

AN ORDINANCE No 85-255-237

ADOPTED OCT 14 1985

Authorizing the City Manager, for and on behalf of the City of Richmond, to execute an agreement by and between the City of Richmond, Richmond Redevelopment and Housing Authority, Central Fidelity Bank, David J. Fairchild and G. Andrew Nea, Jr., Trustees, and Renaissance Parking Corporation, concerning a deed of conveyance from the City to Richmond Redevelopment and Housing Authority of certain underground parcels of land, and the grant to the City by Richmond Redevelopment and Housing Authority of an underground and surface easement and agreement pertaining to such conveyances, all relating to the Festival Marketplace project, and to repeal Ordinance No. 84-271-244, adopted November 5, 1984, which authorized caisson encroachments by Richmond Redevelopment and Housing Authority in Marshall Street and in 5th Street.

Patron - City Manager

Approved as to form and legality
by City Attorney

1. THE CITY OF RICHMOND HEREBY ORDAINS:
2. § 1. That the City Manager, Manuel Deese, for and
3. on behalf of the City of Richmond, be and is hereby author-
4. ized and directed to execute an agreement by and between
5. the City of Richmond, a Virginia municipal corporation;
6. Richmond Redevelopment and Housing Authority, a political
7. subdivision of the Commonwealth of Virginia; Central
8. Fidelity Bank, a Virginia banking corporation; David J.
9. Fairchild and G. Andrew Nea, Jr., Trustees under the "Deed
10. of Trust" dated November 1, 1984, duly of record in the

1. office of the Clerk of the Circuit Court of the City of
2. Richmond in Deed Book 24, at page 663; and Renaissance
3. Parking Corporation, a Virginia corporation, concerning a
4. deed of conveyance from the City to Richmond Redevelopment
5. and Housing Authority of certain underground parcels of
6. land, and the grant to the City by Richmond Redevelopment
7. and Housing Authority of an underground and surface easement
8. and agreement pertaining to such conveyances, all relating
9. to the Festival Marketplace project, to be substantially as
10. the copy marked "Exhibit A", attached to the draft of this
11. ordinance.

12. § 2. That Ordinance No. 84-271-244, adopted
13. November 5, 1984, as follows, be and is hereby repealed:

14. § 3. This ordinance shall be in force and effect
15. upon adoption.

6/17/85
7/03/85
8/14/85
8/27/85

THIS DEED, EASEMENT AND AGREEMENT made and entered into as of this ____ day of _____, 1985, by and between THE CITY OF RICHMOND, a Virginia municipal corporation ("City"); RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia ("RRHA"); CENTRAL FIDELITY BANK, a Virginia banking corporation ("Central"); DAVID J. FAIRCHILD and G. ANDREW NEA, JR., trustees under the "Deed of Trust" hereinafter described ("Trustees"), and RENAISSANCE PARKING CORPORATION, a Virginia corporation ("Renaissance").

RECITALS

As part of the Festival Marketplace project currently under construction in the Project One redevelopment area, Renaissance is constructing a parking garage on Parcel A (1.58 acres) in Block N-11 of said area. The location and metes and bounds description of said Parcel A is shown on a boundary survey by Austin Brockenbrough & Associates, dated February 16, 1984, revised October 12, 1984, a copy of which survey is attached to and recorded with that certain memorandum of lease dated November 1, 1984, by and between RRHA and The Industrial Development

Authority of the City of Richmond (the "IDA") which memorandum (the "Memorandum of Lease") was recorded November 30, 1984 in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia (the "Clerk's Office") in Deed Book 24, Page 649 (the survey being at page 661). Pursuant to Deed of Assignment and Assumption between the IDA and Renaissance dated November 1, 1984, recorded November 30, 1984 in the Clerk's Office in Deed Book 24, Page 736 (the "Deed of Assumption"), Renaissance acquired the leasehold interest of the IDA in Parcel A created by the land lease dated as of November 1, 1984 (the "Lease Agreement") described in the Memorandum of Lease.

Central is the owner and holder of an industrial development revenue bond dated November 1, 1984 in the principal amount of \$4,100,000, which is secured, inter alia, by a deed of trust on the fee simple interest in Parcel A, dated November 1, 1984, recorded November 30, 1984, in the Clerk's Office in Deed Book 24, Page 663 (the "Deed of Trust"). Messrs. Fairchild and Nea are the trustees under the Deed of Trust, which provides, in paragraph 24, that the Trustees, or either of them, are authorized and empowered to act on behalf of the Trustees in performing their rights, responsibilities and obligations under the Deed of Trust.

Construction by Renaissance of the parking garage involves (i) the below grade encroachment of certain foundation

caissons into Marshall Street, Fifth Street and property of the City at the northeast corner of Parcel A, and (ii) construction of a depressed vehicular exit from the garage to Clay Street (now closed) (the "Clay Street Connector") across property of the City lying to the north of Parcel A, and, in connection therewith, penetration of the existing Clay Street retaining wall. In connection with certain construction work contemplated by it, the City requires an easement on a portion of Parcel A, north of the north wall and foundations of the parking garage for (i) construction of an emergency stairwell leading from ground level to Clay Street (closed) and (ii) for construction of certain other improvements and for landscaping at ground level.

Renaissance's Clay Street Connector and the City's proposed stairwell and other improvements to be constructed on Parcel A, other than landscaping, are to be substantially as shown on the following three drawings (the "McCarthy Plans") prepared for McCarthy Parking Structures by DesMan Parking Associates: Drawing A14 dated June 4, 1985, revised June 10 and August 7, 1985 and Drawing S12 dated June 11, 1985, revised August 7, 1985, both entitled "Clay St. Tunnel Connector Plans, Sect. & Details", and drawing A13 dated February 22, 1985, revised June 4 and August 7, 1985, entitled "Signage Plans & Dtls".

NOW, THEREFORE, in consideration of the foregoing and the conveyances and agreements thereafter set forth, the parties for themselves, their successors and assigns, do take the following actions:

1. The City does hereby grant and convey to RRHA in fee simple those areas in, on, upon, across, into, through, under and along the north right of way line of Marshall Street and the east right of way line of 5th Street, beginning at a depth of approximately 16 feet below grade and continuing to a depth of approximately 60 feet below grade, and more particularly shown as the area hatched (vertically and horizontally) on Department of Public Works Drawing No. 0-21385, dated July 16, 1985, a copy of which drawing is attached as Exhibit A. This grant and conveyance does not extend beyond five feet from the boundaries of Parcel A.

2. The City does hereby grant and convey to RRHA in fee simple (subject to the City's reversionary interest as hereinafter set forth) that area actually occupied by the Clay Street Connector and related facilities as same are hereafter constructed substantially in accordance with the McCarthy Plans, said area to be used for the construction, repair, maintenance and use of a vehicular connector from Parcel A to Clay Street

(closed). The general location of the area herein conveyed, pre-construction, is shown cross-hatched on Exhibit A. The City reserves to itself all surface and air rights in the area above the Clay Street Connector as constructed. This conveyance includes the right to penetrate the existing retaining wall of Clay Street to complete the Clay Street Connector, as set forth in the McCarthy Plans. In the event the Clay Street Connector, once constructed and opened for use in connection with the parking garage, is damaged or destroyed and is not reconstructed within twenty-four (24) full calendar months after such damage or destruction, or is not used for vehicular access to Clay Street (closed) for a period of twenty-four (24) consecutive full calendar months, all right title and interest of RRHA, its successors and assigns in and to the area conveyed to it in this Paragraph 2 shall terminate and revert to the City, and the then Owner of Parcel A shall take all steps determined by the City as necessary to seal off the Clay Street Connector at both the north and south ends thereof. The west wall of the Clay Street Connector, abutting the stairwell described in paragraph 3, once constructed, shall remain in place for as long as the stairwell is in existence.

3. RRHA does hereby grant and convey to the City a perpetual easement in, on, upon, across, into, through, under and along that portion of Parcel A lying north of the north wall of

the parking garage and foundations therefor, which is actually occupied by the stairwell and other permanent improvements to be constructed by the City as same are constructed substantially in accordance with the McCarthy Plans, said easement to be appurtenant to and run with the title to the City's land lying north of Parcel A, said easement to be for (i) the construction, repair, maintenance and use of the stairwell and related City improvements shown on the McCarthy Plans, and (ii) for surface landscaping. The general location of the easement area, pre-construction, is shown shaded on Exhibit A.

4. Central and Mr. Nea, as sole acting trustee, join in this instrument for the purpose of agreeing and confirming that the Deed of Trust and the lien thereof are and shall be subject and subordinate to the easement rights granted by RRHA to the City in paragraph 3 hereof.

5. Renaissance joins in this instrument for the purpose of agreeing and confirming that its estate and rights as tenant under the Lease Agreement and Memorandum of Lease are and shall be subject and subordinate to the easement rights granted by RRHA to the City in paragraph 3 hereof.

6. Pursuant to Section 12.15 of the Lease Agreement, RRHA confirms to Renaissance that the interests in land granted and conveyed to it by the City in paragraphs 1 and 2 of this instrument are part of the "Leased Premises" demised to

Renaissance, as present tenant, pursuant to the Lease Agreement and Memorandum of Lease. In confirmation thereof, RRHA hereby demises same to Renaissance in accordance with and subject to the provisions of the Lease Agreement and Memorandum of Lease.

Renaissance confirms to Central and the Trustees that its leasehold estate in said land is part of the "Project" defined in the Deed of Assumption.

7. Pursuant to the Deed of Trust, RRHA confirms to Central and the Trustees that the land interests granted and conveyed to it by the City in paragraphs 1 and 2 of this instrument are part and parcel of the "Property" conveyed to the Trustees pursuant to the Deed of Trust. In furtherance of such confirmation, and as ADDITIONAL COLLATERAL for the indebtedness secured by the Deed of Trust, RRHA hereby grants, conveys and assigns to the Trustees in accordance with and subject to the provisions of the Deed of Trust the same land interests hereinabove acquired by RRHA from the City in Paragraphs 1 and 2 hereof.

8. Upon request of a party hereto, accompanied by a survey showing the definitive location of the Clay Street Connector, the stairwell and other improvements hereinabove referred to, as constructed, the other parties will execute a suitable instrument or instruments in recordable form establishing such as-built location.

IN WITNESS WHEREOF, the parties hereto have executed this Deed, Easement and Agreement pursuant to due authorization, as of the day and year first above written.

CITY OF RICHMOND, a Virginia
municipal corporation

By _____

Title _____

RICHMOND REDEVELOPMENT AND HOUSING
AUTHORITY, a political subdivision
of the Commonwealth of Virginia

By: _____
Executive Director

CENTRAL FIDELITY BANK, a Virginia
banking corporation

By _____

Title _____

G. Andrew Nea, Jr.,
Sole Acting Trustee

RENAISSANCE PARKING CORPORATION

By _____

Title _____

Jan

OFFERED OCT 22 1984

AN ORDINANCE *No. 84-271-244*

ADOPTED NOV 5 1984

To authorize Richmond Redevelopment and Housing Authority, owner, and successors thereof, to encroach in, on, upon, across, into, through, under and along the north right of way line of Marshall Street to the extent of a maximum distance of five feet immediately west of the portion of 6th Street to be closed by Ordinance No. 84-26-25, adopted February 13, 1984, becoming effective, to a point 5 feet, more or less, west of the copper pin marking the intersection of the west right of way line of 5th Street and the north right of way line of Marshall Street (a distance of 233 feet, more or less, and to a maximum distance of five feet in, on, upon, across, into, through, under and along the east right of way line of 5th Street from Marshall Street to a point 40 feet, more or less, south of the south right of way line of Clay Street, with caissons as shown shaded on Department of Public Works Drawing No. N-21276, dated October 17, 1984, entitled: "Proposed Caisson Encroachment in Marshall and 5th Streets for 5th Street Parking Garage (R.R.H.A.)", upon certain terms and conditions.

Patron - City Manager (By Request)

PUBLIC HEARING NOV 5 1984 AT 7 P.M.

Approved as to form and legality
by City Attorney

1. THE CITY OF RICHMOND HEREBY ORDAINS:
2. § 1. That Richmond Redevelopment and Housing
3. Authority, owner, and any successor thereof, hereinafter
4. referred to as "Licensee", is hereby permitted to encroach
5. in, on, upon, across, into, through, under and along the
6. north right of way line of Marshall Street to the extent of
7. a maximum distance of 5 feet immediately west of the portion

1. Richmond Redevelopment and Housing Authority, or its
2. successors.

3. (b) That the Licensee, or its successors, unless
4. expressly exempted from such payment by prevailing law, shall
5. pay to the City for the use and occupancy of the actual
6. quantity of space occupied in the streets such charges as
7. Council has heretofore or may hereafter prescribe for such
8. use of the public streets which may be increased or
9. decreased or otherwise modified at any time and from time to
10. time by the Council.

11. (c) That the Licensee, or its successor, shall
12. indemnify, keep and hold the City free and harmless from
13. liability on account of injury or damage to persons, firms
14. and corporations and property growing out of such use of the
15. streets and the installation, construction, maintenance,
16. repair, operation and removal of the encroachments, and in
17. the event that suit shall be brought against the City,
18. either independently or jointly with the Licensee on account
19. thereof, the Licensee will defend the City in any such suit
20. at its cost, and in the event of a final judgment being
21. obtained against the City either independently or jointly
22. with the Licensee, it will pay such judgment and all costs
23. and hold the City harmless therefrom.

24. (d) That the Licensee, or successors, shall insure

1. repeal of this ordinance, or upon the failure, refusal or
2. neglect of the Licensee to comply fully and in all respects
3. with the provisions of this or any other ordinance relating
4. thereto. The Licensee, or its successors, shall pay all
5. premiums chargeable for the bond and shall keep the same in
6. full force and effect at all times during the existence and
7. removal of the encroachment. The bond shall contain a
8. provision that it shall not be terminated or otherwise
9. allowed to expire prior to sixty days written notice to that
10. effect given to the City Manager of the City. An irrevoca-
11. ble letter of credit in an amount of not less than twenty-
12. five thousand dollars may be provided in lieu of such bond.

13. (f) Prior to commencing work in, on, across, into,
14. upon, through, under or along any street any and all permits
15. required for such work shall be obtained under provisions of
16. ordinances and regulations relating to issuance of such
17. permits. All work performed pursuant to such permits shall
18. be performed in a manner satisfactory to the Director of
19. Public Works, Public Safety, and Public Utilities.

20. (g) Licensee, or its successors, shall restore and
21. replace portions of streets and public utilities of either
22. regulated utility companies or of the City disturbed or
23. destroyed.

24. (h) This ordinance is adopted pursuant to the power

City of Richmond
City Planning Commission



900 East Broad Street, Richmond, Virginia 23219
804 • 780-4347

October 8, 1985

To the Honorable Council of the
City of Richmond, Virginia

At its meeting of October 7, 1985, the City Planning Commission voted
(6-0-2 abstentions) to recommend APPROVAL of:

Ordinance No. 85-255

Authorizing the City Manager,***to execute an agreement by and between the City of Richmond, Richmond Redevelopment and Housing Authority, Central Fidelity Bank, David J. Fairchild and G. Andrew Nea, Jr., Trustees, and Renaissance Parking Corporation, concerning a deed of conveyance from the City to Richmond Redevelopment and Housing Authority of certain underground parcels of land, and the grant to the City by Richmond Redevelopment and Housing Authority of an underground and surface easement,***and to repeal Ordinance No. 84-271-244,***which authorized caisson encroachments***in Marshall Street and in 5th Street.

This paper would authorize the City Manager to execute an agreement to enable certain transfers of property interests between the City and R.R.H.A. The transfers are necessary to enable completion of construction and financing agreements for the 6th Street Marketplace parking garage at 5th and Marshall Streets. In October, 1984, the Commission recommended and Council adopted an ordinance to authorize foundation caisson encroachments for the garage under Marshall and 5th Streets. One of the purposes of this paper is to transfer to R.R.H.A. ownership of the below-grade area that is now occupied by the caissons. R.R.H.A. already owns the site of the parking garage. The previous encroachment ordinance would be repealed.

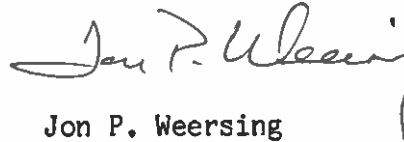
In addition, the City would transfer to R.R.H.A. an underground area comprising approximately 550 square feet adjacent to the Clay Street tunnel east of 5th Street. This area is necessary to provide an exitway from the parking garage to Clay Street.

Finally, the paper provides for the granting of a permanent surface and underground easement from R.R.H.A. to the City to accommodate a stairwell from the parking garage to Clay Street and for landscaping and other improvements at ground level. This easement involves the portion of the parking garage site lying between the garage itself and the Coliseum plaza to the north. Since these elements of the agreement are necessary to

October 8, 1985

enable completion of the parking garage and related improvements, and will not impair public use of the rights-of-way involved, approval is recommended.

Very truly yours,



Jon P. Weersing
Secretary

JPW:lk

cc: Executive Director - R.R.H.A.
Director - Department of Public Works
Gail Preston - Assistant City Attorney