

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35MRM

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
SETTLEMENT OF NON-INVESTOR CLAWBACK CLAIM**

Burton W. Wiand, as Receiver over the assets of the Corporate and Relief Defendants,¹ moves the Court to approve the Receiver's settlement of his clawback claims against Sterling Group ("Sterling").

¹ The ("Receiver" and the "Receivership" or "Receivership Estate") has been expanded to include not only the Corporate and Relief Defendants but also the following entities: EquiAlt Qualified Opportunity Zone Fund, LP; EquiAlt QOZ Fund GP, LLC; EquiAlt Secured Income Portfolio REIT, Inc.; EquiAlt Holdings LLC; EquiAlt Property Management

BACKGROUND

On February 11, 2020, the Securities and Exchange Commission (“SEC”) filed a complaint (Doc. 1) against the above-captioned Defendants and Relief Defendants. On July 9, 2020, the SEC filed an amended complaint (Doc. 138) (the “Amended Complaint”) against the same Defendants and Relief Defendants.

On February 14, 2020, the Court entered an order (Doc. 11) appointing Burton W. Wiand as temporary Receiver. The Court 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 . . . and to administer such assets as is required in order to comply with the directions contained in this Order.” Doc. 11 at ¶1. The Court also entered a temporary restraining order (Doc. 10) imposing a temporary injunction against the Defendants and Relief Defendants, freezing their assets and granting other relief. On August 17, 2020, the Court issued an order (Doc. 184) granting the SEC’s request for a preliminary injunction, extending the temporary restraining order pending the issuance of the preliminary injunction, and granting the Receiver’s Motion to Expand the Receivership to Include REIT and QOZ Entities (Doc. 90).

LLC; and EquiAlt Capital Advisors, LLC [Doc. 184, at 6–7] and EquiAlt Fund I, LLC [Doc. 284].

The Amended Complaint charges the Defendants with violations of various federal securities laws and regulations for orchestrating a real estate Ponzi scheme that raised more than \$170 million from approximately 1,100 victim investors (the “Scheme”). The SEC alleges that the Defendants misrepresented the use of the proceeds of the investments and that Davison and Rybicki, who controlled the operations of the Receivership Entities prior to the appointment of the Receiver, misappropriated monies from the investors.

Pursuant to this Court’s Order, the Receiver was to “[i]nvestigate the manner in which the affairs of the Corporate Defendants were conducted and institute such actions and legal proceedings for the benefit and on behalf of the Corporate Defendants and Relief Defendants and their investors and other creditors as the Receiver deems necessary . . . against any transfers of money or other proceeds directly or indirectly traceable from investors in EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, and EA SIP, LLC; provided such actions may include, but not be limited to . . . recovery and/or avoidance of fraudulent transfers” [Doc. 11 at ¶2]

To that end, the Receiver tasked his forensic accountants at Yip Associates to identify those sales agents and their associated entities who received “commissions” or “marketing fees” based on their sales of the EquiAlt debentures. Sterling Group received \$478,562.12 in commissions for

the sale of EquiAlt debentures from August 2016 through November 2017. Counsel for the Receiver has been in settlement discussions with Sterling for some time, and based on these conversations and information provided by Sterling to the Receiver, the Receiver and Sterling have agreed to settle the Receiver's claims for \$450,000 to be paid in quarterly installments to be completed within 390 days of the Court's approval of the settlement. *See Exhibit 1*. In addition to this amount, Sterling has also agreed to waive any claims it may have against DLA Piper and Fox Rothschild, former lawyers for EquiAlt LLC and its affiliates, which benefits the Receiver's case against those law firms.

The Receiver believes this settlement is a practical result that benefits the Receivership Estate. Avoiding the expense of litigation and gaining assets for the Estate result in a good outcome for this claim.

ARGUMENT

I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SETTLEMENT OF THESE CLAWBACK CLAIMS IS IN THE RECEIVERSHIP ESTATE'S BEST INTEREST.

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 defrauded investors and other 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).

Based on these equitable principles, the Receiver believes that this Court should grant this motion. The Receiver has determined that this settlement is reasonable, practicable and in the Receivership Estate's best interests. Therefore, the Receiver requests that the Court approve the Receiver's settlement with the Sterling Group.

CONCLUSION

Based on the foregoing, the Receiver moves the Court for entry of an order approving the Receiver's settlement of his clawback claim against Sterling Group in the amount of \$450,000.

LOCAL RULE 3.01(G) CERTIFICATION

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

Dated: November 1, 2022.

Respectfully submitted,

/s/ Katherine C. Donlon

Katherine C. Donlon, FBN 0066941

kdonlon@jclaw.com

JOHNSON, CASSIDY, NEWLON &
DeCORT P.A.

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and

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and

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Tampa, FL 33607
Tel: (813) 347-5100

Attorneys for Burton W. Wiand Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 1, 2022, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

/s/ Katherine C. Donlon
Attorney

EXHIBIT 1

SETTLEMENT AGREEMENT

On this 18th day of August, 2022, this agreement (the "Settlement Agreement") is entered into by and among (a) Burton W. Wiand ("the Receiver"), the Court-appointed Receiver in the action styled *SEC v. Davison, et al.*, Case No. 8:20-cv-00325-MSS-AEP (the "Receivership Action"), pending in the United States District Court for the Middle District of Florida ("the Court"), (b) the Plaintiffs (collectively, the "Investor Plaintiffs") named in the action styled *Richard Gleinn and Phyllis Gleinn, et al. v. Paul Wassgren, et al.*, Case No. 8:20-cv-01677-MSS-CPT ("the Investor Action"), also pending in the Court, and (c) the Sterling Group and the Sterling Equity Alternative Fund (the "Sterling Fund"). The Sterling Group and the Sterling Fund, and any other Sterling entity with common ownership, are hereinafter collectively referred to as "Sterling."

WITNESSETH:

WHEREAS, the Receiver and the Investor Plaintiffs have threatened to assert certain claims against Sterling arising from its involvement in the offer and sale of securities issued by EquiAlt LLC.

WHEREAS, to avoid the expense and uncertainty of litigation, Sterling, the Receiver, and the Investor Plaintiffs (collectively, "the Parties"), desire to settle and resolve all claims and potential claims arising from Sterling's involvement in the offer and sale of securities issued by EquiAlt LLC or any of the EquiAlt LLC entities placed into receivership in the Receivership Action (collectively, "EquiAlt").

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Payment by Sterling. Sterling will pay to the Receiver \$450,000, payable as follows:

- \$150,000 will be due and payable 30 days after the Court in the Receivership Action has approved this Settlement;
- an additional \$100,000 will be due and payable 150 days after the Court in the Receivership Action has approved this Settlement;
- an additional \$100,000 will be due and payable 270 days after the Court in the Receivership Action has approved this Settlement; and
- the final \$100,000 will be due and payable 390 days after the Court in the Receivership Action has approved this Settlement.

2. Approval of the Sterling Fund's Receivership Claim. The Receiver will approve the claims submitted by the Sterling Fund in the Receivership Action as an investor claim, conditioned on and subject to, the Receiver's receipt of documentation showing that: (a) the investors of the Sterling Fund do not include any of the principals or managers of the Sterling Group; and (b) the offering materials for the Sterling Fund do not contain material misrepresentations about EquiAlt. Sterling will provide the Receiver with copies of all such offering materials within 10 days after the execution of this Settlement Agreement. After approval by the Receivership Court of the Receiver's determination of claims, the Sterling Fund shall be entitled to the same pro rata distribution of Receivership assets as other approved investor claims.

3. Release of Sterling's Claims against Third-Parties. Contemporaneously with the execution of this Settlement Agreement, Sterling will execute and deliver to the Receiver and to the Investor Plaintiffs both (a) the Release and Covenant Not to Sue attached as **Exhibit A**, releasing all claims Sterling has or may in the future have against DLA Piper, LLP (US), its predecessors, successors, parents, subsidiaries, affiliates, assigns, officers, partners, counsel, associates, employees, or insurers, including specifically Paul Wassgren, and (b) the Release and Covenant Not to Sue attached as **Exhibit B**, releasing all claims Sterling has or may in the future have against Fox Rothschild, LLP, its predecessors, successors, parents, subsidiaries, affiliates,

assigns, officers, partners, counsel, associates, employees, or insurers, including specifically Paul Wassgren.

4. Approval of Settlement Agreement. Before the Receiver releases any funds for any approved claims in the EquiAlt Receivership, the Receiver will file a motion in the Receivership Action requesting Court approval of this Settlement Agreement. Should the Court decline to approve the Settlement Agreement, unless the Parties in writing agree otherwise, this Settlement Agreement (and any exhibit executed thereunder) will be deemed void *ab initio* and the Parties returned to their status *quo ante*

5. Mutual Release of Claims among the Parties. Upon the Court's approval of the Settlement Agreement, the Receiver and the Investor Plaintiffs release Sterling (and its respective agents, attorneys, employees, officers, directors, representatives, beneficiaries, successors, heirs, and assigns) of and from any and all claims, demands, or causes of action relating to or otherwise arising out of Sterling's involvement in the offer and sale of securities issued by EquiAlt. Likewise, upon the Court's approval of the Settlement Agreement, Sterling releases the Receiver, the Receivership, and the Investor Plaintiffs of and from any and all claims, demands, or causes of action relating to or otherwise arising out of Sterling's purchase of securities issued by EquiAlt.

6. Scope of Releases. It is expressly agreed and understood by the Parties that none of the releases set forth above nor any other provision of this Settlement Agreement is intended to release the Parties from the obligations contained in or evidenced by this Settlement Agreement, and each party to this Settlement Agreement hereby expressly reserves any claims arising out of the obligations created by this Settlement Agreement.

7. Authority to Execute and Voluntary Execution. The Parties acknowledge that the persons signing this Settlement Agreement below are fully authorized to make the agreements and

give the releases described herein on behalf of the Parties, and that the signatures of any representatives of any of the Parties bind the Parties to the terms of this agreement. The Parties further acknowledge that they have read and understand this agreement and that their execution of this agreement is a voluntary act performed after due and considered deliberation. The Parties also acknowledge that they have had the opportunity to be represented by counsel in connection with the settlement referenced herein and in connection with the preparation and execution of this Settlement Agreement, and that they have not relied upon any express or implied representations regarding this Settlement Agreement. The Parties warrant and represent that (other than the submission of claims by the Investor Plaintiffs in the Receivership Action) they have not assigned, transferred, conveyed, pledged, or made any other disposition of the rights, claims, interests, actions, causes of action, obligations, or any other matter being settled and released herein.

8. Severability. Should any provision of this Settlement Agreement be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, terms, or provisions shall be deemed not to be a part of this Settlement Agreement.

9. Headings. The headings in this Settlement Agreement are for reference only and do not affect the interpretation of this agreement.

10. Construction of Agreement. The Parties acknowledge that they have both participated in the drafting and preparation of this Settlement Agreement and that the Settlement Agreement shall not be construed in favor of one Party or against another Party as the drafter of this Settlement Agreement.

11. Governing Law. This Settlement Agreement shall be deemed to have been executed and delivered in the state of Florida and shall be governed, construed, and enforced in accordance with the laws of Florida.

12. Integration and Amendment. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter of this Agreement. The terms of this Agreement are contractual and may not be modified orally, but instead may only be modified by a written instrument duly signed by all of the parties.

13. Persons Bound. This Agreement shall be binding upon and shall inure to the benefit of the heirs, beneficiaries, and/or successors to each Party to this Agreement.

14. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Agreement electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Agreement.

For the Receiver:


Burton W. Wiand

For The Sterling Group:

By: Emily Miller
Its: Manager

For the Sterling Equity Alternative Fund:

By: Emily Miller
Its: Manager

For the Investor Plaintiffs:

Andrew S. Friedman

For The Sterling Group:

By: _____

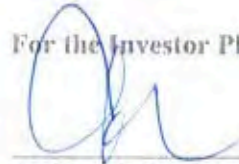
Its: _____

For the Sterling Equity Alternative Fund:

By: _____

Its: _____

For the Investor Plaintiffs:



Andrew S. Friedman

EXHIBIT A

RELEASE AND COVENANT NOT TO SUE

This Release and Covenant Not to Sue is entered into by the Sterling Group and the Sterling Alternative Equity Fund and their present and former officers, directors, managers, members, managing members, shareholders, parents, subsidiaries, general partners, limited partners, partners, employees, subsidiaries, divisions, successors, predecessors, affiliates, agents, attorneys, legal counsel, heirs, assigns, executors, administrators, estates, insurers, and representatives, or the like, of any of the above entities, including all individuals with a controlling or ownership interest or a management or employment role, past or present (collectively, the "Releasers").

WITNESSETH:

WHEREAS, the Releasers allegedly participated in the offer for sale or sale of securities issued by EquiAlt LLC or its affiliates;

WHEREAS, the Releasers are potential defendants, other than those defendants defined as Releasees below, in pending or threatened actions by Burton W. Wiand in his capacity as the court-appointed Receiver for EquiAlt LLC, EquiAlt Fund LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, EA SIP, LLC, EquiAlt Secured Income Portfolio REIT, Inc., EquiAlt Qualified Opportunity Zone Fund, L.P., and EquiAlt Fund I, LLC ("the Receiver");

WHEREAS, the Releasers are also potential defendants, other than those defendants defined as Releasees below, in pending or threatened actions by Richard Gleinn, Phyllis Gleinn, Cary Toone, John Celli, Maria Celli, Eva Meier, Georgia

Murphy, Steven J. Rubinstein, as trustee for the Rubinstein Family Living Trust dated 6/25/2010, Tracey F. Rubinstein, as trustee for the Rubinstein Family Living Trust dated 6/25/2010, Bertram D. Greenberg, as trustee for the Greenberg Family Trust, Bruce R. Hannen, Geraldine Mary Hannen, Robert Cobleigh, Rory O'Neal, Marcia O'Neal, and Sean O'Neal, as trustee for the O'Neal Family Trust dated 4/6/2004 (collectively, "the Investor Plaintiffs");

WHEREAS, to avoid the expense and uncertainty of litigating the Receiver's and the Investor Plaintiffs' potential claims, the Receiver, the Investor Plaintiffs, and the Releasors have entered into the Settlement Agreement dated August 19, 2022 ("the Releasor Settlement Agreement");

WHEREAS, as a term of the Releasor Settlement Agreement, Releasors have agreed to execute this Release and Covenant Not to Sue;

WHEREAS, Releasors hereby represent and acknowledge that they are providing this Release and Covenant Not to Sue in exchange for good and valuable consideration reflected in the terms of the Releasor Settlement Agreement;

WHEREAS, the intent of this Release and Covenant Not to Sue is for Releasors to fully and finally release Releasees from the Released Claims;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Releasors hereby agree and covenant as follows:

1. As used herein, "Releasees" means DLA Piper LLP (US), Paul Wassgren, and its, his, and their respective affiliates, parents, subsidiaries, assigns, divisions, segments, predecessors, successors, attorneys, paralegals, staff members,

officers, directors, employees, representatives, partners, counsel, associates, insurers, or agents.

2. As used herein, “the Released Claims” refers to any and all claims, actions, lawsuits, causes of action, investigations, demands, complaints, cross-claims, counterclaims, third-party claims or proceedings, debts, liabilities, damages, restitution, equitable relief, legal relief, and administrative relief, known and unknown, at law or in equity, whether brought directly or indirectly, including any further claim to recovery or relief as a result of action by any state or federal government agencies, relating to, based upon, arising from, or otherwise connected to:

(i) any acts, omissions, advice, or services of Releasees concerning or provided to or relating to Releasers;

(ii) any of the entities placed in receivership in the action captioned *SEC v. Brian Davison et al.*, No. 8:20-cv-00325-MSS-AEP (M.D. Fla.) (“the SEC Action”) or over which the Receiver has authority as a result of the SEC Action, including EquiAlt, LLC, EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, EA SIP, LLC, EquiAlt Secured Income Portfolio REIT, Inc., EquiAlt Qualified Opportunity Zone Fund, L.P., EquiAlt Fund I, LLC, and their predecessors, successors, parents, subsidiaries, agents, creditors, affiliates, assigns, officers, partners, counsel, and employees, including Brian Davison and Barry Rybicki, Deandre Sears, and Maria Antonio-Sears;

(iii) any acts, omissions or services of Releasees concerning or provided or relating to BR Support Services LLC and its predecessors, successors, parents,

subsidiaries, agents, creditors, affiliates, assigns, officers, partners, counsel, and employees, including Barry Rybicki; or

(iv) the claims, facts, events, transactions, circumstances, or occurrences alleged in, that could have been alleged in, or that underlie the claims in any of the following actions: *Burton W. Wiand, et al. v. Paul Wassgren, et al.*, Case 20-STCV-49670, pending in the Superior Court of California, County of Los Angeles – Central District (the “Receiver Action”); *Richard Gleinn, et. al. v. Paul Wassgren, et. al.*, No. 8:20-cv-01677-MSS-CPT, pending in the United States District Court for the Middle District of Florida (the “Investor Action”); the SEC Action; *Burton Wiand v. Family Tree Estate Planning, LLC et al.*, No. 8:21-cv-00361-SDM-AAS, pending in the United States District Court for the Middle District of Florida; and *Steven J. Rubinstein et al. v. EquiAlt, LLC et al.*, No. 8:20-cv-00448-WFJ-TGW, pending in the United States District Court for the Middle District of Florida.

3. The Releasors hereby expressly, fully and forever, release and discharge Releasees from and against the Released Claims.

4. Releasors hereby expressly further agree and covenant that they will not now or hereafter institute, maintain, assert, join, or assist or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against Releasees asserting the Released Claims.

5. In connection with the foregoing releases, Releasors acknowledge that they are aware that they may hereafter discover claims or damages presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the Released Claims. Nevertheless, Releasors understand and agree that this release will fully, finally, and forever settle and release all claims and causes of action defined as Released Claims, known or unknown, and which now exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Claims.

RELEASORS EXPRESSLY UNDERSTAND THAT SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA PROVIDES:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

TO THE EXTENT THAT CALIFORNIA OR OTHER SIMILAR FEDERAL OR STATE LAW MAY APPLY (BECAUSE OF OR NOTWITHSTANDING THE PARTIES' CHOICE OF LAW IN THIS AGREEMENT), RELEASORS HEREBY AGREE THAT THE PROVISIONS OF SECTION 1542 AND ALL SIMILAR FEDERAL OR STATE LAWS, RIGHTS, RULES, OR LEGAL PRINCIPLES,

**TO THE EXTENT THEY ARE FOUND TO BE APPLICABLE HEREIN, ARE
HEREBY KNOWINGLY AND VOLUNTARILY WAIVED AND
RELINQUISHED BY RELEASORS, AND RELEASORS HEREBY AGREE
THAT THIS IS AN ESSENTIAL TERM OF THE RELEASE.**

6. Releasors acknowledge that the persons signing this Release and Covenant Not to Sue below are fully authorized to make the agreements and give the releases described herein, and that the signatures of any representatives of any of the parties bind the parties to the terms of this Release and Covenant Not to Sue. Releasors further acknowledge that they have read and understand this Release and Covenant Not to Sue and that their execution of this Release and Covenant Not to Sue is a voluntary act performed after due and considered deliberation. Releasors also acknowledge that they have been represented by counsel or have had the opportunity to secure counsel of their choosing in connection with this Release and Covenant Not to Sue, and that they have not relied upon any express or implied representations regarding this Release and Covenant Not to Sue.

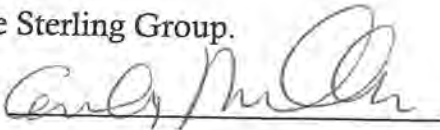
7. Should any provision of this Release and Covenant Not to Sue be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, terms, or provisions shall be deemed not to be a part of this Release and Covenant Not to Sue.

8. This Release and Covenant Not to Sue shall be deemed to have been executed and delivered in the state of Florida and shall be governed, construed, and enforced in accordance with the laws of Florida.

9. This Release and Covenant Not to Sue may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Release and Covenant Not to Sue electronically or by facsimile shall be effective as delivery of an original executed counterpart.

10. Releasors agree not to disparage or negatively comment about Releasees in any public statements.

The Sterling Group.

By: 

Its: Manager

Date: 8/19/2022

The Sterling Alternative Equity Fund.

By: 

Its: Manager

Date: 8/19/2022

EXHIBIT B

RELEASE AND COVENANT NOT TO SUE

This Release and Covenant Not to Sue is entered into by the Sterling Group and the Sterling Alternative Equity Fund and their present and former officers, directors, managers, members, managing members, shareholders, parents, subsidiaries, general partners, limited partners, partners, employees, subsidiaries, divisions, successors, predecessors, affiliates, agents, attorneys, legal counsel, heirs, assigns, executors, administrators, estates, insurers, and representatives, or the like, of any of the above entities, including all individuals with a controlling or ownership interest or a management or employment role, past or present (collectively, the “Releasers”).

WITNESSETH:

WHEREAS, the Releasers allegedly participated in the offer for sale or sale of securities issued by EquiAlt LLC or its affiliates;

WHEREAS, the Releasers are potential defendants, other than those defendants defined as Releasees below, in pending or threatened actions by Burton W. Wiand in his capacity as the court-appointed Receiver for EquiAlt LLC, EquiAlt Fund LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, EA SIP, LLC, EquiAlt Secured Income Portfolio REIT, Inc., EquiAlt Qualified Opportunity Zone Fund, L.P., and EquiAlt Fund I, LLC (“the Receiver”);

WHEREAS, the Releasers are also potential defendants, other than those defendants defined as Releasees below, in pending or threatened actions by Richard Gleinn, Phyllis Gleinn, Cary Toone, John Celli, Maria Celli, Eva Meier, Georgia

Murphy, Steven J. Rubinstein, as trustee for the Rubinstein Family Living Trust dated 6/25/2010, Tracey F. Rubinstein, as trustee for the Rubinstein Family Living Trust dated 6/25/2010, Bertram D. Greenberg, as trustee for the Greenberg Family Trust, Bruce R. Hannen, Geraldine Mary Hannen, Robert Cobleigh, Rory O'Neal, Marcia O'Neal, and Sean O'Neal, as trustee for the O'Neal Family Trust dated 4/6/2004 (collectively, "the Investor Plaintiffs");

WHEREAS, to avoid the expense and uncertainty of litigating the Receiver's and the Investor Plaintiffs' potential claims, the Receiver, the Investor Plaintiffs, and the Releasors have entered into the Settlement Agreement dated August 19, 2022 ("the Releasor Settlement Agreement");

WHEREAS, as a term of the Releasor Settlement Agreement, Releasors have agreed to execute this Release and Covenant Not to Sue;

WHEREAS, Releasors hereby represent and acknowledge that they are providing this Release and Covenant Not to Sue in exchange for good and valuable consideration reflected in the terms of the Releasor Settlement Agreement;

WHEREAS, the intent of this Release and Covenant Not to Sue is for Releasors to fully and finally release Releasees from the Released Claims;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Releasors hereby agree and covenant as follows:

1. As used herein, "Releasees" means Fox Rothschild LLP, Paul Wassgren, and its, his, and their respective affiliates, parents, subsidiaries, assigns, divisions,

segments, predecessors, successors, attorneys, paralegals, staff members, officers, directors, employees, representatives, partners, counsel, associates, insurers, or agents.

2. As used herein, “the Released Claims” refers to any and all claims, actions, lawsuits, causes of action, investigations, demands, complaints, cross-claims, counterclaims, third-party claims or proceedings, debts, liabilities, damages, restitution, equitable relief, legal relief, and administrative relief, known and unknown, at law or in equity, whether brought directly or indirectly, including any further claim to recovery or relief as a result of action by any state or federal government agencies, relating to, based upon, arising from, or otherwise connected to:

(i) any acts, omissions, advice, or services of Releasees concerning or provided to or relating to Releasers;

(ii) any of the entities placed in receivership in the action captioned *SEC v. Brian Davison et al.*, No. 8:20-cv-00325-MSS-AEP (M.D. Fla.) (“the SEC Action”) or over which the Receiver has authority as a result of the SEC Action, including EquiAlt, LLC, EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EquiAlt Fund III, LLC, EA SIP, LLC, EquiAlt Secured Income Portfolio REIT, Inc., EquiAlt Qualified Opportunity Zone Fund, L.P., EquiAlt Fund I, LLC, and their predecessors, successors, parents, subsidiaries, agents, creditors, affiliates, assigns, officers, partners, counsel, and employees, including Brian Davison and Barry Rybicki, Deandre Sears, and Maria Antonio-Sears;

(iii) any acts, omissions or services of Releasees concerning or provided or relating to BR Support Services LLC and its predecessors, successors, parents,

subsidiaries, agents, creditors, affiliates, assigns, officers, partners, counsel, and employees, including Barry Rybicki; or

(iv) the claims, facts, events, transactions, circumstances, or occurrences alleged in, that could have been alleged in, or that underlie the claims in any of the following actions: *Burton W. Wiand, et al. v. Paul Wassgren, et al.*, Case 20-STCV-49670, pending in the Superior Court of California, County of Los Angeles – Central District (the “Receiver Action”); *Richard Gleinn, et. al. v. Paul Wassgren, et. al.*, No. 8:20-cv-01677-MSS-CPT, pending in the United States District Court for the Middle District of Florida (the “Investor Action”); the SEC Action; *Burton Wiand v. Family Tree Estate Planning, LLC et al.*, No. 8:21-cv-00361-SDM-AAS, pending in the United States District Court for the Middle District of Florida; and *Steven J. Rubinstein et al. v. EquiAlt, LLC et al.*, No. 8:20-cv-00448-WFJ-TGW, pending in the United States District Court for the Middle District of Florida.

3. The Releasors hereby expressly, fully and forever, release and discharge Releasees from and against the Released Claims.

4. Releasors hereby expressly further agree and covenant that they will not now or hereafter institute, maintain, assert, join, or assist or participate in, either directly or indirectly, on their own behalf, on behalf of a class, or on behalf of any other person or entity, any action or proceeding of any kind against Releasees asserting the Released Claims.

5. In connection with the foregoing releases, Releasors acknowledge that they are aware that they may hereafter discover claims or damages presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the Released Claims. Nevertheless, Releasors understand and agree that this release will fully, finally, and forever settle and release all claims and causes of action defined as Released Claims, known or unknown, and which now exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Claims.

RELEASORS EXPRESSLY UNDERSTAND THAT SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA PROVIDES:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

TO THE EXTENT THAT CALIFORNIA OR OTHER SIMILAR FEDERAL OR STATE LAW MAY APPLY (BECAUSE OF OR NOTWITHSTANDING THE PARTIES' CHOICE OF LAW IN THIS AGREEMENT), RELEASORS HEREBY AGREE THAT THE PROVISIONS OF SECTION 1542 AND ALL SIMILAR FEDERAL OR STATE LAWS, RIGHTS, RULES, OR LEGAL PRINCIPLES,

**TO THE EXTENT THEY ARE FOUND TO BE APPLICABLE HEREIN, ARE
HEREBY KNOWINGLY AND VOLUNTARILY WAIVED AND
RELINQUISHED BY RELEASORS, AND RELEASORS HEREBY AGREE
THAT THIS IS AN ESSENTIAL TERM OF THE RELEASE.**

6. Releasors acknowledge that the persons signing this Release and Covenant Not to Sue below are fully authorized to make the agreements and give the releases described herein, and that the signatures of any representatives of any of the parties bind the parties to the terms of this Release and Covenant Not to Sue. Releasors further acknowledge that they have read and understand this Release and Covenant Not to Sue and that their execution of this Release and Covenant Not to Sue is a voluntary act performed after due and considered deliberation. Releasors also acknowledge that they have been represented by counsel or have had the opportunity to secure counsel of their choosing in connection with this Release and Covenant Not to Sue, and that they have not relied upon any express or implied representations regarding this Release and Covenant Not to Sue.

7. Should any provision of this Release and Covenant Not to Sue be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, terms, or provisions shall be deemed not to be a part of this Release and Covenant Not to Sue.

8. This Release and Covenant Not to Sue shall be deemed to have been executed and delivered in the state of Florida and shall be governed, construed, and enforced in accordance with the laws of Florida.

9. This Release and Covenant Not to Sue may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Release and Covenant Not to Sue electronically or by facsimile shall be effective as delivery of an original executed counterpart.

10. Releasors agree not to disparage or negatively comment about Releasees in any public statements.

The Sterling Group.

By: 

Its: manager

Date: 8/19/2022

The Sterling Alternative Equity Fund.

By: 

Its: manager

Date: 8/19/2022