

NOTE: THE BOARD OF ALDERMEN MEETING WILL BE HELD **IN-PERSON**
AND VIRTUALLY VIA ZOOM (link is below).

Please note, individuals may attend in-person or virtually via Zoom. Doors will open 30 minutes prior to the start of each meeting.

Please click this URL to join. <https://us02web.zoom.us/j/84535711866>; Webinar ID: 845 3571 1866

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Persons interested in making their views known on any matter on the agenda should send an email with their comments to the City Clerk at jfrazier@claytonmo.gov. All comments received will be distributed to the entire Board before the meeting.

CITY OF CLAYTON BOARD OF ALDERMEN
EXECUTIVE SESSION – 6:00 P.M.
TUESDAY, JUNE 13, 2023
CLAYTON, MO 63105

1. Negotiation of a Contract.

Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021 (9)(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.

CITY OF CLAYTON BOARD OF ALDERMEN
DISCUSSION SESSION – 6:30 P.M.
TUESDAY, JUNE 13, 2023
CLAYTON, MO 63105

1. FY2024 Budget Preliminary Discussion

Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021 (9)(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.

**CITY OF CLAYTON BOARD OF ALDERMEN
TUESDAY, JUNE 13, 2023 – 7:00 P.M.
CITY HALL COUNCIL CHAMBERS, 2ND FL
10 N. BEMISTON AVENUE
CLAYTON, MO 63105**

ROLL CALL

PUBLIC REQUESTS & PETITION

CONSENT AGENDA

1. Minutes – May 23, 2023
2. Resolution – Contract with SWT for additional design services for Remembrance Park (Res. No. 2023-21)

CITY MANAGER REPORT

1. Ordinance – Bonhomme Parking Garage Lease Between the City and Revive Capital Development, LLC (Bill No. 6978)
2. Ordinance - Intergovernmental Agreement with the Cities of Brentwood and Richmond Heights to create a Joint Fire Training Center Commission. (Bill No. 6979)

ADJOURNMENT

Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021 (9)(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.

Agenda topics may be added or deleted at any time prior to the Board of Aldermen meeting without further notice. To inquire about the status of agenda topics, call 290.8469. Individuals who require an accommodation (i.e., sign language, interpreter, listening devices, etc.) to participate in the meeting should contact the City Clerk at 290.8469 or Relay Missouri at 1.800.735.2966 (TDD) at least two working days prior to the meeting.

THE CITY OF CLAYTON

Board of Aldermen
In-Person and Virtual Meeting
May 23, 2023
7:00 p.m.

Minutes

The meeting was open to individuals to attend in-person and/or virtually via Zoom.

Mayor Harris called the meeting to order and requested a roll call. The following individuals were in attendance:

In-person: Bridget McAndrew, Susan Buse, Becky Patel, Gary Feder, Rick Hummell, and Mayor Harris.

Virtual: Ira Berkowitz

Staff: City Manager Gipson, City Attorney O'Keefe, City Clerk Frazier, and Anna Krane, Director of Planning

PUBLIC REQUESTS AND PETITIONS

None

RECOGNITIONS AND AWARDS

Mayor Harris welcomed the Mayor's Youth Advisory Council (MYAC) and presented the students with certificates of participation. Special recognition was presented to Elle Winings and Alex Slen for the Outstanding Participation awards.

A PUBLIC HEARING AND A RESOLUTION FOR A CONDITIONAL USE PERMIT – 8113 MARYLAND AVENUE RESTAURANT D/B/A JINZEN

Mayor Harris opens the public hearing and requests proof of publication.

City Manager Gipson reported that this is a public hearing and a resolution to consider an application for a Conditional Use Permit submitted by Haolin Li on behalf of 888FOOD LLC d/b/a JINZEN, to allow for the operation of a 2,000 square foot restaurant with an outdoor dining area.

Lin Li and Haolin Li, owners, were present to answer questions from the Board.

Mayor Harris closes the public hearing.

Motion made by Alderman Berkowitz to approve Resolution No. 2023-18, granting a conditional Use Permit for 8113 Maryland Avenue for JINZEN Restaurant . Alderman McAndre seconded.

The motion passed unanimously on a voice vote.

CONSENT AGENDA

1. Minutes – May 9, 2023
2. Resolution - On-Call Services Contract for Landscape and Tree Preservation Plan Review Services (Res. No. 2023-19)
3. ~~Resolution – Authorizing the submittal of a grant application to the U. S. Department of Transportation Federal Highway Administration for electric vehicle charging stations. (Res. No. 2023-20)~~
4. Motion – Liquor license for Kitchen Clayton located at 7923 Forsyth Boulevard.

City Manager Gipson stated that a request was received from Alderman Hummell to remove item #3, Resolution No. 2023-20, Authorizing the submittal of a grant application to the U. S. Department of Transportation Federal Highway Administration for electric vehicle charging stations, from the Consent Agenda.

Motion made by Alderman Berkowitz to approve the Consent Agenda. Alderman McAndrew seconded.

The motion passed on a roll call vote: Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; Alderman Hummell – Aye; and Mayor Harris – Aye.

A RESOLUTION AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO THE U. S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION FOR ELECTRIC VEHICLE CHARGING STATIONS AT VARIOUS CITY PROPERTIES

City Manager Gipson reported that city staff is seeking approval to submit a grant application for the “Charging and Fueling Infrastructure Discretionary Grant Program” of the US Department of Transportation to install electric vehicle (EV) charging stations at various City properties. The application deadline is June 13.

Alex Elmestad, Executive Director, Clayton Community Foundation, attending (virtually) providing a summary of the grant process, and details, and to answer questions from the Board.

Motion made by Alderman Berkowitz to approve Resolution No. 2023-20, authorizing staff to submit a grant application for EV Charging Stations. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

AN ORDINANCE FOR A CONDOMINIUM PLAT FOR PROPERTIES ADDRESSED 114, 116, 118, 120, AND 122 (BUILDING A) AND 126, 128, 130, 132, AND 134 (BUILDING B) GAY AVENUE

City Manager Gipson reported that on April 28, 2020, the Board of Aldermen approved an application, plat and supporting documents from MRM Manlin Development Group, owner of 114, 116, 118, 120, and 122 (building A) and 126, 128, 130, 132, and 134 (building B) Gay Avenue, for the approval of a condominium plat at those addresses to be known as The Townhomes of Clayton. The conditions of plat approval were not met, and the approved plat was not recorded.

On March 21, 2023, the applicant submitted an application, condominium plat, bylaws and declaration. The subject townhomes are under construction and comprise two (2), five (5) unit buildings.

Construction of the development is progressing, however, not all improvements have been completed. During staff review, the applicant requested that the plat be presented to the Board of Aldermen despite not complying with Section 415.150.B as an applicant is allowed to request pursuant to Section 415.150.C.

Mike Manlin, Developer, Bruce Bartlett, representing the developer, and several future residents of the condominium units were in attendance.

Steve Huntley, future resident (Unit 4), addressed the Board with comments and expressing his support for the Board's approval of tonight's request.

Alderman Berkowitz introduced Bill No. 6976, to approve a condominium plat for 114, 116, 118, 120, and 122 (Building A) and 126, 128, 130, 132, and 134 (Building B) Gay Avenue to be read for the first time by title only. Alderman McAndrew seconded.

City Attorney O'Keefe reads Bill No. 6976, first reading, an Ordinance Providing for the Approval of a Plat for the Townhomes of Clayton, a Condominium Located at 114, 116, 118, 120, 122, 126, 128, 130, 132, and 134 Gay Avenue in the City of Clayton, Missouri by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Berkowitz that the Board give unanimous consent to consideration for adoption of Bill No. 6976 on the day of its introduction. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

Alderman Berkowitz introduced Bill No. 6976, to approve a condominium plat for 114, 116, 118, 120, and 122 (Building A) and 126, 128, 130, 132, and 134 (Building B) Gay Avenue to be read for the second time by title only. Alderman McAndrew seconded.

City Attorney O'Keefe reads Bill No. 6976, second reading, an Ordinance Providing for the Approval of a Plat for the Townhomes of Clayton, a Condominium Located at 114, 116, 118, 120, 122, 126, 128, 130, 132, and 134 Gay Avenue in the City of Clayton, Missouri by title only.

The motion passed on a roll call vote: Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; Alderman Hummell – Aye; and Mayor Harris – Aye. The bill, having received majority approval, was adopted, and became Ordinance No. 6837 of the City of Clayton.

AN ORDINANCE ENDING EMERGENCY MEASURES RELATED TO COVID-19 PANDEMIC

City Manager Gipson reported that the Board of Aldermen approved certain emergency measures in response to the COVID-19 pandemic on March 24, 2020. The State of Missouri announced an end to the COVID-19 pandemic crisis on April 1, 2022 and the Federal government officially ended the national emergency on May 11, 2023. The proposed ordinance would end the local emergency measures put in place in March of 2020.

Alderman Berkowitz introduced Bill No. 6977, ending emergency measures related to the Covid-19 Pandemic to be read for the first time by title only. Alderman McAndrew seconded.

City Attorney O’Keefe reads Bill No. 6977, first reading, an Ordinance Ending Emergency Measures to Protect the Public Health During the Coronavirus Pandemic Crisis by title only.

The motion passed unanimously on a voice vote.

Motion made by Alderman Berkowitz that the Board give unanimous consent to consideration for adoption of Bill No. 6977 on the day of its introduction. Alderman McAndrew seconded.

The motion passed unanimously on a voice vote.

Alderman Berkowitz introduced Bill No. 6977, ending emergency measures related to the Covid-19 Pandemic to be read for the second time by title only. Alderman McAndrew seconded.

City Attorney O’Keefe reads Bill No. 6977, second reading, an Ordinance Ending Emergency Measures to Protect the Public Health During the Coronavirus Pandemic Crisis by title only.

The motion passed on a roll call vote: Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; Alderman Hummell – Aye; and Mayor Harris – Aye. The bill, having received majority approval, was adopted, and became Ordinance No. 6838 of the City of Clayton.

DISCUSSION ON WASTE COLLECTION ASSISTANCE

City Manager Gipson provided the Board with a PowerPoint presentation on waste collection assistance. *(presentation available in the City Clerk’s office)*

Kathleen Gund (virtual attendance), 320 N. Bemiston, addressed the Board with comments regarding 1) the penalty for not properly recycling; 2) low-income applicants; and 3) suggest the Board consider setting a perimeter (i.e. real property tax bill) to determine the need.

Other

Alderman McAndrew reported on the following:

- CRSWC
 - Membership enrollment is continuing to increase; corporate membership is lagging
 - Discussion on updating the scholarship program policy
 - Discussion on updating the party policy
 - Reviewed the Silver Sneakers’ program
- Plan Commission/ARB.

Alderman Buse reported that she attended the 2023 Galvanizing Gutsy Women Gala Brunch where Alderman Patel hosted a table.

Alderman Patel reported on the following:

- Boards & Commissions recruitment of members
- Sustainability Committee
 - Discussion on a possible tour of the Public Works facility
 - Washington University interns – good experience
- 2023 Galvanizing Gutsy Women Gala

Alderman Feder reported on the following:

- Clayton Community Foundation
 - Fundraising efforts
 - Restoration of the Hanley House
 - Art on Wydown

Mayor Harris reported on the following:

- BOA/Staff retreat – Kudos; special thanks to Anna Krane for presentation(s)
- Attended the St. Louis Regional Crime Summit
- Community Landscape Task Force – recommendation on the Philippine Village
- Chamber of Commerce event - Parties in the Park

Mayor Harris recognized a resident in the audience, Paul Flotkin. Mr. Flotkin stated that he was in attendance as an interested party in the townhouse project.

Motion made by Alderman Hummell that the Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO. Alderman Patel seconded.

The motion passed on a roll call vote: Alderman Berkowitz – Aye; Alderman McAndrew – Aye; Alderman Buse – Aye; Alderman Patel – Aye; Alderman Feder – Aye; Alderman Hummell – Aye; and Mayor Harris – Aye.

The motion passed unanimously on a voice vote.

The meeting was adjourned at 8:43 p.m.

Mayor

ATTEST:

City Clerk



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
TONI SIERING, DIRECTOR OF PARKS & RECREATION
DATE: JUNE 13, 2023
SUBJECT: RESOLUTION – A CONTRACT WITH SWT DESIGN, INC. FOR
PROFESSIONAL SERVICES RELATED TO REMEMBRANCE PARK

In 2018, the City of Clayton acquired land at 7811 Maryland Avenue with the intent to create an urban pocket park in Downtown Clayton. As you know, a Request for Bids for construction of the park was first issued in March 2022 and, although minor changes were made to the scope of the project to reduce the cost, the bids still came in over budget. To move this project forward, and with the approval of the Board of Aldermen, the City applied for and was awarded additional Municipal Park Grant funding for the new park for a total of \$455,000.

During this process SWT Design, Inc. has continued its contractual involvement in the project – from including changes to the original design to keep the project moving in 2022 to additional bidding and construction related services with the 2023 rebid. However, SWT Design, Inc. has now reached the end of the contracted amount for design services and has requested the attached addendum. Per the addendum, SWT Design, Inc. will continue the permitting and construction contract updates, as well as bidding and construction related services for the project at a cost of \$27,725, which is expected to see the project through to the completion of Remembrance Park. When the City applied for additional Municipal Park Grant funding for the project, extra funds were included in the grant application for further architects and construction management fees, so this additional expense will be within the total grant amount of \$455,000.

Recommendation: To an addendum to the contract with SWT Design, Inc. in the amount of \$27,725 for professional services to finalize the construction of Remembrance Park.

RESOLUTION NO. 2023-21

A RESOLUTION APPROVING A CONTRACT WITH SWT DESIGN, INC. FOR PROFESSIONAL SERVICES RELATED TO REMEMBRANCE PARK

WHEREAS, the Board of Aldermen believes that construction of Remembrance Park at 7811 Maryland Avenue will enhance the leisure and recreation program offered to our residents by the City of Clayton; and

WHEREAS, the park system and enhancements to this system are critical in sustaining the quality of life expected in the City; and

WHEREAS, due to protracted delays in the project resulting from market forces and redesign and value engineering efforts to make the project more financially feasible, the original contract amount for services by SWT Design Inc. has been exhausted and the additional funding reflected in the attached addendum to the original contract is necessary to see the project to conclusion;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON AS FOLLOWS:

Section 1. The Board of Aldermen approves on behalf of the City a contract addendum with SWT Design Inc. in the amount of \$27,725 for Remembrance Park at 7811 Maryland Avenue in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such document changes as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient, or prudent in order to carry out the intent of this legislation.

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen.

Passed this 13th day of June 2023

Mayor

ATTEST:

City Clerk



January 17, 2023

City of Clayton
Toni Siering
Director of Parks and Recreation
50 Gay Ave.
Clayton, MO 63105

**RE: Additional Service #001 – 7811 Maryland Avenue Park: Design and Implementation Agreement
09.06.21 | Permitting, Bidding, and Implementation 2023**

Dear Ms. Siering,

This letter will serve as our agreement to perform the following services subject to the conditions of the Park Design and Implementation Agreement dated September 6, 2021.

Scope: MSD Permitting, Bid Drawings Update, Bid Manual Update, Bidding, and Construction Observation

Schedule: Anticipated project completion December 1, 2023.

Estimated Cost: Our base services cost is \$27,725.00.

Please sign and return the enclosed copy of this Work Order for our records, and I am available if you have any questions.

Thank you,

Jay Wohlschlaeger, PLA
Project Partner

Accepted this _____ day of _____, 2023.

By: _____

Title: _____

ATTACHMENT “A”

SCOPE OF WORK / FEE

Below is a proposed project scope from the SWT Design Team for completing the 7811 Maryland Park – Permitting, Bidding and Implementation 2023.

TASK 1: DESIGN SERVICES (PERMITTING AND CONSTRUCTION DOCUMENTS UPDATE)

SWT will facilitate MSD permitting of the project and update the construction documents to include items from 2022 bid addenda and Grant Round 23 that were not included in the original bid package. Permitting and Construction Documents Update tasks include:

- a. MSD submittals and comment response submittals to obtain MSD approval.
- b. Revise overall document set to reflect current dates and details.
- c. Incorporate 2022 bid process addenda items into 2023 bid set.
- d. Incorporate water feature element into construction documents.
- e. Explore opportunity to incorporate reclaimed wood from City of Clayton into seating details. (This will occur with City and Contractor following bidding and award of contract.)
- f. Update technical specifications to reflect project revisions.
- g. Update estimate of probable costs for bid review.
- h. Coordination with City of Clayton as required for streetscape and completed road improvements.
- i. Perform internal quality control check of documentation and coordination.
- j. Revise bid manual front end and bid form.
- k. Prepare final set of approved Bid Documents for distribution to bidders.

PRODUCTS OF TASK 1A: ▪ 100% Client Approved Construction Documents Package (electronic submittal)

MEETINGS FOR TASK 1B: ▪ One (1) 100% Construction Documents and Bid Process Review with Client.

TASK 2: BIDDING AND CONSTRUCTION RELATED SERVICES

The Construction Related Services Phase include providing final bid documents, support to Client for bidding and negotiation with qualified contractors, pre-construction services, submittal review, construction observation, field reports, coordinating field-adjustments and a final punch list.

- a. SWT shall assist the Client with Bidding and Negotiation process. SWT will respond to Client’s and Contractor’s questions. As needed, SWT shall analyze submitted bids and provide recommendations to Client regarding award of contract. SWT shall participate in assisting the Client in bidding, clarifications, and addenda. SWT will attend a pre-bid meeting and bid opening if requested.
- b. SWT will participate in a pre-construction meeting to review project expectations as it relates to the scope of the design contract documents.
- c. SWT shall review and approve or take other appropriate action on the submittals, such as shop drawings, product data, samples and other data, which the manufacturer is required submit, but only for the limited purpose of checking for conformance with the design intent and the information shown in the Construction Documents.

- d. SWT shall visit the project site at intervals appropriate to the stage of construction, no more or as otherwise agreed to in writing by the Client and SWT, in order to observe the progress and quality of the work (“Work”) completed by the contractor or contractors for this Project (“Contractor(s)”). Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Work but rather are to allow SWT, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Project Documents. Maximum five (5) site visits included in base services.
- e. Based on this general observation, SWT shall keep the Client informed about the progress of the Work and shall endeavor to guard the Client against deficiencies in the Work. SWT will prepare a field report corresponding with each site visit. In addition, supplementary sketches required to resolve actual field conditions encountered will be prepared as needed.
- f. SWT shall not supervise, direct, or have control over the Work, nor have any responsibility for the construction means, methods, techniques, sequences, or procedures selected by the Contractor, nor for the Contractor’s safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Construction Documents.
- g. SWT shall not be responsible for any acts or omissions of the Contractor, subcontractor, or any entity performing any portions of the Work, or any agents or employees of any of them. SWT does not guarantee the performance of the Contractor and shall not be responsible for the Contractor’s failure to perform Work in accordance with the Construction Documents or any applicable laws, codes, rules, or regulations.
- h. SWT will assist the Client in preparing a punch list for all work identified in the contract documents. One punch list review will be provided. SWT will visit the site to review all punched items are accurately accounted for and completed.

- **Deliverables of Task 2:**

- 1. Bid Review Recommendation
- 2. Field Reports
- 3. Final Punch List

- **Meetings for Task 2:**

- 1. One (1) Pre-Bid Meeting
- 2. One (1) Bid Opening and Review
- 3. One (1) Pre-Construction Meeting
- 4. Construction Observations Site Visits (5 max. - timing to be coordinated with Client)
- 5. One (1) Final Punch List Site Visit

FEES: SCOPE OF WORK

The fee for services outlined in this proposal is **\$27,725.00**, including direct expenses as defined below. SWT will bill on a percentage of completion basis per task. Billing for SWT fees and will be submitted monthly.

<i>TASK 1: Design Services</i>	\$9,225.00
<i>TASK 2: Bidding & Construction Related Services</i>	\$18,500.00
TOTAL:	\$27,725.00

DIRECT EXPENSES

- Direct Expenses including mileage for local travel and in-house printing are included in Compensation.

ADDITIONAL SERVICES

Additional Services shall be provided if authorized or confirmed in writing by the Client and shall be paid for by the Client in addition to the compensation for Basic Design Services. Additional Services will be compensated based upon a mutually agreed fee. If a fee is not mutually agreed to, the Additional Services will be billed at the hourly rates set forth herein. Incurred expenses associated with any Additional Services are in addition to the Additional Services Fee and will be reimbursed at cost.

Additional services will be billed on an hourly* basis as follows:

COMPENSATION: ADDITIONAL SERVICES

Client approved services outside Attachment "A" will be billed on an hourly basis at the following 2022 rates:

Partner.....	\$190.00	Designer.....	\$95.00
Senior Associate I.....	\$150.00	Staff I.....	\$85.00
Senior Associate II.....	\$135.00	Staff II.....	\$80.00
Civil Engineer.....	\$150.00	Staff III.....	\$65.00
Associate.....	\$110.00	Administrative.....	\$70.00

Costs for professional reprographics/printing of drawings sets, document courier or shipping costs, and permit fees if paid by the design team will be billed to the Client at 1.1x the cost incurred.

WORK NOT INCLUDED IN BASIC SERVICES

- a. Soils/Geotechnical Investigation
- b. Environmental Impact Statements
- c. Project Survey and Base Mapping
- d. Meetings in addition to those noted in scope of work
- e. Perspective Renderings



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
GARY CARTER, DIRECTOR OF ECONOMIC DEVELOPMENT
DATE: JUNE 13, 2023
SUBJECT: ORDINANCE - BONHOMME PARKING GARAGE LEASE BETWEEN
THE CITY AND REVIVE CAPITAL DEVELOPMENT, LLC

Revive Capital Development (RCD) has reached a tentative agreement to purchase two properties located at 121 and 111 South Meramec Avenue owned by St. Louis County. RCD's plan is to develop a mixed-use project on these sites, with a primary focus on rental residential units. The proposed development involves partially demolishing 121 South Meramec Avenue (also known as the World Trade Center) and utilize the remaining building for residential and some commercial purposes. Additionally, RCD intends to construct a residential tower on the 111 South Meramec Avenue site. Although RCD has not yet submitted a Planned Unit Development (PUD) application for the entire project, they say they are preparing to do so in the near future.

Because the existing structure at 121 South Meramec and the anticipated new structure at 111 South Meramec do not have sufficient on-site parking spaces to accommodate RCD's desired development, RCD seeks to lease 200 parking spaces from the City, which are available within the Bonhomme Garage adjacent to the west side of the development site. Entering into a lease to provide the parking necessary for the proposed development is a condition precedent to RCD closing on the purchase of the County properties.

Since 1998, the Clayton on the Park property located at 8025 Bonhomme has held a parking lease for spaces within the adjacent city-owned Bonhomme parking facility. This lease provides 280 parking spaces for the exclusive use of Clayton on the Park. The Bonhomme Garage has a total capacity of 570 spaces and also currently is used for various long-term parking arrangements, including 90 spaces leased by Moneta. Furthermore, the garage offers monthly parking options for several small businesses in the area and provides public parking for visitors to Shaw Park. St. Louis Parking, the operator of the garage on behalf of the City, has confirmed that allocating 200 spaces to Revive Capital Development's proposed development will not impact the garage's operations. It is important to note that with the cessation of office use and partial demolition of the 121 South Meramec property, St. Louis County's long-term rights to 269 parking spaces within the Bonhomme garage will terminate.

Since December 2022, the staff and legal counsel have been working closely with RCD to establish the following lease terms:

- The lease will cover 200 parking spaces.

- Once RCD is issued their initial building permit, they will have 60 months until they are required to lease all 200 spaces for the remaining duration of the contract. Until that time, they will be required to lease spaces to satisfy occupancy requirements. The City has the ability to lease unused spaces to other entities or individuals until RCD is required to utilize the spaces for their development.
- The first building to be completed is the 121 S. Meramec site. It is anticipated that RCD will neither use any parking spaces nor be required to pay for them since the site has existing parking. However, the parking study included with the PUD will dictate whether the on-site parking adequately meets the project's requirements.
- The second building to be completed is the 111 S. Meramec site. During the lease up and occupancy, RCD will lease parking spaces as needed based on the findings of the parking study, which will consider the occupancy of apartments and other uses.
- The lease term will extend until 2075 and align with the expiration of the parking lease agreement with Clayton on the Park for that same Bonhomme Garage.
- The rental cost for the parking spaces will be determined by the market, with the City utilizing a third-party vendor, currently St. Louis Parking, to establish fair market rates.
- The lease is contingent upon the continued use prescribed by the zoning for the 121 and 111 South Meramec properties as adopted by the City after application by the developer.
- The City will retain the authority to manage the Bonhomme Garage and maximize its utilization.

Recommendation: To approve the ordinance.

BILL NO. 6978

ORDINANCE NO. _____

AN ORDINANCE APPROVING A LONG-TERM LEASE WITH REVIVE CAPITAL DEVELOPMENT, LLC. FOR PARKING SPACES IN THE BONHOMME GARAGE AND ACTIONS RELATED THERETO

WHEREAS, Revive Capital Development, LLC. Intends to acquire the property at 121 and 111 South Meramec Avenue from St. Louis County for the purpose of a mixed-use development with rental housing and some commercial space; and

WHEREAS, Revive's development plans can only be realized if the developer is assured that a number of parking spaces in the City's adjacent Bonhomme Garage will be available for tenants of the new development on a long-term basis; and

WHEREAS, the Mayor and Board of Aldermen find and believe that the capital investment to be made by developer, the revitalization of that part of downtown Clayton, and return of the redeveloped properties to the public tax rolls will be in the best interests of the City and its residents; and

WHEREAS, the parking spaces required by developer are available in the Bomhomme Garage without compromising the current parking tenants or the transient parking demands to support user of Shaw Park and patrons of nearby businesses;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen approves on behalf of the City an agreement Revive Capital Development, LLC., for a long term lease of parking spaces in the City's Bonhomme Avenue Garage in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen.

Adopted this 13th day of June 2023.

Mayor

ATTEST:

City Clerk

PARKING LEASE

THIS PARKING LEASE is made and entered into effective as of the ___ day of June, 2023 (“Effective Date”), by and between The City of Clayton, Missouri, a constitutional charter city of the State of Missouri (which, together with its successors and assigns is hereinafter referred to as “Clayton”), and Revive Capital Development, LLC, a Missouri limited liability company (which, together with its successors and assigns, is hereinafter referred to as “Tenant”).

WITNESSETH:

WHEREAS, Clayton is the owner of a certain tract of land, together with all improvements thereon, located in the City of Clayton, County of St. Louis, State of Missouri, more particularly described on Exhibit “A” attached hereto and incorporated by reference herein (the “Brentwood Garage Tract”); and

WHEREAS, the Brentwood Garage Tract is improved with a parking structure, together with driveways, walkways and accessways serving the parking garage structure (hereinafter referred to as the “Brentwood Garage”); and

WHEREAS, Tenant has acquired St. Louis County’s rights and interests in 121 South Meramec Avenue (“Small Building”) and 111 South Meramec Avenue (“Tower”); and

WHEREAS, Tenant intends to redevelop the acquired parcels into a mixed-use development (hereinafter referred to as the “Mixed Use Buildings”); and

WHEREAS, Tenant desires to enter into a parking lease in the Brentwood Garage, which sets forth Tenant’s and Clayton’s rights and interests during the term hereof.

NOW, THEREFORE, in consideration of the aforesaid representations, which are expressly incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually accepted, Clayton and Tenant agree as follows:

ARTICLE I. PREMISES

Section 1.1 Leased Premises.

(a) In consideration of the mutual covenants and agreements herein contained, Clayton hereby leases to Tenant (i) up to two hundred (200) parking spaces within the Brentwood Garage on an unreserved basis referred to herein as the “Tenant Spaces”, together with all appurtenances thereto, the rights hereinafter granted with respect to the Common Facilities, and all appurtenances thereto, and the rights to use and maintain the Accessways (as hereinafter defined) as hereinafter provided (collectively, the Tenant Spaces, Common Facilities and rights to use and maintain the Accessways are hereinafter referred to as the “Leased Premises”) for use by Tenant and its employees, occupants, tenants, guests and invitees in connection with the use and occupancy of the Mixed Use Buildings. As provided herein, Tenant shall have access to the Tenant Spaces on a first-come, first-served basis. The location of the Tenant Spaces shall not be specifically identified within the Brentwood Garage and Tenant, its employees, occupants, tenants, guests, and

invitees shall be permitted to use all spaces within the Brentwood Garage up to the total number of Tenant Spaces that have been delivered and leased to Tenant as hereinafter set forth. The number of Tenant Spaces leased to Tenant hereunder from time to time shall be determined as follows:

(i) Effective as of the Commencement Date, Tenant shall be deemed to be leasing Tenant Spaces located within the Brentwood Garage, subject to the terms and conditions hereinafter set forth.

(ii) The period of time until twenty-four months immediately following the receipt of a certificate of occupancy for the Tower shall be known as the (“**Stabilization Period**”). During the Stabilization Period, Tenant shall be required to lease at least one Tenant Space from Clayton for each residential unit in the Tower that becomes occupied for residential use in accordance with the parking study commissioned during the zoning process. From and after the expiration of the Stabilization Period and continuously thereafter, as long as the Mixed Use Buildings are utilized for the use(s) specified on the date of execution of this Parking Lease, Tenant shall compensate Clayton as provided in Section 3.1 for two hundred (200) Tenant Spaces. Such use(s) shall specifically include residential apartments. The initial designation of Tenant Spaces for residential units shall be administered according to this subpart (ii). Tenant agrees to provide Clayton at least ten (10) business days prior written notice of the date (the “Space Delivery Date”) that a Tenant Space should be designated to Tenant and such Tenant Space shall become part of the Leased Premises on said Space Delivery Date. Upon receipt of such notice, Clayton agrees to provide Tenant with a parking card or other entry device for such Tenant Space on or before the Space Delivery Date, provided that Clayton shall not be required to do so sooner than ten (10) business days after its receipt of Tenant’s notice. Notwithstanding the foregoing, neither Tenant nor the applicable residential user of the Tenant Space shall have access to the Brentwood Garage (i.e., the parking card or other entry device will not be activated) until such time as Tenant has provided or caused to be provided to Clayton or its parking operator the information requested for its operational purposes, such as the identity of the residential unit to which an Tenant Space is assigned, the name and contact information for the intended occupant(s) or responsible party for such residential unit (including Tenant itself if the residential unit is to remain unoccupied following the Space Delivery Date or subsequently becomes unoccupied and Tenant is not permitted or does not elect to un-designate the Tenant Space), and the make, model, color, plate number and other information pertaining to the vehicle to be parked in the Brentwood Garage with such parking card or other entry device. Tenant understands and acknowledges that Clayton will not issue an initial certificate of occupancy for any unit which Tenant has prepared for residential use in the Tower until the foregoing procedure has been followed and a Tenant Space has been designated and assigned to such residential unit. Once a Tenant Space has been made available and assigned to a residential unit in the Tower as aforesaid, the foregoing condition precedent to issuance of a certificate of occupancy shall no longer be applicable for that unit. Notwithstanding anything else herein contained, however, any future modification of the use of the Mixed Use Buildings from the residential, mixed-use utilized in the parking study shall be required to be in compliance with the then-applicable parking requirements of Clayton. Tenant expressly agrees that any retail and/or office use shall not exceed twenty percent (20%) of the net rentable square footage of the Mixed Use

Buildings.

(iii) Tenant Spaces that have not been designated for use by Tenant and made available to Tenant under the above procedure or pursuant to Subpart (vi) of this Section 1.1(a), shall not be part of the Leased Premises, and may be used by Clayton for such other parking uses and purposes as Clayton may deem appropriate, subject to Tenant's right to designate Tenant Spaces for use as provided herein and Clayton's obligation to make available the Tenant Spaces in accordance herewith.

(iv) Once a Tenant Space has been designated for use by Tenant and made available to Tenant under the above procedure, it shall be deemed to be leased to Tenant and part of the Leased Premises under the terms of this Lease, and Tenant shall not have the right thereafter to un-designate such Tenant Space or remove it from the Leased Premises, subject to the following: Tenant shall have the right to re-assign Tenant Spaces as it deems necessary or convenient in the operation of the Mixed Use Buildings provided that, each residential unit which becomes occupied must have, at all times, at least one Tenant Space designated for it (even in the event such unit becomes unoccupied). Notwithstanding anything else herein contained, however, any future modification of the use of the Mixed Use Buildings from the use permitted by Clayton on the date of execution of this Parking Lease shall be required to be in compliance with the applicable parking requirements of Clayton. Such use shall specifically include residential apartments.

(v) Nothing herein contained shall be deemed to limit Tenant's right to designate Tenant Spaces for lease hereunder to non-residential units at any time existing in the Mixed Use Buildings, it being the intention of the parties that Tenant may designate up to two hundred (200) Tenant Spaces for use by Tenant in connection with the Mixed Use Buildings at any time after the Tower Occupancy Date. Tenant agrees to provide Clayton at least ten (10) business days prior written notice of the Space Delivery Date that a Tenant Space should be designated to Tenant and such Tenant Space shall become part of the Leased Premises on said Space Delivery Date. Upon receipt of such notice, Clayton agrees to provide Tenant with a parking card or other entry device for such Tenant Space on or before the Space Delivery Date, provided that Clayton shall not be required to do so sooner than ten (10) business days after its receipt of Tenant's notice. Notwithstanding the foregoing, neither Tenant nor the applicable non-residential user of the Tenant Space shall have access to the Brentwood Garage (i.e., the parking card or other entry device will not be activated) until such time as Tenant has provided or caused to be provided to Clayton or its parking operator the information requested for its operational purposes, such as the identity of and contact information for the intended occupant(s) or responsible party for such non-residential unit) and, where feasible, the make, model, color, plate number and other information pertaining to the vehicle to be parked in the Brentwood Garage with such parking card or other entry device.

(vi) In connection with the delivery of a parking card or other entry device for a Tenant Space, Clayton or its parking operator may require the payment of a reasonable activation fee to help defray the administrative costs associated with the activation of the parking card or other entry device.

ARTICLE 2. TERM

Section 2.1 Term. The term of this Parking Lease shall begin on June 15, 2023 (the “Commencement Date”) and shall end on the date in 2075 when Clayton’s Lease for Clayton on the Park and all options for renewal expire.

For purposes of this Parking Lease, the term “**lease year**” shall mean a period of twelve consecutive months. The first lease year shall begin on the Commencement Date and end on June 14, 2024. Subsequent lease years shall run consecutively, each beginning on the first day of the month succeeding the completion of the previous lease year.

Section 2.2 Options. Tenant shall not have the option to extend the term of this Parking Lease, although Tenant and Clayton may extend the term of this Lease by mutual agreement. The word “term” whenever used herein shall mean the original term and any extensions thereof unless the context otherwise requires.

Section 2.3 Mutual Termination. The term of this Parking Lease may be terminated at any time upon the written agreement of Clayton, Tenant and the holder of a Leasehold Mortgage (as defined hereinbelow), if any, which agreement may be withheld in each such party’s sole discretion.

Section 2.4 Tenant Termination. Tenant may terminate this Parking Lease, upon 60 days’ notice of termination, if 51 or more units in the Tower and/or Small Building are destroyed by fire, earthquake, tornado, wind, storm, collapse, or other act(s) of God, explosion, civil unrest, insurrection, and/or war, are condemned, are taken by eminent domain, and/or if the dominate means of personal transportation in Clayton is no longer the personal automobile.

ARTICLE 3. RENT

Section 3.1 Rent.

(a) Subject to the deadlines contained in Section 1.1 (a)(ii) of this Lease and during each “lease year” as defined in Section 2.1 above, installments of rent shall be payable in advance on or before the first (1st) day of each month. Subject to the phased commencement of Tenant’s obligations to pay rent as set out in Section 3.1(d) below, throughout the term of this Parking Lease the monthly rent payable for the Leased Premises shall be determined as hereinafter set forth.

(b) Clayton shall determine the monthly rental rate per Tenant Space (the “Rental Rate”) for each lease year during the term of this Parking Lease to be effective as of the anniversary of the Commencement Date. The Rental Rate for each lease year shall be the fair market rental value of a parking space in the Brentwood Garage for such year as determined by Clayton. Clayton’s determination of the Rental Rate shall be based on its evaluation of the monthly rents then being charged in other parking garages in the Clayton Business District, as well as the monthly rents then being charged in other comparable parking garages operated by others in the Clayton Business District (and for purposes of this Parking Lease the “Clayton Business District” shall be deemed to consist of that area bounded by the north line of Maryland Avenue on the north, Forest Park Expressway on the south, the city limits of Clayton on the east, and Interstate I-170 on the west). In evaluating such monthly rents, Clayton shall, in the exercise of its knowledge, expertise

and experience as a regulator and administrator of parking in the Clayton Business District, consider such factors as it deems pertinent to the determination of the fair market rental value of the Brentwood Garage parking spaces, including, without limitation, the location of the Garage within the Clayton Business District, the convenience and accessibility of the Garage, the availability of parking spaces in the Garage, and other factors Clayton may deem pertinent.

(c) The parties hereby acknowledge and agree that the monthly Rental Rate for the first lease year under this Parking Lease shall be \$90 per Tenant Space. For each ensuing lease year under this Parking Lease, Clayton shall determine the monthly Rental Rate to be paid for such lease year, commencing as of the first day of such lease year, and shall provide Tenant written notice thereof at least forty-five (45) days' prior to such commencement date.

(d) The monthly rent payable for the Leased Premises shall be an amount equal to (i) the monthly Rental Rate multiplied by the number of Tenant Spaces comprising the Leased Premises ten (10) days prior to the beginning of the calendar month (not to exceed two hundred (200) until the expiration of the Stabilization Period, and (ii) two hundred Tenant Spaces from a date that is sixty (60) months after issuance of the initial building permit for the Mixed Use Buildings and thereafter.

(e) In the event Tenant desires to contest any Rental Rate determination made by Clayton hereunder, Tenant shall provide Clayton written notice of its objection within thirty (30) days after Tenant's receipt of written notice of such Rental Rate, failing which Tenant's right to contest the Rental Rate shall be forfeited for the applicable lease year. In the event Tenant provides Clayton a timely written objection to its Rental Rate determination, the Rental Rate for the prior lease year shall remain in effect pending the resolution of the dispute, and the parties agree to use good faith efforts to settle their differences by negotiation. To this effect, representatives of each party shall consult and negotiate with each other in good faith and attempt to reach a just and equitable resolution which is satisfactory to both parties. If a written resolution signed by both parties is not achieved through negotiation within a period of thirty (30) days, then, Tenant shall have the right to file an appeal with Clayton's Board of Aldermen by providing the Mayor and the City Clerk of Clayton, within sixty-five (65) days after Tenant's receipt of written notice of the contested Rental Rate, a written request for a hearing before the Board of Aldermen, failing which Tenant's right to appeal the Rental Rate shall be forfeited. In the event Tenant provides a timely request for appeal as aforesaid, the Rental Rate for the prior lease year shall continue to remain in effect pending the resolution of the dispute, and Tenant shall have the right to have its objections to the Rental Rate heard and considered by Clayton's Board of Aldermen at an evidentiary hearing conducted before the Board in accordance with the provisions of Chapter 536 of the Revised Statutes of Missouri, as amended. In the event Tenant is not satisfied with the decision made by the Clayton Board of Aldermen, Tenant shall be entitled to judicial review of the Board's decision in the Circuit Court of St. Louis County, Missouri pursuant to Chapter 536, to determine whether the Board's decision is supported by competent and substantial evidence upon the record as a whole. Following resolution of the Rental Rate by written agreement of the parties, by forfeiture of Tenant's right to appeal to the City, to the Board of Aldermen or to the Circuit Court of St. Louis County, or by a final determination made pursuant to judicial review, the Rental Rate so determined shall be applied retroactively to the calculation of rent as of the commencement of such lease year, and the adjusted amount due (if any) shall be payable within thirty (30) days of the date of such determination.

Section 3.2 Rent Payee. Rent checks shall be made payable to the “City of Clayton” and rent checks shall be mailed to the Director of Finance of the City of Clayton, 10 North Bemiston Avenue, Clayton, Missouri 63105, until Tenant is otherwise notified in writing by Clayton at least ten (10) days prior to the rent payment date on which the change in payee is to be effective. In the event that Clayton's interest in this Parking Lease shall pass or devolve upon another, or in the event that one other than Clayton or the designated rent payee shall become entitled to collect the rent, then in any such event written notice of the fact shall be given to the Tenant by Clayton; and until such notice Tenant may continue to pay rent to the one to whom the last preceding installment of rent was paid and each such payment shall to the extent thereof fully exonerate Tenant. Notwithstanding the foregoing, (i) Tenant may, but in the absence of notice given as above provided, shall be under no obligation to pay rent to anyone other than Clayton, or the designated rent payee, who may become legally entitled to receive such rent.

ARTICLE 4. MAINTENANCE, REPAIRS AND UTILITIES

Section 4.1 Tenant's Obligations.

(a) Tenant agrees, at its sole cost and expense, to maintain in good order and repair those certain accessways located in, on or under the Mixed Use Tract connecting Brentwood Garage with the Mixed Use Buildings (the “Accessways”), such Accessways to be maintained by Tenant for the exclusive use by Tenant and its employees, occupants, tenants, guests and invitees.

Section 4.2 Clayton's Obligations.

(a) Clayton agrees, at its sole expense, to take reasonable actions to:

(i) Make all necessary repairs and replacements and provide maintenance to the Brentwood Garage, including but not limited to roofs, walls, elevators, gutters, driveways, parking areas, directional signs, striping, structural members, mechanical systems, and exterior doors; and to the extent applicable, to repaint all exterior painted portions of the Brentwood Garage when necessary in a color which compliments the exterior of the Mixed Use Building;

(ii) Make all necessary repairs and replacements of any heating, air-conditioning and air-cooling equipment serving the Brentwood Garage;

(iii) Provide adequate connections with and maintain in the Brentwood Garage the local water supply, sewerage systems, gas, electrical and other utilities and pay the costs of all utilities provided to the Brentwood Garage;

(iv) Supply and staff the Brentwood Garage with sufficient parking attendants and security personnel, or with sufficient automated systems, to provide for the orderly operation of the Brentwood Garage, proper parking of vehicles, reasonable precaution against unauthorized parking, and reasonable provision of security for the safety of the users of the Brentwood Garage and their vehicles; and

(v) Remove trash, dirt and debris from the Brentwood Garage and all Common Facilities, including undertaking reasonable efforts to remove snow and ice from driveways

and parking areas in the Brentwood Garage.

Section 4.3 Common Facilities. The sidewalks, driveways, general parking areas, landscaping, service areas, utilities to the point where they enter the Brentwood Garage, and other facilities of the Brentwood Garage Tract designed for use by all occupants and/or users of the Brentwood Garage, including all easements and accesses located on the Brentwood Garage Tract, or other rights benefitting the Brentwood Garage Tract and located thereon are herein together referred to as the “Common Facilities”. Clayton shall maintain the Common Facilities in good order, appearance and repair (including but not limited to all necessary patching, resurfacing and restriping of the parking areas), provide adequate lighting thereof, and remove all snow, dirt and debris therefrom.

Section 4.4 Fees. To the extent applicable, Clayton shall pay all permit and inspection fees relating to the Brentwood Garage imposed by governmental authorities.

Section 4.5 Performance. All maintenance, alterations, repairs and replacements to be performed by either party shall be begun and completed within a reasonable time. To the extent possible, and except in the case of emergencies, any of such work to be performed by one party shall be done so as to minimize inconvenience to use and enjoyment of the other.

ARTICLE 5. USE, COMMON FACILITIES, ALTERATIONS AND FIXTURES

Section 5.1 Use of the Tenant Spaces and the Common Facilities.

(a) The Tenant Spaces may be used only for the parking of vehicles. Clayton hereby grants to Tenant, its employees, occupants, tenants, guests and invitees, the right of reasonable ingress and egress to and from the Brentwood Garage for use of the Tenant Spaces. Clayton shall provide Tenant with parking cards, stickers or some other means of effecting prompt ingress and egress to and from the Brentwood Garage to be used by the permitted users of the Tenant Spaces. Tenant hereby acknowledges that Clayton shall have the right to alter or modify the means of ingress and egress to and from the Brentwood Garage from time to time, and to temporarily close or suspend use of one or more means of ingress and egress, in connection with any improvements, maintenance or repairs made by Clayton (i) with respect to the Brentwood Garage and/or (ii) on, in, under or above streets, alleys, sidewalks and other public rights of way in the vicinity of the Brentwood Garage; provided, however, that during any such period of closure or suspension, Clayton shall make available at least one point of ingress and egress available to the permitted users of the Tenant Spaces and Additional County Spaces at all times except in the event of and to the limited extent necessary to address an emergency. In the event it becomes necessary for Clayton to simultaneously close all points of access to the Brentwood Garage, Clayton shall only do so to the extent and for such duration necessary and, except in the event of an emergency, shall provide Tenant with written notice at least ten (10) business days in advance of the scheduled closure. In the event the City must simultaneously close all points of access to the Brentwood Garage for a period in excess of seven (7) consecutive days, such closure shall be treated as a casualty giving rise to rent abatement pursuant to Section 6.4 of this Parking Lease.

(b) Clayton hereby grants to Tenant, its employees, occupants, tenants, guests and invitees, the right to use in common with others entitled to similar use thereof, all of the Common

Facilities except during reasonable periods of time required to provide necessary maintenance or repairs.

Section 5.2 Zoning. Clayton warrants that as of the date of this Parking Lease, as first written above, there is no zoning law, ordinance or regulation prohibiting the use of the Leased Premises for the purposes contemplated by this Parking Lease.

Section 5.3 Reserved.

Section 5.4 Clayton's Alterations. Clayton shall at its expense comply with all governmental rules, laws, ordinances, regulations and orders with respect to the Brentwood Garage and the Brentwood Garage Tract and from time to time shall make any alterations or improvements to the Brentwood Garage, the Brentwood Garage Tract and/or the Leased Premises that may be required on account of any existing or future laws, ordinances or regulations of lawful authority; the foregoing notwithstanding, however, Clayton shall not be required to make any such alterations or improvements in order to increase the total number of parking spaces available to Tenant under the terms and conditions set forth in this Parking Lease. If because of any such law, ordinance or regulation or the work to be done by Clayton in connection with this Parking Lease, Tenant is deprived of the use of the Tenant Spaces for more than seven (7) consecutive days, such deprivation shall be treated as a casualty giving rise to rent abatement pursuant to Section 6.4 of this Parking Lease.

Section 5.5 Liens. Tenant shall keep the Brentwood Garage and the Brentwood Garage Tract free from any mechanics or materialmen's liens for any labor or material furnished by Tenant in connection with the Accessways.

ARTICLE 6. RESTORATION

Section 6.1 Hazard Insurance. Clayton shall, at Clayton's expense, carry insurance on, a "Comprehensive Replacement Cost Form" with a face amount equal to 100% of the replacement value of the insured Brentwood Garage, against loss or damage resulting from fire and other insurable casualties. The Brentwood Garage insurance shall not be able to be canceled or materially changed unless Clayton is given written notice of such cancellation or change at least ten (10) days in advance, and Clayton agrees to promptly provide Tenant a copy of any such notice it may receive. Promptly upon the execution hereof, and thereafter prior to any stated expiration thereof, Clayton shall deliver to Tenant a certificate of insurance that evidences the existence of the insurance required under this Section.

Section 6.2 Release: Waiver of Subrogation.

(a) To the extent permitted by law, and to the extent any property loss or damage is actually compensated by insurance proceeds received or by proceeds which would have been received had Clayton maintained the insurance required herein, Clayton hereby releases and discharges Tenant, its employees, occupants, tenants, guests and invitees from all liability to Clayton and to anyone claiming by, through or under Clayton on account of any loss or damage resulting from or arising out of any fire or other casualty, however caused.

(b) To the extent permitted by law, and to the extent any loss or damage is actually

compensated by insurance proceeds received or by proceeds which would have been received had Tenant maintained insurance required herein, Tenant hereby releases and discharges Clayton, and its employees, occupants, tenants, guests and invitees of and from all liability to Tenant and to anyone claiming by, through or under Tenant on account of any loss or damage resulting from or arising out of any fire or other casualty, however caused.

Section 6.3 Restoration. If the Brentwood Garage is damaged or destroyed by fire or other casualty, Clayton shall, at its expense, repair and restore the Brentwood Garage so as to be substantially the same as prior to such damage or destruction. Clayton shall begin such repairs or restoration within ninety (90) days from the date of such fire or other casualty and shall diligently pursue and complete said repairs or restoration as promptly as possible thereafter. The dates by which Clayton is to begin and complete said repairs or restoration shall be deferred for a period equal to any delay caused by reason of acts of God or the public enemy, war, floods, storms, earthquake, lightning or other act or the elements, accidental fire, explosion, strikes, labor disturbances, riots, insurrection, civil commotion, governmental acts or regulations, accidents, failure or delay of transportation or delivery facilities or supplies, or any other cause beyond the control and without the fault or neglect of such party, whether similar or not to the foregoing causes; provided Clayton has from time to time in writing kept Tenant fully advised of such delays and the cause thereof. Upon any damage or destruction of all or a portion of the Brentwood Garage such that Tenant is denied the use and enjoyment of any or all of the Tenant Spaces, during the period of restoration by Clayton, Clayton shall use its reasonable best efforts, subject to annual appropriation, to provide to Tenant alternate parking to replace any of the Tenant Spaces lost as a result of the damage or destruction.

Section 6.4 Rent Abatement. Subject to the terms of Sections 5.1(a) and 5.4, if damage or destruction to the Brentwood Garage results in the suspension of Tenant's use of the Tenant Spaces and Clayton does not or cannot provide Tenant with any suitable substitute parking in the Brentwood Garage during Clayton's restoration or repair, rents and other charges payable by Tenant under this Parking Lease shall abate from the date of such suspension until the date such use is resumed. If such damage or destruction or the work of repairing or restoring said improvements results in only a partial suspension of use, the abatement shall be apportioned accordingly.

Section 6.5 Failure to Restore. If Clayton fails to begin or complete the repairs or restoration of the Brentwood Garage within the times and in the manner provided for in this Article 6, then Tenant may, in addition to any other remedies it may have, terminate this Parking Lease by notice in writing to Clayton at any time prior to said beginning or completion, as the case may be.

ARTICLE 7. EMINENT DOMAIN

Section 7.1 Total. If the entire Leased Premises is taken under the power of eminent domain, this Parking Lease shall terminate on the date of such taking.

Section 7.2 Partial. If under the power of eminent domain, twenty percent (20%) or more of the Tenant Spaces are taken by one or more takings, or if all access to the Brentwood Garage is taken by one or more takings, or if any parts of the Common Facilities essential to

Tenant's use of the Tenant Spaces and the exercise of its rights hereunder are taken by one or more takings, or if all or any portion of the Mixed Use Building is taken then, in any such event, Tenant may terminate this Parking Lease by giving Clayton no less than thirty (30) days written notice thereof not more than ninety (90) days after the date of such taking.

Section 7.3 Restoration. If a portion of the Tenant Spaces or the Common Facilities is taken as described in Section 7.2, above, and this Parking Lease is not terminated therefor, the remainder of the Tenant Spaces or Common Facilities shall be restored by Clayton as soon as possible and, to the extent feasible, Clayton shall provide Tenant satisfactory substitute parking space in the Brentwood Garage to replace any portion of the Tenant Spaces taken.

Section 7.4 Rent Abatement. In the event of a partial taking as contemplated by Section 7.2, all rents and other charges payable by Tenant under this Parking Lease shall be reduced from and after the date Tenant is deprived of use and enjoyment of any portion of the Tenant Spaces in proportion to the number of Tenant Spaces so taken. In addition, if any such taking results in the suspension of Tenant's use of all of the Tenant Spaces, all rents and other charges payable by Tenant under this Parking Lease shall abate from the date of such suspension of use until the date such use is resumed.

Section 7.5 Settlement. For the purpose of this Article, a taking under the power of eminent domain shall include conveyances or dedications made in settlement of or in lieu of condemnation proceedings.

Section 7.6 Award. Tenant and not Clayton shall be entitled to any portion of the award made to Tenant or Clayton for the value of Tenant's business interruption and/or relocation expenses. Subject to the foregoing, any award of damages made in an eminent domain proceeding whereby all or any portion of the Brentwood Garage is condemned, which award shall include compensation for the interests taken (including loss of parking for the Mixed Use Building, if and to the extent permitted by law and so ordered by a court of competent jurisdiction) shall be apportioned among Tenant and Clayton, and any other party having an interest in the said award or any portion thereof, pursuant to the then applicable laws and regulations pertaining to the same.

ARTICLE 8. LIABILITY INSURANCE

Section 8.1 Landlord and Tenant shall each procure and keep in force at its own expense broad form comprehensive general liability insurance, including bodily injury and property damage insurance, with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. To the extent any liability, loss or casualty is actually compensated by insurance proceeds received or by proceeds which would have been received had the impacted party maintained the insurance required herein, each party hereby releases and discharges the other, its employees, occupants, tenants, guests and invitees from all liability claiming by, through or under it. Purchase of such insurance shall not be deemed a waiver of Clayton's Sovereign Immunity.

ARTICLE 9. TITLE AND POSSESSION

Section 9.1 Possession. Clayton shall make such Tenant Spaces available to Tenant incrementally after the Commencement Date hereof in accordance with the procedure set forth in

Section 1.1(a) hereof. If Clayton fails to make a Tenant Space available to Tenant by the Space Delivery Date for such Space (as provided in Section 1.1(a) hereof), all rents and other charges payable by Tenant hereunder with respect to such Space shall abate until Clayton makes such Tenant Space available to Tenant. The parties hereby acknowledge that they currently anticipate Clayton making Tenant Spaces available to Tenant in accordance with the procedure set forth in Section 1.1(a) hereof by causing parking cards for such Tenant Spaces to be provided to Tenant.

Section 9.2 Reserved.

Section 9.3 Assignment and Subletting. Tenant may from time to time and without any consent of Clayton assign or sublease its rights to the Tenant Spaces leased pursuant to this Parking Lease, subject to the terms and conditions set forth in this Parking Lease, to any new or subsequent owner of the Mixed Use Tract and Mixed Use Buildings. In addition and in lieu of designation contemplated by Section 1.1(a)(vi), Tenant may assign or sublease its rights to a portion of the Tenant Spaces leased hereunder to a non-residential tenant of the Mixed Use Buildings. Tenant agrees to notify Clayton in writing of any such assignment or subleasing referenced in the immediately preceding sentences within thirty (30) days after such assignment or subletting. Except as otherwise set forth above, Tenant shall not assign this Parking Lease or sublease the whole or any part of the Tenant Spaces without the prior written consent of Clayton. In the event Tenant assigns or subleases its rights to the Tenant Spaces leased hereunder to any new or subsequent owner of the Mixed Use Tract and Mixed Use Buildings, Tenant shall be relieved of all liability for the performance of the Tenant obligations which thereafter accrue hereunder upon (i) the written assumption of such obligations by the new or subsequent owner and (ii) the delivery of such written assumption to Clayton. Notwithstanding the foregoing, Tenant's assignment or subletting of the right to use a Tenant Space hereunder to a residential user in the Mixed Use Buildings shall not assign or delegate, or otherwise release Tenant from responsibility for, the obligation to pay the rent for such Tenant Space.

Section 9.4 Title. Clayton represents to the best of its knowledge, information, and belief that it has marketable title to the Brentwood Garage and the Brentwood Garage Tract in fee simple subject only to current taxes not past due, utility easements and leases and other interests not conflicting with the rights herein granted to Tenant. Clayton also represents that there are no contracts, leases or other Leases of any kind which adversely affect or limit Tenant's use of the Tenant Spaces or the Common Facilities, excepting the rights to parking spaces and the Common Facilities extended to Moneta Real Estate, LLC under a certain Parking Agreement dated October 24, 2006 executed by Clayton, Moneta and the County.

Section 9.5 Subordination. Clayton agrees to deliver to Tenant, promptly upon execution of this Parking Lease, a written consent agreement, in form reasonably satisfactory to Tenant, from the holder of any deed of trust, trustee's deed or mortgage which has priority over this Parking Lease that such holder will not disturb the rights of Tenant under this Parking Lease so long as Tenant is not in default of this Parking Lease. Provided Clayton is not in default, Tenant agrees to subordinate this Parking Lease to any deed of trust, trust deed or mortgage which may hereafter be placed on the Brentwood Garage or the Brentwood Garage Tract, provided such trustee or mortgagee thereunder shall agree in form reasonably satisfactory to Tenant that it will not disturb Tenant's right to utilize the Leased Premises and other rights under this Parking Lease so long as Tenant is not in default of this Parking Lease.

ARTICLE 10. TAXES

Section 10.1 Taxes. Clayton shall pay all real estate taxes levied or assessed against the Brentwood Garage and the Brentwood Garage Tract, if any, before they became delinquent; provided, however, that Tenant shall be responsible for paying the real estate taxes, if any, that are levied or assessed against Tenant's leasehold estate in the Leased Premises. Tenant may, at Tenant's option and Tenant's expense, use good faith efforts to defend against efforts by the State of Missouri, St. Louis County or others to characterize the Leased Premises as taxable to Tenant.

ARTICLE 11. HAZARDOUS MATERIAL

Section 11.1 Hazardous Material. As used herein, the term "Hazardous Material" means hazardous wastes, hazardous substances, hazardous materials, toxic substances or toxic pollutants, as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, the hazardous materials Transportation Act, the Toxic Substance Control Act, the Clean Air Act, the Clean Water Act or any other federal law or any state law, or in any regulations promulgated pursuant to any such Acts (hereinafter referred to collectively as "Environmental Laws"), and asbestos and petroleum products in levels or amounts which are required to be removed or remediated pursuant to Environmental Laws, or any material or substance which becomes regulated by Environmental Laws, whether originating from the Mixed Use Building, the Mixed Use Tract, the Brentwood Garage or the Brentwood Garage Tract, or migrating, flowing, percolating, defusing or in any way moving onto or under the same.

Section 11.2 Responsibilities of Parties. Clayton and Tenant agree as follows with respect to the existence or use of Hazardous Material in, on or under the Brentwood Garage or the Brentwood Garage Tract:

(a) As between Clayton and Tenant, Clayton shall be responsible for all costs incurred in complying with any order, ruling or other requirement of any court or governmental body or agency having jurisdiction over the Brentwood Garage or the Brentwood Garage Tract requiring Clayton to comply with any Environmental Laws in, on or about the same including, without limitation, the cost of any required or necessary repair, cleanup or detoxification in the preparation of any closure or other required plans, excluding however, any such cost relating to Hazardous Material in, on or under the Brentwood Garage or the Brentwood Garage Tract is established to have been caused by Tenant or any of its employees, occupants, tenants, guests or invitees.

In addition, as between Clayton and Tenant, Tenant shall be responsible for and shall reimburse Clayton for all costs incurred by Clayton in complying with any order, ruling or other requirement of any court or any governmental body or agency having jurisdiction over the Brentwood Garage or the Brentwood Garage Tract requiring Clayton to comply with any Environmental Laws in, on, or about the same including, without limitation, the costs of any required or necessary repair, cleanup, or detoxification in the preparation of any closure or any other required plans but only to the extent, if any, that such cost(s) relating to the Hazardous Material in, on or under the Brentwood Garage or the Brentwood Garage Tract are established to have been caused by the use of the Tenant Spaces or the Common Facilities by Tenant, its employees, occupants, tenants, guests or invitees.

(b) To the extent commercially practical, Clayton shall take such action as is necessary to enforce the requirements contained in any leases or occupancy agreements with other tenants, users or occupants of the Brentwood Garage and/or Brentwood Garage Tract which relate to the handling, transportation, storage, treatment, use or disposition of Hazardous Material by such other tenants or occupants.

In addition, to the extent commercially practical, Tenant shall take such action as is necessary to enforce the requirements contained in any leases or occupancy agreements to which it is a party, with other tenants, users or occupants of the Brentwood Garage and/or the Brentwood Garage Tract which relate to the handling, transportation, storage, treatment, use or disposition of Hazardous Material by such other tenants or occupants.

ARTICLE 12. GENERAL

Section 12.1 Default. If any rent is due and remains unpaid for ten (10) days after receipt of written notice from Clayton, or if Tenant breaches any of the other covenants of this Parking Lease, and if such other breach continues for thirty (30) days after receipt of written notice from Clayton, or in the event Tenant shall file a petition in bankruptcy or arrangement, or be adjudicated a bankrupt, or make an assignment for the benefit of creditors, or take advantage of any insolvency act, Clayton shall then, but not until then, have the right to sue for rent, and/or terminate this Parking Lease and re-enter the Leased Premises, and/or pursue any other rights and remedies as may be available to it at law or in equity, except that if Tenant shall pay said rent within said ten (10) days, or if Tenant shall in good faith within said thirty (30) days commence to correct such other breach and shall diligently proceed therewith to completion, then Clayton shall not have the right to sue for rent, or terminate this Parking Lease, or pursue any other rights and remedies. If Clayton breaches any of its covenants under this Parking Lease, fails to make any required alteration, repair, maintenance or restoration or to pay any utility bill or other fee or charge required to be paid by Clayton under this Parking Lease and such breach continues for thirty (30) days after receipt of written notice from Tenant (except that in case of emergency prior notice need not be given), then Tenant shall have any and all rights and remedies as may be available to it at law or in equity, including the right to institute such proceedings as may be necessary or desirable in Tenant's opinion to compel specific performance of Clayton's obligations under this Lease; provided, however, if Clayton in good faith within said thirty (30) days commences to correct such other breach and diligently proceeds therewith to completion, then Tenant shall not have the right to pursue any such rights and remedies. Notwithstanding the foregoing, in the event that at any time Tenant shall have a claim against Clayton, Tenant shall not have the right to abate, set off or deduct the amount allegedly owed to Tenant from any rent or other sums payable to Clayton hereunder. If Tenant breaches its obligations under Section 4.1 hereof, and such breach continues for thirty (30) days after receipt of written notice from Clayton (except in the case of emergency, prior notice need not be given), then Clayton shall have the right to perform Tenant's obligations under Section 4.1 hereof, and seek payment therefor by action for damages at law.

Section 12.2 Notices. Notices and demands required or permitted to be given under this Parking Lease shall be given by registered or certified mail and shall be addressed, if to Clayton, at the last address at which rent is payable, and if to Tenant, Revive Capital Development, LLC, 1627 Main Street, Suite 801, Kansas City, MO 64108, with a courtesy copy to James F. Freeman III, Swanson Bernard, LLC, 4600 Madison, Suite 600, Kansas City, MO 64112, or at such other

address as Tenant shall designate by written notice to Clayton. Notices and demands shall be deemed to have been given when mailed.

Section 12.3 Rent Refund. Promptly after the termination or cancellation of this Parking Lease for any reason or after the effective date of the abatement of rents and other charges under this Parking Lease, whether entire or partial, Clayton shall refund to Tenant all rents and other charges paid by Tenant to the extent they are allocable to any period of time beyond the effective date of such termination, cancellation or abatement of rent and other charges.

Section 12.4 Holding Over. At the termination of this Parking Lease by lapse of time or otherwise, Tenant shall immediately surrender possession of the Leased Premises to Clayton and, further, shall immediately return to Clayton any and all parking cards, medallions, chips and/or other devices used to obtain entry into the Brentwood Garage. If any parking cards and/or other entry devices are not returned to Clayton within thirty (30) days after the termination of this Parking Lease, or if any parking cards and/or other entry devices are returned within such thirty (30) day period but they are damaged and/or have undergone excessive wear and tear (ordinary wear and tear excepted), Tenant shall pay Clayton a reasonable fee for each unreturned and/or damaged parking card or other entry device to compensate Clayton for the cost of replacing such card or other entry device. In no event shall any holding over by Tenant be deemed to create a tenancy from year to year or month to month, nor shall Clayton elect to create such a tenancy.

Section 12.5 Waiver. The failure of Clayton or Tenant to insist upon strict performance by the other of any of the provisions of this Parking Lease or to exercise any option hereto conferred shall not be deemed as a waiver or relinquishment for the future of any such provision or option,

Section 12.6 Remedies. All rights and remedies provided for here-in or otherwise existing at law or in equity are cumulative, and the exercise of one or more rights or remedies by either party shall not preclude or waive its right to the exercise of any or all of the others. In the event of litigation to enforce the terms of this Parking Lease, the non-prevailing party shall be liable for the reasonable attorney's fees and costs of the prevailing party.

Section 12.7 Interpretation. All provisions hereof are to be construed as covenants and Leases as though the words importing such covenants and Leases were used in each section hereof. The necessary grammatical changes required to make the provisions of this Parking Lease apply in the plural sense where there is more than one Clayton or Tenant and to either corporations, associations, partnerships, limited liability companies or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. The captions of the articles and sections contained herein are for convenience only and do not define, limit, construe or describe the scope or intent of such articles or sections. If any provision of this Parking Lease shall be held invalid, the validity of the remainder of this Parking Lease shall not be affected thereby.

Section 12.8 Exhibits and Entire Lease. All exhibits referred to in and attached to this Parking Lease are hereby made a part of this Parking Lease. This Parking Lease and the Exhibits attached hereto reflect the entire agreement of the parties concerning the Brentwood Garage Tract and the Leased Premises, and no representations, inducements or Leases, whether oral or otherwise, between the parties not contained in this Parking Lease shall be of any force or effect.

Section 12.9 Successors. This Parking Lease shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, and the covenants, Leases, conditions and undertakings in this Parking Lease shall be construed as covenants running with the lands herein described. No third party, other than such heirs, legal representatives, successors and assigns, shall be entitled to enforce any or all of the provisions of this Parking Lease or shall have any rights under this Parking Lease whatsoever.

Section 12.10 Memorandum of Lease. At the request of either party, the parties shall execute a memorandum of this Parking Lease in recordable form stating the term of this Parking Lease, the parties hereto, any options or rights of first refusal granted to Tenant, and any other matters reasonably requested by either of the parties. The parties shall cause the memorandum to be recorded in the Office of the St. Louis County Recorder of Deeds.

Section 12.11 Amendments. This Parking Lease shall be amended only by written agreement of the parties hereto.

Section 12.12 Cooperation. The parties understand and agree that there may be certain requirements pertaining to the Brentwood Garage, the Tenant Spaces and/or this Parking Lease imposed by third party lenders in connection with the financing of the development of the Mixed Use Tract and the rehabilitation or reconstruction of the Mixed Use Buildings by Tenant. Accordingly, Clayton and Tenant agree to cooperate to address such requirements to the extent that the same is deemed to be in the best interest of Clayton and its citizens by the appropriate elected and appointed officials of Clayton.

Section 12.13 Time is of the Essence. Clayton and Tenant each acknowledges and agrees that time is of the essence with respect to the obligations and responsibilities incurred by each of them pursuant to this Parking Lease.

Section 12.14 Business Days; Counting Days. The term "business day" shall mean any day other than a Saturday, Sunday or legal holiday. If the last day for giving of notice or for performance of any obligation or condition hereunder is a Saturday, Sunday or legal holiday, then such last day shall be extended to the next succeeding business day thereafter. Whenever it is provided in this Parking Lease that days shall be counted, the first day to be counted shall be the day following the date on which the event causing the period to commence occurs.

Section 12.15 Governing Law; Venue. This Parking Lease shall be governed by and construed in accordance with the laws of the State of Missouri. Any action arising out of, or concerning, this Parking Lease shall be brought only in the Circuit Court of St. Louis County, Missouri. All parties to this Parking Lease consent to the jurisdiction and venue of that Court.

Section 12.16 No Limitation of Clayton Regulatory Authority. None of the obligations, covenants and agreements accepted and adopted by Clayton under this Parking Lease in its capacity as a property owner and landlord shall be deemed to diminish, limit or waive the regulatory aspect of the police power vested in Clayton as a municipal subdivision of the State of Missouri, it being acknowledged that Clayton shall be permitted to exercise such power in the performance of its municipal functions without regard to, and without limitation, diminution or waiver of such power by virtue of, the obligations, covenants and agreements set forth in this

Lease; provided, however, that Tenant's joining in the foregoing acknowledgment shall not be deemed to waive or limit any right Tenant may have to challenge any legislation hereinafter adopted by Clayton on the basis that it is unlawful special legislation applicable only to the Brentwood Garage or a limited number of public garages in Clayton.

ARTICLE 13. LEASEHOLD MORTGAGE

Section 13.1 Tenant shall have the right to grant a security interest in this Parking Lease which may take the form of a pledge, assignment, mortgage, deed of trust or other instrument (a "Leasehold Mortgage") by the terms of which Tenant pledges its interest in this Parking Lease to one or more lenders who are mortgagees (that is, a mortgagee under a mortgage or a beneficiary or third party under a deed of trust) of the Mixed Use Tract. Tenant shall, promptly after execution, deliver to Clayton a true copy of the original of any instrument creating a Leasehold Mortgage.

Section 13.2 Each Leasehold Mortgage shall contain, among other items, in substance the following provisions: (i) no purchaser under any foreclosure sale (or purchaser by deed in lieu of foreclosure) of the Leasehold Mortgage shall acquire any right, title or interest in and to this Parking Lease hereby mortgaged, unless the purchaser, or the person, firm or corporation to which such purchaser's rights have been assigned, in the instrument transferring to such person or to such assignee the interest of Tenant under this Parking Lease, shall assume and agree to perform all of the terms, covenants, and conditions of this Parking Lease thereafter to be observed or performed on the part of Tenant and a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee is delivered to Clayton promptly after the consummation of such sale; and (ii) the Leasehold Mortgage and all rights of the mortgagee thereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of Clayton under this Parking Lease.

Section 13.3 Clayton agrees to give each leasehold mortgagee, at the address of such leaseholder mortgagee set forth in the Leasehold Mortgage provided to Clayton under Section 13.1 hereof, and otherwise in the manner provided by Section 12.2, a copy of each notice of default by Tenant at the same time as and whenever any such notice of default shall thereafter be given by Clayton to Tenant and no such notice of default by Clayton shall be deemed to have been duly given to Tenant unless and until a copy thereof shall have been so given to each leasehold mortgagee. Each leasehold mortgagee (i) shall thereupon have a period of ten (10) days more in the case of a default in the payment of rent and twenty (20) days more in the case of any other default, after such notice is given to leaseholder mortgagee, for remedying the default or causing the same to be remedied or causing the action to remedy a default to be commenced than is given Tenant after such notice is given to it; and (ii) shall within such period and otherwise as herein provided, have the right to remedy such default, cause the same to be remedied or cause action to remedy a default to be commenced. Clayton shall accept performance by a leasehold mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Parking Lease.

Section 13.4 From and after the date upon which Clayton received a notice provided in Section 13.1, it shall not modify or amend this Parking Lease in any material respects or cancel or terminate this Parking Lease other than as provided herein without the prior written consent of the

leasehold mortgagee which gave the notice, which consent will not be unreasonably withheld.

No leasehold mortgagee shall become liable under the terms of this Parking Lease unless and until such time as it become the owner of the leasehold estate created hereby.

If there is more than one leasehold mortgagee, Clayton shall recognize only the leasehold mortgagee whole leasehold mortgage is senior in lien as the leasehold mortgagee entitled to the rights afforded by this Article 13.

Section 13.5 No default by Tenant or event of default shall be deemed to exist as long as a leasehold mortgagee, in good faith, shall have commenced or caused to be commenced to cure promptly the default or event of default and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence and continuity, subject to unavoidable delays, which for the purposes of this Section 13.5 shall include causes beyond the control of Tenant; provided that the leasehold mortgagee shall have delivered to Clayton, in writing, its agreement to take the action described herein and shall have assumed the obligation to cure the default or event of default, and that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Tenant under this Parking Lease are being duly performed (including, without limitation, payment of all rental due hereunder) within any applicable grace periods. However, at any time after the delivery of the aforementioned agreement, the leasehold mortgagee may notify Clayton, in writing, that it has relinquished possession of the Leased Premises or that it will not institute foreclosure proceedings, or, if such proceedings have been commenced, that it has discontinued them, and, in such event, the leasehold mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Clayton (except for any obligations assumed by the leasehold mortgagee and accruing prior to the date it delivers such notice), and, thereupon, Clayton shall have the unrestricted right to terminate this Parking Lease and to take any other action it deems appropriate by reason of any default by Tenant.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Parking Lease as of the day and year first above written.

CITY OF CLAYTON, MISSOURI

Revive Capital Development, LLC

By: _____
Title: _____

By: _____
Title: _____

Attest: _____
Title: _____

EXHIBIT A TO LEASE

Description of the Brentwood Garage Tract:

LOT B OF A SUBDIVISION OF THE SCHOOL LOT OF BLOCK 2 OF THE TOWN OF CLAYTON, A SUBDIVISION IN ST. LOUIS COUNTY, MISSOURI, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 346 PAGE 301 OF THE ST. LOUIS COUNTY, MISSOURI RECORDS.

EXHIBIT B TO LEASE

Description of the Mixed Use Tract:



City Manager
10 N. Bemiston Avenue
Clayton, MO 63105

REQUEST FOR BOARD ACTION

TO: MAYOR HARRIS; BOARD OF ALDERMEN
FROM: DAVID GIPSON, CITY MANAGER
ERNIE RHODES, FIRE CHIEF
DATE: JUNE 13, 2023
RE: ORDINANCE - AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITIES OF BRENTWOOD AND RICHMOND HEIGHTS TO CREATE A COMMISSION FOR A FIRE DEPARTMENT TRAINING CENTER

For your consideration is an Intergovernmental Agreement with the Cities of Brentwood and Richmond Heights to create a joint commission for the purpose of leasing property and construct and operate a facility for fire department training.

The creation of the commission must be approved by all three cities before any further action can be taken. Once created, the commission will request the Board of Aldermen to ratify the commission's by-laws and the property lease agreement for the training site.

The City of Brentwood passed an ordinance adopting this Intergovernmental Agreement on May 31, 2023. The City of Richmond Heights adopted a previous version of the Intergovernmental Agreement on May 1, 2023, but will be voting on the attached version in the near future.

STAFF RECOMMENDATION: To approve the attached ordinance authorizing the City to enter into an Intergovernmental Agreement with the Cities of Brentwood and Richmond Heights to create a joint commission that will own and operate a fire training center for its member municipalities.

BILL NO. 6979

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITIES OF BRENTWOOD AND RICHMOND HEIGHTS TO CREATE A COMMISSION FOR FIRE DEPARTMENT TRAINING SERVICES

WHEREAS, The cities of Brentwood, Clayton, and Richmond Heights wish to cooperate with one another to create a Commission for the purpose of leasing and improving property to be utilized for training purposes; and

WHEREAS, the subject of the Agreement referenced herein is within the scope of all the cooperating municipalities and Sections 70.220 and 70.260 RSMo authorize the cities to work in a cooperative manner and establish a joint body as provided in the Agreement; and

WHEREAS, cooperation between the cities will provide additional fire department training opportunities and continue to improve efficiencies and enhancements for the Cities; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:

SECTION 1. The Board of Aldermen approves the Central Core Fire Training Center Commission Intergovernmental Agreement in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Manager and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

SECTION 2. This ordinance shall be in full force and effect from and after the date of its passage as provided by law; provided, however, that in the event the other cities identified herein do not approve the Agreement in substantially the same form as executed by the City hereunder, this Ordinance and any and all actions taken pursuant hereto may be revoked.

Passed this 13th day of June 2023.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT A

Central Core Fire Training Center Commission Intergovernmental Agreement

This Agreement (“Agreement”) is entered into as of the date last subscribed below by and between the Missouri cities of Brentwood, Clayton and Richmond Heights (the “Cities”), all of which are political subdivisions of the State of Missouri and are authorized to enter into this Agreement pursuant to Sections 70.220 and 70.260 of the Revised Statutes of Missouri.

Purpose

The purpose of this agreement by and between the Cities of is to create a Missouri statutory commission (“Commission”) to enhance the ability of the Cities to provide fire department training services to member municipalities.

Commission activities may include, but are not limited to, the creation, construction and operation of public improvements and facilities and coordination of related activities to promote the ability of member municipalities to provide fire department training services.

Commission Powers:

Under no circumstances are the proposed powers of the Commission to be interpreted as permitting or authorizing any activity or endeavor by the Commission within the corporate limits of a Member Municipality that is within the scope of that municipality’s authority as defined by Missouri statute unless such municipality has expressly authorized and/or permitted such activity or endeavor.

The Commission shall have powers, except to the extent any such power has been limited by any enabling legislation, necessary to carry out and effectuate the purposes and provisions of the Commission including, but not limited to, the following:

- (1) After ratification by motion of the respective Boards of Aldermen or City Council of the Cities, to adopt, amend, and repeal bylaws necessary or convenient to administer Commission affairs and responsibilities and carry out the purposes of the Commission; provided such bylaws are not inconsistent with the ordinances of the Cities in which the Commission is created.
- (2) To make and enter into contracts and other instruments, with public and private entities, necessary or convenient to exercise its powers and achieve the purposes of the Commission. However, any such contracts that commit the Commission to expend an amount in excess of \$60,000.00 and/or bind the Commission to performance for a period of at least one year shall require ratification by motion of the respective Boards of Aldermen or City Council of the Cities.
- (3) To accept grants, guarantees and donations of real property, personal property, labor, services, or other things of value from any public or private source.
- (4) To employ or contract for such managerial, engineering, legal, technical, clerical, accounting or other assistance as is deemed appropriate, advisable or necessary by the Board of Directors to carry out the purpose and intent of the Commission.

(5) To acquire by purchase, lease, gift, grant, bequest, devise, or otherwise, any real property, personal property, or any interest in such property.

(6) To buy, sell, lease, exchange, transfer, assign, mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property or any interest in such property within the boundaries of the Commission as is determined to be necessary by the Board of Directors to carry out the intent and purposes of the Commission.

(7) To levy and collect Member Municipal assessments, and real and personal Property taxes and other revenues as provided in the enabling legislation. However, no taxes shall be levied on any property exempt from taxation pursuant to state statute. Nothing contained herein shall prevent any tax exempt property from voluntarily contributing its proportionate tax to the Commission.

(8) To fix, charge, and collect fees, rents, and other charges for use of any of the following:

(a) The Commission's real property;

(b) The Commission's personal property;

(c) Any of the Commission's interests in real or personal property, or any activity, service or endeavor of the Commission

(9) To borrow money from any public or private source, issue bonds or other obligations, and provide security for the repayment of the same as provided in state statute.

(10) To make expenditures, create reserve funds and use its revenues and reserves as necessary to carry out its powers or duties and the provisions and purposes of the Commission. The Commission shall reimburse or otherwise compensate a Member Municipality that provides legal, IT, financial and other such services for staff time and expenses performed for the Commission.

(11) To carry out any other powers set forth in the Commission enabling legislation.

(12) To sue and be sued.

Withdrawal:

Any Member Municipality may withdraw from the Commission upon giving one year's written notice to the Commission, evidenced by resolution of its governing body, and payment of all amounts in arrears for assessments; provided, that if the Commission, prior to the giving of such notice, shall have incurred indebtedness in conformity with the powers granted by this Agreement which matures after the effective date of the notice of withdrawal, the withdrawal shall not become effective until such indebtedness shall have been paid by the Commission, or until sufficient funds have been set aside irrevocably in trust to satisfy such indebtedness, or, in the alternative, until the withdrawing contracting party shall have paid to the Commission its pro rata portion thereof, or until sufficient funds have been set aside irrevocably in trust to satisfy such portion. Any Member Municipality that withdraws from the Commission shall thereby

forfeit any ownership interest in any assets of the Commission and shall not be entitled to any property or assets of the Commission. Any contracting party that has given notice of withdrawal shall not be obligated for new indebtedness after giving such notice.

Miscellaneous General Terms:

(1) Nothing in this agreement shall be construed to delegate to the Commission any sovereign right held by any Member Municipality to regulate the use and development of land, promote order, safety, health, morals, and general welfare of the public.

(2) The Commission shall not have the power of eminent domain to acquire real property. The Commission may enter into joint agreements with the Member Municipalities to acquire real property through eminent domain, but such authority shall be retained by the member municipalities and shall only be used as is provided by Missouri statute.

(3) This Agreement constitutes the entire agreement between the parties with regard to the subject matters contained herein, and all prior and contemporaneous negotiations and understandings between the parties shall be deemed merged into the Agreement. No waiver, modification or amendment of the terms of this Agreement shall be valid or binding unless in writing, signed by all parties, and then only to the extent set forth in such written waiver, modification or amendment, and subject to any required Court approval.

(4) If any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

(5) The parties may execute this Agreement in counterparts, and execution in one or more counterparts shall have the same force and effect as if all parties had signed the same instrument.

(6) A copy of each City's execution, along with a resolution or ordinance authorizing same shall be forwarded to and maintained by the Board of Directors.

IN WITNESS WHEREOF, this Agreement has been executed by the Cities through their duly authorized representatives on the dates noted below.

CITY OF BRENTWOOD, MISSOURI

CITY OF RICHMOND HEIGHTS, MISSOURI

By _____
Mayor

By _____
Mayor

ATTEST:

ATTEST:

City Clerk

City Clerk

Dated: _____

Dated: _____

CITY OF CLAYTON, MISSOURI

By _____
Mayor

ATTEST:

City Clerk

Dated: _____