

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Case No.:

MORTON ZINBERG, an individual;
ELAINE ZINBERG, an individual; and
AARON GRUSHKO, an individual;

Plaintiffs,

v.

MAGNUM ENERGY PARTNERS, LLC, a Delaware limited liability company;
MEP ALASKA, LLC, a Delaware limited liability company; and
TERRENCE MANNING, an individual;

Defendants.

COMPLAINT FOR DAMAGES

Plaintiffs MORTON ZINBERG, an individual; ELAINE ZINBERG, an individual; and AARON GRUSHKO, an individual (collectively, “Plaintiffs”), pursuant to New York common law; bring the following Complaint against defendants MAGNUM ENERGY PARTNERS, LLC, a Delaware limited liability company; MEP ALASKA, LLC, a Delaware limited liability company; and TERRENCE MANNING, an individual (collectively, the “Defendants”). As grounds therefor, Plaintiffs allege the following:

PRELIMINARY STATEMENT

1. This action seeks to compensate Plaintiffs for the fraudulent investment scheme perpetrated upon them by Defendants under the guise of raising capital to fund a business whose stated purpose was to acquire, manage, dispose of, and otherwise deal with oil leases and to explore for oil, gas, and other hydrocarbons in a burgeoning oil region in Alaska.

2. Contrary to the seemingly-sound stated purpose of the business venture; Defendants’ true goal in raising funds from investors was to line their own pockets and live extravagant lives with the funding provided by the unsuspecting investors, including Plaintiffs.

3. Whereas Plaintiffs thought their investments would bring them financial reward, their investments actually left them financially hollow; as they were taken advantage of by greedy scam artists who preyed upon Plaintiffs in the name of gross avarice.

4. Defendants are liable because:

- (a) The sales materials and offering documents used to procure Plaintiffs' investments contained multiple false or misrepresented statements of fact on which Plaintiffs relied in deciding to invest;
- (b) The sales materials and offering documents used to procure Plaintiffs' investments omitted several highly material facts that would have swayed Plaintiffs to not invest in Defendants' purported business venture; and
- (c) One of the sales agents who procured Plaintiffs' investments was a convicted felon awaiting sentencing for his operation of a widespread Ponzi scheme and was not permitted to sell securities.

5. As a result of this fraud, Plaintiffs have suffered severe economic damage -- all directly because Plaintiffs put their faith, trust, and belief in what Defendants represented to them, which has turned out to be as misguided a decision as they could have made.

PARTIES, JURISDICTION AND VENUE

THE PARTIES

Plaintiffs

6. Plaintiff MORTON ZINBERG is an individual domiciled in Lawrence, New York, is a citizen of the state of New York, and is *sui juris*.

7. Plaintiff ELAINE ZINBERG is an individual domiciled in Lawrence, New York, is a citizen of the state of New York, and is *sui juris*.

8. At all times material hereto, MORTON ZINBERG and ELAINE ZINBERG were married as husband and wife.

9. Plaintiff AARON GRUSHKO is an individual domiciled in Cedarhurst, New York, is a citizen of the state of New York, and is *sui juris*.

Defendants

10. Defendant MAGNUM ENERGY PARTNERS, LLC (“MAGNUM ENERGY”) is a Delaware limited liability company with its principal place of business in Kingwood, Texas.

11. Defendant MEP ALASKA, LLC (“MEP ALASKA”) is a Delaware limited liability company with its principal place of business in Kingwood, Texas. At all times material hereto, MAGNUM ENERGY served as the Manager of MEP ALASKA.

12. Defendant TERRENCE MANNING (“MANNING”) is an individual domiciled in Houston, Texas, is a citizen of the state of Texas, and is *sui juris*. At all times material hereto, MANNING was an Executive Officer and Director of MAGNUM ENERGY.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest, costs and attorneys’ fees, and is an action between citizens of different states.

14. This Court has personal jurisdiction over the defendants because: (a) the corporate defendants are business entities operating, present, and/or doing business within this jurisdiction, as the defendants came to this jurisdiction to specifically solicit funds from Plaintiffs, and (b) the defendants’ contractual and tortious breaches occurred within this jurisdiction.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted in this action occurred in this district.

GENERAL FACTUAL ALLEGATIONS

16. In February 2013, MAGNUM ENERGY was organized and registered with the State of Delaware as a for-profit limited liability company.

17. In April 2014, MEP ALASKA was organized and registered with the State of Delaware as a for-profit limited liability company.

18. As noted above, MAGNUM ENERGY is the Manager of MEP ALASKA. In that role, MAGNUM ENERGY is responsible for directing, controlling, and managing MEP ALASKA's business and affairs.

19. In or about June 2014, MEP ALASKA, as a means of raising capital to fund its purported operations, offered to numerous investors a private placement of Units of ownership in MEP ALASKA's business for \$500,000.00 per Unit.

20. That fundraising effort continued through the years 2014 and 2015 and included vital participation from MANNING, who [falsely] verified to several investors the legitimacy of the project and the investment.

21. Additionally, one of the primary agents working for Defendants to solicit investors (including Plaintiffs) was a gentleman named Gershon Barkany ("Mr. Barkany"), a purported financial advisor and real estate investor who Plaintiffs were led to believe had a significant ownership interest of his own in MEP ALASKA.

22. Defendants represented to potential investors, including Plaintiffs, that their investments would provide them high returns with little or no risk.

THE MEP ALASKA OFFERING DOCUMENTS

23. To memorialize the terms of its offering, MEP ALASKA issued a Limited Liability Company Agreement (the "LLC Agreement") to which each investor/"Member" was required to subscribe. Attached hereto as **Exhibit "A"** is a true and correct copy of the LLC Agreement.

24. According to the LLC Agreement, MAGNUM ENERGY was established for the following purposes, *inter alia*:

- (a) to acquire an up to 18% interest in oil and gas leases pertaining to land in the North Slope region of Alaska;
- (b) to acquire, manage, dispose of, and otherwise deal with oil leases;

- (c) to explore for oil, gas, and other hydrocarbons; and
- (d) to do anything necessary, convenient, or incidental to the foregoing.

25. Additionally, the LLC Agreement represented that funds derived from the operation of MEP ALASKA's business would, after the company's repayment to Members of any loan(s) to the company, be distributed to Members thusly:

[U]ntil the Investors' respective Capital Balances have been reduced to zero dollars (\$0.00), as follows: (i) 85% to the Investors, *pro rata*, in proportion with their respective Capital Balances; and (ii) 15% to [MAGNUM ENERGY].

26. Furthermore, the LLC Agreement provided:

Section 11.2 ("Availability"). The Company shall cause to be kept full and true books of account in accordance with the accounting method followed by the Company for federal income tax purposes and shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. Such books of account, together with a copy of this Agreement and the Articles, shall at all times be maintained at the principal office of the Company. **Each Member or its duly authorized representative shall have the right at any time to inspect and copy such books and documents during normal business hours upon reasonable notice.**

Section 11.3(a) ("Financial Reports"). **The Manager shall cause the Company to prepare and deliver to each Member within thirty (30) days after the end of each fiscal quarter of the Company: (a) an internally-prepared income statement** reflecting in reasonable detail the results of operations of the Company for such quarter and the fiscal year to date **and a balance sheet reflecting the financial position of the Company as of the end of such quarter;** (b) a schedule setting forth distributions to the Members during such quarter and for the fiscal year to date; and **(c) a statement of any fees or other amounts paid by the Company** to any Member or to any Affiliate of any Member during such quarter and for the fiscal year to date and the goods provided or services rendered by such Member or person therefor.

(emphasis added).

27. To signify his/her acceptance of MEP ALASKA's offer and the terms of the LLC Agreement, each investor executed a "Signature Page for Individual Subscribers" by which each individual purchased from MEP ALASKA a certain number of Units of MEP ALASKA for the price listed above and thereby became a Member of MEP ALASKA -- entitling the Unit owner to a certain percentage of ownership in MEP ALASKA's business.

THE ZINBERG SUBSCRIPTION AGREEMENT

28. On June 29, 2014, ELAINE ZINBERG -- in reasonable reliance on the representations made to her by and on behalf of Defendants -- executed a "Signature Page for Individual Subscribers," memorializing her subscription for 1.0 Unit at a purchase price of \$500,000.00 per Unit for an aggregate purchase price of \$500,000.00, which was accepted on December 30, 2014 by MAGNUM ENERGY on behalf of MEP ALASKA. Attached hereto as **Exhibit "B"** is a true and correct copy of ELAINE ZINBERG's Signature Page for Individual Subscribers.

29. On that same date, ELAINE ZINBERG transmitted, or had someone transmit on her behalf, a personal check made payable to MEP ALASKA representing the payment for her investment.

30. The LLC Agreement, when read together with ELAINE ZINBERG's Signature Page for Individual Subscribers, is referred to herein as the "ZINBERG Subscription Agreement."

31. At no time did Defendants ask ELAINE ZINBERG if she were an "accredited investor," as that term is generally understood in the context of private investment opportunities.

THE ZINBERG BRIDGE PROMISSORY NOTE

32. In connection with Defendants' private fundraising efforts and ELAINE ZINBERG's subscription for 1.0 Unit of ownership in MEP ALASKA, Defendants further solicited ELAINE ZINBERG and MORTON ZINBERG to loan to MEP ALASKA certain funds that were purportedly needed by the company to fund its operations and which would be repaid by the company within a

period of no more than twelve weeks from the date on which the funds were to be borrowed by the company.

33. On July 30, 2014, MORTON ZINBERG -- in reasonable reliance on the representations made to him by and on behalf of Defendants -- entered into a contract with MEP ALASKA by which MORTON ZINBERG loaned to MEP-ALASKA funds in the principal sum of One Hundred Thousand Dollars (\$100,000.00). Attached hereto as **Composite Exhibit "C"** is a true and correct copy of the Bridge Promissory Note, as well as a personal check reflecting MORTON ZINBERG's payment, that memorialized the loan.

34. Pursuant to the Bridge Promissory Note, MEP ALASKA was obligated to pay back to MORTON ZINBERG no later than October 31, 2014 the then full outstanding balance of the \$100,000.00 loan.

35. Although Fifty Thousand Dollars (\$50,000.00) of the amount loaned was ultimately repaid to MORTON ZINBERG, there still remains an unpaid and outstanding balance of Fifty Thousand Dollars (\$50,000.00) due and payable to MORTON ZINBERG.

THE GRUSHKO SUBSCRIPTION AGREEMENT

36. On or about June 20, 2014, AARON GRUSHKO -- in reasonable reliance on the representations made to him by and on behalf of Defendants -- executed a "Signature Page for Individual Subscribers," memorializing his subscription for 1.0 Unit at a purchase price of \$500,000.00 per Unit for an aggregate purchase price of \$500,000.00, which was accepted by MAGNUM ENERGY on behalf of MEP ALASKA.

37. AARON GRUSHKO's Signature Page for Individual Subscribers, in all material respects, is identical to ELAINE ZINBERG's Signature Page for Individual Subscribers, except for AARON GRUSHKO's handwritten signature appearing on his Signature Page whereas ELAINE ZINBERG's signature appears on her Signature Page.

38. Also on or about June 20, 2014, AARON GRUSHKO transmitted, or had someone transmit on his behalf, a personal check made payable to MEP ALASKA representing the payment for his investment.

39. The LLC Agreement, when read together with AARON GRUSHKO's Signature Page for Individual Subscribers, is referred to herein as the "GRUSHKO Subscription Agreement."

40. At no time did Defendants ask AARON GRUSHKO if he were an "accredited investor," as that term is generally understood in the context of private investment opportunities.

DEFENDANTS' FRAUD AND BREACH OF WRITTEN OBLIGATIONS

41. The factual representations made by and on behalf of Defendants to induce Plaintiffs to invest their funds with MEP ALASKA were materially misleading if not outright false.

42. In the LLC Agreement and the offering documents that were promoted alongside it, MEP ALASKA touted its business operations in terms that were misleading to investors, including Plaintiffs.

43. Upon information and belief, MEP ALASKA did not possess the assets in which the investors were being asked to subscribe -- assets that were necessary for MEP ALASKA to actually operate the business on which it sold Plaintiffs to secure their funds.

44. Moreover, Defendants' representation that Plaintiffs' investments would provide them high returns with little or no risk was false, as Plaintiffs have incurred nothing but a loss of their principal with no returns whatsoever (other than the partial loan repayment made to MORTON ZINBERG).

45. Additionally, Defendants' assurance that MEP ALASKA investors would be kept up-to-date on a quarterly basis on MEP ALASKA's income, distributions, fees incurred, and overall financial strength was false; as Plaintiffs never received any such quarterly updates.

46. Similarly, Defendants' assurance that MEP ALASKA investors would have easy access to MEP ALASKA's financial books and supporting documents was likewise false, as Plaintiffs have been denied access to those books and records despite proper demand.

DEFENDANTS HELD A CONVICTED FRAUDSTER OUT AS THEIR AGENT AND ADVISOR

47. Moreover, Mr. Barkany -- who was one of Defendants' primary solicitors of investors and who was involved in soliciting Plaintiffs' investments -- is a convicted fraudster of the highest degree.

48. Although it was not known to Plaintiffs at the time they invested with Defendants, Mr. Barkany was the mastermind behind a \$62 million Ponzi scheme that operated from January 2008 to December 2010.

49. For his involvement in that scheme, Mr. Barkany was arrested and was criminally charged in March 2013 by federal authorities in the U.S. District Court for the Eastern District of New York for, *inter alia*, defrauding investors. *See, USA v. Gershon Barkany*, U.S. Dist. Ct. - E.D.N.Y. - Case No. 2:13-cr-00362-LDW-ARL.

50. Since the date in 2013 on which he pleaded guilty to the criminal charges against him, Mr. Barkany has been out of jail awaiting sentencing for his crimes. It was during that time -- after he had pleaded guilty to defrauding tens of millions of dollars from investors -- that Mr. Barkany served as an advisor, promoter, solicitor, and quasi-spokesperson for Defendants and helped solicit Plaintiffs' investments in MEP ALASKA.

51. Upon information and belief, Defendants knew of Mr. Barkany's conviction and ignored it in the name of obtaining additional funding for MEP ALASKA's purported business operations.

52. Had Plaintiffs known of Mr. Barkany's shameful and untrustworthy past, they would not have relied upon any representations he made on Defendants' behalf.

53. Moreover, had Plaintiffs known that Defendants were willingly and unhesitatingly working with a fraud perpetrator such as Mr. Barkany, Plaintiffs would not have invested any of their funds with Defendants.

54. Plaintiffs have duly performed all of their duties and obligations, and any conditions precedent to Plaintiffs bringing this action have occurred, have been performed, or else have been excused or waived.

55. To enforce their rights, Plaintiffs have retained undersigned counsel and are obligated to pay counsel a reasonable fee for its services, for which Defendants are liable as a result of their bad faith and otherwise.

COUNT I – BREACH OF CONTRACT: ZINBERG SUBSCRIPTION AGREEMENT
[BY ELAINE ZINBERG AGAINST MEP ALASKA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

56. The ZINBERG Subscription Agreement (attached hereto as **Exhibits “A” and “B”**) constitutes a contract between ELAINE ZINBERG and MEP ALASKA.

57. MEP ALASKA has breached the express terms of the ZINBERG Subscription Agreement by failing to fulfill all of its responsibilities and obligations thereunder, including but not limited to:

- (a) Distributing to ELAINE ZINBERG the promised returns on her investment,
- (b) Keeping ELAINE ZINBERG up-to-date on a quarterly basis on MEP ALASKA’s income, distributions, fees incurred, and overall financial strength, and
- (c) Providing ELAINE ZINBERG access to MEP ALASKA’s financial books and supporting documents.

58. Despite demand from ELAINE ZINBERG that MEP ALASKA cure its breaches, MEP ALASKA has failed to cure them.

59. As a direct and proximate result of MEP ALASKA's breach of the ZINBERG Subscription Agreement, ELAINE ZINBERG has been damaged.

WHEREFORE, Plaintiff ELAINE ZINBERG, an individual; demands entry of a judgment against Defendant MEP ALASKA, LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT II – BREACH OF CONTRACT: BRIDGE PROMISSORY NOTE
[BY MORTON ZINBERG AGAINST MEP ALASKA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

60. On or about July 30, 2014, MEP ALASKA issued to MORTON ZINBERG a Bridge Promissory Note in the principal amount of One Hundred Thousand Dollars (\$100,000.00). Attached hereto as **Composite Exhibit "C"** is a true and correct copy of the Bridge Promissory Note, as well as a personal check reflecting MORTON ZINBERG's payment, that memorialized the loan.

61. The Bridge Promissory Note constitutes a contract between MORTON ZINBERG and MEP ALASKA.

62. MEP ALASKA has breached the express terms of the Bridge Promissory Note by failing to make the necessary payments thereunder and, despite demand, has failed to cure its breach.

63. As a direct and proximate result of MEP ALASKA's breach of the Bridge Promissory Note, MORTON ZINBERG has been damaged.

WHEREFORE, Plaintiff MORTON ZINBERG, an individual; demands entry of a judgment against Defendant MEP ALASKA, LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT III – BREACH OF CONTRACT: GRUSHKO SUBSCRIPTION AGREEMENT
[BY AARON GRUSHKO AGAINST MEP ALASKA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

64. The GRUSHKO Subscription Agreement constitutes a contract between AARON GRUSHKO and MEP ALASKA.

65. MEP ALASKA has breached the express terms of the GRUSHKO Subscription Agreement by failing to fulfill all of its responsibilities and obligations thereunder, including but not limited to:

- (a) Distributing to AARON GRUSHKO the promised returns on his investment,
- (b) Keeping AARON GRUSHKO up-to-date on a quarterly basis on MEP ALASKA's income, distributions, fees incurred, and overall financial strength, and
- (c) Providing AARON GRUSHKO access to MEP ALASKA's financial books and supporting documents.

66. Despite demand from AARON GRUSHKO that MEP ALASKA cure its breaches, MEP ALASKA has failed to cure them.

67. As a direct and proximate result of MEP ALASKA's breach of the GRUSHKO Subscription Agreement, AARON GRUSHKO has been damaged.

WHEREFORE, Plaintiff AARON GRUSHKO, an individual; demands entry of a judgment against Defendant MEP ALASKA, LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT IV – FRAUDULENT INDUCEMENT
[BY ALL PLAINTIFFS AGAINST MEP ALASKA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

68. MEP ALASKA, by acts of both omission and commission, made false statements to Plaintiffs concerning material facts about their investments and loan.

69. Specifically, MEP ALASKA's representations to Plaintiffs that, among other things:

- (a) Plaintiffs' investments would provide them high returns with little or no risk,
- (b) After certain other financial liabilities were addressed, investors would receive 85% of the funds derived from the operation of MEP ALASKA's business,
- (c) MEP ALASKA investors would be kept up-to-date on a quarterly basis on MEP ALASKA's income, distributions, fees incurred, and overall financial strength,
- (d) MEP ALASKA investors would have easy access to MEP ALASKA's financial books and supporting documents, and
- (e) MEP ALASKA would pay back to MORTON ZINBERG no later than October 31, 2014 the full \$100,000.00 he loaned to the company

were false; and MEP ALASKA knew at the time the statements were made that the statements were false.

70. MEP ALASKA intended that Plaintiffs would be induced into action by relying upon the statements of fact made to them by MEP ALASKA.

71. In the course of investing their money with MEP ALASKA and entrusting MEP ALASKA to properly allocate those funds to meet MEP ALASKA's corporate operating needs, Plaintiffs reasonably and justifiably relied on the statements of fact made to them by MEP ALASKA.

72. As a direct and proximate result of Plaintiffs' reliance on the statements made to them by MEP ALASKA, Plaintiffs have suffered damage.

73. ELAINE ZINBERG has rescinded the ZINBERG Subscription Agreement and has notified MEP ALASKA of same.

74. To the extent ELAINE ZINBERG has received from MEP ALASKA any benefits through the ZINBERG Subscription Agreement -- though none are known to her at this time -- she hereby offers to restore those benefits to MEP ALASKA.

75. AARON GRUSHKO has rescinded the GRUSHKO Subscription Agreement and has notified MEP ALASKA of same.

76. To the extent AARON GRUSHKO has received from MEP ALASKA any benefits through the GRUSHKO Subscription Agreement -- though none are known to him at this time -- he hereby offers to restore those benefits to MEP ALASKA.

WHEREFORE, Plaintiffs MORTON ZINBERG, an individual; ELAINE ZINBERG, an individual; and AARON GRUSHKO, an individual; demand entry of a judgment against Defendant MEP ALASKA, LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs; and further demand rescission of the ZINBERG Subscription Agreement and the GRUSHKO Subscription Agreement.

COUNT V – BREACH OF FIDUCIARY DUTIES
[BY ELAINE ZINBERG AGAINST MEP ALASKA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

77. ELAINE ZINBERG and MEP ALASKA shared a relationship whereby:

- (a) ELAINE ZINBERG reposed trust and confidence in MEP ALASKA, and
- (b) MEP ALASKA undertook such trust and assumed a duty to advise, counsel and/or protect ELAINE ZINBERG.

78. MEP ALASKA owed ELAINE ZINBERG a fiduciary duty to, among other things:

- (a) Disclose to ELAINE ZINBERG all material information pertaining to her investment in the company; and
- (b) Refrain from making false statements or creating misimpressions of material fact as they relate to ELAINE ZINBERG's investment in MEP ALASKA.

79. MEP ALASKA breached its duty to ELAINE ZINBERG.

80. As a direct and proximate result of ELAINE ZINBERG's reliance on the statements made to her by MEP ALASKA, ELAINE ZINBERG has suffered damage.

WHEREFORE, Plaintiff ELAINE ZINBERG, an individual, demands entry of a judgment against Defendant MEP ALASKA, LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT VI – BREACH OF FIDUCIARY DUTIES
[BY AARON GRUSHKO AGAINST MEP ALASKA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

81. AARON GRUSHKO and MEP ALASKA shared a relationship whereby:

- (a) AARON GRUSHKO reposed trust and confidence in MEP ALASKA, and
- (b) MEP ALASKA undertook such trust and assumed a duty to advise, counsel and/or protect AARON GRUSHKO

82. MEP ALASKA owed AARON GRUSHKO a fiduciary duty to, among other things:

- (a) Disclose to AARON GRUSHKO all material information pertaining to his investment in the company; and
- (b) Refrain from making false statements or creating misimpressions of material fact as they relate to AARON GRUSHKO's investment in MEP ALASKA.

83. MEP ALASKA breached its duty to AARON GRUSHKO.

84. As a direct and proximate result of AARON GRUSHKO's reliance on the statements made to him by MEP ALASKA, AARON GRUSHKO has suffered damage.

WHEREFORE, Plaintiff AARON GRUSHKO, an individual, demands entry of a judgment against Defendant MEP ALASKA, LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT VII – CONVERSION
[BY ALL PLAINTIFFS AGAINST MEP ALASKA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

85. Plaintiffs transferred funds to MEP ALASKA for investment, and as a loan, in an amount of \$1,100,000.00.

86. MEP ALASKA has kept Plaintiffs' money (including all profits) after Plaintiffs requested its return, despite MEP ALASKA's lack of any ownership interest in the money and despite MEP ALASKA's agreement in writing to compensate Plaintiffs in accordance with a distribution payment schedule, devised by MEP ALASKA itself.

87. By refusing to return to Plaintiffs their money (including all profits to which Plaintiffs are entitled) -- except for the Fifty Thousand Dollars (\$50,000.00) that has been returned to Plaintiff MORTON ZINBERG -- MEP ALASKA intended to interfere with, and indeed has interfered with, Plaintiffs' ownership and interest in the money and has deprived Plaintiffs of their property, permanently or temporarily.

88. Upon information and belief, MEP ALASKA has utilized Plaintiffs' capital to, *inter alia*, cover MEP ALASKA's own business expenses and allow MANNING to enrich himself and companies he owned or controlled.

89. As a result of MEP ALASKA's conversion of Plaintiffs' money to its own corporate and personal use, Plaintiffs have suffered damage.

WHEREFORE, Plaintiffs MORTON ZINBERG, an individual; ELAINE ZINBERG, an individual; and AARON GRUSHKO, an individual; demand entry of a judgment against Defendant MEP ALASKA, LLC, a Delaware limited liability company; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

COUNT VIII – CIVIL CONSPIRACY
[By ALL PLAINTIFFS AGAINST ALL DEFENDANTS]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 - 55 above, and further allege:

90. Defendants conspired with one another to perpetrate an unlawful act upon Plaintiffs or to perpetrate a lawful act by unlawful means, *to wit*: they made multiple misrepresentations of fact to Plaintiffs in an effort to extract from Plaintiffs investment capital to fund the corporate defendants' and MANNING's personal financial interests, not the corporate purpose to which Plaintiffs were told

by Defendants that their investment principal was being applied – all of which put Defendants’ own pecuniary interest ahead of Plaintiffs’ welfare and economic safety.

91. Defendants solicited and/or accepted from Plaintiffs large sums of investment funds while withholding from Plaintiffs certain material facts, including:

- (a) MEP ALASKA had no intent to provide ELAINE ZINBERG shares of ownership that represented any real value for her;
- (b) MEP ALASKA had no intent to provide AARON GRUSHKO shares of ownership that represented any real value for him;
- (c) MEP ALASKA had no intent to satisfy the payment obligations MEP ALASKA undertook when entering into the Subscription Agreement with ELAINE ZINBERG;
- (d) MEP ALASKA had no intent to satisfy the payment obligations MEP ALASKA undertook when entering into the Subscription Agreement with AARON GRUSHKO;
- (e) MEP ALASKA had no intent to satisfy the payment obligations MEP ALASKA undertook when entering into the Bridge Promissory Note with MORTON ZINBERG;
- (f) MEP ALASKA did not possess the assets in which the investors were being asked to subscribe -- assets that were necessary for MEP ALASKA to actually operate the business on which it sold Plaintiffs to secure their funds; and
- (g) Defendants were aware, yet self-servingly ignored and withheld from Plaintiffs, that a key member of the MEP ALASKA team (Gershon Barkany) had a disreputable background which, had that information been disclosed, would have discouraged Plaintiffs from investing any money with MEP ALASKA.

92. All Defendants agreed to the illicit purpose for garnering investment monies from Plaintiffs so that the individual defendants could enjoy lavish lifestyles with Plaintiffs’ money.

93. Defendants were each aware of, and consented to, the misrepresentations detailed above and knew that the efforts to raise capital from Plaintiffs was all part of a fraud aimed solely at enriching themselves without any intent to issue common stock or remunerate Plaintiffs in any way.

94. In furtherance of their conspiracy, Defendants made to Plaintiffs, or agreed to have someone make on their behalf, the false statements of fact detailed above and purposefully withheld

from Plaintiffs certain material facts detailed above in a concerted effort to obtain Plaintiffs' investment funds. As noted above, MANNING falsely verified to several investors the legitimacy of the project and the investment.

95. MEP ALASKA conducted no legitimate business -- something of which the MANNING was aware and which he accepted as part of the scheme to defraud investors, including Plaintiffs.

96. As a direct and proximate result of Defendants' conspiracy, Plaintiffs have suffered damage.

WHEREFORE, Plaintiffs MORTON ZINBERG, an individual; ELAINE ZINBERG, an individual; and AARON GRUSHKO, an individual; demand entry of a judgment against Defendants MAGNUM ENERGY PARTNERS, LLC, a Delaware limited liability company; MEP ALASKA, LLC, a Delaware limited liability company; and TERRENCE MANNING, an individual; for an amount within the jurisdictional limits of this court, including an award of interest, attorneys' fees, and costs.

PLAINTIFFS' DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of all issues so triable.

RESERVATION OF RIGHTS

Plaintiffs reserve their right to further amend this Complaint, upon completion of their investigation and discovery, to assert any additional claims for relief against Defendants or other parties as may be warranted under the circumstances and as allowed by law.

Respectfully submitted,

THE BRAUNSTEIN LAW FIRM, PLLC

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- and -

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Attorneys for Plaintiffs

Dated: November 15, 2016

MEP ALASKA LLC
LIMITED LIABILITY COMPANY AGREEMENT

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") is made effective as of the ___ day of _____, 2014 by and among the Persons listed on Exhibit A attached hereto (collectively the "Members") and the Manager.

EXPLANATORY STATEMENT

MEP Alaska LLC (the "Company") was organized as a limited liability company pursuant to the Act upon the filing of a Certificate of Formation with the Delaware Secretary of State on April 10, 2014.

NOW, THEREFORE, in consideration of the mutual promises of the parties, each to the others, and for good and valuable consideration, receipt of which is acknowledged, it is mutually agreed by and among the parties as follows:

**SECTION I
DEFINED TERMS**

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meaning specified in this Section I. The singular shall include the plural and vice versa and the use of any gender shall be deemed to be or include the other gender, whenever appropriate.

Accountants means the firm of certified public accountants as may be engaged by the Manager from time to time to prepare the tax returns of the Company and to provide accounting advice as necessary.

Act means the Delaware Limited Liability Company Act as set forth in 66 Delaware Code Section 18-101 *et. seq.*, as it may be from time to time amended.

Act of Insolvency means with respect to a Member or Manager, (a) if the Interest of a Member is attached or taken in execution or is made subject to a charging order, or (b) if a Member or Manager, as the case may be, applies for the benefit of or files a case under, any provision of federal bankruptcy law or any other law relating to the insolvency or relief of debtors, or (c) if any case or proceeding is brought against a Member or Manager, as the case may be, under any provision of the federal bankruptcy law or any other law relating to insolvency or relief of debtors which is not dismissed within thirty (30) days after the commencement thereof, or (d) if a Member or Manager, as the case may be, makes an assignment for the benefit of creditors.

Additional Capital Contribution – means any Capital Contributions made by the Members in accordance with this Agreement (excluding their respective initial Capital Contributions set forth on Exhibit A).

Affiliate means, as to any named Member, any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with the Member.

EXHIBIT "A"

Agreement means this Limited Liability Company Agreement, as it may be amended from time to time, as the context requires.

Capital Proceeds - means the gross proceeds received from a Capital Transaction.

Capital Account means, as to any Member, the Initial Capital Contribution and any additional capital contributions made by such Member in regards to his Units, plus all Profit allocated to such Member with respect to his Units, and minus the sum of (a) all Loss allocated to such Member with respect to his Units, and (b) the amount of cash and the book value of any other asset distributed to such Member (net of liabilities assumed or taken subject to by such Member) with respect to his Units. Each Member's Capital Account shall be computed and maintained in accordance with the Treasury Regulations promulgated under Section 704(b) of the Code. Any questions concerning a Member's Capital Account with respect to his Units shall be resolved by the Manager by applying principles consistent with this Agreement and the Treasury Regulations under Section 704 of the Code.

Capital Balance – means, with respect to each Member, such Member's Initial Capital Contribution to the Company for his Units, and Additional Capital Contribution to the Company reduced (but not below zero) by the amount of cash and the book value of any other asset distributed to such Member as a return of its Capital Balance pursuant to Section 5.1(b)(i).

Capital Call – has the meaning given to it in Section 3.3.2.

Capital Contribution – means, with respect to each Member, collectively each Member's Initial Capital Contribution and Additional Capital Contribution, as applicable.

Capital Transaction means the sale, exchange, financing, refinancing, condemnation, casualty or other disposition of all or substantially all of the assets of the Company.

Cash Flow - means, all cash funds derived from operations of the Company (excluding Capital Contributions, Additional Capital Contributions, and Capital Proceeds, but including interest received on reserves), and without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reserves for future expenses, required debt service payments, capital improvements, leasing costs, and replacements or otherwise, as reasonably determined by the Manager (and, if applicable, any lender). Cash Flow shall include any funds which would have been characterized as "Cash Flow" hereunder but were previously reserved in accordance herewith and which become available for distribution to the Members.

Code means the Internal Revenue Code of 1986, as amended (or any corresponding provision of any succeeding law).

Company means "MEP Alaska LLC," being the limited liability company named in Section 2.1 of this Agreement.

Consent of the Members means the written consent of Members whose aggregate ownership of the outstanding Units exceeds fifty percent (50%) of the Percentage Interests then held by Members, except on those matters expressly set forth herein which require a larger percentage as set forth herein.

Covered Person – means a Member (acting in its capacity as a Member), any officer, member, partner, or shareholder of a Member, any officer or Manager of the Company.

Entity means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

Event of Withdrawal - means that a Member or Manager shall be deemed to have withdrawn from the Company as a Member or Manager, as the case may be, as of the date on which such Member or Manager: (a) dies or becomes Incapacitated, as to an individual Member or Manager, (b) dissolves, as to a corporate or partnership Member or Manager, or (c) commits an Act of Insolvency.

Incapacity – means, with respect to any Person who is not an Entity, the physical or mental inability of such Person to perform his duties hereunder, as determined by a certificate of two qualified physicians or psychiatrists, as appropriate.

Initial Capital Contribution means the total amount of cash contributed by each Member to the Company as set forth on Exhibit A hereto for said Member's Units.

Investors – means each of the Members other than Magnum.

Manager – shall have the meaning given to it in Section 6.1.1 hereof.

Magnum – means Magnum Energy Partners LLC, a Delaware limited liability company.

Maximum Tax Liability - shall mean, for any taxable year, the sum of the hypothetical federal, state, and local taxes which shall be determined by multiplying the Company's taxable income (as determined under Section 703 of the Code including items required to be separately stated under Section 703(a)(1) of the Code) for such year by (i) for purposes of determining the hypothetical federal tax, the highest marginal federal income tax rate in effect for such year (including any surtax or surcharge) and (ii) for purposes of determining state and local taxes, the highest effective state and local tax rate, as the case may be, imposed on such taxable income, taking into account state and local rates in effect in any jurisdiction in which any Member is subject to a tax on its allocable share of the Company's taxable income. In the case of any Member which is an entity treated as a pass-through tax entity for federal, state, or local purposes, the partners, members, beneficiaries, or shareholders (as the case may be) of such entity shall be considered as Members for purposes of applying the immediately preceding sentence.

Member means any person owning any Units, to the extent that such person was admitted as a Member pursuant to the terms of this Agreement.

Member Loans – shall have the meaning given to it in Section 3.3(a) hereof.

Member Nonrecourse Deduction has the meaning set forth in Treasury Regulations Section 1.7042(i) for "partner nonrecourse deduction."

Minimum Gain has the meaning set forth in Treasury Regulations Section 1.7042. Minimum Gain shall be computed separately for each Member by the Accountants, applying principles consistent with both the foregoing definition and the Treasury Regulations promulgated under Section 704 of the Code.

Negative Capital Account means a Capital Account with a balance less than zero.

Nonrecourse Deduction has the meaning as set forth in Treasury Regulations Section 1.704-2(b)(1). The amount of Nonrecourse Deduction for a Company fiscal year equals the net increase, if any, in the amount of Minimum Gain during that fiscal year, determined according to the provisions of Treasury Regulations Section 1.7042(c).

North Slope Leases – The oil field leases more particularly described on Exhibit B attached hereto.

Notification means a writing, containing information or requests deemed necessary or appropriate under this Agreement by the Member sending the same, to be communicated to another Member or Members, and sent in accordance with the provisions of Section 13.1 of this Agreement.

Percentage Interest when used with respect to any Member, means the percentage determined by dividing the number of Units held by such Member by the total number of Units then outstanding, as the case may be.

Person means any individual or Entity, and the heirs, executors, administrators, trustees, successors and assigns of such Person where the context so admits.

Positive Capital Account means a Capital Account with a balance greater than zero.

Profit and Loss means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.7041(b)(2)(iv)(I), and not otherwise taken into account in computing Profits and Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(iii) In the event the book value of any Company asset is adjusted pursuant to this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from the disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the book value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its book value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account book depreciation for such fiscal year or other period; and

(vi) Notwithstanding any other provision of this definition of Profits and Losses, any items which are specially allocated pursuant to Section 4.1.3. hereof shall not be taken into account in computing Profits or Losses.

Regulations – means the regulations promulgated by the Internal Revenue Service under the Code.

Restoration Amount – means with respect to each Member: (a) the Member's share of Minimum Gain, and (b) any amount which the Member is required by law to contribute to the Company to restore his or its Negative Capital Account balance with respect to such Member under Section 10.2.

Return Multiple – means aggregate distributions to Investors of Cash Flow equal to three times (3x) their aggregate Initial Capital Contributions (including any and all distributions to the Investors pursuant to Section V hereof).

Return Multiple Determination Date – means the date that is sixty (60) months from the effective date of this Agreement.

Transfer means a sale, conveyance, assignment, exchange, pledge, hypothecation, encumbrance or other disposition of an asset, specifically including any Percentage Interest in the Company, or the act of selling, conveying, assigning, exchanging, pledging, hypothecating, encumbering, or otherwise disposing of such asset.

Units - means units of interest in the Company the holders of which have with respect thereto the rights, obligations, powers and privileges specified in this Agreement as attaching to or embodied in Units.

SECTION II FORMATION AND NAME; OFFICE AND REGISTERED AGENT; PURPOSE; TERM

2.1 Formation and Name. The Members hereby continue the Company under the name **MEP ALASKA LLC** pursuant to the provisions of the Act and this Agreement. The Company may do business under that name and under any fictitious name upon which the Manager selects that is approved by the other Members in accordance with the provisions of this Agreement.

2.2. Principal Place of Business and Registered Agent. The principal place of business of the Company shall be at such location as the Manager may designate from time to time. The Manager may at any time change the location and may establish such additional offices

as may be deemed desirable. Notification of the change of the principal office shall be given to the Members. The registered agent and its address in the State of Delaware shall be Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

2.3. Purpose. The purposes for which the Company was organized are: (1) acquire an up to 18% interest in the North Slope Leases; (2) to acquire, manage, dispose of and otherwise deal with oil leases; (3) to explore for oil, gas and other hydrocarbons; (4) to do anything necessary, convenient or incidental to the foregoing; and (5) to do anything permitted by the Act, subject to the laws of any applicable jurisdiction in which the Company conducts business.

2.4. Term. The Company shall have perpetual existence unless sooner terminated in accordance with this Agreement and the Act.

SECTION III CAPITAL; CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

1. Initial Capital. Each of the Members has made an Initial Capital Contribution to the Company in the amount set forth next to his respective name on Exhibit A hereto.

2. Additional Contributions. Except as provided herein, the Members shall be under no obligation to make any Additional Capital Contributions to the Company.

3. Additional Capital; Member Loans.

1. Member Loans. In the event that at any time (or from time to time) additional funds are determined by the Manager to be required by the Company and the Members do not unanimously agree in writing to contribute such funds as Additional Capital Contributions in accordance with Section 3.2, the Manager may, in its sole discretion, but subject to any applicable third-party loan restrictions, borrow such funds from an outside, third party lender; provided, however, none of the Members shall be under any obligation to guarantee such borrowing. In the event that the Manager is not able to obtain third-party financing on terms acceptable to the Manager, in its sole discretion, such funds may (in their sole discretion, but without any obligation to do so) be loaned to the Company by one or more of the Members, with interest thereon at such interest rate and on such other terms that the Manager reasonably believes necessary or appropriate in the best interests of the Company, which loans ("**Member Loans**") shall be repaid in accordance with Section 5.1(a) hereof.

2. Capital Calls. Alternatively, the Manager may request that such funds be contributed as Additional Capital Contributions by all Members. In such event, the

Manager shall provide reasonable notice to all Members of the reason, the amount and the timing of such additional Capital Contributions (a “**Capital Call**”). If, following such Capital Call, any Member does not contribute his *pro rata* share of the Additional Capital Contributions required under a Capital Call (a “**Nonfunding Member**”), any funds contributed by the Members (each, a “**Funding Member**”) shall either:

(a) be treated as a Member Loans in accordance with subsection (a) above; or

(b) upon the determination of the Manager (or, alternatively, set forth in the written instrument evidencing the Capital Call), be treated as Additional Capital Contributions and dilute the Nonfunding Member’s Percentage Interest (and increase each funding Member’s Percentage Interest) by an amount of percentage points equal to (i) a fraction, the numerator of which is equal to the amount of the Additional Capital Contribution not made timely by the Nonfunding Member, and the denominator of which equals the total Additional Capital Contributions made to the Company by the Funding Members as of such date (including the Additional Capital Contribution), multiplied by (ii) a fraction, the numerator of which is the Funding Member’s Percentage Interest, and the denominator of which is the sum of all Funding Members’ Percentage Interests. For the avoidance of doubt, it is intended that the fraction be multiplied by one hundred (100) to convert the quotient to a percentage.

4. Withdrawal of Capital; Interest on Capital. No Member shall be entitled to withdraw all or any part of the Member’s Capital Account or to receive any distribution from the Company except as provided in Section 5. No Member shall be entitled to receive interest on amounts contributed to the capital of the Company.

5. Capital Accounts

(a) Basic Rules. A Capital Account shall be maintained for each Member in accordance with the provisions of this Section 3.5. Each Member’s Capital Account: (i) shall be *increased* by (1) the amount of money contributed or deemed contributed by the Member to the Company and (2) the fair market value of any property contributed by the Member to the Company (net of any liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code) and (3) allocations to the Member of Company Profit (or items or components thereof) and (ii) shall be *decreased* by (4) the amount of money distributed to the Member by the Company and (5) the fair market value of any property distributed to the Member by the Company (net of any liabilities secured by such property that the Member is considered to assume or take subject to under Section 752 of the Code) and (6) allocations to the

Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code and (7) allocations to the Member of Company Loss (or items or components thereof).

(b) Additional Rules. It is the intent of the Members that the Members' Capital Accounts shall be maintained and adjusted in accordance with, and that the rules prescribed in Section 3.5(a) shall be applied consistently with, Section 1.704-1(b)(2)(iv) of the Regulations, the provisions of which are hereby incorporated herein by reference.

SECTION IV ALLOCATIONS OF PROFITS AND LOSSES

4.1 In General. Except as otherwise provided herein, Company Profit or Company Loss, as the case may be, for any Company fiscal year shall be allocated among the Members as follows:

1. If there is a Loss for the fiscal year, such Loss shall be allocated as follows:

(a) to each of the Members to the extent of (1) the aggregate amount of Profit allocated to such Member for prior fiscal years reduced by (2) the aggregate amount of Loss allocated to such Member pursuant to this subparagraph (a) in prior fiscal years (the "**Net Profit for Prior Years**"), in proportion to the aggregate Net Profit for Prior Years of all the Members; then

(b) to each of the Members having a positive Capital Account balance to the extent of and in proportion to such balances; and

(c) thereafter, in accordance with Members' Percentage Interest;

4.1.2 If there is a Profit for the fiscal year, such Profit shall be allocated:

(a) to each of the Members to the extent of (1) the aggregate amount of Loss allocated to such Member in prior fiscal years reduced by (2) the aggregate amount of Profit allocated to such Member pursuant to this subparagraph (b) in prior fiscal years (the "**Net Loss for Prior Years**"), in proportion to the aggregate Net Loss for Prior Years of all of the Members; and

(b) thereafter, in accordance with the Members' Percentage Interest.

4.2 Member Loans, Etc. Any interest paid on loans made by the Members and all compensation, fees, and other amounts (if any) paid to any Member (to the extent determined without regard to the income of the Company) shall, to the extent permitted under Section 707 of the Code, be deducted from gross income for Company book and tax purposes.

4.3 Qualified Income Offset. Notwithstanding Section 4.1 above, if for any year a Member unexpectedly receives any adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, then such Member shall be allocated items of income and gain (consisting of a *pro rata* portion of each item of Company income, including gross income, and gain for such year) in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account (excluding from each Member's deficit Capital Account balance any amount that such Member is obligated to restore within the meaning of Section 1.704-1(b)(2)(ii)(c) of the Regulations, as well as any addition thereto pursuant to the next to last sentence of Section 1.704-1(b)(4)(iv)(f) of the Regulations) created by such adjustment, allocation, or distribution as quickly as possible.

4.4 Minimum Gain Chargeback. Notwithstanding Section 4.1 above, if there is a net decrease in Company Minimum Gain during a Company taxable year, all Members shall be allocated, before any other allocation is made under Section 704(b) of the Code of Company items for such year, items of income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of Company Minimum Gain. For purposes of the preceding sentence, the rules set forth in Section 1.704-1(b)(4)(iv)(e) shall apply as though set forth herein. For purposes hereof, "**Company Minimum Gain**" has the meaning set forth in Section 1.704-2 of the Regulations; and a "**Member's Share of Company Minimum Gain**" means the amount determined in accordance with Section 1.704-2(g) of the Regulations.

4.5 Distributive Shares. For purposes of Sections 702 and 704 of the Code or any similar tax law of any state or jurisdiction, each Member's distributive share of Company income, gain, loss, deduction and credit (and items thereof) shall be as set forth in this Section 4.

4.6 Tax Payment Distributions. Subject to available Cash Flow, the Company shall make sufficient quarterly distributions of cash to allow each Member to pay the estimated federal and state income tax liability attributable to the projected inclusion of any Company income on said Member's federal or state income tax return.

SECTION V DISTRIBUTIONS

5.1 In General. Any available Cash Flow of the Company, whether derived from the ordinary operations of the Company, from Capital Transactions, or otherwise (subject to any restrictions as the Company may have agreed to with third party commercial lenders), shall be distributed at such times as the Manager determines, but only in accordance with the following priorities:

(a) First, to the repayment of interest, then principal, of any Member Loans.

(b) Second, until the Investors' respective Capital Balances have been reduced to zero dollars (\$0.00), as follows: (i) 85% to the Investors, *pro rata*, in proportion with their respective Capital Balances; and (ii) 15% to Magnum.

(c) Third, until the Investors have received the Return Multiple, as follows: (i) 85% to the Investors, *pro rata*, in proportion with their respective Capital Balances; and (ii) 15% to Magnum.

(d) Fourth, as follows:

1. Provided the Return Multiple is achieved by the Return Multiple Determination Date, then all available Cash Flow thereafter shall be distributed (i) 50% to the Investors, *pro rata*, in proportion with their respective Percentage Interests, and (ii) 50% to Magnum.
2. If the Return Multiple is not achieved by the Return Multiple Determination Date, then, until aggregate distributions to Investors of Cash Flow equal to five times (5x) their aggregate Initial Capital Contributions (including any and all distributions to the Investors pursuant to this Section V), all available Cash Flow thereafter shall be distributed (i) 85% to the Investors, *pro rata*, in proportion with their respective Percentage Interests, and (ii) 15% to Magnum. From and after the date by which aggregate distributions to Investors of Cash Flow equal to five times (5x) their aggregate Initial Capital Contributions (including any and all distributions to the Investors pursuant to this Section V), all available Cash Flow thereafter shall be distributed (i) 50% to the Investors, *pro rata*, in proportion with their respective Percentage Interests, and (ii) 50% to Magnum.

5.2. Distributions To Pay Taxes. Subject to the provisions of Section 4.6, the Company shall make distributions of available Cash Flow (including all distributions pursuant to Section 5.1 hereof) at least equal to the Maximum Tax Liability for each year at such times (considering, among other factors, the requirement to make quarterly estimated tax payments) that each Member will receive such distributions prior to the times payments of taxes or estimated taxes are due. All distributions under this Section 5.2 shall be made to the Members in proportion to their respective Percentage Interests.

5.3 Distributions in Respect of Taxes. Amounts withheld pursuant to the Code or any provision of any state or local law with respect to any payment, distribution, or allocation to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Section 5 for all purposes of this Agreement. The Manager is authorized to withhold from distributions that would otherwise be made to, or in respect of allocations to, the Members and to pay over to any federal, state, or local government any amounts required to be so withheld pursuant to the Code or any provision of any other federal, state, or local law and shall allocate such amounts to those Members with respect to which such amounts were withheld; provided, however, that the Manager shall provide usual and customary opportunity to the Members to provide documentation to establish exemption from such withholding requirements in accordance with applicable law.

5.4 Upon Dissolution and Winding Up of the Company. Pursuant to Section 18-804 of the Act and the terms of this Agreement, the net proceeds resulting from the dissolution of the Company and liquidation of the Company's assets and properties in connection with the winding up of the Company shall be applied as follows:

- (a) First, to payment of the debts and liabilities of the Company (including those owed to Members) and the expenses of liquidation;

(b) Second, to the setting up of such reserves as the person charged with winding up the Company's affairs may reasonably deem necessary for any contingent liabilities or obligations of the Company, *provided* that any such reserves shall be paid over by such person to an independent escrow agent to be held by such agent or its successor for such period as such person shall deem advisable for the purpose of applying such reserves to the payment of such liabilities or obligations, and, at the expiration of such period, the balance of such reserves, if any, shall be distributed as hereinafter provided;

(c) Third, to the Members to the return of their respective Capital Balances; and

(d) Fourth, all subsequent distributions shall be to the Members, *pro rata*, in proportion with their respective Percentage Interests.

SECTION VI MANAGEMENT: RIGHTS, POWERS, AND DUTIES; LIMITATIONS ON AUTHORITY OF MEMBERS; MEETINGS OF MEMBERS; PERSONAL SERVICES

6.1. Management.

6.1.1. Manager. The business and affairs of the Company shall be managed under the direction and control of a manager, who may, but shall not be required to, be a Member (the "**Manager**"). Mangum is hereby appointed as the Manager of the Company.

6.1.2. General Powers. The Manager shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including without limitation, for Company purposes, the power to:

6.1.2.1. acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

6.1.2.2. operate, maintain, finance, and improve, and to own, sell, convey, assign, mortgage, or lease any real or personal property, and to grant security interests, liens or otherwise encumber such property;

6.1.2.3. sell, dispose, trade, or exchange Company assets in the ordinary course of the Company's business;

6.1.2.4. enter into agreements and contracts and to give receipts, releases, and discharges;

6.1.2.5. purchase liability and other insurance to protect the Company's properties and business;

6.1.2.6. borrow money for and on behalf of the Company, and, in connection therewith, execute and deliver instruments, including debentures or similar instruments, authorizing the confession of judgment against the Company.

6.1.2.7. execute or modify leases with respect to any part or all of the assets of the Company;

6.1.2.8. prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any asset of the Company and in connection therewith to execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust;

6.1.2.9. execute any and all other instruments and documents approved by the Manager which may be necessary or in the opinion of the Manager desirable to carry out the intent and purpose of this Agreement, including, but not limited to, documents whose operation and effect extend beyond the term of the Company;

6.1.2.10. make any and all expenditures which the Manager, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting, travel, lodging and other related expenses incurred in connection with the organization and financing and operation of the Company;

6.1.2.11. enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company;

6.1.2.12. invest and reinvest Company reserves in shortterm instruments or money market funds; and

6.1.2.13. delegate to officers, agents, employees and affiliates of the Company (including the Manager), the power to implement any of the foregoing rights and duties of the Manager.

6.1.2.14. admit new or additional Members to the Company at any time.

6.1.3. Restrictions on Powers of Manager. The Manager shall not have any power or authority to take any action on behalf of the Company in violation of applicable law.

6.1.4. Limitation on Authority of Members.

6.1.4.1. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

6.1.4.2. This Section 6.1.4 supersedes any authority granted to the Members pursuant to the Act. Any Member who takes any action or binds the Company in violation of this Section 6.1.4 shall be solely responsible for any loss and expense incurred by the

Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

6.1.5. Removal, Resignation or Withdrawal of Manager; Appointment of Replacement Manager. The Manager may only be removed by the Members in the event of fraud, or gross negligence by the Manager in connection with its obligations hereunder. The Manager may resign at any time by providing written notice to the Members. In the event of the removal or resignation of the Manager or upon the occurrence of an Event of Withdrawal with respect to the Manager, the Members shall promptly appoint a replacement Manager with the Consent of the Members.

6.2. Meetings of and Voting by Members.

6.2.1. A meeting of the Members may be called at any time by the Manager, the Manager, or by those Members holding greater than fifty percent (50%) of the Percentage Interests then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place in the Houston, Texas area designated by the Person calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding greater than fifty percent (50%) of the Percentage Interests then held by the Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by his duly authorized attorney in fact.

6.2.2. In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the Consent of Members.

6.2.3. Except as otherwise provided in this Agreement, wherever the Act requires unanimous consent to approve or take any action, that consent shall be given in writing and, in all cases, shall mean, rather than the consent of all Members, the consent of Members holding greater than fifty percent (50%) of the Percentage Interests then held by the Members.

6.2.4. If any vote is required on any matter under this Section 6.3, and there are neither sufficient votes to approve nor disapprove of the matter, then any Member may require that the matter be submitted to arbitration by one arbitrator in Houston, Texas, in accordance with the rules of the American Arbitration Association.

6.3. Personal Services. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Manager, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

6.4. Conflicts of Interest.

6.4.1. The Manager and any Member shall be entitled to enter into

transactions that may be considered to be competitive with the Company, it being expressly understood that Members or the Manager may enter into transactions that are similar to the transactions into which the Company may enter. Notwithstanding the foregoing, the manager or any Member shall account to the Company and hold as trustee for it any property, profit, or benefit derived by the Member or Manager, as the case may be, without the consent of the Members, in the conduct and winding up of the Company business or from a use or appropriation by the Member or Manager of Company property, including information developed exclusively for the Company and opportunities expressly offered to the Company.

6.4.2. Neither the Manager nor any Member violates a duty or obligation to the Company merely because the Member's or Manager's conduct furthers the Member's or Manager's own interest, as the case may be. A Member or the Manager may lend money to and transact other business with the Company. The rights and obligations of a Member or Manager who lends money to or transacts business with the Company are the same as those of a person who is not a Member or Manager, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member or the Manager has a direct or indirect interest in the transaction if the transaction is fair and reasonable to the Company.

SECTION VII TRANSFER OF INTERESTS; ISSUANCE OF ADDITIONAL UNITS

7.1 Transfers.

7.1.1. General Restriction on Transfer. Subject to any further restrictions on transferability imposed by federal or state law, no Member (the "**Transferor**") shall have the right to Transfer all or any part of such Member's interest in the Company (including but not limited to the right to receive any distributions hereunder), and no transferee shall be entitled to become a substituted Member or to exercise any of the rights of a Member, except with the consent of the Manager.

7.1.2. Requirements for Transfer and Substitution. No Transfer of all or any portion of a Member's interest in the Company otherwise made in accordance with Section 7.1.1 or Section 7.1.3 shall become effective and no transferee of the whole or a portion of a Member's interest shall have the right to become a substitute Member in place of its transferor unless and until all of the following conditions are satisfied:

(a) The Transferor and transferee shall have executed, acknowledged, and delivered to the Company such instruments as the Manager may reasonably deem necessary or desirable to effect or evidence such Transfer; and

(b) With respect to the substitution of a transferee as a Member, the transferee shall have executed, acknowledged, and delivered to the Company a written instrument evidencing the transferee's unconditional agreement to be bound by the provisions of this Agreement as a substituted Member;

(c) The Company shall have received a written opinion from counsel to the Transferor or the transferee (which opinion and counsel shall be reasonably acceptable to counsel for the Company) to the effect that the Transfer may be made without registration

under, and otherwise will be in compliance with, United States federal and state securities laws, the Transfer will not result in the Termination of the Company pursuant to Code Section 708, the Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended from time to time; and

(d) The transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number; and (ii) the transferee's initial tax basis in the interest Transferred from the transferor.

7.1.3 Right of First Refusal on Transfer.

(a) If a Transferor receives a bona fide written offer (the "**Transferee Offer**") from any other Person (the "**Transferee**") to purchase all or any portion of or any interest or rights in the Units held by the Transferor (the "**Offered Interest**") that the Transferor wishes to accept, then, before any Transfer of the Offered Interest, the Transferor shall give to each of the other Members (the "**Remaining Members**") written notice (the "**Transfer Notice**") containing each of the following:

- (i) the Transferee's identity;
- (ii) a true and complete copy of the Transferee Offer; and
- (iii) the Transferor's offer (the "**Offer**") to sell the Transferor Interest to the Remaining Members for a total price equal to the price set forth in the Transferee Offer (the "**Transfer Price**"), which shall be payable on the terms of payment set forth in the Transferee Offer.

(b) The Offer shall be and remain irrevocable for a period (the "**Offer Period**") ending at 11:59 P.M. local time at the Company's principal office, on the thirtieth (30th) day following the date the Transfer Notice is given to the Remaining Members. At any time during the Offer Period, a Remaining Member may accept the offer by notifying the Transferor in writing that the Remaining Member intends to purchase all, but not less than all, of the Offered Interest. If two (2) or more Remaining Members desire to accept the Offer, then, in the absence of an agreement between or among them, each such Remaining Member shall purchase the Offered Interest in the proportion that such Remaining Member's Percentage Interest bears to the total Percentage Interests of all of the Remaining Members who desire to accept the Offer. If one or more Remaining Members accept the Offer, then the parties shall fix a closing date (the "**Transfer Closing Date**") for the purchase, which shall not be earlier than ten (10) or more than ninety (90) days after the expiration of the Offer Period.

(c) If any Remaining Member accepts the Offer, the Transfer Price shall be paid in immediately available funds on the Transfer Closing Date in accordance with the payment terms set forth in the Transferee Offer.

(e) If no Remaining Member accepts the Offer (within the time and in the manner specified in this Section), then the Transferor shall be free for a period (the "**Free Transfer Period**") of thirty (30) days after the expiration of the Offer Period to Transfer the Offered Interest to the Transferee, for the same or greater price and on the same terms and conditions as set forth in the Transfer Notice, subject to the terms of Section 7.2 above. If the Transferor does not Transfer the Offered Interest within the Free Transfer

Period, the Transferor's right to Transfer the Offered Interest pursuant to this Section shall cease and terminate.

(f) Any Transfer by the Transferor after the last day of the Free Transfer Period or without strict compliance with the terms, provisions, and conditions of this Section and the other terms, provisions, and conditions of this Agreement, shall be null and void and of no force or effect.

7.2 Additional Units.

7.2.1. Issuance of Additional Units. In the event that the Company desires to raise additional equity by the issuance of additional Units (the "**Additional Units**") and not as Additional Capital Contributions in accordance with Section 3.3.2 hereof, the Manager shall first offer to sell such Additional Units to the Investors. Such offer pursuant to this Section 7.2 shall be made by the transmitting of written notice (the "**Additional Units Notice**") to all Investors which sets forth the terms of the subscription for the Additional Units.

7.2.2. Right of First Refusal for Additional Units. The Investors shall have the first right to purchase the Additional Units by giving written notice to the Manager within fifteen (15) days after the giving of the Additional Units Notice, pro rata to their Percentage Interests in the Company. In the event one or more Investors do not elect to exercise such first right or purchase, the Manager shall so notify the other Investors in writing (the "**Second Additional Units Notice**"), and such other Investors shall have the right to purchase the Additional Units by giving written notice to the Manager within five (5) days after the giving of the Second Additional Units Notice, in the same proportion as their Percentage Interests bear to each other and in larger proportions to the extend one or more of such other Investors do not elect to exercise the right to purchase as set forth in the Second Additional Units Notice.

7.2.3. Subscription for Additional Units. Except as hereinafter set forth, the Investors shall have the periods set forth above within which to accept or reject, by written notice, the offer set forth in the Additional Units Notice and Second Additional Units Notice, respectively. If such offer is accepted, the subscription and payment for the Additional Units shall occur within five (5) days after the last election to buy the Additional Units or such later date as shall be determined by the Manager. If the additional equity being raised by the Company is with respect to an opportunity or obligation pursuant to the Areawide AMI Joint Operating Agreement effective as of September 16, 2008, or the North Tarn Operating Agreement dated December 31, 2009, to each of which the Company is a party by succession (each, a "**JOA**"), then the time periods set forth in Sections 7.2.2 and 7.2.2 shall be the *lesser of* the periods set forth above, or the periods necessary to meet the requirements of the applicable JOA.

7.2.4. Outside Investors. If the Investors shall fail to exercise their rights to subscribe for all of the Additional Units pursuant to the Additional Units Notice and Second Additional Units, then the Manager, on behalf of the Company, shall have the right to accept subscriptions from other parties, in the Manager's sole discretion, for any Additional Units not purchased by the Investors.

SECTION VIII LIABILITY AND INDEMNIFICATION

8.1 Liability. Except as otherwise expressly provided by the Act, the debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation, or liability of the Company solely by reason of being a Covered Person.

8.2 Exculpation.

(a) Notwithstanding any other agreement between a Covered Person and the Company, no Covered Person shall be liable to the Company or any other Covered Person for any loss, damage, or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed by such Covered Person to be within the scope of authority conferred on such Covered Person by or in accordance with this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's breach of this Agreement, gross negligence or willful misconduct.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, Profits, Losses or cash flow of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

8.3 Fiduciary Duty. To the maximum extent permitted under the Act, no Covered Person shall have any liability to the Company or to any Member for any breach of fiduciary duties (other than liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing). Any Covered Person acting under this Agreement shall not be liable to the Company or to any Member for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the parties to replace such other duties and liabilities of such Covered Person.

8.4 Indemnification. To the fullest extent permitted by applicable law, the Company shall indemnify, defend, and hold harmless a Covered Person for any loss, damage, or claim incurred by such Covered Person by reason of any act performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by or in accordance with this Agreement, except that no Covered Person shall be entitled to be indemnified, defended, or held harmless in respect of any loss, damage, or claim incurred by such Covered Person by reason of such Covered Person's breach of this Agreement, willful misconduct with respect to such acts or omissions, gross negligence, or fraud; *provided*, however, that any indemnity under this Section 8.4 shall be provided

out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

8.5 Expenses. To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person in defending any claim, demand, action, suit, or proceeding shall, from time to time, be advanced by the Company before the final disposition of such claim, demand, action, suit, or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Section 8.4 hereof.

SECTION IX EVENTS OF WITHDRAWAL

9.1 No Member shall be entitled to voluntarily withdraw as a Member of the Company. Upon the occurrence of any Event of Withdrawal with respect to a Member, the Company shall nevertheless continue. From and after the date of an Event of Withdrawal, the withdrawing Member shall have no further right to participate directly or indirectly in the management of the Company. The withdrawing Member (or the withdrawing Member's successor in interest) shall have no right to transfer all or any portion of its interest in the Company other than as provided in Section 7.1 or to designate any other person as a Member in the withdrawing Member's place. The withdrawing Member (or the withdrawing Member's successor in interest) shall have only the right to receive distributions (at such times and in such amounts) to which the withdrawing Member would have been entitled under this Agreement had he not withdrawn, reduced, in the case of a voluntary withdrawal, by any damages to the Company proximately caused by such withdrawal. In no event shall the Company or any other Member be obligated to redeem or purchase the interest of the withdrawing Member.

SECTION X LIQUIDATION AND WINDING UP

10.1 Gain or Loss Upon Liquidation. Upon the liquidation and winding up of the Company, any gain or loss on the disposition of Company property shall be credited or charged to the Members in accordance with Section 4. Any property distributed in kind in liquidation shall be valued and treated as though the property was sold and the cash proceeds were distributed. The difference between the value of the property distributed in kind and its book value shall be treated as a gain or loss on the sale of the property and shall be credited or charged to the Members in accordance with Section 4.

10.2 Restoration of Deficit Capital Accounts. Except as provided in the following sentence, upon the liquidation and winding up of the Company, no Member shall have any obligation to restore a negative balance in such Member's Capital Account. Notwithstanding the preceding sentence, in the event any Member has guaranteed any debt or obligation of the Company and such debt or obligation remains outstanding at the date of liquidation of the Company, such Member hereby agrees to (a) waive its rights of subrogation with respect to such guaranty; and (b) restore the lesser of (i) the amount of such guaranty or (ii) the negative balance, if any, in such Member's Capital Account, no later than the end of the Company's taxable year in which the liquidation of the Company (or such Member's interest) occurs (or, if later, within 90 days after the date of such liquidation). Nothing contained herein shall be deemed to waive any rights of contribution a guarantor may have against any other guarantor.

10.3 Final Tax Returns, Etc. Upon the liquidation and winding up of the Company, the Manager shall promptly cause to be filed all outstanding and final tax returns with the appropriate government authorities and a certificate of cancellation or such other documents as are necessary to effectuate the termination of the Company's existence under the Act.

SECTION XI BOOKS AND RECORDS; ACCOUNTING AND REPORTS; TAX MATTERS

11.1 Bank Accounts. A bank account or accounts shall be maintained in such bank or banks as may from time to time be determined by the Manager. All funds of the Company shall be deposited in the name of the Company in such account or accounts, and all checks thereon and withdrawals therefrom shall be signed by such individuals as are from time to time authorized by the Manager.

X 11.2 Availability. The Company shall cause to be kept full and true books of account in accordance with the accounting method followed by the Company for federal income tax purposes and shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. Such books of account, together with a copy of this Agreement and the Articles, shall at all times be maintained at the principal office of the Company. Each Member or its duly authorized representative shall have the right at any time to inspect and copy such books and documents during normal business hours upon reasonable notice.

3. Financial Reports.

(a) The Manager shall cause the Company to prepare and deliver to each Member within thirty (30) days after the end of each fiscal quarter of the Company (a) an internally-prepared income statement reflecting in reasonable detail the results of operations of the Company for such quarter and the fiscal year to date and a balance sheet reflecting the financial position of the Company as of the end of such quarter; (b) a schedule setting forth distributions to the Members during such quarter and for the fiscal year to date; and (c) a statement of any fees or other amounts paid by the Company to any Member or to any Affiliate of any Member during such quarter and for the fiscal year to date and the goods provided or services rendered by such Member or person therefor.

(b) The independent accountants of the Company, as shall be selected by the Manager, shall within 90 days after the end of each fiscal year of the Company prepare and deliver to each Member (a) a financial report of the Company for such period, including an income statement reflecting in reasonable detail the results of operations of the Company for such fiscal year and a balance sheet reflecting the financial position of the Company as of the end of such year; (b) a schedule of distributions to the Members allocating to the Members each item of taxable income, gain, loss, deduction, credit and item of tax preference; (c) all necessary tax reporting information required by the Members for preparation of their respective income tax returns; (d) a copy of the tax returns (federal, state, and local, if any) of the Company for each fiscal year; (e) a statement of any fees or other amounts paid by the Company to any Member or to any Affiliate of any Member and the goods provided or services rendered by such Member or person therefor; and (f) such other matters as the Manager may reasonably deem material to the operations of the Company.

11.4 Accounting Decisions and Tax Elections. All decisions as to accounting matters and tax elections required or permitted to be made by the Company shall be made by the

Manager consistent with the Company's method of accounting applied on a consistent basis as the Manager may in its reasonable discretion determine.

11.5 Taxable Year. The Company's taxable and fiscal years shall be the calendar year.

11.6 Tax Matters Partner. Magnum shall be the Company's Tax Matters Partner ("TMP") under the Code. The TMP shall have the right to resign by giving thirty (30) days' written notice to the Members. Upon the resignation, dissolution or Event of Withdrawal of the TMP, a successor TMP shall be elected by the Members; provided, however that any successor TMP must be a Member. The TMP shall employ experienced tax counsel to represent the Company in connection with any audit or investigation of the Company by the Internal Revenue Service ("IRS") and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The fees and expenses of such, and all expenses incurred by the TMP in serving as the TMP, shall be Company expenses and shall be paid by the Company. Notwithstanding the foregoing, it shall be the responsibility of the Members, at their expense, to employ tax counsel to represent their respective separate interests. If the TMP is required by law or regulation to incur fees or expenses in connection with tax matters not affecting each of the Members, then the Manager may, in its sole discretion, seek reimbursement from or charge such fees and expenses to the Members on whose behalf such fees and expenses were incurred. The TMP shall keep the Members informed of all administrative and judicial proceedings, as required by Section 6223(g) of the Code and shall furnish a copy of each notice or other communication received by the TMP from the IRS to each Member, except such notices or communications as are sent directly to such Member by the IRS. The relationship of the TMP to the Members is that of a fiduciary, and the TMP has a fiduciary obligation to perform his duties as TMP in such manner as will serve the best interests of the Company and all of the Company's Members. To the fullest extent permitted by law, the Company agrees to indemnify the TMP and his agents and save and hold them harmless from and in respect to all (i) reasonable fees, costs and expenses in connection with or resulting from any claim, action or demand against the TMP or the Company that arise out of or in any way relate to the TMP's status as TMP for the Company and (ii) all such claims, actions and demands and any losses or damages therefrom, including amounts paid in settlement or compromise of any such claim, action or demand; *provided* that this indemnity shall not extend to conduct by the TMP adjudged (i) not to have been undertaken in good faith to promote the best interests of the Company or (ii) to have constituted recklessness or intentional wrongdoing by the TMP.

11.7 Taxation as Company. It is the intention of the Members that the Company not be treated as an association or a corporation for income tax purposes but instead, pursuant to Treasury Regulation Section 301.7701-3, be treated as a partnership for income tax purposes. In furtherance of the foregoing, each Member agrees that it will file its own Federal, state and local income, franchise and other tax returns and otherwise act in a manner that is consistent with such tax treatment and not make any election to treat the Company as an association or a corporation for income tax purposes. The Manager and Members shall use their best efforts to avoid taking any action that would cause the Company to be classified as other than a partnership for federal income tax purposes.

SECTION XII POWER OF ATTORNEY

12.1 *Grant of Power.* Each Member constitutes and appoints the Manager, acting jointly, as the Member's true and lawful attorney-in-fact ("**Attorney-in-Fact**"), and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file:

12.1.1. one or more certificates of formation;

12.1.2. all documents (including amendments to the certificate of formation) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement including, without limitation, any amendment to Exhibit A to reflect the admission of any Member or any change in the Percentage Interest of any Member;

12.1.3. any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Delaware or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Delaware;

12.1.4. one or more fictitious or trade name certificates; and

12.1.5. all documents which may be required to dissolve and terminate the Company and to cancel its certificate of formation.

12.2 *Irrevocability.* The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of an Interest, except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

SECTION XIII MISCELLANEOUS

13.1 *Notices.* All notices, demands, requests, consents, or other communications required or permitted to be given or made under this Agreement shall be in writing and signed by the party giving the same and shall be deemed to have been given or made when delivered to the intended recipient (including delivery by commercial courier) or sent by United States certified mail, postage prepaid, to the intended recipient at the address set forth in Exhibit A or at any other address of which prior written notice has been given; provided, however, that any notices to be sent outside of the United States shall be sent by fax or by recognized international courier services and that such notice shall be deemed given on the fourth business day following dispatch. Any notice period shall commence on the day such notice is deemed given.

13.2 Limitation of Liability. In no event shall a Member be liable hereunder to any other Member or to the Company for special, incidental, consequential, or punitive damages, including loss of profits or overhead, whether the claim is based upon contract, warranty, tort, negligence, or strict liability theories, or otherwise relates to a breach of representation or warranty set forth in this Agreement or a breach of a covenant or agreement under this Agreement; *provided*, that nothing herein shall be deemed to limit the obligation, if any, of a Member to indemnify, defend, and hold harmless the other Members or the Company for any special, incidental, consequential, or punitive damages if and to the extent such special, incidental, consequential, or punitive damages are recovered by a third person.

13.3 Titles and Headings. Titles or headings contained in this Agreement are inserted only as a matter of convenience of reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provisions hereof.

13.4 Person and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and the word "person" shall include a corporation, firm, partnership, or other form of association.

13.5 Binding Agreement. Subject to the restrictions on assignment herein contained, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, estates, heirs, and legatees of the respective Members.

13.6 Applicable Law. The validity, construction, and enforcement of the terms and provisions of this Agreement shall be governed by the laws of the State of Delaware (without regard to any provision that would result in the application of the laws of any other state or jurisdiction).

13.7 No Agency Intended; Other Activities. Nothing herein contained shall be construed to constitute any Member the agent of another Member, except as expressly provided herein, or in any manner to limit the Members in the carrying on of their own businesses or activities.

13.8 Amendment of Agreement. This Agreement (and any exhibits to this Agreement) may be amended only with the unanimous written consent of the Members.

13.9 Incorporation of Recitals and Exhibits. Each of the recitals and exhibits to this Agreement is by this reference incorporated into and made a part of this Agreement.

13.10 Effective Date. This Agreement shall be effective on and as of the date set forth in the first paragraph of this Agreement.

13.11 Entire Agreement. This Agreement constitutes the entire agreement of the Members and supersedes all prior agreements among the Members with respect to the Company.

13.12 Company Name. The Company shall have the exclusive ownership and right to use the Company name as long as the Company continues.

13.13 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration before a single arbitrator in Houston Texas, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association. Any award shall be final, binding and conclusive upon the parties. The arbitrator shall be empowered to award the costs of the arbitration and reasonable attorneys' fees to the substantially prevailing party in the arbitration as the arbitrator determines is just and appropriate. A judgment upon the award rendered may be entered in any court having jurisdiction thereof.

13.14 Counterparts; Electronic Delivery. This Agreement may be executed in any number of counterparts, and delivered by fax or other electronic means, each of which shall be deemed an original, and all of which, when taken together, shall constitute one complete and original instrument. Each Investor has completed and executed a Subscription Agreement, and the execution by each Investor of the Subscription Agreement shall constitute such Investor's counterpart signature to this Agreement and such Investor's agreement to be bound by the terms hereof.

13.15 Separate Counsel. Each Member has had the opportunity to consult with independent counsel in the negotiation and finalization of this Agreement, and is relying on that counsel and no other in determining whether to commit to the covenants and agreements contained herein.

13.16 Joint Representation Waiver. Neuberger, Quinn, Gielen, Rubin & Gibber, P.A. ("NQGRG") has drafted this Agreement on behalf of Magnum. NQGRG may be deemed to have represented, in addition to Magnum, the Company as well. Insofar as NQGRG is deemed to have represented the Company in connection with the drafting of this Agreement, all Members consent to such representation. Each Member consents to NQGRG representing the Company in the conduct of its business notwithstanding its continuing representation of Magnum. For any reason or no reason, any Member may, by written notice to NQGRG, withdraw consent to such joint representation, effective upon receipt of the notice.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

MANAGER:

MAGNUM ENERGY PARTNERS LLC,
a Delaware limited liability company

By: 

Mark Steinmetz, Committee Member

By: 

Terence R. Manning, Committee Member

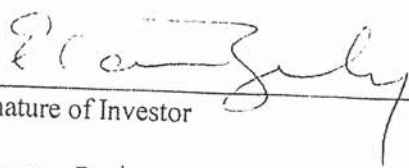
SIGNATURE PAGE FOR INDIVIDUAL SUBSCRIBERS

The undersigned hereby subscribes for one Units at a purchase price of \$500,000 per Unit, for an aggregate purchase price of \$500,000, and herewith tenders such sum to the Company by wire transfer. By executing this Signature Page, the Investor agrees that, upon acceptance by the Company of the Investor's subscription for Units, the Investor will be bound by the LLC Agreement to the same extent as if the Investor was a direct signatory thereto.

IN WITNESS WHEREOF, the undersigned has executed and sealed this Subscription Agreement for the purchase of Securities as of this 29th day of June, 2014.

Check One:

- ☐ Tenants-in-common
☐ Joint tenants
☐ Tenants by the entireties
☒ Individual



Signature of Investor


Elaine Zisberg
Typed or Printed Name of Investor


Signature of Co-Investor (if any)

Typed or Printed Name of Co-Investor (if any)

Residence or Business Address

Lawrence New York 
City State Zip


Telephone Number


Social Security Number

ACCEPTED THIS 30th DAY
OF December, 2014

MEP-ALASKA LLC

By: Magnum Energy Partners LLC, Manager

By: 

BRIDGE PROMISSORY NOTE

~~\$750,000.00~~
100,000.00

30
July 29, 2014

FOR VALUE RECEIVED, MEP-ALASKA LLC, a Delaware limited liability company (the "Borrower"), promises to pay to the order of _____, a New York _____ (the "Lender"), the principal sum of _____ Dollars (\$750,000.00) (the "Principal Sum"), without interest.

1. **Payments and Maturity.** Upon the closing of the Borrower's private placement of equity interests in the amount of \$11,150,000 (the "Equity Raise"), the Principal Sum and all other amounts due hereunder will be automatically converted into a direct or indirect equity interest in the Borrower on the same terms as the amount of the Principal Sum would be entitled to in the Equity Raise. The full outstanding balance of the Principal Sum and all other amounts due hereunder if not converted in the Equity Raise or otherwise paid shall be due and payable on ~~August 22, 2014.~~ *8 - To a maximum of 12 weeks (Twelve weeks) From date first written above. I.E. a period no later than October 31, 2014.*

2. **Application and Place of Payments.** All cash payments on account of this Note shall be paid in lawful money of the United States of America in immediately available funds during regular business hours of the Lender or at such other times and places as the Lender may at any time and from time to time designate in writing to the Borrower.

3. **Prepayment.** The Borrower may prepay the unpaid Principal Sum in whole or in part, at any time or from time to time, without premium or penalty.

4. **Events of Default.** The following shall constitute "Events of Default" hereunder: (a) The failure of the Borrower to pay to the Lender when due any and all amounts payable by the Borrower to the Lender under the terms of this Note which failure or breach continues for more than ten days after written notice thereof to the Borrower from the Lender; and (b) If the Borrower becomes insolvent or has cumulative judgments against it in the amount of \$250,000 or more (exclusive of this Note).

5. **Remedies.** Upon the occurrence of an Event of Default, at the option of the Lender, all amounts payable by the Borrower to the Lender under the terms of this Note shall immediately become due and payable by the Borrower to the Lender without notice to the Borrower or any other person, and the Lender shall have all of the rights, powers, and remedies available under the terms of this Note, and all applicable laws. The Borrower and all endorsers, guarantors, and other parties who may now or in the future be primarily or secondarily liable for the payment of the indebtedness evidenced by this Note hereby severally waive presentment, protest and demand, notice of protest, notice of demand and of dishonor and non-payment of this Note and expressly agree that this Note or any payment hereunder may be extended from time to time without in any way affecting the liability of the Borrower, guarantors and endorsers.

6. **Expenses.** The Borrower promises to pay to the Lender on demand by the Lender all costs and expenses incurred by the Lender in connection with the collection and enforcement of this Note, including, without limitation, all attorneys' fees and expenses and all court costs.

7. **Miscellaneous.** Each right, power, and remedy of the Lender as provided for in this Note, or now or hereafter existing under any applicable law or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this

COMPOSITE EXHIBIT "C"

Note or now or hereafter existing under any applicable law, and the exercise or beginning of the exercise by the Lender of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Lender of any or all such other rights, powers, or remedies. No failure or delay by the Lender to insist upon the strict performance of any term, condition, covenant, or agreement of this Note, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, covenant, or agreement or of any such breach, or preclude the Lender from exercising any such right, power, or remedy at a later time or times. By accepting payment after the due date of any amount payable under the terms of this Note, the Lender shall not be deemed to waive the right either to require prompt payment when due of all other amounts payable under the terms of this Note or to declare an Event of Default for the failure to effect such prompt payment of any such other amount. No course of dealing or conduct shall be effective to amend, modify, waive, release, or change any provisions of this Note.

8. **Partial Invalidity.** In the event any provision of this Note (or any part of any provision) is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Note; but this Note shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had not been contained in this Note, but only to the extent it is invalid, illegal, or unenforceable.

9. **Captions.** The captions herein set forth are for convenience only and shall not be deemed to define, limit, or describe the scope or intent of this Note.

10. **Governing Law.** The provisions of this Note shall be construed, interpreted and enforced in accordance with the laws of the State of New York as the same may be in effect from time to time.

11. **Waiver of Trial by Jury.** The Borrower hereby waives trial by jury in any action or proceeding to which the Borrower and the Lender may be parties, arising out of or in any way pertaining to this Note. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Note.

12. **Binding Effect.** This Note shall be binding upon the Borrower and the Borrower's successors and assigns.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed as of the date first written above.

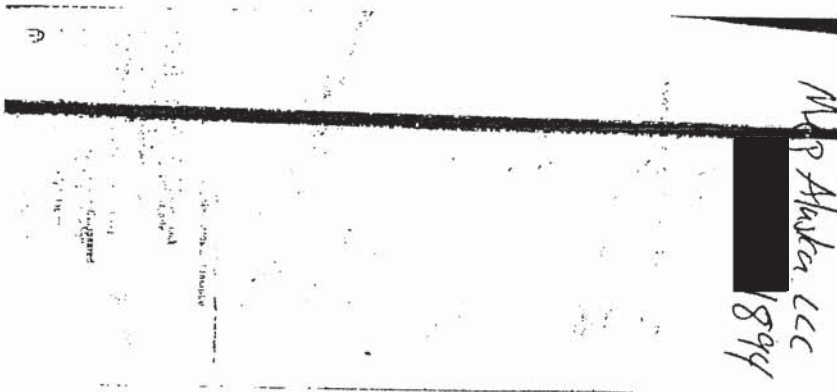
BORROWER:
MEP-ALASKA LLC

By: Magnum Energy Partners LLC, Manager



Online Banking

BofA Interest Checking - 5935: Account Activity Transaction Details

Check number: 00000002620**Post date:** 07/31/2014**Amount:** -100,000.00**Type:** Check**Description:** Check

Check number: 2620 | Amount: \$100,000.00


MORTON ZINBERG
ELAINE ZINBERG
[REDACTED]

2820
1-2820 BY
100

7/30/14 DATE

PAY TO THE ORDER OF AEP ALASKA LLC

One hundred thousand and no/100 DOLLARS \$100,000.00

Bank of America  **Wealth Management Banking**

ANY PAYEE'S CHECKS MUST BE DEPOSITED WITHIN 60 DAYS OF THE DATE OF THE CHECK

Low [REDACTED] 225 [REDACTED] 5935#2620

[Signature]

continued o