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9 *Behalf of All Others Similarly Situated*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN MATEO**

12 **ROBERT G. MAR**, Individually and on  
13 Behalf of All Others Similarly Situated,

14 **Plaintiff,**

15 **vs.**

16  
17 **BENJAMIN CHARLES MOHR**, an  
18 individual;  
19 **BEN MOHR, INC.**, a corporation; and  
20 **DOES 1 through 25**, inclusive,

21 **Defendants.**

CASE NO. 20-CIV-01986

**COMPLAINT; INDIVIDUAL AND  
CLASS ACTION**

1. Violation of Cal. Corp. Code § 25210;
2. Fraud and Deceit;
3. Intentional Misrepresentation;
4. Negligent Misrepresentation.

**JURY TRIAL DEMANDED**

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1 Plaintiff **ROBERT G. MAR** (“Plaintiff”), on behalf of himself and all other similarly  
2 situated individuals and entities (the “Class,” as defined below), alleges as follows upon  
3 information and belief based, *inter alia*, upon investigation conducted by Plaintiff and his  
4 counsel, except for those allegations pertaining to Plaintiff personally, which are alleged upon  
5 knowledge:

6 **I. INTRODUCTION**

7 1. This case arises from a \$170 million Ponzi scheme operated by EquiAlt, LLC.  
8 EquiAlt claimed to pool investor funds, purchase distressed real estate, and return 8–10% annual  
9 profit to investors with little risk. Instead, EquiAlt misappropriated investor funds by paying  
10 existing obligations with new investor money; by purchasing luxury automobiles, fine jewelry,  
11 and chartering jets for the executives; and by paying substantial undisclosed commissions—as  
12 much as ten-to-fourteen percent—to unregistered sales agents.

13 2. Defendant Benjamin Charles Mohr (“Mohr”) is one of those unregistered sales  
14 agents. Mohr profited from EquiAlt’s scheme that defrauded over 1,100 investors, some of whom  
15 trusted him with their retirement savings. Mohr solicited investments in EquiAlt and its real estate  
16 funds, provided investors with offering materials, provided advice on the merits of the  
17 investment, and received transaction-based compensation. Mohr was not registered as a broker-  
18 dealer and was not associated with a qualified broker-dealer. Mohr never disclosed that he was  
19 unlicensed and that it was illegal for him to sell the EquiAlt Securities. Nor did he disclose that  
20 the EquiAlt funds have lost money every year since inception and that they are insolvent.

21 3. EquiAlt, LLC and its investment funds are now in Receivership. An independent  
22 audit by the Securities and Exchange Commission estimates that EquiAlt, LLC’s assets are worth  
23 \$85 million—\$82 million less than their obligations coming due to investors in December 2020.

24 4. By this action, Plaintiff and the Class members seek to recover the damages caused  
25 by Defendants’ unlawful marketing, sale, and transactions in EquiAlt Securities.

26 **II. JURISDICTION AND VENUE**

27 5. This court has personal jurisdiction over Defendants because they are residents of  
28 the State of California and, at all times relevant, the events which combined to produce the

1 injuries sustained by Plaintiff occurred in this state. This court is competent to adjudicate this  
2 action and the amount in controversy exceeds the jurisdictional minimum of this court.

3 6. Venue is proper in the County of San Mateo, State of California, pursuant to Code  
4 of Civil Procedure § 395.5 as this litigation arises out of contracts made in San Mateo County,  
5 State of California.

6 7. Venue is proper in the County of San Mateo pursuant to Code of Civil Procedure  
7 section 395(b) because the action arises from a transaction consummated as a proximate result of  
8 a telephone call or electronic transmission made by a buyer in response to a solicitation by a seller  
9 leading to a contract signed by the buyer in San Mateo County.

10 8. Furthermore, Defendant Mohr operated out of an office in San Mateo County at  
11 951 Mariners Island Boulevard, Suite 300, San Mateo, CA 94404 and at all times relevant to this  
12 complaint, Plaintiff resided in San Mateo County.

13 **III. PARTIES**

14 **A. Plaintiffs**

15 9. Plaintiff **ROBERT G. MAR** (“Mar” or “Plaintiff”) was, at all relevant times, an  
16 individual who resided in Foster City, in the County of San Mateo, California. Mar invested one  
17 hundred thousand dollars (\$100,000.00) in EquiAlt Securities through a transaction effected by  
18 Defendants.

19 10. Mar brings this suit in his individual capacity and on behalf of all other similarly  
20 situated California residents and entities (the “Class,” as defined in Section VI, *infra*.)

21 **B. Defendants**

22 11. Defendant **BENJAMIN CHARLES MOHR** (“Mohr”) was, at all relevant times,  
23 an individual who resided in Contra Costa County at 6216 Lakeview Circle, San Ramon,  
24 California 94582. Mohr is individually licensed by the Department of Insurance as a Life-Only  
25 Insurance Agent and as an Accident and Health Insurance Agent. Mohr represented to Plaintiff  
26 and the Class that he provided “retirement planning” services to California consumers.

27 12. Defendant **BEN MOHR, INC.** (“BMI”) is a now-dissolved California corporation  
28 that did business at 6216 Lakeview Circle, San Ramon, CA 94582. BMI was in the business of



1 insurance brokering and life insurance sales. BMI's website (benmohrinc.com) offered retirement  
2 planning services. Ben Mohr filed a certificate of dissolution with the California Secretary of  
3 State on December 6, 2018 on behalf of BMI.

4 **C. Unnamed and Doe Defendants**

5 13. The true names and capacities, whether individual, corporate, associate or  
6 otherwise of the Defendants **DOES 1 through 25**, inclusive, are unknown to Plaintiff who  
7 therefore sues said Defendants by such fictitious names pursuant to Code of Civil Procedure  
8 section 474; Plaintiff further alleges that each fictitious Defendant is in some manner responsible  
9 for the acts and occurrences set forth herein. Plaintiff will amend this Complaint to show their  
10 true names and capacities when the same are ascertained, as well as the manner in which each  
11 fictitious Defendant is responsible.

12 14. Mohr, BMI, and Does 1 through 25 will be collectively referred to as  
13 "Defendants."

14 **D. Agency, Concert of Action, and Conspiracy**

15 15. At all times herein mentioned, each of the Defendants, inclusive, were the agent,  
16 servant, employee, partner, aider and abettor, co-conspirator and/or joint venturer of each of the  
17 remaining defendants named herein and were at all times operating and acting within the purpose  
18 and scope of said agency, service, employment, partnership, conspiracy, alter ego and/or joint  
19 venture, and each defendant has ratified and approved the acts of each of the remaining  
20 defendants. Each of the Defendants has aided and abetted, encouraged, and rendered substantial  
21 assistance to the other defendants in breaching their obligations to Plaintiff Mar and the Class as  
22 alleged herein. In taking action to aid and abet and substantially assist the commission of these  
23 wrongful acts and other wrongdoings complained of, as alleged herein, each of the Defendants  
24 acted with an awareness of his or her primary wrongdoing and realized that his or her conduct  
25 would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and  
26 wrongdoing.

1 **IV. BACKGROUND OF EQUIALT, LLC**

2 16. EquiAlt, LLC is a private Tampa, Florida-based limited liability company.  
3 EquiAlt, LLC's management team included Brian Davison ("Davison"), owner and chief  
4 executive officer, and Barry Rybicki ("Rybicki"), managing director. Davison and Rybicki  
5 maintained control over EquiAlt, LLC, whose primary business is to manage four real estate  
6 investment funds: EquiAlt Fund, LLC; EquiAlt Fund II, LLC; EquiAlt Fund III, LLC; and EA  
7 SIP, LLC (collectively, the "Funds.") The parent company, the management, and the Funds will  
8 hereinafter be referred to as "EquiAlt."

9 17. The Funds issued securities in the form of fixed-rate debentures (the "EquiAlt  
10 Securities.") The EquiAlt Securities are not nationally traded securities, and they are not issued by  
11 an investment company registered, or that has filed a registration statement, under the Investment  
12 Company Act of 1940, and as such, the EquiAlt Securities are not covered securities within the  
13 meaning of 15 U.S.C. § 77p(3) or 77r(b)(1)-(2).

14 18. Defendants and EquiAlt pursued a conspiracy to accomplish the wrongs  
15 complained of herein. Defendants were aware that EquiAlt was misusing and misappropriating  
16 investor funds, and that they planned to misuse and misappropriate investor funds, and that  
17 Defendants agreed with EquiAlt and others and intended that the misuse and misappropriation of  
18 investor funds be committed. Defendants and EquiAlt acted in furtherance of the objectives of the  
19 conspiracy as co-conspirators.

20 19. Defendants aided and abetted EquiAlt in committing the wrongs complained of  
21 herein. Defendants were aware of EquiAlt's misconduct and Defendants gave substantial  
22 assistance or encouragement to EquiAlt and Defendants' conduct was a substantial factor in  
23 causing harm to Plaintiff and the Class members.

24 20. Defendants were the agents of EquiAlt in that they represented EquiAlt in  
25 effecting or attempting to effect purchases or sales of securities in California and they materially  
26 aided in the act or transaction constituting the violation. EquiAlt gave Defendants authority to act  
27 on its behalf, and Defendants were acting within the scope of their agency when they harmed  
28 Plaintiff and the Class members.

1 **V. BACKGROUND OF INVESTMENTS**

2 **A. Defendant Mohr Solicited Mar and Others to Invest in EquiAlt**

3 21. On April 25, 2018, Plaintiff received an email solicitation from BMI inviting  
4 potential investors to one of three upcoming investment seminars in San Mateo (May 15),  
5 Berkeley (May 16), and Walnut Creek (May 17). The email advertised “Exciting News” about  
6 investment opportunities including: (a) a new life settlement product; (b) investments earning 8-  
7 10% in as little as one year; (c) investments that are liquid within 60 days; and (d) investment  
8 opportunities outside the stock market. The email was sent to a number of California residents.

9 22. Plaintiff Mar responded to BMI’s emailed solicitation and attended the May 15  
10 seminar at Paul Martin’s restaurant at Hillsdale Shopping Center in the city of San Mateo.

11 23. On May 16, 2018, Defendant Mohr told Plaintiff via email that EquiAlt offer is  
12 “8% for 4 years on a \$25k minimum investment. 10% APR on \$100k+ investment. You can  
13 invest cash or IRA. There is a 60 day liquidity notice, meaning you request your funds at any time  
14 and get them within 60 days.” (**Exhibit A.**)

15 24. Plaintiff would learn that EquiAlt was offering loans in the form of fixed-rate  
16 debentures. Defendant Mohr provided EquiAlt’s marketing materials as an attachment to May 16  
17 email. (**Exhibit B.**) The marketing materials included claims about the safety, security, and low  
18 risk profile of the EquiAlt Securities, including “no risk of loan default” and that “EquiAlt has  
19 never lost investor dollars.”

20 **EquiAlt Overview**

21 We understand that there are several strategies and goals in the area of  
22 Real Estate investing. Based on our experience, we offer education and  
23 offerings that are institutional-grade quality with no risk of loan default on  
EquiAlt’s “No Debt” platform. Available products for investors range from  
totally passive to the traditional active.

24 **Historical Performance**

25 **Historic return to investors:**

26 **EquiAlt has never lost investor dollars since inception**



1           30. Plaintiff and the Class were persuaded to purchase investments with the promise of  
2 generous returns, with no risk of loan default, from a company who has never lost investor dollars  
3 over ten years and hundreds of millions of dollars' worth of real estate deals. Plaintiff agreed to  
4 invest part of his retirement income in EquiAlt Securities.

5           31. On June 7, 2018, Plaintiff Mar met with Defendant Mohr at Mohr's office in San  
6 Mateo located at 951 Mariners Island Boulevard, Suite 300.

7           32. Defendant Mohr made representations to Plaintiff about the safety, quality, and  
8 merits of the EquiAlt Securities. Plaintiff, by his words and conduct, represented that the EquiAlt  
9 Securities were a safe way to generate high returns on investment with low risk.

10           33. Defendant Mohr provided the paperwork to facilitate Plaintiff's investment in the  
11 EquiAlt Securities. Mohr did not provide financial statements for EquiAlt, LLC or EquiAlt Fund,  
12 LLC, the issuer of the EquiAlt Securities. Instead, Mohr provided a Prospective Purchaser  
13 Questionnaire, a Private Placement Memorandum, and a uniform Subscription Agreement for  
14 EquiAlt Fund, LLC ("Subscription Agreement.")

15           **B. The Uniform Subscription Agreement Signed by Plaintiff Mar and Others**

16           34. The uniform Subscription Agreement stated that EquiAlt Fund, LLC was seeking  
17 to issue "up to a maximum of One Hundred Million (100,000,000) units of Class A membership  
18 (the 'Maximum Offering') to certain Accredited Investors . . ." at a price of ten dollars per unit.

19           **(Exhibit E.)**

20           35. The Subscription Agreement stated that "The Units are being sold through  
21 [EquiAlt, LLC] without commissions." (*Id.* at ¶ 3.7(B).) The agreement also states that EquiAlt  
22 Fund, LLC "will pay finder's fees only in compliance with applicable law." (*Id.* at ¶ 6.6.)

23           36. The Subscription Agreement stated that Plaintiff Mar should have received  
24 EquiAlt's Offering Documents including:

25           an executive summary of this offering, a copy of [EquiAlt Fund, LLC's] operating  
26 agreement, an accredited investor questionnaire, this Agreement and the Risk  
27 Factors incorporated into the Agreement, as such may have been amended or  
28 supplemented from time to time (collectively, the "Offering Documents")

1 37. Defendant Mohr did not provide the operating agreement or “The Risk Factors  
2 incorporated into the Agreement.”

3 **C. The Private Placement Memorandum Signed by Plaintiff Mar and Others**

4 38. The Private Placement Memorandum (“PPM”) provided by Mohr merely set out  
5 the terms of the debenture being issued by EquiAlt Fund, LLC. For Plaintiff Mar’s \$100,000.00  
6 investment, EquiAlt Fund, LLC promised to repay the principal amount, plus ten percent annual  
7 interest on the unpaid principal amount, for 48 months. (**Exhibit F.**)

8 39. The PPM referred to the debenture as a “Loan.” (*Id.* at ¶¶ 7, 11.)

9 40. The loan was to commence on July 12, 2018 for a maturity date of “July 2022.”

10 41. The PPM provided by Mohr did not include any information about EquiAlt’s  
11 financial statements, EquiAlt’s intended use of the offering proceeds, risk factors, conflicts of  
12 interest, offering expenses, or the amount of selling compensation that will be paid to the manager  
13 and its affiliates.

14 **D. Plaintiff Mar Purchased the EquiAlt Debentures Through Defendant Mohr**

15 42. Plaintiff Mar decided to purchase the EquiAlt security based on EquiAlt and  
16 Defendants’ representations about the safety, quality, and merits of the EquiAlt Securities.

17 43. On June 7, 2018, Plaintiff Mar signed the Prospective Purchaser Questionnaire,  
18 PPM, and Subscription Agreement while at Defendant Mohr’s office in San Mateo. Plaintiff Mar  
19 purchased 10,000 units for a total investment of one hundred thousand dollars (\$100,000.00). (See  
20 **Exhibit E**, *supra*.)

21 44. At the June 7 meeting, Defendant Mohr never disclosed that he would receive a  
22 commission on the sale of the EquiAlt Securities.

23 45. Plaintiff Mar opened an account with IRA Services Trust Company at Defendant  
24 Mohr’s direction for the purpose of facilitating Plaintiff’s EquiAlt investment.

25 46. On July 9, 2018, Plaintiff Mar transferred \$100,000.00 from his IRA Services  
26 Trust account to EquiAlt.

27 47. The Subscription Agreement was agreed to and accepted as of June 13, 2018 and  
28 signed by EquiAlt, LLC, the manager of EquiAlt Fund, LLC.

1           48.     The PPM was executed on July 12, 2018 by EquiAlt Fund, LLC, the manager of  
2 EquiAlt Fund, LLC and signed by Rybicki. The PPM stated that the Holder of the loan was “IRA  
3 Services Trust Company FBO Robert G. Mar Traditional IRA.”

4           **E.     Defendant Mohr is not Qualified to Sell the EquiAlt Securities**

5           49.     Plaintiff Mar never communicated with Davison, Rybicki, or any other EquiAlt  
6 representative before investing in the EquiAlt Securities. Defendant Mohr was the sole  
7 salesperson of the EquiAlt Securities.

8           50.     Mohr is not registered as a broker-dealer in California. According to the financial  
9 Industry Regulatory Authority (“FINRA”), Mohr had been registered broker-dealer ten years  
10 earlier while employed by with Midamerica Financial Services Inc. Mohr received his license  
11 after passing the Uniform Securities Agent State Law Examination (Series 63), administered by  
12 FINRA, on August 31, 2009. Mohr’s license expired in 2010 and he has not been licensed since.

13           51.     On or about October 22, 2018, the State of California Department of Business  
14 Oversight issued a Desist and Refrain Order (the “DBO Order”) to Defendants Mohr and BMI for  
15 selling, *inter alia*, EquiAlt Securities without the proper certification in violation of California  
16 Corporations Code section 25210. (**Exhibit G.**)

17           52.     According to the DBO Order, Defendants had been offering, selling, and effecting  
18 transactions in EquiAlt Securities since at least 2017. “At least 10 California investors transferred  
19 over \$400,000.00 to EquiAlt through the assistance of BMI and Mohr, some using retirement  
20 funds, for 36 to 48 months in exchange for a profit of at least 8% to 10% per annum. BMI and  
21 Mohr hosted dinners with California investors and the vice president of EquiAlt to effect  
22 transactions in securities in the form of investment agreements in EquiAlt.” (*Id.* at ¶ 3.)

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1 53. The Commissioner found that Defendants did not have a certificate to act as a  
2 broker-dealer under section 25210 of the California Securities Law of 1968, and that:

3 Based on the foregoing findings, the Commissioner is of the opinion that Ben Mohr, Inc. and  
4 Benjamin Charles Mohr are subject to the laws regulating broker-dealers under Corporate Securities  
5 Law of 1968, and has affected transactions in, or induced, or attempted to induce the purchase or sale  
6 of, securities as broker-dealers, without having first applied for and secured from the Commissioner a  
7 certificate authorizing these persons to act in that capacity, in violation of CSL section 25210.

8 Pursuant to CSL section 25532, Ben Mohr, Inc. and Benjamin Charles Mohr are hereby  
9 ordered to desist and refrain from conducting business as a broker-dealer, unless and until  
10 certification has been made under said law or unless exempt.

11 This Order is necessary, in the public interest, for the protection of investors and consistent  
12 with the purposes, policies and provisions of the Corporate Securities Law of 1968.

13 54. Defendants never told Plaintiff Mar or the Class that they needed a license to sell  
14 the EquiAlt securities, and Plaintiff and the Class members did not learn of the DBO order until  
15 after the EquiAlt Ponzi scheme was uncovered in February 2020.

16 55. When confronted with the DBO order in April 2020, Defendant Mohr said, "as  
17 part of an agreement with DBO I agreed that until I got further licensing I would not promote  
18 EquiAlt any further, hence the Cease & Refrain Order."

19 **F. The SEC Action Against EquiAlt**

20 56. On February 11, 2020, the Securities and Exchange Commission filed an  
21 emergency action against EquiAlt, LLC, its funds, Davison, and Rybicki in the United States  
22 District Court for the Middle District of Florida (the "SEC Action.")

23 57. According to the SEC, EquiAlt's offering documents represented that the funds  
24 would pool 90% of investor money to purchase distressed real estate, rent or flip the properties,  
25 and pay 8–10% returns to investors. In reality, EquiAlt was using only about half of investor  
26 money on real estate and misappropriating the other half.

27 58. The funds managed by EquiAlt—including EquiAlt Fund, LLC—have lost money  
28 every year since inception. EquiAlt's business is almost solely reliant on new investor money to  
29 funds its operations.

30 59. By December 2020, EquiAlt will owe investors over \$167.3 million including



1 \$13.7 million in interest alone. As of the fall of 2019, they had less than \$7 million in cash.  
2 EquiAlt's primary assets are real property.

3 60. EquiAlt supposedly owns approximately 260 properties. EquiAlt records the  
4 property values in two ways: by "Best Value" and by "Market Value." Even using EquiAlt's Best  
5 Value, EquiAlt is operating from a position of negative equity with a portfolio worth \$145  
6 million. Using EquiAlt's Market Value, their real estate portfolio value is \$78 million, leaving the  
7 company and funds \$82 million short of obligations that will be owed to investors as of December  
8 2020. (Exhibit H.<sup>1</sup>)

9 61. On February 14, 2020, the District Court for the Middle District of Florida froze  
10 the assets of EquiAlt, LLC, its funds, Davison, and Rybicki, and appointed a Receiver to take  
11 possession of EquiAlt's assets and investigate the true value of losses suffered by Plaintiff Mar  
12 and the members of the Class.

13 **VI. CLASS ALLEGATIONS**

14 62. Plaintiff brings this action as a class action, pursuant to California Code of Civil  
15 Procedure § 382, on behalf of a Class defined as follows:

16 All California residents who purchased, or who currently hold, EquiAlt securities  
17 obtained through a transaction effected by Defendants between January 1, 2017  
18 and the present. "EquiAlt Securities" shall mean debentures issued by EquiAlt,  
19 LLC; EquiAlt Fund, LLC; EquiAlt Fund II, LLC; EquiAlt Fund III, LLC; or EA  
SIP, LLC.

20 63. Excluded from the Class are Defendants and any entity in which Defendant Mohr  
21 has a controlling interest, as well as their officers, directors, and employees, and defendant  
22 Mohr's heirs, successors, and assigns. Also excluded from the Class is EquiAlt, as well as their  
23 officers, directors, and employees, successors, and assigns.

24 64. This action is properly maintainable as a class action.

25 65. The Class is so numerous that joinder of all members is impractical, and the class  
26 action procedure is more practical, cost-effective, inclusive, and efficient than multiple lawsuits

27 <sup>1</sup> Exhibit H is the Declaration of Mark Dee in support of Plaintiff Securities and Exchange Commission's  
28 Emergency Ex Parte Motion and Memorandum of Law for Temporary Restraining Order, Asset Freeze, and Other  
Injunctive Relief, *SEC v. Davison, et al.* (M.D. Fla, Feb. 11, 2020, No. 8:20cv-00325-MSS-AEP). Exhibit F here  
includes Exhibit 6 attached to Mark Dee's Declaration.

1 on the common questions of law and fact that unite the class. Plaintiff is informed and believes  
2 that Between twenty and fifty California residents and entities purchased EquiAlt Securities  
3 through transactions effected by Defendants. The exact number and identities of those investors  
4 can be readily ascertained from Defendants' records.

- 5 66. There are questions of law and fact which are common to the Class, including:
- 6 a. Whether the debentures issued by EquiAlt and their funds were securities
  - 7 within the definition of California Securities Laws.
  - 8 b. Whether Defendants were acting as broker-dealers by promoting the EquiAlt
  - 9 Securities.
  - 10 c. Whether Defendants were required to be licensed by the Commission.
  - 11 d. Whether Defendants were licensed by the Commission or exempt from
  - 12 licensure requirements.
  - 13 e. Whether Defendants were engaged in a conspiracy with EquiAlt or aided and
  - 14 abetted EquiAlt's misconduct.
  - 15 f. Whether Defendants committed fraud.
  - 16 g. Whether Defendants made negligent misrepresentations to purchasers of the
  - 17 EquiAlt Securities.
  - 18 h. Whether the Class is entitled to damages due to Mohr's wrongful conduct.

19 67. Plaintiff is committed to prosecuting this action and has retained competent  
20 counsel experienced in litigation of this nature.

21 68. The Claims of Plaintiff are typical of the claims of other members of the Class and  
22 Plaintiff has the same interests as the other members of the Class. Plaintiff will fairly and  
23 adequately represent the Class.

24 69. The prosecution of separate actions by individual members of the Class would  
25 create a risk of inconsistent or varying adjudications with respect to individual members of the  
26 Class which would establish incompatible standards of conduct for Defendants, or adjudications  
27 with respect to individual members of the Class which would, as a practical matter, be dispositive  
28 of the interests of other members not parties to the adjudications or substantially impair or impede

1 their ability to protect their interests.

2 70. A class action is superior to all other available methods for the fair and efficient  
3 adjudication of this controversy since joinder of all members is impracticable. As the damages  
4 suffered by individual Class members may be relatively small, the expense and burden of  
5 individual litigation make it impractical for members of the Class to individually redress the  
6 wrongs done to them. There will be no difficulty in the management of this action as a class  
7 action.

8 71. The claims arise under California law, the Class will have less than 100 members,  
9 and the amount in controversy will not exceed \$5,000,000.00 exclusive of interests and costs.

10 **VII. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**  
12 **Violations of Corporations Code § 25210**  
13 **(Against all Defendants)**

14 72. Plaintiff hereby incorporates all the foregoing paragraphs.

15 73. The debentures issued by EquiAlt Fund, LLC and purchased by Plaintiff and the  
16 Class members are securities within the meaning of the California Securities Law of 1968  
17 (“CSL”).

18 74. Defendants were broker-dealers in the EquiAlt Securities pursuant to section  
19 25004 of the CSL in that they were persons engaged in the business of effecting transactions in  
20 securities in this state for the account of others or for their own account.

21 75. Defendants effected a transaction in, or induced, or attempted to induce, the  
22 purchase of EquiAlt Securities in this state by Plaintiff and the Class members.

23 76. Defendants had not applied for and secured from the Commissioner on Business  
24 Oversight (“Commissioner”) a certificate authorizing Defendants to act as a broker-dealer.

25 77. As a result of Defendants’ wrongful conduct, Plaintiff and the Class members have  
26 suffered and continue to suffer economic losses and other general and specific damages.

27 **SECOND CAUSE OF ACTION**  
28 **Uniform Fraud and Deceit**  
**(Against all Defendants)**

78. Plaintiff hereby incorporates all the foregoing paragraphs.



1 and merits of the EquiAlt Securities; (b) EquiAlt's past financial performance; and (c) EquiAlt's  
2 solvency.

3 88. Defendants knew the statements were false when they made them, or they made  
4 the representations recklessly and without regard for their truth.

5 89. Defendants intended that Plaintiff and the Class members would rely on the  
6 representations.

7 90. Plaintiff and the Class members justifiably relied on the false statements and  
8 misrepresentations of fact and, as a result, sustained damages.

9 91. Defendants, directly and indirectly, made substantially similar misrepresentations  
10 to Plaintiff and each member of the Class.

11 92. The aforementioned acts of Defendants were done maliciously, oppressively, and  
12 with intent to defraud, and Plaintiff and the Class members are entitled to punitive and exemplary  
13 damages in an amount to be shown according to proof at the time of trial.

14 93. As a result of Defendants' wrongful conduct, Plaintiff and the Class members have  
15 suffered and continue to suffer economic losses and other general and specific damages.

16 **FOURTH CAUSE OF ACTION**  
17 **Common Negligent Misrepresentation**  
18 **(Against all Defendants)**

19 94. Plaintiff hereby incorporates all the foregoing paragraphs.

20 95. Defendants, directly or through their agents and employees, including through  
21 EquiAlt, made false representations to Plaintiff Mar and the Class members about: (a) the safety,  
22 quality, and merits of the EquiAlt Securities; (b) EquiAlt's past financial performance; and (c)  
23 EquiAlt's solvency.

24 96. Defendants had no reasonable grounds for believing that the representations were  
25 true when Defendants made them.

26 97. Defendants intended that Plaintiff and the Class members would rely on the  
27 representations.

28 98. Plaintiff and the Class members justifiably relied on the false statements and  
misrepresentations of fact and, as a result, sustained damages.

1 99. Defendants, directly and indirectly, made substantially similar misrepresentations  
2 to Plaintiff and each member of the Class.

3 100. As a result of Defendants' wrongful conduct, Plaintiff and the Class members have  
4 suffered and continue to suffer economic losses and other general and specific damages.

5 WHEREFORE, Plaintiffs pray for relief as set forth below.

6 **VIII. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays that this Court enter judgment in favor of him and the  
8 Class on every claim for relief set forth above as follows:

9 1. Declaring this action to be a proper class action and certifying Plaintiff as the Class  
10 Representative;

11 2. For rescission of the purchase of EquiAlt Securities by Plaintiff and the Class;

12 3. For return of the consideration paid for the securities by Plaintiff and the Class,  
13 plus interest at the legal rate;

14 4. For reasonable attorney's fees and costs;

15 5. For an award of compensatory damages to Plaintiff and the Class against all  
16 Defendants, jointly and severally, for all damages sustained as a result of Defendants'  
17 wrongdoing, in an amount to be proven at trial, including interest thereon.

18 6. An award of punitive damages and restitution where available;

19 7. Such further and additional relief as the Court deems proper.

20  
21 Dated: May 6, 2020

**COTCHETT, PITRE & McCARTHY, LLP**

22 By:   
23 DONALD J. MAGILLIGAN  
*Attorneys for Plaintiff*

24 **VII. JURY DEMAND**

25 Plaintiffs demand trial by jury on all issues so triable.

26 Dated: May 6, 2020

**COTCHETT, PITRE & McCARTHY, LLP**

27 By:   
28 DONALD J. MAGILLIGAN  
*Attorneys for Plaintiff*

# **EXHIBIT A**

**From:** benmohr@benmohrinc.com,

**To:** [REDACTED]

**Subject:** Annuity Info & Equialt Real Estate Fund Info

**Date:** Wed, May 16, 2018 2:12 pm

**Attachments:** 20180515 Ben Mohr. Robert Mar 400K 222 7% 75-79 then income.pdf (551K),  
20180515 Ben Mohr. Robert Mar 400K 222 6% 2-10 then income.pdf (553K), EquiAlt Overview 2018.pdf (2131K)

---

Hi Robert,

Attached are two reports on the annuity I discussed last night. These reports are based on a \$400k/ 1035 exchange of your Vanguard Variable Annuity. Please see page 8 of each report..

- 1.) 1<sup>st</sup> report shows you taking withdraws at age 69 starting at \$24k/year then at age 80 starts to increase.
- 2.) 2<sup>nd</sup> report shows you taking withdraws at age 75 of \$28k/yr with the amount increasing to \$35k+ by age 80

Again there are no annual fees and if you pass away your family gets the income value as a death benefit.

→ You also put on your contact sheet last night that you wanted additional info on the Equialt Real Estate Fund. I have included their 16 page report.

→ Again there offer is 8% for 4 years on a \$25k minimum investment. 10% APR on \$100k+ investment. You can invest cash or IRA. There is a 60 day liquidity notice, meaning you request your funds at any time and get them in within 60 days.

We are scheduled to meet Friday the 25<sup>th</sup> @ 1pm. Please let me know if you have any questions or need additional info before the meeting. I'll bring this info and we can review on the 25<sup>th</sup>.

Thanks,

Ben Mohr

Retirement Planner

CA Lic# 0F93677

6216 Lakeview Circle

San Ramon, CA 94582



4/10/2020

Annuity Info & Equialt Real Estate Fund Info

(925)895-5467

[benmohr@benmohrinc.com](mailto:benmohr@benmohrinc.com)

[benmohrinc.com](http://benmohrinc.com)

# **EXHIBIT B**



## **EQUIALT LLC & SUBSIDIARIES**

Las Vegas–Phoenix–Tampa Area

Nothing herein represents an offer to sell securities. These materials are for informational purposes only. Any investment into EquiAlt LLC or its affiliates (collectively, the “Fund”) must be made through the Fund’s standard private offering documents. Past performance does not guarantee future performance. All figures referenced herein are accurate as of the date of the document and may change over time.

# EquiAlt Overview

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We understand that there are several strategies and goals in the area of Real Estate investing. Based on our experience, we offer education and offerings that are institutional-grade quality with no risk of loan default on EquiAlt's "No Debt" platform. Available products for investors range from totally passive to the traditional active.



## EQUITY

EquiAlt researches, acquires and manages opportunistic and distressed Real Estate assets for the income and equity. EquiAlt's management has directly acquired over 200 million dollars and liquidated over 300 million dollars in distressed Real Estate since 2008 in over 1,000 transactions.



## HOLDINGS

EquiAlt maintains income properties that have been stabilized from distressed acquisitions. These specific properties are part of a convergent investment strategy based on generational demographic trends in Real Estate. These properties from time to time are offered in bulk to end investors in groups of ten units or greater.



## NO DEBT

Unlike many other real estate funds or investment companies, EquiAlt does not leverage its real estate purchases with any bank debt. EquiAlt owns its properties outright, distinguishing it from others. Accordingly, there is no risk of a loan default, even in the worst economic downturn. The manager reserves the right to deploy traditional debt, however, since the beginning of operations in 2008, the company has never taken a loan to purchase or finance a property.

# Core Values

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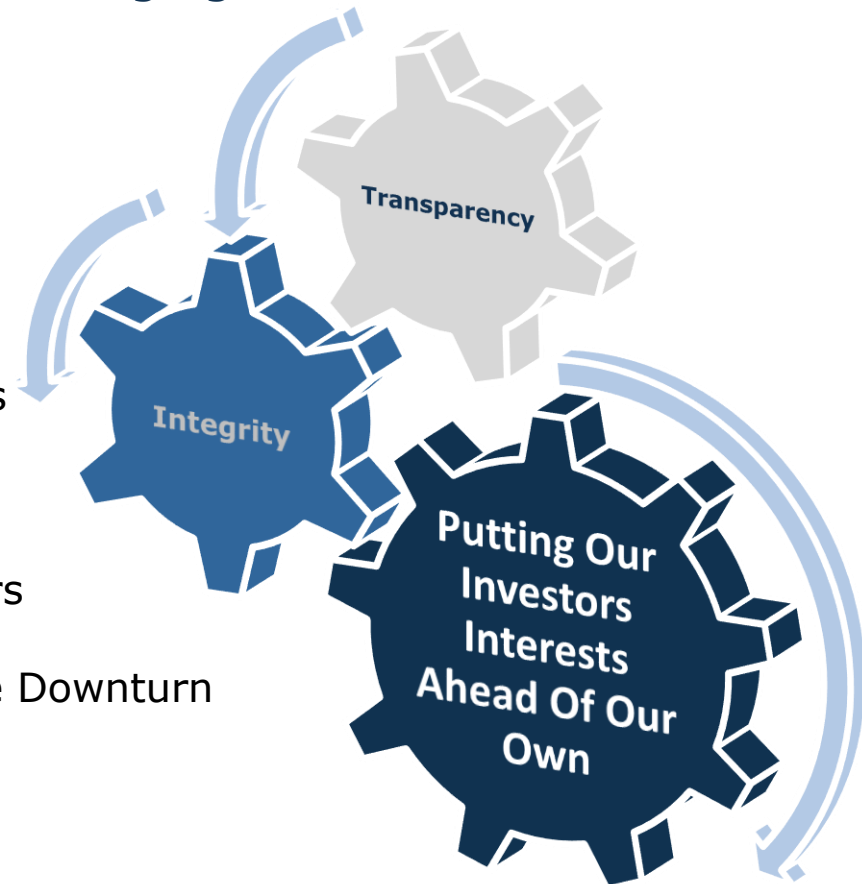
Contact Information

We believe that it matters, not only what strategy the investment manager subscribes to, but perhaps more importantly, the corporate values and individual character of the team members that manage your capital.

Our core values are central to who we are individually and as a team. We are passionate about these ideas and they are the foundation that we build upon in managing this fund.

## EquiAlt Highlights:

- 📍 **NO DEBT** No Third Party Risk
- 📍 Proven Risk Management Strategies
- 📍 Invest In Tangible Assets
- 📍 Alignment Of Interest With Investors
- 📍 Successful Track Record During The Downturn
- 📍 Diverse Stabilized Income Streams



# Historical Performance

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## Historic return to investors:

- EquiAlt has never lost investor dollars since inception
- Returns are fixed to your individual investment so you know what to expect for your portfolio
- Both growth and monthly income investment terms are offered based on your needs and suitability
- Directly acquired over \$200 million and liquidated over \$300 million in distressed Real Estate since 2008
- Have successfully completed over 1,000 transactions



# Fund Executive Summary

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## Income Producing

- Monthly income or growth

## Leverage

- Zero leverage, no financing on assets inside the fund

## Fixed Rate Of Return

- 8% for growth or 8% monthly income

## Transparency

- Fully committed to our investors and their best interest

## Private Placement Memorandum

- Stabilized net asset value with fixed return

# Fund Terms

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## Terms:

Yield to Investors	8%
Minimum Investment	\$25,000
Maximum Fund Size	\$150 Million
Lock Up Period	36 - 72 Months
Liquidity	60 days notice
Income Distribution Options	Monthly Payments or Growth Account

## Service Providers:

Fund Administrator	EquiAlt, LLC
Banking	Wells Fargo
Legal	Paul R. Wassgren Fox Rothschild LLP 3800 Howard Hughes Parkway Las Vegas, NV 89169 (702) 262-6899
CPA	Gino Mauriello & Co 5545 Mountain Vista St #E Las Vegas, NV 89120



# Strategy Overview

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This aspect of the funds activity are based on Macro Demographic Trends in the United States as (in our opinion) best explained by Harry S. Dent.

## Value:

- Equity on acquisition (not relying on future appreciation or speculation).
- Fixed assets providing cash flow.
- Real Estate as an inflation hedge.
- Product is currently attractive for 'non-wealthy' boomers who retire en masse until 2024 who still want independence of separate living conditions without the burden of ownership.
- Product is attractive for 'echo boomers' as first time buyers as an exit strategy.
- End product is attractive to institutional investors buying pools of performing assets.

## Risk:

- Assets are significantly distressed, physically unstable with title work to complete to make fully marketable in traditional sales outlets such as MLS through Realtors.
- Average repair per unit is 20% of current value.
- Value does not account for the recent full repairs that make our product above market value as an updated new, fully repaired product.

## Summary:

EquiAlt is currently focused in the Single Family Market and Small Multi-Unit Properties, as the market is tightening we are branching out to more aggressive bidding towards higher volume purchases. As the market strengthens, this will include apartment complexes and condo units. EquiAlt's goal has always been to add to our base, while maintaining a "no-debt" platform, minimizing market exposure, and securing a fixed income as monthly cash flow.

By acquiring and maintaining what most demographic research points to as generally the brightest potential area in all Real Estate, management hopes to provide current, and future value.

An excerpt from most recent newsletter from H.S. Dent and Rodney Johnson:

*"Then there's the lower-income buyer..."*

*This market is obviously the smallest in dollar volume. It is also different. These households keep steadily qualifying for mortgages and house affordability into retirement.*

*This segment will keep the lower and middle end of the housing markets relatively stronger in the coming years. In fact, coupled with the delayed, so slowly rising tide of starter home buying by the Echo Boomers, it will represent the strongest and most buoyant market in the decade ahead.*

*This segment will keep the lower and middle end of the housing markets relatively stronger in the coming years. In fact, coupled with the delayed, so slowly rising tide of starter home buying by the Echo Boomers, it will represent the strongest and most buoyant market in the decade ahead."*

# Strategy Overview

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## Why EquiAlt?

- Depth of experience in Real Estate lending markets
- Successfully liquidated over \$300 million in distressed Real Estate since 2008
- Over 1,000 successful transactions
- Nationwide capabilities, able, and ready for all markets
- Direct alignment with our clients
- Highly seasoned team of investment professionals
- Conservative underwriting methodology
- Reg D Fund offering, on file with SEC
- Currently operating three successful private placement funds
- One of a few management teams that have operated successfully throughout the downturn of our “great recession”

# Strategy Overview

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## Key Points:

- ④ Primary risk management tool: conservative underwriting
- ④ Sector and property diversification: key to managing risk within portfolio
- ④ Senior management inspects every property before purchase
- ④ Preference for income producing properties
- ④ Maximum exposure is less than 70% current market value

# Strategy Overview

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## Investment Ideas; Better Investor Positioning:

Opportunity to make investments in whole distressed Single Family Real Estate focused on equity on acquisition buying and buy-to-rent strategies. This investment strategy positions the investment for several factors from a strong buy side positioning allowing for:

- 1. Assets are bought significantly under current value:** The 2012 average acquisition price was 31% of current value, significantly more equity than the average distressed unit in US. Properties are purchased individually to increase the equity on acquisition as bulk buying masks the laggards in a group. This practice significantly reduces principle risk and allows for much higher than normal ROI from the market rents compared to actual cash outlay.
- 2. Asset are immediately brought to cash flowing:** (28 day average). Upon acquisition every property is addressed for any necessary rehabilitation to stabilize and repair the property to make it a marketable residence.
- 3. Assets are targeted toward specific end users:**
  - A.** Aging baby boomers, manageable size property, SFR freedom, SFR quality, a more stable fixed income renter.
  - B.** Echo Boomers are the next significant generational consumer wave; more rent type options; rent, rent to own, lease option, financed, all for the future first time homebuyers.
- 4. Assets are non-leveraged:** Properties carry no debt burden. This allows for higher yield to investors and increased management flexibility in down markets.
- 5. Multiple exit strategies:** Units exist in the market as fully repaired, modernized functioning cash flowing assets. These can be sold individually or in blocks to institutional investors.

# Strategy Overview

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## Forced Pragmatism vs. The American Dream:

# Rent VS. Own

**Real cost of home ownership:** With no home price appreciation prospective buyers analyze all cost of ownership; property taxes, HOA dues, maintenance / repair costs. Notable: property taxes will be under pressure as municipalities look to raise rates to balance stressed budgets. *Transaction costs; typically overlooked and take 10% off any arms length transaction - a price of mobility or cashing out.*

**Demographic effects:** Baby boomer households have begun the shift to empty nesters, downsizing, smaller vacation home buyers. Gen Y is growing pressing the need for entry level housing, this is an 80M- group whose job growth was 3x's the national average in 2010 and the average household size is declining as a % of households. This coupled with the psychological effect of Gen Y's raised in a housing bust should alter projections.

**Economic obstacles:** Hurdles to purchasing are; real downpayment requirements, stricter FICO and underwriting guidelines. The great recession has leveled many entry level owners with damaged credit profiles and longer term unemployment have drained cash down payments. Rising student loan debt with more college graduates with more debt than previous generations pressure future purchases.

**Home Price Declines 30%-50%:** Historic declines have altered consumer thinking on housing as an investment. Foreclosure backlog increase fears of further value decreases discourages buyers with down payment risk.

**Economic drags:** Long-term unemployment and labor insecurity raise the need for mobility. Rising gas prices along with environmental issues are increasing demand for residences close to transit and denser locations away from the exurbs.

# Portfolio Asset Description

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- ④ Underlying assets: single family residences, multi-family, commercial
- ④ Zero leverage, no debt encumbrances
- ④ Conservative purchase-to-value– maximum 70%
- ④ Types of Real Estate considered
  - Preference for income-producing assets
- ④ Fund activities:
  - Primarily in high opportunistic Real Estate
  - Tax certificates
  - Tax sale properties
  - Trustee sale properties
  - Bank sale properties
  - Trust deeds
- ④ 36 - 72 month terms

# FAQ

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## **What happens if the market repeats itself and turns back to what we saw in 2008 – 2010?**

During the downturn, EquiAlt's management successfully maintained an average annual return of 24.68% in the portfolios, from 2008 - 2010! A downturn isn't expected, but if it were to happen, EquiAlt's management is prepared and has proven successful that it can make the proper decisions to result in profitable return.

## **Are there individual Insurance policies or how is the properties protected from natural or unnatural disasters?**

There is a blanket policy through National Real Estate Insurance Group and Affinity Group Management that cover for such disasters.

## **Can I use my 401k / IRA retirement account to invest into the fund?**

Yes, the account is moved into a self-directing retirement account which is then invested into EquiAlt Fund LLC. The process is simple, a form is filled out, and the money is transferred to the self-directed IRA account and then invested into EquiAlt Fund LLC. The process is handled this way to make sure there are no tax complications or charges.

## **Do I receive statements for my account?**

Yes, quarterly statements are mailed out and can be emailed on request

**Can I contact EquiAlt's CPA or Attorney?** Absolutely, both are independent from EquiAlt LLC and can give you some insight into the fund and its activities.

## **Does EquiAlt buy in blocks or in bulk?**

NO! We have "Boots on the ground" which is to say we inspect each and every property before purchase to find out the pluses and negatives before we own it. We don't have any pressure to just buy property for the purpose of buying property like the bigger hedge funds. We have intentionally stayed small to keep the fund you are investing in strong!

# Executive Team Biographies

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## **Brian Davison – Chief Executive Officer**

Brian Davison's Real Estate career began in 1994 in North County San Diego. He has hands-on experience in a variety of functions in the Real Estate and mortgage industries: encompassing management, loan renegotiation at a publicly traded REIT, regional Vice President of a private residential mortgage company, the broker-owner of a multi-state branch correspondent residential loan origination company with in-house underwriting and outbound marketing support system, and Vice President of a private lending company. Brian has held Real Estate and/or mortgage broker licenses in California, Nevada, and Florida, with additional work in the Arizona and Colorado markets. Brian has facilitated over \$1.5 billion in mortgage and Real Estate transactions, is an active investor in a variety of markets and is host of "The Cash Flow Show." In early 2009, he founded Invest REO LLC dba The Cash Flow Store, an opportunistic distressed Real Estate investment company. He currently holds a State of Nevada Real Estate License.



# Executive Team Biographies

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## Barry M. Rybicki – Managing Director

Barry has over 14 years of experience in Real Estate lending. He has lived in Phoenix, Arizona for the past 21 years, originally coming to Arizona from Nebraska to attend Arizona State University where he majored in Accounting and minored in Marketing. He served as President to a bank in Arizona, and managed a \$10,000,000 line of credit. This capacity required; Real Estate evaluation, risk management, customer service, underwriting, appraisal review. He has handled over \$540,000,000 in residential deeds of trust in the Phoenix market and continues to have an overall understanding of the residential sectors inside of Maricopa County. Barry also served as Vice President for Cole Management LLC, where he gained significant experience in originating, structuring and negotiating deals, developing and implementing business strategies, assessing market and competitive issues, and raising capital from debt and equity providers. He remains actively involved in the community donating his time to coach youth sports and is currently the Treasurer of Pinnacle High School's Boys Soccer Team.

# Contact Information

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**1-855- EquiAlt**

**[www.EquiAlt.com](http://www.EquiAlt.com)**

**EQUIALT LLC & SUBSIDIARIES**

Las Vegas-Phoenix-Tampa Area

# **EXHIBIT C**



# EquiAlt Secured Real Estate Income Fund

*An Alternative Real Estate Investment that Creates a Secure Income  
Solution*

## **Frequently Asked Questions**

### **Are these investments risky?**

EquiAlt understands the value of thorough due diligence and conducts thorough underwriting of potential investments in order to reduce the risk in these investments. They only allow investments that meet strict investment criteria. Because properties are owned 100% by the fund with no debt, there is no risk of default. EquiAlt conducts deep underwriting of potential investments and the fundamentals that reduce the risk in these investments. Because EquiAlt owns the properties outright with no loans, risk to your monthly income or return of capital is greatly reduced. Fund investors receive their income from rents from tenants, not mortgage payments from borrowers. Since inception, EquiAlt has redeemed 100% of principal, at maturity, to investors.

### **How does the EquiAlt Secured Real Estate Income Fund screen potential investments?**

The founders of EquiAlt have decades of combined real estate transaction experience and have purchased well over \$1 billion in property. Their buying evaluates the fundamentals and structure of each transaction, the economic environment of the local real estate market, the condition of the property, the quality, reputation and track record of the operator. Only the best quality properties are purchased in the fund. EquiAlt focuses on preserving investors' capital and providing a secure, steady yield generated by rents.

## Is my investment with EquiAlt Secured Real Estate Income Fund secure?

The EquiAlt Secured Real Estate Income Fund is structured so that the investor is protected even if anything were to happen to EquiAlt or its operating partner. One of the benefits of ownership in real estate is that the investment is in a brick and mortar asset, not a financial derivative that is subject to the whims of the stock or bond markets.

## What happens if the real estate market turns down?

EquiAlt's management has successfully navigated real estate downturns before and knows how to deal with them if they were to happen again. Investors will continue to receive their monthly income from rents no matter what the value of the underlying real estate is.

## How are the properties protected from natural or unnatural disasters?

EquiAlt maintains insurance coverage on all of its properties through National Real Estate Insurance Group, Affinity Group Management to cover such disasters.

## Can I use my 401k / IRA retirement account to invest into the Fund?

Yes, an investor's funds can be rolled over from a 401k or IRA at another custodian into a self-directed retirement account that is invested into EquiAlt Fund LLC. The rollover process is simple and the money is transferred to the self-directed IRA account and then invested into EquiAlt Fund LLC. When handled properly, these rollovers are tax-deferred or tax-free.

## What is the equity position on acquisition of each property?

The fund owns 100% of every property it purchased with no debt. Properties are purchased from 30% to 40% below market value.

## Does EquiAlt buy in blocks or in bulk?

No. EquiAlt inspects each property carefully before it is purchased to uncover its plusses and minuses. Many large institutional investors such as hedge funds and pension funds buy huge blocks of real estate and do not have time to inspect each property.

## When will I get my principal back?

The investment term is 36 months. At maturity of your investment, your principal will be returned.

## Who can invest with EquiAlt Secured Real Estate Income Fund?

EquiAlt's investors must be accredited, which means that their net worth must be at least \$1 million excluding the value of their primary residence or they must earn \$200,000 a year as an individual or \$300,000 a year as a married couple.

## Who makes investment decisions in the Fund?

EquiAlt management, LLC acts as the Managing Member, so it manages each investment in the EquiAlt Secured Real Estate Income Fund. The Managing Member has the sole and exclusive right to manage, control and conduct the affairs of the fund including, but not limited to, the distribution of funds to investors, sale and leasing decisions, operational decisions and reporting activities.

## Who manages and maintains the assets?

Each asset will have seasoned asset managers that have the skill, knowledge, and experience to tend to the asset and solve any challenges involving owning real estate. The managers are experts in the field of that particular asset class, whether it's a multi-tenant, single family, or an apartment building.

# Why is this investment only for accredited investors?

The Securities and Exchange Commission (SEC) has provided for certain exemptions in the sale and registration of securities if they are only offered and sold to accredited investors. Accredited investors have to meet minimum income and/or net worth thresholds and are thought to be sophisticated enough to make informed decisions on the merits of any particular investment opportunity. By offering our investments only to accredited investors, EquiAlt and Picasso Group are insuring regulatory compliance.

# Why should I invest in the EquiAlt Secured Real Estate Income Fund?

The main benefit of becoming an Investor in the Fund is that you earn a reliable stream of monthly income for three years and are assured of getting your principal back when the fund liquidates at that time. The Founders of EquiAlt have a combined \$1+ billion of experience in real estate transactions. Their knowledge base allows for only the best investment opportunities to make it to our fund so that you can count on receiving your monthly distributions and return of capital.

Prior to any investment in EquiAlt Fund II, LLC (the "Fund"), prospective investors will be asked to complete and submit an investor questionnaire and other subscription documents for review by the Fund's management and/or legal counsel, and only those persons who qualify as an accredited investor within the meaning of Regulation D may invest. The Fund's web site does not represent an offer of or a solicitation for advisory services under any conditions or a security in any state/jurisdiction of the United States or any country where the product is not registered, notice filed, or exempt. The Fund provides information on its own real estate performance, but prior results are not a guarantee of future results. Any potential customer should carefully consider their own investment objectives and never rely on any single chart, graph or marketing piece to make decisions. EquiAlt is not a broker dealer and does not offer tax or legal advice. Please consult your tax adviser or legal counsel for assistance with your specific needs.

# **EXHIBIT D**





2018



## Alternative Investment Strategies



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**EQUIALT LLC & SUBSIDIARIES** Las Vegas | Phoenix | Tampa Area



*As life changes...*

*so do your goals.*



*We can help.*

## **EquiAlt Overview**

We understand that there are several strategies and goals in the area of Real Estate investing. Based on our experience, we offer education and offerings that are truly investment grade. Available products for investors range from totally passive to the traditional active.



### **EQUITY**

EquiAlt researches, acquires and manages opportunistic and distressed Real Estate assets for the income and equity. EquiAlt's management has directly acquired over 345 million dollars and liquidated over 450 million dollars in distressed Real Estate since 2008 and over 3000 transactions.



### **HOLDINGS**

EquiAlt maintains investment grade income property that has been stabilized from the distressed acquisitions. These specific properties are part of a convergent investment strategy based on generational demographic trends in Real Estate. These properties from time to time are offered in bulk to end investors in groups of ten units or greater.



## Core Values

We believe that it matters, not only what strategy the investment manager subscribes to, but perhaps more importantly, the corporate values and individual character of the team members that manage your capital.

Our core values are central to who we are individually and as a team. We are passionate about these ideas and they are the foundation that we build upon in managing this fund.

### EquiAlt Highlights:

- **NO DEBT - No Third Party Risk**
- Proven Risk Management Strategies
- Invest In Tangible Assets
- Alignment of Interest with Investors
- Successful Track Record During the Downturn
- Diverse Stabilized Income Streams



## Historical Performance

### Historic return to investors:

- **EquiAlt Has NEVER Lost Investor Dollars Since Inception**
- Returns are fixed to your individual investment so you know what to expect for your portfolio
- Several versions are offered based on your needs and suitability
- Directly acquired over \$345 million and liquidated over \$450 million in distressed Real Estate since 2008
- Successfully completed over 3000 transactions

## Fund Executive Summary

**Income Producing** Growth or monthly income

**Leverage** Zero leverage, no financing on assets inside the fund

**Transparency** All assets verifiable thru County Assessor sites

**Private Placement Memorandum** Stabilized net asset value with fixed return

### Fund Terms

#### Terms:

Yield to Investors	8% Growth or Payment
Minimum Investment	\$25,000
Maximum Size Per Fund	\$150,000,000
Lock Up Period	48 - 72 Months
Liquidity	60 days notice
Income Distribution Options	Monthly

#### Service Providers:

Fund Administrator	EquiAlt, LLC
Banking	Wells Fargo

#### **Legal**

Paul R. Wassgren, Partner  
DLA Piper LLP (US)  
2000 Avenue of the Stars  
Suite 400 North Tower  
Los Angeles, California  
90067-4704  
(310)595-3000

#### **CPA**

Gino Mauriello & Co  
5545 Mountain Vista St #E  
Las Vegas, NV 89120



## Strategy Overview

This aspect of the funds activity are based on Macro Demographic Trends in the United States as (in our opinion) best explained by Harry S. Dent.

### **Value:**

- Equity on acquisition (not relying on future appreciation) or speculation
- Fixed assets providing cash flow
- Real Estate as an inflation hedge
- Product is currently attractive for 'non-wealthy' boomers who retire en masse until 2024 who still want independence of separate living conditions without the burden of ownership
- Product is attractive for 'echo boomers' as first time buyers as an exit strategy
- End product is attractive to institutional investors buying pools of performing assets

### **Risk:**

- Assets are significantly distressed, physically unstable with title work to complete to make fully marketable in traditional sales outlets such as MLS through Realtors
- Average repair per unit is 20% of current value.

Value does not account for the recent full repairs that make our product above market value as an updated new, fully repaired product

### **Summary:**

EquiAlt is currently focused in the Single Family Market and Small Multi-Unit Properties, as the market is tightening we are branching out to more aggressive bidding towards higher volume purchases. As the market strengthens, this will include apartment complexes and condo units. EquiAlt's goal has always been to add to our base, while maintaining a "no-debt" platform, minimizing market exposure, and securing a fixed income as monthly cash flow.

By acquiring and maintaining what most demographic research points to as generally the brightest potential area in all Real Estate, management hopes to provide current and future value.

### **Why EquiAlt?**

- Depth of experience in Real Estate lending markets
- Successfully liquidated over \$450 million in distressed Real Estate since 2008
- Over 3000 successful transactions
- Nationwide capabilities, able and ready for all markets
- Direct alignment with our clients
- Highly seasoned team of investment professionals
- Conservative underwriting methodology
- Reg D Fund offering, on file with SEC
- Currently operating three successful private placement funds
- One of a few management teams that have operated successfully throughout the downturn of our "great recession"

# Strategy Overview

## **Key Points:**

- Primary risk management tool: conservative underwriting
- Sector and property diversification: key to managing risk within portfolio
- Senior management inspects every property before purchase
- Preference for income producing properties
- Maximum exposure is less than 70% current market value

## **Investment Ideas; Better Investor Positioning:**

Opportunity to make investments in whole distressed Single Family Real Estate focused on equity on acquisition buying and buy-to-rent strategies. This investment strategy positions the investment for several factors from a strong buy side positioning allowing for:

### **1. Assets are bought significantly under current value:**

The 2012 average acquisition price was 31% of current value, significantly more equity than the average distressed unit in US. Properties are purchased individually to increase the equity on acquisition as bulk buying masks the laggards in a group. This practice significantly reduces principle risk and allows for much higher than normal ROI from the market rents compared to actual cash outlay.

**2. Asset are immediately brought to cash flowing:** (28 day average). Upon acquisition every property is addressed for any necessary rehabilitation to stabilize and repair the property to make it a marketable residence.

### **3. Assets are targeted toward specific end users:**

- Aging baby boomers, manageable size property, SFR freedom, SFR quality, a more stable fixed income renter.
- Echo Boomers are the next significant generational consumer wave; more rent type options; rent, rent to own, lease option, financed, all for the future first time homebuyers.

### **4. Assets are non-leveraged:**

Properties carry no debt burden. This allows for higher yield to investors and increased management flexibility in down markets.

### **5. Multiple exit strategies:**

Units exist in the market as fully repaired, modernized functioning cash flowing assets. These can be sold individually or in blocks to institutional investors.

## Strategy Overview

### Forced Pragmatism vs. American Dream: Rent VS. Own

**Real Cost Of Home Ownership:** With no home price appreciation prospective buyers analyze all cost of ownership; property taxes, HOA dues, maintenance / repair costs. Notable: property taxes will be under pressure as municipalities look to raise rates to balance stressed budgets. Transaction costs; typically overlooked and take 10% off any arms length transaction - a price of mobility or cashing out.

**Demographic Effects:** Baby boomer households have begun the shift to empty nesters, downsizing, smaller vacation home buyers. Gen Y is growing pressing the need for entry level housing, this is an 80M-group whose job growth was 3x's the national average in 2010 and the average household size is declining as a % of households. This coupled with the psychological effect of Gen Y's raised in a housing bust should alter projections.

**Economic Obstacles:** Hurdles to purchasing are; real downpayment requirements, stricter FICO and underwriting guidelines. The great recession has leveled many entry level owners with damaged credit profiles and longer term unemployment have drained cash down payments. Rising student loan debt with more college graduates with more debt than previous generations pressure future purchases.

**Home Price Declines 30%-50%:** Historic declines have altered consumer thinking on housing as an investment. Foreclosure backlog increase fears of further value decreases discourages buyers with down payment risk.

**Economic Drags:** Long-term unemployment and labor insecurity raise the need for mobility. Rising gas prices along with environmental issues are increasing demand for residences close to transit and denser locations away from the metropolitan area.





## Portfolio Asset Description

- Underlying assets: single family residences, multi-family, commercial
- **Zero leverage, no debt encumbrances**
- Conservative purchase-to-value- maximum 70%
- Types of Real Estate considered
  - Preference for income-producing assets
- Fund activities:
  - Primarily in high opportunistic Real Estate
  - Tax certificates
  - Tax sale properties
  - 48 - 72 month terms
  - Trustee sale properties
  - Bank sale properties
  - Trust deeds



## Q&A

### **What happens if the market repeats itself and turns back to what we saw in 2007 – 2010?**

During the downturn EquiAlt's Management successfully turned over 185 properties and averaged an annual return of 24.68% from 2007 - 2010! A downturn isn't expected but if it were to happen than EquiAlt's Management is ready and has proven successfully it can make the proper decisions to turn a profitable return.

### **Are there individual Insurance policies or how are the properties protected from natural or unnatural disasters?**

There is a blanket policy thru National Real Estate Insurance Group, Affinity Group Management to cover for such disasters.

### **Can I use my 401k / IRA retirement account to invest into the fund?**

Yes, the account is moved into a self-directing retirement account which is then invested into EquiAlt Fund LLC. The process is simple, a form is filled out, and the money is transferred to the self-directed IRA account and then invested into EquiAlt Fund LLC. The process is handled this way to make sure there are no tax complications or charges.

**Do I receive statements for my account?** Yes, quarterly statements are mailed out and can be emailed on request

**Can I contact EquiAlt's CPA or Attorney?** Absolutely, both are independent from EquiAlt LLC and can give you some insight into the fund and its activities.

### **Does EquiAlt buy in blocks or in bulk?**

NO! We have "Boots on the ground" which is to say we inspect each and every property before purchase to find out the pluses and negatives before we own it. We don't have any pressure to just buy property for the sake of buying property like the bigger hedge funds. We have intentionally stayed small to keep the fund you are investing in strong!

## Executive Team Biographies



### **Brian Davison – Chief Executive Officer**

Brian Davison's Real Estate career began in 1994 in North County San Diego. He has hands-on experience in a variety of functions in the Real Estate and mortgage industries: encompassing management, loan renegotiation at a publicly traded REIT, regional Vice President of a private residential mortgage company, the broker-owner of a multi-state branch correspondent residential loan origination company with in-house underwriting and outbound marketing support system, and Vice President of a private lending company. Brian has held Real Estate and/or mortgage broker licenses in California, Nevada, and Florida, with additional work in the Arizona and Colorado markets. Brian has facilitated over \$1.5 billion in mortgage and Real Estate transactions, is an active investor in a variety of markets and is host of "The Cash Flow Show." In early 2009, he founded Invest REO LLC dba The Cash Flow Store, an opportunistic distressed Real Estate investment company. He currently holds a State of Nevada Real Estate License.



### **Barry M. Rybicki – Managing Director**

Barry has over 14 years of experience in Real Estate lending. He has lived in Phoenix, Arizona for the past 21 years, originally coming to Arizona from Nebraska to attend Arizona State University where he majored in Accounting and minored in Marketing. He served as President to a bank in Arizona, and managed a \$10,000,000 line of credit. This capacity required; Real Estate evaluation, risk management, customer service, underwriting, appraisal review. He has handled over \$540,000,000 in residential deeds of trust in the Phoenix market and continues to have an overall understanding of the residential sectors inside of Maricopa County. Barry also served as Vice President for Cole Management LLC, where he gained significant experience in originating, structuring and negotiating deals, developing and implementing business strategies, assessing market and competitive issues, and raising capital from debt and equity providers. He remains actively involved in the community donating his time to coach youth sports and is currently the Treasurer of Pinnacle High School's Boys Soccer Team.



*An alternate approach...*

*to Investments.*



**e** **EQUIALT**



**1-855-EquiAlt**  
**[www.EquiAlt.com](http://www.EquiAlt.com)**

**EQUIALT LLC & SUBSIDIARIES** Las Vegas | Phoenix | Tampa Area

# **EXHIBIT E**

## **SUBSCRIPTION AGREEMENT**

**FOR**

**EQUIALT FUND, LLC**

**A Nevada limited liability company**

THIS SUBSCRIPTION AGREEMENT (the "Agreement") is made by and among EquiAlt Fund, LLC, a Nevada limited liability company (the "Company"), and the individuals and/or entities purchasing the securities hereunder (individually, a "Subscriber" and collectively, the "Subscribers").

WHEREAS, the Company desires to issue up to a maximum of One Hundred Million (100,000,000) units of Class A membership interest (the "Maximum Offering") to certain Accredited Investors, as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "Act")

WHEREAS, each Subscriber has been furnished with an executive summary of this offering, a copy of the Company's operating agreement, an accredited investor questionnaire, this Agreement and the Risk Factors incorporated into the Agreement, as such may have been amended or supplemented from time to time (collectively, the "Offering Documents"); and

WHEREAS, the Subscriber desires to purchase that number of units set forth on the signature page hereof on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual representations and covenants set forth herein, the parties agree as follows:

1. Purchase and Sale of Units.
  - 1.1. Purchase of Units. Subject to the terms and conditions of this Agreement, the Subscribers agree to purchase at the Closings that number of units up to an aggregate of One Hundred Million (1,000,000) units of Class A membership interest at a purchase price of Ten Dollars (\$10.00) per unit, as may be subscribed to by the Subscribers in this offering. The Units issued to the Subscribers pursuant to this Agreement (including counterpart versions hereof) shall be referred to herein as the "Units".
  - 1.2. Company reservation of Rights to Terminate or Deny. The Company reserves the right to refuse all or part of any or all subscriptions. Furthermore, no Subscription Agreement shall be effective until accepted and executed by the Company and the Company shall have the right, in its sole discretion, for any reason or for no reason, to refuse any potential Subscribers.

2. Closing and Delivery.

- 2.1. Initial Closing Date. The initial purchase and sale of the Units shall take place at such time and place as the Company determines (the "Initial Closing"). At the Initial Closing, the Company shall deliver to each Subscriber a certificate representing the Units to be purchased in the Closing by the Subscriber. The purchase price for the Units is payable by check or wire transfer payable to the Company or its designee in an amount equal to the applicable purchase price per unit multiplied by the number of Units being purchased by such Subscriber. Each Subscriber hereby authorizes and directs the Company to deliver the Units to be issued to the Subscriber pursuant to this Agreement directly to the Subscriber at the residential or business address indicated on the signature page hereto.
- 2.2. Subsequent Closings. The Company may conduct subsequent closings on an interim basis (each referred to as a "Closing"), until the Maximum Offering amount has been reached (subject to increase in the event of oversubscription of the offering). All such sales shall be made on the terms and conditions set forth in this Agreement. Any Units sold pursuant to this Section 2.2 shall be deemed to be "Units" and any Subscribers thereof shall be deemed to be "Subscribers" for all purposes under this Agreement.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to the Subscribers that:

- 3.1. Organization, Good Standing and Qualification. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business or properties.
- 3.2. Authorization. All action on the part of the Company, and its managers, necessary for the authorization, execution and delivery of this Agreement and the issuance of the Units, the performance of all obligations of the Company hereunder and there under has been taken or will be taken prior to the Closing, and this Agreement constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms.
- 3.3. Valid Issuance of Units. (A) The Units, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein or therein, will be duly and validly issued and fully-paid and non-assessable. Based in part upon the representations of the Subscribers in this Agreement and subject to the completion of the filings referenced below, the Units will be issued in compliance with all applicable federal and state securities laws.  
(B) The Units, are or as of the Initial Closing will be, duly and validly authorized and issued, fully-paid, and were or will be issued in compliance with all applicable federal and state laws.

- 3.4. Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local government authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except for the Federal and State Securities Law Filings to be made by the Company as necessary.
- 3.5. Litigation. There is no action, suit, proceeding or investigation pending or currently threatened against the Company that questions the validity of the Agreement, or the right of the Company to enter into this Agreement, or to consummate the transactions contemplated hereby, or that might result, either individually or in the aggregate, in any material adverse changes in the assets, condition, affairs or prospects of the Company, financially or otherwise, or any change in the current equity ownership of the Company, nor is the Company aware that there is any basis for the foregoing. The Company is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by the Company currently pending or which the Company intends to initiate.
- 3.6. Compliance with Other Instruments. The Company is not in violation or default of any provisions of its Articles of Organization or Operating Agreement or of any instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound or, to its knowledge, of any provision of federal or state statute, rule or regulation applicable to the Company. The execution, delivery and performance of the Agreement, and the consummation of the transactions contemplated hereby, will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event which results in the creation of any lien, charge or encumbrance upon any assets of the Company.
- 3.7. Disclosure. The forward-looking statements, including financial projections, contained in the Offering Documents were prepared in good faith; however, the Company does not warrant that such statements will ultimately become true. In addition to the foregoing, the Company restates as if rewritten herein the Risk Factors attached hereto as Schedule I as if fully rewritten herein and the following:
- (A) No Independent Studies. The determination of the Company's capital requirements and the intended use of proceeds from this Offering is based solely upon information developed by the Company. No independent studies with regard to feasibility, management, or marketing have been conducted by any third parties in determining the Company's capital requirements or requirements.
- (B) Structure of the Offering. The Units are being sold through the Company without commissions. The Offering is being conducted on a "best efforts" basis.
4. Representations and Warranties of the Subscribers. Each Subscriber hereby severally and not jointly represents and warrants to the Company that:
- 4.1. Risk. The Subscriber recognizes that the purchase of the Units involves a high degree of risk in that (i) the Company has limited operation history; (ii) an investment in the Company is highly speculative, and only investors who can afford the loss of their entire investment should consider investing in the Company and the Units; (iii) the Subscriber



may not be able to liquidate his, her or its investment; and (iv) transferability of the Units is extremely limited.

- 4.2. **Accredited Investor.** The Subscriber represents that the Subscriber is an officer, director or equivalent of the Company, and /or is an "Accredited Investor," as such term is defined in Rule 501 of Regulation D promulgated under the Act, and that the Subscriber is able to bear the economic risk of an investment in the Units.
- 4.3. **Investment Experience.** The Subscriber hereby acknowledges and represents that the Subscriber has prior investment experience, including investment in non-listed and unregistered securities, or the Subscriber has employed the services of an investment advisor, attorney and/or accountant to read all of the documents furnished or made available by the Company both to the Subscriber and to all other prospective investors in the Units and to evaluate the merits and risks of such an investment on the Subscriber's behalf.
- 4.4. **Due Diligence.** The Subscriber hereby acknowledges receipt and careful review of the Offering Documents, as supplemented and amended, and the attachments and exhibits thereto all of which constitute an integral part of the Offering Documents, and hereby represents that the Subscriber has been furnished by the Company during the course of this transaction with all information regarding the Company which the Subscriber has requested or desired to know, has been afforded the opportunity to ask questions of and receive answers from duly authorized managers, officers or other representatives of the Company concerning the terms and conditions of the offering and has received an additional information which Subscriber has requested.
- 4.5. **Protection of Interests; Exempt Offering.** The Subscriber hereby represents that the Subscriber either by reason of the Subscriber's business or financial experience or the business or financial experience of the Subscriber's professional advisors (who are unaffiliated with and who are not compensated by the Company or any affiliate of the Company, directly or indirectly) has the capacity to protect the Subscriber's own interests in connection with the transaction contemplated hereby. The Subscriber hereby acknowledges that the offering has not been reviewed by the United States Securities and Exchange Commission (the "SEC") because of the Company's representations that this is intended to be exempt from the registration requirements of Section 5 of the Act. The Subscriber agrees that the Subscriber will not sell or otherwise transfer the Units unless they are registered under the Act or unless an exemption from such registration is available.
- 4.6. **Investment Intent.** The Subscriber understands that the Units have not been registered under the Act by reason of a claimed exemption under the provisions of the Act which depends, in part, upon the Subscriber's investment intention. In this connection, the Subscriber hereby represents that the Subscriber is purchasing the Units for the Subscriber's own account for investment and not with a view toward the resale or distribution to others. The Subscriber, if an entity, was not formed for the purpose of purchasing the Units.
- 4.7. **Restricted Securities.** The Subscriber understands that there currently is no public market for any of the Units and that even if there were, Rule 144 promulgated under the Act requires, among other conditions, a one-year holding period prior to the resale (in limited amounts) of securities acquired in a non-public offering without having to

satisfy the registration requirements under the Act. The Subscriber understands and hereby acknowledges that the Company is under no obligation to register the Units under the Act or any state securities or "blue sky" laws. The Subscriber consents that the Company may, if it desires, permit the transfer of the Units out of the Subscriber's name only when the Subscriber's request for transfer is accompanied by an opinion of counsel reasonably satisfactory to the Company that neither the sale nor the proposed transfer results in a violation of the Act or any applicable state "blue sky" laws (collectively, the "Securities Laws"). The Subscriber agrees to hold the Company and its members, manager, officers, employees, controlling persons and agents and their respective heirs, representatives, successors and assigns harmless and to indemnify them against all liabilities, cost and expenses incurred by them as a result of any misrepresentation made by the Subscriber contained in this Agreement or any sale or distribution by the Subscriber in violation of the Securities Laws. The Subscriber understands and agrees that in addition to restrictions on transfer imposed by applicable Securities Laws, the transfer of the Units will be restricted by the terms of this Agreement.

- 4.8. Legends. The Subscriber consents to the placement of a legend on any certificate or other document evidencing the Units that such Units have not been registered under the Act or any state securities or "blue sky" laws and setting forth or referring to the restrictions on transferability and sale thereof contained in the Agreement. The Subscriber is aware that the Company will make a notation in its appropriate records with respect to the restrictions on the transferability of such Units and may place additional legends to such effect on Subscriber's unit certificate(s).
- 4.9. Rejection. The Subscriber understands that the Company will review this Agreement and that the Company reserves the unrestricted right to reject or limit any subscription and to close the offering to the Subscriber at any time.
- 4.10. Address. The Subscriber hereby represents that the address of the Subscriber furnished by the Subscriber on the signature page hereof is the Subscriber's principal residence.
- 4.11. Authority. The Subscriber represents that he or she has full power and authority to execute and deliver this Agreement and to purchase the Units. This Agreement constitutes the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms.

5. Limitations on Transfer.

- 5.1. Company Right of First Refusal. The Subscribers shall not assign, encumber or dispose of any interest in any of the Units except in compliance with applicable state and federal laws.

6. Miscellaneous.

- 6.1. Survival of Representations and Warranties. The warranties, representations and covenants of the Company contained in or made pursuant to this Agreement shall

survive the execution and delivery of this Agreement and the Closing for a period of one (1) year following the last Closing.

- 6.2. **Governing Law.** NOTWITHSTANDING THE PLACE WHERE THIS AGREEMENT MAY BE EXECUTED BY ANY OF THE PARTIES HERETO, THE PARTIES EXPRESSLY AGREE THAT ALL THE TERMS AND PROVISIONS HEREOF SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEVADA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
- 6.3. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 6.4. **Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- 6.5. **Notices.** (A) All notices, request, demand and other communications under this Agreement or in connection herewith shall be given to or made upon the respective parties as follows: if to the Subscribers, to the addresses set forth on the signature page hereto, or, if to the Company, to EquiAlt Fund, LLC, c/o Duane Morris LLP, Attn: Paul R. Wassgren, 100 N. City Parkway, Suite 1560, Las Vegas, Nevada 89106. (B) All notices, requests, demands and other communications given or made in accordance with the provisions of the Agreement shall be in writing, and shall be sent by certified or registered, return receipt requested, or by overnight courier or telecopy (facsimile) with confirmation of receipt, and shall be deemed to be given or made when receipt is so confirmed. (C) Any party may, by written notice to the other, alter its address or respondent and such notice shall be considered to have been given ten (10) days after the airmailing, telexing or telecopying thereof.
- 6.6. **Brokers.** (A) Each Subscriber severally represents and warrants that it has not engaged, consented to or authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. Each Subscriber hereby severally agrees to indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of such Subscriber hereunder. The Company will pay finder's fees only in compliance with applicable law. (B) The Company agrees to indemnify and hold harmless the Subscribers from and against all fees, commissions or other payment owing by the Company to any other person or firm acting on behalf of the Company hereunder.
- 6.7. **Expenses.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.
- 6.8. **Third Parties.** Nothing in the Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement.

- 6.9. **Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and Subscribers holding a majority in interest of the Units purchased in the offering.
- 6.10. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.
- 6.11. **Entire Agreement.** This Agreement and the other Offering Documents constitute the entire agreement between the parties hereto pertaining to the subject matter herof, and any and all other written or oral agreements existing between the parties hereto are expressly canceled.

*(Signature page follows.)*

This Subscription Agreement has been executed as of the date last set forth below.

NUMBER OF UNITS: 10,000

at \$10.00 PER UNIT

FOR THE AGGREGATE PURCHASE PRICE: \$100,000.00

SUBSCRIBER: ROBERT MAR

Print or Type Name of Subscriber: ROBERT MAR

Signature: Robert Mar Second Signature if Jointly: \_\_\_\_\_

Title of Signatory: \_\_\_\_\_

If jointly, subscribed manner in which Title to be held: \_\_\_\_\_

Address: 

Telephone: 

Facsimile: \_\_\_\_\_

Tax I.D. #: 

Dated: \_\_\_\_\_

This Subscription Agreement is agreed to and accepted as of: 06-13-18


**EQUIALT FUND , LLC**

**a Nevada limited liability company**

By: EquiAlt, LLC

a Nevada limited liability company

its Manager

By:  \_\_\_\_\_

EquiAlt, its Manager

IRA SERVICES TRUST Co. CFBO:

Print or Type Name of Subscriber: ROBERT MAR

Signature: [Handwritten Signature] Second Signature If Jointly: \_\_\_\_\_

Title of Signatory: Gary R Shumm, VP  
~~IRA Services Trust Company~~

If jointly, subscribed manner in which Title to be held: \_\_\_\_\_

Address: [Redacted] IRA Services Trust Company  
Cust. FBO: ROBERT MAR  
IRA [Redacted]  
Telephone: [Redacted] PO Box 7080, San Carlos CA 94070  
(650) 593-2221 (TIN: 26-2627205) \*

Facsimile: \_\_\_\_\_

Tax I.D. #: [Redacted] \*

Dated: 7/9/2018

This Subscription Agreement is agreed to and accepted as of: 06-13-18

**EQUIALT FUND , LLC**

**a Nevada limited liability company**

By: EquiAlt, LLC

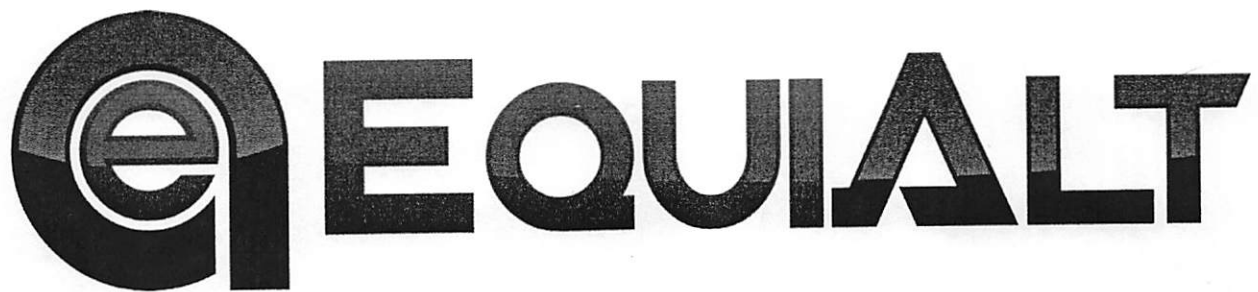
a Nevada limited liability company

its Manager

By: [Handwritten Signature]

EquiAlt, its Manager

# **EXHIBIT F**



Robert G. Mar

EquiAlt Growth Acct. #4369-6808-8806





## SUMMARY OF TERMS

This document dated July 12 2018 will serve as a summary to the PPM Agreement.

Amount of Investment: \$100,000.00 - (IRA).


Annual Rate: 10.00%

Payment requested: GROWTH

Term: 48 months

Receipt of funds date: July 12, 2018

Signed and mutually agreed by:

  
\_\_\_\_\_  
Barry M. Rybicki  
EquiAlt Fund LLC

\_\_\_\_\_  
Robert Mar  
(IRA Services Trust Co.)  
Acct. # IRA 774078



**PRIVATE PLACEMENT MEMORANDUM**

**EQUIALT FUND, LLC**

## EXHIBIT A

### FORM OF DEBENTURE

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE, AND IS ISSUED IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR RE-SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

### 10% DEBENTURE

**\$100,000.00**

**July 12, 2018**

FOR VALUE RECEIVED, the undersigned, EquiAlt Fund LLC, a Nevada limited liability company having an address of 10161 Park Run Drive, Suite 150, Las Vegas, NV 89145 ("Maker"), promises to pay to the order of IRA Services Trust Company FBO Robert G. Mar Traditional IRA having an address of P.O. Box 7080, San Carlos, CA. 94070-7080 ("Holder"), the principal sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Principal Amount"), together with interest on the unpaid Principal Amount thereof computed from the date hereof (the "Commencement Date"), at the rates provided herein, on the Maturity Date defined in Section 1 hereof.

1. Maturity. The Principal Amount and any unpaid interest due under this debenture (the "Debenture") shall be due and payable in July 2022 (the "Maturity Date").
2. Interest Rate and Payments. Interest hereunder shall accrue as follows:
  - (a) From the Commencement Date, interest shall accrue on the unpaid Principal Amount at the rate of Ten and 00/100 percent (10%) per annum.
3. Prepayment. This Debenture may be prepaid in whole or in part at any time, without penalty or premium, it being understood and agreed that, except as expressly provided herein, Maker shall not be entitled, by virtue of any prepayment or otherwise, to a refund of interest,

any other fees, points, charges and the like paid by Maker to Holder in connection with his Debenture.

4. Waiver. Maker hereby waives all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, demand for payment, protest, notice of protest and notice of dishonor, to the extent permitted by law. Maker further waives trial by jury. No extension of time for payment of this Debenture or any installment hereof, no alteration, amendment or waiver of any provision of this Debenture and no release or substitution of any collateral securing Maker's obligations hereunder shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Maker under this Debenture.

5. Default and Remedies. At the election of the holder of this Debenture, all payments due hereunder may be accelerated, and this Debenture shall become immediately due and payable without notice or demand, upon the occurrence of any of the following events (each an "Event of Default"): (1) Maker fails to pay on or before the date due, any amount payable hereunder; (2) Maker fails to perform or observe any other term or provision of this Debenture with respect to payment; or (3) Maker fails to perform or observe any other term or provision of this Debenture, which default is not cured within sixty (60) days of receipt of written notice. In addition to the rights and remedies provided herein, the holder of this Debenture may exercise any other right or remedy in any other document, instrument or agreement evidencing, securing or otherwise relating to the indebtedness evidenced hereby in accordance with the terms thereof, or under applicable law, all of which rights and remedies shall be cumulative.

Any forbearance by the holder of this Debenture in exercising any right or remedy hereunder or under any other agreement or instrument in connection with the Debenture or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by the holder of this Debenture. The acceptance by the holder of this Debenture of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of the holder of this Debenture to require prompt payment when due of all other sums payable hereunder or to declare a default for failure to make prompt payment.

6. Assignment of Debenture. If this Debenture is transferred in any manner by Holder, the right, option or other provisions herein shall apply with equal effect in favor of any subsequent holder hereof, provided, however, that any assignment by Holder must comply with applicable Federal and state securities laws, and Maker shall be entitled to demand an opinion of counsel opining that any transfer will comply with said laws.

7. Waiver of Offset. By its acceptance of Holder's funds and execution of this Debenture, Maker acknowledges, agrees and confirms that, as of the time of signing, it has no defense, offset or counterclaim for any occurrence in relation to this Loan.

8. Acceptable Currency. All payments of principal and interest hereunder are payable in lawful money of the United States of America.

9. Joint and Several Obligations. If more than one person signs this Debenture, each person signs as a Maker, unless otherwise stated and shall be fully, jointly, severally and personally obligated to keep all of the promises made in this Debenture, including the promise to pay all sums due and owing.

10. Miscellaneous. This Debenture shall be binding on the parties hereto and their respective heirs, legal representatives, executors, successors and assigns. This Debenture shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted. This Debenture shall be exclusively governed by the laws of the State of Nevada without regard to choice of law consideration. Maker hereby irrevocably consents to the jurisdiction of the courts of the State of Nevada and of any federal court located in Nevada in connection with any action or proceeding arising out of or relating to this Debenture. This Debenture may not be changed or terminated except upon the prior written agreement of the Holder. A determination that any portion of this Debenture is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Debenture to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision to the extent legally permissible and otherwise as it may apply to other persons or circumstances.

11. Jury Waiver. **MAKER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY MAKER OR THE HOLDER OF THIS DEBENTURE ON OR WITH RESPECT TO THIS DEBENTURE OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. MAKER AND HOLDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. MAKER ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF THERE ARE NO DEFENSES OR OFFSETS TO ANY AMOUNTS DUE IN CONNECTION WITH THE LOAN. FURTHER, MAKER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. MAKER ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS DEBENTURE AND THAT HOLDER WOULD NOT EXTEND CREDIT TO MAKER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS DEBENTURE.**


*[Remainder of this page intentionally blank.]*

IN WITNESS WHEREOF, the Maker has executed this Debenture on the date first above written.

**MAKER:**

EquiAlt Fund LLC  
a Nevada limited liability company

By: EquiAlt LLC  
a Nevada limited liability company  
its Manager

By:   
Name: Barry M Rybicki  
Title: Managing Director

# **EXHIBIT G**





1 annum. BMI and Mohr hosted dinners with California investors and the vice president of Equialt to  
2 effect transactions in securities in the form of investment agreements in Equialt.

3 4. Beginning in at least 2017, BMI and Mohr offered, sold and effected transactions in  
4 securities in the form of promissory notes and investment agreements with Petro Rock Mineral  
5 Holdings, LLC. (PRMH), a Texas limited liability company specializing in oil and gas funding,  
6 drilling and excavation. PRMH created various investment fund Delaware limited liability  
7 companies known as PRMH Lenders Fund, LLC., PRMH Lenders Fund II, LLC. and PRMH Lenders  
8 Fund IV, LLC. California investors invested in these oil and gas excavation funds by way of  
9 promissory notes and investment agreements offered, sold and effected by BMI and Mohr.  
10 California investors transferred over \$25,000.00 to PRMH funds, some using retirement funds, for 1  
11 year in exchange for a profit of at least 8% annum. BMI and Mohr signed the promissory notes  
12 and/or investment agreements as “agent” by electronic signature through “DocuSign.”

13 5. Beginning in at least 2017, BMI and Mohr offered, sold and effected transactions in  
14 securities in the form of promissory notes and investment agreements with Legacy Energy, LLC.  
15 (Legacy), a Nevada limited liability company that specialized in making energy, oil and gas business  
16 loans. Legacy made loans to PRMH for exploration purposes through Resolute Capital Partners,  
17 LLC., a Nevada limited liability company. Over nine California investors invested in these oil and  
18 gas excavation funds by way of promissory notes and investment agreements offered, sold and  
19 effected by BMI and Mohr. California investors transferred over \$400,000.00 to Legacy, some using  
20 retirement funds, for 1 year in exchange for a profit of at least 8% annum. BMI and Mohr signed the  
21 promissory notes and/or investment agreements as “agent” by electronic signature through  
22 “DocuSign.”

23 6. Beginning in at least 2017, BMI and Mohr offered, sold and effected transactions in  
24 securities in the form of investment agreements and/or evidences of indebtedness in 1 Global Capital,  
25 LLC. (Global), a Florida limited liability company engaged in the business of funding merchant cash  
26 advance transactions, through American Alternative Investments, LLC., an Indiana limited liability  
27 company. At least 5 California investors transferred over \$100,000.00 to Global for variable periods  
28 of time in exchange for a profit of at least 3% per annum. BMI and Mohr executed an “advisor

1 disclosure” statement as “agent” in the process of effecting transactions in the above referenced  
2 securities.

3 7. CSL section 25004 defines “broker-dealer” as any person engaged in the business of  
4 effecting transactions in securities in this state for the account of others or for his own account.

5 8. CSL section 25210, subdivision (a), prohibits a broker-dealer from effecting any  
6 transaction in or induce or attempt to induce the purchase or sale of, any security in this state unless  
7 the broker-dealer has first applied for and secured from the commissioner a certificate, then in effect,  
8 authorizing that person to act in that capacity.

9 9. BMI and Mohr have never obtained a certificate to act as a broker-dealer under CSL  
10 section 25210 and is not exempt from the licensure requirement.

11 Based on the foregoing findings, the Commissioner is of the opinion that Ben Mohr, Inc. and  
12 Benjamin Charles Mohr are subject to the laws regulating broker-dealers under Corporate Securities  
13 Law of 1968, and has affected transactions in, or induced, or attempted to induce the purchase or sale  
14 of, securities as broker-dealers, without having first applied for and secured from the Commissioner a  
15 certificate authorizing these persons to act in that capacity, in violation of CSL section 25210.

16 Pursuant to CSL section 25532, Ben Mohr, Inc. and Benjamin Charles Mohr are hereby  
17 ordered to desist and refrain from conducting business as a broker-dealer, unless and until  
18 certification has been made under said law or unless exempt.

19 This Order is necessary, in the public interest, for the protection of investors and consistent  
20 with the purposes, policies and provisions of the Corporate Securities Law of 1968.

21  
22 Dated: October 22, 2018  
23 Sacramento, California

JAN LYNN OWEN  
Commissioner of Business Oversight

24  
25 By \_\_\_\_\_  
26 MARY ANN SMITH  
27 Deputy Commissioner  
28 Enforcement Division

# **EXHIBIT H**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CIVIL ACTION NO. \_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION, )

Plaintiff, )

v. )

BRIAN DAVISON, )

BARRY M. RYBICKI, )

EQUIALT LLC, )

EQUIALT FUND, LLC, )

EQUIALT FUND II, LLC, )

EQUIALT FUND III, LLC, )

EA SIP, LLC, )

Defendants, and )

UNDER SEAL

128 E. DAVIS BLVD, LLC, )

310 78TH AVE, LLC, )

551 3D AVE S, LLC, )

604 WEST AZEELE, LLC, )

2101 W. CYPRESS, LLC, )

2112 W. KENNEDY BLVD, LLC, )

5123 E. BROADWAY AVE, LLC, )

BLUE WATERS TI, LLC, )

BNAZ, LLC, )

BR SUPPORT SERVICES, LLC, )

BUNGALOWS TI, LLC, )

CAPRI HAVEN, LLC, )

EA NY, LLC, )

EQUIALT 519 3RD AVE S., LLC, )

MCDONALD REVOCABLE LIVING TRUST, )

SILVER SANDS TI, LLC, )

TB OLDEST HOUSE EST. 1842, LLC, )

Relief Defendants. )

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INDEX OF EXHIBITS TO  
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S

**EMERGENCY *EX PARTE* MOTION AND MEMORANDUM OF LAW FOR  
TEMPORARY RESTRAINING ORDER, ASSET FREEZE, AND OTHER  
INJUNCTIVE RELIEF SOUGHT**

- Ex. 1, Declaration of Mark Dee
- Ex. 2, EquiAlt's Corporate Filing
- Ex. 3, EquiAlt Bank Account Signature Cards
- Ex. 4, Davison's Testimony Transcript
- Ex. 5, EquiAlt Fund, LLC's SEC Form D
- Ex. 6, Investor Statement
- Ex. 7, BR Support Services, LLC Corporate Filing
- Ex. 8, EquiAlt website
- Ex. 9, Fund Revenues
- Ex. 10, Fund 1's Corporate Filings
- Ex. 11, Fund 1 PPMs
- Ex. 12, Fund 2 PPM
- Ex. 13, Fund 3's Corporate Filings
- Ex. 14, EA SIP Corporation Filings
- Ex. 15, EA SIP PPM
- Ex. 16, 2112 W. Kennedy LLC's Corporate Filing
- Ex. 17, Checks to McDonald Revocable Trust
- Ex. 18, 128 E. Davis Blvd, LLC spreadsheet
- Ex. 19, 310 78th Ave, LLC spreadsheet
- Ex. 20, 551 3d Ave S, LLC spreadsheet
- Ex. 21, 604 West Azeele, LLC spreadsheet
- Ex. 22, 2101 W. Cypress, LLC spreadsheet
- Ex. 23, 2112 W. Kennedy Blvd, LLC spreadsheet

- Ex. 24, 5123 E. Broadway Ave, LLC spreadsheet
- Ex. 25, Blue Waters TI, LLC spreadsheet
- Ex. 26, BNAZ, LLC Corporate Filings
- Ex. 27, Bungalows TI, LLC spreadsheet
- Ex. 28, EquiAlt 519 3d Ave S. spreadsheet
- Ex. 29, Silver Sands TI, LLC spreadsheet
- Ex. 30, TB Oldest House Est. 1842 spreadsheet
- Ex. 31, Capri Haven, LLC spreadsheet
- Ex. 32, EquiAlt Marketing materials
- Ex. 33, 21 W. 20th Street, #5, NY, NY spreadsheet
- Ex. 34, List of 260 properties owned by The Funds
- Ex. 35 [INTENTIONALLY OMITTED]
- Ex. 36, Investor Questionnaires
- Ex. 37 [INTENTIONALLY OMITTED]
- Ex. 38, J. M. Conley Declaration with exhibits
- Ex. 39, 2 Unpaid Loans from Funds
- Ex 40, Checks to IRS
- Ex. 41, Outflow Summary of EquiAlt LLC Showing Expenses
- Ex. 42, Investor Subscription Agreement
- Ex, 43, Example of Discount Fee paid to EquiAlt

DECLARATION OF MARK DEE

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Mark Dee. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.
2. I am employed as a Senior Accountant with the United States Securities and Exchange Commission. I am also a retired state police lieutenant of a fraud unit and a Certified Fraud Examiner.
3. Amounts referred to in this Declaration are approximate and have been rounded.
4. As part of my duties, I was asked to examine the flow of funds of four companies' offerings: (1) Equialt Fund, LLC ("Fund I"); (2) Equialt Fund II, LLC ("Fund II"); (3) Equialt Fund III, LLC ("Fund III"); and (4) EA SIP, LLC ("the EA SIP Fund"), all managed by their parent company Equialt, LLC ("Equialt"). Brian Davison is Equialt's owner and CEO. Barry Rybicki is Equialt's Managing Director, President of Equialt's Arizona Operations and the owner of BR Support Services, LLC.
5. As part of my analysis, I was asked to review whether investors' funds raised from one Fund offering were co-mingled with investors' funds from other Fund offerings. I use the term "co-mingled" to mean that investor funds from one individual Fund (either Fund I, II, III or the EA SIP Fund) were combined with investor funds from another individual Fund.
6. In addition, I was also asked to determine based on information found in Private Placement Memoranda ("PPMs"), Proforma Statements, QuickBooks entries and bank account records whether Equialt and the Funds will have enough money to pay back its investors the interest and principal owed to them under the investors' subscription agreements with the Funds.



## **I. SUMMARY OF MY FINDINGS**

### **A. Co-Mingling of Investor Funds**

7. I found repeated instances where investor funds from one Fund's Offering were co-mingled with monies from other Fund's Offerings. Funds were co-mingled in numerous ways including transfers of monies directly from one Fund to another and monies credited from one Fund to another in the form of loans or property investments. In total, I documented more than \$6.6 million of funds that were co-mingled. *See* Exhibit 1, attached hereto.
8. An example of the co-mingling can be seen at Exhibits 2 and 3 attached hereto, which show the Wells Fargo bank account records of Fund III from December 2015. These records reflect that Fund III received two wires on December 15, 2015, one for \$1.29 million from Fund I and another for \$1.08 million from Fund II. *See* Exhibit 2. Two days later, on December 17, 2015, a check for \$2.09 million was made from Fund III to Provident Trust Group (the account administrator responsible for processing interest payments to investors) with the memo "Investment Returns With Interest." *See* Exhibit 3. On or about June 27, 2016, Fund III was closed. Thus, the bank account records reflect that \$2.3 million received from Fund I and Fund II was used to pay back the investors in Fund III their principal and interest.<sup>1</sup>

### **B. Uses of Investor Funds Inconsistent with the PPMs**

9. I also documented repeated instances where investor funds were used in ways inconsistent with the statements of how they were to be used as set forth in the PPMs. This occurred in numerous ways, such as: (a) money from one Fund being spent to purchase properties for another Fund; (b) money from one Fund being used to pay investor returns in another Fund;

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<sup>1</sup> Although ownership of the properties owned by Fund III was transferred to Fund 1 and Fund II, per Equalt's own records, the value of the properties transferred to Funds 1 and 2 was about \$1.3 Million, which is about \$1 million less than the \$2.37 Million transferred by the Funds.

and (c) miscellaneous and undisclosed fees such as acquisition, discount, due diligence, equity, management, rehab, and success fees. *See* Exhibit 4, attached hereto.

10. Moreover, although the PPMs purport that 89 to 95% of the monies raised will be used for “Working Capital (i.e. investments in real property),” my analysis shows that only \$55 Million, less than 33% of the monies raised (\$171 Million), was used to invest in real properties.<sup>2</sup> *See* Exhibit 5, attached hereto.

### **C. Davison and Rybicki Used Investor Funds to Benefit Themselves**

11. I also documented many instances where monies from the Funds were used by Davison and Rybicki to benefit themselves or related entities in a manner inconsistent with how investors’ funds were to be used as set forth in the PPMs. Davison and Rybicki used funds from Fund I and Fund 2 to pay themselves (and their related companies) undisclosed distributions of \$11.2 million in the years 2017 - 2018. And in 2019, Davison and Rybicki took cash distributions from the Funds of \$6.1 million and \$1.2 million, respectively, purportedly for the repayment of loans to the Funds. This amount does not include the millions in commissions and fees they paid themselves detailed below. Exhibit 4, attached hereto. Almost all of the commission payments, generally 10-14% of the investment, were made to Rybicki’s company, BR Support Services.
12. In total, in connection with Fund I, Fund II, Fund III, and EA SIP, I documented approximately \$60 million of payments from the Funds’ accounts that Davison (\$33 million to Davison in Fees and distributions) and Rybicki (\$27 million to Rybicki’s in commissions and

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<sup>2</sup> This analysis is based on the purchase price of the properties, but even if commission fees are included in the analysis, the result is that less than half of the money raised was used for investments in real property.

distributions) used in a manner inconsistent with the PPM to benefit themselves and their related companies. *See* Exhibit 4, attached hereto.

#### **D. Deficit of Amounts Owed to Investors**

13. Based on the amounts of interest and principal payments that remain owed to investors, the cash the Funds have on hand, and the stated value of the properties in Equialt's books and records, Equialt is unlikely to have enough money to pay the interest and principal owed to investors. As explained below, pursuant to the investors' subscription agreements, Equialt owes the Funds' investors \$167 million in interest and principal payments by December 2020. As of November 2019, the Funds and Equialt had in total \$6.8 million cash on hand.<sup>3</sup> Assuming the Funds' real estate holdings are valued at \$145 million,<sup>4</sup> there remains a \$15.4 million deficit in funds and assets available to pay back investors the principal and interest owed to them by December 2020. *See* Exhibit 6, attached hereto. In 2019, the Funds generated only \$4.4 million in revenues from their real estate holdings. If the Funds generate similar revenues in 2020, they will have a deficit of what is owed to investors of millions of dollars.

## **II. OVERVIEW OF THE FUNDS**

14. While Fund III is now closed, the other Funds continue to raise funds from investors at a rate since January 2018 of about \$2-3 million a month.
15. As of October 10, 2019, the total net amount raised for Funds 1, 2 and the EA SIP Fund is about \$170 million from approximately 1,140 investors. *See* Exhibit 6, attached hereto.

### **A. Equialt Fund LLC ("Fund I")**

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<sup>3</sup> As of November 2019, Fund 1 had \$3.4 million cash on hand, Fund II had \$1.9 million cash on hand, the EASIP Fund had \$1.29 million cash on hand, and Equialt, LLC had \$151,032 cash on hand.

<sup>4</sup> This value of the real estate holdings are taken from the portfolio "Beat Values" listed by Equialt in Equialt-00004473.

16. Fund I has raised the most of any of the Funds from investors, having raised approximately \$110.2 million from about 733 investors from 2011 to 2019. *See* Exhibit 5, attached hereto.
17. In addition to raising money from investors, Fund I generates other revenues through rents and sales of real estate. In total, from 2011 to November 2019, Fund I generated \$12 million in revenue from these non-investor sources of income. Of that, \$3.4 million in revenue was generated in 2018 and \$3.3 million in 2019. *Id.*
18. From January 2011 to November 2019, Fund I used \$37.7 million to purchase real estate. The current value of these properties, per Equialt's records, is \$48 million. *See* Exhibit 11, attached hereto.
19. From January 2011 to November 2019, Fund I used \$15 million to pay for expenses and various "fees" described as acquisition, discount, due diligence, equity, rehab, and success fees. Another \$4.5 million was used to pay "management fees." About \$15.5 million of the funds raised were used to pay commissions. The majority of these fees and commissions were paid to Davison and Rybicki or the companies they owned. *See* Exhibit 4, attached hereto.
20. Based on Equialt's records, Fund I has operated at a net loss every year since it started raising money from investors in 2011. *See* Exhibit 7, attached hereto. In 2017 and 2018, Fund I's net losses were \$12 million and \$2.7 million, respectively. *See* Exhibits 14 & 15, attached hereto.
21. As of November 2019, Fund I had approximately \$3.4 million cash on hand in its bank accounts. *See* Exhibit 8, attached hereto.
22. By December 2020, Fund I will owe to investors \$106.7 Million in interest and principal payments. It is unlikely that Fund I will have enough money to pay back the amounts owed to investors under the investor agreements. Netting the value of the properties owned by Fund

I, (using Equialt's valuations of the properties to be between \$49 Million and \$104 million),<sup>5</sup> and Fund I's cash on hand to the amounts owed, there will be a deficit of what is owed to investors by 2020 of millions of dollars. *See* Exhibit 6, attached hereto.

23. In addition, funds raised from investors from Fund I were co-mingled since investor funds from Fund I were transferred to Fund III. Similarly, investors' funds were transferred from Funds II and EA SIP to Fund I. (*See* Exhibit 1, attached hereto).

**B. Equialt Fund II**

24. From July 2013 to November 2019, Fund II raised at least \$39 million from approximately 266 investors. In addition to investors' principal investments in Fund II, Equialt generates other income through rents and from selling properties. From May 2013 to November 2019, Fund II generated \$3.5 million in revenue from these non-investor sources of income. *See* Exhibit 6, attached hereto.

25. From May 2013 to November 2019, Fund II used \$9.6 million to purchase properties. The current portfolio value of these properties as reflected on Equialt's books and records is \$27.3 million. The current market value of these properties as reflected on Equialt's records is \$16 Million. *See* Exhibit 12, attached hereto.

26. From May 2013 to November 2019, Fund II used more than \$7 million to pay various "fees" described as acquisition, buy, discount, distribution, due diligence, equity, and success fees. Of this, \$1.9 million was used to pay "management fees." Another \$5.5 Million was paid for

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<sup>5</sup> For arguments' sake, my analysis uses the values of properties listed in Equialt's own books. Equialt's records list the "portfolio value" of the properties, which appear to be highly inflated. For example, the portfolio value of Fund I's properties per Equialt is 115% higher than the market value listed in Equialt's books. My analysis also includes a separate calculation using the market values listed by Equialt, which raises the deficit owed to investors considerably. *See* Exhibit 6, attached hereto.

commissions. The majority of these fees and commissions were paid to Davison and Rybicki or to the companies they owned. *See* Exhibit 4, attached hereto.

27. Based on Equialt's books and records, Fund II has operated at a net loss every year since it was formed in 2013. *See* Exhibit 9, attached hereto.
28. As of November 2019, Fund II had approximately \$2 million cash on hand in the bank to cover its expenses including the interest and principal owed to investors.
29. By the end of 2020, Fund II investors will be owed \$40.5 million in interest and principal. Even if the properties held by Fund II are valued at \$27.3 million, there is a net deficit of what will be owed to investors by December 2020 of \$11.3 Million. *See* Exhibit 6, attached hereto.

### **C. Equialt Fund III**

30. Fund III began raising money from investors in July 2013 and was closed in June 2016. In total, Fund III raised approximately \$2.6 million from investors. In the few years it was open, Fund III generated \$359,000 in revenues and rents from its real estate projects. Fund III's expenditures during this same time period were \$3.2 million. *See* Exhibit 13, attached hereto.
31. As explained above, Equialt co-mingled money in Fund III having received \$2.3 million from Funds I and II to pay back the investors in Fund III their principal and interest payments.

### **D. EA SIP Fund**

32. From April 2016 to November 2019, the EA SIP Fund raised at least \$21.7 million from some 138 investors. *See* Exhibit 6, attached hereto.
33. In addition to investors' principal investments, the EA SIP Fund generates other income through rents and from selling properties. From April 2016 to November 2019, the EA SIP Fund generated \$176,000 in revenue from non-investor sources of income. *Id.*

34. From April 2016 to November 2019, the EA SIP Fund used \$9 million to purchase properties. The portfolio value of these properties as reflected on Equialt's books is \$13.6 million. *Id.*
35. From April 2016 to November 2019, the EA SIP Fund used \$2.3 million to pay for various "fees" described as acquisition, buy, commission, construction, discount, due diligence, equity, rehab, and success fees. Another \$2 Million was used to pay commissions. The majority of these management and fees and commissions were paid to Davison and Rybicki or the companies they owned. *See* Exhibit 4, attached hereto.
36. As of November 2019, the EA SIP Fund had approximately \$151,000 cash on hand in the bank to cover its expenses including the interest and principal owed to investors.
37. Based on Equialt's books and records, the EA SIP Fund has operated at a net loss every year since it was formed in 2016. *See* Exhibit 10, attached hereto.
38. By the end of 2020, the EASIP Fund will owe investors \$19.9 Million in interest and principal payments. Even if the properties held by the EA SIP Fund are valued at \$13.5 million, there is a deficit of what will be owed to investors in interest and principal payments by December 2020 of \$5.1 million. *See* Exhibit 6, attached hereto.

### **III. INSUFFICIENT FUNDS TO PAY BACK INVESTORS**

39. As described above, without a substantial infusion of additional revenues, Funds I, II and the EA SIP Fund will not have enough money to pay the interest and principal owed to investors in 2020. Even if the Funds were able to sell their entire real estate portfolio for the values listed in their own books and records, Funds I, II and the EA SIP Funds would be short \$15.4 million of what will be due to investors in December 2020. Thus, to pay back what it owes investors in interest and principal in 2020, the three debt Funds will need to generate revenues of at least \$15.4 million, which is \$11 million more than what they generated last year.

Moreover, that amount will most likely be greater as my analysis does not include the Funds' future operating expenses and assumes the properties would all be sold at best value.

40. Based on the above, approximately 1,140 investors who have invested approximately \$171 million in Fund 1, Fund 2 and the EA SIP Fund are at risk because of the shortfall between revenues generated by Equialt and the millions that will be due to investors.

#### **IV. DOCUMENTS RELIED UPON**

In connection with the above analysis, I relied upon the following records:

- a. for account number XXXXXX1045 in the name of Equialt Fund, LLC, at Wells Fargo Bank, N.A. (the "Fund 1 WF Account"), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2012 through January 2019;
- b. for account number XXXXXX5670 in the name of Equialt Fund, LLC, at Wells Fargo Bank, N.A. (the "Fund 1 WF Savings Account"), its account opening documentation, monthly statements, deposited items, checks and transfer information for November 2012 through December 2018;
- c. for account number XXXXXX1717 in the name of Equialt Fund II, LLC, at Wells Fargo Bank, N.A. (the "Fund 2 WF Account"), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for May 2013 through January 2019;
- d. for account number XXXXXX1717 in the name of Equialt Fund II, LLC, at Wells Fargo Bank, N.A. (the "Fund 2 WF Savings Account"), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for January 2014 through December 2018;



- e. for account number XXXXXX1444 in the name of Equialt Fund III, LLC, at Wells Fargo Bank, N.A. (the “Fund 3 WF Account”), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for May 2013 through June 2016;
- f. for account number XXXXXX0886 in the name of Equialt Fund III, LLC, at Wells Fargo Bank, N.A. (the “Fund 3 WF Savings Account”), its account opening documentation, monthly statements, deposited items, and transfer information for May 2013 through June 2016;
- g. for account number XXXXXX7000 in the name of EA SIP, at Wells Fargo Bank, N.A. (the “E-SIP WF Account”), its account opening documentation, monthly statements, deposited items, and wire/transfer information for April 2016 through January 2019;
- h. for account number XXXXXX1052 in the name of Equialt LLC, at Wells Fargo Bank, N.A. (the “Management WF Account”), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2012 through January 2019;
- i. for account number XXXXXX3190 in the name of Equialt Fund, LLC, at Bank of America, N.A. (the “Fund 1 BOA Account”), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2018 through November 2019;
- j. for account number XXXXXX3200 in the name of Equialt Fund, LLC, at Bank of America, N.A. (the “Fund 1 BOA Escrow Account”), its account opening documentation, monthly statements, deposited items, checks written and wire/transfer information for November 2018 through October 2019;

- k. for account number XXXXXX3213 in the name of Equialt Fund II, LLC, at Bank of America, N.A. (the “Fund 2 BOA Account”), account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2018 through October 2019;
- l. for account number XXXXXX3297 in the name of Equialt Fund II, LLC, at Bank of America, N.A. (the “Fund 2 BOA Escrow Account”), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2018 through October 2019;
- m. for account number XXXXXX3213 in the name of EA SIP, LLC, at Bank of America, N.A. (the “E-SIP BOA Account”), account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2018 through November 2019;
- n. for account number XXXXXX3310 in the name of Equialt LLC, at Bank of America, N.A. (the “Management BOA Account”), its account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2018 through November 2019;
- o. for account number XXXXXX3323 in the name of Equialt LLC, at Bank of America, N.A. (the “Management BOA Escrow Account”), account opening documentation, monthly statements, deposited items, checks and wire/transfer information for November 2018 through November 2019;
- p. bates number Equialt – 0004292, an Intuit QuickBooks file;
- q. bates number Equialt – 0004293, an Intuit QuickBooks file;
- r. bates number Equialt – 0004294, an Intuit QuickBooks file;

- s. bates number Equialt – 0004314, an Intuit QuickBooks file;
- t. bates number Equialt – 0004315, an Intuit QuickBooks file;
- u. bates number Equialt – 0004473, a Microsoft Excel Workbook file;
- v. bates numbers Equialt – 00003202 through Equialt - 00003224, a PDF file;
- w. bates numbers Equialt – 0003286 through Equialt - 00003317, a PDF file;
- x. Equialt Private Placement Memorandum, Equialt Fund, LLC (no Bates number);
- y. bates numbers RA00000001 – 00000025, Equialt PPM, Fund 1;
- z. bates numbers RA00000026 -00000050, Equialt PPM, Equialt Fund, LLC;
- aa. Equialt Private Placement Memorandum, Equialt Fund II, LLC (no Bates numbers);
- bb. bates numbers EquiAlt 00004295 – 00004313, Equialt PPM, EA SIP, LLC;
- cc. bates numbers EquiAlt 00004539 – 00004566, Operating Agreement of Fund I;
- dd. bates numbers EquiAlt 00004477 – 00004504, Operating Agreement of Fund II;
- ee. bates numbers EquiAlt 00004505 – 00004535, Operating Agreement of EA SIP Fund;
- and
- ff. bates numbers RA00000559- RA00000570, APPENDIX B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10 th day of February 2020.

  
\_\_\_\_\_  
MARK DEE

## Liability vs. Real Estate Portfolio Values

Summary of Payments Owed to Investors by 12/2020					
Period	1/2011 - 11/2019	5/2013 - 11/2019	4/2016 - 11/2019	Equialt LLC	Total
Fund	1	2	EA SIP		
# of Investors	733	266	138	0	1,137
Total Revenue from Business Operations	\$ 11,914,628.44	\$ 3,506,304.29	\$ 176,229.66	\$ -	\$ 15,597,162.39
Amount Raised from Investors	\$ 110,185,262.92	\$ 39,630,785.30	\$ 21,727,416.03	\$ -	\$ 171,543,464.25
Redemptions to Investors	\$ 12,528,237.83	\$ 2,283,201.42	\$ 3,104,529.22	\$ -	\$ 17,915,968.47
Total Investor Principal Owed	\$ 97,657,025.09	\$ 37,347,583.88	\$ 18,622,886.81	\$ -	\$ 153,627,495.78
Total Investor Interest Owed	\$ 9,141,290.94	\$ 3,250,020.24	\$ 1,312,546.06	\$ -	\$ 13,703,857.23
Total Owed to Investors	\$ 106,798,316.03	\$ 40,597,604.12	\$ 19,935,432.87	\$ -	\$ 167,331,353.01
Bank Account Balance (10 or 11/2019)	\$ 3,447,051.98	\$ 1,938,351.65	\$ 1,291,696.13	\$ 151,032.30	\$ 6,828,132.06
Real Estate Portfolio Value (per Equialt)	\$ 104,166,720.34	\$ 27,352,680.00	\$ 13,545,000.00	\$ -	\$ 145,064,400.34
Total Fund Value	\$ 107,613,772.32	\$ 29,291,031.65	\$ 14,836,696.13	\$ -	\$ 151,741,500.10
Solvent (Insolvent)	\$ 815,456.30	\$ (11,306,572.47)	\$ (5,098,736.74)	\$ 151,032.30	\$ (15,438,820.61)
Summary of Payments Owed to Investors by 12/2020					
# of Investors	733	266	138	0	1,137
Total Revenue from Business Operations	\$ 11,914,628.44	\$ 3,506,304.29	\$ 176,229.66	\$ -	\$ 15,597,162.39
Amount Raised from Investors	\$ 110,185,262.92	\$ 39,630,785.30	\$ 21,727,416.03	\$ -	\$ 171,543,464.25
Redemptions to Investors	\$ 12,528,237.83	\$ 2,283,201.42	\$ 3,104,529.22	\$ -	\$ 17,915,968.47
Total Investor Principal Owed	\$ 97,657,025.09	\$ 37,347,583.88	\$ 18,622,886.81	\$ -	\$ 153,627,495.78
Total Investor Interest Owed	\$ 9,141,290.94	\$ 3,250,020.24	\$ 1,312,546.06	\$ -	\$ 13,703,857.23
Total Owed to Investors	\$ 106,798,316.03	\$ 40,597,604.12	\$ 19,935,432.87	\$ -	\$ 167,331,353.01
Bank Account Balance (10 or 11/2019)	\$ 3,447,051.98	\$ 1,938,351.65	\$ 1,291,696.13	\$ 151,032.30	\$ 6,828,132.06
Real Estate Portfolio Current Market Value (per Equialt)	\$ 48,539,000.00	\$ 16,187,000.00	\$ 13,545,000.00	\$ -	\$ 78,271,000.00
Total Fund Value	\$ 51,986,051.98	\$ 18,125,351.65	\$ 14,836,696.13	\$ -	\$ 85,099,132.06
Solvent (Insolvent)	\$ (54,812,264.05)	\$ (22,472,252.47)	\$ (5,098,736.74)	\$ 151,032.30	\$ (82,232,220.95)

\*These values do not include potential operating revenues anticipated for 2020. Nor are future costs or expenses for continuing operations included in the analysis. For comparison sake the revenues raised by all three funds in 2019 was \$4.4 million. Thus, revenues would need to increase over three fold in one year to cover the anticipated deficit in 2020.

\*\*Sources used were from Equialt investor lists, QuickBooks records, and spreadsheets.

