



Clayton Recreation, Sports and Wellness Commission

AGENDA

Friday, February 27, 2009
The Center of Clayton
Multipurpose Room C
8:00 – 9:00 a.m.

- 1) Call to Order
- 2) Addresses from the Audience
- 3) Reports
 - January 2009 Financial Report
 - January 2009 Membership Report
- 4) Discussion Items
 - Updated CRSWC Bylaws and Operation & Management Agreement
 - Recreation Staffing Recommendations
- 5) Action Items
 - RFCA – Approval of Updated CRSWC Bylaws and Operation & Management Agreement
 - RFCA – Approval of Recreation Staffing Recommendations
 - Motion – To approve January 23, 2009 minutes
- 6) Adjourn Public Meeting

Next Meeting

Date: March 27, 2009
Time: 8:00 – 9:00 am
Location: Center Of Clayton
Multipurpose Room C

Attachments:

1. January 2009 Executive Summary & Financial Report – All Funds
2. Membership Report – January 2009
3. RFCA – Approval of Updated CRSWC Bylaws and Operation & Management Agreement
(includes updated copies of both documents)
4. RFCA – Approval of Recreation Staffing Recommendations
5. Minutes for Meeting – January 23, 2009
6. Minutes for Executive Session Meeting – January 23, 2009

The Clayton Recreation Sports and Wellness Commission may also hold 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, negotiation of a contract pursuant to Section 610.021(12) RSMO., and/or proprietary information pursuant to Section 610.021(15).

Agenda topics may be added or deleted at any time prior to the Clayton Recreation, Sports and Wellness Commission meeting without further notice. To inquire about the status of agenda topics, call 314.290.8506. Individuals who require an accommodation (i.e., sign language, interpreter, listening devices, etc.) to participate in the meeting should contact the Superintendent of Parks & Recreation Operations at 314.290.8506 at least two working days prior to the meeting.

The Center of Clayton Membership Report As of January 31, 2009

<u>Membership Type</u>	<u>Platinum Member Units</u>	<u>Monthly Member Units</u>	<u>Annual Member Units</u>	<u>Total Member Units</u>	<u>Comparison to last month</u>	<u>Net Difference</u>	<u>Comparison to last year 12 months prior</u>	<u>Net Difference</u>
Resident Youth	3	23	3	29	26	3	31	-2
Corporate Youth	0	1	0	1	1	0	2	-1
Non-Resident Youth	0	8	5	13	13	0	17	-4
Resident Adult	11	350	101	462	452	10	497	-35
Corporate Adult	4	442	107	553	555	-2	661	-108
Non-Resident Adult	6	191	53	250	238	12	260	-10
Resident Family	99	300	171	570	572	-2	565	5
Corporate Family	55	273	101	429	429	0	433	-4
Non-Resident Family	37	146	43	226	213	13	219	7
Resident Senior	15	107	201	323	327	-4	294	29
OASIS Senior	1	142	149	292	293	-1	322	-30
Corporate Senior	0	40	50	90	98	-8	110	-20
Non-Resident Senior	1	28	15	44	40	4	28	16
<i>SUBTOTAL</i>	232	2051	999	3282	3257	25	3439	-157
Center Employee	0	0	216	216	202	14	174	42
Center Employee Family	3	18	7	28	34	-6	30	-2
City Employee	123	0	0	123	114	9	120	3
City Employee Family	16	18	1	35	23	12	15	20
CSD Employee	0	0	286	286	281	5	275	11
CSD Employee Family	0	18	8	26	25	1	24	2
<i>SUBTOTAL</i>	142	54	518	714	679	35	638	76
TOTAL	374	2105	1517	3996	3936	60	4077	-81

NOTES:

1. Totals listed above are for active membership units (ie: adult, family, senior, etc.) and comparison data is positive increase, unless otherwise noted.
2. There were a total of 89 monthly membership terminations at the end of January 2009. The most common reasons for monthly membership termination this month are (in order): 1. No Reason Given 2. Returned/Expired Credit Cards or EFTs 3(tie). Too Busy/Lack of Use and Moving



Clayton Recreation, Sports and Wellness Commission

To: CRSWC

From: Toni Siering, Superintendent of Parks & Recreation Operations
 Patty DeForrest, Director of Parks & Recreation

Date: February 19, 2009

RE: Executive Summary - January 2009 Financial Report

Attached is the CRSWC financial report for January 2009. The charts below summarize the activity within each of the three CRSWC Funds with accompanying notes to identify highlights. At the conclusion of January, there is currently a fund balance that is 15.65% (\$361,234.50/ \$2,307,818.00) of remaining planned expenditures for FY09.

Fund 25: Operating Fund			
	Year To Date	Estimated Year-End Actuals	%age Achieved
Beginning Balance	\$138,921.59	\$126,497.00	
FY09 Revenue	\$901,545.31	\$2,935,205.00	30.71%
FY09 Expenditures	\$876,110.26	\$2,967,174.00	29.53%
FY09 Net	\$25,435.05	(\$31,969.00)	-79.56%
Ending Balance	\$164,356.64	\$94,528.00	173.87%

Notes:

- January membership revenue is down from the same period last year, but consistent with year-to-date figures thus far. Revenues are on track year to date based on limited increases projected for FY09.
- Some programming and rentals are slightly behind as compared to previous year-to-date figures.
 - Contractual fitness programs have increased compared to last year.
 - Personal Training is significantly decreased from last year, due in large part to the slow economy.
 - Sports and Aquatics programs are on-track to meet budget, with consistent participation expected in the spring and summer sessions.
- Most expenses are on track to meet budget at year-end.
 - January 2009 was a three-payroll month, which was realized in February last year (of which the approximate impact is \$50,000).
 - Building Operations salaries are over budget, which will result in an overage in this area.
 - Part-time aquatic salaries are higher due to the increased use of staff to assist during the full-time vacancies; this will be offset by savings in full-time salaries.
 - Staff will continue to monitor expenses in relation to program revenue and make adjustments as necessary.

Fund 26: Equipment Replacement Fund			
	Year To Date	Estimated Year-End Actuals	%age Achieved
Beginning Balance	\$66,644.44	\$66,644.44	
FY09 Revenue	\$349.44	\$58,903.00	0.59%
FY09 Expenditures	\$9,099.98	\$70,000.00	13.00%
FY09 Net	(\$8,750.54)	(\$11,097.00)	78.86%
Ending Balance	\$57,893.90	\$55,547.44	104.22%

Notes:

- Revenues in January were limited to interest income.
- Expenditures in Fund 26 for this month include:
 - \$6,098 = new cardio equipment for the fitness center
 - \$3,002 = on-going fitness equipment leases

Fund 28: Capital Fund			
	Year To Date	Estimated Year-End Actuals	%age Achieved
Beginning Balance	\$150,710.39	\$169,119.00	
FY09 Revenue	\$26,135.88	\$198,743.00	13.15%
FY09 Expenditures	\$37,862.31	\$299,961.00	12.62%
FY09 Net	(\$11,726.43)	(\$101,218.00)	11.59%
Ending Balance	\$138,983.96	\$67,901.00	204.69%

Notes:

- Revenues in Fund 28 for this month include:
 - \$25,554 = Insurance reimbursement for pool skylights
 - \$602 = Interest income
- Expenditures in Fund 28 for this month include:
 - \$2,500 = Sealing of joints on roof
 - \$12,713 = Health Classroom Remodeling
 - \$8,827 = Locker Room consultant
 - \$13,370 = Fitness Center flooring labor (tear-out and installation)

FY09 FINANCIAL REPORT - THE CENTER OF CLAYTON

Fund 25: Operating Fund
January 1, 2009 - January 31, 2009

	Jan-08	Previous YTD	% Achieved		Jan-09	Year To Date	% Achieved	
			Previous YTD	FY08 Actual			Year to Date	FY09 Budget
Fund 25 Starting Balance	\$152,897.27	\$152,897.27		\$93,854.00	\$138,921.59	\$138,921.59		\$126,497.00
Revenue	\$272,886.06	\$895,912.97	32.20%	\$2,782,223.87	\$271,778.25	\$901,545.31	30.71%	\$2,935,205.00
Expense	\$239,031.76	\$770,686.18	28.16%	\$2,737,156.28	\$255,018.87	\$876,110.26	29.53%	\$2,967,174.00
Net	\$33,854.30	\$125,226.79	277.86%	\$45,067.59	\$16,759.38	\$25,435.05	-79.56%	-\$31,969.00
Fund 25 Ending Balance	\$186,751.57	\$278,124.06	200.20%	\$138,921.59	\$155,680.97	\$164,356.64	173.87%	\$94,528.00

ADMINISTRATION: Revenues include Daily Pass, Annual Pass, Rentals, Food Service, Child Care, Miscellaneous, & Reimbursements

	Jan-08	Previous YTD	% Achieved		Jan-09	Year To Date	% Achieved	
			Previous YTD	FY08 Actual			Year to Date	FY09 Budget
Revenue	\$178,695.17	\$644,729.74	31.83%	\$2,025,633.39	\$173,472.53	\$639,576.13	30.12%	\$2,123,363.00
Expense	\$8,633.50	\$297,187.64	31.86%	\$938,693.61	\$88,070.54	\$314,011.24	30.83%	\$1,018,608.00
Net	\$103,248.77	\$347,542.10	31.97%	\$1,086,939.78	\$85,401.99	\$325,564.89	29.47%	\$1,104,755.00
Revenue:								
Daily Fees	\$10,542.84	\$38,508.84	36.39%	\$105,808.84	\$12,551.00	\$41,158.00	34.78%	\$118,332.00
Annual Passes	\$146,250.65	\$524,904.34	31.70%	\$1,655,864.90	\$139,828.78	\$520,500.24	31.48%	\$1,653,306.00
Rentals	\$8,633.50	\$38,778.50	32.39%	\$119,731.25	\$7,523.75	\$38,702.97	28.62%	\$135,236.00
Food Service	\$910.39	\$3,512.75	20.16%	\$17,427.94	\$915.70	\$3,354.69	12.46%	\$26,926.00
Child Care	\$1,275.00	\$3,784.00	29.07%	\$13,015.00	\$1,139.00	\$3,941.00	27.35%	\$14,410.00
Misc.	\$1,404.12	\$8,622.64	36.95%	\$23,338.45	\$1,545.30	\$5,010.23	6.47%	\$77,486.00
Reimbursements	\$9,678.67	\$26,618.67	29.43%	\$90,447.01	\$9,989.00	\$26,909.00	27.55%	\$97,667.00
Expenditures:								
Personnel Services	\$42,141.26	\$175,978.16	30.91%	\$569,405.83	\$66,395.59	\$196,602.71	33.35%	\$589,531.00
Benefits	\$5,638.84	\$25,889.29	33.90%	\$76,361.22	\$7,887.61	\$30,463.95	30.00%	\$101,556.00
Contractual	\$24,897.67	\$75,817.39	32.55%	\$232,931.05	\$10,598.00	\$71,536.59	6.22%	\$242,259.00
Commodities	\$2,768.63	\$11,052.94	22.13%	\$49,952.85	\$3,189.34	\$15,073.40	123.68%	\$57,841.00
Capital Items	\$0.00	\$8,449.86	84.14%	\$10,042.66	\$0.00	\$334.59	1.22%	\$27,421.00

FITNESS

	Jan-08	Previous YTD	% Achieved		Jan-09	Year To Date	% Achieved	
			Previous YTD	FY08 Actual			Year to Date	FY09 Budget
Revenue	\$59,110.39	\$128,349.73	36.39%	\$352,748.09	\$52,942.72	\$129,296.80	33.35%	\$387,744.00
Expense	\$34,144.49	\$112,941.36	27.56%	\$409,772.73	\$44,712.39	\$133,944.55	32.84%	\$407,898.00
Net	\$24,965.90	\$15,408.37	-27.02%	-\$57,024.64	\$8,230.33	-\$4,647.75	23.06%	-\$20,154.00
Revenue:								
Fitness - In-house	\$23,619.39	\$49,576.88	38.09%	\$130,171.93	\$23,804.16	\$53,147.47	39.52%	\$134,490.00
Fitness - Contract	\$12,489.00	\$15,054.85	28.66%	\$52,530.16	\$16,687.75	\$20,865.75	36.61%	\$57,000.00
Personal Training	\$23,002.00	\$63,284.00	37.22%	\$170,046.00	\$12,450.81	\$55,283.58	28.17%	\$196,254.00
Miscellaneous	\$0.00	\$434.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
Expenditures:								
Personnel Services	\$18,861.43	\$86,730.63	28.60%	\$303,250.62	\$32,189.91	\$103,648.42	34.17%	\$303,324.00
Benefits	\$1,442.86	\$6,634.91	28.65%	\$23,156.05	\$2,462.63	\$7,929.34	34.17%	\$23,204.00
Contractual	\$9,871.23	\$13,241.43	18.48%	\$71,637.02	\$9,718.43	\$19,972.28	28.97%	\$68,950.00
Commodities	\$3,968.97	\$6,334.39	54.01%	\$11,729.04	\$341.42	\$2,394.51	19.28%	\$12,420.00

SPORTS

	Jan-08	Previous YTD	% Achieved		Jan-09	Year To Date	% Achieved	
			Previous YTD	FY08 Actual			Year to Date	FY09 Budget
Revenue	\$10,104.00	\$61,827.25	47.04%	\$131,441.00	\$22,422.00	\$78,682.25	52.03%	\$151,226.00
Expense	\$2,230.66	\$24,706.76	25.09%	\$98,480.42	\$7,722.27	\$28,844.20	25.43%	\$113,426.00
Net	\$7,873.34	\$37,120.49	112.62%	\$32,960.58	\$14,699.73	\$49,838.05	131.85%	\$37,800.00
Revenue:								
Adult Leagues	\$7,600.00	\$7,641.00	24.49%	\$31,206.00	\$10,150.00	\$10,150.00	38.01%	\$26,700.00
Youth Leagues	\$765.00	\$49,751.25	76.81%	\$64,778.00	\$10,225.00	\$64,261.25	88.33%	\$72,750.00
Instruct. Camps	\$0.00	\$0.00	0.00%	\$22,791.00	\$0.00	\$0.00	0.00%	\$33,100.00
Climbing Wall	\$1,739.00	\$4,435.00	35.01%	\$12,668.00	\$2,047.00	\$4,271.00	22.87%	\$18,676.00
Expenditures:								
Personnel Services	\$1,943.26	\$11,657.69	19.71%	\$59,148.31	\$6,382.78	\$18,388.75	29.07%	\$63,263.00
Benefits	\$148.67	\$891.87	19.71%	\$4,525.15	\$488.34	\$1,406.91	29.07%	\$4,840.00
Contractual	\$0.00	\$1,340.00	7.42%	\$18,057.00	\$0.00	\$0.00	0.00%	\$24,670.00
Commodities	\$138.73	\$10,817.20	64.58%	\$16,749.96	\$851.15	\$9,048.54	43.81%	\$20,653.00

AQUATICS

	Jan-08	Previous YTD	% Achieved Previous YTD	FY08 Actual	Jan-09	Year To Date	% Achieved Year to Date	FY09 Budget
Revenue	\$24,374.50	\$58,381.75	27.17%	\$214,867.17	\$22,470.00	\$52,277.13	24.56%	\$212,898.00
Expense	\$26,923.25	\$105,078.41	27.50%	\$382,164.76	\$39,352.32	\$123,866.73	30.90%	\$400,915.00
Net	-\$2,548.75	-\$46,696.66	27.91%	-\$167,297.59	-\$16,882.32	-\$71,589.60	38.08%	-\$188,017.00
Revenue:								
Teams	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
Programs	\$24,374.50	\$58,381.75	27.40%	\$213,042.67	\$22,470.00	\$52,277.13	25.09%	\$208,364.00
Certifications	\$0.00	\$0.00	0.00%	\$1,824.50	\$0.00	\$0.00	0.00%	\$4,534.00
Expenditures:								
Personnel Services	\$24,266.50	\$93,837.23	27.90%	\$336,312.94	\$35,646.50	\$112,366.06	32.00%	\$351,191.00
Benefits	\$1,870.34	\$7,259.09	27.82%	\$26,091.81	\$2,954.67	\$9,261.87	34.47%	\$26,866.00
Contractual	\$260.00	\$807.00	24.23%	\$3,330.10	\$685.00	\$840.50	13.54%	\$6,206.00
Commodities	\$526.41	\$3,175.09	19.33%	\$16,429.91	\$66.15	\$1,398.30	8.40%	\$16,652.00

COMMUNITY RECREATION

	Jan-08	Previous YTD	% Achieved Previous YTD	FY08 Actual	Jan-09	Year To Date	% Achieved Year to Date	FY09 Budget
Revenue	\$602.00	\$2,624.50	19.49%	\$13,465.84	\$471.00	\$1,713.00	15.20%	\$11,270.00
Expense	\$258.54	\$1,342.46	14.80%	\$9,069.48	\$147.55	\$549.24	6.97%	\$7,877.00
Net	\$343.46	\$1,282.04	29.16%	\$4,396.36	\$323.45	\$1,163.76	34.30%	\$3,393.00
Revenue								
General Rec.	\$602.00	\$2,624.50	19.49%	\$13,465.84	\$471.00	\$1,713.00	16.36%	\$10,470.00
Special Events	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00	\$0.00	0.00%	\$800.00
Expenditures								
Personnel Services	\$77.00	\$409.00	56.88%	\$719.00	\$91.65	\$395.10	37.99%	\$1,040.00
Benefits	\$5.89	\$31.31	56.89%	\$55.04	\$7.01	\$30.25	37.81%	\$80.00
Contractual	\$175.65	\$902.15	10.97%	\$8,224.15	\$30.95	\$105.95	1.74%	\$6,088.00
Commodities	\$0.00	\$0.00	0.00%	\$71.29	\$17.94	\$17.94	2.68%	\$669.00

BUILDING OPERATIONS: Includes maintenance personnel costs, contractual services, utilities, building supplies

	Jan-08	Previous YTD	% Achieved Previous YTD	FY08 Actual	Jan-09	Year To Date	% Achieved Year to Date	FY09 Budget
Expense	\$100,028.42	\$229,429.55	26.34%	\$871,159.30	\$75,013.80	\$274,894.30	27.87%	\$986,246.00
Expenditures								
Personnel Services	\$35,462.10	\$70,605.84	30.78%	\$229,354.76	\$22,541.43	\$88,917.59	34.66%	\$256,534.00
Benefits	\$11,033.19	\$22,127.74	30.47%	\$72,620.60	\$6,546.91	\$26,843.49	33.16%	\$80,956.00
Contractual	\$2,843.50	\$6,708.58	35.36%	\$18,970.72	\$2,141.18	\$6,542.68	32.15%	\$20,351.00
Utilities	\$40,337.39	\$101,265.35	24.00%	\$421,902.00	\$37,183.02	\$123,656.36	24.37%	\$507,363.00
Commodities	\$10,352.24	\$28,722.04	22.38%	\$128,311.22	\$8,601.26	\$28,934.18	23.90%	\$121,042.00
Capital Expenditure	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00

SUMMER QUEST

	Jan-08	Previous YTD	% Achieved Previous YTD	FY08 Actual	Jan-09	Year To Date	% Achieved Year to Date	FY09 Budget
Revenue	\$0.00	\$0.00	0.00%	\$44,068.38	\$0.00	\$0.00	0.00%	\$48,704.00
Expense	\$0.00	\$0.00	0.00%	\$27,815.98	\$0.00	\$0.00	0.00%	\$32,204.00
Net	\$0.00	\$0.00	0.00%	\$16,252.40	\$0.00	\$0.00	0.00%	\$16,500.00

FY09 FINANCIAL REPORT - THE CENTER OF CLAYTON

Fund 26: Equipment Replacement Fund

January 1, 2009 - January 31, 2009

	Jan-08	Previous YTD	% Achieved Previous YTD	FY08 Actual	Jan-09	Year To Date	% Achieved Year to Date	FY09 Budget
Fund 26 Starting Balance	\$62,876.29	\$62,876.29		\$68,563.00	\$64,617.72	\$64,617.72		\$62,461.00
Revenue	\$263.57	\$46,288.48	96.93%	\$47,754.76	\$349.44	\$57,156.57	97.04%	\$58,903.00
Expense	\$12,838.38	\$26,301.45	52.95%	\$49,673.32	\$9,099.98	\$24,988.82	35.70%	\$70,000.00
Net	-\$12,574.81	\$19,987.03	-1041.77%	-\$1,918.56	-\$8,750.54	\$32,167.75	-289.88%	-\$11,097.00
Fund 26 Ending Balance	\$50,301.48	\$82,863.32	124.34%	\$66,644.44	\$55,867.18	\$96,785.47	188.43%	\$51,364.00

Revenue:

Contribution - City	\$0.00	\$22,500.00	100.00%	\$22,500.00	\$0.00	\$28,125.00	100.00%	\$28,125.00
Contribution - CSD	\$0.00	\$22,500.00	100.00%	\$22,500.00	\$0.00	\$28,125.00	100.00%	\$28,125.00
Interest Income	\$263.57	\$1,288.48	46.77%	\$2,754.76	\$349.44	\$906.57	34.17%	\$2,653.00
Transfer from Fund 27	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
Transfer from CRSWC	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
Transfer from Fund 25	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00

Expenditures:

Transfer to Fund 28	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
Other Equipment	\$0.00	\$2,475.00	0.00%	\$7,221.00	\$6,098.00	\$13,299.00	88.66%	\$15,000.00
Fitness Equipment	\$12,838.38	\$23,826.45	56.13%	\$42,452.32	\$3,001.98	\$11,689.82	21.25%	\$55,000.00

FY09 FINANCIAL REPORT - THE CENTER OF CLAYTON

Fund 28: Capital Fund

January 1, 2009 - January 31, 2009

	Jan-08	Previous YTD	% Achieved Previous YTD	FY08 Actual	Jan-09	Year To Date	% Achieved Year to Date	FY09 Budget
Fund 28: Starting Balance	\$274,673.32	\$274,673.32		\$281,985.00	\$150,710.39	\$150,710.39		\$169,119.00
Revenue	\$571.69	\$157,368.18	77.46%	\$203,150.71	\$26,135.88	\$220,619.15	111.01%	\$198,743.00
Expense	\$39,954.92	\$163,557.26	48.91%	\$334,425.32	\$37,862.31	\$70,548.19	23.52%	\$299,961.00
Net	-\$39,383.23	-\$6,189.08	4.71%	-\$131,274.61	-\$11,726.43	\$150,070.96	-148.27%	-\$101,218.00
Fund 28: Ending Balance	\$235,290.09	\$268,484.24	178.15%	\$150,710.39	\$138,983.96	\$300,781.35	442.97%	\$67,901.00

Revenue:

Contribution - City	\$0.00	\$77,500.00	100.00%	\$77,500.00	\$0.00	\$96,875.00	100.00%	\$96,875.00
Contribution - CSD	\$0.00	\$77,500.00	100.00%	\$77,500.00	\$0.00	\$96,875.00	100.00%	\$96,875.00
Interest Income	\$571.69	\$2,368.18	46.73%	\$5,067.45	\$601.96	\$1,335.23	26.74%	\$4,993.00
Misc. Income	\$0.00	\$0.00	0.00%	\$43,083.26	\$25,533.92	\$25,533.92	0.00%	\$0.00
Transfer from Fund 27	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
Transfer from Fund 26	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00

Expenditures:

Emergency Repairs	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$15,000.00
Debt Service	\$0.00	\$21,535.20	0.00%	\$84,460.80	\$0.00	\$21,115.20	25.00%	\$84,461.00
Equipment	\$1,320.50	\$1,320.50	0.00%	\$3,288.76	\$0.00	\$1,495.00	5.16%	\$29,000.00
Facility Exterior	\$4,662.50	\$11,875.00	0.00%	\$34,338.54	\$2,500.00	\$2,500.00	3.01%	\$83,000.00
Facility Interior	-\$1,640.00	\$13,330.57	16.04%	\$83,096.80	\$32,712.31	\$42,787.99	158.47%	\$27,000.00
Pool Area	\$29,632.51	\$79,851.58	87.95%	\$90,797.01	\$2,650.00	\$2,650.00	40.77%	\$6,500.00
Capital Project - FY07	\$5,979.41	\$35,639.41	0.00%	\$38,438.41	\$0.00	\$0.00	0.00%	\$5,000.00
Insurance Costs UMB Loan	\$0.00	\$5.00	0.00%	\$5.00	\$0.00	\$0.00	0.00%	\$0.00
Transfer to Fund 25	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$50,000.00
Transfer to Fund 26	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
Transfer to Fund 27	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$0.00	0.00%	\$0.00



Clayton Recreation, Sports and Wellness Commission

Request for Commission Action

To: Clayton Recreation, Sports, and Wellness Commission

From: Finance Committee
Patty DeForrest, Director of Parks & Recreation

Date: February 24, 2009

RE: Approval of the Amended and Restated Operation and Management Agreement and Bylaws for The Clayton Recreation, Sports and Wellness Commission (CRSWC).

Last year, while considering an amendment to the Bylaws for the CRSWC, it was suggested that it would be a good idea to review both the Operation and Management Agreement and Bylaws in order to bring them up-to-date with current practices. To that end, Mike Whittle volunteered his services and the services of an associate of his firm, Andy Voss, to tackle this project. These documents were reviewed by the members of the Finance Committee at their January 8th meeting and the members of the CRSWC at their January 23rd meeting. Recommendations have been incorporated into these documents and reviewed by the Finance Committee at their February 5th meeting and are before you for consideration today.

Outlined for you are the highlights of those changes:

Amended and Restated Bylaws:

- Directors will serve staggered terms following the adoption of these bylaws.
- Upon the approval of the Board of Directors, those directors who have served the maximum amount of consecutive terms upon the adoption of these Amended and Restated Bylaws may serve 1 additional term.
- The term for each director will now be 3 years instead of 2 years.
- The term for each officer will remain 1 year, except that the President will now serve a 2-year term.
- These bylaws create a [President-In-Training] officer position but only those individuals who have previously served as or are concurrently serving as Vice-President, Treasurer or Secretary will be eligible for the [President-In-Training].

- The [President-In-Training] will be elected in the President's final year of his or her term.
- These Amended and Restated Bylaws will reference approval by both the Board of Aldermen and the Board of Education.
- The Board shall review these Bylaws every 5 years.

Amended and Restated Operation and Management Agreement:

- This Agreement eliminates those sections relating solely to the construction of the Facilities.
- This Agreement now properly identifies the three funds used by the Commission and explains the purpose of each fund:

Operating Fund

Equipment Replacement Fund

Capital Fund

- These funds no longer operate in a “waterfall” fashion and the Commission now has greater flexibility to transfer and utilize funds as needed.
- This Agreement now sets forth the process by which the Board of Education and the Board of Aldermen will pay the Commission for projected deficits, deficits identified during the fiscal year and also any remaining deficits at the end of the fiscal year.
- This Agreement now allows for an Authorized Representative(s), who may or may not have the title of Executive Director, to create a budget, make necessary or approved expenditures and manage day-to-day operations at the Facilities on behalf of the Commission.
- Those timing requirements in relation to submitting a budget to the Commission and performing an annual audit now have a “reasonable efforts” carve out to them.
- Insurance policy coverage limits have been increased to \$2,500,000 per occurrence and \$2,500,000 as an annual aggregate limit.
- All addresses have been updated.
- Exhibit B will be replaced with a proper written legal description

There was not consensus as to what the title for (President-in-Training) position should be, once this is determined by the CRSWC it will be incorporated into the final document. Otherwise, the documents attached are the final version as approved by the Finance Committee.

Recommendation: To approve the amended and restated Operation and Management Agreement and Bylaws in substantially the same form as the attached documents.

AMENDED AND RESTATED
BYLAWS
OF
CLAYTON RECREATION, SPORTS AND WELLNESS COMMISSION, INC.

ARTICLE I

OFFICES, RECORDS, SEAL

1. Offices.

a. *Registered Office and Registered Agent.* The corporation shall have and continuously maintain in the State of Missouri, a registered office and a registered agent, whose office must at all times be identical with the registered office. The address of the initial registered office and the name of the initial registered agent shall be as stated in the Articles of Incorporation. The Board of Directors may, from time to time, change the address of the registered office or the identity of the registered agent by complying with the applicable provisions of Chapter 355 of the Revised Statutes of Missouri, as amended (the "Missouri Nonprofit Corporation Act").

b. *Principal Office.* The principal office of the corporation shall be located within the bounds of the City of Clayton, Missouri, at such place as may from time to time be designated by the Board of Directors,

2. Records. The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board of Directors and each committee of the Board of Directors. The corporation shall keep at its principal office, or at its registered office, a record of the name and place of residence of each director and each officer.

3. Seal. The Board of Directors shall adopt, and may alter at its pleasure, a corporate seal, which shall have inscribed thereon the name of the corporation and the words: Corporate Seal-Missouri. The corporate seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or to be in any other manner reproduced.

ARTICLE II

PURPOSES

1. Purposes Stated in Articles. The purposes of the corporation shall be those purposes stated in the Articles of Incorporation.

2. Nonprofit Corporation. The corporation shall be a nonprofit corporation and no part of the net earnings or other assets of the corporation shall inure to the benefit of any director, contributor, officer or other private individual having, directly or indirectly, any personal or private interest in the activities of the corporation.

ARTICLE III

BOARD OF DIRECTORS

1. Directors in Lieu of Members or Shareholders. The corporation shall not have members or shareholders as such but, in lieu thereof, shall have only a self-perpetuating Board of Directors.

2. Powers of Board of Directors. The Board of Directors shall have and is vested with all and unlimited powers and authorities, except as it may be expressly limited by law, the Articles of Incorporation or these Bylaws, to supervise, control, direct and manage the property, affairs and activities of the corporation, to determine the policies of the corporation, to do or cause to be done any and all lawful things for and on behalf of the corporation, to exercise or cause to be exercised any or all of its powers, privileges or franchises, and to seek the effectuation of its objects and purposes; provided, however, that (i) the Board of Directors shall not authorize or permit the corporation to engage in any activity not permitted to be transacted by the Articles of Incorporation or by a corporation organized as a nonprofit corporation under the Missouri Nonprofit Corporation Act, (ii) none of the powers of the corporation shall be exercised to carry on activities, otherwise than as an insubstantial part of its activities, which are not in themselves in furtherance of the purposes of the corporation, and (iii) all income and property of the corporation shall be applied exclusively for its nonprofit purposes and shall not inure to the benefit of any private entity or person.

3. Number of Directors; Qualifications. The number of directors of the corporation to constitute the Board of Directors shall be six (6). The number of directors may be increased or decreased by amendment to these Bylaws, in accordance with the Missouri Nonprofit Corporation Act; provided, however, that the number of directors shall in no event be less than three (3). Each director shall be a citizen of the United States of America and a resident of the School District of Clayton, St. Louis County, Missouri (the "District"). Two directors shall be members of the Board of Education of the District (the "District Directors"); two directors shall be members of the Board of Aldermen of the City of Clayton, Missouri (the "City") (or in lieu thereof, one director shall be a member of the Board of Aldermen of the City and one director shall be the Mayor of the City) (the "City Directors"); and two directors shall be persons who are neither members of the Board of Education of the District nor members of the Board of Aldermen of the City nor the Mayor of the City (the "At-Large Directors"). In addition to the above, the Superintendent of Schools of the District and the City Manager of the City shall serve as non-voting, ex officio directors.

4. Board of Directors The term for each director of the corporation immediately following the adoption of these Bylaws shall be as follows:

<u>Director Membership</u>	<u>Term</u>
At-Large Director #1	1 Year
City Director #1	1 Year

At-Large Director #2	2 Years
District Director #1	2 Years
City Director #2	3 Years
District Director #2	3 Years

Each such director shall hold office until such director's term expires or until such director's successor is duly elected and has commenced his or her term of office, whichever is later. Thereafter, the directors shall be elected in the manner and for the terms provided for in **Paragraph 6** of this **Article III**.

5. Commencement of Term of Office of Directors. A director shall not be deemed to have commenced his or her term of office or to have any of the powers or responsibilities of a director (i) unless such director is qualified to act as such, and (ii) until the time such director accepts the office of director either by a written acceptance or by participating in the affairs of the corporation at a meeting of the Board of Directors or otherwise.

6. Election of New Directors/Terms.

a. *Election.* On or before the annual meeting of the Board of Directors, (i) the Board of Education of the District shall appoint District Directors to replace those District Directors whose terms are expiring, and (ii) the Board of Aldermen of the City shall appoint City Directors to replace those City Directors whose term are expiring. At the annual meeting of the Board of Directors, the Board of Directors shall elect, by a majority vote of the remaining directors, At-Large Directors to replace those At-Large Directors whose terms are expiring. Subject to **Subparagraph 6b** of this **Article III**, any director whose term is about to expire may be elected to succeed himself or herself.

b. *Terms.* Except for those terms described above in **Paragraph 4** of this **Article III**, each new director shall serve for a term ending three (3) years after the date on which his or her predecessor's term should have expired (which date shall be the date of the annual meeting of the Board of Directors), or until such director's successor is duly elected and has commenced his or her term of office, whichever is later, provided, however, that in no event shall any director serve for more than three (3) consecutive terms. Furthermore, the Board of Directors, at its discretion, may approve one (1) additional term for those directors who have served for the maximum number of consecutive terms upon the adoption of these Bylaws. Notwithstanding the foregoing, the term of each ex officio director shall continue so long as such person continues to meet one of the qualifications described in the last sentence of **Paragraph 3** of this **Article III**.

7. Vacancies. Vacancies among District Directors or City Directors elected pursuant to **Paragraph 6** of this **Article III**, resulting from the death, resignation, removal, incapacity or disqualification of a director, or by reason of an increase in the number of District Directors or City Directors or the failure of an elected District Director or City Director to accept the office of director, shall be filled by the Board of Education of the District and/or the Board of Aldermen of the City, as the case may be, on or before the next regular meeting of the Board of

Directors or on or before a special meeting called for that purpose. Vacancies among At-Large Directors elected pursuant to **Paragraph 6** of this **Article III**, resulting from death, resignation, removal, incapacity or disqualification of an At-Large Director, or by reason of an increase in the number of At-Large Directors or the failure of an elected At-Large Director to accept the office of director, shall be filled by a majority vote of the entire number of directors then fixed by these Bylaws at the next regular meeting of the Board of Directors or at a special meeting called for that purpose. A director elected to fill a vacancy shall meet the qualifications set forth in these Bylaws, including in particular those qualifications described in **Paragraph 3** of this **Article III**, and shall serve until such director's successor has been duly elected and has commenced his or her term of office.

8. Compensation of Directors. No director shall receive compensation from the corporation for any service such director may render to it as a director. A director may be reimbursed for his or her actual expenses reasonably incurred in and about such director's performance of his or her duties as a director.

9. Committees. Committees not having the authority of the Board of Directors in the management of the corporation may be designated by a resolution adopted by a majority vote of the entire number of directors then fixed by these bylaws. Each such committee shall have such duties and authority as are from time to time delegated to it by the Board of Directors. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon such Board or member by law.

The Board of Directors shall have no authority to appoint an executive committee or any other committee having the authority of the Board of Directors.

10. Resignation of Directors. Any director may resign from the Board of Directors. Such resignation shall be in writing addressed to the Secretary of the corporation and shall be effective immediately or upon its acceptance by the Board of Directors as such resignation may provide.

11. Removal. Any director may be removed from office for willful neglect of office, failure to carry out the duties and responsibilities assigned to said director, or willful violation of the Articles of Incorporation, these Bylaws, or any rules and/or regulations of the corporation adopted by the Board of Directors. Removal shall be accomplished by the Board of Directors pursuant to the following procedure:

a. The Board of Education of the District (in the case of removal of a District Director), the Board of Aldermen of the City (in the case of removal of a City Director), and the Board of Directors (in the case of removal of an At-Large Director) shall adopt a resolution of notice and intent to remove, which must be adopted by a majority vote of the entire number of its governing body (other than the director sought to be removed) at any meeting of such governing body.

b. The director subject to removal shall be accorded the opportunity for a fair and impartial hearing before the governing body initiating such removal.

c. Following the hearing, removal from office shall be effected by an affirmative vote of a majority of the governing body initiating such removal who are present at any regular or special meeting of such governing body. In the event of the removal of a director under the provisions of these Bylaws, said removal shall automatically terminate such director's tenure as a member of the Board of Directors.

ARTICLE IV

MEETINGS

1. **Place.** Meetings of the Board of Directors of the corporation shall be held at the principal office of the corporation, as designated by the Board of Directors, or at any other place within the bounds of the City of Clayton, Missouri, as may be determined from time to time by resolution of the Board or by written consent of the members thereof.

2. **Annual Meetings.** The annual meeting of the Board of Directors shall be held at such time and place as may be determined by resolution of the Board. Notice of an annual meeting shall be given to each newly appointed director and to each director who shall continue in office not less than ten (10) days before the date of the annual meeting.

3. **Regular Meetings.** In addition to the annual meeting, the Board of Directors may hold regular meetings at such time and place as may be determined from time to time by resolution of the Board. Notice of a regular meeting need not be given to directors. Any business may be transacted at a regular meeting.

4. **Special Meetings.** Special meetings of the Board of Directors may be held at any time or place and for any purpose or purposes. Special meetings may be called by the President, the Vice President or by the Secretary or by a majority of the Board of Directors by notice duly given by the officer or directors calling the same in the manner hereinafter provided.

5. **Notice of Special Meetings.** Written notice stating the place, day and hour of a special meeting and the purpose or purposes for which the meeting is called shall be delivered to each director not less than two (2) days before the date of the meeting, either personally, by mail or by telegram, by or at the direction of the officer or the directors calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the director at such director's address as it appears on the records of the corporation, with postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the same is delivered to the telegraph company.

6. **Waiver of Notice.** Any notice provided or required to be given to the directors may be waived in writing by any of them whether before or after the time stated therein. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where the director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

7. **Quorum.** The presence of a majority of the Board of Directors shall be requisite for and shall constitute a quorum for the transaction of business at all meetings. Vacant positions

are not counted in determining a majority of the Board of Directors; provided, however, that in no event shall a quorum consist of less than one-third of the entire number of Directors. The act of a majority of the directors present at a meeting at which a quorum is present shall be valid as the act of the Board of Directors except in those specific instances in which a larger vote may be required by law, the Articles of Incorporation or these Bylaws.

8. Adjournment. Whether or not a quorum shall be present at any such meeting, the directors present shall have power successively to adjourn the meeting, without notice, or publication of notice, other than announcement at the meeting, to a specified date. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which could have been transacted at the original session of the meeting.

9. Voting. Each director present at any meeting shall be entitled to cast one vote on each matter coming before such meeting for decision. If a roll call is taken, all votes shall be recorded so as to attribute each "aye" and "nay" vote, or abstinence if not voting, to the name of the respective director.

10. Meeting by Conference Telephone. Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

11. Open Meetings Laws. Notwithstanding any other provision of these Bylaws to the contrary, all meetings of the Board of Directors shall be conducted, and all notices thereof shall be given, in accordance with the requirements of Section 610.010, et seq., R.S.Mo., as may be amended or revised from time to time, and any other law, ordinance or regulation applicable to the City of Clayton or the Board of Education of the School District of Clayton pertaining to the conduct of meetings of public or quasi-public bodies, is the same are defined in Section 610.010, et seq., R.S.Mo., as may be amended or revised from time to time.

ARTICLE V

OFFICERS

1. General. The officers of the corporation shall be a President, a [President-In-Training], a Vice President, a Secretary, a Treasurer and such other officers as the Board of Directors may elect, including but not limited to Assistant Secretaries and Assistant Treasurers. The President, the [President-In-Training], and the Vice President shall be elected from among the members of the Board of Directors and shall at all times while holding such offices be members of the Board of Directors. The Secretary and the Treasurer may be, but are not required to be, members of the Board of Directors. Any two or more offices may be held by the same person and the [President-In-Training] shall have previously served as or shall concurrently hold the office of Vice-President, Secretary or Treasurer.

2. Election and Terms of Office. The President shall be elected for a term of two (2) years and all other officers shall be elected for a one (1) year term. The [President-In-Training] shall be elected for a one (1) year term during the second year of the President's term.

Only those Board of Directors who have sufficient years of service remaining on their term as a Board of Director shall be an eligible candidate for the offices of President, [President-In-Training] and Vice President.

At each annual meeting of the Board of Directors, the Board shall elect officers, as applicable, to serve at the pleasure of the Board. Notwithstanding the foregoing, the Board shall elect the [President-In-Training] at each annual meeting following the completion of the President's first year in office.

An officer shall be deemed qualified when such officer enters upon the duties of the office to which such officer has been elected or appointed and furnishes any bond required by the Board of Directors or these Bylaws; but the Board may also require of such person a written acceptance and promise faithfully to discharge the duties of such office.

The term of each officer of the corporation holding office at the pleasure of the Board of Directors shall terminate at the annual meeting of the Board succeeding his or her election or appointment and at which any officer of the corporation is elected or appointed unless the Board provides otherwise at the time of his or her election or appointment. Notwithstanding the foregoing, the President's term shall terminate at the second annual meeting of the Board succeeding his or her election or appointment.

3. Removal. Any officer or any employee or agent of the corporation may be removed or discharged by the Board of Directors whenever in its judgment, the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

If for any reason any officer who is also a member of the Board of Directors ceases to be a member, then such officer shall automatically be removed from office in the corporation.

4. Compensation of Officers. No officer who is also a member of the Board of Directors shall receive any salary or compensation from the corporation for any services such officer may render to it as an officer. Salaries and compensation of all other officers, agents and employees of the corporation, if any, may be fixed, increased or decreased by the Board of Directors, but until action is taken with respect thereto by the Board of Directors, the same may be fixed, increased or decreased by the President, or such other officer or officers as may be empowered by the Board of Directors to do so; provided, however, that no person may fix, increase or decrease his or her own salary or compensation. Each officer may be reimbursed for such officer's actual expenses if they are reasonable and incurred in connection with the purposes and activities of the corporation.

5. Vacancies. Vacancies caused by the death, resignation, incapacity, removal or disqualification of an officer of the corporation shall be filled by the Board of Directors at any annual or other regular meeting or at any special meeting called for that purpose, and such person or persons so elected to fill any such vacancy shall serve at the pleasure of the Board until the next annual meeting of the Board, and until such officer's successor is duly elected and qualified.

6. The President. The President shall be the chief executive officer of the corporation, shall have such general executive powers and duties of supervision and management as are usually vested in the office of the chief executive officer of a corporation, and shall carry into effect, all directions and resolutions of the Board of Directors. The President shall preside at all meetings of the Board of Directors at which he or she may be present.

The President may execute all bonds, notes, debentures, mortgages, and other contracts requiring a seal, under the seal of the corporation and may cause the seal to be affixed thereto, and all other instruments for and in the name of the corporation.

The President shall have the right to attend any meeting of any committee of the Board of Directors, and to express his or her opinion and make reports at such meeting; provided, however, that unless the President shall be specifically appointed to any committee, the President shall not be considered to be a committee member or have the right to vote or be counted for the purpose of determining a quorum at any such meeting.

The President shall have such other duties, powers and authority as may be prescribed elsewhere in these Bylaws or by the Board of Directors.

7. The [President-In-Training]. The [President-In-Training] shall perform the duties of the President in his or her absence or in the event of the inability of the President to perform his duties. It is anticipated that the [President-In-Training] will serve as the President of the Board of Directors during the next ensuing term and that, as [President-In-Training], will become familiar with the requirements of the corporation and the office of the President to better serve the corporation. Notwithstanding the foregoing, the election of an individual to the office of [President-In-Training] shall only be elected as President following confirmation by the Board of Directors.

8. The Vice President. The Vice President shall work in cooperation with the President and shall perform such duties as the Board of Directors may assign to him or her. In the event of the death, and during the absence, incapacity, inability or refusal to act of the President and [President-In-Training], the Vice President shall be vested with all the powers and perform all of the duties of the office of President. In the absence of the President and the [President-In-Training], the Vice President shall preside at all meetings of the Board of Directors at which he or she may be present. The Vice President shall have such other or further duties or authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

9. The Secretary. The Secretary shall attend the meetings of the Board of Directors and shall record or cause to be recorded all votes taken and the minutes of all proceedings in the minute book of the corporation to be kept for that purpose. The Secretary shall perform like duties for any committee established pursuant to these Bylaws when requested by such committee to do so. The Secretary shall be the custodian of all the books, papers and records of the corporation and shall, as such reasonable times as may be requested, permit an inspection of such books, papers and records by any director of the corporation. The Secretary shall upon reasonable demand furnish a full, true and correct copy of any book, paper or record in his or her

possession. The Secretary shall be the administrative and clerical officer of the corporation under the supervision of the President and the Board of Directors.

The Secretary shall keep in safe custody the seal of the corporation and when authorized to do so shall affix the same to any instrument requiring the seal, and when so affixed, the Secretary shall attest the same by his or her signature.

The Secretary shall have the principal responsibility to give or cause to be given notice of the meetings of the Board of Directors, but this shall not lessen the authority of others to give such notice as provided in these Bylaws.

The Secretary shall have the general duties, powers and responsibilities of a secretary of a corporation and shall have such other or further duties or authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board of Directors.

10. The Treasurer. The Treasurer shall have supervision and custody of all moneys, funds and credits of the corporation and shall cause to be kept full and accurate accounts of the receipts and disbursements of the corporation in books belonging to it. The Treasurer shall keep or cause to be kept all other books of account and accounting records of the corporation as shall be necessary, and shall cause all moneys and credits to be deposited in the name and to the credit of the corporation in such accounts and depositories as may be designated by the Board of Directors. The Treasurer shall disburse or supervise the disbursement of funds of the corporation in accordance with the authority granted by the Board of Directors, taking proper vouchers therefor. The Treasurer shall be relieved of all responsibility for any moneys or other valuable property or the disbursement thereof committed by the Board of Directors to the custody of any other person or corporation, or the supervision of which is delegated by the Board to any other officer, agent or employee.

The Treasurer shall render to the President or the Board of Directors, whenever requested by them, an account of all transactions as Treasurer and of those under the Treasurer's jurisdiction and the financial condition of the corporation.

The Treasurer shall have the general duties, powers and responsibilities of a treasurer of a corporation, shall be the chief financial and accounting officer of the corporation, and shall have and perform such other duties, responsibilities and authorities as may be prescribed from time to time by the Board of Directors.

11. The Assistant Secretary and Assistant Treasurer. Each Assistant Secretary or Assistant Treasurer, if any, in order of their seniority, in the event of the death, and during the absence, incapacity, inability or refusal to act of the Secretary or Treasurer, respectively, shall perform the duties and exercise the powers of said respective officers and perform such other duties as the Board of Directors may from time to time prescribe.

12. Other Agents. The Board of Directors from time to time may also appoint such other agents for the corporation as it shall deem necessary or advisable, each of whom shall serve at the pleasure of the Board for such period as the Board may specify, and shall exercise such powers, have such titles and perform such duties as shall, be determined from time to time by the Board or by an officer empowered by the Board to make such determinations.

13. **Duties of Officers May Be Delegated.** If any officer of the corporation be absent or unable to act, or for any other reason that the Board of Directors may deem sufficient, the Board may delegate, for the time being, some or all of the functions, duties, powers and responsibilities of any officer to any other officer, or to any other agent or employee of the corporation or other responsible person, provided a majority of the whole Board of Directors concurs therein.

ARTICLE VI

GENERAL PROVISIONS

1. **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the, name of and on behalf of the corporation.

2. **Depositories and Checks.** The moneys of the corporation shall be deposited in such manner as the Board of Directors shall direct in such banks or trust companies as the Board may designate and shall be drawn out by checks or drafts signed in such manner as may be provided by resolution adopted by the Board.

3. **Bonds.** The Board of Directors may require that any officer or employee handling money of the corporation be bonded at the corporation's expense, in such amounts as may be determined by the Board of Directors.

4. **Custodian of Securities.** The Board of Directors may from time to time appoint one or more banks or trust companies to act for reasonable compensation as custodian of all securities and other valuables owned by the corporation, and to exercise in respect thereof such powers as may be conferred by resolution of the Board of Directors. The Board of Directors may remove any such custodian at any time.

5. **Fiscal Year.** The Board of Directors shall have the power to fix and, from time to time, change the fiscal year of the corporation. In the absence of action by the Board of Directors, however, the fiscal year of the corporation shall end each year on the date which the corporation treated as the close of its first fiscal year, until such time, if any, as the fiscal year shall be changed by the Board of Directors.

6. **Certain Loans Prohibited.** The corporation shall not make any, loan to any officer or director of the corporation, to any member of the Board of Education of the District, or to any member of the Board of Aldermen of the City. No loans shall be contracted on behalf of the corporation and no evidence of any financial obligation shall be issued in its name unless authorized by a resolution of the Board of Directors.

7. **Indemnification and Liability of Directors and Officers.** Each person who is or was a director or officer of the corporation (including the heirs, executors, administrators and estate of such person) shall be indemnified by the corporation as of right to the full extent permitted or authorized by the laws of Missouri, as now in effect and as hereafter amended, against any liability, judgment, fine, amount paid in settlement, cost and expense (including attorneys' fees) asserted or threatened against or incurred by such person in such person's

capacity as or arising out of such person's status as a director or officer of the corporation. The indemnification provided by this Bylaw provision shall not be exclusive of any other rights to which those indemnified may be entitled under any other bylaw provision or under any agreement, vote of disinterested directors or otherwise, and shall not limit in any way any right which the corporation may have to make different or further indemnifications with respect to the same or different persons or classes of persons.

No person shall be liable to the corporation for any loss, damage, liability or expense suffered by it on account of any action taken or omitted to be taken by such person as a director or officer of the corporation if such person (i) exercised the same degree of care and skill as a prudent person would have exercised under the circumstances in the conduct of his or her own affairs, or (ii) took or omitted to take such action in reliance upon advice of counsel for the corporation, or upon statements made or information furnished by directors, officers, employees or agents of the corporation which such person had no reasonable grounds to disbelieve.

8. Absence of Personal Liability. The directors and officers of the corporation are not individually or personally liable for the debts, liabilities or obligations of the corporation.

9. Conflicts of Interest. The corporation and its officers, directors and employees shall at all times abide by all applicable federal, state and local laws, ordinances and regulations relating to conflict of interest. Additionally, but not in limitation of the foregoing, no officer, director or employee of the corporation shall participate in any decisions relating thereto which affect his or her personal interests or the interests of any corporation or partnership in which he or she is directly or indirectly interested.

10. No Discrimination. The corporation and its officers, directors and employees shall not discriminate against any employee or applicant for employment in the terms or conditions of employment including but not limited to: recruitment, selection, training, upgrading, promotion, demotion, transfer, layoff, or termination due to said person's race, religion, creed, color, sex, age, national origin, handicap, or disability. In addition, the operation and use of any facility owned by or under the control of the corporation shall be on a non-discriminatory basis and shall be conducted strictly in accordance with applicable federal, state and local laws, regulations and ordinances.

ARTICLE VII

AMENDMENTS

The Board of Directors of the corporation shall have the power to make, alter, amend and repeal the Bylaws of the corporation and to adopt new Bylaws, which power may be exercised by (i) a vote of a majority of the members of the full Board of Directors and (ii) the approval of the Board of Education of the District and the Board of Aldermen of the City. The corporation shall keep at its principal office a copy of the Bylaws, as amended, which shall be open to inspection by any Board member at all reasonable times during office hours. To ensure that, as necessary or desirable, the Bylaws are periodically updated and/or amended, the Board of Directors shall conduct a review the Bylaws no less than once every five (5) years.

* * * *

CERTIFICATE

The foregoing Bylaws were duly adopted as and for the Bylaws of the Clayton Recreation, Sports and Wellness Commission, Inc. by the Board of Directors of said corporation at its first meeting held on April _____, 2009, and have met the approval of both the Board of Aldermen and the Board of Education.

President of the Corporation

Secretary of the Corporation

**AMENDED AND RESTATED
OPERATION AND MANAGEMENT AGREEMENT**

BY AND AMONG

CITY OF CLAYTON, MISSOURI

AND

SCHOOL DISTRICT OF CLAYTON, ST. LOUIS COUNTY, MISSOURI

AND

CLAYTON RECREATION, SPORTS AND WELLNESS COMMISSION, INC.

TABLE OF CONTENTS

Parties
Recitals

ARTICLE I DEFINITIONS

Section 1.1	Definitions of Words and Terms.....	2
Section 1.2	Rules of Construction	6

ARTICLE II THE FACILITIES

Section 2.1	Mission Statement.....	7
-------------	------------------------	---

ARTICLE III ESTABLISHMENT OF FUNDS; DEPOSIT AND APPLICATION OF MONEY

Section 3.1	Establishment of Funds.....	7
Section 3.2	Operating Fund	7
Section 3.3	Equipment Replacement Fund.....	7
Section 3.4	Capital Fund.....	8
Section 3.5	Deposits and Investment of Money	8

ARTICLE IV OWNERSHIP AND SALE OF THE FACILITIES; ENDORSEMENTS AND GIFTS

Section 4.1	Ownership of the Facilities	8
Section 4.2	Acquisition of Personal Property	9
Section 4.3	Sale of the Facilities.....	9
Section 4.4	Approvals of Endorsements and Gifts	9

ARTICLE V COVENANTS OF THE PARTIES

Section 5.1	Covenants.....	9
Section 5.2	Maintenance.....	10
Section 5.3	Legal Claims	10

ARTICLE VI IMPROVEMENTS TO THE FACILITIES AND PREMISES

ARTICLE VII OPERATION OF THE FACILITIES

Section 7.1	Commission to Operate the Facilities	12
Section 7.2	Damage or Destruction to the Facilities.....	13
Section 7.3	Payment of Deficits and Capital Improvement Budget Requirements	13
Section 7.4	Covenant to Request Appropriations	14

ARTICLE VIII OVERSIGHT OF THE FACILITIES

Section 8.1	Oversight.....	14
Section 8.2	Authorized Representative(s).....	15

Section 8.3	Operating and Capital Improvement Budget	15
Section 8.4	Annual Audit.....	16

ARTICLE IX INSURANCE

Section 9.1	Property Insurance	16
Section 9.2	Public Liability Insurance	17
Section 9.3	Builder’s Risk	18

ARTICLE X DISPUTE RESOLUTION

Section 10.1	Dispute Resolution.....	18
--------------	-------------------------	----

ARTICLE XI GENERAL PROVISIONS

Section 11.1	Notices	18
Section 11.2	Filing of Agreement.....	19
Section 11.3	Amendments	19
Section 11.4	Severability	19
Section 11.5	Governing Law	19
Section 11.6	Effective Date	19
Section 11.7	Execution in Counterparts.....	20

AMENDED AND RESTATED

OPERATION AND MANAGEMENT AGREEMENT

THIS AMENDED AND RESTATED OPERATION AND MANAGEMENT AGREEMENT (the “Agreement”), made and entered into as of this _____ day of April, 2009, by and among the **CITY OF CLAYTON, MISSOURI**, a municipal corporation duly organized and existing under the Constitution and law of the State of Missouri (the “City”), the **SCHOOL DISTRICT OF CLAYTON, ST. LOUIS COUNTY, MISSOURI**, a political subdivision duly organized and existing under the laws of the State of Missouri (“the “District”), and the **CLAYTON RECREATION, SPORTS AND WELLNESS COMMISSION, INC.**, a body corporate and politic duly organized and existing under the laws of the State of Missouri (the “Commission”).

RECITALS

1. The City and the District, pursuant to Sections 70.210 to 70.320 of the Revised Statutes of Missouri, as amended (the “Act”), contracted and cooperated with each other and with private corporations for the planning, development, construction, acquisition or operation of a public improvement or facility within the scope of their individual powers.

2. Pursuant to the Act and a Cooperation Agreement dated August 27, 1997 (the “Cooperation Agreement”), the City and the District approved the formation of the Commission for the purpose of facilitating the financing, construction, renovation and operation of the proposed Center (as hereinafter defined) and the existing Clayton Community Center (as hereinafter defined) (the Center and the Clayton Community Center hereinafter collectively referred to as the “Facilities”) for the benefit of and use by the City and the District and their respective constituencies.

3. The Board of Aldermen of the City authorized the execution of that certain Operation and Management Agreement dated 1997 (the "Original Agreement") by Ordinance No. 5401 adopted on December 16, 1997; the Board of Education of the District authorized the execution of the Original Agreement by a Resolution adopted on December 17, 1997; and the Board of Directors of the Commission authorized the execution of the Original Agreement by a Resolution adopted on December 11, 1997.

4. The City, the District and the Commission entered into the Original Agreement to provide for the operation and management of the Facilities.

5. The City, the District and the Commission desire to enter into this Agreement to amend the Original Agreement.

NOW, THEREFORE, THE CITY OF CLAYTON, MISSOURI, THE SCHOOL DISTRICT OF CLAYTON, ST. LOUIS COUNTY, MISSOURI AND THE CLAYTON RECREATION, SPORTS AND WELLNESS COMMISSION, INC. AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions of Words and Terms. In addition to words and terms elsewhere defined herein, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is plainly intended:

"Acquire" shall include purchase, lease, receipt by grant, condemnation, transfer or other acquirement, or any combination thereof.

"Act" means Sections 70.210 to 70.320 of the Revised Statutes of Missouri, as amended.

"Actual Deficit" means the amount by which actual Expenses exceed the actual Revenues for an applicable period of time.

“Budget Deficit” means the amount, identifiable at any time during the Fiscal Year, by which the projected Expenses exceed the projected Revenues.

“Capital Fund” means the fund by that name to be established by the Commission pursuant to Section 3.1 of this Agreement.

“Center” means the athletic/recreation facility constructed on the District’s high school campus in the City of Clayton, Missouri.

“City” means the City of Clayton, Missouri and any successors or assigns.

“Clayton Community Center” means the existing facility by that name located at #2 Mark Twain Circle in the City of Clayton, Missouri.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“Commission” means the Clayton Recreation, Sports and Wellness Commission, Inc. and any successors or assigns.

“Cooperation Agreement” means the Cooperation Agreement dated August 27, 1997 between the City and the District.

“Deficits” means collectively the Actual Deficit and Budget Deficit.

“District” means the School District of Clayton, St. Louis County, Missouri and any successors or assigns.

“Equipment” means all exercise and athletic equipment as well as any other equipment that is used by the patrons, in whole or part, for enjoyment of the Facility.

“Equipment Replacement Fund” means the fund by that name to be established by the Commission pursuant to Section 3.1 of this Agreement.

“Expenses” means all expenditures paid by the Commission, including but not limited to, all expenditures paid out of the Operating Fund, Equipment Replacement Fund and the Capital Fund.

“Facilities” mean the Clayton Community Center and the Center.

“Fiscal Year” means the fiscal year adopted by the Commission for accounting purposes, which as of the date of this Agreement commences on October 1 and ends on September 30 of the immediately following calendar year.

“Governmental Authority” means the United States of America, the State or any instrumentality or political subdivision thereof or any municipal or quasi-municipal authority, or similar entity thereof including, with respect to matters pertaining to insurance, boards of fire underwriters to the extent they have power to impose conditions on the issuance of policies or the coverage thereof.

“Governmental Requirement” means any law, ordinance, code, order, rule or regulation of any Governmental Authority.

“Major Damage” means the damage or destruction of so much of the Facilities that, in the opinion of the respective governing bodies of the City and the District, one or more of the following conditions result: (i) the conduct of the City’s and/or the District’s use of the Facilities would be substantially prevented or impaired for a period of time exceeding six months; (ii) the remaining portion of the Facilities would not be economically and feasibly usable by the City or the District; or (iii) the Facilities will be other than reasonably efficient or economic for the City’s and the District’s use.

“Necessary Approvals” mean any permit, license, certificate, approval or other evidence of compliance with any requirement necessary for the lawful construction, renovation and

occupancy of the Facilities and the issuance of the insurance required to be carried under this Agreement.

“Operating Costs” means the costs and expenses incurred by the Commission for operations, maintenance, repairs and ordinary renewals and replacements necessary for the operation of the Facilities, and shall include, without limitation, all administrative expenses, insurance premiums, legal, accounting and engineering expenses, consulting and technical expenses, payments to pension, retirement, health and hospitalization funds, annual charges payable by the Commission pursuant to any licenses, permits, orders or other authorizations from any agency or regulatory body having lawful jurisdiction over the Facilities, any taxes or governmental charges, and other expenses required to be paid by the Commission to the extent properly and directly attributable to the afore-described operation of the Facilities. Except as otherwise approved by the City and the District, Operating Costs shall not include debt service payments or any provision for depreciation or similar charges, or after initial completion of construction and/or renovation of the Facilities, any costs or expenses for new construction or reconstruction other than the costs of restoring any part of the Facilities to be paid from Revenues.

“Operating Fund” means the fund by that name to be established by the Commission pursuant to Section 3.1 of this Agreement.

“Parties” mean the City, the District and the Commission.

“Person” means any natural person, corporation, limited liability company, partnership, joint venture, association, firm, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

“Premises” means the real property to be leased to the Commission by the City upon which the Clayton Community Center is located and the real property to be leased to the Commission by the District upon which the Center will be constructed, all as described in Exhibit B attached hereto and incorporated by this reference.

“Revenues” means all revenues, interest income on all funds and accounts created hereunder and charges, rents, gifts, bequests, contributions, grants and other income and receipts derived by the Commission from or with respect to the Facilities.

“State” means the State of Missouri.

Section 1.2 Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Words importing the singular number shall include the plural and vice versa and words denoting persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) The table of contents hereto and the headings and captions herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

(d) Terms used in an accounting context and not otherwise defined shall have the meaning ascribed to them by the Governmental Accounting Standards Board.

ARTICLE II
THE FACILITIES

Section 2.1 Mission Statement. The Commission hereby adopts, and the City and the District hereby approve, the Mission Statement of the Commission with respect to the Facilities as set forth in Exhibit A attached hereto and incorporated by this reference.

ARTICLE III
ESTABLISHMENT OF FUNDS; DEPOSIT AND APPLICATION OF MONEY

Section 3.1 Establishment of Funds. The Commission shall establish the following separate funds and have the authority (which authority may be delegated to the Authorized Representative(s) as defined hereinafter) to disburse or transfer any contributions, gifts, Revenues or other monies between such funds:

- (a) Operating Fund.
- (b) Equipment Replacement Fund.
- (c) Capital Fund.

Section 3.2 Operating Fund. All Revenues as collected, excluding contributions and interest accrued from any other accounts, shall be deposited in the Operating Fund. The amounts in the Operating Fund shall be used to pay the Operating Costs incurred by the Commission and the Facilities, including but not limited to those associated with the daily operation of the Facilities.

Section 3.3 Equipment Replacement Fund. The amounts in the Equipment Replacement Fund shall be used to purchase, lease, finance, replace, repair, maintain, reconstruct or restore the Equipment.

Section 3.4 Capital Fund. The amounts in the Capital Fund shall be used to pay the cost of necessary or desirable additions, betterments, improvements and repairs to, extensions, replacements and care of the Facilities or any portion thereof, excluding the Equipment, that is expected to improve the value and useful life of the Facilities.

Section 3.5 Deposits and Investment of Money.

(a) Money in each of the funds or accounts established pursuant to Section 3.1 of this Agreement shall be deposited in a bank or banks or other legally permitted financial institutions located in the State that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the banks holding such deposits as provided by the laws of the State. All money held in such funds or accounts created shall be kept separate and apart from all other funds of the Parties so that there shall be no commingling of such funds with any other funds of the Parties.

(b) Money held in any fund or account established pursuant to Section 3.1 of this Agreement may be invested by the Treasurer of the Commission at the direction of the Board of Directors of the Commission.

ARTICLE IV

OWNERSHIP AND SALE OF THE FACILITIES; ENDORSEMENTS AND GIFTS

Section 4.1 Ownership of the Facilities. The Facilities shall be owned by the Commission, subject to the rights of the City and the District set forth in the Cooperation Agreement.

Section 4.2 Acquisition of Personal Property. The Parties, in their discretion, may jointly or separately Acquire and hold any personal property as any Party shall deem necessary or advisable to adequately furnish and equip the Facilities. Personal property so Acquired by the Commission shall become part of the Facilities. Personal property so acquired by the City or the District shall remain the property of said Party unless the Parties agree otherwise.

Section 4.3 Sale of the Facilities. Any sale of the Facilities or any portion thereof shall be governed by Article 6 of the Cooperation Agreement.

Section 4.4 Approvals of Endorsements and Gifts. All endorsements (whether of products, businesses or other special interests) and gifts (whether of cash or in kind) relating to the Facilities must be approved in advance by the Parties.

ARTICLE V

COVENANTS OF THE PARTIES

Section 5.1 Covenants.

(a) The Parties covenant not to permit the use of the Facilities (1) in violation of any Governmental Requirements; (2) in violation of any covenants or restrictions affecting the Facilities or the Premises; or (3) for any unlawful, noxious or offensive purpose, or in such manner as to constitute a nuisance.

(b) The Commission covenants to maintain the Facilities and to make all improvements, repairs and replacements as and when needed to preserve the Facilities in good working order and condition, subject to any act or failure to act by the City or the District that may adversely affect the Commission's ability to make such improvements, repairs or replacements and the availability of adequate Revenues and the payment by the City and the District of any Operating Deficits pursuant to Section 7.3 hereof to enable the Commission to make such improvements, repairs or replacements.

(c) The Commission covenants to (1) pay promptly when due the entire cost of any work to the Facilities so that the Facilities shall, at all times, be free of liens for labor and materials arising from such work; (2) procure all Necessary Approvals before undertaking such work; (3) do all such work in a good and workmanlike manner, employing materials of good quality; (4) perform such work in such manner as to insure proper maintenance of good and harmonious labor relationships; and (5) comply with any Governmental Requirements relating to any of the foregoing.

(d) The Commission covenants to cause to be discharged of record by payment all liability and expense arising from any lien at any time filed against the Facilities for any work, labor, services or materials claimed to have been performed at or furnished to the Facilities, for or on behalf of the Parties.

Section 5.2 Maintenance. The Commission shall maintain the Premises and the Facilities in good condition and repair and shall comply with all applicable Governmental Requirements. The Commission's obligation to maintain the Premises and the Facilities shall be subject to the availability of adequate Revenues and the payments by the City and the District of any Operating Deficits pursuant to Section 7.3 hereof.

Section 5.3 Legal Claims.

(a) Each Party shall promptly report to the other any claim or suit against it arising out of or in connection with the Premises, the Facilities or any Party's activities relating thereto. The Commission shall have the right to compromise and defend any claim or suit within the limits of any applicable insurance.

(b) Each Party shall appear and defend any action or legal proceeding brought to determine or contest the validity of this Agreement and/or the legal authority of the Parties to

undertake the activities contemplated by this Agreement. If any Party is not named as a party to the action, the Party or Parties named shall give the unnamed Party or Parties prompt notice of the action and provide such Party or Parties opportunity to intervene at its or their own expense. Each Party shall bear any costs and expenses taxed by the court against it.

(c) To the extent permitted by applicable law, each Party shall aid the other Parties harmless from all suits, claims or liability arising from the acts or omissions of the indemnifying Party, its agents or employees, and from all claims for unpaid wages, remuneration for services, liens and remittances for supplies arising from the Facilities; and, in the event any such suit be filed against the indemnified Party, the indemnified Party shall appear and defend the same, and judgment be rendered or settlement be made against the indemnified Party, to pay the same. Each Party hereby retains the right to select and compensate its own attorney in the event a claim is made, or a lawsuit is filed, against any Party with respect to the Premises, the Facilities or any Party's activities relating thereto.

ARTICLE VI

IMPROVEMENTS TO THE FACILITIES AND PREMISES

The Commission may propose to the City and the District such additions, alterations or other improvements to the Facilities and the Premises under such financing arrangements as the Commission deems appropriate or as shall be required by applicable Governmental Requirements. The terms of such financing arrangements, and the City's and the District's participation in the costs thereof, shall be determined by subsequent interlocal cooperation agreements among the Parties.

ARTICLE VII

OPERATION OF THE FACILITIES

Section 7.1 Commission to Operate the Facilities.

(a) Upon completion of the Facilities, the Commission shall operate and manage the Facilities for the benefit of the City and the District, and in connection therewith, the Commission shall adopt such policies and procedures as it deems appropriate. The City and the District hereby appoint the Commission as the sole and exclusive manager of the Facilities. The Commission hereby accepts such appointment on the terms and conditions set forth herein, and agrees to furnish on behalf of the City and the District all services necessary for the management and operation of the Facilities.

(b) The Commission, subject to the availability of adequate Revenues and the payment by the City and the District of any Operating Deficits pursuant to Section 8.3 hereof, shall operate and maintain the Facilities as first-class public facilities, to be kept at all times in a safe and clean condition, available on a reasonable basis for uses for which the Facilities were designed and as fees or rentals fixed by a schedule designed to pay as much of the Operating Costs as practicable.

(c) The Commission hereby assumes payment of all Operating Costs subject to the availability of Revenues and the payment by the City and the District of any Operating Deficits pursuant to Section 7.3 hereof. The Commission shall provide all management, supervision, personnel, materials, equipment, services and supplies necessary to operate, maintain and repair the Facilities and shall take all reasonable precautions to prevent damage, injury or loss, by reason of or related to the operation and maintenance of the Facilities and the Premises, to any persons or property, and shall comply with all other applicable laws, ordinances, rules and regulations relating to the safety of persons or property or their protection

from damage, injury or loss. The Commission shall properly supervise and direct its employees and other parties implementing the performance of its duties, obligations and function under this Agreement, and the Commission shall be fully responsible for the performance of such employees and other parties. All costs of the Commission so incurred shall be reimbursed as Operating Costs.

Section 7.2 Damage or Destruction to the Facilities.

(a) In the event of Major Damage to the Center or the Clayton Community Center, the Commission shall, at the direction of the City and the District, either (1) repair or rebuild the Center or the Clayton Community Center, as the case may be, and continue this Agreement in full force and effect or (2) terminate this Agreement.

(b) If and to the extent the Commission receives insurance proceeds as a result of such Major Damage, and if the City and the District have instructed the Commission to repair or rebuild the Center or the Clayton Community Center, as the case may be, such proceeds shall be applied to such repair or rebuilding. If the City and the District have instructed the Commission to terminate this Agreement, the Commission shall pay such proceeds over to the City and the District according to their respective monetary contributions to the Construction Fund as set forth in Article 5 of the Cooperation Agreement.

Section 7.3 Payment of Deficits and Capital Improvement Budget Requirements.

Subject to annual appropriation, the City and the District covenant and agree that they will each pay to the Commission:

(a) As indicated by the proposed budget of the Commission for the following Fiscal Year, 50% of an annual stipulated amount proposed by the Commission and approved by the City and District to provide for any projected Budget Deficit;

(b) The Commission will immediately notify the City and the District of any Deficits, of which the Commission becomes aware at any time during the Fiscal Year following the commencement thereof, and as soon as reasonably possible thereafter, and subject to annual appropriation, the City and the District covenant and agree that they will each pay 50% of such amount to the Commission for deposit into the appropriate fund. If the City or the District advances funds for the other Party, such funds shall bear interest at a rate per annum equal to the federal funds rate, as adjusted from time to time, plus two percent (2.0%). Each Party reserves the right to determine the source of such payment.

Section 7.4 Covenant to Request Appropriations. The City and the District covenant and agree that so long as this Agreement is in force, the appropriate officers of the City and the District at the time charged with the responsibility of formulating budget proposals are hereby directed to include in the budget proposal submitted to the Board of Aldermen of the City and to the Board of Education of the District a request for an appropriation of all amounts due under Section 7.3 hereof. Notwithstanding the foregoing, the decision to budget and appropriate funds is to be made in accordance with the City's and the Districts normal procedures for such decisions.

ARTICLE VIII

OVERSIGHT OF THE FACILITIES

Section 8.1 Oversight. The Commission shall make reports to the City and the District as required in this Agreement. Throughout the term of this Agreement, the Commission shall submit financial statements and rental and fee schedules relating to the Facilities and other financial data relating to the Facilities to the City and the District at such times as may be reasonably requested by the City and the District.

Section 8.2 Authorized Representative(s).

(a) The Commission shall be responsible for the day-to-day management of the Facilities, in connection therewith, the Commission may, at its sole discretion, appoint, designate, employ, evaluate and supervise one or more authorized individuals (“Authorized Representative(s)”), who may or may not have the title of Executor Director, (1) to serve as spokesperson with respect to the Facilities, (2) to be responsible for budget development and implementation, scheduling of activities and programs, enforcement of policies and procedures, and marketing, and (3) to have such other duties as designated by the Commission. The Authorized Representative(s) shall report to the Commission and, in connection with their performance, shall consult with the City Manager of the City and with the Superintendent of Schools of the District with respect to the operation and management of the Facilities. The Authorized Representative(s) may, with the consent of the Commission, retain such other staff as the operating budget for the Facilities permits.

(b) The Authorized Representative(s) shall be authorized to approve any budgeted expenditure not exceeding \$10,000. Any such budgeted expenditure exceeding \$10,000 but not exceeding \$50,000 shall require prior approval of the Commission. Any such budgeted expenditure in excess of \$50,000 shall require prior approval of the Parties.

Section 8.3 Operating and Capital Improvement Budget.

(a) The Authorized Representative(s) shall use reasonable efforts to submit to the Commission, not later than 60 days before the end of each Fiscal Year, an annual operating and capital improvement budget prepared in accordance with guidelines of the Governmental Accounting Standards Board for the Commission’s next Fiscal Year. The Commission shall use reasonable efforts to submit to the City and the District, not later than 30 days before the end of

each Fiscal Year, the Commission's recommended operating and capital improvement budget for the Commission's next Fiscal Year for review and approval by the City and the District. The City and the District shall provide the Commission with written comments to said budget within 30 days of their receipt. The City and the District shall approve said budget not later than 30 days after the commencement of the Commission's Fiscal Year and, subject to appropriation by the respective governing bodies of the City and the District, shall fund said budget immediately thereafter in accordance with Section 8.3 hereof.

(b) Upon receipt of written comments to the budget from the City and/or the District, the Commission shall approve, modify or otherwise revise the budget as soon as reasonably practical. If the Commission determines to modify or otherwise revise the budget, then the Commission shall submit the modified or revised budget to the City and the District for further review and comment or approval.

Section 8.4 Annual Audit. The Commission shall have an annual audit of the records and accounts relating to the Facilities made by an independent certified public accountant and shall use reasonable efforts to furnish the City and the District a copy of such audit within 180 days after the end of each Fiscal Year of the Commission.

ARTICLE IX

INSURANCE

Section 9.1 Property Insurance.

(a) The Commission shall (1) keep or cause to be kept insured, for the mutual benefit of the Parties, all improvements located on or appurtenant to the Premises against loss or damage by fire, vandalism and such other risks as are now or hereafter included in an extended coverage endorsement in common use for public structures and (2) cause each of the Parties to be named insureds on all such insurance policies. The amount of insurance shall be sufficient to

reflect replacement value and to prevent any Party from becoming a co-insurer under the provisions of the policy. In no event shall the amount of such insurance be less than the full insurable value as recommended by an independent insurance consultant. The cost of such insurance shall be an Operating Cost.

(b) Notwithstanding subsection (a) of this Section 9.1, the Commission may, with written approval of the City and the District, implement a program of self insurance with reserves that are sufficient, in the judgment of the City and the District, to protect the Parties against loss.

Section 9.2 Public Liability Insurance.

(a) The Commission shall (1) keep or cause to be kept in force for the mutual benefit of the Parties, and their respective officers, agents and employees, comprehensive broad form and general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy or condition of the Facilities or the Premises and (2) cause each of the Parties to be named insureds on all such insurance policies. The cost of such insurance shall be an Operating Cost.

(b) The policies of the insurance provided for in subsection (a) of this Section 9.2 shall provide protection of a combined single limit bodily injury and property damage liability limit of at least \$2,500,000 for each occurrence with at least a \$2,500,000 annual aggregate limit. The limits of such policies shall be reviewed at the written request of any Party. At no time shall such policy limits be lower than those customarily maintained with respect to facilities of like character as the facilities comprising the Facilities.

(c) Notwithstanding subsection (a) or (b) of this Section 9.2, the Commission may, with written approval of the City and the District, implement a program of self insurance

with reserves that are sufficient, in the judgment of the City and the District, to protect the Parties against loss.

Section 9.3 Builder’s Risk. The Commission shall negotiate and approve a package of insurance and other risk coverage instruments that shall be designed to adequately protect the Parties against loss or damage during any future additions, alterations or other improvements to the Facilities.

ARTICLE X

DISPUTE RESOLUTION

Section 10.1 Dispute Resolution. The Parties agree that all disputes between the Parties shall be governed by Article 7 of the Cooperation Agreement, which is incorporated herein by reference.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1 Notices. All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

If to the District: School District of Clayton
#2 Mark Twain Circle
Clayton, Missouri 63105
Attention: Superintendent of Schools

with a copy to: School District of Clayton
#2 Mark Twain Circle
Clayton, Missouri 63105
Attention: President Board of
Education

If to the City: City of Clayton
10 North Bemiston
Clayton, Missouri 63105
Attention: City Manager

with a copy to: City of Clayton
10 North Bemiston
Clayton, Missouri 63105
Attention: Mayor

If to the Commission: Clayton Recreation, Sports and
Wellness Commission, Inc.
50 Gay Ave.
Clayton, Missouri 63105
Attention: President

Section 11.2 Filing of Agreement. In accordance with Section 70.300 of the Act, the District and the City will file a copy of this Agreement with the Missouri Secretary of State and with the office of the Recorder of Deeds of St. Louis County, Missouri.

Section 11.3 Amendments. This Agreement may be amended only in writing, executed by the Parties. The Parties may supplement this Agreement with additional written policies or agreements approved in writing by each Party which are not inconsistent with the terms of this Agreement.

Section 11.4 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.6 Effective Date. This Agreement shall be in effect from and after its execution by the Parties hereto.

Section 11.7 Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or officials as of the date first above stated.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

CITY OF CLAYTON, MISSOURI

(SEAL)

By: _____
Mayor

ATTEST:

City Clerk

SCHOOL DISTRICT OF CLAYTON,
ST. LOUIS COUNTY, MISSOURI

(SEAL)

By: _____
President of the Board of Education

ATTEST:

Secretary of the Board of Education

CLAYTON RECREATION, SPORTS AND
WELLNESS COMMISSION, INC.

(SEAL)

By: _____
President

ATTEST:

Secretary

EXHIBIT A

TO

OPERATION AND MANAGEMENT AGREEMENT

Mission Statement: The Facilities will serve the evolving needs and interests of all constituencies of the City of Clayton and the School District of Clayton by providing a broad range of recreation, sports, wellness and community-based programs.

EXHIBIT B
TO
OPERATION AND MANAGEMENT AGREEMENT

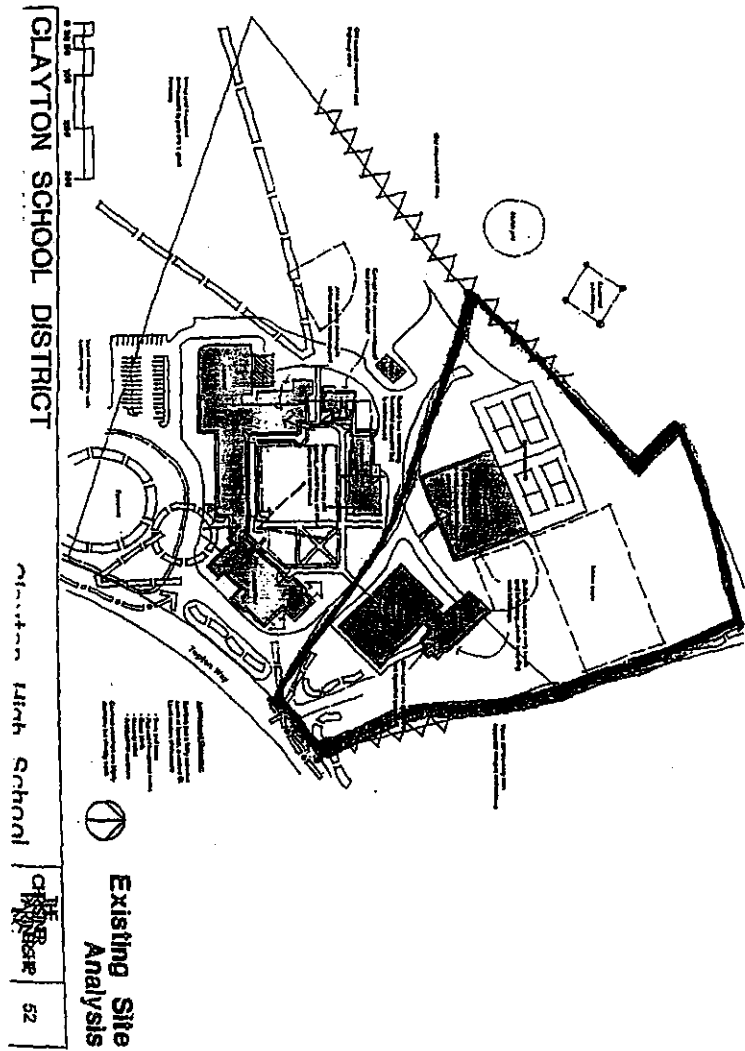
THE SITE

The Site consists of the following-described real property located in St. Louis County, Missouri and all improvements located thereon:

A TRACT OF LAND IN U.S. SURVEY 1919, TOWNSHIP 45 NORTH, RANGE 6 EAST, CITY OF CLAYTON, ST. LOUIS COUNTY MISSOURI, BEING PART OF A TRACT OF LAND DESCRIBED TO TOWN SCHOOL DISTRICT OF CLAYTON BY DEED RECORDED IN BOOK 2172, PAGE 633 OF THE ST. LOUIS COUNTY RECORDS DESCRIBED AS FOLLOWS:

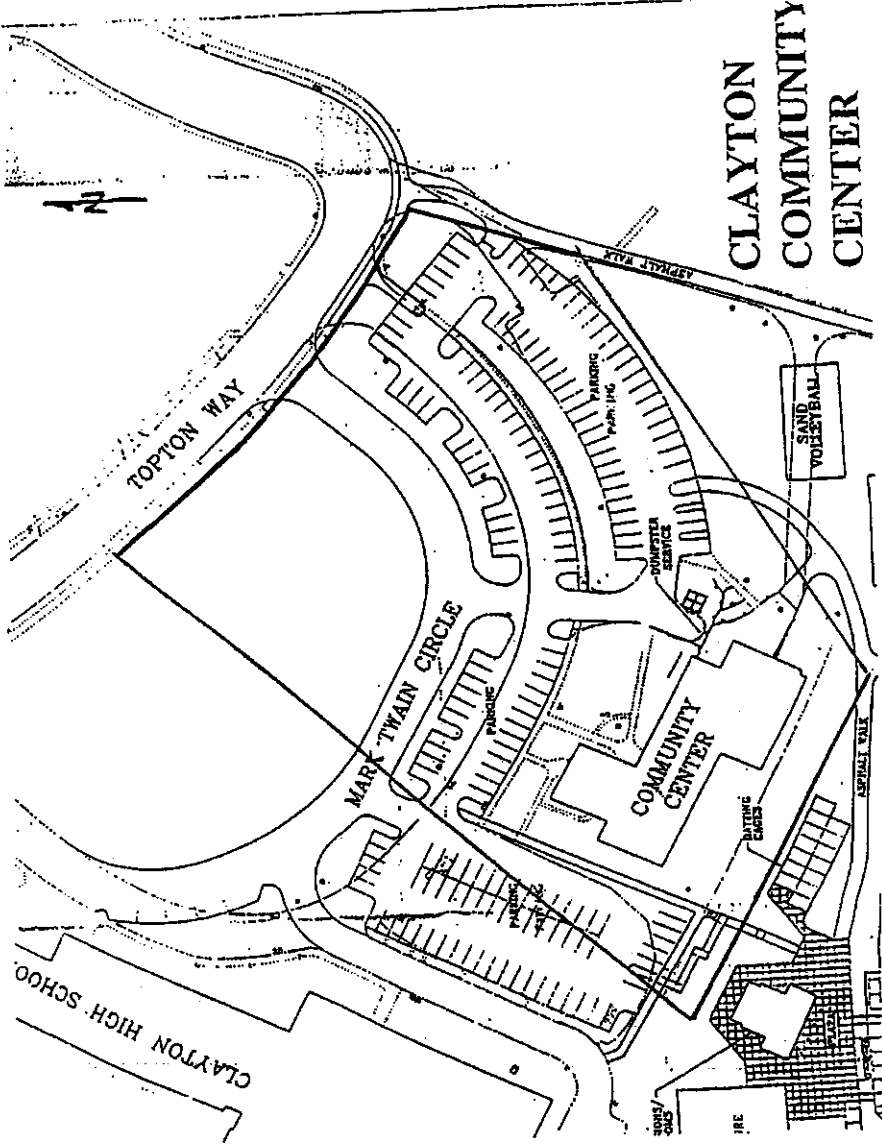
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF A TRACT OF LAND DESCRIBED TO BROWN SHOE COMPANY BY DEED RECORDED IN BOOK 2799, PAGE 295 AND THE WEST LINE OF TOPTON WAY, 60.00 FEET WIDE, THENCE SOUTHEAST ALONG THE WESTERN LINE OF TOPTON WAY AND ALONG A CURVE TO THE LEFT WHOSE RADIUS POINT BEARS NORTH 87 DEGREES 48 MINUTES 00 SECONDS EAST 930.00 FEET AN ARC DISTANCE OF 159.42 FEET TO A POINT; THENCE LEAVING SAID WESTERN LINE OF TOPTON WAY THE FOLLOWING COURSES AND DISTANCES: NORTH 78 DEGREES 01 MINUTES 56 SECONDS EAST 50.00 FEET TO A POINT; THENCE SOUTH 72 DEGREES 35 MINUTES 06 SECONDS WEST, 329.65 FEET TO A POINT; THENCE NORTH 28 DEGREES 17 MINUTES 06 SECONDS EAST, 262.34 FEET TO A POINT; THENCE NORTH 70 DEGREES 17 MINUTES 12 SECONDS EAST, 202.31 FEET TO A POINT; THENCE SOUTH 76 DEGREES 56 MINUTES 28 SECONDS EAST, 50.00 FEET TO A POINT ON THE EAST LINE OF A TRACT OF LAND DESCRIBED TO THE CITY OF CLAYTON, MISSOURI BY DEED RECORDED IN BOOK 6744, PAGE 2285, ALSO BEING THE EAST LINE OF THE FORMER ST. LOUIS BELT AND TERMINAL RAILROAD RIGHT OF WAY, THENCE ALONG THE EAST LINE OF SAID TRACT OF LAND DESCRIBED TO THE CITY OF CLAYTON THE FOLLOWING: NORTH 06 DEGREES 48 MINUTES 00 SECONDS WEST 438.90 FEET TO A POINT OF CURVE, NORTHWEST ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 3,104.93 FEET AN ARC DISTANCE OF 451.22 FEET, NORTH 15 DEGREES 22 MINUTES 30 SECONDS WEST 268.44 FEET AND SOUTH 74 DEGREES 37 MINUTES 30 SECONDS WEST 93.88 FEET TO A POINT ON THE EAST LINE OF GAY AVENUE, 40.00 FEET WIDE, THENCE ALONG THE EAST LINE OF GAY AVENUE, NORTH 06 DEGREES 59 MINUTES 00 SECONDS EAST 433.99 FEET TO THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED TO BROWN SHOE COMPANY BY DEED RECORDED IN BOOK 2799, PAGE 295; AFORESAID, THENCE ALONG THE SOUTH LINE OF SAID BROWN SHOE TRACT, SOUTH 76 DEGREES 22 MINUTES 00 SECONDS EAST 871.16 FEET TO THE POINT OF BEGINNING CONTAINING 395,877 SQUARE FEET OR 9.088 ACRES MORE OR LESS.

(Description of District Property)



[Description of City Property]

EXHIBIT B



CLAYTON
COMMUNITY
CENTER



Clayton Recreation, Sports and Wellness Commission

Request for Commission Action

To: Clayton Recreation, Sports, and Wellness Commission

From: Finance Goal Team
Patty DeForrest, Director of Parks & Recreation, City of Clayton

Date: February 27, 2009

RE: Resolution – To Approve Restructuring of Aquatics Department

The recent resignation of Aquatics Supervisor, Kyle Henke, has given us the opportunity to evaluate the current structure of the department. The Parks & Recreation Department has gone through numerous scenarios in this area in an effort to find the best management team in order to most effectively run the aquatics department. They have found these positions challenging to fill, with the demands of the profession such that there are few qualified candidates in the field.

With that said, Eric Gruenenfelder and Patty DeForrest have considered their options. They believe there are two ways to proceed with this opening; one would be to fill the position as it exists today, the second would be to take the funds available for the Aquatics Supervisor and Program Coordinator and create two full-time Recreation Assistant positions. We realize that in these challenging economic times it is a tough case to make for new full-time positions, however, this may truly be the best way to fill the existing vacancy, save money and create a succession program for the future.

From a financial standpoint, the CRSWC's current budget includes \$47,618 plus benefits for the Aquatics Supervisor position. Using the calculation of 34% for benefits, the total cost for this employee this year will be approximately \$63,808. The Program Coordinator position is a part-time position, where the employee generally works 35 hours per week. The current employee filling this position is paid \$13.40 per hour for a total yearly salary of \$25,298, plus FICA at 7.65% for a total cost of \$27,233. The combined cost of the two employees is \$91,041. If we were to hire two entry level Recreation Assistant at \$31,000 plus benefits, the initial cost would be \$83,080; total savings to the CRSWC of \$7,961 in the first year. Both of these positions are paid out of the CRSWC budget.

The Finance Committee considered other advantages of Option Two. These included:

- Increased productivity of Program Coordinator as this person would no longer be limited to 35 hours per week.
- With several current employees who are qualified for entry level positions, we could hire without extensive costs for recruitment and hiring.
- If current employees were promoted, we would retain their experience. They are currently looking for full-time positions in the field and could leave once those opportunities become available.
- Shared responsibility for the department would result in better coverage overall; thereby reducing the stress of this field for existing employees, perhaps enabling us to retain them longer.
- It would reduce the supervisory responsibility of the Superintendent of Recreation; thereby freeing him up to do more of his primary duties.
- We have found this position to be one that has a high degree of turnover; this would set up a training program for future hiring.
- It creates a team atmosphere; by working together they can build a strong team approach to management.

We also looked at reasons why this would not be a good idea. These included:

- With a new Supervisor in place due to the departure of Jordan Wienke, this may be too much responsibility. As this is not what was discussed during the interview process with him, would he be up to the change? As an unknown entity, did we think he could handle this responsibility?
- It could potentially cost more money over time due to the continued increases in the cost of benefits.
- There could be requests from other divisions within our department to do the same thing as we have program coordinators in other areas such as sports.
- If this does not work, would we be able to return to the previous structure at a future date.

After careful consideration and much discussion, the Department of Parks & Recreation, with support of the Finance Committee advocate for being able to proceed with the plan to convert the existing Full-time Recreation Supervisor and Part-time Program Coordinator position to two Full-time Recreation Assistants for Aquatics. We believe that overall, this is the best way to ensure for the future management of the Aquatic Center. Not only do we take the opportunity to promote several hard working, proven employees, we also are able to save the CRSWC budget approximately \$7,000 this year.

Recommendation: To approve the restructuring of the Aquatics Department as proposed.



Clayton Recreation, Sports and Wellness Commission

Minutes

January 23, 2009

The Center of Clayton

Multipurpose Room C

8:00 am

The meeting was called to order at 8:05 am by Bernard Gerdelman.

Those in attendance: Bernard Gerdelman
 Judy Goodman
 Michelle Harris
 Steve Singer
 Michael Whittle
 Craig Owens, Ex-Officio
 Don Senti, Ex-Officio

Those absent: Sonny Buttar

1. Addresses from the Audience

There were no addresses from the audience.

2. Reports

2008 SummerQuest Report

Nathan Peck, Director, presented a final report for the 2008 SummerQuest program.

Financial Reports

Toni Siering, Superintendent of Parks and Recreation Operations, reviewed the December 2008 financial reports for the commission.

Membership Reports

Toni Siering provided a summary of membership activity for December 2008.

3. Discussion Items

CRSWC Bylaws and Operation & Management Agreement

Mike Whittle introduced Andrew Voss of Armstrong Teasdale, who has been assisting the updates to the CRSWC's Bylaws and Operation & Management Agreement. Mike presented an overview of the changes and gathered input from the commission. Changes to both documents will be presented for approval at the February CRSWC meeting.

4. New Business

BJC/Oasis Meeting

Patty DeForrest briefed the commission on a recent meeting that she had with Mayor Goldstein and representatives from both BJC and Oasis.

5. Action Items

Approval of December 19, 2008 Minutes

A motion was made by Judy Goodman to approve the December 19, 2008 minutes as submitted. Motion was seconded by Mike Whittle. Motion passed.

Adjourn to Executive Session

A motion was made by Judy Goodman to move 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, negotiation of a contract pursuant to Section 610.021 (12) RSMO, and/or proprietary information pursuant to Section 610.021(15). Roll call as follows:

Sonny Buttar – Absent
Bernard Gerdelman – Yes
Judy Goodman – Yes
Michelle Harris – Yes
Steve Singer – Yes
Mike Whittle – Yes

Public Meeting adjourned to Executive Session at 9:05 am.

Minutes recorded by Toni Siering.



Clayton Recreation, Sports and Wellness Commission

Executive Session Minutes

January 23, 2009
The Center of Clayton
Meeting Room C
9:05 am

The meeting was called to order at 9:05 am by Bernard Gerdelman.

Those in attendance: Bernard Gerdelman
 Judy Goodman
 Michelle Harris
 Steve Singer
 Michael Whittle
 Don Senti, Ex-Officio

Those absent: Sonny Buttar
 Craig Owens, Ex-Officio

1. Discussion Items

The commission discussed the contract with Northwest Coffee Roasting Company for operations at The Center of Clayton.

Roll call as follows to adjourn from Executive Session:

Sonny Buttar – Absent
Bernard Gerdelman – Yes
Judy Goodman – Yes
Michelle Harris – Yes
Steve Singer – Yes
Mike Whittle – Yes

Executive Session adjourned at 9:22 am.

Minutes recorded by Toni Siering.