

#49206

CERTIFICATE  
OF  
LIMITED PARTNERSHIP  
OF  
4490 ASSOCIATES

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Pursuant to the provisions of Title 7, Chapter 13 of the General Laws of the State of Rhode Island, the undersigned, as general and limited partners of 4490 Associates, hereby certify the following and swear thereto:

- I. The name of the partnership;
- II. The character of the business of the partnership;
- III. The location of the principal place of business of the partnership;
- IV. The name and place of residency of each member with the general and limited partners being respectively designated;
- V. The term for which the partnership is to exist;
- VI. The amount of cash and a description and the agreed value of the other property contributed by each limited partner;
- VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;
- VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned;

IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his/its contribution;

X. The right, if given, of a limited partner to substitute an assignee as contributor in his/its place and the terms and conditions of such substitution;

XI. The right, if given, of the partners to admit additional limited partners;

XII. The right, if given, of one or more of the limited partners to priority over other limited partners as to contributions or as to compensation by way of income and the nature of such priority;

XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of the general partner; and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution;

are all as shown and described in the attached Limited Partnership Agreement of 4490 Associates.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 1<sup>st</sup> day of November, 1983.

General Partner

DeFelice Properties, Inc.

By: Ralph J. Kenna

Its: President

Limited Partners

William L. Henry  
William Henry

Agnes A. Henry  
Agnes Henry

STATE OF RHODE ISLAND

COUNTY OF Kent

In the City of Warwick, in said county, this 1<sup>st</sup> day of November, 1983, then personally appeared before me William Henry and Agnes Henry, known to me and known by me to be the parties executing the foregoing instrument, and they acknowledged said instrument by them subscribed to be their free act and deed.

M. Ernestine Monson

Notary Public

STATE OF RHODE ISLAND

COUNTY OF Kent

In the City of Warwick, in said county, this 1<sup>st</sup> day of November 1983, then personally appeared before me Raymond J. Proulx in his capacity as President of DeFelice Properties,

Inc., who is known to me and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument by him subscribed to be his free act and deed and the free act and deed of DeFelice Properties, Inc.



Notary Public

Limited Partnership Agreement of  
4490 ASSOCIATES

THIS AGREEMENT of Limited Partnership made as of the 1st day of November, 1983 by and between DeFelice Properties, Inc., William Henry and Agnes Henry.

WITNESSETH:

1. Formation. The parties hereto do hereby form a limited partnership pursuant to the provisions of Title 7, Chapter 13, of the Uniform Limited Partnership Act of the General Laws of Rhode Island, as amended (the "Act").

2. Name, Office and Address of Partners. The business of the partnership shall be conducted under the firm name of 4490 ASSOCIATES (the "Partnership"). The principal office of the Partnership shall be at 3960 Post Road, Warwick, Rhode Island 02886, but the General Partner may at any time change the location of such principal office to another Rhode Island location by giving due notice of such change to all the Partners.

3. Term. The Partnership shall commence on the date of the filing for record of the Certificate of Limited Partnership of the partnership in the office of the Secretary of State of Rhode Island, and shall continue until December 31, 1993, unless sooner terminated as hereinafter provided. Said Certificate of Limited Partnership shall be executed and acknowledged by each Partner. The General Partner shall also file and publish a fictitious business name statement for the Partnership wherever required by law.

4. Purpose. The purpose of the Partnership shall be to acquire, by capital contribution and/or by purchase, certain real property situated on the easterly side of Post Road in the City of Warwick, County of Kent, State of Rhode Island and to develop, construct, sell, lease and manage on said real property a condominium development to be known as The Moorings (the "Project").

5. Authorized Acts. In furtherance of its purposes, but subject to all other provisions of this Agreement, the partnership is authorized to:

5.1 Execute, acknowledge and deliver a Promissory Note(s), a Mortgage Deed(s), construction loan agreement, security agreement and such other documents as may be necessary to obtain financing for the development of the Project;

5.2 Execute, acknowledge and deliver Deeds conveying the condominium units and the accompanying percentage of common interest;

5.3 Enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with or incidental to, the accomplishment of the purposes of the Partnership, so long as said activities and contracts may be lawfully carried on or performed by a partnership under the laws of the State of Rhode Island; and

5.4 Execute, acknowledge and deliver such documents as are necessary and required to comply with the provisions of Rhode Island General Laws, Title 34, Chapter 36, entitled the "Condominium Ownership Act".

6. Partners; Capital Contributions; Ownership Percentage.

The Partners and the initial contribution of each General Partner and of each Limited Partner to the Partnership capital and the respective ownership percentage participation of each Partner in Partnership profits and losses are as follows:

<u>Name</u>	<u>Contribution</u>		<u>Ownership</u>	
	<u>Cash</u>	<u>Other</u>	<u>Value</u>	<u>Interest</u>
<u>General Partner</u>				
DeFelice Properties, Inc.	\$200.00	Services	\$80,000	50%
<u>Limited Partners</u>				
William Henry	\$100.00	Land	\$40,000	25%
Agnes Henry	\$100.00	Land	\$40,000	25%

No Limited Partner shall be liable for Partnership obligations in excess of the capital contributed by said Limited Partner and no additional capital contributions may be made or required without the unanimous consent of the Partners.

The property to b3 acquired by the Partnership under the Purpose Section hereof is the land to be contributed by the Limited Partners.

The General Partner has agreed to provide the services of its employees without cost to the Partnership up to a value of \$80,000.00.

The Partner's addresses are shown on Schedule A.

7. Income, Losses and Cash Proceeds.

7.1 The net income of the Partnership including net proceeds to the Partnership resulting from the sale, mortgage,

refinancing, or condemnation of any property held by the Partnership, shall be divided among, and any net losses shall be borne by, each of the Partners in the respective proportions set forth in Section 6 hereof. The terms "net income" and "net losses" as used herein shall mean the income or losses of the Partnership from the operation of the Partnership after all operating expenses incurred in connection with the Partnership business and all interest on all Partnership mortgages and other indebtedness, including Advances from the General Partner, have been paid or provided for, but before making any allowance for amortization or depreciation of the cost of any property of the Partnership.

7.2 The amortization and depreciation of the cost of any property of the Partnership shall be divided among the Partners in the respective proportions set forth in Section 6 hereof.

8. Distribution of Available Net Income. As used in this Agreement, the term "available net income " for any year or portion of a year shall mean the excess, if any, of (a) the net income of the Partnership for such year or a portion of a year less (b) all amounts paid or accrued in such year or a portion of a year on account of the principal on mortgages, other indebtedness, including Advances from the General Partner, and operating expenses of the Partnership including the total cost of sales of units in the Project including sales commissions to an affiliate of the General Partner. The available net income of the Partnership for each fiscal year shall be distributed to the Partners within a reasonable time after the end of such year



or a portion or a year or more frequently if available and approved by all Partners. All distributions of available net income shall be made in the respective proportions set forth in Section 6 hereof.

9. Losses of Limited Partners. Notwithstanding anything to the contrary herein contained, the liability of the Limited Partners for payment of any losses of the Partnership shall in no event exceed their respective contributions to the capital of the Partnership. For purposes of Partnership accounting, however, all Partnership losses shall be charged against the capital accounts of the Partners in the respective proportions set forth in Section 6 hereof, and should a negative balance appear in the capital account of a Limited Partner, such negative balance shall be offset by any future net income of the Partnership allocable to said Limited Partner. Distributions made by the Partnership shall be considered a return of capital contributions until each Partner's capital account is reduced to zero.

10. Advances. If the Partner shall advance any monies to the Partnership in excess of its agreed capital contribution to the Partnership expressly provided for herein, the amount of any such advance shall not be an increase of its capital contribution or entitle it to any increase in its share of the distributions of the Partnership, nor subject him to any greater proportion of any losses which the Partnership may sustain, but the amount of any such advance shall be a debt due from the Partnership to such Partner and, unless otherwise provided and

agreed, shall be repaid to him with interest at Fleet National Bank prime rate as soon as practicable. The General Partner has paid, or will pay, certain expenses, fees and costs to obtain zoning, architectural drawings, legal services and other required services to produce the Project. These items shall be considered Advances.

11. Books and Records; Method of Accounting and Tax Elections.

11.1 At all times during the continuance of the Partnership, the General Partner shall keep or cause to be kept full and true books of account, in which shall be entered fully and accurately each transaction of the Partnership.

11.2 All of said books of account shall at all times be maintained at the principal office of the Partnership and shall be open to the inspection and examination of any Partner or its representatives during reasonable business hours. The fiscal year of the partnership shall be the calendar year and the cash system of accounting shall be used.

11.3 Annual statements showing the Partnership profits and losses for the fiscal year and indicating the share of the profit or loss of each Partner for income tax purposes shall be prepared by the accountants of the Partnership and distributed within a reasonable time after the close of each fiscal year.

11.4 The General Partner shall have no authority to change the partnership's method of accounting and/or tax elections without the written consent of all Partners.

12. Bank Accounts. All funds of the Partnership are to be deposited in the Partnership name in such bank account or accounts as shall be designated by the General Partner. Withdrawals from any such bank account or accounts shall be made only in the regular course of the Partnership business as herein provided and shall be made upon such signature or signatures as the General Partner may designate.

13. Management and Powers.

13.1 The management and control of the Partnership business shall be exercised, and all decisions to be made by the Partnership shall in all cases be made, by the General Partner.

13.2 All documents of any nature required to be signed on behalf of the Partnership shall be signed by the General Partners.

13.3 The General Partner shall not have the authority without the written consent of the other Partners to: (i) do any act in contravention of this Agreement; (ii) do any act which would make it impossible to carry on the ordinary business of the Partnership; (iii) confess a judgment against the Partnership; (iv) possess Partnership property for other than a Partnership purpose; or (v) admit any additional person as a Partner.

14. Rights and Duties of Partners.

14.1 The General Partner shall devote to the Partnership such of its time or its employees time and shall render such services as may be required for the efficient conduct of the business of the Partnership.

14.2 It is expressly understood that the General Partners and the Limited Partners may engage in any other business or investment, including the ownership of or investment in real estate and the operation and management of real estate, and neither the Partnership nor any of the Partners hereof shall have any rights in and to said businesses investments, or the income or profits derived therefrom.

14.3 The General Partner may employ, on behalf of the Partnership, such persons, firms or corporations (including Partners or persons, firms or corporations owned and/or controlled by Partners) as it, in it's sole judgment, shall deem advisable in the operation and management of the business of the Partnership.

14.4 The General Partner shall not be liable, responsible or accountable in damages or otherwise to any of the Partners for any acts performed by it within the scope of the authority conferred on the General Partner by this Agreement or for its failure or refusal to perform any acts except those expressly required by the terms of this Agreement

14.5 Except as otherwise expressly provided in this Agreement, no Partner shall have the right to demand the return of its contribution to the capital of the Partnership or any part thereof, until the Partnership has been dissolved and terminated, and no Partner shall have the right to demand or receive property other than cash in return for his contribution.

15. Death, Bankruptcy or Incapacity of a General Partner.

15.1 In the event of the death, bankruptcy, incapacity or dissolution of a General Partner, the business of the Partnership shall be continued by the remaining General Partners. If no General Partner remains, a substitute General Partner may be selected by the Limited Partners to replace the General Partner. In the event that a substitute General Partner is not obtained, the Partnership shall be dissolved on the 90th day after the occurrence of such event.

15.2 Notwithstanding the last sentence of Section 15.1 hereof, the business of the Partnership may be continued on the terms and conditions of this Agreement after the death, bankruptcy, incapacity or dissolution of the sole remaining General Partner, if within 90 days after the date of such death, bankruptcy, incapacity or dissolution, all of the Limited Partners shall elect to continue the business of the Partnership and may select from among the Limited Partners (with consent of the Limited Partner so selected) one Limited Partner as a substitute General Partner of the Partnership.

15.3 If the business of the Partnership shall be continued after the death, bankruptcy, incapacity or dissolution of the sole remaining General Partner, the status of the interest of such General Partner shall be changed to that of a limited partner, subject to all of the terms and conditions of this Agreement, provided that the liability of such General Partner for liabilities incurred subsequent to said change of status, shall be limited to an amount equal to the share of such General Partner in the total net assets of the Partnership at the date

that the interest of such General Partner became a limited partner interest hereunder.

16. Transferability of General Partner and Limited Partnership Interests.

16.1 No General Partner shall retire or withdrawn from the Partnership or transfer, sell, alienate, assign, encumber or otherwise dispose of all or any part of his interest in the Partnership, whether voluntary, involuntary or by operation of law, or at judicial sale or otherwise, or admit additional or successor General Partners without first obtaining the written consent of all the Partners. A Limited Partner may sell or assign his limited partnership interest or portion thereof only as permitted by this Section 16.

16.2 A Limited Partner shall not have the right to substitute an assignee or transferee as a limited partner in his place. The General Partner shall, however, have the right to permit such assignee or transferee to become a Substitute Limited Partner and any such permission by the General Partner shall be binding and conclusive without the consent or approval of the other Limited Partners. Any such approved assignee or transferee shall, as a condition of becoming a Substitute Limited Partner, agree to be bound by the provisions of this Agreement, and shall also agree to accept such other terms and conditions as the General Partners in their sole discretion may require. Each Substitute Limited Partner shall execute such instruments as shall be required by the General Partner to

signify his agreement to be bound by all provisions of this Agreement as last amended.

16.3 Each of the General Partners individually is hereby constituted the attorney-in-fact of the Limited Partners to execute, acknowledge and deliver such instruments as may be necessary or appropriate to carry out the provisions of this Section 16, including amendments to the Certificate of Limited Partnership of the Partnership required by statute, business certificates and the like.

16.4 An assignee of the interest of a Limited Partner who does not become a Substitute Limited Partner as provided above and who desires to make a further assignment of his interest shall be subject to all the provisions of this Section 16 to the same extent and in the same manner as a Limited Partner desiring to make an assignment of his interest.

17. Termination of Partnership. The Partnership shall terminate at the earlier of: (a) expiration of the term hereof, (b) as set forth in Section 15 hereof, (c) upon the sale of all of the condominiums units of The Moorings owned by the Partnership, or (d) upon the unanimous consent of the Partners.

18. Gain, Loss and Distribution Upon Dissolution. Upon any dissolution or termination of the Partnership: The General Partner shall prepare or cause to be prepared a statement setting forth the assets and liabilities of the Partnership as of the date of dissolution, and such statement shall be furnished to all the Partners. The liabilities shall be paid and

the remaining assets distributed to the Partners, without priority, in the respective proportions set forth in Section 6.

19. Further Assurances. Each party to this Agreement agrees to execute, acknowledge, deliver, file, record and publish such further certificates, amendments of certificates, instruments and documents, and to do all such further acts and things, as may be required by law, or as may, in the opinion of the General Partner, be necessary or advisable to carry out the intents and purposes of this Agreement.

20. Notices. Unless otherwise specified in this Agreement, all notices, demands, requests or other communications which any of the Partners may desire or be required to give hereunder shall be in writing and shall be given by mailing the same by registered or certified mail, return receipt requested, postage prepaid, to the Partners at the addresses herein set forth and to the Partnership at its principal office. Notices given in compliance with the provisions of this Section 20 shall be deemed given when placed in the mails.

21. Applicable Law. This Agreement is made in the State of Rhode Island pursuant to the provisions of the Act and shall be construed accordingly.

22. Captions. All Section titles or captions contained in this Agreement and the table of contents, if any, are for convenience only and shall not be deemed a part of this Agreement.

23. Variations of Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine,



feminine or neuter, singular or plural, as the identify of the person or persons or entity or entities may require.

24. Terms. The term "person" shall include individuals, firms, corporations, trustees, fiduciaries, and all other entities.

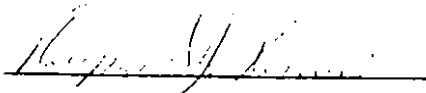
25. Successors and Assigns. This Agreement shall be binding upon the parties hereto, their respective heirs, personal representatives and assigns and shall inure to the benefit of the parties hereto, and except as otherwise provided herein, their respective heirs, personal representatives and assigns.

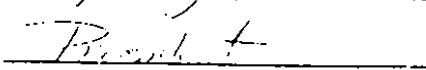
26. Amendments. This Agreement and the Certificate of Limited Partnership may be amended at any time only by the unanimous written consent of all Partners.

IN WITNESS WHEREOF, the parties hereto have set their hands effective as of the day and year first above written.

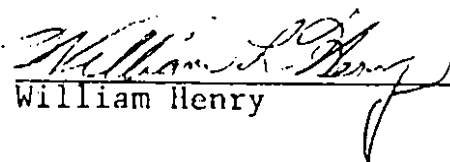
General Partner

DeFelice Properties, Inc.

By: 

Its: 

Limited Partners

  
William Henry

  
Agnes Henry

SCHEDULE A

DeFelice Properties, Inc.  
3960 Post Road  
Warwick, Rhode Island

William & Agnes Henry  
4490 Post Road  
Warwick, Rhode Island

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