

A 9900000 2168

LEDYARD H. DEWEES, P.A.

270 N.W. 3RD COURT

BOCA RATON, FLORIDA 33432-3720

TELEPHONE (561) 368-1427

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February 4, 2000

Florida Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314

Re: M.A.C. Capital Partners, Ltd.  
Document Number A99000002168

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-02/08/00--01002--002  
\*\*\*\*113.00 \*\*\*\*112.50

Dear Sir/Madam:

I am enclosing for filing and return an original executed Amended and Restated Agreement and Certificate of Limited Partnership of M.A.C. Capital Partners, Ltd.

I am also enclosing a check in the amount of \$ 113.00 for the following items:

Filing Fee .....	\$52.50
Certified Copy .....	60.50
	<u>\$113.00</u>

Please return the certified copy to this address.

Thank you for handling.

Very truly yours,

*Ledyard H. DeWees*

Ledyard H. DeWees

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**AMENDED AND RESTATED  
AGREEMENT AND CERTIFICATE  
OF  
LIMITED PARTNERSHIP  
OF  
M.A.C. CAPITAL PARTNERS, LTD.**

THIS AMENDED AND RESTATED AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP made and entered into at 1499 West Palmetto Park Road, Suite 170, Boca Raton, Florida 33486 as of January 25, 2000, by and between M.A.C. CAPITAL ADVISERS, INC. a Florida corporation, as General Partner, Mark A. Cohen, an individual as 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 has formed M.A.C. Capital Partners Ltd. as a Limited Partnership organized pursuant to the Florida Revised Uniform Limited Partnership Act (1986) of the State of Florida (hereinafter sometimes called the "UPLA") for the purpose of investing, reinvesting and trading in securities as that term is defined in the Securities Act of 1933, as amended (the "Act"), and rights relating thereto, by the execution of a Certificate of Limited Partnership, executed by M.A.C. Capital Advisers Incorporated, as General Partner, which such Certificate was filed with the Department of State, State of Florida, on December 21, 1999 and assigned document number A99000002168; and

**WHEREAS**, the General Partner desires to make certain changes and amendments to the said Certificate of Limited Partnership, which are restated and integrated in this Amended and Restated Agreement and Certificate of Limited Partnership as of January 25, 2000, which has been duly executed and is being filed with the Florida Department of State in accordance with Florida Statute §620.109; and

**WHEREAS**, the Limited Partners are willing to make capital contributions to meet partnership objectives:

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

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## 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: M.A.C. CAPITAL PARTNERS, LTD.

#### **Section 1.02 Purpose**

The primary purpose of the Partnership is to invest, reinvest, and trade in securities and rights relating thereto, excepting commodities, as that term is defined in the Securities Act of 1933, 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>
M.A.C. Capital Advisers, Incorporated	1499 W. Palmetto Park Road Suite 170 Boca Raton, Florida 33486

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

<u>Name</u>	<u>Address</u>
Mark A. Cohen	1499 W. Palmetto Park Road Suite 170 Boca Raton, Florida 33486

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

The principal place of business and mailing address of the Partnership shall be located at 1499 West Palmetto Park Road, Suite 170, Boca Raton, Florida 33486 or such other place as the General Partner may from time to time determine upon prior 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>
Mark A. Cohen	1499 W. Palmetto Park Road Suite 170 Boca Raton, Florida 33486

(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.

  
MARK A. COHEN

**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 contribution, 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 Partner's 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, gown. A new fiscal period ("Fiscal Period") for a Limited Partner shall commence on the first day of each fiscal year, on the date of any capital contribution to the Partnership and on each date next following the date of any withdrawal of capital or retirement from the Partnership, and the prior Fiscal period shall terminate on the date immediately preceding such date of commencement of a new Fiscal Period.

### **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;

(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 purposes or would result in the Partnership's having to register as an investment company under the Investment Company 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 governmental 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.

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## **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 \$25,000 provided, however, that a minimum of one (1) Unit 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 the Net Asset Value of the Partnership as defined in Section 7.02 herein. The General Partner reserves the right to issue fractional Units. There is no limit to the number of Units which may be offered, however, the General Partner reserves the right to terminate the offering at any time.

#### **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 the 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 amounts 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 purposes 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.

### **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

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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 adviser or manager pursuant to Section 4.02(f) below) or any partner or affiliate thereof may act as an investment adviser 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 the same 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 power on behalf of the Partnership:

- (a) To purchase, hold and sell securities of any sort, excepting commodities, and any rights therein, to vote proxies and exercise all rights, on behalf of the partnership, with respect to securities owned by the Partnership;
- (b) To open, conduct and close accounts with brokers and dealers and to pay the commissions, fees and other charges applicable to transactions with respect to such accounts;
- (c) To purchase securities from, and sell securities to, dealers acting for their own accounts;
- (d) To open, maintain and close bank accounts and to draw checks or other orders for the payment of money;



(e) To enter into, make and perform any other contracts, agreements or other undertakings it may deem advisable in conducting the business of the Partnership, including but not limited to contracts, agreements or other undertakings with persons, firms or corporations with which the General Partner or any other Partner is affiliated;

(f) To retain one or more persons or entities as investment adviser(s) or manager(s), including the General 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 adviser(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 one percent (1%) annually of the assets held under such an agreement.

(g) To act for the Partnership in all other matters; and

(h) 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 on the General Partners**

The General Partner shall not on behalf of the partnership:

(a) Invest in real estate, except for securities secured by real estate or interests therein; or

(b) Purchase the securities of any registered investment company, except to the extent permissible under the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder; or

(c) Invest in commodities in any form whatsoever.

#### **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 the 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 indemnitee, or (2) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee or (3) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee.

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 of the Partnership; and (3) the General Partner decides that legal services are required for any purpose it deems necessary or desirable on behalf of the Partnership.

#### **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 charge to the Partnership, expenses classified as organizational or syndication expenses, which such expenses shall include the costs incurred in connection with the offer and sale of limited partnership Units of interest in the Partnership and legal, accounting, printing, and related costs for the preparation of the initial Confidential Private Offering Memorandum and the documentation contained therein.

#### **Section 4.09 Overhead Expenses**

The General Partner shall not charge to the Partnership, or be reimbursed for, expenses classified as "overhead expenses." Overhead expenses shall consist of office rent, supplies, secretarial services, telephone equipment and monthly expense, printing and stationery, publications and subscriptions, service contracts for quotation equipment and news wires, employee payroll and taxes, and other reasonable expenses. Except as limited

herein, it shall be within the sole discretion of the General Partner to determine expenses that are to be classified as overhead expenses. All expenses classified as overhead expenses shall be paid by the General Partner.

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

Investment expenses shall be paid by the Partnership and shall, without limitation thereto, include sales commissions, interest on margin accounts and other indebtedness relating to securities, custodial fees if applicable, bank service charges, and any other reasonable expenses related to the purchase, sale, trade, or transmittal of Partnership assets and shall be determined by the General Partner in its sole discretion.

#### **Section 4.10 Management Fee to General Partner**

The General Partner shall be paid an annual management fee of One Percent (1%) of the fair market value of the assets of the Partnership as shall be determined and paid at the end of each calendar quarter. This fee shall be paid without regard to the allocation of net profits and losses as determined herein.

### **ARTICLE V**

#### **WITHDRAWALS FROM CAPITAL ACCOUNTS AND RETIREMENTS**

##### **Section 5.01 Withdrawal Rights**

A Limited Partner shall have the right, on the first anniversary of his contribution, and thereafter, at the end of a calendar year, to withdraw from his or her capital Account (as hereinafter defined), upon 30 day written notice delivered to the General Partner all or any portion of his or her Capital account. Withdrawals of fractional Units shall not be permitted unless the withdrawal is a complete termination of that Partner's interest. This right of withdrawal by a Limited Partner shall be a continuing right, applied at the end of a given calendar year with proper notice, during the existence of the Partnership.

##### **Section 5.02 Withdrawals From General Partner's Capital Account**

The General Partner may make one or more withdrawals from its Capital Account within its discretion commencing with the first anniversary of this Partnership and continuing thereafter during the existence of the Partnership.

##### **Section 5.03 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 30 days 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 effective on the date specified in such notice. A Limited Partner who is required 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 5.04 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.

**ARTICLE VI**

**TERM AND DISSOLUTION OF THE PARTNERSHIP**

**Section 6.01 Term of Partnership**

The partnership shall continue in full force and effect until December 31, 2010 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 the 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.

## **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 contribution 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 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 York 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 Securities 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 preceding, 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.

(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

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dividing the amount of each Partner's Capital Account as of the beginning of the Fiscal Period by the sum of the Capital Accounts of all of the Partners as of the beginning of such Fiscal Period. The sum of all of the Partners' 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 calendar 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 80% of the NDP shall be allocated and credited to the Capital Accounts of the Limited Partners, and (ii) the remaining 20% of the NDP shall be allocated and Credited to the Capital Account of the General Partner. If any fiscal year where NDP are realized and follow one or more years where Net Losses exceeded Net Profits, all such profits shall first be allocated and credited to the Capital Accounts of the Limited Partners until prior annual losses are made up in the Capital Accounts of the Limited Partners. Any Net Distributable Profits remaining after restitution to the Capital Accounts of the Limited Partners, shall then be allocated 80% to the Capital Accounts of the Limited Partners and 20% to the Capital Account of the General Partner in the manner as specified in this Section 8.01(b).

(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 principles 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 Partners 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.

(f) Notwithstanding anything in Section 7.01(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, so that the net amount of any items so allocated and the income, gain, loss, deduction and all other items allocated to each Partner 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 special allocations had not been made.

## **Section 8.02 Distributions**

(a) The General Partner, in its sole discretion may make distributions to the Partners 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 in proportion to their closing positive Capital Account balances on the date of termination after giving effect to liquidating expenses and prior distributions.

## **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

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Partner, securities selected by the General Partner, or in cash and 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 in 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 notice and at reasonable times during of 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 any 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.

The foregoing appointment shall be deemed to be a power coupled with an interest in recognition of the fact that each of the Partners 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 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 of 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 66-2/3% 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 Partners.

#### **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 identity 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 10.13 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.

**Section 10.12 Governing Law**

This Agreement and the rights of the parties hereunder 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.

M.A.C. CAPITAL ADVISERS INCORPORATED

By: Mark A. Cohen  
Mark A. Cohen  
President

Mark A. Cohen  
Mark A. Cohen  
Initial Limited Partner

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TALLAHASSEE, FLORIDA

**EXHIBIT I**

**SUBSCRIPTION AGREEMENT**

To: M.A.C. Capital Partners, Ltd.  
1499 W. Palmetto Park Road  
Suite 170  
Boca Raton, FL 33486

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SECURITIES  
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Gentlemen;

The undersigned hereby tenders this Subscription Agreement and applies to become a Limited Partner in M.A.C. Capital Partners, Ltd., a Florida limited partnership (the "Partnership"), and subscribes for the purchase of a sufficient number of complete Units of Interest at a price sufficient to equal at least Twenty-Five Thousand Dollars (\$25,000), or at a price sufficient to purchase one or more complete Units of Interest if the undersigned has previously been admitted as a Limited Partner, and encloses or attaches a check or other acceptable payment payable to the partnership.

The undersigned acknowledges receipt of a numbered copy of the confidential Private Offering Memorandum as herein indicated, and hereby specifically accepts and adopts each and every provision of the Agreement and Certificate of Limited Partnership of M.A.C. Capital Partners, Ltd., as contained within said Memorandum and agrees to be bound thereby in all respects.

It is agreed and understood that all references in this Subscription Agreement to the undersigned shall include, as may be applicable, an authorized representative of the undersigned, in whatever form that representation may appear.

The undersigned represent, warrant, acknowledge and agree that (initial each applicable item):

\_\_\_\_\_ He or she is a natural person who fulfills the definition of an "accredited investor" as set forth in Reg. 5230.501 (Rule 501) of Regulation D adopted pursuant to the Securities Act of 1933, as amended, (the "Act").

\_\_\_\_\_ He or she is a natural person who is not an accredited investor but who meets the requirements set forth in Reg. §230.506 (Rule 506) of Regulation D as adopted pursuant to the Securities Act.

\_\_\_\_\_ It is a benefit plan that fulfills the definition of an accredited investor as set forth in Reg. §230.501(a)(1) of Regulation D adopted pursuant to the Securities Act.

\_\_\_\_\_ It is a trust that fulfills the requirements of an accredited investor as set forth in Reg. 5230.501(a)(7) of Regulation a adopted pursuant to the Securities Act.

\_\_\_\_\_ It is an entity in which all of the equity owners are accredited investors.

\_\_\_\_\_ It is an insurance company.

\_\_\_\_\_ It is a 501(c)(3) organization as defined in Reg. 9230.501(a)(3) of Regulation D adopted pursuant to the Securities Act of 1933.

\_\_\_\_\_ It is a person, plan, trust, or business entity identified in an Addendum attached to this Subscription Agreement and acknowledged by the parties hereto.

The undersigned further warrants, represents, acknowledges, and agrees as follows:

(1) The undersigned understands that the limited partnership interest is being purchased without the furnishing of any offering literature of any type other than the said Memorandum, the documentation contained therein, and exhibits thereto.

(2) It is the intention at the General Partner that new Limited Partners shall be admitted to the partnership as of the first day of each calendar month. In any event the date of admission of a Limited Partner shall be within the discretion of the General Partner, and such admission date shall not necessarily correspond to the date that subscription payments are received by the Partnership. Anything to the contrary notwithstanding, the General Partner shall not hold subscription payments longer than 60 days without either admitting the payor as a Limited Partner or returning, without interest, the payment to the payor.

(3) The undersigned is entering into this Agreement relying solely on the facts and terms set forth in this Agreement and the Memorandum and Exhibits thereto including the Partnership Agreement; the General Partner has not made any representations or warranties of any kind or nature to induce the undersigned to enter into this Agreement except as specifically set forth in such documents; the undersigned is not relying upon the General Partner for guidance with respect to tax or other law or economic considerations; and the undersigned has been afforded an opportunity to ask questions of, and receive answers from, the General Partner and/or persons authorized to act on

their behalf, concerning the terms and conditions of the purchase of the Partnership interests and has been afforded the opportunity to obtain any additional information (to the extent the General Partner had such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of Information otherwise furnished by the General Partner.

(4) If the undersigned is an organization, this purchase has been duly authorized by all necessary directors, officers or other necessary persons of the undersigned and will not violate any agreement to which the undersigned is a party; and each of this Agreement and the Partnership Agreement shall be valid and binding against the undersigned and enforceable in accordance with its terms.

(5) The undersigned person(s) hereby agree that any representation made hereunder will be deemed to be reaffirmed by the undersigned at any time the undersigned makes an additional capital contribution to the Partnership and the act of making such additional contribution will be evidence of such reaffirmation.

(6) The undersigned has not distributed the Memorandum to any person other than its Purchaser Representative(s), if any, and no person other than the undersigned and its Purchaser Representative(s), if any, has used the Memorandum, provided to the undersigned.

(7) The undersigned, if an individual, is a citizen of the United States of America, is at least 21 years of age, and has the legal capacity to execute, deliver and perform this Agreement.

(8) The undersigned acknowledges that this purchase of one or more limited partnership units of participation is for investment purposes and was not acquired with a view or intent to make a public or other distribution of such securities.

(9) The undersigned understands that securities acquired in this transaction under Rule 506 of Regulation D shall have the status of securities acquired in a transaction under Section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. This Subscription Agreement shall constitute the document evidencing the acquisition of the securities and this Paragraph (9) shall constitute a proper restrictive legend as to transferability and, sale of the acquired securities.

The undersigned hereby irrevocably constitutes, and empowers to act alone, the General Partner as its attorney-in-fact with authority to execute, acknowledge and swear to all instruments and file all documents requisite to carry out the intention and purpose of this Agreement including, without limitations, the partnership Agreement, and all business certificates and other certificates and amendments thereto to be executed and/or filed from time to time in accordance with applicable laws.

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

Further, by execution below, the undersigned authorizes the attachment of this Power of Attorney to any filings with the State of Florida.

IN WITNESS WHEREOF, the undersigned has executed this Subscription Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Amount of Subscription Payment and Units \_\_\_\_\_

Type of Ownership (Individual, not entity, subscribers should check one)

\_\_\_\_\_ Individual ownership

\_\_\_\_\_ Joint Tenants (with  
right of survivorship)  
(both parties must sign)

\_\_\_\_\_ Community Property State  
(Spouse's signature  
required)

\_\_\_\_\_ Tenants-in-common  
surviving tenant has  
no rights of survivor-  
ship) (both parties  
must sign)

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IN FLORIDA  
COUNTY OF

\_\_\_\_\_  
**Subscriber**

\_\_\_\_\_  
**Joint Subscriber (If Any)**

\_\_\_\_\_  
**Name Typed or Printed**

\_\_\_\_\_  
**Name Typed or Printed**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title (if signing for entity)**

\_\_\_\_\_  
**Residence Address**

\_\_\_\_\_  
**Residence Address**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**Business Address (if any)**

\_\_\_\_\_  
**Business Address**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**Social Security Number**

\_\_\_\_\_  
**Social Security Number  
Identification Number**

Accepted:

M.A.C. Capital Partners, Ltd.

\_\_\_\_\_  
**Daytime Telephone Number**

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

Mark A. Cohen  
President of General Partner

\_\_\_\_\_  
**Contact Person Name  
(If other than Subscriber)**

\_\_\_\_\_  
**Memorandum Number**

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SOUTHERN DISTRICT OF  
FLORIDA  
TALLAHASSEE, FLORIDA