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April 10, 2002

Department of State  
Division of Securities  
409 East Gaines Street  
Tallahassee, FL 32399

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To whom it may concern;

Enclosed is a check to cover the filing fee and Certified Copy. Also enclosed is a pre paid airbill, please return the Certified Copy in the envelope provided.

Sincerely,

Frank Perri  
(732) 275-6230

Peradon Capital  
1000 Hwy. 35 FL-LL  
Middletown, NJ 07748

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TALLAHASSEE, FLORIDA

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**AMENDED AND RESTATED AGREEMENT AND CERTIFICATE**

**OF**

**LIMITED PARTNERSHIP**

**OF**

**PERADON Capital Fund of Funds, Ltd.**

THIS AMENDED AND RESTATED AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP made and entered into at 175 West Camino Real, Boca Raton, Florida 33432 as of April 10, 2002, by and between PERADON Capital Fund Management, LLC, a Florida Limited Liability Company, as the sole General Partner and Frank Perri, an Individual being the Initial Limited Partner, and all other persons and entities who or which shall execute a Subscription Agreement in the form attached hereto as Exhibit I and made a part thereof.

WHEREAS, the General Partner filed a Certificate of Limited Partnership with the Florida Department of State on February 26, 2002, having document number A02000000291, and:

WHEREAS, the General Partner desires to make certain changes to the original Certificate of Limited Partnership and to incorporate an agreement of Limited Partnership with the said certificate; and

WHEREAS, this Amended and restated Agreement and Certificate of Limited Partnership has been duly executed and is being filed in accordance with the requirements of Florida Statute 620.109 and is to be effective April 10, 2002.

NOW, THEREFORE, in consideration of the covenants contained herein, the parties hereto, intending to be legally bound thereby, agree as follows:

**ARTICLE I**

**GENERAL PROVISIONS**

**Section 1.01 Formation and Name of Partnership**

The Partners hereby form a Limited Partnership ("the Partnership") pursuant to the provisions of the ULPA. The name of the Partnership shall be: PERADON Capital Fund of Funds, Ltd.

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### **Section 1.02 Purpose**

The primary purpose of the Partnership is to invest and reinvest in securities and rights relating thereto, as that term is defined in the Securities Act of 1993, as amended, and rights relating thereto. In addition, the Partnership may engage in any other type of activity which is lawful under the laws of the United States and the State of Florida.

### **Section 1.03 Name and Address of Partners**

(a) General Partner: The name and business address of the General Partner is as follows:

<u>Name</u>	<u>Address</u>
PERADON Capital Fund Management, LLC	175 West Camino Real Boca Raton, Florida 33432

(b) Initial Limited Partner. The name and business address of the Initial Limited Partner is as follows:

<u>Name</u>	<u>Address</u>
Frank Perri	175 West Camino Real Boca Raton, FL 33432

### **Section 1.04 Place at Business and Mailing Address**

The principal place of business and mailing address of the Partnership shall be located at 175 West Camino Real, Boca Raton, Florida 33432 or such other place as the General Partner may from time to time determine upon written notice to the Limited Partners.

### **Section 1.05 Designation of Registered Agent for Service of Process**

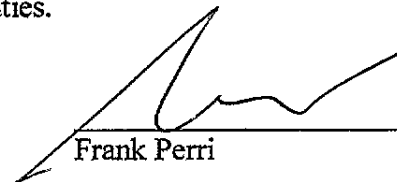
(a) **Name and Address of Agent.** The name and business address of the agent for service of process is as follows:

<u>Name</u>	<u>Address</u>
Frank Perri	175 West Camino Real Boca Raton, FL 33432

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(b) **Acceptance of Registered Agent for Service of Process.** Having been designated herein as agent for service of process, at the place designated above I hereby agree, pursuant to the requirements of the Florida Revised Uniform Partnership Act (1986) to act in this capacity, and I further agree to comply with the provisions of the Florida Revised Uniform Partnership Act relative to the proper and complete performance of my duties.

  
Frank Perri

### **Section 1.06 Limited Liability of Limited Partners**

Anything in this Agreement or elsewhere to the contrary notwithstanding, the personal liability of the Limited Partners and each of them arising out of or in any manner relating to the Partnership or its business shall not be assessable and shall not exceed the amount of the capital contributions called for pursuant to this Agreement, and upon the payment of such capital contributions, the Limited Partners shall not have any further personal liability to contribute money or otherwise to, or in respect of, the liabilities or obligations of the Partnership. Upon the payment of each Limited Partners capital contributions, such Limited Partner shall have no further liability or responsibility to the Partnership or its creditors in any event whatsoever.

### **Section 1.07 Fiscal Year and Fiscal Periods**

The fiscal year of the Partnership shall be the calendar year and shall end on December 31 of each year subject to change by the General Partner from time to time; provided, however, that the first fiscal year of the Partnership shall be the period beginning on the date the Partnership commences business and ending on December 31, 2002. The term "fiscal period" means the period commencing on the first day of a given month during the fiscal year and ending at the completion of the last day of that month.

### **Section 1.08 Non-assignability of the Interest of a Limited Partner**

A Limited Partner may not assign or otherwise transfer his Limited Partnership interest, in whole or in part, unless:

(a) the assigning Limited Partner shall, at the request of the General Partner, deliver to the General Partner an opinion of counsel in form and substance satisfactory to counsel to the Partnership as to the effect on the Partnership or the General Partner at such assignment and any offering made in connection therewith under applicable Partnership, securities and tax laws;

(b) the assignee shall execute a statement acceptable to the General Partner that the assignee meets the suitability requirements set forth in the Confidential Private Offering Memorandum pertaining to this Partnership and any exhibits thereto, and that the assignee is acquiring such Partnership interest for his own account for investment and not with a view to the distribution or resale thereof;

(c) the assignee shall deliver to the General Partner copies of the instrument of assignment and any related documents, which documents shall be satisfactory to the General Partner;

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(d) the General Partner shall consent in writing to such assignment, which such consent shall be withheld if, in the opinion of counsel to the Partnership, such transfer would result in the termination under the Internal Revenue Code of 1986, as amended (the "code"), of this Partnership's taxable year or of its status as a Partnership for federal income tax purpose or would result in the Partnership's having to register as an investment company under the Investment Act of 1940, as amended;

(e) in the opinion of counsel to the Partnership, the transfer will comply with all applicable rules and regulations of government authorities; and

(f) the assignor or assignee agrees to pay any filing fees, reasonable counsel fees, and other reasonable expenses of the Partnership in connection with the assignment.

If the foregoing conditions are not complied with, the Partnership need not recognize such assignment for any purpose. Upon an assignment of a Limited Partnership Interest the assignee shall become a Limited Partner upon the execution of such agreements and other documents as shall be required by the General Partner.

It is understood that even if the conditions as specified in this section 1.08 are satisfied, the General Partner retains the absolute power to grant or deny any requested assignment or other transfer, within its sole discretion.

## ARTICLE II

### ESCROW

There shall be no escrow of initial or subsequent capital contributions by the Limited Partners to this Partnership. All capital contributions as received by the General Partner shall be deposited to the account of the said Partnership and applied for the purposes as set forth herein and as may be listed in the Confidential Private Offering Memorandum pertaining to this Partnership.

## ARTICLE III

### COMPOSITION AND ADMISSIONS

#### Section 3.01 Units of Partnership Interest

All interests of Limited Partners shall be expressed in Units of participation ("Units") or fractions thereof. Each Unit shall represent an equal proportionate interest in the Partnership with each other Unit issued and outstanding. Upon formation of the Partnership, a Unit shall be the interest in the Partnership equivalent to a capital contribution, in cash, of \$25.00 provided, however, that a minimum of two thousand (2,000) Units must be purchased unless this minimum purchase requirement is waived in the sole discretion of the General Partner. Subsequent to the time that the Partnership commences business, the price per Unit shall be determined based upon Net Asset Value of the Partnership as defined in Section 7.02 herein. The General Partner reserves the right to issue fractional Units.

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### **Section 3.02 Contribution of the General Partner**

The capital contribution of the General Partner shall be, and shall be maintained in, an amount sufficient to meet the ruling standards of the Internal Revenue Service with respect to Partnership classification if applicable. The determination of such amount shall be in the sole discretion, of the General Partner and the General Partner may rely on advice of counsel in determining such amount.

### **Section 3.03 Contributions of Limited Partners**

For and on behalf of the Partnership, the General Partner may receive such cash contributions to the capital of the Partnership from any person or persons who shall be admitted to the Partnership as Limited Partners upon their execution and delivery of the Subscription Agreement in the form as attached to this Agreement and upon the acceptance thereof by the General Partner. It is understood that subscriptions to become a Limited Partner are not open to the public and are subject, in all events, to acceptance within the sole discretion of the General Partner the number of Units acquired for a given contribution made after the Partnership commences business will be based on the Net Asset Value per Unit as hereinafter defined, determined as of the last business day prior to the effective date of such contribution. The date for admittance of a Limited Partner shall be the first day of a given calendar month, based upon the Net Asset Value as established at then end of the previous month.

### **Section 3.04 Initial Limited Partner**

The initial Limited Partner shall make a cash contribution of \$100.00 which shall be the total contribution made by the Initial Limited Partner. Notwithstanding provisions of this Agreement to the contrary, the Initial Limited Partner shall be entitled to purchase a Unit of Ownership with a total payment of \$100.00 in cash paid at the time of execution of this Agreement, provided however, that upon such time as other Limited Partners are admitted, the admission of the Initial Limited Partner shall be voided, the cash contribution shall be returned, without interest, and the Initial Limited Partner shall henceforth have no Partnership interest whatsoever.

### **Section 3.05 Schedule of Partners**

The names and addresses of each of the Partners, the amount of their capital contributions and the number of Units owned by each shall be set forth in a schedule to be kept on file at all times at the principal place of business of the Partnership. A Partner may change his address for purpose of this Agreement upon 5 days prior written notice to the General Partners.

### **Section 3.06 Admission of Additional General Partners**

The General Partner may admit one or more additional General Partners into the Partnership under such terms and conditions as the General Partner shall determine, but only after giving notice to each Partner, which notice shall disclose the name of the new General Partner and all of the terms and conditions of its admission to the Partnership.

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## ARTICLE IV

### MANAGEMENT OF PARTNERSHIP

#### Section 4.01 Actions of the General Partner

The General Partner alone shall have the discretion to manage the Partnership and to exercise the powers set forth in Section 4.02. The General Partner may appoint such agents of the Partnership as it deems necessary to hold such offices, exercise such powers and perform such duties as shall be determined from time to time by the General Partner. The General Partner shall devote so much of its time and efforts to the affairs of the Partnership as may, in its judgment, be necessary to accomplish the purposes of the Partnership. Nothing herein contained shall prevent the General Partner or any Partner or affiliate thereof or any Limited Partner from conducting any other business, including any business with respect to securities, and neither the Partnership nor any other Partner shall have any rights in or to such other business or the income or the distributions therefrom. Without limiting the generality of the foregoing, the General Partner (acting either as General Partner, or as an investment advisor or manager pursuant to Section 4.02(c) below) or any partner or affiliate thereof may act as an investment advisor or investment manager for others, may manage funds or capital for others, may have, make and maintain investments in his own name or through other entities, and may serve as consultant, partner or stockholder of one or more investment funds, partnerships, securities firms or advisory firms. It is recognized that (i) certain investments may be appropriate for the Partnership and also for other clients advised by the General Partner; (ii) a particular security may be bought or sold for only the Partnership or only one client in different amounts and at different times for more than one but less than all clients, including the Partnership; (iii) a particular security may be bought for the Partnership or one or more clients when one or more other clients or the Partnership are selling the security; (iv) purchases or sales of the same security may be made for two or more clients, including the Partnership on some date, in which event, such transactions will be allocated among the Partnership and client(s) in a manner believed by the General Partner to be equitable to each; and (v) purchase and sale orders for the Partnership may be combined with those of other clients of the General Partner in the interest of most favorable net results to the Partnership. It is further recognized that in effecting transactions, it may not always be possible, or consistent with the investment objectives of the various persons described above and of the Partnership, to take or liquidate the same investment positions at the same time or at the same prices.

#### Section 4.02 Powers of the General Partner

The General Partner, subject to the restrictions herein contained and as specified in Florida Statute Section 620.125, shall have the following powers on behalf of the Partnership:

- (a) The General Partner may invest in any alternative investments (Hedge Funds);
- (b) To enter into contracts and other arrangements as it may deem desirable, including organizations with which it is affiliated, including, without limitation thereto, affiliated hedge funds;

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- (c) To retain one or more persons or entities as investment advisor(s) or manager(s), including the General Partner or any partner or any Partner or affiliate of the General Partner to supervise the investment of assets of the Partnership and to enter into an agreement with such advisor(s) or manager(s) providing for the payment of such fees and the reimbursement of such expenses as the General Partner shall deem reasonable and appropriate; provided, however, that a management or advisor agreement shall not exceed a fee of two percent (2%) annually of the assets held under such agreement,
- (d) To act for the Partnership in all other matters.
- (e) To take any action necessary or appropriate in order to ensure that the Partnership is not required to register as an investment company under the Investment Company Act of 1940, as amended, including without limitation the right to restrict the number of investors to no more than 100 beneficial owners as defined in such Act.

#### **Section 4.03 Restrictions of the General Partner**

The General Partner is restricted from investing in any security other than alternative investments (Hedge Funds).

#### **Section 4.04 Limitation of Liability: Indemnification and Advances**

The General Partner shall have no liability to the Partnership or to any Partner for any loss suffered by the Partnership itself which arises out of any action or inaction of the General Partner if the General Partner in good faith determined that such course of conduct was in the best interest of the Partnership and such course of conduct did not constitute negligence or misconduct of the General Partner. The General Partner shall be indemnified by the Partnership against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with the Partnership, provided that the same were not result of negligence or misconduct on the part of the General Partner.

Notwithstanding the above, the General Partner shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless (1) there has been a successful adjudication on the merits of each court involving alleged securities law violations as to the particular indemnity, or (2) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnity or (3) a court of competent jurisdiction approves a settlement of the claims against a particular indemnity.

It shall be permissible for the General Partner to secure advances from the Partnership for legal expenses and other related costs incurred as a result of a legal action if (1) the legal action relates to the performance of duties or services by the General Partner on behalf of the Partnership; (2) the legal action is initiated by a third party who is not a Limited Partner; and (3) the General Partner decides that legal services are required for any purpose it deems necessary or desirable on behalf of the Partnership.

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#### **Section 4.05 Restrictions on Limited Partner**

No Limited Partner shall participate in or have any control over the Partnership business, except as required by law. The Limited Partners hereby consent to the exercise by the General Partner of powers conferred on it by this Agreement. No Limited Partner shall have any authority or right to act for or bind the Partnership or to participate in control of the Partnership's business.

#### **Section 4.06 Expenses of the Partnership Generally**

The General Partner is authorized to incur all expenses, except as specifically limited herein, which it deems necessary or desirable in the best interests of the Partnership.

#### **Section 4.07 Organizational and Syndication Expenses**

The General Partner shall remain responsible for the organizational and syndication expenses pertaining to this Partnership and shall not charge any such expenses to the Partnership.

#### **Section 4.08 Overhead Expenses**

The General Partner shall remain responsible for expenses classified as "overhead expense" and shall not charge any such expenses to the Partnership, provided, however, that the determination of overhead expenses shall be within the sole discretion of the General Partner.

#### **Section 4.09 Investment Expenses**

Investment expenses shall be paid by the Partnership and shall, without limitation thereto, include prime brokerage expenses and selling agreement expenses and fees.

#### **Section 4.10 Management Fee**

The General Partner shall be paid an annual management fee of Two Percent (2%) of fair market value of the assets of the Partnership as shall be determined and paid at the end of each calendar month. This fee shall be paid without regard to the allocation of net profits and losses determined herein.

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## ARTICLE V

### WITHDRAWALS FROM CAPITAL ACCOUNTS AND RETIREMENTS

#### **Section 5.01 Withdrawal Rights for Limited and General Partners**

A Limited Partner or General Partner shall have no right of withdrawal from his or her Capital Account (as hereinafter defined) for a period of six months commencing as of the date that a contribution to the Capital Account is entered on the books of the Partnership. This limitation shall apply to each separate contribution to a Partner's Capital Account, applied to that particular contribution. Thereafter, upon sixty days written notice to the General Partner, a Partner may withdraw any portion of his Capital Account Contributions that has been on the books of the Partnership for a period of six months or longer, provided, however, net profits allocated to a Partners Capital Account, as specified in Section 8.01, may be withdrawn by any Partner at any time, upon 60 day written notice to the General Partner. However, if a Partner should request for their share of NDP, it must be in its entirety, it being the intention of this Agreement that the restrictions against a withdrawal by a Partner shall apply to his or her Capital Account Contribution(s) only.

#### **Section 5.02 Mandatory Retirement of a Limited Partner**

If the General Partner in its discretion deems it to be in the best interests of the Partnership, it may require any Limited Partner to retire from the Partnership on not less than 30days written notice. In addition, if a Limited Partner dies, is dissolved, or becomes adjudged bankrupt or insane, the General Partner, in its discretion, may require such Limited Partner to retire from the Partnership upon immediate written notice. Such retirement shall become to retire pursuant to this Section 5.03 shall be entitled to receive the value of such Limited Partner's Liquidating Share (as defined in Section 9.01) computed as of the date on which such Limited Partner's retirement shall become effective.

#### **Section 5.03 Distributions in Cash or in Kind**

All distributions to a Partner from the Partnership shall be made in cash, or at the discretion of the General Partner, in securities selected by the General Partner or partly in cash and partly in securities as determined by the General Partner. In any case where the market value of a given security cannot be readily determined, the General Partner shall have the sole discretion to place market value upon that security for distribution purposes.

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## ARTICLE VI

### TERM AND DISSOLUTION OF THE PARTNERSHIP

#### **Section 6.01 Term of Partnership**

The Partnership shall continue in full force and effect until April 10, 2022 unless earlier terminated as hereinafter provided.

### **Section 6.02 Dissolution of the Partnership**

The Partnership may be dissolved by the General Partner at any time after 12 months following the date the Partnership becomes effective under Florida Law, and thereupon the affairs of the Partnership shall be promptly wound up by the General Partner. If there is no General Partner or successor to the General Partner, the affairs of the Partnership shall be promptly wound up by the person(s) designated by Limited Partners owning a majority interest of the Capital Accounts of all the Limited Partners as of the date of dissolution of the Partnership. Such designated person(s) shall be herein referred to as the "Liquidator."

Neither the admission of Partners nor the retirement, bankruptcy, dissolution, death or insanity of a Limited Partner shall dissolve the Partnership.

### **Section 6.03 Procedure on Winding Up**

(a) Upon the winding up of the Partnership, distributions will be made as provided in Section 8.02(b) hereof.

(b) Distributions to a Partner pursuant to Section 8.02(b) may be in installments and shall be made in cash or, at the discretion of the General Partner (or the Liquidator), in securities selected by the General Partner (or the Liquidator), or partly in cash and partly in securities selected by the General Partner (or the Liquidator).

(c) Upon the winding up of the Partnership, the name of the Partnership and its goodwill shall not be appraised, sold or otherwise liquidated but shall remain the exclusive property of the General Partner.

(d) Within 90 days after the completion of the winding up of the Partnership, the General Partner (or Liquidator) shall, cause to be prepared and forwarded to each Partner a final statement and report of the Partnership.

(e) If the Partnership is wound up by a Liquidator, the Liquidator shall be entitled to reasonable compensation for his services in winding up the Partnership.

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## ARTICLE VII

### CAPITAL ACCOUNTS AND NET ASSET VALUE

#### Section 7.01 Capital Accounts

A Capital Account shall be maintained for each Partner. Each such Capital Account shall be credited with the Partner's capital contributions and with his share of Net Profits (defined below), shall be charged with such Partner's share of Net Losses (defined below), distributions and withholding taxes (if any), and shall otherwise appropriately reflect transactions of the Partnership and the Partners. No loan made by a Partner to the Partnership shall constitute a capital contribution for any purpose. No interest shall be paid on any capital contributions to the Partnership.

"Net Profits" for any Fiscal Period shall mean the excess of the Net Asset Value of the Partnership (defined in Section 7.02(b)) at the close of business on the last day of the Fiscal Period, prior to any distribution being made with respect to such Period, over the Net Asset Value of the Partnership of the as of the opening of business on the first day of such period, after any additional contributions made during the Fiscal Period.

"Net Losses" for any Fiscal Period shall mean the excess of the Net Asset Value of the Partnership as of the opening of business on the first day of the Fiscal Period, after any additional contributions made during the fiscal period, over the Net Asset Value of the Partnership at the close of business on the last day of such Period, prior to any distribution being made with respect to such period.

#### Section 7.02 Net Asset Value

(a) "Asset Value" shall mean the market value of all assets held by the Partnership determined as of the close of trading on the New Stock Exchange. The market value of positions in securities shall be determined as follows: Securities that are listed on the New York Stock Exchange, the American Stock Exchange, or other United States or foreign exchanges or in the National Association of Dealers Quotation System ("NASDAQ") shall be valued at the last sale price on the exchange on which the security is most extensively traded, or, if no sales occurred on such day, at the last known "bid" price on the exchange, or on NASDAQ, if applicable, at the close of business on such day. Securities traded over the counter that are not NASDAQ listed but which are freely transferable shall be valued at the last known "bid" price at the close of business on such day. All other securities shall be valued by the General Partner based upon the last sale price, or if not available, at the last known "bid" price of the same or comparable securities on, or reasonably proceeding, the date of determination. Securities for which market quotations are not readily available and all other assets of the Partnership shall be Valued at fair value in the manner determined in good faith by the General Partner. Further, the General Partner shall be deemed in full compliance with this section 7.02 if values of any assets are obtained by the General Partner through the use of a service that provides asset pricing.

(b) "Net Asset Value of the Partnership" shall mean the dollar amount derived by subtracting (i) the liabilities of the Partnership from (ii) the Asset Value determined in the manner described in Section 7.02(a).

(c) "Net Asset Value per Unit" shall mean the dollar amount derived by dividing (1) the Net Asset Value of the Partnership determined in the manner described in Section 7.02(b) less (ii) the positive balance in the Capital Account of the General Partner by (iii) the number of Units issued and outstanding.

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(d) Asset Value, Net Asset Value of the Partnership, and Net Asset Value per Unit shall be determined as of the close of business on the last business day of each Fiscal Period; provided, however, that the Partnership may suspend the determination of such amounts during any period when the New York Stock exchange is closed, during periods when trading on the New York Stock Exchange is restricted as determined by the Securities and Exchange Commission, during any emergency as determined by said Commission which makes it impracticable for the Partnership to dispose of its securities or value its assets, or during any other period determined by the General Partner to be necessary or advisable for the protection of the Partnership.

## ARTICLE VIII

### ALLOCATIONS AND DISTRIBUTIONS

#### Section 8.01 Allocation of Net Profits and Net Losses

(a) Net Profits and Net Losses shall be determined and allocated as of the close of business on the last business day at each Fiscal Period to and among the Partners in proportion to their respective Partnership Percentages, determined by dividing the amount of each Partner's Capital Account as of the beginning of such Fiscal Period. The sum of all of the Partner's Partnership Percentages on any date shall equal 100%. Any allocations made pursuant to this Section 8.01(a) shall be subject to re-allocation pursuant to Section 8.01(b).

(b) If in any fiscal year the Net Profits of the Partnership exceed the Net Losses, this excess which shall be identified as Net Distributable Profits (NDP), shall be allocated and distributed as follows: (i) an amount equal to 90% of the NDP shall be allocated to the Capital Accounts of the Limited Partners and (ii) the remaining 10% of the NDP shall be allocated to the Capital Account of the General Partner. If a Limited Partner shall be eligible to withdraw any of his or her Capital Account at the end of a given month during a fiscal year, and exercises such right, 10% of the NDP allocated to that account shall be paid to the General Partner's Capital Account at the time of the distribution.

(c) For each fiscal year, items of Partnership income, deduction, gain, loss or credit that are recognized for tax purposes shall be allocated pursuant to Treasury Department Regulation 1.704-1(b) in such manner as to equitably reflect amounts credited to or debited from each Partner's Capital Account for the current and prior Fiscal Periods. Such allocations shall be made in accordance with the principals of Section 704(c) of the Code and in conformity with the provisions of Treasury Department Regulations 1.704-1(b)(2)(iv)(f)(1) through (5) and 1.704-1(b)(4)(i) or any successor provisions, such that realized gains and losses of the Partnership with respect to particular securities are allocated to those who were Partner in the periods during which such gains and losses accrued in proportion to their holdings during such period, subject to any "ceiling rule" which may be described in such regulations.

(d) Notwithstanding anything in Section 8.01(c) to the contrary, in the event that a Partner retires from the Partnership, the General Partner may, in its sole discretion, specially allocate items of Partnership gain to that Partner for tax purposes to reduce the amount, if any, by which that Partner's Liquidating Share, as defined in Section 9.01, exceeds that Partner's aggregate tax basis for his or her Units.

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(e) Notwithstanding anything in Section 8.01(c) or (d), to the contrary, in the event any Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Department Regulations 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), items of Partnership income (including gross income) and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate the deficit balance in his Capital Account (in excess of (i) the amount he is obligated to restore upon liquidation in the Partnership and (ii) his share of the Minimum Gain (as defined in Treasury Department Regulations 1.704-1(b)(4)(iv)(c)) created by such adjustments, allocations of income and gain pursuant to this Section 8.01(e) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article VIII shall, to the extent possible, equal the net amount that would have been allocated to each such Partner pursuant to the provisions of this; Article VIII if such allocations had not been made.

### **Section 8.02 Distributions**

(a) The General Partner, in its sole discretion may make distributions to the Partner from time to time. No Partner shall be entitled to receive distributions from the Partnership except as provided in Section 8.02(b)

(b) Notwithstanding anything in this Agreement to the contrary, upon dissolution and termination and winding up of the Partnership, any Net Profits and Net Losses, and any items of Partnership income, deduction, gain, loss or credit that are recognized for tax purposes, shall be allocated as provided in Section 8.01 and any cash or other property shall thereafter be applied and distributed in the following order of priority:

- (i) to the payment of debts and liabilities of the Partnership then due (or required by any lender or creditor to be repaid on account of the dissolution and termination) including any fees and expenses;
- (ii) to fund reserves for contingent liabilities to the extent deemed reasonable by the General Partner, provided, that at the expiration of such period of time as the General Partner shall deem advisable, the balance of such reserves remaining after payment or other satisfaction of such contingencies shall be distributed in the manner hereinafter set forth in this Section 8.02(b); and
- (iii) to the Partners on proportion to their closing positive Capital Account balances on the date of termination after giving effect to liquidating expenses and prior distributions.

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## ARTICLE IX

### PAYMENTS TO AND BY A PERSON WHO HAS CEASED TO BE A PARTNER

#### Section 9.01 Payments on Retirement of any Partner

Within 10 days after the final preparation of the Partnership's audited financial statements for the fiscal year in which a Partner was retired in accordance with the terms of this Agreement, there shall be paid or distributed to such Partner or to the legal representative of such Partner, an amount in cash or, as determined by the General Partner, securities selected by the General Partner, equal in value to the amount of the Liquidating Share (as hereinafter defined) of such Partner. The term "Liquidating Share," when used with respect to any retiring Partner, shall mean the Capital Account of such Partner as of the date question after giving effect to all adjustments thereto.

## Article X

### MISCELLANEOUS PROVISIONS

#### Section 10.01 Maintaining Books of Account

Proper and complete books of account shall be kept at all times and shall be open to inspection by any Partner or his or her accredited representative upon reasonable times during office hours.

#### Section 10.02 Audit of Books

The books of account and records of the Partnership shall be audited as of the end of each fiscal year by independent certified public accountants designated from time to time by the General Partner, and such audit reports shall be furnished to each of the Limited Partners promptly after their reception by the General Partner.

#### Section 10.03 Binding Effect of Agreement

This Agreement in its entirety shall be binding on the successors, assigns, heirs. Administrators and the personal representatives of each of the Partners.

#### Section 10.04 Appointment of Attorney-in-Fact

Without limiting the effect of provisions elsewhere in this Agreement, each Limited Partner (including and additional Limited Partners) hereby severally irrevocably constitutes and empowers the General Partner as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in his name, place and stead, to carry out the intention and purpose of the Limited Partnership Agreement, including without limitation, authority to make, execute, sign, acknowledge, swear to, record, publish, file and deliver the Limited Partnership Agreement, all amendments to the Limited Partnership Agreement and any Exhibits thereto effected in accordance with the Agreement and Certificate of Limited Partnership of the Partnership effected in accordance with the laws of the State of Florida, and all business certificates and other certificates and documents and amendments thereto required to be acted on from time to time in accordance with applicable laws and in conduct of the business of the Partnership. Any person dealing with the Partnership may presume conclusively and rely upon the fact that any instrument referred to above is authorized, regular and binding, without further inquiry.

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The foregoing appointment shall be deemed to be a power coupled with an interest in recognition of the fact that each of the Partner will be relying on the power of the General Partner to act as contemplated by this Agreement in such filing and such other action by it on behalf of the Partnership. The foregoing power of attorney shall be irrevocable and shall survive the incapacity, bankruptcy, insolvency, dissolution or termination of a Limited Partner.

#### **Section 10.05 Tax Elections: Tax Matters Partner**

The General Partner, at its option, may cause the Partnership to elect, pursuant to Code Section 154, to adjust the basis of the Partnership property in the case of a distribution of Partnership property or a transfer of an interest in the Partnership. The General Partner shall constitute the Tax Matters Partner for the Partnership.

#### **Section 10.06 Counterparts**

This Agreement may be executed in several counterparts, and all so executed, shall constitute one Agreement, binding on all parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

#### **Section 10.07 Severability**

The validity or unenforceability of any provision of this Agreement in a particular respect shall not affect the validity or unenforceability of any other provision of this Agreement or the same provision in any other respect.

#### **Section 10.08 Amendment of Agreement**

This Agreement may be amended by the General Partner in any manner that does not adversely affect any Limited Partner. This Agreement may also be amended by action taken by both (a) the General Partners and (b) the Limited Partners owning 75% or more of the outstanding Units of the Partnership at the time of the amendment, provided that such amendment does not discriminate among the Limited Partners. This Agreement may be amended in any manner not inconsistent with applicable law by unanimous vote of the Partner.

#### **Section 10.09 Pronouns and Plurals**

All pronouns and any variations thereof, shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identify of the person or persons may require.

#### **Section 10.10 Titles and Captions**

All captions are for convenience only. They do not form a substantive part of this Agreement, and shall not restrict or enlarge any substantive provisions of this Agreement.

#### **Section 10.11 Entire Agreement**

This Agreement contains the entire understanding between and among the parties hereto and supersedes, any prior understanding and agreements between or among them respecting the subject matters of this Agreement.

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**Section 10.12 Governing Law**

This Agreement and the rights of the parties thereunder shall be interpreted in accordance with the laws of the State of Florida and in particular the Florida Revised Uniform Limited Partnership Act (1986).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year above first written.

PERADON Capital Fund Management, LLC

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

Frank Perri

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