NO. 01-17-00181-CV

IN THE FIRST COURT OF APPEALS OF TEXAS AT HOUSTON

RAIDEN COMMODITIES, LP AND ASPIRE COMMODITIES, LP,

Appellants,

V.

PATRICK DE MAN,

Appellee

APPEAL FROM CAUSE NO. 2016-59771 IN THE 125TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS HONORABLE KYLE CARTER, PRESIDING JUDGE

APPELLANTS' BRIEF

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ORAL ARGUMENT REQUESTED

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Trial Judge:

Honorable Kyle Carter
125th Judicial District
Harris County, Texas

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CITATIONS TO THE APPELLATE RECORD

In this brief, Appellants will cite to the appellate record as follows:

- "CR" indicates the clerk's record filed on March 27, 2017.
- "Find. of Fact & Conc. of Law" indicates the trial court's April 24, 2017 Findings of Fact and Conclusions of Law. Appellants have requested that the Findings of Fact and Conclusions of law be added as a supplement to the clerk's record, but the record has not yet been supplemented.
- "RR" indicates the reporter's record filed on March 14, 2017.
- "App. Tab __" indicates a part of the record reproduced in the Appendix.

STATEMENT REGARDING ORAL ARGUMENT

Appellants request the opportunity to present oral argument to explain why the trial court's error of law in refusing to exercise jurisdiction requires correction. The proper application of personal jurisdiction in the context of remote negotiation and employment in an increasingly digital economy is important to the jurisprudence of the state and has the potential to affect many employers in Texas.

STATEMENT OF THE CASE

This is an appeal from a final order granting Appellee's special appearance for lack of *in personam* jurisdiction. CR691, App. Tab 20. The case centers on Appellants' claim for declaratory judgment that Appellee is not a partner in the Appellants. CR13-14, App. Tab 1. Appellee is a non-resident of Texas who claims to be a partner in Appellants (CR67-68 ¶ 23, App. Tab 2; CR288, App. Tab 10; CR293, App. Tab 11), who are a Texas limited partnership (CR62 ¶ 4, App. Tab 2; CR151, App. Tab 5) and a U.S. Virgin Islands Limited Partnership (CR64 ¶ 13, App. Tab 2; CR77, App. Tab 4), and both of whom had their principal place of business in Texas at the time Appellee formed his relationship with Appellants (CR62 ¶ 4, CR64-65 ¶¶13, 15, App. Tab 2). Appellee claims he became a partner in Appellants as a result of negotiations between Appellee in Connecticut and Appellants in Texas (CR348-49, App. Tab 12), and by providing "sweat equity" in support of Appellants' business operations in Texas (CR353 ¶ 49, App. Tab 12). Appellants contend that Appellee was an employee who "telecommuted" to perform a job based in Texas (CR64 ¶ 10, App. Tab 2), and never obtained a partnership interest (CR8-9, App. Tab 1; CR64, App. Tab 2).

ISSUES PRESENTED FOR REVIEW

ISSUE ONE:

Does a non-resident defendant have minimum contacts with Texas sufficient to exercise personal jurisdiction over a claim for declaratory judgment to determine whether the defendant is a partner in two limited partnerships, and an alternative claim for breach of the partnership agreements, where one of the partnerships is a Texas limited partnership, both partnerships had their principal place of business in Texas when the negotiations occurred, and the defendant performed job functions directed at Texas that he claims were "sweat equity" for his alleged partnership interests?

ISSUE TWO:

Does a non-resident defendant purposefully avail himself of the privileges of Texas law, for purposes of establishing minimum contacts for the exercise of personal jurisdiction, when the defendant claims to be a partner in two limited partnerships, when the operative limited partnership agreements contain Texas choice of forum provisions, and when the claims arise from the alleged partnership relationship and fall within the scope of the forum-selection clause?

ISSUE THREE

Can a Texas court exercise personal jurisdiction over a non-resident defendant for claims of misappropriation of trade secrets, when the trade secrets were developed in Texas and relate to the Texas energy market, when the defendant obtained the trade secrets in the course of an employment relationship that was centered in Texas, and when the parties expressly contemplated that disputes pertaining to the employment relationship would be litigated in Texas?

ISSUE FOUR

Can a Texas court exercise personal jurisdiction over a non-resident defendant for claims of conversion of property when the defendant obtained the property in the course of an employment relationship that was centered in Texas, and when the parties expressly contemplated that disputes

pertaining to the employment relationship would be litigated in Texas?

I. STATEMENT OF FACTS

The Appellants are two limited partnerships engaged in the trading of power commodities in the Texas ERCOT market. Aspire Commodities LP ("Aspire") has always been a Texas limited partnership, and Raiden Commodities LP ("Raiden") was a U.S. Virgin Islands limited partnership at all times relevant to this dispute.[1] CR62 ¶ 4, CR64 ¶ 13, App. Tab 2; CR77, App. Tab 4; CR152, App. Tab 5. The Appellee, Patrick De Man, is an individual who worked for Aspire and Raiden as a commodities trader from 2011 to 2016.

The ultimate owner and principal of Aspire and Raiden is Adam Sinn, an entrepreneur who specializes in trading commodities related to electrical power in Texas. CR62 ¶ 4, App. Tab 2. Mr. Sinn met Mr. De Man in 2005 or 2006, when they were both employees at Lehman Brothers. CR63 ¶ 6, App. Tab 2. At the time, Mr. De Man was a Dutch citizen living in Connecticut and working for Lehman Brothers as an analyst in New York, while Mr. Sinn was a Texas citizen living in Houston and working as a trader in Lehman's Houston office. *Id*. In early 2008, Mr. De Man moved to Houston to support Lehman's ERCOT trading group, which

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[1] As discussed further below, Raiden was organized under the laws of the U.S. Virgin Islands from its formation until 2016, when it was re-domiciled as a Texas limited partnership. That change, however, occurred after the Appellants filed this suit, and thus Appellants have considered Raiden to be a U.S. Virgin Islands partnership for purposes of the issue of personal jurisdiction presented

Mr. Sinn managed, as an analyst. *Id*. The personal and professional relationship between the two flourished at that time. *Id*.

After Lehman declared bankruptcy in September 2008, Mr. Sinn decided to begin his own trading operation. CR62 ¶ 4, App. Tab 2. In 2009, while residing in Texas, Mr. Sinn formed Aspire Capital Management, LLC, a Texas limited liability company based in Houston, Texas, to engage in commodities trading in the ERCOT market. *Id*. Mr. Sinn subsequently reformed that company as Aspire Commodities LP, the Appellant. *Id*. Mr. Sinn manages Aspire as the sole manager of its general partner (Aspire Commodities 1, LLC). *Id*. From its formation until 2013 (when Mr. Sinn moved his personal residence to Puerto Rico for tax reasons), Aspire's principal place of business was in Houston, and Mr. Sinn managed Aspire from his home or office in Houston. *Id*.

After Lehman ceased normal operations in September 2008, Mr. De Man returned to the New York area, where he worked for the Lehman bankruptcy estate for a period of time. CR63 ¶ 6, App. Tab 2. When that job ended, Mr. Sinn helped Mr. De Man get a job at RBS Sempra Commodities ("Sempra") in Connecticut, with the express purpose (as agreed between them) of allowing Mr. De Man to develop trading experience so that he could eventually come to work as a trader

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herein.

with Mr. Sinn. CR348 ¶ 30, App. Tab 12; CR641-42 ¶ 4, App. Tab 16. During 2010, Mr. Sinn and the Defendant often discussed a long-term plan of trading commodities together. CR642-43 ¶ 4, App. Tab 16. Those discussions happened frequently by email, but also in person on several occasions when Mr. Sinn visited New York. CR641-42 ¶¶ 4-5, App. Tab 16.

Mr. Sinn and Mr. De Man accelerated their long-term plan of trading commodities on the ERCOT market together in late 2010, when Mr. De Man's fortunes at Sempra turned south. CR642 ¶ 6, App. Tab 16. Sempra was owned by the Royal Bank of Scotland (RBS), which announced on October 7, 2010, that it was selling its power and gas trading book. *Id*. A few days later, Mr. De Man emailed Mr. Sinn to describe his bleak job prospects as a result of that sale, and renew discussions about coming to work with Mr. Sinn. *Id*. and CR646-47, App. Tab 17.

> Hi Adam,
>
> How are you?
>
> Sempra is going to close on the sale of power/gas to JPM Dec1.
>
> 3 scenarios:
>
> 1) either get laid off Dec 1.
>
> 2) get laid off a quarter or so later, in case they can use you for integration (i prefer this option myself)
>
> 3) get job offer from SocGen.

> in any case, we get paid what we're owed. But I think they mean any contracts, and nothing has been said regarding year-end bonuses.
>
> At this point, they still owe me 250k in retention and guarantee.
>
> Initially I was thinking to bring that into our fund as equity.
>
> However, now I think it's better to live of this money for the next year or two while working with you.

Following this email, in late 2010 into the spring of 2011, Mr. de Man and Mr. Sinn, then residing in Texas, negotiated the terms of Mr. de Man's employment. CR63 ¶ 7, App. Tab 2. While they initially discussed forming a partnership, Mr. de Man did not have the capital required to fund his trading, and Mr. de Man's immigration status barred him at the time from being a partner. *Id*. Consequently, Mr. de Man and Mr. Sinn mutually determined that they were unable to form a partnership at that time, and that Mr. de Man would work as an employee until those two conditions changed. *Id*.

Mr. de Man's trading strategy involved different commodities than Aspire's trading strategy. More specifically, Aspire historically traded short-term future and virtual contracts, whereas Mr. de Man was interested in trading long-term transmission rights. CR64 ¶ 12, App. Tab 2. Thus, in the spring of 2011, Mr. Sinn formed another trading company, Appellant Raiden Commodities LP ("Raiden"), through which to trade long-term transmission rights. *Id*. Mr. Sinn elected to conduct these trading operations through separate entities in order to separate risk

between the two trading books. *Id*. From its formation in 2011 until Mr. Sinn moved his residence to Puerto Rico in 2013, Mr. Sinn managed Raiden from his home or office in Houston. CR62 ¶ 4, CR64 ¶ 13, CR65 ¶¶ 15-16, App. Tab 2; CR643-44 ¶ 9, App. Tab 16.

Mr. Sinn agreed in principle with Mr. de Man that if he accumulated sufficient capital to fund half of his strategy, Mr. Sinn would allow the Defendant to "buy in" as a partner in Raiden (although the details of that arrangement were never fully worked out). CR64 ¶ 13, App. Tab 2. Mr. Sinn made that preliminary agreement while he was in Texas. *Id*.

Once it became clear that a partnership was impracticable, the parties negotiated an employment relationship. CR63 ¶ 8, App. Tab 2. They discussed the Defendant's responsibilities (which would include managing the trading book of Raiden), and his compensation structure. *Id*. They also discussed potential trading strategies to be used on ERCOT. *Id*. Those discussions happened principally by telephone, email, or Instant Message, between Mr. de Man in the New York area and Mr. Sinn in Houston. *Id*.

Those discussions culminated in an offer letter for Mr. de Man to become an employee of Aspire, which both Mr. de Man and Mr. Sinn reviewed and discussed. CR63 ¶ 9, App. Tab 2. Section 11 of that offer letter contained the following provision regarding the place of performance, choice of law, and

jurisdiction for disputes:

> This agreement is performable in whole or in part in Harris County, Texas. This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the State of Texas, without giving effect to any choice of law rules which may direct the application of the laws of any other jurisdiction. If a party wishes to pursue legal action pertaining to this agreement, we agree that such action shall be commenced and prosecuted in the courts of Harris County, Texas, or in the United States District Court for the Southern District of Texas, if appropriate, and we each submit to the exclusive jurisdiction of said courts and respectively waive the right to change venue. CR63-64 ¶ 9, App. Tab 2; CR75 ¶ 11. App. Tab 3.

Mr. de Man suggested revisions to several sections of the offer letter, but at no time raised any disagreement that his work for Aspire was performable in Harris County, Texas, or that disputes related to the employment relationship would be subject to jurisdiction and venue in Harris County, Texas. CR64 ¶ 11, App. Tab 2. For example, in an email on March 21, 2011, Mr. de Man stated, "I put in a few comments, but those are minor. There is nothing really fundamental that I need to add." CR64 ¶ 11, App. Tab 2; CR70-71, App. Tab 3. The parties did not execute the offer letter into a written employment agreement. CR64 ¶ 11, App. Tab 2. Nonetheless, Mr. de Man commenced work for Aspire as an employee in April 2011 on material terms mirroring those laid out in the offer letter. *Id*.

Although Mr. de Man lived in Connecticut at the time, Aspire and Raiden never conducted any business in Connecticut or had any offices, operations, or

employees there, other than the fact that Mr. de Man lived there while working from home as an employee of Aspire. CR64 ¶ 10, App. Tab 2; CR644 ¶ 10, App. Tab 16. Moreover, Mr. de Man's job was based in Texas. For instance:

- Along with trading power on the PJM market, Mr. de Man's primary job function was to execute long-term transmission right trades on the ERCOT market within Raiden. Mr. de Man registered as a User Security Administrator with ERCOT, and maintained contact with ERCOT staff in his role as User Security Administrator (CR65 ¶¶ 13, 15, App. Tab 2);

- Mr. de Man had to seek Mr. Sinn's approval before executing significant trades, and he liaised routinely with Mr. Sinn in Texas regarding the operation of the business (CR65 ¶ 14, App. Tab 2);

- Mr. de Man provided analytical support to Mr. Sinn and other traders based in Houston who made trades through Raiden and Aspire on the ERCOT market (*id.*);

- Mr. de Man travelled to Houston and worked out of Aspire's Houston office on several occasions (CR65 ¶ 15, App. Tab 2; CR395 ¶ 15, App. Tab 12);

- Mr. de Man came to Houston to interview candidates for an analyst position to support Mr. de Man's trades (*id.*);

- Mr. de Man worked directly with a Houston insurance broker to obtain health insurance for himself and Aspire's other employees (CR65 ¶ 16, App. Tab 13); and

- Mr. de Man frequently discussed moving to Houston to physically work out of that office permanently (CR65 ¶ 15, App. Tab 2).

Mr. de Man did not return to Texas, however, because Mr. Sinn moved his personal residence to Puerto Rico in 2013 as part of a tax-management strategy. CR65 ¶ 16, App. Tab 2. Consequently, in 2013, Mr. de Man also moved to Puerto

Rico. *Id*.

Nonetheless, the locus of Aspire's and Raiden's business remained in Texas. The same trades were made based on the same trading strategies on the same Texas market managed by ERCOT. CR65 ¶ 16, App. Tab 2. Aspire remains a Texas limited partnership to this day. *Id*. Moreover, many administrative functions are still Texas-based. *Id*. Both Aspire and Raiden maintain their banking relationships with financial institutions in Texas and salaries are paid out of these Texas banks. *Id*. Legal and human resources functions are also based out of Texas. *Id*.

At the time of their original formation, the partnership agreements of Aspire and Raiden contained no provisions expressly governing jurisdiction for disputes related to the partnerships. CR65 ¶ 17, App. Tab 2. In 2014, however, the Aspire limited partnership agreement was amended (with an effective date of September 5, 2013) to provide for jurisdiction and venue over disputes related to the partnership in Texas. CR65 ¶ 17, App. Tab 2; CR644 ¶ 13, App. Tab 16; CR652-54, App. Tab 19.

Specifically, Section 7.10 of the Aspire Second Amended Limited Partnership Agreement provides in pertinent part:

> 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 ….** CR66 ¶ 18, App. Tab 2; CR212 ¶ 7.10, App. Tab 5.

Although Mr. de Man had no right of consent to amendments to the Aspire limited partnership agreement, Mr. de Man reviewed a draft of this amendment before it was executed. CR543, CR617-618, App. Tab 15.

In May 2016, before Mr. de Man severed his employment with Aspire and Raiden and took the other actions precipitating this dispute, Raiden's limited partnership agreement also was amended to provide for jurisdiction and venue

over disputes related to the partnership in Texas. CR65-66 ¶ 17, App. Tab 2; CR138-39 ¶ 7.10, App. Tab 4; CR648-51, App. Tab 18. Specifically, the Second Amended Limited Partnership Agreement of Raiden contained a clause identical to the clause set out above, except that it provided for venue in Harris Country rather than Montgomery County. CR65-66 ¶ 17, App. Tab 2; CR138-39 ¶ 7.10, App. Tab 4.

These provisions were added to the limited partnership agreements because, although Mr. Sinn had moved his personal residence to Puerto Rico (and thus conducted a substantial amount of his work for the companies from Puerto Rico), the locus of the companies' business remained in Texas, and thus Texas was the most appropriate forum for disputes related to partnership issues. CR66 ¶ 18, App. Tab 2. It made no sense for disputes related to those partnerships to be resolved in Puerto Rico courts, where proceedings are conducted in Spanish, just because Mr. Sinn had moved there for tax reasons. *Id*.

Mr. de Man never executed those agreements, but other traders who did become limited partners were required to accept those terms (among others) in the Limited Partnership agreements. CR66-67 ¶ 18, App. Tab 2; CR225-54, App. Tab 6. Notwithstanding the fact that Mr. de Man never executed the limited partnership agreement, the Appellants treated Mr. de Man in some respects as if he were a limited partner. For example, Aspire and Raiden reported some of Mr. de

Man's compensation to the IRS as partnership income. CR446, CR458.

In July 2016, Mr. de Man terminated his relationship with Aspire and Raiden. In the course of discussing the terms of separation, however, it became apparent that the Appellants and Mr. de Man did not agree regarding the nature of the relationship, including whether he had any partnership interest and the terms thereof. After Appellants tendered a draft separation agreement, Mr. de Man (through counsel) responded with a demand letter (in the form of a draft settlement agreement) that asserted, in relevant part:

- Mr. de Man was an employee of Aspire from 2011 to 2013 and an employee of Raiden's general partner thereafter (CR293, App. Tab 11);
- Mr. de Man is a limited partner in both Aspire and Raiden (*id.*);
- Mr. Sinn made various promises and offers of equity participation to induce Mr. de Man to accept his employment as a trader for Aspire and Raiden (*id.*);
- Mr. de Man was entitled to payment of $5.6 million for the repurchase of his limited partnership interests in Aspire and Raiden, along with termination of his employment and the execution of releases (including of releases of claims arising under the Texas Constitution, the Texas Labor Code, and the Texas Commission on Human Rights Act) (CR295-96 ¶ 4, App. Tab 11).

On September 6, 2016, Aspire and Raiden filed this action in the district court of Harris County. CR4-20, App. Tab 1. The primary claim seeks a declaration that Mr. de Man is not a partner of Aspire or Raiden, or in the alternative, to declare the terms of any such partnership and that Mr. de Man has

breached those terms. CR13-14, App. Tab 1.

Additionally, the petition alleges misappropriation of trade secrets (CR15, App. Tab 1), and conversion of computers containing the trade secrets (CR14-15, App. Tab 1). The trade secrets at issue are comprised of confidential and proprietary information, including, *inter alia*, analyses of weather, transmission congestion, and historical pricing, as well as models that test the data by manipulating these underlying variables. CR67 ¶ 20, App. Tab 2. Raiden's and Aspire's trading strategies are based on these models. CR67 ¶ 19, App. Tab 2. The majority of them were developed in Texas and designed for use in the Texas market. *Id*. Some were discussed with the Defendant during negotiations in 2011 from Texas. *Id*. Aspire, Raiden, and its employees spent considerable time, effort, and capital to develop their trading models, which are dependent on data generated in Texas and are still used to make trades in the Texas market to this day. CR67 ¶ 20, App. Tab 2. The parties contemplated protecting the trade secrets in their negotiations and draft agreements. CR67 ¶ 19, App. Tab 2; CR73-74 ¶ 8, App. Tab 3. The parties also contemplated resolving disputes about these trade secrets in a Texas court under Texas law. CR67 ¶ 19, App. Tab 2; CR75 ¶ 11, App. Tab 3.

Moreover, most of the computers on which the trade secrets reside were purchased by Mr. Sinn on behalf of Aspire from a Texas vendor to enable the Defendant to execute trades on a Texas market. CR67 ¶ 21, App. Tab 2; CR256-

67, App. Tab 7; CR274-76, App. Tab 9. The Defendant's Dell computer and his most recent laptop were purchased by the Defendant, but he was reimbursed by Aspire for those purchases from its bank account in Texas. CR67 ¶ 21, App. Tab 2; CR269-276, App. Tab 8.

On January 3, 2017, Mr. de Man served Mr. Sinn with a complaint in the Bayamon Superior Court, a court of first instance in Puerto Rico (the "Puerto Rico Lawsuit"). CR68 ¶ 24, App. Tab 2; CR307-32, CR333-68. The Puerto Rico Lawsuit is in most respects a mirror image of the Original Petition in this case. More specifically, Mr. de Man alleges that he is a partner in Aspire and Raiden (CR342 ¶ 1, App. Tab 12), and seeks relief for breach of fiduciary duty (CR358-59, App. Tab 12) and partnership obligations by Aspire and Raiden (as well as the general partners of Aspire and Raiden, Mr. Sinn personally, and Mr. Sinn's living trust) (CR360-61, App. Tab 12).

II. SUMMARY OF ARGUMENT

This case arises out of a business relationship between Mr. de Man and the Appellants that is inextricably connected to Texas. At the time the relationship came into existence, Aspire and Raiden had their principal place of business in Texas. Their business was and always has been trading energy commodities on the ERCOT market in Texas. Mr. de Man accepted a job executing trades and performing other functions for the Appellants in Texas. Due to the wonders of

modern telecommunications, he was able to perform many (but not all) of his job functions from his home in Connecticut (and later Puerto Rico), but the locus of his job was in Texas. That fact is confirmed by the offer letter that he received at the outset of his employment, which stated that the agreement was performable in whole or in part in Texas, and that disputes pertaining to the agreement would be litigated in Texas. Mr. de Man reviewed that offer letter, expressed no disagreement with those terms, and thereafter commenced his work for Aspire.

The central issue in this case is whether Mr. de Man was merely an employee, or obtained a partnership interest in Aspire and Raiden. Texas courts have personal jurisdiction over Mr. de Man to resolve that issue because Mr. de Man established minimum contacts when he formed the relationship with Aspire and Raiden that he now claims gave rise to a partnership interest.

The district court erred in its application of the law to the facts in two primary ways. First and most significantly, the district court focused exclusively (and erroneously) on the degree of Mr. de Man's contacts with Texas at the time that the parties' relationship "blew up," rather than his contacts at the time the relationship began and when he claimed to obtain a partnership interest. Based on his own allegations in the Puerto Rico lawsuit, he claims that his partnership interest arose out of his negotiations with Aspire and Raiden when they were located solely in Houston, and from the "sweat equity" that he allegedly provided

to those companies in Houston. Thus, for purposes of assessing whether there is a substantial connection between the declaratory judgment claim and Mr. de Man's contacts with Texas, it is necessary to look at his contacts in 2010 to 2013 (when he claims the partnership agreement came into existence) as well as his contacts when the relationship ended in 2016.

Second, the district court's jurisdictional analysis placed too much weight on physical presence, finding that Mr. de Man worked as a commodities trader "in Connecticut" and that his trades were executed "from outside of Texas." Find. of Fact Conc. of Law ¶¶ 11, 13, App. Tab 21. In the context of interstate contractual relations, however, the most important question to the jurisdictional analysis is where the defendant's actions are purposefully directed, not where the defendant is physically located. In taking a job to perform duties in Texas for two Texas-based companies (albeit remotely), and then claiming that his negotiations to obtain that job and performance of the job created a partnership interest in those companies, Mr. de Man purposefully availed himself of the privilege of doing business in Texas. His contacts with Texas were by no means "random and fortuitous."

Finally, the district court's denial of jurisdiction over the trade secret and conversion claims is erroneous for similar reasons. Mr. de Man obtained the trade secrets and computers at issue in the course of his employment relationship, which was centered in Texas. The fact that he should reasonably anticipate being haled

into Texas court on those claims is confirmed by the fact that the offer letter he received, which he reviewed without objection, stated that all claims related to the employment agreement would be litigated in Texas.

ARGUMENT AND AUTHORITIES

III. STANDARD OF REVIEW

Whether a trial court has personal jurisdiction over a defendant is a question of law that this Court reviews de novo. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007). The trial court's resolution of disputed fact questions is subject to review of the factual and legal sufficiency of the evidence. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

IV. Issue One: Does a non-resident defendant have minimum contacts with Texas sufficient to exercise personal jurisdiction over a claim for declaratory judgment to determine whether the defendant is a partner in two limited partnerships, and an alternative claim for breach of the partnership agreements, where one of the partnerships is a Texas limited partnership, both partnerships had their principal place of business in Texas when the negotiations occurred, and the defendant performed job functions directed at Texas that he claims were "sweat equity" for his alleged partnership interests?

The material facts relevant to the exercise of personal jurisdiction over Mr. de Man are largely undisputed. The trial court erred by misapplying the applicable law to those facts, both by setting far too high a threshold of "minimum contacts" required to exercise jurisdiction, and by ignoring relevant contacts that clearly pass the threshold. This Court reviews the application of the law to the facts on an

order granting special appearance *de novo*.

Texas courts may exercise jurisdiction over a nonresident if the Texas long-arm statute authorizes the exercise of personal jurisdiction and the exercise of jurisdiction is consistent with federal and state constitutional guarantees of due process. *Moki Mac*, 221 S.W.3d at 575. The Texas long-arm statute authorizes Texas courts to exercise jurisdiction over a nonresident defendant who "does business" in the state. *See* Tex. Civ. Prac. & Rem.Code § 17.042, App. Tab 23. The Texas Supreme Court has interpreted the broad language of the Texas long-arm statute to extend Texas courts' personal jurisdiction "as far as the federal constitutional requirements of due process will permit." *BMC Software*, 83 S.W.3d at 795.

The leading pronouncement of the U.S. Supreme Court on the exercise of personal jurisdiction over a non-resident defendant in the context of contractual relations is *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). In *Burger King*, the Court described the governing principles as follows:

> The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful "contacts, ties, or relations." By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not

render them liable to suit[.]"

Burger King, 471 U.S. at 471-72.

In applying these general principles, the Court emphasized the essential question of whether the non-resident defendant has established sufficient "minimum contacts" with the forum state such that the defendant has fair warning that he may be subjected to suit there:

> [T]he constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. … [T]he foreseeability that is critical to due process analysis ... is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."
>
> This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts," or of the "unilateral activity of another party or a third person." Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum State.

Burger King, 471 U.S. at 474-75.

Very important to this case, the Court in *Burger King* also emphasized the limited relevance of physical presence in the forum state in cases involving

interstate commercial relationships:

> Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

Burger King, 471 U.S. at 476.

In this case, Mr. de Man purposefully directed his commercial efforts towards Texas by negotiating to form a business relationship with two companies based in Texas (one of which is a Texas limited partnership), claiming that those negotiations gave rise to a partnership interest (with notice that the partnership agreements contained a Texas forum-selection clause), and performing employment services directed at Texas that he claims amounts to "sweat equity" for the limited partnership interest.

The central question at the heart of this case is whether Mr. de Man holds a partnership interest in Aspire or Raiden, and if so, the terms of the partnership agreement. The events relevant to that issue stretch over a period from 2008 to 2016, and unquestionably involve conduct of Mr. de Man that was purposefully

directed toward Texas.

At the time that Mr. de Man formed his business relationship with Aspire, Aspire was a Texas company in every sense. It was a Texas limited partnership, and its only place of business was in Houston. CR62 ¶ 4, CR65 ¶¶ 15-16, App. Tab 2. Likewise, when Mr. de Man began performing trading services for Raiden, Raiden's principal place of business was in Houston. CR64 ¶ 13, CR65 ¶¶ 15-16, App. Tab 2.

The district court's findings of fact are not inconsistent. The court based its decision in large measure on a finding that "[b]oth Raiden and Aspire *have* their principal place of business in Puerto Rico, as evidenced by the K-1 tax forms filed with the IRS." Find. of Fact & Conc. of Law ¶ 19 (emphasis added), App. Tab 21. The evidence cited by the district court, however, relates solely to the years 2013-2015. It is undisputed that Aspire and Raiden moved their principal place of business to Puerto Rico in 2013, where it has remained since. *See* CR65 ¶ 16, App. Tab 2. But it is also undisputed that Aspire and Raiden had their principal place of business in Houston at all times prior to the move to Puerto Rico in 2013, including when the negotiations giving rise to the business relationship, and which form part of the basis for Mr. de Man's claim to a partnership interest, began. CR62 ¶ 4, CR63 ¶ 8, CR64 ¶ 13, CR65 ¶¶ 14-16, App. Tab 2; *see* CR395 ¶ 19, App. Tab 13.

At oral argument, counsel for Mr. de Man led the trial court astray by arguing that events prior to 2014 were not relevant to the issue at hand. *See* RR10:6-10:7, 13:19-13:20, App. Tab 22. ("The claims all arise out of stuff that happened in the summer of 2016 …at the time of the blow up in the summer of 2016."). That is plainly not the case, as is evident from both the Original Petition in this case and the complaint that Mr. de Man filed in Puerto Rico (in which he sets out the factual basis for his claim that he is a partner in Aspire and Raiden).

For instance, the crux of the Original Petition alleges that Mr. Sinn and Mr. de Man agreed during their negotiations in 2010 and 2011 that Mr. de Man would be an employee of Aspire, not a partner of either Aspire or Raiden. CR6-8 ¶¶ 9-11, App. Tab 1. Moreover, the Original Petition also alleges that Mr. Sinn and Mr. de Man agreed during their negotiations in 2010 and 2011 on the conditions in which Mr. de Man might become a partner in Aspire or Raiden in the future. CR8 ¶ 12, App. Tab 1. Additionally, the Original Petition alleges that the business of Raiden expanded and changed in 2012, such that the parties' original discussions regarding the circumstances under which he might become a partner were no longer germane. CR8 ¶ 13, App. Tab 1. Thus, the claim for declaratory judgment does not arise solely from the "blow-up" of the parties' relationship in 2016. The question of whether Mr. de Man holds a partnership interest in Aspire or Raiden necessarily involves the entirety of the discussions during which the parties agreed

(or failed to agree) on the nature of the business relationship, which goes back at least to 2010.

Indeed, this is confirmed by Mr. de Man's own allegations in the Puerto Lawsuit, in which he sets out the factual basis for his claim to be a partner. For instance, Mr. de Man alleges:

> Meanwhile, in Houston, Sinn realized that working independently (that is, independent from a large and well-established company) would be his best option, and he would suggest from time to time that he and De Man could someday work together again. In early 2009, Sinn began to trade in electricity futures independently. He initially registered his business entity as "Aspire Capital Management LLC", and later, in 2011, Sinn transferred those business activities to Aspire LP, one of the Defendants. CR347 ¶ 28, App. Tab 12.
>
> During the summer of 2009, Sinn visited New York and met with De Man to continue exploring these ideas. CR348 ¶ 29, App. Tab 12.
>
> Sinn did not have the knowledge, experience, or the quantitative skills to trade these products on his own. De Man also did not have a great deal of experience in trading these products, which is why in October 2009, he applied for and accepted a job with RBS Sempra Commodities ("Sempra") …
>
> While De Man was working at Sempra, Sinn continued to tell De man how appealing it would be for the two of them to build a business. For example, on July 22, 2010, Sinn sent an email to De Man in which he said: "*Relying on someone else gives me the heebee jeebees. You ready to join me*?"
>
> De Man and Sinn soon began to have more serious conversations (by telephone and email) regarding the viability of a joint company, the regional markets in which this company should participate, and what the applicable capital requirements

would be. As part of this dialogue, Sinn repeatedly expressed his desire for De Man to join him: "it would be a privilege to get an arrangement worked out" (September 20, 2010) and "I view this as more of a partnership" (September 30, 2010).

In late 2010, and while the dialogue with De Man continued, Sinn decided to create a new company for the purpose of trading FTRs and Virtuals, and asked De Man to suggest a name for the new company: "*Just make it something that at some point in time if you wanted to sell the company that the name isn't too outlandish*" (November 3, 2010).[2]

At the start of 2011, De Man had a family with a one (1) year-old son and had bought a house. Therefore, the idea of leaving a good position with a large and stable company and in order to take part in a small and independent commercial enterprise was hard to take.… De Man's decision to partner with Sinn brought with it a significant reputational risk in addition to the practical and personal risks described above. This is also, among other reasons, because Sinn was a small trader, unknown in the market, and had not even earned the respect of his former boss.

De Man left Sempra to join Sinn in April 2011. Sinn finally managed to persuade De Man to join him and to take the aforementioned risks, using as his big guns the promise of equity interest in the company that De Man had already named. Thus, De Man, confident and relying on Sinn's promises, accepted the risks in exchange for the expectation of becoming an equity partner and to be materially compensated to the extent that the company was successful or was sold.

Sinn and De Man agreed that Sinn would provide the capital required for the electricity trading business, while De Man would contribute his knowledge, efforts, experience and skills. In addition, they initially agreed that De Man would receive (as his initial compensation) 30% of the profits generated by his

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[2] Without a doubt, from the beginning, Sinn was clear that De Man would be the owner of the entity in question and would benefit from its potential sale.

> own trading in the electricity market. Sinn also promised De Man that he could buy up to a 50% equity interest in Raiden LP. CR348-50 ¶¶ 30-33, 35-37, App. Tab 12.
>
> * * *
>
> Once De Man began working with Sinn, Sinn was able to expand the companies' business activities, rent additional office space and hire several new traders. This business growth generated substantial additional administrative needs. At Sinn's request, De Man devoted a significant amount of time and effort to effectively incorporating and including each of the new employees into the operation, and creating a management and administrative framework. These administrative and managerial efforts, typical of a partner or an owner, distracted De Man a great deal and prevented him from engaging in his market activities, which is what generated income for him.
>
> As indicated above, during the first few years (2011-2013), the capital contributions De Man made to the companies were not formally recognized. CR 350-51 ¶¶ 40-41, App. Tab 12.

Thus, based on Mr. de Man's own allegations in the Puerto Rico Lawsuit, there can be no doubt that the question at the center of Appellants' declaratory judgment claim (and alternative claim for breach) arises from the parties' negotiations and business relationship in 2010 to 2013, and not merely from the "blow up" of the business relationship in 2016. Mr. de Man contends that the partnership agreement was formed in 2011, and that his work for the companies in 2011 to 2013 constituted "sweat equity" for his partnership interest. *E.g.*, CR353 ¶ 49, App. Tab 12.

Furthermore, it is not highly relevant, much less dispositive, that Mr. de

Man was physically located in Connecticut during most of those negotiations, and performed his job primarily from Connecticut. As the Supreme Court emphasized in *Burger King*, the important question is whether Mr. de Man's efforts were "purposefully directed" toward Texas. They plainly were.

For instance, on Mr. de Man's own allegations in the Puerto Rico Lawsuit, the "serious conversations" regarding the nature of the business relationship happened by telephone and email. CR63 ¶ 8, App. Tab 2; CR348 ¶ 32, App. Tab 12. Thus, while the district court's factual findings reference five in-person discussions that occurred in New York during the early phase of the negotiations (Find. of Fact & Conc. of Law ¶ 9, App. Tab 21), it is undisputed that the negotiations also occurred by telephone and email with Mr. Sinn in Texas. Therefore, for jurisdictional purposes, the contract was negotiated in Texas. *See Beechem v. Pippin*, 686 S.W.2d 356, 362 (Tex. App.—Austin 1985, no writ) (reversing trial court's dismissal for lack of jurisdiction, and finding that "the contract was solicited and negotiated in Texas" when defendant contacted plaintiff in Texas by telephone seeking to lease personal property; the calls resulted in a contract; and the contract was accepted over the phone and later reduced to writing.); *see also Kiah v. Singh*, 2009 WL 47021, at *4 (D.N.J. Jan. 6, 2009) (finding that defendants purposefully availed themselves of the forum state by initiating contact with the resident plaintiff by email; engaging in negotiations of

the contracts over email, phone, and fax; knowingly providing services to a forum state resident under the contracts; and improperly accessing forum state bank accounts, while rejecting defendants' argument that they never physically travelled to the forum state: "a finding of purposeful does not require a physical entrance into the forum state by a defendant."); *accord Searcy v. Parex Res., Inc*., 496 S.W.3d 58, 74 n.87 (Tex. 2016), *reh'g denied* (Sept. 23, 2016) (in a personal jurisdiction case based on tort claims, in addressing the dissent's criticism that "[t]he Court, however, fails to recognize [defendant] conducted its negotiation and bidding activities *in Texas* through electronic means" the majority states "nowhere in this opinion do we highlight a difference between in-person and electronic communications") (emphasis in original).

More significantly, the employment (or partnership) opportunity that Mr. de Man was pursuing was located in Texas. Aspire was a Texas limited partnership. CR62 ¶ 4, App. Tab 2. Aspire and Raiden had their principle place of business in Houston. CR62 ¶ 4, CR64-65 ¶¶13, 15, App. Tab 2. Their business was trading commodities on the ERCOT market. CR62-63 ¶ 5, App. Tab 2. All of their employees were located in Houston. CR65 ¶ 15, App. Tab 2. Thus, regardless of where and how the negotiations occurred, Mr. de Man's purpose in those negotiations was to affiliate himself with Texas-based businesses as either an employee or a partner.

Similarly, the job functions that Mr. de Man performed were directed at Texas. He traded commodities on a Texas market for the benefit of two Texas-based companies. CR65 ¶¶ 14-15, App. Tab 2. He liaised with Mr. Sinn regularly regarding the operation of those Texas-based companies. CR65 ¶ 15, App. Tab 2. He provided analytical support to Mr. Sinn and the partnerships' other traders in Texas. *Id*. He worked out of the Houston office (physically) on several occasions. *Id*. He performed administrative functions in Texas, such as obtaining health insurance from a Houston broker. He was paid from Aspire's bank in Texas. *Id*.

If these facts required further corroboration that the parties considered Mr. de Man's job functions to be based in Houston, it can be found in the offer letter that Aspire sent Mr. de Man, and Mr. de Man's reaction to it. CR63-64 ¶¶ 9-11, App. Tab 2; CR70-75, App. Tab 3. That letter explicitly stated that "[t]his agreement is performable in whole or in part in Harris County, Texas," provided for the application of Texas law, and contained a Texas forum-selection clause for disputes related to the employment agreement. CR63-64 ¶ 9, App. Tab 2; CR75 ¶ 11, App. Tab 3. Mr. de Man reviewed that offer letter, and expressed no disagreement with those terms. CR64 ¶ 11, App. Tab 2. Thus, Mr. de Man understood that the job he subsequently accepted was performable in Texas, and

that disputes related to that employment agreement would be litigated in Texas.[3] The district court did not consider this evidence in its findings of fact and conclusions of law.

The district court based its decision in part on its finding that Aspire hired Mr. de Man "to work as a commodities trader in Connecticut, as evidence by a number of employment documents from the State of Connecticut." Find. of Fact & Conc. of Law ¶ 11, App. Tab 21. It is not disputed that Mr. de Man physically resided in Connecticut, and worked primarily out of his home there, in 2011 to 2013. But the fact that Mr. de Man worked in Connecticut, and thus had to comply with Connecticut tax and labor rules, is not dispositive of where his job functions were purposefully *directed*. Nor does the physical location of his job dictate where he directed his alleged "sweat equity" capital contributions, namely, to Aspire and Raiden in Texas. *See The Leader Institute v. Jackson*, 2015 WL 4508424 at *13 (N.D. Tex. Jul. 24, 2015) (rejecting nonresident defendant's argument that work performed primarily from his home in Indiana for a Texas company was insufficient contact to establish personal jurisdiction in Texas).

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[3] The parties did not execute that agreement. Nonetheless, Mr. de Man's acceptance of employment based on the terms laid out in the offer letter constitutes implicit acceptance of the terms therein. Moreover, even if the offer letter is not a binding employment contract, it nevertheless is strong evidence that Mr. de Man understood that his job duties were based in Texas and that disputes related to that

Indeed, Mr. de Man acknowledged in his affidavit that there is "no requirement that persons involved in trading contracts be located in, or otherwise tethered to, Texas," and pointed out that Mr. Sinn and others routinely trade ERCOT contracts from outside of Texas. CR392 ¶ 11, App. Tab 13. Mr. de Man misunderstands the significance of this fact, which runs directly contrary to his argument. In the modern economy, the ability to perform tasks remotely (via the internet or otherwise) *diminishes* the importance of physical presence to the personal jurisdiction analysis. *See Burger King*, 471 U.S. at 476 ("it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted" and as "long as a commercial actor's efforts are 'purposefully directed' toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.") Mr. de Man literally could have lived anywhere and performed his job for Aspire and Raiden remotely. That fact makes the location where he chose to live the "random and fortuitous" contact, and highlights the importance of the fact that his job duties were *directed at* Texas.

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employment relationship would be litigated in Texas.

Based on all of these facts, the district court plainly has personal jurisdiction over Mr. de Man. In *Smart Call LLC v. Genio Mobile*, 349 S.W.3d 755 (Tex. App. Hous. [14th] 2011), the court asserted personal jurisdiction over a nonresident based on contacts that were similar – and if anything, less extensive – than those in the present case. The plaintiff in *Smart Call* (Genio) was a cell phone service reseller based in Texas who entered into a contract with a virtual cell phone service provider based in Ohio (Smart Call) to provide service to the plaintiff's customers in Texas. *Id*. at 757. Negotiations occurred over phone, e-mail, and video conferences, and in two in-person meetings in Ohio. *Id*. The parties progressed performance of their agreement over an approximately six-month period before the relationship deteriorated, at which point Genio brought suit in Texas.

Smart Call filed a special appearance objecting to personal jurisdiction on the grounds that:

> "(1) Genio contacted Smart Call in Ohio; (2) Smart Call had not done any business in Texas before contracting with Genio; (3) the contract between Genio and Smart Call was to be performed in Ohio and Montana; and (4) Smart Call has no physical presence or employees in Texas and has never marketed its products and services in Texas. Smart Call argues that merely contracting with a Texas company does not constitute purposeful availment for jurisdictional purposes."

Id. at 760. The court of appeals analyzed the issue under the *Burger King* standard,

and concluded that Texas courts could exercise personal jurisdiction over Smart Call. Specifically, the court did not place much weight on the fact that the plaintiff had initiated the contact out of Texas, or that the defendant was not physically present in Texas, and instead emphasized the fact that the parties had a long-term relationship involving repeated contacts directed by the defendant in Ohio toward the plaintiff in Texas. The court disregarded the fact that the case did not involve a franchise relationship (as was the case in *Burger King*), and focused on "whether the parties have the kind of 'interdependent relationship' that constitutes a purposeful availment of the forum by the out-of-state defendant." *Id*. at 763. The court found that they did, because Smart Call negotiated with Genio fully knowing that its services would be provided to Genio in Texas.

The connections in this case are similar to, and far more extensive than, those in *Smart Call*. Mr. de Man negotiated with the Appellants to provide his commodities trading and other services to Aspire and Raiden in Texas knowing that they conducted business almost exclusively in Texas (*e.g.*, trading commodities on the ERCOT market). Regardless of whether he was an employee or a partner, he provided those services to Aspire and Raiden in Texas for more than two years, involving near daily interaction with Mr. Sinn and the other employees in Houston, as well as frequent interaction with ERCOT. Moreover, in Mr. de Man's view – the correctness of which is the central question in the case –

he was not just an employee or other service provider. He claims he became a partner in Aspire and Raiden as a result of his dealings with them, and sweat equity provided to them, in Texas. It is hard to imagine more "purposeful availment" than that.

Another case finding personal jurisdiction over a nonresident on facts similar to this case is *Murray v. Epic Energy Resources, Inc*., 300 S.W.3d 461 (Tex. App.—Beaumont 2009, no pet.). In *Murray*, the court exercised personal jurisdiction over claims for breach of an employment agreement and misappropriation of trade secrets by a Texas employer against a nonresident employee. The court found that the employee had established sufficient minimum contacts to support jurisdiction because he had entered into an employment agreement with a company that had its principal place of business in Texas, he traveled to Texas on several occasions in the course of his work, he frequently communicated with and reported to the company's executives based in Texas, and the employment relationship was governed by an agreement that contained Texas choice-of-law and forum-selection (arbitration) clauses.[4] *Id*. at 470. Each of these

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[4] The employment contract in *Murray* was executed, whereas the offer letter in this case was not reduced to a written contract. The *Murray* court, however, did not base its exercise of personal jurisdiction on the binding nature of that agreement. Rather, it concluded that the agreement was not itself dispositive, but was evidence of the employee's "deliberate affiliation with Texas and the

factors is present here as well.

In summary, the district court has jurisdiction over Mr. de Man to determine whether he is a partner in Aspire and Raiden, and if so, whether he breached the partnership agreement, because his claim to be a partner arises out of extensive contacts that Mr. de Man directed purposefully toward Texas. Under these circumstances, it does not offend traditional notions of fair play and substantial justice for a Texas court to assert jurisdiction and decide this claim.

V. Issue Two: Does a non-resident defendant personally avail himself of the privileges of Texas law, for purposes of establishing minimum contacts for the exercise of personal jurisdiction, when the defendant claims to be a partner in two limited partnerships, when the operative limited partnership agreements contain Texas choice of forum provisions, and when the claims arise from the alleged partnership relationship and fall within the scope of the forum-selection clause?

Mr. de Man claims that he is a limited partner in both Aspire and Raiden. He made this claim in a demand letter that his counsel sent to Appellants on July 20, 2016 (CR288, App. Tab 10), in an additional demand letter (styled as a draft settlement agreement) that his counsel sent to Appellants on August 11, 2016 (CR293, App. Tab 11), and in the Puerto Rico Lawsuit that he filed on December

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foreseeability of litigation in Texas concerning the agreement." *Murray*, 300 S.W.3d at 470. In this case, Mr. de Man's approving review of the draft employment agreement also is evidence that his subsequent work for Aspire and Raiden constituted "deliberate affiliation" with Texas which, when combined with the other facts outlined above, is sufficient to support personal jurisdiction.

16, 2016 (CR342 ¶ 1, App. Tab 12).

In asserting that he is a partner in Aspire and Raiden, Mr. de Man claims that he is a party to the partnership agreements governing those partnerships. This is explicit in the Puerto Rico Lawsuit. Count III of that complaint asserts a claim for breach of the Raiden Limited Partnership Agreement, which Mr. de Man could only assert if he is a party to that agreement.

The operative partnership agreements of both Aspire and Raiden contain Texas forum-selection clauses. Section 7.10 of the First Amended Limited Partnership Agreement of Raiden provides:

> Any dispute arising hereunder or among the Partners or General Partners (or their Affiliates) shall be resolved in the courts of Harris County, Texas. … **ALL PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY TEXAS STATE DISTRICT COURT SITTING IN HARRIS COUNTY, TEXAS, UNITED STATES OF AMERICA IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER ANCILLARY AGREEMENTS….** CR138-39 ¶ 7.10, App. Tab 4.

The Second Amended Limited Partnership Agreement of Aspire contains an identical provision, except that venue is provided in Montgomery rather than Harris County. CR212 ¶ 7.10, App. Tab 5.

Mr. de Man claims that the forum selection clauses were not in the initial versions of the limited partnership agreements, and that he did not agree to the

adding the forum selection clauses. *See* CR380-81 ¶ 23. That is factually true (insofar as he did not agree to any of the partnership agreements, because he never became a partner). Nonetheless, assuming he is a limited partner, he is bound by the forum selection clauses regardless of whether he consented to the amendments because his consent was not required to amend the agreements even if he was a limited partner. *See* CR441 § 8.8, App. Tab 14 (allowing general partner to amend agreement unilaterally).

The doctrine of quasi-estoppel precludes a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken by the party. *Lopez v. Munoz, Hockema & Reed*, 22 S.W.3d 857, 864 (Tex. 2000). The doctrine applies when it would be unconscionable to allow a party to maintain a position inconsistent with one in which it had acquiesced. In this case, Mr. de Man's position that the court lacks jurisdiction is inconsistent with a position he previously took and is detrimental to the Appellants. He has claimed to be a party to partnership agreements in order to claim rights thereunder, but seeks to deny the burdens of those very same agreements (including the provisions allowing them to be amended without his consent, and the forum-selection clauses in the amended agreements). It would be unconscionable to allow him to escape the partnership agreements' forum selection clauses only to assert in a different court that he is a partner in the very partnerships whose dispute resolution procedures he seeks to

avoid. Doing so would rob Appellants – and the other partners in Raiden and Aspire who are party to the same agreements – of the opportunity to have their claims heard in the proper jurisdiction but leave the Defendant free to assert his claims in another, which he has already done.

Moreover, the undisputed evidence shows that Mr. de Man was aware of the Texas forum-selection clause. In 2014, Mr. de Man reviewed the First Amended Limited Partnership Agreement of Aspire shortly before it was executed. CR543, CR617-18, App. Tab 15. Thus, when Mr. de Man asserted that he was a partner in Aspire in 2016, he did so knowing that the operative partnership agreement provided for exclusive jurisdiction over disputes arising out of or relating to that agreement, or any ancillary agreement, in Texas. This fact is further strong evidence that Mr. de Man purposely availed himself of the privileges of Texas law, and that exercise of personal jurisdiction over Mr. de Man comports with due process.

VI. Issue Three: Can a Texas court exercise personal jurisdiction over a non-resident defendant for claims of misappropriation of trade secrets, when the trade secrets were developed in Texas and relate to the Texas energy market, when the defendant obtained the trade secrets in the course of an employment relationship that was centered in Texas, and when the parties expressly contemplated that disputes pertaining to the employment relationship would be litigated in Texas?

The district court denied personal jurisdiction over Appellant's trade secret claims because it found that those claims "arise out of conduct that allegedly took

place in 2016, while De Man was in Puerto Rico," and that the claims are not substantially connected to Mr. de Man's contacts with Texas. Find. of Fact & Conc. of Law ¶ 20, App. Tab 21. Once again, the district court erred in its application of the law to the facts.

The trade secrets at issue were developed in Texas based on data about the ERCOT market including, among other things, analyses of weather, transmission congestion, and historical pricing, as well as models that test the data by manipulating these underlying variables. CR67 ¶ 20, App. Tab 2. The Appellants and their employees devoted considerable time, effort, and capital to develop those trading models, "which are dependent on data generated in Texas and are still used to make trades in the Texas market to this day." *Id*. This evidence is

uncontradicted.[5]

Additionally, it is undisputed that Mr. de Man obtained the trade secrets in connection with his business relationship with the Appellants (whether that relationship be one of employment or partnership). The only reason that Mr. de Man obtained the trade secrets at all was to enable him to execute trades on the Texas energy market on behalf of Aspire and Raiden. CR67 ¶ 21, App. Tab 2.

Additionally, the offer of employment that Aspire made to Mr. de Man at the outset of the relationship contemplated the protection of such information under Texas law, and with disputes pertaining thereto to that information to be litigated in Texas court. CR75 ¶ 11, App. Tab 3.

In light of these facts, the district court's conclusion that there is no substantial connection between the trade secret claim and Mr. de Man's Texas

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[5] The only evidence that Mr. de Man submitted regarding these alleged trade secrets is that Mr. Sinn "shared information with me before I was an employee or partner of any of his companies," and did not take steps to require that the information be maintained in confidence. CR393 ¶ 13, App. Tab 13. That evidence and argument, however, go to the merits of the Appellants' claim, which the Court should not consider when assessing the existence of personal jurisdiction. *See Info. Servs. Grp., Inc. v. Rawlinson*, 302 S.W.3d 392, 407 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) ("we do not consider the merits of appellants' [breach of non-compete agreement] claims when conducting a personal jurisdiction analysis"). Indeed, to the extent that Mr. de Man's evidence on this point is relevant at all, it merely confirms that some of the information at issue was disclosed to him during the discussions through which he became an employee or partner in Aspire, at a time when Aspire indisputably had its principal place of

contacts must is erroneous. While the misappropriation of the information occurred in Puerto Rico, that is not the only relevant event. In *Moncrief Oil Intern. Inc. v. OAO Gazprom*, 414 S.W.3d 142, 153-54 (Tex. 2013), the Court exercised personal jurisdiction over a trade secret misappropriation claim against a nonresident defendant based primarily on the fact that the trade secrets were created in Texas, and the defendant obtained them in Texas for the purpose of conducting business in Texas.

Similarly, in *Delta Brands, Inc. v. Rautaruukki Steel*, 118 S.W.3d 506 (Tex. App.—Dallas 2003, pet. denied), the court exercised personal jurisdiction over a trade secret misappropriation claim notwithstanding the fact that the alleged (or threatened) misappropriation occurred in Europe. *Id*. at 509. The court instead focused on the fact that the confidential information "emanated" from the plaintiff's office in Texas, and the defendant knowingly obtained it in and from Texas. *Id*. at 511-12. Thus, the court concluded, it was reasonably foreseeable to defendant that it could be "haled into a Texas court to answer for the alleged improper disclosure of [plaintiff]'s proprietary information". *Id.* at 512.

Mr. de Man's contacts with Texas relevant to the trade secret misappropriation claim far exceed those of the defendants in *Delta Brands* and

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business in Houston.

Moncrief. In this case, the trade secrets were created in Texas and are extensively connected to the Texas energy market. Mr. de Man obtained those trade secrets in the course of a years-long business relationship with two companies that had their principle place of business in Texas at the time, for the purpose of allowing him to conduct trading on the Texas energy market. Mr. de Man "benefitted from Texas," in the words of the Supreme Court in *Moncrief*, because he obtained the Texas-centric trade secrets so that he could carry out business based in Texas. *Moncrief*, 414 S.W.3d at 154. Moreover, Mr. de Man knew that the job offer he accepted contemplated that litigation related to the employment relationship, including confidential information obtained during the course of that relationship, would be conducted in Texas. These contacts related to the trade secret claim are not random or fortuitous.

VII. Issue Four: Can a Texas court exercise personal jurisdiction over a non-resident defendant for claims of conversion of property when the defendant obtained the property in the course of an employment relationship that was centered in Texas, and when the parties expressly contemplated that disputes pertaining to the employment relationship would be litigated in Texas?

The district court denied personal jurisdiction over Appellant's conversion claims because it found that those claims "arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico," and that the conversion occurred in Puerto Rico. Find. of Fact & Conc. of Law ¶ 21, App. Tab 21. Once

again, the district court erred in its application of the law to the facts.

As with the trade secret misappropriation claim, the district court's focus on where the conversion occurred to the exclusion of all other relevant facts was erroneous. It also is relevant how the defendant came into possession of the property at issue. For example, in *Lensing v. Card*, 417 S.W.3d 152, 158 (Tex. App.—Dallas 2013), the court exercised personal jurisdiction over a claim that the defendant had converted property located in Illinois on the basis that the defendant had first obtained the property in Texas. In *Navasota Resources, Ltd. v. Heep Petroleum, Inc*., 212 S.W.3d 463 (Tex. App.—Austin 2006), the court exercised personal jurisdiction over a claim of conversion related to property located in Montana and South Dakota because the defendant had entered into contracts related to that property in Texas.

In this case, the computers at issue were purchased in Texas, and/or paid for from Aspire's bank account in Texas. CR67 ¶ 21, App. Tab 2; CR256-67, App. Tab 7; CR269-72, App. Tab 8; CR274-76, App. Tab 9. The most significant software on the computers (the trade secrets discussed above) emanated from Texas. *See* CR67 ¶ 21, App. Tab 2. Moreover, Mr. de Man obtained the computers and software in the course of his business relationship with the Appellants (which was centered in Texas) for the purpose of facilitating his commodities trades in the Texas market. *Id*. Additionally, Mr. de Man knew that the job offer he accepted

contemplated that litigation related to the employment relationship would be conducted in Texas. CR63-64 ¶¶ 9-11, App. Tab 2; CR75 ¶ 11, App. Tab 3. Mr. de Man's conversion of property that he obtained during the course of that employment relationship pertains to that agreement. Mr. de Man's contacts with Texas giving rise to the conversion claim were purposeful, not random and fortuitous.

PRAYER AND REQUEST FOR RELIEF

For the reasons set out above, Appellants ask the Court to reverse the judgment below and render a judgment that the exercise of personal jurisdiction is proper over Appellants' claims against the Appellee and to remand the case with instructions to proceed in accordance with this ruling. Appellants seek such other and further relief to which they are entitled.

Dated: May 30, 2017

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Rule 9.4(i)(3) and relying on the word-count function of the computer program used to prepare this document, I certify that the total number of words in this document is 10,768 words. This count excludes the sections allowed to be excluded from the word count under TRAP 9.4(i)(1).

/s/ Kevin D. Mohr
Kevin D. Mohr

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Appellants' brief has been served in accordance with the Texas Rules of Appellate Procedure on all the counsel of record listed below by electronic service, on May 30, 2017.

/s/ Kevin D. Mohr
Kevin D. Mohr

NO. 01-17-00181-CV

IN THE FIRST COURT OF APPEALS
OF TEXAS AT HOUSTON

RAIDEN COMMODITIES, LP AND ASPIRE COMMODITIES, LP,

Appellants,

V.

PATRICK DE MAN,

Appellee

APPEAL FROM CAUSE NO. 2016-59771 IN THE 125TH
JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS
HONORABLE KYLE CARTER, PRESIDING JUDGE

APPENDIX TO APPELLANTS' BRIEF

TAB	CR RANGE	DOCUMENT
1.	CR4-20	Original Petition filed in Texas
2.	CR62-68	Jan. 12, 2017 Dec. of Adam Sinn
3.	CR70-75	Offer Letter and Mar. 21, 2011 Email
4.	CR77-149	Raiden Second Amended Partnership Agreement
5.	CR151-223	Aspire First Amended Partnership Agreement
6.	CR225-254	Example Joinder of New QA Partner
7.	CR256-267	Dec. 20, 2010 Computer Purchase Confirmation
8.	CR269-272	Dec. 22, 2010 Email Concerning Computer Purchase Reimbursement

9.	CR274-276	Nov. 8, 2011 Email Concerning Computer Purchase
10.	CR288-289	Jul. 20, 2016 Demand Letter
11.	CR291-306	Aug. 11, 2016 Demand Letter styled as Draft Settlement
12.	CR342-366	Complaint filed by Appellee in Puerto Rico
13.	CR388-397	Feb. 3, 2017 Dec. of Patrick de Man
14.	CR435-443	Raiden First Amended Partnership Agreement
15.	CR543-619	July 2014 Email Chain attaching draft Aspire First Amended Partnership Agreement
16.	CR641-645	Feb. 10, 2017 Dec. of Adam Sinn
17.	CR647	Oct. 11, 2010 Email from Patrick de Man to Adam Sinn concerning closure of Sempra
18.	CR649-651	May 18, 2016 Docusign of Raiden Second Amended Partnership Agreement
19.	CR653-654	Aug. 5, 2014 Docusign of Aspire First Amended Partnership Agreement
20.	CR691	Mar. 7, 2017 Order Granting Special Appearance and Dismissing Case
21.	N/A	Apr. 24, 2017 Findings of Fact and Conclusion of Law
22.	N/A	Reporter's Record of Feb. 17, 2017 hearing
23.	N/A	Tex. Civ. Prac. & Rem. Code Sec. 17.042 Acts Constituting Business in This State

This appendix contains the documents required by Texas Rule of Appellate Procedure 38.1(k)(1), including the order from which relief is sought (Tab 20), findings of fact and conclusions of law (Tab 21), the text of Texas Civil Practices and Remedies Code Section 17.042 (Tab 23), and the text of the agreements and other documents central to the argument (Tabs 3-5). The appendix also contains other documents pertinent to the issues. TEX. R. APP. P. 38.1(k)(2).

TAB 1

9/6/2016 4:03:46 PM
Chris Daniel - District Clerk Harris County
Envelope No. 12504423
By: Monica Ovalle
Filed: 9/6/2016 4:03:46 PM

2016-59771 / Court: 125

CAUSE NO. _____

RAIDEN COMMODITIES, LP & ASPIRE COMMODITIES, LP	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	HARRIS COUNTY, TEXAS
vs.	§	
PATRICK de MAN	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Raiden Commodities, LP ("Raiden") and Aspire Commodities, LP ("Aspire," and collectively "Plaintiffs") file this original petition against Patrick de Man ("Defendant"), seeking declaratory judgment that Defendant is not a partner in Raiden or Aspire and that Plaintiff is not owed certain bonus payments, and damages and injunctive relief related to Defendant's conversion and misappropriation of Plaintiffs' equipment, confidential information, and trade secrets. If this Court should find that Defendant is a partner, then Plaintiffs also seek damages from his breach of partnership obligations.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery pursuant to Rule 190.3(a) (Level 2) of the Texas Rules of Civil Procedure, and seek declaratory judgment, injunctive relief, and monetary relief with a value in excess of $1 million. Plaintiffs affirmatively plead that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because it seeks relief other than monetary relief.

PARTIES

2. Plaintiff Aspire is a Texas limited partnership with an office located at 3333 Allen Parkway, Suite 610, Houston Texas 77019.

3. Plaintiff Raiden is a limited partnership incorporated under the laws of the Virgin Islands with its principal office in San Juan, Puerto Rico, and a registered agent at 2500 Dallas Pkwy, Suite 501, Plano, TX 75093.

4. Defendant Patrick de Man is an individual residing at 544 Corredor del Bosque, Dorado, Puerto Rico, 00646.

JURISDICTION AND VENUE

5. This Court has specific jurisdiction because Defendant's liability arises out of or is related to an employment relationship that was formed in Texas, and the events that Defendant alleges gave rise to a partnership interest occurred in substantial part in Texas. Additionally, Section 7.10 of the Raiden Commodities, LP Partnership Agreement, the principal partnership in which Defendant claims to be a partner, provides that that any dispute among partners shall be resolved in the courts of Harris County, Texas, and that "all parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any Texas state district court sitting in Harris County, Texas, United States of America in any action or proceeding arising out of or relating to this agreement or any other ancillary agreement…."

6. This Court also has general personal jurisdiction over Defendant as a non-resident who does business in Texas. TEX. CIV. PRAC. & REM. C. §17.042. The commodities trading strategy that Defendant assisted with while working for Raiden involved power contracts traded in the market administered by the Energy Reliability Council of Texas ("ERCOT"). Defendant registered as a User Security Administrator with ERCOT, and was the principal person involved

in executing Raiden's ERCOT-related trades. Thus, Defendant purposefully availed himself of the privilege of conducting activities within Texas, thus invoking the benefits and protections of its laws. Defendant made continuous and systematic contacts with the forum Texas, thereby establishing general jurisdiction.

7. Venue in Harris County, Texas, is proper pursuant to Texas Civil Practice and Remedies Code Section 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claims occurred in Harris County. Venue is also proper because Section 7.10 of the Raiden Commodities, LP Partnership Agreement provides for venue in Harris County.

FACTS

8. Adam Sinn is an entrepreneur who specializes in trading commodities related to electrical power. Mr. Sinn began his career as a commodities trader in 2002. After several years of trading for established trading houses, Mr. Sinn accumulated sufficient capital to begin his own trading operations. In 2009, Mr. Sinn formed Aspire Capital Management, LLC, based in Houston, Texas, to engage in commodities trading. Mr. Sinn subsequently reformed that company as Plaintiff Aspire, which he manages as the sole manager of its general partner (Aspire Commodities 1, LLC). As explained further below, Mr. Sinn also subsequently formed Plaintiff Raiden in 2011.

9. Mr. Sinn met the Defendant in or around 2005, when they were both employees at Lehman Brothers. At the time, Defendant was a Dutch citizen living in Connecticut. Defendant had experience trading power commodities. The two became friends, and after Lehman's bankruptcy, Mr. Sinn helped Defendant find a job as a trader for another company. Later, when that company also became insolvent, the Defendant and Mr. Sinn began discussions regarding an arrangement under which to trade commodities together. The Defendant had a relatively good

trading acumen, but the Defendant did not have the capital required to fund his trading (which required at least several million dollars). Consequently, the parties were unable to form a partnership at that time.

10. As a result of these circumstances, Mr. Sinn agreed to form a trading company through which the Defendant could trade commodities as an employee. Mr. Sinn elected not to conduct this trading operation within his existing business (Aspire) solely to separate risk between the two trading books, which involved different commodities and trading strategies. Instead, in 2011, Mr. Sinn established Plaintiff Raiden Commodities, LP, which he owned and oversaw as the sole voting member and manager of its general partner (initially Poseidon Commodities, LLC and subsequently Raiden Commodities 1, LLC). Mr. Sinn provided approximately several million dollars in initial capital to Raiden, which was the entirety of Raiden's capital at that time. At various times he has also provided additional capital. On no occasion has Defendant ever contributed his own capital.

11. In turn, Mr. Sinn (through his primary company, Aspire) engaged the Defendant as an employee to execute trades in Raiden's trading book and assist with some of the administrative functions necessary to Raiden's operations. As compensation, Aspire agreed orally to pay the Defendant a salary plus a percentage of the profits (net of losses and expenses) from successful trades specifically executed by the Defendant. The profit agreement did not include trades which were not specifically executed by the Defendant. The salary and profit bonus paid to Defendant were higher than the customary compensation in the industry for an employee trader because of their friendship, and in recognition of the fact that Defendant would have responsibility (in addition to trading) for certain administrative tasks such as accounting,

payroll, maintaining computer systems, compliance functions, etc. The Defendant began his employment with Aspire under these terms in April 2011.

12. At the time Mr. Sinn formed Raiden and agreed to hire the Defendant, the parties also discussed the possibility that Defendant might become a partner in Raiden in the future. Mr. Sinn agreed that if Defendant left his profit bonus in Raiden's trading book, at such a time when the Defendant's accumulated capital was 50% of Raiden's total capitalization, the Defendant would have an option to buy into Raiden as a 50% partner, with the expectation of then hiring employees and expanding the trading operation.

13. In or around early 2012, Mr. Sinn decided to expand the operations of Raiden beyond the trading strategy that he and the Defendant had initially envisioned. Mr. Sinn had accumulated additional capital from the successful operations of Aspire, and wished to put that capital to work through trades that fit the profile of Raiden, but that he or other employees of Aspire (apart from the Defendant) would manage. Thus, Mr. Sinn contributed millions of dollars in additional capital to Raiden. Mr. Sinn and the Defendant never discussed, and Mr. Sinn never agreed, that the Defendant would have any interest in the profits of trades executed in Raiden outside of the trading book the Defendant managed.

14. As time progressed, the Defendant generally did not leave his profit bonus in Raiden's trading book, except for a minimum amount that the Defendant and Mr. Sinn agreed would remain in proportion to the value of the positions that the Defendant managed. Defendant determined when to receive payment of his bonuses, and sometimes elected to defer bonus payments (purportedly for tax reasons). Defendant's capital in the Raiden trading book never amounted to or came close to the 50% of Raiden's capitalization. Moreover, to the extent that any orally-agreed option to acquire 50% of Raiden still was valid following the substantial

expansion of Raiden's operations beyond the trading strategy originally envisioned by Mr. Sinn and the Defendant, the Defendant never asked to exercise such option (presumably because he did not have 50% of Raiden's capitalization to contribute). For the avoidance of doubt, any offer to the Defendant of an option to acquire a partnership interest in Raiden or any affiliate of Raiden is rescinded.

15. Consequently, at all times since Raiden's formation, substantially all of the capital employed by Raiden in its trading and ancillary operations was provided by Mr. Sinn.

16. In addition to Defendant, other traders execute trades on behalf of Aspire and Raiden. Each of those traders has executed Aspire's limited partnership agreement (the "Aspire LPA"). The Aspire LPA creates a separate class of limited partnership interests for traders (called "Trading Partners"). The Aspire LPA contains numerous provisions that govern the relationship between Trading Partners and the partnership, including, *inter alia*:

- A requirement to devote full-time efforts to the partnership (§ 1.9);
- Restrictions on self-dealing, usurpation of corporate opportunities, and competition (§ 1.10);
- Prohibition against disparagement (§1.12);
- Restrictions on the admission of new Trading Partners, which require them to comply with the provisions of the Aspire LPA and terms set by the general partner (§ 3.1);
- Restrictions on transfer of partnership interests (§ 3.3.4);
- Confidentiality obligations (§ 3.10);
- Restrictions on withdrawal (§ 3.12)
- Restrictions on voting rights (§ 3.15);

- Restrictions on management authority and the rights to Profits and Losses to limited partnership property (e.g., the trading book managed by that Trading Partner) (§ 3.15);
- A reduction in the price that the partnership must pay to repurchase the partnership interest if the Trading Partner is terminated for Cause or leaves without Good Reason (as defined therein) (§ 3.15);
- A fiduciary duty of loyalty, to act in the best interests of the partnership, and to devote best efforts to the business of the partnership (§§ 1.9 and 3.15, and also required as a standard condition to admission of a new Trading Partner);
- A requirement to execute a Confidentiality, Non-Solicitation, and Non-Competition Agreement as a condition of being admitted as a Trading Partner.

17. The Raiden Limited Partnership Agreement ("Raiden LPA") contains comparable terms, but refers to "QA Partners" (for "quantitative analyst") in lieu of "Trading Partner" in comparable provisions.

18. Defendant has not executed the Aspire LPA or Raiden LPA, or otherwise agreed to be bound by their terms. The Defendant also has not satisfied the conditions set by the general partners of Aspire and Raiden to be admitted as a partner (whether as a Trading Partner, QA Partner, or otherwise).

19. In 2015, in response to complaints by the Defendant about the volume of his non-trading responsibilities, Aspire increased Defendant's profit bonus percentage on the trades he managed. Ironically, despite being paid more, the Defendant began working less and less.

20. Defendant worked as an employee from 2011 until July 2016. In that time, he received several million dollars in salary and profit bonuses, while contributing none of his own

capital to the business. In the course of his employment, Defendant also received access to valuable confidential and proprietary information, including, *inter alia*, trading strategies and models, trading opportunities, market analysis, partnership financial information, specialized software, and internal emails.

21. In 2016, Mr. Sinn again wished to expand his successful businesses, and engaged a talent recruiter to identify traders for possible hire. The recruiter identified a promising prospect, and Mr. Sinn approached Defendant about the possibility of hiring that prospect to work underneath Defendant managing his Raiden book, or of establishing a new company owned 50/50 by Mr. Sinn and the Defendant, which the Defendant and the new prospect would operate (*i.e.*, implementing the original partnership idea contemplated in 2011). Before either idea could progress, however, Mr. Sinn learned that Defendant was attempting to raise capital in the market to start a new trading company on his own.

22. Shortly thereafter, on or about July 1, 2016, Defendant informed Mr. Sinn that he was terminating his employment. He also informed Mr. Sinn that he intends to establish and/or has established a competing trading company. In addition, he has hired or is working with the individual that Mr. Sinn sought to hire, using the trading strategies and other confidential and proprietary information of Raiden and Aspire.

23. On July 1, 2016, Aspire's general counsel informed Defendant that his access to company information systems, including the DropBox account that the companies use as a shared drive and which Defendant managed, would be terminated. On July 2, 2016, Aspire's general counsel learned that Defendant had changed the access credentials to the DropBox account and deleted the local copies of the DropBox files from other users' computers. This action effectively "locked out" Mr. Sinn and the other Aspire personnel, preventing them from

accessing files necessary to conduct Aspire's and Raiden's trading operations. Moreover, this action occurred in the midst of the July 4 holiday weekend, which Defendant knew is a critical trading period in U.S. power markets.

24. Aspire was understandably alarmed that someone was hijacking its files. When Aspire's general counsel confronted Defendant, the Defendant initially prevaricated, claiming that he had changed the access credentials because he believed someone had attempted an unauthorized access. He then refused to restore access to the account because he was not working over the holiday weekend, despite knowing that the other traders had positions and trades at risk over that important weekend. Finally, Defendant revealed his true intentions, offering to restore Aspire's access to the data on condition of immediate payment of more than $1 million in past and future profit bonuses that he claimed to be owed. Only under threat of litigation did Defendant restore access to the files on July 3. The markets in which Plaintiff operates are among the most volatile in global markets and even a single minute can be ruinous. Defendant knew this was the case and knew this was an accelerated point of risk. Despite this, Defendant was intentionally slow in restoring access. Even today, Defendant has not restored full access; instead, one critical folder remains inaccessible to Plaintiffs.

25. Additionally, Defendant has failed to return computer equipment, proprietary software, and confidential and proprietary data files belonging to Aspire and Raiden, despite repeated requests. On information and belief, Defendant plans to use the intellectual property, confidential information, and trade secrets that he converted and misappropriated in his new trading business.

26. After Defendant's dramatic departure, Defendant asserted that he was not merely an employee of Aspire, but in fact was a limited partner in Raiden *and* Aspire – apparently in

their entirety, and not merely with respect to the trading book that he managed. Defendant claims that he is entitled to payment of millions of dollars for the "re-purchase" of his alleged partnership interests. Additionally, Defendant has asserted that he is entitled to payment of more than a million dollars (in excess of salary and profit bonuses) for the "additional services" (*i.e.*, the administrative responsibilities in addition to trading) that he provided for Raiden and Aspire. Defendant has conditioned the return of Plaintiffs' equipment and proprietary information on receipt of millions of dollars, which Plaintiffs dispute to be owed.

COUNT I – SUIT FOR DECLARATORY RELIEF

27. Plaintiffs request that this Court issue a declaratory judgement under Chapter 37 of the Texas Civil Practices and Remedies Code Sections 37.004(a),(b) (contract construction) and 37.003(c) ("The enumerations in Sections 37.004 and 37.005 do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought and a judgment or decree will terminate the controversy or remove an uncertainty.").

28. First, Plaintiffs request a declaratory judgment that Defendant was never and is not now a limited or general partner of Raiden or Aspire. Defendant has not executed or otherwise agreed to the terms of the Raiden LPA or Aspire LPA, has not contributed any capital to Raiden or Aspire, and has not executed any option to acquire a partnership interest in Raiden or Aspire.

29. Additionally, Plaintiffs seek declaratory judgment that Defendant is not entitled to any compensation for "additional services" that he performed as an employee of Aspire and/or Raiden because those services were performed in consideration of his salary and/or profit bonuses.

30. Additionally, Plaintiffs seek declaratory judgment that Defendants' misconduct and bad faith, including but not limited to locking traders out of their files, failing to return company property, undermining the hiring of a prospective trader, and seeking to form or forming a competing trading company with that prospective trader, excuse any obligation on Plaintiffs to pay any bonuses to Defendant.

31. In the alternative, if the Court determines that Defendant does have a partnership interest in Aspire and/or Raiden, then Plaintiffs request that this Court issue a declaratory judgment that: (a) Defendant willfully and knowingly violated his duties as a partner; (b) Defendant's partnership interest is subject to all of the terms of the applicable written partnership agreement, including all of the terms and conditions applicable to, and customarily required for the admission of, Trading or QA Partners (specifically including, but not limited to, the provisions regarding the price of repurchasing Defendant's alleged partnership interest); and (c) Defendant is entitled to no payment for the repurchase of his alleged partnership interest.

32. This is a live, justiciable controversy between the parties, which directly impacts negotiations over the proper separation payment, if any, owed to Defendant as well as the Plaintiffs' right to return of partnership property, and the declaration will resolve the controversy.

COUNT II - CONVERSION

33. Plaintiffs owned and had the right to immediate possession of the Raiden computer equipment that Defendant has wrongfully kept in his possession since he left Aspire. Plaintiffs purchased the equipment using their funds. Defendant was in possession of the equipment in order to perform his duties as an employee. The computer equipment is personal property. Defendant wrongfully exercised dominion and control over the equipment by not returning it immediately upon cessation of his employment. Plaintiffs have suffered injury because of Defendant's actions.

34. Defendant has also wrongfully kept in his possession certain confidential information, as described in Paragraph 20. Plaintiffs owned and had a right to immediate possession of the confidential information. Plaintiffs developed the confidential information using their funds. Defendant was in possession of the confidential information in order to perform his duties as an employee. He intended to deprive Plaintiffs of the information by keeping it and using it in a manner that is inconsistent with Plaintiffs' rights. Plaintiffs have suffered injury because of Defendant's actions, and will suffer irreparable injury should Defendant not be enjoined from using the confidential information in the future.

COUNT III – MISAPPROPRIATION OF TRADE SECRETS

35. Defendant misappropriated Plaintiffs' trade secrets, including but not limited to the trade secrets described in Paragraph 20, in violation of the Texas Uniform Trade Secrets Act (Texas Civil Practices and Remedies Code Section 134A). Plaintiffs owned the trade secrets. The information in question constitutes trade secrets because Plaintiffs have taken reasonable steps to keep it secret, including the use of confidentiality agreements and password-protected access. The information also has independent economic value to third parties because it is generally unknown and not readily ascertainable by proper means.

36. Defendant was originally in possession of the confidential information in order to perform his duties as an employee. He misappropriated the trade secrets when he left Raiden without returning the trade secrets. Defendant knew that the information constituted trade secrets, knew that the trade secrets belonged to Plaintiffs, and knowingly and intentionally maintained possession and control of the trade secrets by improper means when he terminated his employment. Plaintiffs have suffered injury because of Defendant's use and threatened use of the information to compete with Plaintiffs. Plaintiffs will suffer irreparable injury should Defendant not be enjoined from using the confidential information in the future.

COUNT IV – BREACH OF PARTNERSHIP OBLIGATIONS

37. If the Court finds that Defendant is a partner in Raiden Commodities, LP or Aspire Commodities, LP, then Defendant has breached his partnership obligations. He has converted partnership property and confidential information and misappropriated partnership trade secrets for his own benefit and to the detriment of the partnership and the other partners. He also harmed the partnership and other partners by locking them out of Raiden Commodities, LP's shared files. Finally, on information and belief, Defendant intends to form a competing company. It is likely that discovery will reveal even more misconduct. Based on information known to date, and upon information and belief, Defendant has breached at least the following provisions of the Raiden LPA and/or Aspire LPA:

a. Requirement to devote full time effort to the partnership (§1.9);

b. Prohibitions against self-dealing, competition, solicitation, diversion or circumvention of prospective business transactions and relationships, and actions injurious or prejudicial to the goodwill of the partnership (§1.10);

c. Prohibition against disparagement (§1.12);

d. Misuse of confidential information (§3.10);

e. Prohibition against wrongful withdrawal (§3.12);

f. Obligation of fiduciary duty of loyalty and allegiance to act at all times in the best interests of the Partnership and to do no act which would injure the Partnership's business, its interests, its Property or its reputation (standard term of admission of new Trading Partners) (*see* § 3.15).

38. If this Court finds that Defendant is a partner, then Defendant is not entitled to some or all of the payments he claims. *See* Raiden LPA and Aspire LPA, §3.15. Rather, Plaintiffs are entitled to damages related to Defendant's breach of the partnership agreement(s).

ATTORNEYS' FEES AND COSTS

39. Whether as a partner, employee or otherwise, Plaintiffs are entitled to recover reasonable attorneys' fees pursuant to Sections 37.009, 38.001, and 134A.005(3) of the Texas Civil Practice and Remedies Code. Additionally, if this Court finds that Defendant is a partner in Aspire or Raiden, then Plaintiffs are also entitled to attorneys' fees under the Section 7.10 of the Raiden LPA or Aspire LPA.

SPECIAL DAMAGES

40. Plaintiffs are entitled to recover their foreseeable and contemplated special damages resulting from Defendant's actions, including but not limited to lost profits, cost of delay in making their trades, damage to their reputation and relationship with other traders, loss of their intellectual property, confidential information, and trade secrets, and cost to replace the converted computer equipment.

EXEMPLARY AND PUNITIVE DAMAGES

41. Plaintiffs are entitled to recover exemplary and punitive damages against Defendant as a result of his malicious conduct. TEX. CIV. PRAC. & REM. CODE § 41.003. Plaintiffs are also entitled to exemplary damages in accordance with Texas Civil Practices and Remedies Code Section 134A.004(b) for willful and malicious misappropriation of trade secrets.

REQUEST FOR PERMANENT INJUNCTION

42. Plaintiffs are entitled to injunctive relief in accordance with Texas Civil Practices and Remedies Code Section 134A.003 to prevent the actual and threatened misappropriation of

trade secrets. If this Court finds that Defendant is a partner in Raiden or Aspire, then Plaintiffs are also entitled to an injunction under Sections 3.10 and 7.10 of the partnership agreement(s).

43. Plaintiffs ask this Court issue a permanent injunction to prevent Defendant from using any of Plaintiffs' intellectual property, confidential information, or trade secrets.

44. It is probable that Plaintiffs will succeed after a trial on the merits because Defendant has misappropriated the trade secrets when he left Raiden without returning the trade secrets. Defendant knew that the information constituted trade secrets, knew that the trade secrets belonged to Plaintiffs, and knowingly and intentionally maintained possession and control of the trade secrets by improper means when he terminated his employment. Plaintiffs have suffered injury because of Defendant's use and threatened use of the information to compete with Plaintiffs.

45. Plaintiffs face irreparable harm if an injunction is not issued because Defendant's use of the trade secrets precludes Plaintiffs from using them, or at least using them to achieve maximum trading profits. Defendant is also likely to share those trade secrets with his purported partner, and once revealed, the confidential information will cease to be Plaintiffs' trade secret.

46. Plaintiff has no adequate remedy at law because monetary damages from the use and/or disclosure of Plaintiffs' trade secrets are difficult to calculate.

JURY DEMAND

47. Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

CONDITIONS PRECEDENT

48. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

REQUEST FOR DISCLOSURE

49. Under Texas Rule of Civil Procedure 194, Plaintiffs request that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER FOR RELIEF

50. Plaintiffs request the following relief:

(a) That this Court issue a declaratory judgment that Defendant was and is not a partner in Raiden Commodities, LP or Aspire Commodities, LP or alternatively, that this Court issue a declaratory judgment that: (a) defendant violated his obligations as a partner; b) any partnership interest is subject to the terms of the written partnership agreement, including all terms and conditions applicable to other Trading or QA Partners; and (c) Defendant is entitled to no payment for the repurchase of his alleged partnership interest;

(b) That this Court issue a declaratory judgment that Defendant is not owed any compensation for "additional services" that he performed as an employee;

(c) That this Court issue a declaratory judgment the Defendant is not owed bonus for 2015 profits or for future profits resulting from trades Defendant placed prior to the termination of his employment;

(d) That this Court issue a permanent injunction to prevent Defendant from using any of Plaintiffs' intellectual property, confidential information, or trade secrets;

(e) An award of economic, actual, direct, consequential, special, and compensatory damages against Defendant;

(f) An award of exemplary damages against Defendant;

(g) Costs of suit;

(h) Attorneys' fees, costs, disbursements, and other charges to the fullest extent permitted under the applicable agreement(s) and law; and

(i) Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS RAIDEN COMMODITIES, LP & ASPIRE COMMODITIES, LP

TAB 2

CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP & ASPIRE COMMODITIES, LP	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
Plaintiffs,	§	HARRIS COUNTY, TEXAS
	§	
vs.	§	
	§	
PATRICK de MAN	§	
	§	
Defendant.	§	125th JUDICIAL DISTRICT

DECLARATION OF ADAM SINN

1. My name is Adam Sinn. I am over the age of eighteen and competent to give testimony in this action. I have personal knowledge of the statements set forth in this declaration and all of these facts are true and correct.

2. I am making this declaration in support of Raiden Commodities, LP and Aspire Commodities, LP's Original Petition and Response to Special Appearance.

3. I am the founder of Aspire and Raiden. I am also the sole voting member of the general partners of Aspire and Raiden, Aspire Commodities 1, LLC and Raiden Commodities 1, LLC, respectively. I am authorized to make this declaration on their behalf.

4. I am an entrepreneur who specializes in trading commodities related to electrical power in Texas. I began my career as a commodities trader in 2002. After several years of trading for established trading houses, I accumulated sufficient capital to begin my own trading operations. In 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. I manage Aspire as the sole manager of its general partner (Aspire Commodities 1, LLC). I also subsequently formed Plaintiff Raiden in 2011. From their formation until 2013 (when I moved my personal residence to Puerto Rico for tax reasons), both Aspire and Raiden had their principal place of operations in Houston. During that time, I managed both companies from my home or office in Houston.

5. I developed commodities trading strategies involving Texas electrical power contracts traded in the market administered by the Energy Reliability Council of Texas ("ERCOT"). Along with a small number of trades in the Northeast United States,

trades in the Texas market governed by ERCOT represent the significant majority of both Aspire's and Raiden's business.

6. I met the Defendant, Patrick de Man, in or around 2005 or 2006, when we were both employees at Lehman Brothers. Mr. de Man was a Dutch citizen who lived at that time in Connecticut. I worked at Lehman Brothers in Houston as a trader, and Mr. de Man initially was employed in New York as an analyst. In or around early 2008, Mr. de Man moved to Houston to serve as an analyst for the ERCOT Trading Group, which I managed. Our personal and professional relationship flourished while he worked for me in Houston, and Mr. de Man also learned a considerable amount about the ERCOT market during that time. After Lehman declared bankruptcy in September 2008, Mr. de Man returned to New York, where he worked for the Lehman bankruptcy estate for some time. I then helped Mr. de Man find a job as an analyst for another company. When that company closed its operations in early 2011, I began serious discussions with Mr. de Man about coming to work as a trader with me. By that time, I had achieved some success trading with Aspire, and had added several additional traders already.

7. In late 2010 and the spring of 2011, Mr. de Man and I negotiated the terms of Mr. de Man's employment. I was residing in Houston at the time. While we initially discussed forming a partnership, he did not have the capital required to fund his trading, and we also believed Mr. de Man's immigration status could bar him from being a partner. Consequently, we mutually determined that we were unable to form a partnership at that time and that Mr. de Man would work as an employee until those two conditions changed.

8. Once it became clear that a partnership was impracticable, we discussed Mr. de Man's responsibilities and his compensation structure as an employee, which differed somewhat from that of a typical trader. We also discussed potential trading strategies to be used on ERCOT. These discussions implicated the trade secrets that are also at issue in this case. Those discussions happened principally by telephone, email, or Instant Message, between Mr. de Man in the New York area and me in Houston.

9. Those discussions culminated in an offer letter, which both Mr. de Man and I reviewed and discussed. Exhibit 1 is a true and correct copy of an email from Mr. de Man to me, in which he enclosed his comments on that offer letter. Section 11 of that offer letter stated:

> This agreement is performable in whole or in part in Harris County, Texas. This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the State of Texas, without giving effect to any choice of law rules which may direct the application of the laws of any other jurisdiction. If a party wishes to pursue legal action pertaining to this agreement, we agree that such action shall be commenced and prosecuted in the courts of Harris County, Texas,

> or in the United States District Court for the Southern District of Texas, if appropriate, and we each submit to the exclusive jurisdiction of said courts and respectively waive the right to change venue. *Id.*

10. That clause reflected the reality that while Mr. de Man might continue to live in Connecticut (or elsewhere) and "telecommute" to the job, the job he was being hired to do was based in Texas. The company was a Texas limited liability company operating in Texas, the focus of the work he would be doing was based in Texas, the office and other employees of the company all were in Texas, and it only made sense that any dispute about his employment would be resolved in Texas rather than wherever Mr. de Man chose to live.

11. Mr. de Man suggested revisions to several sections of the offer letter, but at no time raised any disagreement that his work for Aspire would be deemed performable in, or that disputes related to the employment relationship would be subject to jurisdiction and venue in, Harris County, Texas using Texas law. Rather, he stated in his March email enclosing his comments on the letter, "I put in a few comments, but those are minor. There is nothing really fundamental that I need to add." We never executed the offer letter, primarily because we were continuing to discuss the addition of terms related to his potentially becoming a partner in the future. Nonetheless, Mr. de Man commenced work for Aspire in April 2011 as an employee on material terms mirroring those laid out in the offer letter.

12. I also decided around that time to form another trading company, Plaintiff Raiden, to trade commodities that involved different products and trading strategies from Aspire. More specifically, Raiden focused on trading financial transmission rights, whereas Aspire primarily traded futures and virtuals. I elected to conduct these trading operations through separate entities to separate risk between the two trading books, choosing to isolate the risk generated by Patrick's long-term trading of transmission rights from my short-term futures trading.

13. Raiden is a limited partnership formed under the laws of the U.S. Virgin Islands, because I contemplated at that time that I might move my personal residence to the Virgin Islands for tax reasons. Nonetheless, at the time of its formation, I operated Raiden from Houston, Texas. At this time, Raiden consisted entirely of Mr. de Man's trading strategy, which initially targeted the Northeast U.S. PJM market and expanded to include the Texas market shortly after he began his employment. I agreed in principle with Mr. de Man that if he accumulated sufficient capital to fund half of his strategy, I would allow him to "buy in" as a partner in Raiden, although the details of that arrangement were never fully agreed. I made that preliminary agreement with Mr. de Man from Texas. After that time, Raiden expanded to include trading books and strategies managed by me and others; I never agreed that Mr. de Man could buy into half of any aspect of Raiden's business outside the trading book he would manage.

14. Mr. de Man commenced work in April of 2011. Along with trading his strategy, Mr. de Man provided analytical support to traders making trades through Raiden and Aspire. These trades were entirely on the Texas market. Although Mr. de Man lived in Connecticut at the time, his work was directed at Aspire's and Raiden's operations in Texas. Mr. de Man also had to seek my approval before executing significant trades. We called each other frequently and Instant Messaged each other about the market throughout the day, more or less every day.

15. Aspire and Raiden leased an office in Houston in 2012. During that time period, around eight employees worked for Aspire out of that office in Houston. Mr. de Man also worked out of the Houston office physically on several occasions, including coming to Houston to interview candidates for an analyst position supporting his trades. We even discussed his moving to Texas to work out of that office permanently. Mr. de Man also registered as a User Security Administrator with ERCOT, and was the principal person involved in executing Raiden's ERCOT-related trades. He routinely liaised with me in Texas regarding the operation of the business and maintained contact with ERCOT staff in his role as User Security Administrator.

16. After years of operating my business from Texas, I moved my personal residence to Puerto Rico in 2013 as part of a tax-management strategy; the profits of Aspire and Raiden "flow through" to me personally for federal tax purposes, and are taxed at a favorable rate in Puerto Rico. I do not speak Spanish and neither does Mr. de Man, to my knowledge. In 2013, Mr. de Man also moved to Puerto Rico for the same reason. Nonetheless, the locus of Aspire's and Raiden's business remained in Texas and Mr. de Man's job responsibilities did not change. The same trades were made based on the same trading strategy on the same Texas market managed by ERCOT. Aspire remains a Texas limited partnership to this day. Moreover, many of their administrative functions are still Texas-based. Both Aspire and Raiden maintain their banking relationships with financial institutions in Texas and salaries are paid out of these Texas banks. Legal and human resources functions are also based out of Texas. Health insurance was also arranged by a broker in Houston. In fact, when Mr. de Man first started working for me, I already had insurance but he did not. He took the lead in setting up the company's health insurance and worked directly with the Houston insurance broker in doing so.

17. At the time of their original formation, the partnership agreements of Aspire and Raiden contained no provisions expressly governing jurisdiction for disputes related to the partnerships. Exhibit 2 is a true and correct copy of the Raiden Commodities Second Amended Limited Partnership Agreement. The 2013 amended partnership agreements for the two companies provide for jurisdiction and venue over such disputes in Texas. For instance, Section 7.10 of that Second Amended Limited Partnership Agreement provides in pertinent part:

Any dispute arising hereunder or among the Partners or General Partners (or their Affiliates) shall be resolved in the courts of Harris 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 HARRIS 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. *See* Ex. 2.

18. The Aspire partnership agreement has a similar provision. Exhibit 3 is a true and correct copy of the Aspire Commodities First Amended Limited Partnership Agreement. These provisions were added to the limited partnership agreements because, although I had moved my personal residence to Puerto Rico (and thus conducted a substantial amount of my work for the companies from Puerto Rico), the locus of the companies' business remained in Texas, and thus Texas was the most appropriate forum for disputes related to partnership issues. It made no sense for disputes related to those partnerships to be resolved in Puerto Rico courts, where proceedings are conducted in Spanish, just because I had moved there for tax reasons.

Although Mr. de Man never executed those agreements (because he was never a partner of either Aspire or Raiden and was still operating as an employee), other traders who did become limited partners were required to accept those terms (among others) in the Limited Partnership agreements. *See* Exhibit 4, which is a true and correct copy of a joinder agreement through which another trader became a limited partner.

19. The trade secrets at issue in this case are also Texas-focused. The majority of them were developed in Texas and designed for use in the Texas market. Some were discussed with Mr. de Man during negotiations in 2011 from Texas. Mr. de Man and I contemplated protecting the trade secrets in our negotiations and draft agreements. *See* Ex. 1 ¶ 8. We also contemplated resolving disputes about these trade secrets in a Texas court under Texas law. *See* Ex. 1 ¶11.

20. The trade secrets consist of confidential and proprietary information, including, *inter alia*, analyses of weather, transmission congestion, and historical pricing, as well as models that test the data by manipulating these underlying variable. Raiden's and Aspire's trading strategies are based on these models. Aside from some analyses that Mr. de Man developed for trades on the Northeast PJM market, the vast majority of the trade secrets are Texas-centric. Aspire, Raiden, and its employees spent considerable time, effort, and capital to develop those trading models, which are dependent on data generated in Texas and are still used to make trades in the Texas market to this day.

21. Moreover, the computers on which the trade secrets reside were purchased by me on behalf of Aspire from a Texas vendor to enable Mr. de Man to execute trades on a Texas market. *See* Ex. 5, which are true and correct copies of four December 20, 2010 email receipts forwarded from Mr. de Man to me; Ex. 6, which is a true can correct copy of a December 22, 2010 email attaching a true and correct copy of a spreadsheet concerning the computer purchases; Ex. 7, which is a true and correct copy of a November 8, 2011 email. Mr. de Man purchased his Dell computer and his most recent laptop, but he was reimbursed by Aspire for those purchases from its bank account in Texas.

22. In 2016, after Mr. de Man severed his connections with the Plaintiffs, Raiden was formally re-domiciled as a Texas limited partnership. By that time, I no longer intended to move the business to the Virgin Islands, and it made sense to formally structure Raiden as a Texas limited partnership in order to align its corporate formalities with Aspire's (which always was a Texas limited partnership), as well as the reality that both companies are a Texas-based business. Exhibit 8 is a true and correct copy of the Raiden Commodities LP conversion certificate.

23. After terminating his employment, Mr. de Man claimed that he was a partner in Aspire and Raiden. Exhibit 9 is a true and correct copy of a July 20, 2016

email and attached letter, and Exhibit 10 is a true and correct copy of an email and attached proposed settlement.

24. Mr. de Man has now filed a lawsuit against me, along with Aspire, Raiden, their respective LLCs, and my living trust, in Puerto Rican court. I was recently served with process through my attorneys. Ex. 11 is a true and correct copy of the complaint.

25. My name is Adam Clark Sinn, my date of birth is February 6, 1978, and my address is 200 Dorado Beach Drive #3232, Dorado, PR 00646. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dorado County, State of Puerto Rico, on the 12th day of January, 2017.

Adam Sinn, Declarant

TAB 3

From: pat.deman@gmail.com [mailto:pat.deman@gmail.com] **On Behalf Of** Patrick de Man
Sent: Sunday, April 10, 2011 6:03 PM
To: Adam Sinn <gonemaroon@hotmail.com>
Subject: Fwd: contract draft

---------- Forwarded message ----------
From: **Patrick de Man** <pat.deman@gmail.com>
Date: Mon, Mar 21, 2011 at 8:11 PM
Subject: contract draft
To: gonemaroon@hotmail.com

Hi Adam,

I put in a few comments, but those are minor.
There is nothing really fundamental that I need to add.

One thing we talked about:
I am taking COBRA for next 18 months (likely that long), and Aspire would reimburse me those monthly payments (could be at end of year all at once, I don't care about that). Not sure if we need to include this as 'other benefits'...?
After my COBRA runs out, we should look for a group health package; hopefully by then one that has coverage in USVI.

Also, we don't have anything about bonus, but we'll write up a memorandum of

understanding that we keep track of P/L and that it would build towards partial ownership in the future, right?

Cheers,
Patrick.

Sin-asp.offltrpdm

Aspire ~~Capital Management LLC~~Commodities LP
3333 Allen Parkway, Suite 610
Houston, TX 77019
Telephone: (979) ---575 7026

March _____, 2011

Patrick ~~De~~ de Man
143 Hoyt St, Apt 3K
Stamford, CT 06905

Dear Patrick:

I am pleased to offer you a position with Aspire ~~Capital Management LLC~~Commodities LP ("Aspire") on the following terms:

1. You will be employed by Aspire to trade power commodities and derivatives and will devote your full time and best efforts to the businesses of Aspire. You will be responsible for performing all duties and responsibilities associated with your position and such other duties and functions as you may reasonably be assigned from time to time. Your employment will be on an "at will" basis and otherwise subject to the terms of this letter.

2. Your salary will be $120,000.00 per annum, pro-rated for any partial years of employment, and will be paid in accordance with Aspire's standard payroll practices in effect from time to time. You will also be entitled to vacation as may from time to time be agreed between you and Aspire.

3. Aspire may terminate your employment at will, with or without notice, either for convenience or for Cause. If you voluntarily terminate your employment with Aspire you must provide Aspire with two (2) weeks advance written notice ("Notice"). Following such Notice, during such two-week Notice period, Aspire may elect to prohibit you from entering its premises and/or may terminate your employment immediately without any severance obligation. If you voluntarily terminate your employment with Aspire, or Aspire terminates your employment for Cause (defined below), you will have no right to receive any severance payment or bonus which may otherwise have been considered. As used herein, "Cause," without limiting its definition at common law, means (i) your failure to comply with any applicable trading limit guidelines, counter-party credit policies or other risk management guidelines or policies, (ii) your breach of any material term of this Agreement or any other policies, guidelines or procedures that Aspire may adopt from time to time, including your failure to comply with applicable U.S. immigration laws and regulations, (iii) your engaging in misconduct which reflects or may reflect negatively on Aspire or its Affiliates (defined below), or engaging in any theft, fraud or embezzlement, (iv) your material violation of any law, rule or regulation pertaining to the businesses or operation of Aspire or its Affiliates (other than a violation of a motor vehicle regulation), (v) your commission of any crime involving felony,

dishonesty or moral turpitude, or (vi) your gross negligence in the conduct of your job responsibilities or your refusal to follow the lawful directive of the management of Aspire or your willful failure to properly carry out your duties. "Affiliate" means any entity controlling, controlled by or under common control with Aspire or a subsidiary of Aspire, as applicable. As used herein, "control" (including "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of power to direct or cause the direction of management or policies of an entity, whether through the ownership of securities or partnership or other ownership interests, by written contract, indenture, note bond, loan, instrument, lease, commitment or otherwise.

4. We understand based on your representations that you are not subject to any contractual restraints related to previous employment or otherwise that would interfere with complete fulfillment of your duties and obligations as a power trader in the employment of Aspire. You represent and warrant that during the course of your communications with Aspire and its representatives, you have not made any misrepresentations of material facts or failed to disclose any material fact with respect to your post-employment obligations to any prior employer or any other matter that would interfere with the performance of your job responsibilities related to your employment by Aspire.

5. Your employment is subject to receipt of all approvals necessary for you to commence work with Aspire. U.S. immigration laws require employers to verify identity and employment eligibility prior to an employee commencing work. This verification is a continuing requirement and employers must reverify employment eligibility on or before the date that employment eligibility expires. Please be advised that your offer of employment is contingent upon you providing Aspire with acceptable documentation evidencing your identity and eligibility to work. Your failure to provide Aspire with evidence of your continuing employment eligibility will constitute Cause for termination of your employment.

6. All payments payable by Aspire under this letter agreement ("Agreement') shall be made in accordance with Aspire's then applicable payroll practices and shall be subject to all deductions and withholdings required or permitted by law. Aspire may, to the full extent permitted by law, set off against any bonus payments any amounts you may otherwise owe Aspire or its Affiliates.

7. Nothing in this Agreement shall limit or otherwise impair the right of the management of Aspire, exercised in its sole discretion, to limit, decrease or change in any manner its trading limit guidelines, any position limits, counterparty credit policies or other risk management guidelines or policies that govern its trading businesses.

8. Aspire agrees to provide you with certain confidential, proprietary and/or non-public information, including without limitation information relating to Aspire, its Affiliates, trading partners and/or its or their respective customers, as well as financial information, contractual rights/obligations, trading practices/strategies, data and information relating concerning dealings, transactions, activities, practices, affairs,

customers, suppliers, technical systems, pricing models, technical data, formulas, and methods of Aspire and its Affiliates ("collectively, the "Confidential Information"). Furthermore, you agree that during and after your term employment with Aspire you will not knowingly disclose any of the Confidential Information to any third party without the expressed written consent of Aspire. Further you agree that you must not use any of the Confidential Information other that for the purposes of your employment with Aspire hereunder, and that you will not disclose or disclose such Confidential Information for the benefit of yourself or any third party. ?? trade secret, confidential information or other intellectual property right of any other party (including, without limitation, any of your former employers) in violation of any rights of such party or duty of confidentiality owing to such party. In addition, on termination of your employment with Aspire for any reason, you agree to return to Aspire all of its property and records (and copies thereof) of Aspire in your possession or control

9. (a) While employed by Aspire you agree not in any way to plan, organize or conduct any competing business, or in any way to solicit or encourage any employee of Aspire or its Affiliates to separate from Aspire or participate in any competing business (whether existing or to be organized).

(b) In consideration of Aspire providing you and exposing you to Confidential Information, as well as the other agreements related to your employment hereunder, we agree that if Aspire terminates your employment for Cause or you resign for any reason, for a period of one (1) year following such termination you must not: (i) directly or indirectly, contact, recruit, entice, induce or solicit any employee, officer, director, agent, consultant or independent contractor employed by or performing services for Aspire or its Affiliates to leave the employ of or terminate services to Aspire or its Affiliates, or hire or otherwise employ any of such persons, including, without limitation, to work with you, with an entity with which you have become affiliated (as an employee, member, consultant, officer, director, stockholder or otherwise), or with any other entity; or (ii) engage in or participate in any effort or act to induce any customer of Aspire or its Affiliates to refrain, discontinue or diminish its business conducted with Aspire or any of its Affiliates; (iii) solicit business from any person or entity which was a customer of Aspire or any of its Affiliates during the term of your employment with Aspire.

(c) If any of the restrictive covenants contained in Paragraphs 9(a) or 9(b), or any part thereof, are held to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants, which shall be given full effect, without regard to the invalid or unenforceable portions. Without limiting the generality of the foregoing, if any of the restrictive covenants contained in Paragraphs 9(a) or *9(b),* or any part thereof, are held to be unenforceable because of the duration of such provision or the area covered thereby, the parties hereto agree that the court making such determination shall have the power to, and is hereby directed to, reduce the duration and/or area of such provision to the least extent necessary in order to make such reduced provision enforceable.

10. No waiver by Aspire of any breach by you of any provision or condition of this Agreement shall be deemed a waiver of a breach of the same or any similar or dissimilar

provision or condition, whether at the same time or any prior or subsequent time. In case any term or provision in this Agreement shall be declared invalid, illegal or unenforceable by any court of competent jurisdiction, the validity and enforceability of the remaining terms and provisions shall not in any way be affected or impaired thereby.

11. This agreement is performable in whole or in part in Harris County, Texas. This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the State of Texas, without giving effect to any choice of law rules which may direct the application of the laws of any other jurisdiction. If a party wishes to pursue legal action pertaining to this agreement, we agree that such action shall be commenced and prosecuted in the courts of Harris County, Texas, or in the United States District Court for the Southern District of Texas, if appropriate, and we each submit to the exclusive jurisdiction of said courts and respectively waive the right to change venue.

I look forward to your favorable reply at which time we can agree on your employment commencement date.

Sincerely,

_____

Adam Sinn
Chief Executive Officer

ACCEPTED AND AGREED:

_____

Patrick de Man
Date: March___, 2010

TAB 4

RAIDEN COMMODITIES, LP

A US Virgin Islands Limited Partnership

SECOND AMENDED & RESTATED PARTNERSHIP AGREEMENT

Effective Date: July 30, 2013

DISCLAIMER:

THE UNDERLYING SECURITIES CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS HAVE NOT BEEN REGISTERED UNDER U.S. VIRGIN ISLANDS 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.

SECOND AMENDED & RESTATED PARTNERSHIP AGREEMENT

OF

RAIDEN COMMODITIES, LP

This Second Amended & Restated Partnership Agreement (the "Agreement") is adopted by the Partners of **RAIDEN 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 US Virgin Islands 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. It shall further include any Affiliate of a close family member including spouses, children, parents, and sibilngs.

"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 Office of the Lt Governor of the US Virgin Islands by which the Partnership was organized as a US Virgin Islands 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 US Virgin Islands 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)(l). 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.

"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 Class A 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 QA Classes of General Partnership Interest or Limited Partner Interests. The current and sole General Partner is **RAIDEN COMMODITIES I, 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 Exhibit 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 QA 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 Exhibit 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 **RAIDEN COMMODITIES, LP**, a US Virgin Islands Limited Partnership.

"Partnership Interest" or "Interest" means the Partnership interest of a Partner (whether in their capacity as a General Partner or Limited Partner) or Partners 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 business. There may be multiple Classes of Partnership Interests and such Classes will determine the rights, duties and obligations of the Partner owning such a Class of Partnership Interest. The initial Partnership Interest of each Partner is set forth in Exhibit 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.

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. A unit may be taken to mean one (1) percent of such interest or any reasonable fraction thereof.

"Permitted Transferee" means a trust, including a charitable remainder trust, corporation, limited partnership, company or other entity 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, arbitrative 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; and,

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 s **RAIDEN 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 US Virgin Islands Limited Partnership by the filing of the Articles and the issuance of a certificate of filing for the Partnership by the Lt Governor of US Virgin Islands.

1.4 Term. The Partnership commenced on the date the Lt Governor of US Virgin Islands 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, as defined herein, 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 it 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 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 however 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 wh ch 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 US Virgin Islands. 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 US Virgin Islands 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

US Virgin Islands or Puerto Rico, as the General Partners 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 the US Virgin Islands, 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 US Virgin Islands Lt Governor.

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 (if ever allowed thereby), 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) thirty (30) consecutive calendar days or 2) thirty (30) 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, Designated Key Person 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 and commercially reasonable 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 or General 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 and General 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 or General Partner and for a period of time after they cease to be a Partner or General 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 or General Partner and following the termination of their Partnership, their term as General Partner 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, General 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. Further, any amounts owed

to that General Partner, for whatever reason (including expense reimbursements, bonuses, salary and the like), shall be immediately forfeited and no longer payable.

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 General Partner, 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 Class A 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, General Partners and/or Classes of Partners or General Partners, including Quantitative Analyst Partners (also known as "QA Partners," "QA Limited Partners" or "QA General Partners," whatever their status may be), b) allow availability and use of such Pool by various Partners, General Partners and/or Classes of Partners or General Partners, including QA 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 QA Partner shall be placed in at least one Pool over which they have management responsibility, Profits and Loss interests and/or Agreed Partnership Splits (as defined herein) therein.

The General Partner may assign the varying Pools of Property to specific Classes of Partners or General Partners, including QA Partners or QA General 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 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 to the Partners who have been delegated authority over, Profits and Loss interests in and/or Agreed Partnership Splits in the Pool prior to such change.

By way of example, the Class A Partners may define a "Class B Quantitative Analyst Pool" (also known as "Class B QA 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 QA 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, General 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 the election of General Partners is not held on the day designated, or at any adjournment thereof, the Limited Partners shall cause the election to be held at a special meeting of the Limited 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 any Class A Partner or General Partner (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 he d by unanimous consent without Notice.

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, General Partner, 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 or their spouse.

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.

2.8.5 Telephonic Meeting. Partners or General Partners of the Partnership 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. Non-Class A Partners or QA Partners, by a resolution of a Majority In Interest of such Class, 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 QA Partner or QA General 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 Class A General Partners. Only a Class A Partner may call a meeting or special meeting of any other non-moving Class of Partners or General Partners or of the Partnership as a whole.

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 officer, manager, member, administrator, custodian, 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. 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 Limited 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 <u>Partnership Interest Pledge or Encumbrance</u>. 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, it 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, General 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, General Partner, 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 Person must notify the General Partners promptly of any request for that information, before disclosing it, if practicable);

B. To advisers or representatives of the Limited Partner or General Partner hereto or to Persons to which that Person's direct or indirect 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, General Partner, 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, General Partner, 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 General Partner 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, in the good faith determination of the General Partner, 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 General, Class A Limited Partners and Class Z Limited Partners (and corresponding Partnership Interests). However, it is intended that: 1) there shall be no initial Class Z Limited 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 Limited Partnership Interest (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, then it would take a Majority in Interest of the Partners from that Class to call a meeting thereof.

C. Unless otherwise specified, prompt notice of the taking of an action under this Agreement that requires 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.

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, at any time, 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 Limited Partners and the Partnership Interest in question from any other Class shall immediately upon their acquisition of such be converted to such Class Z Limited Partnership Interest. Class Z Limited Partners shall have no right or authority to: (1) vote their Partnership Interest as Class Z Limited 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 Limited 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 Limited Partners shall have only the following limited rights which shall be construed to the maximum extent allowed by law in the US Virgin Islands to restrict such Class Z Limited 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 Limited Partner.

The forgoing notwithstanding, Any non-waivable or non-amendable rights under the Act of an Unauthorized Assignee or Class Z Limited 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 Limited Partner but shall be otherwise limited and restricted to the maximum extent permitted by law in the US Virgin Islands. 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 QA Partners. In addition to Class A and Class Z Limited Partnership Classes, the Partnership may also have certain Quantitative Analyst (or "QA") Classes which may be referred to by any alpha, numeric or other naming convention Class of Partnership Interests ("Class B" or "Class 1", "Class Christopher," 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 QA Class Partnership Interests shall be referred to as a "QA Partner" and their rights shall be limited as defined herein. The intent of creating Classes of QA 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 QA Partner (or group of QA Partners). A QA Class may have multiple Partners. Any QA Partner shall not be entitled to vote, except as it relates to actions or decisions among multiple Partners in their particular QA 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 QA Partners. Even in the case of an action or vote by QA Partners that is within the scope of those powers authorized or delegated to the QA 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 QA 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 QA Partner are nonvoting in all respects as it relates to Partnership wide votes.

A QA Partner need not be named as a General Partner. Any QA 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 "QA General Partner"). Further, a QA 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 QA 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 QA Partner's Partnership Interest shall be set by agreement among the Class A Partners and a Majority In Interest of the QA Partners for a particular QA Class at the issuance of the QA 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 QA Partners of a particular QA 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 QA Partner's Partnership Interest may be amended from time to time by agreement among the QA Partners affected and the Class A Partners, provided however, that no retroactive application or amendment of such agreement shall serve to deprive a QA Partner of Profits and Losses that were previously earned by and allocated to them prior to the amendment, unless such QA Partner agrees to such.

A QA Class (or the Partnership Interests of a particular QA 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 QA Partners whose Partnership Interests are being retired: a) were not retired 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 QA Partner and except for those QA Partners whose Partnership Interests are being retired 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 QA 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 QA Partner or their particular QA Class jointly and severally. The Purchase Price as to a QA Partner whose Partnership Interest is being retired 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 QA Partner or their particular QA Class jointly and severally.

The preemptive rights prescribed in section 3.6 shall not apply to the issuance of any QA Partner Class of Partnership Interests or be granted to any QA Partner. No QA 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 QA Partners hereby consent to such limitation. Section 7.3, 7.4 and 7.5 shall not apply to any QA Partners. QA 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 QA Partners for a particular QA Class the term for noncompetition, non-solicitation, and non-circumvention following termination shall be six (6)

months for QA Partners. In the case where a Partner serves in both a QA 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 Section 3.3 shall be determined as provided herein or, as to a QA 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 QA 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 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 if both were living Persons. 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 ent ty 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, except as otherwise stated in this Agreement. 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

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 QA 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 following the Contribution. By

way of example, if a Contribution occurred on June 28th 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 1st 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 Contr bution 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 US Virgin Islands; 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 US Virgin Islands. 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 US Virgin Islands 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 QA 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 QA 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(i)(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. 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 Class A Partners in an amount equal to thirty five percent (35%) of the estimated Adjusted Allocated Taxable Income (as hereinafter defined)

of the Class A 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 QA 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 96.5% 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, having due regard for the activity and condition of the relevant market and general financial and economic conditions,

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 QA 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 as described in 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 US Virgin Islands.

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 possib e, 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 election 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 US Virgin Islands.

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 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. Limited 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. Unless another method or time period is prescribed herein, 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 if delivered by this method 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 for Partners or 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, Partners, General Partner, 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, except as to another Class A Partner (or another General Partner of the same Class), 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 the disclaimer and release contained herein, 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 Harris 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 HARRIS 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 a l 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 the US Virgin Islands 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 prior allocated 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. No Partner shall unreasonably withhold, delay or condition their consent to a proposed amendment which would not have a material adverse effect on them.

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 for any other reason) 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 alterative 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 **RAIDEN COMMODITIES, LP**, a US Virgin Islands Limited Partnership, hereby evidence their adoption and ratification of the foregoing Agreement of the Partnership.

Effective Date: July 30, 2013

GENERAL PARTNER:

RAIDEN COMMODITIES I, LLC

DocuSigned by:
Adam Sinn
31AE81A8B8C44B3...
BY: **ADAM C. SINN**, Manager

LIMITED PARTNER:

SINN LIVING TRUST, dated November 9, 2012

DocuSigned by:
Adam Sinn
31AE81A8B8C44B3...
BY: **ADAM CLARK SINN**, Trustee

EXHIBIT "A"

Partner(s)	Percentage	Capital
RAIDEN COMMODITIES I, LLC (Class A General Partner)	1%	$10
SINN LIVING TRUST, dated November 9, 2012 (Class A Limited Partner)	99%	$990

EXHIBIT B
DESIGNATED KEY PERSON(S)

ADAM CLARK SINN as to their direct or indirect interest in the Partnership, including that which is by or through the **SINN LIVING TRUST**, dated November 9, 2012.

EXHIBIT C

PRIMARY OPERATING COMPANIES

RAIDEN COMMODITIES 1, LLC, a Puerto Rico limited liability company
RAIDEN COMMODITIES, LP, a US Virgin Islands Limited Partnership
3S REAL ESTATE INVESTMENTS, LLC, a Texas limited liability company
ASPIRE CAPITAL MANAGEMENT, LLC, a Texas limited liability company
ASPIRE COMMODITIES 1, LLC, a Puerto Rico limited liability company
ASPIRE COMMODITIES, LP, a Texas limited partnership
POSEIDEN COMMODITIES, LLC, a US Virgin Islands limited liability company
RURAL ROUTE 3 HOLDINGS, LP, a Texas limited partnership
RURAL ROUTE 3 MANAGEMENT, LLC, a Texas limited liability company
XS CAPITAL INVESTMENTS, LP, a Texas limited partnership
XS CAPITAL 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 July 30, 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 **RAIDEN 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: _____.

_____

Spouse 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 July 30, 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 **RAIDEN 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: _____

TAB 5

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)(l). 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, arbitrative 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 it 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 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, it 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 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 am 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 28th 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 1st 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 alterative 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

DocuSigned by:
Adam Sinn
31AE81A90BCA4B9...

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

DocuSigned by:
Adam Sinn
31AE81A90BCA4B9...

By: **SINN LIVING TRUST**, Manager of the General Partner
By: **ADAM C. SINN**, Trustee of the Manager

EXHIBIT "A"

Updated September 5, 2013

Partner(s)	Percentage	Capital
ASPIRE COMMODITIES 1, LLC (Class A General Partner)	**1.00%**	**See Records**
RURAL ROUTE 3 HOLDINGS, LP (Class A Limited Partner)	**99.00%**	**See Records**

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.

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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: _____

TAB 6

SPOUSAL ASSENT AND AFFIRMATION

The undersigned Spouse ("Spouse") of **BRIAN TYSON** ("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 August 28, 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 an Assignee, Partner, Designated Key Person or potential Partner of **ASPIRE COMMODITIES, LP** ("Partnership"). 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.

Effective Date: **March 28, 2015.**

Mariandrea Tyson

Spouse Name: **MARIANDREA TYSON**

JOINDER OF NEW QUANTITATIVE ANALYST PARTNER

To Partnership Agreement

BRIAN TYSON (for the purposes of this Joinder the "Quantitative Analyst Partner" or "QA Partner" being referenced herein) hereby signs this **JOINDER OF NEW QUANTITATIVE ANALYST PARTNER** ("Joinder") as one of the conditions precedent to becoming a Quantitative Analyst Partner of the Partnership and, except as to terms otherwise contained in a superseding agreement among the QA Partner and the Partnership (which shall be considered modified thereby), joins in the execution of that certain Limited Partnership Agreement dated August 28, 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 that he or she by executing this Joinder shall be fully bound thereby); and affirming and/or re-affirming, as the case may be, the corporate documentation contained in the Partnership's corporate records ("Records"), including but not limited to any restrictions on transfer of an interest, Agreed Partnership Splits, non-competition provisions, or rights of repurchase surrounding spouses.

ASPIRE COMMODITIES, LP ("Partnership") is the Partnership. This Joinder applies to the Partnership (together with its Affiliates, successors and assigns including but not limited to the Primary Operating Companies) and any current or future interests of the Assignee and/or the Spouse, if any, therein.

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BT

Effective Date: March 28, 2015

QUANTITATIVE ANALYST PARTNER:

Printed Name: BRIAN TYSON

ACKNOWLEDGED BY:

GENERAL PARTNER:

ASPIRE COMMODITIES 1, LLC

BY: ADAM C. SINN, Manager

LIMITED PARTNER:

SINN LIVING TRUST, dated November 9, 2012

BY: ADAM C. SINN, Trustee

To The Partners of:
ASPIRE COMMODITIES, LP

RECORD OF INITIAL CONTRIBUTION BY QUANTITATIVE ANALYST PARTNER

The Class A Partners, both General and Limited, of **ASPIRE COMMODITIES, LP** hereby confirm the following Capital Contributions in exchange for the issuance of that certain Class of Partnership Interest, as follows:

New Quantitative Analyst Partner(s)	Class & Percentage of Class	Capital
Brian Tyson (New Class Brian Tyson Quantitative Analyst Partner)	100% of Class Brian Tyson Limited Partnership Interests	$1,000

All other Partnership Interests remain unchanged. The Partnership Class defined above has been fully capitalized and, in exchange for such, all authorized Partnership Interests of that Class are issued to the Partners listed herein.

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Dated: March 28, 2015

QUANTITATIVE ANALYST PARTNER:

Printed Name: BRIAN TYSON

Accepted:

GENERAL PARTNER:

ASPIRE COMMODITIES 1, LLC

BY: ADAM C. SINN, Manager

LIMITED PARTNER:

SINN LIVING TRUST, dated November 9, 2012

BY: ADAM C. SINN, Trustee

ASPIRE COMMODITIES, LP

UNANIMOUS CONSENT TO ADD A QUANTITATIVE ANALYST PARTNER

IN LIEU OF A SPECIAL MEETING

Effective Date: March 28, 2015

New QA Partner Name: BRIAN TYSON ("New QA Partner")

The undersigned, being the sole General Partner (the "General Partner") and Class A Limited Partner(s) ("Class A Limited Partner(s)" such being collectively referred to as the "Class A Partners" when combined the General Partner) together with the New QA Partner, as defined herein, of **ASPIRE COMMODITIES, LP**, a Texas limited partnership (the "Partnership"), hereby adopts this Unanimous Consent dated as of the Effective Date above. The Partners waive advance notice of the meeting.

1. Admittance of Non-Class A Quantitative Analyst Partner. The General Partner wishes to admit certain non-Class A New QA Partners to the Partnership. The undersigned Partners hereby approve, ratify and accept, upon the completion of all conditions required or advisable by the General Partner, the issuance and/or other transfer of the following non-Class A Quantitative Analyst Partnership Interests:

> **As permitted under the Partnership Agreement, New QA Partner (or an approved Affiliate of theirs, as approved by the General Partner) has or will contribute, contemporaneously with this Consent, the Required Capital Contributions, and in return shall receive one hundred percent (100%) of the New Class Limited Partnership QA Partner Interest in the Partnership (as defined in Exhibit A, attached hereto).**

All Partners hereby consent to such issuance or other transfer and any other ancillary documents which may be advisable in the discretion of the General Partner and associated therewith. The New QA Partner shall become a QA Partner upon execution/completion and delivery to the General Partner of the following:

i. Execution and delivery of this Consent by the New QA Partner;
ii. Execution and the delivery of their Joinder to the Partnership Agreement;
iii. Execution and delivery by their Spouse, if any, of a Spousal Consent;
iv. Execution and delivery of a Record of Initial Contribution;
v. Delivery of the cash sum equal to their Required Capital Contributions defined above;
vi. Execution and delivery of the Confidentiality, Non-Solicitation and Non-Compete Agreement;
vii. Execution and delivery of a Consent of Designated Keyperson, if deemed advisable by the General Partner;

viii. Execution and delivery of such other agreements or documents, as determined to be advisable by the General Partner.

All such documents listed above shall be in a form and substance that is advisable and acceptable by the General Partner.

2. Partnership Agreement. The current Partnership Agreement, as may be amended from time to time, was presented to the New QA Partner for thorough inspection by them. The New QA Partner has agreed, or contemporaneously with their execution of this Consent will agree, to be bound to the Partnership Agreement and all of its terms, except as may be modified in this Consent.

3. Creation of Partnership Pool. Pursuant to the Partnership Agreement, the General Partner hereby creates and assigns a certain Pool of partnership Property, as defined in Exhibit A attached hereto (the "New QA Pool" for the purposes of this Consent) to the New QA Partner. Subject to oversight by the General Partner, the New QA Partner is authorized to manage the New QA Pool and shall have management authority, rights to Agreed Partnership Splits, and rights to Profits and Losses of the New QA Pool as set forth in the Partnership Agreement and as agreed upon between the Class A Partners and the New QA Partner (whether herein or otherwise). The General Partner may unilaterally enlarge or diminish the New QA Pool and/or the New QA Partner's authority over such at any time hereafter provided that it shall not have the effect of diminishing prior earned Agreed Partnership Splits unless such is otherwise consented to by the New QA Partner.

4. Duties of New QA Partner. New QA Partner shall perform and shall have such duties, responsibilities, and authorities as may be designated for such position by the General Partner. New QA Partner agrees to devote their best efforts, abilities, knowledge, experience, and full business time to the faithful performance of the duties, responsibilities, and authorities which may be assigned to New QA Partner. New QA Partner may not engage, directly or indirectly, in any other business, investment, or activity that interferes with New QA Partner 's performance of their duties hereunder, or is contrary to the interests of the Partnership. New QA Partner shall at all times comply with and be subject to such policies and procedures as the Partnership may establish from time to time, which will be customary within the Partnership's industry. New QA Partner acknowledges and agrees that New QA Partner owes a fiduciary duty of loyalty and allegiance to act at all times in the best interests of the Partnership and to do no act which would injure the Partnership's business, its interests, its Property or its reputation. Including, but not limited to the above, New QA Partner shall adhere to the following:

a) In the performance of his or her duties for the Partnership, New QA Partner is required to, and it is New QA Partner's responsibility to: (i) know and comply with and enforce all applicable federal and state securities laws and regulations, as well as regulations of federal and state governmental and regulatory agencies, including, but not limited to, compliance with the Securities and Exchange Act of 1934, as amended, and the Commodities Exchange Act, as amended, (including the rules and regulations promulgated

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thereunder) and the rules and regulations of the NASD; IESO, SPP, CME; CBOT; EUREX; LIFFE; NYSE; NYMEX; ICE; CFTC; MISO; PJM; NEPOOL, NYISO, CAISO, ERCOT, Nodal Exchange, and NFA; (ii) know and comply with the Federal Energy Regulatory Commission's ("FERC") laws and regulations and understand and know the latest tariffs accepted by FERC; (iii) know and comply with the U.S. Commodity Futures Trading Commission's ("CFTC") laws and regulations; and (iv) know and comply with and enforce all applicable Partnership policies and general procedures as established from time to time by the Partnership as well as all requirements of state and federal law. New QA Partner is responsible for being knowledgeable about and complying with any changes or amendments to the above regulations, rules, and laws.

b) To abide by the Partnership's written rules, regulations and practices for Partners, including those concerning work schedules, vacation, and sick leave, as they may from time to time be adopted or modified by the Partnership.

c) To ensure a safe, competent, and efficient working environment, and to uphold the effectiveness and integrity of the Partnership, New QA Partner shall not use, possess, conceal, transport, or promote for sale or use any illegal or illicit drugs, including but not limited to marijuana, cocaine, mood or mind altering substances, look-alike substances, designer and synthetic drugs, certain inhalants of abuse, or any other controlled substance, or any equipment or paraphernalia related to illegal drug or substance use at the Partnership premises or any other worksite where New QA Partner is representing or performing duties for the Partnership. Excepted from this section are prescription drugs actually prescribed to New QA Partner by an authorized medical practitioner and any over-the-counter drugs used according to its directions so long as they are not used in an abusive or non-prescribed manner. Also excepted from this section are alcoholic beverages served or provided by the Partnership at approved Partnership social functions, so long as such is consumed in a professional manner.

d) To conduct himself/herself in a professional manner at all times as determined by the sole discretion of the Partnership and shall (i) report to work at the time fixed by the Partnership; and (ii) conduct himself/herself in a manner which is not detrimental to the Partnership as determined by the sole discretion of the Partnership.

e) Notwithstanding anything to the contrary in this Agreement, New QA Partner shall not have the right, authority, or responsibility to contract for or enter any business transaction on behalf of the Partnership without the prior consent of the Partnership.

5. Agreed Partnership Splits. The Class A Partners along with the New QA Partner hereby agree to the Agreed Partnership Splits defined in Exhibit A and the division of the Profits and Losses generated from the New QA Pool. The General Partner may change the future Agreed Partnership Splits or the division of Profits and Losses at any time provided that it shall not have

the effect of diminishing prior earned Agreed Partnership Splits unless such is otherwise consented to by the New QA Partner and provided further that any reduction of Agreed Partnership Splits shall constitute "Good Reason" for the purposes of the New QA Partner leaving the Partnership. Agreed Partner Splits due to the New QA Partner, together with the amount of Profits and Losses and/or distributions due thereunder for a prior period ending the 31st day of December will be determined by the General Partner on or prior to the following 31st day of January. No further Agreed Partnership Splits shall be due and payable to the New QA Partner if: (i) New QA Partner is not actively engaged full-time by the Partnership on the payment date that any such distribution is to be paid, under the then existing Partnership policies, unless the New QA Partner is not actively engaged full time by the Partnership due to the Partnership's termination of the New QA Partner without Cause or (ii) New QA Partner has committed any breach of this Agreement. Distributions made under this Unanimous Consent shall be subject to reduction by the amount of any applicable withholding and any other items or direct/allocated costs which the Partnership may be required or authorized by law to deduct, including allocations for overhead and other reasonable expenses.

6. Guaranteed Payment. The New QA Partner may be entitled to a certain annual Guaranteed Payment, as determined and defined on Exhibit A and, if any Guaranteed Payment is listed thereon, such shall be payable not less than monthly to the New QA Partner. The Guaranteed Payment shall be prorated for any partial period applicable at the beginning or end of the New QA Partners association with the Partnership. Guaranteed Payments are a part of the Agreed Partnership Splits allocated to the New QA Partner and shall be deducted from the Agreed Partnership Splits and treated as a distribution to the New QA Partner prior to any additional distributions being made to the New QA Partner. By way of example, if a QA Partner previously received $60,000 in Guaranteed Payments but is due $100,000 under the Agreed Partnership Splits, then such $60,000 Guaranteed Payment shall be deemed a distribution against the Agreed Partnership Splits and only $40,000 shall remain to be distributed.

7. Other Partner Benefits. As a part of or in addition to the Agreed Partnership Splits payable to New QA Partner hereunder, including any Distribution of Profits or Losses outlined herein, New QA Partner shall be entitled to the following benefits:

a. The Partnership may adopt or continue in force benefits plans for the benefit of its Partners or certain of its employees. The Partnership may terminate any or all such plans at any time and may choose to adopt any other plans. New QA Partner's rights under any benefit plans now in force or later adopted by the Partnership shall be governed solely by the terms of such plans. Any eligible New QA Partner who elects to not participate in any or all of the benefits offered shall receive no additional consideration for waiving or declining such benefits, unless an alternative benefit is agreed to by the Partnership in lieu of such benefit. Nothing in this Agreement is to be construed or interpreted to provide greater rights, participation, coverage, or benefits under such benefit plans or programs than provided to similarly situated QA Partners pursuant to the terms and conditions of such benefit plans and programs.

b. The Partnership shall not by reason of this Section be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any such partner or employee benefit program or plan.

c. At its discretion, the Partnership may choose to: 1) charge the cost of any and all benefits against the Agreed Partners Splits and/or Profits and Losses (and any distributions due therefrom, including Guaranteed Payments) so that they are deducted from the total amounts allocated or to be allocated to the New QA Partner or 2) to make an additional allocation of Profits and Losses to the New QA Partner which makes it such that the cost of the benefits and the additional allocation equal one another.

8. Clawback Agreement. New QA Partner and the Partnership agree to deduct from and reduce any Agreed Partnership Splits, Distributions and Profits or Losses received, earned or allocated to New QA Partner in the event of a Clawback by an Independent System Operator ("ISO") or an order from any governmental agency ordering such a Clawback (whether against the Partnership or the Partners) such reduction may be applied to current period allocations, future period allocations, or prior period's allocations of Agreed Partnership Splits, Distributions and Profits or Losses, in the reasonable discretion of the General Partner. In the event that current period allocations are unavailable, unable or undesirable to be utilized in such Clawback, then New QA Partner agrees to immediately reimburse the Partnership in the event of a Clawback. In addition to current or prior period adjustments, the Partnership may adjust, reduce or suspend any future payments or allocations to New QA Partner, including but not limited to distribution of Guaranteed Payments or Profits, in order to recover Clawback amounts. New QA Partner agrees that in the event an ISO retroactively makes adjustments to fees the ISO may have charged or revenue the ISO may have paid out to the Partnership (including to the Partnership's Affiliates, subsidiaries, agents successors or assigns), the Partnership may consider such a Clawback hereunder and apply these provisions to such reduction. In the event New QA Partner's Partnership Interest is retired or ceases for any reason (or if this Unanimous Consent or the Agreement is breached in any way), New QA Partner agrees that the balance of outstanding Clawback amounts owed by New QA Partner shall become immediately due and payable to the Partnership and may be charged to the Partner and/or withheld from any remaining Agreed Partnership Splits, Distributions and Profits or Losses owed or allocated to New QA Partner. The Partnership shall have full recourse against New QA Partner on any outstanding balances owed to the Partnership and, even if such Clawback is being validly contested, shall have the right to collect such asserted Clawback from the New QA Partner and may pay or hold those amounts until such time as the contest or dispute is resolved. The term "Clawback" shall be defined liberally herein to mean any amounts recuperated from the Partnership (or their Affiliates) that are related to the activity in the New QA Pool, by any Person (including but not limited to any ISO, clearinghouse, custodian, trading agent, regulatory body, governmental agency or other entity having or exercising authority, whether contractual, by law or otherwise) over the activities of the Partnership. The New QA Partner and Partnership agree that the New QA Partner shall only be responsible for their pro rata share of any Clawback or deemed Clawback allocated under this provision, as defined by the Net Trading Revenue Share in Exhibit A applicable for the year or years such Clawback is in reference to.Further, the share of the Clawback for which the New QA Partner

shall be responsible shall not exceed the total Agreed Partnership Splits distributed in relation to the year or years to which the Clawback corresponds.

9. Termination Clause. In the event that New QA Partner intends to cease devoting full-time effort to the Partnership, they shall provide at least thirty (30) days prior written Notice to the Partnership. New QA Partner's representations, warranties, and obligations contained in this Unanimous Consent (and any other documents related to their Partner status and/or employment with the Partnership) shall survive the termination of his or her partnership, and New QA Partner's representations and warranties shall also survive the expiration of this Unanimous Consent or the Agreement. By way of example (and including but not limited to), New QA Partners obligations of confidentiality shall survive the retirement of their Partnership Interests and/or the termination of the New QA Partner's relationship with the Partnership. Following any cessation of Partnership or full-time devotion by New QA Partner, such New QA Partner shall fully cooperate with the Partnership in all matters relating to his or her continuing obligations as or while they were a Partner of the Partnership.

10. Indemnification by the Partnership. In accordance with the terms of the Partnership's Agreement or other Records, the Partnership shall indemnify and reimburse New QA Partner for all attorneys' fees and court costs incurred by New QA Partner and all administrative fines, settlements, judgments, arbitration awards and monetary penalties assessed against New QA Partner in connection with any litigation to which any of the Operating Companies listed in Exhibit C to the Partnership Agreement was a party prior to the New QA Partner's joinder to the Partnership Agreement and any services rendered by New QA Partner on behalf of the Partnership, except for those Clawbacks pursuant to Paragraph 8 of this Unanimous Consent and those fines and monetary penalties arising from the unreasonable behavior, negligence or willful misconduct by New QA Partner, including but not limited to the violation of any law by New QA Partner in performing services on behalf of the Partnership under this Agreement.

11. Indemnification by QA Partners. New QA Partner shall indemnify the Partnership and hold the Partnership harmless for any and all damages, liabilities, settlements, costs, judgments, arbitration awards, administrative fines, and attorneys' fees arising from any acts, omissions, or decisions made by New QA Partner while performing services for the Partnership, where such acts and/or decisions are determined by arbitrators, a court, or jury to be fraudulent, unreasonable, negligent, and/or to constitute a breach of fiduciary duty or in the event the Partnership, in the exercise of its business judgment, determines to settle any claim made by any individual or entity against the Partnership regarding the conduct or activity of New QA Partners. Any amount due and owing to the Partnership under this paragraph may be collected at the Partnership's discretion from current or future Agreed Partnership Splits, Distributions and Profits and Losses received, earned or allocated to New QA Partner, in the discretion of the General Partner. This indemnity includes but is not limited to indemnifications for claims, losses and damages arising out of: (a) any investigation or inquiry by a governmental agency, exchange, or self-regulatory organization arising out of the New QA Partner's activities; (b) failure of the New QA Partner to properly perform its duties, obligations and responsibilities pursuant to the Partnership Agreement; (c) any dishonest, fraudulent, negligent or criminal act or omission on the

part of the New QA Partner; (d) any violation by the New QA Partner of state or federal law or the Constitution, rules, regulations or policies of any governmental agency or securities self-regulatory organization; or (e) any act or omission by any third-party New QA Pool controller hired by the New QA Partner holding discretionary trading authority over the New QA Partner's New QA Pool.

12. Designated Key Person(s). Certain Persons, known as "Designated Key Persons" (as defined in the Agreement), may own an indirect interest in the Partnership but are deemed material to the operations of the Partnership and are to be bound by provisions in the Agreement (including but not limited to those regarding non-competition, death, incapacity, withdrawal and confidentiality). The Partnership may, at the sole discretion of the General Partner(s), add Designated Key Persons at any time, including to New QA Partner's Partnership Interest, provided that this is done with the consent of the New QA Partner. If the New QA Partner's Interest is attributable to a specific individual but owned indirectly by that individual then the individual shall be a Designated Key Person as to that Interest. If a Designated Key Person is named or required by the General Partner, then such Designated Key Person shall sign and deliver a Consent of Designated Key Person as a condition precedent the New QA Partner becoming a QA Partner. In the event of a change in ownership or of a Designated Key Person, the Partnership may convert New QA Partner's Partnership Interest as that of an assignee and not a Partner unless and until such new Designated Key Person or owner executes documents deemed necessary and advisable by the Partnership.

13. Risk Disclosure. THE PARTNERSHIP HAS INFORMED THE NEW QA PARTNER THAT IT INTENDS TO HAVE OTHER PARTNERS OF THE PARTNERSHIP, IN ADDITION TO THE NEW QA PARTNER, TRADING PROPRIETARY SUBACCOUNTS FOR THE PARTNERSHIP. THE NEW QA PARTNER IS AWARE AND ACKNOWLEDGES THAT THERE IS ALWAYS A POSSIBILITY THAT ONE OR MORE OF THE OTHER PARTNERS COULD INCUR SUBSTANTIAL LOSSES IN THEIR SUB-ACCOUNTS BEYOND THE AMOUNT OF CAPITAL ALLOCATED TO THEIR SUB-ACCOUNTS OR THAT LOSES COULD OCCUR AS A RESULT OF SYSTEMS FAILURES OR OTHER ADVERSE EVENTS. THE NEW QA PARTNER ACKNOWLEDGES THAT IT IS AWARE THAT ANY OF THESE EVENTS COULD RESULT IN A SITUATION WHERE THE PARTNERSHIP BECOMES INSOLVENT OR WHERE THE NEW QA PARTNER HAS NET PROFITS IN A GIVEN PERIOD, BUT THE PARTNERSHIP IS UNABLE TO PERMIT NEW QA PARTNER TO RECEIVE A DISTRIBUTION FROM ITS CAPITAL ACCOUNT (SUBJECT TO THE TERMS OF THE PARTNERSHIP AGREEMENT). IN SUCH AN EVENT, THE NEW QA PARTNER HEREBY WAIVES ANY CLAIMS AGAINST THE PARTNERSHIP, ITS GENERAL PARTNER, OR ANY OF ITS AFFILIATES, AGENTS, SUCCESSORS AND ASSIGNS.

14. Tax Ramifications & Decisions. The New QA Partner is solely responsible for the payment of all taxes and withholdings pertaining to any Guaranteed Payments or Distributions allocated to it, including but not limited to, income taxes, social security taxes, payroll taxes, federal unemployment taxes, self-employment taxes and/or hospital insurance taxes, and the New QA Partner indemnifies and holds harmless the Partnership from any present or future liability relating thereto. New QA Partner agrees that it has in no way relied upon (nor will rely upon) any advice from the Partnership or its advisors regarding the New QA Partner's tax status, tax liabilities

or tax reporting. New QA Partner will hire and maintain competent advisors on its own regarding such matters.

15. Ratification of Prior Acts and Indemnification. All action taken on behalf of the Partnership prior to the date hereof by its Class A Partners or other authorized agents (collectively the "Agents") in furtherance of the intent and purpose of the foregoing resolutions are hereby ratified by the Partnership as the acts and deeds of the Partnership, as if the Partnership had undertaken such acts after the date hereof. In consideration of the time and effort of those Agents, the Partnership and New QA Partner shall, and does hereby agree to, fully release, indemnify, defend and hold harmless those Agents from all claims related to such acts.

16. Effective Date, General Terms & Defined Terms. This Consent shall be effective as of the Effective Date listed herein, regardless of when it may be executed by the General Partner or any other Person. New QA Partner will immediately notify any employers, potential employers or other Persons with which it has or seeks to have a relationship with that this Unanimous Consent (together with its ancillary documents, including but not limited to any restrictions set forth in the Confidentiality, Non-Solicitation and Non-Compete Agreement) exists and that such affects their ability to work for or contract with such Persons. New QA Partner expressly authorizes the Partnership to notify third parties, including New QA Partner's employers and potential employers, of the terms of the Agreement, Records or this Unanimous Consent. Any terms not explicitly defined herein shall have the meaning ascribed to them in the Partnership Agreement for the Partnership or, in the event it is not defined therein, elsewhere in the corporate Records or, in the event it is not defined anywhere in the Records, as defined by the Texas Business Organizations Code. New QA Partner acknowledges that he or she has had the opportunity to consult legal counsel about this Unanimous Consent, the Agreement and the Records, and that they each and every Person necessary a) has read and understands this Agreement, b) fully intends to comply with its terms, and c) has entered into it freely and voluntarily and based on his or her own judgment and not on any representations or promises by the Partnership or any Agent of the Partnership other than those contained in the Agreement, this Unanimous Consent and the Records.

New QA Partner acknowledges and understands that prospective Partners or business relationships of the Partnership may conduct due diligence into the Partnership and its Partners prior to purchasing, making an investment in or forming any other relationship with the Partnership. Such Persons may desire to know the identity of the Class A Partners and QA Partners of the Partnership. The New QA Partner hereby authorizes the Partnership to disclose and provide the identity and other pertinent information of the New QA Partner upon inquiry by any reasonable Person as part of its due diligence, all without prior notice to the New QA Partner.

New QA Partner hereby represents and warrants to the Partnership that New QA Partner has not previously assumed any obligations inconsistent with those contained in the Agreement, the Records or this Unanimous Consent and that New QA Partner is not violating or breaching any other agreements or obligations by entering into or assuming such with the Partnership. New QA Partner further represents and warrants to the Partnership that New QA Partner has entered into

this Agreement pursuant to New QA Partner's own initiative and that this Agreement is not in contravention of any existing commitments. New QA Partner acknowledges that the Partnership has entered into this Agreement in reliance upon the foregoing representations of New QA Partner. New QA Partner hereby releases the Partnership from any monetary obligations, if any, arising from any prior agreement between New QA Partner and the Partnership.

QUANTITATIVE ANALYST PARTNER:

Printed Name: **BRIAN TYSON**

GENERAL PARTNER:

ASPIRE COMMODITIES 1, LLC

BY: **ADAM C. SINN**, Manager

LIMITED PARTNER:

SINN LIVING TRUST, dated November 9, 2012

BY: **ADAM C. SINN**, Trustee

EXHIBIT A: FINANCIAL TERMS

Required Capital Contributions: $1,000 in US Currency to be delivered contemporaneously herewith to the Partnership.

New Class Limited Partnership QA Partner Interest: BRIAN TYSON Class of Interests

New QA Pool: Class **BRIAN TYSON** Pool, consisting of the following Property of the Partnership:

A. New QA Partner's Capital Contribution;

B. Account #N/A provided however that such may be amended or updated or curtailed by the General Partner from time-to-time and at any time.

C. The New QA Partner shall be authorized to make trades and be subject to the Partnership's trading limits as determined from time to time, whether orally or in writing. Trading limits may be increased or decreased from time to time upon the determination of the General Partner, in its sole and absolute discretion. The New QA Partner is obligated at all times not to exceed its trading limits. Any violation shall constitute a breach of the Agreement.

Agreed Partnership Splits: As defined in the Agreement, the General Partner and/or Class A Partners may agree to certain Agreed Partnership Splits with specific QA Partners. Consistent with such, the New QA Partner's Agreed Partnership Split shall be as follows:

Net Trading Revenue Share: Twenty Percent (20%)

New QA Partner's Agreed Partnership Splits: Allocated the Net Trading Revenue Share of Net Trading Revenue (in a specific and particular period of time) on the New QA Pool, less the Initial Guaranteed Payments and Guaranteed Payments, and as may be adjusted to account for Clawbacks, Losses, etc. as defined in this Unanimous Consent. For the avoidance of doubt, the Agreed Partnership Splits shall in no event be determined to be less than zero dollars ($0.00).

"Net Trading Revenue" or "NTR" shall mean: the total gross Profits of the New QA Pool from the trading efforts of New QA Partner, as reflected in, and calculated by, the PJM, MISO, ERCOT, NYISO, CAISO, NEPOOL, SPP, ICE, NYMEX, Nodal Exchange, NGX and other trading account statements, less the Net Trading Loss from the prior annual period (if any annual net loss exists), commissions, exchange fees, clearing fees, any and all brokerage related fees in order to execute the trades requested by New QA Partner, any and all trading expenses, including, but not limited to, Bloomberg, Genscape, weather services, quote services, benefits and fees required at New QA Partner's request and the Partnership's approval to facilitate trading revenues.

"Net Trading Losses" mean the losses from all trading efforts of New QA Partner including commissions, exchange fees, clearing fees, any and all brokerage related fees in order to execute the trades of New QA Partner, any and all trading expenses, including, but not limited to, Guaranteed Payments, moving expenses, Initial Guaranteed Payments, Bloomberg, Genscape, weather services, quote services, and fees required at New QA Partner's request to facilitate trading revenues.

Reports of executions or orders shall be deemed conclusive and binding immediately upon the New QA Partner receiving the report of execution. IT SHALL BE THE SOLE RESPONSIBILITY OF THE NEW QA PARTNER TO CHECK THEIR TRADING STATEMENTS ON A DAILY BASIS AND TO REPORT ANY INACCURACIES ON SUCH TRADING STATEMENTS TO THE PARTNERSHIP AT LEAST THREE BUSINESS DAYS PRIOR TO SUCH DATE THE EXCHANGE OR ISO ALLOWS FOR INNACCURACIES TO BE CORRECTED.

Guaranteed Payment: Guaranteed Payments shall consist of two specific items:

A. **Annual Guaranteed Payment:** As to the New QA Partner, shall be **$120,000.00** for a full calendar year as a QA Partner, pro-rated for a part thereof based upon the commencement, retirement or termination of Partnership (or cessation of full time devotions to the Partnership), payable by monthly installments.

B. **Initial Guaranteed Payment:** In addition to the Annual Guaranteed Payment, the New QA Partner, upon becoming a QA Partner and payable within sixty (60) days thereafter shall be paid **$2,000.00** as an Initial Guaranteed Payment.

Payment Terms: New QA Partner's Agreed Partnership Splits shall generally be calculated on an annual calendar basis by the Class A General Partner. In the event that the full time engagement of the New QA Partner is terminated without Cause by the General Partner, the New QA Partner's Agreed Partnership Splits shall be calculated within seven(7) days of the date of termination. Thereafter, the General Partner shall pay to New QA Partner, in the form of a Distribution to them, as follows:

A. **Current Distribution:** Fifty Percent (50%) of the Agreed Partnership Splits paid to and/or distributable to the New QA Partner within thirty (30) days following the date of determination, the date of determination generally being on the 1st day of January following the year for which Agreed Partnership Splits are to be determined. Should it prove impractical to determine on the 1st day of January following the year for which Agreed Partnership Splits are to be determined, the General Partner agrees to make best efforts to determine the Agreed Partnership Splits as soon as practically possible.

B. **Delayed Distribution:** Unless and to the extent that Net Trading Losses for a period between the 1st day of January and the 30th day of June exceed fifteen percent (15%) of the Net Trading Revenue for the prior period ending the 31st of December, then the

remaining portion of the Agreed Partnership Splits from a particular period shall generally be paid on or before the 31st day of July.

In the event, however, that Net Trading Losses for a period between the 1st day of January and the 30th day of June exceed fifteen percent (15%) of the Net Trading Revenue for the prior period ending the 31st of December, then the remaining portion of the Agreed Partnership Splits from a particular period shall be retained by the Partnership until at least the following annual date of determination.

In the event that as of the following date of determination (generally, the 1st day of January) the Net Trading Losses for the prior annual period do not exceed fifteen percent (15%) of the Net Trading Revenue first referenced in this subsection B, then the previously retained remaining portion of the Agreed Partnership Splits from a particular period shall be paid thirty (30) days following the date of determination.

In the event that as the following date of determination (generally, the 1st day of January) the Net Trading Losses for the prior annual period exceed fifteen percent (15%) of the Net Trading Revenue first referenced in this subsection B, the General Partner shall continue to retain the previously retained remaining portion of the Agreed Partnership Splits if and until the next annual date of determination on which there does not exist a Net Trading Loss.

C. **Distribution Upon Termination without Cause by Partnership:** In the event that the full time engagement of the New QA Partner is terminated without Cause by the Partnership, Agreed Partnership Splits less any current Net Trading Losses will be distributed within 30 days of the date of termination.

Designated Key Person NA – Owned directly by QA.

Special Notes or Provisions: The Partnership will cover fifty percent (50%) of the cost of a mutually agreeable health, vision and dental plan for the New QA Partner during the term of the New QA Partner's full time engagement pursuant to this Consent.

CONFIDENTIALITY, NON-SOLICITATION AND NON-COMPETE AGREEMENT

This CONFIDENTIALITY, NON-SOLICITATION and NON-COMPETE AGREEMENT ("CNSNC"), dated **March 28, 2015** (the "Effective Date"), is by and between the undersigned New Quantitative Analyst Partner (the "New QA Partner") and **ASPIRE COMMODITIES, LP**, a Texas Limited Partnership (the "Partnership").

The covenants contained herein are made by the New QA Partner, as a new Quantitative Analyst Partner in the Partnership, in consideration of the New Class Limited Partnership QA Partner interest applicable to the New QA Partner and any distributions to be received by the New QA Partner during his/her relationship with the Partnership. New QA Partner acknowledges and agrees that: (1) the Partnership would not have offered the opportunity to be a New QA Partner with the Partnership but for the covenants contained herein that New QA Partner hereby makes, and (2) those covenants have been made by New QA Partner in order to induce the Partnership to take such actions.

In consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the New QA Partner agrees to the following:

ARTICLE I
CONFIDENTIALITY

A. **Definitions**. For purposes of this Section, the following terms are defined as follows:

1. "Proprietary Information" is all information and any idea or concept in whatever form, tangible or intangible, pertaining in any manner to the business of the Partnership or any of its Affiliates, subsidiaries, its Partners, managers, directors, Officers, employees, traders, New QA Partners or any other agents or representatives which was produced or acquired by or on behalf of Partnership, including but not limited to the items listed in Exhibit A, attached hereto and incorporated herein by this reference.

2. "Confidential Information" includes but is not limited to all Proprietary Information not generally known outside of the Partnership, and all Proprietary Information so known only through improper means. Confidential Information may be contained in oral communications, as well as in any tangible expressions referring or relating, but not limited to, (i) research and development techniques, processes, trade secrets, computer programs, software, system architecture, hardware, inventions, innovations, patents, discoveries, improvements, data, know-how, formats, test results, research projects, manuals, specifications, documentation, notes, industry contacts, (ii) information about costs, profits, markets, sales, contracts and lists of customers, and distributors; (iii) business, marketing, and strategic plans; (iv) financial

information, budgets, projections, and customer lists, identities, characteristics and agreements; and (v) employee personnel files and compensation information. Specifically and without limiting the generality of the foregoing, it further includes: the identity and contact information for businesses and individual employees of such business responsible for trading products brokered by the Partnership, as well as these businesses' trading histories, patterns, preferences, tendencies and market positions; know-how with respect to the effective brokering techniques proven to be successful in the markets in which the Partnership operates; training in the functionality and operation of the Partnership's proprietary trading systems and electronic trading platforms and the manner in which such systems may increase the Partnership's effectiveness and efficiency in executing trades; the Partnership's business plans, computer processes, computer programs and codes, trading research, trading strategies, trading information systems, strategies and financial condition and results; the revenue generation and performance of other traders or other employees employed by or Partners of the Partnership. Confidential information does not include information that is, or becomes, readily publicly available without restriction through no fault of New QA Partner.

3. "Competitor" For purposes of this CNSNC, includes but shall not be limited to all other entities that trade in the electricity or natural gas markets or in any market in which the Partnership trades, including, but not limited to, NYMEX; ICE; CFTC; MISO; PJM; NEPOOL, NYISO, CAISO, ERCOT, Nodal Exchange, Virtuals, Up-To Congestion Transactions, any type of a spread bid product and Financial Transmission Rights.

8. **Protection of Confidential Information.** New QA Partner will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any third party, other than in New QA Partner's assigned duties and for the benefit of Partnership with written consent of Partnership, any of Partnership's Confidential Information, either during or after New QA Partner's relationship with Partnership. New QA Partner acknowledges that he/she is aware that the unauthorized disclosure of Confidential Information of Partnership may be highly prejudicial to Partnership interests, an invasion of privacy, and an improper disclosure of trade secrets. New QA Partner agrees that all Confidential Information made known to New QA Partner during or after his/her relationship with the Partnership is subject to this CNSNC and will be received and held in the strictest of confidence. New QA Partner will take all necessary steps to prevent disclosure of Confidential Information to others and will not use or disclose Confidential Information except as set forth in this CNSNC or with the express prior written consent of the Partnership. New QA Partner shall immediately notify the Partnership of any actual or suspected unauthorized use or disclosure of Confidential Information, and shall cooperate with the Partnership in obtaining injunctive or other equitable relief and in any suit for damages. If New QA Partner receives a subpoena or other legal process seeking disclosure of Confidential Information, New QA Partner shall immediately notify the Partnership and cooperate fully with the Partnership in contesting such disclosure.

New QA Partner also acknowledges that all Proprietary Information, including all rights, title and interest to any product, strategy, system, device, information, invention or enhancement to a product or service, developed during New QA Partner's relationship with the Partnership and using Partnership's resources or know-how, unless otherwise agreed among the parties, shall belong exclusively to Partnership, and New QA Partner agrees to execute any documents necessary to reflect Partnership's exclusive ownership of such items.

C. Return of Partnership Property. Upon any such termination New QA Partner's relationship with the Partnership, New QA Partner shall immediately deliver to Partnership all Property and Confidential Information which is Partnership's Property or related to Partnership's business that is in New QA Partner's possession or under New QA Partner's control. "Property" shall have the meaning ascribed to it in the Partnership Agreement and, as used herein, includes but is not limited to, papers and documents of any sort containing information about the Partnership or its Affiliates, subsidiaries, its Partners, managers, directors, Officers, employees, traders, Administrators, advisors or any other agents or representatives, information used and/or stored on Partnership's computer network, and any Partnership software and computer-related equipment. In the event New QA Partner discovers that he/she is in possession, or another party is in possession, of any of the foregoing as a result of New QA Partner's actions or omissions, New QA Partner shall immediately return such Property to Partnership. New QA Partner understands that the Partnership may pursue any remedies allowed by law to recover or protect its Property.

ARTICLE II
INVENTIONS AND PATENTS

A. Unless specifically listed as excluded on Exhibit B covering Excluded Items, New QA Partner agrees that all Confidential Information, Intellectual Property, Inventions, feedback, innovations, improvements, developments, methods, designs, analyses, drawings, reports, and all similar or related information ("Work Product") that relates to the Partnership's actual business or anticipated business of which they are aware or reasonably should be aware, including existing or future products or services, that are conceived, developed or made by New QA Partner while in a relationship with the Partnership belong to the Partnership and that New QA Partner retains no rights of any nature in such Work Product. New QA Partner will promptly disclose such Work Product and perform all actions reasonably requested by the Partnership (whether during or after the New QA Partner's relationship with the Partnership) to establish and confirm such ownership (including, without limitation, executing assignments, consents, powers of attorney, and other instruments).

New QA Partner does hereby grant and assign to the Partnership, or its nominee, New QA Partner's entire right, title, and interest in and to any lawfully assignable intellectual

property, including, but not limited to, any Inventions, Works, Work Product, patents, copyrights, trademarks, service marks, films, scripts, technologies, strategies, creations, improvements, and developments that New QA Partner conceived, created, or reduced to practice, or caused to be conceived, created, or reduced to practice, alone or with others, during New QA Partner's involvement with the Partnership, that relate to the industry, trade, or business of the Partnership. All items covered by the foregoing shall be considered, and referred to herein as the Partnership's "Intellectual Property." The Partnership's Intellectual Property is understood to include, without limitation, not only items conceived, created, or reduced to practice during New QA Partner's involvement with the Partnership but also (a) anything suggested by, or related to work performed by New QA Partner or any other individual or entity engaged by the Partnership to perform services, (b) anything conceived or developed with the aid, assistance, or use of any of the Partnership's property, equipment, facilities, supplies, resources, or patents, trade secrets, copyrightable works, non-copyrightable works, know-how, technology, confidential information, ideas, trademarks, service marks, and any applications or registrations related to them, and (c) anything related to the past, current, or demonstrably anticipated business, research, or developments of the Partnership. All right, title, and interest of every kind and nature, moral or otherwise, whether now known or unknown, in and to any of the Partnership's Intellectual Property, including, but not limited to, any Inventions, Works, patents, trademarks, service marks, copyrights, films, scripts, ideas, creations, and properties invented, created, written, developed, furnished, produced, or disclosed by New QA Partner, in the course of rendering services to the Partnership shall, as between the Partnership and New QA Partner, be and remain the sole and exclusive property of the Partnership for any and all purposes and uses, and New QA Partner shall retain no right, moral rights, title, power of control, or interest of any kind or nature in or to such property, or in or to any results or proceeds from such property. New QA Partner acknowledges and agrees that all original works of authorship which are made by New QA Partner (solely or jointly with others) within the scope of his or her involvement with the Partnership, are "works made for hire" as that term is defined in the United States Copyright Act and that, as such, all rights comprising copyright under the United States Copyright laws will vest solely and exclusively in the Partnership and fall within the scope of Partnership's Intellectual Property as used here.

B. New QA Partner understands that he/she need not assign to the Partnership any invention, development, or information made solely by himself/herself on his/her own time and without using any equipment, facility, material or other resources of the Partnership or any Confidential Information or Intellectual Property, but that New QA Partner must assign to the Partnership any invention, Intellectual Property, development, or information that (1) relates to the Partnership's actual business or anticipated business of which he is aware or reasonably should be aware, or (2) results from any work performed by New QA Partner for the Partnership.

C. New QA Partner shall execute all documents and take all actions necessary or reasonably requested by the Partnership to document, obtain, maintain, perfect or assign its rights to the Work Product. If New QA Partner fails or refuses to execute any such instruments,

the Partnership shall serve as attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on New QA Partner's behalf and to execute such documents. New QA Partner will not contest the validity of the Partnership's rights in the Work Product.

D. To facilitate compliance with this agreement, New QA Partner agrees that during involvement with the Partnership and for a period of two (2) years thereafter New QA Partner will immediately disclose to the Partnership all ideas, inventions, and Works made by New QA Partner during the course of New QA Partner's involvement with the Partnership, or that are derived from or related to any work performed by New QA Partner for the Partnership. An idea, invention and Work is made by New QA Partner during the course of New QA Partner's involvement with the Partnership if New QA Partner conceived of, or put into practice, the idea during New QA Partner's involvement with the Partnership.

E. New QA Partner agrees that for a period of one (1) year following the termination of New QA Partner's employment with the Partnership, any inventions, intellectual property or works conceived, created; developed or reduced to practice by New QA Partner, alone or with others, within a line of business that is the same as or substantially similar to any line of the Partnership's business that New QA Partner participated in or received any information about in the two (2) year period preceding the retirement of New QA Partner's Partnership (or cessation of full time devotion by New QA Partner) shall be presumed to be an invention, a work, a piece of Intellectual Property, Proprietary Information, a Work Product, and/or Confidential Information derived from the Partnership's Confidential Information, Proprietary Information and trade secrets and/or Partnership's Intellectual Property; and, therefore, any such items shall be an invention or work assigned to the Partnership. The foregoing presumption shall control unless (a) New QA Partner provides the Partnership prompt notice of the Invention or Work within 30 days of its conception, discovery, or creation, and (b) New QA Partner shows through clear and convincing evidence presented to the Partnership that the Invention or Work is unrelated to the Partnership's line of business and not derived in any manner, in whole or in part, from the Partnership's Confidential Information, trade secrets, or Intellectual Property.

ARTICLE III
NON-SOLICITATION

A. During the time in which the New QA Partner is in a relationship with the Partnership and for six (6) months thereafter, New QA Partner shall not directly or indirectly through another entity (1) induce or attempt to induce any employee, Partner, contractor or other agent or affiliate of the Partnership or any of its subsidiaries or Affiliates to leave (or terminate/modify their relationship with) the Partnership or such subsidiary or Affiliate, or in any way interfere with the relationship between the Partnership or such subsidiary or Affiliate and any Person involved with such, including, without limitation, inducing or attempting to induce any Person or group of Persons involved with the Partnership or any subsidiary or

Affiliate of the Partnership to interfere with the business or operations of the Partnership or its subsidiaries or Affiliates; (2) hire any then-current employee, interviewee, candidate, Partner, contractor or other agent or affiliate of the Partnership or any Person who was an employee of the Partnership or a subsidiary or affiliate of the Partnership at any time; or (3) induce or attempt to induce any customer, client, supplier, subcontractor, alliance partner, licensee, licensor, or other business relation of the Partnership or any of its subsidiaries or affiliates to cease doing business with the Partnership or such subsidiary or Affiliate, or in any way interfere with the relationship between any such customer, client, supplier, subcontractor, alliance partner, licensee, licensor, or business relation and the Partnership or any of its subsidiaries or affiliates.

B. During the time in which the New QA Partner is in a relationship with the Partnership and for zero (0) months thereafter, New QA Partner shall not in any way directly or indirectly, for himself, or through, on behalf of or in conjunction with any person or business: 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 himself or any person or business, 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, general partner, administrator, officer, employee, vendor, supplier, distributor, contractor or any agent or representative 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.

ARTICLE IV
NON-COMPETITION

A. During the time in which the New QA Partner is in a relationship with the Partnership and for zero (0) months thereafter, New QA Partner shall not directly or indirectly be employed by, provide services with respect to or otherwise engage in or be involved in a business that is focused on or engaged in (or anticipated to engage in or be involved in) activities in competition with or relating to the business of the Partnership, including, but not limited to, directly or indirectly owning, controlling, participating in, joining, operating, or managing or being a partner, stockholder or other equity interest owner, or an employee, independent contractor, consultant, or advisor of any kind in any such business which competes with or is engaged in or carries on, in any material respect, any aspect of the business (the "Competitive Activities") within the Geographic Area. For purposes herein, "Geographic Area" is defined as all areas within North America, including but not limited to the state of Delaware and the territory of Puerto Rico.

New QA Partner acknowledges that the Partnership's business is global in nature and New QA Partner's work will be used to support buying and selling activity on electronic market centers all over the United States and so the most reasonable geographic limitation for the non-

competition agreement is not where New QA Partner is physically located but rather where the Partnership's business is conducted-that is, the various market centers where the New QA Partner's trades actually occurred. New QA Partner acknowledges and agrees that: (i) because modern technology allows Competitors' offices to be physically located anywhere in the world, the definition of "Competitor" provides reasonable limits on the geographic reach of this CNSNC; (2) the limitations on post-employment activities contained in this CNSNC are no greater than necessary to protect the goodwill of the Partnership; (3) the post-employment restrictions of this CNSNC are reasonable and necessary because the activities prohibited herein of this CNSNC would likely result in the improper use or disclosure of non-public information about the Partnership's business, including Confidential Information, in breach of this CNSNC and to the Partnership's detriment;(4) the services rendered by New QA Partner to the Partnership are of a special and unique character; and (5) in light of the foregoing and of New QA Partner's education, skills, abilities and financial resources, New QA Partner acknowledges and agrees that New QA Partner will not assert, and it should not be considered, that the enforcement of any of the covenants set forth herein would prevent New QA Partner from earning a living, provide for his/her family or otherwise are void, voidable or unenforceable or should be voided or held unenforceable.

A. The above notwithstanding, the term "Competitive Activities" shall not include (1) the ownership as a passive investment of capital stock of a person or business engaged in Competitive Activities, if that class of capital stock is listed on a national securities exchange or traded in the national over the counter market, in an amount which shall not exceed five percent (5.0%) of the outstanding shares of such class of capital stock of any such corporation or (2) New QA Partner's ability to operate or engage in Competitive Activities in areas outside of the Geographic area.

B. New QA Partner expressly understands and agrees that the covenants contained in this Article are supported by independent valuable consideration and that such restrictions contained in this CNSNC to be reasonable and necessary for the purposes of preserving and protecting the Partnership. Nevertheless, if any of the aforesaid restrictions are found by a court having jurisdiction to be unreasonable, or overly broad as to the scope of activity to be restrained, geographic area or time, or otherwise unenforceable, the Parties intend for the restrictions therein set forth to be modified by such court in the minimal amount necessary so as to be reasonable and enforceable and, as so modified by the court, to be fully enforced.

ARTICLE V
NON-DISPARAGEMENT

New QA Partner agrees to not make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices or conduct of the Partnership, its Partners, managers, directors, officers, employees, traders or any other agents or representatives. New QA Partner acknowledges and

agrees that this prohibition extends to statements, written or verbal, made to anyone, including, but not limited to, the news media, investors, potential investors, any board of directors or advisory board of directors, clients, potential clients, employees (past or present), vendors, industry analysts, competitors, agents of the New QA Partner, and strategic partners. Additionally, New QA Partner agrees not to make any releases to the press or other public disclosure at any time with respect to the relationship formed and being explored hereunder without the prior written consent of the Partnership.

ARTICLE VI
MISCELLANEOUS

A. **Entire Agreement.** This CNSNC is meant to clarify, amplify and supplement the Partnership Agreement ("Agreement") both of which when taken together (including with the Records) contains the entire understanding and the full and complete agreement of the Parties and supersedes and replaces any prior understandings and agreements among the Parties with respect to the subject matter hereof. New QA Partner will not enter into any agreement either oral or written in conflict with this CNSNC and his/her relationship with the Partnership. The Partnership is entitled to communicate New QA Partner obligations under this CNSNC to any future employer, potential employer or potential partner or other financial relationship of New QA Partner. If any time period stated herein (such as and including but not limited to, those applicable to noncompetition, non-solicitation, and non-circumvention) is different than that stated in the Partnership Agreement applicable as of the Effective Date herein, then this provision shall control and serve as an amendment to the Partnership Agreement with regard to the New QA Partner listed herein only. New QA Partner will advise any future employer or entity with whom they have a relationship of the foregoing restrictions and terms in this CNSNC before accepting new employment or entering into a new relationship of any sort which might be in violation of this CNSNC.

B. **Severability.** If any court of competent jurisdiction determines that any provision of this CNSNC is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall be re-formed and construed in a manner so as to give the maximum valid and enforceable effect to the intent of the Parties expressed therein. It is expressly understood and agreed that the Partnership and New QA Partner consider the restrictions contained in this CNSNC to be reasonable and necessary to protect the proprietary, trade secret, and confidential information and goodwill of the Partnership.

C. **Equitable Relief and Remedies.** If New QA Partner breaches or threatens to breach any covenants in this CNSNC the parties acknowledge and agree that the damage or imminent damage to the Partnership's business or its goodwill would be irreparable and extremely difficult to estimate, making any remedy at law or in damages inadequate. Accordingly, notwithstanding any agreement to arbitrate disputes, the Partnership shall be entitled to injunctive relief against New QA Partner in the event of any breach or threatened breach of this agreement by New QA Partner, in addition to any other relief (including damages) available to the Partnership. New QA Partner and the Partnership agree that in the event of a breach or threatened breach by New QA Partner of any provision of this

CNSNC, the Partnership will not have an adequate remedy at law. In the event of a breach or threatened breach by New QA Partner of any provision of this CNSNC, the Partnership shall be entitled to (i) injunctive relief by temporary restraining order, temporary injunction, and/or permanent injunction, (ii) recovery of the attorney's fees and costs incurred by the Partnership in obtaining such relief and in enforcing its rights under this CNSNC, and (iii) any other legal and equitable relief to which it may be entitled, including any and all monetary damages which the Partnership may incur as a result of said breach or threatened breach. Injunctive relief shall not be the exclusive relief and may be in addition to any other relief to which the Partnership would otherwise be entitled. The availability to obtain injunctive relief will not prevent the Partnership from pursuing any other equitable or legal relief, including the recovery of damages from such breach or threatened breach. The existence of any cause of action by New QA Partner against the Partnership shall not constitute a defense to enforcement of the restrictions on New QA Partner created by this CNSNC.

The prevailing party shall be entitled to recover from the other, the prevailing party's costs (including, without limitation, reasonable attorneys' fees) incurred in connection with enforcing this CNSNC, in addition to any other rights or remedies available at law, in equity, or by statute. New QA Partner further acknowledges and agrees that the enforcement of a remedy hereunder by way of injunction will not prevent him/her from earning a reasonable livelihood and that the covenants contained herein are necessary for the protection of Partnership's business interests and are reasonable in scope and content.

If New QA Partner violates any covenant contained in this CNSNC, and the Partnership brings legal action for injunctive or other relief, the Partnership shall not, as a result of the time involved in obtaining the relief, be deprived of the benefit of the full period of any such covenant. Accordingly, the covenants of New QA Partner contained in this CNSNC that apply to New QA Partner after his or her date of termination shall be deemed to have durations as specified above, which periods shall be extended as necessary in connection with the entry by a court of competent jurisdiction of a final judgment enforcing New QA Partner's covenants in this CNSNC so as to provide the Partnership with the full period of protection to which the Partnership was entitled

D. **Notices.** All Notices and other communications hereunder shall be handled according to the terms of the Partnership Agreement for the Partnership.

E. **Waiver of Jury Trial.** The Parties hereunder agree that in any court action or other legal proceeding relating to this CNSNC, they mutually WAIVE TRIAL BY JURY of any or all issues arising in court or other legal proceeding.

F. **Titles and Headings.** Titles and headings to articles and sections in this CNSNC are for convenience only and do not limit or amplify the provisions hereof. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

G. **Governing Law.** This CNSNC shall be governed and construed in accordance with the laws of the State of Delaware without reference to choice of law principles to the contrary.

JPT

H. **Counterparts.** This CNSNC may be executed in one or more counterparts, including by fax, email transmission and/or electronic signature, and by electronic signature, each of which will be deemed an original and all of which shall constitute one instrument.

I. **No Offset or Release.** The existence of any claim or cause of action of New QA Partner against the Partnership, or any Partner of the Partnership, or any officer, manager, or Affiliate of such, whether predicated on this CNSNC or otherwise, shall not constitute a defense to the enforcement by the Partnership of the covenants of New QA Partner contained in this CNSNC. In addition, the provisions of this Article shall continue to be binding upon New QA Partner in accordance with its terms, notwithstanding the termination of New QA Partner's Partnership for any reason, including termination by New QA Partner following a breach by the Partnership.

Each covenant of New QA Partner set forth herein (particularly with regard to Confidential Information, Intellectual Property and the like) which, by its nature would not cease as of the termination of this CNSNC or the termination of Partnership with the New QA Partner shall survive the termination of this CNSNC and shall be construed as an agreement independent of any other provision of this CNSNC.

BY SIGNING THIS CNSNC, NEW QA PARTNER AGREES AND ACKNOWLEDGES THAT (1) HE/SHE HAS CAREFULLY READ THIS CNSNC; (2) HE/SHE AGREES TO BE BOUND BY ALL OF ITS TERMS WITHOUT RESERVATION; (3) HE/SHE AGREES THAT THE RESTRICTIVE COVENANTS CONTAINED HEREIN ARE FAIR AND REASONABLE; (4) THIS CNSNC IS NOT IN ANY WAY TO BE VIEWED AS A CONTRACT FOR EMPLOYMENT, THAT IT SHOULD NOT BE CONSTRUED AS A GUARANTEE OF ANY RELATIONSHIP FOR ANY PERIOD OF TIME, AND THAT IT SHALL NOT BE CONSTRUED TO OBLIGATE THE PARTNERSHIP TO NEW QA PARTNER IN ANY WAY; (5) HE/SHE HAS HAD THE OPPORTUNITY TO OBTAIN ADVICE FROM LEGAL COUNSEL OF HIS/HER CHOICE IN ORDER TO INTERPRET ANY AND ALL PROVISIONS OF THIS CNSNC; (6) HE/SHE HAS HAD THE OPPORTUNITY TO ASK THE PARTNERSHIP QUESTIONS ABOUT THIS CNSNC AND ANY OF SUCH QUESTIONS HAVE BEEN ANSWERED TO HIS/HER SATISFACTION; AND (7) THIS CNSNC WAS EXECUTED VOLUNTARILY AND OF HIS/HER OWN ACCORD UPON ADVICE OR WAIVER OF THE RIGHT TO COUNSEL.

[REMAINDER OF PAGE LEFT BLANK. SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties hereto have executed this CNSNC, effective as of the aforementioned Effective Date.

NEW QA PARTNER:

By: BRIAN TYSON

PARTNERSHIP:

GENERAL PARTNER:

ASPIRE COMMODITIES 1, LLC

BY: ADAM C. SINN, Manager

LIMITED PARTNER:

SINN LIVING TRUST, dated November 9, 2012

BY: ADAM C. SINN, Trustee

EXHIBIT A: EXAMPLES OF PROPRIETARY INFORMATION

This is a list of examples of trade secrets and confidential business, technical, and financial information constituting Proprietary Information and/or Confidential Information. This is a partial, but not a complete list of the Proprietary Information subject to this CNSNC.

- Trading Strategies and Systems
- Vendor list and all information contained in vendor records;
- Client list and all information contained in client/Partnership records;
- Prospective Client list and all information contained in prospective client/Partnership records;
- Stockholder list and all information contained in stockholder records;
- All information concerning the financial condition of the Partnership, including information contained in any income statement, balance sheet or other internal financial report;
- Marketing plans and strategies of the Partnership, including information pertaining to prospective customers;
- Financing plans and strategies of the Partnership;
- Staffing plans and strategies of the Partnership;
- Expansion plans and business strategies of the Partnership;
- Negotiations for financing, merger, acquisition, new customers, new vendors or otherwise;
- Technical research projects, methodologies and results;
- Other research and development projects;
- Drawings and specifications;
- Software and hardware documentation;
- Forms, manuals, handbooks and guidelines written for internal staff use;
- Any materials for which the Partnership has copyright protection or are marked confidential, and;
- The Partnership's proprietary operating procedures and systems.
- Employee list and all information contained in employee records;

EXHIBIT B: EXCLUDED ITEMS

The following items are hereby disclosed by the New QA Partner and shall be excluded from the definition of Proprietary Information, Confidential Information and Work Product ("Excluded Items"):

1) Load Prediction Models - Regression models translating temperature values into to load values for a given ISO using historical data.

2) LMP Prediction Models - Regression models translating load values into LMP clearing prices for a given ISO using historical data.

3) Natural Gas Demand Model - Regression models translating temperature values into natural gas demand components such as Rescom, Industrial, and Power burns.

TAB 7

From: pat.deman@gmail.com [mailto:pat.deman@gmail.com] **On Behalf Of** Patrick de Man
Sent: Wednesday, December 22, 2010 6:07 PM
To: Adam Sinn <gonemaroon@hotmail.com>
Subject: Fwd: Dell Order Has Been Confirmed for Dell Purchase ID: 2002961863341

---------- Forwarded message ----------
From: **Dell Inc.** <dell_automated_email@dell.com>
Date: Mon, Dec 20, 2010 at 9:50 PM
Subject: Dell Order Has Been Confirmed for Dell Purchase ID: 2002961863341
To: deman@alum.mit.edu

==========
=
DELL USA
Dell Outlet
==========
=
Order Confirmed

Your order is being processed.

We will send you an e-mail after your order ships
Please check your e-mail regularly for updates.

==========
=
Order Information

Customer Number: 115082566
Dell Purchase ID: 2002961863341

==========
=

Estimated Delivery Date

You can check the progress of your order at any time by clicking on the link(s) below.

Order Number: 558791997
Product Description: Dell Refurbished UltraSharp U3011 30-inch Widescreen Flat Panel Monitor
Estimated Delivery Date:12/28/2010
https://support.dell.com/support/order/details.aspx?c=us&l=en&s=ARB&order_number=558791997&validate=115082566

==========
=
Payment Information

Contact: Patrick De Man
-

Phone Number: (617) 9801886 (work)

Statement Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Payment Method: Pay with one credit/debit card online Pay with Gift Card
Total Amount: $952.94

==========
=
Delivery Information

Contact: Patrick De Man

-

Phone Number: (617) 9801886 (work)
(203) 5364124 (cell)

Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Delivery Method: 3-5 Day Delivery - Standard Delivery.
Your order will be delivered up to 3-5 business days after it ships.

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Order Detail

Order Number: 558791997
Estimated Delivery Date: 12/28/2010

Item Description: Dell Refurbished UltraSharp U3011 30-inch Widescreen Flat Panel Monitor

Product Subtotal: $899.00
Shipping and Handling: $0.00
Tax: $53.94
Product Total: $952.94

Order Subtotal: $899.00
Shipping and Handling: $28.99
Shipping Discount: -$28.99
Environmental Disposal Fee: $0.00
Tax Total: $53.94
Total Amount: $952.94

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Important Things to Know:

Please save this Order Confirmed email. To ensure that your order is complete and accurate, please compare this confirmation to your invoice and/or packing slip.

Please note that Dell cannot be responsible for pricing or other errors, and reserves the right to cancel any orders arising from such errors.

Your order is subject to Dell's Terms and Conditions of Sale www.dell.com/terms which include a binding arbitration provision.

If your order includes a service contract, please visit our Service Contracts website http://www1.us.dell.com/content/topics/global.aspx/services/en/service_contracts? for details about your contract.

Learn more about the estimated delivery date.
http://support.dell.com/support/topics/global.aspx/support/order/en/delivery?c=us&l=en&s=gen&~section=estimated

Thanks again for choosing Dell!

The amount of tax and shipping added to your order depends on where you have asked for the product to be shipped as well as on which products and/or services you've chosen to purchase.

From: pat.deman@gmail.com [mailto:pat.deman@gmail.com] **On Behalf Of** Patrick de Man
Sent: Wednesday, December 22, 2010 6:07 PM
To: Adam Sinn <gonemaroon@hotmail.com>
Subject: Fwd: Dell Order Has Been Confirmed for Dell Purchase ID: 2002961868944

---------- Forwarded message ----------
From: **Dell Inc.** <dell_automated_email@dell.com>
Date: Mon, Dec 20, 2010 at 9:57 PM
Subject: Dell Order Has Been Confirmed for Dell Purchase ID: 2002961868944
To: deman@alum.mit.edu

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DELL USA
Dell Outlet
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=
Order Confirmed

Your order is being processed.

We will send you an e-mail after your order ships
Please check your e-mail regularly for updates.

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=
Order Information

Customer Number: 115082566
Dell Purchase ID: 2002961868944

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=

Estimated Delivery Date

You can check the progress of your order at any time by clicking on the link(s) below.

Order Number: 558795097
Product Description: Dell Refurbished UltraSharp U3011 30-inch Widescreen Flat Panel Monitor
Estimated Delivery Date:12/28/2010
https://support.dell.com/support/order/details.aspx?c=us&l=en&s=ARB&order_number=558795097&validate=115082566

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Payment Information

Contact: Patrick De Man

-

Phone Number: (617) 9801886 (work)

Statement Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Payment Method: Pay with one credit/debit card online Pay with Gift Card
Total Amount: $952.94

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Delivery Information

Contact: Patrick De Man

-

Phone Number: (617) 9801886 (work)
(203) 5364124 (cell)

Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Delivery Method: 3-5 Day Delivery - Standard Delivery.
Your order will be delivered up to 3-5 business days after it ships.

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Order Detail

Order Number: 558795097
Estimated Delivery Date: 12/28/2010

Item Description: Dell Refurbished UltraSharp U3011 30-inch Widescreen Flat Panel Monitor

Product Subtotal: $899.00
Shipping and Handling: $0.00
Tax: $53.94
Product Total: $952.94

Order Subtotal: $899.00
Shipping and Handling: $28.99
Shipping Discount: -$28.99
Environmental Disposal Fee: $0.00
Tax Total: $53.94
Total Amount: $952.94

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Important Things to Know:

Please save this Order Confirmed email. To ensure that your order is complete and accurate, please compare this confirmation to your invoice and/or packing slip.

Please note that Dell cannot be responsible for pricing or other errors, and reserves the right to cancel any orders arising from such errors.

Your order is subject to Dell's Terms and Conditions of Sale www.dell.com/terms which include a binding arbitration provision.

If your order includes a service contract, please visit our Service Contracts website http://www1.us.dell.com/content/topics/global.aspx/services/en/service_contracts? for details about your contract.

Learn more about the estimated delivery date.
http://support.dell.com/support/topics/global.aspx/support/order/en/delivery?c=us&l=en&s=gen&~section=estimated

Thanks again for choosing Dell!

The amount of tax and shipping added to your order depends on where you have asked for the product to be shipped as well as on which products and/or services you've chosen to purchase.

From: pat.deman@gmail.com [mailto:pat.deman@gmail.com] **On Behalf Of** Patrick de Man
Sent: Wednesday, December 22, 2010 6:08 PM
To: Adam Sinn <gonemaroon@hotmail.com>
Subject: Fwd: Dell Order Has Been Confirmed for Dell Purchase ID: 2002961883240

---------- Forwarded message ----------
From: **Dell Inc.** <dell_automated_email@dell.com>
Date: Mon, Dec 20, 2010 at 10:17 PM
Subject: Dell Order Has Been Confirmed for Dell Purchase ID: 2002961883240
To: deman@alum.mit.edu

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DELL USA
Home & Home Office
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=
Order Confirmed

Your order is being processed.

We will send you an e-mail after your order ships
Please check your e-mail regularly for updates.

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Order Information

Customer Number: 115083079
Dell Purchase ID: 2002961883240

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Estimated Delivery Date

You can check the progress of your order at any time by clicking on the link(s) below.

Order Number: 558804170
Product Description: Dell AY511 SoundBar with Virtual Surround
Estimated Delivery Date:12/30/2010
https://support.dell.com/support/order/details.aspx?c=us&l=en&s=DHS&order_number=558804170&validate=115083079

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Payment Information

Contact: Patrick De Man
-

Phone Number: (617) 9801886 (work)

Statement Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Payment Method: Pay with one credit/debit card online Pay with Gift Card
Total Amount: $52.99

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Delivery Information

Contact: Patrick De Man

-

Phone Number: (617) 9801886 (work)
(203) 5364124 (cell)

Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Delivery Method: 3-5 Day Delivery - Standard Delivery.
Your order will be delivered up to 3-5 business days after it ships.

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Order Detail

Order Number: 558804170
Estimated Delivery Date: 12/30/2010

Item Description: Dell AY511 SoundBar with Virtual Surround

Product Subtotal: $49.99
Shipping and Handling: $0.00
Tax: $3.00
Product Total: $52.99

Order Subtotal: $49.99
Shipping and Handling: $8.99
Shipping Discount: -$8.99
Environmental Disposal Fee: $0.00
Tax Total: $3.00
Total Amount: $52.99

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Important Things to Know:

Please save this Order Confirmed email. To ensure that your order is complete and accurate, please compare this confirmation to your invoice and/or packing slip.

Please note that Dell cannot be responsible for pricing or other errors, and reserves the right to cancel any orders arising from such errors.

Your order is subject to Dell's Terms and Conditions of Sale www.dell.com/terms which include a binding arbitration provision.

If your order includes a service contract, please visit our Service Contracts website http://www1.us.dell.com/content/topics/global.aspx/services/en/service_contracts? for details about your contract.

Learn more about the estimated delivery date.
http://support.dell.com/support/topics/global.aspx/support/order/en/delivery?c=us&l=en&s=gen&~section=estimated

Thanks again for choosing Dell!

The amount of tax and shipping added to your order depends on where you have asked for the product to be shipped as well as on which products and/or services you've chosen to purchase.

From: pat.deman@gmail.com [mailto:pat.deman@gmail.com] **On Behalf Of** Patrick de Man
Sent: Wednesday, December 22, 2010 6:08 PM
To: Adam Sinn <gonemaroon@hotmail.com>
Subject: Fwd: Dell Order Has Been Confirmed for Dell Purchase ID: 2002964572964

---------- Forwarded message ----------
From: **Dell Inc.** <dell_automated_email@dell.com>
Date: Wed, Dec 22, 2010 at 11:00 AM
Subject: Dell Order Has Been Confirmed for Dell Purchase ID: 2002964572964
To: deman@alum.mit.edu

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=
DELL USA
Home & Home Office
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=
Order Confirmed

Your order is being processed.

We will send you an e-mail after your order ships
Please check your e-mail regularly for updates.

==========
=
Order Information

Customer Number: 115043914
Dell Purchase ID: 2002964572964

==========
=

Estimated Delivery Date

You can check the progress of your order at any time by clicking on the link(s) below.

Order Number: 560345451
Product Description: Studio XPS 9100, Genuine Windows® 7 Ultimate, 64bit, English
Estimated Delivery Date:01/17/2011
https://support.dell.com/support/order/details.aspx?c=us&l=en&s=DHS&order_number=560345451&validate=115043914

==========

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Payment Information

Contact: Patrick De Man
-

Phone Number: (617) 9801886 (work)

Statement Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Payment Method: Pay with one credit/debit card online Pay with Gift Card
Total Amount: $2,363.29

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Delivery Information

Contact: Patrick De Man

-

Phone Number: (617) 9801886 (work)
(203) 5364124 (cell)

Address: 143 Hoyt St Apt 3K
Stamford, CT 06905-5749

Delivery Method: 3-5 Day Delivery - Standard Delivery.
Your order will be delivered up to 3-5 business days after it ships.

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Order Detail

Order Number: 560345451
Estimated Delivery Date: 01/17/2011

Item Description: Studio XPS 9100, Genuine Windows® 7 Ultimate, 64bit, English

Product Subtotal: $2,229.99
Shipping and Handling: $0.00
Tax: $133.30
Product Total: $2,363.29

Order Subtotal: $2,229.99
Shipping and Handling: $49.00
Shipping Discount: -$49.00
Environmental Disposal Fee: $0.00
Tax Total: $133.30
Total Amount: $2,363.29

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Important Things to Know:

Please save this Order Confirmed email. To ensure that your order is complete and accurate, please compare this confirmation to your invoice and/or packing slip.

Please note that Dell cannot be responsible for pricing or other errors, and reserves the right to cancel any orders arising from such errors.

Your order is subject to Dell's Terms and Conditions of Sale www.dell.com/terms which include a binding arbitration provision.

If your order includes a service contract, please visit our Service Contracts website http://www1.us.dell.com/content/topics/global.aspx/services/en/service_contracts? for details about your contract.

Learn more about the estimated delivery date.
http://support.dell.com/support/topics/global.aspx/support/order/en/delivery?c=us&l=en&s=gen&~section=estimated

Thanks again for choosing Dell!

The amount of tax and shipping added to your order depends on where you have asked for the product to be shipped as well as on which products and/or services you've chosen to purchase.

TAB 8

From: pat.deman@gmail.com [mailto:pat.deman@gmail.com] **On Behalf Of** Patrick de Man
Sent: Wednesday, December 22, 2010 6:06 PM
To: Adam Sinn <gonemaroon@hotmail.com>
Subject: Re: dell order / CO login

Hi Adam,

Today I ordered the computer, which was total $2360 or so.
According to Dell the components of the computer were valued at 3k, but they have some discounts going now, so there was like an $850 discount, and free shipping on everything.
The giftcards saved $170 an additional.

And today I also went through the CO website, so keep an eye if you get credited there over the next few weeks.

The details of what I paid is in the spreadsheets.
Would you mind reimbursing me for the total amount of $4,210.70 ?

You can still tax deduct it from this tax year.
After this email, I will forward you the Dell and Amazon Order Confirmations for the total amount $4,380.70?
Let me know if you need anything else.

Thanks,
Patrick.

On Wed, Dec 22, 2010 at 5:28 AM, Adam Sinn <gonemaroon@hotmail.com> wrote:

> Wow sweet... let me know how they work out!
>
> On Dec 21, 2010, at 12:33 PM, Patrick de Man <deman@alum.mit.edu> wrote:
>
> > Hi Adam,
> >
> > Last night, I purchased 2 refurbished monitors from the Dell Outles online.
> > At first I was somewhat hesitant, but reviews online said they were totally fine, and they get the same warranty as new products (just a bit shorter).

These were about $900 each as they are ultrasharp (high resolution) 30" monitors. It's a bit high, but these are badass, and I'll be looking at those screens all day.
I'll give you an overview of the total expenses etc. once I have purchased the computer, which I intend to do by tomorrow.

I went through the CO website to place the order, but I am not sure if the miles are credited for purchases in the Dell Outlet.
It's supposed to be part of the Home and Home Business segment of Dell, so I think you should get the miles.

Cheers,
Patrick.

On Sun, Dec 19, 2010 at 12:18 PM, Adam Sinn <gonemaroon@hotmail.com> wrote:

> I think it said double miles when I checked who knows maybe I misread it or it changed.
>
> Make sure when you order it you get the best computer since it's a very important tool for work
>
> On Dec 19, 2010, at 12:12 PM, Patrick de Man <deman@alum.mit.edu> wrote:
>
> > Thanks.
> > I just checked and Dell (and others like HP, BestBuy) only give 2 miles/dollar spent.
> > You'll get 4 miles if you pay with a Continental credit card.
> >
> > Somehow you thought you'd get 5 miles, but that might have been a temporary promotion?
> >
> > Cheers,
> > Patrick.
> >
> > On Sun, Dec 19, 2010 at 1:44 AM, Adam Sinn <gonemaroon@hotmail.com> wrote:
> >
> > > gonemaroon
> > >
> > > ac24sinn
> > >
> > > just make sure you spare no expenses when ordering... I'll talk to you before ordering I'm sure
> > >
> > > On Dec 18, 2010, at 9:41 PM, Patrick de Man <deman@alum.mit.edu> wrote:
> > >
> > > > Hi Adam,
> > > > Nice seeing you again today. Hope you had a nice rest of the day in nyc.
> > > > Mika and I drove home, and chilled out after 2 days of back and forth driving.
> > > >

> If you have a chance, please send me your Continental site login/pw.
> I want to order by Dec 22, which is when that $100 promotion runs out.
>
> Have a good flight tomorrow.
>
> Cheers,
> Patrick.

Dell Computer purchase
12/22/2010

Vendor	Item	Model	Price	Giftcard	Cost Giftcard	Credit Card	Expense
Dell	Monitor	U3011	952.94	50	45	902.94	947.94
Dell	Monitor	U3011	952.94	50	45	902.94	947.94
Dell	SoundBar	AY511	52.99	50	0	2.99	2.99
Dell	Computer	XPS 9100	2363.29	1600	1490	763.29	2253.29
Amazon	Wireless Card	D-Link DWA-556	58.54			58.54	58.54
	Total		4380.7	1750	1580	2630.7	**4210.7**

TAB 9

From: Tim Kirk [mailto:tim@internetworkconsulting.net]
Sent: Tuesday, November 08, 2011 2:27 PM
To: gonemaroon@hotmail.com; Adam Sinn <gonemaroon@hotmail.com>
Subject: Stephen PC

Adam,

Here is the configuration for Stephen's PC.

$5144.74 plus sales tax

XEON E5620 2.4 12MB 1333 MHZ RETAIL 2

SUPER MICRO 3U ACTIVE HEATSINK SOCKET F

COOLERMASTER TOWER HAF932 NO/PS

4GB DDR-3 1333 MHZ ECC REG. SUPERTALENT x 4

ASUS DP5520 1366 96DDR3 6SR 2GL 4PCIE16X

GIGABYTE GTX550 1 GIG PCIE 2DVI HDSLI x 3

500GB WD RE SATA 7200 64MB ENTERPRISE

1TB SEAGATE SE SATA/600 7200 RPM 32MB

COOLER MASTER 1000 WATT 80PLUS MODULARE

ACER 22" LCD W.S. 50000:1 DVI N-SPK

SONY 24X16X24X8 DVDRW SATA BULK

MICROSOFT WIN 7 PROFESSIONAL 64BIT SP1

MICROSOFT OFFICE HOME&BUS 2010 KEY

TRIPPLITE 1500VA USB 8-OUTLET UPS W LCD

BUILD WORKSTATION:WITH RAID, WITH OS

Sincerely,

Timothy Kirk Sr.
Internetwork Consulting
281-606-3300 (o)
713-204-6100 ©

From: Adam Sinn [mailto:gonemaroon@hotmail.com]
Sent: Monday, November 07, 2011 1:30 PM
To: Tim Kirk
Subject: Fwd: PC

Reply from one of my guys

Begin forwarded message:

> **From:** Stephen Benchluch <stephenbenchluch@yahoo.com>
> **Date:** November 7, 2011 12:43:01 PM CST
> **To:** Adam Sinn <gonemaroon@hotmail.com>
> **Subject: Re: PC**
> **Reply-To:** Stephen Benchluch <stephenbenchluch@yahoo.com>
>
> Adam - The configuration below seems pretty good in many areas. I like the fact that you select a 64-bit OS by using 4 4GB chips (16 Total). The per-process limit is greatly increased in 64 and the video cards and other devices will not be stealing usable memory from operating system. You are using windows 7 which is good with 64-bit OS.
>
> My suggestion is that if you want to do simulation work you need to think about multiple core systems if you are talking about a single box. I could not see the version of the i7 processor that you are referring to (cores, speed....). As an example a single simulation of 15 days in PJM can last up to 150 minutes and you do not want to wait for one to finish prior to starting the second one. I have used 6 and 8 core systems in the past since I was running multiple simulations (up to 6 in a single box) for a total of up to 12 to 18 simulations per day which I believe we would like to achieve at some point. I think that the i7 has multiple core processors. Stay away from AMD for this type of simulations. Anything faster than 3 GHz will be good.
>
> The rest is fine with me.
>
> Stephen Benchluch
> **From:** Adam Sinn <gonemaroon@hotmail.com>
> **To:** stephenbenchluch@yahoo.com
> **Sent:** Monday, November 7, 2011 10:45 AM
> **Subject:** FW: PC

This information below is for one machine, that is replicated into 4. If I am missing anything let me know. 7132046100. If the price is right, the customer may purchase 4 more.

1 - Mega Box – Cooler Master
1 - i7 Intel Processor with pro fan
4 – 4GB chips = 16 megs of memory. instead of the 24 your pc have.
3 – duel 1gb DVI video cards
1 – 500 GB raptor hard drive
1 – Logitech fx700 keyboard and mouse
1 – 650 watt power supply
8 - usb ports 2.0
1 - dvdrw reader
4 – 22in LCD monitors
1 – Windows 7 Pro
1 – you build it for me
1 – Trippite 650
1 Office 2010

TAB 10

QUINTAIROS, PRIETO, WOOD & BOYER, P.A.

ATTORNEYS AT LAW

WWW.QPWBLAW.COM

[redacted]

kwaldner@qpwblaw.com

July 20, 2016

Via E-Mail:

Barry M. Hammond, Jr., Esq.
Barry@ruralroute3holdings.com
Raiden Commodities LP
3333 Allen Pkwy, Unit 1605
Houston, TX 77019-1844

Re: Raiden Commodities LP

Dear Mr. Hammond:

We are contacting you on behalf of Mr. Patrick de Man in response to your email of Monday, July 18, 2016 to Messrs. Roberto Cámara Fuertes and Juan Bou.

In that email, you have confirmed that Raiden Commodities LP, its General Partner, and its officers (collectively, "Raiden") will not distribute to Mr. de Man, one of its limited partners, his due partnership distribution in the amount of $690,847 because "the course of performance between the parties necessitated that certain capital be retained at the company." Please be advised that Raiden's actions are wrongful and have no basis under the laws of the U.S. Virgin Islands. Consequently, this is to demand that Mr. de Man's partnership distribution be released to him immediately and in no case later than on Friday, July 29, 2016.

In addition to his partnership distribution, Mr. de Man is further entitled to compensation for the services rendered to Raiden and its affiliates since 2011, as well as to severance payment

and other related compensation. To this end, please note that pursuant to the Virgin Islands Uniform Limited Partnership Act, 26 V.I.C. § 375, Mr. de Man, a limited partner of Raiden Commodities LP, has the right to demand that all partnership books of Raiden Commodities LP be made available for inspection and copying, as well as other corporate documents and records. Mr. de Man hereby reserves his right to make such a demand in due course.

Finally, immediately preserve the above and all physical and electronic documents, materials and data in your possession, custody and/or control (including, without limitation, emails, text messages and voice mail recordings) that are or might be relevant or related to the foregoing matters, regardless of where they are located.

This letter is not intended, and should not be construed, as a complete expression of my client's factual or legal positions with respect to this matter. Nothing contained in or omitted from this letter is intended, and should not be construed, as a waiver, relinquishment, release or other limitation upon any legal or equitable claims, causes of action, rights and/or remedies available to my client in any jurisdiction, including the U.S. Virgin Islands or the Commonwealth of Puerto Rico, all of which are hereby expressly reserved.

We look forward to your immediate response to this letter.

Sincerely yours,

Kyle R. Waldner

TAB 11

From: Juan Carlos Bou [mailto:jbou@ferraiuoli.com]
Sent: Thursday, August 11, 2016 5:43 PM
To: Barry Hammond <Barry@ruralroute3holdings.com>
Cc: Roberto Cámara Fuertes <rcamara@ferraiuoli.com>; Juan Carlos Bou <jbou@ferraiuoli.com>
Subject: Confidential Draft Settlement Agreement
Importance: High

Confidential Settlement Communication

Barry,

As requested, attached please find our proposed settlement agreement for your consideration.

Please review and let me know when you are available to discuss.

Cordially,

JCB

Juan Carlos Bou

ferraiuoli llc

PO Box 195168 • San Juan, PR 00919-5168
221 Ponce de León Avenue, Suite 500 • San Juan, PR 00917
T. 787-766-7000
F. 787.766.7001
D. 787.777.1177
E. jbou@ferraiuoli.com

This **SETTLEMENT, SEPARATION AND RELEASE AGREEMENT,** together with any other agreement expressly incorporated as part of this Settlement, Separation and Release Agreement (collectively referred to as "the **Agreement**") is made and entered as of August [__], 2016 (the "**Effective Date**"), by and among **PATRICK DE MAN** ("**PDM**"); **RAIDEN COMMODITIES, LP**, a U.S. Virgin Island limited partnership ("**RAIDEN USVI**"); **RAIDEN COMMODITIES 1, LLC**, a Puerto Rico limited liability company ("**RAIDEN PR**"); **ASPIRE CAPITAL MANAGEMENT, LLC**, a Texas limited liability company ("**ASPIRE CAPITAL**"); **ASPIRE COMMODITIES 1, LLC**, a Puerto Rico limited liability company ("**ASPIRE LLC**"); **ASPIRE COMMODITIES, LP** a Texas limited partnership ("**ASPIRE LP**"); and **ADAM C. SINN ("ACS",** and together with **RAIDEN USVI, RAIDEN PR, ASPIRE CAPITAL, ASPIRE LLC** and **ASPIRE LP,** to be collectively referred to as the **"RAIDEN PARTIES")**.

PDM, RAIDEN USVI, RAIDEN PR, ASPIRE CAPITAL, ASPIRE LLC, ASPIRE LP and ACS are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**." In addition, as used in the Agreement, "**Affiliate**" means, with respect to a person or entity, any other person or entity which either directly or indirectly controls, is controlled by or is under common control with the first person or entity, including the shareholders, partners or owners of such person. For purposes of this definition, Maroon Services, Inc; Poseidon Commodities, LLC; XS Capital Investments, LP; XS Capital Management, LLC; Rural Route 3 Holdings, LP; Rural Route 3 Management, LLC; 3S Real Estate Investments, LLC; The Sinn Living Trust shall be considered "Affiliates" of the Raiden Parties (these parties, collectively with the RAIDEN PARTIES, to be referred to collectively as the "**RAIDEN GROUP**").

WHEREAS, PDM has been employed by ASPIRE LP from April 2011 through June 2013 and by RAIDEN PR since November 2013;

WHEREAS, RAIDEN USVI and ASPIRE LP are engaged in the business of trading certain energy futures and contracts in various USA based Independent System Operators and Regional Transmission Operators ("**ISO/RTOs**"), and exchanges;

WHEREAS, PDM has been a limited partner in RAIDEN USVI ("**Raiden LP Interest**"), ASPIRE LP (the "**Aspire LP Interest"**), and a member in RAIDEN PR since 2014 (the "**Raiden LLC Interest**", and together with the Raiden LP Interest and the Aspire LP Interest, the "**LP Interests**");

WHEREAS, ACS, as inducement for PDM to accept his employment as trader of RAIDEN USVI and ASPIRE LP and to perform the Additional Services (defined below), made various promises and offers to PDM to become equity partner in certain entities of the RAIDEN GROUP, including RAIDEN USVI, and to participate in certain other investments, including Bounce Energy (collectively the "**Equity Participation**");

WHEREAS, PDM justifiably relied on the above promises to accept his employment with the RAIDEN PARTIES and has tried to work in good faith with ACS to come to an

agreement regarding said offers, but ACS has continually retracted and modified said offers in order to have PDM continue his employment and provide the Additional Services without the benefits of the Equity Participation;

WHEREAS, in the meantime, PDM has also been providing additional services at the request, and for the benefit, of the RAIDEN GROUP, *including* the following: (i) accounting and financial services; (ii) operational and administrative services (including payroll, health insurance administrator and other human resources functions, as well as IT and contract management); (iii) compliance and risk management services (including ISO/RTO relationship management and maintenance), and (iv) forensic underwriting and other strategic services (including drafting the complaint and litigation strategy related to the claim against GDF Suez North America and identifying the tax advantaged jurisdiction and negotiating the related tax decrees for ACS, RAIDEN PR and RAIDEN USVI) (collectively, the "**Additional Services**");

WHEREAS, notwithstanding that the Additional Services were requested by, and have directly and substantially benefitted the RAIDEN GROUP, PDM has not been paid for the same even though he has demanded payment thereof, nor has he been able to secure the Equity Participation even though PDM has demanded its issuance on multiple occasions;

WHEREAS, RAIDEN USVI is also currently retaining $1,010,847 of funds directly attributable to PDM's Raiden LP Interest consisting of: (i) $690,847, which constitutes the past due remainder of the funds reported on PDM's Form K-1 for 2015; (ii) $120,000, which constitutes the proportional share of RAIDEN USVI profits attributable to PDM for the current portion of 2016 as of the date hereof and (iii) $200,000 which constitutes the proportional share of RAIDEN USVI profits attributable to PDM from the date hereof until May 2017 (these payments are collectively referred to as the "**Retained Distributions**");

WHEREAS, the RAIDEN GROUP acknowledges and agrees that (i) the Retained Distributions are due and payable as of the date hereof and that PDM has the rights of a creditor with respect to the same; (ii) that the Additional Services have been provided by PDM, have generated substantial benefit to the RAIDEN GROUP but have not been compensated; (iii) that the value of the releases and covenants granted by PDM hereunder have significant value to the RAIDEN GROUP and (iv) that PDM's claims related to the non-issuance of the Equity Participation have substantial value; but that in order to avoid litigation and any regulatory complications, the RAIDEN GROUP and PDM desire to forever settle any and all claims among them regarding the Retained Distributions, Additional Services, and the Equity Participation and, therefore, have agreed to enter into this Agreement subject to each its provisions.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

1. **Payment of Retained Distributions**. RAIDEN USVI shall pay to PDM the Retained Distributions on the date hereof.

2. **Payment of Additional Services**. The RAIDEN USVI shall pay to PDM in cash the amount of $1,500,000 on the date hereof in consideration for the provision of the Additional Services (the "**Service Compensation**").

3. **Termination of Employment, Repurchase of LP Interests and Liquidation of Damages related to the Equity Participation**. RAIDEN USVI and ASPIRE LP combined shall also pay to PDM a total amount in cash of $5,600,000 (the "**Separation and Release Payment**") in consideration of (i) the termination of PDM's employment in RAIDEN PR; (ii) the execution of this Agreement, including the releases, warranties and non-disclosure covenant issued by PDM to the RAIDEN GROUP; (iii) the repurchase of LP Interests and (iv) the liquidation of the damages related to the non-issuance of the Equity Participation (including lost profits, costs and other damages).

Upon receipt in full of the Retained Distributions, the Service Compensation, and the Separation and Release Payment (the actual receipt of which shall collectively be referred to as the "**Full Payment**"), PDM shall resign as Vice-President and trader of RAIDEN USVI, as trader of ASPIRE LP, employee and Manager of RAIDEN PR, as well as from any other position or interest he holds in any other member of the RAIDEN GROUP. Moreover, upon receipt of the Full Payment, PDM shall no longer be a limited partner, partner or otherwise hold any interest or ownership in the RAIDEN GROUP.

Notwithstanding the above, PDM shall be treated as a limited partner of RAIDEN USVI and ASPIRE LP regarding the Full Payment for federal and Puerto Rico tax reporting purposes for the tax year 2016, shall be issued the appropriate Form K-1 reflecting the Full Payment and the Parties shall not take any position contrary to this status in their federal or Puerto Rico tax filings or for any other purposes. Additionally, the parties shall cooperate with each other and provide each other with the necessary documentation, including the relevant Forms K-1, to facilitate PDM's reporting of the amounts received pursuant to this Agreement consistent with this Section 3.

Moreover, all payments pursuant to this Agreement shall be made, without deduction, withholding or setoff, to the following account:

Bank	J.P. Morgan Chase, NY
Routing number	021000021
For credit to	National Financial Services LLC
Account number	066196–221
For the benefit of	Patrick de Man
For final credit to	X65890539
Address	One Chase Manhattan Plaza New York, NY 10005

4. Mutual Release of Claims.

(a) In exchange and in consideration for the Full Payment, PDM hereby (but effective only upon actual receipt of said Full Payment):

(i) IRREVOCABLY AND UNCONDITIONALLY releases, acquits, and forever discharges the RAIDEN GROUP (together with all of its Affiliates), its past, present and future owners, directors, attorneys, officers, shareholders, members, managers, partners, employees,

agents, attorneys, representatives and related persons of any of the foregoing entities (each a "Released Party", and collectively, the "**RAIDEN Released Parties**"), from any and all claims, grievances, demands, promises, agreements or other causes of action of any kind whatsoever, KNOWN OR UNKNOWN, at common law, statutory, or otherwise (collectively, the "**PDM Claims**"), that may be legally waived and released, and that PDM has now or might have had in the past, or might have up to and including the Effective Date, relating to PDM's employment with, ownership in, association with or separation from RAIDEN USVI, RAIDEN PR, ASPIRE LP or any member of the RAIDEN GROUP, including but not limited to, claims of: negligence, breach of contract, fraud, defamation, emotional distress, harassment, retaliation, discharge in violation of public policy, wrongful discharge/termination, breach of implied covenant of good faith and fair dealing, sexual harassment, violations of federal, state or local laws which prohibit discrimination on the basis of any protected class (including race, color, national origin, relation, sex, sexual orientation, marital or registered domestic partner status, age, veteran status, or disability). This further includes Claims that PDM may have, have ever had or may in the future have arising out of, or in any way related to: (i) the United States, Texas, U.S. Virgin Islands, or Puerto Rico Constitutions, (ii) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e, et seq., including the Civil Rights Act of 1991) (iii) the Texas Labor Code or similar statue in Puerto Rico, (iv) any other United States, Texas, U.S. Virgin Islands, Puerto Rico or other applicable laws governing employment or partnerships, as may be amended from time-to-time, including but not limited to the Sarbanes-Oxley Act of 2002, the Equal Pay Act, Employee Retirement Income Security Act, the Fair Labor Standards Act, the Texas Commission on Human Rights Act (or other applicable statutes in a relevant jurisdiction), the FMLA, the Age Discrimination in Employment Act ("**ADEA**"), the Americans With Disabilities Act, or any other local, state or federal regulation, statute or ordinance (including those based on prohibiting race, sex, religion, national origin, handicap, disability, or other forms of discrimination) that may be waived and released. Claims further includes any tort and/or contract and quasi-contract claims, including but not limited to, defamation, breach of partnership agreement, tortious interference, damage to business reputation or personal reputation, infliction of emotional distress, negligence, intentional acts, assault, battery, negligent hiring or supervision, respondeat superior, invasion of privacy, fraud, duress, conspiracy to defraud, misrepresentation, and all related Claims for compensatory damages, actual damages, unpaid wages or salary, overtime pay, vacation pay, unemployment compensation, sick leave, economic damages, punitive damages, attorney's fees, court costs, expenses, interest, and all other losses or damages or expenses that PDM claims or might have claimed. The releases set forth above also apply to any claims brought by any person or agency or any class under which PDM may have a right to for any benefit. In exchange and consideration of the Full Payment, PDM waives all Claims against the Released Parties and all damages, if any, that may be recoverable. Notwithstanding anything to the contrary in the foregoing, PDM hereby reserves his right to sue or otherwise enforce the terms and conditions of this Agreement and any violation or infringement thereof.

(ii) Agrees that PDM, on behalf of PDM, PDM's spouse, family, heirs, assigns, executors and administrators and/or other Affiliates, will not file, join in, or permit to be filed in his name or on his behalf, any lawsuit against any of the Released Parties based upon any act or event which occurred on or before the Effective Date, and agrees further that if PDM files or joins in any such suit, PDM will pay all costs or expenses incurred by the sued Released Parties, including attorneys' fees, as they are incurred, in defending against such suit. Notwithstanding

the foregoing, this release is not intended to interfere with PDM's right to (1) file a charge with the Equal Employment Opportunity Commission (the "**EEOC**") or any similar state discrimination agency or commission, or (2) challenge the waiver of an ADEA claim or charge, in connection with any claim PDM believes he may have against the RAIDEN GROUP or its Affiliates. PDM AGREES, WARRANTS, AND REPRESENTS TO THE COMPANY THAT HE HAS FULL EXPRESS AUTHORITY TO SETTLE ALL CLAIMS AND DEMANDS THAT ARE SUBJECT TO THIS AGREEMENT AND THAT PDM HAS NOT GIVEN OR MADE ANY ASSIGNMENT TO ANYONE, INCLUDING PDM'S SPOUSE, FAMILY OR LEGAL COUNSEL, OF ANY CLAIMS AGAINST ANY PERSON OR ENTITY ASSOCIATED WITH THE RAIDEN GROUP OR ANY OF THE RELEASED PARTIES.

(iii) Agrees that, if any lawsuit is filed in PDM's name or on PDM's behalf, against any of the Released Parties, based upon any act or event which occurred on or before the Effective Date, PDM will not seek or accept any personal relief, including but not limited to an award of monetary damages or reinstatement of PDM's employment with the RAIDEN GROUP.

(b) In exchange and in consideration for the releases given by PDM on Subsection (a) above, the RAIDEN GROUP hereby:

(i) IRREVOCABLY AND UNCONDITIONALLY releases, acquits, and forever discharges PDM and its Affiliates, their past, present and future owners, directors, attorneys, officers, shareholders, members, managers, partners, employees, agents, attorneys, representatives and related persons of any of the foregoing persons and entities (each a "**Released Party**", and collectively, the "**PDM Released Parties**"), from any and all claims, grievances, demands, promises, agreements or other causes of action of any kind whatsoever, KNOWN OR UNKNOWN, at common law, statutory, or otherwise (collectively, the "**RAIDEN Claims**"), that may be legally waived and released, and that the RAIDEN GROUP has now or might have had in the past, or might have up to and including the Effective Date, relating to PDM's employment with, ownership in, association with or separation from RAIDEN USVI, RAIDEN PR, ASPIRE LP or any member of the RAIDEN GROUP, including but not limited to, claims of: negligence, breach of contract, fraud, defamation, emotional distress, harassment, retaliation, breach of implied covenant of good faith and fair dealing and sexual harassment. This further includes RAIDEN Claims that RAIDEN GROUP may have, have ever had or may in the future have arising out of, or in any way related to: (i) the United States, Texas, U.S. Virgin Islands, or Puerto Rico Constitutions or (ii) any other United States, Texas, U.S. Virgin Islands, Puerto Rico or other applicable laws governing limited liability companies or partnerships, as may be amended from time-to-time, including but not limited to the Sarbanes-Oxley Act of 2002, or any other local, state or federal regulation, statute or ordinance that may be waived and released. RAIDEN Claims further includes any tort and/or contract and quasi-contract claims, including but not limited to, defamation, breach of partnership or limited liability operating agreement, tortious interference, damage to business reputation or personal reputation, infliction of emotional distress, negligence, intentional acts, assault, battery, negligent hiring or supervision, respondeat superior, invasion of privacy, fraud, duress, conspiracy to defraud, misrepresentation, and all related RAIDEN Claims for compensatory damages, actual damages, economic damages, punitive damages, attorney's fees, court costs, expenses, interest, and all other losses or damages or expenses that the RAIDEN GROUP claims or might have

claimed. The releases set forth above also apply to any claims brought by any person or agency or any class under which the RAIDEN GROUP may have a right to for any benefit. In exchange and consideration of the Releases set forth in Subsection (a) above, the RAIDEN GROUP waives all RAIDEN Claims against the Released Parties and all damages, if any, that may be recoverable. Notwithstanding anything to the contrary in the foregoing, the RAIDEN GROUP hereby reserves its right to sue or otherwise enforce the terms and conditions of this Agreement and any violation or infringement thereof.

(ii) Agrees that the RAIDEN GROUP, on behalf of the RAIDEN GROUP, each member of the RAIDEN GROUP's spouse, family, heirs, assigns, executors and administrators and/or other Affiliates, will not file, join in, or permit to be filed in its name or on his behalf, any lawsuit against any of the PDM Released Parties based upon any act or event which occurred on or before the Effective Date, and agrees further that if any member of the RAIDEN GROUP files or joins in any such suit, the RAIDEN GROUP will pay all costs or expenses incurred by the sued PDM Released Party, including attorneys' fees, as they are incurred, in defending against such suit. The RAIDEN GROUP further represents that no member of the RAIDEN GROUP has filed any complaints or charges with a court or administrative agency against the PDM Released Parties on or prior to the date hereof. THE RAIDEN GROUP HEREBYAGREES, WARRANTS, AND REPRESENTS TO PDM THAT THE RAIDEN GROUP HAS FULL AND EXPRESS AUTHORITY TO SETTLE ALL CLAIMS AND DEMANDS THAT ARE SUBJECT TO THIS AGREEMENT AND THAT THE RAIDEN GROUP HAS NOT GIVEN OR MADE ANY ASSIGNMENT TO ANYONE OF ANY CLAIMS AGAINST ANY PERSON OR ENTITY ASSOCIATED WITH THE PDM RELEASED PARTIES OR ANY OF THE PDM RELEASED PARTIES.

(iii) Agrees that, if any lawsuit is filed in the RAIDEN GROUP's name or on the RAIDEN GROUP's behalf, against any of the PDM Released Parties, based upon any act or event which occurred on or before the Effective Date, the RAIDEN GROUP will not seek or accept any personal relief, including but not limited to an award of monetary damages.

5. **Indemnification**. The RAIDEN GROUP hereby expressly confirms, acknowledges and agrees that its obligations to indemnify and hold PDM harmless, heretofore extended and afforded to PDM as a former officer and employee under the relevant sections of RAIDEN USVI's, RAIDEN PR's, and ASPIRE LP's constitutional documents or other RAIDEN GROUP constitutional agreements, if any, that contain indemnity obligations that cover PDM in his former capacity as Vice-President and manager of RAIDEN USVI, RAIDEN PR, or ASPIRE LP, officer, agent, proxy and/or employee, shall continue to apply to and cover, to the same extent and subject to the same conditions and limitations, to any claims, liabilities and expenses that may hereafter be asserted against or incurred by PDM arising from or relating to any actions taken or omissions by PDM in his former capacity as Vice-President, manager, employee or officer of any member of the RAIDEN GROUP prior to, and notwithstanding, the termination of such capacity.

6. **Health Insurance**. RAIDEN PR will provide to PDM its group health medical benefits through the date hereof. PDM may be eligible to receive coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (or other benefits required by state or federal law) but RAIDEN PR shall be under no obligation to provide more than is required

following the termination of any other similarly situated employee and, generally, such continued benefits shall be at the cost and initiative of PDM.

7. **Non-Disclosure of Confidential Information**.

a. PDM agrees to hold in strict confidence and not disclose to third parties any Confidential Information PDM currently possesses or obtains or to which it had access during his employment with RAIDEN USVI, except (i) as authorized in writing by RAIDEN USVI; (ii) as may be otherwise required or requested by law, rule or regulation; (iii) pursuant to an order or request issued by any governmental agency or self regulatory organization (including any ISO, each an "**SRO**"); (iv) to his affiliates, legal, tax and financial advisors; or (v) to an SRO, government agency or other administrative body, pursuant to an information-sharing or cooperation program or agreement. As used in this Agreement, the term "Confidential Information" means and includes RAIDEN USVI's confidential and/or proprietary information and/or trade secrets, and includes, but is not limited to, all attorney-client communications, technical and business information, including financial statements and related books and records, computer disks, electronic files, personnel records, handbooks, manuals, correspondence, marketing plans, customer files, customer information, customer lists, arrangements with customers and suppliers. PDM acknowledges that RAIDEN USVI's Confidential Information is special and unique, that the loss arising from a breach or threatened breach of PDM's confidentiality obligations pursuant to this Agreement cannot reasonably and adequately be compensated by money damages, and will cause the RAIDEN USVI to suffer irreparable harm. Therefore, PDM agrees that a remedy at law for any breach thereof will be inadequate, and RAIDEN USVI shall be entitled to injunctive or other extraordinary relief in case of any such breach or threatened breach, which in no way shall limit any other rights, including the recovery of damages, RAIDEN USVI may have under law or terms of this Agreement.

b. Subject to the terms and conditions set forth in Subsection (a) above, PDM agrees to the following confidentiality covenant as one of the principal considerations to this Agreement:

i. PDM commits to never divulge or publicize in the future or cause the divulging or publication by other persons of the content of this Agreement and of the conversations between the parties or their representatives in relation to the negotiation of this Agreement, except to his family members, internal or external legal, financial, accounting or tax consultants agents or officers, and unless they receive a formal citation, request or subpoena duly served and issued by a forum with jurisdiction and authority to order their appearance or production of the information. In that case, PDM will promptly inform RAIDEN USVI of this situation and in writing by letter via certified and regular mail addressed to: _____, so that RAIDEN USVI, if it wishes to do so and at its expense, may request the necessary remedies and/or protections before the information is revealed; *provided, however*, nothing herein will prevent PDM from disclosing said information in order to, in his reasonable opinion, prevent or avoid any penalty, liability, loss or expense.

ii. Notwithstanding any violation by PDM of this confidentiality covenant, the Agreement's obligations will remain in full force and effect.

8. **Non-Solicitation and No Business Interference**. For a period of 6 months from July 1, 2016, PDM will not, directly or indirectly, whether himself or through another person or entity: (a) induce or attempt to induce any employee, partner, contractor or other agent or Affiliate of RAIDEN USVI or any of its subsidiaries or Affiliates to leave (or terminate their relationship with) RAIDEN USVI or such subsidiary or Affiliate, or in any way negatively interfere with the relationship between the Company or such subsidiary or Affiliate and any such person involved with RAIDEN USVI, including, without limitation, inducing or attempting to induce any person or group of persons involved with RAIDEN USVI or any subsidiary or Affiliate of RAIDEN USVI to negatively interfere with the business or operations of RAIDEN USVI or its subsidiaries or Affiliates; (b) hire any then-current employee, partner, or affiliate of the Company, or (c) induce or attempt to induce any customer, client, supplier, subcontractor, alliance partner, licensee, licensor, or other business relation of RAIDEN USVI or any of its subsidiaries or Affiliates to cease or reduce the amount of business with the RAIDEN USVI or such subsidiary or Affiliate, or in any way negatively interfere with the relationship between any such customer, client, supplier, subcontractor, alliance partner, licensee, licensor, or business relation and RAIDEN USVI or any of its subsidiaries or Affiliates.

9. **Mutual Non-Disparagement**. The RAIDEN GROUP and PDM agree and represent to each other that they will not at any time, directly or indirectly, (i) make any negative or derogatory comments, statements or the like about the other, including about any of the Parties or their Affiliates, (ii) solicit from any third party, any comments, statements or the like that may be considered negative or derogatory or detrimental to the good name and business reputation of the other, including about any of the Parties or their Affiliates, or (iii) engage in any conduct that is deliberately intended to injure the other's reputation, including about any of the Parties or their Affiliates; *provided, however*, that any communication or information disclosed by PDM pursuant to Sections 7(a)(i) through (v) above shall considered to be consistent with this Section 9 and shall not be considered a breach thereof.

10. **ADEA Waiting Period.** PDM SHALL HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THE ORIGINAL VERSION OF THIS AGREEMENT TO CONSIDER WHETHER OR NOT TO SIGN IT. AFTER SIGNATURE, A SEVEN DAY (7) REVOCATION PERIOD WILL BE APPLICABLE DURING WHICH PDM WILL HAVE THE RIGHT TO REVOKE THIS AGREEMENT AND, IF REVOKED, THE AGREEMENT WILL HAVE NO FURTHER FORCE AND EFFECT. ANY REVOCATION MUST BE IN WRITING AND BE COMMUNICATED BY NOTICE AS REQUIRED HEREIN. IF PDM DOES NOT REVOKE THIS AGREEMENT DURING THE REVOCATION PERIOD, THEN UPON THE EXPIRATION OF THE REVOCATION PERIOD, THIS AGREEMENT SHALL BECOME IRREVOCABLE AND BE IN FULL FORCE AND EFFECT.

11. **Important Notices Regarding ADEA**. PDM represents and acknowledges that:

(a) PDM RECEIVED THIS AGREEMENT ON [_____], 2016. PDM WAS GIVEN AT LEAST TWENTY-ONE (21) DAYS AFTER RECEIPT OF THE ORIGINAL VERSION OF THIS AGREEMENT TO CONSIDER WHETHER OR NOT TO SIGN IT. ANY DECISION TO SIGN IT BEFORE EXPIRATION OF TWENTY-ONE (21) DAYS HAS BEEN ENTIRELY PDM'S OWN.

(b) NO PROMISES OR REPRESENTATIONS EXCEPT THOSE CONTAINED IN THIS AGREEMENT HAVE BEEN MADE TO HIM IN CONNECTION WITH THE SEPARATION OF PDM'S EMPLOYMENT, AND THAT PDM IS ENTERING INTO THIS AGREEMENT VOLUNTARILY, OF PDM'S OWN FREE WILL, WITHOUT ANY COERCION, UNDUE INFLUENCE, THREAT, OR INTIMIDATION OF ANY KIND WHATSOEVER.

(c) THERE ARE NO OTHER AGREEMENTS, LAWS OR OTHER RESTRICTIONS, WHETHER WRITTEN OR ORAL, THAT WOULD PROHIBIT PDM FROM ENTERING INTO THIS AGREEMENT.

(d) PDM HAS READ AND UNDERSTOOD EACH AND EVERY PROVISION IN THIS AGREEMENT AND HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS AGREEMENT.

(e) PDM IS AWARE THAT PDM MAY CHANGE PDM'S MIND AND REVOKE THIS AGREEMENT AT ANY TIME DURING THE SEVEN (7) DAYS AFTER PDM SIGNS THE AGREEMENT. IF THEY DO SO, NONE OF THE PROVISIONS OF THIS AGREEMENT WILL HAVE EFFECT. PDM IS AWARE THAT IF HE DO NOT REVOKE THIS AGREEMENT DURING THE REVOCATION PERIOD THAT THIS AGREEMENT WILL HAVE FULL FORCE AND EFFECT.

(f) PDM IS KNOWINGLY AND VOLUNTARILY WAVING AND RELEASING ANY RIGHTS HE MAY HAVE UNDER THE ADEA WITH THE EXCEPTION OF EXERCISING HIS RIGHTS UNDER THE OWBPA TO CHALLENGE THE VALIDITY OF SUCH WAIVER OF ADEA CLAIMS.

(g) THIS AGREEMENT DOES NOT APPLY TO RIGHTS OR CLAIMS THAT MAY ARISE AFTER THE EFFECTIVE DATE.

(h) IF EXECUTED AND NOT REVOKED DURING THE REVOCATION PERIOD, THIS AGREEMENT IS AND SHALL BE BINDING UPON PDM IN ALL RESPECTS.

12. **No Other Consideration**. PDM understands that he will receive no other wage, accrued vacation, bonus, commission, benefits, severance or similar payments from the Company other than the Full Payment, including specifically any profit distributions, bonuses or vacation accruals after the date hereof. PDM acknowledges that he has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act ("FMLA").

13. **Consummation of Transactions**. Subject to the terms and conditions of this Agreement, the RAIDEN GROUP and PDM agree to take or cause to be taken and to do or cause to be done any and all actions and things as are necessary and convenient under the terms of this Agreement or under applicable laws, or as may be advisable or reasonably requested by the other Party or Parties, as applicable, in order to consummate the transactions contemplated by this Agreement. None of the Parties shall intentionally perform any act which, if performed, or if omitted to be performed, would prevent or excuse the performance of the Agreement by any Party. In connection with the consummation of the transactions contemplated by the Agreement, the RAIDEN GROUP shall at all times subsequent to the execution of the Agreement cooperate with PDM, to the extent reasonably and lawfully requested, such that the Full Payment to PDM or its designees contemplated hereunder are made pursuant to the PDM' reasonable and lawful tax planning.

14. **Governing Law and Choice of Forum**. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of the Commonwealth of Puerto Rico ("**Puerto Rico**"). The courts of Puerto Rico, including the federal courts located in Puerto Rico, have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of the Agreement or any non-contractual obligation arising out of or in connection with the Agreement) (a "**Dispute**"). The Parties agree that the courts of Puerto Rico are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary, including any argument of forum non conveniens or similar doctrine.

15. **Representations and Warranties**.

a. Each person whose signature is affixed hereto on behalf of a Party represents and warrants that such person has full authority and capacity to execute the Agreement and each of the related agreements to which it is a party on behalf of that Party and to bind that Party to the Agreement and each of the related agreements to which it is a party. Each Party represents and warrants that it has the legal capacity to enter into the Agreement and each of the related agreements to which it is a party, that it has read the Agreement, that it understands the Agreement to which it is a party, and that it intends to be legally bound hereby and thereby. Each Party represents and warrants that the execution and delivery of the Agreement and the performance of, or compliance with, any of its terms and provisions, do not (i) conflict with or will conflict with, or will result in the breach of any of the terms, conditions or provisions of, any governing instruments, contract or any other agreement or restriction to which such Party is a party or by which it is bound, (ii) constitute a default thereunder or violate any judgment, order, injunction, decree or award of any court, administrative agency or governmental body by which such Party is bound or subject, (iii) contravene any law, rule or regulation binding on such Party, or (iv) require the consent or approval of or any notice to any bureau, commission, board or regulatory agency, or any other third party or parties.

b. The RAIDEN GROUP represents and warrants that he or it has not filed any administrative grievances or proceedings, complaints, charges, lawsuits or other legal actions with any court, arbitration panel, government agency or professional association or regulatory body against any other Party. Each Party further represents and warrants that he or it has not

heretofore assigned or transferred to any person not a Party to the Agreement any released Claim or other matter or any part or portion thereof.

16. **Survival**. All representations, warranties, covenants and agreements of the Parties contained in the Agreement shall survive to the extent contemplated by the execution of the Agreement and the transactions contemplated hereunder.

17. **Entire Agreement**. The Parties expressly agree that the Agreement, together with the exhibits hereto, and such other written agreements among the Parties that may be executed to consummate the transactions contemplated hereby (the "**Related Agreements**") contains the entire agreement of the Parties with respect to its and all prior oral or written agreements, contracts, memoranda, negotiations, representations and discussions, if any, pertaining to this matter and the Parties hereto are merged into the Agreement. No Party to the Agreement has made any oral or written representation other than those set forth in the Agreement and no Party has relied upon, or is entering into, the Agreement in reliance upon any representation. The obligations and rights under the Agreement shall be binding upon and inure to the benefit of, as the case may be, the Parties' successors, assigns, heirs and personal representatives.

18. **No Oral Modifications or Waivers**. No waiver, modification or amendment of any provision of the Agreement shall be effective unless executed in writing by the Parties to be bound by such waiver, modification or amendment. The failure of a Party to enforce the breach of any of the terms or provisions of the Agreement shall not be a waiver of any preceding or succeeding breach of the Agreement or any of its provisions, nor shall it affect in any way the obligation of the other Parties to fully perform their obligations hereunder.

19. **Severability; Voidability**. Inapplicability or unenforceability for any reason of any provision of the Agreement shall neither limit nor impair the operation or validity of any other provision of the Agreement. In the event any part or provision of this Settlement Agreement is unenforceable against a Party or its parent, employees, shareholders, owners, trustee, agents, subsidiaries, Affiliates, predecessors, successors, assigns, directors or officers due to applicable law, such unenforceability shall not result in any liability on the Party to which the provision was deemed unenforceable.

20. **Advice of Counsel; Voluntariness**. The Parties acknowledge (a) that they have been separately represented by counsel and have received the benefit of the advice of counsel in connection with the negotiation and this Agreement and the Related Agreements, (b) that, other than as stated in this Agreement and/or in the Related Agreements, no party, agent, attorney or other person has made any promise or inducement to enter into this Agreement or any of the Related Agreements, (c) that each Party hereto has entered into this Agreement and each of the Related Agreements of its own free will and without any threat of intimidation, coercion or undue influence, and (d) the representations and warranties made in this Agreement and each of the Related Agreements have been made based on adequate knowledge and information, and after consultation with legal counsel of their choice.

21. **Notice**. Unless expressly stated otherwise herein, every notice, demand, request, consent, approval or other communication contemplated by this Agreement (all of which shall be defined as "notices" for purposes of this Agreement) shall be in writing and shall be provided by email

(where an email address has been provided) and also by mailing the same by registered or certified mail, first class postage and fees prepaid, return receipt requested, to each of the addresses set forth below:

If to the RAIDEN GROUP, then to:

[_____]

With a copy to:
[_____]

If to PDM, then to:

Patrick de Man
URB SABANERA DORADO
544 Corredor del Bosque
Dorado, PR 00646
deman@alum.mit.edu

With a copy to:

Juan Carlos Bou, Esq.
Ferraiuoli LLC
221 Ponce de León Avenue, 5th Floor
San Juan, Puerto Rico 00917
T. 787.766.7000
F. 787.766.7001
jbou@ferraiuoli.com

The Parties may change their recipient and address/contact information above at any time by providing written notice to the other Parties.

22. **Confidentiality**. All terms and conditions of the Agreement shall remain strictly confidential, and shall not be disclosed by any of the Parties, other than to their attorneys, legal representatives, accountants, financial or tax advisors or regulatory or governmental agencies having or claiming jurisdiction over the Party disclosing the information, and as may be required or requested by law, by order of a court of competent jurisdiction or governmental agency, or as may be agreed to in a writing signed by the Parties here.

23. **Captions**. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of the Agreement or any provision hereof.

24. **Number and Gender**. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders

shall each include the others, and the word "person" shall include corporation, firm, partnership, business entity, joint venture, trust or estate.

25. **Execution in Counterparts and by Email**. The Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Photographic and emailed copies of such signed counterparts shall have the efficacy of a signed original and may be used in lieu of the originals for any purpose.

26. **Drafting**. Each Party to the Agreement and hereby acknowledges its cooperation in the preparation and drafting of the Agreement. Hence, in any construction or interpretation of the Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter (i.e. contra proferentem is not applicable).

27. **Voluntary and Knowing Agreement**. By their authorized signatures below, the Parties certify that they have carefully read and fully considered the terms of the Agreement, that they have had an opportunity to discuss these terms with attorneys or advisors of their own choosing, that they agree to all of the terms of the Agreement, that they intend to be bound by them and to fulfill the promises and agreements set forth herein, and that they voluntarily and knowingly enter into the Agreement with a full understanding of its binding legal consequences.

28. **Attorney's Fees**. Each Party shall bear their own attorney's fees and costs in connection with negotiation and drafting the Agreement.

29. **Business Day**. For purposes of this Settlement Agreement, the term "**business day**" or "**business days**" means any day or days other than (i) Saturday or Sunday; or (ii) a day on which banks are required or authorized by law to close in San Juan, Puerto Rico.

(Remainder of page intentionally left blank.)

(Signature page of Settlement, Separation and Release Agreement between the Raiden Group and Patrick de Man)

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

PATRICK DE MAN

_____
Date:

ADAM C. SINN

_____

Date:

[RAIDEN GROUP]

By: _____
Name:
Date:

RAIDEN COMMODITIES, LP

_____

By: RAIDEN COMMODITIES 1, LLC, General Partner
By: ADAM C. SINN, Manager

TAB 12

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
JUDICIAL CENTER OF BAYAMON
SUPERIOR COURT OF BAYAMON

[A] PATRICK A.P. DE MAN; [B] MIKA DE MAN (AKA MIKA KAWARJIRI-DE MAN OR MIKA KAWAJIRI); [C] COMMUNITY PROPERTY REGIME COMPRISED OF BY DE MAN-KAWAJIRI; Plaintiffs; v. [1] ADAM C. SINN; [2] RAIDEN COMMODITIES, LP; [3] RAIDEN COMMODITIES 1, LLC; [4] ASPIRE COMMODITIES, LP; [5] ASPIRE COMMODITIES 1, LLC; [6] SINN LIVING TRUST Defendants	CIVIL CASE NO. D AC2016-2144 (702) BREACH OF FIDUCIARY DUTY; BREACH OF OPERATIONAL CONTRACT; BREACH OF PARTNERSHIP CONTRACT; DAMAGES; BAD FAITH AND FRAUD, BAD FAITH IN CONTRACTING; UNJUST ENRICHMENT. *[stamp: FILED WITH THE COURT CLERK, DEC. 16, 2016. 4:58 p.m.]*

COMPLAINT

TO THE HONORABLE COURT:

APPEARING are the Plaintiffs, **Patrick A.P. de Man** ("De Man"), **Mika de Man** (aka Mika Kawajiri or Mika Kawajiri-de Man), and the **De Man-Kawajiri Community Property Regime,** represented by the undersigned attorneys, who respectfully DECLARE, ALLEGE AND REQUEST:

I.
NATURE OF THE CASE

1. Since early 2014, De Man has been a limited partner in Raiden Commodities, LP ("Raiden LP") and Aspire Commodities, LP ("Aspire LP"). Raiden LP and Aspire LP are the Defendants.

2. Raiden Commodities 1, LLC ("RC1") is the general partner of Raiden LP. Aspire Commodities 1, LLC ("AC1") is the general partner of Aspire LP, RC1 and AC1 (collectively, the "General Partners"), both of whom have fiduciary duties to De Man as general partners.

3. Adam C. Sinn ("Sinn"), the only individual defendant, absolutely, totally and effectively controlled the General Partners,[1] and routinely neglected and ignored the proper separation between the Defendants' corporate affairs (which are legal entities) and his own personal affairs, all for his own benefit, despite the fact that he was not the Defendants' only partner.

4. Over the years, Sinn organized and structured a business group together with the other Defendants, which operated as if it were one sole entity with identical interests, but did not follow their individual corporate formalities, which ultimately answered to the whims of their alter ego, Sinn.[2]

5. Furthermore, by virtue of the absolute control that Sinn exercised over the General Partners and his titles as chief executive officer and president, he owed, directly and personally, fiduciary duties to De Man, as the minority partner. These fiduciary duties included the duties of loyalty, care, fair treatment and honesty, and both Sinn and the General Partners (directly and through Sinn) violated these duties on repeated occasions.

6. Sinn and the Sinn Living Trust ("Sinn Trust") were considered as "key persons" within the structure of Aspire LP, Raiden LP, AC1 and RC1.

7. Before, during and after De Man became a limited partner in Aspire LP and Raiden LP (collectively, the "Operating Companies"), Sinn convinced De Man to participate and contribute to the business activities of the Operating Companies by making promises of substantial equity interest in them. As a result of these promises and statements made by Sinn (their fiduciary), De Man invested and contributed substantial amounts of time and capital into the business activities of the Commercial Companies and contributed to the enormous success that they had in the midst of challenging, volatile and turbulent markets.

[1] De Man owns 50% of the equity interest in RC1, but his equity interest does not come with voting rights, which means that Sinn, the other partner, completely controls the company and owes fiduciary duties to De Man.

[2] This "consolidated" way of administering the legal entities is evidenced in the Defendants' operating and incorporating agreements such as that of Aspire LP, for example. In said agreement, Sinn is appointed as a "Designated Key Person" of the "Primary Operating Companies" (a term which includes most of the Defendants), and despite the fact that he is not a direct partner of said entity, he is afforded all of the rights and obligations of a true and legitimate direct partner, including the right to vote and exercise control over the entity and to exercise the privileges and rights of a controlling partner. He is also given the duties and obligations each partner has, as well as their fiduciary duties. Thus, Sinn has gained effective control over its indirect subsidiaries, effectively and voluntarily piercing the corporate veil of these companies in a clear violation of the recognized principles on separating the legal capacity of a shareholder from the legal entity in which the shareholder holds interest.

8. When De Man asked Sinn in mid-2016 to honor his promises to contribute additional corporate capital, Sinn refused and unjustly withheld close to $700,000.00 owed to De Man with the intention (and the effect) of depriving De Man of the money necessary to invest in his businesses. Sinn was the reason why Raiden LP did not pay De Man the liquid funds that were due, payable, and owed to him, and has gone back on his promises of contributing additional equity interest in the Operating Companies, which, in addition to constituting a breach of the agreement between the parties, also constitutes a breach of his fiduciary duties to De Man.

9. As a result, the Plaintiffs are seeking to recover the damages caused by the Defendants' refusal to pay the due amounts Raiden LP owed De Man along with the damages due to Sinn's failure to honor his promise to issue additional equity interest. Finally, De Man is requesting an order for Sinn and Sinn Trust to reimburse and return tens of millions of dollars in illegal profits arising from the breach of their fiduciary duties, their legal obligations, and the investments and contributions made by De Man while he reasonably and directly relied on the promises made by Sinn.

10. Alternatively, the Plaintiffs request compensation for the damages they suffered as a result of the Defendants' bad faith and deceit as well as the damages caused to the Plaintiffs as a result of the Defendants' unjust enrichment.

II.
THE PARTIES

11. De Man is of legal age, married, and a resident of Dorado, Puerto Rico.

12. Mrs. De Man is of legal age, married, and a resident of Dorado, Puerto Rico. Mr. and Mrs. De Man have two children who live with them in Dorado.

13. The De Man-Kawajiri community property regime is comprised of De Man and Mrs. De Man.

14. Raiden LP is a limited partnership organized under the laws of the United States Virgin Islands, and administered by its general partner, RC1, out of Dorado, Puerto Rico. It was recently "converted" into a Texas limited partnership. Sinn controls Raiden LP through his control over RC1 (its general partner) and his powers as executive officer of both entities. Raiden LP continuously and systematically conducts

its business in Puerto Rico directly or through its general partner (RC1), its agents, directors and partners, and in any case, the activities of Raiden LP in Puerto Rico give rise in part to this Lawsuit.

15. RC1 is a limited liability company organized under the laws of the Commonwealth of Puerto Rico, and its primary place of business is in Dorado, Puerto Rico. Sinn controls RC1 through his majority interest in it and his powers as an executive officer of RC1.

16. Aspire LP is a limited partnership organized under the laws of Texas and administered by its general partner, AC1, out of Dorado, Puerto Rico. Sinn controls Aspire LP through his majority interest in it and his powers as executive officer of AC1. Aspire LP continuously and systematically conducts its business in Puerto Rico directly or through its general partner (AC1), its agents, directors and partners, and at any rate, Raiden LP's activities in Puerto Rico have partially given rise to this Lawsuit.

17. AC1 is a limited liability company organized under the laws of the Commonwealth of Puerto Rico, and its primary place of business is Dorado, Puerto Rico. Sinn controls AC1 through his majority interest in it and his powers as an executive officer of AC1.

18. Raiden LP, Aspire LP, RC1 and AC1 have a presence in Puerto Rico through their agents, general partners, executive officers or representatives, as well as through the Sinn's administration and management from Puerto Rico. According to information and knowledge that the Plaintiffs consider to be accurate, Raiden LP, Aspire LP, RC1 and AC1 have no other place of business other than Puerto Rico. Furthermore, both AC1 and RC1 are beneficiaries of a tax exemption decree under Law 20 of January 17, 2012 (as amended). Thus, both entities manage some of the other Defendants from Puerto Rico.

19. Sinn is an individual who allegedly resides in Puerto Rico, he is of legal age and single. Sinn is the beneficiary of a tax exemption decree under Law 22 of January 17, 2012. According to the terms of said decree (the "Sinn Decree"), Sinn is required to establish his legal and tax residence in Puerto Rico. The above notwithstanding, Sinn has publicly expressed his disdain for Puerto Rico and the Plaintiffs have serious concerns as to whether Sinn is in compliance with the Sinn Decree.

20. The Sinn Trust, another of the Defendants, is a trust fund organized under the laws of Texas. Based on information and belief, Sinn is the primary beneficiary of the Sinn Trust and is also the trustee of said trust, therefore he has executive control over it. The Sinn Trust and Sinn are the primary beneficiaries of the other Defendants and control them directly through their agents and appointed officials. Based on information and belief, all or part of the illegal profit made by Raiden LP and Aspire LP and owed to the Plaintiffs have been distributed directly or indirectly to the Sinn Trust. The Sinn Trust has a presence in Puerto Rico through Sinn, and to the extent that some or all the actions being attributed to one or more of the Defendants was committed by the Sinn Trust, then these actions were intended to harm the Plaintiffs, who reside in Puerto Rico.

21. In compliance with Rule 21 of the Rules for the Administration of the Court of First Instance (August 2009), the physical and postal address and telephone number of the Plaintiffs is:

Physical Address:

554 Corredor del Bosque, URB Sabanera Dorado, Dorado, PR 00646

Mailing Address:

554 Corredor del Bosque, URB Sabanera Dorado, Dorado, PR 00646

Telephone:

(939) 240-3510

The contact information for the co-defendants shall be provided by the parties or by their legal representatives.

III.
JURISDICTION OF THE COURT

23. This Honorable Court has the authority to award this Lawsuit in accordance with Rule 3 of the Rules of Civil Procedures of Puerto Rico, 32 L.P.R.A. Ap. V., R. 3.

IV.
MATERIAL FACTS OF THE COMPLAINT

24. In accordance with Rule 8.3. of the Rules of Civil Procedure of Puerto Rico, the Plaintiffs are including paragraphs 1

through 22 of this complaint by way of reference as a part of this paragraph, as if they were being alleged again. See 32 L.P.R.A., Ap. V R. 8.3.

V.
BACKGROUND

25. After receiving a Master's Degree and a Doctorate in Chemical Engineering, as well as a Master's in Business Administration from the Massachusetts Institute of Technology (MIT) in June 2006, De Man became an associate in the New York office of Lehman Brothers ("Lehman"), working on commodities trading. In early September 2007, De Man and Sinn ended up working together in Lehman, first in New York and then in Houston (from March to September 2008). Sinn and De Man managed trading in the ERCOT[3] ("Ercot") market, and within Lehman, they were responsible for trading in the Texas electricity.

26. De Man's quantitative background complemented Sinn's market knowledge and experience. De Man structured the work processes and created the infrastructure necessary for Ercot trading operations, which allowed them both to work efficiently and successfully as a team.

27. Once Lehman filed for bankruptcy in September 2008, De Man and Sinn went their separate ways. De Man obtained a job at Lehman Brothers Holdings Inc. in New York, due to his extensive institutional knowledge and worked in bankruptcy estate. As an expert in several financial products, De Man analyzed a variety of offers of products and deals and managed to collect over $150 million on behalf of, and to the benefit of, the creditors of the bankruptcy estate.

28. Meanwhile, in Houston, Sinn realized that working independently (that is, independent from a large and well-established company) would be his best option, and he would suggest from time to time that he and De Man could someday work together again. In early 2009, Sinn began to trade in electricity futures independently. He initially registered his business entity as "Aspire Capital Management LLC", and later, in 2011, Sinn transferred those business activities to Aspire LP, one of the Defendants.

[3] Electric Reliability Council of Texas, http://www.ercot.com.

29. Although Sinn traded primarily in futures markets, he soon began to explore trading in "financial transmission rights" ("FTRs")[4], and in virtual products or "virtuals"[5]. These are specialized products that are negotiable in auction markets organized by the regional operators of the electricity grid, such as ERCOT, for the State of Texas. During the summer of 2009, Sinn visited New York and met with De Man to continue exploring these ideas.

30. Sinn did not have the knowledge, experience, or the quantitative skills to trade these products on his own. De Man also did not have a great deal of experience in trading these products, which is why in October 2009, he applied for and accepted a job with RBS Sempra Commodities ("Sempra") (located in Stamford, CT). While he worked at Sempra, De Man learned how to successfully trade FTRs and Virtuals.

31. While De Man was working at Sempra, Sinn continued to tell De man how appealing it would be for the two of them to build a business. For example, on July 22, 2010, Sinn sent an email to De Man in which he said: "*Relying on someone else gives me the heebee jeebees. You ready to join me*?"

32. De Man and Sinn soon began to have more serious conversations (by telephone and email) regarding the viability of a joint company, the regional markets in which this company should participate, and what the applicable capital requirements would be. As part of this dialogue, Sinn repeatedly expressed his desire for De Man to join him: *"it would be a privilege to get an arrangement worked out" (September 20, 2010) and "I view this as more of a partnership" (September 30, 2010).*

33. In late 2010, and while the dialogue with De Man continued, Sinn decided to create a new company for the purpose of trading FTRs and Virtuals, and asked De Man

[4] Financial Transmission Rights or FTRs allow market participants to offset potential losses (hedge) related to the price risk of delivering energy to the grid. FTRs are a financial contract entitling the FTR holder to a stream of revenue (or charges) based on the day-ahead hourly congestion price difference across an energy path (http://pjm.com/markets-and-operations/ftr.aspx).

[5] Virtual transactions are a set of bids and offers submitted to take financial positions in the Day-Ahead Market without the intent of delivering or consuming physical power in the Real-Time Market. (http://www.pjm.com/~/media/library/reports-notices/special-reports/20151012-virtual-bid-report.ashx)

to suggest a name for the new company: "*Just make it something that at some point in time if you wanted to sell the company that the name isn't too outlandish*" (November 3, 2010).[6]

34. The name that De Man recommended was "Raiden Commodities" (i.e., two of the Defendants, Raiden LP and RC1) and this was the name that Sinn chose for the company. Its general partner was Poseidon Commodities LLC. Both entities were formed in the United States Virgin Islands, since Sinn and De Man were considering moving to St. Thomas due to certain tax incentives.[7]

35. At the start of 2011, De Man had a family with a one (1) year-old son and had bought a house. Therefore, the idea of leaving a good position with a large and stable company and in order to take part in a small and independent commercial enterprise was hard to take. In fact, De Man's boss at Sempra, who was also Sinn's former boss, laughed when he heard of De Man's plans to reject a job offer from a European bank to join Sinn. He told De Man that Sinn's operation was inferior and that "Adam [Sinn] is trading out of his basement." De Man's decision to partner with Sinn brought with it a significant reputational risk in addition to the practical and personal risks described above. This is also, among other reasons, because Sinn was a small trader, unknown in the market, and had not even earned the respect of his former boss.

36. De Man left Sempra to join Sinn in April 2011. Sinn finally managed to persuade De Man to join him and to take the aforementioned risks, using as his big guns the promise of equity interest in the company that De Man had already named. Thus, De Man, confident and relying on Sinn's promises, accepted the risks in exchange for the expectation of becoming an equity partner and to be materially compensated to the extent that the company was successful or was sold.

[6] Without a doubt, from the beginning, Sinn was clear that De Man would be the owner of the entity in question and would benefit from its potential sale.

[7] Eventually, Sinn and De Man abandoned this idea and chose Puerto Rico as their base of operations, primarily because of the tax benefits provided for by Laws 20 and 22 cited above.

37. Sinn and De Man agreed that Sinn would provide the capital required for the electricity trading business, while De Man would contribute his knowledge, efforts, experience and skills. In addition, they initially agreed that De Man would receive (as his initial compensation) 30% of the profits generated by his own trading in the electricity market. Sinn also promised De Man that he could buy up to a 50% equity interest in Raiden LP.[8]

38. In addition, beginning in 2011, a practical complication arose which delayed the documentation of De Man's partnership share in Raiden LP. De Man, a Dutch national, originally came to the United States as a graduate student. After receiving his graduate degrees, De Man began to work under the H-1B visa program. Under this program, De Man had to be a salaried employee with an income above a certain threshold, and there were also certain restrictions related to De Man being the owner of the company sponsoring his H-1B visa. Since Sinn had hired a few traders at Aspire LP, De Man and Sinn agreed that De Man would be an employee of Aspire LP for a limited period of time, and that as soon as his visa status permitted, De Man would obtain the promised partnership share, which is what he was working for.

39. At the end of 2011, Sinn asked his attorney, George Kuhn, to draft an agreement which included the details of his relationship with De Man regarding the companies. The draft specified that De Man had to right to acquire up to 50% of Raiden. After making edits and suggestions, De Man sent the revised document to Sinn, but Sinn ignored him. Nevertheless, Sinn assured De Man that he had the intention of honoring his promise, and that the agreement regarding his interest would eventually be formalized.

40. Once De Man began working with Sinn, Sinn was able to expand the companies' business activities, rent additional office space and hire several new traders. This business growth generated substantial additional administrative needs. At Sinn's request, De Man devoted a significant amount of time and effort to effectively incorporating and including each of the new employees into the operation, and creating a management and administrative framework. These administrative and managerial efforts, typical of a partner or an

[8] In other words, De Man would have the right to receive 50% of the profits made by Raiden's overall business, and not just a percentage of the earnings generated by his individual trading activity.

owner, distracted De Man a great deal and prevented him from engaging in his market activities, which is what generated income for him.

41. As indicated above, during the first few years (2011-2013), the capital contributions De Man made to the companies were not formally recognized.

42. In that sense, the audited financial statements of Raiden LP show that as of December 31, 2011, the net owners' contribution during that year was $2.9 million dollars. De Man's trading strategies were immediately successful and generated significant earnings, and therefore his 30% interest in those earnings began to accumulate. The account that held De Man's share of the earnings grew quickly, due to the fact that De Man did not receive any monetary compensation from Aspire LP or Raiden LP in 2011. De Man's success was reflected in the net income of Raiden LP of nearly $500,000.00 for 2011, which increased the owner's equity to $3.4 million at the end of 2011.

43. By the end of 2012, De Man's 30% interest in the earnings was more than $1.9 million, while more than double that amount (some $4.5 million) was added to Sinn's account, which was allocated 70% of the profits produced by De Man. Nonetheless, when Sinn found out that De Man had earned compensation of more than $1.9 million in such a short time, Sinn demanded that De Man reduce that amount to $1.5 million, alleging that that sum represented his after tax earnings.[9]

44. Raiden LP used the earnings attributable to De Man's traffic in its operations as if it were actually part of the capital contributed by De Man. In addition, the capital contributed by De man was available, without interest, for Sinn and Raiden. They used De Man's "capital" to meet the additional collateral requirements or "margin calls" that both the ERCOT markets and the financial institutions made to Sinn during the summer, August and September of 2012. While Sinn tried to gather the cash required to remain solvent, he was also putting at risk the capital contributed by De Man to the business.

[9] De Man believes that this "deduction" was improper because the tax rates for the companies and for Sinn at that time were extremely low due to the capital structure of Sinn's companies.

45. Aspire LP and Raiden LP escaped unharmed from the 2012 debacles with the help and sacrifice of De Man. De Man supported Sinn and the businesses during this period, and even managed the delicate and critical relationship with ERCOTs, and researched the collateral requirements calculated based on the ERCOT credit model. In this way, De Man supported the companies during difficult times, helping them to survive while their capital was at risk and they could lose all of their net gains.

46. Over the next year, De Man continued to be successful in his operations, and ended the year 2013 with over $2 million dollars in accumulated earnings. Finally, in 2014, De Man decided to withdraw some of the earnings that had accumulated in his equity account. Despite those withdrawals, his accumulated and non-distributed earnings were at $2 million at the end of 2014. At the beginning of 2015, when compiling information for the federal tax returns for the 2014 calendar year, Sinn finally recognized De Man's status as a limited partner in Aspire LP and Raiden LP, and asked the company's accountants to prepare the Form K-1s for De Man. Those K-1s reflected that De Man was, in his individual capacity, a partner both of Raiden LP as well as of Aspire LP, and that he had equity accounts in each entity from which he had already received distributions. For this reason, from the moment that De Man became a partner of Aspire LP and of Raiden LP, Sinn, as the majority partner and chief executive of the entities, had the fiduciary duties of loyalty, care and transparency to De Man.

47. Ordinarily, in a bank or a hedge fund, a trader can focus all of his attention on his business, since the administrative, operational, financial and technological infrastructure are managed by personnel who specialize in those areas, also known as the "back office" or "middle office". Having said this, neither Aspire LP nor Raiden LP had that administrative infrastructure in place. Therefore, Sinn asked De Man to assume total responsibility for these critical duties, and to convince him to do so, Sinn again assured De Man that he would have the right to obtain an equity interest of 50% in the businesses of Raiden. De Man accepted the challenge, relying on Sinn's promises, and starting basically from scratch, led the effort to convert Raiden LP into a trading house that was in compliance with the applicable requirements of the ERCOT and PJM markets. In that sense, Sinn asked De Man to take on the roles of the back and middle offices,

and to completely supply the administrative and management infrastructure which he didn't have. De Man's efforts allowed all of the traders of Aspire LP and Raiden LP (including Sinn himself) to successfully (and without distractions) trade in ERCOT and PJM. Meanwhile, the time that De Man could have been dedicating to successfully trading in the markets would be reduced, as eventually was the case, to his detriment.

48. In a letter to the Department of Homeland Security, Sinn certified that the scope of De Man's responsibilities included only those activities directly related to De Man's trading in FTRs and Virtuals. As a consequence, De Man would develop his own infrastructure (and not that used by companies in general), such as: analytical tools, databases and models in order to enter the aforementioned commodities markets. Using this infrastructure, De Man would be able to analyze, identify and execute profitable trading strategies. It is clear, then, that the De Man's work was not to serve as the "back/middle office" or the firm's roaming administrative infrastructure, but rather his official and primary function was to trade in electricity markets. Therefore, his initial compensation was tied directly to his own earnings, and beginning in 2014, that compensation was also evidenced in the limited partnership given to De Man in Raiden LP and Aspire LP. Understandably, any time that De Man would devote his time to the administrative tasks of the companies in general, it would prevent him from devoting himself full time to the main (and lucrative) activities of electricity trading.

49. However, believing justifiably that he was going to become a true equity partner, De Man invested his efforts, abilities and talents (i.e. the so-called "sweat equity") and assumed responsibility, as required by Sinn, for a large number of tasks that clearly went beyond his duties as a trader. Logically, De Man (as would any other reasonable person) would have preferred to invest his time in a lucrative activity like trading electricity, instead of a non-lucrative activity such as the administrative functions that he was asked to perform, unless something equally valuable would have been promised to him. And along these lines, De Man invested considerable amounts of time and efforts over the years to research, organize, manage and administer various aspects of the Aspire and Raiden companies, as required by Sinn, because he was relying on the promises of ownership that Sinn had made to him.

50. During 2014, De Man continued to ask for recognition and remuneration for his administrative and managerial work on behalf of Sinn, Aspire LP and Raiden LP, as well as for his ownership to be formalized. Instead, Sinn's strategy in response to De Man's requests was to delay and put off any discussion about the issue, without every denying or rescinding the promises that he had made. In this way, Sinn managed to get De Man to continue to administer and manage the companies, and in his spare time, to trade in the electricity markets, primarily for Sinn's benefit.

51. By early 2016 De Man was extremely frustrated due to, on the one hand, Sinn's failure to respond to his inquiries regarding the formal recognition of his partnership stake, and on the other, the continuous and frivolous requests that Sinn was making of him in relation to the administrative infrastructure. Whenever De Man would express his frustrations and ask for a final response to his requests, Sinn would postpone and evade and discussion or meaningful response, which indicated that Sinn had already decided to breach his obligations to De Man.

52. Beginning in 2013, Sinn instructed Kyle Carlton, an attorney in Texas, to put the ownership and operational agreements of the multiple entities that Sinn controlled in order, including Aspire LP, Raiden LP, AC1 and RC1. The expectation was that within the new set of documents, De Man's status as a 50% partner in Raiden LP would be finally formalized. For reasons that are still not clear, Carlton took a long time to carry out the tasks that had been assigned to him. The delays endured by De Man were extraordinary. When De Man asked when the documents would be ready for review, Sinn's predetermined tactic was, again, to delay, and to use the excuse that he was busy with more important tasks.

53. Two years later, in 2015, when De Man inquired about the status of the partnership agreement of Raiden LP, Kyle Carlton responded: "*I have drafted the documents, but I need to check it over 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." In fact, De Man never received that draft nor any version of the document.

54. Later on, in March 2016, De Man received an internal memorandum addressed to the "*Limited Partners of Aspire Commodities*", which discussed, primarily, a change in policies with respect to the distributions of Aspire LP. Similarly, De Man received an equivalent internal memo discussing this same change policy for Raiden LP, addressed to: "*Limited Partners of Raiden Commodities, LP*".[10] Each of the memorandums were prepared and sent by Kyle Carlton, Barry Hammond and Mr. Schieffer, with a copy to Sinn. Kyle Carlton and Barry Hammond were Sinn's lawyers, while Schieffer was his external accountant. Thus, with Sinn's full knowledge, both the companies' attorneys and their accountant represented and admitted that De Man continued to be a partner of Aspire LP and Raiden LP. Furthermore, in early 2016, De Man received a K-1 form reflecting his share in the ownership of Raiden LP and his earnings for 2015.

55. Meanwhile, during the first half of 2016, with Carlton's assistance, Sinn attempted to amend some of the agreements related to the companies and affairs of Raiden LP and Aspire LP, with the intention of continuing to squeeze De Man in order to get him out of those companies. Incredibly, Sinn and his accomplices attempted to unilaterally and without any notification, amend the incorporation documents of the entities, despite the acknowledged status of De Man as a partner in Aspire LP and Raiden LP, and as a 50% member of RC1 (the general partner of Raiden LP).

56. By mid-2016, De Man was finally convinced that Sinn had no intention of keeping his promise to issue a 50% equity interest in Raiden LP. In light of all of the above, De Man concluded that he had no other option than to leave his position, and therefore he requested a distribution of the capital that he still maintained within Raiden LP. These funds ($690,847.00) had been reported to the federal government on the K-1 form of the tax returns for calendar year 2015, and therefore, they were the property of De Man. Sinn interpreted De Man's request for his distribution as a statement of his intention to completely separate from the partnership. De Man, now tired of having to explain himself, wrote the following to Sinn on June 30, 2016:

[10] Typographical error in the name of the company on the original memo.

> The fundamental concern has not been addressed, and it shows that you and Barry [Hammond] also, it seems, view the situation in a way that I completely disagree with.
>
> I want this to be absolutely clear, so I say it again: For years I had the view of ownership on the horizon. That's why I took up work that had to be done to move the business forward. For that time I spent I was never compensated, and it is reasonable to state that this was in fact a huge opportunity cost for me by not being able to trade.
>
> I believe it is better to separate. And as I stated earlier, I would like that fairly. For example, liquidating PJM would take more time so I can just keep at it until the book is completely closed. I can work with Barry on a list of things and a separation agreement. But I can't be expected to spend hours for free to train Barry what I developed in my own time.
>
> The distribution I asked about is based on P/L generated last year. YTD results are positive and I have a small open PJM position with a positive locked-in P/L, so there's no reason to hold back anything."[11]

57. Sinn's response was predictable, since he had finally excised De Man from the companies: "*I expect you to meet with Barry and train him to take over the duties that you will no longer be performing.*" (July 1, 2016). Sinn proceeded to withhold the aforementioned distribution, simultaneously alleging that it was an investment of "capital", while, on the other hand, he was denying De Man his share in the companies. Since then, Sinn and Hammond have ignored multiple requests and demands for payment from De Man. It was soon clear that Sinn's denials were part of a plan to deprive De Man of various resources while they tried to force him to accept an arrangement that was unfavorable to his interests. These ill-intentioned and oppressive efforts were carried out in a clear violation of the fiduciary obligations of loyalty and fair treatment that Sinn owed to De Man, a minority partner.

58. Sinn had a legal obligation, as a majority partner, administrator and as trustee, to distribute the retained funds ($690,847.00). By conditioning the distribution to

[11] [English translation provided in the footnote of the original Spanish language Complaint].

De Man's execution of an extremely oppressive and unreasonable separation agreement, Sinn again violated his legal and fiduciary duties to De Man, who has still not received the distribution which he has always had a right to. [12]

59. The separation agreement that Sinn attempted to force De Man to accept, included a series of clauses and provisions that were completely inappropriate for the termination of his interest in the company. The proposed separation agreement intended to retroactively impose a series of onerous obligations after the fact of De Man's separation, simply in exchange for a distribution of funds that already belonged to him. In this way, Sinn effectively withheld all of De Man's earnings in 2016, and certain contractually guaranteed benefits that would be received up to May 2017.

60. For example, the non-compete clause proposed in the termination agreement would prohibit De Man from working in the industry in any part of North America for six months, without any obligation on the part of Sinn or the Defendants to compensate him for the business opportunities that he would lose during that period.

61. Due to the fact that the proposed separation agreement was completely unacceptable, De Man responded with his own version. From that moment on, and despite the repeated efforts by De Man, Sinn engaged in a series of delaying tactics and procrastination in order to buy himself the time necessary to prepare a lawsuit (Lawsuit 2016-59771), which was filed in September 2016 in Harris County (Houston), Texas. The purpose of this lawsuit is clearly to illegally and without justification confiscate the money that was legally owed to De Man, as well as the equity interest promised by Sinn. In addition, the complaint filed is full of fictitious and inaccurate statements and allegations.

62. In light of the fact that Raiden LP is a United States Virgin Islands ("USVI") company, De Man hired an attorney from the USVI to confirm his rights under the law applicable to that jurisdiction. In July, De Man's attorney sent Sinn a letter in which he demanded the payment of the illegally withheld funds.

63. Sinn never responded to the letter demanding payment of the illegally withheld money, and attempted to engage in simulated negotiations in

[12] It is important to note that on multiple occasions, both Sinn as well as his attorney, Hammond, confirmed and admitted to De Man in writing that the withheld money ($690,847.00) legally belonged to him and that it was just a question of waiting until July 31, 2016 for it to be paid, in accordance with the internal rules applicable to partner distributions. Obviously this has not occurred and they have not paid De Man.

order to buy more time. While these exchanges were going on, and in an effort to avoid the problem and to get an undue advantage over his minority partner, Raiden LP asked to re-domicile as a Texas limited partnership. The Conversion Certificate was signed by Sinn and sent by Hammond via fax. This concerted, fraudulent and deceptive scheme was intended to complicate De Man's efforts to receive his distribution and interest by changing the jurisdiction of Raiden LP to Texas, a forum which is supposedly more advantageous to Sinn and to once again pressure De Man and deprive him of substantive rights. All of the above-mentioned acts constituted a violation of the fiduciary duty of fidelity and loyalty (transparency) that Sinn and RC1 owed to De Man as a minority partner of RC1.

64. Through his plan, Sinn wanted to bleed De Man and his family dry of money in order to exercise more pressure or leverage in a possible negotiation. Sinn also took advantage of the fact that he and De Man are co-investors in DGSP2 LLC, a company which operates a small power plant in Texas. According to the Limited Liability Company Agreement of DGSP2 LLC, a quarterly distribution should be made to all of the owners. On September 1, 2016, a company resolution was issued, authorizing the distribution of the excess shares, and in the execution of this resolution, De Man would receive $26,229.00. In order to prevent De Man from receiving those funds, Sinn has refused, to this day, to sign the relevant resolution. In his attempt to cause harm to De Man, Sinn has also voluntarily withheld incentives from MP2 Energy LLC, as the plant manager. As one of the managing and majority partners of DGSP2 LLC, Sinn owes fiduciary duties to De Man. His unjustified refusal to implement the resolution is a violation of his fiduciary duties with the illegal and fraudulent intention of causing damage to De Man and gaining a strategic advantage over him.

V.
CAUSES OF ACTION

A.
FIRST CAUSE OF ACTION: BREACH OF FIDUCIARY DUTIES
Against all Defendants

66. Pursuant to Rule 8.3 of the Civil Procedure Rules of Puerto Rico, the Plaintiffs are incorporating, paragraphs 1 to 22 and 25 to 65 of the complaint, by way of reference and including them as a part of this paragraph as if they were being alleged again. See 32 L.P.R.A. Ap. V R. 8.3.

67. Sinn and the other Defendants, all of whom operated as a single business unit, owe De Man fiduciary duties of loyalty, prudence, fair treatment, honesty and transparency, and each of these duties have been violated. These fiduciary duty violations have been the direct, efficient, effective and legal results of the damages caused to the Plaintiffs, including, but not limited to, the loss of equity interest in Raiden LP, lost business opportunities, as well as mental anguish and emotional distress.

68. Furthermore, Sinn personally has fiduciary duties to De Man because he was, during the relevant times, the general partner, chief executive and/or majority partner of Raiden LP and Aspire LP, as well as of their respective general partners.

69. Similarly, Sinn, as the executive and "key person" within his business group, including Raiden LP, directly violated his fiduciary duties (among other things), causing the other Defendants to breach their legal obligations to honor the agreement of issuing De Man the 50% ownership stake in Raiden LP. Sinn acted in his own benefit, and was affected and compromised by a clear conflict of interests, to the extent that he favored himself over his minority partners by refusing to honor the equity interest promised to De Man in order to keep all of the profits and retain management control over the companies. Furthermore, along with the other Defendants, Sinn violated his duties of loyalty and fair treatment by oppressing De Man in that they used their control over the entities to amend their founding documents in order to perpetuate Sinn's control, avoid paying the funds withheld from De Man and to avoid giving him his partnership share.

70. Through his business efforts, De Man generated gross revenues of more than $15.6 million dollars from 2011 to 2016, while he was relying on the promises and statements made by Sinn. The Defendants' interest in this revenue is approximately $10 million dollars in total. Additionally, and as an alternative, subsidiary to the real damages, a further remedy De man is seeking is that the Defendants return and refund the profits that they received and that were produced by De Man, which total approximately $10 million dollars.

B.

SECOND CAUSE OF ACTION: BREACH OF THE OPERATING AGREEMENT

Against the co-defendants Sinn, Sinn Trust and RC1

71. Pursuant to Rule 8.3 of the Civil Procedure Rules of Puerto Rico, the Plaintiffs are incorporating paragraphs 1 to 22 and 25 to 65 of the complaint by reference and including them in this paragraph as if they were being alleged again. See 32 L.P.R.A. Ap. V R. 8.3.

72. RC1 is a limited liability company organized and founded under the provisions of the General Corporations Act of Puerto Rico, as amended (the "Corporations Act"), and acts as the general partner of Raiden LP.

73. De Man is a Class B partner of RC1 and made an initial capital contribution of $1,000.00, as documented in the Operating Agreement of RC1, dated July 3, 2013 (the "Agreement").

74. Sinn and/or Sinn trust own, directly or indirectly, all of the other interest as Class A partners (with voting rights), and as such, control RC1. Sinn is also the administrator of RC1, and as such, owes fiduciary duties to De Man.

75. De Man has certain rights and privileges by virtue of the Agreement and the Corporations Act, including the right to be notified and to consent to the taking of certain actions.

76. By way of information and belief, Sinn, either directly and/or through the Sinn Trust, caused the Operating Agreement of RC1 to be amended without notifying De Man ahead of time, with the intention of oppressing De Man. Sinn also essentially deprived De Man of his rights, effectively cancelling De Man's interest in RC1, without just compensation and/or consent.

77. Sinn has abused his control of RC1 and has failed to comply with his fiduciary duties, including his duty of loyalty, transparency and fair treatment to the detriment of De Man, with the sole intention of oppressing De Man and depriving him, as the minority partner, of the benefits and privileges of his interest in RC1.

78. These unjustified and reckless actions on the part of Sinn have caused damages and losses to De Man of an amount no less than $1,000,000.00.

C.

THIRD CAUSE OF ACTION: INTENTIONAL BREACH OF THE LIMITED PARTNERSHIP AGREEMENT, ILLEGAL APPROPRIATION AND CONVERSION OF CAPITAL CONTRIBUTION

Against the Co-defendants Sinn, Sinn Trust, Raiden LP and RC1

79. In accordance with Rule 8.3 of the Civil Procedure Rules of Puerto Rico, the Plaintiffs are incorporating paragraphs 1 to 22 and 25 to 65 of the complaint by reference and including them in this paragraph as if they were being alleged again. See 32 L.P.R.A. Ap. V R. 8.3.

80. The first Limited Partnership Agreement of Raiden LP establishes that "Distributions of the Partnership's net operating profits to the Partners[13]... shall be made at such times, but no less frequently than as the Partners reasonably agree. Such distributions shall be made to the Partners simultaneously."[14]

81. Furthermore, according to an internal memorandum dated March 16, 2016, addressed to the "Limited Partners of Raiden Commodities, LP", the limited partners' "gains and losses are...paid out to [the Limited Partners] ... in two payments, in January and July of the year following your trading activity."[15]

82. This payment schedule is consistent with the business uses, customs and practices followed by Sinn, Raiden LP and Hammond regarding the payment of distributions to the limited partners of Raiden LP.

83. Moreover, both Sinn as well as his agent, Hammond, confirmed and admitted to De Man that the distribution of approximately $700,000.00 should be paid to De Man no later than July 31, 2016.[16] In that sense, both stated that the distribution in question would be made no later than July 31, 2016 as long as De Man executed a separation agreement, which he was not legally obligated to sign. This unjustified condition was an illegal attempt by Sinn to extort De Man into retroactively submitting to a series of contractual and legal limitations that he was not obligated to sign.[17]

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[13] "Partner" includes both the Limited Partner and the General Partner of Raiden LP.
[14] [English translation provided in the footnote of the original Spanish language Complaint].
[15] [English translation provided in the footnote of the original Spanish language Complaint].
[16] Email from Barry Hammond, Esq. to De Man on July 1, 2016: "I am drafting your separation paperwork and I understand that you will be paid in the normal course of performance ...". According to the internal memos cited above, the limited partners were paid in January and July every year. Therefore, De Man should have been paid no later than July 31, 2016. In that sense, Sinn confirmed to De Man on July 1, 2016, that: "The second distributions happen on or before July 31", thus confirming that he had to pay De Man his distribution by that date.
[17] The most likely reason why Sinn insisted with such vehemence on the contractual provisions of the Separation Agreement was that, since he had broken his promise to make De Man a 50% equity partner of Raiden LP, he could not submit De Man to the types of restrictive provisions common for equity partners.
As a result, Sinn wanted to "have his cake and eat it too" in the sense that now he wanted to retroactively subject De Man to restrictive agreements typical for an equity partner, but without having given De Man the benefit of the privileges of an equity partner, as he had promised when he because an employee of the company.

84. Sinn has not made the aforementioned distribution as of the date of this Complaint, in violation of the Limited Partnership Agreement, and the uses and customs between the parties, their own agreements and admissions, as well as the internal memorandums and applicable law.

85. Sinn and Raiden LP have also illegally withheld and used approximately $400,000.00 of embezzled capital belonging to De Man under the false pretense that said money was De Man's proportional share of the taxes payable by Raiden LP. Based on information and belief, the tax rate for Sinn and Raiden LP for the year in question was far lower than the corresponding amounts withheld from De Man, and these funds were not used to pay taxes, which results in an illegal misappropriation of De Man's funds.

86. The breach of the Limited Partnership Agreement and applicable law, as well as the illegal appropriation of De Man's capital, were intentional and done in bad faith, and constitute another failure to comply with Sinn, Sinn Trust, Raiden LP and RC1's fiduciary duties.

87. Therefore, their actions and omissions have caused damages to the Plaintiffs, including, among others, the loss of income, the loss of business opportunities, mental anguish and emotional distress, in an amount of no less than $2,500,000.00.

D.
FOURTH CAUSE OF ACTION: DAMAGES
Against all Defendants

88. In accordance with Rule 8.3 of the Civil Procedure Rules of Puerto Rico, the Plaintiffs are incorporating paragraphs 1 to 22 and 25 to 65 of the complaint by reference and including them in this paragraph as if they were being alleged again. See 32 L.P.R.A. Ap. V R. 8.3.

89. The intentional conduct of all of the Defendants has caused a significant loss of business opportunities, emotional distress and mental anguish to De Man, Mrs. De Man and the De Man – Kawajiri Community Property Regime, including nights of insomnia, anguish due to the uncertainty regarding the Plaintiffs' future financial situation, concerns and stress over all of the effort, time and

opportunities that were evidently lost after De Man had dedicated so much time and effort to the Defendants, with the direct expectation of reaping the rewards and receiving significant material benefits.

90. De Man and Mrs. De Man suffered emotional distress and mental anguish as a result of the intentional actions and omissions of the Defendants, as established herein. These damages total no less than $1,000,000.00. In addition, the Defendants' actions caused significant financial harm to the Defendants and losses of business opportunities that are worth no less than $2,500,000.00.

E.

FIFTH CAUSE OF ACTION: BAD FAITH ("FRAUD") AND BREACH OF THE OBLIGATION TO NEGOTIATE FAIRLY AND IN GOOD FAITH

Against the Co-defendants Raiden LP, RC1, Sinn and Sinn Trust

91. In accordance with Rule 8.3 of the Civil Procedure Rules of Puerto Rico, the Plaintiffs are incorporating paragraphs 1 to 22 and 25 to 65 of the complaint by reference and including them in this paragraph as if they were being alleged again. See 32 L.P.R.A. Ap. V R. 8.3.

92. The Defendants acted in bad faith when they consciously and intentionally, through fraudulent and deceitful means, avoided complying with their legal obligations to the Plaintiffs with respect to the issuance of the equity interest in Raiden LP promised to De Man.

93. Sinn and/or the Sinn Trust intentionally avoided compliance with this legal requirement to issue equity interest in Raiden LP, through schemes, artifices and actions, (i) ignoring De Man's requests to produce the necessary documentation to formalize the agreement; (ii) ordering and causing its agents to refrain from producing the necessary documents in relation to the promise of equity interest and continuing to negotiate with De Man regarding the relevant documents; (iii) constantly and arbitrarily changing their position with respect to the terms of the promised interest in Raiden LP, and (iv) by creating and encouraging an offensive, discriminatory and hostile working environment, with the sole intention of causing De Man to resign from his position and to stop demanding his right to equity interest.

94. Sinn's bad faith in causing and organizing this scheme caused damages to De Man and his family, including mental anguish and emotional distress, the loss of earnings and business opportunities in an amount of no less than $2,500,000.00.

F.
SIXTH CAUSE OF ACTION: UNJUST ENRICHMENT
Against Sinn, Aspire LP, AC1 and Sinn Trust

95. In accordance with Rule 8.3 of the Civil Procedure Rules of Puerto Rico, the Plaintiffs are incorporating paragraphs 1 to 22 and 25 to 65 of the complaint by reference and including them in this paragraph as if they were being alleged again. See 32 L.P.R.A. Ap. V R. 8.3.

96. As an alternative to the request to compensate for the breach of fiduciary obligations and the violation of agreements on the part of the Defendants, De Man is claiming compensation and remuneration for the considerable efforts, contributions and services that he provided to the benefit of Sinn, Aspire LP, AC1 and Sinn Trust, for which he has not been compensated.

97. Therefore, and in the event that these efforts, contributions and services are not effectively considered to be a capital contribution to Raiden LP or any of the other Defendants, De Man claims that he was not compensated adequately for the performance of said considerable efforts, contributions and services.

98. These defendants benefitted substantially and directly from De Man's efforts (especially his managerial and administrative services), and were unjustly enriched by these efforts without having to pay De Man for them.

99. Thus, these defendants should compensate De Man and pay the Plaintiffs an amount equivalent to the fair value of the contributions, efforts and services provided by De Man to them over the past five (5) years.

100. For most of the past five (5) years, De Man continually demanded the above-referenced compensation for his contributions, efforts and services provided.

101. While the position and finances of the Defendants improved, the Plaintiffs suffered damages in the amount of no less than the value of their contribution to those defendants, and the contributions, efforts and services provided to them in the amount of no less than $6,000,000.00.

HENCE, Patrick A.P. De Man and Mika De Man, respectfully petition this honorable court to **RULE IN FAVOR** of this lawsuit, and as a result, to award the remedies that are being requested below:

(a) Recognize the damages suffered by the Plaintiffs caused by the Defendants' refusal to recognize the De Man's equity interest in Raiden LP;

(b) Return and refund the profits earned by the Defendants, which are attributable to De Man, estimated at $10,000,000.00;

(c) Rule that Sinn, Sinn Trust and/or RC1 breached RC1's Operating Agreement and award the damages resulting from said breach to the Plaintiffs for an amount of at least $1,000,000.00.

(d) Rule that Sinn, Sinn Trust, Raiden LP and/or RC1 breached the Limited Partnership Agreement of Raiden LP and order the return of De Man's capital as well as any other distribution that is owed to him, including any funds illegally withheld by the Defendants in the amount of no less than $2,500,000.00;

(e) Award a sum for damages, including the loss of business opportunities, caused to the Plaintiffs by the Defendants, amounting to no less than $2,500,000.00;

(f) Find that Raiden LP, RC1, Sinn and/or Sinn Trust acted in bad faith, with deceit, insidious machinations and fraud, and that furthermore they negotiated unfairly and in bad faith, causing millions of dollars of damages to the Plaintiffs, which are being sought in an amount of no less than $2,500,000.00;

(g) Find, alternatively, that Sinn, Aspire LP, AC1 and/or Sinn trust were unjustly enriched at the expense of the Plaintiffs and issue a Final Judgment that remedies the financial harm they suffered as a result of the Co-defendants' actions, in an amount of no less than $6,000,000.00;

(h) Issue an order, grant whatever remedy, by law or in equity, and issue a ruling in favor of the Plaintiffs and against the Defendants which is consistent with the facts of this Sworn Complaint and applicable laws.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on December 16, 2016.

FOR THE PLAINTIFFS

FERRAIUOLI LLC
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San Juan, PR 00919-5168

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[signature]
ROBERTO A. CAMARA FUERTES
R.U.A. No. 13,556
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TAB 13

CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, & ASPIRE COMMODITIES, LP,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF HARRIS COUNTY, TEXAS
PATRICK DE MAN,	§	
Defendant.	§	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
	577621180002	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 28, 2014	No	1
	648809680001	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,[1] 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

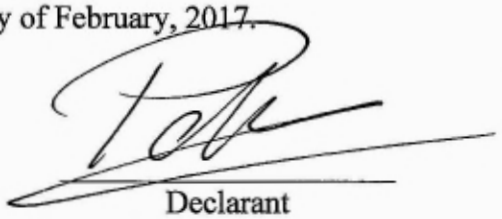
[1] Another false statement by Sinn was that Raiden leased an office (Sinn Declaration ¶ 15). Raiden never paid any rent for any office space.

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.



Declarant

TAB 14

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 23, 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	360 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 amounts 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 Genders 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	Signature
Raiden Commodities 1, LLC	By: Adam C. Sinn Manager

Limited Partner

Names	Signature
Adam C. Sinn	

SCHEDULE "A"
Initial Capital Contributions

	Cash Contributions	Agreed Value of Property Contributions
General Partner		
Raiden Commodities LLC	*$999.99*	*$999.99*
Limited Partner		
Adam C. Sinn	*$0.01*	*$0.01*

TAB 15

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> 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)(l). 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, arbitrative 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 it 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 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, it 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 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 am 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 28th 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 1st 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 alterative 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

_____

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

_____

By: **SINN LIVING TRUST**, Manager of the General Partner
By: **ADAM C. SINN**, Trustee of the Manager

EXHIBIT "A"

Updated September 5, 2013

Partner(s)	Percentage	Capital
ASPIRE COMMODITIES 1, LLC (Class A General Partner)	**1.00%**	**See Records**
RURAL ROUTE 3 HOLDINGS, LP (Class A Limited Partner)	**99.00%**	**See Records**

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 ıat 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 toı orrow - 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> 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]
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> 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

TAB 16

CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP & ASPIRE COMMODITIES, LP	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	HARRIS COUNTY, TEXAS
vs.	§	
PATRICK de MAN	§	
Defendant.	§	125th JUDICIAL DISTRICT

DECLARATION OF ADAM SINN

1. My name is Adam Sinn. I am over the age of eighteen and competent to give testimony in this action. I have personal knowledge of the statements set forth in this declaration and all of these facts are true and correct.

2. I am making this declaration in support of Raiden Commodities, LP and Aspire Commodities, LP's Original Petition and Response to Special Appearance.

3. I am the founder of Aspire and Raiden. I am also the sole voting member of the general partners of Aspire and Raiden, Aspire Commodities 1, LLC and Raiden Commodities 1, LLC, respectively. I am authorized to make this declaration on their behalf.

4. In late 2010, Mr. de Man and I had become good friends after working together for several years at Lehman, where he served as an analyst on the trading desk that I ran in Houston. Lehman went bankrupt in 2008, ultimately leaving Mr. de Man, myself, and numerous other employees unemployed, and without paying substantial bonuses. I then helped Mr. de Man get a new job at RBS Sempra Commodities ("Sempra") in Connecticut. By that time, we had discussed the prospect of trading together at some point in the future, but Mr. de Man did not have the right experience or enough capital. Thus, as we discussed with each other, Mr. de Man's

job at Sempra was an opportunity for him to develop trading experience so that he could eventually come to work as a trader with me. We discussed that plan often during 2010, usually by email.

5. In that context, Mr. de Man's listing of a number of lunches and dinners in New York is highly misleading. Mr. de Man and I were close friends and I often had meals with him and his family when I was in New York. We may or may not have discussed our long-term plan of Mr. de Man ultimately coming to work for Aspire in Texas at each of those meals; I do not specifically recall, but it would not have been unusual. It is not the case, however, that I reached out to him to recruit him. We had been mutually discussing the prospect of trading together since Lehman went bankrupt.

6. Mr. de Man and I accelerated our long-term plan of having him come work for Aspire in late 2010, when Mr. de Man's fortunes at Sempra turned south. Sempra was owned by the Royal Bank of Scotland (RBS), which was was heavily embroiled in the Eurozone debt crisis and by 2010 was looking to divest Sempra. On October 7, 2010, RBS announced that it would sell its power and gas trading book to JP Morgan, but would leave behind a portion of the business that included Mr. de Man. A few days later, Mr. de Man emailed me to describe his bleak job prospects and renew discussions about coming to work with me. Ex. 1 is a true and correct excerpt from an email Mr. de Man sent me on October 11, 2010:

> Hi Adam,
>
> How are you?
>
> Sempra is going to close on the sale of power/gas to JPM Dec1.
> 3 scenarios:
> 1) either get laid off Dec 1.
> 2) get laid off a quarter or so later, in case they can use you for integration (i prefer this option myself)
> 3) get job offer from SocGen.

> in any case, we get paid what we're owed. But I think they mean any contracts, and nothing has been said regarding year-end bonuses.
> At this point, they still owe me 250k in retention and guarantee.
> Initially I was thinking to bring that into our fund as equity.
> However, now I think it's better to live of this money for the next year or two while working with you.

7. Mr. de Man was eager to come work for Aspire because he was out of good options. His best alternative was a job offer from Societe General, the French bank that was the leading contender to buy the remaining assets of Sempra (and did so in January 2011). As the Mr. de Man told me, however, he did not want to work for another European bank, with continued exposure to layoffs and risky compensation without much upside potential. In fact, Societe General closed the Stamford office and laid off its remaining employees less than a year later. It was in this context that Mr. de Man pursued a job with Aspire, which at that time was a Texas limited partnership that had its only office in Houston, and whose sole business was trading commodities in the Texas energy market.

8. The long-term goal of Mr. de Man and I at the time continued to be to form a trading business that we would operate in the U.S. Virgin Islands (USVI), but we could not accomplish that immediately for several reasons, including USVI residency requirements and the Mr. de Man's immigration status. Consequently, I formed Raiden in 2010 as a USVI limited partnership with an eye toward the future, but I operated Raiden from Houston.

9. Mr. de Man states in his declaration that "[a]t 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." De Man Decl. at ¶ 6. That statement is false. Raiden had no connection to Puerto Rico prior to 2013. Moreover, while the original Certificate of Limited Partnership for Raiden listed its office address in the USVI, the actual business

operations of Raiden—the people and the money doing work—were in Houston from its formation in 2010 until I moved to Puerto Rico in 2013.

10. When Mr. de Man came to work as an employee for Aspire in 2011, in order to trade for both Aspire and Raiden, both of those companies were based in Houston. He was hired to work in Texas. Mr. de Man executed trades on behalf of two Houston-based companies, and provided analytical support to the companies' other employees based in Houston. I allowed him to work from his home in Connecticut, but Aspire and Raiden never had any offices, operations, or employees in Connecticut other than Mr. de Man.

11. Mr. de Man visited Texas on several occasions. In 2012, he was considering moving to Texas and he visited and worked out of Houston to get a feel for the Houston office. He also had a trader here in Houston working for him and he visited to interact with that trader. I never forced him to visit; he decided to visit and work out of the Houston office on his own.

12. Mr. de Man asserts that he was an employee of Raiden Commodities 1, LLC "at the time of the incidents alleged to serve as the basis of all of the claims (the summer of 2016)." Def. ex. A ¶ 3. I did change the entity that paid Mr. de Man's salary in 2013, but that did not affect his job duties. He was formally an employee of Aspire from 2011-2013, performing services for both Aspire and Raiden, which he continued to perform after he formally became an employee of RC1 in 2013.

13. I did not falsify any documents or change signature dates. The Aspire revised agreement that is Exhibit A-3 to Plaintiffs' Response to Special Appearance was signed on August 5, 2014 and has an effective date of Sept. 5, 2013. Ex. 3 is a true and correct copy of the DocuSign email verification showing the date it was executed. The Raiden second revised agreement that is Exhibit A-2 to Plaintiffs' Response to Special Appearance was signed on May

18, 2016, months before Mr. de Man left the company and the dispute arose, and has an effective date of July 30, 2013. Ex. 2 is a true and correct copy of the DocuSign email verification showing the date I signed the agreement. I have never asserted that those agreements were signed on the "effective dates."

14. My name is Adam Clark Sinn, my date of birth is February 6, 1978, and my address is 200 Dorado Beach Drive #3232, Dorado, PR 00646. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dorado County, State of Puerto Rico, on the 10th Day of February, 2017.

Adam Sinn, Declarant

TAB 17

From: pat.deman@gmail.com [mailto:pat.deman@gmail.com] **On Behalf Of** Patrick de Man
Sent: Monday, October 11, 2010 9:25 AM
To: Adam Sinn <gonemaroon@hotmail.com>
Subject: Re:

Hi Adam,

How are you?

Sempra is going to close on the sale of power/gas to JPM Dec1.
3 scenarios:
1) either get laid off Dec 1.
2) get laid off a quarter or so later, in case they can use you for integration (i prefer this option myself)
3) get job offer from SocGen.

in any case, we get paid what we're owed. But I think they mean any contracts, and nothing has been said regarding year-end bonuses.
At this point, they still owe me 250k in retention and guarantee.
Initially I was thinking to bring that into our fund as equity.
However, now I think it's better to live of this money for the next year or two while working with you.

In any case, I think we do need to decide on a salary for me (for the visa sponsorship), but that can be minimal.
Also, I should be able to file my own paperwork for the H1B visa. I want to look into that today.
We could save a couple $k by doing it ourselves, instead of hiring a lawfirm.

Gerry is coming to Stamford tomorrow so I want to talk with him what he's thinking about our partnership.

Cheers,
Patrick.

On Mon, Oct 11, 2010 at 10:14 AM, Adam Sinn <gonemaroon@hotmail.com> wrote:

> What's the latest and greatest up there?

TAB 18

From: DocuSign System [mailto:dse@docusign.net]
Sent: Wednesday, May 18, 2016 11:00 AM
To: Kyle Carlton <kcarlton@txwealthlawyers.com>
Subject: Completed: Please DocuSign: 3d-2013-07-30 2nd Amended Restated Ltd Ptrship Agmt - Raiden Commodities....pdf

DocuSign

Kyle Carlton

accounting@prosrvllc.com

All parties have completed Please DocuSign: 3d-2013-07-30 2nd Amended Restated Ltd Ptrship Agmt - Raiden Commodities....pdf.

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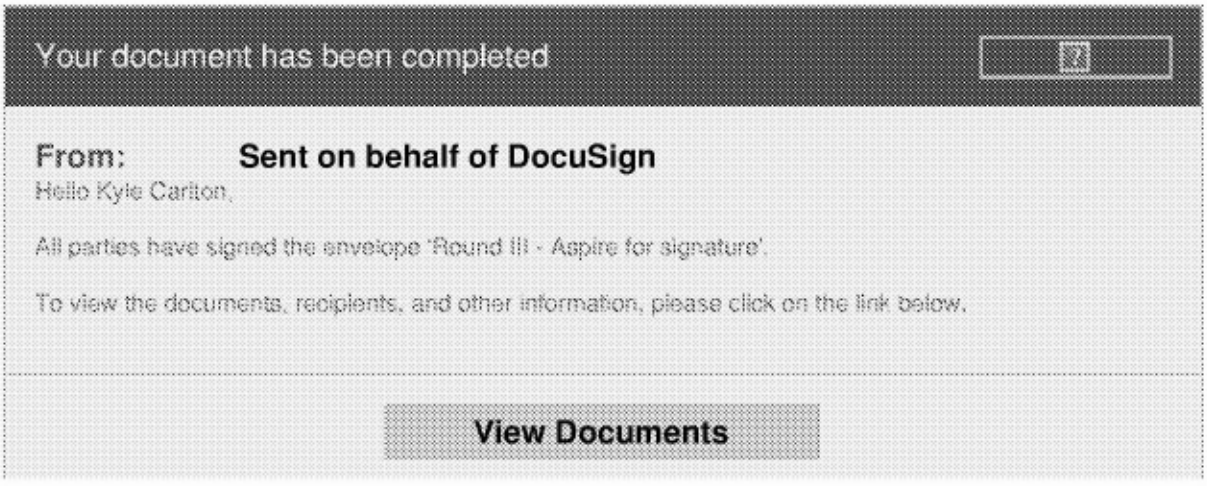
TAB 19

From: DocuSign System <dse@docusign.net> on behalf of Kyle Carlton via DocuSign <dse@docusign.net>
Sent: Tuesday, August 5, 2014 11:02 AM
To: Kyle Carlton
Subject: Completed: Round III - Aspire for signature



Alternately, you can access these documents by visiting docusign.com, clicking the 'Access Document' link, and using this security code:

ADD83BFEFA00446C9937C989E4D7CE9B1

This message was sent to you by Kyle Carlton who is using the DocuSign Electronic Signature Service. If you would rather not receive email from this sender you may contact the sender with your request.

If you need assistance, please contact DocuSign Support (service@docusign.com)

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TAB 20

2/17/2017 1:50:01 PM
Chris Daniel - District Clerk Harris County
Envelope No. 15389199
By: Alma Martinez
Filed: 2/17/2017 1:50:01 PM
Pgs-1

PJURX
NCA
11A

CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, & ASPIRE COMMODITIES, LP,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF HARRIS COUNTY, TEXAS
PATRICK DE MAN,	§	
Defendant.	§	125TH JUDICIAL DISTRICT

ORDER

Having considered the pleadings and arguments of counsel, the Court concludes that it lacks personal jurisdiction over Plaintiffs' claims against Defendant Patrick de Man. Defendant's special appearance is GRANTED, and this case is dismissed without prejudice.

Signed this the _____ day of _____, 2017

Signed:
3/7/2017

JUDGE PRESIDING

TAB 21

4/21/2017 3:57:05 PM
Chris Daniel - District Clerk Harris County
Envelope No. 16601985
By: Alma Martinez
Filed: 4/21/2017 3:57:05 PM
Pgs-7

FFCLX

CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, & ASPIRE COMMODITIES, LP,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
vs.	§	OF HARRIS COUNTY, TEXAS
PATRICK DE MAN,	§	
Defendant.	§	125TH JUDICIAL DISTRICT

~~DEFENDANT'S PROPOSED~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having considered the pleadings and arguments of counsel concerning Defendant Patrick de Man's special appearance, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Patrick de Man ("De Man") lives in Dorado, Puerto Rico.[1] At all times material to this case he was a citizen of the Netherlands.[2]

2. After the Lehman Brothers bankruptcy in September 2008, De Man moved to New York City, New York, and he lived there until 2010.[3]

3. In October 2009, De Man accepted a job offer with Sempra Energy Trading LLC in Stamford, Connecticut.[4]

4. From 2010 to 2013, De Man lived in Stamford, Connecticut.[5]

5. De Man moved to Puerto Rico in 2013, and he has lived there ever since.[6]

---

[1] De Man Declaration ¶ 1.
[2] First Sinn Declaration ¶ 6; Second Sinn Declaration ¶ 8.
[3] De Man Declaration ¶ 13.
[4] *Id.*
[5] De Man Declaration ¶¶ 13, 18.
[6] De Man Declaration ¶ 18.

6. De Man has not lived in Texas since September 2008.

7. In 2009, Adam Sinn ("Sinn") approached De Man about the possibility of working with one of the trading companies affiliated with Sinn.[7]

8. During the entire time that Sinn was having those discussions with De Man, De Man lived in New York or Connecticut, and De Man never set foot in Texas.[8]

9. In 2009 and 2010, Sinn met with De Man in New York on at least five occasions and discussed the possibility of a working relationship.[9]

10. At the time of those meetings, De Man felt that he had a job at a well-established and reputable institution, Sempra, and the thought of leaving that job to work with a Sinn-affiliated company seemed risky to him.[10] De Man's wife had recently given birth to his son, and Sinn sought to persuade De Man to take the risk of working with him.[11]

11. In 2012 and part of 2013, De Man was hired by Plaintiff Aspire Commodities LP ("Aspire") to work as a commodities trader in Connecticut, as evidenced by numerous employment documents from the State of Connecticut.[12]

12. In 2013, De Man moved to Puerto Rico, and he was subsequently described as a partner on Schedule K-1 tax forms (IRS Form 1065) for Plaintiffs Raiden Commodities LP ("Raiden") and Aspire Commodities LP ("Aspire").[13]

---

[7] De Man Declaration ¶ 14.
[8] *Id.*
[9] *Id.*
[10] De Man Declaration ¶ 15.
[11] *Id.*
[12] De Man Declaration ¶ 17 and Exhibits 20–25.
[13] De Man Declaration at Exhibits 2, 3, and 9.

13. All of the trading in which De Man engaged in on behalf of Raiden and Aspire was executed from outside of Texas.[14]

14. Raiden was originally incorporated in the Virgin Islands, and it was incorporated there at all times prior to and including the date on which this lawsuit was filed.[15]

15. The Schedule K-1 tax forms provided by Raiden to Sinn and De Man show that Raiden was located in the Virgin Islands and Puerto Rico.[16]

16. The Schedule K-1 tax forms provided by Aspire to Sinn and De Man show that Aspire is located in Puerto Rico.[17]

CONCLUSIONS OF LAW

I. Specific Jurisdiction

17. "[F]or a nonresident defendant's forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation." *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007).

18. "The purpose of the minimum-contacts analysis is to protect the defendant from being haled into court when its relationship with Texas is too attenuated to support jurisdiction." *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002).

19. This Court lacks specific jurisdiction over the Plaintiffs' declaratory judgment actions concerning whether De Man has partnership interests in the Plaintiffs. De Man is a resident of Puerto Rico.[18] Both Raiden and Aspire have their principal places of business in Puerto Rico,

[14] De Man Declaration ¶ 16.
[15] De Man Declaration ¶ 6 and Exhibits 10 and 11.
[16] De Man Declaration at Exhibits 2, 9, and 12.
[17] De Man Declaration ¶ 7 at Exhibits 3 and 12.
[18] De Man Declaration ¶ 18.

as evidenced by the K-1 tax forms filed with the IRS.[19] There is no substantial connection between Plaintiffs' declaratory judgment actions and any Texas contacts by De Man.

20. This Court lacks specific jurisdiction over the Plaintiffs' trade secret claims. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. Plaintiffs have not alleged and the record does not show any jurisdictionally significant facts indicating that Plaintiffs' trade secret claims are substantially connected to Texas contacts by De Man that were purposefully directed at availing himself of the benefits of Texas law.

21. This Court lacks specific jurisdiction over the Plaintiffs' conversion claims. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. Even if the Plaintiffs were located in Texas, allegations that an out-of-state defendant refused to return property that belongs to a Texas plaintiff are insufficient to establish personal jurisdiction over a defendant. *See Pervasive Software, Inc. v. Lexware GmbH & Co. KG*, 688 F.3d 214, 230 (5th Cir. 2012) (citing *Laykin v. McFall*, 830 S.W.2d 266, 269–70 (Tex. App.—Amarillo 1992, no writ)). Plaintiffs have not alleged and the record does not show any jurisdictionally significant facts indicating that Plaintiffs' conversion claims are substantially connected to Texas contacts by De Man that were purposefully directed at availing himself of the benefits of Texas law.

22. This Court lacks specific jurisdiction over the Plaintiffs' alternative claims for breach of partnership obligations. Plaintiffs' allegations arise out of conduct that allegedly took place in 2016, while De Man was in Puerto Rico. There is no substantial connection between Plaintiffs' claims for breach of partnership obligations and any Texas contacts by De Man.

[19] De Man Declaration at Exhibits 3, 9, and 12.

II. General Jurisdiction

23. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

24. General jurisdiction exists only when a defendant has had "continuous and systematic" contacts such that they are "essentially at home" in the forum state. *Id.* at 919. "It may be that whatever special rule exists permitting 'continuous and systematic' contacts to support jurisdiction with respect to matters unrelated to activity in the forum applies *only* to corporations." *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 610 n.1 (1990).

25. At the time this lawsuit was filed, and at all times since then, De Man's domicile was Puerto Rico.[20] Therefore, De Man is not subject to general jurisdiction in Texas.

Signed this the _____ day of _____, 2017

Signed:
4/24/2017

JUDGE PRESIDING

[20] De Man Declaration ¶ 18.

Respectfully submitted,

REYNOLDS FRIZZELL LLP

By: *<u>/s/ Chris Reynolds</u>*

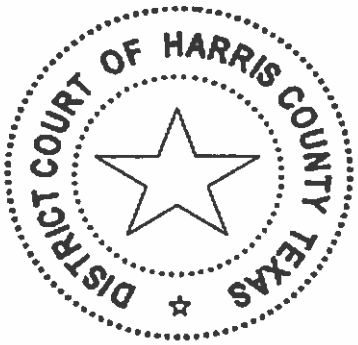
Chris Reynolds
State Bar No: 16801900
Cory R. Liu
State Bar No: 24098003
1100 Louisiana Street, Suite 3500
Houston, TX 77002
Phone: (713) 485-7200
Fax: (713) 485-7250
creynolds@reynoldsfrizzell.com
cliu@reynoldsfrizzell.com

CERTIFICATE OF SERVICE

I certify that on this 21st day of April 2017, a true and correct copy of the foregoing instrument has been served upon counsel of record in accordance with the requirements of the Texas Rules of Civil Procedure, addressed as follows:

Kevin D. Mohr
kmohr@kslaw.com
Erich J. Almonte
ealmonte@kslaw.com
KING & SPALDING LLP
1100 Louisiana Street
Suite 4000
Houston, TX 77002
Fax: (713) 751-3290

/s/ Chris Reynolds
Chris Reynolds



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this April 26, 2017

Certified Document Number: 74809390 Total Pages: 7

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

TAB 22

REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES

COURT OF APPEALS NO. 01-17-00181-CV
TRIAL COURT CAUSE NO. 2016-59771

RAIDEN COMMODITIES, LP, & ASPIRE COMMODITIES, LP,	)	IN THE DISTRICT COURT OF
Plaintiffs,	)	
vs.	)	HARRIS COUNTY, TEXAS
PATRICK DE MAN,	)	
Defendant.	)	125th JUDICIAL DISTRICT

DEFENDANT'S HEARING ON SPECIAL APPEARANCE

On the 17th day of February, 2017, the following proceedings came on to be held in the above-entitled and numbered cause before the Honorable Kyle Carter, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

APPEARANCES

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CHRONOLOGICAL INDEX

VOLUME 2

DEFENDANT'S HEARING ON SPECIAL APPEARANCE

February 17, 2017

P R O C E E D I N G S

THE COURT: 2016-59711 *Raiden Commodities, LP vs. Patrick De Man.*

Counsel, please make your appearances for the record.

MR. REYNOLDS: Chris Reynolds specially appearing to contest jurisdiction on behalf of the defendant Patrick De Man.

MR. MOHR: Kevin Mohr on behalf of the plaintiffs Aspire Commodities and Raiden Commodities.

MR. LIU: Cory Liu on behalf of Patrick De Man.

MR. ALMONTE: Erich Almonte on behalf of Raiden Commodities and Aspire Commodities.

MR. REYNOLDS: May I proceed, your Honor?

THE COURT: You may.

MR. REYNOLDS: We agreed to a briefing schedule after we filed our special appearance and so you have an original special appearance filed by my client in November, then you have a response filed by them in January, a reply by us and then a supplemental submission both of which were filed in February.

My client, Patrick De Man, is a resident of Puerto Rico. No dispute about that at all. At various points in time that they have talked about in

their documents and we have talked about as well, he was a resident of either New York or Connecticut. He has never been a resident of Texas.

My client was employed by or, excuse me, the two plaintiffs Raiden Commodities, LP and Aspire Commodities, LP are both controlled by a gentleman by the name of Adam Sinn, of all things; and Mr. Sinn is a resident of Puerto Rico. So we have a Puerto Rico defendant and we have two plaintiffs both of which are controlled by an individual who resides in Puerto Rico.

THE COURT: Let me just ask this. What's the basis for jurisdiction here in Texas? What are the contacts?

MR. MOHR: Aspire Commodities is a Texas limited partnership. Raiden Commodities is a U.S./Virgin Islands limited partnership that at the time that the party's relationship began was -- had its principal place of business in Houston, Texas.

The plaintiff claims that he is entitled to a partnership interest in these two businesses. We filed our declaratory judgment action to say that they, in fact, the parties never agreed on the terms of a partnership and to determine what the terms of a partnership would be if, in fact, there was such an agreement. So the first thing I would point out is the

plaintiff claims a partnership interest in a Texas limited partnership but let me take the Court back to the factual --

THE COURT: Does that in and of itself give rise to in personam jurisdiction in the State of Texas?

MR. MOHR: I think it does.

THE COURT: You can think but I need to see -- I am looking for a real black letter law that says, hey, partners in the company in Texas are all subject to jurisdiction, personal jurisdiction. I don't think that -- that's a stretch. What else you got?

MR. MOHR: This relationship began in 2011. At that point in time, the defendant was living in Connecticut but was soon to be out of a job and he was close friends with Mr. Sinn who had these companies in Houston.

They began discussions about either forming a partnership relationship or an employment relationship for Mr. De Man to come to work for these two Texas based companies and they subsequently did agree on some kind of relationship. The terms of that are the issue that's in dispute in the merits. Thereafter, the defendant did work for these two Texas based companies for two years and -- but he performed

his services from his home in Connecticut. He was telecommuting to work essentially but his job functions were all based in Texas. The companies were in Texas, the office was in Texas, the -- his boss was in Texas, all of the employees were in Texas.

As he alleges, and I think admits, you can trade from anywhere. So the fact that he was living in Connecticut is sort of irrelevant. He could have been living in Alaska or he subsequently moved to Puerto Rico for tax reasons but neither Connecticut nor Puerto Rico had any real nexus to the party's relationship at the time that it began and that relationship at the time when they had all of the discussions about whether he was going to become a partner in these companies, those were Texas companies.

THE COURT: Where were the discussions had?

MR. MOHR: The discussions were primarily had by e-mail.

THE COURT: Do you have any anything for me to indicate that that is an issue in this case?

MR. MOHR: I'm sorry.

THE COURT: E-mail communications.

MR. MOHR: E-mail communications, you know, can give rise to personal jurisdiction. The

question about personal jurisdiction dispute ultimately is, did he -- the defendant purposely avail himself of the privilege of doing business in Texas and in this case we know that he did because two different agreements that the parties negotiated demonstrate that they expected that his job was to be performed in Texas. The parties drafted and negotiated the terms of an employment contract which contains a Texas forum selection clause.

That employment contract is Exhibit A-1 to the plaintiff's response and in Section 11 of that employment contract draft it notes that the agreement is performable in whole or in part in Harris County and that disputes regarding that relationship would be in Harris County. Now the defendant says he never signed the contract and that is true and we -- when we get to the merits we will see whether what impact that has on whether he is, in fact, an employee or a partner.

But from the question of whether he intentionally availed himself of doing a Texas-based job, he negotiated a contract in which he agreed -- the draft contract agreed that the job was performable in Texas. They didn't sign that contract but he responded to it so that he had -- to the draft -- so that he had only minor modifications and didn't raise any question

about whether the job was, in fact, performable in Texas.

THE COURT: So what you are really arguing to me is, okay, maybe performance by virtue of his performance of the work that he assents to the contract but you are saying to me really just by sending back some changes and that's indicating that he is upset about the selection clause then that gives rise to in personam jurisdiction.

It's an interesting argument. What I think counsel is arguing and I am going to ask you the question, Mr. Reynolds, is, I think that he is arguing that by virtue of signing up to be a partner or doing work for companies that are in Texas that he is availing himself to the laws of the State of Texas and intentionally doing so in such a manner that would give rise to in personam jurisdiction. Tell me why that's wrong.

MR. REYNOLDS: Well it's wrong because there are two ways to get personal jurisdiction over a defendant in Texas or any other state in the nation. That is, number one, you show general jurisdiction continuous and systematic contacts such that he is literally at home in Texas. Recent Supreme Court authority -- Cory can talk about it if we need more

detail -- but recent supreme court authority has basically said that in personam jurisdiction over an individual defendant on the basis of systematic contacts is basically a dead letter. You have to -- unless the claim arises out of their contacts with Texas which the claims in this case don't. The claims all arise out of stuff that happened in the summer of 2016.

The other thing is they're misrepresenting the nature of their companies. This is evidence before the Court just so you can see it. This is Aspire one of the two plaintiffs. Where does it say it's located? Dorado, Puerto Rico. This is in K-1 that they filed reporting my client's share of income and he keeps saying it's a Texas-based company. This is Raiden. 2015 Raiden Commodities, Dorado, Puerto Rico. My client Puerto Rico, too. This is a Puerto Rican dispute between companies controlled by Mr. Sinn as I told you, a Puerto Rican, and my client, a Puerto Rican resident.

THE COURT: So let me get this straight. So if I was to deny or grant -- deny the special appearance and say that there's no jurisdiction here --

MR. REYNOLDS: That would be to grant it.

THE COURT: Grant the special appearance and say that there is no jurisdiction here you'd be going to Puerto Rico?

MR. REYNOLDS: We are in Puerto Rico already. Mr. De Man has sued these companies, Mr. Sinn and Mr. Sinn's living trust, a number of other people in a case already pending in Puerto Rico. So yes, if you grant the special appearance, everything will be heard in Puerto Rico either as claims or counterclaims. If you deny the special appearance then two cases will be going on simultaneously and we would move to dismiss for forum non convenience in any of them. You have to have the special appearance before you have anything else heard obviously as a matter of practice under 120a.

THE COURT: Okay.

MR. MOHR: May I respond to a few points?

THE COURT: Please address those two points for me.

MR. MOHR: Mr. Reynolds' statement that the events related to the dispute are limited to 2016 is incorrect. And the events related to the dispute out of which the dispute arise go all the way back to 2011 because the Court question in the case is, what did the parties agree on the nature of their relationship? Was it a partnership; if so, what were the terms? Is he an employee? And, in fact, if you look at the allegations in the complaint that Mr. De Man filed in Puerto Rico in which he sets out the basis for his claim that he is a

partner, it discusses events going all the way back to 2009 until 2013. At that point in time when those key events occurred, the companies were based in Houston, Texas. They were not based in Puerto Rico. They had no connection to Puerto Rico at all at that point in time. What is the connection to Puerto Rico? That connection arose because for tax reasons Mr. Sinn decided to move his personal residence to Puerto Rico.

THE COURT: Okay.

MR. MOHR: Because the income in a partnership like this flows through ultimately to the individual and is taxed on the individual's partnership return so it was better for him to live in Puerto Rico than in Texas. Mr. De Man did the same thing because he wanted his income to be taxed in Puerto Rico instead of in Connecticut.

The question, I think, that is important from a personal jurisdiction standpoint and I think that the U.S. Supreme Court's decision in *Burger King* sort of sets this standard is that, that a personal jurisdiction should not be based on contacts that are random, fortuitous or attenuated or the unilateral activity of another party or the third person. So you can't haul someone into court in a state where they have never had any kind of purposeful contact with.

In this case the contacts in Puerto Rico are, in fact, the ones that are attenuated because the parties were never doing business in Puerto Rico. The business of trading power in the Texas power markets was here. The business was here in Texas at the time that they decided to form this relationship. They moved to Puerto Rico for reasons that are really unrelated to the nature of the business of the companies. They don't do any business in Puerto Rico. They just sit there because you can do the trading on a computer from anywhere. So it's the Puerto Rico contacts are the ones that are random and attenuated. The business is in Texas.

THE COURT: Okay.

MR. REYNOLDS: Your Honor, they originally claimed in their lawsuit my client was employed by the plaintiffs and we filed our response and said that's not true. He was employed by a company called Raiden Commodities 1, LLC at the time of the blow up in the summer of 2016. Raiden Commodities 1, LLC, Puerto Rico. That's the company that employed us at the time of the blow up. And then talked about this all goes back to these contacts and stuff, that's an argument for general jurisdiction. There is no general jurisdiction here. He has made no effort because he can't to show that any

of the claims and I have gone through them very carefully starting at paragraph 18 of their plaintiff's original petition, your Honor, they specifically allege defendant has not executed the Aspire limited partnership agreement or the Raiden limited partnership agreement, these agreements that contain these forum selection clauses. And they also allege -- this is in their live pleading -- he has not otherwise agreed to be bound by their terms.

Paragraph 20, they talk about what happened in July of 2016 and talk about the fact that they were scared that he is going to start competing with them.

Paragraph 22 what happened in July of 2016? Mr. Sinn said he was terminating his employment with that company RC1 that's not a party here. They are afraid he is going to go to work in competition with them.

Paragraph 26. When did we claim to be a partner? It says, after defendants dramatic departure -- that was July of 2016 -- defendant asserted that he was not merely an employee but was, in fact, a limited partner. That's when that claim was made and we were sitting squarely in Dorado, Puerto Rico on that day. You should sustain the special exception, your

Honor.

THE COURT: Thank you very much, gentlemen. At this time the Court is prepared to rule. Special exception is --

MR. REYNOLDS: Excuse me, special appearance.

THE COURT: You are making me say wrong words now.

MR. REYNOLDS: That was my fault.

THE COURT: Special appearance is granted, is sustained. I need an order, Counsel, an order on the matter.

MR. REYNOLDS: Thank you, your Honor.

THE COURT: It's an interesting argument.

(Proceedings Concluded)

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STATE OF TEXAS

COUNTY OF HARRIS

I, Kendra Garcia, CSR, RPR, Official Court Reporter in and for the 125th District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $ 54.06 and was paid by KING & SPALDING, LLP.

WITNESS MY OFFICIAL HAND this the 9th day of MARCH, 2017.

/s/Kendra Garcia
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TAB 23

Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 17. Parties; Citation; Long-Arm Jurisdiction (Refs & Annos)
Subchapter C. Long-Arm Jurisdiction in Suit on Business Transaction or Tort (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 17.042

§ 17.042. Acts Constituting Business in This State

Currentness

In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:

(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;

(2) commits a tort in whole or in part in this state; or

(3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

Notes of Decisions (1671)

V. T. C. A., Civil Practice & Remedies Code § 17.042, TX CIV PRAC & REM § 17.042
Current through Chapters effective immediately through Chapter 8 of the 2017 Regular Session of the 85th Legislature