

**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
PURCHASE OF REAL PROPERTY**

Burton W. Wiand, as Receiver (the “**Receiver**”) over the assets of the corporate and relief defendants,¹ moves the Court to approve the purchase by the Receivership of a certain parcel of land in downtown St. Petersburg. As

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.

explained below, the Receiver believes the proposed purchase is commercially reasonable and will result in an increased sale price of adjacent properties already owned by the Receivership.

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. Further, the Receiver is authorized to “[m]ake or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver’s duties.” *Id.* at ¶9.

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. Included in these properties are nine vacant lots (36,000 sq. ft.) in downtown St. Petersburg on the north side of 3rd Avenue South (“Vacant Properties”).² These parcels are located on a block that is bisected by an alley. There are 10 lots in the southern half of the block. The Vacant Properties are six lots on one end of the block and three lots on the other end. The holding comprises all of the southern half of the block except for one lot (Parcel No. 19-31-17-74466-052-0170), mid-block, which is currently

² Three of these properties are owned by EquiAlt Fund LLC, two owned by EquiAlt 519 3rd Ave S. LLC and one owned by EA SIP LLC.

owned by MLF 2, Ltd. (“Non-Owned Lot”). As a contiguous parcel, all 10 lots comprise a prime development property that is currently in high demand. As the Court may be aware, development in the downtown St. Petersburg area is thriving. Since his appointment, the Receiver has investigated various options with the Vacant Properties, including selling them, purchasing the Non-Owned Lot and developing the entire property, or purchasing the Non-Owned Lot and sell the entire contiguous parcel to a developer. After his investigation and analysis, the Receiver has determined that it is in the best interest of the Receivership to purchase the Non-Owned Lot and then sell all of the parcels as a package.

According to the June 2021 valuation conducted by Coldwell Banker (requested by the Receiver and approved by the Court), the Vacant Properties were valued at \$4,500,000. The Receiver has discussed the sale of the two parcels (one consisting of three lots and the other consisting of six parcels) together to several third-parties and received offers from \$5-\$6.5 million. However, if the entire ten lots are combined into one parcel, the value for development purposes increases dramatically. If the Receiver can purchase the Non-Owned Lot, evaluation of sales of similar large development sites indicates that the combined lots could return more than \$15 million. There are several developers who are actively pursuing this combined property for development. Already, an unsolicited letter of intent has been received offering

a price of over \$13 million. Discussions with other well-known developers indicate that this property will be in high demand and the Receiver can be aggressive in pricing the entire combined parcel. Given this extreme differential in valuations, the Receiver entered into negotiations with the owner of the Non-Owned Lot and has entered into an Agreement for Purchase and Sale of the Non-Owned Lot, subject to the Court's approval, for \$1,750,000. See Exhibit 1.

Although an appraisal for this vacant land would suggest a much lower purchase price if sold by itself, the purchase price of this land is justified by the greatly enhanced value to the entire parcel. In the current development climate in St. Petersburg, the Receiver believes that he can promptly find a buyer for the property. While the price for the Non-Owned Lot is very high, adding the property to the other Vacant Properties poses little risk to the Receivership and appears very likely to garner an enhanced return for the EquiAlt victims of millions of dollars.³ The Receiver respectfully requests that the Court approve the purchase by the Receiver of the Non-Owned Lot so that he may begin negotiations to sell the contiguous parcel. The latter sale would, of course, be subject to this Court's future approval.

³ To date, the Receiver has collected over \$21 million from the sales of approximately 46 properties and has entered into contracts on eighteen other properties that will add another \$18.5 million to that total. At present, the Receiver holds over \$40 million in cash.

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. PURCHASING THE NON-OWNED LOT IS IN THE BEST INTEREST OF THE RECEIVERSHIP ESTATE

The Court should approve the proposed purchase of the Non-Owned Lot because it is in the best interest of the Receivership Estate. If the Receiver were to sell the Vacant Properties without the Non-Owned Lot, it is anticipated that they would sell for less than five million dollars. However, if the Receiver can purchase the one Non-Owned Lot for the purchase price of \$1,750,000, based on the current real estate market and comps from other similarly situated properties, the value of the combined properties could very well triple or more from the Coldwell Banker valuation.

Although the Receiver has the authority under the Court's Order Appointing Receiver [Doc. 11] to administer the property and assets of the estate, manage the business of the Receivership Entities, as well as make disbursements that are reasonable, necessary and advisable to discharge the Receiver's duties, given the significant purchase price of the Non-Owned Lot, the Receiver is seeking the Court's approval of this real estate purchase in

order to place the Receivership in a position to obtain a much higher sales price for the Vacant Properties.

CONCLUSION

For the foregoing reasons, the Receiver moves the Court for entry of an order approving the Receiver's purchase of the Non-Owned Lot (Pinellas County Parcel No. 19-31-17-74466-052-0170) for \$1,750,000.

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 Defendant 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 February 18, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Katherine C. Donlon

EXHIBIT 1

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT (“**Agreement**”), dated the 15th day of February, 2022 (the “**Effective Date**”), is entered into by MLF 2, LTD., a Florida limited partnership (“**Seller**”) and BURTON W. WIAND, as Receiver for EQUIALT FUND, LLC, a Florida limited liability company (hereinafter, the “**Receiver**” or “**Buyer**”).

BACKGROUND:

Seller is the owner of that certain parcel of land located in St. Petersburg, Florida, legally described in **Exhibit A** attached hereto and made a part hereof, and identified as Parcel No. 19-31-17-74466-052-0170 (the “**Parcel**”). Buyer desires to purchase Seller’s interest in the Parcel, together with all appurtenances, rights, easements, rights of way, permits, licenses and approvals incident or appurtenant thereto, any and all, development rights, estates, titles, privileges, tenements, hereditaments and appurtenances to the extent applicable and any and all impact fee credits, and any and all rights or privileges in connection with the real property and planned development approvals and preliminary plat in Seller’s possession and control, if any, (collectively, the “**Entitlements**”, together with the Parcel, the “**Property**”), and Seller desires to sell the Property to Buyer.

The parties to this Agreement agree to the sale and purchase of the Property on the terms and conditions which are set forth herein.

In consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows.

AGREEMENT:

1. **Purchase and Sale.** Subject to all of the terms and conditions of this Agreement, the Seller will sell to the Buyer and the Buyer will purchase from the Seller the Property.

2. **Purchase Price and Payment.**

(a) The purchase price to be paid by the Buyer to the Seller for the Property shall be One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000.00) (the “**Purchase Price**”), subject to adjustments and prorations as set forth in this Agreement.

(b) Within three (3) business days from the Effective Date of this Agreement, Buyer shall deliver an earnest money deposit of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (the “**Deposit**”) to Johnson, Pope, Bokor, Ruppel & Burns, LLP (“**Escrow Agent**”). The Deposit will be held in escrow by Escrow Agent in accordance with Section 35 below and applied to the Purchase Price at Closing.

(c) At the time of Closing, the Buyer will pay to Escrow Agent, by wire transfer, the Purchase Price, less the Deposit, as adjusted for prorations and adjustments as set

forth in this Agreement, together with Buyer's closing costs as described herein and Escrow Agent shall deliver the Purchase Price to the Seller and shall pay the closing costs to the applicable payee thereof.

3. **Due Diligence Period.**

(a) Commencing on the Effective Date and continuing until 6:00 p.m. EST on the day that is ninety (90) days from the Effective Date (the "**Due Diligence Period**"), Buyer shall have the right to investigate the Property, and to satisfy itself with respect to the condition of the Property and the feasibility of purchasing the Property. Buyer shall have the right to enter upon and investigate any and all aspects of the Property it deems appropriate, in its sole and absolute discretion, but, however, excluding any invasive testing without the Seller's prior written consent, which shall not be unreasonably withheld, and to communicate directly with governmental officials upon prior written notice to Seller which notification shall only be required with respect to the inspections performed by Buyer pursuant to this Section 3(a), and Seller agrees to reasonably cooperate with Buyer in Buyer's review and inspection of the Property and all such communications. During the Due Diligence Period, Seller will provide Buyer and Buyer's agents with access to the Property for the purposes of conducting any and all inspections, surveys, testing, and investigation that Buyer deems appropriate with respect to the Property, including, without limitation, a Phase I environmental audit, and a Phase II environmental audit with Seller's prior written consent. Buyer hereby indemnifies and holds the Seller harmless from any loss, cost or expense, including, but not limited to, reasonable attorneys' fees and costs, actually incurred by the Seller as a result of the actions of Buyer or any of Buyer's agents who enter upon the Property during the Due Diligence Period (other than for conditions existing solely prior to Buyer's inspections). During the Due Diligence Period, Buyer shall have received approval of the transaction contemplated by this Agreement from the United States District Court (the "**District Court Approval**") and Seller shall have received all required approvals of the transaction contemplated by this Agreement from any limited partners or affiliates of Seller.

(b) Seller has delivered to Buyer before or with the execution of this Agreement, will deliver to Buyer within five (5) days following the Effective Date, true, correct, and complete copies or originals of those items described in **Exhibit B** attached hereto and made a part hereof (collectively, the "**Property Information**"). Any delay in Seller's delivery of the Property Information hereunder shall cause the Due Diligence Period to be extended by one (1) day for each day of delay. Within three (3) days after written request by Buyer to Seller, Seller shall deliver to Buyer true, correct and complete copies of such other documents and information relating to the Property as Buyer may reasonably request and which is in Seller's possession or control.

(c) Buyer may terminate this Agreement for any reason or for no reason by providing written notice of such termination to Seller on or prior to the expiration of the Due Diligence Period in which case this Agreement shall be terminated, Buyer shall return the Property Information to Seller, the Deposit shall be returned to Buyer and the parties hereto shall be relieved of all liabilities and obligations under this Agreement, except those which specifically survive termination. If Buyer does not provide written notice of termination on or prior to the expiration of the Due Diligence Period, then the Deposit shall be deemed to be non-refundable, Buyer shall be deemed to have elected to proceed with this Agreement, and, notwithstanding the expiration of the Due Diligence Period, Buyer may continue to investigate the condition of the Property through

the Closing Date. Notices for purpose of this paragraph may be delivered via email to the parties and/or to their respective counsel.

(d) The Buyer intends to use the Property for mid- to high-rise buildings (“**Intended Use**”).

(e) Buyer, at Buyer’s expense, may submit for all necessary development permits and approvals as required by all respective governing authorities having jurisdiction of the development of the Property pursuant to the Intended Use, including the City of St. Petersburg, South West Florida Water Management District, Department of Environmental Protection, Florida Department of Transportation, Pinellas County School Board, and Pinellas County, each in final form with all appeals periods having passed without an appeal having been filed (“**Final and Non-Appealable**”) (collectively, the “**Permits**”). Seller agrees to use commercially reasonable efforts to cooperate with Buyer and execute necessary applications, documents, and/or forms reasonably required to obtain the Permits, at no expense to Seller.

(f) Buyer and Buyer’s agents accessing the Property shall maintain liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, workers compensation insurance in statutory limits, and employers liability insurance with limits not less than One Million Dollars (\$1,000,000). Such insurance policies shall: (i) be primary and non-contributory to any insurance maintained by Seller; (ii) be issued by an insurer with a Best’s rating of no less than A-/VIII and licensed to write insurance and do business in the state where the Property is located; and (iii) include Seller as an additional insured thereunder. Buyer shall provide Seller with a certificate of insurance from Buyer (and the applicable Buyer agents) satisfying the above-listed requirements prior to any entry onto the Property by Buyer or any Buyer Party.

4. **Title and Title Insurance.**

(a) **Title Commitment.** Buyer may obtain, at Buyer’s expense, a title insurance commitment (the “**Commitment**”) issued by a title insurance company authorized to transact business in the State of Florida (the “**Title Insurer**”), committing to insure the title to the Property in the amount of the Purchase Price, subject to the Schedule B-II exceptions therein (the “**Exceptions**”). It is a condition of Buyer’s obligation to close and pay to Seller the Purchase Price that title to the Property is marketable and insurable subject only to: (i) zoning and other regulatory laws and ordinances affecting the Property, and (ii) those Exceptions accepted by Buyer pursuant to this **Section 4** (collectively, the “**Permitted Exceptions**”). Buyer will notify Seller in writing (the “**Title Objection Notice**”) on or before the expiration of the Due Diligence Period of any of Buyer’s objections to title (the “**Title Defects**”), which Title Defects may or may not relate to the marketability or insurability of title. Seller shall notify Buyer in writing within five (5) days after receiving Buyer’s Title Objection Notice, if Seller does not intend to remove (or cause the Title Insurer to endorse over, to Buyer’s satisfaction) or otherwise cure the Title Defects. Seller’s lack of response shall be deemed as Seller’s refusal to remove or otherwise cure the Title Defects. If Seller elects to cure such Title Defects, Seller will use good faith efforts to cure the Title Defects within ten (10) days of Seller’s receipt of the Title Objection Notice (“**Seller’s Title Cure Period**”). In the event that Seller, using good faith efforts, is unable to cure the Title Defects within the Seller’s Cure Period, then Buyer shall have the option of either (x) proceeding to Closing and accepting title to the Property “as is”, without diminution in the Purchase Price; or (y) terminating this Agreement by written notice to Seller, in

which event this Agreement shall be cancelled, the Deposit shall be returned to Buyer, and neither party shall have any further obligations to each other with respect to the matters contained in this Agreement, except for those matters which survive the termination of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, Seller shall be obligated to discharge, either at or before Closing, all mortgages, liquidated liens and judgments, notices of commencement and past due taxes.

(b) Updated Title Commitment. On or before the Closing, Buyer will have the right, from time to time, to obtain an endorsement bringing the effective date of the Commitment forward to the most current date available (the “**Updated Commitment**”). If the Updated Commitment discloses any matters that are not Permitted Exceptions (“**Additional Title Defects**”), then Buyer shall have the right to object to such Additional Title Defects by providing written notice of same to Seller, within the earlier of (i) five (5) business days after receipt of such Updated Commitment; or (ii) the Closing Date. If Buyer timely delivers notice of such Additional Title Defects to Seller, Seller will use good faith efforts to cure such Additional Title Defects prior to the Closing Date; provided that Buyer shall have the right to extend the Closing Date for a reasonable period of time, as determined by Buyer, in order to cure such Additional Title Defects. In the event that Seller, using good faith efforts, is unable to timely cure such Additional Title Defects, then Buyer shall have the option of either (x) proceeding to Closing and accepting title to the Property “as is”, without diminution in the Purchase Price, or (y) terminating this Agreement by written notice to Seller, in which event this Agreement shall be cancelled, the Deposit shall be returned to Buyer, and neither party shall have any further obligations to each other with respect to the matters contained in this Agreement, except for those matters which survive the termination of this Agreement. Notwithstanding anything in this subsection (b) to the contrary: (i) Seller shall be obligated to cure any Additional Title Defects to the extent provided in the last sentence of subsection (a) above and if the Additional Title Defects arose as a result of any action by Seller; and (ii) in the event that any Additional Title Defects are recorded in violation of and result in a default by Seller under the terms of this Agreement, then Buyer shall be entitled to terminate this Agreement, receive a refund of the Deposit and Seller shall reimburse Buyer for its actual third party costs and expenses incurred in connection with negotiating this Agreement, investigations and due diligence and in contemplation of Closing, not to exceed Thirty Thousand and No/100 Dollars (\$30,000.00 in the aggregate).

5. Survey.

(a) Survey. During the Due Diligence Period, Buyer may obtain, at Buyer’s expense, a survey of the Property (or an update of the Survey delivered by Seller to Buyer) (the “**Survey**”), prepared by a Florida licensed surveyor in accordance with the minimum technical standards for surveys under Florida law, certified to Seller, Buyer, their respective counsel and the Title Insurer (and the agent issuing the Commitment).

(b) Buyer will notify Seller in writing on or before the expiration of the Due Diligence Period of any objections to the Survey (the “**Survey Objection Notice**”), and Seller will use good faith efforts to cure the survey matters described in the Survey Objection Notice (“**Survey Defects**”) prior to the expiration of the Seller’s Title Cure Period. In the event that Seller, using good faith efforts, is unable to cure the Survey Defects prior to the expiration of the Seller’s Title Cure Period, then Buyer shall have the option of either (x) proceeding to Closing and accepting

the Survey of the Property “as is”, without diminution in the Purchase Price, or (y) terminating this Agreement by written notice to Seller, in which event this Agreement shall be cancelled, the Deposit shall be returned to Buyer, and neither party shall have any further obligations to each other with respect to the matters contained in this Agreement, except for those matters which survive the termination of this Agreement.

(c) If an update to the Survey discloses any matters not shown on the Survey that are not Permitted Exceptions, then Buyer may object to such additional matters in the same manner, and subject to the same conditions and review periods, as objections to the Additional Title Defects as provided in Section 4(b) above.

6. **Governmental Violations and Orders.** All notices of violations of law or municipal ordinances, orders, requirements or notices issued by, filed by, or served by, any governmental agency having jurisdiction of over, against or affecting the Property (hereinafter “**Violations**”), as well as all related liens, fines and other charges, shall be complied with and discharged of record by Seller at Seller’s sole expense and the Property shall be free of the same on the Closing Date. Buyer shall give Seller written notice of any such violations, and Seller shall have until the Closing Date to cure any such violations other than any such violations resulting from Buyer’s or Buyer’s agents’ actions.

7. **Seller’s Representations and Warranties.** Seller represents and warrants to Buyer as follows:

(a) Seller is indefeasibly seized of, and has good, marketable and insurable title to the Property, free and clear of all liens, leases, encumbrances, exceptions, reservations, restrictions, limitations, easements or claims of third parties except as disclosed in the Commitment.

(b) (i) To Seller’s knowledge, there are no Hazardous Materials on, in, or under the Property (“**Hazardous Materials**” meaning any hazardous materials, asbestos, perchlorethylene or similar dry cleaning solvents or materials, toxic substances, contaminants, pollutants or other substances whose release into the environment in any quantity are regulated by applicable laws, statutes, regulations or otherwise including, without limitation, all substances which are defined, designated or listed as a “hazardous substance”, “hazardous material”, “hazardous waste” or “industrial waste” under any applicable law, statute, regulation); (ii) Seller is not aware of the release or discharge of any Hazardous Materials onto or from the Property; (iii) to Seller’s knowledge, no governmental agency has issued a notice indicating that any present or past condition on or used on the Property may violated any law, rule, or regulation concerning any Hazardous Materials; and (iv) to the best of Seller’s knowledge, Seller has not received any notice from any source, including without limitation, any governmental or quasi-governmental entity, indicating that the Property is or has been contaminated by Hazardous Materials or any notice that the Property is subject to any claim or cause of action pursuant to any federal, state or local environmental statute, regulation or ordinance.

(c) Seller has complete power and authority to enter into this Agreement and all other agreements to be executed and delivered by Seller pursuant to the terms and provisions hereof to perform its obligations hereunder and thereunder, and to consummate the transaction contemplated hereby; and this Agreement, when executed and delivered by Seller and by Buyer,

will constitute the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as limited by applicable bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and equitable principles of general application.

(d) There is no litigation, zoning application, investigation or proceeding pending, or to the knowledge of Seller, threatened, against Seller or the Property which would adversely affect the Property, Seller's ability to perform its obligations hereunder or the commercial use of the Property.

(e) There are no condemnation or eminent domain proceedings pending or, to the best of Seller's knowledge, contemplated against the Property or any part thereof, and Seller has received no notice of the desire or intention of any public authority to take or use the Property or any part thereof.

(f) Seller has not received any notice of a violation of any law, regulation, ordinance, order or judgment affecting the Property

(g) Seller has no knowledge of any unrecorded easements, restrictions or encumbrances affecting all or any part of the Property.

(h) There are no existing leases, service contracts, franchise agreements, rights of first refusal or option to purchase or other contracts relative to the ownership, operation and maintenance of the Property which shall remain in effect after the date of closing.

(i) Seller (which, for this purposes of this Subsection (i), shall include its partners, members, principal stockholders and any other constituent entities) (i) has not been designated as a "specifically designated national and blocked person" on the most current list published by the Office of Foreign Asset Control of the U.S. Department of the Treasury ("OFAC") at its official website (<http://www.treas.gov/ofac/t11sdn.pdf>) or at any replacement website or other replacement official publication of such list (collectively, the "List"); (ii) is currently in compliance with and will at all times during the term of this Agreement (including any extension thereof) remain in compliance with the regulations of OFAC and any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto; and (iii) will not transfer or permit the transfer of any controlling interest in Seller to any person or entity who is, or any of whose beneficial owners are, listed on the List.

(j) Seller has not filed, and has not retained anyone to file, notices of protest against, or to commence action to review, real property tax assessments against the Property.

(k) Seller has not (i) made a general assignment for the benefit of creditors; (ii) filed any involuntary petition in bankruptcy or suffered the filing of an involuntary petition by Seller's creditor's; (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets; (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or compromise to its creditors generally. Seller is solvent and able to pay its debts as they come due in the usual and ordinary course of business and has no present intention of taking any of the actions described in (i)-(vi) immediately above.

(l) Seller has not entered into and there is not existing any other agreement, written or oral, under which Seller is or could become obligated to sell the Property, or any portion thereof, to a third party.

(m) There are no sale, listing or leasing commission obligations affecting the Property as of the date hereof and no such agreements shall affect the Property as of the date of the Closing.

Seller agrees to immediately notify Buyer in writing of any event or condition which occurs prior to Closing and which causes a change in the facts related to or the truthfulness of any of such representations, but no such notice shall be deemed to alter, amend or otherwise affect any of such representations. It is understood and agreed that if Seller is unable to deliver the certificate required by Section 10(a)(v) below due to a change in facts contemplated by the preceding sentence, Buyer shall have the right to waive such requirement and proceed with Closing or to terminate this Agreement, in which event the Deposit (including that portion previously released to Seller) shall be returned to Buyer; provided, however, in the event such change in facts, conditions or circumstances were caused by Seller's intentional breach of its obligations under this Agreement (as distinguished from, for example, a change in circumstances occurring through no fault of Seller), Buyer shall be entitled to its remedies more particularly set forth in Section 18(b). The representations and warranties contained in this Section 7 shall survive Closing for a period of twelve (12) months.

8. **Conditions to Buyer's Obligations.** The following shall each be conditions precedent to Buyer's obligation to purchase the Property. If any one or more of such conditions precedent is not, or in the reasonable opinion of Buyer will not be, satisfied at or prior to Closing, in addition to other remedies available to Buyer under this Contract, Buyer shall be entitled to waive any one or more of such conditions precedent by written notice to Seller, or to terminate this Agreement by written notice to Seller, in which event the Deposit shall be returned to Buyer:

(a) All representations and warranties set forth in Section 7 are true and correct and Seller has delivered its certificate to Buyer reaffirming such representations and warranties;

(b) Seller has performed each and every obligation of Seller under the terms and provisions of this Agreement;

(c) All necessary utilities for the Intended Use are available to the Property;

(d) No material adverse physical change shall have occurred to the Property when compared to the condition of the Property on the expiration of the Due Diligence Period, other than as may have been caused by Buyer or Buyer's agents; and

(e) Seller has delivered the Property vacant and free and clear of all tenancies, leases, subleases and rights of occupants.

9. **Closing.** Subject to the provisions of this Agreement (including satisfaction of the conditions set forth in Section 8 above) and provided that Buyer has elected to proceed with this transaction following the expiration of the Due Diligence Period, the purchase and sale

contemplated by this Agreement (“**Closing**”) shall be closed sixty (60) days following the expiration of the Due Diligence Period (“**Closing Date**”). Buyer shall the right to extend the Closing Date for four (4) consecutive periods of thirty (30) days each (each, an “**Closing Extension**”) upon providing Seller written notice five (5) days prior to the then scheduled Closing Date and depositing an additional Twenty Five Thousand and No/100 Dollars (\$25,000.00) per Closing Extension (each, an “**Extension Deposit**”) with the Escrow Agent, which shall become immediately non-refundable but applicable to the Purchase Price (provided; however, the Extension Deposits shall be refundable to Buyer in the event that Seller defaults under the terms of this Agreement). The Closing shall take place at the office of Escrow Agent or other closing agent hereafter designated in writing by Buyer on the Closing Date. Upon the election of Buyer, the Closing may also be done as a “mail away closing” or escrow closing in which all required documents and funds are provided to the Escrow Agent and disbursed by the Escrow Agent to the appropriate parties or entities.

10. **Seller’s Deliveries.**

(a) Seller shall deliver to the Buyer, at Closing, the following documents dated as of the Closing Date, the delivery and accuracy of which shall be a condition to the Buyer’s obligation to consummate the purchase and sale:

(i) **Deed.** A special warranty deed, in recordable form, duly executed by the Seller, conveying to the Buyer good, marketable fee simple title to the Property, subject only to the Permitted Exceptions.

(ii) **Affidavit.** An owner’s and contractor’s affidavit adequate for title insurance to be issued by the Title Company without exception for parties in possession, mechanics’ or materialmens’ liens and to permit the Title Company to delete the “gap” in the Commitment.

(iii) **FIRPTA Affidavit.** In order to comply with the requirements of the Foreign Investment Real Property Tax Act of 1980 (“**FIRPTA**”), Seller will deliver to Buyer at Closing Seller’s affidavit under penalty of perjury stating the Seller is not a “foreign person,” as defined in Section 1445 of the Internal Revenue Code of 1986 and the U.S. Treasury Regulations thereunder, setting forth Seller’s taxpayer identification number, and that Seller intends to file a United States income tax return with respect to the transfer.

(iv) **Assignment and Assumption.** A counterpart, executed by Seller, of an Assignment and Assumption of all of Seller’s right, title and interest in and to all permits, licenses, warranties and development rights and approvals with respect to the Property.

(v) **Certificate.** A Certificate of the Seller that the Seller has no knowledge contradicting the representations and warranties set forth in Section 7 as being true and correct as of the Closing Date.

(vi) **Bill of Sale.** A Bill of Sale duly executed by Seller conveying all personal property contained therein to Buyer, free and clear of all liens and encumbrances,

if applicable.

(vii) Parking Space License Agreement. A counterpart, executed by Seller, to a Parking Space License Agreement, if applicable.

(viii) Settlement Statement. A counterpart, executed by Seller, of a summary statement describing the consideration, prorations, adjustments, costs and expenses associated with the Closing (herein called "**Settlement Statement**").

(ix) Resolutions. Certified resolutions and such other instruments as may be required by the Title Insurer, evidencing the authority of Seller to enter into and perform this Agreement and to perform Seller's obligations hereunder.

(x) Other Documents. Any other agreement, document or instrument required by this Agreement to be delivered by Seller or required by the Title Insurer to insure title or otherwise reasonably necessary to carry out the provisions of this Agreement.

Seller shall also deliver to Buyer and Buyer's attorney, copies of all of the foregoing documents at least five (5) days prior to the Closing Date for Buyer's review. In the event Seller does not provide copies of said documents at least five (5) days prior to the Closing Date for Buyer's review, Buyer shall have the right to extend the Closing Date by the number of days delay in delivery of said copies for review.

11. **Buyer's Deliveries**. At the Closing, and after the Seller has complied with all of the terms and conditions of this Agreement and simultaneously with Seller's delivery of the final documents required in Section 10, the Buyer shall deliver by wire transfer, the Purchase Price less the Deposit, adjusted for the prorations and adjustments provided for in this Agreement and the following:

(i) Assignment and Assumption. A counterpart, executed by Buyer, of an Assignment and Assumption of all of Seller's right, title and interest in and to all permits, licenses, warranties and development rights and approvals with respect to the Property.

(ii) Parking Space License Agreement. A counterpart, executed by Buyer, of a Parking Space License Agreement, if applicable.

(iii) Settlement Statement. A counterpart, executed by Buyer, of the Settlement Statement

(iv) Resolutions. Certified resolutions and such other instruments as may be required by the Title Insurer, evidencing the authority of Buyer to enter into and perform this Agreement and to perform Buyer's obligations hereunder.

(v) Other Documents. Any other agreement, document or instrument required by this Agreement to be delivered by Seller or required by the Title Insurer to insure title or otherwise reasonably necessary to carry out the provisions of this Agreement.

12. **Closing and Recording Costs.** Seller shall pay all transfer taxes, documentary stamp taxes and any surcharge, tax or imposition due upon recordation of the deed, and the costs to obtain and record any title curative documents. Buyer shall pay the title search and the premium for the issuance of the title policy to Buyer in the amount of the Purchase Price, the cost of the Survey, the cost for recording the deed and any costs associated with and financing of the Property. Seller and Buyer shall equally share escrow fees and each bear their own respective professional fees and expenses of their attorneys, accountants, consultants, and other professionals incurred in connection with the preparation of this Agreement, the Closing pursuant hereto and the transactions contemplated hereby. Except as otherwise provided herein, Seller and Buyer shall each pay such other costs as are customarily paid by a seller and buyer, respectively, of real property in Pinellas County, Florida.

13. **Real Estate Taxes and Prorations.**

(a) **General.** Except as otherwise expressly provided in this Agreement, all income and expenses of the Property, if any (including, without limiting, amounts paid and payable for utilities, taxes and assessments) with respect to the period prior to the Closing Date, shall be for the account of Seller, and all income and expenses of the Property with respect to the period commencing with the Closing Date shall be for the account of Buyer. Seller shall pay and discharge on or before the Closing Date, all liens, encumbrances and mortgages upon the Property.

(b) **Taxes.** To the extent real estate and personal property taxes have not been paid for the period prior to Closing, real and personal property taxes (if any), assessments and special district levies shall be prorated for the tax fiscal year in which the Closing Date occurs on the basis of the then most current assessed value and tax rate available with respect to the Property and said fiscal year, Seller being charged with said proration through the date prior to the Closing Date and Buyer with the Closing Date and thereafter. If the only tax bill available for the Property includes real property which is not a part of the Property, then taxes will be further prorated based on the number of gross square feet of the Property's area compared with the total gross square feet of all land included in the tax bill; provided that the Buyer shall not be required to pay more than would be required by applying the tax millage rate to the Purchase Price for the Property, prorated to the Closing Date. Such proration shall be recalculated upon the issuance of final bills for such taxes and any amount due from one party by reason of such recalculation to the other shall be paid in cash at that time. Seller shall pay and discharge on or before the Closing Date, any special assessment of any public taxing authority which is a lien upon the Property or any part thereof. Seller shall be responsible for payment in full of any personal property taxes applicable to Seller, Seller's personal property or business assets. This covenant shall survive Closing.

14. **Possession.** The Buyer shall be granted full and exclusive possession of the Property as of the Closing.

15. **Covenants and Agreements of Seller.**

Seller covenants and agrees that between the Effective Date of this Agreement and the Closing:

(a) Seller will not, without the Buyer's prior written consent, create by its consent any encumbrances on the Property. For purposes of this provision the term

“encumbrances” shall include, but not be limited to, any liens, claims, options, or other encumbrances, encroachments, rights-of-way, leases, easements, covenants, conditions or restrictions. At or prior to Closing, Seller shall terminate, and pay in full, all outstanding amounts due and payable and any termination fees required to terminate any and all leases, service contracts, maintenance contracts, franchise agreements, easements not approved in writing by Buyer, and any other claims to the Property not approved in writing by Buyer.

(b) Seller will not remove any fill or cause any change to be made to the condition of the Property without the prior written consent of the Buyer.

(c) Between the Effective Date and the Closing Date, Seller will not create or consent to the creation of any special taxing districts or associations with the authority to impose taxes, liens or assessments on the Property.

(d) Between the Effective Date and the Closing Date, (i) Seller shall (A) operate and manage the Property in a normal businesslike manner consistent with its past practices; (B) maintain the Property in its current condition and perform required and routine maintenance and make replacements of each part of the Property that is tangible property (whether real or personal) and perform repairs or make replacements to any broken, defective or malfunctioning portion the Property that is tangible property (whether real or personal) as the relevant conditions require; (C) pay, prior to the Closing Date, all sums due for work, materials or services furnished or otherwise incurred in the ownership, use or operation of the Property up to the Closing Date; (D) comply all governmental requirements applicable to the Property; and (ii) Seller shall not enter into any new lease, service contracts, or any other type of agreement for any portion of the Property.

(e) Seller will advise Buyer immediately if Seller becomes aware of any litigation or administrative proceedings instituted or threatened against Seller or involving the Property, or if any of the representations and warranties set forth in Section 8 above has become untrue.

16. **Real Estate Commissions.** Each party hereby warrants to the other that it has not engaged or dealt with any broker or agent with respect to the purchase and sale of the Property as contemplated by this Agreement. If a claim for a commission, finder’s fee or other compensation in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of one of the parties hereto, such party shall indemnify, defend and hold the other party and such other party’s partners, members, managers, directors, officers, shareholders, employees, agents, advisors and affiliates, and their respective successors and assigns, from all losses, liabilities, costs and expenses (including without limitation, reasonable attorneys’ fees and court costs through all trial and appellate levels), damages, liens, claims, actions and causes of action arising or resulting from or relating to such claim for compensation. The provisions of this Section 16 shall survive the Closing and any termination of this Agreement.

17. **Risk of Loss and Condemnation.**

(a) All risk of condemnation shall be on Seller. In the event that ten percent (10%) or more of the total acreage of the Property is taken by eminent domain, negotiated for grant in lieu of condemnation or threatened to be taken or made available for use by any governmental entity, prior to Closing or through Buyer’s development approval process, Buyer shall have the

option of either: (i) canceling this Agreement and receiving a refund of the Deposit (including that portion previously released to Seller), whereupon both parties shall be relieved of all further obligations under this Agreement, except those obligations which survive termination; or (ii) Buyer may proceed with Closing in which case Buyer shall be entitled to all condemnation awards and settlements relating to the Property. In the event Buyer elects the latter option, Buyer shall be entitled to participate in any such negotiations and proceedings, and Seller shall from time to time deliver to Buyer all instruments requested by it to permit such participation. Seller shall, at its expense, diligently pursue any such proceeding, and shall consult with Buyer, its attorneys and experts and cooperate with them in any defense of any such proceedings.

(b) All risk of loss by casualty and all other causes of damage shall be on Seller. In the event all or a portion of the Property shall be damaged or destroyed by fire or other casualty after the Effective Date and before Closing, Buyer shall have the option of either: (i) canceling this Agreement and receiving a refund of the Deposit (including that portion previously released to Seller), together with all interest accrued thereon, whereupon both parties shall be relieved of all further obligations under this Agreement, except those obligations which survive termination; or (ii) proceeding with Closing in which case Buyer shall be entitled to all insurance awards and settlements relating to the Property.

18. **Default.**

(a) In the event of a default by the Buyer under this Agreement which is not cured within five (5) days after written notice to Buyer, then the Deposit (or any portion thereof actually delivered to Escrow Agent), shall be delivered by the Escrow Agent to the Seller as liquidated and agreed upon damages. This shall be Seller's sole remedy in the event of any breach of this Agreement by Buyer. The parties agree that the amount of actual damages which Seller would suffer as a result of Buyer's default would be extremely difficult to determine and have agreed that the amount of the Deposit and any interest thereon is a reasonable estimate of Seller's damages and is intended to constitute a fixed amount of liquidated damages in lieu of other remedies available to Seller and is not intended to constitute a penalty. Notwithstanding the foregoing, the notice and cure provisions of this Section 18(a) shall not apply to Buyer's failure to timely pay the Deposit, and Seller's only remedy shall be to terminate this Agreement.

(b) In the event of a default by the Seller hereunder, which is not cured within five (5) days after written notice to Seller, then at the option of the Buyer, Buyer may either (1) enforce specific performance of this Agreement; or (2) terminate this Agreement, in which event the (i) the Deposit shall be returned to Buyer; and (ii) Seller shall reimburse Buyer for its actual third party costs and expenses incurred in connection with negotiating this Agreement, investigations and due diligence and in contemplation of Closing, not to exceed Thirty Thousand and No/100 Dollars (\$30,000.00 in the aggregate). For all purposes hereof, Buyer waives its right to seek, plead or obtain any judgment for any remedies or damages not specifically contained herein, including, but without limitation, consequential, compensatory and punitive damages.

19. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the transaction contemplated herein, and it supersedes all prior written and oral understandings or agreements between the parties.

20. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and permitted assigns.

21. **Survival of Provisions.** All representations, warranties and agreements contained herein shall survive the closing and delivery of the deed of conveyance contemplated by this Agreement.

22. **Waiver; Modification.** The failure by the Buyer or Seller to insist upon or enforce any of their rights shall not constitute a waiver thereof, and except to the extent conditions are waived by the express terms of this Agreement, nothing shall constitute a waiver of the Buyer's right to insist upon strict compliance with the terms of this Agreement. Either party may waive the benefit of any provision or condition for its benefit which is contained in this Agreement. No oral modification of this Agreement shall be binding upon the parties and any modification must be in writing and signed by the parties.

23. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

24. **Use of Purchase Price to Remove Encumbrances.** If at Closing there are liens or encumbrances that Sellers are obligated to pay or discharge, Seller may use any portion of the Purchase Price to pay or discharge them, provided Seller shall simultaneously deliver to Buyer at Closing instruments in recordable form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative Seller may deposit sufficient monies with the title insurance company to assure their discharge, but only if the title insurance company will insure Buyer's title clear of the matters or insure against the enforcement there upon the Property.

25. **Headings.** The section headings as set forth in this Agreement are for convenience or reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any section herein.

26. **Notices.** Any notice, request, demand, instruction or other communication to be given to either party, except where required by the terms of this Agreement to be delivered at the Closing, shall be in writing and shall be sent by registered or certified mail, return receipt requested, hand-delivery or by express overnight courier or by electronic delivery or facsimile to the email address or facsimile numbers set forth herein (provided that notice is also simultaneously sent by registered or certified mail or by overnight courier), as follows:

If to Seller:	MLF 2, LTD. 540 2 nd Ave. S. St. Petersburg, FL Attn: Scott Macdonald Telephone No. 813-514-2108 Email: smacdonald@blueskycommunities.com
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With copy to:	Nelson Mullins Riley & Scarborough, LLP
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215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Attn: Melissa VanSickle
Telephone No. 850-205-3307
Email: melissa.vansickle@nelsonmullins.com

If to Buyer: BURTON W. WIAND, as Receiver for EQUIALT FUND,
LLC
114 Turner St.
Clearwater, FL
Attn: Burton W. Wiand - Receiver
Telephone No. 727-235-6769
Email: burt@burtonwwiandpa.com

With copy to: Johnson, Pope, Bokor, Ruppel & Burns, LLP
401 East Jackson Street, Suite 3100
Tampa, Florida 33602
Attn: William T. Conroy and Kaley Johnson
Phone No.: 727-999-9900
E-mail: willc@jpfirm.com and kaleyj@jpfirm.com

Notice shall be deemed valid if given by electronic mail, or certified mail, return receipt requested or national express overnight courier. Notice shall be deemed given if sent by certified mail through the facilities of the United States Postal Office on the third day following the date that the notice in question is deposited in the facilities of the U.S. Postal Service postage prepaid. If notice is sent by express overnight courier, it shall be deemed given on the day that the notice in question is deposited in the facilities of an express overnight courier. Any party hereto shall have the right to change its address for notice if written notice is given to all other parties in accordance with the notice provisions hereof. Attorneys may give and receive notices on behalf of their respective clients.

27. **Assignment.** Buyer may freely assign this Agreement without Seller's consent, provided that Buyer delivers to Seller a written agreement evidencing the assignment of all of Buyer's rights under this Agreement to the assignee, as well as all of its rights in and to the Deposit, and the assignee's assumption of Buyer's obligations hereunder. Buyer shall remain liable under this Agreement, regardless of any assignment.

28. **Attorneys' Fees.** In the event that it becomes necessary for either party to bring suit to enforce the terms of this Agreement, then the prevailing party shall be entitled to recover all costs, including attorneys' fees and paralegal charges incurred in connection with such litigation (including appellate proceedings) against the non-prevailing party.

29. **Weekends and Holidays.** If the date for performance or the date for giving of any notice required under this Agreement is on a Saturday, Sunday or federal holiday, the date for performance or the notice date, as the case may be, shall be extended to the next business day.

30. **Construction.** Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than the other.

31. **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signature of the persons required to bind the party appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement. Facsimile or electronic copies of this executed Agreement shall be deemed an original agreement.

32. **Dispute Resolution.** Buyer and Seller hereby (i) agree that venue for all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be in the United States District Court, Middle District of Florida, Tampa Division, 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.

33. **Further Assurances.** Each of Seller and Buyer agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the transaction contemplated hereby. The provisions of this Section 33 shall survive Closing.

34. **Confidentiality.** Seller and Buyer (and their employees, representative, agents and consultants) agree to keep the terms of this Agreement confidential and not make any public announcements or disclosures with respect to the subject matter hereof without the prior written consent of the other party, except that (i) Buyer may disclose material terms of this Agreement which are necessary or required to be disclosed in connection with its due diligence investigations, any development approvals, as required by applicable law and as required by rules of any exchange applicable to Buyer or its affiliates and (ii) both parties may disclose material terms of this Agreement to their partners, lenders, state agencies and attorneys. Notwithstanding the foregoing, Buyer shall be permitted to market the Property to prospective third-party purchasers and disclose the terms of this Agreement to a third-party in connection with such marketing. The terms of this Agreement will also be required to be disclosed when the Buyer seeks approval of the transaction contemplated by this Agreement from the United States District Court.

35. **Covenant Not to Market.** For so long as this Agreement remains in effect, Seller shall not market the Property for sale or disposition, shall not solicit or respond to any offers or letters of intent and shall not enter into any backup contracts.

36. **Escrow Agent.** Escrow Agent shall have only the duties specifically set forth in this Agreement. Escrow Agent is acting as stakeholder only with respect to the Deposit. The parties agree that such duties are purely ministerial in nature and do not disqualify Escrow Agent from acting in any other capacity with respect to this transaction, including without limitation, as Buyer's counsel. Provided that Escrow Agent acts in good faith to performs its duties hereunder, (a) Escrow Agent shall incur no liability for failure to perform such duties except in the case of willful misconduct or negligence; and (b) Seller and Buyer each release Escrow Agent from any claims for failure to perform such duties except in the case of willful misconduct or negligence. Except as otherwise set forth herein, Escrow Agent shall disburse the Deposit at Closing. In the event that either party alleges that there is a default or other event entitling that party to the Deposit and demands that the Deposit be paid to that party, then Escrow Agent shall send a Demand Notice to both parties. The parties shall have ten (10) days to review the Demand Notice. If neither party objects to the Demand Notice within ten (10) days after receipt of the Demand Notice, then Escrow Agent shall disburse the Deposit according to the demanding party's instructions. If either party objects to the Demand Notice within ten (10) days after receipt of the Demand Notice, then Escrow Agent shall hold the Deposit until it receives written disbursement instructions signed by both Seller and Buyer, or, if no such instructions are given, Escrow Agent shall hold the Deposit until final determination of the rights of the parties in appropriate legal proceedings. If Escrow Agent does not receive such instructions within thirty (30) days after the date of the Demand Notice, and if appropriate legal proceedings to determine how to disburse the Deposit are not begun within thirty (30) days after the date of the Demand Notice and diligently continued, Escrow Agent may bring an appropriate action to interplead the Deposit. Any such interpleader action must be brought in the courts referenced in Section 32 above. The party finally determined not to be entitled to the Deposit shall reimburse Escrow Agent for all costs and expenses incurred by Escrow Agent in connection with the interpleader action, including without limitation, reasonable attorneys' fees and disbursements. Upon disbursing the Deposit in accordance with this Section 36, Escrow Agent shall have no further liability for the Deposit unless such delivery constituted willful misconduct or negligence. Escrow Agent is hereby authorized and instructed to invest the Deposit in a non-interest-bearing account at a state or federal bank whose accounts are generally insured by the F.D.I.C. If Escrow Agent is counsel to either Buyer or Seller, Escrow Agent shall not be disqualified from representing itself or its client in connection with this Agreement solely because Escrow Agent is acting as the escrow agent for this transaction. The provisions of this Section 36 shall survive Closing and any termination of this Agreement.

37. **Marketing; Sign.** Intentionally Deleted.

38. **Section 1031 Exchange.** Buyer acknowledges that Seller may effect a like-kind exchange under Section 1031 of the Tax Code. Accordingly, Buyer agrees that it will cooperate with Seller to effect a tax-free exchange in accordance with the provisions of Section 1031 of the Tax Code and the regulations promulgated with respect thereto. Seller shall be solely responsible for any additional fees, costs or expenses incurred in connection with any like-kind exchange requested by Seller, and Buyer shall not be required to incur any debt, obligation or expense in accommodating Seller hereunder. In no event shall Seller's ability or inability to effect a like-kind exchange, as contemplated hereby, in any way delay the Closing or relieve Seller from its obligations and liabilities under this Agreement and in no way shall Buyer be held responsible for the same. Seller acknowledges that Buyer may effect a like-kind exchange under Section 1031 of the Tax Code. Accordingly, Seller agrees that it will cooperate with Buyer to effect a tax-free

exchange in accordance with the provisions of Section 1031 of the Tax Code and the regulations promulgated with respect thereto. Buyer shall be solely responsible for any additional fees, costs or expenses incurred in connection with any like-kind exchange requested by Buyer, and Seller shall not be required to incur any debt, obligation or expense in accommodating Buyer hereunder. In no event shall Buyer's ability or inability to effect a like-kind exchange, as contemplated hereby, in any way delay the Closing or relieve Buyer from its obligations and liabilities under this Agreement.

39. **Parking Space License.** Seller may, in Seller's sole discretion, elect to license up to six (6) parking spaces, on a non-exclusive basis, and located on either the Property or property that is adjacent to the Property, for a license fee of Seventy-Five Thousand and No/100 Dollars (\$75,000.00) per parking space (the "**Parking Space Purchase Price**"). The location of the parking spaces shall be determined by Buyer in its sole and absolute discretion. Such election shall be made by Seller at least three (3) days prior to Closing. If such election is made by Seller, the Parking Space Purchase Price shall be paid by Seller to Buyer at Closing and the parties shall enter into a Parking Space License Agreement that shall be mutually agreed upon by Seller and Buyer.

40. **Seller Approvals.** Within sixty (60) days after the Effective Date, Seller shall provide Buyer with evidence, reasonably satisfactory to Buyer, that Seller has obtained all approvals from any limited partners, lenders, and/or governmental entities, if required (the "**Seller Approvals**"). If Seller does not deliver such evidence of the Seller Approvals to Buyer within sixty (60) days of the Effective Date, Buyer may terminate this Agreement and receive a return of the Deposit.

41. **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN THE LIMITED WARRANTY OF TITLE THAT MAY BE SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROTECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO BUYER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT AT THE CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", AND THAT BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR

PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.


42. **Waiver of Jury Trials.** Seller and Buyer, to the extent they may legally do so, hereby expressly waive any right to trial by jury of any claim, demand, action, cause of action, or proceeding arising under or with respect to this Agreement.

43. **Recordation of Agreement.** Neither Seller nor Buyer shall record this Agreement nor any memorandum, summary, or other evidence hereof in any public records prior to the consummation of the Closing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year last below written.

SELLER:

MLF 2, LTD., a Florida limited partnership

By: 
Name: Forrest Clancy
Title: President

BUYER:

BURTON W. WIAND, as Receiver for
EQUIALT FUND, LLC, a Florida limited
liability company

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year last below written.

SELLER:

MLF 2, LTD., a Florida limited partnership

By: _____

Name: _____

Title: _____

BUYER:



BURTON W. WIAND, as Receiver for
EQUIALT FUND, LLC, a Florida limited
liability company

EXHIBIT A

LEGAL DESCRIPTION OF PARCEL

Lot 17, Block 52, of The Revised Map of the City of St. Petersburg, according to the map or plat thereof recorded in Plat Book 1, page 49, of the public records of Hillsborough County, Florida of which Pinellas County was formerly a part.

EXHIBIT B
PROPERTY DOCUMENTS

1. Copies of real estate tax bills (including special assessments).
2. Environmental Reports.
3. Geotechnical Reports.
4. Copies of existing approved site plans and approvals.
5. Copies of any development orders, regulating documents and feasibility studies.
6. Copies of all leases.
7. Previously completed appraisals.
8. All licenses, permits and approvals.
9. Copy of existing title insurance policy and previous title reports.
10. Copy of existing survey.
11. Certified boundary survey.
12. Copies of all civil engineering designs to date, including master drainage, underwater retention systems, soil and demucking reports and estimates.
13. As-built plans.