

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.

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**RECEIVER'S SECOND 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,<sup>1</sup> moves the Court to approve the marketing and sale of certain real property, free and clear of any and all liens,

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<sup>1</sup> 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 and as evidenced by the Receiver's earlier online property auction, 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.

Since the inception of the Receivership through the end of September 2021, the Receiver has sold with Court approval seven properties through private sale. In addition to these private sales, the Receiver sought and received the Court’s approval to market and sell through online auction 30 properties during late August/early September 2021. Given the current housing market and the success of his earlier automobile auction, the Receiver chose this format with the belief that it would be the most efficient way to sell

multiple properties. The Court approved the auction in an order dated July 14, 2021. (Doc. 349)

Prior to the start of the auction, the Receiver advertised and caused an article to be published in the Tampa Bay Times (online and print) in order to garner interest in the auction. The Receiver also listed the auction through the MLS service and other online services such as Zillow. The publicity was a huge success. The articles referencing the auction were the second most viewed of the Tampa Bay Times, only exceeded by Elon Musk's space flight. The articles were also picked up internationally, furthering our reach to prospective bidders. In the timeframe from the advertisements going public to the end of the auction, the receivership-auctions.com website gained over 400 registered users interested in the auction. Having this base of potential bidders, the Receiver can reach out directly to these users to inform them of upcoming auctions.

Due to the Receiver's marketing efforts and the current trends of the housing market, the auction proved a success. In the 10-day window that the auction was held, the Receiver was able to sell 24 of the 30 properties directly in the auction. Five of the six properties that did not meet the reserve during the course of the auction were placed under contract shortly thereafter, due in large part to interest garnered from the auction. In total, the auction was able

to generate an overall Bid amount of 105.5% of fair market value of the properties based on third-party Broker Price Opinions. Using the auction format, the Receiver was able to avoid paying commissions that are typically paid to the buyer and seller agents. He was able to do this by adding a buyer's premium of 5% of the winning bid amount. The Receiver then used that 5% to cover the costs of agents and title expenses. The five of the remaining six properties have been placed under contract since the auction at 102.6% of their fair market value. The final property has received several competitive offers.

In order to make these properties appeal to private buyers, the Receiver employed an innovative provision in the auction terms that allowed a winning bidder to use a window of 30 days to acquire financing. This window, while not a contingency on a purchaser's obligation to complete the transaction gave buyers an opportunity to utilize financing. The Receiver believes that this accommodation increased the pool of bidders and purchasers.

Given the results of this first real estate auction, the Receiver believes that this process will continue to provide him an efficient way to dispose of the real property assets while protecting the receivership through setting a proper reserve price. 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**"):

<b>Address</b>	<b>City</b>	<b>State</b>
1129 Ave D	Haines City	FL
1193 88th Ave	St. Petersburg	FL
53 Phillips St S	Lake Wales	FL
5930 Fairfield Ave S	St. Petersburg	FL
621 Strain Blvd	Lakeland	FL
8009 N 14th St	Tampa	FL
6702 Sandra Dr	Port Richey	FL
106 S Westland Ave	Tampa	FL
2015 E 51st Ave	Bradenton	FL
4709/4711 25th St N	St. Petersburg	FL
7204 S Kissimmee St	Tampa	FL
7206 S Kissimmee St	Tampa	FL
7208 S Kissimmee St	Tampa	FL
4908 W Ingraham	Tampa	FL
4910 W Ingraham	Tampa	FL
4805 Alt 19 #312	Palm Harbor	FL
7117 E Bank Dr #102	Tampa	FL
7143 E Bank Dr	Tampa	FL
5135 Tennis Court Circle	Tampa	FL
1300 Sylvia Avenue, #B	Spring Hill	FL
134 86 <sup>th</sup> Terrace	Treasure Island	FL
605 92 <sup>nd</sup> Avenue North	St. Petersburg	FL
118 S. Westland Avenue	Tampa	FL
29250 US Highway 19 #114	Clearwater	FL

The Properties include parcels of single-family homes, condominiums, duplexes, and two multiplexes.

### **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](http://www.receivership-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 the Receiver's earlier property auction as well as previous Court-approved auctions of several high-end vehicles. *See* Docs. 109; 156; 208; 210. As with these previous auctions, the

Receiver has based the reserve pricing amounts on his review and evaluation of available public sources, third-party broker price opinions 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](http://www.equialtreceivership.com) and the Properties will be advertised for sale on the popular real estate listing website [www.zillow.com](http://www.zillow.com). These two services provide the widest possible dissemination of the sale information to the real estate market. 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. Many of these people participated in the first online property auction. These interested professionals as well as the over 400 individuals that registered for the first auction will receive notice of the second auction. The auction will be open for public participation at [www.receivership-auctions.com](http://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. 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](http://www.receivership-auctions.com) (and the various other methods described above) has proven successful and continues to 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 where the Receiver deems such transaction advantageous. Given the prior success of this auction format and the anticipated success of this new auction, the Receiver intends to use future auctions as part of his liquidation efforts.

## **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 other properties via online auction (Doc. 349) as well as 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 \$9 million from the sale of real estate.<sup>2</sup>

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

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<sup>2</sup> 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.

will end without selling the property.<sup>3</sup> The reserve price, the initial bid price, as well 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 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](http://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

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<sup>3</sup> In the last auction, there were six properties where the reserve was not met. After the auction concluded, the Receiver's team continued to negotiate with interested parties and ultimately entered into contracts on those properties. Those private sales have been submitted to the Court for approval.

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 has proven effective in the earlier auction. It provides far wider notice of the auction than the advertising method described in the applicable statutes. 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](http://www.zillow.com) and on [www.equialtreceivership.com](http://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 be inefficient and would result in the unwarranted expenditure of funds and resources of the Receivership Estate. The Receiver's suggested sale procedures assure an open and well publicized auction and further ensures 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 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.

### **LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the SEC and Defendant Barry Rybicki and they do not object to the relief sought 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

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 December 13, 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, and pursuant to an Order on Motion for Preliminary Injunction entered on August 17, 2020 in connection with the proceedings in the Action (the “**Receivership Orders**”); and pursuant to the Receivership Orders the Receiver was granted authority, custody and control over EquiAlt, LLC and various other related companies and assets including EquiAlt Fund \_\_\_, LLC and he is authorized to sell said 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 through Receivership-Auctions.com 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 Receivership-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](mailto: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. Unless Seller has agreed otherwise, **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. Any financing shall be allowed solely pursuant to the terms of the Financing Addendum attached hereto.

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 Receiver's Deed transferring all of Seller's interest in the Property. Upon delivery of the Receiver's 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 Purchaser who desires to finance a purchase after being the successful bidder in an auction must execute and strictly comply with the terms of the Financing Addendum attached hereto.

**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 authorizing and directing Seller to deliver a Receiver's 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 to 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](mailto:burt@burtonwwiandpa.com) or via Seller's Agent at the email address [tony@abetterliferealty.com](mailto: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 agrees 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 agrees 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 at \_\_\_\_\_ (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

DRAFT



**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](http://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.