

# EXHIBIT A

RAIDEN COMMODITIES, LP, &  
ASPIRE COMMODITIES, LP,

Plaintiffs,

vs.

PATRICK DE MAN,

Defendant.

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

125TH JUDICIAL DISTRICT

**DECLARATION OF PATRICK DE MAN**

This unsworn declaration is presented in lieu of a written sworn declaration, pursuant to Texas Civil Practice and Remedies Code §132.001, and is made subject to and without waiver of the Special Appearance now pending in this Court.

1. My name is Patrick Antonius Petrus de Man, my date of birth is January 14, 1974, and my address is 544 Corredor del Bosque, Dorado, Puerto Rico, 00646, United States of America. I declare under penalty of perjury that each of the statements set forth in this Declaration (my “Declaration”) are both true and correct, and are based on my personal knowledge.

2. Attached as Exhibits 1–27 to my Declaration are true and correct copies of each of the following documents:

- Exhibit 1: A screen shot showing the current status in Puerto Rico of Raiden Commodities 1, LLC (“RC1”).
- Exhibit 2: The Schedule K-1 that I received from Raiden Commodities LP, in respect of my interest as a limited partner, for calendar 2014.
- Exhibit 3: The Schedule K-1 that I received from Aspire Commodities LP, in respect of my interest as a limited partner, for calendar 2014.
- Exhibit 4: E-mail dated March 7, 2016, pursuant to which the CPA for Aspire forwarded to me a memo explaining certain aspects of my limited partnership interest in Aspire.

- Exhibit 5: The memo that was attached to Exhibit 4.
- Exhibit 6: E-mail dated March 17, 2016, pursuant to which the accountant for Raiden forwarded to me a memo explaining certain aspects of my limited partnership interest in Raiden.
- Exhibit 7: The memo that was attached to Exhibit 6.
- Exhibit 8: The March 30, 2016 e-mail pursuant to which Raiden's CPA sent me my K-1 for calendar 2015.
- Exhibit 9: The Schedule K-1 that was attached to Exhibit 8.
- Exhibit 10: The Certificate of Limited Partnership for Raiden and Certificate of Amendment.
- Exhibit 11: Raiden's partnership agreement.
- Exhibit 12: The 2013, Schedule K-1 forms that Aspire and Raiden sent to Sinn in respect of his partnership interests in Aspire and Raiden.
- Exhibit 13: A "Customer Account Application" for Aspire, signed by Sinn on March 31, 2011.
- Exhibit 14: A W-9, "Request for Taxpayer Identification Number and Certification," signed by Aspire, on March 31, 2011.
- Exhibit 15: A "Corporate Resolution" for Aspire, in which Sinn certified that on December 12, 2010, the Board of Directors of Aspire, met and adopted various resolutions. He signed the certification on March 31, 2011.
- Exhibit 16: Documents showing wire transfers being made by Aspire Capital Management, LLC, in 2012.
- Exhibit 17: A screenshot from the website of the Secretary of State of Texas that shows recent activity by Aspire Capital Management, LLC.
- Exhibit 18: Defendant/Counter-Plaintiffs' Response to Counter-Defendants Adam Sinn, XS Capital Investments, L.P., and Aspire Commodities, L.P.'s Motion for Traditional Summary Judgment in cause number 2014-40964.
- Exhibit 19: E-mails exchanged with Sinn while I was still employed as a vice president with Sempra.

- Exhibit 20: An application to the Connecticut Department of Labor completed by Sinn, which describes the “Business Location” as my home address in Connecticut
- Exhibit 21: An Employer Contribution Voucher from the Connecticut Department of Labor for the first quarter of 2013.
- Exhibit 22: A letter acknowledging Aspire’s registration with the Connecticut Department of Revenue Services.
- Exhibit 23: An invoice for worker’s compensation insurance in Connecticut for 2012.
- Exhibit 24: A notice of cancellation of that worker’s compensation insurance beginning July 1, 2013.
- Exhibit 25: My first paystub for working from my home in Stamford, Connecticut.
- Exhibit 26: Copies of e-mails dealing with the authenticity of the purported Raiden partnership agreement attached to Sinn’s Declaration as Exhibit A-2.
- Exhibit 27: Copies of e-mails dealing with the authenticity of the purported Aspire partnership agreement attached to Sinn’s Declaration as Exhibit A-3.

3. At the time of the incidents alleged to serve as the basis of all of the claims (the summer of 2016), I was an employee of Raiden Commodities 1, LLC (“RC1”), an entity that is not a party to this litigation. RC1 was and remains a Puerto Rican Limited Liability Company with its principal place of business in Dorado, Puerto Rico. *See* Exhibit 1. I became an employee of RC1 in 2013; prior to that time, I was employed by Plaintiff Aspire Commodities, LP. I was not employed by either of the Plaintiffs after 2013, and was never an employee of Plaintiff Raiden Commodities, LP.

4. I was formally recognized as a limited partner in Aspire Commodities, LP (“Aspire”), and Raiden Commodities, LP (“Raiden”) as of 2014. *See* Exhibits 2 and 3. In March of 2016, the attorneys and accountant for Raiden and Aspire sent me memoranda that explained certain aspects of my limited partnership interests in those limited partnerships. *See* Exhibits 4, 5, 6, and 7. In both memoranda, Plaintiffs addressed me as a “Limited Partner.” A copy of each e-

mail was contemporaneously sent to Sinn. On March 30, 2016, Raiden's CPA sent me the Schedule K-1 in respect of my limited partnership interest in Raiden for calendar 2015. *See* Exhibits 8 and 9.

5. Despite having been made a limited partner in each of these entities, I was never asked to sign a Raiden limited partnership agreement (or any joinder or ratification thereof), and I never surrendered, sold or otherwise transferred my limited partnership interest in either entity. Indeed, Sinn apparently never had any of his limited partners sign the partnership agreement, because his CPA explained to me that none of the people who traded under Sinn had signed the partnership agreement.

6. Contrary to Sinn's misleading assertions, Raiden was not a "Texas limited partnership" or a "Texas-based business" at any time during my relationship with it. At all times prior to this lawsuit, Raiden was a limited partnership formed under the laws of the Virgin Islands and had its principal place of business in Puerto Rico. *See* Exhibits 10 and 11. On the Schedule K-1 forms that Raiden provided to its partners, including Sinn and me, Raiden represented (quite correctly) that it was located in the Virgin Islands and Puerto Rico. *See* Exhibits 2, 3, and 8. It was only on September 19, 2016—*thirteen days after this lawsuit was filed*—that Sinn converted Raiden to a Texas limited partnership.

7. Aspire's principal place of business is and long has been Puerto Rico. The Schedule K-1 forms that Aspire prepared and sent to its partners, including Sinn and me, show that Aspire was at all material times based in Puerto Rico. *See* Exhibit 3 and 12.

8. I have read (and re-read) the Declaration of Adam Sinn (the "Sinn Declaration") that was submitted in support of Plaintiffs' opposition to my special appearance. As set forth in

this Declaration, many of the claims made in the Sinn Declaration are either demonstrably false, or badly misleading.

9. In Paragraph 4 of the Sinn Declaration, Sinn claims that “[i]n 2009, while residing in Texas, I formed Aspire Capital Management, LLC, a Texas limited liability company based in Houston, Texas, to engage in commodities trading. I subsequently reformed that company as Plaintiff Aspire, which is a Texas limited partnership.” This description is false. Aspire Capital Management, LLC, was never “reformed” as “Aspire Commodities, LP.” Aspire Capital Management, LLC, (“ACM”) is not a plaintiff in this case, and, importantly, continues to exist as a company separate and apart from Plaintiff Aspire. Attached to my Declaration as Exhibits 13–16 are true and correct copies of documents that show that Aspire Capital Management LLC continued to exist long after, and independent of, the creation of Aspire.

10. Indeed, the records of the Texas Secretary of State (Exhibit 17) show much recent activity for the entity ACM:

	554145010001	Public Information Report (PIR)	December 31, 2013	July 18, 2014	No	1
	522670760001	Public Information Report (PIR)	December 31, 2013	January 5, 2014	No	1
	577621160002	Reinstatement	November 11, 2014	November 11, 2014	No	1
	579940380003	Change of Registered Agent/Office	November 25, 2014	November 25, 2014	No	2
	584072400001	Public Information Report (PIR)	December 31, 2014	December 26, 2014	No	1
	648899680001	Public Information Report (PIR)	December 31, 2015	January 6, 2016	No	1

11. Sinn makes much of the fact that I was involved in trading contracts related to “ERCOT,” the Electric Reliability Council of Texas. But, as he well knows, those trades were not for my own account, but were instead made in the name and on behalf of either ACM (until April of 2012) or Raiden (2011-2016). Moreover, there is no requirement that persons involved in trading contracts related to ERCOT be located in, or otherwise tethered to, Texas. Indeed, many of the large players in ERCOT are based elsewhere, including DC Energy, based in Virginia,

Sesco, based in Pennsylvania, and Morgan Stanley, in New York. Sinn, in fact, trades ERCOT contracts from all over the globe, and often from Puerto Rico.

12. Sinn has a history of misrepresenting material facts in litigation. And, his misrepresentations have been the subject of pleadings filed in cases to which he has been a party. *See* Exhibit 18 at 1–2, 17–19.

13. After the Lehman Brothers bankruptcy in 2008, I left my temporary corporate housing in Houston and moved back to my apartment in New York City. In October 2009, I accepted a job with Sempra Energy Trading LLC (“Sempra”), and in 2010 I moved to Stamford Connecticut. From March 2010 until early 2011, I was employed as a vice president of Sempra. In 2009, when Sinn first approached me about becoming his partner in one or more of his trading companies, he was aware that Sempra was a competitor in the power-trading markets and that, as one of its officers, I owed my duties of loyalty and candor to Sempra. As Sinn acknowledges in his Declaration, he shared information with me before I was an employee or partner of any of his companies. Although Sinn and I were discussing the details of his plans, trading strategies and ideas, he did not then ask me to sign a confidentiality agreement nor did he tell me or otherwise suggest that I should keep secret the information that he shared with me. He never suggested or intimated that any of what we discussed was proprietary to his companies or that it constituted some form of “trade secret” or intellectual property. At all times during these discussions, I regarded myself as free to discuss with others, or use on behalf of my employer, any and all of the information that he shared with me. *See* Exhibit 19. None of the exchanges include any statement regarding confidentiality or a need to keep the information secret.

14. Beginning in 2009, Sinn made multiple visits to New York, and while in New York met with me and encouraged me to work for one of his trading companies. His visits included the following:

- On August 21, 2009, Sinn had dinner with my wife and me at Sushi of Gari 46, in Midtown Manhattan.
- On December 19, 2009, Sinn had lunch with my wife and me at an Italian restaurant in the East Village of Manhattan.
- On September 10, 2010, Sinn had dinner with me at Brasserie 8½ in Midtown Manhattan.
- On October 30, 2010, Sinn met with me at the Standard Hotel, in the Meatpacking District of Manhattan.
- On December 18, 2010, Sinn had lunch with my wife, my son, and me at Sprig in Midtown Manhattan.

During each of these meals and meetings, he pitched the idea of me coming to work with his trading operations. I was living in either New York or Connecticut during these visits from Sinn, and not once did I come to Texas in an attempt to secure a position with one or more of Sinn's companies.

15. At the time of these meetings, I had a job at a well-established and reputable institution, Sempra. The thought of leaving that job to work with or for a Sinn-affiliated company—when my wife had just recently given birth to our son—seemed to me to be a highly risky move. Sinn was a relatively unknown player in the market, and colleagues advised me to choose a stable job at a reputable bank. In order to persuade me to take the risk of working with him, Sinn repeatedly promised me a partnership interest in the Plaintiff entities.

16. Starting in 2013, I was an employee of RC1, trading on behalf of Raiden and Aspire (the Plaintiffs). I also traded on behalf of ACM, during the time that I was employed by Aspire



(2011–2012). All of the trading in which I engaged on behalf of Raiden, Aspire, and ACM was executed from outside of Texas.

17. Numerous documents establish that Sinn understood that I was working outside of Texas. During 2012 and part of 2013, I worked for Aspire as a commodities trader in Connecticut, as evidenced by the documents attached as Exhibits 20–25.

18. I moved to Puerto Rico in 2013, and I have resided and worked from there ever since.

19. In 2011, I made three work-related visits to Texas: (1) April 8–11; (2) September 19–23; (3) December 17–21. During 2012, when Aspire leased an office in Houston,<sup>1</sup> I was never present in Texas. In 2014, while employed by RC1, a non-party, I made a single visit to Texas from March 10–12 with the purpose to interview a group of traders who were considering employment with a Sinn-affiliated entity. Each of these visits lasted between three and five days. I have not set foot in Texas since then.

20. Sinn claims that Exhibits A-2 and A-3 to his Declaration represent operative partnership agreements for the Plaintiff entities, based on Sinn’s signature on those documents (Sinn Declaration at ¶¶ 17–18). Those are falsified, backdated documents that were not actually signed on the dates indicated on their signature pages. The DocuSign software used to produce the signatures on those documents allows for the actual date of the signature to be omitted from the final document, and Sinn appears to have done this with his electronic signatures on Exhibits A-2 and A-3. This would explain why the document purporting to be the “Second Amended & Restated Partnership Agreement” of Raiden, Exhibit A-2, is dated July 30, 2013, when the “First Amended

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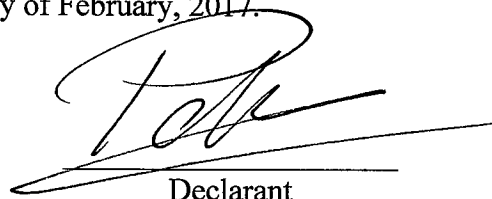
<sup>1</sup> Another false statement by Sinn was that Raiden leased an office (Sinn Declaration ¶ 15). Raiden never paid any rent for any office space.

and Restated Limited Partnership Agreement” of Raiden was signed and dated by Sinn, by hand, on September 20, 2013. *See* Exhibit 11. A number of e-mails, true and correct copies of which are included in Exhibit 26, corroborate that the “First Amended” agreement, dated September 20, 2013, is authentic. For instance, on August 30, 2013, Brett Geary, a legal assistant of a Virgin Islands law firm that represented Raiden, circulated a draft of a partnership agreement for Raiden. On September 4, 2013, Kyle Carlton, Sinn’s transactional lawyer in Texas, sent an e-mail to me and Sinn suggesting that he might restyle the partnership agreement the “First Amended Limited Partnership Agreement” and date it “September \_\_\_, 2013.” I forwarded that suggestion to Will Thomas, a Virgin Islands lawyer for Raiden, who circulated a revised version of the agreement to Sinn and me on September 9, 2013.

21. Similarly, the document purporting to be the “First Amended and Restated Partnership Agreement” of Aspire, is also backdated. Kyle Carlton sent an unsigned (and also backdated) draft of an earlier version of that document to me on July 17, 2014, attached to an e-mail that stated: “I’m finally starting to finalize all the aspire/raiden docs. Should have the other ancillary docs done in the next few days but, in the meantime, here’s the agreement for Aspire. The Raiden LP agreements and the LLC Agreements will end up being VERY similar to this.” On July 24, 2014, I responded with comments on the draft, and Carlton acknowledged receipt of the comments, remarking that he would “try to circulate an updated draft in the next few days.” On June 17, 2015, having heard nothing in months, I sent Carlton and Sinn an e-mail wondering about the status of the proposed amendments to the partnership agreements, and on June 25, 2015, Carlton responded: “I have drafted up the documents, but I need to check over it one more time. I should be able to knock this out later this week / early next week. It is the last piece in Adam’s puzzle.”

Copies of these e-mails are included in Exhibit 27. That was the last that I heard about the proposed amendments to the Raiden and Aspire partnership agreements.

Executed in Dorado, Puerto Rico, on the 3rd day of February, 2017.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a surname that appears to be 'Rosa'. The signature is written over a horizontal line.

Declarant

# **EXHIBIT 1**



# Registry of Corporations and Entities

## Announcement

The content presented by this Registry is 'Public Information' and the online services are intended for interactive participation. We reserve the right to block access to the site if we detect automated bulk data gathering tools. For business need of structured data feeds, please contact [support@estado.pr.gov](mailto:support@estado.pr.gov).

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## CORPORATION INFORMATION

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#### General Information

Name	RAIDEN COMMODITIES 1, LLC		
Register No.	327712	Status	ACTIVE
Class	Limited Liability Company		
Type	For Profit	Jurisdiction	Domestic

#### Resident Agent

Name	Sinn, Adam C.		
Street Address	200 Dorado Beach Drive, Unit 3021 Dorado, PR 00646	Mailing Address	200 Dorado Beach Drive, Unit 3021 Dorado, PR 00646

[Return to Search Results](#)

# **EXHIBIT 2**

**RAYMOND SCHIEFFER, PC CPA  
1146 W PANOLA  
CARTHAGE, TX 75633  
214-717-4500**

April 2, 2015

**CONFIDENTIAL**

PATRICK DE MAN  
URB Sabanera Dorado  
544 Corredor del Bosque  
DORADO, PR 00646

Dear Partner:

We have prepared the enclosed copy of your Schedule K-1 for RAIDEN COMMODITIES LP partnership. It contains your share of the partnership's items of income/loss, deductions, credits, and other information for the partnership's tax year ended December 31, 2014. These items are to be reported on your federal income tax return; therefore, this schedule should be retained with your tax records and documentation.

Also enclosed is state K-1 information, if applicable. This information should also be retained with your tax records and documentation.

Also enclosed is your partner basis information. This information consists of your basis in the partnership and, if applicable, your share of any suspended or disallowed losses. Retain this information with your tax records; it may be needed to complete your federal income tax return.

If you have any questions, or if we can be of assistance in any way, please call.

Sincerely,

RAYMOND SCHIEFFER, PC CPA

**PARTNER# 3**  
**Schedule K-1**  
**(Form 1065)**

Department of the Treasury  
 Internal Revenue Service

**2014**


For calendar year 2014, or tax  
 year beginning \_\_\_\_\_  
 ending \_\_\_\_\_

Final K-1  Amended K-1

651113  
 OMB No. 1545-0123

**Partner's Share of Income, Deductions, Credits, etc.** u See back of form and separate instructions.

Part I Information About the Partnership																	
A	Partnership's employer identification number <b>REDACTED</b>																
B	Partnership's name, address, city, state, and ZIP code <b>RAIDEN COMMODITIES LP</b>  <b>ONE HIBISCUS ALLEY</b> <b>ST THOMAS VI 00802</b>																
C	RS Center where partnership filed return <b>E-FILE</b>																
D	<input type="checkbox"/> Check if this is a publicly traded partnership (PTP)																
Part II Information About the Partner																	
E	Partner's identifying number <b>REDACTED</b>																
F	Partner's name, address, city, state, and ZIP code <b>PATRICK DE MAN</b> <b>URB SABANERA DORADO</b> <b>544 CORREDOR DEL BOSQUE</b> <b>DORADO PR 00646</b>																
G	<input type="checkbox"/> General partner or LLC member-manager <input checked="" type="checkbox"/> Limited partner or other LLC member																
H	<input checked="" type="checkbox"/> Domestic partner <input type="checkbox"/> Foreign partner																
I1	What type of entity is this partner? <b>INDIVIDUAL</b>																
I2	If this partner is a retirement plan (RA/SEP/Keogh/etc.), check here <input type="checkbox"/>																
J	Partner's share of profit, loss, and capital (see instructions):																
	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 15%; text-align: center;">Beginning</th> <th style="width: 15%;"></th> <th style="width: 15%; text-align: center;">Ending</th> </tr> </thead> <tbody> <tr> <td>Profit</td> <td style="text-align: center;">0.000000 %</td> <td style="border-left: 1px solid black;"></td> <td style="text-align: center;">0.000000 %</td> </tr> <tr> <td>Loss</td> <td style="text-align: center;">0.000000 %</td> <td style="border-left: 1px solid black;"></td> <td style="text-align: center;">0.000000 %</td> </tr> <tr> <td>Capital</td> <td style="text-align: center;">0.000000 %</td> <td style="border-left: 1px solid black;"></td> <td style="text-align: center;">0.000000 %</td> </tr> </tbody> </table>		Beginning		Ending	Profit	0.000000 %		0.000000 %	Loss	0.000000 %		0.000000 %	Capital	0.000000 %		0.000000 %
	Beginning		Ending														
Profit	0.000000 %		0.000000 %														
Loss	0.000000 %		0.000000 %														
Capital	0.000000 %		0.000000 %														
K	Partner's share of liabilities at year end:																
	Nonrecourse ..... \$ _____																
	Qualified nonrecourse financing ..... \$ _____																
	Recourse ..... \$ _____																
L	Partner's capital account analysis:																
	Beginning capital account ..... \$ _____																
	Capital contributed during the year ..... \$ _____																
	Current year increase (decrease) ..... \$ <u>2,000,000</u>																
	Withdrawals & distributions ..... \$ ( <u>2,000,000</u> )																
	Ending capital account ..... \$ <u>0</u>																
	<input checked="" type="checkbox"/> Tax basis <input type="checkbox"/> GAAP <input type="checkbox"/> Section 704(b) book																
	<input type="checkbox"/> Other (explain) _____																
M	Did the partner contribute property with a built-in gain or loss?																
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																
	If "Yes," attach statement (see instructions)																

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items			
1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss) <b>C 2,000,000</b>		
12	Section 179 deduction	<b>A</b>	<b>2,000,000</b>
13	Other deductions		
14	Self-employment earnings (loss) <b>A 2,000,000</b>		
19	Distributions		
20	Other information		
*See attached statement for additional information.			
For IRS Use Only			



This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

- 1. **Ordinary business income (loss).** Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.
  - Passive loss Report on See the Partner's Instructions
  - Passive income Schedule E, line 28, column (g)
  - Nonpassive loss Schedule E, line 28, column (h)
  - Nonpassive income Schedule E, line 28, column (j)
- 2. **Net rental real estate income (loss)** See the Partner's Instructions
- 3. **Other net rental income (loss)**
  - Net income Schedule E, line 28, column (g)
  - Net loss See the Partner's Instructions
- 4. **Guaranteed payments** Schedule E, line 28, column (j)
- 5. **Interest income** Form 1040, line 8a
- 6a. **Ordinary dividends** Form 1040, line 9a
- 6b. **Qualified dividends** Form 1040, line 9b
- 7. **Royalties** Schedule E, line 4
- 8. **Net short-term capital gain (loss)** Schedule D, line 5
- 9a. **Net long-term capital gain (loss)** Schedule D, line 12
- 9b. **Collectibles (28%) gain (loss)** 28% Rate Gain Worksheet, line 4 (Schedule D instructions)
- 9c. **Unrecaptured section 1250 gain** See the Partner's Instructions
- 10. **Net section 1231 gain (loss)** See the Partner's Instructions
- 11. **Other income (loss)**
  - Code
  - A Other portfolio income (loss) See the Partner's Instructions
  - B Involuntary conversions See the Partner's Instructions
  - C Sec. 1256 contracts & straddles Form 6781, line 1
  - D Mining exploration costs recapture See Pub. 535
  - E Cancellation of debt Form 1040, line 21 or Form 982
  - F Other income (loss) See the Partner's Instructions
- 12. **Section 179 deduction** See the Partner's Instructions
- 13. **Other deductions**
  - A Cash contributions (50%) } See the Partner's Instructions
  - B Cash contributions (30%) }
  - C Noncash contributions (50%) }
  - D Noncash contributions (30%) }
  - E Capital gain property to a 50% organization (30%) }
  - F Capital gain property (20%) }
  - G Contributions (100%) }
  - H Investment interest expense Form 4952, line 1
  - I Deductions—royalty income Schedule E, line 19
  - J Section 59(e)(2) expenditures See the Partner's Instructions
  - K Deductions—portfolio (2% floor) Schedule A, line 23
  - L Deductions—portfolio (other) Schedule A, line 28
  - M Amounts paid for medical insurance Schedule A, line 1 or Form 1040, line 29
  - N Educational assistance benefits See the Partner's Instructions
  - O Dependent care benefits Form 2441, line 12
  - P Preproductive period expenses See the Partner's Instructions
  - Q Commercial revitalization deduction from rental real estate activities See Form 8582 instructions
  - R Pensions and IRAs See the Partner's Instructions
  - S Reforestation expense deduction See the Partner's Instructions
  - T Domestic production activities information See Form 8903 instructions
  - U Qualified production activities income Form 8903, line 7b
  - V Employer's Form W-2 wages Form 8903, line 17
  - W Other deductions See the Partner's Instructions

14. **Self-employment earnings (loss)**  
 Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.

- A Net earnings (loss) from self-employment Schedule SE, Section A or B
- B Gross farming or fishing income See the Partner's Instructions
- C Gross non-farm income See the Partner's Instructions

- 15. **Credits**
  - A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings } See the Partner's Instructions
  - B Low-income housing credit (other) from pre-2008 buildings }
  - C Low-income housing credit (section 42(j)(5)) from post-2007 buildings }
  - D Low-income housing credit (other) from post-2007 buildings }
  - E Qualified rehabilitation expenditures (rental real estate) }
  - F Other rental real estate credits }
  - G Other rental credits }
  - H Undistributed capital gains credit Form 1040, line 73; check box a
  - I Biofuel producer credit } See the Partner's Instructions
  - J Work opportunity credit }
  - K Disabled access credit }

- Code Report on
- L Empowerment zone employment credit } See the Partner's Instructions
- M Credit for increasing research activities }
- N Credit for employer social security and Medicare taxes }
- O Backup withholding }
- P Other credits }
- 16. **Foreign transactions**
  - A Name of country or U.S. possession } Form 1116, Part I
  - B Gross income from all sources }
  - C Gross income sourced at partner level }
  - Foreign gross income sourced at partnership level
  - D Passive category } Form 1116, Part I
  - E General category }
  - F Other }
  - Deductions allocated and apportioned at partner level
  - G Interest expense Form 1116, Part I
  - H Other Form 1116, Part I
  - Deductions allocated and apportioned at partnership level to foreign source income
  - I Passive category } Form 1116, Part I
  - J General category }
  - K Other }
  - Other information
  - L Total foreign taxes paid Form 1116, Part II
  - M Total foreign taxes accrued Form 1116, Part II
  - N Reduction in taxes available for credit Form 1116, line 12
  - O Foreign trading gross receipts Form 8873
  - P Extraterritorial income exclusion Form 8873
  - Q Other foreign transactions See the Partner's Instructions
- 17. **Alternative minimum tax (AMT) items**
  - A Post-1986 depreciation adjustment } See the Partner's Instructions and the Instructions for Form 6251
  - B Adjusted gain or loss }
  - C Depletion (other than oil & gas) }
  - D Oil, gas, & geothermal—gross income }
  - E Oil, gas, & geothermal—deductions }
  - F Other AMT items }
- 18. **Tax-exempt income and nondeductible expenses**
  - A Tax-exempt interest income Form 1040, line 8b
  - B Other tax-exempt income See the Partner's Instructions
  - C Nondeductible expenses See the Partner's Instructions
- 19. **Distributions**
  - A Cash and marketable securities } See the Partner's Instructions
  - B Distribution subject to section 737 }
  - C Other property }
- 20. **Other information**
  - A Investment income Form 4952, line 4a
  - B Investment expenses Form 4952, line 5
  - C Fuel tax credit information Form 4136
  - D Qualified rehabilitation expenditures (other than rental real estate) See the Partner's Instructions
  - E Basis of energy property See the Partner's Instructions
  - F Recapture of low-income housing credit (section 42(j)(5)) Form 8611, line 8
  - G Recapture of low-income housing credit (other) Form 8611, line 8
  - H Recapture of investment credit See Form 4255
  - I Recapture of other credits See the Partner's Instructions
  - J Look-back interest—completed long-term contracts See Form 8697
  - K Look-back interest—income forecast method See Form 8866
  - L Dispositions of property with section 179 deductions } See the Partner's Instructions
  - M Recapture of section 179 deduction }
  - N Interest expense for corporate partners }
  - O Section 453(l)(3) information }
  - P Section 453A(c) information }
  - Q Section 1260(b) information }
  - R Interest allocable to production expenditures }
  - S CCF nonqualified withdrawals }
  - T Depletion information—oil and gas }
  - U Reserved }
  - V Unrelated business taxable income }
  - W Precontribution gain (loss) }
  - X Section 108(i) information }
  - Y Net investment income }
  - Z Other information }

**PARTNER# 3**

Schedule <b>K-1</b>	<b>Analysis of Partner's K-1, Current Year Increase (Decrease) Worksheet</b>	<b>2014</b>
For calendar year 2014, or tax year beginning _____, and ending _____		

Partnership Name <b>RAIDEN COMMODITIES LP</b>	Employer Identification Number REDACTED
Partner's Name <b>PATRICK DE MAN</b>	Taxpayer Identification Number REDACTED

Items Included in Current Year Increase (Decrease):

<b>SCHEDULE K ADDITIONS:</b>	
<b>SECTION 1256 CONTRACTS</b>	2,000,000
	-----
<b>SUBTOTAL</b>	2,000,000
	-----
<b>TOTAL PER SCHEDULE K-1, CURRENT YEAR INCREASE (DECREASE)</b>	2,000,000
	=====

Schedule **K-1**

For calendar year 2014, or tax year beginning , and ending

Partnership Name  
**RAIDEN COMMODITIES LP**

Employer Identification Number  
REDACTED

Partner's Name  
**PATRICK DE MAN**

Taxpayer Identification Number  
REDACTED

**Beginning of year** ..... **0**

**Increases:**

Capital contributions:	Cash	Property (adjusted basis)	
"Excess" depletion			
Income items:	Ordinary income		
	Net income from rental real estate activities		
	Net income from other rental activities		
	Interest		
	Dividends		
	Royalties		
	Net short-term capital gain		
	Net long-term capital gain		
	Other portfolio income		
	Net gain under section 1231		
	Other income	<b>2,000,000</b>	
	Tax-exempt interest and other income		<b>2,000,000</b>
Other increases:	Transfer of capital		
	Gain on disposition of section 179 assets		
	Other increases		
Distributions:	Cash	Property (adjusted basis)	
	<b>2,000,000</b>		<b>2,000,000</b>
Increase (decrease) in share of partnership liabilities	P/Y	C/Y	

**Subtotal** ..... **0**

Distribution in excess of partner basis .....

**Decreases:**

Noncap items:	Nondeductible expenses		
	Charitable contributions		
	Foreign taxes		
Loss items:	Ordinary loss		
	Net loss from rental real estate activities		
	Net loss from other rental activities		
	Royalties		
	Net short-term capital loss		
	Net long-term capital loss		
	Other portfolio loss		
	Net loss under section 1231		
	Other losses		
	Section 179 expense		
	Deductions related to portfolio income		
	Other deductions		
	Interest expense on investment debts		
	Section 59(e)(2) expenditures		
	Loss on disposition of section 179 assets		
Depletion			
Other decreases			

**End of year** ..... **0**

Note to partner: This worksheet was prepared based on partnership records. Please consult with your tax advisor for adjustments.

# **EXHIBIT 3**

**PARTNER# 6**  
**Schedule K-1**  
**(Form 1065)**

Department of the Treasury  
 Internal Revenue Service

**2014**


For calendar year 2014, or tax  
 year beginning \_\_\_\_\_  
 ending \_\_\_\_\_

Final K-1  Amended K-1

651113  
 OMB No. 1545-0123

**Partner's Share of Income, Deductions,  
 Credits, etc.** See back of form and separate instructions.

Part I Information About the Partnership													
A	Partnership's employer identification number <b>REDACTED</b>												
B	Partnership's name, address, city, state, and ZIP code <b>ASPIRE COMMODITIES, LP</b>  <b>200 DORADO BEACH DRIVE UNIT 3021</b> <b>DORADO PR 00646</b>												
C	RS Center where partnership filed return <b>E-FILE</b>												
D	<input type="checkbox"/> Check if this is a publicly traded partnership (PTP)												
Part II Information About the Partner													
E	Partner's identifying number <b>REDACTED</b>												
F	Partner's name, address, city, state, and ZIP code <b>PATRICK DE MAN</b> <b>URB SABANERA DORADO</b> <b>544 CORREDOR DEL BOSQUE</b> <b>DORADO PR 00646</b>												
G	<input type="checkbox"/> General partner or LLC member-manager <input checked="" type="checkbox"/> Limited partner or other LLC member												
H	<input checked="" type="checkbox"/> Domestic partner <input type="checkbox"/> Foreign partner												
I1	What type of entity is this partner? <b>INDIVIDUAL</b>												
I2	If this partner is a retirement plan (RA/SEP/Keogh/etc.), check here <input type="checkbox"/>												
J	Partner's share of profit, loss, and capital (see instructions):												
	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Beginning</th> <th style="text-align: center;">Ending</th> </tr> </thead> <tbody> <tr> <td>Profit</td> <td style="text-align: center;"><b>0.000000 %</b></td> <td style="text-align: center;"><b>0.000000 %</b></td> </tr> <tr> <td>Loss</td> <td style="text-align: center;"><b>0.000000 %</b></td> <td style="text-align: center;"><b>0.000000 %</b></td> </tr> <tr> <td>Capital</td> <td style="text-align: center;"><b>0.000000 %</b></td> <td style="text-align: center;"><b>0.000000 %</b></td> </tr> </tbody> </table>		Beginning	Ending	Profit	<b>0.000000 %</b>	<b>0.000000 %</b>	Loss	<b>0.000000 %</b>	<b>0.000000 %</b>	Capital	<b>0.000000 %</b>	<b>0.000000 %</b>
	Beginning	Ending											
Profit	<b>0.000000 %</b>	<b>0.000000 %</b>											
Loss	<b>0.000000 %</b>	<b>0.000000 %</b>											
Capital	<b>0.000000 %</b>	<b>0.000000 %</b>											
K	Partner's share of liabilities at year end:												
	Nonrecourse ..... \$ _____												
	Qualified nonrecourse financing ..... \$ _____												
	Recourse ..... \$ _____												
L	Partner's capital account analysis:												
	Beginning capital account ..... \$ _____												
	Capital contributed during the year ..... \$ _____												
	Current year increase (decrease) ..... \$ <b>500,000</b>												
	Withdrawals & distributions ..... \$ ( <b>500,000</b> )												
	Ending capital account ..... \$ <b>0</b>												
	<input checked="" type="checkbox"/> Tax basis <input type="checkbox"/> GAAP <input type="checkbox"/> Section 704(b) book												
	<input type="checkbox"/> Other (explain) _____												
M	Did the partner contribute property with a built-in gain or loss? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," attach statement (see instructions)												

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items			
1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss) <b>C 500,000</b>		
12	Section 179 deduction	19	Distributions <b>A 500,000</b>
13	Other deductions		
14	Self-employment earnings (loss) <b>A 500,000</b>	20	Other information
*See attached statement for additional information.			
			

For IRS Use Only

**This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.**

<b>1. Ordinary business income (loss).</b> Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.	
Passive loss	Report on See the Partner's Instructions
Passive income	Schedule E, line 28, column (g)
Nonpassive loss	Schedule E, line 28, column (h)
Nonpassive income	Schedule E, line 28, column (j)
<b>2. Net rental real estate income (loss)</b>	See the Partner's Instructions
<b>3. Other net rental income (loss)</b>	
Net income	Schedule E, line 28, column (g)
Net loss	See the Partner's Instructions
<b>4. Guaranteed payments</b>	Schedule E, line 28, column (j)
<b>5. Interest income</b>	Form 1040, line 8a
<b>6a. Ordinary dividends</b>	Form 1040, line 9a
<b>6b. Qualified dividends</b>	Form 1040, line 9b
<b>7. Royalties</b>	Schedule E, line 4
<b>8. Net short-term capital gain (loss)</b>	Schedule D, line 5
<b>9a. Net long-term capital gain (loss)</b>	Schedule D, line 12
<b>9b. Collectibles (28%) gain (loss)</b>	28% Rate Gain Worksheet, line 4 (Schedule D instructions)
<b>9c. Unrecaptured section 1250 gain</b>	See the Partner's Instructions
<b>10. Net section 1231 gain (loss)</b>	See the Partner's Instructions
<b>11. Other income (loss)</b>	
Code	
<b>A</b> Other portfolio income (loss)	See the Partner's Instructions
<b>B</b> Involuntary conversions	See the Partner's Instructions
<b>C</b> Sec. 1256 contracts & straddles	Form 6781, line 1
<b>D</b> Mining exploration costs recapture	See Pub. 535
<b>E</b> Cancellation of debt	Form 1040, line 21 or Form 982
<b>F</b> Other income (loss)	See the Partner's Instructions
<b>12. Section 179 deduction</b>	See the Partner's Instructions
<b>13. Other deductions</b>	
<b>A</b> Cash contributions (50%)	See the Partner's Instructions
<b>B</b> Cash contributions (30%)	
<b>C</b> Noncash contributions (50%)	
<b>D</b> Noncash contributions (30%)	
<b>E</b> Capital gain property to a 50% organization (30%)	
<b>F</b> Capital gain property (20%)	
<b>G</b> Contributions (100%)	
<b>H</b> Investment interest expense	Form 4952, line 1
<b>I</b> Deductions—royalty income	Schedule E, line 19
<b>J</b> Section 59(e)(2) expenditures	See the Partner's Instructions
<b>K</b> Deductions—portfolio (2% floor)	Schedule A, line 23
<b>L</b> Deductions—portfolio (other)	Schedule A, line 28
<b>M</b> Amounts paid for medical insurance	Schedule A, line 1 or Form 1040, line 29
<b>N</b> Educational assistance benefits	See the Partner's Instructions
<b>O</b> Dependent care benefits	Form 2441, line 12
<b>P</b> Preproductive period expenses	See the Partner's Instructions
<b>Q</b> Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions
<b>R</b> Pensions and IRAs	See the Partner's Instructions
<b>S</b> Reforestation expense deduction	See the Partner's Instructions
<b>T</b> Domestic production activities information	See Form 8903 instructions
<b>U</b> Qualified production activities income	Form 8903, line 7b
<b>V</b> Employer's Form W-2 wages	Form 8903, line 17
<b>W</b> Other deductions	See the Partner's Instructions
<b>14. Self-employment earnings (loss)</b>	
<b>Note.</b> If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.	
<b>A</b> Net earnings (loss) from self-employment	Schedule SE, Section A or B
<b>B</b> Gross farming or fishing income	See the Partner's Instructions
<b>C</b> Gross non-farm income	See the Partner's Instructions
<b>15. Credits</b>	
<b>A</b> Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Partner's Instructions
<b>B</b> Low-income housing credit (other) from pre-2008 buildings	
<b>C</b> Low-income housing credit (section 42(j)(5)) from post-2007 buildings	
<b>D</b> Low-income housing credit (other) from post-2007 buildings	
<b>E</b> Qualified rehabilitation expenditures (rental real estate)	
<b>F</b> Other rental real estate credits	
<b>G</b> Other rental credits	
<b>H</b> Undistributed capital gains credit	
<b>I</b> Biofuel producer credit	
<b>J</b> Work opportunity credit	
<b>K</b> Disabled access credit	Form 1040, line 73; check box a
	See the Partner's Instructions

Code		Report on
<b>L</b> Empowerment zone employment credit		See the Partner's Instructions
<b>M</b> Credit for increasing research activities		
<b>N</b> Credit for employer social security and Medicare taxes		
<b>O</b> Backup withholding		
<b>P</b> Other credits		
<b>16. Foreign transactions</b>		
<b>A</b> Name of country or U.S. possession		Form 1116, Part I
<b>B</b> Gross income from all sources		
<b>C</b> Gross income sourced at partner level		
Foreign gross income sourced at partnership level		
<b>D</b> Passive category		Form 1116, Part I
<b>E</b> General category		
<b>F</b> Other		
Deductions allocated and apportioned at partner level		
<b>G</b> Interest expense		Form 1116, Part I
<b>H</b> Other		Form 1116, Part I
Deductions allocated and apportioned at partnership level to foreign source income		
<b>I</b> Passive category		Form 1116, Part I
<b>J</b> General category		
<b>K</b> Other		
Other information		
<b>L</b> Total foreign taxes paid		Form 1116, Part II
<b>M</b> Total foreign taxes accrued		Form 1116, Part II
<b>N</b> Reduction in taxes available for credit		Form 1116, line 12
<b>O</b> Foreign trading gross receipts		Form 8873
<b>P</b> Extraterritorial income exclusion		Form 8873
<b>Q</b> Other foreign transactions		See the Partner's Instructions
<b>17. Alternative minimum tax (AMT) items</b>		
<b>A</b> Post-1986 depreciation adjustment		See the Partner's Instructions and the Instructions for Form 6251
<b>B</b> Adjusted gain or loss		
<b>C</b> Depletion (other than oil & gas)		
<b>D</b> Oil, gas, & geothermal—gross income		
<b>E</b> Oil, gas, & geothermal—deductions		
<b>F</b> Other AMT items		
<b>18. Tax-exempt income and nondeductible expenses</b>		
<b>A</b> Tax-exempt interest income		Form 1040, line 8b
<b>B</b> Other tax-exempt income		See the Partner's Instructions
<b>C</b> Nondeductible expenses		See the Partner's Instructions
<b>19. Distributions</b>		
<b>A</b> Cash and marketable securities		See the Partner's Instructions
<b>B</b> Distribution subject to section 737		
<b>C</b> Other property		
<b>20. Other information</b>		
<b>A</b> Investment income		Form 4952, line 4a
<b>B</b> Investment expenses		Form 4952, line 5
<b>C</b> Fuel tax credit information		Form 4136
<b>D</b> Qualified rehabilitation expenditures (other than rental real estate)		See the Partner's Instructions
<b>E</b> Basis of energy property		See the Partner's Instructions
<b>F</b> Recapture of low-income housing credit (section 42(j)(5))		Form 8611, line 8
<b>G</b> Recapture of low-income housing credit (other)		Form 8611, line 8
<b>H</b> Recapture of investment credit		See Form 4255
<b>I</b> Recapture of other credits		See the Partner's Instructions
<b>J</b> Look-back interest—completed long-term contracts		See Form 8697
<b>K</b> Look-back interest—income forecast method		See Form 8866
<b>L</b> Dispositions of property with section 179 deductions		See the Partner's Instructions
<b>M</b> Recapture of section 179 deduction		
<b>N</b> Interest expense for corporate partners		
<b>O</b> Section 453(l)(3) information		
<b>P</b> Section 453A(c) information		
<b>Q</b> Section 1260(b) information		
<b>R</b> Interest allocable to production expenditures		
<b>S</b> CCF nonqualified withdrawals		
<b>T</b> Depletion information—oil and gas		
<b>U</b> Reserved		
<b>V</b> Unrelated business taxable income		
<b>W</b> Precontribution gain (loss)		
<b>X</b> Section 108(i) information		
<b>Y</b> Net investment income		
<b>Z</b> Other information		

**PARTNER# 6**

<b>Analysis of Partner's K-1, Current Year Increase (Decrease) Worksheet</b>	
Schedule <b>K-1</b>	<b>2014</b>
For calendar year 2014, or tax year beginning _____, and ending _____	

Partnership Name <b>ASPIRE COMMODITIES, LP</b>	Employer Identification Number REDACTED
Partner's Name <b>PATRICK DE MAN</b>	Taxpayer Identification Number REDACTED

Items Included in Current Year Increase (Decrease):

<b>SCHEDULE K ADDITIONS:</b>	
<b>SECTION 1256 CONTRACTS</b>	<b>500,000</b>
	<hr/>
<b>SUBTOTAL</b>	<b>500,000</b>
	<hr/>
<b>TOTAL PER SCHEDULE K-1, CURRENT YEAR INCREASE (DECREASE)</b>	<b>500,000</b>
	<b>=====</b>

Schedule K-1

For calendar year 2014, or tax year beginning , and ending

Partnership Name <b>ASPIRE COMMODITIES, LP</b>	Employer Identification Number REDACTED
Partner's Name <b>PATRICK DE MAN</b>	Taxpayer Identification Number REDACTED

Beginning of year ..... 0

**Increases:**

Capital contributions:	Cash	Property (adjusted basis)	
"Excess" depletion			
Income items:	Ordinary income		
	Net income from rental real estate activities		
	Net income from other rental activities		
	Interest		
	Dividends		
	Royalties		
	Net short-term capital gain		
	Net long-term capital gain		
	Other portfolio income		
	Net gain under section 1231		
	Other income		500,000
	Tax-exempt interest and other income		500,000
Other increases:	Transfer of capital		
	Gain on disposition of section 179 assets		
	Other increases		
Distributions:	Cash	Property (adjusted basis)	
	500,000		500,000
Increase (decrease) in share of partnership liabilities	P/Y	C/Y	

**Subtotal** ..... 0

Distribution in excess of partner basis .....

**Decreases:**

Noncap items:	Nondeductible expenses		
	Charitable contributions		
	Foreign taxes		
Loss items:	Ordinary loss		
	Net loss from rental real estate activities		
	Net loss from other rental activities		
	Royalties		
	Net short-term capital loss		
	Net long-term capital loss		
	Other portfolio loss		
	Net loss under section 1231		
	Other losses		
	Section 179 expense		
	Deductions related to portfolio income		
	Other deductions		
	Interest expense on investment debts		
	Section 59(e)(2) expenditures		
	Loss on disposition of section 179 assets		
Depletion			
Other decreases			

**End of year** ..... 0

Note to partner: This worksheet was prepared based on partnership records. Please consult with your tax advisor for adjustments.



# **EXHIBIT 4**

**From:** Scott Schieffer <[scott@scottschieffer.com](mailto:scott@scottschieffer.com)>

**Date:** Monday, March 7, 2016 at 4:27 PM

**To:** Patrick de Man <[pdeman@aspirecommodities.com](mailto:pdeman@aspirecommodities.com)>, Dave Schmidli <[dschmidli@aspirecommodities.com](mailto:dschmidli@aspirecommodities.com)>, Brian Tyson <[briantyson777@gmail.com](mailto:briantyson777@gmail.com)>, Jay Viswanathan <[jviswanathan@aspirecommodities.com](mailto:jviswanathan@aspirecommodities.com)>

**Cc:** Adam Sinn <[asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com)>, Barry Hammond <[bhammond@rk-lawfirm.com](mailto:bhammond@rk-lawfirm.com)>, Kyle Carlton <[KCarlton@dallasbusinesslaw.com](mailto:KCarlton@dallasbusinesslaw.com)>

**Subject:** changes to K-1 tax year reporting

Patrick, Dave, Brian and Jay:

Please review the attached memo from Barry, Kyle and me, as it will impact your K-1 received from Aspire Commodities, LP, in 2015. After you've had a chance to review it, feel free to call me with any questions.

Scott

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**R. Scott Schieffer, P.C.**

Attorney | CPA

3102 Maple Avenue, Suite 400

Dallas, Texas 75201

214.717.4500

[scott@scottschieffer.com](mailto:scott@scottschieffer.com)

[www.scottschieffer.com](http://www.scottschieffer.com)

# **EXHIBIT 5**

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**INTEROFFICE MEMORANDUM**

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**TO:** LIMITED PARTNERS OF ASPIRE COMMODITIES, LP  
**FROM:** KYLE E. CARLTON, BARRY K. HAMMOND, R. SCOTT SCHIEFFER  
**SUBJECT:** CHANGE IN TAX REPORTING  
**DATE:** MARCH 7, 2016  
**CC:** ADAM C. SINN

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This memorandum seeks to explain a change in tax reporting that will likely affect you, as you are receiving this memorandum because you have previously been issued a K-1 from Aspire Commodities, L.P. (“Aspire”).

As you know, your gains and losses are tracked throughout the year and then paid out to you in two payments in January and July of the year following your trading activity. For tax years 2014 and prior, tax reporting followed those cash flows: gains and losses were reported on a Schedule K-1 for the year in which the cash from your prior year gains were paid to you. For example, trading gains earned from trading in 2013 were paid out in 2014 in two payments, and those payments were reported on a 2014 Schedule K-1 issued to each trader for inclusion on his 2014 tax returns.

Because your income is being reported to you on a K-1, the income distributed to you from Aspire should follow partnership accounting rules rather than cash basis accounting rules. Partnership accounting rules dictate that income and expenses are reported to partners in the year earned, *regardless of when cash is distributed to partners*. Thus, for tax year 2015 and forward, any trading gains and losses earned by you will be reported on a Schedule K-1 for the year in which they are earned, rather than when cash is distributed to you. Because of the change, your 2015 Schedule K-1 will include gains from both 2014 and 2015, since 2014 gains have yet to be reported.

Once Aspire’s General Partner has calculated what your gains and losses for 2015 were, Scott will prepare Schedule K-1s for each of you, adding your 2015 gains and losses to your 2014 gains that were paid out in 2015. The entire figure will be reported to you on a single 2015 Schedule K-1 that you should use in preparing your 2015 U.S. and Puerto Rico tax returns. If you have been issued a 1099 for the 2015 tax year, please disregard such as it was in error and you should have received a K-1.

**Because most of you live in Puerto Rico and enjoy the favorable tax treatment it offers, we do not anticipate that this larger K-1 will create any additional tax liability for you.** If it does create additional tax liability (or for those who do not live in Puerto Rico), there should be no “cash crunch” created by the larger K-1. This is because the General Partner is generally required to make a “Minimum Tax Distribution” to cover such tax liabilities (i.e., distribute at least enough cash to you as is necessary to pay your tax bill in a particular year).

For those of you who are bona fide residents of Puerto Rico, should you ever choose to leave Puerto Rico, your gains from your final year will be taxed in Puerto Rico, not the U.S., for the last year in which you lived in Puerto Rico. For example, if you moved back to the U.S. in 2018, then your trading gains for 2017 would be reported on a 2017 Schedule K-1, rather than there being a lag in the tax reporting. In this way, there is a match of where you earned the income and where it was reported to be earned, which would permit Puerto Rico’s tax laws to apply to your trading gains in the year you earn them, even if you move the next year.

# **EXHIBIT 6**

**From:** Scott Schieffer <[scott@scottschieffer.com](mailto:scott@scottschieffer.com)>  
**Date:** Thursday, March 17, 2016 at 7:39 AM  
**To:** Kyle Carlton <[KCarlton@dallasbusinesslaw.com](mailto:KCarlton@dallasbusinesslaw.com)>  
**Cc:** Patrick de Man <[pdeman@aspirecommodities.com](mailto:pdeman@aspirecommodities.com)>, Adam Sinn <[asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com)>  
**Subject:** Re: changes to K-1 tax year reporting

Kyle:

Sure thing; attached is the mirrored memo for Raiden.

-----

**R. Scott Schieffer, P.C.**

Attorney | CPA

3102 Maple Avenue, Suite 400

Dallas, Texas 75201

214.717.4500

[scott@scottschieffer.com](mailto:scott@scottschieffer.com)

[www.scottschieffer.com](http://www.scottschieffer.com)

On Tue, Mar 15, 2016 at 7:34 PM, Kyle Carlton <[KCarlton@dallasbusinesslaw.com](mailto:KCarlton@dallasbusinesslaw.com)> wrote:

Hey Patrick,

That is correct – same policy on Raiden. Scott – can you do a mirrored one for Raiden just so we have something for the file?

KC

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**Ferguson, Braswell  
& Fraser, PC**  
**Kyle E. Carlton, JD,**

**MBA** [www.dallasbusinesslaw.com](http://www.dallasbusinesslaw.com) Work: (469) 647-3701 Assistant: (469) 647-3702 /3703 Cellular: (972) 974-7734 Facsimile: (877) 433-6906 Work: [Kcarlton@dallasbusinesslaw.com](mailto:Kcarlton@dallasbusinesslaw.com) Personal: [kcarlton@gmail.com](mailto:kcarlton@gmail.com) AIM: MAHER00001 Skype: K.Big.Carlton \*\*\*

**PLEASE NOTE: some of our phone numbers and email addresses have changed. Our new Address is 2500 Dallas Pkwy, Suite 501, Plano, TX 75093. "Amor Vincit Omnia" - Prioress, Canterbury Tales**

The information contained in this transmission may contain privileged and/or confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication (including any reliance thereon) is STRICTLY PROHIBITED. If you are not the intended recipient, please contact the sender and destroy all copies of the original message in their entirety, whether in electronic or hard copy format. To contact our communications administrator directly, please send an email to [postmaster@prosvllc.com](mailto:postmaster@prosvllc.com). Securities Disclaimer: The contents of this communication are for informational purposes only and do not constitute an offer to sell or solicitation of an offer to buy an interest in any entity. An offer or solicitation with respect to any interest in any opportunity will only be made through definitive Transaction Documents ("Transaction Documents"). Any information contained in this communication is subject to more complete information contained in the Transaction Documents. All information contained herein is subject to change without notice. Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

**From:** Patrick de Man [<mailto:pdeman@aspirecommodities.com>]

**Sent:** Friday, March 11, 2016 09:26 AM **To:** 'Scott Schieffer'

<[scott@scottschieffer.com](mailto:scott@scottschieffer.com)>; Kyle Carlton

<[KCarlton@dallasbusinesslaw.com](mailto:KCarlton@dallasbusinesslaw.com)> **Cc:** 'Adam Sinn'

<[asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com)> **Subject:** RE: changes to K-1 tax year reporting

Hi guys,

I assume the same goes for Raiden Commodities LP?

That entity would be more relevant to me.

Thanks,  
Patrick.

**From:** Scott Schieffer [<mailto:scott@scottschieffer.com>] **Sent:** Monday, March 7, 2016 6:27 PM **To:** Patrick de Man <[pdeman@aspirecommodities.com](mailto:pdeman@aspirecommodities.com)>; Dave Schmidli <[dschmidli@aspirecommodities.com](mailto:dschmidli@aspirecommodities.com)>; Brian Tyson <[briantyson777@gmail.com](mailto:briantyson777@gmail.com)>; Jay Viswanathan <[jviswanathan@aspirecommodities.com](mailto:jviswanathan@aspirecommodities.com)> **Cc:** Adam Sinn <[asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com)>; Barry Hammond <[bhammond@rk-lawfirm.com](mailto:bhammond@rk-lawfirm.com)>; Kyle Carlton <[KCarlton@dallasbusinesslaw.com](mailto:KCarlton@dallasbusinesslaw.com)> **Subject:** changes to K-1 tax year reporting

Patrick, Dave, Brian and Jay:

Please review the attached memo from Barry, Kyle and me, as it will impact your K-1 received from Aspire Commodities, LP, in 2015. After you've had a chance to review it, feel free to call me with any questions.

Scott

-----

**R. Scott Schieffer, P.C.**

Attorney | CPA

3102 Maple Avenue, Suite 400

Dallas, Texas 75201

[214.717.4500](tel:214.717.4500)

[scott@scottschieffer.com](mailto:scott@scottschieffer.com)

[www.scottschieffer.com](http://www.scottschieffer.com)



# **EXHIBIT 7**

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**INTEROFFICE MEMORANDUM**

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**TO:** LIMITED PARTNERS OF RAIDEN COMMODITIES, LP  
**FROM:** KYLE E. CARLTON, BARRY K. HAMMOND, R. SCOTT SCHIEFFER  
**SUBJECT:** CHANGE IN TAX REPORTING  
**DATE:** MARCH 16, 2016  
**CC:** ADAM C. SINN

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This memorandum seeks to explain a change in tax reporting that will likely affect you, as you are receiving this memorandum because you have previously been issued a K-1 from Raiden Commodities, L.P. (“Raiden”).

As you know, your gains and losses are tracked throughout the year and then paid out to you in two payments in January and July of the year following your trading activity. For tax years 2014 and prior, tax reporting followed those cash flows: gains and losses were reported on a Schedule K-1 for the year in which the cash from your prior year gains were paid to you. For example, trading gains earned from trading in 2013 were paid out in 2014 in two payments, and those payments were reported on a 2014 Schedule K-1 issued to each trader for inclusion on his 2014 tax returns.

Because your income is being reported to you on a K-1, the income distributed to you from Raiden should follow partnership accounting rules rather than cash basis accounting rules. Partnership accounting rules dictate that income and expenses are reported to partners in the year earned, *regardless of when cash is distributed to partners*. Thus, for tax year 2015 and forward, any trading gains and losses earned by you will be reported on a Schedule K-1 for the year in which they are earned, rather than when cash is distributed to you. Because of the change, your 2015 Schedule K-1 will include gains from both 2014 and 2015, since 2014 gains have yet to be reported.

Once Raiden’s General Partner has calculated what your gains and losses for 2015 were, the CPA for Raiden will prepare Schedule K-1s for each of you, adding your 2015 gains and losses to your 2014 gains that were paid out in 2015. The entire figure will be reported to you on a single 2015 Schedule K-1 that you should use in preparing your 2015 U.S. and Puerto Rico tax returns. If you have been issued a 1099 for the 2015 tax year, please disregard such as it was in error and you should have received a K-1.

**Because most of you live in Puerto Rico and enjoy the favorable tax treatment it offers, we do not anticipate that this larger K-1 will create any additional tax liability for you.** If it does create additional tax liability (or for those who do not live in Puerto Rico), there should be no “cash crunch” created by the larger K-1. This is because the General Partner is generally required to make a “Minimum Tax Distribution” to cover such tax liabilities (i.e., distribute at least enough cash to you as is necessary to pay your tax bill in a particular year).

For those of you who are bona fide residents of Puerto Rico, should you ever choose to leave Puerto Rico, your gains from your final year will be taxed in Puerto Rico, not the U.S., for the last year in which you lived in Puerto Rico. For example, if you moved back to the U.S. in 2018, then your trading gains for 2017 would be reported on a 2017 Schedule K-1, rather than there being a lag in the tax reporting. In this way, there is a match of where you earned the income and where it was reported to be earned, which would permit Puerto Rico’s tax laws to apply to your trading gains in the year you earn them, even if you move the next year.

# **EXHIBIT 8**

**From:** Scott Schieffer <[scott@scottschieffer.com](mailto:scott@scottschieffer.com)>  
**Date:** Wednesday, March 30, 2016 at 3:34 PM  
**To:** Patrick de Man <[pdeman@aspirecommodities.com](mailto:pdeman@aspirecommodities.com)>  
**Subject:** Re: K-1 from Raiden

Thanks, Patrick. Those dates and amounts do show up on the statements, but they showed a payee of "Smithfield;" I think Chase has a limit to the number of characters in their fields, so perhaps your name was cut off, but I will know that those are yours in the future.

Here is the revised K-1. As was mentioned in the prior correspondence, this K-1 won't actually be filed until after the summer payment is made. Line 19 shows 2015 cash actually paid, but that does not impact the taxation at all; it just helps reconcile the cash in and out of the overall partnership for purposes of the partnership balance sheet.

On your 2016 K-1, you will see the \$890,847 on line 19 next year, and your line 11 amount will be whatever your gains are for 2016; let me know if that makes sense.

Scott

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**R. Scott Schieffer, P.C.**  
Attorney | CPA  
3102 Maple Avenue, Suite 400  
Dallas, Texas 75201  
214.717.4500  
[scott@scottschieffer.com](mailto:scott@scottschieffer.com)  
[www.scottschieffer.com](http://www.scottschieffer.com)

# **EXHIBIT 9**

**PARTNER# 3**  
**Schedule K-1**  
**(Form 1065)**

**2015**

Department of the Treasury  
 Internal Revenue Service

For calendar year 2015, or tax  
 year beginning \_\_\_\_\_  
 ending \_\_\_\_\_

Final K-1  Amended K-1

651113  
 OMB No. 1545-0123

**Partner's Share of Income, Deductions, Credits, etc.**  
 See back of form and separate instructions.

<b>Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items</b>			
1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
<b>C</b>	<b>1,890,847</b>		
12	Section 179 deduction	19	Distributions
		<b>A</b>	<b>1,000,000</b>
13	Other deductions		
		20	Other information
14	Self-employment earnings (loss)		

**Part I Information About the Partnership**

**A** Partnership's employer identification number  
 REDACTED

**B** Partnership's name, address, city, state, and ZIP code  
**RAIDEN COMMODITIES LP**  
  
**200 DORADO BEACH DRIVE UNIT 3232**  
**DORADO PR 00646**

**C** IRS Center where partnership filed return  
**E-FILE**

**D**  Check if this is a publicly traded partnership (PTP)

**Part II Information About the Partner**

**E** Partner's identifying number  
 REDACTED

**F** Partner's name, address, city, state, and ZIP code  
**PATRICK DE MAN**  
**URB SABANERA DORADO**  
**544 CORREDOR DEL BOSQUE**  
**DORADO PR 00646**

**G**  General partner or LLC member-manager  Limited partner or other LLC member

**H**  Domestic partner  Foreign partner

**I1** What type of entity is this partner? **INDIVIDUAL**

**I2** If this partner is a retirement plan (RA/SEP/Keogh/etc.), check here

**J** Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	0.000000 %	0.000000 %
Loss	0.000000 %	0.000000 %
Capital	0.000000 %	0.000000 %

**K** Partner's share of liabilities at year end:

Nonrecourse ..... \$ \_\_\_\_\_  
 Qualified nonrecourse financing ..... \$ \_\_\_\_\_  
 Recourse ..... \$ \_\_\_\_\_

**L** Partner's capital account analysis:


Beginning capital account	\$ _____
Capital contributed during the year	\$ _____
Current year increase (decrease)	\$ <b>1,890,847</b>
Withdrawals & distributions	\$ <b>(1,000,000)</b>
Ending capital account	\$ <b>890,847</b>

Tax basis  GAAP  Section 704(b) book  
 Other (explain)

**M** Did the partner contribute property with a built-in gain or loss?  
 Yes  No  
 If "Yes," attach statement (see instructions)

\*See attached statement for additional information.

For IRS Use Only



**This list identifies the codes used on Schedule K 1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K 1 and the instructions for your income tax return.**

- 1. **Ordinary business income (loss).** Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.
  - Passive loss Report on See the Partner's Instructions
  - Passive income Schedule E, line 28, column (g)
  - Nonpassive loss Schedule E, line 28, column (h)
  - Nonpassive income Schedule E, line 28, column (j)
- 2. **Net rental real estate income (loss)** See the Partner's Instructions
- 3. **Other net rental income (loss)** See the Partner's Instructions
- 4. **Guaranteed payments** Schedule E, line 28, column (j)
- 5. **Interest income** Form 1040, line 8a
- 6a. **Ordinary dividends** Form 1040, line 9a
- 6b. **Qualified dividends** Form 1040, line 9b
- 7. **Royalties** Schedule E, line 4
- 8. **Net short-term capital gain (loss)** Schedule D, line 5
- 9a. **Net long-term capital gain (loss)** Schedule D, line 12
- 9b. **Collectibles (28%) gain (loss)** 28% Rate Gain Worksheet, line 4 (Schedule D instructions)
- 9c. **Unrecaptured section 1250 gain** See the Partner's Instructions
- 10. **Net section 1231 gain (loss)** See the Partner's Instructions
- 11. **Other income (loss)**
  - Code
  - A Other portfolio income (loss) See the Partner's Instructions
  - B Involuntary conversions See the Partner's Instructions
  - C Sec. 1256 contracts & straddles Form 6781, line 1
  - D Mining exploration costs recapture See Pub. 535
  - E Cancellation of debt Form 1040, line 21 or Form 982
  - F Other income (loss) See the Partner's Instructions
- 12. **Section 179 deduction** See the Partner's Instructions
- 13. **Other deductions**
  - A Cash contributions (50%)
  - B Cash contributions (30%)
  - C Noncash contributions (50%)
  - D Noncash contributions (30%)
  - E Capital gain property to a 50% organization (30%)
  - F Capital gain property (20%)
  - G Contributions (100%)
  - H Investment interest expense Form 4952, line 1
  - I Deductions—royalty income Schedule E, line 19
  - J Section 59(e)(2) expenditures See the Partner's Instructions
  - K Deductions—portfolio (2% floor) Schedule A, line 23
  - L Deductions—portfolio (other) Schedule A, line 28
  - M Amounts paid for medical insurance Schedule A, line 1 or Form 1040, line 29
  - N Educational assistance benefits See the Partner's Instructions
  - O Dependent care benefits Form 2441, line 12
  - P Preproductive period expenses See the Partner's Instructions
  - Q Commercial revitalization deduction from rental real estate activities See Form 8582 instructions
  - R Pensions and IRAs See the Partner's Instructions
  - S Reforestation expense deduction See the Partner's Instructions
  - T Domestic production activities information See Form 8903 instructions
  - U Qualified production activities income Form 8903, line 7b
  - V Employer's Form W-2 wages Form 8903, line 17
  - W Other deductions See the Partner's Instructions
- 14. **Self-employment earnings (loss)**

**Note:** If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.

  - A Net earnings (loss) from self-employment Schedule SE, Section A or B
  - B Gross farming or fishing income See the Partner's Instructions
  - C Gross non-farm income See the Partner's Instructions
- 15. **Credits**
  - A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings
  - B Low-income housing credit (other) from pre-2008 buildings
  - C Low-income housing credit (section) 42(j)(5) from post-2007 buildings
  - D Low-income housing credit (other) from post-2007 buildings
  - E Qualified rehabilitation expenditures (rental real estate)
  - F Other rental real estate credits
  - G Other rental credits
  - H Undistributed capital gains credit Form 1040, line 73; check box a
  - I Biofuel producer credit
  - J Work opportunity credit
  - K Disabled access credit

- Code Report on
- L Empowerment zone employment credit
- M Credit for increasing research activities
- N Credit for employer social security and Medicare taxes
- O Backup withholding
- P Other credits
- 16. **Foreign transactions**
  - A Name of country or U.S. possession
  - B Gross income from all sources
  - C Gross income sourced at partner level
  - Foreign gross income sourced at partnership level
  - D Passive category
  - E General category
  - F Other
  - Deductions allocated and apportioned at partner level
  - G Interest expense
  - H Other
  - Deductions allocated and apportioned at partnership level to foreign source income
  - I Passive category
  - J General category
  - K Other
  - Other information
  - L Total foreign taxes paid
  - M Total foreign taxes accrued
  - N Reduction in taxes available for credit
  - O Foreign trading gross receipts
  - P Extraterritorial income exclusion
  - Q Other foreign transactions
- 17. **Alternative minimum tax (AMT) items**
  - A Post-1986 depreciation adjustment
  - B Adjusted gain or loss
  - C Depletion (other than oil & gas)
  - D Oil, gas, & geothermal—gross income
  - E Oil, gas, & geothermal—deductions
  - F Other AMT items
- 18. **Tax-exempt income and nondeductible expenses**
  - A Tax-exempt interest income Form 1040, line 8b
  - B Other tax-exempt income See the Partner's Instructions
  - C Nondeductible expenses See the Partner's Instructions
- 19. **Distributions**
  - A Cash and marketable securities
  - B Distribution subject to section 737
  - C Other property
- 20. **Other information**
  - A Investment income Form 4952, line 4a
  - B Investment expenses Form 4952, line 5
  - C Fuel tax credit information Form 4136
  - D Qualified rehabilitation expenditures (other than rental real estate) See the Partner's Instructions
  - E Basis of energy property See the Partner's Instructions
  - F Recapture of low-income housing credit (section 42(j)(5)) Form 8611, line 8
  - G Recapture of low-income housing credit (other) Form 8611, line 8
  - H Recapture of investment credit See Form 4255
  - I Recapture of other credits See the Partner's Instructions
  - J Look-back interest—completed long-term contracts See Form 8697
  - K Look-back interest—income forecast method See Form 8866
  - L Dispositions of property with section 179 deductions
  - M Recapture of section 179 deduction
  - N Interest expense for corporate partners
  - O Section 453(l)(3) information
  - P Section 453A(c) information
  - Q Section 1260(b) information
  - R Interest allocable to production expenditures
  - S CCF nonqualified withdrawals
  - T Depletion information—oil and gas
  - U Reserved
  - V Unrelated business taxable income
  - W Precontribution gain (loss)
  - X Section 108(i) information
  - Y Net investment income
  - Z Other information

**PARTNER# 3**

Schedule <b>K-1</b>	<b>Analysis of Partner's K-1, Current Year Increase (Decrease) Worksheet</b>	<b>2015</b>
For calendar year 2015, or tax year beginning _____, and ending _____		

Partnership Name <b>RAIDEN COMMODITIES LP</b>	Employer Identification Number REDACTED
Partner's Name <b>PATRICK DE MAN</b>	Taxpayer Identification Number REDACTED

Items Included in Current Year Increase (Decrease):

<b>SCHEDULE K ADDITIONS:</b>	
<b>SECTION 1256 CONTRACTS</b>	1,890,847
	<hr/>
<b>SUBTOTAL</b>	1,890,847
	<hr/>
<b>TOTAL PER SCHEDULE K-1, CURRENT YEAR INCREASE (DECREASE)</b>	<b>1,890,847</b>
	<b>=====</b>



Partnership Name <b>RAIDEN COMMODITIES LP</b>	Employer Identification Number REDACTED
Partner's Name <b>PATRICK DE MAN</b>	Taxpayer Identification Number REDACTED

**Beginning of year** ..... **0**

**Increases:**

Capital contributions:	Cash	Property (adjusted basis)	
"Excess" depletion			
Income items:	Ordinary income		
	Net income from rental real estate activities		
	Net income from other rental activities		
	Interest		
	Dividends		
	Royalties		
	Net short-term capital gain		
	Net long-term capital gain		
	Other portfolio income		
	Net gain under section 1231		
	Other income	<b>1,890,847</b>	
	Tax-exempt interest and other income		<b>1,890,847</b>
Other increases:	Transfer of capital		
	Gain on disposition of section 179 assets		
	Other increases		
Distributions:	Cash	Property (adjusted basis)	
	<b>1,000,000</b>		<b>1,000,000</b>
Increase (decrease) in share of partnership liabilities	P/Y	C/Y	

**Subtotal** ..... **890,847**

Distribution in excess of partner basis .....

**Decreases:**

Noncap items:	Nondeductible expenses		
	Charitable contributions		
	Foreign taxes		
Loss items:	Ordinary loss		
	Net loss from rental real estate activities		
	Net loss from other rental activities		
	Royalties		
	Net short-term capital loss		
	Net long-term capital loss		
	Other portfolio loss		
	Net loss under section 1231		
	Other losses		
	Section 179 expense		
	Deductions related to portfolio income		
	Other deductions		
	Interest expense on investment debts		
	Section 59(e)(2) expenditures		
	Loss on disposition of section 179 assets		

Depletion .....  
Other decreases .....

**End of year** ..... **890,847**

**Partner's Schedule K-1 Activity Worksheet**

Schedule **K-1**

For calendar year 2015, or tax year beginning , and ending

**2015**

Partnership Name

**RAIDEN COMMODITIES LP**

Employer Identification Number

REDACTED

Partner's Name

**PATRICK DE MAN**

Taxpayer Identification Number

REDACTED

Activity Description	Activity Disposed	Schedule K-1 Passthrough		
		EIN	Entity Type	PTP
<b>A MISC AMOUNTS</b>				
<b>B</b>				
<b>C</b>				

Schedule K-1		Description	A	B	C
Box	Code				
11	C	<b>SECTION 1256 CONTRACTS AND STRADDLES</b>	<b>1,890,847</b>		

# **EXHIBIT 10**

**CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
RAIDEN COMMODITIES, LP**

1. The Name of the Limited Partnership, as formed effective as of the date of the filing of this certificate, shall be **Raiden Commodities, LP**.

2. The Physical and Mailing Addresses of the Office of the Limited Partnership are:

<u>(Physical)</u>	<u>(Mailing)</u>
One Hibiscus Alley	PO Box 6347
St. Thomas, USVI 00802	St. Thomas, USVI 00804

3. The Agent for Service of Process and the Agent's Physical and Mailing Addresses are:

*Marjorie Rawls Roberts, PC*

<u>(Physical)</u>	<u>(Mailing)</u>
One Hibiscus Alley	PO Box 6347
St. Thomas, USVI 00802	St. Thomas, USVI 00804

4. The Name of the General Partners is: **Poseidon Commodities, LLC**

5. The Business Address (Physical and Mailing) of the General Partner is:


<u>(Physical)</u>	<u>(Mailing)</u>
One Hibiscus Alley	PO Box 6347
St. Thomas, USVI 00802	St. Thomas, USVI 00804

6. The term of the Limited Partnership commenced as of the date of the filing of this certificate and shall continue until no later than December 31, 2060.

7. The Limited Partnership hereby elects to be a limited partnership covered by Section 4 of Act No. 6205, which is Chapter 3, Title 26, Virgin Islands Code, establishing the Uniform Limited Partnership Act, effective June 1, 1998.

I hereby affirm that the facts stated above are true as of this 22 day of December, 2010.

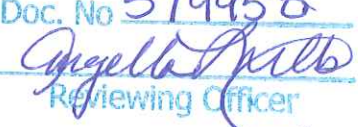
**POSEIDON COMMODITIES, LLC – General Partner:**

  
Adam C. Simm  
Its: Manager and Sole Member

Office of the Lt. Gov.  
Division of Corporations  
**FILED**

DEC 30 2010

Doc. No 579950

  
Reviewing Officer

2010 DEC 30 PM 5:09  
CORPORATIONS

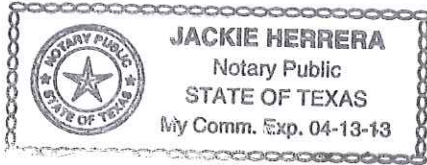
STATE OF TEXAS                    )  
  )  
COUNTY OF HARRIS                )

BEFORE ME, the undersigned authority, on this 22 day of December, 2010, personally appeared Adam C. Sinn, who being by me first duly sworn, declared he is the person who signed the foregoing document and that the statements contained in this Certificate of Limited Partnership are true.

*Jackie Herrera*

Notary Public

My Commission Expires: 04/13/13



2010 DEC 30 PM 5:09  
COMMERCIAL  
RAIDEN

**CERTIFICATE OF AMENDMENT  
TO THE CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
RAIDEN COMMODITIES, LP**

Raiden Commodities, LP, a Limited Partnership duly organized and existing under and by virtue of the laws of the United States Virgin Islands (the "Company") DOES HEREBY CERTIFY that the following Amendment to its Certificate of Limited Partnership has been duly adopted in accordance with the provisions of the Uniform Limited Partnership Act, Chapter 3, Title 26, Section 225 of the Virgin Islands Code.

1. The name of the Limited Partnership is: ***Raiden Commodities, LP***
2. The Certificate of Limited Partnership was filed with the Office of the Lieutenant Governor on December 30, 2010.
3. The Certificate of Limited Partnership is hereby amended by deleting paragraph two in its entirety and inserting the following in lieu thereof:

***The physical and mailing address of the principal office of the Limited Partnership is 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802.***

4. The Certificate of Limited Partnership is hereby amended by deleting paragraph three in its entirety and inserting the following in lieu thereof:

***The name and address of the Resident Agent of the Limited Partnership is Business Basics VI, LLC, 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802.***

5. The Certificate of Limited Partnership is hereby amended by deleting paragraph four in its entirety and inserting the following in lieu thereof:

***The Name of the General Partner is: Raiden Commodities I, LLC.***

6. The Certificate of Limited Partnership is hereby amended by deleting paragraph five in its entirety and inserting the following in lieu thereof:

***The physical and mailing address of the General Partner is 200 Dorado Beach Drive, Unit 3021, Dorado, Puerto Rico 00646.***

[signature page follows]

Office of the Lt. Gov.  
Division of Corporations

**FILED**


DEC 14 2013

Doc. No LP-005-2013

*Angela M. Hill*  
Revealing Officer

IN WITNESS WHEREOF, the undersigned person has hereunto set his hand as a Member of the Company on this 30 day of July, 2013.

**Raiden Commodities 1, LLC**

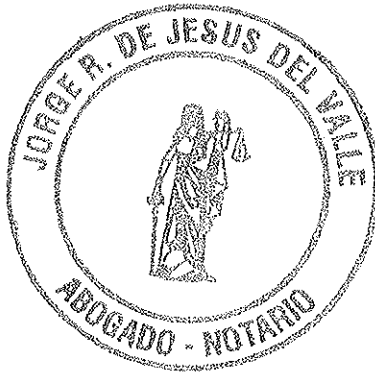
  
Adam Sinn, Member

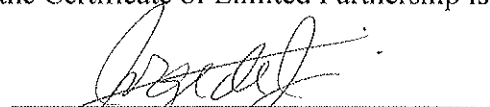
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2013 JUL 7 PM 11:11  
GENERAL SERVICES - ST

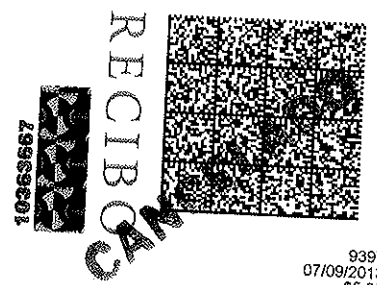
IN THE COMMONWEALTH OF PUERTO RICO )

DISTRICT OF Dorado )  
Affidavit No. 5, 295 )

BEFORE ME, the undersigned authority, on this 30<sup>th</sup> day of July, 2013 personally appeared Adam Sinn who, being by me first duly sworn, declared that he is the person who signed the foregoing document as a Member of the Company and that the statements contained in this Amendment to the Certificate of Limited Partnership is true.



  
Notary Public  
My commission expires Permanent



9397  
07/09/2013  
\$5.00  
\$5 Sello Asistencia Legal  
51682-2013-0709-67914574

# **EXHIBIT 11**



**FIRST AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT  
OF  
RAIDEN COMMODITIES, LP**

THIS LIMITED PARTNERSHIP AGREEMENT (this "Agreement") is made and entered into as of September 20, 2013 by and among Raiden Commodities 1, LLC, hereinafter referred to as the "General Partner", and Adam C. Sinn as the "Limited Partner," whose names are set forth on the signatory pages to this Agreement (all of whom together are hereinafter collectively referred to as "Partners").

**WHEREAS**, the Partners formed a Limited Partnership (hereinafter referred to as the "Partnership") under the Virgin Islands Uniform Limited Partnership Act on December 30, 2010; and

**WHEREAS**, any and all partnership agreements between the Partners prior to this Agreement have either been lost or destroyed; and

**WHEREAS**, the Partners desire to enter into this Agreement in order to clarify their relationship and further to govern the Partnership from the date of formation (December 30, 2010) until the date of dissolution of the Partnership as provided herein.

In consideration of the mutual covenants contained in this Agreement, the Partners agree as follows:

**Article I. FORMATION, NAME, PURPOSE, TERM**

1.1 Formation. The Partners formed a Limited Partnership on December 30, 2010 pursuant to the Virgin Islands Uniform Limited Partnership Act (the "Act"). Any and all prior partnership agreements relating to the Partnership have either been lost or destroyed, and as a result the Partners now enter into this Agreement to govern them from the date of formation (December 30, 2010) until the date of dissolution of this Agreement. Furthermore, to the extent any partnership agreements between the Partners do exist, all previous partnership agreements are hereby revoked and this Agreement hereby completely replaces and supersedes any prior partnership agreements. The General Partner shall manage the Partnership business, and the Limited Partner shall not participate in the management of the Partnership business.

1.2 Name of Limited Partnership. The business of the Partnership shall be conducted under the name of Raiden Commodities, LP.

1.3 Partners.

The name and address of the General Partner is:

**Names**

**Addresses**

Raiden Commodities 1, LLC

200 Dorado Beach Drive, Unit 3021  
Dorado, PR 00646

The name and address of the Limited Partner is:

**Names****Addresses**

Adam C. Sinn

200 Dorado Beach Drive, Unit 3021  
Dorado, PR 00646

1.4 Place of Business and Agent for Service of Process. The designated office and principal place of business of the Partnership shall be located at 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802, or such other place as the General Partner may from time to time designate.

The name and address of the agent for service of process as required by law is Business Basics VI, LLC, 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802 or such other person as the General Partner may from time to time designate.

1.5 Term. The Partnership shall commence on the date of formation, December 30, 2010, and its duration shall be perpetual.

1.6 Purpose. The purpose for which the Partnership is organized is to conduct all lawful activity for which limited partnerships may be organized under the Act.

**Article II. CAPITAL ACCOUNTS**

2.1 Initial Contribution of Partners. Each Partner has contributed to the initial capital of the Partnership cash or property, or both in the amount and form indicated on attached Schedule A. Capital contributions to the Partnership shall not bear interest. An individual capital account shall be maintained for each Partner.

2.2 Additional Capital Contribution. No Partner shall be required to contribute to the capital of this Partnership. Any Partner who shall make a contribution shall be deemed to have made a loan to such Partnership, which loan shall not bear interest which principal shall have priority over any and all other sums owed to or payable to the Partner(s).

2.3 Percentage Share of Profits and Capital. The Percentage Share of Profits and Capital of each Partner shall be (unless otherwise modified by the terms of this Agreement) as follows:

<b>Names</b>	<b>Initial Percentage</b>
	<b>Share of Profits and Capital</b>
Raiden Commodities 1, LLC	99.9%
Adam C. Sinn	0.01%

2.4 Return of Capital Contributions. No Partner shall have the right to demand the return of his or her capital

contributions except as provided in this Agreement.

2.5 Rights of Priority. The individual Limited Partner shall have priority over the individual General Partner, as to the return of capital contributions.

2.6 Distributions. Distributions to the Partners of net operating profits of the Partnership, as hereinafter defined, shall be made at such times, but no less frequently than as the Partners shall reasonably agree. Such distributions shall be made to the Partners simultaneously. For purposes of this Agreement, net operating profit for any accounting period shall mean the gross receipts of the Partnership for such period, less the sum of all cash expenses of operation of the Partnership, and such sums as may be necessary to establish a reserve for operating expenses. In determining net operating profit, deductions for depreciation, amortization, or other similar charges not requiring actual current expenditures of cash shall not be taken into account in accordance with generally accepted accounting principles.

2.7 Compensation. No Partner shall be entitled to receive any compensation from the Partnership, nor shall any Partner receive any drawing account from the Partnership.

### **Article III. MANAGEMENT**

3.1 Management. The General Partner shall direct, manage, and control the business of the Partnership to the best of the General Partners' ability and shall have full, sole, exclusive and complete authority, power and discretion to make any and all decisions and to do any and all things which the General Partner deems necessary or desirable for that purpose without any approval from the Limited Partners. The General Partner shall be solely responsible for the operation of the Partnership business, having all powers generally conferred by law, as well as those which are necessary, advisable, or consistent in connection with the purposes of the Partnership. Any action required or permitted to be taken by a corporate General Partner hereunder may be taken by such of its proper officers or agents as it may validly designate for such purpose.

3.2 Liability for Certain Acts. The General Partner shall exercise ordinary business judgment in managing the business, operations and affairs of the Partnership. Except in the case of fraud, deceit, gross negligence, willful misconduct, wrongful taking or a breach of the General Partner's fiduciary duties to the Partnership or the Limited Partners, the General Partner shall not be liable or obligated to the Partnership or the Limited Partners for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the General Partner in conducting the business, operations and affairs of the Partnership which may cause or result in any loss or damage to the Partnership or its Partners. The General Partner does not, in any way, guarantee the return of the Limited Partner's Capital Contributions or a profit for any Limited Partner from the operations of the Partnership. The General Partner shall not be responsible to any Limited Partner because of a loss of their investment or a loss in operations, unless the loss shall have been the result of fraud, deceit, breach of the General Partner's fiduciary duties to the Partnership or the Limited Partners, gross negligence, willful misconduct or a wrongful taking by the General Partner.

3.3 Tax Matters Partner. The Tax Matters Partner for the Partnership shall be the General Partner serving in such capacity from time to time.

### **Article IV. RIGHTS & OBLIGATIONS OF THE LIMITED PARTNER**

4.1 Limitation of Liability. Each Limited Partner's liability shall be limited to the full extent set forth in the Act or other applicable law. No Limited Partner shall be liable for any debts, liabilities, contracts or obligations unless otherwise provided by this Agreement. Except otherwise provided by this Agreement, any other agreements among

the Partners, or applicable law, a Limited Partner shall be liable only to make such Limited Partner's Capital Contributions as and when due hereunder and shall not be required to lend any funds to the Partnership or, after such Limited Partner's Capital Contributions have been paid, to make any additional contributions to the Partnership.

#### **Article V. POWER OF ATTORNEY**

##### **5.1 Power of Attorney**

(a) Each Partner irrevocably appoints the General Partner as his or her true and lawful attorney, in his or her name, place and stead, to make, execute, acknowledge and/or file: (i) any Certificate of Limited Partnership or other instrument which may be required to be executed or filed by the Partnership or which the General Partner shall deem it advisable to execute or file; (ii) any and all amendments or modifications to the instrument; and (iii) all documents which may be required to effectuate the dissolution and termination of the Partnership.

(b) Further, each Partner appoints the General Partner as his or her true and lawful attorney, in his name, place and stead, to purchase, deal with the property and to manage the same including without limitation, to sign, deliver or record all deeds, contracts of sale or other instruments conveying title to the property, either in the names of the Partners or in the name of the Partnership and the members, to establish bank accounts for the Partnership and to deposit and withdraw funds solely upon his signature, to demand, sue for, levy or recover all sums of money, debts, rents or other demands or claims of any nature whatsoever which are or shall be due the Partnership in such manner as the General Partner shall determine to be advisable.

(c) Each Partner expressly agrees and intends that the foregoing powers of attorney are coupled with an interest.

(d) The foregoing powers of attorney shall survive the delivery of an assignment by any of the Partners of the whole or any portion of his or her transferable interest in the Partnership.

(e) From time to time, the General Partner may, at its sole discretion, send notice to the Partners of actions taken. If objection is not received by the General Partner within thirty (30) days of said notice, then objection to said action shall be waived by all of the parties to this Agreement.

#### **Article VI. DISSOLUTION**

6.1 Dissolution. The partnership term shall commence on December 30, 2010, and continue thereafter for an unstipulated time ending:

(1) On the dissolution of the partnership by law;

(2) On dissolution at any time agreed on by the General Partner;

(3) On dissolution at the close of the month following the qualification and appointment of the personal representative of a terminated general partner, and following the exercise by the partners of an option granted by this agreement to cause the partnership to be dissolved as of the close of such month.

(4) Value of Partner's Interest.

The value of a general partner's interest in the partnership shall be computed by: (1) adding the totals of: (a) his or her capital account, (b) his or her income account, and (c) any other amounts owed to him or her by the Partnership, and (2) subtracting from the sum of the above totals the sum of the totals of (a) his or her drawing account and (b) any amount owed by him or her to the Partnership.

6.2 Liquidation. In the event that the Partnership shall hereafter be dissolved for any reason whatsoever, a full and general account of its assets, liabilities and transactions shall at once be taken. Such assets may be sold and turned into cash as soon as possible and all debts and other amounts due the Partnership collected. The proceeds shall be applied in the following order:

- (a) To discharge the debts and liabilities of the Partnership and the expenses of liquidation.
- (b) To pay each Partner or his or her legal representative any unpaid salary, drawing account, interest, profits, interim distributions or distributions upon withdrawal to which the partner shall then be entitled.
- (c) To pay the Limited Partner or his or her legal representative his or her share of the profits and other compensation by way of income on their contributions.
- (d) To pay to the Limited Partner in respect to the capital of their contributions.
- (e) To pay to the General Partner other than for capital and profits.
- (f) To pay to the General Partner in respect to profits.
- (g) To pay to the General Partner in respect to capital.

6.3 Right to Demand Property. No Partner shall have the right to demand and receive property in kind for his or her distribution.

## **Article VII. BOOKS & RECORDS**

7.1 Accounting Year, Books, Statements.

(a) The Partnership's fiscal year shall commence on January 1, of each year and shall end on December 31, of each year. Full and accurate books of account shall be kept at the office specified in the certificate of limited partnership, showing the condition of the business and finances of the Partnership; and each Partner shall have access to such books of account and shall be entitled to examine them at any time during ordinary business hours.

(b) At the end of each year, the General Partner shall cause the Partnership's accountant to prepare a balance sheet setting forth the financial position of the Partnership as of the end of that year and a statement of operations (income and expenses) for that year. A copy of the balance sheet and statement of operations shall be delivered to each Partner as soon as it is available. The General Partner shall also cause to be prepared and delivered to each Partner as soon as

possible all forms and documents needed by the Partners for determining their income taxes.

(c) Each Partner shall be deemed to have waived all objections to any transaction or other facts about the operation of the Partnership disclosed in any balance sheet and/or statement of operations unless he or she notifies the General Partner in writing of the objections within thirty (30) days of the date on which such statement is mailed.

(d) The Partnership books shall be kept on the accrual basis and in accordance with generally accepted accounting principles consistent with those employed for determining its income for federal income tax purposes.

7.2 Access to Information by Limited Partner. The Limited Partner shall have the right to inspect and copy any of the Partnership records required to be maintained by law and to obtain from General Partner, from time to time, upon reasonable demand the following:

- (1) True and complete information regarding the state of the business and financial conditions of the Partnership;
- (2) Promptly after becoming available, copies of the Partnership's federal, state, and local income tax returns for each year; and
- (3) Other information regarding the affairs of the Partnership as is just and reasonable.

7.3 Partnership's Agents. Pursuant to the Partnership's day to day activity the General Partner shall have the power to employ investment counsel, brokers, accountants, attorneys, and any other agents to act in the Partnership's behalf, generally to do any act or thing and execute all instruments necessary, incidental or convenient to the proper administration of the Partnership property.

7.4 Transfer to Living Trusts. For purposes of this Agreement, any Partner may transfer his or her interest to said Partner's Living Trust. Upon such transfer, legal title shall rest in such Living Trust but such interest shall be subject to the same events and circumstances as if the transferring Partner continued to own such interest. Further, the transferring Partner shall continue to exercise all rights and be liable for all duties imposed by this Agreement.

7.5 Checks. All checks or demands for money and notes of the Partnership shall be signed by the General Partner or such other person or persons as the General Partner may from time to time designate.

7.6 Conflicts of Interest. Partners may engage in or possess interest in other business ventures of every kind and description for their own accounts. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in such independent business ventures or to their income or profits.

## **Article VIII. MISCELLANEOUS**

8.1 Effective Date. This Agreement shall be effective only upon execution by all of the proposed Partners listed in Section 1.3.

8.2 Execution in Counterparts. This Partnership Agreement may be executed in any number of counterparts, each of which shall be taken to be an original.

8.3 Indemnification. The Partnership shall indemnify any person who is made, or threatened to be made, a party to any action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that the person, or the person's testator or intestate is or was a Partner, employee or agent of the Partnership or serves or served any other enterprise at the request of the Partnership to the full extent permitted by law.

8.4 Notice. Any and all notices provided for herein shall be given in writing by registered or certified mail, return receipt requested which shall be addressed to the last address known to the sender or delivered to the recipient in person.

8.5 Modifications. No modification of this Agreement shall be valid unless such modification is in writing and signed by the General Partner.

8.6 Opinion of Counsel. The doing of any act or the failure to do any act by any Partner (the effect of which may cause or result in loss or damage to the Partnership) if pursuant to opinion of legal counsel employed by the General Partner on behalf of the Partnership, shall not subject such Partner to any liability. Further, the General Partner shall not be liable for any error in judgment or any mistake of law or fact or any act done in good faith in the exercise of powers and authority conferred upon him/her/them but shall be liable only for gross negligence or willful default.

8.7 Agreement Binding. This Agreement shall be binding upon the parties to this Agreement and upon their heirs, executors, administrators, successors or assigns. The parties to this Agreement agree for themselves and their heirs, executors, administrators, successors and assigns to execute any and all instruments in writing which are or may become necessary or proper to carry out the purpose and intent of this Agreement.

8.8 Amendments. This Agreement may be altered at any time by the General Partner by signed, written amendment. Notwithstanding any provision in this Agreement to the contrary, any amendment to this Agreement which would adversely affect the liabilities of Partners, or change the method of allocation of profit and loss or distribution of distributable cash as provided herein shall require the approval of all the Partners.

8.9 Titles and Subtitles. Titles of the paragraphs and subparagraphs are placed herein for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

8.10 Words and Gender or Number. As used herein, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

8.11 Severability. In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

8.12 Waiver. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the person or party against whom charged.

8.13 Applicable Law. All rights, obligations, and disputes of the parties relating to or arising out of this Agreement shall be subject to and governed by the laws of the Territory of the United States Virgin Islands.

In Witness Whereof, the parties have hereunto set their hands and seals this 20 day of September, 2013.

General Partner

Names

*Raiden Commodities 1, LLC*

Signature



By: Adam C. Sinn  
Manager

Limited Partner

Names

Adam C. Sinn

Signature





*SCHEDULE "A"*  
*Initial Capital Contributions*

	<b>Cash Contributions</b>	<b>Agreed Value of Property Contributions</b>
General Partner		
Raiden Commodities 1, LLC Limited Partner	<i>\$999.99</i>	<i>\$999.99</i>
Adam C. Sinn	<i>\$0.01</i>	<i>\$0.01</i>

# **EXHIBIT 12**

**RAYMOND SCHIEFFER, PC CPA  
1146 W PANOLA  
CARTHAGE, TX 75633  
214-717-4500**

October 1, 2014

**CONFIDENTIAL**

ADAM C SINN  
200 DORADO BEACH DRIVE UNIT 3021  
DORADO, PR 00646

Dear Partner:

We have prepared the enclosed copy of your Schedule K-1 for ASPIRE COMMODITIES, LP partnership. It contains your share of the partnership's items of income/loss, deductions, credits, and other information for the partnership's tax year ended December 31, 2013. These items are to be reported on your federal income tax return; therefore, this schedule should be retained with your tax records and documentation.

Also enclosed is state K-1 information, if applicable. This information should also be retained with your tax records and documentation.

Also enclosed is your partner basis information. This information consists of your basis in the partnership and, if applicable, your share of any suspended or disallowed losses. Retain this information with your tax records; it may be needed to complete your federal income tax return.

We have retained a copy of this Schedule K-1 and the partner basis information for use in preparing your federal income tax return, Form 1040. We urge you to call for an appointment at your earliest convenience so that we might begin preparation of your individual tax returns.

If you have any questions, or if we can be of assistance in any way, please call.

Sincerely,

RAYMOND SCHIEFFER, PC CPA

**PARTNER# 2**  
**Schedule K-1**  
**(Form 1065)**

Department of the Treasury  
 Internal Revenue Service

**2013**

For calendar year 2013, or tax  
 year beginning \_\_\_\_\_  
 ending \_\_\_\_\_

Final K-1  Amended K-1

651113  
 OMB No. 1545-0099

**Partner's Share of Income, Deductions,  
 Credits, etc.** See back of form and separate instructions.

<b>Part I Information About the Partnership</b>													
A Partnership's employer identification number	REDACTED												
B Partnership's name, address, city, state, and ZIP code	<b>ASPIRE COMMODITIES, LP</b>  <b>200 DORADO BEACH DRIVE UNIT 3021</b> <b>DORADO PR 00646</b>												
C RS Center where partnership filed return	<b>OGDEN, UT</b>												
D <input type="checkbox"/> Check if this is a publicly traded partnership (PTP)													
<b>Part II Information About the Partner</b>													
E Partner's identifying number	REDACTED												
F Partner's name, address, city, state, and ZIP code	<b>ADAM C SINN</b>  <b>200 DORADO BEACH DRIVE UNIT 3021</b> <b>DORADO PR 00646</b>												
G <input type="checkbox"/> General partner or LLC member-manager <input checked="" type="checkbox"/> Limited partner or other LLC member													
H <input checked="" type="checkbox"/> Domestic partner <input type="checkbox"/> Foreign partner													
I1 What type of entity is this partner?	<b>INDIVIDUAL</b>												
I2 If this partner is a retirement plan (RA/SEP/Keogh/etc.), check here (see instructions)	<input type="checkbox"/>												
J Partner's share of profit, loss, and capital (see instructions):													
	<table border="1"> <thead> <tr> <th></th> <th>Beginning</th> <th>Ending</th> </tr> </thead> <tbody> <tr> <td>Profit</td> <td><b>99.000000 %</b></td> <td><b>99.000000 %</b></td> </tr> <tr> <td>Loss</td> <td><b>99.000000 %</b></td> <td><b>99.000000 %</b></td> </tr> <tr> <td>Capital</td> <td><b>99.000000 %</b></td> <td><b>99.000000 %</b></td> </tr> </tbody> </table>		Beginning	Ending	Profit	<b>99.000000 %</b>	<b>99.000000 %</b>	Loss	<b>99.000000 %</b>	<b>99.000000 %</b>	Capital	<b>99.000000 %</b>	<b>99.000000 %</b>
	Beginning	Ending											
Profit	<b>99.000000 %</b>	<b>99.000000 %</b>											
Loss	<b>99.000000 %</b>	<b>99.000000 %</b>											
Capital	<b>99.000000 %</b>	<b>99.000000 %</b>											
K Partner's share of liabilities at year end:													
Nonrecourse	\$ _____												
Qualified nonrecourse financing	\$ _____												
Recourse	\$ _____												
L Partner's capital account analysis:													
Beginning capital account	\$ <b>2,231,513</b>												
Capital contributed during the year	\$ <b>341,550</b>												
Current year increase (decrease)	\$ <b>36,098,705</b>												
Withdrawals & distributions	\$ ( _____ )												
Ending capital account	\$ <b>38,671,768</b>												
<input checked="" type="checkbox"/> Tax basis <input type="checkbox"/> GAAP <input type="checkbox"/> Section 704(b) book													
<input type="checkbox"/> Other (explain)													
M Did the partner contribute property with a built-in gain or loss?													
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No													
If "Yes," attach statement (see instructions)													

<b>Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items</b>			
1	Ordinary business income (loss)	15	Credits
	<b>-883,483</b>		
2	Net rental real estate income (loss)		
*	<b>69,363</b>		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
	<b>3,774</b>		
5	Interest income		
	<b>10</b>		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
	<b>5,940</b>		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
	<b>329,079</b>	<b>D</b>	<b>13,332</b>
9b	Collectibles (28%) gain (loss)		
		<b>E</b>	<b>10,879</b>
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
<b>C</b>	<b>35,486,854</b>	<b>C*</b>	<b>27,624</b>
12	Section 179 deduction		
13	Other deductions		
<b>A</b>	<b>34,808</b>		
14	Self-employment earnings (loss)		
<b>K</b>	<b>161</b>	<b>A</b>	<b>10</b>
		<b>T*</b>	<b>STMT</b>
		<b>Z*</b>	<b>STMT</b>

\*See attached statement for additional information.

For IRS Use Only



**This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.**

- 1. **Ordinary business income (loss).** Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.
  - Passive loss Report on See the Partner's Instructions
  - Passive income Schedule E, line 28, column (g)
  - Nonpassive loss Schedule E, line 28, column (h)
  - Nonpassive income Schedule E, line 28, column (j)
- 2. **Net rental real estate income (loss)** See the Partner's Instructions
- 3. **Other net rental income (loss)**
  - Net income Schedule E, line 28, column (g)
  - Net loss See the Partner's Instructions
- 4. **Guaranteed payments** Schedule E, line 28, column (j)
- 5. **Interest income** Form 1040, line 8a
- 6a. **Ordinary dividends** Form 1040, line 9a
- 6b. **Qualified dividends** Form 1040, line 9b
- 7. **Royalties** Schedule E, line 4
- 8. **Net short-term capital gain (loss)** Schedule D, line 5
- 9a. **Net long-term capital gain (loss)** Schedule D, line 12
- 9b. **Collectibles (28%) gain (loss)** 28% Rate Gain Worksheet, line 4 (Schedule D instructions)
- 9c. **Unrecaptured section 1250 gain** See the Partner's Instructions
- 10. **Net section 1231 gain (loss)** See the Partner's Instructions
- 11. **Other income (loss)**
  - Code
  - A Other portfolio income (loss) See the Partner's Instructions
  - B Involuntary conversions See the Partner's Instructions
  - C Sec. 1256 contracts & straddles Form 6781, line 1
  - D Mining exploration costs recapture See Pub. 535
  - E Cancellation of debt Form 1040, line 21 or Form 982
  - F Other income (loss) See the Partner's Instructions
- 12. **Section 179 deduction** See the Partner's Instructions
- 13. **Other deductions**
  - A Cash contributions (50%)
  - B Cash contributions (30%)
  - C Noncash contributions (50%)
  - D Noncash contributions (30%)
  - E Capital gain property to a 50% organization (30%)
  - F Capital gain property (20%)
  - G Contributions (100%)
  - H Investment interest expense Form 4952, line 1
  - I Deductions—royalty income Schedule E, line 19
  - J Section 59(e)(2) expenditures See the Partner's Instructions
  - K Deductions—portfolio (2% floor) Schedule A, line 23
  - L Deductions—portfolio (other) Schedule A, line 28
  - M Amounts paid for medical insurance Schedule A, line 1 or Form 1040, line 29
  - N Educational assistance benefits See the Partner's Instructions
  - O Dependent care benefits Form 2441, line 12
  - P Preproductive period expenses See the Partner's Instructions
  - Q Commercial revitalization deduction from rental real estate activities See Form 8582 instructions
  - R Pensions and IRAs See the Partner's Instructions
  - S Reforestation expense deduction See the Partner's Instructions
  - T Domestic production activities information See Form 8903 instructions
  - U Qualified production activities income Form 8903, line 7b
  - V Employer's Form W-2 wages Form 8903, line 17
  - W Other deductions See the Partner's Instructions
- 14. **Self-employment earnings (loss)**
  - A Net earnings (loss) from self-employment Schedule SE, Section A or B
  - B Gross farming or fishing income See the Partner's Instructions
  - C Gross non-farm income See the Partner's Instructions
- 15. **Credits**
  - A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings
  - B Low-income housing credit (other) from pre-2008 buildings
  - C Low-income housing credit (section 42(j)(5)) from post-2007 buildings
  - D Low-income housing credit (other) from post-2007 buildings
  - E Qualified rehabilitation expenditures (rental real estate)
  - F Other rental real estate credits
  - G Other rental credits
  - H Undistributed capital gains credit Form 1040, line 71; check box a
  - I Biofuel producer credit
  - J Work opportunity credit
  - K Disabled access credit

- Code Report on
- L Empowerment zone employment credit See the Partner's Instructions
- M Credit for increasing research activities
- N Credit for employer social security and Medicare taxes
- O Backup withholding
- P Other credits
- 16. **Foreign transactions**
  - A Name of country or U.S. possession Form 1116, Part I
  - B Gross income from all sources
  - C Gross income sourced at partner level
  - Foreign gross income sourced at partnership level
  - D Passive category Form 1116, Part I
  - E General category
  - F Other
  - Deductions allocated and apportioned at partner level
  - G Interest expense Form 1116, Part I
  - H Other Form 1116, Part I
  - Deductions allocated and apportioned at partnership level to foreign source income
  - I Passive category Form 1116, Part I
  - J General category
  - K Other
  - Other information
  - L Total foreign taxes paid Form 1116, Part II
  - M Total foreign taxes accrued Form 1116, Part II
  - N Reduction in taxes available for credit Form 1116, line 12
  - O Foreign trading gross receipts Form 8873
  - P Extraterritorial income exclusion Form 8873
  - Q Other foreign transactions See the Partner's Instructions
- 17. **Alternative minimum tax (AMT) items**
  - A Post-1986 depreciation adjustment
  - B Adjusted gain or loss
  - C Depletion (other than oil & gas)
  - D Oil, gas, & geothermal—gross income
  - E Oil, gas, & geothermal—deductions
  - F Other AMT items
- 18. **Tax-exempt income and nondeductible expenses**
  - A Tax-exempt interest income Form 1040, line 8b
  - B Other tax-exempt income See the Partner's Instructions
  - C Nondeductible expenses See the Partner's Instructions
- 19. **Distributions**
  - A Cash and marketable securities
  - B Distribution subject to section 737
  - C Other property
- 20. **Other information**
  - A Investment income Form 4952, line 4a
  - B Investment expenses Form 4952, line 5
  - C Fuel tax credit information Form 4136
  - D Qualified rehabilitation expenditures (other than rental real estate) See the Partner's Instructions
  - E Basis of energy property See the Partner's Instructions
  - F Recapture of low-income housing credit (section 42(j)(5)) Form 8611, line 8
  - G Recapture of low-income housing credit (other) Form 8611, line 8
  - H Recapture of investment credit See Form 4255
  - I Recapture of other credits See the Partner's Instructions
  - J Look-back interest—completed long-term contracts See Form 8697
  - K Look-back interest—income forecast method See Form 8866
  - L Dispositions of property with section 179 deductions
  - M Recapture of section 179 deduction
  - N Interest expense for corporate partners
  - O Section 453(l)(3) information
  - P Section 453A(c) information
  - Q Section 1260(b) information
  - R Interest allocable to production expenditures
  - S CCF nonqualified withdrawals
  - T Depletion information—oil and gas
  - U Amortization of reforestation costs
  - V Unrelated business taxable income
  - W Precontribution gain (loss)
  - X Section 108(i) information
  - Y Net Investment Income
  - Z Other information

**Federal Statements****ADAM C SINN**

REDACTED

**Schedule K-1, Line 2 - Net Rental Real Estate Income (Loss)**

Description	Type	Amount	Disposed
393 COLLEGE AVENUE	COMMERCIAL	\$ 69,363	

**Schedule K-1, Line 18 - Tax-Exempt Income and Nondeductible Expenses**

Code	Description	Amount
C	NONDEDUCTIBLE MEALS AND ENTERTAINMENT	\$ 27,624

**Schedule K-1, Line 20 - Other Information**

Code	Description	Amount
T		\$ 2,000
T	DEPLETION	2,000

**Schedule K-1, Line 20Z - Additional Supplemental Information**

Description	
INTEREST FROM US OBLIGATIONS INCLUDED IN LINE 5	10

**PARTNER# 2**

Schedule	<b>K-1</b>	<b>Analysis of Partner's K-1, Current Year Increase (Decrease) Worksheet</b>	<b>2013</b>
		For calendar year 2013, or tax year beginning _____, and ending _____	

Partnership Name <b>ASPIRE COMMODITIES, LP</b>	Employer Identification Number REDACTED
Partner's Name <b>ADAM C SINN</b>	Taxpayer Identification Number REDACTED

Items Included in Current Year Increase (Decrease):

**SCHEDULE K ADDITIONS:**

ORDINARY INCOME/LOSS	-883,483
NET RENTAL REAL ESTATE INCOME/LOSS	69,363
US INTEREST	10
NET SHORT-TERM CAPITAL GAIN/LOSS	5,940
NET LONG-TERM CAPITAL GAIN/LOSS	329,079
SECTION 1256 CONTRACTS	35,486,854

<b>SUBTOTAL</b>	<b>35,007,763</b>
-----------------	-------------------

**SCHEDULE K SUBTRACTIONS:**

CHARITABLE CONTRIBUTIONS	34,808
DEDUCTIONS RELATED TO PORTFOLIO INCOME: PORTFOLIO DEDUCTIONS (2% FLOOR)	161

<b>SUBTOTAL</b>	<b>34,969</b>
-----------------	---------------

**SCHEDULE M-3 ADJUSTMENTS - EXP/DEDUCTION ITEMS:**  
MEALS AND ENTERTAINMENT

-27,624

<b>SUBTOTAL</b>	<b>-27,624</b>
-----------------	----------------

**SCHEDULE M-3 ADJUSTMENTS - INCOME (LOSS) ITEMS:**

INCOME STATEMENT GAIN/LOSS SALES	-36,544,615
GROSS CAPITAL GAINS - SCHEDULE D	335,019
OTHER GAIN/LOSS ON DISPOSITION OF ASSETS	36,209,597

<b>SUBTOTAL</b>	<b>1</b>
-----------------	----------

**SCHEDULE M-2 ADDITIONS:**

OTHER INCREASES: PRIOR PERIOD ADJUSTMENT	1,153,536
---	-----------

<b>SUBTOTAL</b>	<b>1,153,536</b>
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<b>TOTAL PER SCHEDULE K-1, CURRENT YEAR INCREASE (DECREASE)</b>	<b>36,098,705</b>
---	-------------------

Schedule **K-1**

For calendar year 2013, or tax year beginning , and ending

Partnership Name <b>ASPIRE COMMODITIES, LP</b>	Employer Identification Number REDACTED
Partner's Name <b>ADAM C SINN</b>	Taxpayer Identification Number REDACTED

<b>Beginning of year</b> .....		<b>0</b>
<b>Increases:</b>		
Capital contributions: Cash <b>341,550</b> Property (adjusted basis)		<b>341,550</b>
"Excess" depletion .....		
Income items: Ordinary income .....		
Net income from rental real estate activities .....	<b>69,363</b>	
Net income from other rental activities .....		
Interest .....	<b>10</b>	
Dividends .....		
Royalties .....		
Net short-term capital gain .....	<b>5,940</b>	
Net long-term capital gain .....	<b>329,079</b>	
Other portfolio income .....		
Net gain under section 1231 .....		
Other income .....	<b>35,486,854</b>	
Tax-exempt interest and other income .....		<b>35,891,246</b>
Other increases: Transfer of capital .....		
Gain on disposition of section 179 assets .....		
Other increases .....		
Distributions: Cash .....		
Increase (decrease) in share of partnership liabilities P/Y C/Y .....		
<b>Subtotal</b> .....		<b>36,232,796</b>
Distribution in excess of partner basis .....		
<b>Decreases:</b>		
Noncap items: Nondeductible expenses .....	<b>27,624</b>	
Charitable contributions .....	<b>34,808</b>	
Foreign taxes .....		<b>62,432</b>
Loss items: Ordinary loss .....	<b>883,483</b>	
Net loss from rental real estate activities .....		
Net loss from other rental activities .....		
Royalties .....		
Net short-term capital loss .....		
Net long-term capital loss .....		
Other portfolio loss .....		
Net loss under section 1231 .....		
Other losses .....		
Section 179 expense .....		
Deductions related to portfolio income .....	<b>161</b>	
Other deductions .....		
Interest expense on investment debts .....		
Section 59(e)(2) expenditures .....		
Loss on disposition of section 179 assets .....		
Depletion .....		<b>883,644</b>
Other decreases .....		
<b>End of year</b> .....		<b>35,286,720</b>

Note to partner: This worksheet was prepared based on partnership records. Please consult with your tax advisor for adjustments.



**PARTNER# 2**

Schedule <b>K-1</b>	<b>Partner's Distributive Share From Passthrough Entities Worksheet P1</b>	<b>2013</b>
For calendar year 2013, or tax year beginning _____, and ending _____		

Partnership Name <b>ASPIRE COMMODITIES, LP</b>	Employer Identification Number REDACTED
Partner's Name <b>ADAM C SINN</b>	Taxpayer Identification Number REDACTED

	EIN	Entity Type	Activity Disposed	Publicly Traded
<b>A GRAND ENERGY 2011-83 LTD</b>	REDACTED	<b>PARTNERSHIP</b>		
<b>B</b>				
<b>C</b>				

	<b>A</b>	<b>B</b>	<b>C</b>	
--	----------	----------	----------	--

**Liabilities:**

- Nonrecourse - at risk .....
- Nonrecourse - not at risk .....
- Qualified nonrecourse - at risk .....
- Qualified nonrecourse - not at risk .....
- Recourse - at risk .....
- Recourse - not at risk .....

**Income (Loss):**

- Ordinary income (loss) from trade or business activities ..... **2,453**
- Net income (loss) from rental real estate activities .....
- Net income (loss) from other rental activities .....
- Guaranteed payments to partners .....
- Interest .....
- US interest .....
- Ordinary dividends .....
- Qualified dividends .....
- Royalties .....
- Net short-term capital gain (loss) .....
- Net long-term capital gain (loss) .....
- Collectibles (28%) gain (loss) .....
- Unrecaptured section 1250 gain from sale of business assets .....
- Unrecaptured section 1250 gain from trusts, REITS or RICS .....
- Net section 1231 gain (loss) .....
- Other income (loss) items:
- Other portfolio income (loss) .....
- Section 1256 contracts and straddles .....
- Mining exploration costs recapture .....
- Cancellation of debt .....
- Other income (loss) .....
- Section 1202 gain - 50% exclusion .....
- Section 1202 gain - 60% exclusion .....
- Section 1202 gain - 75% exclusion .....

**Deductions:**

- Contributions:
- Cash contributions (50%) .....
- Cash contributions (30%) .....
- Noncash contributions (50%) .....
- Noncash contributions (30%) .....
- Capital gain property to a 50% organization (30%) .....
- Capital gain property (20%) .....
- Contributions (100%) .....
- Investment interest expense on investment debts .....
- Section 59(e)(2) expenditures .....

Note: The amounts included on this worksheet are already included on Schedule K-1 and are provided for informational purposes only.

**PARTNER# 2**

Schedule <b>K-1</b>	<b>Partner's Distributive Share From Passthrough Entities Worksheet P4</b>	<b>2013</b>
For calendar year 2013, or tax year beginning _____, and ending _____		

Partnership Name <b>ASPIRE COMMODITIES, LP</b>	Employer Identification Number REDACTED
Partner's Name <b>ADAM C SINN</b>	Taxpayer Identification Number REDACTED

	EIN	Entity Type	Activity Disposed	Publicly Traded
<b>A GRAND ENERGY 2011-83 LTD</b>	REDACTED	<b>PARTNERSHIP</b>		
<b>B</b>				
<b>C</b>				

	A	B	C
<b>Alternative Minimum Tax (AMT) Items</b>			
Depreciation adjustment post 1986 .....			
Adjusted gain or loss .....			
Depletion (other than oil and gas) .....			
Gross income from oil, gas, and geothermal properties .....	<b>13,332</b>		
Deductions allocable to oil, gas, and geothermal properties .....	<b>10,879</b>		
Other AMT items .....			
<b>Tax-Exempt Income and Nondeductible Expenses:</b>			
Tax-exempt interest income .....			
Other tax-exempt income .....			
Nondeductible expenses .....			
<b>Other Information:</b>			
Investment expenses .....			
Recapture of low-income housing credit (section 42(j)(5)) .....			
Recapture of low-income housing credit (other) .....			
Recapture of investment credit .....			
Recapture of qualifying therapeutic discovery project grant .....			
Recapture of other credits .....			
Look-back interest - completed long-term contracts .....			
Look-back interest - income forecast method .....			
Interest expense for corporate taxpayers .....			
Section 453(l)(3) information .....			
Section 453A(c) information .....			
Section 1260(b) information .....			
Interest allocable to production expenditures .....			
CCF nonqualified withdrawals .....			
Depletion information - oil and gas .....	<b>2,000</b>		
Amortization of reforestation costs .....			
Unrelated business taxable income .....			
Net investment income .....			

Note: The amounts included on this worksheet are already included on Schedule K-1 and are provided for informational purposes only.

**PARTNER# 2**

**OK Partner's Share of Income and Credits Worksheet**

Form **514**  
**Schedule K-1**

For the year 2013, or other taxable year beginning \_\_\_\_\_, ending \_\_\_\_\_

**2013**

Partner's identifying number **REDACTED**

Partnership's identifying number **REDACTED**

Partner's name, address, and ZIP Code

Partnership's name, address, and ZIP code

**ADAM C SINN**  
**200 DORADO BEACH DRIVE UNIT 3021**  
**DORADO PR 00646**

**ASPIRE COMMODITIES, LP**  
**200 DORADO BEACH DRIVE UNIT 3021**  
**DORADO PR 00646**

Resident  Nonresident

Partner's percentage of:	Beginning of year	End of Year
Profit sharing	<b>99.000000%</b>	<b>99.000000%</b>
Loss sharing	<b>99.000000%</b>	<b>99.000000%</b>
Ownership of capital	<b>99.000000%</b>	<b>99.000000%</b>

Amended  Final

Composite filer  Composite tax \_\_\_\_\_

**Income**

<b>C</b> Distributable federal income	<b>34,972,794</b>
<b>D</b> Distributable Oklahoma income	<b>-666,234</b>
<b>E</b> Federal guaranteed payments to partners	<b>3,774</b>
<b>F</b> Oklahoma guaranteed payments to partners	<b>3,774</b>
<b>G</b> Federal allowable oil and gas depletion	
<b>H</b> State allowable oil and gas depletion	

**Oklahoma Withholding and Form 511CR Credits**

Oklahoma Withholding from a Pass Through	
Form 511CR Line Number	
<b>1</b> Investment/New jobs credit	
<b>2</b> Coal credit	
<b>3a</b> Credit for conversion of motor vehicles to clean burning fuel	
<b>3b</b> Credit for investment in qualified electric motor vehicle property	
<b>4</b> Small business capital credit	
<b>5</b> Oklahoma agricultural producers credit	
<b>6</b> Small business guaranty fee credit	
<b>7</b> Credit for food service establishments that pay for hepatitis A vaccinations	
<b>8</b> Credit for energy assistance fund contribution	
<b>10</b> Credit for hazardous waste control	
<b>11</b> Credit for qualified recycling facility	
<b>12</b> Credit for employers providing child care programs	
<b>13</b> Credit for entities in the business of providing child care services	
<b>14</b> Credit for commercial space industries	
<b>16</b> Credit for tourism development or qualified media production facility	
<b>17</b> Oklahoma local development and enterprise zone incentive leverage act credit	
<b>18</b> Credit for qualified rehabilitation expenditures	
<b>20</b> Rural small business capital credit	
<b>21</b> Credit for electricity generated by zero-emission facilities	
<b>22</b> Credit for financial inst making loans under the rural econ dev loan act	
<b>23</b> Credit for manufacturers of small wind turbines	
<b>24</b> Credit for qualified ethanol facilities	
Other credits	

**Supplemental Information**

**PARTNER# 2**

**OK Partner's Distributive Income Worksheet**

**2013**

Schedule **K-1**

For calendar year 2013, or fiscal year beginning , and ending

Partnership Name

**ASPIRE COMMODITIES, LP**

Employer Identification Number

REDACTED

Partner's Name

**ADAM C SINN**

Taxpayer Identification Number

REDACTED

Form 514, Schedule K-1, Line D:

**ORDINARY INCOME(LOSS) FROM TRADE OR BUSINESS ACTIVITIES** **-631,426**

**SUBTOTAL** **-631,426**

**CONTRIBUTIONS** **34,808**

**SUBTOTAL** **34,808**

**DISTRIBUTABLE OKLAHOMA INCOME** **-666,234**

PARTNER# 2

State of Oklahoma

**INFORMATION RETURN  
REPORT OF NONRESIDENT MEMBER INCOME TAX WITHHELD**



FORM **500-B**

Revised 2013

Tax Year End Date of Partnership, S Corporation, LLC or Trust 12/31/13

<b>PART A: PASS-THROUGH ENTITY INFORMATION</b>		
Name of Pass-Through Entity: <b>ASPIRE COMMODITIES, LP</b>		
Type of Ownership: <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> S Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Trust <input type="checkbox"/> Other (specify) _____		
Federal Identification Number: <b>REDACTED</b>		
Street Address: <b>200 DORADO BEACH DRIVE UNIT 3021</b>		
City	State	ZIP
<b>DORADO</b>	<b>PR</b>	<b>00646</b>

<b>PART B: NONRESIDENT MEMBER INFORMATION</b>		
Name: <b>ADAM C SINN</b>		
Type of Taxpayer: <input checked="" type="checkbox"/> Individual <input type="checkbox"/> LLC <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Other (specify) _____		
Social Security Number or Federal Identification Number of Member: <b>REDACTED</b>		
Street Address: <b>200 DORADO BEACH DRIVE UNIT 3021</b>		
City	State	ZIP
<b>DORADO</b>	<b>PR</b>	<b>00646</b>

<b>PART C: DISTRIBUTION AND WITHHOLDING</b>	
Total Amounts Distributed from Oklahoma Sources: <b>2,453</b>	Oklahoma Income Tax Withheld: <b>239</b>

The nonresident member must enclose Form 500-B with their Oklahoma income tax return to substantiate the withholding.

**PARTNER# 2**

**OK Partner's Share of Capital Gains and Losses Worksheet**

Form **561P**

**2013**

For the year 2013, or other taxable year beginning \_\_\_\_\_, ending \_\_\_\_\_

Partnership Name as Shown on Return <b>ASPIRE COMMODITIES, LP</b>	Federal Identification Number <b>REDACTED</b>
Name of Nonresident Partner <b>ADAM C SINN</b>	Social Security Number / Federal Identification Number <b>REDACTED</b>

Enter the Date(s) the Nonresident Partner Acquired Ownership in the Partnership:

**1. List qualifying Oklahoma capital gains and losses, not included on lines 2 through 4 below.**

A1. Description of Property	B. Date Acquired (mm/dd/yy)	C. Date sold (mm/dd/yy)	D. Sales Price	E. Cost or Other Basis	Partner's Share	
					F. Gain or (loss)	G. Gain or (loss)
A2. Oklahoma Location/Address or Federal ID Number						
A1) <b>SPDR GOLD TRUST</b>						
A2)	<b>07/01/13</b>	<b>08/16/13</b>	<b>78,061</b>	<b>72,122</b>	<b>5,940</b>	<b>5,940</b>
A1) <b>SPDR GOLD TRUST</b>						
A2)	<b>VARIOUS</b>	<b>VARIOUS</b>	<b>161</b>		<b>161</b>	<b>161</b>
A1) <b>BOUNCE ENERGY INC. CL C PREF</b>						
A2)	<b>11/14/11</b>	<b>08/13/13</b>	<b>2,196,652</b>	<b>1,979,881</b>	<b>216,770</b>	<b>216,770</b>
A1) <b>BOUNCE ENERGY INC. CL C PREF</b>						
A2)	<b>11/14/11</b>	<b>12/18/13</b>	<b>112,147</b>		<b>112,147</b>	<b>112,147</b>

2. Qualifying Oklahoma capital gain from installment sales reported on Federal Schedule D, line 9. Enclose a copy of Federal Form 6252 .....	2		
3. Other qualifying Oklahoma net capital gain or (loss) from like-kind exchanges reported on Federal Schedule D, line 10. Enclose a copy of Federal Form 8824 .....	3		
4. Qualifying Oklahoma net capital gain or (loss) from partnerships, estates or trusts reported on Federal Schedule D, line 11. (Complete the worksheet on page 2 of Form 561P and enclose a copy of the Federal Schedule K-1)) .....	4		
5. Qualifying Oklahoma net capital gain. Add amounts in Columns F and G on line 1 and lines 2 through 4. (If zero or less, enter "0") .....	5	<b>335,018</b>	<b>335,018</b>
6. Net capital gain. (See instructions) (If zero or less, enter "0") .....	6	<b>329,079</b>	<b>0</b>
7. <b>Oklahoma Capital Gain Deduction.</b> Enter the smaller of lines 5 or 6. (Do not enter less than zero) .....	7	<b>329,079</b>	<b>0</b>

**RAYMOND SCHIEFFER, PC CPA  
1146 W PANOLA  
CARTHAGE, TX 75633  
214-717-4500**

October 1, 2014

**CONFIDENTIAL**

ADAM C SINN  
200 DORADO BEACH DRIVE UNIT 3021  
DORADO, PR 00646

Dear Partner:

We have prepared the enclosed copy of your Schedule K-1 for RAIDEN COMMODITIES LP partnership. It contains your share of the partnership's items of income/loss, deductions, credits, and other information for the partnership's tax year ended December 31, 2013. These items are to be reported on your federal income tax return; therefore, this schedule should be retained with your tax records and documentation.

Also enclosed is state K-1 information, if applicable. This information should also be retained with your tax records and documentation.

Also enclosed is your partner basis information. This information consists of your basis in the partnership and, if applicable, your share of any suspended or disallowed losses. Retain this information with your tax records; it may be needed to complete your federal income tax return.

We have retained a copy of this Schedule K-1 and the partner basis information for use in preparing your federal income tax return, Form 1040. We urge you to call for an appointment at your earliest convenience so that we might begin preparation of your individual tax returns.

If you have any questions, or if we can be of assistance in any way, please call.

Sincerely,

RAYMOND SCHIEFFER, PC CPA

**PARTNER# 2**  
**Schedule K-1**  
**(Form 1065)**

Department of the Treasury  
 Internal Revenue Service

**2013**

For calendar year 2013, or tax  
 year beginning \_\_\_\_\_  
 ending \_\_\_\_\_

Final K-1

Amended K-1

651113  
 OMB No. 1545-0099

**Partner's Share of Income, Deductions,  
 Credits, etc.** See back of form and separate instructions.

<b>Part I Information About the Partnership</b>													
<b>A</b>	Partnership's employer identification number <b>REDACTED</b>												
<b>B</b>	Partnership's name, address, city, state, and ZIP code <b>RAIDEN COMMODITIES LP</b>  <b>ONE HIBISCUS ALLEY</b> <b>ST THOMAS VI 00802</b>												
<b>C</b>	RS Center where partnership filed return <b>OGDEN, UT</b>												
<b>D</b>	<input type="checkbox"/> Check if this is a publicly traded partnership (PTP)												
<b>Part II Information About the Partner</b>													
<b>E</b>	Partner's identifying number <b>REDACTED</b>												
<b>F</b>	Partner's name, address, city, state, and ZIP code <b>ADAM C SINN</b>  <b>200 DORADO BEACH DRIVE UNIT 3021</b> <b>DORADO PR 00646</b>												
<b>G</b>	<input type="checkbox"/> General partner or LLC member-manager <input checked="" type="checkbox"/> Limited partner or other LLC member												
<b>H</b>	<input checked="" type="checkbox"/> Domestic partner <input type="checkbox"/> Foreign partner												
<b>I1</b>	What type of entity is this partner? <b>INDIVIDUAL</b>												
<b>I2</b>	If this partner is a retirement plan (RA/SEP/Keogh/etc.), check here (see instructions) <input type="checkbox"/>												
<b>J</b>	Partner's share of profit, loss, and capital (see instructions): <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Beginning</th> <th style="text-align: center;">Ending</th> </tr> </thead> <tbody> <tr> <td>Profit</td> <td style="text-align: right;">99.000000 %</td> <td style="text-align: right;">99.000000 %</td> </tr> <tr> <td>Loss</td> <td style="text-align: right;">99.000000 %</td> <td style="text-align: right;">99.000000 %</td> </tr> <tr> <td>Capital</td> <td style="text-align: right;">99.000000 %</td> <td style="text-align: right;">99.000000 %</td> </tr> </tbody> </table>		Beginning	Ending	Profit	99.000000 %	99.000000 %	Loss	99.000000 %	99.000000 %	Capital	99.000000 %	99.000000 %
	Beginning	Ending											
Profit	99.000000 %	99.000000 %											
Loss	99.000000 %	99.000000 %											
Capital	99.000000 %	99.000000 %											
<b>K</b>	Partner's share of liabilities at year end: Nonrecourse \$ _____ Qualified nonrecourse financing \$ _____ Recourse \$ <b>95,452</b>												
<b>L</b>	Partner's capital account analysis: <table style="width:100%; border-collapse: collapse;"> <tbody> <tr> <td>Beginning capital account</td> <td style="text-align: right;">\$ <b>21,905,109</b></td> </tr> <tr> <td>Capital contributed during the year</td> <td style="text-align: right;">\$ <b>12,474,000</b></td> </tr> <tr> <td>Current year increase (decrease)</td> <td style="text-align: right;">\$ <b>1,458,578</b></td> </tr> <tr> <td>Withdrawals &amp; distributions</td> <td style="text-align: right;">\$ <b>(26,834,458)</b></td> </tr> <tr> <td>Ending capital account</td> <td style="text-align: right;">\$ <b>9,003,229</b></td> </tr> </tbody> </table> <input checked="" type="checkbox"/> Tax basis <input type="checkbox"/> GAAP <input type="checkbox"/> Section 704(b) book <input type="checkbox"/> Other (explain) _____	Beginning capital account	\$ <b>21,905,109</b>	Capital contributed during the year	\$ <b>12,474,000</b>	Current year increase (decrease)	\$ <b>1,458,578</b>	Withdrawals & distributions	\$ <b>(26,834,458)</b>	Ending capital account	\$ <b>9,003,229</b>		
Beginning capital account	\$ <b>21,905,109</b>												
Capital contributed during the year	\$ <b>12,474,000</b>												
Current year increase (decrease)	\$ <b>1,458,578</b>												
Withdrawals & distributions	\$ <b>(26,834,458)</b>												
Ending capital account	\$ <b>9,003,229</b>												
<b>M</b>	Did the partner contribute property with a built-in gain or loss? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," attach statement (see instructions)												

<b>Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items</b>			
1	Ordinary business income (loss) <b>-217,983</b>	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income <b>1,750</b>		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)	<b>A</b>	<b>-1</b>
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss) <b>C 1,677,008</b>		
12	Section 179 deduction	19	Distributions
13	Other deductions	<b>A</b>	<b>26,834,458</b>
14	Self-employment earnings (loss)		
15		20	Other information
16		<b>A</b>	<b>1,750</b>
*See attached statement for additional information.			

For IRS Use Only





**This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.**

- 1. Ordinary business income (loss).** Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.
  - Passive loss Report on See the Partner's Instructions
  - Passive income Schedule E, line 28, column (g)
  - Nonpassive loss Schedule E, line 28, column (h)
  - Nonpassive income Schedule E, line 28, column (j)
- 2. Net rental real estate income (loss)** See the Partner's Instructions
- 3. Other net rental income (loss)**
  - Net income Schedule E, line 28, column (g)
  - Net loss See the Partner's Instructions
- 4. Guaranteed payments** Schedule E, line 28, column (j)
- 5. Interest income** Form 1040, line 8a
- 6a. Ordinary dividends** Form 1040, line 9a
- 6b. Qualified dividends** Form 1040, line 9b
- 7. Royalties** Schedule E, line 4
- 8. Net short-term capital gain (loss)** Schedule D, line 5
- 9a. Net long-term capital gain (loss)** Schedule D, line 12
- 9b. Collectibles (28%) gain (loss)** 28% Rate Gain Worksheet, line 4 (Schedule D instructions)
- 9c. Unrecaptured section 1250 gain** See the Partner's Instructions
- 10. Net section 1231 gain (loss)** See the Partner's Instructions
- 11. Other income (loss)**
  - Code
  - A** Other portfolio income (loss) See the Partner's Instructions
  - B** Involuntary conversions See the Partner's Instructions
  - C** Sec. 1256 contracts & straddles Form 6781, line 1
  - D** Mining exploration costs recapture See Pub. 535
  - E** Cancellation of debt Form 1040, line 21 or Form 982
  - F** Other income (loss) See the Partner's Instructions
- 12. Section 179 deduction** See the Partner's Instructions
- 13. Other deductions**
  - A** Cash contributions (50%)
  - B** Cash contributions (30%)
  - C** Noncash contributions (50%)
  - D** Noncash contributions (30%)
  - E** Capital gain property to a 50% organization (30%)
  - F** Capital gain property (20%)
  - G** Contributions (100%)
  - H** Investment interest expense Form 4952, line 1
  - I** Deductions—royalty income Schedule E, line 19
  - J** Section 59(e)(2) expenditures See the Partner's Instructions
  - K** Deductions—portfolio (2% floor) Schedule A, line 23
  - L** Deductions—portfolio (other) Schedule A, line 28
  - M** Amounts paid for medical insurance Schedule A, line 1 or Form 1040, line 29
  - N** Educational assistance benefits See the Partner's Instructions
  - O** Dependent care benefits Form 2441, line 12
  - P** Preproductive period expenses See the Partner's Instructions
  - Q** Commercial revitalization deduction from rental real estate activities See Form 8582 instructions
  - R** Pensions and IRAs See the Partner's Instructions
  - S** Reforestation expense deduction See the Partner's Instructions
  - T** Domestic production activities information See Form 8903 instructions
  - U** Qualified production activities income Form 8903, line 7b
  - V** Employer's Form W-2 wages Form 8903, line 17
  - W** Other deductions See the Partner's Instructions
- 14. Self-employment earnings (loss)**
  - A** Net earnings (loss) from self-employment Schedule SE, Section A or B
  - B** Gross farming or fishing income See the Partner's Instructions
  - C** Gross non-farm income See the Partner's Instructions
- 15. Credits**
  - A** Low-income housing credit (section 42(j)(5)) from pre-2008 buildings
  - B** Low-income housing credit (other) from pre-2008 buildings
  - C** Low-income housing credit (section 42(j)(5)) from post-2007 buildings
  - D** Low-income housing credit (other) from post-2007 buildings
  - E** Qualified rehabilitation expenditures (rental real estate)
  - F** Other rental real estate credits
  - G** Other rental credits
  - H** Undistributed capital gains credit Form 1040, line 71; check box a
  - I** Biofuel producer credit
  - J** Work opportunity credit
  - K** Disabled access credit

- Code Report on
- L** Empowerment zone employment credit
- M** Credit for increasing research activities
- N** Credit for employer social security and Medicare taxes
- O** Backup withholding
- P** Other credits
- 16. Foreign transactions**
  - A** Name of country or U.S. possession
  - B** Gross income from all sources
  - C** Gross income sourced at partner level
  - Foreign gross income sourced at partnership level
  - D** Passive category
  - E** General category
  - F** Other
  - Deductions allocated and apportioned at partner level
  - G** Interest expense
  - H** Other
  - Deductions allocated and apportioned at partnership level to foreign source income
  - I** Passive category
  - J** General category
  - K** Other
  - Other information
  - L** Total foreign taxes paid
  - M** Total foreign taxes accrued
  - N** Reduction in taxes available for credit
  - O** Foreign trading gross receipts
  - P** Extraterritorial income exclusion
  - Q** Other foreign transactions
- 17. Alternative minimum tax (AMT) items**
  - A** Post-1986 depreciation adjustment
  - B** Adjusted gain or loss
  - C** Depletion (other than oil & gas)
  - D** Oil, gas, & geothermal—gross income
  - E** Oil, gas, & geothermal—deductions
  - F** Other AMT items
- 18. Tax-exempt income and nondeductible expenses**
  - A** Tax-exempt interest income
  - B** Other tax-exempt income
  - C** Nondeductible expenses
- 19. Distributions**
  - A** Cash and marketable securities
  - B** Distribution subject to section 737
  - C** Other property
- 20. Other information**
  - A** Investment income
  - B** Investment expenses
  - C** Fuel tax credit information
  - D** Qualified rehabilitation expenditures (other than rental real estate)
  - E** Basis of energy property
  - F** Recapture of low-income housing credit (section 42(j)(5))
  - G** Recapture of low-income housing credit (other)
  - H** Recapture of investment credit
  - I** Recapture of other credits
  - J** Look-back interest—completed long-term contracts
  - K** Look-back interest—income forecast method
  - L** Dispositions of property with section 179 deductions
  - M** Recapture of section 179 deduction
  - N** Interest expense for corporate partners
  - O** Section 453(l)(3) information
  - P** Section 453A(c) information
  - Q** Section 1260(b) information
  - R** Interest allocable to production expenditures
  - S** CCF nonqualified withdrawals
  - T** Depletion information—oil and gas
  - U** Amortization of reforestation costs
  - V** Unrelated business taxable income
  - W** Precontribution gain (loss)
  - X** Section 108(i) information
  - Y** Net Investment Income
  - Z** Other information

**PARTNER# 2**

Schedule <b>K-1</b>	<b>Analysis of Partner's K-1, Current Year Increase (Decrease) Worksheet</b>	<b>2013</b>
For calendar year 2013, or tax year beginning _____, and ending _____		

Partnership Name <b>RAIDEN COMMODITIES LP</b>	Employer Identification Number REDACTED
Partner's Name <b>ADAM C SINN</b>	Taxpayer Identification Number REDACTED

Items Included in Current Year Increase (Decrease):

<b>SCHEDULE K ADDITIONS:</b>	
ORDINARY INCOME/LOSS	-217,983
INTEREST INCOME	1,750
SECTION 1256 CONTRACTS	1,677,008
	<hr/>
<b>SUBTOTAL</b>	<b>1,460,775</b>
	<hr/>
<b>SCHEDULE M-3 ADJUSTMENTS - EXP/DEDUCTION ITEMS:</b>	
OTHER AMORTIZATION/IMPAIRMENT WRITE-OFFS	-108,204
DEPRECIATION	106,007
	<hr/>
<b>SUBTOTAL</b>	<b>-2,197</b>
	<hr/>
<b>SCHEDULE M-3 ADJUSTMENTS - INCOME (LOSS) ITEMS:</b>	
INCOME STATEMENT GAIN/LOSS SALES	-1,677,008
GROSS CAPITAL GAINS - SCHEDULE D	1,677,008
<b>TOTAL PER SCHEDULE K-1, CURRENT YEAR INCREASE (DECREASE)</b>	<b>1,458,578</b>
	=====

**PARTNER# 2**

**Partner's Basis Worksheet, Page 1**

**2013**

Schedule **K-1**

For calendar year 2013, or tax year beginning , and ending

Partnership Name <b>RAIDEN COMMODITIES LP</b>	Employer Identification Number REDACTED
Partner's Name <b>ADAM C SINN</b>	Taxpayer Identification Number REDACTED

<b>Beginning of year</b> .....		<b>21,905,109</b>
<b>Increases:</b>		
Capital contributions: Cash <b>12,474,000</b> Property (adjusted basis) .....		<b>12,474,000</b>
"Excess" depletion .....		
Income items: Ordinary income .....		
Net income from rental real estate activities .....		
Net income from other rental activities .....		
Interest .....	<b>1,750</b>	
Dividends .....		
Royalties .....		
Net short-term capital gain .....		
Net long-term capital gain .....		
Other portfolio income .....		
Net gain under section 1231 .....		
Other income .....	<b>1,677,008</b>	
Tax-exempt interest and other income .....		<b>1,678,758</b>
Other increases: Transfer of capital .....		
Gain on disposition of section 179 assets .....		
Other increases .....		
Distributions: Cash <b>26,834,458</b> Property (adjusted basis) .....		<b>26,834,458</b>
Increase (decrease) in share of partnership liabilities P/Y <b>44,550</b> C/Y <b>95,452</b> .....		<b>50,902</b>
<b>Subtotal</b> .....		<b>9,274,311</b>
Distribution in excess of partner basis .....		
<b>Decreases:</b>		
Noncap items: Nondeductible expenses .....		
Charitable contributions .....		
Foreign taxes .....		
Loss items: Ordinary loss .....	<b>217,983</b>	
Net loss from rental real estate activities .....		
Net loss from other rental activities .....		
Royalties .....		
Net short-term capital loss .....		
Net long-term capital loss .....		
Other portfolio loss .....		
Net loss under section 1231 .....		
Other losses .....		
Section 179 expense .....		
Deductions related to portfolio income .....		
Other deductions .....		
Interest expense on investment debts .....		
Section 59(e)(2) expenditures .....		
Loss on disposition of section 179 assets .....		
Depletion .....		<b>217,983</b>
Other decreases .....		
<b>End of year</b> .....		<b>9,056,328</b>

Note to partner: This worksheet was prepared based on partnership records. Please consult with your tax advisor for adjustments.

# **EXHIBIT 13**

**CUSTOMER ACCOUNT APPLICATION**  
**ALL INFORMATION MUST BE FURNISHED BY CUSTOMER**

Account Number	
Office Code	Sales Code

**E. CONFIDENTIAL CREDIT INFORMATION:**

Because ADM Investor Services, Inc. is responsible for the clearing of all of Customer's trades made through ADMIS, in effect, ADMIS is the initial guarantor to the Exchange clearing houses of any margin requirements which may be imposed on Customer's account. As such, ADMIS does not intend or undertake to use the following information for the purpose of limiting the Customer's Risk or to protect the Customer from Risk or unsuitable trading, but only for ADMIS's own business operations purposes. NFA rules require the person soliciting this account to obtain the following information. Failure to provide any of this information may result in ADMIS's refusal to accept the account of the Customer.

Name: Aspire Commodities, LP

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

Investment Objectives (Account Owner #1)		
Investment Objectives	<input checked="" type="checkbox"/> Hedge	<input type="checkbox"/> Speculation

Investment Objectives (Account Owner #2)		
Investment Objectives	<input type="checkbox"/> Hedge	<input type="checkbox"/> Speculation

Investment Experience (Account Owner #1)	
Futures/Options	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, how many years?	<u>8 years</u>
Firm(s)	<u>RCG, Triland, Lehman</u>

Investment Experience (Account Owner #2)	
Futures/Options	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, how many years?	
Firm(s)	

Securities	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, how many years?	
Firm(s)	

Securities	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, how many years?	
Firm(s)	

Credit Information (Account Owner #1)	
Annual Income \$	<u>8,000,000</u>
Net Worth \$	<u>18,000,000</u>
Risk Capital \$	<u>15,000,000</u>
Liquid Net Worth \$ (cash, securities, other)	<u>ACS 16,000,000</u>

Credit Information (Account Owner #2)	
Annual Income \$	
Net Worth \$	
Risk Capital \$	
Liquid Net Worth \$ (cash, securities, other)	

Customer has declined to provide the Credit Information above

Customer has declined to provide the Credit Information above

ACS  
Customer Initial

\_\_\_\_\_  
Customer Initial

The foregoing information is hereby certified to be true and accurate as of the date hereof.

**X** SIGNATURE [Signature]  
 NAME, TITLE Adam Sinn - President  
 DATE March 31, 2011

**X** SIGNATURE \_\_\_\_\_  
 NAME, TITLE \_\_\_\_\_  
 DATE \_\_\_\_\_

<input checked="" type="checkbox"/> I approve the opening of this trading account. <input type="checkbox"/> I approve the trading of Security Futures in this account AND I confirm that the customer has received the Security Futures Disclosure Statement. <input type="checkbox"/> I disapprove the trading of Security Futures in this account.	<b>FOR OFFICE USE ONLY</b>
Reason: _____ <b>X</b> <u>[Signature]</u> IB Signature/Designated Securities Futures Principal	_____ Date <u>4/8/11</u>

# **EXHIBIT 14**

**Request for Taxpayer  
 Identification Number and Certification**

Give form to the  
 requester. Do not  
 send to the IRS.

Print or type  
 See Specific Instructions on page 2.

Name (as shown on your income tax return)  
**Aspire Commodities LP**  
 Business name, if different from above

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  
 Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ -----  Exempt payee  
 Other (see instructions) ▶

Address (number, street, and apt. or suite no.)  
**3333 Allen Parkway, Suite 410**  
 City, state, and ZIP code  
**Houston, TX 77019**

Requester's name and address (optional)

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3. Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number  
 \_\_\_\_\_  
 or  
 Employer identification number  
**REDACTED**

**Part II Certification**

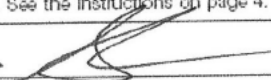
Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here

Signature of U.S. person ▶



Date ▶ **March 31, 2011**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien.
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States.
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity.

# **EXHIBIT 15**



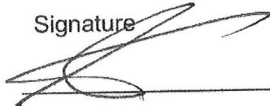
**CORPORATE RESOLUTION**

I, Adam Sinn, (Assistant) Secretary having the custody of the records of Aspire Commodities, LP, a Corporation organized and existing under the laws of the State of Texas, having its principal office at 3535 Allen Parkway, Suite 1610 Houston, TX 77019

(the "Corporation") DO HEREBY CERTIFY that at a meeting of the Board of Directors of said Corporation duly held on the 12 day of December, 2010, the following resolutions were duly adopted, that said resolutions have not been amended, rescinded or revoked and are in no way in conflict with any of the provisions of the charter or membership agreement of said Corporation;

- (1) RESOLVED: That each of the directors, officers, managers, employees and agents of this Corporation named below is hereby authorized to trade in commodity futures, commodity options, forward contracts, foreign exchange, physical or cash commodities, and exchange for physical ("EFP") or Exchange for Risk ("EFR") transactions (Collectively "Commodity Contracts") for present or future delivery for the account and risk of this Corporation through and with the firm of ADM Investor Services, Inc., maintaining offices at Chicago, Illinois, as said firm is now constituted or may be hereafter constituted, the authority hereby granted including the power to do any and/or all of the following:
  - (a) To buy, sell and agree to buy and sell Commodity Contracts for present or future delivery, on margin or otherwise, the power to sell including the power to sell "short";
  - (b) To buy and to grant put and call options on Commodity Contracts, and to exercise options and all other activities in connection with options transactions;
  - (c) To deposit with and withdraw from said firm money, securities and other property for the purchase or sale of Commodity Contracts, including options on futures contracts;
  - (d) To receive requests and demand for additional margin, notice of intention to sell or purchase and other notices and demand of whatsoever character, including notices of exercise of options;
  - (e) To receive and acquiesce in the correctness of such notices statements of account and other records and documents;
  - (f) To execute documents binding the Corporation and to open one or more trading accounts;

I do further certify that the signature opposite each name listed below is the true and genuine signature of each person named:

Name	Title	Signature
<u>Adam Sinn</u>	<u>President</u>	
_____	_____	_____
_____	_____	_____
_____	_____	_____

and it was further

- (2) RESOLVED: That any and all past transactions of any kind herein authorized, which may have been heretofore made on behalf of this Company through or with said firm of ADM Investor Services, Inc., be and hereby are ratified;

and it was further

- (3) RESOLVED: That ADM Investor Services, Inc. is authorized to act upon the authority of these resolutions until receipt by it of a certificate showing rescission or modification thereof signed by the Secretary of this Corporation and under its seal.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed the seal of said Company this

31<sup>st</sup> day of March, 2011.

(SEAL OF COMPANY TO BE AFFIXED HERE)



(Assistant) Secretary

Unexpired Government Issued Photo ID Required

# **EXHIBIT 16**



**Funds Transfer Request and Authorization (FTRA)**

<b>Section I: Requestor/Originator Information</b>				
Requestor Name <b>ADAM SINN</b>			Date Wire to be Sent <b>06/11/2012</b>	
Business Name (if applicable) <b>ASPIRE CAPITAL MANAGEMENT LLC</b>			Telephone # <b>979-575-7026</b>	
Address <b>3333 Allen Pkwy Unit 1605</b>		City <b>HOUSTON</b>	State <b>TX</b>	Zip <b>77019</b>
Customer ID Type 1 <b>TXDL</b>	ID# <b>REDACTED</b>	Issue State/Country <b>TX</b>	Issue Date <b>02/03/2012</b>	Expiration Date <b>02/16/2018</b>
Customer ID Type 2 <b>BOA CK CD</b>	ID#	Issue State/Country	Issue Date	Expiration Date <b>04/13</b>
<b>Section II: Associate Accepting Wire</b>				
Associate Name <b>Jose Valdivia</b>	Phone and Fax # <b>713-865-7036 / 713-865-7047</b>	Unit Co# / CC# <b>REDACTED</b>	Date <b>06/11/2012</b>	Time <b>10:45</b>
Callback Required if Phone, Fax or Letter <input type="checkbox"/> Yes <input type="checkbox"/> N/A		Name/Number of Person Contacted		Date/Time
Call Back Completed by:				
<b>Section III: Domestic Payment Instructions</b>				
Amount of Wire <b>4,000,000.00</b>	Debit Account Type (check one) <input checked="" type="checkbox"/> CHKG <input type="checkbox"/> SAV <input type="checkbox"/> ICA <input type="checkbox"/> GL	Serial # (For ICA/GL) or Repetitive ID#	Source <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter	<input checked="" type="checkbox"/> OTC
Account Debit <b>REDACTED</b>	State <b>TX</b>	Available Balance <b>\$ 5,200,856.25</b>		
Account Title <b>ASPIRE CAPITAL MANAGEMENT LLC</b>				
Overdraft Amount <b>\$</b>	Overdraft Approved by (Name & Signature)		Date	Wire Fee <b>\$ 25</b>
<b>Section IV: International Payment Instructions</b> <input type="checkbox"/> Check here if funds must be sent in US dollars.				
USD Amount of Wire <b>\$</b>	Country	Rate	Foreign Currency Code	Foreign Currency Amount
Debit Account Type (check one) <input type="checkbox"/> CHKG <input type="checkbox"/> SAV <input type="checkbox"/> ICA <input type="checkbox"/> GL	Serial # (For ICA/GL) or Repetitive ID#	FX Reference ID (if applicable)	Source <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter	<input type="checkbox"/> OTC
Account Debit	State	Available Balance <b>\$</b>		
Account Title				
Overdraft Amount <b>\$</b>	Overdraft Approved by (Name & Signature)		Date	Wire Fee <b>\$</b>
<b>Section V: Wire Information</b>				
Beneficiary Name <b>Electric Reliability Council Of Texas, Inc</b>			Beneficiary Account # or IBAN (if IBAN, no further Beneficiary Bank information is required) <b>REDACTED</b>	
Beneficiary Address: Street		City <b>Houston</b>	State <b>TX</b>	Country <b>USA</b>
Beneficiary Bank Name <b>Chase Bank</b>		ABA # or Swift or National ID <b>REDACTED</b>		
Beneficiary Bank Address: Street		City <b>Houston</b>	State <b>TX</b>	Country <b>USA</b>
Additional Instructions (Attention To, Phone Advise, Customer Reference, Contact Upon Arrival) <b>Credit to Raiden Commodities, LP account</b>				
Send Thru Bank/IBK (if available)			ABA # or Swift or National ID	
Send Thru Bank Address: Street		City	State	Country <b>USA</b>
Zip				
<b>Section VI: Customer Approval (Print form to obtain customer's signature)</b>				
I authorize Bank of America to transfer my funds as set forth in the instructions noted herein (including debiting my account if applicable), and agree that such transfer of funds is subject to the Bank of America standard transfer agreement (see page 2 of this form) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided in Section IV, or, if no rate is entered, the rate provided by Bank of America at the time the wire transfer is sent.				
Customer's Signature:			Date of Request: <b>6/11/2012</b>	
<b>Section VII: Approval and Wire System Entry / Verification (Complete manually)</b>				
Signature Verification: Type of account: <input checked="" type="checkbox"/> Business (Required for all) <input type="checkbox"/> Personal (Required if \$10,000 or more unless customer is well-known)				
Indicate Method of Signature Verification: <input checked="" type="checkbox"/> Signature Card <input type="checkbox"/> Business Resolution <input type="checkbox"/> Posted Check #				
Approval (required field)			BAT Approval Authorization # (if applicable/attach approval)	
Wire Entered by: Name/Signature (attach BFT screen prints) Print: <b>J Valdivia</b> Signature:		BFT System Time <b>10:51</b>	BFT Sequence # <b>01120611003835</b>	
Date of Entry and Verification <b>/ /</b>	Verified By (Name/Signature) (Attach Verification Screen Print) Print:  Signature:			BFT System Time

Note: Purpose of Wire must be disclosed if sent to an OFAC blocked country - See OFAC in PRO 95-14-0237NSBW 04-2011

# **EXHIBIT 17**

# **TEXAS SECRETARY of STATE**

## **ROLANDO B. PABLOS**

[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

### **BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

**Filing Number:** 801069949  
**Original Date of Filing:** January 2, 2009  
**Formation Date:** N/A  
**Tax ID:** 32038608918  
**Duration:** Perpetual  
**Entity Type:** Domestic Limited Liability Company (LLC)  
**Entity Status:** In existence  
**FEIN:**  
**Name:** Aspire Capital Management LLC  
**Address:** 200 DORADO BEACH DRIVE UNIT 3232  
 DORADO, PR 00646 USA

<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>
<b>Name</b>		<b>Address</b>			<b>Inactive Date</b>
KB Carlton, PLLC		2500 Dallas Parkway, Suite 501 Plano, TX 75093 USA			

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### BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

**Filing Number:** 801069949  
**Original Date of Filing:** January 2, 2009  
**Formation Date:** N/A  
**Tax ID:** 32038608918  
**Duration:** Perpetual

**Entity Type:** Domestic Limited Liability Company (LLC)  
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<u>REGISTERED AGENT</u>		<u>FILING HISTORY</u>		<u>NAMES</u>		<u>MANAGEMENT</u>		<u>ASSUMED NAMES</u>		<u>ASSOCIATED ENTITIES</u>	
<u>View Image</u>	<u>Document Number</u>	<u>Filing Type</u>	<u>Filing Date</u>	<u>Effective Date</u>	<u>Eff. Cond</u>	<u>Page Count</u>					
	241555280002	Certificate of Formation	January 2, 2009	January 2, 2009	No	1					
	252464000002	Certificate of Correction	April 2, 2009	April 2, 2009	No	3					
	291897410002	Change of Registered Agent/Office	January 21, 2010	January 21, 2010	No	1					
	364223080001	Public Information Report (PIR)	December 31, 2010	April 15, 2011	No	1					
	364281740001	Public Information Report (PIR)	December 31, 2010	April 18, 2011	No	1					
	351966100098	Change of Name or Address by Registered Agent	January 26, 2011	January 26, 2011	No	8					
	436675130002	Change of Registered Agent/Office	August 10, 2012	August 10, 2012	No	2					
	465237774493	Tax Forfeiture	February 8, 2013	February 8, 2013	No	1					
	554145010001	Public Information Report (PIR)	December 31, 2013	July 18, 2014	No	1					
	522670760001	Public Information Report (PIR)	December 31, 2013	January 5, 2014	No	1					
	577621160002	Reinstatement	November 11, 2014	November 11, 2014	No	1					
	579940380003	Change of Registered Agent/Office	November 25, 2014	November 25, 2014	No	2					
	584072400001	Public Information Report (PIR)	December 31, 2014	December 26, 2014	No	1					
	648899680001	Public Information Report (PIR)	December 31, 2015	January 6, 2016	No	1					

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<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>
<b>Last Update</b>	<b>Name</b>	<b>Title</b>	<b>Address</b>		
January 6, 2016	ADAM C SINN	MANAGING MEMBER	200 DORADO BEACH DRIVE UNIT 3232 DORADO, PR 00646 USA		
January 6, 2016	ADAM C SINN	DIRECTOR	200 DORADO BEACH DRIVE UNIT 3232 DORADO, PR 00646 USA		

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# **EXHIBIT 18**



CAUSE NO. 2014-40964

ERIC TORRES, ADAM SINN,	§	IN THE DISTRICT COURT OF
XS CAPITAL MANAGEMENT, L.P., and	§	
ASPIRE COMMODITIES, L.P.,	§	
Plaintiffs	§	
	§	HARRIS COUNTY, TEXAS
v.	§	
	§	
CRAIG TAYLOR and	§	
ATLAS COMMODITIES, L.L.C.,	§	
Defendants	§	157TH JUDICIAL DISTRICT

**DEFENDANTS/COUNTER-PLAINTIFFS' RESPONSE TO PLAINTIFF/COUNTER-DEFENDANTS ADAM SINN, XS CAPITAL INVESTMENTS, L.P., AND ASPIRE COMMODITIES, L.P.'S MOTION FOR TRADITIONAL SUMMARY JUDGMENT**

Defendants/Counter-Plaintiffs Craig Taylor (“Taylor”) and Atlas Commodities, LLC (“Atlas”) (collectively “Defendants”) file this Response to Plaintiff/Counter-Defendants Adam Sinn, XS Capital Investments, L.P., and Aspire Commodities, L.P.’s Motion for Summary Judgment as follows:

**I. INTRODUCTION**

After being confronted at his deposition with evidence he could not dispute, Sinn now admits—contrary to the affidavit filed in support of his motion for summary judgment (filed before he was deposed)—that he indeed sent the photograph at issue to persons other than those depicted in the photograph. Sinn also disparaged Atlas and Taylor. Sinn and Eric Torres (“Torres”) both now admit that though they warranted and represented under oath that rights under the settlement agreement had not been assigned, Torres had in fact assigned his interest in the settlement agreement to Sinn.

Torres and Sinn have each offered testimony at odds with other statements they have made under oath at different times when it suited their interests. In support of his motion for summary

judgment, Sinn filed an affidavit denying that he breached the non-disparagement clause of the settlement agreement. At his deposition, he admitted having repeatedly made such statements. Their motions for summary judgment must be denied. Atlas and Taylor will move for summary judgment at the appropriate time and will show through the expert testimony of Rob Hancock that they have been harmed by Torres and Sinn's violations of the Settlement Agreement.

## **II. OBJECTIONS TO SINN'S SUMMARY JUDGMENT EVIDENCE**

Defendants object to Sinn's Summary Judgment Evidence as follows:

**Exhibit 1.** One of the two pieces of evidence attached to Sinn's motion for summary judgment is an affidavit that contains statements that are utterly false. For example, in paragraph 15 of his affidavit, Sinn states:

On December 22, 2013, I sent the Picture via group text message to the persons pictured in the Picture, Joonsup Park and David Schmidli. I did not send the picture to any customers or affiliates of Atlas, nor did I make any negative remarks about Taylor or Atlas.

(Sinn Ex. A. ¶ 15.) After executing this affidavit, Sinn admitted that he sent the photograph to an unknown person or persons with the message "Happy Holidays Atlas." (Ex. O, Sinn Dep., at 69:5–20.)

Sinn's testimony therefore rests entirely on his credibility. "If the credibility of the affiant or deponent is likely to be a dispositive factor in the resolution of the case, then summary judgment is inappropriate." *Casso v. Brand*, 776 S.W.2d 551, 558 (Tex. 1989).

## **III. SUMMARY JUDGMENT EVIDENCE**

Defendants rely on the following:

Exhibit A: Photograph

Exhibit B: December 23, 2013 Email from Berg to Moore and Langham

Exhibit C: December 24, 2013 Email from Langham to Berg, copy to Moore

- Exhibit D: December 24, 2013 Email from Berg to Langham, copy to Moore
- Exhibit E: December 24, 2013 Email from Langham to Berg and Moore
- Exhibit F: December 25, 2013 Email from Berg to Langham and Moore
- Exhibit G: December 31, 2013 Email from Berg to Langham and Moore
- Exhibit H: January 1, 2014 Email from Langham to Berg and Moore
- Exhibit I: January 2, 2014 Email from Berg to Langham and Moore
- Exhibit J: January 7, 2014 Email from Berg to Langham and Moore
- Exhibit K: January 7, 2014 Email from Langham to Berg and Moore
- Exhibit L: January 7, 2014 Email from Berg to Langham and Moore
- Exhibit M: August 15, 2013 Settlement Agreement
- Exhibit N: Excerpts from March 6, 2015 Deposition of Eric Torres
- Exhibit O: Excerpts from April 8, 2015 Deposition of Adam Sinn
- Exhibit P: Declaration of Craig Taylor
- Exhibit Q: Defendants' First Set of Interrogatories and Requests for Production to Plaintiff Eric Torres
- Exhibit R: Eric Torres' Response to Defendants' First Set of Interrogatories and Requests for Production
- Exhibit S: Defendants' First Set of Interrogatories and Requests for Production to Plaintiff Adam Sinn
- Exhibit T: Adam Sinn's Response to Defendants' First Set of Interrogatories and Requests for Production
- Exhibit U: Affidavit of Kathryn E. Nelson

#### **IV. UNDISPUTED FACTS**

Atlas is a commodities brokerage. For the most part, it brokers energy products, facilitating the transfer, storage, and purchase of gas, electricity, physical crude and related commodities. Taylor is Atlas' majority shareholder.

In or about September 2010, Torres and Taylor entered into negotiations for Torres to purchase an equity interest in Atlas. The idea was that Torres would buy into Atlas, establish and run Atlas' electricity/power transactions (known as ERCOT). Taylor agreed to sell a 25% ownership interest in Atlas to Torres for \$750,000. An additional 10% interest in Atlas was conveyed subject to reversion if Torres failed to meet certain revenue goals.

Soon after Torres "purchased" the shares in Atlas, Taylor questioned whether Plaintiff/Counter-Defendant Adam Sinn ("Sinn") was the source of Torres' investment funds. Torres prevaricated and stalled in order to protect himself and refused to admit that Sinn was indeed the source of the funds with which he "purchased" the shares in Atlas. (*See* Ex. N, Torres Dep. at 11:24–13:8; 14:8–17:5.)

When it became clear that Sinn had financed Torres' investment and was the true owner of Atlas' shares, Atlas offered to simply return all of Sinn's money in exchange for return of Atlas' shares and Torres' departure. (*See* Ex. N, Torres Dep., at 22:16–25.) Atlas was prepared to absorb the damage that had been done to the company and its reputation in order to be rid of Sinn and Torres. Sinn and Torres refused. (*See id.*)

Ultimately, as he did here, Torres preemptively filed suit against Atlas, Taylor and Marshall. Atlas and Taylor counterclaimed and joined Sinn, XS, and Aspire for, among other things, rescission of the sale to Torres/Sinn of Atlas shares. A settlement was reached and, on August 15, 2013, a settlement agreement was signed ("Settlement Agreement"). (Ex. M at 1.) Though Sinn/Torres had paid \$750,000 for shares of Atlas and the company had grown since the sale, Atlas/Taylor agreed to buy back their shares for \$500,000 paid out without interest over two years as follows: \$250,000 up front, and then \$10,000 per month for twenty-five months. (*See id.* ¶ 3.)

Return of Sinn/Torres' shares of Atlas was to, and did, take place immediately. (*See* Ex. M, Settlement Agreement, ¶ 1; Ex. N, Torres Dep., at 26:12–17.) Taylor and Atlas made the \$250,000 payment, and four subsequent payments of \$10,000 each. (*See* Ex. N, Torres Dep. at 26:24–27:28:3.) The case was dismissed with prejudice and, at Sinn's request, the records were sealed.

The Settlement Agreement contains the following non-disparagement provision:

**Non-Disparagement.** The Parties agree that in exchange for the consideration provided under this agreement, the Parties shall not directly or indirectly, disparage, make or publish any false, derogatory, slanderous or libelous comments about any other Party regarding any matter likely to be harmful to the Party's business, business reputation, or personal reputation. Further, the Parties agree that they shall not solicit from any third party any comments, statements, or the like that may be considered negative, false, derogatory or detrimental to the business reputation of any other Party. Further, the Parties agree that they will not restrict, limit, or prohibit any third party or employee from socializing, fraternizing, or doing business with any other Party.

(Ex. M, Settlement Agreement, ¶ 19.)

On December 22, 2013 at 12:06 a.m., four months after execution of the Settlement Agreement, Taylor received a text message from Sinn. (Ex. P, Taylor Aff., ¶ 3.) The message contained no text, just a photograph of Sinn, Torres, Barry Hammond (another of Sinn's lawyers), and a few other energy traders, Evan Caron, Paul Sarver, and Sean Kelly. (*Id.*) They are standing in front of a Christmas tree—and all but Caron are extending their middle fingers at the camera. (Ex. A.) At the time the picture was taken, Caron and Kelly were traders at companies that do business with Atlas. (Ex. P, Taylor Aff., ¶ 4.) Sarver is a former Atlas employee who worked for a competitor. (Ex. P, Taylor Aff., ¶ 5.)

Taylor and Atlas were not interested in reinstating litigation or seeing the settlement unravel because Sinn and a few apparently intoxicated friends were not imaginative enough to do anything more amusing than say “f-you” with their fingers. So on Monday, December 23, 2013, counsel for Taylor and Atlas sent the following email to counsel for Torres and Sinn:

As you know, the settlement agreement between our clients contains confidentiality and non-disparagement clauses. I can't say I've ever seen a violation of those provisions quite like this one, but Mr. Sinn texted the attached picture to Craig Taylor this past weekend. As you can see, the photo features Mr. Sinn and Mr. Torres. Also making an appearance is Chanler's co-counsel, not exactly living up to the highest standards of professionalism by upholding his middle finger instead of the dignity of the profession, as the rules require.

Whether they thought they were being funny or trying to accomplish something else isn't clear. I'm going to guess, though, that this picture was not taken right after your clients and co-counsel either refused to discuss Atlas, Taylor, Marshall or the settlement or used "words to the effect that all disputes among [the Parties] have been fully settled and resolved" and nothing else, as the agreement requires.

It looks to me like they were just drunk. Whatever the case, Mr. Taylor isn't amused, and I don't blame him.

This case took a lot of effort from all of us to get settled and I don't want to undo it over this. Without waiving Atlas' right to act in response to any future violation(s), and without asking that either of your clients admit to having violated it, request is made that Mr. Sinn, Mr. Torres and Chanler's co-counsel (whose name escapes me at the moment) each apologize to Mr. Taylor before Christmas and then leave him alone.

If you would like to discuss, please let me know.

(Ex. B.)

The next day, on December 23, 2015, counsel for Sinn responded by saying that the picture was not intended for Taylor, but was in fact sent to people associated with *Atlas* with the tag line "Happy Holidays from *Atlas*." (Ex. C (emphasis added).) This of course would be a far more serious breach of the Settlement Agreement than originally believed, so counsel for Atlas and Taylor wrote back just over an hour later requesting (i) that Sinn provide "the picture with the tag line, a list of senders, and a full list of recipients, including all names, phone numbers, and email addresses," and (ii) that *no related material be deleted or destroyed*. (Ex. D.)

Later that night (at 8:30 on Christmas Eve), counsel for Sinn emailed again, explaining that in his response to counsel for Atlas, he typed "*Atlas*" when what he meant was "*Aspire*," Sinn's

company. In other words, Sinn was now claiming that the photograph was sent to people associated with *Aspire* with the tag line “Happy Holidays from *Aspire*.” Along with this explanation, counsel for Sinn forwarded to counsel for Taylor and Atlas an email from Sinn in which he explained:

I thought I was sending the photo to someone else, I know multiple Craig’s [sic] and even two Craig Taylor’s [sic] believe it or not. This is the first I’ve learned of Craig Taylor getting sent this photo errantly. Everyone needs to lighten up a bit, and yes I sent it to a bunch of folks as a joke. If Craig has [sic] issue I can surely apologize, but in now [sic] way are the others in the photo apologizing for something I did by accident.

(Ex. E.)

The next day, Wednesday, December 25, counsel for Taylor and Atlas again emailed counsel for Sinn, pointing out that the message received by Taylor contained no text—no “tag line”—at all, just a picture, and requesting that he forward what Sinn now claimed were “holiday cards” to *Aspire* associates by Friday, December 27. (Ex. F.)

By the following Tuesday, December 31, Sinn had not responded at all, so counsel for Taylor and Atlas again emailed counsel for Sinn and said:

I didn’t receive any of these, so I will assume your client does not intend to provide them.

Contacting people associated with Atlas with an obscene message purporting to be “from Atlas” is a violation of the settlement agreement. This breach by Mr. Sinn and Mr. Torres excuses further performance by Atlas, which will now consider what action it should take to protect itself.

(Ex. G.)

The following day, January 1, 2014, counsel for Sinn emailed the following *non sequitur* to counsel for Taylor and Atlas:

I assume from your response that you did not understand that I wrote a typo in my previous email. The places where I referenced “*Atlas*” should have referenced “*Aspire*.” It is my understanding that Mr. Taylor received the message and photo in error. It was not meant for him to receive it and it was not directed at him either.

Indeed, the message had nothing to do with Mr. Taylor or the lawsuit that we amicably resolved.

We did not send any messages to people associated with your client's company, we also did not purport to send any messages "from" your client's company. This apparently is all a big misunderstanding. I don't think it would be appropriate to claim that the mistaken message or my typo is some breach of the settlement agreement. I also don't think it would be appropriate to unilaterally cease your clients [*sic*] performance under the settlement agreement based on a mistaken text message.

With that said, we sincerely apologize for any inconvenience this may have caused you and your client.

(Ex. H (emphasis added).)

The next day, January 2, 2014, counsel for Taylor and Atlas responded to counsel for Sinn:

Thanks for the clarification, but I do understand that you claim your previous email's reference to Atlas was a typo. I hope that is the case and look forward to receiving the original texts with the original tag lines and a list of recipients so that it can be confirmed.

(Ex. I.) Again, Sinn did not respond.

On January 7, still having had no response from Sinn, counsel for Taylor and Atlas emailed again, this time pointing out that Sinn had to that point simply ignored repeated requests that he produce whatever it was that he sent out, so:

Request is made—again—that you provide the original texts in full, with a list of senders and recipients. If you do not provide it by the close of business on Friday, January 10, 2014, Atlas will assume that it is because to do so would confirm Mr. Sinn and Mr. Torres' breach of the settlement agreement.

Breach by Mr. Sinn and Mr. Torres excuses further performance by Atlas. If Mr. Sinn or Mr. Torres have breached the settlement agreement, Atlas will have no obligation to make further payment, and such payments will not be made.

(Ex. J.)

That same day, instead of simply producing the texts which Sinn claimed would vindicate him, thus avoiding this entire dispute, he invoked the mediation clause of the Settlement



agreement, requesting that the parties make themselves available for a teleconference with the parties' agreed mediator, Paul Clote. (Ex. K.)

Taylor and Atlas agreed about an hour later, but pointed out that none of this would be necessary if Sinn would simply produce the documents he claimed would exonerate him: Taylor and Atlas would not invoke their right to cease performance, no attorneys' fees would be incurred, and no costs of any kind would be necessary. If litigation followed, Taylor and Atlas would be entitled to production of those messages in discovery anyway—all at much greater expense than simply producing them ahead of time. All Sinn had to do was show Taylor and Atlas—even Taylor and Atlas' counsel for his eyes only—what Sinn claimed were messages unrelated in any way to Atlas or Taylor. Counsel for Taylor and Atlas therefore responded:

I agree that Mr. Sinn and Mr. Torres' breach of the settlement agreement requires that the parties to confer with Paul Clote before initiating any action. I am available tomorrow afternoon anytime, Thursday from 1:30–2:45, Friday morning until 11:00, and Tuesday the 14th from 1:30–3:00.

As you know, if Mr. Clote is not able to assist us in resolving this matter and litigation follows, your clients will be required to produce in discovery what we're requesting now. If the texts didn't mention Atlas or go to anyone associated with Atlas, as you now claim, there will be nothing to drag third parties into. If that isn't the case, however, we will find out about it during discovery and those third parties will, at a minimum, be witnesses anyway. It is curious that Mr. Sinn and Mr. Torres would prefer to spend time and money jumping through all of these hoops instead of just forwarding what they claim would exonerate them and dispose of this issue completely.

Neither Mr. Sinn nor Mr. Torres have any reason to believe that Atlas wants to litigate further, as you now claim. It doesn't. Craig Taylor, James Marshall, and Atlas want nothing more to do with your clients. It wasn't Atlas that contacted them and it isn't Atlas which is refusing to prove something so simple.

If this was all a mistake, proving it is easy (which I guess you don't deny since you promise to provide some of the evidence to Mr. Clote). What makes absolutely no sense at all is to insist on spending thousands of dollars going through a mediator instead of just forwarding the requested information. It does make sense if Mr. Sinn and Mr. Torres have something to hide, though.

If your clients were actually concerned that Atlas was looking for an excuse to initiate litigation, you could have asked at any time over the last two-plus-weeks for an assurance that if you provided the material, Atlas would consider the issue resolved. Atlas would have said yes because litigation isn't what it wants. Instead, Mr. Sinn and Mr. Torres have done everything they can not to have to turn over what they sent out.

Mr. Sinn, XS, Aspire, and Mr. Torres are in breach of the settlement agreement. Because of their breach, further performance by Mr. Taylor, Mr. Marshall, and Atlas is excused. This email will be printed and sent by certified mail and facsimile to you and Melissa pursuant to paragraph 20 of the Settlement Agreement.

(Ex. L.) Payment from Atlas and Taylor to Sinn was accordingly halted.

The parties mediated, first by phone and then in person on April 1, 2014. Sinn steadfastly refused to produce what he actually sent.

On July 17, 2014, Torres filed this lawsuit against Atlas and Taylor for breach of the Settlement Agreement, complaining of their failure to pay them monies he claimed were due. Atlas and Taylor answered on August 18, 2014 and asserted a claim for breach of the non-disparagement provision of the Settlement Agreement.

Also on August 18, 2014, Defendants served their First Set of Interrogatories and Requests for Production on Sinn. (*See Ex. S at 2.*) Defendants specifically requested information regarding the photograph attached as Exhibit A:

**REQUEST FOR PRODUCTION NO. 1:** Produce all documents or communications sent to, received from, or created by you mentioning, relating, or referring to the photograph attached as Exhibit A to Defendants' Original Counterclaim.

...

**REQUEST FOR PRODUCTION NO. 3:** Produce all communications between you and Eric Torres between August 15, 2013 and the present.

**REQUEST FOR PRODUCTION NO. 4:** Produce all communications between you and Evan Caron between August 15, 2013 and the present.

**REQUEST FOR PRODUCTION NO. 5:** Produce all communications between you and Paul Sarver between August 15, 2013 and the present.

**REQUEST FOR PRODUCTION NO. 6:** Produce all communications between you and Sean Kelly between August 15, 2013 and the present.

**REQUEST FOR PRODUCTION NO. 7:** Produce all communications between you and Joonsup Park between August 15, 2013 and the present.

**REQUEST FOR PRODUCTION NO. 8:** Produce all communications between you and David Schmidli between August 15, 2013 and the present.

**REQUEST FOR PRODUCTION NO. 9:** Produce all communications in your possession, custody or control between August 15, 2013 and the present that, directly or indirectly, mention, relate, or refer to Craig Taylor. This request includes but is not limited to communications sent by you and those received by you.

...

**REQUEST FOR PRODUCTION NO. 11:** Produce all communications in your possession, custody or control between August 15, 2013 and the present that, directly or indirectly, mention, relate, or refer to Atlas. This request includes but is not limited to communications sent by you and those received by you.

**REQUEST FOR PRODUCTION NO. 12:** Produce all communications in your possession, custody or control which say “Happy Holidays from Atlas” sent by you between December 21, 2013 and the present.

...

**REQUEST FOR PRODUCTION NO. 14:** Produce all communications in your possession, custody or control which say “Happy Holidays from Atlas” sent to you between December 21, 2013 and the present.

...

**REQUEST FOR PRODUCTION NO. 16:** Produce all communications in your possession, custody or control which contain or refer to the photograph attached to Defendants’ Original Counterclaim as Exhibit A.

(Ex. S.) On September 22, 2014, Sinn served general, boilerplate objections to the requests, but produced no documents whatsoever. (*See* Ex. T.)

On September 29, 2014, one week later, Defendants moved to compel responses to the requests. After hearing Defendants' motion, on November 11, 2014, the Court compelled Sinn to produce documents responsive to the requests. Despite repeated requests and an order from the Court compelling him to do so, Sinn has never produced the material he apparently still maintains would exonerate him. What little he has produced is heavily redacted, purportedly for privilege.<sup>1</sup> Defendants question whether the redacted information is privileged and whether the privilege was properly preserved and reserve the right to raise these issues with the Court.

Sinn and Torres both have now admitted that Sinn was the source of the funds Torres used to purchase a share of Atlas. (Ex. N, Torres Dep., at 11:21–12:8; Ex. O, Sinn Dep., at 23:12–24:6.) In addition, Torres has admitted and Sinn has confirmed that they committed fraud in executing the Settlement Agreement. In the Settlement Agreement, Torres represented—under oath—that he had not assigned any of his rights or interests under the agreement:

**Warranty by Torres.** Torres hereby represents and warrants that he has not assigned or otherwise transferred to any other person or entity any interest in any claims, actions, demands and/or causes of action he has, or may have, or may claim to have in connection with the matters released hereby and/or the persons and entities released herein. . .

(Ex. M, Settlement Agreement, ¶ 11, at 10.) This representation is flatly contradicted by both Torres' and Sinn's deposition testimony. First of all, Torres and Sinn both acknowledged at deposition that all moneys paid under the Agreement (\$290,000 to date) went to Sinn:

Q. So that lawsuit between you and Atlas Commodities, James Marshall and Craig Taylor was ultimately settled after a mediation; correct?

A. That's correct.

Q. And under the terms of that settlement, Atlas and Taylor basically were going to pay \$500,000 to you; right?

---

<sup>1</sup> The documents have been designated "Confidential" pursuant to the parties' Agreed Protective Order entered by the Court on November 19, 2014 and therefore are not attached to this response.

A. Correct

...

Q. And under the terms of the settlement agreement—Well, strike that.

\$250,000 was paid under the terms of the settlement agreement. Where did that money go?

A. That was paid, if I recall, directly to Chandler's [*sic*] law firm. That's—I'm sure that's how we set it up. Yeah.

Q. Okay. \$250,000 went to Chanler's law firm Chanler Langham at Susman, Godfrey who represented Adam Sinn and XS Capital.

A. Correct.

Q. So \$250,000 to Susman, Godfrey which then did what with it?

A. I'm—I don't know exactly what they did with it. I'm sure they gave—gave it to Adam Sinn or they used part of it to pay for legal fees, gave it to Adam Sinn, I don't know; but I know some of it got to Adam Sinn.

Q. None of it came to you.

A. Correct.

Q. Right. Then there were two payments made following that payment under the settlement agreement; correct?

A. Was it only two? I thought it was four.

...

Q. Those payments went, under the terms of the settlement agreement, to Chanler Langham's law firm; correct?

A. Correct.

Q. Okay. Ultimately Chanler's firm represented you, but it didn't at that point; correct?

A. I was represented by Melissa Moore.

Q. Right. Okay. So that money went to Susman, Godfrey—

A. Uh-huh.

Q. —which did what with it?

A. I imagine they gave it to Adam Sinn, but I don't know for sure.

Q. *Okay. That money was going directly to Adam Sinn, or at least to his representative.*

A. *Sure.*

Q. *None of it was going to you.*

A. *No.*

Q. *And none of the remainder was going to you.*

A. *Correct.*

Q. *It all goes to Adam Sinn, ultimately.*

A. *Ultimately, yes.*

(See Ex. N, Torres Dep., at 26:3–10, 26:22–27:20, 27:25–28:21 (emphasis added).)

Q. All right. So, Atlas made that first 250,000-dollar payment. Where did that go?

A. To Susman Godfrey.

Q. And what did Susman Godfrey do with it?

A. They then distributed it out.

Q. To whom?

A. To myself.

Q. Did Mr. Torres get any of it?

A. No.

Q. Okay. And then Atlas made payments of \$10,000 per month for four months, correct?

A. Correct.

Q. And those payments also went to Susman Godfrey, right?

A. They did.

Q. Susman Godfrey was the law firm which represented you before you hired Rapp & Krock, correct?

A. Yes.

Q. All right. And Susman Godfrey represented you in the lawsuit that was settled by this Settlement Agreement, right?

A. Correct.

Q. Okay. So, \$10,000 a month for four months went to Susman Godfrey, right?

A. Correct.

Q. And what happened to each of those payments of \$10,000?

A. They were distributed out to me.

Q. *Did Mr. Torres get any of those funds?*

A. *No.*

(Ex. O, Sinn Dep., at 35:16–36:20 (emphasis added).)

More importantly, Torres and Sinn have further admitted that the entire \$500,000 settlement was assigned to Sinn by Torres and that Torres has no right to any of that money. The assignment from Torres to Sinn was, according to Torres' testimony in this case, executed between the time the parties settled the underlying matter at mediation and the time they entered into the Settlement Agreement:

Q. Okay. Did you sign some agreement with Adam Sinn saying: All the money under this settlement agreement is going to you?

A. If I recall correctly, I did. I don't remember the exact document; but I think *after the settlement day, between that until the actual final agreement, there was a document that I signed where the \$500,000 was to be paid to Adam Sinn, essentially—*

Q. Okay.

A. —to cut out the middleman, basically.

Q. Do you know if that document was produced in this litigation?

A. I don't think so, no.<sup>2</sup>

(See Ex. N, Torres Dep., at 28:22–29:9 (emphasis added).)

Q. But you do have a written agreement on the total of 500,000 under the Settlement Agreement?

A. I don't recall, but potentially we do.

Q. Okay. Well, if it's not written, it's certainly oral, correct?

A. Like, I literally don't recall. I mean, I know he said that, but I don't recall.

Q. Okay.

A. I don't recall what the specific structure—

Q. Then let me—let me put it this way. He says to you in one way or another, oral, written, whatever you leave open the possibility.

A. Okay.

Q. *You just don't recall. He says: Hey, I owe you this money. Under the Settlement Agreement, it's \$500,000. It's yours. I assign it to you.*

A. *Uh-huh.*

Q. *Is that right?*

A. *Basically correct.*

Q. *Right. Whether it's written or oral, you don't remember, but that's how it happened?*

A. *Correct.*

(Ex. O, Sinn Dep., at 38:24–39:20 (emphasis added).) In addition to being completely at odds with the affidavit Torres filed in support of his motion for summary judgment, the Torres/Sinn assignment is itself a violation of the Agreement. (See Ex. M, Settlement Agreement, ¶ 11.)

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<sup>2</sup> Defendants have produced no documentation of this assignment. (Ex. U, Nelson Aff., ¶ 3.) As otherwise set forth in this response, discovery is woefully incomplete. Defendants therefore request, in the alternative, a continuance of the motions for summary judgment set for July 24, 2015.



Any assignment of rights under the Settlement Agreement required consent of the Atlas parties:

**Successors and Assigns.** The rights of the Parties hereto, and any of their subsidiaries and affiliates, shall inure to the benefit of any and all of their successors and assigns. **No Party may assign any of its rights or delegate any of its duties hereunder without the written consent of the other Parties.**

(Ex. M, Settlement Agreement, ¶ 27 (emphasis added).) None of the Atlas parties consented to the Torres-Sinn assignment, nor were they ever asked. Atlas and Taylor would not have agreed to payment to Sinn, which is precisely why Plaintiffs did not ask. (See Ex. P, Taylor Aff., ¶ 7.)

In his motion for summary judgment and his affidavit in support thereof, Sinn claims that he “did not send the Picture to any customers or affiliates of Atlas, nor did he make any negative remarks about Taylor or Atlas.” (Mot. at 4.) This assertion is false. In paragraph 15 of his affidavit, Sinn again states:

On December 22, 2013, I sent the Picture via group text message to the persons pictured in the Picture, Joonsup Park and David Schmidli. ***I did not send the picture to any customers or affiliates of Atlas, nor did I make any negative remarks about Taylor or Atlas.***

(Sinn Ex. A. ¶ 15 (emphasis added).) This representation, again, is false. After executing this affidavit, Sinn admitted that he sent the photograph to an unknown person or persons with the message “Happy Holidays Atlas”:

Q. Is this a message from you to someone else?

A. That’s correct.

Q. Okay. You see it has the picture—

A. Uh-huh.

Q. —which is attached as, I believe, Exhibit 3 to your deposition of you and your friends flipping off the camera? You see that?

A. Uh-huh.

Q. And it is to 713-377-2320, correct?

A. Correct.

Q. All right. And it says “Body: Happy Holidays Atlas.” Do you see that?

A. Yes.

Q. *So, you did send out a message saying “Happy Holidays Atlas” with the picture, correct?*

A. *Yeah. Apparently so.*

(Ex. O, Sinn Dep., at 69:5–20 (emphasis added).) Sinn admitted that he did not know whose phone number that was. (Ex. O, Sinn Dep., at 68:16–17.)

In addition, Sinn admitted to making several negative and disparaging comments about Taylor:

Q. Do you remember calling Craig Taylor a cock blast?

A. Not specifically.

Q. Have you called him a cock blast?

A. I mean, possibly.

Q. What’s a cock blast?

A. I would have no idea. Probably something like a dipshit.

Q. Well, it’s not good. It doesn’t sound good, is it?

...

A. Yeah. It’s probably not flattering.

Q. (By Mr. Berg) Would you call a Christmas miracle if Craig Taylor had a heart attack?

A. Yeah. I think I jokingly—jokingly said that.

...

Q. Dave Schmidli said, “Looks like a Christmas card.” And you said, “Funny shit. Hope he chokes on his breakfast.” You were talking about Craig Taylor?

A. That moment in time, yes.

(Ex. O, Sinn Dep., at 53:1–16; 56:18–21.)

## V. TRADITIONAL SUMMARY JUDGMENT STANDARD

Summary judgment is proper when there are no disputed issues of material fact and the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003). A party moving for summary judgment on its own cause of action must conclusively establish each element of its claim as a matter of law. *See Winchek v. Am. Exp. Travel Related Servs. Co.*, 232 S.W.3d 197, 201 (Tex. 2007); *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000) (per curiam). All summary judgment evidence must be admissible. *United Blood Servs. v. Longoria*, 938 S.W.2d 29, 30 (Tex. 1997) (per curiam). When reviewing a motion for summary judgment, the court must take the nonmovant’s evidence as true, indulge every inference in favor of the nonmovant, and resolve every doubt in the nonmovant’s favor. *M.D. Anderson*, 28 S.W.3d at 23.

## VI. ARGUMENT AND AUTHORITIES

### A. Sinn Is Not Entitled to Summary Judgment on Defendants’ Claims

Defendants incorporate by reference the preceding paragraphs for all purposes.

As an initial matter, Sinn is not entitled to summary judgment on all of Defendants’ claims because he has not moved for summary judgment on all of Defendants’ claims. *See* Tex. R. Civ. P. 166a(a), (c) (summary judgment may only be granted on claims regarding which a party moves). Sinn has not moved for summary judgment on Defendants’ claim for fraud in the inducement and their request for indemnity. (*See* 2d Am. Pet. ¶¶ 28–62.) Sinn also has not moved for summary judgment on Defendants’ request for a declaration that he violated the non-assignment provision

of the Settlement Agreement. (*See* 2d Am. Pet. ¶ 51.) Summary judgment therefore cannot be granted on those claims. *See* Tex. R. Civ. P. 166a(a), (c).

Sinn moves for summary judgment on the first three declarations sought by Defendants and on Defendants' claim for breach of contract, all of which are related to the creation and transmission of the photograph attached as Exhibit A, along with any message that may have accompanied it. (Mot. at 5–6.) Sinn asserts that, by sending the photograph to Taylor, he did not violate the non-disparagement clause of the Settlement Agreement. (*See* Mot. at 7.) Sinn misstates Defendants' claims. Defendants do not allege that the transmission of the photograph to Taylor violated the Settlement Agreement. (*See* 2d Am. Pet. ¶ 51.) Sinn therefore is not entitled to summary judgment on that basis.

Sinn further asserts that the photograph and any accompanying message sent to the persons in the photograph did not contain “any ‘false, derogatory, slanderous or libelous comments’ about Taylor or Atlas ‘regarding any matter likely to be harmful’ to Taylor’s or Atlas’ ‘business, business reputation, or personal reputation.” (Mot. at 7.) He further claims that that he “did not send the Picture to any customers or affiliates of Atlas, nor did he make any negative remarks about Taylor or Atlas.” (Mot. at 4.) In paragraph 15 of his affidavit, Sinn again states:

On December 22, 2013, I sent the Picture via group text message to the persons pictured in the Picture, Joonsup Park and David Schmidli. ***I did not send the picture to any customers or affiliates of Atlas, nor did I make any negative remarks about Taylor or Atlas.***

(Sinn Ex. A. ¶ 15 (emphasis added).) These representations are demonstrably false. Sinn admitted, after being confronted with a forensic copy, that he sent the photograph attached as Exhibit A and an accompanying message stating “Happy Holiday’s [*sic*] ***Atlas***” to another person. (Ex. O, Sinn Dep., at 68:18–69:20; Ex. Q, Report (emphasis added).) Sinn admitted to additional disparagement of Taylor, including calling him a “cockblast,” saying it would be a “Christmas miracle” if he had

a heart attack, and hoping he choked on his breakfast, all because Sinn found it amusing. (*See Ex. O, Sinn Dep.*, at 53:13–16; 56:18–57:8; 63:8–16.) Sinn therefore is not entitled to summary judgment on that basis.

Sinn baldly asserts that the transmission of the photograph and any accompanying message could not have damaged Taylor’s or Atlas’ reputation, citing the elements for a cause of action for business disparagement. (Mot. at 8.) But Defendants do not allege business disparagement. Defendants have sued for a breach of the non-disparagement clause of the contract at issue. For that reason alone, Sinn’s motion for summary judgment may not be granted.

#### **B. Sinn Is Not Entitled to Attorney’s Fees**

Defendants incorporate by reference the preceding paragraphs for all purposes.

A party has a duty to exercise reasonable care to mitigate its damages. *Great Am. Ins. Co. v. N. Austin Mun. Utility Dist. No. 1*, 908 S.W.2d 415, 426 (Tex. 1995). If a party fails to exercise such reasonable care, it cannot recover damages that could have been avoided. *Pinson v. Red Arrow Freight Lines, Inc.*, 801 S.W.2d 14, 15 (Tex. App.—Austin 1990, no writ). The doctrine of mitigation applies to claims for attorney’s fees. *See Glenn v. Nortex Foundation Designs, Inc.*, No. 2-07-172-CV, 2008 WL 2078510, at \*4 (Tex. App.—Fort Worth 2008, no pet.) (mem. op.) (upholding reduction of recoverable attorney’s fees because of party’s failure to mitigate after rejecting reasonable settlement offer); *A.D. Willis Co., Inc./Metal Bldg. Components, Inc. v. Metal Bldg. Components, Inc.*, No. 03-09-00574-CV, 2000 WL 1508500, at \*5 (Tex. App.—Austin 2000, pet. denied) (upholding reduction of recoverable attorney’s fees because of party’s failure to make reasonable efforts to negotiate a compromise) Sinn has failed to mitigate his attorney’s fees in this case by resisting discovery and violating the non-assignment clause of the Settlement Agreement himself. (*See Ex. O, Sinn Dep.*, at 35:16–36:20; 39:12–20.) Sinn therefore is not entitled to an

award of the attorney's fees incurred because of his multiple failures to mitigate his damages. *See Glenn*, 2008 WL 2078510, at \*4; *A.D. Willis Co.*, 2000 WL 1508500, at \*5.

## VII. CONCLUSION AND PRAYER

For these reasons, Defendants/Counter-Plaintiffs Craig Taylor and Atlas Commodities, LLC respectfully request that the Court deny Plaintiff/Counter-Defendants Adam Sinn, XS Capital Investments, L.P., and Aspire Commodities, L.P.'s Motion for Summary Judgment in its entirety and any for any other and further relief to which they may be entitled.

Respectfully submitted,  
BERG FELDMAN JOHNSON BELL, LLP

By:           /s/ Geoffrey Berg            
Geoffrey Berg (gberg@bfjblaw.com)  
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Texas Bar No. 24037166  
4203 Montrose Boulevard, Suite 150  
Houston, Texas 77006  
713-526-0200 (tel)  
832-615-2665 (fax)

ATTORNEYS FOR CRAIG TAYLOR AND  
ATLAS COMMODITIES, LLC

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing instrument was served by electronic filing, certified mail, return receipt requested, email, and/or facsimile on July 17, 2015 as follows:

Kenneth M. Krock (kkrock@rk-lawfirm.com)  
Terri S. Morgan (tmorgan@rk-lawfirm.com)  
Megan N. Brown (mbrown@rk-lawfirm.com)  
Matthew M. Buschi (mbuschi@rk-lawfirm.com)  
Rapp & Krock, PC  
3050 Post Oak Boulevard, Suite 1425  
Houston, Texas 77056  
fax: (713) 759-9967

          /s/ Geoffrey Berg            
Geoffrey Berg

# **EXHIBIT 19**



**From:** Patrick de Man [<mailto:pat.deman@gmail.com>]  
**Sent:** Wednesday, February 2, 2011 11:46 AM  
**To:** 'Adam Sinn' <[gonemaroon@hotmail.com](mailto:gonemaroon@hotmail.com)>  
**Subject:** RE:

I was wondering why you were offline...

What's BalWeek doing? That's only Thu+Fri, right?  
I only see RT prices hitting at \$3000 for North Hub, and if you're short.....

What do you mean, you gave up the golden goose?

**From:** Adam Sinn [<mailto:gonemaroon@hotmail.com>]  
**Sent:** Wednesday, February 02, 2011 11:54 AM  
**To:** Patrick de Man  
**Subject:**

I'm still alive if you were wondering... this has been the most EPIC trading day ever. I was short 300 ND coming into today but was long 500MW of bal week... so I gave up the golden goose today b/c 500MWX\$1000 = Adam Sinn retired... but any event did you see the e-mail from ERCOT? I cannot believe how nasty it got the entire neighborhood was blacked out here and everywhere else in town.

During the early morning hours, the ERCOT grid began experiencing numerous forced outages of generation due to the cold weather. As of 9 am, more than 7,000 MW of capacity was still out of service or not producing at its expected level.

**From:** Adam Sinn [<mailto:gonemarooon@hotmail.com>]  
**Sent:** Wednesday, February 16, 2011 10:54 AM  
**To:** [deman@alum.mit.edu](mailto:deman@alum.mit.edu)  
**Subject:** RE: congrats

Something we need to investigate is the South Zone Valley Import... is there any way to see how many times it congested prior to nodal? I don't know if the [ercot.com](http://ercot.com) website is still up and running, however we've seen it kick in and when it does the valley units such as magic valley (name might be duke to ercot) silas rays, hidalgo, frontera, etc all go to price cap and lift the SZ LZ and SZ hub into the 100's if not 1000's.

Have a friend claiming they looked into it and the Valley Import in zonal was a concern and was in a few times a month during zonal when weather was really warm. Any event if that is the case this summer SZ could get very out of control, I am already bullish summer if we get load since they decommissioned Valley, Trading House, Decordoba, and a couple Permian's. If we get max load we will be trading \$300-\$500 in the dailies because of the \$3000 price cap.

Basically when the Valley Import binds those points in that region that factor into the mathematical equation of the LZ and HUB skew the average so much that those go way over all other zones.

---

From: [pat.deman@gmail.com](mailto:pat.deman@gmail.com)  
To: [gonemarooon@hotmail.com](mailto:gonemarooon@hotmail.com)  
Subject: RE: congrats  
Date: Wed, 16 Feb 2011 11:26:03 -0500

Let me know if you have any questions about this, then I'll look more into it.

You see ERCOT's suggestion to curtail number of bids and also limit bids to 500MW?  
That must mean there were bids over that amount.

Also, DC Energy even suggests a claw-back because this was a modeling error. Curious to see how that pans out.

**From:** Adam Sinn [<mailto:gonemarooon@hotmail.com>]  
**Sent:** Wednesday, February 16, 2011 9:49 AM  
**To:** [deman@alum.mit.edu](mailto:deman@alum.mit.edu)  
**Subject:** RE: congrats

I wasn't aware that they were making the majority of their money off that one error that would make sense -

---

From: [pat.deman@gmail.com](mailto:pat.deman@gmail.com)  
To: [gonemarooon@hotmail.com](mailto:gonemarooon@hotmail.com)  
Subject: RE: congrats  
Date: Wed, 16 Feb 2011 08:25:23 -0500

Yeah, the PTP profits that many made is b/c of a modeling error. So, arbitraging the system.

You trade a path between two points that are almost identical in the DAM, so can buy or sell for free.

But then in the RT market one of them is dead (Permian Basin 5) and that one assumes the 'System Lambda' aka marginal energy price, thus has no congestion.

The second node is a live one, which would have congestion, and thus you either sell or buy this path.

People found out about it and piled in on the PB5 node (either as a source or sink), as you can see in the DC Energy presentation.

Now that game is over as ERCOT changed their model.

Cheers,  
Patrick.

**From:** Adam Sinn [<mailto:gonemaroon@hotmail.com>]

**Sent:** Wednesday, February 16, 2011 7:29 AM

**To:** [deman@alum.mit.edu](mailto:deman@alum.mit.edu)

**Subject:** RE: congrats

I bet he's talking about the underfunding of CRR's? There's some money to be made in them, but everyone that I know is focusing on the PTP's due to the underfunding issues going on.

---

From: [pat.deman@gmail.com](mailto:pat.deman@gmail.com)

To: [gonemaroon@hotmail.com](mailto:gonemaroon@hotmail.com)

Subject: FW: congrats

Date: Tue, 15 Feb 2011 20:54:22 -0500

Seth ended up at DC Energy.

**From:** Seth Cochran [<mailto:scochran87@yahoo.com>]

**Sent:** Tuesday, February 15, 2011 1:09 PM

**To:** Patrick de Man

**Subject:** Re: congrats

cool, I will be looking for a newly registered CRR account holder:) You may want to review the DC Energy presentation at the last WMS meeting. It deals with a CRR issue.

Seth

--- On Tue, 2/15/11, Patrick de Man <[deman@alum.mit.edu](mailto:deman@alum.mit.edu)> wrote:

From: Patrick de Man <[deman@alum.mit.edu](mailto:deman@alum.mit.edu)>

Subject: Re: congrats

To: "Seth Cochran" <[scochran87@yahoo.com](mailto:scochran87@yahoo.com)>

Date: Tuesday, February 15, 2011, 10:36 AM

I am still here at Sempra.

We moved to the 2nd floor now, and doors to SocGen are locked.

My date is 3/31, after which i'll be going to work w/ Adam.

On Tue, Feb 15, 2011 at 10:16 AM, Seth Cochran <[scochran87@yahoo.com](mailto:scochran87@yahoo.com)> wrote:  
Thanks. I am Staying in Austin. What are you up to? Working with Adam?

--- On Tue, 2/15/11, Patrick de Man via LinkedIn <[member@linkedin.com](mailto:member@linkedin.com)> wrote:

From: Patrick de Man via LinkedIn <[member@linkedin.com](mailto:member@linkedin.com)>

Subject: congrats

To: "Seth Cochran" <[scochran87@yahoo.com](mailto:scochran87@yahoo.com)>

Date: Tuesday, February 15, 2011, 10:13 AM

---

## LinkedIn

Patrick de Man has sent you a message.

**Date:** 2/15/2011

**Subject:** congrats

Hi Seth,

Hope you and the family are doing well.

Congrats on the new position.

Are you staying in Austin? or moving up to the NE?

Cheers,

Patrick.

[View/reply to this message](#)

Don't want to receive e-mail notifications? [Adjust your message settings.](#)

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Go to the [Yahoo! Mail Q&A](#) for [great tips from Yahoo! Answers](#) users.

# **EXHIBIT 20**

Registration Number: <u>41-260-67</u> _____ For Office Use Only Status <u>01/01/2012</u> Rate(s) <u>4.2</u> Quarter(s) <u>All</u> Date Rec'd <u>01/05/2012</u>	ABC Over 6 Lag Date IC <input type="checkbox"/> Under 6 ND 666 <input checked="" type="checkbox"/> 148 151 713 Other _____ Predecessor Reg. No.: _____	UC-1A (Rev 11/18/03) <b>EMPLOYER STATUS REPORT</b> <b>For UNEMPLOYMENT</b> <b>COMPENSATION</b>
<b>FORM IS TO BE TYPED OR PRINTED IN INK</b>		RETURN COMPLETED FORM TO: EMPLOYER STATUS UNIT 200 FOLLY BROOK BLVD. WETHERSFIELD, CT 06109-1114 TEL. NO. (860) 263-6550 FAX (860) 263-6567
<small>PLEASE COMPLETE AND RETURN THIS FORM EVEN THOUGH YOU MAY NOT BE SUBJECT TO THE CONNECTICUT UNEMPLOYMENT COMPENSATION LAW. *501(C)(3) NON-PROFIT ORGANIZATIONS SHOULD REQUEST FORM UC-1NP. THE STATE OF CONNECTICUT OR ITS MUNICIPALITIES SHOULD REQUEST FORM UC-1MUN.</small>		

1. Federal Identification Number REDACTED Tel. No. (979)575-7026 Fax No. \_\_\_\_\_

2. Business or Trade Name ASPIRE COMMODITIES LP

3. Name of Owner, Partners, or Corporate Name, if other than above ADAM SINN

4. Mailing Address 3333 ALLEN PKWY UNIT 1605 HOUSTON TX 77019-1844  
Number Street or P.O. Box City State Zip Code

5. List all Connecticut business locations, if different from above. If mailing address is P.O. Box, please give the physical location of business. Attach a separate sheet if necessary. If only a salesman in Connecticut, please indicate salesman's home address.  
 See Supplemental Information Below

6a. Describe the exact nature of the business. If construction, state the type. If manufacturing, list the principal products sold and their percent of the total. If trade, state whether retail or wholesaler and list the type of products sold. If employer of HOUSEHOLD help, so indicate.  
FINANCE - COMMODITIES TRADING

6b. State function of the Connecticut facility (i.e., headquarters, research facilities, etc.) \_\_\_\_\_

7a. Under what type of business organization do you operate? (Check one of the following)

Individual/Sole Proprietorship  Partnership  Corporation  Other \_\_\_\_\_  
 LIMITED LIABILITY COMPANIES:  LLC--Sole Proprietor  LLC--Partnership  LLC--Corporation

7b. Corporations or LLC's complete this item:

State in which Incorporated/Organized: \_\_\_\_\_ Date of Incorporation/Organization: \_\_\_\_\_

8. List proprietor, partners, corporation officers, or members of a L.L.C.: (See Supplemental Information Below):

9. When did you first engage employees working in Connecticut under your present type of organization? 01/01/2012

Note: Officers of a corporation are considered employees for unemployment purposes

10. Did you acquire ALL or PART of the employees, or assets, or organization, or trade and business in Connecticut of some other employer?

Note: Acquisition can be facilitated by a third party such as a bank  Yes  No If Yes,  All  Part

If only part, describe what part was acquired: \_\_\_\_\_

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

Is your business owned by the same interests as the predecessor?  Yes  No

11. If the answer to Item 10 is Yes, complete the following:

1. Previous Employer's Trade Name \_\_\_\_\_

2. Name and address of previous proprietor, partner, or corporation officer \_\_\_\_\_

3. Was the previous employer subject to Connecticut Unemployment Compensation Law?  Yes  No  
 Previous registration number \_\_\_\_\_

4. Will the previous employer remain in business in Connecticut?  Yes  No

12. Were you previously or are you now registered as an employer with the Connecticut Labor Department?

Yes  No If Yes, indicate registration number \_\_\_\_\_

You are subject to the CT and Federal Unemployment Tax if (a) during any calendar quarter of the current or preceding year you paid wages totaling \$1,500 or more, or (b) you had, during the current or preceding calendar year, one or more employees at any time in each of 20 calendar weeks.

13. Were you required to file the EMPLOYER'S FEDERAL UNEMPLOYMENT TAX RETURN Treasury Form 940, or Schedule H or Schedule F for any part of the preceding three completed calendar years?

Yes  No  Not Sure If yes, indicate the years:

14. As of the date of this application, have you met the liability requirements for this current calendar year?  Yes  No  Not Sure

If NO, please complete 15 and 16:

Week-ending date when 20th week of employment met: \_\_\_\_\_

15. If you have engaged employees and anticipate meeting the liability requirements in this calendar year you will be subject as of the first date you engaged employees. However, a Connecticut registration number can not be issued until you actually meet the liability requirements, unless you voluntarily accept coverage. Do you wish to accept coverage at this time?  Yes  No

16. If you have engaged employees and do NOT meet the liability requirements in this calendar year, but anticipate meeting the liability requirements next year, you will be subject commencing January 1. However, a Connecticut registration number can not be issued until you actually meet the liability requirements, unless you voluntarily accept coverage commencing January 1. Do you wish to accept coverage?  Yes  No

17. List below the gross wages paid to individuals in your employ in Connecticut. Include FULL and PART-TIME employees and OFFICERS, if a corporation. See UC-1A Instructions for the definition of gross wages.

	1st Quarter (Jan. 1 - Mar. 31)	2nd Quarter (Apr. 1 - June 30)	3rd Quarter (July 1 - Sept 30)	4th Quarter (Oct. 1 - Dec. 1)
--	-----------------------------------	-----------------------------------	-----------------------------------	----------------------------------

Current Year 2012 1,500

Prior Year 1

Prior Year 2

Quarter/year in which employer first paid \$1500:

Note: For  Domestic (Household) and  Agricultural please check box and list only cash wages above

18. AGRICULTURAL EMPLOYERS - Did you employ 10 or more agricultural workers (excluding aliens admitted to the United States pursuant to Sections 214 (c) and 101 (a)(15)(H) of the Immigration and Nationality Act) for some portion of a day during any 20 calendar weeks, not necessarily consecutive, in either the preceding or current calendar year?

Yes  No  Not Sure If Yes, list the week-ending date when the 20th week of employment was (or will be) met \_\_\_\_\_

Did or will you pay cash wages of \$20,000, or more in any calendar quarter of the preceding or current calendar year?

Yes  No  Not Sure

19. DOMESTIC EMPLOYERS: Did you pay cash wages of \$1,000, or more in any calendar quarter in either the preceding or current year?

Yes  No  Not Sure

20. Do you have individuals performing services that you believe to be excluded from coverage or whom you believe to be independent contractors?  Yes  No

If "Yes" explain below.

21. Bank Name: BANK OF AMERICA

Address and Account Number \_\_\_\_\_

22. Name of accountant and/or payroll service, if any: SUREPAYROLL

Address and Telephone Number: \_\_\_\_\_

23. Please enter the total number of employees paid wages in Connecticut during the pay period which includes the 12th day of each month in the first quarter you reported employment?

1st Mo. 10000 2nd Mo. 10000 3rd Mo. 10000

THIS FORM MUST BE SIGNED BY THE OWNER, A PARTNER, CORPORATE OFFICER, OR AN AUTHORIZED EMPLOYEE. ALL OTHERS MUST PROVIDE DOCUMENTATION OF AUTHORIZATION (I.E., POWER OF ATTORNEY).

I certify that the information in this report is true and correct.

Prepared by \_\_\_\_\_

Print Name PATRICK DE MAN

Address \_\_\_\_\_

Title TRANSMISSION Tel. Number (917)275-7551  
ANALYST

PLEASE DO NOT MAIL /  
FOR YOUR RECORDS ONLY

SUPPLEMENTAL INFORMATION

Previous Registration Information

Previous FEIN:

Previous Business Name

Previous Name of Owner

Previous Address

Previous Phone Number

5. Business Locations (cont.)

Business Address	Business Function	Business Records Housed Here
143 HOYT ST APT 3K STAMFORD CT 06905	HOME OFFICE	<input checked="" type="checkbox"/>

8. Owners/Officers (cont.)

Name	SSN	Title	Address
ADAM SINN	349-66-6481	PRESIDENT	3333 ALLEN PARKWAY #1605 HOUSTON TX 77019

Other

Email Address: ASINN@ASPIRECOMMODITIES.COM



# **EXHIBIT 21**

Qtr. 1/13

New Hire Password  
REDACTED

This form is a payment voucher not a Contribution Return. It is to be completed only by Magnetic Media filers who submit payment by check. If you have any questions regarding this form, please contact the Tax Automation/Wage Processing Unit at (860) 263-6375. Please note: you can make payment via Electronic Funds Transfer (ACH Debit) at: <https://wage.ctdol.state.ct.us>. You do not have to mail this form if payment is made online, or if your payroll service makes payment on your behalf. (For check payments see instructions below).

ASPIRE COMMODITIES LP  
SINN, ADAM  
3333 ALLEN PKWY UNIT 1605  
HOUSTON TX 77019 184405

A Failure to File Fee of twenty five dollars (\$25) is assessed on Employer Contribution Returns and/or Employee Quarterly Earnings Reports that are not filed by the due date. (maximum \$25 per quarter)

Interest is calculated at 1% per month times (X's) the number of months the payment is late.

A penalty of ten percent (10%) or fifty dollars (\$50), whichever is greater, is imposed if payment is filed beyond 30 days of due date.

REGISTRATION NO.	C.D.	FEDERAL IDENTIFICATION NO.	REPORT PERIOD	
			QTR	YR
41-260-67		REDACTED	1	13
LIABILITY DATE	SUC.	NOTIFICATION DATE	DUE DATE	
01/01/12		01/11/12	04/30/13	

If paying by check, payment and voucher must be filed by the last day of the month following each calendar quarter.

AMOUNT OF REMITTANCE ENCLOSED WITH THIS VOUCHER

SIGNATURE TITLE DATE PHONE #

**The State of Connecticut Department of Labor will no longer mail this Employer Contribution Voucher to you. This first quarter 2013 Employer Contribution Voucher will be the last one you receive. Make payments via an Electronic Funds Transfer (ACH Debit) at:**

<https://sso.ctdol.state.ct.us>

**Please note and save the Password in the upper right corner of this form for New Hire Reporting. Questions regarding New Hire Reporting may be addressed to the Office of Research at 860-263-6275.**



# **EXHIBIT 22**



# STATE OF CONNECTICUT

## DEPARTMENT OF REVENUE SERVICES

Twenty-Five Sigourney Street Hartford, Connecticut 06106



ASPIRE COMMODITIES LP  
4801 WOODWAY DR STE 125W  
HOUSTON TX 77056-1854

Corr ID: 1200014640869

Date: 01/06/2012

Dear Taxpayer:

Your registration application has been processed and your business entity has been assigned CT Tax Registration Number 54686340. The CT Tax Registration Number along with the correct Location Number should be used on any communications with the Department of Revenue Services (DRS). You should advise us promptly of any change in your business activities. Visit the DRS *Welcome New Business* page at [www.ct.gov/welcomenewbusiness](http://www.ct.gov/welcomenewbusiness) for information specific to filing and payment options, and to obtain valuable tax information.

Tax Registration Number/Location	Tax Type	Filing Frequency	Start Date	Registration Date
54686340 / 000	Business Entity	ANNUAL	01/01/2011	01/05/2012
54686340 / 000	Wage Withholding	QUARTERLY	01/01/2012	01/05/2012

Connecticut law requires that you file timely tax returns and pay the taxes due for all taxable periods and make the proper remittance, including any penalty or interest due.

We encourage taxpayers to use the **Taxpayer Service Center (TSC)** at [www.ct.gov/TSC](http://www.ct.gov/TSC) to file a variety of tax returns, update account information, and make payments online. You can choose to get first-time filer information and filing assistance, or can log directly into the **TSC** to file returns and pay taxes. Electronic filing options are available for most tax types. Also, returns may be downloaded from our website. If you require assistance please call DRS during business hours, Monday through Friday at 1-800-382-9463 (Connecticut calls outside the Greater Hartford calling area only); or **860-297-5962** (from anywhere).

# **EXHIBIT 23**



# INSURANCE BILL

Billing Company:  
Trumbull Insurance Company

Bill Date 01/03/12  
Account Number REDACTED

Payment Due Date	01/23/12
Pay in Full	Minimum Due
\$462.00	\$462.00

↑ Please Pay Either Amount ↑

Thank you for placing your insurance with The Hartford.

### Account Summary (Activity since last bill)

Payments Received	New Activity	New Fee(s)	Adjustments	Current Balance
\$0.00	\$462.00	\$0.00	\$0.00	\$462.00

If your payment is not received by the due date, a late fee of \$30.00 will be assessed.

Please see the reverse side for additional details on your account.

### Summary of Policies for ASPIRE COMMODITIES LP

Policy Number	Description	Policy Period	Status	Current Balance	Minimum Due
76WEGER1219	Workers Compensation	01/01/12-01/01/13	Down Payment Billing	\$462.00	\$462.00
<b>Totals</b>				\$462.00	\$462.00

### Contact Us

For Customer Service Call: Toll Free 1-866-467-8730  
Monday-Friday

Report Claims 24 hours a day:  
Toll Free 1-800-327-3636

Automated Service is Available  
24 hours a day, 7 days a week

Insurance Agency:  
HARTFORD FIRE INSURANCE COMPANY

Please detach here and return with your payment. Write the account number on the check and make payable to **The Hartford**

Check below and provide info on  
the back to request

Address Change - Mailing Only

#### Mail Payments To:

THE HARTFORD  
P O BOX 2907  
HARTFORD, CT 06104-2907

Account Number: REDACTED

Amount Enclosed \$ \_\_\_\_\_

Payment Due Date	01/23/12
Pay in Full	Minimum Due
\$462.00	\$462.00

4585  
ASPIRE COMMODITIES LP  
4801 WOODWAY DR STE 125W  
HOUSTON, TX 77056



7613586000372508060000004620000000046200810007

01010000761358600005024\*

# **EXHIBIT 24**

TRUMBULL INSURANCE COMPANY  
THE HARTFORD  
8711 UNIVERSITY EAST DRIVE  
CHARLOTTE NC 28213  
**NOTICE OF CANCELLATION OF INSURANCE**

Named Insured & Mailing Address:

Producer: 250806

ASPIRE COMMODITIES LP  
200 DORADO BEACH DR, UNIT 3021  
DORADO  
PUERTO RICO 00646

HARTFORD FIRE INSURANCE COMPANY  
55 FARMINGTON AVENUE  
HARTFORD CT 06105

Policy No.: 76WEGER1219  
Type of Policy: WORKERS' COMPENSATION  
Date of Cancellation: 07/01/2013; 12:01 A.M. Local Time at the mailing address of the Named Insured.

We are cancelling this policy. Your insurance will cease on the Date of Cancellation shown above.

The reason for cancellation is workers no longer working in Connecticut.

The actions being taken by the Hartford company(ies) under the terms of this notice, apply to all of The Hartford companies designated in the policies shown in this notice.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Named Insured

ASPIRE COMMODITIES LP  
200 DORADO BEACH DR, UNIT 3021  
DORADO  
PUERTO RICO 00646

Date Mailed:  
12th day of July, 2013

*Susan L. Castaneda*

SUSAN L. CASTANEDA



# **EXHIBIT 25**

NON-NEGOTIABLE

PAY TO THE ORDER OF

DE MAN, PATRICK  
143 HOYT ST  
APT 3K  
STAMFORD, CT 06905

NET \$7,561.25

SEVEN THOUSAND FIVE HUNDRED SIXTY-ONE & 25/100\*\* DOLLARS

DE MAN, PATRICK

SSN REDACTED

143 HOYT ST  
APT 3K  
STAMFORD, CT 06905

PERIOD START	01/01/2012	PERIOD END	01/31/2012
CHECK DATE	02/02/2012	CHECK NUMBER	0

EARNINGS TYPE	HOURS	RATE	CURRENT	YTD
SALARY	173.33		\$10,000.00	\$10,000.00
<b>TOTAL EARNINGS</b>			<b>\$10,000.00</b>	<b>\$10,000.00</b>

TAXES TYPE	CURRENT	YTD
FED WTH	\$1,352.92	\$1,352.92
FICA	\$420.00	\$420.00
MEDFICA	\$145.00	\$145.00
STATE-CT	\$520.83	\$520.83
<b>TOTAL TAXES</b>	<b>\$2,438.75</b>	<b>\$2,438.75</b>

DEDUCTIONS TYPE	CURRENT	YTD
<b>TOTAL DEDUCTIONS</b>	<b>\$0.00</b>	<b>\$0.00</b>

TIME OFF TYPE	EARNED	USED	AVAILABLE	EARNED YTD	USED YTD

TOTAL EARNINGS	\$10,000.00	\$10,000.00
TOTAL TAXES	\$2,438.75	\$2,438.75
TOTAL DEDUCTIONS	\$0.00	\$0.00
<b>NET PAY</b>	<b>\$7,561.25</b>	

\*Non-Cash Earnings are not included in the Net Pay amount, but are included in the Earnings Period and YTD Totals

# **EXHIBIT 26**

---

**From:** Brett Geary <bgeary@kffklaw.com>  
**Sent:** Friday, August 30, 2013 11:25 AM  
**To:** Patrick de Man  
**Cc:** asinn@aspirecommodities.com; Greg Ferguson; Will Thomas  
**Subject:** Partnership Agreement  
**Attachments:** Partnership Agreement - Raiden Commodities, LP.pdf

Good Afternoon Patrick,

Attached please find the partnership agreement for Raiden Commodities, LP.

**Brett Geary**



9100 Port of Sale Mall  
Suite 15  
St. Thomas, U.S. Virgin Islands 00802  
Office: 340.779.2564  
Fax: 888.316.9269

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Circular 230: To ensure compliance with the requirements imposed by the IRS, we inform you that any tax advice contained in our communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any tax penalty or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

**LIMITED PARTNERSHIP AGREEMENT  
OF  
RAIDEN COMMODITIES, LP**

THIS LIMITED PARTNERSHIP AGREEMENT (this “Agreement”) is made and entered into as of September \_\_\_, 2013 by and among Raiden Commodities 1, LLC, hereinafter referred to as the “General Partner”, and Adam C. Sinn as the “Limited Partner,” whose names are set forth on the signatory pages to this Agreement (all of whom together are hereinafter collectively referred to as “Partners”).

Whereas, the Partners desire to form a Limited Partnership (hereinafter referred to as the “Partnership”) under the Virgin Islands Uniform Limited Partnership Act for the term and upon the conditions hereinafter set forth.

In consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

**Article I. FORMATION, NAME, PURPOSE, TERM**

1.1 Formation. The Partners hereby form a Limited Partnership pursuant to the Virgin Islands Uniform Limited Partnership Act (the “Act”). The General Partner shall manage the Partnership business, and the Limited Partner shall not participate in the management of the Partnership business.

1.2 Name of Limited Partnership. The business of the Partnership shall be conducted under the name of Raiden Commodities, LP.

1.3 Partners.

The name and address of the General Partner is:

<b>Names</b>	<b>Addresses</b>
Raiden Commodities 1, LLC	200 Dorado Beach Drive, Unit 3021 Dorado, PR 00646

The name and address of the Limited Partner is:

<b>Names</b>	<b>Addresses</b>
Adam C. Sinn	200 Dorado Beach Drive, Unit 3021 Dorado, PR 00646

1.4 Place of Business and Agent for Service of Process. The designated office and principal place of business of the Partnership shall be located at 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802, or such other place as the General Partner may from time to time designate.

The name and address of the agent for service of process as required by law is Business Basics VI, LLC, 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802 or such other person as the General Partner may from time to time designate.

1.5 Term. The Partnership shall commence on September \_\_\_\_, 2013 and its duration shall be perpetual.

1.6 Purpose. The purpose for which the Partnership is organized is to conduct all lawful activity for which limited partnerships may be organized under the Act.

## Article II. CAPITAL ACCOUNTS

2.1 Initial Contribution of Partners. Each Partner has contributed to the initial capital of the Partnership cash or property, or both in the amount and form indicated on attached Schedule A. Capital contributions to the Partnership shall not bear interest. An individual capital account shall be maintained for each Partner.

2.2 Additional Capital Contribution. No Partner shall be required to contribute to the capital of this Partnership. Any Partner who shall make a contribution shall be deemed to have made a loan to such Partnership, which loan shall not bear interest which principal shall have priority over any and all other sums owed to or payable to the Partner(s).

2.3 Percentage Share of Profits and Capital. The Percentage Share of Profits and Capital of each Partner shall be (unless otherwise modified by the terms of this Agreement) as follows:

<b>Names</b>	<b>Initial Percentage</b>
	<b>Share of Profits and Capital</b>
Raiden Commodities 1, LLC	99.9%
Adam C. Sinn	0.01%

2.4 Return of Capital Contributions. No Partner shall have the right to demand the return of his or her capital contributions except as provided in this Agreement.

2.5 Rights of Priority. The individual Limited Partner shall have priority over the individual General Partner, as to the return of capital contributions.

2.6 Distributions. Distributions to the Partners of net operating profits of the Partnership, as hereinafter defined, shall be made at such times, but no less frequently than as the Partners shall reasonably agree. Such distributions shall be made to the Partners simultaneously. For purposes of this Agreement, net operating profit for any accounting period shall mean the gross receipts of the Partnership for such period, less the sum of all cash expenses of operation of the Partnership, and such sums as may be necessary to establish a reserve for operating expenses. In determining net operating profit, deductions for depreciation, amortization, or other similar charges not requiring actual current

expenditures of cash shall not be taken into account in accordance with generally accepted accounting principles.

2.7 Compensation. No Partner shall be entitled to receive any compensation from the Partnership, nor shall any Partner receive any drawing account from the Partnership.

### **Article III. MANAGEMENT**

3.1 Management. The General Partner shall direct, manage, and control the business of the Partnership to the best of the General Partners' ability and shall have full, sole, exclusive and complete authority, power and discretion to make any and all decisions and to do any and all things which the General Partner deems necessary or desirable for that purpose without any approval from the Limited Partners. The General Partner shall be solely responsible for the operation of the Partnership business, having all powers generally conferred by law, as well as those which are necessary, advisable, or consistent in connection with the purposes of the Partnership. Any action required or permitted to be taken by a corporate General Partner hereunder may be taken by such of its proper officers or agents as it may validly designate for such purpose.

3.2 Liability for Certain Acts. The General Partner shall exercise ordinary business judgment in managing the business, operations and affairs of the Partnership. Except in the case of fraud, deceit, gross negligence, willful misconduct, wrongful taking or a breach of the General Partner's fiduciary duties to the Partnership or the Limited Partners, the General Partner shall not be liable or obligated to the Partnership or the Limited Partners for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the General Partner in conducting the business, operations and affairs of the Partnership which may cause or result in any loss or damage to the Partnership or its Partners. The General Partner does not, in any way, guarantee the return of the Limited Partner's Capital Contributions or a profit for any Limited Partner from the operations of the Partnership. The General Partner shall not be responsible to any Limited Partner because of a loss of their investment or a loss in operations, unless the loss shall have been the result of fraud, deceit, breach of the General Partner's fiduciary duties to the Partnership or the Limited Partners, gross negligence, willful misconduct or a wrongful taking by the General Partner.

3.3 Tax Matters Partner. The Tax Matters Partner for the Partnership shall be the General Partner serving in such capacity from time to time.

### **Article IV. RIGHTS & OBLIGATIONS OF THE LIMITED PARTNER**

4.1 Limitation of Liability. Each Limited Partner's liability shall be limited to the full extent set forth in the Act or other applicable law. No Limited Partner shall be liable for any debts, liabilities, contracts or obligations unless otherwise provided by this Agreement. Except otherwise provided by this Agreement, any other agreements among the Partners, or applicable law, a Limited Partner shall be liable only to make such Limited Partner's Capital Contributions as and when due hereunder and shall not be required to lend any funds to the Partnership or, after such Limited Partner's Capital Contributions have been paid, to make any additional contributions to the Partnership.

### **Article V. POWER OF ATTORNEY**

5.1 Power of Attorney

(a) Each Partner irrevocably appoints the General Partner as his or her true and lawful attorney, in his or her name, place and stead, to make, execute, acknowledge and/or file: (i) any Certificate of Limited Partnership or other instrument which may be required to be executed or filed by the Partnership or which the General Partner shall deem it advisable to execute or file; (ii) any and all amendments or modifications to the instrument; and (iii) all documents which may be required to effectuate the dissolution and termination of the Partnership.

(b) Further, each Partner appoints the General Partner as his or her true and lawful attorney, in his name, place and stead, to purchase, deal with the property and to manage the same including without limitation, to sign, deliver or record all deeds, contracts of sale or other instruments conveying title to the property, either in the names of the Partners or in the name of the Partnership and the members, to establish bank accounts for the Partnership and to deposit and withdraw funds solely upon his signature, to demand, sue for, levy or recover all sums of money, debts, rents or other demands or claims of any nature whatsoever which are or shall be due the Partnership in such manner as the General Partner shall determine to be advisable.

(c) Each Partner expressly agrees and intends that the foregoing powers of attorney are coupled with an interest.

(d) The foregoing powers of attorney shall survive the delivery of an assignment by any of the Partners of the whole or any portion of his or her transferable interest in the Partnership.

(e) From time to time, the General Partner may, at its sole discretion, send notice to the Partners of actions taken. If objection is not received by the General Partner within thirty (30) days of said notice, then objection to said action shall be waived by all of the parties to this Agreement.

#### **Article VI. DISSOLUTION**

6.1 Dissolution. The partnership term shall commence on September \_\_\_\_, 2013, and continue thereafter for an unstipulated time ending:

(1) On the dissolution of the partnership by law;

(2) On dissolution at any time agreed on by the General Partner;

(3) On dissolution at the close of the month following the qualification and appointment of the personal representative of a terminated general partner, and following the exercise by the partners of an option granted by this agreement to cause the partnership to be dissolved as of the close of such month.

(4) Value of Partner's Interest.

The value of a general partner's interest in the partnership shall be computed by: (1) adding the totals of: (a) his or her capital account, (b) his or her income account, and (c) any other amounts owed to him or her by the Partnership, and (2) subtracting from the sum of the above totals the sum of the totals of (a) his or her drawing account and (b) any amount owed by him or her to the Partnership.

6.2 Liquidation. In the event that the Partnership shall hereafter be dissolved for any reason whatsoever, a full and general account of its assets, liabilities and transactions shall at once be taken. Such assets may be sold and turned into cash as soon as possible and all debts and other amounts due the Partnership collected. The proceeds shall be applied in the following order:

(a) To discharge the debts and liabilities of the Partnership and the expenses of liquidation.



(b) To pay each Partner or his or her legal representative any unpaid salary, drawing account, interest, profits, interim distributions or distributions upon withdrawal to which the partner shall then be entitled.

(c) To pay the Limited Partner or his or her legal representative his or her share of the profits and other compensation by way of income on their contributions.

(d) To pay to the Limited Partner in respect to the capital of their contributions.

(e) To pay to the General Partner other than for capital and profits.

(f) To pay to the General Partner in respect to profits.

(g) To pay to the General Partner in respect to capital.

6.3 Right to Demand Property. No Partner shall have the right to demand and receive property in kind for his or her distribution.

## **Article VII. BOOKS & RECORDS**

7.1 Accounting Year, Books, Statements.

(a) The Partnership's fiscal year shall commence on January 1, of each year and shall end on December 31, of each year. Full and accurate books of account shall be kept at the office specified in the certificate of limited partnership, showing the condition of the business and finances of the Partnership; and each Partner shall have access to such books of account and shall be entitled to examine them at any time during ordinary business hours.

(b) At the end of each year, the General Partner shall cause the Partnership's accountant to prepare a balance sheet setting forth the financial position of the Partnership as of the end of that year and a statement of operations (income and expenses) for that year. A copy of the balance sheet and statement of operations shall be delivered to each Partner as soon as it is available. The General Partner shall also cause to be prepared and delivered to each Partner as soon as possible all forms and documents needed by the Partners for determining their income taxes.

(c) Each Partner shall be deemed to have waived all objections to any transaction or other facts about the operation of the Partnership disclosed in any balance sheet and/or statement of operations unless he or she notifies the General Partner in writing of the objections within thirty (30) days of the date on which such statement is mailed.

(d) The Partnership books shall be kept on the accrual basis and in accordance with generally accepted accounting principles consistent with those employed for determining its income for federal income tax purposes.

7.2 Access to Information by Limited Partner. The Limited Partner shall have the right to inspect and copy any of the Partnership records required to be maintained by law and to obtain from General Partner, from time to time,

upon reasonable demand the following:

- (1) True and complete information regarding the state of the business and financial conditions of the Partnership;
- (2) Promptly after becoming available, copies of the Partnership's federal, state, and local income tax returns for each year; and
- (3) Other information regarding the affairs of the Partnership as is just and reasonable.

7.3 Partnership's Agents. Pursuant to the Partnership's day to day activity the General Partner shall have the power to employ investment counsel, brokers, accountants, attorneys, and any other agents to act in the Partnership's behalf, generally to do any act or thing and execute all instruments necessary, incidental or convenient to the proper administration of the Partnership property.

7.4 Transfer to Living Trusts. For purposes of this Agreement, any Partner may transfer his or her interest to said Partner's Living Trust. Upon such transfer, legal title shall rest in such Living Trust but such interest shall be subject to the same events and circumstances as if the transferring Partner continued to own such interest. Further, the transferring Partner shall continue to exercise all rights and be liable for all duties imposed by this Agreement.

7.5 Checks. All checks or demands for money and notes of the Partnership shall be signed by the General Partner or such other person or persons as the General Partner may from time to time designate.

7.6 Conflicts of Interest. Partners may engage in or possess interest in other business ventures of every kind and description for their own accounts. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in such independent business ventures or to their income or profits.

#### **Article VIII. MISCELLANEOUS**

8.1 Effective Date. This Agreement shall be effective only upon execution by all of the proposed Partners listed in Section 1.3.

8.2 Execution in Counterparts. This Partnership Agreement may be executed in any number of counterparts, each of which shall be taken to be an original.

8.3 Indemnification. The Partnership shall indemnify any person who is made, or threatened to be made, a party to any action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that the person, or the person's testator or intestate is or was a Partner, employee or agent of the Partnership or serves or served any other enterprise at the request of the Partnership to the full extent permitted by law.

8.4 Notice. Any and all notices provided for herein shall be given in writing by registered or certified mail, return receipt requested which shall be addressed to the last address known to the sender or delivered to the recipient in person.

8.5 Modifications. No modification of this Agreement shall be valid unless such modification is in writing and signed by the General Partner.

8.6 Opinion of Counsel. The doing of any act or the failure to do any act by any Partner (the effect of which may cause or result in loss or damage to the Partnership) if pursuant to opinion of legal counsel employed by the General Partner on behalf of the Partnership, shall not subject such Partner to any liability. Further, the General Partner shall not be liable for any error in judgment or any mistake of law or fact or any act done in good faith in the exercise of powers and authority conferred upon him/her/them but shall be liable only for gross negligence or willful default.

8.7 Agreement Binding. This Agreement shall be binding upon the parties to this Agreement and upon their heirs, executors, administrators, successors or assigns. The parties to this Agreement agree for themselves and their heirs, executors, administrators, successors and assigns to execute any and all instruments in writing which are or may become necessary or proper to carry out the purpose and intent of this Agreement.

8.8 Amendments. This Agreement may be altered at any time by the General Partner by signed, written amendment. Notwithstanding any provision in this Agreement to the contrary, any amendment to this Agreement which would adversely affect the liabilities of Partners, or change the method of allocation of profit and loss or distribution of distributable cash as provided herein shall require the approval of all the Partners.

8.9 Titles and Subtitles. Titles of the paragraphs and subparagraphs are placed herein for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

8.10 Words and Gender or Number. As used herein, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

8.11 Severability. In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

8.12 Waiver. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the person or party against whom charged.

8.13 Applicable Law. All rights, obligations, and disputes of the parties relating to or arising out of this Agreement shall be subject to and governed by the laws of the Territory of the United States Virgin Islands.

In Witness Whereof, the parties have hereunto set their hands and seals this \_\_\_\_ day of September, 2013.

General Partner

Names

Signature

*Raiden Commodities 1, LLC*

\_\_\_\_\_  
By: Adam C. Sinn  
Manager

Limited Partner

Names

Signature

Adam C. Sinn

\_\_\_\_\_

***SCHEDULE "A"***  
***Initial Capital Contributions***

	<b>Cash Contributions</b>	<b>Agreed Value of Property Contributions</b>
General Partner		
Raiden Commodities 1, LLC Limited Partner	<i>\$999.99</i>	<i>\$999.99</i>
Adam C. Sinn	<i>\$0.01</i>	<i>\$0.01</i>

**From:** Kyle Carlton <KCarlton@dallasbusinesslaw.com>  
**Sent:** Wednesday, September 4, 2013 1:25 PM  
**To:** Patrick de Man  
**Cc:** 'Adam Sinn'  
**Subject:** RE: Partnership Agreement

Patrick,

This looks good with the exception of the date issue you pointed out. I don't suppose there are any legal ramifications to it (Adam is never going to sue himself). That said, if you want to get it right, they have two options for correcting this:

**Option 1:** State that the partnership commenced on the "date of formation, such being \_\_\_\_\_, and this agreement shall be construed as effective on that date regardless of when it may actually be signed by the parties" From there they can replace most of the other "September \_\_, 2013" dates with the formation date.

**Option 2:** Date it September \_\_, 2013 but call it a "First Amended Limited Partnership Agreement" and then add a sentence saying "Any prior limited partnership agreements have either been lost or left incomplete. As a result of such the Partners now enter into this Agreement for the purposes of clarifying their relationship. All previous limited partnership agreements are revoked and this Agreement completely replaces and supersedes such prior agreements."

Let me know if you have any other questions. Happy to help.

All my best,

Kyle

---

Ferguson, Braswell & Fraser, PC

Kyle E. Carlton, JD, MBA

[www.dallasbusinesslaw.com](http://www.dallasbusinesslaw.com)

Work: (469) 759-0844

Assistant: (469) 759-0740

Cellular: (972) 974-7734

Facsimile: (877) 433-6906

Work: [kcarlton@dallasbusinesslaw.com](mailto:kcarlton@dallasbusinesslaw.com)

Personal: [kcarlton@gmail.com](mailto:kcarlton@gmail.com)

AIM: MAHER00001

Skype: K.Big.Carlton

**\*\*\* PLEASE NOTE: effective 1/1/2013, some of our phone numbers and email addresses have changed. Please update your contact information accordingly.**

*"Amor Vincit Omnia" - Prioress, Canterbury Tales*

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Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

---

**From:** Patrick de Man [<mailto:pdeman@aspirecommodities.com>]  
**Sent:** Friday, August 30, 2013 11:50 AM  
**To:** Kyle Carlton  
**Cc:** 'Adam Sinn'  
**Subject:** FW: Partnership Agreement

Hi Kyle,

Back in the saddle?

Does this look good to you?

One question I have is that the partnership actually existed for a while, they state in there that it starts in Sep 2013. Would that potentiall cause a problem?

Thanks,  
Patrick.

---

**From:** Brett Geary [<mailto:bgeary@kffklaw.com>]  
**Sent:** Friday, August 30, 2013 12:25 PM  
**To:** Patrick de Man  
**Cc:** [asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com); Greg Ferguson; Will Thomas  
**Subject:** Partnership Agreement

Good Afternoon Patrick,

Attached please find the partnership agreement for Raiden Commodities, LP.

**Brett Geary**



9100 Port of Sale Mall  
Suite 15  
St. Thomas, U.S. Virgin Islands 00802

Office: 340.779.2564  
Fax: 888.316.9269

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Circular 230: To ensure compliance with the requirements imposed by the IRS, we inform you that any tax advice contained in our communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any tax penalty or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



**From:** Will Thomas <WThomas@kffklaw.com>  
**Sent:** Monday, September 9, 2013 8:45 AM  
**To:** Patrick de Man; asinn@aspirecommodities.com  
**Cc:** Brett Geary; Greg Ferguson  
**Subject:** Re: Partnership Agreement  
**Attachments:** image001.jpg; Partnership Agreement - Raiden v.2.pdf

Patrick:

Please see the attached revised partnership agreement for Raiden Commodities, LP. Should you have any questions, please feel free to contact me.

-Best Regards,

**William A. Thomas**



9100 Port of Sale Mall  
Suite 15  
St. Thomas, U.S. Virgin Islands 00802

Office: 340.779.2564  
Fax: 888.316.9269

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---

**From:** Patrick de Man <[pdeman@aspirecommodities.com](mailto:pdeman@aspirecommodities.com)>  
**Date:** Wednesday, September 4, 2013 2:43 PM  
**To:** Brett Geary <[bgeary@kffklaw.com](mailto:bgeary@kffklaw.com)>, Greg Ferguson <[gferguson@kffklaw.com](mailto:gferguson@kffklaw.com)>, Will Thomas <[wthomas@kffklaw.com](mailto:wthomas@kffklaw.com)>  
**Cc:** "[asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com)" <[asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com)>  
**Subject:** RE: Partnership Agreement

Thank you.

The agreement document looks good, but I have the following issue:  
Article 1.5 states that the partnership starts in Sep 2013, while it has been in existence and operating since Dec 2010.

Is it possible to do either of the following:

**Option 1:** State that the partnership commenced on the "date of formation, such being \_\_\_\_\_, and this agreement shall be construed as effective on that date regardless of when it may actually be signed by the parties" From there replace most of the other "September \_\_, 2013" dates with the formation date.

**Option 2:** Date it September \_\_\_, 2013 but call it a “First Amended Limited Partnership Agreement” and then add a sentence saying “Any prior limited partnership agreements have either been lost or left incomplete. As a result of such the Partners now enter into this Agreement for the purposes of clarifying their relationship. All previous limited partnership agreements are revoked and this Agreement completely replaces and supersedes such prior agreements.”

Thanks,  
Patrick.

---

**From:** Brett Geary [<mailto:bgeary@kffklaw.com>]  
**Sent:** Friday, August 30, 2013 12:25 PM  
**To:** Patrick de Man  
**Cc:** [asinn@aspirecommodities.com](mailto:asinn@aspirecommodities.com); Greg Ferguson; Will Thomas  
**Subject:** Partnership Agreement

Good Afternoon Patrick,

Attached please find the partnership agreement for Raiden Commodities, LP.

**Brett Geary**



9100 Port of Sale Mall  
Suite 15  
St. Thomas, U.S. Virgin Islands 00802  
Office: 340.779.2564  
Fax: 888.316.9269

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**FIRST AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT  
OF  
RAIDEN COMMODITIES, LP**

THIS LIMITED PARTNERSHIP AGREEMENT (this "Agreement") is made and entered into as of September \_\_\_, 2013 by and among Raiden Commodities 1, LLC, hereinafter referred to as the "General Partner", and Adam C. Sinn as the "Limited Partner," whose names are set forth on the signatory pages to this Agreement (all of whom together are hereinafter collectively referred to as "Partners").

**WHEREAS**, the Partners formed a Limited Partnership (hereinafter referred to as the "Partnership") under the Virgin Islands Uniform Limited Partnership Act on December 30, 2010; and

**WHEREAS**, any and all partnership agreements between the Partners prior to this Agreement have either been lost or destroyed; and

**WHEREAS**, the Partners desire to enter into this Agreement in order to clarify their relationship and further to govern the Partnership from the date of formation (December 30, 2010) until the date of dissolution of the Partnership as provided herein.

In consideration of the mutual covenants contained in this Agreement, the Partners agree as follows:

**Article I. FORMATION, NAME, PURPOSE, TERM**

1.1 Formation. The Partners formed a Limited Partnership on December 30, 2010 pursuant to the Virgin Islands Uniform Limited Partnership Act (the "Act"). Any and all prior partnership agreements relating to the Partnership have either been lost or destroyed, and as a result the Partners now enter into this Agreement to govern them from the date of formation (December 30, 2010) until the date of dissolution of this Agreement. Furthermore, to the extent any partnership agreements between the Partners do exist, all previous partnership agreements are hereby revoked and this Agreement hereby completely replaces and supersedes any prior partnership agreements. The General Partner shall manage the Partnership business, and the Limited Partner shall not participate in the management of the Partnership business.

1.2 Name of Limited Partnership. The business of the Partnership shall be conducted under the name of Raiden Commodities, LP.

1.3 Partners.

The name and address of the General Partner is:

**Names**

Raiden Commodities 1, LLC

**Addresses**

200 Dorado Beach Drive, Unit 3021  
Dorado, PR 00646

The name and address of the Limited Partner is:

**Names****Addresses**

Adam C. Sinn

200 Dorado Beach Drive, Unit 3021  
Dorado, PR 00646

1.4 Place of Business and Agent for Service of Process. The designated office and principal place of business of the Partnership shall be located at 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802, or such other place as the General Partner may from time to time designate.

The name and address of the agent for service of process as required by law is Business Basics VI, LLC, 9100 Port of Sale Mall, Suite 15, St. Thomas, U.S. Virgin Islands 00802 or such other person as the General Partner may from time to time designate.

1.5 Term. The Partnership shall commence on September \_\_\_\_, 2013 and its duration shall be perpetual.

1.6 Purpose. The purpose for which the Partnership is organized is to conduct all lawful activity for which limited partnerships may be organized under the Act.

## Article II. CAPITAL ACCOUNTS

2.1 Initial Contribution of Partners. Each Partner has contributed to the initial capital of the Partnership cash or property, or both in the amount and form indicated on attached Schedule A. Capital contributions to the Partnership shall not bear interest. An individual capital account shall be maintained for each Partner.

2.2 Additional Capital Contribution. No Partner shall be required to contribute to the capital of this Partnership. Any Partner who shall make a contribution shall be deemed to have made a loan to such Partnership, which loan shall not bear interest which principal shall have priority over any and all other sums owed to or payable to the Partner(s).

2.3 Percentage Share of Profits and Capital. The Percentage Share of Profits and Capital of each Partner shall be (unless otherwise modified by the terms of this Agreement) as follows:

**Names****Initial Percentage****Share of Profits and Capital**

Raiden Commodities 1, LLC

99.9%

Adam C. Sinn

0.01%

2.4 Return of Capital Contributions. No Partner shall have the right to demand the return of his or her capital contributions except as provided in this Agreement.

2.5 Rights of Priority. The individual Limited Partner shall have priority over the individual General Partner, as to the return of capital contributions.

2.6 Distributions. Distributions to the Partners of net operating profits of the Partnership, as hereinafter defined, shall be made at such times, but no less frequently than as the Partners shall reasonably agree. Such distributions shall be made to the Partners simultaneously. For purposes of this Agreement, net operating profit for any accounting period shall mean the gross receipts of the Partnership for such period, less the sum of all cash expenses of operation of the Partnership, and such sums as may be necessary to establish a reserve for operating expenses. In determining net operating profit, deductions for depreciation, amortization, or other similar charges not requiring actual current expenditures of cash shall not be taken into account in accordance with generally accepted accounting principles.

2.7 Compensation. No Partner shall be entitled to receive any compensation from the Partnership, nor shall any Partner receive any drawing account from the Partnership.

### **Article III. MANAGEMENT**

3.1 Management. The General Partner shall direct, manage, and control the business of the Partnership to the best of the General Partners' ability and shall have full, sole, exclusive and complete authority, power and discretion to make any and all decisions and to do any and all things which the General Partner deems necessary or desirable for that purpose without any approval from the Limited Partners. The General Partner shall be solely responsible for the operation of the Partnership business, having all powers generally conferred by law, as well as those which are necessary, advisable, or consistent in connection with the purposes of the Partnership. Any action required or permitted to be taken by a corporate General Partner hereunder may be taken by such of its proper officers or agents as it may validly designate for such purpose.

3.2 Liability for Certain Acts. The General Partner shall exercise ordinary business judgment in managing the business, operations and affairs of the Partnership. Except in the case of fraud, deceit, gross negligence, willful misconduct, wrongful taking or a breach of the General Partner's fiduciary duties to the Partnership or the Limited Partners, the General Partner shall not be liable or obligated to the Partnership or the Limited Partners for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the General Partner in conducting the business, operations and affairs of the Partnership which may cause or result in any loss or damage to the Partnership or its Partners. The General Partner does not, in any way, guarantee the return of the Limited Partner's Capital Contributions or a profit for any Limited Partner from the operations of the Partnership. The General Partner shall not be responsible to any Limited Partner because of a loss of their investment or a loss in operations, unless the loss shall have been the result of fraud, deceit, breach of the General Partner's fiduciary duties to the Partnership or the Limited Partners, gross negligence, willful misconduct or a wrongful taking by the General Partner.

3.3 Tax Matters Partner. The Tax Matters Partner for the Partnership shall be the General Partner serving in such capacity from time to time.

### **Article IV. RIGHTS & OBLIGATIONS OF THE LIMITED PARTNER**

4.1 Limitation of Liability. Each Limited Partner's liability shall be limited to the full extent set forth in the Act or other applicable law. No Limited Partner shall be liable for any debts, liabilities, contracts or obligations unless otherwise provided by this Agreement. Except otherwise provided by this Agreement, any other agreements among the Partners, or applicable law, a Limited Partner shall be liable only to make such Limited Partner's Capital

Contributions as and when due hereunder and shall not be required to lend any funds to the Partnership or, after such Limited Partner's Capital Contributions have been paid, to make any additional contributions to the Partnership.

#### **Article V. POWER OF ATTORNEY**

##### **5.1 Power of Attorney**

(a) Each Partner irrevocably appoints the General Partner as his or her true and lawful attorney, in his or her name, place and stead, to make, execute, acknowledge and/or file: (i) any Certificate of Limited Partnership or other instrument which may be required to be executed or filed by the Partnership or which the General Partner shall deem it advisable to execute or file; (ii) any and all amendments or modifications to the instrument; and (iii) all documents which may be required to effectuate the dissolution and termination of the Partnership.

(b) Further, each Partner appoints the General Partner as his or her true and lawful attorney, in his name, place and stead, to purchase, deal with the property and to manage the same including without limitation, to sign, deliver or record all deeds, contracts of sale or other instruments conveying title to the property, either in the names of the Partners or in the name of the Partnership and the members, to establish bank accounts for the Partnership and to deposit and withdraw funds solely upon his signature, to demand, sue for, levy or recover all sums of money, debts, rents or other demands or claims of any nature whatsoever which are or shall be due the Partnership in such manner as the General Partner shall determine to be advisable.

(c) Each Partner expressly agrees and intends that the foregoing powers of attorney are coupled with an interest.

(d) The foregoing powers of attorney shall survive the delivery of an assignment by any of the Partners of the whole or any portion of his or her transferable interest in the Partnership.

(e) From time to time, the General Partner may, at its sole discretion, send notice to the Partners of actions taken. If objection is not received by the General Partner within thirty (30) days of said notice, then objection to said action shall be waived by all of the parties to this Agreement.

#### **Article VI. DISSOLUTION**

6.1 Dissolution. The partnership term shall commence on December 30, 2010, and continue thereafter for an unstipulated time ending:

(1) On the dissolution of the partnership by law;

(2) On dissolution at any time agreed on by the General Partner;

(3) On dissolution at the close of the month following the qualification and appointment of the personal representative of a terminated general partner, and following the exercise by the partners of an option granted by this agreement to cause the partnership to be dissolved as of the close of such month.

(4) Value of Partner's Interest.

The value of a general partner's interest in the partnership shall be computed by: (1) adding the totals of: (a) his or her

capital account, (b) his or her income account, and (c) any other amounts owed to him or her by the Partnership, and (2) subtracting from the sum of the above totals the sum of the totals of (a) his or her drawing account and (b) any amount owed by him or her to the Partnership.

6.2 Liquidation. In the event that the Partnership shall hereafter be dissolved for any reason whatsoever, a full and general account of its assets, liabilities and transactions shall at once be taken. Such assets may be sold and turned into cash as soon as possible and all debts and other amounts due the Partnership collected. The proceeds shall be applied in the following order:

- (a) To discharge the debts and liabilities of the Partnership and the expenses of liquidation.
- (b) To pay each Partner or his or her legal representative any unpaid salary, drawing account, interest, profits, interim distributions or distributions upon withdrawal to which the partner shall then be entitled.
- (c) To pay the Limited Partner or his or her legal representative his or her share of the profits and other compensation by way of income on their contributions.
- (d) To pay to the Limited Partner in respect to the capital of their contributions.
- (e) To pay to the General Partner other than for capital and profits.
- (f) To pay to the General Partner in respect to profits.
- (g) To pay to the General Partner in respect to capital.

6.3 Right to Demand Property. No Partner shall have the right to demand and receive property in kind for his or her distribution.

## **Article VII. BOOKS & RECORDS**

7.1 Accounting Year, Books, Statements.

(a) The Partnership's fiscal year shall commence on January 1, of each year and shall end on December 31, of each year. Full and accurate books of account shall be kept at the office specified in the certificate of limited partnership, showing the condition of the business and finances of the Partnership; and each Partner shall have access to such books of account and shall be entitled to examine them at any time during ordinary business hours.

(b) At the end of each year, the General Partner shall cause the Partnership's accountant to prepare a balance sheet setting forth the financial position of the Partnership as of the end of that year and a statement of operations (income and expenses) for that year. A copy of the balance sheet and statement of operations shall be delivered to each Partner as soon as it is available. The General Partner shall also cause to be prepared and delivered to each Partner as soon as possible all forms and documents needed by the Partners for determining their income taxes.

(c) Each Partner shall be deemed to have waived all objections to any transaction or other facts about the operation of the Partnership disclosed in any balance sheet and/or statement of operations unless he or she notifies the General Partner in writing of the objections within thirty (30) days of the date on which such statement is mailed.

(d) The Partnership books shall be kept on the accrual basis and in accordance with generally accepted accounting principles consistent with those employed for determining its income for federal income tax purposes.

7.2 Access to Information by Limited Partner. The Limited Partner shall have the right to inspect and copy any of the Partnership records required to be maintained by law and to obtain from General Partner, from time to time, upon reasonable demand the following:

(1) True and complete information regarding the state of the business and financial conditions of the Partnership;

(2) Promptly after becoming available, copies of the Partnership's federal, state, and local income tax returns for each year; and

(3) Other information regarding the affairs of the Partnership as is just and reasonable.

7.3 Partnership's Agents. Pursuant to the Partnership's day to day activity the General Partner shall have the power to employ investment counsel, brokers, accountants, attorneys, and any other agents to act in the Partnership's behalf, generally to do any act or thing and execute all instruments necessary, incidental or convenient to the proper administration of the Partnership property.

7.4 Transfer to Living Trusts. For purposes of this Agreement, any Partner may transfer his or her interest to said Partner's Living Trust. Upon such transfer, legal title shall rest in such Living Trust but such interest shall be subject to the same events and circumstances as if the transferring Partner continued to own such interest. Further, the transferring Partner shall continue to exercise all rights and be liable for all duties imposed by this Agreement.

7.5 Checks. All checks or demands for money and notes of the Partnership shall be signed by the General Partner or such other person or persons as the General Partner may from time to time designate.

7.6 Conflicts of Interest. Partners may engage in or possess interest in other business ventures of every kind and description for their own accounts. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in such independent business ventures or to their income or profits.

## **Article VIII. MISCELLANEOUS**

8.1 Effective Date. This Agreement shall be effective only upon execution by all of the proposed Partners listed in Section 1.3.

8.2 Execution in Counterparts. This Partnership Agreement may be executed in any number of counterparts,



each of which shall be taken to be an original.

8.3 Indemnification. The Partnership shall indemnify any person who is made, or threatened to be made, a party to any action, suit or proceeding (whether civil, criminal, administrative or investigative) by reason of the fact that the person, or the person's testator or intestate is or was a Partner, employee or agent of the Partnership or serves or served any other enterprise at the request of the Partnership to the full extent permitted by law.

8.4 Notice. Any and all notices provided for herein shall be given in writing by registered or certified mail, return receipt requested which shall be addressed to the last address known to the sender or delivered to the recipient in person.

8.5 Modifications. No modification of this Agreement shall be valid unless such modification is in writing and signed by the General Partner.

8.6 Opinion of Counsel. The doing of any act or the failure to do any act by any Partner (the effect of which may cause or result in loss or damage to the Partnership) if pursuant to opinion of legal counsel employed by the General Partner on behalf of the Partnership, shall not subject such Partner to any liability. Further, the General Partner shall not be liable for any error in judgment or any mistake of law or fact or any act done in good faith in the exercise of powers and authority conferred upon him/her/them but shall be liable only for gross negligence or willful default.

8.7 Agreement Binding. This Agreement shall be binding upon the parties to this Agreement and upon their heirs, executors, administrators, successors or assigns. The parties to this Agreement agree for themselves and their heirs, executors, administrators, successors and assigns to execute any and all instruments in writing which are or may become necessary or proper to carry out the purpose and intent of this Agreement.

8.8 Amendments. This Agreement may be altered at any time by the General Partner by signed, written amendment. Notwithstanding any provision in this Agreement to the contrary, any amendment to this Agreement which would adversely affect the liabilities of Partners, or change the method of allocation of profit and loss or distribution of distributable cash as provided herein shall require the approval of all the Partners.

8.9 Titles and Subtitles. Titles of the paragraphs and subparagraphs are placed herein for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

8.10 Words and Gender or Number. As used herein, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

8.11 Severability. In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

8.12 Waiver. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the person or party against whom charged.

8.13 Applicable Law. All rights, obligations, and disputes of the parties relating to or arising out of this Agreement shall be subject to and governed by the laws of the Territory of the United States Virgin Islands.

In Witness Whereof, the parties have hereunto set their hands and seals this \_\_\_\_ day of September, 2013.

General Partner

Names

Signature

*Raiden Commodities 1, LLC*

\_\_\_\_\_  
By: Adam C. Sinn  
Manager

Limited Partner

Names

Signature

Adam C. Sinn

\_\_\_\_\_

*SCHEDULE "A"*  
*Initial Capital Contributions*

	<b>Cash Contributions</b>	<b>Agreed Value of Property Contributions</b>
General Partner		
Raiden Commodities 1, LLC Limited Partner	<i>\$999.99</i>	<i>\$999.99</i>
Adam C. Sinn	<i>\$0.01</i>	<i>\$0.01</i>

# **EXHIBIT 27**

**From:** Kyle E. Carlton <kcarlton@gmail.com>  
**Sent:** Thursday, July 17, 2014 5:11 PM  
**To:** Patrick de Man  
**Subject:** Re: Partnership Agmts  
**Attachments:** 3a-Limited Partnership Agmt (Amended and Restated) - Aspire Commodities LP.pdf

Jokes over - here's the attachment now.

On Thu, Jul 17, 2014 at 4:56 PM, Kyle E. Carlton <[kcarlton@gmail.com](mailto:kcarlton@gmail.com)> wrote:

Hey Patrick,

I'm finally starting to finalize all the aspire/raiden docs. Should have the other ancillary docs done in the next few days but, in the meantime, here's the agreement for Aspire. The Raiden LP agreements and the LLC Agreements will end up being VERY similar to this.

Read through it and let me know when's a convenient time to talk through it and ask/answer any questions. Some light weekend reading for you :-)

Thanks!

KC

# **ASPIRE COMMODITIES, LP**

**A Texas Limited Partnership**

**FIRST AMENDED AND RESTATED PARTNERSHIP AGREEMENT**

**Effective Date: September 5, 2013**

**DISCLAIMER:**

THE UNDERLYING SECURITIES CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS HAVE NOT BEEN REGISTERED UNDER TEXAS OR PUERTO RICO SECURITIES LAWS, THE LAWS OF ANY OTHER STATE OR WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM SUCH REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933 ("SECURITIES ACT") AND THE CORRESPONDING SECURITIES LAWS IN ANY APPLICABLE STATE. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT AND IN A TRANSACTION WHICH IS EITHER EXEMPT FROM REGISTRATION UNDER SUCH ACTS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACTS. CERTAIN RESTRICTIONS ON TRANSFERS OF INTEREST ARE SET FORTH IN THIS PARTNERSHIP AGREEMENT AND THE ANCILLARY AGREEMENTS.

THE PARTNERS EACH ACKNOWLEDGE THAT THIS AGREEMENT HAS BEEN PREPARED BY FERGUSON BRASWELL & FRASER, PC, KB CARLTON, PLLC, AND IN COOPERATION WITH OTHER ATTORNEYS OR AFFILIATES (COLLECTIVELY, ALL OF THE ABOVE LIST BEING THE "**FIRM**"), SUCH BEING LEGAL COUNSEL FOR THE PARTNERSHIP, AND THAT, IN CERTAIN INSTANCES, CIRCUMSTANCES MIGHT EXIST OR MAY LATER OCCUR WHICH COULD RESULT IN ACTUAL OR PERCEIVED CONFLICTS OF INTEREST BETWEEN OR AMONG ONE OR MORE OF THE PARTNERS, GENERAL PARTNERS, OFFICERS AND/OR THE PARTNERSHIP. ACCORDINGLY, EACH AND EVERY PERSON INVOLVED WITH THE PARTNERSHIP HAS BEEN ENCOURAGED TO SEEK THE COUNSEL OF HIS, HER OR ITS OWN ATTORNEYS OR OTHER ADVISORS. IN ADDITION TO THE FOREGOING ACKNOWLEDGEMENTS, EACH PARTNER ACKNOWLEDGES THAT HE/SHE/IT HAS BEEN ADVISED THAT FIRM CURRENTLY REPRESENTS, AND WILL CONTINUE TO REPRESENT, OTHER ENTITIES WHICH ARE OWNED, IN WHOLE OR IN PART, BY SOME OR ALL OF THE PARTNERS, GENERAL PARTNERS OR OFFICERS OF THE PARTNERSHIP OR THEIR AFFILIATES. EACH PARTNER CONSENTS TO THE PREPARATION OF THIS AGREEMENT BY THE FIRM, AND JOINTLY WAIVES (I) TO THE EXTENT SUCH RIGHT HAS NOT BEEN EXERCISED, THE RIGHT TO RETAIN SEPARATE LEGAL COUNSEL IN CONNECTION WITH THE NEGOTIATION, PREPARATION, REVIEW AND EXECUTION OF THIS AGREEMENT, AND (II) THE RIGHT TO LATER ASSERT ANY SUCH CONFLICT OF INTEREST AGAINST THE PARTNERSHIP, ITS GENERAL PARTNERS, PARTNERS REPRESENTED BY THE FIRM, OR THE FIRM ITSELF IN THE PROSECUTION OR DEFENSE OF ANY ACTION.

# FIRST AMENDED AND RESTATED PARTNERSHIP AGREEMENT

OF

## ASPIRE COMMODITIES, LP

This First Amended and Restated Partnership Agreement (the “Agreement”) is adopted by the Partners of **ASPIRE COMMODITIES, LP**, (the “Partnership”), as of the Effective Date and shall, regardless of when it is actually executed be construed to be effective as of the Effective Date.

### ARTICLE I ORGANIZATION

**1.1 Definitions.** Definitions of Terms may be defined in this Section or elsewhere in the Agreement. As used in this Agreement, the following terms have the following meanings:

“**Act**” means the Texas Business Organizations Code and any successor statute, as amended from time to time.

“**Adjusted Capital Account**” means, with respect to a Partner, that Partner's Capital Account balance, modified as follows:

A. increased by the amount, if any, of such Partner’s share of the Minimum Gain of the Partnership as determined under Treasury Regulation Section 1.704-2(g)(1);

B. increased by the amount, if any, of such Partner’s share of the Minimum Gain attributable to Partner Nonrecourse Debt of the Partnership pursuant to Treasury Regulation Section 1.704-2(i)(5);

C. increased by the amount, if any, that such Partner is treated as being obligated to contribute subsequently to the capital of the Partnership as determined under Treasury Regulation Section 1.704-1(b)(2)(ii)(c);

D. decreased by the amount, if any, of cash that is reasonably expected to be distributed to such Partner, but only to the extent that the amount thereof exceeds any offsetting increase in such Partner’s Capital Account that is reasonably expected to occur during (or prior to) the tax year during which such distributions are reasonably expected to be made as determined under Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(6); and



E. decreased by the amount, if any, of loss and deduction that is reasonably expected to be allocated to such Partner pursuant to Code Section 704(e)(2) or 706(d), Treasury Regulation Section 1.751-1(b)(2)(ii) or Treasury Regulation Section 1.704-1(b)(2)(iv)(k).

This definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

**“Adjusted Capital Account Deficit”** means, with respect to a Partner, the deficit balance, if any, in that Partner's Adjusted Capital Account.

**“Affiliate”** shall mean, when used with respect to a specified person, any person that directly or indirectly controls, is controlled by or is under common Control with such specified person.

**“Agreement”** has the meaning given that term in the introductory paragraph.

**“Ancillary Agreements”** shall mean include this Agreement but also shall include any other documents, agreements, Partnership Records, instruments, or other writings from time to time executed by any Person which clarify or are in connection with this Agreement and the transactions or relationships contemplated herein.

**“Appraisal”** means, unless the context indicates otherwise, a written valuation report by an Appraiser duly qualified to make such a report that describes and values the fair market value of an ownership interest in the Partnership.

**“Articles”** means the Certificate of Formation filed with the Secretary of State of Texas by which the Partnership was organized as a Texas Limited Partnership under and pursuant to the Act, as amended from time to time.

**“Assignee”** means a person who has acquired all or a portion of an interest in a Partnership Interest by assignment as of the date the assignment of the Partnership Interest has become “effective.” As used in this Agreement, the assignment of a Partnership Interest becomes “effective” as of the date on which all of the requirements of an assignment expressed in this Agreement shall have been met. An Assignee has only the rights granted under this Agreement or, if not defined, then under the Act. An Assignee does not have the right to become a Partner except as provided in this Agreement or, if not defined, then in the Act. An Assignee is an “Authorized Assignee” only if the assignment arose under Section 3.3.4 or 3.3.6 of this Agreement.

**“Authorized Assignee”** means the owner of a Partnership Interest upon Disposition to such Person as a Permitted Transferee or upon the consent of all General Partners.

**“Bankrupt Partner”** means (except to the extent a Majority in Interest of the Class A Partners consents otherwise) any Partner:

A. That:

- (1) Makes a general assignment for the benefit of creditors;
- (2) Files a voluntary bankruptcy petition;
- (3) Becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding;
- (4) Files a petition or answer seeking for the Partner a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law;
- (5) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partner in a Proceeding of the type described in subclauses (1) through (4) of this clause (a); or
- (6) Seeks, consent to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Partner or of all or any substantial part of the Partner's properties; or

B. Against which, a Proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and one hundred twenty (120) days have expired without dismissal thereof or with respect to which, without the Partner's consent or acquiescence, a trustee, receiver, or liquidator of the Partner or of all or any substantial part of the Partner's properties has been appointed and ninety (90) days have expired without the appointment having been vacated or stayed, or ninety (90) days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

**“Built-In Gain”** with respect to any Partnership Property means (1) as of the time of contribution, the excess of the Gross Asset Value of any Contributed Property over its adjusted basis for federal income tax purposes and (2) in the case of any adjustment to the Carrying Value of any Partnership Property pursuant to this Agreement, the Unrealized Gain.

**“Built-In Loss”** with respect to any Partnership Property means (1) as of the time of contribution, the excess of the adjusted basis for federal income tax purposes of any

Contributed Property over its Gross Asset Value and (2) in the case of any adjustment to the Carrying Value of any Partnership Property pursuant to this Agreement, the Unrealized Loss.

**“Business Day”** means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in San Juan, Puerto Rico or State of Texas are closed. “Calendar day,” “day,” “days” or any other like term not preceded by the phrase “Business” means that number of sequential days without regard to weekends or holidays in counting such days provided, however (and unless otherwise explicitly specified herein), that should a specific deadline fall on a day that is not a Business Day, then the deadline shall automatically be extended to the next succeeding Business Day. Any deadline regarding Business Day or calendar day shall be deemed met or unmet as of 6:00 PM in San Juan, Puerto Rico on the day of the deadline (by way of example, if an item requires that it must be deposited in the mail, faxed or hand delivered then such an item required to be done would be late at 6:30 PM in San Juan Puerto Rico).

**“Capital Account”** means the account to be maintained by the Partnership for each Partner in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv) and, to the extent not inconsistent therewith, the following provisions:

A. a Partner’s Capital Account shall be credited with the cash or net Agreed Value of the Partner’s Capital Contributions, the Partner’s distributive share of Profit, and any item of income or gain specially allocated to the Partner pursuant to the provisions hereof; and

B. a Partner’s Capital Account shall be debited with the amount of cash and the Net Agreed Value of any Partnership property distributed to the Partner, the Partner’s distributive share of Loss and any item of expenses or losses specially allocated to the Partner pursuant to the provisions hereof.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest; provided, however, that if the transfer causes a termination of the Partnership under Code Section 708(b)(1)(B), the Capital Accounts of the Partners shall be adjusted in conformance with Treasury Regulation Section 1.704-1(b)(2)(iv)(I). A Partner that has more than one Interest shall have a single Capital Account that reflects all of its Interests, regardless of the class of Interest owned by that Partner and regardless of the time or manner in which it was acquired.

**“Capital Contribution”** means with respect to any Partner, the money and other assets contributed to the Partnership by the Partner. Any reference in this Agreement to the Capital Contribution of a Partner shall include the Capital Contribution of his predecessors in interest. The Partnership shall maintain records to reflect the initial Book Value and the Net Agreed Value of all non-cash assets contributed. In the event that the value of any Capital Contribution needs to be ascertained or clarified before or after the date of its

contribution, the General Partner, in their sole discretion, may make such a determination or define the process for making such a determination.

**“Carrying Value”** means (1) with respect to any Contributed Property, the Gross Asset Value of the property reduced as of the time of determination by all Depreciation and an appropriate amount to reflect any sales, retirements, or other dispositions of assets included in the property and, (2) with regard to other Property, the adjusted basis of the property for federal income tax purposes as of the time of determination; provided, however, that the Carrying Values shall be further adjusted as provided in this Agreement and, at the time of adjustment, the property shall thereafter be deemed to be a Contributed Property contributed as of the date of adjustment.

**“Code”** means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

**“Commitment”** means, subject in each case to adjustments on account of Dispositions of Partnership Interests permitted by this Agreement, (a) in the case of a Partner executing this Agreement as of the date of this Agreement or a Person acquiring that Partnership Interest, the amount specified for that Partner as its Commitment, and (b) in the case of a Partnership Interest issued pursuant to this Agreement, the Commitment established pursuant thereto.

**“Partnership”** means **ASPIRE COMMODITIES, LP**, a Texas Limited Partnership.

**“Control”** As used throughout this Agreement, means possession, directly or indirectly (through one or more intermediaries), of the power to direct or cause the direction of management and policies of a Person through an ownership of voting securities (or other debenture interests), contract, guardianship, voting trust or otherwise.

**“Default Interest Rate”** means a rate per annum equal to the lesser of:

A. ten percent (10.0%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate (which is also the base rate on corporate loans at large United States money center commercial banks) as quoted in the money rates section of the Wall Street Journal from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, or

B. The maximum rate permitted by applicable law.

**“Delinquent Partner”** means a Partner who does not contribute by the time required all or any portion of a Capital Contribution that Partner is required to make as provided in this Agreement.

**“Designated Key Person”** or **“Designate Key Person”** shall have the meaning assigned to it in Section 3.18. The purpose of a Designated Key Person is to tie particular Interests to a particular individual who is material to the Partnership even if they own their Partnership Interest indirectly. As such, with regards to violations hereof, a Designated Key Person shall be treated as if they were a Partner for purposes of this Agreement and the Records. If a Designated Key Person ever violated any provision of this Agreement or any other requirement in the Records (even if the particular portion thereof refers only to a Partner and not specifically to a Designated Key Person) then the Partnership Interest attributable to them, directly or indirectly, shall be treated as having violated this Agreement. No failure to mention or specify both Partners and Designated Key Persons herein shall be interpreted to exclude Designated Key Persons from being bound in the same manner and to the same degree as the Partner to whom they are associated.

**“Dispose,” “Disposing,” “Disposition,” or “Disposed of”** means a sale, assignment, gift, donation, transfer, exchange, mortgage, pledge, grant of a security interest, or any other disposition or encumbrance (including, without limitation: by court order or other operation of law, by the death of any Partner, by judicial process, by foreclosure, by levy or by attachment, and whether voluntary or involuntary), or any intended acts thereof (which may or may not be effective) which would have the effect of transferring any right, portion of a right, Interest or potential Interest in the Partnership.

**“Distributable Cash”** means, at the time of determination for any period (on the cash receipts and disbursements method of accounting), all Partnership cash derived from the conduct of the Partnership's business, including distributions from entities owned by the Partnership, cash from operations or investments, and cash from the sale or other disposition of Partnership Property, other than (1) Capital Contributions with interest earned pending its utilization, (2) financing or other loan proceeds, (3) reserves for working capital, and (4) other amounts that the General Partners reasonably determine should be retained by the Partnership.

**“Effective Date”** shall mean the effective date listed on the cover page of this Agreement, regardless of when it may actually be executed by the Partners.

**“General Interest Rate”** means a rate per annum equal to the lesser of:

- A. The Wall Street Journal prime rate (which is also the base rate on corporate loans at large United States money center commercial banks) as quoted in the money rates section of the Wall Street Journal from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, plus an additional four percent (4%); or

B. The lesser of eight percent (8%) per annum or the maximum rate permitted by application law.

**“General Partner(s)”** means any Person or Persons executing this Agreement as of the date of this Agreement as a general partner or hereafter admitted to the Partnership as a general partner as provided in this Agreement, but does not include any Person who has ceased to be a general partner in the Partnership, and does not include an Assignee of a General Partnership Interest unless the Assignee has been admitted as a General Partner. There may be multiple General Partners. Further, there may be multiple General Partners owning respectively various classes of General Partnership Interests and such ownership classification shall determine the rights, duties and obligations of those General Partners owning such a class of General Partnership Interest, including their duties as it relates to any Pool of Partnership Property. Notwithstanding anything contained herein to the contrary, only Class A Partners, whether General Partners or Limited Partners, shall be entitled to vote. Any other class of Partner, whether General Partner or Limited Partner shall have their rights restricted as detailed in this Agreement. Specifically, but without limited the generality of the foregoing, such restriction applies to Trading Classes of General Partnership Interest or Limited Partner Interests. The current and sole General Partner is **ASPIRE COMMODITIES 1, LLC**, a Puerto Rico limited liability company.

**“General Partnership Interest”** means the Partnership Interest owned in the capacity of a General Partner. There may be multiple classes of General Partnership Interests and such classes will determine the rights, duties and obligations of the General Partner owning such a class of General Partnership Interest. The initial General Partnership Interest of each General Partner is set forth in Schedule A, as the same may be amended from time to time.

**“Gross Asset Value”** means, (1) with regard to property contributed to the Partnership, the fair market value of the property as of the date of the contribution and (2) as to any property the Carrying Value of which is adjusted pursuant to this Agreement, the fair market value of the property as of the date of the adjustment, as the fair market value is determined by the General Partner using any reasonable method.

**“Lending Partner”** means those Partners, whether one or more, who advance the portion of the Delinquent Partner's Capital Contribution that is in default.

**“Limited Partner(s)”** means any Person or persons executing this Agreement as of the date of this Agreement as a limited partner or hereafter admitted to the Partnership as a limited partner as provided in this Agreement, but does not include any Person who has ceased to be a limited partner in the Partnership, and does not include an Assignee of a Limited Partnership Interest unless the Assignee has been admitted as a Limited Partner. There may be multiple Limited Partners. Further, there may be multiple Limited Partners owning respectively various classes of Limited Partnership Interests and such ownership classification shall determine the rights, duties and obligations of the Limited Partner owning

such a class of Limited Partnership Interest including their duties or rights as it relates to any Pool of Partnership Property. Notwithstanding anything contained herein to the contrary, only Class A Partners, whether General Partners or Limited Partners, shall be entitled to vote. Any other class of Partner, whether General Partner or Limited Partner shall have their rights restricted as detailed in this Agreement. Specifically, but without limited the generality of the foregoing, such restriction applies to Trading Classes of General Partnership Interest or Limited Partner Interests.

**“Limited Partnership Interest”** means the Partnership Interest owned in the capacity of a Limited Partner. There may be multiple classes of Limited Partnership Interests and such classes will determine the rights, duties and obligations of the Limited Partner owning such a class of Limited Partnership Interest. The initial Limited Partnership Interest of each Limited Partner is set forth in Schedule A, as the same may be amended from time to time.

**“Liquidator”** means the Partner or Partners or a person or committee selected by a Majority in Interest of Partners who will commence to wind up the affairs of the Partnership and to liquidate and sell its properties when there has been a dissolution of the Partnership. The term shall also refer to any successor or substitute Liquidator.

**“Majority in Interest”** means those Partners whose Partnership Interests aggregate more than fifty percent (50%) of the Partnership Interests of all Partners in question, including votes among any particular Class of Partners. If at any point an action is required to be approved by multiple classes of Partners, then the aggregation for such classes shall be allocated proportionately according to the Capital Accounts of all Partners in each of the classes added together. Anywhere that a Class or Partner type is not specified or clearly implied by this Agreement, then it shall mean only Class A Partners.

**“Operating General Partner”** or **“Administrator”** shall have the same meaning as **“President”** and means any person elected to be such, as defined herein, but does not include any Person who has ceased to be such for any reason. The General Partners by Ninety Percent in Interest of the Class A General Partners may designate one of the General Partners as an Administrator (**“Administrator”**). A General Partner may further be an Administrator as to a specific Class of Partnership Interests and/or Pool of Partnership Property. A designated Administrator shall serve until the designation is revoked or the Administrator ceases to serve for any other reason. If a Administrator is designated, the Administrator is authorized and directed to manage and control the Property and the business of the Partnership (or the Pool or Class thereof, except as may be limited by the Class A General Partner). If a Administrator is designated, any reference to **“General Partner”** in this Agreement shall also include **“Administrator”** if applicable but only as to those classes, Pools, Property, actions or authority contemplated or delegated. The initial Administrator shall additionally include any of the following individuals: **ADAM C. SINN**.

**“Partner”** means any Person executing this Agreement as of the date of this Agreement as a Partner or hereafter admitted to the Partnership as a Partner as provided in

this Agreement, but does not include any Person who has ceased to be a Partner in the Partnership. “Partner” means generically any General Partner or Limited Partner of the Partnership or, in the case of a specifically contemplated partner, the partner to whom reference is made, unless otherwise defined or stated otherwise herein.

**“Partnership”** means **ASPIRE COMMODITIES, LP**, a Texas limited partnership.

**“Partnership Interest” or “Interest”** means the interest of a Partner (whether in their capacity as a General Partner or Limited Partner) in the Partnership and all rights associated therewith or contained thereunder as specified in this Agreement or the Act, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to be consulted as to whether they consent or approve with regard to any Partnership action. With respect to any Partner, their “Interest” or “Percentage Interest” means a fraction (expressed as a percentage), the numerator of which is that Partner’s number of Partnership units in a particular Class (whether as General Partner or Limited Partner) of Partnership ownership and the denominator of which is the total number of then outstanding Partnership units as to that specific Class of Partnership ownership. There may be multiple classes of Partnership Interests (i.e. Class A, Class B, etc.), as set forth in Schedule A, as the same may be amended from time to time. Notwithstanding anything to the contrary contained herein, only Class A Partnership Interests, whether General Partnership Interests or Limited Partnership Interests, has voting rights under this Agreement herein.

**“Permitted Transferee”** means a trust, including a charitable remainder trust, corporation, Limited Partnership, or partnership Controlled by such Partner, or another Person Controlling, Controlled by, or under common Control with such Partner.

**“Person”** is defined broadly to include all possible human or legal “persons” and includes an individual, partnership, limited partnership, limited liability company, foreign entity of any type, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity (or any other as defined in the Act). “Party” shall mean, generically, any Person who is a party to this agreement (or to whom reference is made) and “Parties” shall mean each and every Party taken collectively.

**“President”** is defined in Section 6.2.3.1 hereof.

**“Proceeding”** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative.

**“Profits” and “Losses”** means for each fiscal year or other period, an amount equal to the Partnership'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), and any guaranteed payments paid to the Partners, shall be included in taxable income or loss), with the following adjustments:



A. any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

B. any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;

C. gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Carrying Value or Section 704(e) Carrying Value of the property disposed of, as the case may be, notwithstanding that the adjusted tax basis of such property differs from its Carrying Value or Section 704(e) Carrying Value;

D. in lieu of depreciation, amortization and other costs recovery deductions taken into account in computing taxable income or loss, there will be taken into account Depreciation for the taxable year or other period;

E. if the Carrying Value or Section 704(e) Carrying Value, as the case may be, of any Partnership property is adjusted under Section 4.4.2, the adjustment will be taken into account as gain or loss from disposition of the asset for purposes of computing Profits or Losses;

F. notwithstanding any other provision of this definition, any items which are specially allocated pursuant to subsection 4.6 of this Agreement shall not be taken into account in computing Profits or Losses.

**“Property”** means all real and personal property which has been contributed to or acquired by the Partnership and all increases and decreases applicable to the Property.

**“Treasury Regulations” or “Regulations”** means the Treasury Regulations promulgated under the Code, as amended.

**“Unanimous Consent”** means the consent of all persons eligible to vote on an issue, whether Limited Partners or General Partners and including votes among classes of Partners or groups of Partners.

**“Unauthorized Assignee”** is defined in Section 3.3.8 hereof.

**“Unrealized Gain”** attributable to Partnership property means the excess of the Gross Asset Value of the property over the carrying Value or the Section 704(e) Carrying Value, as the case may be, of the property as of the date of determination.

**“Unrealized Loss”** attributable to Partnership property means the excess of the Carrying Value or the Section 704(e) Carrying Value, as the case may be, of the property over its Gross Asset Value as of the date of determination.

Other terms defined herein have the meanings so given them.

**1.2 Name.** The name of the Partnership is **ASPIRE COMMODITIES, LP** and all Partnership business must be conducted in that name or such other names that comply with applicable law as the General Partners may select from time to time.

**1.3 Formation.** The Partnership has been organized as a Texas Limited Partnership by the filing of the Articles and the issuance of a certificate of filing for the Partnership by the Secretary of State of Texas.

**1.4 Term.** The Partnership commenced on the date the Secretary of State of Texas issued a certificate of filing for the Partnership and shall continue in existence for the period fixed in the Articles for the duration of the Partnership, or such earlier time as this Agreement may specify.

**1.5 Mergers and Exchanges.** The Partnership may be a party to (a) a merger, or (b) an exchange or acquisition of the type described in the Act subject to the requirements of this Agreement.

**1.6 No State-Law Partnership.** The Partners intend that the Partnership be classified as a Limited Partnership and not be a general partnership or joint venture, for any purposes other than federal and state tax purposes, if applicable, and this Agreement may not be construed to suggest otherwise.

**1.7 General Business Matters.**

**1.7.1 Books and Records.** The books and records of the Partnership shall be kept at the principal office of the Partnership or at such other places as the General Partners shall from time to time determine. The terms “Corporate Records,” “Partnership Records” or “Records” are used interchangeably in this Agreement and in all the Ancillary Documents and shall mean: 1) the Standard Documents, 2) copies of all resolutions and/or consents of the Partnership, its Partners, Officers, Administrators or General Partners contained in the Records, and 3) any other documents or records determined from time-to-time by resolution of the General Partners (subject to veto right or limitations set by the Partners) to be included in the Corporate Records, provided however, that the determination of inclusion or exclusion regarding certain documents or records need not be the same for all Persons.

**1.7.2 Right of Inspection / Waiver of Full Access to Information.** Because the ability of the Partnership to achieve its Business Purpose is highly dependent on secrecy and the confidentiality of systems, strategies, and information, the right to access information, including but not limited to the Records, is restricted to significantly. Each Partner or General Partner is entitled to information and the Records only under the circumstances and subject to the conditions stated in the Act, as may be further clarified or restricted by this Agreement. Specifically, the Partnership may determine, due to contractual obligations, business concerns, or other considerations, that certain information or Records regarding the business, affairs, Property, and financial condition of the Partnership shall be kept confidential and not provided to some or all other Partners, General Partners, Administrators or Officers and that it is not necessary or reasonable for those Persons to examine or copy certain information or Records. Each Partner and General Partner agrees that the judgment of the Partnership shall be final and conclusive and hereby fully releases, both the Partnership and all Persons involved in making such determinations, both individually and in their capacity as a Partner, General Partner, Administrator or Officer, from their determinations regarding such private and confidential information. The limitation on access to information contained in this paragraph shall not apply to Partners **ADAM C. SINN** or his Affiliates for so long as they remain Class A Partners or a Designated Key Person.

Generally and provided that such a determination to withhold has not been made by the Partnership (and further provided that the Partnership shall always reserve the right, at any time, to later restrict access to such information except as to the excluded Partners above), any currently admitted Partner or General Partner of record, except as limited otherwise herein, shall have the right to examine, at a reasonable time or times as determined by the Partnership, the books, Records, minutes and records of the Partnership. Such inspection shall be, at a minimum, only at an appointed time period and place as determined by the Partnership after a reasonable time for preparation by the Partnership, following a written request for such access from the requesting Partner or General Partner, and after any and all reasonable conditions which may be required by the Partnership at that time have been met, including requiring confidentiality and non-competition agreements from such Person(s) as the Partnership deems advisable (including from Affiliates or other Persons reasonably related to the requesting Person).

Any production of Records, books or other information: a) shall be at the cost of the Person(s) requiring such production (including reasonable charges from the Partnership for producing such which the Partnership may require to be paid in advance), b) may not be done in a way that has the effect of harassing the Partnership or materially hindering or endangering it from achieving its Business Purpose, and c) shall be limited to: 1) the Standard Documents, as defined herein, or 2) the non-waivable documents and information required by the Code and/or the Act, if it is greater than the Standard Documents. For the purposes of the Partnership, "Standard Documents" shall mean only the following: 1) basic historical end of year profit & loss statements for the three years prior to the request for documents but only as to those portions of the Partnership for which such Person had a Partnership Interest in or management oversight over, such as a Pool of Property; 2) basic

historical end of year balance sheets for the three years prior to the request for documents but only as to those portions of the Partnership for which such Person had a Partnership Interest in or management oversight over, such as a Pool of Property; 3) a W-9 from the Partnership together with any federal or state tax documents pertaining to the Person requesting information directly; and 4) the most current and Partnership Agreement of the Partnership, although such may exclude a roster of Partners if the Partnership deems such exclusion advisable.

The forgoing notwithstanding, any non-waivable or non-amendable rights under the Act of an Assignee, Partner, or General Partner which are attempted to be modified herein, if any, (including rights to inspect the books and Records of the Partnership or to receive information if such is determined to non-waivable and non-amendable) shall be granted to that Person but shall be otherwise limited and restricted to the maximum extent permitted by law in the State of Texas. If it is deemed that a Person has the right to inspect the books and Records of the Partnership (or any other right to require information, accounting of transactions or meetings with the Partnership or its Partners) then such shall occur but only in the manner and according to the procedure as defined in this Agreement.

Any authorized inspection may be made by any agent or attorney of the Person requiring the inspection, provided that the agent or attorney is bound by the same confidentiality obligations of the Person for whom the agent or attorneys is inspecting. The Partnership may impose any reasonable conditions precedent to such inspection by an agent or attorney, including requiring confidentiality agreements and/or non-compete agreements from any and all Persons involved in such inspection. Any production of Records, books or other information may not be done in a way that has the effect of harassing the Partnership or materially hindering or endangering it from achieving its Business Purpose.

**1.7.3 Financial Records.** All financial records shall be maintained and reported based the accounting principles adopted and defined herein or otherwise adopted by the General Partners. Without limiting the generality of the foregoing, the Partnership shall initially and generally use GAAP, as defined herein.

**1.7.4 Principal Office(s) and Headquarters.** The office or appointed Person of the Partnership in the State of Texas shall be located at such place as the General Partners may determine from time to time. The Partnership shall conduct business at such other or additional locations, offices, outposts, appearances or presences, whether within or outside of the State of Texas or Puerto Rico, as the General Partner may designate from time to time in accordance with the Act and the laws in place at that location and its other locations. The initial headquarters of the Partnership shall be in San Juan, Puerto Rico.

Prior to the qualification of the Partnership to conduct business in any jurisdiction other than Texas, the General Partners shall cause the Partnership to comply, to the extent procedures are available and those matters are reasonably within the control of the General

Partners, with all requirements necessary to qualify the Partnership as a foreign entity in that jurisdiction. At the request of the General Partners each Partner shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with the terms of this Agreement that are necessary or appropriate to qualify, continue, and terminate the Partnership as a foreign entity in all jurisdictions in which the Partnership may conduct business.

**1.7.5 Registered Office.** The address of the initial registered office of the Partnership and the initial registered agent at such address shall be as set forth in the Articles. The registered office and the registered agent may be changed from time to time by action of the Partners and by filing the prescribed form with the Texas Secretary of State.

**1.7.6 Change of Address & New Offices.** The Partnership may designate or change any Address or office at the election of the General Partner.

**1.8 Simple and Not Series.** The Partnership is created as a simple Limited Partnership and not as a series Limited Partnership, if one is possible. No Series (“Series”) are currently authorized under the Articles or this Agreement. The Partnership reserves the right to amend the structure, in the manner prescribed by the Act, and add series (and to segregate Property, liabilities, Profits and Losses into such series) at any time in the future at the election of the Partners. In such a case, the allocation of Partnership Interests to each of the Series need not be equal or proportionate as to each Series or Partner’s Partnership Interests.

**1.9 Business Purpose and Allocation of Efforts.** The Partnership is formed to transact any and all lawful businesses and engage in any lawful act and/or activities for which limited liability companies may be organized under the Act, and further to engage in any other business or activity that may be incidental, proper, advisable or convenient to accomplish the foregoing purpose, including, without limitation, obtaining financing therefor, and which is not forbidden by the law of the jurisdiction in which the Partnership engages in that business. The Business Purpose (“Business Purpose”) of the Partnership, for purposes of non-competition, corporate opportunities and other provisions contained in this Agreement or elsewhere among the Partners shall be defined as follows: **engaging in commodities, oil, gas, transmission rights, futures, options, swaps, and electricity trading and any other ancillary activities thereto, as may be further defined or clarified by the General Partners from time to time.**

Partners or their Designated Key Person are expected to devote full-time effort to the Partnership or the other Primary Operating Companies, as determined, agreed and allocated by the General Partners, managers or officers thereof unless such requirement is otherwise waived by the Partnership (including waiver before or after the breach of this provision). Failure of such Partner or their Designated Key Person to comply with this provision for a period exceeding either: 1) sixty (60) consecutive calendar days or 2) forty five (45) Business Days in any consecutive one hundred eighty (180) day period shall be deemed to have violated this provision and may be treated by the Partnership as if they made an unauthorized Disposition of their Partnership Interests. If the material reason for their failure to devote full-time effort is due to incapacity of such Partner or their

Designated Key Person, as determined by the General Partners, then such Partner shall be deemed to have left with Good Reason. Otherwise, they shall be deemed to have left without Good Reason.

**1.10 Self-Dealing, Corporate Opportunity and Non-Competition.** Provided the terms of the transaction are reasonably no less favorable than those the Partnership could obtain from unrelated third parties, the Partners, Designated Key Person, Administrators, General Partners, and/or Officers shall have, including by or through their Affiliates, the authority to enter into any transaction with or in cooperation with the Partnership despite the fact that another party to the transaction may be (1) a trust of which a Partner is a trustee or beneficiary; (2) an estate of which a Partner is a personal representative, owner, heir or beneficiary; (3) a business Controlled by an Affiliate, one or more Partners, or a business of which any Partner is also an owner, director, officer or employee; (4) any Affiliate, employee, stockholder, associate, manager, partner, or business associate of the Partnership; (5) any Partner, acting individually; or (6) any relative of a Partner or Administrator. No contract or transaction contemplated in this paragraph shall be void or voidable solely for that reason, if:

A. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the General Partners or the committee contemplating such, and the General Partners or committee in good faith authorizes the contract or transaction by their affirmative vote; or

B. The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Partners entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Partners; or

C. The contract or transaction is fair as to this Partnership as of the time it is authorized, approved, or ratified by the General Partners, a committee thereof, or the Partnership.

Common or interested Partners may be counted in determining the presence of a quorum at a meeting of the Partners or General Partners or of a committee which authorizes the contract or transaction. This provision is meant to be illustrative and not a requirement; it shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

Unless otherwise stipulated and agreed herein or elsewhere in the Records, it is expressly understood that each Partner, General Partner, Administrator or Officer is entitled to invest his personal assets for his own account and is entitled to conduct his personal affairs and investments without regard to whether they constitute a Partnership "opportunity." No Partner or General Partner shall be obligated to present any "opportunity" to the Partnership prior to engaging in such opportunity themselves unless any of the following are true: a) the activity would be reasonably in line with the Business Purpose of the Partnership, b) that Person has agreed to non-competition restrictions and such opportunity would reasonably seem to violate those restrictions against them or c) the Partnership was the original intended recipient of the opportunity and the Person: 1)

intentionally, negligently, or simply by their inaction undermined such opportunity for the Partnership in an effort to induce the other parties to enter into such opportunity with the Person (or one of their Affiliates) instead of the Partnership; or 2) intentionally, negligently, or simply by their inaction attempted to divert the opportunity from the Partnership. The Partners agree to immediately provide to the Partnership any and all information necessary to determine whether an opportunity should have been submitted to the Partnership. violation of this provision regarding opportunities may be rectified and cured by such Person if they, within thirty (30) days after receiving notice of a proven violation from the Partnership, surrender and/or assign such opportunity to the Partnership on the same or reasonably the same terms offered to them.

Unless otherwise waived by the consent of ninety percent (90%) in Interest of the Class A Partners (including the Partnership Interest of the one who is seeking such waiver), all Partners (together with their Affiliates and Designated Key Person) shall be subject to non-compete, non-solicitation and non-circumvention requirements during their time as a Partner and for a period of time after they cease to be a Partner. Unless otherwise agreed by the Partnership and such Person that the time period should be longer or shorter in duration, the time period that this provision shall be effective is during their term as a Partner and following the termination of their Partnership or their employment with the Partnership, for any reason, for a period of one (1) year following the date that such ended.

No Partner or Designated Key Person shall, directly or indirectly, for themselves, or through, on behalf of or in conjunction with any Person or Affiliate: a) divert or circumvent (or attempt to do either of those) a current or prospective business transaction, relationship or customer of the Partnership to any competitor, including themselves or their Affiliate, by direct or indirect inducement or otherwise; b) divert, circumvent, induce, or encourage to terminate, abandon, quit or get fired (or make any attempt to do any of those) any Partner, Administrator, Officer, employee, vendor, supplier, distributor, or other contractor of the Partnership; or c) do or perform, directly or indirectly, any other act which a reasonable person would anticipate to be competitive, injurious or prejudicial to the goodwill associated with the Partnership, its Business Purpose and/or the Partnership Property.

If a General Partner shall breach this provision, as determined by the Partners in their sole discretion, then such General Partner shall immediately be removed from their position as a General Partner and have their interest converted to that of a Limited Partner.

In the event any Partner or Designated Key Person shall breach any provision of this Section, the Partner and/or Designated Key Person may be terminated immediately from any and all positions with the Partnership without any further need for an opportunity to cure, and/or expelled as a Partner, have its Partnership Interests be converted to that of an Unauthorized Assignee, and repurchased as if such Partner was terminated for Cause.

This provision relating to non-competition, non-solicitation and non-circumvention is a material provision of this Agreement and is necessary to protect the Partnership and the Partnership Property. The Partnership may require that any Administrator, Partner, Designated Key Person, or

Officer, prior to becoming such or at any time that they serve in any such role, enter into any and all reasonable further documentation to evidence and/or clarify this provision. If any Person should refuse to sign such further documentation within fifteen (15) days after receiving a request to do so from the Partnership, then they shall thereafter be expelled from any and all of their positions with the Partnership and its Affiliates and shall be deemed in breach of this provision.

**1.11 Allocation of Partnership Property.** The General Partners may from time to time and at their discretion in the management of the overall Partnership Property, pool the Partnership's Property into different groups of Property ("Pools") in order to accomplish any of the following objectives: a) define or limit management responsibilities with regard to such Pool by various Partners or classes of Partners, including Trading Partners, b) allow availability and use of such Pool by various Partners or classes of Partners, including Trading Partners, while limiting others' availability, information about and use thereof. Such Property in a particular Pool may, but need not be, assets contributed by one of the Partners managing them, provided however, that at least some of the contribution from a Trading Partner shall be placed in at least one Pool over which they have management responsibility and/or Agreed Partnership Splits interests therein.

The General Partner may assign the varying Pools of Property to specific classes of Partners, including Trading Partners, for management thereof. Further, regardless of who actually contributed the Property of a particular Pool, the Class A Partner may, upon agreement with any other Partners from a particular Class, agree to certain divisions of profits and losses among the Partners in that Class and the Class A Partners. If a the Class A Partner later changes or lowers the Property contained in a Pool (or eliminates or restructures certain Pools), it shall have no effect on the allocation of profits and losses previously attributable the Partners who have been delegated authority over and/or Profits and Loss interests in the Pool prior to such change.

By way of example, the Class A Partners may define a "Class B Trading Pool" and allocate \$10,000,000 in Property to such Pool. The Class A Partners may further agree with the Class B Partners that they will divide the profits and losses generated off investing such Class B Trading Pool among the Class A Partners and the Class B Partners, in a certain fashion or proportion. In this case perhaps it could be thirty percent (30%) to the Class B Partners and seventy percent (70%) to the Class A Partners, with such profits being further divided proportionately among each individual Classes various Partnership Interests after allocation to that individual Class.

**1.12 Non-Disparagement.** The Partners and Designated Key Person (including by or through their Affiliates) hereby forever and continually covenant that they will not disparage, slander or otherwise do anything which would have the reasonably anticipated effect of materially hurting or undermining the Partnership or its Business Purpose.



## **ARTICLE II MEETINGS**

**2.1 No Annual Meeting.** Except as required by law, annual meetings (whether of Partners or General Partners shall not be required for the Partnership. If required, by law or hereunder, the annual meeting of the Partners shall be held the first Saturday in the month of November in each year at 10:00 a.m., for the purpose of electing General Partners, and for the transaction of such other business as may come before the meeting, and the annual meeting of General Partners shall immediately follow. If the day fixed for the annual meetings is a legal holiday, such meetings shall be held on the next succeeding Business Day. If a designation is necessary and the designation of General Partners is not done on the day designated, or at any adjournment thereof, the Partners shall cause the designation to be held at a special meeting of the Partners as soon thereafter as it may conveniently be held. If annual meetings are not required, the General Partners shall serve until incapacity or death or special election of successor.

**2.2 Regular Meetings.** The Partners or General Partners, including as to meetings among a class of Partners or General Partners, may by resolution of a Majority in Interest set the time and place for the holding of regular meetings of the Partnership and any and all Partners (or in the case of a Class of Partners, that Class may only call a meeting of that Class) and may provide that the adoption of such resolution shall constitute notice of such regular meetings.

**2.3 Special Meetings.** Special meetings of the Partners or General Partners for any purpose or purposes, unless otherwise proscribed by statute, may be called by resolution of a Majority in Interest of the Partners or General Partners (provided that such is not a part of a scheme to harass or hinder the Partnership, its Partners or General Partners) upon Notice or may be held by unanimous consent without notice. While a Class of Partners may call a meeting in this manner as to their particular Class, only a Class A Partner may call a special meeting of any other Class of Partners or the Partnership as a whole.

**2.4 Notice of Meeting.** Notice stating the place, day and hour of any Partner or General Partner meeting and, in case of a special meeting, the purposes for which the meeting is called, shall be delivered not less than three (3) days before the date of the meeting, either personally or by mail, by or at the direction of any Partner or General Partners, to each Partner of record or General Partner entitled to vote at such meeting. When all the Partners or General Partners of the Partnership are present at any meeting, or if those not present sign in writing a waiver of notice of such meeting, or subsequently ratify all the proceedings thereof, the transactions of such meeting are as valid as if a meeting were formally called and notice had been given.

**2.5 Quorum.** At any meeting of the Partners, a Majority in Interest represented in person or by proxy, shall constitute a quorum at a meeting of Partners. A majority of the General Partners shall be a quorum at a meeting of General Partners. If less than a quorum is represented at a meeting, a majority of those that are present may adjourn the meeting from time to time, without further notice, until such time as a quorum shall be present or represented. Any business may be transacted which might have been transacted at the meeting as originally notified. The

Partners or General Partners present at a duly organized meeting convened with a quorum may continue to transact business until adjournment, and the subsequent withdrawal from the meeting of any Partner or General Partner represented in person or by proxy, or the refusal of any Partner or General Partner represented in person or by proxy to vote, shall not affect the presence of a quorum at the meeting. If the Partners or General Partners shall call a meeting and proper Notice be given as required in this Agreement, but the necessary Partners or General Partners to constitute a quorum shall fail or refuse to attend on more than two (2) occasions (particularly if such is done for the purpose of hindering the Partnership or delaying a vote), then the calculation of a quorum shall be based on those Partners and General Partners who did not fail or refuse to attend the initial meeting called for such purposes.

**2.6 Proxies.** At all meetings of Partners, a Partner may vote by proxy executed in writing by the Partner or by his duly authorized attorney-in-fact. Such proxy shall be filed with the General Partners of the Partnership or presented to the Partners before or at the time of the meeting. No proxy shall be valid after three (3) months from date of execution, unless otherwise provided in the proxy.

**2.7 Voting by Certain Partners.** Any Partnership Interest held by a corporation, trust, partnership or company may be voted by any officer, trustee, partner, manager, agent or proxy as the bylaws, trust agreement, partnership agreement, or regulations of such entity may prescribe or, in the absence of such provision, as such entity may determine by resolution. Any Partnership Interest held by a trust, estate, ward or other person acting through an attorney-in-fact or other personal representative, guardian or conservator may be voted by the trustee, personal representative, administrator, executor, attorney-in-fact, guardian or conservator, either in person or by proxy, without a transfer of ownership certificates into the name of the legal representative. Any Partnership Interest held by a married couple as their community property may be voted by either spouse, acting alone, hereunder unless a particular spouse has been specified and appointed by the Partner in which case the Partnership, in their sole discretion, shall have the right to refuse or approve the action of the other spouse. In no event shall the Partnership ever be held liable by the Partner, their spouse, or any other Person for exercising its discretion and allowing or refusing to allow a particular Person to vote or act on behalf of a particular Partnership Interest held or claimed to be held by a Partner.

**2.8 Manner of Acting.**

**2.8.1 Formal Action.** The vote of the Partners on a particular issue shall be in accordance with percentage of Partnership Interests in the Partnership held by each Partner. Each Partner shall be entitled to one vote or a fraction of one vote per one-percent of Partnership Interest or fraction thereof owned by the Partner on each matter. In the case of a vote by General Partners, each General Partner shall have one vote. In this Agreement, any reference to a vote or decision of the Partners shall generally mean only the Class A Partners unless otherwise explicitly specified to the contrary. Specifically referencing a vote as restricted to Class A Partners is done solely for clarity and shall not be required as all other Classes are non-voting as to Partnership wide decisions.

**2.8.2 Procedure.** Unless the Articles or this Agreement provide otherwise, action shall be by a majority of those Partners' votes present at any meeting in which a quorum is established. Action by General Partners shall be by a Majority in Interest of General Partners present at any meeting in which a quorum is established. A record shall be maintained of the meeting. The Partners or General Partners may adopt their own rules of procedure which shall not be inconsistent with this Agreement.

**2.8.3 Presumption of Assent.** A Partner or General Partner who is present at a meeting at which action on any matter is taken shall be presumed to have assented to the action taken, unless their dissent shall be entered in the minutes of the meeting or unless he shall file their written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent in the manner for Notice prescribed herein to the secretary of the meeting immediately after the adjournment of the meeting. Such right to dissent shall not apply to anyone who voted in favor of such action.

**2.8.4 Informal Action.** Unless otherwise provided by law, any action required to be taken, or which may be taken, at a meeting of the Partners or General Partners, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the necessary amount of the Partners or General Partners entitled to vote with respect to the subject matter thereof, provided however, that all Partners or General Partners entitled to vote have received sufficient Notice of such action prior to the action being taken. Alternatively, any Partner or General Partner may vote against or formally evidence their dissent to such action (after such has been formally proposed and a vote has been called) in which case they shall be deemed to have waived any required Notice. For purposes of acting under this section, votes may be taken by email among the Partners or General Partners (and a formal signature shall not be required) provided that the emails are sufficiently clear to give notice that a formal vote is being taken. Unless otherwise specified, prompt notice of the taking of an action under this Agreement that require less than unanimous written consent of the Partners and that may be taken without a meeting shall be given to the Partners who have not consented in writing to the taking of the action but who are affected thereby.

**2.8.5 Telephonic Meeting.** Partners or General Partners may participate in any meeting by means of conference telephone or similar communication if all Persons participating in such meeting can hear one another for the entire discussion of the matter(s) to be voted upon. Participating in a meeting pursuant to this Section shall constitute presence in person at such meeting.

**2.9 Calling Meetings by Non-Class A Partners.** A non-Class A Partner or Trading Partner may call meetings or special meetings as prescribed herein but only as to the Partners and General Partners of their particular Class of Partnership Interests. No Trading Partner shall have the right to call meetings of the entire Partnership, whether of Partners or General Partners, unless

otherwise approved or ratified by a Majority In Interest of the Class A Partners or the General Partners.

### **ARTICLE III PARTNERSHIP**

**3.1 Admission of Partners.** The initial Partners of the Partnership are the Persons executing this Agreement as of the date of this Agreement as Partners, each of which is admitted to the Partnership as a Partner effective contemporaneously with the execution by such Person of this Agreement. After the formation of this Partnership, a Person becomes a new Partner:

A. In the case of a Person acquiring a Partnership Interest directly from this Partnership, on compliance with (a) the provisions of this Agreement governing admission of new Partners, and (b) the terms for admission set by the General Partners in connection with the offering; and

B. In the case of an Assignee of a Partnership Interest, as set forth in Section 3.4 hereof.

**3.2 Representations and Warranties.** Each Partner hereby represents and warrants to the Partnership and each other Partner that:

A. If that Partner is a corporation, it is duly organized, validly existing, and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein);

B. If that Partner is a Limited Partnership, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign Limited Partnership in the jurisdiction of its principal place of business (if not organized therein);

C. If that Partner is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in clause (a), (b), or (c), as applicable, are true and correct with respect to each partner, trustee, or other Partner thereof;

D. It has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, Managers, officers, partners, trustees, beneficiaries, or other Persons

necessary for the due authorization, execution, delivery, and performance of this Agreement by that Partner have been duly taken;

E. It has duly executed and delivered this Agreement to the Partnership; and

F. Its authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which that Partner is a party or by which it is bound.

G. that, except as already disclosed in writing and formally approved or ratified by the Partnership, there is no claim, Proceeding, or other item currently pending or materially threatened which would reasonably be calculated to have an adverse effect on the Partners, the Partnership or their Affiliates or that purports to or could reasonably affect the legality, validity, or enforceability of this Agreement or any of the other Ancillary Agreements. The Parties and their Affiliates are current on all taxes due to any governmental entity, except those which are being contested in good faith and for which the Party has set up adequate reserves sufficient to satisfy the General Partner.

H. If qualification is necessary in any other jurisdiction in order for this Agreement to be enforceable, the Partner has duly qualified and is in good standing in that jurisdiction (and with any governmental or quasi-governmental body thereof).

### **3.3 Restrictions on the Disposition of an Interest.**

**3.3.1 Construction.** It is intended that this Partnership shall not allow free transferability of interest and, to the extent possible, this Agreement shall be read and interpreted to prohibit the free transferability of interest of any Partner. Any attempted Disposition by a Person of a Partnership Interest, other interest or right, or any part thereof, in respect of the Partnership other than in accordance with this Section shall be, and is hereby declared, null and void *ab initio*.

**3.3.2 Notice of Restriction on Transfer.** The ownership and transferability of Partnership Interests in the Partnership are substantially restricted. Neither record title nor beneficial ownership of a Partnership Interest may be Disposed of, transferred or encumbered except as set forth in this Agreement.

**3.3.3 Justification.** This Partnership is formed by those who know and trust one another, who will have surrendered certain management rights and assumed management responsibility and risk based upon their relationship and trust. Ownership is material to the business and investment objectives of the Partnership and its federal tax status. An unauthorized transfer of a Partnership Interest could create a substantial hardship to the Partnership, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to

protect and preserve existing relationships based upon trust and the Partnership's capital and its financial ability to continue.

**3.3.4 Restriction on Transfer.** Except as provided in this Section, neither record title nor beneficial ownership of a Partnership Interest may be Disposed of without the consent of all Class A General Partners. This restriction on transfer or assignment applies to any transferor, whether a Partner or an Assignee. To be a valid assignment, in addition to meeting the other requirements of this Section, the assignment must be in writing, the terms of which are not in contravention of any of the provisions of the Agreement, and the assignment must be received by the Partnership and recorded on the books of the Partnership. Until the effective date of an assignment of a transferred interest (and all further requirements are met), the Partnership shall be entitled to treat the assignor of the transferred interest as the absolute owner thereof in all respects. Upon the effective date of a Disposition conducted pursuant hereto (and the meeting of all requirements herein are met), the transferee shall be an Unauthorized Assignee unless otherwise elected to be an Authorized Assignee or admitted Partner but the Partnership.

**3.3.5 Disclosures.** The Partnership Interests have not and will not be, registered under federal or state securities laws. Partnership Interests may not be offered for sale, sold, pledged, or otherwise transferred unless so registered, or unless an exemption from registration exists and the Partnership has approved such offering. The availability of any exemption from registration must be established by an opinion of counsel, whose opinion must be satisfactory to the General Partners.

**3.3.6 Permitted Transfers.** In the following circumstances, Disposition of a Partnership Interest, or any part thereof (or right thereunder), is permitted to a Permitted Transferee without necessity of obtaining the consent of the Partnership.

A. **Intervivos Estate Planning Transfers.** A Partner who is doing such for estate planning, tax planning or wealth preservation purposes will have the right to make transfers of their Partnership Interest (provided that such would not reasonably endanger any rights or interests of the Partnership or other Partners), with or without consideration, to a Permitted Transferee, who will be an Authorized Assignee. In the case where such Disposition would have any potential adverse effect on the Partnership or other Partners, then such Disposition (even if it is to a Permitted Transferee) shall be submitted to the Partnership for approval, provided however, that the approval of such Disposition shall not be unduly or unreasonably withheld or delayed.

**3.3.7. Nonrecognition of an Unauthorized Transfer.** The Partnership will not be required to recognize the interest of any transferee who has obtained a purported Partnership Interest as the result of a transfer or assignment that is not authorized by this Agreement. If there is a doubt as to ownership of a Partnership Interest or who is entitled to Distributable Cash or liquidating proceeds or other Property, the Partnership may

accumulate the same until the issue is resolved to the satisfaction of the General Partners. In the event any Person purports to be an Assignee, but is not an Authorized Assignee under this Agreement, the Partnership shall have the right, but not the obligation, to seek a declaratory judgment to determine whether such Person is an Assignee. The Partnership Interest in question shall bear the legal and administrative expenses of the Partnership in making such determination, which expenses may be offset against the Partnership Interest as damages arising from the unauthorized Disposition.

**3.3.8 Acquisition of Interest Conveyed Without Authority.** If any Person: 1) acquires a Partnership Interest without authorization 2) is the beneficiary of a unapproved Disposition, 3) asserts any material Control over a Partnership Interest but is not an approved Partner and such Control lasts more than twenty (20) days (or a lower number of days if such assertion of Control would endanger the operations of the Partnership or the interests and rights of the other Partners), or 3) becomes an Assignee of an Interest which, in the case of all of the above, is the result of: (a) an order of a court which the Partnership is required by law to recognize, including but not limited to a court order involving a divorce proceeding of a Partner directly or indirectly, (b) a Partner's interest in the Partnership being subjected to a lawful "charging order," (c) a Partner making any other unauthorized Disposition of a Partnership Interest, including having their Partnership Interest foreclosed upon (or assigned in lieu of foreclosure), which the General Partners determine that the Partnership is required by law to recognize (whether or not they have obtained a declaratory judgment to that effect), (d) a Partner becoming a Bankrupt Partner, (e) the death of a Partner, (f) the incapacity or incompetency of a Partner, including a formal or informal guardianship or receivership Proceeding, whether temporary or otherwise, or (e) any other reason by which a Partnership Interest (or any right thereunder) is held by someone who is not a Partner or Authorized Assignee (or causes a shift in Control away from such Persons), such Person shall be an "Unauthorized Assignee" of the interest. The Partnership will have the unilateral option (but not the obligation) to acquire the interest of the Unauthorized Assignee or a Class Z Partner, or any fraction or part thereof, upon the following terms and conditions:

A. The Partnership will have the option to acquire the interest, at any time thereafter (unless such person later becomes a Partner or Authorized Assignee) by giving written notice to the transferee or Unauthorized Assignee of its intent to purchase such interest.

B. The valuation date for the determination of the Purchase Price of the interest will be 1) the date of the Disposition if notice of intent to purchase is delivered within ninety (90) days following the Partnership becoming aware of such Disposition or 2) the date on which the Partnership delivers its notice of intent to Purchase.

C. Unless the Partnership and the Unauthorized Assignee agree otherwise, the amount paid will be the Purchase Price for the interest, or any fraction

thereof in the case of a partial purchase by the Partnership, payable as prescribed herein

D. Closing of the sale will occur at the principal office of the Partnership or at such other place as the General Partners shall determine, including any reasonable changes thereto. Regardless of the payment terms, the selling Person shall unequivocally assign the Partnership Interests on the day of closing, free of any lien or reservation.

E. The Purchase Price, to the extent it can, shall be paid by with the proceeds, if any, received by the Partnership from insurance held on the life of the deceased Partner (or Designated Key Person), less any amounts necessary to be held in reserve or for operations, as determined by the General Partners. In order to reduce the burden upon the resources of the Partnership, the Partnership will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in ten (10) equal annual installments which shall include interest at the General Interest Rate, beginning one (1) year after the date of closing (or according to any other terms which are not less favorable than those defined herein). The Partnership will have the right to prepay all or any part of the purchase money obligation at any time without penalty. If the Partnership elects to utilize such payment terms, no pledge or security agreement shall be given or required over the interests acquired (or any other collateral offered to secure such payment) unless the General Partners deem such to be appropriate in their sole discretion.

F. By unanimous consent of the General Partners, the Partnership may assign the Partnership's option to purchase to one or more of the remaining Partners (or their Affiliates) and when done, any rights or obligations of the Partnership will instead become, by substitution, the rights and obligations of the Partners who are assignees. Such Partners, upon purchasing the interest of the Unauthorized Assignee, shall be Authorized Assignees of such interest unless otherwise approved by the Partnership.

**3.3.9 Partnership Interest Pledge or Encumbrance.** No Partner or Assignee may grant a security interest in or otherwise pledge, hypothecate or encumber his interest in this Partnership or such Person's distributions without the consent of the General Partners. Such grant of a security interest, pledge, a suitor hypothecation or encumbrance is a Disposition as defined herein and shall trigger all the rights of the Partnership and the other Partners defined herein. It is understood that the Partners are under no obligation to give consent nor are they subject to liability for withholding consent for any and all reasons. In the event consent is given for a pledge, foreclosure of the Interest pledged would not result in the creditor being treated as Authorized Assignee.

**3.4 Admission of Substitute Partners.** Notwithstanding anything in this Article to the contrary, any Assignee of a Partnership Interest (whether such interest was obtained by the consent



of the General Partners, a Disposition to a Permitted Transferee, an unauthorized Disposition, or otherwise) shall be admitted to the Partnership as a substitute Partner only upon:

A. Furnishing to the General Partners, in a form satisfactory to the General Partners, a written acceptance of all of the terms and conditions of this Agreement and such other documents and instruments as may be required to effect the admission of the Assignee as a Partner including but not limited to: the substitute Partner's notice address, its agreement to be bound by this Agreement, its agreement not to compete, its confidentiality agreement, any applicable employment agreement, its spousal assent (if married), and its unqualified representation and warranty that the representation and warranties required of new Partners are true and correct with respect to the new Partner;

B. Depositing with the Partnership a transfer fee of \$10,000, or such other reasonable amount as may be set by the General Partners to cover the costs and expenses of the Partnership in connection with the request, including legal and accounting expenses and the cost of investigating the proposed substitute Partner; and

C. Obtaining the Consent of all General Partners and complying with all requirements that the General Partners shall impose for approving such admission of the proposed substitute Partner.

If admitted as a Partner, the Assignee shall be admitted to the Partnership as a substitute Partner as of the effective date of the Disposition or upon such other effective date as the General Partner shall determine. If an Assignee (whether Authorized or Unauthorized) is not admitted as a substitute Partner, he shall have no right to vote the Partnership Interest nor any other right beyond those specifically given an Assignee under this Agreement, and all votes on Partnership matters shall be calculated as if the Partnership Interest of the Assignee did not exist by subtracting the interest of the Assignee from the denominator of any voting equation.

**3.5 Additional Partners.** Except as limited by Section 4.3, additional Persons may be admitted to the Partnership as Partners and Partnership Interests may be created and issued to those Persons and to existing Partners at the direction of the General Partners and/or upon a vote of the Class A Partners on such terms and conditions as they may determine at the time of admission. The terms of admission or issuance must specify the Partnership Interests and the Commitments applicable thereto and may provide for the creation of different Classes or groups of Partners, who may have different rights, powers, and duties. The General Partners shall reflect the creation of any new Class or group in an amendment to this Agreement or a resolution of the Partnership indicating the different rights, powers, and duties, and such an amendment need be executed only by the General Partners. Any such admission also must comply with the requirements described elsewhere in this Agreement, including but not limited to those prescribed in section 3.4 (the requirements applicable to substitute Partners shall be applicable to new Partners in the same manner and form prescribed therein).

**3.6 Preemptive Rights.** The foregoing notwithstanding, the Partners of the Partnership shall have a preemptive right to acquire additional, newly created Partnership Interests of the Partnership, or securities of the Partnership convertible into or carrying a right to subscribe to or acquire Partnership Interests, except to the extent limited or denied by this Agreement or the Articles.

**3.7 Change of Ownership in a Partner.** A Partner that is not a natural person may not cause or permit, directly or indirectly, an interest in itself to be disposed of in the same manner of a Disposition defined herein (as applicable to the Partnership but in this case as applied to the Partner) or otherwise altered, mutated, or restructured such that, after such change or Disposition:

A. The Partnership would be considered to have terminated within the meaning of Section 708 of the Code; or,

B. Without the consent of the Partnership that Partner shall cease to be Controlled by substantially the same Persons who Controlled it as of the date of its admission to the Partnership; or,

C. A Designated Key Person, directly or indirectly, shall give up the material rights of Control over their Partnership Interests.

On the breach of the provisions of this section, the breaching Partner shall lose its status as a Partner and be converted automatically to an Unauthorized Assignee and the Partnership Interests shall be considered subject to an unauthorized Disposition.

**3.8 Certificates.** Certificates shall not be required unless mandated by state law, in which event certificates representing equity interest in the Partnership shall be in such form as shall be determined by the General Partners. Such Certificates may be signed by any one General Partner, or by two Officers, if Officers have been elected. All Certificates shall be consecutively numbered or otherwise identified.

**3.9 Capital Account Roster.** Even when no Certificates are issued, the Partnership shall maintain a Capital Account Roster for its Partners, evidencing the name and address of each Partner, the number of shares (or percentage ownership) held by each Partner, and the capital contributions and Capital Account adjustments for each Partner.

**3.10 Confidentially of Information.** The Partners and Designated Key Persons acknowledge that from time to time they may receive information from or regarding the Partnership in the nature of trade secrets or that otherwise is confidential (“Confidential Information”), the release of which may be damaging to the Partnership or Persons with which it does business. Each Partner, Administrator, Officer and Designated Key Persons shall hold in strict confidence any information it receives regarding or from the Partnership (or its Affiliates). Such information need not be marked as confidential to establish its confidentiality. Any information from the Partnership, its Partners, General Partners or its Affiliates shall be presumed to be confidential unless otherwise

explicitly stated therein or found to be public in nature as defined herein. Such Person's bound herein may not disclose it to any Person, including to another Partner or General Partner other than another Partner or a General Partner specifically *authorized to receive such*, excluding only those disclosures:

A. Compelled by law (but the Partner or Administrator must notify the General Partners promptly of any request for that information, before disclosing it, if practicable);

B. To advisers or representatives of the Partner or Administrator or to Persons to which that Partner's Partnership Interest may be Disposed in an authorized manner as permitted by this Agreement, but only after Notice to the Partnership and compliance of all requirements imposed by the General Partners including but not limited to that the recipients have agreed to be bound by the provisions of this Section and any other reasonable restrictions or confidentiality agreements required by the Partnership;

C. Of information that Partner or General Partner also has received from a source independent of the Partnership or its Affiliates, outside of the scope of such Person's involvement or work with the Partnership, that the Person reasonably knows is without breach of any obligation of confidentiality hereunder; or,

D. that are approved by the Partnership in writing prior to the disclosure being made or formally ratified by the Partnership thereafter.

The Partners acknowledge that breach of the provisions of this Section may cause irreparable injury to the Partnership for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Partners agree that the provisions of this Section may be enforced by specific performance and by injunctive relief. If any Person becomes aware of an unauthorized disclosure of Confidential Information they shall immediately notify the Partnership and take all steps necessary to stop or mitigate the disclosure.

If any Partner, Administrator, Assignee, Officer or other Affiliate is determined by the Partnership to be a direct or indirect competitor of the Partnership (including an anticipated competitor) and 1) the attendance of such Person at a meeting, 2) the receipt of information by such Person or 3) the inspection of any documents, including the Standard Documents, by such Person would require the disclosure of Confidential Information, trade secrets or any other form of Property, concept or strategy which would enable the Person to compete with, emulate or improve upon the Partnership's Property, concept or strategy (including an anticipated or suggested one), then the Partnership may, at its sole election, require such Person to sign a non-compete and/or other confidentiality agreements prior to attending any meeting (or thereafter), receiving any information or inspecting any documents, including the Records.

The Partnership may require that any Person enter into any and all reasonable further documentation to evidence and/or clarify this provision. If any Person should refuse to sign such further documentation within fifteen (15) days after receiving a request to do so from the

Partnership, then they shall thereafter be removed from any and all positions with the Partnership and have their Partnership Interests Converted to that of an Unauthorized Assignee.

The provisions of this Section shall survive the termination of this Agreement or the removal of any Person from any position with the Partnership, including as an Affiliate or Designated Key Person of the Partnership. In the event any Person ceases to be a Partner, Administrator, Officer, or Affiliate of the Partnership, then they shall immediately, within two (2) days following their removal, return any and all Confidential Information and/or Property to the Partnership in the form and condition that it was in immediately prior to their removal.

**3.11 Liabilities to Third Parties.** Except as otherwise expressly agreed in writing or required by the Act, no Partner or Administrator shall be liable for the debts, obligations or liabilities of the Partnership.

**3.12 Withdrawal.** A Partner does not have the right or power to withdraw from the Partnership as a Partner or to compel a distribution or return of its Capital Account.

**3.12.1 Damages on Wrongful Withdrawal.** If, in the good faith determination of the General Partner, a Partner withdraws, the withdrawal will be treated as a breach of this Agreement and the Partnership may recover damages from the withdrawing Partner, including the reasonable cost of obtaining replacement of the services the withdrawing Partner or their Affiliate was obligated to perform. The Partnership may, in addition to pursuing any remedies otherwise available under applicable law, recover from the withdrawing Partner by offsetting any damages against any amount otherwise distributable to the withdrawing Partner, reducing the Partnership Interest, or both.

**3.12.2 Effect of Wrongful Withdrawal.** If a Partner withdraws in violation of this Agreement, the Partner shall be expelled as a Partner and the Partnership Interest held by such Partner shall be held as an Unauthorized Assignee of that Partnership interest. The Partnership shall have the option to acquire the entire Partnership Interest of the withdrawn Partner as if an unauthorized Disposition occurred (and as the Partnership Interests may remain, if at all, after offsetting damages allowed against such Partnership Interests in this Agreement) under the same terms and conditions as if the withdrawn Partner was a transferee of a Partnership interest Disposed of or conveyed without authority.

**3.13 Lack of Authority.** No Partner (other than an authorized General Partner or an Officer, if they are also a Partner) has the authority or power to act for or on behalf of the Partnership, to do any act that would be binding on the Partnership, or to incur any expenditures on behalf of the Partnership.

**3.14 Classes and Voting.** As to the Partnership, there shall initially be two (2) classes of Partnership Interests and/or Partners, unless the Articles state to the contrary or two (2) or more classes or groups of one or more Partners and/or Partnership Interests are established pursuant this Agreement. Initially, there shall be Class A and Class Z Partners and Partnership Interests. However,

it is intended that: 1) there shall be no initial Class Z Partners as defined in this Section and 2) that all initial Partners shall be Class A Partners so only one class shall be operative until such time as a Person becomes a Partner to Class Z (or any other class created hereunder or by the General Partner). Any previous classes are hereby converted and merged into Class A Partnership Interests.

In addition to the two (2) classes defined in this Section, at any time the General Partners may elect to establish more classes or groups of one or more Partners and/or Partnership Interests. Unless otherwise specified and in the event of the establishment of more classes or groups of one or more Partners, then the following provisions shall apply:

A. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of Partners, as may be defined the designation of classes by the Partnership thereof.

B. Unless otherwise specified, if two or more classes or groups of one or more Partners are established, then each class or group of Partners, as far as waiver of notices, action by consent without a meeting, establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter relating to the exercise of the right to vote within that class or otherwise, shall be governed as to that Class by the same provisions of this Agreement as pertain to the Partnership as a whole. By way of example, if a Class wishes to call a meeting of that Class, the it would take a Majority in Interest of the Partners from that Class to call a meeting thereof.

The foregoing notwithstanding and pursuant to the Certificate and the Act, there shall be at least two (2) classes of Partnership Interests, Class A (with full Partnership and voting rights, provided they have been admitted as a Class A Partner) and Class Z (with restricted Partnership rights and no voting rights). Any Person(s) shall generally be treated as an Unauthorized Assignee according to the Act and as further defined or restricted in this Partnership Agreement who may acquire, succeed or accede or in any way obtain or acquire any rights to Partnership Interests (or any rights thereunder including the rights to payments) in the Partnership, unless authorized by this Agreement and/or approved by the Partnership, whether Class A Partnership Interests or any other Class, including by means of any: (1) sale, pledge, hypothecation, bequest, gift division or other assignment by or from a Partner, including but not limited to one that is in satisfaction of a debt (and including as to a debt which was previously approved by the Partnership), regardless of whether such is voluntary or involuntarily; (2) levy or execution upon a judgment, foreclosure, receivership, bankruptcy, garnishment, auction, sequestration, or any other compulsory legal or collection process; or (3) judgment, agreement or award of any court or arbitrator in a divorce proceeding. In the event that such Person(s) or Unauthorized Assignees are determined, allowed or required to be Partners of the Partnership (and unless otherwise admitted as Partners, whether Class Z or otherwise, as determined and approved by the Partnership), then such Person(s) shall become Class Z Partners and the Partnership Interest in question from any other class shall immediately upon their acquisition of such be converted to such class Z Partnership Interest. Class Z Partners shall have no right or authority to: (1) vote their Partnership Interest as Class Z Partnership shall be non-voting in all respects; (2) call any meeting of Partners or to place any item on the agenda

of any meeting for discussion; (3) serve as a managing Partner, General Partner, any Officer of the Partnership, or as Registered Agent unless otherwise elected by the Partnership pursuant to the Partnership Agreement after the acquisition of the Partnership Interest in question; (4) act on behalf of the Partnership, or to make representations to or agreements with non-Partners on behalf of the Partnership; (5) amend any Corporate Records, including the Partnership Agreement, even if such Partnership Interest would have otherwise given them the requisite votes to do so; or (6) inspect the books and records of the Partnership.

The Partnership is formed with the intent that there should never be any Class Z Partners or Unauthorized Assignees but instead only those Partners who are admitted through the procedures defined in this Agreement and as approved by the other Partners. For that reason, and to avoid disruption to the business of the Partnership and the other Partners, Class Z Partners shall have only the following limited rights which shall be construed to the maximum extent allowed by law in the State of Texas to restrict such Class Z Partners' actions with regard to the Partnership: (1) to be notified of any meeting of Partners and, provided they sign a confidentiality agreement with the Partnership and abide by all other reasonable restrictions set by the Partnership, to be present in a non-disruptive fashion at any such meeting, and to express views and opinions as to any matters discussed at any such meeting but only for a reasonable amount of time as determined by the Partner or chairperson leading such meeting; and (2) to receive distributions or allocations which they may be entitled to, only in the event and provided that the person follows the proper approvals, conditions and procedures set by the Partnership and/or the Partnership Agreement, less any current or anticipated deductions, offsets, damages or other fees or costs payable by or attributed to such Person(s) or Partnership Interests. The right to attend meetings and to speak may be limited by the Partnership if such attendance would result in the disclosure of certain Confidential Information of the Partnership or the other Partners which would in any way enable or promote directly or indirectly competitive activities or adverse litigation by the Class Z Partner.

The forgoing notwithstanding, Any non-waivable or non-amendable rights under the Act of an Unauthorized Assignee or Class Z Partner which are attempted to be modified herein or in the Partnership Agreement, if any, (including rights to inspect the books and records of the Partnership or to receive information if such is determined to non-waivable and non-amendable) shall be granted to an Unauthorized Assignee or Class Z Partner but shall be otherwise limited and restricted to the maximum extent permitted by law in the State of Texas. If it is deemed that an Unauthorized Assignee or Partner has the right to inspect the books and other Records of the Partnership (or any other right to require information, accounting of transactions or meetings with the Partnership or its Partners) then such shall occur as defined in this Agreement (specifically in Section 1.7.2).

**3.15 Trading Partners.** In addition to Class A and Class Z Partnership Classes, the Partnership may also have certain Trading Classes which may be referred to by any other alpha or numeric class of Partnership Interests ("Class B" or "Class 1", etc.), as set forth by the agreement of the Class A Partners in the manner and according to the procedures defined in this Agreement. A Partner holding only Trading Class Partnership Interests shall be referred to as a "Trading Partner" and their rights shall be limited as defined herein. The intent of creating classes of Trading Partners is such that the Partnership and Class A Partners can deal with certain

Partners (or group of Partners) individually, without necessarily affecting or changing the immediate relationship to any other Trading Partner (or group of Trading Partners). A Trading Class may have multiple Partners. Any Trading Partner shall not be entitled to vote, except as it relates to actions or decisions among multiple Partners in their particular Trading Class and provided further that such votes or actions are approved, delegated or authorized (by the Class A Partners) to be voted on by the Trading Partners. Even in the case of an action or vote by Trading Partners that is within the scope of those powers authorized or delegated to the Trading Partners by the Class A Partners, all such actions or votes shall remain subject to review, approval, and a veto right by the Class A Partners. Except for actions among Partners of their particular Class, no Trading Partner shall be considered in the calculation of aggregate Partnership wide Partnership Interests (by way of example when calculating a quorum, Majority in Interest or Unanimous Consent for Partnership wide action) as the Partnership Interests of a Trading Partner are nonvoting in all respects as it relates to Partnership wide votes.

A Trading Partner need not be named as a General Partner. Any Trading Partner who is also elected as a General Partner shall, unless otherwise explicitly stated, be a General Partner only as to the particular Class of Partnership Interests and the Pool(s) of Property assigned to such Class (and, in the instance where such Person's General Partner responsibilities are limited to a particular Class or Pool, such Person may, but need not be, titled a "Trading General Partner"). Further, a Trading Partner shall only have management responsibility as defined, clarified or limited by their agreement with the Class A Partners and a Majority in Interest of the Partners from their Trading Class, including that their management authority and rights to Profits and Losses may be limited to certain Pools of Partnership Property, as defined herein.

The Profits and Losses allocated to any Trading Partner's Partnership Interest shall be set by agreement among the Class A Partners and a Majority In Interest of the Trading Partners for a particular Trading Class at the issuance of the Trading Partner's Partnership Interests. Such allocation of Profits and Losses may be specific as to a particular Pool of Partnership Property or to multiple Pools of Partnership Property. While the allocation of Profits and Losses may not be changed without agreement between the Class A Partners and the Trading Partners of a particular Trading Class, the allocation of certain Pools of Partnership Property may be expanded, changed or diminished at any time and without notice by the Class A General Partners. The allocation of Profits and Losses allocated to a Trading Partner's Partnership Interest may be amended from time to time by agreement among the Trading Partners affected and the Class A Partners, provided however, that no retroactive application or amendment of such agreement shall serve to deprive a Trading Partner of Profits and Losses that were previously earned by and allocated to them prior to the amendment, unless such Trading Partner agrees to such.

A Trading Class (or the Partnership Interests of a particular Trading Partner) may, at the determination of the Class A Partners, be retired and/or repurchased by the Partnership at any time and for any reason, with or without Cause, for the Purchase Price defined herein. Upon such election, the Partnership Interests subject to retirement or repurchase shall be treated as if the Partner(s) made an unauthorized Disposition thereof, provided however, that the Partnership shall bear the basic administrative costs of such Disposition if the Trading Partners

whose Partnership interests are being retired: a) were not terminated for Cause or b) leaves with Good Reason. The Purchase Price, as defined in Section 3.16 and utilized in Section 3.3 shall mean, as it relates to any Trading Partner and except for those Trading Partners who are terminated for Cause or leave without Good Reason, the Capital Account Balance (generally speaking, and as further defined herein, their Capital Contribution together with any undistributed but earned and allocated Profits or Losses) of that particular Trading Partner on the date that the Partnership Interests are elected to be repurchased by the Partnership, less any damages or losses otherwise caused by that particular Trading Partner or their particular Trading Class jointly and severally. The Purchase Price as to a Trading Partner who is terminated for Cause or who leaves without Good Reason shall be reduced to fifty percent (50%) of the overall Purchase Price determined herein less any damages or losses otherwise caused by that particular Trading Partner or their particular Trading Class jointly and severally.

The preemptive rights prescribed in section 3.6 shall not apply to the issuance of any Trading Partner Class of Partnership Interests or be granted to any Trading Partner. No Trading Partners shall be entitled to information or Records except as authorized by the Partnership, including financial statements under Article 4, except as it relates directly to their Class or the Pools they oversee and all Trading Partners hereby consent to such limitation. Section 7.3, 7.4 and 7.5 shall not apply to any Trading Partners. Trading Partners shall have the duties required of a Partner under the act including but not limited to a duty of loyalty, care or other fiduciary duties. Unless otherwise agreed by the Class A Partners and a Majority In Interest of the Trading Partners for a particular Trading Class the term for noncompetition, non-solicitation, and non-circumvention following termination shall be six (6) months for Trading Partners. In the case where a Partner serves in both a Trading Partner and Class A Partner capacity, the longer of the two time periods shall apply.

**3.16 Purchase Price Calculation.** The purchase price ("Purchase Price") which the Partnership shall pay for the Partnership Interest which it elects to purchase under this Section 3.3 shall be determined as provided herein or, as to a Trading Partner, as defined in Section 3.15. The Purchase Price shall be the fair market value of the Partnership Interests as determined by the mutual agreement of the Partnership (or any other party to whom the Partnership has assigned the right to purchase the Partnership Interests) and the Partner/Assignee whose Partnership interests are being purchased. If such parties cannot agree on a fair market value within thirty (30) calendar days after the date the purchasing party notifies selling party of their intent to purchase, then the Purchase Price shall be conducted according to the appraisal process set out below. In lieu of and as a prospective replacement of the Purchase Price determined by the preceding sentence, In advance of any Disposition, the Partners and the General Partners by Unanimous consent, may but shall not be obligated to determine a Purchase Price that will be applicable for any period up to three hundred sixty five (365) calendar days after the date of the determination (the applicable end date may be specified by the document stating such determination of Purchase Price). In the absence of an explicit date or timeframe, the applicable period shall be for the one hundred eighty (180) calendar days proceeding after the date of determination). Any document or action setting a determination of Purchase Price for a future period shall state that it is specifically done for the purposes of this provision (and not simply for



strategic planning, attracting investors or other loans, etc). Any predetermination of the Purchase Price shall apply to any Person who may later assert ownership over any particular Partnership Interest, including an Unauthorized Assignee.

If the parties cannot otherwise agree or a Partner/Assignee, by or through their representative (including a representative of their estate), objects in writing (within thirty (30) days following an election by the Partnership or another party to purchase the Partnership Interests) to the determination of the Purchase Price by the pre-determination or formula methods stipulated herein, then an appraisal process shall be undertaken (provided however, that Trading Partner shall not have the right to object and have an appraisal done). The Partnership and the Partner/Assignee shall each select a qualified appraiser to appraise the fair market value of the Partnership Interests within thirty (30) calendar days. If a party fails to select a qualified appraiser within such thirty (30) calendar day period, then the appraisal of the other party shall be binding. Each of the appraisers shall appraise the value of the Interests in question within thirty (30) calendar days after their selection and if such appraisals are within fifteen percent (15%) of each other in fair market value, the average of such appraisals shall be deemed to be the fair market value of the Partnership Interests in question. If such appraisals differ by more than fifteen percent (15%), then such appraisers shall mutually select a third appraiser within thirty (30) calendar days, and such third appraiser shall appraise the value of the Interests within thirty (30) calendar days of the his/her selection. The third appraiser's valuation, unless it is outside the range of the two previous valuations, shall be binding. If the third appraiser's valuation is outside the range of the two previous valuations then an average of the three valuations shall be utilized as the Purchase Price. A Partner or Assignee that is objecting as stipulated herein shall bear all the costs of all appraisers contemplated by the appraisal process defined in this section. After calculating fair market value, the Purchase Price shall be lowered by any damages, losses, or costs of disposition, if any, for the Partnership (or its other non-selling Partners) such that the Partnership Interests being sold or purchased bear the burden of such damages, losses, or costs of disposition.

In the event that an employee, Administrator or General Partner that is also a Partner or Designated Key Person of a Partner is terminated for Cause (as defined below) or leaves without Good Reason (as defined below), then the Partnership shall have the exclusive right and option to purchase their Partnership Interests at a Purchase Price equal to fifty percent (50%) of the Purchase Price otherwise stipulated in this section, and the terminated Partner/Assignee shall be obligated to sell all of their Interests at such lowered Purchase Price.

An employee, Administrator or General Partner that is also a Partner or Designated Key Person of a Partner may be terminated from employment with the Partnership at any time by the affirmative vote of the General Partners, with or without Cause, and such shall be treated as a Disposition triggering the right of repurchase by the Partnership. Moreover, an employee, Administrator or General Partner that is also a Partner or Designated Key Person of a Partner may leave if they have a Good Reason and such shall be treated as a Disposition triggering the right of repurchase by the Partnership. In either instance, the Partnership Interests subject to retirement or repurchase shall be treated as if the Partner(s) made an unauthorized Disposition

thereof, provided however, that the Partnership shall bear the basic administrative costs of such Disposition if the Partners whose Partnership interests are being retired were not terminated for Cause or if the Partner leaves with Good Reason. The Partner proposed to be terminated may participate in such termination vote if it is not done for Cause (Provided however, that **ADAM C. SINN** or his Affiliate serving as a Partner may always participate in a vote regardless of whether it is for Cause or not). Moreover, if they are not terminated for Cause or if they leave with Good Reason, the promissory note granted to pay the Purchase Price shall be secured by a first-priority pledge of the Partnership Interests to the terminated Partner. As used in this Agreement, the following terms shall have the following meanings:

A. "Cause" shall mean any of the following: (A) any misrepresentation of a material fact to, or concealment of a material fact from, a representative of the Partnership; (B) willful violation of any material rule, regulation or policy that may be established by the Board of General Partners from time to time in the Partnership's business; (C) unlawful possession, use or sale of narcotics or other controlled substances, or performing job duties while such controlled substances are materially present and influencing the Partner's body; (D) any act or omission of the Partner in the scope of his employment that: (i) results in the assessment of a criminal penalty against the Partner or the Partnership, or (ii) would result in a material violation of any federal, state, local or foreign law or regulation; (E) conviction of or a plea of guilty or no contest to any crime involving an act of moral turpitude; (F) engages in any unapproved materially competitive or other activity which the reasonable person would perceive to be materially detrimental or harmful to the Business Purpose of the Partnership.

B. "Good Reason" shall mean either of the following: (A) a decrease in the Partner's base salary and/or guaranteed payments by more than fifty percent (50%); or (B) the assignment of duties or position that would necessitate a change in the location of the Partner's home by more than thirty (30) miles.

**3.17 Life Insurance.** The Partnership may maintain life insurance on the lives of the General Partners, Partners, Designated Key Persons or other employees of the Partnership, in an amount and according to such terms as set from time-to-time by the General Partners. Such life insurance may be required to be maintained by such Persons individually and the Partnership (or the other Partners) may be a required beneficiary thereof, at the election of the General Partners. Alternatively, such life insurance policies may be maintained directly by the Partnership itself. This paragraph serves as notice that such policies may be purchased at any time hereafter, although the Partnership may choose to notify the Person whose life is insured again at the time the policies are actually purchased. If the Partnership elects to obtain such policies, those Persons over whose life it is obtained hereby consent to such, including a) that the Partnership or the other Partners may be the listed beneficiaries thereof and b) that the Partnership can direct or control who the ultimate beneficiaries of such policies are and c) the policies may be maintained and kept in force following the termination of such General Partners or Partners. If further consent to obtain such policies is required by the Partnership, then the General Partners or Partners agree to promptly execute such consents.

**3.18 Designated Key Persons.** The Partners, either directly or indirectly are related or Affiliates of certain key individuals for the Partnership. Moreover, certain Partners may choose, after proper consent by the Partnership, to have their ownership in the Partnership owned indirectly, by or through an Affiliate entity (including but not limited to various trusts, family limited partnerships, and other entities). To the degree such things occur, then such key individual shall be deemed a Designated Key Person of the Partner, as determined by the General Partners from time to time. In such a case, any violation committed by a Designated Key Person which would trigger some event of default, breach, repurchase or otherwise with regard to the Partnership Interests to which that Designated Key Person is tied shall be triggered as if the Partner had triggered some event of default, breach, repurchase or otherwise themselves. In such a case, both the Partner and the Designated Key Person are bound by and can breach this Agreement. By way of example, if a person who is a Designated Key Person chose to leave without Good Reason (or was terminated for Cause), then the Partnership Interests owned by the Partner associated with that Designated Key Person would be subject to the repurchase option contained in this Agreement. By way of further example, if they Designated Key Person died or became incapacitated then the Partnership Interests owned by the Partner associated with that Designated Key Person would be subject to the repurchase option contained in this Agreement. By way of further example, the consent to obtain life insurance contained in section 3.17 would apply to both a Partner and its Designated Key Person. By way of further example, any competitive activities of a Designated Key Person would be considered competitive activities of the Partner they are associated with and be a breach of this Agreement by that Partner. The preceding examples are meant to be illustrative and are in no way exhaustive; instead, they are meant to emphasize that the same standards and potential violations of this Agreement applicable to any Partner shall also extend to their Designated Key Person without need of specifying or differentiating such in this Agreement. The initial Designated Key Persons and their corresponding Partners are set forth on Exhibit B attached hereto. The Partnership may tie certain Partnership Interests to a Designated Key Person by resolution of the General Partners or by updating Exhibit B attached hereto from time to time.

No potential Partner shall become a Partner unless and until their Designated Key Person agrees to be bound by this Agreement and the rest of the Records. Such form of consent by the Designated Key Person shall be in a form reasonably determined and required by the General Partners, an initial form of which is attached hereto as Exhibit E and incorporated herein by this reference. A Partner hereby agrees to cause their Designated Key Person to execute any and all agreements or documents which the Partnership deems appropriate and which bind them as a Designated Key Person to the Partnership. Any failure to comply with this provision that is not waived by the Partnership shall render that Partner or potential Partner an Unauthorized Assignee of their Partnership Interests.

**3.19 Cross Default.** The Partners, either directly or indirectly (such as through an Affiliate), may have common ownership in a group of companies which, for purposes of this Agreement, shall be deemed the “Primary Operating Companies” of the Partners. Any default or violation with regard to any of the governing documents for any of the Primary Operating Companies shall be deemed a default or violation as to all the Primary Operating Companies. By

way of example, if a Partner were to make an unauthorized Disposition with regard to one Primary Operating Company, then they have breached as to all Primary Operating Companies and the repurchase rights associated with each of the other Primary Operating Companies, as defined in their respective agreements and records, would then apply as if the Partner had made an unauthorized Disposition of all Primary Operating Companies. By way of further Example, if a Designated Key Person is terminated from a particular entity in the Primary Operating Companies for Cause, then they shall be deemed to have violated all agreements of all the other Primary Operating Companies.

The Primary Operating Companies are listed in Exhibit C, attached hereto and incorporated herein by this reference. By resolution of the General Partners, Exhibit C may be updated from time-to-time to include any new entities which should be included in the Primary Operating Companies.

**3.20 Spousal Assent Required.** No married potential Partner shall be admitted as a Partner unless and until their spouse signs and delivers to the General Partners a Spousal Assent and Affirmation in a form reasonably determined and required by the General Partners, an initial form of which is attached hereto as Exhibit D and incorporated herein by this reference. If any Partner gets married while they are a Partner, then they shall deliver to the company an executed Spousal Assent and Affirmation, signed by their new spouse, within thirty (30) days following the marriage to such spouse. Any failure to comply with this provision that is not waived by the Partnership shall render that Partner or potential Partner an Unauthorized Assignee of their Partnership Interests.

**3.21 Drag Along Rights.** In the event Partners receive a bona fide written offer (the "Drag Along Offer") from a third party to purchase all of the Interests in the Partnership and a Majority-in-Interest of the Partners desire to accept such offer, and the third party purchaser desires to purchase all or materially all of the outstanding Interests in the Partnership, the other Partners hereby agree to sell all of their Interests to such third party purchaser for a price and on terms and conditions no less favorable than those contained in the Drag Along Offer.

**3.22 Tag-Along Right.** If any Partner acting individually, or any group of Partners acting jointly (the "Transferring Partners"), proposes to transfer Interests that constitute more than forty percent (40%) of all the Interests then held by Partners to a third party purchaser, then the Transferring Partners shall offer the other Partners the right to include in the transfer to the third party purchaser a pro rata portion of the other Partners' Interests (based on the proportion that the transferred portion of the Transferring Partners' Interests bears to the Transferring Partners' total Interests) on the same terms and conditions as such Transferring Partners (a "Tag-Along Right"). Prior to the consummation of any proposed transfer described in this Section (a "Proposed Transfer"), the Transferring Partners shall offer to the other Partners the right to be included in the Proposed Transfer by sending written notice (the "Tag-Along Notice") to the other Partners, which notice shall (i) state the portion of such Transferring Partners' Interest to be sold, (ii) state the proposed purchase price per Unit and all other material terms and conditions of such sale (including the identity of the third party purchaser), and (iii) be accompanied by the written transfer agreement between such Transferring Partners and such third party purchaser. Such Tag-Along Right shall be exercisable by written notice to the Transferring Partners with copies to

the Partnership given within ten (10) Business days after receipt of the Tag-Along Notice (the "Tag-Along Notice Period"). Failure by a Partner to respond within the Tag-Along Notice Period shall be regarded as a rejection of the offer made pursuant to the Tag-Along Notice and a forfeiture by the Partner of its rights under this Section. If a Partner elects to participate in the Proposed Transfer, such Partner shall be obligated to sell his, her, or its pro rata portion of his, her, or its Interests for a purchase price equal to the purchase price per Unit described in the Tag-Along Notice and upon the other terms and conditions of such transaction (and otherwise take all reasonably necessary action to cause consummation of the proposed transaction, including voting such Interest in favor of such transaction and becoming a party to the transfer agreement).

## **ARTICLE IV FINANCIAL MATTERS**

### **4.1 General Financial Matters.**

**4.1.1 Fiscal Year.** The fiscal year of the Partnership shall begin on the first day of January and end on the last day of December each year, unless otherwise determined by resolution of the General Partners.

**4.1.2 Deposits.** All funds of the Partnership shall be deposited from time to time to the credit of the Partnership with such banks, brokerage firms, trust companies or other depositories as the General Partners may select.

**4.1.3 Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, and all notes or other evidences of indebtedness issued in the name of the Partnership shall be signed by such persons as the General Partners shall determine.

**4.1.4 Loans.** No loans shall be contracted on behalf of the Partnership and no indebtedness, liability or obligation shall be incurred unless authorized by the General Partners. Such authority may be general or confined to specific instances.

**4.1.5 Contracts.** The Partnership may contract upon approval of a majority of the General Partners, who by resolution may authorize any General Partner of the Partnership to enter into any contract or execute any instrument in the name of and on behalf of the Partnership, and such authority may be general or confined to specific instances.

**4.1.6 Accountant.** One or more accountant(s) may be selected from time to time by the General Partners to perform such tax and accounting services as may, from time to time be required. The accountant may be removed by the General Partners without assigning any cause.

**4.1.7 Legal Counsel.** One or more attorney(s) may be selected from time to time by the General Partners to review the legal affairs of the Partnership and to perform such

other services as may be required and to report to the General Partners with respect thereto. The legal counsel may be removed by the General Partners without assigning any cause.

## **4.2 Accounting for the Partnership.**

**4.2.1 Method of Accounting.** The Partnership shall keep its accounting records and shall report for income tax purposes on the cash basis unless the General Partner elects to do otherwise or is required to do otherwise by the Code or the Act. The records shall be maintained in accordance with GAAP. All accounting terms not specifically defined in this Agreement, by the Records or by resolution of the General Partner shall generally be construed in accordance with Generally Accepted Accounting Principles (“GAAP”) (including the handling of international accounting principles) consistently applied. To the extent that the International Financial Reporting Standards (“IFRS”) are adopted in the United States or in Puerto Rico, such standards shall replace GAAP standards in this Agreement. In the event of (i) a conflict between GAAP and IFRS, or (ii) a significant change in the terms or intent of this Agreement would result from applying IFRS, then the General Partners will come to a reasonable working definition that is consistent with the original intent of the Partnership under GAAP.

**4.2.2 Annual Statements.** Financial statements shall be prepared not less than annually and copies of the statements shall be available to each Partner unless otherwise restricted or withheld as provided herein. Copies of income tax returns filed by the Partnership shall satisfy this requirement unless any Partner shall request in writing formal financial statements.

**4.2.3 Interim Financial Statements.** On written request and unless otherwise restricted or withheld as provided herein, any Partner shall be entitled to copies of any interim financial statements prepared for the Partnership.

**4.2.4 Tax Returns.** The General Partners shall cause to be prepared and filed all necessary federal and state income tax returns for the Partnership, including making the elections described in Section 4.2.5 of this Agreement. Each Partner shall promptly furnish to the Partnership all pertinent information in its possession relating to Partnership operations that is necessary to enable the Partnership's income tax returns to be prepared and filed.

**4.2.5 Tax Elections.** The General Partners shall have the right to make the following elections for the Partnership on the appropriate tax returns:

- A. to adopt the calendar year (or any other year) as the Partnership's Fiscal Year;

B. if a distribution of Partnership Property as described in Section 734 of the Code occurs or if a transfer of a Partnership Interest as described in Section 743 of the Code occurs, on written request of any Partner, to elect, pursuant to Section 754 of the Code, to adjust the basis of Partnership properties;

C. to elect to amortize the organizational expenses of the Partnership ratably if permitted by the Code; and

D. to make any other election the General Partners may deem appropriate and in the best interest of the Partners.

Neither the Partnership nor any Partner may make an election for the Partnership to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law, except where the Partners unanimously consent to have the Partnership taxed as a corporation.

**4.2.6 Tax Matters Partner & Tax Audits.** The General Partners may designate a Partner as the “tax matters partner” of the Partnership pursuant to Section 6231(a)(7) of the Code. The tax matters Partner shall take such action as may be necessary to cause each other Partner to become a “notice partner” within the meaning of Section 6223 of the Code. In the event the Partnership is audited by the Internal Revenue Service (or any other taxing authority or regulatory body), the costs and expenses incurred to defend and comply with then such shall be an expense of the Partnership. Any audit of any individual Partner shall not be deemed to be an audit of the Partnership.

#### **4.3 Capital Contributions.**

**4.3.1 Initial Capital Contributions.** Each Partner agrees to immediately execute a subscription agreement for, if necessary, and contribute, as his initial Capital Contribution, cash or other property as set forth on Exhibit A, attached hereto and incorporated as a part of this Agreement.

**4.3.2 Initial Ownership Interests of Partners.** The initial interests of the Partners in the Partnership shall be set based upon their respective proportional Capital Contributions, as set forth on Exhibit A.

**4.3.3 Additional Voluntary Contributions.** No new Class A Partners or Capital Contributions from existing Class A Partners may be admitted if it would have the effect of diluting the ownership of any Class A Partner (Unless consent is first obtained from that Class A Partner being diluted). The foregoing, however, shall not limit the ability of the General Partner to accept other Trading Partners. The General Partners may admit to the Partnership additional Partners and create and issue additional Partnership Interests to such Persons as they determine. The General Partners shall issue a revised statement of ownership upon admission of new Partners.

**4.3.4 Return of Capital Contributions.** No Partner shall be entitled to withdraw or demand the return of any part of his Capital Contribution except upon termination of the Partnership and/or as specifically provided for in this Agreement. The General Partners may in their discretion allow non-prorata draws against capital, which shall not alter the percentage of Partnership Interests among the Partners.

**4.3.5 Required Contributions -- All Partners.** If needed for the business of the Partnership, in the discretion of the General Partners, the Partners will be required to make additional Capital Contributions to the Partnership to meet operating expenses of the Partnership within five (5) days from date of written notice by the General Partners. Any required Capital Contributions shall be made pro rata, in accordance with the Partners' Partnership Interests, unless otherwise agreed to by all Class A Partners in writing.

**4.3.6 Gift.** All or any part of one or more of the Capital Contributions of one Partner may be made by one or more of the other Partners on behalf of such Partner as a gift.

**4.3.7 Treatment of Immaterial Financial Dates for Convenience.** To simplify the Partnership accounting, any minor or immaterial adjustment to the Capital Accounts or Profits and Losses of the Partners caused by required or optional Capital Contributions may be made at the next convenient juncture in the Fiscal Year of the Contribution. By way of example, if a Contribution occurred on June 28<sup>th</sup> and such would be immaterial as to Profits and Losses of that Partner but it would simplify the accounting for the Partnership, then the Partnership may treat the date of such contributions occurring in July 1<sup>st</sup> since it is the beginning of the month and the mid-year mark.

**4.3.8 Failure to Contribute.**

A. If a Partner fails to make a required Capital Contribution, the Partnership may exercise, on notice to that Partner (the "Delinquent Partner"), one or more of the following remedies:

(1) taking such action, at the cost and expense of the Delinquent Partner, to obtain payment by the Delinquent Partner of the portion of the Delinquent Partner's Capital Contribution that is in default, together with interest on that amount at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made;

(2) permitting the Partners, in proportion to their Partnership Interests or in such other percentages as they may agree (the "Lending Partner," whether one or more), to advance the portion of the Delinquent Partner's Capital Contribution that is in default, with the following results:



a. the sum advanced constitutes a loan from the Lending Partner to the Delinquent Partner and a Capital Contribution of that sum to the Partnership by the Delinquent Partner,

b. the principal balance of the loan and all accrued unpaid interest is due and payable on the tenth day after written demand by the Lending Partner to the Delinquent Partner,

c. the amount lent bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued, is repaid to the Lending Partner,

d. all distributions from the Partnership that would be made to the Delinquent Partner shall be paid to the Lending Partner until the loan and all interest accrued have been paid in full,

e. the payment of the loan and interest accrued is secured by a security interest in the Delinquent Partner's Partnership Interest,

f. the Lending Partner has the right, in addition to the other rights and remedies granted to it under this Agreement or at law or in equity, to take any action, at the cost and expense of the Delinquent Partner, that the Lending Partner may deem appropriate to obtain payment by the Delinquent Partner of the loan and all accrued and unpaid interest;

(3) exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas; or

(4) exercising any other rights and remedies available at law or in equity.

B. Each Partner grants to the Partnership, and to the Lending Partner with respect to any loans made to that Partner, as security, equally and ratable for the payment of all Capital Contributions that Partner has agreed to make and the payment of all loans and interest accrued made by lending Partners to that Partner, a security interest in its Partnership Interest under the Uniform Commercial Code of the State of Texas. On any default in the payment of a required Capital Contribution or in the payment of a loan or interest accrued, the Partnership or the Lending Partner, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Texas with respect to the security interest granted. Each Partner shall execute and deliver to the Partnership

and the other Partners all financing statements and other instruments that the Partnership or the Lending Partner, as applicable, may request to effectuate and carry out the preceding provisions of this section. At the option of the Partnership or a Lending Partner, this Agreement or a carbon, photographic, or other copy of this Agreement may serve as a financing statement.

#### **4.4 Capital Accounts.**

**4.4.1 Capital Accounts.** One Capital Account shall be maintained for each Partner ("Capital Account"). The Capital Account of a Partner generally shall consist of the value of that Partner's original Contribution increased by (a) his additional Contributions to capital and (b) his share of Partnership profits transferred to capital, and decreased by (i) distributions to them in reduction of their Partnership capital and (ii) his share of Partnership losses. This provision shall be construed to conform with and the Capital Account shall be adjusted in accordance with Treasury Regulations 1.704-1(b)(2)(iv). Capital Accounts shall not bear interest.

#### **4.4.2 Carrying Value Adjustments.**

A. If any additional Partnership Interests are to be issued for a contribution of property or cash (other than a de minimis amount) or if any Property or Distributable Cash (other than a de minimis amount) is to be distributed in liquidation of the Partnership or a Partnership Interest, the Capital Accounts of the Partners and the Carrying Value of all Property shall, immediately prior to such issuance or distribution, be adjusted (consistent with the provisions of Section 704(b) of the Code and the Treasury Regulations) upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to all Property (as if the Unrealized Gain or Unrealized Loss had been recognized upon actual sale of the Property upon a liquidation of the Partnership immediately prior to issuance).

B. If all or any portion of a Partnership Interest is transferred to a Permitted Transferee as a gift or deemed gift, the Capital Accounts of the Partners and the Carrying Value of all Property shall, immediately prior to such transfer, be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Property in a manner similar to that set forth in (1) of this subsection. The Capital Accounts and Carrying Values so determined shall be referred to as the "Section 704(c) Capital Accounts" and "Section 704(c) Carrying Values," respectively. The Section 704(c) Capital Accounts and Section 704(c) Carrying Values shall thereafter be adjusted in the same manner as Capital Accounts and Carrying Values.

**4.4.3 Transfer of Capital Account.** Except as otherwise required by the Treasury Regulations under Code 704(b), in the event any interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital

Account and the Section 704(c) Capital Account of the transferor to the extent it relates to the transferred interest.

**4.4.4 Negative Capital Account.** No Partner will be required to restore a deficit in his Capital Account upon liquidation of the Partnership or the Partner's Partnership Interest. The General Partner may treat distributions in excess of a Partner's basis as a loan.

**4.5 Drawing Accounts.** An individual drawing account shall be maintained for each Partner. All withdrawals made by a Partner (other than for salaries, reimbursement for expenses, and other like items supported by adequate consideration) shall be charged to his drawing account. Each Partner's share of profits and losses shall be credited or charged to his drawing account as follows:

A. A credit balance of a Partner's drawing account at year end shall constitute a Partnership liability to that Partner; it shall not constitute a part of his capital account nor increase his proportionate interest in the Partnership;

B. If, after the net profit or loss of the Partnership for the fiscal year is determined, a Partner's drawing account shows a deficit (a debit balance), whether occasioned by drawings in excess of his share of Partnership profits or by charging him for his share of a Partnership loss, the deficit shall constitute an obligation of that Partner to the Partnership to the extent of the Partner's Capital Account, and may be offset against it in the discretion of the General Partners.

Payment of any amount owing to the Partnership, if not offset against the Capital Account, shall be made in a manner and time determined by the Partners. Such obligations shall not be made payable on demand, and absent a determination to the contrary, the Default Interest Rate shall apply.

#### **4.6 Profits or Losses.**

**4.6.1 General Allocations.** Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss and deduction will be allocated among the Partners in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to this Agreement. For the purposes of the Class A Partners, profits and losses shall be determined as if the Partnership Property, profits and losses constituted one total Pool ("Partnership Pool"), less any amounts necessary to satisfy the allocations to the Trading Partners in the other sub-Pools comprising the Partnership Pool. As it relates to the Profits and Losses of any Pool of Partnership Property, Profits and Losses shall be allocated as defined herein. Whenever the Partnership is to pay any sum to any Partner, any amounts that Partner owes the Partnership may be deducted from that sum before payment.

**4.6.2 Allocation of Profits and Losses.** Profits and Losses shall be allocated among the Partners as follows:

A. First, Losses shall be allocated to the Partners in accordance with and in proportion to the Partners' proportionate defined Agreed Partnership Splits over a particular Pool but only to the extent of the Partners' Adjusted Capital Accounts.

B. Second, to the extent the allocation of Losses to a Partner would create an Adjusted Capital Account Deficit for that Partner, such Losses shall be allocated to the other Partners; if allowed under applicable law or regulations, in the following priority: first to the Class A Partners and otherwise to other Trading Partners as the General Partner shall determine appropriate.

C. Third, Profits shall be allocated to the Partners in a cumulative amount equal to the prior cumulative Losses allocated to the Partners in a non-pro rata manner, if applicable.

D. Fourth, Profits shall be allocated to Partners in accordance with the written agreement covering the time period in question and a particular Pool covered by the above referenced agreement regarding such Partners' shares of Profits and Losses Interests over a particular Pool of Partnership Property (such agreement referenced herein being the "Agreed Partnership Splits").

E. Fifth, any remaining profits and losses shall be allocated to the Class A Partners in accordance with their proportion of overall Class A Partnership interests.

E. Notwithstanding the preceding allocations, and to the extent the General Partners deem it necessary to insure that the Agreement and the allocations thereunder meet the requirements of Section 704 of the Code and the allocation Treasury Regulations, allocations of the following type and in the following priority will be made to the appropriate Partners in the necessary and required amounts as set forth in the Treasury Regulations under code Section 704(b) of the Code before any other allocations under this Section 4.6.2:

(1) Partner nonrecourse debt minimum gain chargeback under Treasury Regulations Section 1.704-2(i);

(2) Partnership minimum gain chargeback under Treasury Regulations Section 1.704-2(f) (provided that the General Partners may seek a waiver of such chargeback in appropriate circumstances under Treasury Regulations Section 1.704-2(4) in its sole discretion);

(3) In the event any Partners unexpectedly receive any adjustments, allocations, or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4),(5),or(6), items of Partnership income and gain

to such Partners in an amount and manner sufficient to eliminate the deficit balances in their Capital Accounts (excluding from such deficit balance any amounts Partners are obligated to restore under this Agreement or are treated as obligated to restore pursuant to Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-1(b)(2)(ii)(h), 1.704-2(g), or 1.704-2(i)(5)) created by such adjustments, allocations, or distributions as quickly as possible and in a manner which complies with Treasury Regulations Section 1.704-1(b)(2)(ii)(d);

(4) Partner nonrecourse deductions under Treasury Regulations Section 1.704-2(i) which will in all cases be allocated to the Partner that bears economic risk of loss for the indebtedness to which such deductions are attributable; and,

(5) To the extent an adjustment to the adjusted tax basis of any Property under Code Sections 734(b) or 743(b) is required to be taken into account in determining Capital Accounts under Treasury Regulations Section 1.704(b)(2)(iv)(m), the amount of the adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis), and the gain or loss will be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted under Treasury Regulations Section 1.704-1(b)(2)(iv)(m).

The allocations set forth in Section 4.6.2(5) of this Agreement (the “Regulatory Allocations”) are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may affect results which would not be consistent with the manner in which the Partners intend to divide Partnership distributions. Accordingly, the General Partners are authorized to divide other allocations of Profits, Losses, and other items among the Partners so as to prevent the Regulatory Allocations from distorting the manner in which distributions would be divided among the Partners under Section 4.6 of this Agreement if such distributions were made in accordance with the Proportionate Partnership Interest of the Partners, but for application of the Regulatory Allocations. In general, the reallocation will be accomplished by specially allocating other Profits, Losses and items of income, gain, loss and deductions, to the extent they exist, among the Partners so that the net amount of the Regulatory Allocations and the special allocations to each Partner is zero. The General Partners will have discretion to accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Treasury Regulations. Pursuant to Treasury Regulations Section 1.752-3(a)(3), solely for purposes of determining each Partner's proportionate share of the “excess nonrecourse liabilities” of the Partnership (as defined in Regulations Section 1.752-3(a)(3)), each Partner's interest in Profits will be equal to his Proportionate Partnership Interest.

**4.6.3 Transferor - Transferee Allocations; Section 754 Election.** Income, gain, loss, deduction or credit attributable to any interest in the Partnership which has been transferred shall be allocated between the transferor and the transferee under any method allowed under Section 706 of the Code as agreed by the transferor and the transferee. The General Partners, at their discretion, may make the election provided under Section 754 of the Code and any corresponding provision of applicable state law.

**4.6.4 Reliance on Advice of Accountants and Attorneys.** The General Partners and Class A Partners shall have no liability to the Partners of the Partnership or to any other Person or Affiliate (and such other Persons hereby fully release the General Partners and Class A Partners) if they rely upon the written opinion of tax counsel or accounts retained by the Partnership with respect to all matters (including disputes) relating to characterizations, computations and determinations required to be made under this article or other provisions of this Agreement or in any tax returns, elections or filings. After all allocations under this article have been made the General Partners, in their discretion, shall reallocate income among the Partners to the least extent necessary to insure that the provisions of Code Section 704(e) and the Treasury Regulations have been fulfilled, especially Treasury Regulations Section 1.704-1(e)(3). To the extent that any Partner was allocated income which the Internal Revenue Service finally determines should have allocated to any other Partner under the principles of Code Section 704(e), whether by way of a guaranteed payment or otherwise, the second Partner intends and does designate the income as a gift to the first Partner.

**4.6.5 Tax Allocations; Code section 704(c).** With regard to income, gain, loss, depreciation, depletion and cost recovery deductions for federal income tax purposes: In the case of a Contributed Property, such items will be allocated among the Partners in the manner provided in Section 704(c) of the Code and its Treasury Regulations to take account of the Built-In Gain and Built-In Loss at the time of contribution and, in the case of any Property the Carrying Value of which has been adjusted pursuant to Section 4.4 of this Agreement, such items will be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code and its Treasury Regulations to take into account differences between the Gross Asset Value and the adjusted tax basis of such property at the time of such adjustment. Allocations under this subsection are solely for purposes of federal, state and local taxes and will not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Profits, Losses or other items or distributions under any provision of this Agreement.

**4.6.6 Partner Acknowledgement.** The Partners agree to be bound by the provisions of this Article in reporting their shares of Partnership income and loss for income tax purposes. They further agree that the Class A Partners and the General Partners shall have the sole determination power as it relates to any tax allocations or tax decisions except as may be limited herein or as agreed among the Class A Partners and other Partners with regard to any Partnership Interests. For so long as such tax allocations or decisions are in the best interests of the Partnership, then the Partners and the Partnership shall not be liable

to any Partner for any adverse impact such decision or allocation creates on any Partner or their Affiliate.

**4.6.7 Election to be taxed as a Corporation.** Should the General Partner elect to have the Partnership taxed as a Corporation, a Subchapter S Corporation, or any other tax status which is now or may become available, then the Profits and Losses shall be allocated, the Capital Accounts shall be adjusted, and draws shall be permitted, only as allowed under the Code and the Treasury Regulations then applicable to such entity. The General Partner may amend this Agreement or issue revised policies and practices to comply with such tax election.

#### **4.7 Distributions.**

**4.7.1 General Distributions & Tax Distributions.** Subject to the other provisions of this Agreement, Distributable Cash may be distributed at the sole discretion of the General Partners among the Partners. Notwithstanding the foregoing, to the maximum extent possible without requesting additional capital or borrowing funds to do so, on or before the tenth (10th) day of January, April, June and September of each year with the intent to meet estimated tax payment obligations, the General Partner shall make minimum distributions of Distributable Cash to the Partners in an amount equal to thirty five percent (35%) of the estimated Adjusted Allocated Taxable Income (as hereinafter defined) of the Partners for such Fiscal Year as determined through the end of the immediately preceding calendar quarter(s) (the "Tax Distribution"), less an amount equal other Distributions previously made in any such Fiscal Year (including any prior Tax Distributions). Any such distributions to the Partners shall be made in proportion to the Adjusted Allocated Taxable Income of each Partner. The "Adjusted Allocated Taxable Income" of a Partner shall be the estimated taxable income of the Partnership, if any, which is allocated to such Partner for the applicable period. Any overpayment of Tax Distributions made under this Section shall be carried over to subsequent Fiscal Years or time periods and treated as a current Tax Distribution until it is fully depleted against the current Tax Distributions.

**4.7.2 No Interest.** If any Partner does not withdraw the whole or part of his share of any cash or Property distribution, the Partner shall not be entitled to receive any interest without the consent of the General Partners. Further, such non-withdrawn amount may at the option of the General Partners become an Additional Capital Contribution, if otherwise permitted at that time.

**4.7.3 Transferor - Transferee Shares.** Unless agreed in writing by a transferor and transferee, Distributable Cash allocable to the transferred Partnership Interest which may have been transferred during any year shall be distributed to the holder of such Partnership Interest who was recognized as the owner on the date of such distribution, without regard to the results of Partnership operations during the year.

**4.7.4 Partner Loans.** Notwithstanding the foregoing, if any Partner advances any funds or makes any other payment (which is approved or subsequently ratified by the General Partners) to or on behalf of the Partnership, not required in this Agreement, to cover operating or capital expenses of the Partnership which cannot be paid out of the Partnership's operating revenues, any advance or payment shall be deemed a loan to the Partnership by the Partner, bearing interest from the date of the advance or payment was made until the loan is repaid at the General Interest Rate, unless another rate is agreed to by the General Partners. All distributions of Distributable Cash shall first be distributed to the Partners making the loans until the loans have been repaid, together with interest. Thereafter, the balance of the distributions, if any, shall be made in accordance with the terms of this section. If distributions are insufficient to repay all loans as provided above, the funds available shall first be applied to repay the oldest loan and, if any funds remain available, the funds shall be applied in a similar manner to remaining loans in accordance with the order of the dates on which they were made; however, as to loans made on the same date, each loan shall be repaid pro rata in proportion that the loan bears to the total loans made on that date.

**4.8 Limitation on Discretion to Make Distributions.** The General Partners shall, on at least a quarterly basis, make a determination as to what Distributable Cash and/or Property is available for distribution to the Partners. They may base such determination on the need for the Property and Distributable Cash in the operation of the Partnership business, considering both current needs for operating capital, prudent reserves for future operating capital, current investment opportunities, and prudent reserves for future investment opportunities, all in keeping with the Partnership Business Purpose(s). General Partners, in determining the amount of Distributable Cash available for the payment of distributions, may take into account the needs of the Partnership in its business and sums necessary in the operation of its business until the income from further operations is available, the amounts of its debts, the necessity or advisability of paying its debts, or at least reducing them within the limits of the Partnership's maintainable credit, the preservation of its capital as represented in the Property of the Partnership as a fund for the protection of its creditors, and the character of its surplus Property. Any contributed Property or borrowed funds by the Partnership shall be considered as needed for Partnership investment purposes, and any cash produced from the sale of Property contributed to the Partnership or from the sale of any Property purchased with borrowed funds, or any reinvestment of any of the Property, including the portion of the sale proceeds representing capital appreciation, shall be considered as needed reserves for Partnership investment purposes. Any Distributable Cash derived from income may then, to the extent deemed unnecessary for Partnership purposes by the General Partners under the foregoing standard, be distributed in accordance with this Agreement.

When distributions are made to the Class A Partners (or among a class or group of Trading Partners), they shall generally be made pro-rata according to their Partnership Interests therein (but also taking into account their Capital Account balance and prior draws from their drawing account or credit balances thereto so as to render all distributions pro-rata across time, which may not necessarily be equal in any one quarter or time period in question). By way of example, if the Partnership had two Partners with Partnership Interests that are 96.5% and 3.5%, and the Partner



owning 3.5% had a prior credit balance of \$1000 in their drawing account, then the General Partners could distribute \$1000 first to the Partner owning 3.5% and thereafter would distribute all distributions according to the pro-rata Partnership Interests (or 86.5% and 3.5% respectively).

## **ARTICLE V DISSOLUTION AND TERMINATION**

**5.1 Events of Dissolution.** Except as otherwise provided in this Agreement, the Partnership shall be dissolved upon the occurrence of any of the following events:

- A. an affirmative vote of a Majority in Interest of all Class A Partners;
- B. The expiration of the stated term of the Partnership;
- C. A Partner dies, is expelled, becomes a Bankrupt Partner, or dissolves and the Partnership is not otherwise continued as provided herein;
- D. Any other event occurs that terminates the continued Partnership of a Partner in the Partnership (including an event by which the Partner Disposes of his Partnership Interest or otherwise is deemed an Assignee) and the Partnership is not otherwise continued as provided herein;
- E. The entry of a dissolution decree or judicial order by a court of competent jurisdiction or by operation of law under the Act;
- F. Any other event causing dissolution under the Act but not explicitly covered herein.

**5.2 Limitation on Event of Dissolution.** Notwithstanding Section 5.1, the Partnership shall not dissolve upon the occurrence of an event that would otherwise result in dissolution under Section 5.1(B),(C) or (D) when there is at least one remaining Partner, and the business of the Partnership is continued by the consent of a Majority in Interest of the remaining Partners, in accordance with the Act. Any failure to vote on such an instance coupled with continued operations of the Partnership shall be deemed the affirmative act required herein to continue the Partnership.

**5.3 Winding Up.** In the event of dissolution, the remaining General Partners or Partners who have not wrongfully caused the dissolution shall wind up the affairs of the Partnership or designate a Liquidator for such purpose. The Liquidator acting to wind up the business shall have all rights available to the General Partners hereunder, all rights available under the Act, and all further rights not expressly prohibited by law including but not limited to the full right and unlimited discretion, for and on behalf of the Partnership:

- 1. to prosecute and defend civil, criminal or administrative suits;

2. to collect Partnership Property and assets, including obligations owed to the Partnership;
3. to settle and close the Partnership's business;
4. to dispose of and convey all Partnership Property for cash, and in connection therewith to determine the time, manner and terms of any sale or sales of Partnership Property;
5. to pay all reasonable selling costs and other expenses incurred in connection with the winding up out of the proceeds of the disposition of Partnership Property;
6. to discharge the Partnership's known liabilities and, if necessary, to set up, for a period not to exceed five (5) years after the date of dissolution, such cash reserves as the Liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership;
7. to distribute any remaining Partnership Property (or proceeds from the sale of Partnership Property) to the Partners;
8. to prepare, execute, acknowledge and file a certificate of dissolution under the Law and any other certificates, tax returns or instruments necessary or advisable under any applicable law to effect the winding up and termination of the Partnership; and
9. to exercise, without further authorization or consent of any of the parties hereto or their legal representatives or successors in interest, all of the powers conferred upon the Partners under the terms of this Agreement to the extent necessary or desirable in the good faith judgment of the Liquidator to perform its duties and functions. The Liquidator (if not the Partners) shall not be liable to the Partners and shall, while acting in such capacity on behalf of the Partnership, be entitled to the indemnification rights set forth in Article XIV hereof.

On any voluntary dissolution, or upon expiration of the Partnership term, the Partnership shall immediately commence to wind up its affairs. The Partners shall continue to share profits and losses during the period of liquidation in the same proportions as before dissolution. The Partnership assets shall be applied as provided in the Act.

**5.3.1 Gains or Losses in Process of Liquidation.** Any gain or loss on Disposition of Partnership Property in liquidation shall be credited or charged to the Partners in the proportions of their interest in profits or losses. Any property distributed in kind in liquidation shall be valued and treated as though the property were sold and the cash proceeds were distributed. The difference between the value of property distributed in kind

and its book value shall be treated as a gain or loss on sale of the property and shall be credited or charged to the Partners in the proportions of their interests in profits and losses.

**5.3.2 Method of Division Upon Liquidation or Sale.** In the event of: 1) a liquidation Partnership or 2) the sale of all or substantially all of the Partnership Property, the proceeds shall be distributed among the Partners as follows:

1. to the extent permitted by law, to satisfy Partnership liabilities to creditors of the Partnership, whether by payment or establishment of reserves;
2. to satisfy Partnership obligations to Partners including but not limited to loans made by a Partner to the Partnership or past due Partnership distributions;
3. in an amount necessary to zero out a Partner's Capital Account provided that such Capital Account or Partnership Interest may be subject to a Preference in which case, the amount of the Preference shall be allocated to the Person holding the Preference; and
4. thereafter all remaining proceeds shall be distributed to the Partners in proportion to their Partnership Interests.

For purposes of this Agreement the term "Preference" means the fair market value attributable solely to the Interest of a Partner assigning such Partnership Interest to another Partner (as approved by the Partnership), provided that such Preference is clearly intended to grant the holder of the Preference the right to collect an amount equal to the fair market value of the Partnership Interests as of the date they were assigned to the receiving Partner from the Partnership at the liquidation or sale of all or substantially all of the Partnership Property (less any consideration paid in advance of such for the Partnership Interests or to reduce such Preference). In the event a Preference is granted to an assigning Partner, then the Partner who receives such Partnership Interests subject to the Preference shall receive only those amounts upon liquidation or sale which are in excess of the Preference amount.

## **ARTICLE VI MANAGEMENT**

### **6.1 Management by General Partners.**

**6.1.1 Management by General Partners.** The Partnership is to be managed by General Partners. In the case of multiple General Partners, no actions may be taken by an individual General Partner or group of General Partners without a formal vote of the General Partners unless such General Partner has an explicit authorization from the Partnership to take such actions without consent. In the absence of such an authorization, any action, prior

to such action being taken must be submitted to all of the General Partners in the manner prescribed for making decisions and taking actions in this Agreement. Except for situations in which the approval of the Partners is required by this Agreement or by nonwaivable provisions of applicable law, and subject to the provisions of this Article, (i) the powers of the Partnership shall be exercised by or under the authority of, and the business and affairs of the Partnership shall be managed under the direction of, the General Partners; and (ii) the General Partners may make all decisions and take all actions for the Partnership not otherwise provided for in this Agreement, including, *without limitation*, the following:

- A. entering into, making, and performing contracts, agreements, and other undertakings binding the Partnership that may be necessary, appropriate, or advisable in furtherance of the purposes of the Partnership and making all decisions and waivers thereunder;
- B. opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- C. maintaining the assets of the Partnership in good order;
- D. collecting sums due the Partnership;
- E. to the extent that funds of the Partnership are available therefore, paying debts and obligations of the Partnership;
- F. acquiring, utilizing for Partnership purposes, and selling or otherwise disposing of any Property of the Partnership, including *without limitation* real estate, securities, futures, and options;
- G. borrowing money, pledging assets, utilizing margin accounts, or otherwise committing the credit or assets of the Partnership for Partnership activities and voluntary prepayments or extensions of debt;
- H. selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- I. obtaining insurance for the Partnership;
- J. determining distributions of Partnership cash and other property;
- K. admitting new Partners, approving assignments of Partnership Interests or establishing criteria for either of such, including as to any and all Trading Partners.

**6.1.2 Limitations on General Partners.** The provisions of Section 6.1.1 notwithstanding, the General Partners may not cause the Partnership to do any of the following without complying with the applicable requirements set forth below:

A. sell, lease, exchange or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all of substantially all the Partnership's property and assets (with or without good will), other than in the usual regular course of the Partnership's business, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirement in the Act regarding approval by the Partners (unless such provision is rendered inapplicable by another provision of applicable law); and

B. be a party to (i) a merger, or (ii) an exchange or acquisition of the type described in Chapter Ten of the Act, without complying with the applicable procedures set forth in the Act.

## **6.2 Delegation of Management.**

**6.2.1 General Partners May Delegate Authority.** In managing the business and affairs of the Partnership and exercising its powers, the General Partners may act (i) collectively through meetings and written consents; (ii) through committees; and (iii) through Administrators, Officers or individual General Partners to whom authority and duties may be delegated. Additionally, the General Partners may grant an employee or other agent the authority to sign checks or take action for the Partnership.

**6.2.2 Delegation to Committees.** The General Partners may, from time to time, designate one or more committees, each of which shall be comprised of one or more General Partners. Any such committee, to the extent provided in such resolution or in the Articles or this Agreement, shall have and may exercise all of the authority of the General Partners, subject to the limitations set forth in the Act. At every meeting of any such committee, the presence of a majority of all the Partners thereof shall constitute a quorum, and the affirmative vote of a majority of the Partners present shall be necessary for the adoption of any resolution. The General Partners may dissolve any committee at any time, unless otherwise provided in the Articles or this Agreement.

**6.2.3 Delegation to Officers.** The General Partners may, from time to time, designate one or more Persons to be an Officer ("Officer") of the Partnership, who shall perform (1) the duties provided in this Agreement for such office generally, and (2) any specific delegation of authority and duties made to such Officer by the General Partners. Generally, and unless otherwise stated by the Partnership, the duties and types of Officers would be as follows:

**6.2.3.1 President.** The General Partners may appoint at any time a President. Alternatively the Partners or General Partners may name one or more General Partners to serve as an “Operating General Partner” or “Administrator” and hold all the powers of a President (such terms being used interchangeably herein). The President shall be the chief executive Officer of the Partnership responsible for the general overall supervision of the business and affairs of the Partnership. The President shall, when present, preside at all meetings of the Partners. The President may sign, on behalf of the Partnership, such deeds, mortgages, bonds, contracts or other instruments which have been appropriately authorized to be executed, by the General Partners or the Partners, except in cases where the signing or execution thereof shall be expressly otherwise delegated by or reserved to the Partners, or the General Partners, or by this Agreement, or by any statute. In general, the President shall perform all duties as may be prescribed by the General Partners from time to time and shall have the following specific authority and responsibility:

A. The President shall effectuate this Agreement and the actions and decisions of the General Partners;

B. The President shall direct and supervise the operations of the Partnership;

C. The President, within such parameters as may be set by the General Partners, shall establish such charges for services and products of the Partnership as may be necessary to provide adequate income for the efficient operation of the Partnership;

D. The President, within the budget established by the General Partners, shall set and adjust wages and rates of pay for all personnel of the Partnership and shall appoint, hire and dismiss all personnel and regulate their hours of work;

E. The President shall keep the General Partners advised in all matters pertaining to the operation of the Partnership, services rendered, operating income and expense, financial position, and, to this end, shall prepare and submit a report at each regular meeting and at other times as may be directed by the General Partners;

**6.2.3.2 Other Officers.** The Partnership may, at the discretion of the General Partners, have additional Officers including, without limitation, one or more Vice-Presidents, one or more Secretaries and one or more Treasurers. Officers need not be selected from among the Partners or General Partners. One person may hold two or more offices. When the incumbent of an office is (as determined by the incumbent himself or by the General Partners or Partners) unable to perform the duties thereof, or when there is no incumbent of an office (both such situations

referred to hereafter as the “absence” of the Officer), the duties of the office shall be performed by the person specified by the General Partners.

**6.2.3.3 Election and Tenure.** The General Partners may operate the Partnership without electing Officers. During anytime which the General Partners choose to have Officers, the Officers of the Partnership may be elected annually by the General Partners, but annual elections shall not be required. Each Officer shall hold office from the date of his election until his successor is elected, unless he resigns or is removed.

**6.2.3.4 Resignations and Removal.** Unless there is an agreement the contrary, any Officer may resign at any time by giving written notice to the General Partners and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any Officer may be removed at any time by the General Partners with or without cause.

**6.2.3.5 Vacancies.** A vacancy in any office may be filled for the unexpired portion of the term by the General Partners. During any time that an office is not filled, the General Partners shall perform the duties of that office, or assign those duties to another office.

**6.2.3.6 Salaries.** The salaries of the Officers shall be fixed from time to time by the General Partners and no Officer shall be prevented from receiving such salary by reason of the fact that he is also a Partner or a General Partner of the Partnership.

**6.3 Number and Term of General Partners.** The number of General Partners of the Partnership shall be determined from time to time by resolution of the General Partners or the Class A Partners, including Limited Partners; provided, however, that no decrease in the number of General Partners or that would have the effect of shortening the term of an incumbent General Partner may be made by the General Partners. If the General Partners make no such determination, the number of General Partners shall be the number set forth in the Articles as the number of General Partners constituting the initial General Partners or as may be specified by a vote of the Class A Partners. Each General Partner shall hold office for the term for which elected and thereafter until such General Partner's successor shall have been elected and qualified, or until such General Partner's earlier death, resignation or removal. Unless otherwise provided in the Articles, General Partners need not be Partners or residents of the State of Texas.

**6.4 Classification of General Partners.** By affirmative vote of the General Partners or by affirmative vote of the holders of a Majority in Interest, this Agreement may provide that the General Partners shall be divided into two or more classes, each class to be as nearly equal in number as possible, the terms of office of General Partners of the first class to expire one year, that of the second class to expire two years after their election, and that of the third class, if any, to expire three years after their election. If this classification of General Partners is implemented, (1) the whole

number of General Partners of this Partnership need not be elected annually, and (2) annually after such classification, the number of General Partners equal to the number of the class whose term is expiring shall be elected to succeed them.

**6.5 Removal.** Any and all General Partners may be removed, either for or without Cause, at any special meeting of Partners by the affirmative vote of a Majority in Interest entitled to vote at elections of General Partners (Specifically, the Class A Partners). The Notice calling such meeting shall give notice of the intention to act upon such matter, and if the Notice so provides, the vacancy caused by such removal may be filled at such meeting by vote of a Majority in Interest entitled to vote for the designation of General Partners.

**6.6 Resignations.** Any General Partner may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified then at the time of its receipt by the President, or the remaining General Partners, or if there are none then by the Partners. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. If a General Partner resigns their Interest shall be converted to that of a Limited Partner.

**6.7 Vacancies.** Any vacancy occurring in the General Partners may be filled by the affirmative vote of a majority of the remaining General Partners, though less than a quorum of the General Partners. A General Partner elected to fill a vacancy shall be elected for the unexpired term of the General Partner's predecessor in office. Any General Partner position to be filled by reason of an increase in the number of General Partners shall be filled by a Majority in Interest of the Class A Partners.

**6.8 Place of Meetings.** Meetings of the General Partners, regular or special, may be held either within or without the State of Texas.

**6.9 Approval or Ratification.** The General Partners in their discretion may submit any act or contract for approval or ratification at any special meeting of the Class A Partners called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by a Majority in Interest shall be as valid and as binding upon the Partnership and upon all the Partners as if it shall have been approved or ratified by every Partner of the Partnership.

**6.11 Compensation.** By resolution of the General Partners, the General Partners may be paid their expenses, if any, of attendance at each meeting of the Partners and may be paid a fixed sum for attendance at each meeting of the Partners or a stated salary as General Partner. No such payment shall preclude any General Partner from serving the Partnership in any other capacity and receiving compensation therefor. Partners of any special or standing committees may, by resolution of the General Partners, be allowed compensation for attending committee meetings.

## ARTICLE VII MISCELLANEOUS



**7.1 Notice.** Any notice required or permitted to be given pursuant to the provisions of the Act, the Articles, or this Agreement shall be effective as of the date personally delivered or, if sent by mail, on the date that is seventy two (72) hours after it is deposited with the United States Postal Service (or another reputable courier), prepaid and addressed to the intended receiver at his last known address as shown in the records of the Partnership. Additionally, the parties may give notice by fax or email to the regularly known and monitored fax number or email of the intended recipient. In the case of notice by fax or email, the notice shall be deemed received on the date that is seventy two (72) hours after it is sent to the intended recipient (provided however, that the recipient may notify the Partnership that notice, including response via auto responder, using email or fax shall be ineffective for short periods of time – i.e., while traveling, etc. – in which case, notice shall not be effective until 72 hours after such period of absence expires). Any such delivery contemplated herein shall constitute proper “Notice” under this Agreement.

**7.2 Waiver of Notice.** Whenever any Notice is required to be given pursuant to the provisions of the Act, the Articles or this Agreement, a waiver thereof, in writing, signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at a meeting shall be deemed waiver of Notice regarding that meeting.

**7.3 Indemnification by Partnership and Partners of General Partners.** The Class A Partners and the General Partners shall be entitled to all indemnification authorized or allowed by the Act. The Partnership shall indemnify, save and hold harmless the Class A Partners and the General Partners together with its Designated Key Persons, other Affiliates, Officers, directors, partners, employees, and agents from any Proceeding, loss, damage, claim or liability, including but not limited to direct and indirect costs and reasonable attorneys’ fees and expenses, incurred by them by reason of any act performed by the Person on behalf of the Partnership or in furtherance of the Business Purpose and which are not gross negligence, fraud, intentional misconduct, or extreme bad faith; provided, however, that this indemnity from the Partnership shall be satisfied out of Partnership Property and other insurance contracts only. As to all other Persons, The Partnership, at the resolution of the General Partners, may indemnify any person who was or is a party/defendant or is threatened to be made a party/defendant to any Proceeding (other than an action by or in the right of the Partnership) by reason of the fact that he is or was a Partner, General Partner, Designated Key Person, Officer, employee or agent of the Partnership, or is or was serving at the request of the Partnership, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such Proceeding. The termination of any Proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not in itself create a presumption that the Person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Partnership and, with respect to any criminal action or Proceeding, had reasonable cause to believe that his conduct was unlawful.

Each of the Partners and its Designated Key Persons, other Affiliates, Officers, directors, partners, employees, and agents shall indemnify, save and hold harmless the Partnership and its

Affiliates from any Proceeding, loss, damage, claim or liability, including but not limited to direct and indirect costs and reasonable attorneys' fees and expenses, incurred by them by reason of any act performed by the Person which involve gross negligence, fraud, extreme bad faith, or misconduct.

**7.4 Indemnification Funding.** The Partnership shall fund the indemnification obligations provided by Section 7.3 in such manner and to such extent as the General Partners may from time to time deem proper, including obtaining insurance for such obligations or potential obligations.

**7.5 Duty of Care.** No Class A Partner or General Partner shall be liable for any act or omission except those resulting from gross negligence, fraud, extreme bad faith, or intentional malfeasance. To the maximum extent allowed by law, such Persons will not owe (and all Partners of the Partnership expressly disclaim and/or release) any fiduciary duty to the Partnership or any Partner or General Partner. To the maximum extent allowed by law, such Persons will not owe (and all Partners and the Partnership expressly disclaim and/or release) any and all other duties (including a duty of loyalty and a duty of care) to the Partnership or to any Partner or General Partner. Despite this disclaimer and release, if such Persons are found to owe a duty of loyalty, a duty of care, and/or other duties to anyone else which may not be disclaimed by agreement then such duty shall still be curtailed, defined or disclaimed to the maximum extent allowed by law and any definitions or thresholds which are applicable and allowed by such shall be construed so as to minimize the duties owed to the maximum extent allowed by law at the time of the action in question. To the maximum extent allowed by law the business decisions of such Persons shall not be questioned. Specifically and by way of example, any violations of the duty of care or the duty of loyalty, or any other duty imposed upon any Persons which may not be disclaimed or released by agreement, shall be expressly limited to those instances where the Person acts with gross negligence, extreme bad faith, fraud, or intentional malfeasance.

To the extent applicable state law will permit, a General Partner or other Person who succeeds another will be responsible only for the Property and Records delivered by or otherwise acquired from the preceding Person and may accept as correct the Records of the preceding Person without duty to audit the records or to inquire further into the administration of the predecessor and without liability for a predecessor's errors and omissions.

**7.6 Gender and Number.** Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural thereof.

**7.7 Articles and Other Headings.** The Articles and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation.

**7.8 Reimbursement of Officers, General Partners and Partners.** Officers, General Partners and Partners shall generally receive reimbursement for nominal expenses reasonably incurred in the performance of their duties, as determined by the General Partner.

**7.9 Construction.** All references to articles and sections refer to articles and sections of this Agreement (unless stated otherwise that they apply to the Act or the Articles), and all references to exhibits, if any, are to Exhibits attached hereto, if any, each of which is made a part hereof for all purposes. No preference shall be given to one party by virtue of the fact that such party did not draft this Agreement nor shall any bias be placed against the drafter. No failure by any Person to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any breach or any other covenant, duty, agreement or condition.

**7.10 Venue and Attorney's Fees.** Any dispute arising hereunder or among the Partners or General Partners (or their Affiliates) shall be resolved in the courts of Montgomery County, Texas. Except as otherwise provided in this Agreement, in the event a dispute arises between any Persons hereto (or their Affiliates), the prevailing party shall be entitled to recover reasonable attorney's fees and court costs incurred. **ALL PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY TEXAS STATE DISTRICT COURT SITTING IN MONTGOMERY COUNTY, TEXAS, UNITED STATES OF AMERICA IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER ANCILLARY AGREEMENTS, AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY (I) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH TEXAS STATE DISTRICT COURT, (II) WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY ANCILLARY AGREEMENTS, (III) WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, (IV) TO THE GREATEST EXTENT ALLOWED BY UNITED STATES LAW CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS, SUMMONS, NOTICE OR DOCUMENT IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO THE ADDRESS FOR THE PARTY SPECIFIED IN THIS AGREEMENT AND (V) AGREES THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW WITHOUT NECESSITY OF REHEARING THE MERITS OF SUCH. SHOULD IT BE NECESSARY, AND AT THE REQUEST OF ANOTHER PARTNER OR GENERAL PARTNER, ALL PARTIES AGREE TO PROMPTLY APPOINT AN AGENT FOR SERVICE OF PROCESS IN THE STATE OF TEXAS AND TO INFORM GENERAL PARTNER OF ITS SELECTION OF SUCH AGENT.** Each Party further agrees that money damages would not be a sufficient remedy for any breach of this Agreement, and that the other Parties hereto shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available to the Party at law or in equity. Each Party further agrees not to oppose the granting of such relief, and hereby waives any requirement for the securing or posting of any bond in connection with such remedy.

**7.11 Power of Attorney.** Each Partner, and any Assignee or transferee of their Interest in the Partnership, irrevocably makes, constitutes and appoints the General Partners, including any Successor General Partners, and each of them, now or hereafter serving, with full power of substitution, as their true and lawful attorneys-in-fact and agents, for them and in their name, place

and stead and for their use and benefit. Any such agent may sign, execute, certify, acknowledge, file and/or record in the name, place and stead of such Partner or his successor in Interest, this Agreement, and all appropriate instruments amending or related to the Partnership property or this Agreement as now and as hereafter amended, including, without limitation instruments necessary to: (i) reflect the exercise by the General Partner of any of the powers granted to the General Partner under this Agreement; (ii) reflect any amendments duly made to the Agreement; (iii) reflect the admission to the Partnership of a substituted Partner or the withdrawal of any Partner, in the manner prescribed in this Agreement; (iv) continue the Partnership's value existence; (v) reflect the Partnership's dissolution and termination in accordance with the Agreement; or (vi) comply with this Agreement or the laws of Texas or any other jurisdiction or governmental agency. Each Partner authorizes such attorneys-in-fact to take any further action which such attorneys-in-fact shall consider necessary or advisable to be done in and about the foregoing as fully as such Partner might or could do if personally present and hereby ratifies and confirms all that such attorneys-in-fact shall lawfully do or cause to be done by virtue hereof. This Power of Attorney shall be deemed to be coupled with an interest and irrevocable, and it shall survive the death, dissolution, incompetency or legal disability of any Partner (or their Designated Key Person) and shall extend to their heirs, executors, successors and assigns. The power of attorney may be exercised by an agent in any manner, including exercise by facsimile signature. This power of attorney does not enlarge the powers of the Partners or General Partners under the other terms of this Agreement.

**7.12 Amendments.** This Agreement may be altered, amended, restated, or repealed and a new Agreement may be adopted by vote of a Majority in Interest of all of the Class A Partners provided that: (a) an amendment or modification reducing a Partner's interest in profits or losses (except as otherwise provided by this Agreement) is effective only with that Partner's consent and (b) an amendment or modification reducing the required measure for any consent or vote in this Agreement is effective only with the consent or vote of Partners having the requisite Partnership Interests or other measure previously required.

**7.13 Severance.** In the event any sentence or paragraph of this Agreement is declared by a court to be void or by the Internal Revenue Service, for the purposes of Section 2704 of the Code, to be non-effective, that sentence or paragraph shall be deemed severed from the remainder of the Agreement, and the balance of the Agreement shall remain in effect. This provision shall not prohibit the Partnership or any Partner from contesting a determination of non-effectiveness of any provision of this Agreement by the Internal Revenue Service.

Further, It is understood and agreed that, should any portion of any clause or paragraph of this Agreement be deemed too broad to permit enforcement to its full extent, or should any portion of any clause or paragraph of this Agreement be deemed void as against public policy or unconscionable such that it is unenforceable (including any item which would cause an unintended tax consequence under the Code) in the manner it is herein written, then said clause or paragraph will be reformed by the General Partner and enforced to the maximum extent permitted by law in a manner that is as close as possible to the original intent of the parties. Additionally, if any of the provisions of this Agreement are ever found by a court of competent jurisdiction to exceed the maximum enforceable (i) periods of time, (ii) geographic areas of

restriction, (iii) scope of non-competition or non-solicitation and/or (iv) description or identification of the Partnership's business, or for any other reason, then such unenforceable element(s) of this Agreement will be reformed and reduced to the maximum periods of time, geographic areas of restriction, scope of non-competition or non-solicitation and/or description of the Partnership's business that is permitted by law. In this regard, any unenforceable, unreasonable and/or overly broad provision will be reformed and/or severed so as to permit enforcement of this Agreement to the fullest extent permitted by law and in conformity to the nearest legal alternative to that of the Partners' original Agreement.

**7.14 Disclosure.** Each Partner hereby agrees and acknowledges that: (a) The General Partner has retained legal counsel in connection with the formation of the Partnership and expects to retain legal counsel (collectively, "Firms") in connection with the operation of the Partnership, including making, holding and disposing of investments; (b) Except as otherwise agreed to by the General Partner in writing in its sole discretion, the Firms are not representing and will not represent the Partners in connection with the formation of the Partnership, the offering of Partnership interests, the management and operation of the Partnership, or any dispute that may arise between any Partner on one hand and the General Partner and/or the Partnership on the other (the "Partnership Legal Matters"). Except as otherwise agreed to by the General Partner in writing in its sole discretion, each Partner will, if it wishes counsel on a Partnership Legal Matter, retain its own independent counsel with respect thereto and will pay all fees and expenses of such independent counsel; (c) Each Partner hereby agrees that the Firms may represent the General Partner and the Partnership in connection with any and all Partnership Legal Matters (including any dispute between the General Partner and one or more Partner) and waives any present or future conflict of interest with Firms regarding Partnership Legal Matters arising by virtue of any representation or deemed representation of such Partner or the Partnership on account of Firm's representation described in subsection (a) above; provided, however, that the Partners are not hereby agreeing to Firm's representation of the Partnership in a derivative action on their behalf against the General Partner. Each of the parties acknowledge that they: (1) were urged in advance by the Attorney and Firm who prepared this Agreement and the other Records on behalf of the Partnership, both now and as to Records or amendments in the future, to secure separate independent legal counsel in connection with signing and making this Agreement and its effect upon each of them and/or their marital property, (2) has carefully read and understood the provisions of this Agreement, (3) understands that his or her marital rights in property may be adversely affected by this Agreement, (4) is signing and making this Agreement voluntarily, (5) has been provided a fair and reasonable disclosure of the property and financial obligations of any other Party hereto including the Partnership, and (6) hereby voluntarily and expressly waives in this writing any right to disclosure of the property and financial obligations of the other Partners beyond the disclosure provided.

**7.15 Entire Agreement.** THIS AGREEMENT (TOGETHER WITH THE OTHER WRITTEN ANCILLARY AGREEMENTS) CONTAINS THE ENTIRE AGREEMENT AMONG THE PARTIES REGARDING THE SUBJECT MATTER HEREOF. IT SUPERSEDES ALL PRIOR WRITTEN AND ORAL AGREEMENTS AND UNDERSTANDINGS AMONG THE PARTIES HERETO REGARDING SAME AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT

**ORAL AGREEMENTS BY THE PARTIES OR ANY TERM SHEETS BETWEEN THE PARTIES ALL THE TERMS AND CONDITIONS OF WHICH ARE SUPERSEDED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

**7.16 Execution.** This Agreement may be executed in multiple counterparts, any one of which shall be an original. In the event certain Persons executed separate counterparts, all so executed shall constitute one Agreement, binding on all the Persons hereto, despite the failure of a Person to sign all counterparts separately. The parties hereto shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate, in the discretion of the General Partners, to achieve the purposes of this Agreement.

**[Remainder of page left blank. Signatures on next page]**

**CERTIFICATION**

THE UNDERSIGNED, being the all of the Partners of **ASPIRE COMMODITIES, LP**, a Texas Limited Partnership, hereby evidence their adoption and ratification of the foregoing Agreement of the Partnership.

Effective Date: September 5, 2013

**LIMITED PARTNER(S):**

**RURAL ROUTE 3 HOLDINGS, LP**

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By: **RURAL ROUTE 3 MANAGEMENT, LLC**, its General Partner  
By: **SINN LIVING TRUST**, Manager of the General Partner  
By: **ADAM C. SINN**, Trustee of the Manager

**GENERAL PARTNER(S):**

**ASPIRE COMMODITIES 1, LLC**

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By: **SINN LIVING TRUST**, Manager of the General Partner  
By: **ADAM C. SINN**, Trustee of the Manager

**EXHIBIT "A"**

Updated September 5, 2013

<b><u>Partner(s)</u></b>	<b><u>Percentage</u></b>	<b><u>Capital</u></b>
<b>ASPIRE COMMODITIES 1, LLC (Class A General Partner)</b>	<b>1.00%</b>	<b>See Records</b>
<b>RURAL ROUTE 3 HOLDINGS, LP (Class A Limited Partner)</b>	<b>99.00%</b>	<b>See Records</b>



**EXHIBIT B**  
**DESIGNATED KEY PERSON(S)**

**ADAM C. SINN** as to their direct or indirect interest in the Partnership, specifically but limited to their ownership through RURAL ROUTE 3 HOLDINGS, LP and/or RURAL ROUTE 3 MANAGEMENT, LLC and/or SINN LIVING TRUST.

## **EXHIBIT C**

### **PRIMARY OPERATING COMPANIES**

**ASPIRE COMMODITIES, LP**, a Texas Limited Partnership

**ASPIRE COMMODITIES 1, LLC**, a Puerto Rico Limited Liability Company

**ASPIRE CAPITAL MANAGEMENT, LLC**, a Texas Series Limited Liability Company

**3S REAL ESTATE INVESTMENTS, LLC**, a Texas Limited Liability Company

**MAROON SERVICES, INC**, a Texas Corporation

**POSEIDEN COMMODITIES, LLC**, a USVI Limited Liability Company

**RAIDEN COMMODITIES 1, LLC**, a Puerto Rico Limited Liability Company

**RAIDEN COMMODITIES, LP**, a USVI Limited Partnership

**RURAL ROUTE 3 HOLDINGS, LP**, a Texas Limited Partnership

**RURAL ROUTE 3 MANAGEMENT, LLC**, a Texas Limited Liability Company

## EXHIBIT D

### SPOUSAL ASSENT AND AFFIRMATION

The undersigned Spouse (“Spouse”) of \_\_\_\_\_ (“Partner,” herein although such “Partner” may simply be a Designated Key Person and/or be an owner indirectly including indirect ownership through various other entities, Affiliates, parents or subsidiaries), hereby signs this **ASSENT AND AFFIRMATION** (“Assent”) and joins in the execution of that certain Partnership Agreement dated September 5, 2013, as may be amended from time-to-time (“Agreement”) for the purposes of evidencing his or her knowledge of the Agreement’s existence and substance after thorough inspection thereof; evidencing his or her acknowledgment that he or she agrees to the provisions contained in the Agreement; and affirming and/or re-affirming, as the case may be, the corporate documentation contained Partnership’s corporate Records (“Records”), including but not limited to any restrictions on transfer of an interest or rights of repurchase surrounding spouses.

The Partner is a Partner, Designated Key Person or potential Partner of **ASPIRE COMMODITIES, LP** (“Partnership”). Specifically, and without limiting the generality of the forgoing, Partner likely has an indirect interest in the Partnership through ownership in \_\_\_\_\_ . This Assent applies to the Partnership (together with its affiliates, successors and assigns, and all of the other Primary Operating Companies) and any current or future interests of the Partner and/or the Spouse, if any, therein.

By their signature below, Spouse desires to bind his or her separate or community property interest, if any, in any interest or right in the Partnership to the performance of the Agreement and Records, as the same may be amended and updated from time to time by vote of the Partners or actions of the General Partners. Spouse hereby agrees that in the event of the Partner’s death, or the occurrence of any other event as provided in the Agreement or Records, the covenants made therein shall be, and hereby are, accepted as binding on him or her individually and upon all Persons ever to claim under or on behalf of Spouse. This Assent is intended solely as an assent, affirmation and/or reaffirmation of the Agreement and the Records. It is not intended to, and shall not be construed as, conferring, confirming or creating any separate or community property interest in any ownership interest of the Partnership in favor of the Partner’s Spouse. Moreover, as is consistent with the Records, no further consent or signature of Partner’s Spouse shall be required with respect to any future action taken by such Partner or the Partnership under or in connection with this Agreement, the Records or the Partnership. This Assent is requested out of an abundance of caution and only as a clarification as to this particular Agreement and an affirmation and/or reaffirmation as to the Records.

**[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON PROCEEDING PAGES.]**

Effective Date: \_\_\_\_\_.

\_\_\_\_\_

Printed Name: \_\_\_\_\_

**EXHIBIT E**

**CONSENT OF DESIGNATED KEY PERSON(S)**

The undersigned Key Person (“Key Person”) of \_\_\_\_\_ (“Partner”) as to that ownership of Key Person which by, through or with Partner directly or indirectly is attributable to Key Person and/or Partner (including indirect ownership through various other entities, parents or subsidiaries and further including any future or after acquired Interest, which may or may not be owned in the same manner as the initial Interests), hereby signs this **CONSENT OF DESIGNATED KEY PERSON(S)** (“Consent”) and joins in the execution of that certain Partnership Agreement dated September 5, 2013, as may be amended from time-to-time (“Agreement”) for the purposes of evidencing his or her knowledge of the Agreement’s existence and substance after thorough inspection thereof; evidencing his or her acknowledgment that he or she agrees to the provisions contained in the Agreement; and affirming and/or re-affirming, as the case may be, the corporate documentation contained Partnership’s corporate Records, including but not limited to any restrictions on transfer of an interest or rights of repurchase. Key Person consents to be a Designated Key Person as defined in the Partnership Agreement. Specifically, and without limiting the generality of the forgoing, Key Person likely has an indirect interest in the Partnership through ownership in \_\_\_\_\_.

The Partner is a Partner, Assignee or potential Partner of **ASPIRE COMMODITIES, LP** (“Partnership”). This Consent applies to the Partnership (together with its Affiliates, successors and assigns, and all of the other Primary Operating Companies) and any current or future interests of the Partner and/or the Key Person, if any, therein (whether directly or indirectly, including through an Affiliate).

By their signature below, Key Person desires to bind his or her self and his or her direct or indirect Partnership Interest to the performance of the Agreement and Records, as the same may be amended and updated from time to time by vote of the Partners or actions of the General Partners. Key Person hereby agrees that in the event of the Key Person’s death, or the occurrence of any other event applicable to them or a Partner as provided in the Agreement or Records, the standards and covenants made therein shall be, and hereby are, applicable to the Key Person and are accepted as binding on him or her individually and upon all Persons ever to claim under or on behalf of Key Person (including by or through an Affiliate). This Consent is not intended to, and shall not be construed as, conferring, confirming or creating any separate or new Interest by the Key Person in any ownership Interest of the Partnership. Moreover, as is consistent with the Records, no further consent or signature of the Key Person shall be required with respect to any future action taken by such Partner or the Partnership under or in connection with this Agreement, the Records or the Partnership.

**[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON PROCEEDING PAGES.]**

Effective Date: \_\_\_\_\_.

\_\_\_\_\_

Printed Name: \_\_\_\_\_

**From:** Kyle E. Carlton <kcarlton@gmail.com>  
**Sent:** Thursday, July 24, 2014 8:35 PM  
**To:** Patrick de Man  
**Subject:** RE: Partnership Agmts

Thank you Patrick! I have revised a few other grammatical and structural issues since I sent you that initial draft. I'll make sure your comments below are taken care of.

I've been buried under a couple of large closings but hope to get back to sending a few emails tomorrow - yours included.

I will also try to circulate an updated draft in the next few days.

Have a great night!

KC

On Jul 24, 2014 1:12 PM, "Patrick de Man" <[pdeman@aspirecommodities.com](mailto:pdeman@aspirecommodities.com)> wrote:

Kyle,

Still reading thru this, but I have some comments:

Where do Dave and I come in? Should we be designated key persons?

Typos/etc:

on p5, "Partnership" is out of place (it is listed again on p9).

on p8 "operating General Partner", the font changes midway the paragraph.

on p12, Section 1.7.2. I am wondering if there's a type in these sentences:

"...Records, is restricted to significantly."

"...conditions stated Act,..."

on p13, headquarters is in Dorado, Puerto Rico.

(font is changing in this section also)

On p37, "...company **am** executed Spousal..."

On p67: Poseidon has been dissolved.

More practical questions:

- to keep separate capital accounts, what do we need for that? Just excel spreadsheet is fine, or do we need separate bank accounts?

Raiden is in the USVI, so do the attorneys there have to agree with it? Making sure it's compatible with USVI law?

Cheers,

Patrick.

**From:** Kyle E. Carlton [mailto:[kcarlton@gmail.com](mailto:kcarlton@gmail.com)]

**Sent:** Thursday, July 17, 2014 6:11 PM

**To:** Patrick de Man

**Subject:** Re: Partnership Agmts

Jokes over - here's the attachment now.

On Thu, Jul 17, 2014 at 4:56 PM, Kyle E. Carlton <[kcarlton@gmail.com](mailto:kcarlton@gmail.com)> wrote:

Hey Patrick,

I'm finally starting to finalize all the aspire/raiden docs. Should have the other ancillary docs done in the next few days but, in the meantime, here's the agreement for Aspire. The Raiden LP agreements and the LLC Agreements will end up being VERY similar to this.

Read through it and let me know when's a convenient time to talk through it and ask/answer any questions. Some light weekend reading for you :-)

Thanks!

KC





**From:** Kyle Carlton <KCarlton@dallasbusinesslaw.com>  
**Sent:** Thursday, June 25, 2015 2:45 PM  
**To:** Adam Sinn; Patrick de Man  
**Cc:** Kyle Carlton  
**Subject:** Re: Raiden Commodities LP

Patrick,

I have drafted up the documents, but I need to check over it one more time. I should be able to knock this out later this week / early next week. It is the last piece in Adam's puzzle.

All my best,

Kyle

---

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Kyle E. Carlton, JD, MBA  
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Work: (469) 647-3701  
Assistant: (469) 647-3702 /3703  
Cellular: (972) 974-7734  
Facsimile: (877) 433-6906  
Work: Kcarlton@dallasbusinesslaw.com  
Personal: kcarlton@gmail.com  
AIM: MAHER00001  
Skype: K.Big.Carlton

\*\*\* PLEASE NOTE: some of our phone numbers and email addresses have changed. Our new Address is 2500 Dallas Pkwy, Suite 501, Plano, TX 75093.

"Amor Vincit Omnia" - Prioress, Canterbury Tales

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From: Adam Sinn <asinn@aspirecommodities.com>  
Sent: Wednesday, June 17, 2015 11:51 AM  
To: Patrick de Man  
Cc: Kyle Carlton  
Subject: Re: Raiden Commodities LP

the cleaning lady!!!

anyhow agree with Patrick

> On Jun 17, 2015, at 11:27 AM, Patrick de Man  
> <pdeman@aspirecommodities.com> wrote:  
>  
> This is a multipart message in MIME format.  
>  
> -----=\_NextPart\_000\_39C0\_01D0A8F0.9E19E920  
> Content-Type: text/plain;  
> charset="us-ascii"  
> Content-Transfer-Encoding: 7bit  
>  
> Hi Kyle,  
>  
>  
>  
> Is the paperwork regarding Raiden Commodities LP (and Aspire  
> Commodities  
> LP)  
> set up properly that I am a non-voting partner? Effective since?  
>  
>  
>  
> Reason that I ask is that I just heard that a transplant to PR got  
> audited recently.  
>  
> Our cleaning lady and her husband went to the IRS to make a signed  
> statement  
> regarding whether this person and his family were actually living in PR.  
>  
>  
>  
> Generally, we expected that the IRS was going to be knocking on doors  
> soon.

>  
> That time has come, so I want to ensure our paperwork is taken care off.  
>  
>  
>  
> Thanks,  
>  
> Patrick.  
>  
>  
> -----=\_NextPart\_000\_39C0\_01D0A8F0.9E19E920  
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> charset="us-ascii"  
> Content-Transfer-Encoding: quoted-printable  
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> xmlns:o=3D"urn:schemas-microsoft-com:office:office" =  
> xmlns:w=3D"urn:schemas-microsoft-com:office:word" =  
> xmlns:m=3D"http://schemas.microsoft.com/office/2004/12/omml" =  
> xmlns=3D"http://www.w3.org/TR/REC-html40"><head><META =  
> HTTP-EQUIV=3D"Content-Type" CONTENT=3D"text/html"; =  
> charset=3Dus-ascii"><meta name=3DGenerator content=3D"Microsoft Word  
> 15 (filtered medium)"><style><!--  
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> @font-face  
> {font-family:"MS Mincho";  
> panose-1:2 2 6 9 4 2 5 8 3 4;}  
> @font-face  
> {font-family:"Cambria Math";  
> panose-1:2 4 5 3 5 4 6 3 2 4;}  
> @font-face  
> {font-family:Calibri;  
> panose-1:2 15 5 2 2 2 4 3 2 4;}  
> @font-face  
> {font-family:"\@MS Mincho";  
> panose-1:2 2 6 9 4 2 5 8 3 4;}  
> /\* Style Definitions \*/  
> p.MsoNormal, li.MsoNormal, div.MsoNormal  
> {margin:0in;  
> margin-bottom:.0001pt;  
> font-size:11.0pt;  
> font-family:"Calibri",sans-serif;}  
> a:link, span.MsoHyperlink  
> {mso-style-priority:99;  
> color:#0563C1;  
> text-decoration:underline;}  
> a:visited, span.MsoHyperlinkFollowed  
> {mso-style-priority:99;  
> color:#954F72;  
> text-decoration:underline;}  
> span.EmailStyle17  
> {mso-style-type:personal-compose;

```

> font-family:"Calibri",sans-serif;
> color:windowtext;}
> .MsoChpDefault
> {mso-style-type:export-only;
> font-family:"Calibri",sans-serif;}
> @page WordSection1
> {size:8.5in 11.0in;
> margin:1.0in 1.0in 1.0in 1.0in;}
> div.WordSection1
> {page:WordSection1;}
> --></style><!--[if gte mso 9]><xml>
> <o:shapedefaults v:ext=3D"edit" spidmax=3D"1026" />
> </xml><!--[endif]><!--[if gte mso 9]><xml> <o:shapelayout
> v:ext=3D"edit"> <o:idmap v:ext=3D"edit" data=3D"1" />
> </o:shapelayout></xml><!--[endif]></head><body lang=3DEN-US =
> link=3D"#0563C1" vlink=3D"#954F72"><div class=3DWordSection1><p =
> class=3DMsoNormal>Hi Kyle,<o:p></o:p></p><p =
> class=3DMsoNormal><o:p>&nbsp;</o:p></p><p class=3DMsoNormal>Is the =
> paperwork regarding Raiden Commodities LP (and Aspire Commodities LP)
> = set up properly that I am a non-voting partner?&nbsp;  Effective =
> since?<o:p></o:p></p><p class=3DMsoNormal><o:p>&nbsp;</o:p></p><p =
> class=3DMsoNormal>Reason that I ask is that I just heard that a =
> transplant to PR got audited recently.<o:p></o:p></p><p =
> class=3DMsoNormal>Our cleaning lady and her husband went to the IRS to
> = make a signed statement regarding whether this person and his family
> = were actually living in PR.<o:p></o:p></p><p =
> class=3DMsoNormal><o:p>&nbsp;</o:p></p><p class=3DMsoNormal>Generally,
> = we expected that the IRS was going to be knocking on doors =
> soon.<o:p></o:p></p><p class=3DMsoNormal>That time has come, so I want
> = to ensure our paperwork is taken care off.<o:p></o:p></p><p =
> class=3DMsoNormal><o:p>&nbsp;</o:p></p><p =
> class=3DMsoNormal>Thanks,<o:p></o:p></p><p =
> class=3DMsoNormal>Patrick.<o:p></o:p></p></div></body></html>
> -----=_NextPart_000_39C0_01D0A8F0.9E19E920--
>

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