

CAUSE NO. \_\_\_\_\_

<b>ASPIRE COMMODITIES, LP</b> <b>Plaintiff,</b>	§ § § § § § §	<b>IN THE DISTRICT COURT</b>  _____ <b>JUDICIAL DISTRICT</b>  <b>OF HARRIS COUNTY, TEXAS</b>
<b>V.</b>		
<b>CHARLES F. PATERNO</b> <b>Defendant.</b>		

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Aspire Commodities, LP, hereinafter called Plaintiff, complaining of and about Charles F. Paterno, hereinafter called Defendant, and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

- 1. Plaintiff intends that discovery be conducted under Discovery Level 2.

**PARTIES AND SERVICE**

- 2. Plaintiff, Aspire Commodities, LP, is a Partnership whose address is 2500 Dallas Parkway, Suite 260, Plano, Texas 75093.
- 3. Defendant Charles F. Paterno, an Individual who is a nonresident of Texas, may be served with process by personal delivery at his home, 111 Gurnsey Trail, Chapel Hill, North Carolina 27517, or wherever he may be found.

**JURISDICTION AND VENUE**

- 4. The subject matter in controversy is within the jurisdictional limits of this court.
- 5. Plaintiff seeks monetary relief over \$100,000.00 but not more than \$200,000.00.
- 6. This court has jurisdiction over Defendant Charles F. Paterno, because said Defendant purposefully availed himself of the privilege of conducting activities in the state of

Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant, and the assumption of jurisdiction over Charles F. Paterno will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

7. Plaintiff would show that Defendant Charles F. Paterno had continuous and systematic contacts with the state of Texas sufficient to establish general jurisdiction over said Defendant.

8. Plaintiff would also show that the cause of action arose from or relates to the contacts of Defendant Charles F. Paterno to the state of Texas, thereby conferring specific jurisdiction with respect to said Defendant.

9. Furthermore, Plaintiff would show that Defendant Charles F. Paterno engaged in activities constituting business in the state of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code, in that said Defendant contracted with a Texas resident and performance of the agreement in whole or in part thereof was to occur in Texas.

10. Venue is proper in Harris County under Texas Civil Practice & Remedies Code section 15.002 because plaintiff resided in Harris County when this cause of action accrued, and no other subdivision of Texas Civil Practice & Remedies Code section 15.002(a) applies. Defendant has conducted a continuous transaction with the Plaintiff, a Texas limited partnership where even some of the agreements included a choice of law and forum clause of Texas and Harris County.

## **FACTS**

11. On or about December 2, 2011, at the invitation of Defendant Charles F. Paterno (“Paterno”), the managing member of College Avenue Development, LLC (“CAD”), Aspire Commodities, LP (“Aspire”) invested \$2,500,000.00 in CAD, in exchange for a preferred equity

interest in CAD. *See* attached **Exhibit A**.

12. Concomitant with Aspire's investment in CAD, the members of CAD amended its operating agreement to create Aspire's tier of preferred equity ("December 2, 2011 Amendment").  
*Id.*

13. Article 4 of the December 2, 2011 Amendment provided that "all net profits and gains shall be allocated first, to [Aspire] until [Aspire] has received cumulative allocations of net profits and gain... equal to... \$2,500,000.00" and "all non-liquidating distributions shall be made... first, to [Aspire] until [Aspire] has received cumulative distributions in an amount equal to... \$2,500,000.00". *Id.*

14. On March 10, 2013, after many months of unfulfilled requests, Paterno forwarded the bank account statements for CAD to Aspire. *See* the attached bank account statements, **Exhibit B**.

15. A review of the bank account statements raised questions at Aspire. On or about March 25, 2013, an email was sent to Paterno inquiring about \$171,563.13 in transfers and charges made to the CAD bank account. No sufficient response was received to Aspire's March 25, 2013 request for information, nor its subsequent numerous requests for information. *See* email correspondence attached as **Exhibit C**.

#### **CLAIM FOR BREACH OF CONTRACT**

16. On or about December 2<sup>nd</sup>, 2011, Plaintiff and Defendant executed a valid and enforceable written contract. *See* Exhibit A. The contract provided that all net profits, gains and/or distributions of CAD would be distributed to Aspire. *Id.*

17. Plaintiff fully performed Plaintiff's contractual obligations by executing a wire transfer to CAD and defendant of the agreed amount of \$2,500,000.00.

18. Defendant breached the contract by approving unauthorized wire transfers and payments totaling \$171,563.13 from the CAD account , instead of directing these funds to Aspire, as required by the December 2, 2011 Amendment.<sup>1</sup>

19. Defendant's breach caused injury to Plaintiff.

#### **CLAIM FOR FRAUD**

20. Defendant represented to Plaintiff that all net profits, gains and distributions would first be made to Aspire. *See* Exhibit A.

21. Defendant's representation to Plaintiff was material because Aspire relied upon the representation prior to making its investment in CAD.

22. Defendant's representation to Plaintiff was a false promise of future performance. Defendant promised to direct all net profits, gains and distributions first to Aspire, but declined to do so.

23. Defendant made the false representation knowing it was false.

24. Defendant intended for Plaintiff to rely on the false representation, and Plaintiff justifiably relied on Defendant's representation when it made its investment in CAD.

#### **CLAIM FOR THEFT OF PROPERTY**

25. Plaintiff brings this action under the Texas Theft Liability Act for an unlawful appropriation of property under Texas Penal Code section 31.03.

26. Plaintiff was entitled to possession of the funds disbursed from CAD's bank account pursuant to the December 2, 2011 Amendment. *See* Exhibit A.

27. Defendant unlawfully appropriated Plaintiff's personal property in violation of Texas Penal Code section 31.03 by disbursing funds in contravention of the December 2, 2011

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<sup>1</sup> *See* Exhibit B and Exhibit C for wire transfers and payments and Exhibit A for requirement that profits, gains and distributions be first distributed to Aspire.

Amendment.

28. Defendant's unlawful appropriation was made with the intent to deprive Plaintiff of the property. By transferring the funds out of the CAD account, they were unavailable to make the distributions to Aspire that were required by the December 2, 2011 Amendment.

**CLAIM FOR VIOLATION OF TEXAS SECURITIES ACT**

29. Defendant sold Aspire a security, the preferred equity interest in CAD, by means of untrue material statements of fact.

30. Plaintiff purchased the security in reliance upon these untrue material statements of fact.

31. Plaintiff suffered injury due to the purchase of the security.

32. Defendant did not register the security with the Texas Securities Board nor file for an exemption of a private sale of the security that was for less than 35 people.

33. The Texas Security Act and related Board rules allow for the rescission of the investment plus attorneys' fees.

**DAMAGES FOR PLAINTIFF, ASPIRE COMMODITIES, LP**

34. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, Aspire Commodities, LP, was caused to suffer lost profits in the amount of \$171,563.13.

35. **Exemplary damages.** Plaintiff's injury resulted from Defendant's actual fraud or malice, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a). Defendant was the sole managing member of CAD, apparently authorized the transactions in question, and evaded all inquiries regarding the aforementioned transactions.

36. **Attorney's fees.**

(a) Plaintiff is entitled to recover reasonable attorney fees under Texas Civil

Practice & Remedies Code chapter 38 because this suit is for breach of a written contract. Plaintiff retained counsel, who presented Plaintiff's claim to Defendant. Defendant has not tendered the amount due.

(b) Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code section 134.005(b).

### **REQUEST FOR DISCLOSURE**

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

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff, Aspire Commodities, LP, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

PATEL HAMMOND PLLC

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