

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	Civil Action No. 18-cv-5587
	)	
v.	)	Judge John Z. Lee
	)	
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,	)	Magistrate Judge Young B. Kim
	)	
Defendants.	)	
	)	

**RECEIVER’S THIRD MOTION FOR COURT APPROVAL OF THE  
PROCESS FOR PUBLIC SALE OF REAL PROPERTY BY SEALED BID**

Kevin B. Duff, as receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc. (“EquityBuild”), EquityBuild Finance, LLC (“EquityBuild Finance”), their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), and pursuant to the powers vested in him by Order of this Court entered on August 17, 2018, respectfully moves for judicial approval of a process for the public sale of certain real property through sealed bid. In support of this motion, the Receiver states as follows:

***Preliminary Statement***

1. This motion for approval of a proposed process for the public sale of realty is one of three being filed with the Court concurrently. Although each motion seeks effectively the same relief, this motion stands separate because it exclusively relates to property unencumbered by any debt of which the Receiver is aware. Accordingly, the Receiver anticipates little or no objection to this motion and respectfully requests that the resolution of the motion not be delayed by objections asserted by mortgagees in connection with the two accompanying motions.

2. Unable to allocate net operating income from one property to pay debts associated with another, the Receiver now faces major perils attempting to protect and preserve a substantial number of receivership assets as county tax sales loom, utility providers threaten to discontinue service, health and safety issues require immediate attention, and property managers warn of the consequences associated with not being paid for services rendered or not being reimbursed for cash advances. Accordingly, the sooner the sales of the properties subsumed within this motion can occur, the lesser the likelihood of potentially irreparable harms.

***This Court Authorized The Receiver To Sell Certain Assets Owned By The Receivership Defendants And Subsumed Within The Receivership Estate.***

3. The United States Securities and Exchange Commission filed this case against EquityBuild, EquityBuild Finance, Jerome Cohen, and Shaun Cohen alleging violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. 240.10b-5, Section 20(a) of the Exchange Act, 15 U.S.C. §78t(a), Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. §77e(a) and (c), and Section 17(a) of the Securities Act, 15 U.S.C. §§77q(a).

4. In the Complaint, the SEC alleged that the defendants operated a Ponzi-scheme that raised at least \$135 million from more than 900 investors by, among other things, making untrue statements of material fact in connection with the sale of promissory notes allegedly secured by residential real estate primarily located on the south side of Chicago.

5. On August 28, 2018, the Court entered a judgment against defendants Jerome Cohen and Shaun Cohen which, among other things, enjoined future violations of federal securities laws. (Docket No. 40)

6. In the August 17, 2018 Order Appointing Receiver, the Court assumed exclusive jurisdiction over, and possession of, the assets of the Receivership Defendants, which defendants

were expressly identified as including, but not being limited to, Chicago Capital Fund I, LLC and Chicago Capital Fund II, LLC. (Docket No. 16, ¶ 1)

7. In its Order Appointing Receiver, the Court also conferred upon the Receiver (1) "all powers, authorities, rights and privileges" theretofore possessed by the principals of the Receivership Defendants under applicable state and federal law, as well as by the governing operating and shareholders' agreements and (2) all powers and authority of a receiver at equity, as well as all powers conferred upon a receiver under 28 U.S.C. §§ 754, 959, and 1692, and FRCP 66. (Docket No. 16, ¶ 4)

8. The Court also authorized the Receiver to "take all necessary and reasonable actions to cause the sale" of "all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property." (Docket No. 16, ¶ 38)

***The Receiver Seeks Leave To Sell Three Properties That Are Not Encumbered By Any Debt.***

9. At this time, and in conjunction with discussions with SVN Chicago Commercial, LLC ("SVN"), the Receiver has determined, in an exercise of business judgment, that it is appropriate to sell the following properties (each a residential apartment building) in order to, among other things, infuse the receivership estate with unencumbered capital and eliminate operating expenses:

- i. 3030 East 79th Street, Chicago, IL 60649 ("3030 E 79th");
- ii. 7301-09 South Stewart Avenue, Chicago, IL 60621 ("7301-09 S Stewart"); and
- iii. 8047-55 South Manistee Avenue, Chicago, IL 60617 ("8047-55 S Manistee").

10. The property at 3030 E 79th is a 10-unit building that was acquired by Chicago Capital Fund I, LLC on or about December 22, 2017.

11. The property at 7301-09 S Stewart is a 35-unit building that was acquired by Chicago Capital Fund I, LLC on or about December 27, 2017.

12. The property at 8047-55 S Manistee is a 30-unit building that was acquired by Chicago Capital Fund II, LLC on or about May 8, 2018.

***The Receiver Seeks Leave To Conduct Sealed Bid Public Sales Of The Three Properties Made The Subject Of This Motion.***

13. The Receiver seeks leave to conduct sealed bid public sales of the referenced properties in accordance with 28 U.S.C. §§ 2001, 2002.

14. Under 28 U.S.C. § 2002, a public sale of realty may be made by notice published “once a week for 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.”

15. Accordingly, the Receiver will provide notice of the public sale of the properties subject to this motion in the form attached as **Exhibit A** in both the Chicago Sun-Times and the Chicago Daily Law Bulletin.

16. In addition, SVN will market the public sale of the properties referenced in this motion through the following public media websites, which are popular forums for marketing properties in Chicago and throughout the United States, for the entire four week period:

- a. SVN
- b. SVN Chicago Commercial
- c. CoStar Group
- d. LoopNet

- e. City Feet
- f. RealNex
- g. CREXI
- h. theBrokerList
- i. Real Connex
- j. LinkedIn

17. The Receiver plans to conduct the sale of the properties referenced herein pursuant to the sealed bid public sale process articulated in **Exhibit B**.

18. The winning bid accepted by the Receiver for each property, and any compensation paid to SVN in connection therewith, will be subject to and presented to the Court for approval.

19. As part of the public sale process described herein, and consistent with the Order Appointing Receiver, the Receiver requests authorization to sell, and to convey title to, each of the referenced properties free and clear of all mortgages, liens, claims, and encumbrances. (Docket No. 16, Order ¶ 39)

WHEREFORE, the Receiver respectfully requests that this Court grant permission to sell the properties subject to this motion by sealed bid public sale, enter an order in the form attached hereto as **Exhibit C**, and grant such other relief as the Court deems just and proper.

Dated: April 18, 2019

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

Michael Rachlis  
Nicole Mirjanich  
Rachlis Duff Adler Peel & Kaplan, LLC  
542 South Dearborn Street, Suite 900  
Chicago, IL 60605  
Phone (312) 733-3950; Fax (312) 733-3952  
[mrachlis@rdaplawn.net](mailto:mrachlis@rdaplawn.net)  
[nm@rdaplawn.net](mailto:nm@rdaplawn.net)

# **EXHIBIT A**

## NOTICE OF PUBLIC SALE OF REAL ESTATE

Kevin B. Duff, Receiver for the Estate of EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen, in the action styled *U.S. Securities and Exchange Commission v. EquityBuild, Inc., et al.*, Civil Action No. 1:18-cv-05587, in the United States District Court for the Northern District of Illinois, Eastern Division, gives notice of his intent to sell the following real properties by sealed bid public sale:

- 1) 3030 East 79th Street, Chicago, IL 60649  
PINs: 21-30-416-014-0000, 21-30-416-015-0000, 21-30-416-016-0000
- 2) 7301-09 South Stewart Avenue, Chicago, IL 60621  
PIN 20-28-216-001-0000
- 3) 8047-55 South Manistee Avenue, Chicago, IL 60617  
PIN 21-31-115-016-0000

Offers may be made on a cash basis or subject to a financing contingency, in the latter case by completing Rider A to the form Purchase And Sale Agreement to be supplied by the Seller, accompanied by a proof of funds, and delivered to Jeffrey Baasch (“Broker”), SVN Chicago Commercial, 940 West Adams, Suite 200, Chicago, IL 60607, [jeffrey.baasch@svn.com](mailto:jeffrey.baasch@svn.com), by no later than 5:00 p.m. CST on [\_\_\_\_\_]. Offers must be transmitted to the Broker by e-mail or enclosed in a sealed envelope and delivered by U.S. mail, nationally-recognized overnight courier, or hand. Untimely and non-conforming offers may be rejected at the sole discretion of the Broker. The Receiver strongly recommends that prospective purchasers pre-qualify for financing prior to submitting an offer. No liability shall attach to the Receiver, the Broker, or any other party for failure to open or entertain any offer.

Property tours will be available to all bidders at scheduled times, and the properties may also be shown by appointment. The properties are being sold “as-is,” with all faults, as of the closing date. The winning bidder will be required to make an earnest money deposit in an amount equal to ten percent (10%) of the purchase price by wiring funds to a designated title company within three (3) business days after acceptance of the purchase and sale agreement. The closings will occur within fifteen (15) days after the receivership court grants the Receiver's motion to approve the corresponding sale, which motion will be filed as soon as practicable following the Receiver's acceptance of the purchase and sale contract submitted by the winning bidder. The closing will remain subject to the approval of the receivership court. The Receiver reserves the right to reject any and all offers to purchase any of the properties being offered for sale.

Bidders must comply with the “Sealed Bid Public Sale of Real Estate Terms and Conditions” approved by the receivership court, a copy of which may be obtained upon request to the Broker.

# **EXHIBIT B**



**Sealed Bid Public Sale of Real Estate  
Tranche 03A  
Terms and Conditions**

**Scheduled Tour Dates:** [\_\_\_\_\_]

**Offer Due Date:** [\_\_\_\_\_]

1. Seller: The property is being sold by the Receiver for the EquityBuild Receivership Estate (the "Seller") created by that certain Order Appointing Receiver dated August 17, 2018, and entered in the action styled *U.S. Securities and Exchange Commission v. EquityBuild, Inc., et al.*, Civil Action No. 1:18-cv-05587, in the United States District Court for the Northern District of Illinois, Eastern Division (the "Receivership Court"). The Properties owned and controlled by the Receiver and being sold pursuant to these terms and conditions consist of the following:
  - a) 3030 East 79th Street, Chicago, IL 60649;
  - b) 7301-09 South Stewart Avenue, Chicago, IL 60621; and
  - c) 8047-55 South Manistee Avenue, Chicago, IL 60617
2. Offers: Offers may be made on a cash basis or subject to a financing contingency, in the latter case by completing Rider A to the form Purchase And Sale Agreement to be supplied by the Seller, accompanied in either case by a proof of funds, and delivered to Jeffrey Baasch (the "Broker"), SVN Chicago Commercial, 940 West Adams, Suite 200, Chicago, IL 60607, [jeffrey.baasch@svn.com](mailto:jeffrey.baasch@svn.com), by no later than 5:00 p.m. CST on [\_\_\_\_\_]. Offers must be transmitted to the Broker by e-mail or enclosed in a sealed envelope and delivered by U.S. mail, by nationally-recognized overnight courier, or by hand. Untimely and non-conforming offers may be rejected at the sole discretion of the Broker. The Seller strongly recommends that prospective purchasers pre-qualify for financing prior to submitting an offer. No liability shall attach to Seller, Broker, or any other party for failure to receive or open any offer.
3. Best and Final: Although Bidders are encouraged to submit their best offer, at the Seller's sole discretion, a best and final round may be conducted. In that event, the Seller will select the most competitive bids and the corresponding bidders will be invited to participate in the best and final round to be conducted by the Broker. The best and final bidding process will be conducted by telephone and e-mail.
4. Earnest Money Deposit: The winning bidder will be required to make an earnest money deposit in an amount equal to ten percent (10%) of the purchase price by wiring the funds to a designated title company within three (3) business days after acceptance by the Receiver of the purchase and sale agreement. The earnest money deposit shall become non-refundable at the expiration of the due diligence period (see Paragraph 6, below) and applied toward the purchase price at closing.
5. Property Tours: Property tours will be available to all bidders at scheduled times, and the Property may also be shown by appointment. The accuracy of the information contained in

the bid materials cannot be guaranteed, and prospective bidders are therefore encouraged to complete any desired and non-invasive due diligence at their own expense.

6. Due Diligence: The winning bidder will be entitled to conduct a second due diligence review of the Property within ten days following acceptance of its offer.
7. As-Is Sale: The Property is being sold “as-is,” with all faults, as of the closing date. Neither the Seller, the Broker, nor any of their respective agents, contractors, attorneys, officers, or directors (“Agents”) makes any representation or warranty with respect to the physical condition of the Property, nor any of the personalty, fixtures, machinery, or equipment located thereon, including any warranty of merchantability or fitness for a particular purpose, or any type of other warranty, express or implied. The Seller, the Broker, and their Agents specifically disclaim any warranty, guaranty, or representation, oral or written, past or present, express or implied, concerning the physical condition of the Property or any of the personalty, fixtures, machinery, or equipment located thereon. Neither the Seller, the Broker, nor any of their respective agents possesses any authority to make any oral or written representation regarding the condition of the Property or its contents, other than as may be set forth in the purchase and sale contract, and no bidder may rely upon any such oral or written representation. The bidders shall conduct their own independent physical inspections of the Property and its contents, shall be charged with full knowledge of all documents made available for inspection, and shall submit offers based solely upon their own independent judgment and conclusions and not in reliance on any information provided by the Seller, the Broker, or their respective Agents.
8. Broker Participation Invited: A cooperating commission will be paid to a qualified, licensed real estate broker that procures the bidder who closes on the Property, provided that (1) said cooperating real estate broker is not prohibited by law from being paid such commission and, additionally, is not a principal or affiliate of the bidder and (2) no commission shall be considered earned or payable unless the broker registers its client on the Buyer broker registration form prior to the client's submission of a bid. Oral registrations will not be accepted. Under no circumstances shall any commission be paid if the sale does not close.
9. Closing: The closing shall be held within fifteen (15) days after the Receivership Court grants the Receiver's motion to approve the sale, which motion will be filed as soon as practicable following the Seller's acceptance of the contract submitted by the winning bidder. The Property will be conveyed by judicial deed, subject to any and all covenants, conditions, and restrictions of record, public utility easements, building lines, if any, real estate taxes not yet due and payable, housing court proceedings, building code violations, and acts suffered or permitted by the grantee. All closing costs, including the cost of the closing escrow, shall be paid by the winning bidder. In addition, the winning bidder will pay any earnest money escrow fee charged by the designated title company.
10. Other Terms and Conditions:
  - a) The Closing shall remain subject to the approval of the Receivership Court.
  - b) The Seller and the Broker reserve the right, in their sole and absolute discretion, to postpone or cancel the sealed-bid public sale of real estate with or without notice or to amend, modify, or add any terms and conditions to these general terms and

conditions of sale and to announce such modifications or additional terms and conditions on or before the submission deadline. To the extent of any conflict between these terms and conditions and the purchase and sale agreement, the terms of the purchase and sale agreement shall control.

- c) These terms and conditions do not create any legal obligation on the part of the Seller or the Broker. If the sale fails to comply with any of these terms and conditions for any reason, the Seller and the Broker shall have no liability to any unsuccessful bidder.

# EXHIBIT C

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

_____	)	
UNITED STATES SECURITIES	)	
AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	Civil Action No. 18-cv-5587
	)	
v.	)	Hon. John Z. Lee
	)	
EQUITYBUILD, INC., EQUITYBUILD	)	Magistrate Judge Young B. Kim
FINANCE, LLC, JEROME H. COHEN, and	)	
SHAUN D. COHEN,	)	
	)	
Defendants.	)	
_____	)	

**ORDER APPROVING RECEIVER’S THIRD MOTION FOR  
PUBLIC SALE OF REAL PROPERTY THROUGH SEALED BID**

WHEREAS, Kevin B. Duff, as receiver (“Receiver”) for Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), filed a Third Motion for the Court’s Approval of the Process for the Public Sale of Real Property through Sealed Bid, the Court having conducted a hearing on the motion and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Receiver’s Motion is granted. The Court approves the sealed bid public sale process described by the Receiver and finds that this process complies with the requirements of 28 U.S.C. §§ 2001 and 2002.
2. The Receiver is authorized to conduct sealed bid public sales of (i) 3030 East 79th Street, Chicago, IL 60649, (ii) 7301-09 South Stewart Avenue, Chicago, IL 60621; and (iii) 8047-55 South Manistee Avenue, Chicago, IL 60617, with each sale to be free and clear of all mortgages, liens, claims, and encumbrances.

ENTERED:

\_\_\_\_\_

Date: \_\_\_\_\_