

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-cv-00325-MSS-MRM

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 THE TRANSFER
OF TITLE TO THE PROPERTY LOCATED AT
1334 KETTLES AVENUE, LAKE LAND, FLORIDA 33805**

Burton W. Wiand, as Receiver (the “**Receiver**”) over the assets of the
Corporate Defendants and Relief Defendants¹ moves the Court to approve the

¹ The (“**Receivership**” or “**Receivership Estate**”) has been expanded to include the Corporate and Relief Defendants and 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 LLC; and EquiAlt Capital Advisors, LLC. *See* Doc. 184, at 6–7. *See also*, Doc. 284.

transfer of title to certain real property, sold at auction, free and clear of any and all liens, encumbrances, and claims. This transfer is necessary to complete the sale of the property pursuant to the auction previously approved by Order of this Court (Doc. 574).

ARGUMENT

Pursuant to the Court-approved auction (Doc. 574), the following property, 1334 Kettles Avenue, Lakeland, Florida 33805 (the “**Property**”), has been sold to Riverside Heights Capital LLC (the “**Buyer**”), for \$118,650.00 and the Receiver desires to transfer title to the Property pursuant to the Sale Procedures Agreement attached hereto as **Exhibit 1**. This motion is necessary to facilitate the closing of this transaction and the provision of title insurance to the Buyer.² Granting this motion will authorize the Receiver to transfer title to Buyer, via Receiver’s Deed, free and clear of any and all liens, encumbrances, and claims. The Property is free of any substantial liens or encumbrances, there is no mortgage that applies to the Property. The legal description of the property is as follows:

ADAIRS ADD PB 3 PG 13 BLK N LOT 1

² This motion is necessary as title insurance companies have routinely required a Court order authorizing transfer of title of properties via Receiver’s Deed.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that this Court grant this motion and approve the transfer of title of the Property via Receiver's Deed, free and clear of any and all liens, encumbrances, and claims. Pursuant to the Court's earlier Order [Doc. 640], the Receiver has attached a proposed order as **Exhibit 2**.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and the SEC consents to the relief sought herein and waives any right to appeal an Order granting this Motion.

Respectfully submitted,

/s/ Katherine C. Donlon

Katherine C. Donlon, FBN 0066941

kdonlon@jclaw.com

**JOHNSON, CASSIDY, NEWLON &
DECORT P.A.**

3242 Henderson Blvd., Suite 210

Tampa, FL 33609

Tel: (813) 291-3300

Fax: (813) 235-0462

and

Jared J. Perez, FBN 0085192

jared.perez@jaredperezlaw.com

301 Druid Rd. W

Clearwater, FL 33759

(727) 641-6562

and

R. Max McKinley, FBN 119556
mmckinley@guerraking.com
GUERRA KING P.A.
1408 N. West Shore Blvd., Suite 1010
Tampa, FL 33607
Tel: (813) 347-5100
Fax: (813) 347-5198

Attorneys for the Receiver Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 23, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Katherine C. Donlon
Katherine C. Donlon, FBN 0066941

EXHIBIT 1

SALE PROCEDURES AGREEMENT

This Sale Procedures Agreement (hereinafter "**Agreement**"), is entered into this the 16th day of February 2023, by and between Riverside Heights Capital LLC (hereinafter, the "**Buyer**") and **Burton W. Wiand, Receiver for EQUIALT FUND, LLC** (hereinafter, the "**Receiver**" or "**Seller**", and collectively with Buyer, the "**Parties**") appointed in the matter of *Securities and Exchange Commission v. Brian Davison, et al.*, United States District Court, Middle District of Florida, Tampa Division, Case No.: 8:20-cv-00325-T-35AEP (hereinafter, the "**Action**").

BACKGROUND

WHEREAS, the Receiver was appointed pursuant to an Order Granting Plaintiff's Emergency Ex Parte Motion for Appointment of Receiver and Memorandum of Law entered February 14, 2020 and an Order Granting Emergency Ex Parte Motion for Temporary Restraining Order, Asset Freeze, and Other Injunctive Relief entered February 14, 2020, and pursuant to an Order on Motion for Preliminary Injunction entered on August 17, 2020 in connection with the proceedings in the Action (the "**Receivership Orders**"); and pursuant to the Receivership Orders the Receiver was granted authority, custody and control over EquiAlt, LLC and various other related companies and assets including 1334 Kettles Avenue, Lakeland, Florida 33805 and he is authorized to sell said property with approval of the United States District Court for the Middle District of Florida;

WHEREAS, EQUIALT FUND, LLC is a legal entity under the control of the Receiver pursuant to the Receivership Orders and it is the owner of 1334 Kettles Avenue, Lakeland, Florida 33805, better known as Polk County Property Appraiser's Parcel Id Number (PIN): 23-28-12-050500-014010 ("**the Property**");

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

WHEREAS, the Buyer is the winning bidder in the auction of the Property through Receivership-Auctions.com and is legally bound to purchase the Property. This Agreement is to confirm and document the terms of the closing and transfer of title of the Buyer's purchase of the Property;

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

AGREEMENT

1. **Property:** The Seller has agreed to sell and convey, and Buyer has agreed to purchase and pay for, all pursuant to the terms and conditions hereinafter set forth herein and the terms of auction of Receivership-Auctions.com, the Property consisting of all of Seller's right, title, and interest in and to the Property, more particularly described on Exhibit "A" attached hereto. The Property shall include all appurtenant rights, privileges, and easements, all buildings and improvements, free from all encumbrances whatsoever, except restrictions and easements of record, zoning ordinances, and taxes and assessments, both general and special, not currently due and payable. **PROPERTY SOLD "AS IS"**.

2. **Purchase Price & Contingencies:** The Purchase Price shall be One Hundred Eighteen Thousand Six Hundred Fifty Dollars (\$118,650). The purchase price includes the winning bid price in the auction of the property on Receivership-Auctions.com and the applicable Buyer's premium.

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

3. **Escrow Agent and Initial Money Deposits:** Najmy Thompson, P.L. 1401 8th Ave W, Bradenton, FL 34205 shall serve as the Escrow Agent. **Within 24 hours of the notification to the Buyer that he is the winning bidder of the auction conducted by Receivership-Auctions.com, Buyer shall wire as an Initial Deposit (10%) of the Purchase Price (\$11,865) to the ESCROW AGENT. THESE FUNDS SHALL BE WIRED TO THE ESCROW ACCOUNT OF NAJMY THOMPSON ACCORDING TO THE ATTACHED WIRING INSTRUCTIONS.** These funds shall only be refundable if the United States District Court refuses to approve the transfer of the Property by the Receiver to the Buyer.

Buyer may not cancel the transaction and any attempt thereto shall cause all funds deposited to the **ESCROW AGENT** to immediately become the property of the Receiver.

The funds deposited to the **ESCROW AGENT** shall be credited at Closing towards the Purchase Price to be paid to Seller by Buyer for the Property under the terms of this Agreement. Unless Seller has agreed otherwise, **WITHIN FIVE (5) BUSINESS DAYS BUYER SHALL WIRE THE REMAINING 90% OF THE PURCHASE PRICE TO THE ESCROW AGENT. THESE FUNDS SHALL BE WIRED TO THE ESCROW ACCOUNT OF NAJMY THOMPSON ACCORDING TO THE ATTACHED WIRING INSTRUCTIONS.** Any financing shall be allowed solely pursuant to the terms of the Financing Addendum attached hereto.

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

transaction.

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

5. **No Financing Contingency:** Buyer agrees that there shall be no financing contingency associated with this Agreement. Buyer agrees that this is an **ALL-CASH** purchase and there shall be no financing contingency. Any Purchaser who desires to finance a purchase after being the successful bidder in an auction must execute and strictly comply with the terms of the Financing Addendum attached hereto.

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

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

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

Buyer hereunder, including without limitation, the cost of performance by Buyer and the obligations hereunder.

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

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

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

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

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

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

12. Real Estate Brokers: Seller and Buyer represent and warrant each to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction, except for Tony Kelly of A Better Life Realty LLC ("**Seller's Agent**"). At Closing, Seller agrees to a Two Percent (2.0%) commission to Seller's Agent pursuant to a separate

written agreement by and between Seller and Seller's Agent. No commission shall be payable to any agent of Buyer unless Buyer has disclosed such agent during registration with Receivership-Auctions.com. If such agent is disclosed Buyer's agent will be paid 40% of the Buyer's premium paid by Buyer.

13. General Provisions:

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

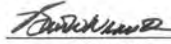
- (g) Notices may be delivered to Seller at the email address burt@burtonwwiandpa.com or via Seller's Agent at the email address tony@abetterliferealty.com and to Buyer at the email address barry_bass19@hotmail.com or via Buyer's Agent at the email address _____.
- (h) This Agreement contains the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained.

BUYER



Riverside Heights Capital LLC
Barry Bass as Manager

SELLER



Burton W. Wiand, Receiver for
EQUIALT FUND, LLC

BROKER'S ACKNOWLEDGEMENT

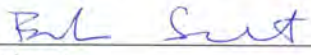
Tony Kelly of A Better Life Realty LLC (Seller's Agent) hereby acknowledge receipt of this Agreement and agrees to be joined to this Agreement to the extent their compensation structure is discussed. The Broker hereby agrees to the compensation structure set forth in paragraph 12 above. Any dispute concerning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



Seller's Agent

BUYER'S BROKER'S ACKNOWLEDGEMENT

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



Buyer's Agent

Financing Addendum

WHEREAS, the Buyer designated in the attached Sale Procedures Agreement desires to finance all or part of the Purchase Price specified in the agreement and has concurrently with signing the Agreement wired 10% of the purchase price to Najmy Thompson, P.L. who shall serve as the Escrow Agent; and

WHEREAS, the Seller agrees to allow the Buyer 30 days to acquire a commitment for financing of this purchase under and only under the commissions specified below.

1. Buyer must acquire a financing commitment within 30 days of the date of the completion of the auction.
2. Buyer must proceed to close the transaction as promptly as possible upon receiving a financing commitment.
3. Buyer acknowledges by signing this document that this Financing Addendum does not provide a financing contingency to the Sale Procedures Agreement or Buyer's obligations to complete the purchase as a result of being the winning bidder in the auction; and
4. Buyer further acknowledges that regardless of whether or not a financing commitment can be acquired, Buyer is bound to complete the transaction and should Buyer fail to acquire financing or otherwise fail to complete the transaction specified in the agreement all funds paid in connection with the transaction shall remain the property of the Seller.

NOW THEREFORE, in consideration of the foregoing promises and agreements the Seller agrees to allow Buyer 30 days to secure a financing commitment and further that in the absence of the Buyer securing a financing commitment or closing the transaction within the 30 day time period all deposits and funds paid by Buyer shall become the property of the Seller.

Buyer: 

Date: 2-23-23

Seller: 

Date: 2-23-2022

1334 Kettles

EXHIBIT 2

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-cv-00325-MSS-MRM

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.

ORDER

THIS CAUSE comes before the Court for consideration of the Receiver’s Unopposed Motion to Approve Transfer of Title to the Property Located at 1334 Kettles Avenue, Lakeland, Florida 33805 (the “Property”). (Dkt. ___) At the request of the Securities and Exchange Commission (“SEC”), the Court appointed the Receiver on February 14, 2020 and directed him, in relevant part, to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants,” which includes “all

real property of the Corporate Defendants and Relief Defendants, wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order.” (Dkt. 11)

The Court previously approved the sale of the Property as part of an auction conducted by the Receiver. (Dkt. 574) The Property was sold at auction to Riverside Heights Capital LLC, and the Receiver requests that the Court approve the transfer of title of the Property to Riverside Heights Capital LLC. (Dkt. ___) The SEC consents to the relief sought in the Motion and has waived any right to appeal this Order. (Id. at ___) The Receiver provided the Sale Procedures Agreement for the Court’s review. (Dkt. ____)

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

1. The Receiver’s Motion, (Dkt. ___), is **GRANTED**.
2. Transfer of title to the Property located at 1334 Kettles Avenue, Lakeland, Florida 33805, better known as Polk County Property Appraiser’s Parcel Id Number (PIN): 23-28-12-050500-014010 to Riverside Heights Capital LLC is **APPROVED**. The Property’s legal description is as follows:

ADAIRS ADD PB 3 PG 13 BLK N LOT 1

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

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

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record