ORDINANCE NO. 11-010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AUTHORIZING THE MAYOR OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF BELLAIRE, TEXAS, AN *AGREEMENT CONCERNING EVELYN'S PARK, BELLAIRE, TEXAS, BY AND AMONG CITY OF BELLAIRE, TEXAS, AND THE JERRY AND MAURY RUBENSTEIN FOUNDATION.*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:

THAT the Mayor of the City of Bellaire, Texas, is hereby authorized to execute, for and on behalf of the City of Bellaire, Texas, an *Agreement Concerning Evelyn's Park, Bellaire, Texas, by and among City of Bellaire, Texas, and The Jerry and Maury Rubenstein Foundation,* in a form as attached hereto and marked Exhibit "A."

PASSED and **APPROVED** this 21st day of February, 2011.

Cynthia Siegel

Cynthia Siegel, Mayor
City of Bellaire, Texas

ATTEST:

Tracy L Dutton

Tracy L. Dutton, TRMC
City Clerk
City of Bellaire, Texas

CITY OF BELLAIRE TEXAS

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney
City of Bellaire, Texas

AGREEMENT CONCERNING

EVELYN'S PARK, BELLAIRE, TEXAS

by and among

CITY OF BELLAIRE, TEXAS

and

THE JERRY AND MAURY RUBENSTEIN FOUNDATION

This Agreement ("Agreement") is made and entered into this _____ day of February, 2011, by and between the City of Bellaire, Texas, a municipal corporation, located in Harris County, Texas (the "City") and The Jerry and Maury Rubenstein Foundation, a Texas non-profit corporation (the "Donor"). City and Donor are sometimes herein referred to individually as a "Party" or collectively as the "Parties".

RECITATIONS

1. Donor is the owner of the real property located in Bellaire, Texas, and legally described on **Exhibit A** attached hereto (the Property);

2. Donor desires to convey the Property to the City to be used solely for park and recreational purposes, subject to the terms and provisions contained in this Agreement and in the Deed (as defined herein), the sole consideration for said conveyance being the completion of the requirements set forth in this Agreement and the commitment of the City, once the Property is developed, to use and maintain the Property for park and recreational purposes in perpetuity, as herein provided.

3. The Parties desire that the Property be developed as a high quality urban park and/or open space, with related facilities and amenities, for the use and enjoyment of residents of the City and visitors to the City.

4. The Parties recognize that the Property is highly visible, and therefore desire that it be developed, operated and maintained at high standards in order to reflect positively on the City as a whole.

5. The Parties further recognize that several decisions are required to be made and a source of funds determined, all as set forth in this Agreement, before the Property can be developed (the "Conditions Precedent"). If such Conditions Precedent have not been fully satisfied and completed in the manner and within the time periods set forth in this Agreement, the Property may be reconveyed, at Donor's option, to Donor free and clear of any restrictions of any kind or character, in which event the title and ownership of the Property shall be vested in Donor, its successors and assigns, and may be used thereafter by Donor and its successors and assigns for any legal purpose, free of any conditions or restrictions relating to park or public use or otherwise. Failure to record the Reconveyance Deed shall not affect or impair the reverter provisions included in the Deed.

6. It is the intention of the Parties to facilitate and assist as appropriate in the raising of public and private funds and resources to pay the costs of design, development, construction, operation and maintenance of the Property in the manner and subject to the standards and conditions set forth in this Agreement and in the Deed.

7. The Parties recognize the importance of raising funds to achieve the development goals and intend to work together to create a Texas non-profit corporation to be known as Evelyn's Park Conservancy, or other name agreed to by the Parties (the "Conservancy"), which will qualify as a 501(c)(3) corporation under the United States Internal Revenue Code, and shall be charged with the rights and duties set forth in this Agreement.

8. From the later of the date of this Agreement and the delivery of Deed by Donor to City, City shall undertake to receive and shall receive a determination from the Harris County Appraisal District that the Property is exempt from taxation, and the City will be solely responsible for the maintenance of the Property, including mowing and other obligations and responsibilities of ownership of the Property.

9. City recognizes that absent this Agreement, Donor would not convey the Property to the City.

AGREEMENT

ARTICLE I
Definitions

Section 1.1 Definitions. As used herein, the following terms have the meanings set forth below:

"Applicable Laws" means all codes, ordinances, rules, statutes and regulations applicable in Bellaire, Harris County, Texas, including, but not limited to, all health, safety, environmental, building and zoning codes, rules and regulations, and specifically including, without limitation, the Americans with Disabilities Act and the Texas Architectural Barriers Act, as now or hereafter may exist.

"Approved Project Design" means the design for the proposed Project, consisting of the concept drawings, schematic drawings and preliminary elevations for the Improvements and the Greenscape to be completed by the Scheduled Completion Date, which drawings shall (i) show in reasonable detail the location of all proposed structures, fixtures and other improvements to be constructed as a part of the Work, and (ii) identify in reasonable detail the uses to be made of each area of the Project, as approved by the Conservancy.

"Architect" means the architect or the architectural firm selected by the Conservancy as the architect of the Project.

"Business Day" means a day other than weekends or national or local holidays.

"City Obligations" means all obligations of City contained in this Agreement and in the Deed.

"Conditions Precedent" is defined in Recital 5 above.

"Conservancy" means the Evelyn's Park Conservancy referred to in Recital 7 of this Agreement.

"Construction Documents" means the Approved Project Design, Working Drawings, the Construction Contract and all other documents governing Contractor's performance of the Work.

"Contractor" means the general contractor(s) selected to construct all improvements, install all Greenscape and perform all other Work for the Project.

"Deed" means the deed from Donor to City, a copy of which is attached hereto as **Exhibit B**.

"Development Costs" means all expenses and capital costs for Developing the Project, including all soft costs and hard costs for the design, engineering, permitting and construction of the Project through Substantial Completion.

"Effective Date" means the effective date of this Agreement, being the date of the City's authorized Officer's countersignature set forth below.

"Force Majeure" means any period or periods of delay caused by strikes, lockouts or other labor disputes; fire or other casualty; storms, floods or other inclement weather; or any other cause (specifically excluding financial) beyond the reasonable control of the Party obligated to perform the task.

"Greenscape" means all sod, flowers, shrubbery, trees and other plants and plantings, and any irrigation systems and equipment serving or related thereto; and all ponds, lakes, streams and other similar water features, any and all drains, filters, aerators, pumps, pipes, temperature controls and other systems and equipment serving or relating thereto on the Property. Such term does not include paths, walks, steps, walls, bridges, structures or other hardscape.

"Improvements" means all infrastructure, structures, lighting, pavement, parking facilities, paths, walks, steps, walls, bridges, fountains, waterwalls, waterfalls, fixtures furnishings, equipment and other systems and facilities comprising the Project, including all grading, contouring, excavating and other earthwork performed in preparation for the Greenscape, but not including the Greenscape and to be constructed by the Contractor pursuant to the Construction Contract.

"Park Rules" means lawful, reasonable rules and regulations concerning use of the Project.

"Permits" means all permits, licenses, approvals or other actions of or by governmental authorities or governmental officials required for the design, construction, ownership or operation of the Project, or any part thereof.

"Person" means any natural person, corporation, company, partnership, business trust, governmental authority or any other entity.

"Project" means the Property, Improvements and Greenscape all to be developed to achieve the objectives described in the Recitals.

"Reconveyance Deed" is defined in Section 2.1 hereof, a copy of which is attached hereto as **Exhibit C**.

"Substantial Completion" or "Substantially Completed" means the date on which (i) the Architect has certified and City and Conservancy have reasonably and in good faith agreed with the Architect's certification, that all Work is sufficiently complete in accordance with the Construction Documents, so that the Project may be used for the purposes for which it was intended; and (ii) all final permits with respect to the construction of the Work and use of the Project have been issued.

"Work" means the performance of the construction and installation of the various separately identifiable parts of the construction and installation of all Improvements and Greenscape required to be completed by the Scheduled Completion Date in accordance with the Approved Project Design and the Working Drawings.

"Working Drawings" means the construction drawings and specifications for the Improvements, and the drawings and horticultural specifications for the Greenscape, prepared by the Architect and other Project consultants in accordance with the Approved Project Design.

ARTICLE II
Conditions Precedent

Section 2.1 Delivery of Deeds. Within ten (10) days after this Agreement has been fully executed by both Parties, Donor will deliver a fully executed and acknowledged Deed to City, which Deed shall be filed for record in the Official Real Property Records of Harris County, Texas (the "Official Records"). Simultaneously with such delivery, City will deliver a fully executed and acknowledged Reconveyance Deed to Donor, which Reconveyance Deed shall be held in escrow by Donor, pursuant to Section 2.6 of this Agreement.

Section 2.2 Ad Valorem Tax Exemption. Within ten (10) days after recordation of the Deed, City will take such action as may be necessary to cause the Property to be designated as exempt from ad valorem taxes.

Section 2.3 Maintenance of the Property. From and after the delivery of the Deed, City will assume full responsibility for the maintenance of the Property in an attractive and orderly condition, including periodic mowing and trimming. City shall also provide all water, sewer, drainage, electricity and gas required for such purposes.

Section 2.4 Creation of Conservancy. The Parties will work together to create the Conservancy as a non-profit 501(c)(3) corporation, and will work together to obtain all required approvals from the Internal Revenue Service. The basic structure of the Conservancy shall include the following:

(a) The Board of Directors shall consist of eight (8) members, four (4) of whom shall be designated by City and four (4) of whom shall be designated by Donor. Any vacancies on the Board of Directors shall be filled by the Party that appointed such Director. Any action taken by the Conservancy shall require a majority vote, which shall include at least one Director appointed by each group (City or Donor, as the case may be). The Board of Directors of the Conservancy may, at its option, establish an advisory board of members of its choosing.

(b) The purpose and function of the Conservancy shall include the following:

(i) Use reasonable efforts to secure "seed money" in an amount sufficient to enable it to perform the functions hereafter specified; however, no Director or other Person shall have any liability if the Conservancy is unsuccessful in doing so;

(ii) If and when seed money has been obtained, the Conservancy shall employ such professionals as it deems appropriate to work with it in the preparation of an Approved Project Design, including Improvements and Greenscape. The Conservancy shall, in cooperation with the City, facilitate and provide for public input in the preparation of the Approved Project Design. In addition, prior to final approval, the Conservancy shall present the proposed design for the Project to the City for input and comment from the City Council and to Donor for input and comment from Donor, but the Conservancy shall retain final approval rights. The Approved Project Design shall include, among other things, the rights retained by Donor, as specified in Section 2.4(c) hereof. Throughout this period, the Conservancy shall continue to seek funds from contributions to fund the capital requirements to construct the Improvements which will be included in the Project;

(iii) When and if an Approved Project Design is approved by the Conservancy and, in the good faith judgment of the Conservancy, sufficient funds are available to justify continuing the Project, the Conservancy will cause Working Drawings to be prepared, and will determine a pro forma budget to perform the required Work.

(iv) Once sufficient funds have been obtained to implement the Approved Project Design, the Conservancy shall proceed with obtaining bids and enter into a Construction Contract with the successful bidder, seeking such professional assistance as may be deemed appropriate;

(v) Oversee construction until Substantial Completion has been achieved.

(c) As a condition to conveying the Property to City, Donor reserves the following rights, which rights are acceptable to and have been agreed to by City:

(i) the right to designate the use of up to ½ acre of the Property, as designated by Donor, for public park or recreation purposes, as determined by Donor in consultation with the Conservancy's park designer;

(ii) the right to erect a monument, plaque or other memorial to the ancestors of Jerry and Maury Rubenstein at each public entrance to the Property, as same may exist from time to time, which shall at all times be maintained at each public entrance to the Property.

(iii) the right of Donor, its successors and assigns, to retain the right to name the park or Project, which name shall continue in perpetuity.

Each of such reservations by Donor shall be in all respects honored at all time in connection with the Approved Project Design or any modifications thereof.

(d) At such time as the Approved Project Design has been completed, City will have the full right and responsibility to operate the Project, as approved by the Conservancy. Provided, however, that any changes in the design or the usage of the Project shall be subject to the prior approval of the Conservancy. Any requirement for the approval by Donor of plans for the Project or changes thereto which are contained in the Deed shall be deemed satisfied if such plans or changes are approved by the Conservancy. However if the Conservancy fails to act or ceases to exist, such approval rights shall remain with Donor. In the management and operation of the Project by City, it may, in addition to other rights and responsibilities, establish reasonable Park Rules.

(e) Following Substantial Completion, the Conservancy may continue to seek capital contributions for the benefit of the Project and City agrees that it will meet with the Board of Directors of the Conservancy on a regular basis, at least biannually, to obtain suggestions and input with respect to the operations of the Project.

Section 2.5 Time Permitted to Achieve Conditions Precedent.

(a) Unless extended in writing by Donor, in its sole and absolute discretion, the time periods within which the Parties shall accomplish or achieve the Conditions Precedent are as follows:

(i) Within one (1) year from the date that the Deed is delivered by Donor to City, the Conservancy shall have been organized and shall have received approval from the Internal Revenue Service to its 501(c)(3) status (the "Conservancy Date");

(ii) Within one (1) year from the Conservancy Date (x) the initial seed money referred to in Section 2.4(b)(i) shall have been obtained; and (y) the Approved Project Design shall have been approved by the Conservancy;

(iii) Within two (2) years from the Conservancy Date, the Conservancy shall have received sufficient financial contributions to fully fund the Development Costs for the Approved Project Design;

(iv) Within three (3) years from the Conservancy Date all Work on the Project shall have been Substantially Completed in compliance with all Applicable Laws, all Development Costs shall have been paid and the Project shall be open to the public; and

(v) At the time of Substantial Completion, City shall have complied with all of the City Obligations.

Section 2.6 Donor's Rights of Enforcement. If any of the Conditions Precedent have not been met and satisfied, for any reason whatsoever, within the time periods specified in Section 2.5, fee simple title to the Property shall, at Donor's sole election, revert to Donor pursuant to the provisions contained in the Deed and additionally Donor may record the Reconveyance Deed in the Official Records, after which ownership of the Property shall be fully vested in Donor, this Agreement shall terminate, and Donor shall have the right to use the Property for any purpose which would have been permissible prior to the delivery of the Deed or permitted under any current zoning or land use restrictions applicable at the time of the reconveyance, free of any conditions or restrictions contained in this Agreement. A delay by Donor in recording the Reconveyance Deed in the Official Records shall not preclude Donor from later recording such Reconveyance Deed, subject to the obligation to return the Reconveyance Deed provided in Section 3.1, below. Additionally, upon request from Donor, City shall execute any documents reasonably requested by Donor confirming that the Property is owned by Donor free and clear of any restrictions, as above set forth.

ARTICLE III
Post Conditions Precedent

Section 3.1. Return of Reconveyance Deed. At such time as the Conditions Precedent included in Section 2.5 have been fully satisfied within the periods specified or approved in writing pursuant to Section 2.5 and the Project has been completed and is open to the public, the Reconveyance Deed shall be returned to City by Donor.

Section 3.2. Survival of Donor's Reverter Rights. Notwithstanding the return of the Reconveyance Deed to City pursuant to Section 3.1, all of the terms and conditions contained in the Deed concerning the required uses and conditions of the Property, including, without limitation, the reverter provisions for violation thereof, shall remain in full force and effect in perpetuity.

ARTICLE IV
Notices

Section 4.1 Notices. Any notice, consent, approval or other communication required or permitted to be given under this Agreement (a "Notice"), must be in writing and must be served by delivering such notice addressed to the Party to be notified (i) effective two (2) days after depositing the notice with the U.S. Postal Service, postage prepaid, sent certified, return receipt requested; or (ii) effective upon receipt in the office of such Party to be notified if delivered in person, by commercial messenger or by a reputable overnight courier; or (iii) effective upon receipt if sent by facsimile with electronic confirmation of receipt. For purposes of giving effective notice, the addresses of the Parties are as follows:

FOR THE CITY:

Attn: City Manager
7008 South Rice Avenue
Bellaire, Texas 77401-4495
Phone: 713/662-8222
Fax: 713/662-8212

FOR THE DONOR

Jerry and Maury Rubenstein Foundation
Attn: Scott Rubenstein
2330 Holmes Road
Houston, TX 77051-1098
Phone: 713/799-5972
Fax: 713 799-5616

Any Party may designate from time to time, upon ten (10) DAYS ADVANCE WRITTEN NOTICE TO THE OTHER Party given in accordance with this Section, a different address with respect to notices to be furnished to such Party.

ARTICLE V
General Provisions

Section 5.1 Waiver. Failure of any Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights under this Agreement, will not be construed as a waiver or relinquishment by such Party of such term, covenant, condition or right with respect to the same or further performance.

Section 5.2 Governing Law. This Agreement will be governed, construed and enforced in accordance with the laws of the State of Texas without regard to any conflict of laws doctrine.

Section 5.3 Dates. If a date requiring notice or action falls on a weekend or national or local holiday, the next Business Day shall be the applicable date.

Section 5.4 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby, and this Agreement will be liberally construed so as to carry out the intent of the Parties.

Section 5.5 Parties in Interest. The terms of this Agreement will be binding upon, and inure to the benefit of, the Parties hereto and their permitted successors and assigns. Nothing in this Agreement will be construed to give any person or entity (other than the Parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of any terms or provisions contained in this Agreement or any standing or authority to enforce the terms and provisions of this Agreement.

Section 5.6 Amendments. This Agreement may be modified or amended only by a writing signed by all Parties hereto.

Section 5.7 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

Section 5.8 Captions. Captions and section headings are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 5.9 Interpretation. The Parties acknowledge and represent that this Agreement has been jointly drafted by the Parties, that no provision of this Agreement will be interpreted or construed against any Party solely because the party or its legal counsel drafted such provision and that each of them has read, understood and approved the language and terms set forth herein.

Section 5.10 Future Cooperation. Both Parties agree that upon request of the other, it will cooperate and execute such further agreements or documents as may be necessary or desirable to evidence the intention of the Parties as expressed in this Agreement or in the Deed.

EXECUTED in multiple counterparts, each effective as an original, on this 25 day of FEBRUARY, 2011.

THE MAURY AND JERRY RUBENSTEIN FOUNDATION, a Texas non-profit corporation

By: _____
Name: MAURY RUBENSTEIN
Title: TRUSTEE

CITY OF BELLAIRE, TEXAS

By: _____
Name: CYNTHIA SIEGEL
Title: MAYOR

EXHIBITS:
A: Legal Description of Property
B: Deed
C: Reconveyance Deed

EXHIBIT A

Tract I:

All that certain 2.9840 acres of land being all of Block 1, Teas Estates according to the plat thereof filed at Film Code Number 578065, Harris County Map Records and being more particularly described by metes and bounds as follows:

BEGINNING at a found 5/8" iron rod with cap in the north right-of-way line of Bellaire Boulevard (150' wide) at its intersection with the east right-of-way line of Newcastle Street (80' wide);

THENCE N 00° 01' 44" W - 222.09', with said east right-of-way line to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 90° 01' 44", a radius of 25.00';

THENCE with said curve and the south right-of-way line of Teas Lane for an arc distance of 39.28' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE East - 477.17', continuing with said south right-of-way line (50' wide at this point) to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 90° 00' 00", a radius of 25.00';

THENCE with said curve, continuing with said south right-of-way line for an arc distance of 39.27' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE South - 222.10', with the west right-of-way line of Mulberry Lane (50' wide) to a found 5/8" iron rod with cap for corner;

THENCE West - 527.06', with the aforementioned north right-of-way line of Bellaire Boulevard to the POINT OF BEGINNING.

TRACT II:

All that certain 1.3496 acres of land being all of Block 2, Teas Estates according to the plat thereof filed at Film Code Number 578065, Harris County Map Records and being more particularly described by metes and bounds as follows:

BEGINNING at a found 5/8" iron rod with cap in the east right-of-way line of Newcastle Street (80' wide) at its intersection with the north line of said Block 2;

THENCE S 89° 59' 48" E - 527.27' with the said north line to a found 5/8" iron rod with cap for corner;

THENCE South - 87.00', with the west right-of-way line of Mulberry Lane (50' wide) to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 90° 00' 00", a radius of 25.00';

THENCE with said curve and with the north right-of-way line of Teas Lane for an arc distance of 39.27' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE West - 477.22', with said north right-of-way line (50' wide at this point) to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 89° 58' 16", a radius of 25.00';

THENCE with said curve, continuing with said north right-of-way line for an arc distance of 39.26' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE N 00° 01' 44" W - 87.04', with the aforementioned west right-of-way line of Newcastle Street to the POINT OF BEGINNING.

EXHIBIT B

DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

THAT THE JERRY AND MAURY RUBENSTEIN FOUNDATION, a Texas non-profit corporation (**"Grantor"**), for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, and the agreement by Grantee to comply with all of the terms and provisions contained in this Deed and in any other contractual agreements to which it is a party, has GRANTED, SOLD AND CONVEYED and by these presents does GRANT, SELL AND CONVEY unto the CITY OF BELLAIRE, TEXAS, a municipal corporation whose mailing address is _____, Bellaire, Texas (**"Grantee"**), that certain tract or parcel of land situated in Harris County, Texas, and more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes, together with; (i) all appurtenances belonging or appertaining thereto; and (ii) all rights of Grantor, if any, in and to any roads, streets, alleys and ways affecting, crossing, fronting or bounding the Property, but not otherwise (the "**Property**").

This conveyance is made by Grantor and accepted by Grantee subject to (i) all easements, restrictions, reservations or other matters affecting or relating to the Property, and (ii) the covenants, restrictions, limitations and obligations stated in this instrument, as set forth below and any other contractual agreements related thereto to which it is a party (collectively, the "**Requirements**"), all of which shall run with the land constituting the Property, shall be binding in perpetuity upon Grantee, its successors and assigns, and shall inure to the benefit of Grantor, its successors and assigns forever:

1. Covenants as to Development

(a) On or before three (3) years after this Deed is recorded (as such date may be extended by Grantor for no more than twelve months, by written agreement between Grantor and Grantee), the Property shall be developed for public park or public recreation uses, including, without limitation, gardens, plantings and water features, all as approved in writing by Grantor;

(b) Upon substantial completion of the initial development of the Property, in accordance with plans approved by Grantor in writing, no future or additional capital improvements costing more than **[$50,000]** in hard construction costs shall be permitted to be constructed or installed on the Property, except with Grantor's prior written approval.

(c) Grantor shall have the sole right (i) to utilize or designate the use of up to ½ acre of the Property for public park or recreation purposes, as determined by Grantor in consultation with the Conservancy; (ii) to erect a monument, plaque or other memorial to the ancestors of Donor's creators at all public entrances to the Property which may exist at any time, or from time to time, which shall be maintained at each public entrance to the Property; and (iii) to name the park, all of which rights shall continue in perpetuity.

(d) The stated uses of the Property shall at all times continue and remain open to the public, subject to temporary closings for repairs or reconstruction.

2. Covenants as to Operation and Maintenance

The Property shall be subject to the following restrictions, covenants and limitations relating to maintenance standards, all of which are included in the Requirements and shall be complied with at all time by Grantee:

(a) The Property shall be operated solely as an urban park or public recreational uses, of high quality, reputation and natural beauty, in accordance with the Requirements, for the use, benefit and enjoyment of the residents of the City of Bellaire and other visitors.

(b) All improvements and fixtures situated on the Property shall at all times be operated and maintained in good, orderly and clean condition, with appropriate lighting and security measures designed to reduce crime and vagrancy.

(c) All receptacles for the accumulation and storage of trash (such as dumpsters, carts and large bins, but not the individual litter baskets or trash cans distributed throughout the Property for deposit and collection of trash) shall be concealed by fencing or shrubbery. All maintenance equipment, vehicles, materials and supplies shall be stored in secured enclosures.

(d) All landscaping and plantings shall be maintained in attractive, healthy and orderly condition, with adequate supplies of water, and with periodic mowing and trimming.

3. Grantor's Rights of Enforcement

All Requirements are expressly deemed to be limitations on the title conveyed herein, it being the express intent of Grantor and Grantee that this instrument conveys to Grantee a determinable estate in and to the Property, subject to all matters set forth herein. Upon any breach of the Requirements, which breach remains uncured for more than 90 days after mailing written notice by Grantor to Grantee at the address shown below, all right, title and interest in and to all of the Property may, upon Grantor's sole election, revert to and vest in Grantor, its successors and assigns, without the necessity of any further act or entry on the part of on behalf of Grantor, after which Grantor shall have the full right to utilize the Property for any lawful purpose free and clear of any restriction or limitations relating to park or public use or

otherwise. No more than one (1) written notice in any twelve (12) month period shall be required. If after the date hereof Grantor becomes the owner of the Property, all of the Requirements, including land use restrictions and limitations, shall become void and of no effect.

IT IS UNDERSTOOD AND AGREED THAT GRANTOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR, CONCERNING (1) THE NATURE AND CONDITION OF THE PROPERTY AND THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONSTRUCTED THEREON, (II) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER AUTHORITY OR BODY, OR (III) THE EXISTENCE OF ANY TOXIC OR HAZARDOUS SUBSTANCE OR WASTE IN, ON, UNDER THE SURFACE OF OR ABOUT THE PROPERTY. GRANTEE AGREES THAT WITH RESPECT TO THE PROPERTY, GRANTEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF GRANTOR EXCEPT FOR THE WARRANTIES OF TITLE IN THIS DEED. GRANTEE AGREES THAT ANY INFORMATION PROVIDED TO GRANTEE BY GRANTOR WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND GRANTOR (A) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND (B) HAS NOT MADE ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. GRANTEE AGREES THAT GRANTOR IS CONVEYING THE PROPERTY TO GRANTEE AND GRANTEE IS ACCEPTING THE PROPERTY ON AN **"AS IS, WHERE IS, WITH ALL FAULTS"** BASIS, AND GRANTEE AGREES THAT GRANTOR HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, WHATSOEVER WITH RESPECT TO THE CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING CONDITION, HABITABILITY, SUITABILITY, QUALITY OR CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND GRANTEE HAS NOT RELIED UPON ANY STATEMENT OR REPRESENTATION MADE BY GRANTOR, ANY BROKER OR BY ANY OTHER PERSON.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto and in any wise belonging unto the Grantee, its successors and assigns forever, subject to the Permitted Exceptions and all other matters set forth herein.

Executed on the dates of the acknowledgments set forth below, to be effective for all purposes as of _____, 2011.

[Remainder of this page intentionally left blank; signature page follows]

GRANTOR:

THE MAURY AND JERRY RUBENSTEIN, FOUNDATION, a Texas non-profit corporation

By:_____
Name:_____
Title:_____

Grantee joins in the execution of this instrument for the purpose of acknowledging and agreeing to the terms and provisions contained in this instrument.

CITY OF BELLAIRE, TEXAS

By:_____
Name:_____
Title:_____

Grantee's Address:

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the ____ day of _____, 2011, by _____, _____ of The Maury and Jerry Rubenstein Foundation, a Texas non-profit corporation.

_____
Notary Public in and for the State of Texas
My commission expires:_____

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the ____ day of _____, 2011, by _____, _____ of the City of Bellaire, Texas.

_____
Notary Public in and for the State of Texas
My commission expires: _____

EXHIBIT A

Tract I:

All that certain 2.9840 acres of land being all of Block 1, Teas Estates according to the plat thereof filed at Film Code Number 578065, Harris County Map Records and being more particularly described by metes and bounds as follows:

BEGINNING at a found 5/8" iron rod with cap in the north right-of-way line of Bellaire Boulevard (150' wide) at its intersection with the east right-of-way line of Newcastle Street (80' wide);

THENCE N 00° 01' 44" W - 222.09', with said east right-of-way line to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 90° 01' 44", a radius of 25.00';

THENCE with said curve and the south right-of-way line of Teas Lane for an arc distance of 39.28' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE East - 477.17', continuing with said south right-of-way line (50' wide at this point) to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 90° 00' 00", a radius of 25.00';

THENCE with said curve, continuing with said south right-of-way line for an arc distance of 39.27' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE South - 222.10', with the west right-of-way line of Mulberry Lane (50' wide) to a found 5/8" iron rod with cap for corner;

THENCE West - 527.06', with the aforementioned north right-of-way line of Bellaire Boulevard to the POINT OF BEGINNING.

TRACT II:

All that certain 1.3496 acres of land being all of Block 2, Teas Estates according to the plat thereof filed at Film Code Number 578065, Harris County Map Records and being more particularly described by metes and bounds as follows:

BEGINNING at a found 5/8" iron rod with cap in the east right-of-way line of Newcastle Street (80' wide) at its intersection with the north line of said Block 2;

THENCE S 89° 59' 48" E - 527.27' with the said north line to a found 5/8" iron rod with cap for corner;

THENCE South - 87.00', with the west right-of-way line of Mulberry Lane (50' wide) to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 90° 00' 00", a radius of 25.00';

THENCE with said curve and with the north right-of-way line of Teas Lane for an arc distance of 39.27' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE West - 477.22', with said north right-of-way line (50' wide at this point) to a found 5/8" iron rod with cap marking the Point of Curvature of a curve to the right having a central angle of 89° 58' 16", a radius of 25.00';

THENCE with said curve, continuing with said north right-of-way line for an arc distance of 39.26' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE N 00° 01' 44" W - 87.04', with the aforementioned west right-of-way line of Newcastle Street to the POINT OF BEGINNING.

EXHIBIT C

DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

WHEREAS, by deed dated _____, 2011, THE JERRY AND MAURY RUBENSTEIN FOUNDATION, a Texas non-profit corporation, conveyed to the CITY OF BELLAIRE, TEXAS, a municipal corporation, the real property hereafter described (the "Prior Conveyance"); and

WHEREAS, pursuant to the agreement of the parties, the City of Bellaire, Texas, desires to reconvey the real property to the Grantee, as defined below, as hereinafter provided:

NOW, THEREFORE, the CITY OF BELLAIRE, TEXAS, a municipal corporation ("Grantor") for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto THE JERRY AND MAURY RUBENSTEIN FOUNDATION, a Texas non-profit corporation ("Grantee"), that certain tract or parcel of land situated in Harris County, Texas, and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes; together with: (i) all appurtenances belonging to or appertaining thereto; and (ii) all rights of Grantor, if any, in and to any roads, streets, alleys or ways affecting, crossing, fronting or bounding the Property, but not otherwise (the "Property")

This conveyance is made and accepted by Grantee subject to all easements and reservations set forth in Exhibit B attached hereto.

However, notwithstanding the provisions and requirements set forth in the Prior Conveyance, all of such Requirements, as defined in the Prior Conveyance, are in all respects terminated and of no effect. Grantee, its successors and assigns, shall have the unrestricted right to utilize the Property for any lawful purpose free and clear of any restrictions or limitations relating to parks or public use or otherwise, it being the intention of the parties that the Property may be used for any purpose which would have been permissible prior to the time that the Prior Conveyance occurred.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances that in anywise belonging unto the Grantee, its successors and assigns forever, subject only to the matters set forth on attached Exhibit B; and Grantor does hereby bind itself to warrant and forever defend all and singular the Property unto Grantee, its successors and assigns,

against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

Grantor warrants and represents that no ad valorem taxes or assessments are due with respect to any period from the date the Property was acquired by Grantor through the date that this Deed is recorded. Grantee, its successors and assigns, shall be responsible for all ad valorem taxes which accrue from and after the date that this Deed is recorded.

Executed on the dates of the acknowledgments set forth below, to be effective for all purposes as of _____. 2011.

GRANTOR:

CITY OF BELLAIRE, TEXAS

By:_____
Name:_____
Title:_____

Grantee's Address:

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the ____ day of _____, 2011, by _____, _____ of The City of Bellaire, Texas, a municipal corporation, on behalf of said municipal corporation.

_____
Notary Public in and for the State of Texas
My commission expires:_____

EXHIBIT A

Tract I:

All that certain 2.9840 acres of land being all of Block 1, Teas Estates according to the plat thereof filed at Film Code Number 578065, Harris County Map Records and being more particularly described by metes and bounds as follows:

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THENCE West - 527.06', with the aforementioned north right-of-way line of Bellaire Boulevard to the POINT OF BEGINNING.

TRACT II:

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THENCE with said curve, continuing with said north right-of-way line for an arc distance of 39.26' to a found 5/8" iron rod with cap marking the Point of Tangency;

THENCE N 00° 01' 44" W - 87.04', with the aforementioned west right-of-way line of Newcastle Street to the POINT OF BEGINNING.

EXHIBIT B
to Deed

1. Building lines and easements for public utilities, including, but not limited to, sanitary sewer easement, water line easements and utility easements, all as reflected by the plat of Teas Estates recorded under Film Code No. 578065 of the Map Records of Harris County, Texas.

2. Drainage easement 15 feet wide on each side of the center line of all gullies, ravines and other natural drainage courses on the herein described property, imposed in the plat and dedication recorded under Film Code No. 578065 of the Map Records of Harris County, Texas.