because the previously sold properties were unencumbered with significant liens or mortgages, the net figure is comparable to the gross amount recovered.

auctions of high-end vehicles produced a net recovery of approximately \$406,000 for the benefit of the Receivership Estate.³

The auction method avoids time and expenses associated with selling individual properties that are incurred by preparing detailed motions to approve the sale of individual parcels of real property. In general, for private sales as opposed to auctions, the Receiver obtains three opinions of value from disinterested sources. Attorneys for the Receiver also spend time and effort compiling relevant information and drafting the detailed motions. These detailed motions consume judicial resources as well because the Court must review each individual filing and rule on the motions. The online auction method described in this motion avoids or reduces all of these expenditures. At the same time, the reserve price and the public auction format ensure that the maximum value is recovered by the sale of the Properties. If the auction price for a particular property does not meet or exceed the reserve price, the auction will end without selling the property. The reserve price as well, the initial bid price, as the format of a well-advertised public auction will assure that the Receivership receives appropriate value for the assets being sold.

The auction method described in this motion is still subject to appropriate judicial oversight. As discussed above, the Receiver intends to

³ This figure does not include the two Ferraris that were returned to Ferrari Financial Services. *See* Doc. 109 at 4.

auction each Property as an individual lot. If a valid bid exceeds the reserve price or the Receiver decides to accept a bid below that reserve, the Receiver will inform the Court of the auction sale of the property to the highest bidder and request authority to deliver a Receiver's deed free and clear of any liens or encumbrances. A preliminary review of the Properties indicates that no such major encumbrances apply to them. A normal real estate closing process will assure the Properties are free of encumbrances.

The plan described in this motion provides the greatest marketing reach and ultimate net benefit to the Receivership by avoiding seller and professional auction fees. The Receiver has created www.receivership-auctions.com expressly for the purpose of liquidating the Properties and other Receivership items in the future. Reserve pricing and the public auction format will protect the Receivership and the investors, and ensure that the Properties are sold at or near their maximum fair market value. Further, the sale of the Properties will avoid incurring the unnecessary carrying, insurance costs, and normal commissions involved with using outside auction houses. Given the scale of the Receivership, these savings are substantial. All of the Properties are currently vacant and not generating any rental revenue for the Receivership Estate. Finally, as described below in Section III, the Receiver's plan to auction the Properties substantially complies with the relevant statutes.

III. THE REQUIREMENTS OF 28 U.S.C. §§ 2001(a) and 2002

Real property sold by a federal court receiver should be done in compliance with 28 U.S.C. § 2001(a) (“**Section 2001(a)**”) and 28 U.S.C. § 2002 (“**Section 2002**”). Section 2001(a) reads as follows:

Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. **Such sale shall be upon such terms and conditions as the court directs.** Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

28 U.S.C. § 2001(a) (emphasis added). Section 2002 reads in relevant part as follows:

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

28 U.S.C. § 2002. Sections 2001(a) and 2002 impose relatively onerous and costly procedures, including an in-person auction at the courthouse (or other property as the Court directs), and publication of the auction in a newspaper once per week, four weeks before the auction occurs.

The Court has the discretion to waive strict compliance. Pursuant to Section 2001(a), the auctions shall occur “as the court directs” and “[s]uch sale shall be upon such terms and conditions as the court directs.” 28 U.S.C. § 2001(a). Additionally, 28 U.S.C. § 2004 (“**Section 2004**”) addresses the sale of personal property and indicates that personal property “shall be sold in accordance with section 2001 of this title, **unless the court orders otherwise**” 28 U.S.C. § 2004 (emphasis added). Here, using the discretion afforded by Sections 2001(a) and 2004, the Court should “order otherwise” in this instance with regard to the notice publication in a newspaper for four consecutive weeks.

Instead of strictly complying with repetitive newspaper advertisements, the Receiver has substantially complied by publicizing the auction using several methods described above. This method of publication is effective. In fact, the Receiver’s real estate professionals have already been contacted by interested buyers for several properties intended for auction and the auction website already has more than 100 registered users. The Court should waive strict compliance with Section 2002 and find that the Receiver has satisfied his duty to publicize the auction by using the methods described above, including newspaper advertising, listing the Properties on MLS, on www.zillow.com and on www.equialtreceivership.com. Section 2002 has not been amended since 1949. While old laws are not necessarily bad laws, clearly more effective

methods of advertising the auction and sale of real property have been developed in the intervening decades. The Receiver has used some of these methods and by doing so has accomplished the purpose of Section 2002. For obvious reasons, Section 2002 also omits reference to using the internet for conducting the auctions. The Court should exercise its considerable broad equitable powers to accommodate these circumstances, and allow the auction to proceed as planned.

The Receiver believes he is in a position to adequately determine the value of the Properties, and that full compliance with Sections 2001(a) and 2004 would result in the unwarranted expenditure of funds and resources of the Receivership Estate. Indeed, compliance with the statutory requirements would partially offset the expected net sale proceeds of the Properties. Additionally, the Receiver has ensured that the Properties are sold at or near their maximum value by offering them for sale in an online public auction format that includes a minimum bid and reserve price. The Court still has oversight of the proposed auction method by virtue of the motion that the Receiver would file after a successful auction.

The waivers requested by the Receiver routinely occur in enforcement actions and receiverships, including those in this district. *See F.T.C. et al. v. E.M. Systems & Services, LLC et al.*, Case No. 8:15-cv-1417-T-23EAJ, Order (M.D. Fla. March 4, 2016) (finding good cause to excuse receiver from judicial

sale procedures of 28 U.S.C. § 2001); *S.E.C. v. A. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Order (M.D. Fla. Aug. 13, 2013) (authorizing receiver to sell automobile and deviate from appraisal and publication requirements under 28 U.S.C. § 2001); *S.E.C. v. Kirkland*, 2008 WL 4264532, *2 (M.D. Fla. 2008) (approving sale of personal property without appraisals or publication where costs of compliance would significantly offset sale proceeds). Therefore, the Receiver requests that these additional procedures under 28 USC § 2001 be waived.

CONCLUSION

For the foregoing reasons, the Receiver moves the Court for entry of an order to sell the Properties via online auction and approve the publication methods as specified herein.

VERIFICATION OF THE RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this motion is true and correct to the best of my knowledge and belief.

s/ Burton W. Wiand
Burton W. Wiand, Receiver

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and Counsel for Defendants Brian Davison and Barry Rybicki and they do not object to the relief sought herein.

Respectfully submitted,

/s/ Katherine C. Donlon
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Attorneys for the Receiver Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Katherine C. Donlon

EXHIBIT 1

SALE PROCEDURES AGREEMENT

This Sale Procedures Agreement (hereinafter “**Agreement**”), is entered into this the ____ day of _____ 20_____, by and between _____ (hereinafter, the “**Buyer**”) and **Burton W. Wiand, Receiver for EquiAlt Fund __, LLC** (hereinafter, the “**Receiver**” or “**Seller**”, and collectively with Buyer, the “**Parties**”) appointed in the matter of *Securities and Exchange Commission v. Brian Davison, et al.*, United States District Court, Middle District of Florida, Tampa Division, Case No.: 8:20-cv-00325-T-35AEP (hereinafter, the “**Action**”).

BACKGROUND

WHEREAS, the Receiver was appointed pursuant to an Order Granting Plaintiff’s Emergency Ex Parte Motion for Appointment of Receiver and Memorandum of Law entered February 14, 2020 and an Order Granting Emergency Ex Parte Motion for Temporary Restraining Order, Asset Freeze, and Other Injunctive Relief entered February 14, 2020 in connection with the proceedings in the Action (the “**Receivership Orders**”); The Receiver’s powers, authorities, rights and privileges, which are outlined in the Receivership Orders, include him taking custody, control and possession of all Receivership Property, including the real property located at _____, he is authorized sell Receivership Property with approval of the United States District Court for the Middle District of Florida;

WHEREAS, EquiAlt Fund __, LLC is a legal entity under the control of the Receiver pursuant to the Receivership Orders and it is the owner of _____, better known as _____ County Property Appraiser’s Parcel Id Number (PIN): _____ (“**the Property**”);

WHEREAS, pursuant to the Receivership Orders and a subsequent Order of the Court, the Seller has been granted full power and authority to market and conduct an auction to sell the Property;

WHEREAS, the Buyer is the winning bidder in the auction of the Property and is legally bound to purchase the Property. This Agreement is to confirm and document the terms of the closing and transfer of title of the Buyer’s purchase of the Property;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. Property: The Seller has agreed to sell and convey, and Buyer has agreed to purchase and pay for, all pursuant to the terms and conditions hereinafter set forth herein and the terms of auction of ReceivrsHIP-Auctions.com, the Property consisting of all of Seller’s right, title, and interest in and to the Property, more particularly described on Exhibit “A” attached hereto. The

Property shall include all appurtenant rights, privileges, and easements, all buildings and improvements, free from all encumbrances whatsoever, except restrictions and easements of record, zoning ordinances, and taxes and assessments, both general and special, not currently due and payable. **PROPERTY SOLD "AS IS"**.

2. Purchase Price & Contingencies: The Purchase Price shall be _____ Dollars (\$ _____). The purchase price includes the winning bid price in the auction of the property on Receivership-Auctions.com and the applicable Buyer's premium.

This Agreement and transfer of the Property is subject only to the contingency that the United States District Court for the Middle District of Florida issues and Order directing and authorizing the Seller to transfer the Property.

3. Escrow Agent and Initial Money Deposits: Najmy Thompson, P.L 1401 8th Ave W, Bradenton, FL 34205 shall serve as the Escrow Agent. Within 24 hours of the notification to the Buyer that he is the winning bidder of the auction conducted by Receivership- Auctions.com, Buyer shall wire as an Initial Deposit (10%) of the Purchase Price (\$ _____) to the Special Trust Account of Burton W. Wiand, PA. These funds shall only be refundable if the United States District Court refuses to approve the transfer of the Property by the Receiver to the Buyer. The funds shall be wired to the following account:

CONTACT SELLER TO CONFIRM WIRING INFO PRIOR TO MAKING ANY WIRES.

Wiring Instructions are as follows:

ABA Routing Number: 062006505
Beneficiary Bank: ServisFirst Bank
Address: 2500 Woodcrest Place
City: Birmingham, AL 35209

Beneficiary Account #: 500120XXXX

Beneficiary Name: Burton W. Wiand PA Special Trust Account

Further Instructions: Lot No. __.

Once this document has been signed and returned to Seller, Buyer will need to contact Jeffrey Rizzo @ jrizzo@guerraking.com to receive the last 4 digits to the Beneficiary account number. Please include your phone number in the e-mail so you can be called back to confirm the last 4 digits of the account number.

Buyer may not cancel the transaction and any attempt thereto shall cause all funds deposited to the Special Trust Account to immediately become the property of the Receiver.

The funds deposited to the Special Trust Account shall be credited at Closing towards the Purchase Price to be paid to Seller by Buyer for the Property under the terms of this Agreement. **Within five (5) business days Buyer shall wire the remaining 90% of the purchase price to the Escrow Agent.** These funds shall be wired to the to the Escrow account of Najmy Thompson according to the attached wiring instructions.

The terms of this Agreement shall serve as the escrow and closing instructions for this transaction.

4. Conditions of Escrow: Seller shall, upon the deposit of all funds required by this Agreement with the Escrow Agent apply to the United States District Court for an Order authorizing and directing the Receiver to deliver to Buyer a Receivers Deed transferring all of Sellers interest in the Property. Upon delivery of the Receivers Deed to the Buyer all funds on deposit with the Escrow Agent or in the Special Trust Account shall be delivered to the Seller. Should the Court fail to or refuse to authorize the transfer of the Property to the Buyer, upon Buyer's request, deposited funds shall be returned to the Buyer. Should Seller fail to perform any obligation under this Agreement for any other reason, the Buyer's sole remedy shall be to seek return of all funds deposited in connection with this Agreement.

5. No Financing Contingency: Buyer agrees that there shall be no financing contingency associated with this Agreement. Buyer agrees that this is an **ALL-CASH** purchase and there shall be no financing contingency. Any Financing contingency must be agreed by separate Addendum to this Agreement signed by Seller.

6. Closing and Closing Agent: Unless extended by mutual agreement of the Parties, Closing shall take place promptly after The United States District Court, Middle District of Florida's directing authorizing and directing Seller to deliver a Receivers Deed to Buyer. "Closing" as used herein shall mean the date all contingencies provided in this Agreement shall be satisfied and the date the Receiver's Deed in substantially the form as Exhibit "B" attached hereto has been recorded. Najmy Thompson, P.L. shall serve as the Closing Agent.

7. Conveyance of Title: When the funds to be paid by Buyer together with all documents required to be deposited by Buyer pursuant to this Agreement have been deposited into escrow, then Seller shall deliver into escrow title to the Property. Seller will convey title via Receiver's Deed in substantially the form as Exhibit "B" attached hereto.

8. Evidence of Title, Survey and Closing Costs: Buyer, at Buyer's cost and expense, may obtain evidence of title, a title abstract, title insurance and/or a survey of the Property. At Closing, Buyer shall pay: (i) all title examination fees; (ii) survey costs or any costs to update surveys; (iii) to update recording costs on documents necessary for Seller to clear title (to the extent such action is required); (iv) any premiums for a title insurance policy; (v) all transfer taxes payable in connection with the delivery for recording of any title transfer instrument or document by Seller provided in or contemplated by this Agreement; (vi) all charges for escrow services; (vii) all survey and appraisal costs; (viii) mortgage taxes (if any); (ix) the cost of any environmental reports; (x) all fees of the Closing Agent; and (xi) Buyer's legal, accounting and other professional fees and

expenses and the cost of all certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by Buyer hereunder, including without limitation, the cost of performance by Buyer and the obligations hereunder.

At Closing, Seller shall pay: (i) Seller's legal, accounting and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by Seller hereunder, including without limitation, the cost of performance by Seller of its obligations hereunder.

Except as otherwise expressly provided for in this Agreement, Buyer shall be responsible for any and all other costs and expenses, regardless of custom or practice in the county where the Property is located, in connection with the consummation of this Agreement.

9. Condition of Premises and Inspection Period: Buyer acknowledges and agrees to purchase the Property on an "As Is" "Where Is" basis, with all faults and without representations, express or implied, of any type, kind, character or nature, including but not limited to the suitability of the Property for any use, and without warranties, express or implied, of any type, kind, character or nature, including but not limited to, suitability of the Property for any use, and without recourse, express or implied, of any type, kind, character or nature.

Any inspection of the Property must be conducted prior to the entry of bids on the Property. All bids are binding and irrevocable when made. Entering a bid on the Property without inspection for any reason shall constitute a waiver of any inspection of the Property and conclusive acceptance of the Property in its current condition.

10. Damage or Destruction: In the event the Property, or any portion thereof, is damaged or destroyed by fire or other cause prior to the date of transfer of title, Buyer may declare this Agreement null and void or Buyer may complete the purchase. If Buyer declares this Agreement null and void due to damage or destruction as described in this Paragraph 10, all funds paid by Buyer to the the Receiver or Escrow Agent shall be delivered immediately to Buyer.

11. Taxes, Assessments & Utilities: Real Estate Taxes, assessments, if any, and any assessments, insurance premiums, charges, and other items attributable to the Property shall be prorated as of the date of Closing, based upon an actual three hundred and sixty-five (365) day year, as is customary. Meters for all public utilities (including water) being used on the Property shall be ordered read on the day prior to closing and all charges to said date shall be paid by Seller.

12. Real Estate Brokers: Seller and Buyer represent and warrant each to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction, except for Tony Kelly of A Better Life Realty LLC ("**Seller's Agent**"). At Closing, Seller agrees to a Two Percent (2.0%) commission Seller's Agent pursuant to a separate written agreement by and between Seller and Seller's Agent. No commission shall be payable to any agent of Buyer unless Buyer has disclosed such agent during registration with Receivership-Auctions.com. If such agent is disclosed Buyer's agent will be paid 40% of the Buyer's premium paid by Buyer.

13. General Provisions:

- (a) This Agreement shall be governed by the laws of Florida.
- (b) Buyer and Seller hereby (i) agree that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be exclusively litigated as a summary proceeding in *Securities and Exchange Commission v. Brian Davison, et al.*, United States District Court, Middle District of Florida, Tampa Division, Case No.: 8:20-cv-00325-T-35AEP, to the exclusion of the courts of or in any other state or country, and (ii) irrevocably submit to the exclusive jurisdiction of the United States District Court, Middle District of Florida, in any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably waive any objection to the laying of venue of any such action or proceeding in any such court and any claim that any such action or proceeding has been brought in an inconvenient forum. A final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.
- (c) Captions of the several items of this Agreement are not a part of the context hereof and shall not be used in construing this Agreement, being intended only as aids in locating the various provisions hereof.
- (d) This Agreement shall inure to the benefit of, and be binding upon, the Buyer's successors and assigns, executors and administrators.
- (e) In the event that this Agreement shall terminate in accordance with the provisions hereof, and in the absence of breach, all funds and documents deposited shall be returned to the depositor thereof and neither party shall be under any further obligation to the other by reason of this Agreement.
- (f) This Agreement is deemed accepted upon delivery of the fully executed Agreement. This Agreement, and any notices required or permitted to be given pursuant to this Agreement, shall be in writing and sent by overnight courier, prepaid, or hand delivered, transmitted by facsimile or e-mail, delivered personally or served by certified or registered mail, return receipt requested. Any facsimile or electronic signature shall be deemed to be an original.
- (g) Notices may be delivered to Seller at the email address burt@burtonwwiandpa.com or via Seller's Agent at the email address tony@abetterliferealty.com and to Buyer at the email address _____ or via Buyer's Agent at the email address _____.
- (h) This Agreement contains the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained.

BUYER

SELLER

Burton W. Wiand, Receiver for
EquiAlt Fund __, LLC

BROKER'S ACKNOWLEDGEMENT

Tony Kelly of A Better Life Realty LLC (Seller's Agent) hereby acknowledge receipt of this Agreement and agree to be joined to this Agreement to the extent their compensation structure is discussed. The Broker hereby agrees to the compensation structure set forth in paragraph 12 above. Any dispute concerning the compensation shall be resolved pursuant to paragraph 13(b) herein.

Seller's Agent

BUYER'S BROKER'S ACKNOWLEDGEMENT

Buyer's Agent as disclosed in Registration of Buyer with Receivership-Auctions.com hereby acknowledges receipt of this Agreement and agree to be joined to this Agreement to the extent his compensation structure is discussed. The Buyer's Agent hereby agrees to the compensation structure set forth in paragraph 12 above. Any dispute concerning the compensation shall be resolved pursuant to paragraph 13(b) herein.

Buyer's Agent

EXHIBIT A TO SALE PROCEDURES AGREEMENT

LEGAL DESCRIPTION

EXHIBIT B TO SALE PROCEDURES AGREEMENT

RECEIVER'S DEED

THIS INDENTURE, made as of the ____ day of _____ 2021, by and between **Burton W. Wiand, Receiver for EquiAlt Fund __, LLC** (hereinafter referred to as the "Grantor"), having a mailing address of 114 Turner Street, Clearwater, Florida 33756, and _____ (hereinafter referred to as the "Grantee") having an address of _____.

WITNESSETH:

That Burton W. Wiand was appointed as Receiver for the Property, as hereinafter described, pursuant to that certain Order Appointing Receiver in *Securities and Exchange Commission v. Brian Davison, et al.*, United States District Court, Middle District of Florida, Tampa Division, Case No.: 8:20-cv-00325-T-35AEP. The sale having been duly approved by Order of The United States District Court, Middle District of Florida, entered _____, 20 _____ (hereinafter referred to as the "Order" and attached hereto as Exhibit 1 and incorporated herein by this reference).

That for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Grantor has granted, bargained, sold, aliened, conveyed and confirmed and does hereby grant, bargain, sell, alien, convey and confirm unto Grantee all of Grantor's right, title and interest in and to all that certain tract or parcel of land lying and being in _____ County, Florida, being more particularly described in Exhibit 2 attached hereto and by this reference made a part hereof (hereinafter referred to as the "Property").

TO HAVE AND TO HOLD said Property, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging or in anywise appertaining, to the only proper use, benefit and behoof of Grantee forever, in as full and ample a manner as the same was held by Grantor.

IN WITNESS WHEREOF, Grantor has signed and sealed this Receiver's Deed, the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness signature

Burton W. Wiand, Receiver for
EquiAlt Fund __, LLC

Printed name

Witness signature

Printed name

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
20_____, by Burton W. Wiand, Receiver for EquiAlt Fund __, LLC.

Notary Public
Print Name:
My Commission Expires:

Personally Known _____(OR) Produced Identification _____
Type of identification produced

EXHIBIT 1 TO RECEIVER’S DEED

COURT ORDER

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

CASE NO. 8:20-CV-325-T-35AEP

Plaintiff,

v.

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC;
310 78TH AVE, LLC;
551 3D AVE S, LLC;
604 WEST AZEELE, LLC;
2101 W. CYPRESS, LLC;
2112 W. KENNEDY BLVD, LLC;
5123 E. BROADWAY AVE, LLC;
BLUE WATERS TI, LLC;
BNAZ, LLC;
BR SUPPORT SERVICES, LLC;
BUNGALOWS TI, LLC;
CAPRI HAVEN, LLC;
EA NY, LLC;
EQUIALT 519 3RD AVE S., LLC;
MCDONALD REVOCABLE LIVING TRUST;
SILVER SANDS TI, LLC;
TB OLDEST HOUSE EST. 1842, LLC;

Relief Defendants. /

ORDER

THIS CAUSE comes before the Court for consideration of the Receiver’s Motion to Approve Transfer of Title to the Property Located _____(the “Property”). At the request of the Securities and Exchange Commission (“SEC”), the Court appointed the Receiver on February 14, 2020 and directed him, in relevant part, to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants,” which includes “all real property of the Corporate Defendants and Relief Defendants, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order.” (Dkt.11) and:

WHEREAS, this Court has previously approved the sale of the Property as part of an auction conducted by the Receiver (Dkt.), and the property was sold at auction to _____ and the Receiver has requested this Court for an order approving the transfer of title to _____ and has provided the Court with a signed Sale Procedures Agreement to complete the auction sale;

Accordingly, it is hereby **ORDERED AND ADJUDGED** that

1. The Receiver’s Motion (Dkt. ___) is **GRANTED**.
2. Transfer of title to the Property located at _____ better known as _____ County Property Appraiser’s Parcel Id Number (PIN): ___; (the

“Property”) to _____ is **APPROVED**. The Property’s legal description is as follows:

3. Said transfer shall be free of any and all liens and encumbrances.

DONE and ORDERED in Tampa, Florida, this ____ day of _____
20____.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

EXHIBIT 2 TO RECEIVER’S DEED

LEGAL DESCRIPTION



1401 8th Avenue West
Bradenton, FL 34205

PHONE (941) 748 - 2216
FAX (941) 748 - 2218

OTHER OFFICES
Lakewood Ranch (941) 907 - 3999
Sarasota (941) 907 - 3999
New York (212) 220 - 6616

WWW.NAJMYTHOMPSON.COM

**INCOMING WIRING INSTRUCTIONS SERVISFIRST BANK IOTA REAL
ESTATE TRUST ACCOUNT**

INCOMING WIRE ROUTING INSTRUCTIONS – Domestic USD

Receiving Bank SERVISFIRST BANK
 2500 WOODCREST PLACE
 BIRMINGHAM, AL 35209
ABA Routing No.: ABA #062006505
Account No.: *****4287 (Not Complete Number)

**TO ENSURE YOU RECEIVE THE PROPER WIRING INSTRUCTIONS, YOU MUST CONTACT
OUR OFFICE DIRECTLY TO OBTAIN THE FULL ACCOUNT NUMBER.**

ServisFirst Account Name: NAJMY THOMPSON, P.L.
 6320 VENTURE DRIVE, SUITE
 104 LAKEWOOD RANCH, FL
 34202

Please Reference Buyer(s) Name or Property Address: _____

FRAUD WARNING

1. TO ENSURE YOUR WIRE REACHES US, YOU MUST INCLUDE ALL OF THE ABOVE INFORMATION IN THE OUTGOING WIRE INSTRUCTIONS.
2. THIS INFORMATION IS FOR WIRE PURPOSES ONLY. YOU ARE NOT AUTHORIZED TO USE THESE INSTRUCTIONS FOR DIRECT DEPOSIT/ACH/EFT INTO THIS ACCOUNT OR FOR ANY OTHER PURPOSE OR PROCEDURE.
3. WE ONLY ACCEPT WIRED FUNDS. WE DO NOT ACCEPT OFFICIAL, CASHIER’S OR PERSONAL CHECKS.
4. DUE TO RECENT INTERNET FRAUD AND EMAIL HACKING, WE ADVISE OUR CLIENTS TO CALL NAJMY THOMPSON, P.L. AT (941) 748-2216 TO VERIFY WIRE INSTRUCTIONS WITH YOUR CLOSER BEFORE INITIATING A WIRE TRANSFER. NAJMY THOMPSON, P.L. WILL NOT BE HELD LIABLE IF YOU BECOME A VICTIM OF THIS FRAUD.

Reference Details:

***** Please note, the sending financial institution will use a U.S. Intermediary bank *****

For accurate and timely processing of transactions, it is very important that remitters correctly identify the final beneficiary’s name and account number. Beneficiary details must be complete with no abbreviations and match the title on the account.