

AN ORDINANCE No. 86-253-232

ADOPTED OCT 27 1986

To authorize Robert C. Bobb, City Manager, for and on behalf of the City of Richmond, to enter into and execute an agreement with Richmond Redevelopment and Housing Authority and the Kwik-Kafe' Co., Inc., also known as Swanson Corporation, doing business as Entertainment Services, to provide for the operation of food, beverages, novelty, catering and concession services including the furnishing of supplies, equipment and improvements necessary for such operation at the Exhibit Hall, known as the Richmond Centre.

Patron - City Manager

Approved as to form and legality
by City Attorney

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 enter into and execute an agreement with Richmond Redevelopment and Housing Authority and the Kwik-Kafe' Co., Inc., also known as Swanson Corporation, doing business as Entertainment Services, to provide for the operation of food, beverages, novelty, catering and concession services including the furnishing of supplies, equipment and improvements necessary for such operation at the Exhibit Hall, known as the Richmond Centre, for a period of ten years commencing September 1, 1986, and extending through August 30, 1996, such agreement to be substantially in the form attached to the draft of this ordinance.

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

THIS AGREEMENT, made and entered into this 1st day of September, 1986, by and among Richmond Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia ("RRHA"), the City of Richmond, a municipal corporation of the Commonwealth of Virginia ("City"), and Kwik-Kafe' Co., Inc., also known as the Swanson Corporation, doing business as Entertainment Services, a Nebraska corporation with principal offices located at 3200 South 60th Street, Omaha, Nebraska 68106 ("Food Service Operator"):

W I T N E S S E T H:

WHEREAS, RRHA is the owner of all the real property and structure located at 400 East Marshall Street, Richmond, Virginia 23219, known as the "Richmond Centre for Exhibitions and Conventions" ("Centre"); and,

WHEREAS, the general purpose of the Centre is to foster and promote events of trade and commerce, large meetings, assemblages and exhibitions, particularly those for business and trade purposes, as well as events of civic, community and general public interest that will enhance the prestige and image of the City. The Centre is intended to serve as a generator of convention dollars brought into the community by convention

delegates and exhibitors and to attract and secure a unique market that was not previously available to the City of Richmond; and,

WHEREAS, RRHA has entered into an agreement with the Marriott Hotels, Inc., a Delaware corporation ("Management Company") for the management and operation of the Centre; and,

WHEREAS, the City, RRHA and the Management Company have need of the services of Food Service Operator to operate food, beverage, novelty catering and concession services including the furnishing of supplies, equipment and improvements necessary for such operation at the Centre;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto mutually agree as follows:

I. DEFINITIONS

- A. "Agreement" shall refer to this Agreement including Food Service Operator's proposal submitted and accepted by the City and RRHA, with such modifications as the City and RRHA shall require, all of which are hereby incorporated into this Agreement. In the event of a conflict between the terms of the proposal submitted by Food Service Operator and the terms of this Agreement the terms of this Agreement shall govern.
- B. "Director" shall refer to the Director of Community Facilities of the City or his designated agent or representative.
- C. "Gross Receipts" shall refer to the total amount of money received by Food Service Operator or any agent or employee of Food Service Operator from all sales, cash or credit (whether collected or not), made as a result of the service right granted under this Agreement, excluding sales taxes collected by Food Service Operator or in the event of prepayment of sales taxes, excluding any amounts so prepaid by Food Service Operator.

- D. "Licensee" shall refer to any person or entity that may from time to time enter into any agreement with the Management Company for the use of the Centre for a particular purpose.
- E. "Request for Proposals" shall refer to the City's and RRHA's Request for Proposals No. 6H428 dated May 16, 1986.
- F. "Proposal" shall refer to Food Service Operator's proposal, submitted in response to the Request for Proposals.

II. TERM

- A. The Term of this Agreement shall be for a ten (10) year period commencing on September 1, 1986 and expiring August 31, 1996.
- B. The rates established in Section VIII hereof may be increased after the fifth year of this Agreement, upon mutual agreement among the City, RRHA and Food Service Operator. Any such increase shall be established based upon gross receipts in the fourth year exceeding Seven Hundred Thousand Dollars (\$700,000).

III. FACILITIES AND EQUIPMENT

- A. Food Service Operator shall be provided space for its operation at the Centre finished in accordance with the terms of the General Construction Contract with Fletcher and Sons. It is Food Service Operator's responsibility to finance fully the capital improvements, equipment and smallwares required beyond those provided by the Centre.
- B. The following facilities and areas shall be available to Food Service Operator:
 - 1. An area of approximately 2,150 square feet along the Fourth Street side of the Centre which includes a preparation and service kitchen, and office, storage and dishwashing facilities.
 - 2. Two (2) permanent concession stands:
 - i. Exhibit Hall A Stand -- An area of approximately 200 square feet (25' front) has been planned as a concession stand to service Exhibit Hall A.
 - ii. Exhibit Hall B Stand -- An area of approximately 270 square feet (18' front) has been planned as a concession stand to service Exhibit Hall B and C and

the Fifth Street Prefunction Area (therefore, service counters from both sides).

3. On the second floor level, along the Fourth Street side of Exhibit Hall A is an alcove area of approximately 200 square feet reserved as a pantry area to service the second floor meeting and function rooms.
4. Adequate office space for Food Service Operator's unit manager and support staff shall be provided in the general administrative office area for the Centre.
5. Storage space adequate to maintain and store smallwares, table dressings, a minimum of six portable concession stands and portable bars.

C. Food Service Operator's Required Investment:

1. Food Service Operator shall invest approximately \$282,017 in capital improvements, equipment and smallwares, in accordance with the summary and details provided in the Proposal. The investment shall be completed within the first partial year of the contract. A total of sixty percent (60%) of this amount, not to exceed \$169,210.20, shall be repaid to Food Service Operator by reducing payments due under this Agreement over the first five (5) years of this Agreement as described in Section VIII. Food Service Operator's failure to make the required investment shall constitute an event of default and shall be treated in accordance with the provisions of Article XII.
2. In the event the City and RRHA terminate this Agreement prior to August 31, 1996, RRHA agrees to purchase the capital improvements and equipment, excluding smallwares, from Food Service Operator. The purchase price for such improvements and equipment shall be the remaining, undepreciated book value of the equipment and improvements, using a ten-year straight-line method of depreciation, as of the date of termination, after taking into account adjustments for condition and for any liens outstanding against the improvements and/or equipment. Provided, however, such purchase price shall be further reduced by any amount by which, as of the date of purchase, total fee reductions to date as described in Section VIII hereof exceed the total of depreciation taken to date. Adjustments for condition shall be made by appraisal by an independent contractor, agreeable to both parties, with expertise in the food service equipment industry. Such adjustments shall take into account the appraiser's professional judgement as to normal wear and tear.

3. Food Service Operator shall provide the City and RRHA with copies of invoices for all capital improvements, equipment and smallwares for purpose of establishing an inventory of Food Service Operator's investment and to fulfill the investment commitment of its Proposal.
4. At all times during the term of this Agreement the Food Service Operator shall maintain all capital improvements and equipment in an operational and good state of repair.

IV. UTILITIES

- A. Food Service Operator shall pay one percent (1%) of its Gross Receipts to the City and RRHA in payment for the cost of electricity, gas, water and sewer service provided by the Centre for Food Service Operator's operation. Said payment shall be made monthly and shall be a separate payment from the percentage of sales paid to the City and RRHA as a fee under this Agreement.
- B. The cost of telephone equipment and service for Food Service Operator's use shall be an expense of Food Service Operator.
- C. Should Food Service Operator's operation require any additional utility capacity and/or outlets beyond those provided for in the Centre as constructed, the cost of such installations and hookups will be Food Service Operator's expense.

V. OPERATIONS

- A. Food Service Operator will operate the spaces designated for the purpose of the sale at retail to the public at the Centre, of beverages, food confections, tobacco products, novelties and sundries in an efficient manner for the convenience and safety of the public during all Centre events and at such other times as shall be reasonably required by the City and RRHA.
- B. Food Service Operator shall conduct its operations in such a way as not to interfere with the normal activities of the patrons of the Centre. The activities of Food Service Operator shall be such as to render service to the public in a dignified manner and no pressure, coercion or persuasion shall be used by Food Service Operator in an attempt to influence the public to use the services or products of Food Service Operator. All Food Service Operator's sales shall be conducted and operated under the supervision of the City

and RRHA and shall in no way interfere with the orderly operation of any event. The sales shall be conducted at such times from and at locations designated by the City and RRHA. The City and RRHA agree that they will provide sufficient space in locations that will maximize revenues for Food Service Operator while efficiently serving the patrons of the Centre. Food Service Operator and its employees will not distribute campaign or political literature of any kind at any time in the Centre. Notwithstanding the overall and ultimate supervision of the Centre's activities by the City and RRHA, Food Service Operator shall at all times exercise prudent, reasonable and experienced judgment in the serving of alcoholic beverages. Food Service Operator's operations must conform with the laws and ordinances of the City and Commonwealth of Virginia and such operations must be conducted so as not to interfere through noise or odor with any person, patron or organization which has properly engaged the enjoyment of the Centre.

- C. Programming for all events requiring the services of Food Service Operator shall be performed by the City's and RRHA's marketing and booking agent. Any and all programming offered by Food Service Operator utilizing the Centre facilities shall be accepted and incorporated into the official Calendar of Events, providing that said activities are consistent with the approved rules and regulations of the Centre and the City and RRHA, including the booking policy.
- D. All employees of Food Service Operator shall be neatly attired in uniforms which properly identify Food Service Operator. All employees of Food Service Operator shall be required to possess a valid health certificate.
- E. Food Service Operator shall employ and compensate its own help, vendors and employees and all said employees, counter help, or vendors shall meet all the requirements set out herein. The employees shall be neat and clean in appearance and be courteous towards the patrons, the public and their fellow employees. All employees of Food Service Operator shall enter and leave the Centre via the entrance(s) designated by the City and RRHA. Only those employees actually working during an event shall be permitted in the Centre without charge, and any such employees observed in the Centre at events in which they are not working may be removed by the City and RRHA. At no time will Food Service Operator permit the free entrance of any person not a bona fide employee for such event or events, and no surplus of employees will be permitted for any event. The Centre shall provide office space and locker room space as needed for employees of Food Service Operator.

- F. Food Service Operator shall be permitted to operate or subcontract vending machines subject to the approval of the City and RRHA as to location, number of machines and products to be sold, which approval shall not be unreasonably withheld. All such sales shall be included in Food Service Operator's Gross Receipts for purposes of computing fees due under this Agreement and utility payments.
- G. The City and RRHA shall have the right of approval of all containers for food and beverages.
- H. Chewing gum will not be sold by Food Service Operator, either manually or through vending machines.
- I. Food Service Operator shall not interfere with the free distribution of food or drinks or any other items of any nature whatsoever, where such distribution has been authorized by the City and RRHA. Free samples may be given away by or on behalf of or with permission of any Licensee at tradeshows, cooking schools, exhibitions or conventions at the discretion of the City and RRHA. Food Service Operator will be required to suspend or modify operations upon request of any Licensee, when it has been approved by the City and RRHA as being in the best interest of the Licensee or when it is necessary to comply with the terms of an agreement between the Centre and said Licensee.
- J. The City and RRHA shall issue reasonable rules and regulations for the operation of the food service, and Food Service Operator shall operate in accordance with such rules and regulations. Such rules and regulations shall be promulgated in the manner provided in the contract between RRHA and Management Company and the Charter of the City and the Richmond City Code of 1985, as well as other applicable ordinances. Final decisions as to whether or not alcoholic beverages may be sold at an event shall be determined by the aforementioned rules and regulations. The decision to refuse service of alcoholic beverage to any individual shall be the sole responsibility of Food Service Operator.
- K. Food Service Operator shall obtain and maintain all required alcoholic beverage permits and licenses for the Centre. The privilege to sell alcoholic beverages shall be subject to the provisions of the alcoholic beverage control laws of the Commonwealth of Virginia and the City and shall require the approval of the City and RRHA in accordance with all applicable laws, rules and regulations.
- L. Food Service Operator shall actively market the Centre and the food services available within the Centre. To that end

Food Service Operator shall spend a minimum of one percent (1%) of Gross Receipts on sales and promotion of the Centre and of Food Service Operator's services therein.

- M. The City and RRHA shall have the right to prohibit the sale of sheet music, programs, records, tapes and souvenirs by the Food Service Operator upon written notice to the Food Service Operator.
- N. Food Service Operator shall provide food service for the Centre in accordance with this Agreement. Food service may be provided by persons other than the Food Service Operator in the following situations:
1. Any Licensee using the Food Service Operator's equipment shall pay the Food Service Operator a negotiated fee. Said fee shall be included as part of the Food Service Operator's Gross Receipts.
 2. Any Licensee using the Centre who is permitted by the Food Service Operator to employ caterers, or other persons, to provide banquet or other cafeteria-type operations shall pay to the Food Service Operator fifteen percent (15%) of the amount paid to the Caterer or other food service provider. The Food Service Operator shall pay to the owner fifty percent (50%) of the fee obtained from said Licensee.
 3. Any Licensee using the Richmond Centre for an event, the main purpose of which is the sale or distribution of food or beverage items, may use the Centre (exclusive of Food Service Operator's facilities and equipment) without payment of any fee to Food Service Operator. Such events shall include but not be limited to the Richmond Boys Club's Richmond's Delicious Weekend or like event and Virginia Restaurant Association trade shows. Such events shall specifically not include catered meals or banquets.
 4. Any Licensee using the Centre for a religious event and requiring special food preparation as a part of that event due to established religious beliefs may use the Centre and provide their own food service through persons regularly employed by them without payment of a fee to the Food Service Operator (exclusive of the use of the Food Service Operator's equipment) provided that the Food Service Operator is deemed unable to provide such food service. Such groups may include Jehovah's Witnesses, Orthodox Jewish groups, Muslims, etc.

VI. MAINTENANCE AND CLEANUP

- A. Food Service Operator shall maintain all equipment and smallwares used in performance of its duties, including rolling stock, in a good state of repair, including maintenance or repair necessitated by ordinary wear and tear.
- B. Food Service Operator shall, at its expense, replace any equipment or smallwares damaged beyond repair, or rendered useless by wear and tear unless, in the sole opinion of the City and RRHA, the equipment or smallwares is unnecessary to the proper functioning of the food service operation. Replacement equipment shall be subject to approval of the City and RRHA as to type and similarity to that replaced.
- C. Food Service Operator shall maintain all food service facilities in a clean sanitary condition in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes, and requirements of duly authorized health authorities of the City and the Commonwealth of Virginia, and any other health department having jurisdiction.
- D. Food Service Operator shall, at its expense, engage and supervise properly licensed bonded exterminators to control vermin and pests as determined to be necessary by the City and RRHA. Such extermination services shall be supplied in all areas where food is prepared, dispensed or stored. Food Service Operator shall coordinate such extermination services with the extermination services for the entire Centre.
- E. Food Service Operator shall supply adequate water-tight trash receptacles in the vicinity of service areas, particularly at the condiments locations of regular stands. Trash receptacles are to be approved by the City and RRHA to conform with the interior design of the Centre. These areas shall be regularly monitored by Food Service Operator for cleanliness and trash removal during events.
- F. All refuse and waste materials created by Food Service Operator's operations in all public areas shall be promptly disposed of after each event at the expense of Food Service Operator. Waste foods shall be kept in closed metal containers until removed from the Centre. Such removal shall be made promptly during and after the event. The entire area, within a radius of twenty-five (25) feet of each stand, commissary and work area, shall be kept free and clear from all nuisance and damage done to floors, walls, windows or other property in said radius by reason of operation of said stand. Food Service Operator shall employ

the necessary personnel before, during and after the hours of any event to comply with these provisions. Food Service Operator shall make certain that the areas specified herein are kept clean and promptly serviced during and after each event.

VII. PRODUCTS TO BE SOLD, PRICES

- A. This Agreement shall give Food Service Operator the exclusive right, subject to other provisions of this Agreement, to sell all products of a food and beverage nature, including alcoholic beverages, novelties, candy and tobacco products at the Centre.
- B. Food Service Operator recognizes that the quality of items sold at Centre is a matter of highest concern to the City and RRHA and is of the essence of this Agreement. Food Service Operator represents and warrants that all items sold will be of the highest possible quality consistent with the quality of food provided by exhibition halls in markets similar to the Centre.
- C. The City and RRHA agree to meet with Food Service Operator to review products to be sold and prices to be charged on an annual basis using September 1 of each year of this Agreement as the beginning for each annual pricing term. Whenever unique economic conditions result in unusual cost increases to Food Service Operator, the City and RRHA will consider a request by Food Service Operator for price changes at times other than the annual date specified above. Food Service Operator shall submit a detailed written price schedule for all items it proposes to sell showing size, weight, grade, cost and price of item, which shall be subject to the final approval of the City and RRHA. Prices shall be consistent with prices charged for similar items in exhibition halls in markets similar to the Centre.
- D. The City and RRHA desire that local producers of products and local sources of product supply have equal opportunity to compete for the use of their products or services at the Centre, when products or services are available on competitive terms and with equal quality.
- E. All merchandise kept for sale shall be subject to inspection and approval or rejection by the City and RRHA during all times that the food service is in operation. Rejected merchandise shall be immediately removed from the Centre and shall not be returned to the Centre for sale.

VIII. FEE PAYMENTS

- A. Food Service Operator shall pay to the City and RRHA, on a monthly basis, the following percentages of Gross Receipts (net of applicable sales taxes) generated from the sale of the items listed:
1. Banquets, catering, buffets and cafeterias (except for alcoholic beverage sales):
 - 8% of all sales up to \$300,000 per year;
 - 10% of all sales from \$300,001 to \$500,000 per year;
 - 12% of all sales from \$500,001 to \$750,000 per year;
 - and,
 - 15% of all sales \$750,001 per year or greater.
 2. Concessions, including food and beverages not classified above, vending machines, novelties, tobacco and candy and all alcoholic beverage sales:
 - 20% of all sales up to \$150,000 per year;
 - 25% of all sales from \$150,001 to \$300,000 per year;
 - 30% of all sales from \$300,001 to \$500,000 per year;
 - 38% of all sales from \$500,001 to \$750,000 per year;
 - 41% of all sales from \$750,001 to \$1,000,000 per year;
 - and,
 - 43% of all sales \$1,000,001 per year or greater.
- B. Each monthly payment during the first five (5) years of this Agreement or such lesser period as may be necessary to meet the terms of this paragraph shall be reduced by \$2,820.17 per month, up to a total reduction of 60% of the total capital investment. If, in any month, Food Service Operator's gross receipts are insufficient to generate the amount of the above-described reduction, Food Service Operator shall pay no fee for that month, and any difference between the allowed reduction and the fee that would otherwise have been charged shall be carried over until the next succeeding month and applied as an additional reduction to that month's fee. Such reductions may, if necessary, be cumulatively carried forward during the term of this Agreement until the lesser of sixty percent (60%) of the actual capital investment described in paragraph III. C.1. or \$169,210.20 is accounted for in fee reductions.

- C. Food Service Operator shall submit to the City and RRHA on or before the twentieth (20th) of each month during the term of this Agreement an accounting of Gross Receipts during the previous calendar month showing amount and source of each category of Gross Receipts. Along with such accounting, Food Service Operator shall pay to the City and RRHA the applicable percentages of Gross Receipts from its operations for the reported calendar month.
- D. Any payments made after the date on which they are due, as defined in paragraph C above and in Section IX below, shall be subject to a ten percent (10%) penalty and daily interest at an annual rate of ten percent (10%).

IX. RECORDS, ACCOUNTING AND AUDITING

- A. Food Service Operator shall, at its own cost and expense, procure and keep in force during the entire period of this Agreement all permits and licenses required by all laws and regulations of the Commonwealth of Virginia and the City.
- B. Food Service Operator shall maintain records of sales, receipts and inventory regarding operations at the Centre, all in accordance with generally accepted accounting principles. The City and RRHA may prescribe the form of records to be kept by Food Service Operator in accordance with this provision. Food Service Operator will establish and maintain a perpetual inventory system to be used to account for all items sold and to determine monthly gross receipts. Food Service Operator shall, on reasonable demand during regular business hours, make available to the City and RRHA all records, books of account and statements maintained with respect to operations at the Centre. Food Service Operator shall also permit designated agents of the City and RRHA to make periodic inspections of the operations of Food Service Operator at the Centre.
- C. The City and RRHA shall be entitled, at any reasonable time during regular business hours, to conduct their own inventory of products and equipment maintained at the Centre pursuant to this Agreement.
- D. Food Service Operator shall establish and maintain a separate account(s) in a commercial bank or financial institution in the City, diverse from any other accounts which it may have, that shall be for the exclusive use of all receipts, revenues and disbursements generated from food service operations at the Centre. Food Service Operator shall provide and keep in force throughout the term of this Agreement and six (6) months thereafter, a written

authorization to the depository bank/financial institution as required herein for the City and RRHA to obtain information and records from the bank/financial institution concerning any and all accounts relating to food service operations at the Centre.

- E. Food Service Operator shall keep full and complete records of its operations satisfactory to the City and RRHA. Food Service Operator shall submit a written monthly operating statement to the City and RRHA no later than the twentieth (20th) of each month covering the entire preceding month and shall pay to the City and RRHA the percentage payments due.
1. For each full or partial year of this Agreement, Food Service Operator shall cause to be conducted an audit ("Audit") of its entire operation at the Centre. An audited financial report ("Report") and a special report on compliance with Section VIII of this Agreement ("Special Report") shall be prepared by Food Service Operator. The Audit shall be conducted by a Certified Public Accountant, licensed to practice in Virginia, who is acceptable to the City and RRHA. The City and RRHA shall approve the Auditor only if, among other requirements as set forth herein, said Auditor agrees to provide the audit work papers to the City Auditor for review.
 2. The Report and Special Report shall cover the period from July 1 through June 30 of each year, except that there may be partial years in the first and last years of this Agreement. The Report shall be prepared in accordance with generally accepted accounting principles. The Special Report shall be prepared in accordance with generally accepted auditing standards. Generally accepted accounting principles and generally accepted auditing standards are as defined by the American Institute of Certified Public Accountants.
 3. Both reports shall be submitted to the City and RRHA no later than sixty (60) days after the end of each full or partial year as defined in subparagraph (2) above. Any additional fee which is determined to be due as a result of the audit shall be considered due and payable as of the deadline for submission of the Report and Special Report, and shall be subject to interest and penalties as described in Section VIII (D) above, after that date.
- F. Food Service Operator shall collect and promptly disburse all taxes required by Federal, Commonwealth and local authorities and shall pay any applicable taxes relating to food service operations, equipment or inventory.

X. INDEMNITY, RELEASE, INSURANCE AND SECURITY

A. Food Service Operator Insurance - General

1. Food Service Operator shall not commence any work in connection with this Agreement until he has obtained all insurance required by this Agreement and such insurance has been approved by the City Attorney and counsel for RRHA. Such approval of any certificate or policy of insurance shall not, however, relieve the Food Service Operator from its responsibilities to provide the insurance coverage required.
2. Food Service Operator shall indemnify and hold harmless the City, RRHA, Management Company and Marriott Corporation, their subsidiaries, affiliates, agents, officers and employees from and against any and all liability, claims, suits, demands, damages, judgements, costs and expenses to which any of the above-named parties may be subject by reason of any claim for, any injury to or death of any person or persons for damage to property or otherwise arising from or in connection with Food Service Operator's acts or omissions relating to the Centre. Notwithstanding this requirement, Food Service Operator shall obtain and retain throughout the term of this Agreement, the insurance coverages described herein.
3. Food Service Operator shall at all times enforce by adequate supervision and training of supervisory personnel a safe working environment for all employees including the supervision of all services which relate to the general safety and welfare of any persons exposed to the services performed under this Agreement by Food Service Operator.

Food Service Operator agrees to fully cooperate with the City and RRHA in any employee and public safety program sponsored by the City or RRHA. Food Service Operator agrees to conduct all of its operations with due diligence and care for the safety of all persons at all times.

4. Food Service Operator shall furnish all certificates of insurance to the City Attorney and counsel for RRHA for review and approval not less than ten (10) days prior to the effective dates for each policy.
5. The City and RRHA shall have the right to request copies of insurance contracts to support the certificates of

insurance, within fifteen (15) days of the receipt of the certificates.

6. All policies required hereunder must show the City, Management Company, Marriott Corporation and RRHA as additional insureds and all applicable certificates of insurance must show the City, Management Company, Marriott Corporation and RRHA as the certificate holders, and all policies and certificates must contain language requiring a sixty (60) day prior notification to the City, Management Company, Marriott Corporation and RRHA and to the City's, Management Company's, Marriott Corporation's and RRHA's designated insurance underwriting manager of any changes or cancellations of coverage.
7. The failure by Food Service Operator to obtain any insurance required hereunder, or the lapse of any such insurance, shall constitute default of this Agreement, under the terms of Section XII hereof.
8. Notwithstanding any of the minimum amounts of coverage required hereunder, the City and RRHA reserve the right to a reasonable increase of any of the required insurance amounts from time to time as it may deem prudent; provided, however, the City and RRHA shall give Food Service Operator a minimum of sixty (60) days' notice prior to any such increase taking effect and provided that the City and RRHA take into consideration the insurance market conditions and the effects of the cost of any increase on Food Service Operator's cost of doing business.
9. All insurance policies shall be issued by financially sound insurers licensed to do business in the Commonwealth of Virginia.

B. Worker's Compensation

Food Service Operator shall secure such insurance as will protect the City, RRHA, Management Company and Marriott Corporation from any claim under any Worker's Compensation acts.

C. Comprehensive Public Liability and Property Damage Insurance

1. Food Service Operator shall secure and maintain during the term of this Agreement five million dollars (\$5,000,000) combined single limit comprehensive general liability and comprehensive automobile liability insurance covering Food Service Operator, its employees, agents, and subsidiaries, for claims for damages for

personal injury and property damage including that which is commonly known as Groups A, B and C. Such policy shall include coverage for claims for any person as a result of an offense directly or indirectly related to the employment of such person by the Food Service Operator or by any other persons.

2. Public Liability coverage shall include automobiles whether owned, non-owned or hired. Coverage shall include blanket contractual insurance and such coverage shall make express reference to Food Service Operator's hold-harmless provision in Paragraph A.
3. The Public Liability coverage shall include in the same contract or a separate contract fire legal liability insurance with a limit of not less than five million dollars (\$5,000,000) covering the Centre site.
4. The City, Management Company, Marriott Corporation and RRHA shall be included as additional insureds in the Public Liability coverage.

D. Personal Property Insurance Including Motor Vehicles

1. Food Service Operator shall secure and maintain during the term of this Agreement adequate insurance coverage for loss of income and other insurance covering merchandise and all types of equipment and property located in or on the Centre. Such insurance shall include the personal property of its employees and agents. Food Service Operator shall require the same coverage for all subsidiaries and their employees including but not limited to, motor vehicles, whether licensed or unlicensed, and mobile equipment, whether licensed or unlicensed.
2. Food Service Operator shall save the City, Management Company, Marriott Corporation and RRHA harmless from the claims of any person for loss, loss of use, damage, or special or consequential damages, including lost profits, arising out of such loss or damage, to the personal property and supplies of Food Service Operator, its agents, employees, and subsidiaries during the term of this Agreement. Such save harmless agreement shall include waiver by Food Service Operator's Personal Property Insurance Company of any subrogation against the City, Management Company, Marriott Corporation or RRHA for any loss or damage occurring under Food Service Operator's Personal Property Insurance on the Centre site.

E. Blanket Fidelity Insurance

Food Service Operator shall secure and maintain during this Agreement five hundred thousand dollars (\$500,000) coverage of each employee.

F. Surety

Food Service Operator shall furnish to the City and RRHA at the time of execution of this Agreement either a surety bond executed by Food Service Operator as principal and by a surety company acceptable to the City and RRHA as surety in the penal sum of one hundred thousand dollars (\$100,000) or such other form of security in an amount as may be agreed to. This surety shall be conditioned upon payment by Food Service Operator of the sums due the City and RRHA under Article VIII during the term of this Agreement as well as faithful performance by Food Service Operator of all other conditions and covenants of this Agreement.

G. Notice

Food Service Operator shall immediately report in writing to the City's and RRHA's designated Insurance Underwriting Manager any incident which might reasonably be expected to result in any claim under any of the coverages mentioned herein. Food Service Operator agrees to cooperate with the City and RRHA in promptly releasing reasonable information periodically as to the disposition of any claims, including a resume' of claims experience relating to all Food Service Operator operations at the Centre.

H. Limitation of Management Company, City, Marriott Corporation and RRHA Liability

No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, commissioner, officer, employee or agent of the Management Company, Marriott Corporation, the City or RRHA in their individual capacities, and neither the directors of Management Company, Marriott Corporation, the City, or RRHA nor the City Manager, nor any officer of the Management Company, Marriott Corporation, the City or RRHA executing this Agreement shall be liable personally hereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof. No director, officer, employee or agent of the Management Company, Marriott Corporation, the City or RRHA shall incur any personal liability with respect to any other action taken by him pursuant to or with respect to this Agreement. The obligations of the Management Company, Marriott Corporation, the City or RRHA under this Agreement shall not be deemed to constitute a debt or pledge of the

faith and credit of the Commonwealth of Virginia or any political subdivision hereof, including the City and RRHA.

XI. MINORITY PARTICIPATION

- A. Food Service Operator hereby agrees that, for the purpose of providing the services covered by this Agreement, it will engage in a joint venture with a minority-owned food service contractor. Such contractor shall be a minority business enterprise as defined in Ordinance No. 83-127-116, as same may be amended from time to time. The minority contractor shall have not less than a twenty-five percent (25%) interest in the proceeds of the business resulting from this Agreement. The minority contractor so engaged shall be subject to the approval of the City and RRHA. A copy of the agreement between the Food Service Operator and the minority contractor shall be kept on file in the office of the Director.
- B. Food Service Operator hereby warrants that it has, and that for the duration of this Agreement it will maintain, a work force consisting of at least ten percent (10%) minority employees. Food Service Operator further agrees that it will endeavor to employ a work force, in its Richmond Centre operation, with a racial composition that reflects the racial composition of the City of Richmond's resident population, which is currently fifty-one percent (51%) black, forty-seven percent (47%) white, and two percent (2%) other racial groups.
- C. In addition to the joint venture set forth in paragraph A, Food Service Operator shall endeavor to purchase at least twenty percent (20%) of the materials, supplies, equipment, and services required under this Agreement from minority business enterprises (MBEs), as defined in City Ordinance No. 83-127-116, as same may be amended from time to time.

XII. DEFAULT AND TERMINATION

- A. In the event Food Service Operator shall default in any of the payments, obligations or conditions set forth in this Agreement, the City and RRHA may notify Food Service Operator of such default in writing.
- B. Failure on the part of the City and RRHA to notify Food Service Operator of default in accordance with this article shall not be deemed a waiver by the City and RRHA of the City's and RRHA's rights on default of Food Service Operator of such default at a subsequent time and such notice will have the same effect as if promptly made.

- C. Within five (5) days after receipt of notice of default from the City and RRHA, Food Service Operator shall correct such default if the default is with respect to any payment required to be made by Food Service Operator, or within thirty (30) days of receipt of the notice of the default if it is of a non-monetary nature; provided that the default is capable of being cured within thirty (30) days and further provided that Food Service Operator shall commence to cure such default upon receipt of notice of such default. In the event Food Service Operator fails to correct the default to the satisfaction of the City and RRHA within the time specified, or such greater period as the City and RRHA may permit for a default that cannot be cured within thirty (30) days, the City and RRHA shall have all rights accorded by law and by this Agreement, including the right to terminate this Agreement. All costs and attorneys fees incurred by the City and RRHA in the enforcement of any provision within this Agreement shall be paid by Food Service Operator.
- D. Termination of this Agreement by the City and RRHA upon default shall be sufficient grounds for the forfeiture of the surety bonds required to be posted by Food Service Operator, and the surety bonds shall so specify.
- E. In the event that this Agreement is terminated upon default, the City and RRHA may assume control of the food service operation and all equipment installed at the Centre, and the City and RRHA may continue to operate the same until arrangements satisfactory to the City and RRHA may be reached with Food Service Operator concerning the default, or until the City and RRHA shall obtain the services of another food service operator.
- F. In the event Food Service Operator cannot perform its obligations under this Agreement because of a labor dispute such non-performance will not be considered a default; provided, however, that in the event of a labor dispute, the City and RRHA may operate the concession until the labor dispute is settled. Food Service Operator shall indemnify the City, Management Company, Marriott Corporation, and RRHA for any labor law claims that arise from such operation by the City and RRHA. During the period of operation by the City and RRHA, the City and RRHA shall be entitled to use all facilities and equipment at the Centre and any supplies and inventory of Food Service Operator on hand and Food Service Operator shall not be entitled to any monies received from such operations. In such event, the City and RRHA agree to pay Food Service Operator a sum equal to the cost of Food Service Operator's supplies and inventory consumed by the City and RRHA in such operation. In the event said labor dispute remains unresolved for thirty (30)

days, the City and RRHA retain the option to terminate this Agreement upon thirty (30) days' notice.

- G. In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging Food Service Operator bankrupt or insolvent; (b) approving as properly filed a petition seeking reorganization of Food Service Operator under any section of the National Bankruptcy Act, as amended; (c) ordering or approving the winding up or liquidation of Food Service Operator's affairs; or (d) appointing a receiver or liquidator or a trustee in bankruptcy for Food Service Operator or its property; or (e) if Food Service Operator shall institute proceedings to be adjudicated as voluntarily bankrupt or shall consent to the filing of any bankruptcy or insolvency proceedings against it, or shall file a petition or answer a consent seeking a reorganization under any section of the National Bankruptcy Act, as amended, or under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes; or (f) if Food Service Operator shall abandon this Agreement, then the City and RRHA may terminate this Agreement and all rights of Food Service Operator to continue to operate hereunder. In the event of such termination, Food Service Operator shall be liable, but not by way of limitation, for all payments required to be made to the City and RRHA up to and including said date of termination.

XIII. OTHER CONDITIONS

- A. No agreement to modify, or modification of, this Agreement shall be binding on the City and RRHA unless the same is reduced to writing and executed with the same formalities as this Agreement.
- B. In the event that Food Service Operator should hold over and remain in possession of the premises after the expiration of the term of this Agreement, or termination for any other cause, such holding over shall be deemed not to operate as a renewal or extension of this Agreement and such holding over may be terminated at any time by the City and RRHA.
- C. Food Service Operator shall not advertise in any manner or form, on or about the Centre, except by means of such signs or forms of advertising as may be approved by the City and RRHA.
- D. Food Service Operator shall not make any discrimination, distinction or reservation on account of color, race, religion, ancestry, national origin or sex. Upon final

determination by a court of competent jurisdiction that Food Service Operator has violated this section, this Agreement shall be deemed terminated and Food Service Operator's further rights hereunder forfeited.

- E. Food Service Operator shall at all times comply with all applicable laws, rules, regulations and orders of the Federal Government, Commonwealth of Virginia, and the City, and also shall abide by all rules and regulations promulgated for the Centre.
- F. Food Service Operator must affirm and shall certify by signing this Agreement, that it fully complies with Resolution No. 74-R8-11 adopted February 24, 1974, Titles VI and VII of the Civil Rights Act of 1964 and all other such regulations.
- G. Food Service Operator shall be an independent contractor, and nothing contained within this Agreement shall be construed to create a joint venture or partnership by or among the City, RRHA and Food Service Operator nor shall Food Service Operator hold itself out as or be considered an agent or employee of the City or RRHA. The City and RRHA shall have no control over the means or methods used by Food Service Operator in performing its obligations under this Agreement.
- H. Pursuant to City Resolution No. 85-R344-313, the City is prohibited from investing public funds or contracting with any bank, financial institution, corporation or body that is known to provide financial assistance in the form of loans, grants, or investments of any nature, to corporations located in South Africa. Food Service Operator hereby warrants that it does and will continue to abide by Resolution 85-R344-313.

XIV. MISCELLANEOUS

A. Governing Law

This Agreement shall be construed and shall be governed by the laws of the Commonwealth of Virginia and jurisdiction and venue shall lie with the Circuit Court of the City of Richmond.

B. Notice

Written notice of default or termination shall be deemed delivered upon presentation to any person designated by Food Service Operator as the manager, or in the case of notice by Food Service Operator, notice for the City shall be given to

the City Manager, and notice to RRHA shall be given to the Executive Director of RRHA . Notice may also be delivered by mailing the same by certified or registered mail to the address for Food Service Operator in the Proposal, or to the address for the City and RRHA in the case of notice by Food Service Operator.

Partial Invalidity

C. If any portion of this Agreement shall be declared invalid by order, decree or judgment of a court, this Agreement shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship on the City or Food Service Operator or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Agreement.

D. Assignment

1. The rights and privileges granted hereunder shall not be assigned or transferred in any manner whatsoever by Food Service Operator without the written approval of the City and RRHA.
2. The City and RRHA shall have the right to assign any of their rights, privileges and responsibilities under this Agreement to Management Company without the consent of Food Service Operator; provided, however, that the City and RRHA shall retain and shall not assign their rights, duties and responsibilities under the following sections of this Agreement:

II.B., VII.C., IX.B., X.A.8., and XIII.B.

RICHMOND REDEVELOPMENT AND
HOUSING AUTHORITY

By: _____
Executive Director

Attest:

CITY OF RICHMOND

By: _____
City Manager

Attest:

KWIK-KAFE' CO., INC.

By: Mark Johnson

Title: Pres.

Attest:

Jacilyn K. Vrba



ORDINANCE OR RESOLUTION SUMMARY
CITY OF RICHMOND, VIRGINIA

Resolution Ordinance No. 86-253	Subject To Enter into an Agreement with "Kwik-Kafe' Co., Inc." to provide Concessionaire Services for the Exhibit Hall.
Requested by City Manager	
Received City Manager's Office --	
Summarized 10/17/86	

SUMMARY

This Ordinance would authorize the City Manager to enter into and execute an agreement with Richmond Redevelopment and Housing Authority and the Kwik-Kafe' Co., Inc., also known as Swanson Corporation, doing business as Entertainment Services, to provide for the operation of food, beverages, novelty, catering and concession services including the furnishing of supplies, equipment and improvements necessary for such operation at the Exhibit Hall, known as the Richmond Centre.

COUNCIL ACTION

On Docket ..10/27/86.....
Amended
Adopted
Rejected