

**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.

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

Burton W. Wiand, as Receiver (the "**Receiver**") over the assets of the corporate and relief defendants,<sup>1</sup> moves the Court to approve the marketing

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

and sale of the remaining parcels of real property owned by the Receivership Estate in Florida, free and clear of any and all liens, encumbrances, and claims via online auction. As explained below and as evidenced by the Receiver's earlier online property auctions, the Receiver believes the proposed manner of sale is commercially reasonable and will result in a fair and equitable recovery for the Receivership Estate. The Receiver also moves for relief from the requirements of 28 U.S.C. §§ 2001 and 2002 in connection with the sales.

### **BACKGROUND**

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

At the request of the SEC, on February 14, 2020, the Court entered a temporary restraining order and asset freeze (Docs. 10 & 11). A preliminary injunction hearing was held on July 31, 2020. On August 17, 2020, the Court granted the SEC's request for entry of a preliminary injunction. The Receiver is directed to "administer and manage the business affairs, funds, assets, choses in action and any other property of the Corporate Defendants and Relief Defendants; marshal and safeguard all of the assets of the Corporate

Defendants and Relief Defendants and take whatever actions are necessary for the protection of investors” (Doc. 11 at p. 2). The Court specifically directed the Receiver to “[t]ake immediate possession of all property, assets and estates of every kind of the Corporate Defendants and Relief Defendants whatsoever and wheresoever located . . . and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court” and to “[i]nitially recover, control and possess liquid assets, known real estate, LLC assets and high-end personal assets purchased with funds traceable from investor proceeds, and trusts if the Receiver deems appropriate.” Doc. 11 at p. 2-3 ¶¶ 2-3.

At the time of his appointment, the Receiver took possession of several hundred parcels of real property the Receivership Entities purchased with investor funds. The Receivership continues to incur expenses associated with owning these properties. Many of these properties are occupied by tenants but some are not.

Since the inception of the Receivership through the end of May 2023, the Receiver has sold, with Court approval, forty-four properties through private sale. In addition to these private sales, the Receiver, on four occasions, sought the Court’s approval to market and sell through online auction properties in June 2021 (30 properties), December 2021 (25

properties), May 2022 (77 properties), and November 2022 (60 properties). The Receiver chose this format with the belief that it would be the most efficient and economical way to sell multiple properties. The Court approved these earlier real property auctions in July 2021 (Doc. 349), December 2021 (Doc. 457), May 2022 (Doc. 574), and December 2022 (Doc. 732). The first two motions were for specific auctions while the third and fourth motions sought the Court's approval for the sale of a larger group of properties to be sold *seriatim* through a number of periodic auctions. In this motion, the Receiver is seeking the same relief as the third and fourth motions, the Court's approval to conduct *seriatim* auctions with the remaining eighty-four (84) properties left in the Receivership Estate.<sup>2</sup>

Prior to the start of each auction, the Receiver advertised and caused an article to be published in the Tampa Bay Times (online and print) in order to garner interest in the auction. The Receiver also listed the auction through the Multiple Listing Service ("MLS") and other online services such as Zillow. The publicity has proven very successful. By conducting these auctions on an almost monthly basis, the Receiver has built up a loyal following of potential buyers. With each auction, the Receiver is seeing more activity and more return bidders. Thus far, the Receivership auction site has

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<sup>2</sup> This does not include the two Rybicki properties in Arizona, the six remaining properties in Tennessee, the brewery sites in New Jersey and North Carolina or the apartments/condo conversions in Treasure Island.

over 950 registered users. These registrants will be contacted about each upcoming auction.

The Receiver's prior auctions have proven very successful. Since the Fourth Motion was filed, the Receiver has conducted three auctions – November 2022 (6<sup>th</sup>): 12 of 16 properties exceeded reserve and closed in January/February 2023; February (7<sup>th</sup>) – 12 of 16 properties offered exceeded reserve and closed in March/April/May 2023; April (8<sup>th</sup>) – 11 of 12 properties offered exceeded reserve. The Court recently granted the Receiver's motions to transfer title on those properties from the Eighth Auction and closings are taking place for these properties.

On the first seven auctions, the total gross proceeds realized by the Receiver have exceeded the Broker Price Opinions ("BPO") by 12%. Using the auction format, the Receiver is able to offset commissions that are typically paid to the buyer and seller agents. He is able to do this by adding a buyer's premium of 5% of the winning bid amount. The Receiver then used that 5% to cover the costs of agents and title expenses.

In order to make these properties appeal to private buyers, the Receiver employed an innovative provision in the auction terms that allowed a winning bidder to use a window of 30 days to acquire financing. This window, while not a contingency on a purchaser's obligation to complete the

transaction gave buyers an opportunity to utilize financing. The Receiver believes that this accommodation increased the pool of bidders and purchasers.

Given the results of these earlier auctions, the Receiver believes that this process will continue to provide him an efficient way to dispose of the real property assets while protecting the receivership through setting a proper reserve price. To avoid incurring additional unnecessary expenses and to recoup investor funds, the Receiver requests that the Court approve the marketing and sale of the 84 remaining Receivership properties identified on the attached Exhibit 1 (collectively, the “**Properties**”), in the manner discussed more fully below. The Properties include primarily single-family homes, condominiums, duplexes, and two warehouses.

The use of the Auction liquidation format also greatly simplifies the process for sale and avoids the need for appraisals prior to motions being filed with the Court for each private sale. The auction procedure also allows the transactions to be completed with a less complex Motion to Transfer Title that saves legal expense and judicial effort.

### **Receiver’s Plans for Sale of the Properties**

Like the Receiver’s recent auctions, he intends to auction the Properties in 15-30 property batches every couple of months in an online format similar

to the earlier auctions. As with his earlier motions, the Receiver, by requesting approval for the sale of the remaining properties, is hoping to expedite the timely disposition of the Receivership's remaining real estate holdings. Further, the Court's approval for the sale of the properties provides the Receiver and his team flexibility in packaging each auction's properties as well as allowing for rollover of properties from one auction to another auction if its reserve price is not met. As anticipated, having these auctions run one after another has kept the auction registrants engaged. Participants in one auction will be provided with a list and link for the properties of the next auction so they can begin their review of those properties as well.

The Receiver has created a website for this purpose, [www.receivership-auctions.com](http://www.receivership-auctions.com). Each Property will be listed as a separate "lot" in the auction. Each Property will have an initial bid amount and an undisclosed reserve that is customized for each particular Property. If a valid bid exceeds the reserve price, the highest bidder (auction purchaser) will enter into a Sale Procedures Agreement ("SPA") in the form attached as Exhibit 2. The terms and conditions of the auction require the successful bidder to purchase the property, the SPA establishes the procedures for the closing of the transaction. When each SPA is signed, the Receiver will request, through a brief motion, an Order from the Court instructing the Receiver to transfer the Property to the highest bidder via Receiver's deed as described in the SPA.

These motions are simpler than the detailed motions the Receiver submits for private sales since the auction sales will have been previously approved through the Court's review of this Motion. The motion will also include a proposed order in accordance with the Court's previous request.

As with these previous auctions, the Receiver has based the reserve pricing amounts on his review and evaluation of available public sources, third-party broker price opinions and recent transactions involving comparable properties. The Receiver also considered the opinions of his real estate professionals to determine a reasonable reserve amount for the Properties to ensure that they are not sold at prices that do not reflect or approach fair market value. As the auctions occur, if a particular property is not sold, the property will be placed in the next auction with a reduced reserve. Should the reduced reserve still not be met, the Receiver will evaluate the sale of the property and possibly put it in succeeding auction without reserve.

As stated above, the Receiver has publicized the sale of the Properties by listing them through MLS and Zillow and also publishing information regarding the properties on the Receiver's website, [www.equialtreceivership.com](http://www.equialtreceivership.com). Upon the Court's approval of the auctions, the Receiver will run advertisements and social media campaigns similar to those placed for the earlier auctions.

The auctions are open for public participation at [www.receivership-auctions.com](http://www.receivership-auctions.com) and will be scheduled to begin twenty days after initial publication. As each subsequent auction of a group of properties occurs, the Receiver will follow this procedure of broad advertising that will begin 20 days before the inception of each successive auction. Bidding will begin and remain open for ten calendar days after the inception of each auction. During this time, the Receiver will have the option to accept any bid or offer he deems appropriate and in the best interests of the Receivership Estate prior to the end of the ten-day period.

## ARGUMENT

### I. THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper

administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

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

The Court should approve the Receiver's proposal of auctioning the Properties through a series of online auctions because it is in the best interest of the Receivership Estate. The Receiver has previously obtained Court approval for the private sale of individual parcels of real property. *See, e.g.*,

Docs. 286, 314, 452-55, 460, 469, 537, 560, 574, 608, 699, 700. The Receiver has also previously obtained Court approval to sell other real property via online auction (Docs. 349, 457, 574, and 734), high-end vehicles via blind auction (Doc. 156) and via online auction (Docs. 210 and 729), and personal items via online auction (and private sale) (Doc. 890). Both methods have proven to be effective. To date, the Receiver has recovered almost \$81million from the sale of real estate, with approximately \$19 million of that amount coming from the first seven court-approved auctions.<sup>3</sup>

The auction method avoids time and expenses associated with selling individual properties that are incurred by preparing detailed motions to approve the sale of individual parcels of real property. In general, for private sales as opposed to auctions, the Receiver obtains three opinions of value from disinterested sources. Attorneys for the Receiver also spend time and effort compiling relevant information and drafting the detailed motions. These detailed motions consume judicial resources as well because the Court must review each individual filing and rule on the motions. The online auction method described in this motion avoids or reduces all these expenditures. Much of the day-to-day work for the online auctions is

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<sup>3</sup> This figure is based on the net sale prices for the real property that has been sold, but it does not include the incidental closing expenses and commissions that accompany those sales. However, because the previously sold properties were unencumbered with significant liens or mortgages, the net figure is comparable to the gross amount recovered.

conducted by EquiAlt employees or employees of Better Life Realty, whose salaries are part of ongoing business operations or who are paid out commissions (2%) on the sales. At the same time, the reserve price and the public auction format ensure that the properties are not sold at a price that would be inconsistent with the value of the properties. If the auction price for a particular property does not meet or exceed the reserve price, the auction will end without selling the property.<sup>4</sup> The reserve price, the initial bid price, as well as the format of a well-advertised public auction will assure that the Receivership receives appropriate value for the assets being sold.

The Receiver's auction method is still subject to appropriate judicial oversight. As discussed above, the Receiver intends to auction each Property as an individual lot. If a valid bid exceeds the reserve price or the Receiver decides to accept a bid below that reserve, the Receiver will inform the Court of the auction sale of the property to the highest bidder and request authority to deliver a Receiver's deed free and clear of any liens or encumbrances thus assuring that the Court is apprised of each transaction.<sup>5</sup>

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<sup>4</sup> In some instances, if the reserve price was not met on a property, after the auction concluded, the Receiver's team continued to negotiate with interested parties and ultimately entered into contracts on several of those properties. Such private sales were then submitted to the Court for approval if the prices were below the selected reserve. As mentioned above, should a property not sell after multiple auctions, the Receiver may include a non-selling property in a successive auction without reserve.

<sup>5</sup> A preliminary review of the Properties indicates that no such major encumbrances apply to them. A normal real estate closing process will assure the Properties are free of encumbrances.

The Receiver's proposal provides the greatest marketing reach and ultimate net benefit to the Receivership by avoiding seller and professional auction fees. The Receiver has created [www.receivership-auctions.com](http://www.receivership-auctions.com) expressly for the purpose of liquidating the Properties and other Receivership items in the future. Reserve pricing and the public auction format will protect the Receivership and the investors and ensure that the Properties are sold at fair market value. Further, the sale of the Properties will avoid incurring the unnecessary carrying, insurance costs, and normal commissions involved with using outside auction houses. Given the scale of the Receivership, these savings can be substantial. About half of the properties are either currently or soon to be vacant. The remaining properties are occupied and will likely be marketed as investment properties with current tenants. To the extent leases come due during the span of time to auction these properties, the Receiver would not renew the lease and would turn over the property to sell as unoccupied. All tenants will be given the right to become a month to month tenant and will receive notice before any sale or marketing of the property. Finally, as described below in Section III, the Receiver's plan to auction the Properties substantially complies with the relevant statutes.

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

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

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

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

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

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

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

Instead of strictly complying with repetitive newspaper advertisements, the Receiver has substantially complied by publicizing the auction using several methods described above, including newspaper advertising, listing the Properties on MLS, on [www.zillow.com](http://www.zillow.com) and on [www.equialtreceivership.com](http://www.equialtreceivership.com). These methods of publication have proven effective in the earlier auctions. They are continuous prior to the auctions and not just the print newspaper ads required under 28 U.S.C. §2001. The Receiver’s auctions are clearly “public sales”. The suggested method of advertising and notice provides far wider notice of the auction than the advertising method described in the applicable statutes. The Court should waive strict compliance with Section 2002 and find that the Receiver has

satisfied his duty under this provision. Section 2002 has not been amended since 1949. The Receiver's auction method provides all the protection that would be provided by an auction on the courthouse steps and, through modern technology, provides vastly greater notice of the auctions and participation by interested buyers.

The Receiver has used these methods and by doing so has accomplished the purpose of Section 2002. For obvious reasons, Section 2002 also omits reference to using the internet for conducting the auctions. The Court should exercise its considerable broad equitable powers to accommodate these circumstances and allow the auction to proceed as planned. The Receiver's suggested sale procedures assure an open and well publicized public auction and further ensures that the Properties are sold at market value in an online public auction format that includes a minimum bid and reserve price.

The waivers requested by the Receiver routinely occur in enforcement actions and receiverships, including those in this district. *See F.T.C. et al. v. E.M. Systems & Services, LLC et al.*, Case No. 8:15-cv-1417-T-23EAJ, Order (M.D. Fla. March 4, 2016) (finding good cause to excuse receiver from judicial sale procedures of 28 U.S.C. § 2001); *S.E.C. v. A. Nadel et. al.*, Case No. 8:09-cv-00087-RAL-TBM, Order (M.D. Fla. Aug. 13, 2013) (authorizing receiver to sell automobile and deviate from appraisal and publication requirements under 28 U.S.C. § 2001); *S.E.C. v. Kirkland*, 2008 WL 4264532, \*2 (M.D. Fla.

2008) (approving sale of personal property without appraisals or publication where costs of compliance would significantly offset sale proceeds). Therefore, the Receiver requests that these additional procedures under 28 USC § 2001 be waived.

### **CONCLUSION**

For the foregoing reasons, the Receiver moves the Court for entry of an order granting the Receiver the authority to sell the remaining Receivership Properties via periodic online auctions and approve the publication methods as specified herein.

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

Counsel for the Receiver has conferred with counsel for the SEC who does not object to the relief sought herein.

Respectfully submitted,

**/s/ Katherine C. Donlon**  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on July 13, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

**/s/ Katherine C. Donlon**

# **EXHIBIT 1**

St #	Address	City	State
11705	Raintree Village Blvd, #A	Temple Terrace	FL
823	Cohasset Avenue	Lake Wales	FL
1505	E. Annie Street	Tampa	FL
1813	E Main Street	Lakeland	FL
4331	Fairfield Avenue S	St. Petersburg	FL
2944	West Bay Dr #202	Belleair Bluffs	FL
1613	E Linden Ave	Tampa	FL
1107	McDavid St	Plant City	FL
103	W Wheeler Rd	Seffner	FL
124	1st Eloise Street	Winter Haven	FL
211	W. Crescent Dr	Lakeland	FL
259	Harrison St	Lake Wales	FL
413	W. 7th Street	Lakeland	FL
525	27th Avenue S, A	St. Petersburg	FL
600	Mosley Road	Fort Meade	FL
702	W. Cherry St	Plant City	FL
705	W. 2nd Street	Lakeland	FL
811	N Keene Rd, C	Clearwater	FL
1035	15th Avenue S, A	St. Petersburg	FL
1035	N. Ohio Avenue	Lakeland	FL
1108	29th Street NW	Winter Haven	FL
1125	W. 8th Street	Lakeland	FL
1199	32nd Street N.W.	Winter Haven	FL
1214	Marjorie Street	Lakeland	FL
1314	E Chelsea St	Tampa	FL
1428	54th Street S	Gulfport	FL
1496	33rd Street NW	Winter Haven	FL
1604	E. Linden Avenue	Tampa	FL
1729	Bush Avenue	Lakeland	FL
1801	13th Avenue South	St. Petersburg	FL
1808	E. Okaloosa Ave	Tampa	FL
1824	Kendrick Lane	Lakeland	FL
1960	Hamilton Street	Bartow	FL
2112	Bassedena Circle W.	Lakeland	FL
2207	9th Street NE	Winter Haven	FL
2318	Granada CR W	St. Petersburg	FL
2408	E. Magnolia	Lakeland	FL
2939	Fletcher Avenue	Lakeland	FL
3307	N. Morgan Street	Tampa	FL
3411	E. Lambright Street	Tampa	FL
4838	Rolling Meadow Drive	Lakeland	FL
4903	Avon St	Lake Wales	FL
5261	99th Terrace N	Pinellas Park	FL
5364	Deltona Blvd	Spring Hill	FL
5601	67th Avenue N #311	Pinellas Park	FL
8216	N. 14th Street	Tampa	FL
8718	Mallard Reserve Dr #201, 1722	Tampa	FL
8820	Crestview Dr A	Tampa	FL
10218	Carriage Glen Ct.	Tampa	FL
13235	Sanctuary Cove Dr, #303, 1934	Temple Terrace	FL
5	Grindstaff Cove Road	Sylva	NC
316	20th St	Carlsdadt	NJ
2345	Kingston St S	St. Petersburg	FL
2421	19th St S	St. Petersburg	FL
3517	Bishop Eddie Newkirk Way	Tampa	FL
3604	E 24th Ave	Tampa	FL
605	Alberta Ave	Auburndale	FL
521	Commerce Dr	Largo	FL
1013	Dartmouth Dr	Holiday	FL
1350	Normandy Blvd	Holiday	FL
2542	Irving Ave S	St. Pete	FL
7252	Dianne Dr	New Port Richey	FL
7349	Cypress Drive	New Port Richey	FL
6332	Newtown Cr, Unit 32B2	Tampa	FL
7102	Waterside Street #34201	Tampa	FL
347	S McMullen Booth Rd #138	Clearwater	FL
18001	Richmond Place Dr Unit 931	Tampa	FL
10455	Carrollbrook Ct Unit 213	Tampa	FL
1264	E 113th Ave Unit J105	Tampa	FL
4209	Winding Moss Trail, #104	Tampa	FL
13149	119th St	Seminole	FL

29250	US HWY 19 N #578	Clearwater	FL
2310	W Pine St	Tampa	FL
1521	Swordbill Drive	Holiday	FL
1908	W. Chestnut St.	Tampa	FL
2013	E Okaloosa Ave	Tampa	FL
2360	25th Avenue S	St. Petersburg	FL
2921	24th Ave S	St. Petersburg	FL
3235	24th Street N	St. Petersburg	FL
3609	Darlington Rd	Holiday	FL
2217	N 64th Street	Tampa	FL
4905	N. 16th Street	Tampa	FL
1045	13th Ave S	St. Pete	FL
2101	W Cypress St	Tampa	FL

# **EXHIBIT 2**

## SALE PROCEDURES AGREEMENT

This Sale Procedures Agreement (hereinafter “**Agreement**”), is entered into this the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter, the “**Buyer**”) and **Burton W. Wiand, Receiver for** \_\_\_\_\_ (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 \_\_\_\_\_ and he is authorized to sell said property with approval of the United States District Court for the Middle District of Florida;

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

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

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

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

### AGREEMENT

1. **Property:** The Seller has agreed to sell and convey, and Buyer has agreed to purchase and pay for, all pursuant to the terms and conditions hereinafter set forth herein and the terms of auction of Receivership-Auctions.com, the Property consisting of all of Seller’s right,

title, and interest in and to the Property, more particularly described on Exhibit "A" attached hereto. The Property shall include all appurtenant rights, privileges, and easements, all buildings and improvements, free from all encumbrances whatsoever, except restrictions and easements of record, zoning ordinances, and taxes and assessments, both general and special, not currently due and payable. **PROPERTY SOLD "AS IS"**.

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

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

**3. Escrow Agent and Initial Money Deposits:** Najmy Thompson, P.L 1401 8th Ave W, Bradenton, FL 34205 shall serve as the Escrow Agent. **Within 24 hours of the notification to the Buyer that he is the winning bidder of the auction conducted by Receivership-Auctions.com, Buyer shall wire as an Initial Deposit (10%) of the Purchase Price (\$\_\_\_\_\_ ) to the 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](mailto:burt@burtonwwiandpa.com) or via Seller's Agent at the email address [tony@abetterliferealty.com](mailto:tony@abetterliferealty.com) and to Buyer at the email address \_\_\_\_\_ or via Buyer's Agent at the email address \_\_\_\_\_.
- (h) This Agreement contains the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained.

BUYER

\_\_\_\_\_

SELLER

\_\_\_\_\_  
Burton W. Wiand, Receiver for  
\_\_\_\_\_

**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.

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Seller's Agent

**BUYER'S BROKER'S ACKNOWLEDGEMENT**

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

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Buyer's Agent

**EXHIBIT A TO SALE PROCEDURES AGREEMENT**

**LEGAL DESCRIPTION**

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**EXHIBIT B TO SALE PROCEDURES AGREEMENT**

**RECEIVER'S DEED**

THIS INDENTURE, made as of the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between **Burton W. Wiand, Receiver for** \_\_\_\_\_ (hereinafter referred to as the "Grantor"), having a mailing address of 114 Turner Street, Clearwater, Florida 33756, and \_\_\_\_\_ (hereinafter referred to as the "Grantee") having an address of \_\_\_\_\_.

**WITNESSETH:**

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

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

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

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

*Signed, sealed and delivered in the presence of:*

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Burton W. Wiand, Receiver for

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Printed name

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by Burton W. Wiand, Receiver for \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Personally Known \_\_\_\_\_ (OR) Produced Identification \_\_\_\_\_

Type of identification produced \_\_\_\_\_

**EXHIBIT 1 TO RECEIVER’S DEED**  
**COURT ORDER**

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

SECURITIES AND EXCHANGE  
COMMISSION,

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.

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**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 \_\_\_\_\_ (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. \_\_\_) The Property was sold at auction to \_\_\_\_\_, and the Receiver requests that the Court approve the transfer of title of the Property to \_\_\_\_\_. (Dkt. \_\_\_) The SEC consents to the relief sought in the Motion and has waived any right to appeal this Order. (Id.) 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 \_\_\_\_\_, better known as \_\_\_\_\_ County Property Appraiser's Parcel Id Number (PIN): \_\_\_\_\_ to \_\_\_\_\_ is **APPROVED**. The Property's legal description is as follows:  
\_\_\_\_\_

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

**DONE and ORDERED** in Tampa, Florida, this \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
MARY S. SCRIVEN  
UNITED STATES DISTRICT JUDGE

**COPIES FURNISHED TO:**

Counsel of Record  
Any Unrepresented Person

**EXHIBIT 2 TO RECEIVER'S DEED**

**LEGAL DESCRIPTION**

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