

AN ORDINANCE No. 86-291-264  
ADOPTED DEC 8 1986

To authorize Robert C. Bobb, City Manager, for and on behalf of the City of Richmond, to execute a document amending the "Amended and Restated Festival Marketplace Cooperation Agreement", heretofore entered into with Richmond Redevelopment and Housing Authority.

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Patron - City Manager

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Approved as to form by City Attorney

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THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Robert C. Bobb, City Manager, for and on behalf of the City of Richmond, is authorized to execute a document amending the cooperation agreement (Festival Marketplace Cooperation Agreement) with Richmond Redevelopment and Housing Authority concerning the development of the Sixth Street Festival Marketplace project and related activities, Council having approved the initial cooperation agreement by Ordinance No. 84-22-19, adopted February 13, 1984, execution of an amendment to Paragraph 9 of said cooperation agreement by the adoption of Ordinance No. 84-29-29 on February 27, 1984, execution of a second amendment to the cooperation agreement by the adoption of Ordinance No. 84-231-200 on September 10, 1984, and execution of an agreement entitled: "This Amended and

Restated Festival Marketplace Cooperation Agreement", by the adoption of Ordinance No. 85-6-14, on January 28, 1985, and execution of an addendum by adoption of Ordinance No. 86-192-179 on July 28, 1986, said amendment to be approved as to form by the City Attorney and to be substantially in the form of the document attached to the draft of this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

## FESTIVAL MARKETPLACE COOPERATION AGREEMENT

THIS AMENDMENT TO AMENDED AND RESTATED FESTIVAL MARKETPLACE COOPERATION AGREEMENT is made as of this            day of December, 1986, by and between the RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia (the "Authority"), and the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia (the "City").

### RECITALS:

A. The City, the Authority, Festival Diogenes Corporation, a Virginia corporation, Richmond Renaissance Incorporated, a Virginia corporation, and Richmond Festival Marketplace Partnership, a Virginia limited partnership ("RFMP") entered into a Disposition and Development Agreement dated as of March 6, 1984, as amended March 6, 1985 and December \_\_\_, 1985 (the "Development Agreement") concerning the development and financing of the 6th Street Marketplace (the "Project").

B. By Ordinance #85-6-14 adopted January 28, 1985, the City Council of the City of Richmond authorized the City Manager to execute an Amended and Restated Cooperation Agreement (the "Cooperation Agreement") between the Authority and the City concerning the Project. By Ordinance #86-192-179, an addendum to the Cooperation Agreement was approved.

C. Pursuant to Article IV, Section 4.2.1. of the Development Agreement the Banks (as defined therein) made to RFMP a first mortgage loan in the amount of \$4,870,000 and a second mortgage loan of \$1,000,000. The Banks have agreed to increase

the first mortgage loan to \$5,770,000, to modify the debt service payments required thereunder, and to make certain other changes therein, all as listed on the attached Exhibit A. As a part of the modification, the Basic Management Fee due RFMP's affiliate management company will be subordinated to the bank debt until December 31, 1990.

D. Pursuant to Article IV, Section 4.2.2. of the Development Agreement the Authority made to RFMP a third mortgage loan (the "Authority Loan") in the amount of \$9,545,000. The Authority has been asked to increase the Authority Loan to \$12,264,000, with the interest rate being increased to 4.09% and the payment terms being substantially modified as follows [all italicized terms are defined in the Lease dated as of October 1, 1984 (the "Lease") between Festival Diogenes Corporation as lessor and RFMP as lessee]:

(a) Of the first \$300,000 of Available Cash Flow in each Rental Year, two-thirds shall be applied to debt service on the loan.

(b) Of the amount of Available Cash Flow in each Rental Year which is greater than \$300,000 but not greater than \$900,000, one-half shall be applied to debt service on the loan.

(c) Of the amount of Available Cash Flow in each Rental Year greater than \$900,000, 22 1/2% shall be applied to debt service on the loan.

All payments shall be applied first to accrued and unpaid interest, then to principal. To the extent Available Cash Flow

is insufficient to pay current interest payable on the loan, the unpaid portion of current interest shall be deferred. Deferred interest shall not bear interest. If not sooner paid, all deferred interest, and a principal payment of \$545,000, shall be paid on May 1 following the fifteenth Rental Year or the date of the sale of RFMP's entire interest in the Project, whichever first occurs. The other provisions of the loan, including without limitation the minimum debt service payments, shall continue as provided in the existing loan documents.

E. Pursuant to Article II, Section 2.1.3. of the Development Agreement, the Authority executed and delivered a lease dated as of October 1, 1984 (the "Authority Lease"). Pursuant to Article II, Section 2.2. of the Development Agreement Festival Diogenes Corporation and RFMP executed and delivered the Lease. The parties to the Authority Lease and the Lease have agreed that the rental terms of both documents will be amended so that, in addition to Annual Basic Rental and in lieu of the Percentage Rental provided therein, the lessee shall pay to the lessor 22 1/2% of the Available Cash Flow in each Rental Year in excess of \$900,000.

F. Article IV, Section 4.2.2.2. of the Development Agreement provides for the Authority to make a loan to RFMP in the amount of \$1,500,000, to be disbursed as needed to cover Debt Service Payments (as defined in the Development Agreement) accruing and unpaid through January 1, 1991 on the Banks' loans. The Authority and RFMP have agreed that such loan will not be

funded and all obligations of the Authority and the City with respect thereto will be terminated.

G. Article IV, Section 4.2.2.3. of the Development Agreement provides for the Authority to make available to RFMP a loan in the amount of \$1,500,000 for construction cost overruns, the payment of which is the responsibility of RFMP upon reasonable cause therefor. The Authority and RFMP have agreed that such loan will not be funded and all obligations of the Authority and the City with respect thereto will be terminated.

H. RFMP has agreed to contribute equity in the amount of \$650,000 to the Project. The cumulative Incentive Management Fee and Incentive Management Fee provided in the Development Agreement will be abolished, and the \$300,000 Development Fee will be reduced to \$150,000.

I. The Authority and the City now desire to amend the Cooperation Agreement to give effect to these proposed changes.

NOW, THEREFORE, in consideration of the benefits to accrue to the City and its citizens from the modifications to the Project Documents described above, and of the mutual covenants herein contained, the Authority and the City agree as follows:

1. The Authority and the City agree to take all actions reasonably necessary to cooperate with one another and RFMP to negotiate and execute the documents necessary and appropriate to effect such modifications, including but not limited to the actions described in the recitals and all things incidental thereto. The documents effecting such actions shall state that to the extent they are not consistent with the Development

Agreement they shall control, and all parties to the Development Agreement shall consent to the provisions thereof. The documents required to be executed by any party to the debt restructure shall be subject to the approval of the City Manager.

2. The City acknowledges that it will transfer or otherwise make available funds, from time to time, as needed, to the Authority to satisfy the commitments made by the Authority to RFMP for the increase of the Authority Loan, upon compliance with the terms and conditions of this Agreement, as follows:

(a) To the extent of \$1,019,000, upon no further limitations or conditions.

(b) To the extent of the excess over \$1,019,000, conditioned upon the appropriation thereof by City Council. The City, although expressly not pledging its full faith and credit in connection with such additional funding, does recognize its moral obligation to make available to the Authority, from time to time, such additional funds as may be necessary for such purposes, but in no event to exceed an additional \$1,700,000. Approval of this Agreement by City Council shall not be deemed an appropriation of such funds.

3. The Authority acknowledges that it will make such loans and other payments to RFMP for the purposes of funding Project costs to the extent provided by the revised Project Documents and as limited by applicable law, including the payment or reimbursement of costs upon reasonable cause demonstrated by RFMP to the reasonable satisfaction of the City Manager or his

designee as set forth on a detailed budget to be incorporated into the revised Project Documents.

4. The Authority agrees to pay to the City upon demand by the City Manager any amounts paid by RFMP to the Authority from time to time pursuant to the Authority Loan documents and the Authority Lease, as modified to effect such changes, and interest, if any, earned from investment of any such amounts before payment thereof to the City and on any funds transferred by the City to the Authority as provided herein before its lending of such funds to RFMP.

5. The Authority agrees that such funds as may be transferred by the City to the Authority from time to time for development of the Marketplace Facility shall initially be deposited by the Authority in a bank or banks designated by the City and be reinvested by the Authority in such obligations as are permitted to be invested in by the Authority until such time as the Authority is obligated to advance all or a portion of such funds to the Partnership or otherwise apply them in accordance with the Project Documents, provided that the general types of all such investments shall be approved by the City Manager or his designee.

6. If after RFMP has made its final draw under the Authority Loan as so modified the Authority retains funds transferred to it by the City of account thereof, such funds shall be returned to the City upon written demand therefor by the City Manager unless City Council has approved the use of such funds (or any part thereof) for other Project Area purposes; but

no such unexpended portion may be retained by the Authority after December 31, 1989.

7. The Authority and the City acknowledge that the Project Documents may require that, in accordance with a schedule to be agreed upon by the Authority and the City and agreed to by the City Auditor, the City Auditor shall periodically audit the financial transactions undertaken in carrying out development of the Marketplace Facility. Such audits shall comply in all respects with generally accepted auditing standards. The Authority shall cooperate to assure that the City Auditor is granted reasonable access on a timely basis to all books and records of any party necessary to complete such audits, and will require appropriate provisions in furtherance of this objective in the Project Documents.

8. The Authority and the City may subcontract without one another's prior approval for services essential to undertaking and carrying out their respective responsibilities under this Agreement and the Project Documents. Either party so doing shall be responsible to the other for the actions or omissions of its subcontractors, and of persons either directly or indirectly employed by them and for the acts and omissions of persons directly employed by it, and at the time of such subcontracting shall provide such bonds or insurance coverage as may be provided for in the Project Documents or otherwise agreed upon by the parties.

9. The Authority shall furnish the City a copy of a blanket corporate fidelity bond with surety acceptable to the

Authority and to the City covering all officers and employees of the Authority capable of authorizing disbursement of funds or handling funds received or disbursed by the Authority from the City, RFMP, or Festival Diogenes Corporation by this Agreement or pursuant to the Project Documents in the amount of Fifty Thousand Dollars (\$50,000) for each officer or employee.

10. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia.

11. Any notices required to be given under this Agreement shall be sufficient if in writing and sent by first class, registered or certified mail, return receipt requested; if to the Authority, to P. O. Box 26887, Richmond, Virginia 23261; or, if to the City, to the City Manager, City Hall, 9th and Broad Streets, Richmond, Virginia 23219. Either party may change its address for purposes of notice by giving notice to the other in accordance with this paragraph.

12. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties thereto; provided, however, that in no event may this Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

13. This Agreement amends the Cooperation Agreement only as expressly set forth herein.

14. It is understood between the parties that no third party rights are created by this Agreement.

RICHMOND REDEVELOPMENT AND  
HOUSING AUTHORITY

(SEAL)

ATTEST:

By \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Assistant Secretary

CITY OF RICHMOND

(SEAL)

ATTEST:

By \_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk

doc72.jwb

EXHIBIT A

6TH STREET MARKETPLACE

PROPOSED MODIFICATION OF BANK LOAN

Additional Principal:

Drawable immediately	\$450,000
Drawable for debt service payments from November 1986 to July 1987	<u>450,000</u>
Additional principal	<u>\$900,000</u>

Revised interest rates:

Present to December 31, 1989 - 8.5% final rate

January 1, 1990 to December 31, 1990 - Prime  
plus 1% with a floor of 8.5% and a  
ceiling of 9.5%

January 1, 1991 to December 31, 1991 - Prime  
plus 1% with a floor of 8.5% and a  
ceiling of 10%

January 1, 1992 to December 31, 1992 - Prime  
plus 1% with a floor of 8.5% and a  
ceiling of 10.5%

January 1, 1993 to December 31, 1993 - Prime  
plus 1% with a floor of 8.5% and a  
ceiling of 11%

January 1, 1994 to December 31, 1994 - Prime  
plus 1% with a floor of 8.5% and a  
ceiling of 11.5%

January 1, 1995 to December 31, 1995 - Prime  
plus 1% with a floor of 8.5% and a  
ceiling of 12%

January 1, 1996 to December 31, 2000 - Prime  
plus 1/4% with a floor of 10.5% and a  
ceiling of 12.5%

January 1, 2001 to maturity - Prime plus 1/2%  
with no floor or no ceiling

**ORDINANCE OR RESOLUTION SUMMARY**  
**CITY OF RICHMOND, VIRGINIA**

<b>Resolution Ordinance No.</b> ..... 86-291	<b>Subject</b>  To Amend - The "Amended and Restated Festival Marketplace Cooperation Agreement"
<b>Requested by</b> ..... City Manager	
<b>Received City Manager's Office</b> ..... --	
<b>Summarized</b> ..... 12/3/86	

**SUMMARY**

This Ordinance would authorize the City Manager to execute a document amending the "Amended and Restated Festival Marketplace Cooperation Agreement," heretofore entered into with Richmond Redevelopment & Housing Authority.

A copy of the proposed amendment is attached.

**COUNCIL ACTION**

<b>On Docket</b> ..... 12/8/86
<b>Amended</b> .....
<b>Adopted</b> .....
<b>Rejected</b> .....