

55-608

CERTIFICATE AND AGREEMENT OF LIMITED PARTNERSHIP

THIS CERTIFICATE and AGREEMENT OF LIMITED PARTNERSHIP (this "Certificate and Agreement") dated as of November 6, 1989 by and between HAR-LEE DEVELOPMENT COMPANY OF RHODE ISLAND, INC., 60 McGarvey Road, Stoughton, Massachusetts 02702, as general partner, and STUART NEEDLEMAN, 33 Flanagan Drive, Framingham, Massachusetts 01701, as limited partner, SUSAN NEEDLEMAN, 33 Flanagan Drive, Framingham, Massachusetts 01701, as limited partner and G. MICHAEL BERKOWITZ, Trustee of the GORDON MICHAEL BERKOWITZ REVOCABLE TRUST, 60 McGarvey Road, Stoughton, Massachusetts 02702, as limited partner.

PRELIMINARY STATEMENT

The parties hereto desire to enter into this Agreement in order to form a limited partnership under the laws of the State of Rhode Island. In consideration of the agreements contained herein, intending to be legally bound hereby, the parties hereto agree as follows:

Section 1. Formation. The parties hereby form a limited partnership (the "Partnership") under the Rhode Island Uniform Limited Partnership Act (the "Uniform Act") on the terms and conditions set forth herein. The general partners shall promptly file this Certificate and Agreement with the State of Rhode Island in order to form the Partnership as a limited partnership under the Uniform Act on the terms and conditions herein set forth.

Section 2. Name and Term. The name of the limited partnership is TIFFANY PLAZA LIMITED PARTNERSHIP. The Partnership's term shall commence on the date of the filing of this Certificate with the office of the Secretary of State of the State of Rhode Island. The Partnership's term shall end on December 21, 2019, unless sooner terminated pursuant to Section 10 hereof.

Section 3. Purposes and Powers. The purposes and powers of the Partnership and the general character of its business are to acquire, own, lease, finance, invest in, improve, construct, hold, encumber, sell, manage, develop, operate and otherwise deal with the real property located at 607-611 Smithfield Avenue, Pawtucket, Rhode Island (overlapping into Lincoln, Rhode Island) (and any personal property related thereto).

Section 4. Office. The address of the principal office of the Partnership is: 60 McGarvey Road, Stoughton, Massachusetts 02702, or such other office as is designated by the general partner by notice to the limited partners. Until otherwise determined, the name and address of the agent for service of process is: Ronald C. Markoff, Esq., c/o Markoff and Boriskin, 55 Pine Street, Providence, Rhode Island 02903, (401) 272-9330.

Section 5. Partners. The name and business address of each partner of the Partnership, general and limited partners being separately specified, are as set forth in Schedule A hereto.

Section 6. Capital Contributions. The amount of cash securities, financing, debt, obligations, services rendered, personal liability and any other property or value contributed to the Partnership by each partner is equal to the amounts specified in Schedule A hereto.

Section 7. Additional Contributions; Loans. No general or limited partner has agreed to make additional capital contributions to the Partnership. Unless otherwise agreed by all partners, any advance made by any partner shall be considered a loan which shall bear interest at the rate of eleven and one-half percent (11.50%) per annum. A contribution by a limited partner may be considered a capital contribution only if agreed to by all partners and such contribution is matched by the other partners, each contributing their proportionate share consistent with the percentages set forth in Schedule A attached hereto and made a part hereof.

Section 8. Distributions of Cash and Allocations of Profits and Losses.

(a) Each partner shall share in the distributions of cash and allocations of profit and loss of the Partnership in accordance with the percentage set forth opposite such partner's name in Schedule A hereto.

(b) The general partner may make distributions at least annually of available cash (if any) after payment of currently due debts and liabilities of the Partnership and establishment of reserves for contingencies and business operations deemed necessary or appropriate by the general partner. Any such distributions by the general partner shall require the written consent of all the partners.

(c) An individual capital account shall be maintained for each partner in accordance with generally accepted accounting principles then being followed by the Partnership. Without limitation of the foregoing, each such capital account shall be credited with the partner's capital contributions and with his share of profits, shall be charged with his share of losses and distributions, and shall otherwise appropriately reflect transactions of the Partnership and the partners.

(d) No interest shall be paid on any capital contribution to the Partnership. No partner shall be entitled to bring an action for partition against the Partnership, or to demand or receive any distribution with respect to this capital contribution, except as is specifically provided under this

Certificate and Agreement. No partner has the right to receive distributions of property other than cash from the Partnership.

(e) Any future capital contributions required in connection with the development of the property or such other purposes specified in Section 3 hereof, shall be made by the partners according to the percentages set forth in Schedule A attached hereto and made a part hereof.

Section 9. Distributions Including Return of Capital Contributions. The right of each partner to receive, or of the general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution are as set forth in Sections 8 and 10 hereof.

Section 10. Dissolution.

(a) The Partnership shall be dissolved and its affairs wound up upon the first to occur of the following:

- (i) the expiration of the term of the Partnership;
- (ii) the sale of all or substantially all of the assets of the Partnership;
- (iii) the retirement, death, withdrawal, incompetency, bankruptcy, dissolution, liquidation or cessation of operations of any general partner, except as otherwise provided in Section 13 hereof; or
- (iv) any other act or event causing a dissolution made in the Uniform Act.

(b) Unless the business of the Partnership is continued upon dissolution of the Partnership, the assets of the Partnership shall be liquidated as promptly as possible by the general partner or by a liquidating agent appointed for the purpose of liquidation by a majority in interest of the partners (or their successors or assigns) as specified in Schedule A hereto, and the proceeds shall be applied and distributed in the following order of priority:

- (i) to the payment of all debts and liabilities of the Partnership (including loans made by partners) and the expenses of liquidation;
- (ii) to the setting up of any reserves which the general partners or liquidating agent, if any, deems necessary or appropriate for any contingent or unforeseen liabilities of the Partnership;
- (iii) to each of the partners in accordance with the percentages set forth in Schedule A.

Section 11. Fees.

The following fees shall be paid by the Partnership:

(a) Development fee to the general partner equal to five percent (5%) of any construction costs incurred in connection with the development and/or construction of new structures on or within the property. For purposes hereof, development fee shall be deemed to include, without limitation, soft costs such as architect's fees, legal fees, zoning fees, etc.

(b) Syndication fee to HAR-LEE Realty Company in the amount of \$10,375.00.

(c) Management fee to HAR-LEE Management Company, a company to be organized and incorporated, such fee equal to five percent (5%) of collected rents.

Section 12. Withdrawal and Transfer.

(a) No partner may voluntarily retire or withdraw from the Partnership except (a) upon the termination of the Partnership pursuant to Section 10, or (b) upon the assignment of his interest in the Partnership as permitted pursuant to paragraph (b) hereof. No distributions shall be due a partner upon his withdrawal or the substitution of an assignee of his Partnership interest as a partner. Distributions to which a partner may be entitled upon termination of the Partnership are set forth in Section 10 hereof.

(b) Each partner shall have the right to sell, pledge, assign or otherwise transfer his interest only upon the express written consent of all the partners. Any person who acquires all or any portion of any interest of a general partner shall automatically be admitted as a general partner with the same percentage interest formerly held by the general partner. Each limited partner shall have the power to grant the right to become a limited partner to a person acquiring any part of his Partnership interest only with the express written consent of the general partner.

(c) In the event of the death, adjudication of incompetency, bankruptcy, dissolution, liquidation or cessation of operations of a partner (the Retiring Partner):

(i) the other partner (the Remaining Partner) shall have the right to purchase the entire interest in the Partnership of the Retiring Partner upon the terms hereinafter set forth, such right to be exercised by giving notice thereof to the Retiring Partner (or his legal representatives) within thirty (30) days after the occurrence of such event;

(ii) The purchase price of the interest being purchased shall be the fair market value thereof agreed upon by the Retiring Partner and the Remaining Partner (or their legal representatives). If such value is not agreed upon forty-five (45) days after the election to purchase, each party shall, within ten (10) days after such 45-day period, designate an appraiser by notice to the other party and the two appraisers shall promptly name a third appraiser and give notice of such designation to each party. If the two appraisers do not, within 10 days after their appointment, agree upon and designate a third appraiser, either party may petition any court having jurisdiction for the appointment of the third appraiser. If either party does not designate its appraiser within the applicable 10-day period, the appraiser designated by the other party shall conduct the appraisal alone;

(iii) The appraiser(s) shall conduct the appraisal as follows:

- (1) the then current fair market value of the property owned by the Partnership shall be determined on a so-called free and clear basis;
- (2) the net value of such property shall be determined by deducting from the amount determined in clause (1) above (A) any and all liabilities and indebtedness then outstanding against the Partnership, whether secured or unsecured (and the appraisers shall be entitled to rely upon a certification of the total amount of such indebtedness as given by the accountant handling the books of the Partnership), and (B) an amount equal to five percent (5%) of the amount determined in clause (1) above which the parties agree to be an amount equal to closing costs which would be incurred upon a sale of such property;
- (3) the appraisers shall then determine the amount that would have been received by the Retiring Partner if the net value determine pursuant to clause (2) had been distributed pursuant to Section 8(a) which amount shall be the fair market value of the Retiring Partner's interest. The appraisers shall conduct such appraisal expeditiously, and if any appraiser shall fail, refuse or neglect to perform his duties as such appraiser, he may be replaced by the person originally appointing him, or by the court if such appointment was by the court. The decision of the sole appraiser or of any two of said appraisers shall be final and binding upon all parties, except that if two of the three appraisers are unable to agree, the appraisal of the third and independent appraiser shall govern. The appraisers shall promptly notify the parties as to the result of the appraisal. Each party shall pay the proportionate

share of the costs and expenses of such appraisers in accordance with the percentages listed in Schedule A attached hereto and made a part hereof; and

- (iv) The closing shall take place on a date not later than thirty (30) days after being notified of the result of the appraisal and at a time and place in Stoughton, Massachusetts, all as designated by the Remaining Partner by notice given not later than fifteen (15) days after being notified of the result of the appraisal. The Retiring Partner (or his legal representatives) shall execute such instruments as may be required to vest in the Remaining Partners the interest being purchased, and the Remaining Partners shall pay the purchase price by certified or bank check. Time is agreed to be of the essence in connection with any such purchase.

Section 13. Continuation of Partnership. In the event of the retirement, death, voluntary or involuntary withdrawal, or adjudication of bankruptcy or incompetency, dissolution, liquidation or cessation of operations of any general partner, the remaining general partner of the partnership (including a substitute or additional general partner), if any, shall have the right to elect to continue the business of the Partnership; and the business of the Partnership shall terminate in the event of the retirement, voluntary or involuntary withdrawal or adjudication of incompetency or bankruptcy, of all of the general partners, unless a new general partner selected by unanimous written consent of the remaining partners shall within thirty (30) days of such withdrawal elect to continue the business.

Section 14. Powers of General Partner. In addition to and not in limitation of any other rights and powers given to a general partner by law or specified herein, the general partner shall (i) have any and all rights and powers as provided to general partners under the Uniform Limited Partnership Act, provided that in no event shall the general partner have the right or power to sell all or any substantial portion of the assets of the partnership or borrow any funds secured by a lien on any partnership assets without the consent of all limited partners, and (ii) have the ability to make decisions with respect to the management, operation and development of the property, including without limitation, the right to hire and deal with related parties and/or persons and entities and award contracts.

It is understood and agreed that the general partner may periodically contract with such related parties and/or other entities as it deems fit provided the services rendered are of a comparable quality at competitive terms. For purposes hereof, the term related parties shall mean G. Michael Berkowitz in his individual capacity or an entity of which any partner hereunder has an interest.

Section 15. Powers of Limited Partners. No limited partner (except one who may also be a general partner, and then only in his capacity as general partner) shall participate in or have any control over the Partnership's business (except the consent rights referred to in Section 14). The limited partners hereby consent to the exercise by the general partner of the powers conferred by this Certificate and Agreement. The liability of each limited partner in his capacity as a limited partner shall be limited to the amount of his capital contribution specified in Schedule A.

Section 16. Appointment of General Partners as Attorneys in Fact. Each limited partner (including a substitute or additional limited partner) hereby severally irrevocably constitutes, and empowers to act alone, each of the general partners as his attorney-in-fact with authority to execute, acknowledge and swear to all instruments and file all documents requisite to carrying out the intention and purpose of this Certificate and Agreement, including, without limitation, all amendments to this Certificate and 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.

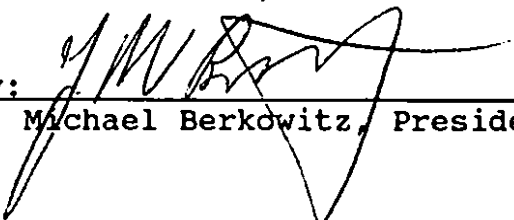
The foregoing appointment shall be deemed to be a power coupled with an interest in recognition of the fact that each of the partners under this Certificate and Agreement will be relying upon the power of the general partner to act as contemplated by this Certificate and Agreement in such filing and other action by them on behalf of the Partnership. The foregoing power of attorney shall survive the assignment by any limited partner of the whole or of any part of his interest hereunder.

Section 17. Liability; Indemnification. No general partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or any limited partner for any act performed or omitted by him in good faith on behalf of the Partnership and in a manner reasonably believed by the general partner to be within the scope of the authority conferred by this Certificate and Agreement and in the best interests of the Partnership except in case of willful misconduct, gross negligence or material breach of fiduciary duty. The Partnership shall indemnify and save harmless the general partner from any claims, expenses, loss or damage incurred by it by reason of any act performed or omitted by it in good faith on behalf of the Partnership and in a manner reasonably believed by the general partner to be within the scope of the authority conferred upon it by this Certificate and Agreement and in the best interests of the Partnership, unless such act constitutes willful misconduct, gross negligence or material breach of fiduciary duty. Any indemnity under this Section 16 shall be provided out of and to the extent of Partnership assets only, and no limited partner shall have any personal liability on account thereof.

Section 18. Amendments. This Certificate and Agreement may be amended or modified only by an amendment in writing signed by all the partners.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Certificate and Agreement as of the date first specified above.

GENERAL PARTNER:  
HAR-LEE DEVELOPMENT COMPANY  
OF RHODE ISLAND, INC.

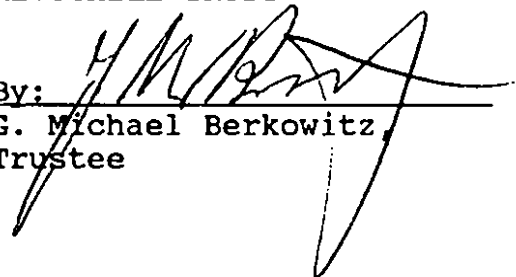
By:   
G. Michael Berkowitz, President

LIMITED PARTNERS

  
Stuart Needleman

  
Susan Needleman

GORDON MICHAEL BERKOWITZ  
REVOCABLE TRUST

By:   
G. Michael Berkowitz,  
Trustee

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

December 21, 1989

Then personally appeared the above-named G. Michael Berkowitz, President of HAR-LEE Development Company of Rhode Island, Inc., general partner as aforesaid, and acknowledged the foregoing to be his free act and deed, before me.

Arnold M. Friedfertig  
Notary Public  
Arnold M. Friedfertig  
My commission expires: 8/8/91

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

December 21, 1989

Then personally appeared the above-named Stuart Needleman, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed, before me.

Arnold M. Friedfertig  
Notary Public  
Arnold M. Friedfertig  
My commission expires: 8/8/91

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

December 21, 1989

Then personally appeared the above-named Susan Needleman, as aforesaid, and acknowledged the foregoing instrument to be her free act and deed, before me.

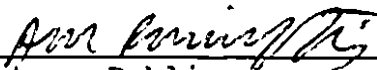
Arnold M. Friedfertig  
Notary Public  
Arnold M. Friedfertig  
My commission expires: 8/8/91

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

December 21, 1989

Then personally appeared the above-named G. Michael Berkowitz, Trustee as aforesaid, and acknowledged the foregoing instrument to be his free act and deed, before me.

  
\_\_\_\_\_  
Notary Public  
Arnold M. Friedfertig  
My commission expires: 8/8/91

RECEIVED  
GENERAL INVESTIGATIVE  
DIVISION

DEC 21 10 45 AM '89

*023/180*

REC'D & PROC DEC 21 1989