



ORDINANCE NO. 14-033

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AUTHORIZING THE MAYOR AND THE CITY MANAGER OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF BELLAIRE, TEXAS, AN AGREEMENT FOR MODIFICATION OF DONATION DOCUMENTS CONCERNING EVELYN'S PARK, CITY OF BELLAIRE (THE "AGREEMENT"), IN A FORM AS ATTACHED HERETO AND MARKED ATTACHMENT "A," BY AND BETWEEN THE CITY OF BELLAIRE, TEXAS, AND THE JERRY AND MAURY RUBENSTEIN FOUNDATION (THE "PARTIES"), FOR THE PURPOSE OF ADDRESSING THE CURRENT STATUS, CIRCUMSTANCES, AND MODIFIED AGREEMENTS OF THE PARTIES RELATING TO EVELYN'S PARK; AND PROVIDING FOR THE TERMINATION OF THE "MEMORANDUM OF UNDERSTANDING" BY AND AMONG THE PARTIES AND EFFECTIVE AS OF DECEMBER 20, 2010; AND PROVIDING FOR THE TERMINATION OF THE "AGREEMENT CONCERNING EVELYN'S PARK, BELLAIRE, TEXAS," BY AND AMONG THE PARTIES AND EFFECTIVE AS OF FEBRUARY 25, 2011, AS WELL AS ANY AND ALL AGREEMENTS HERETOFORE ADOPTED THAT ARE IN CONFLICT WITH THIS AGREEMENT.

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

1. THAT the Mayor and the City Manager of the City of Bellaire, Texas, are each hereby authorized to execute, for and on behalf of the City of Bellaire, Texas, a *Modification of Donation Documents Concerning Evelyn's Park, City of Bellaire* (the "Agreement"), in a form as attached hereto and marked Attachment "A," by and between the City of Bellaire, Texas, and The Jerry and Maury Rubenstein Foundation (the "Parties"), for the purpose of addressing the current status, circumstances, and modified agreements of the Parties relating to Evelyn's Park; and providing for the termination of the "Memorandum of Understanding" by and among the Parties and effective as of December 20, 2010; and providing for the termination of the "Agreement Concerning Evelyn's Park, Bellaire, Texas," by

and among the Parties and effective as of February 25, 2011, as well as any and all agreements heretofore adopted that are in conflict with this Agreement.

2. **THAT** this Ordinance shall be effective immediately upon its passage.

PASSED, APPROVED and ADOPTED this 16th day of June, 2014.

ATTEST:



Tracy L. Dutton
Tracy L. Dutton, TRMC
City Clerk

SIGNED:

Philip L. Nauert
Dr. Philip L. Nauert
Mayor

APPROVED AS TO FORM:

Alan P. Petrov
Alan P. Petrov
City Attorney



ATTACHMENT A

Modification of Donation Documents Concerning Evelyn's Park, City of Bellaire

Ordinance No.: 14-033
Date of Adoption: June 16, 2014

**{Bellaire's original Attachment "A" has been retained by the City's Attorney
Alan P. Petrov, Johnson Petrov LLP, 1001 McKinney Street, Suite 1000,
Houston, Texas 77002-6424}**

**AGREEMENT FOR MODIFICATION OF DONATION DOCUMENTS
CONCERNING
EVELYN'S PARK, CITY OF BELLAIRE**

This AGREEMENT FOR MODIFICATION OF DONATION DOCUMENTS CONCERNING EVELYN'S PARK (this "**Modification Agreement**") is dated effective as of July 21, 2014, between THE JERRY AND MAURY RUBENSTEIN FOUNDATION ("**Foundation**") and THE CITY OF BELLAIRE, TEXAS ("**City**") (collectively, the "**Parties**").

RECITALS

The Parties entered into that certain Memorandum of Understanding dated as of December, 20, 2010 (the "**MOU**") relating to Foundation's proposed donation of land to City for development of a public park to be known as Evelyn's Park. As contemplated by the MOU, the Parties entered into that certain Agreement Concerning Evelyn's Park dated as of February 25, 2011 (the "**Donation Agreement**").

Pursuant to the Donation Agreement, Foundation executed that certain Deed dated as of February 25, 2011 (the "**Original Deed**"), recorded under Film Code No. 20110084390, Real Property Records of Harris County, Texas, conveying to City by donation those two (2) parcels of land (the "**Park Land**") located in Harris County, Texas, consisting of all of Blocks 1 and 2, Teas Addition, an addition in Harris County, Texas, according to the plat thereof recorded under Film Code No. 578065, Harris County Map Records, as replatted as Lot 1, Block 1, Teas Estates, according to the plat recorded under File No. 20121079590, Harris County Map Records and being more particularly described by metes and bounds in the Original Deed.

Also pursuant to the Donation Agreement, the City executed and deposited in escrow with Foundation that certain Deed (the "**Reconveyance Deed**") that would implement the Foundation's exercise of its reversionary rights under the Original Deed in the event of a breach by City of the Requirements, as defined in the Donation Agreement and as set forth in the Original Deed. The MOU, Donation Agreement, Original Deed and Reconveyance Deed are collectively referred to as the "**Donation Documents**".

Since the date of the Donation Agreement and Original Deed, the Parties and the Evelyn's Park Conservancy, a Texas non-profit corporation previously established by agreement of the Parties (the "**Conservancy**") have made significant progress, jointly and separately, toward the planning and development of Evelyn's Park (the "**Park**") on the Park Land. The Conservancy has developed and recommended to the Parties a Master Plan (the "**Master Plan**"), for improvements for Evelyn's Park. The Conservancy has also designated a portion of the improvements in the Master Plan for development as the initial phase of Park Improvements ("**Phase 1**").

The Parties desire to enter into this Modification Agreement to modify the Donation Documents, as more particularly set forth below in this Modification Agreement.

AGREEMENT

For and in consideration of the foregoing recitals, all of which are incorporated in this Modification Agreement, and for the mutual undertakings set forth below, and for TEN

DOLLARS (\$10.00) and other good and valuable consideration given, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Approval of Master Plan and Phase 1.** Foundation hereby acknowledges that it has received full and complete copies of the Master Plan and Phase 1; it has had adequate opportunity to review the same, and Foundation hereby approves the Master Plan and Phase 1.

2. **City Obligations.**

a. City shall use its good faith best efforts to issue and sell, no later than August 31, 2014, \$5,000,000 of park bonds approved by referendum in an election held in November 2013, and to deposit the proceeds thereof in a segregated City account (the "**Evelyn's Park Account**") for purposes of funding the City's construction of the park improvements contemplated in Phase 1.

b. City shall (i) collaborate with the Conservancy to obtain all construction documents for Phase 1 of the Park improvements from the Conservancy, (ii) enter into a construction contract for the construction of Phase 1 of park improvements, and (iii) commence the construction of Phase 1 of Park improvements in a reasonable period of time following issuance of the park bonds but in no event later than January 31, 2016, and thereafter diligently proceed with such construction to final completion thereof.

3. **Foundation Obligations.**

a. Of even date herewith Foundation has signed that certain Amended and Restated Deed (the "**Modification Deed**"), in the form attached hereto as **Exhibit A**, providing for, among other things, the relinquishment and conveyance to City of the reversionary rights reserved by Foundation in the Original Deed.

b. Within five (5) business days after the date of this Modification Agreement, Foundation shall deposit the signed Modification Deed and the original of the Reconveyance Deed with the law firm of BoyarMiller (the "**Custodian**") as document custodian, with written instructions that upon Custodian's receipt of Foundation's written notice confirming City's commencement of construction of Phase 1 of Park improvements in accordance with the construction documents provided by the Conservancy and thereafter mutually approved by the City and the Conservancy, Custodian shall (i) record the Modification Deed in the Real Property Records of Harris County, Texas; and (ii) destroy the Reconveyance Deed.

4. **Conditions.** It is a condition to each Party's obligations set forth herein that City and the Conservancy shall have entered into a binding written Development and Operating Agreement (the "**City-Conservancy Agreement**") on terms that include, among others, the following requirements and provisions:

(i) The Conservancy shall pay for all design development documents and construction documents for all Park improvements as contemplated in Phase 1;

(ii) The City shall pay for all permitting, impact fees and hard costs of construction of Phase 1 of Park improvements, not to exceed \$5,000,000;

(iii) The Conservancy and City shall allocate their respective responsibilities, from and after completion of construction of Phase 1 of Park improvements, for performance or costs

of maintenance and operation of Evelyn's Park. The City-Conservancy Agreement shall provide that the City will maintain the Park to a standard not less than the City's maintenance of the City's other high traffic parks, and the Conservancy will operate the Park to provide programming and all additional maintenance it deems appropriate above and beyond the City's standard of maintenance.

5. **Termination of Prior Agreements.** The Parties agree that the MOU and the Donation Agreement shall be automatically terminated effective upon the last to occur of (i) the full execution of the City – Conservancy Agreement as contemplated in Section 4 above; (ii) the full execution of this Modification Agreement; and (iii) deposit of the signed Modification Deed and the Reconveyance Deed, together with the written custodial instructions described above, with the Custodian. From and after the effective date of this Modification Agreement, this Modification Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof. All prior negotiations, representations or agreements between the Foundation and the City not expressly incorporated into this Modification Agreement are hereby superseded and canceled.

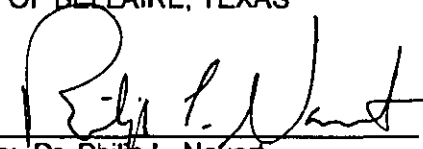
EXECUTED in multiple counterpart originals, effective as of the date first set forth above.

FOUNDATION:

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

By: 
Name: Maury Rubenstein
Title: Trustee

CITY OF BELLAIRE, TEXAS

By: 
Name: Dr. Philip L. Nauer
Title: City Mayor

By: 
Name: Paul Hoffmann
Title: City Manager

**EXHIBIT A TO
MODIFICATION AGREEMENT**

FORM OF AMENDED AND RESTATED DEED

[See attached 6 pages]

AMENDED AND RESTATED 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
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

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 7008 S. Rice (77401) ("**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 restrictive covenants set forth in Section 1 below (such restrictive covenants, 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) The Property shall be developed for public park or public recreation uses, including, without limitation, gardens, plantings and water features, all as initially approved in writing by Grantor.

(b) Grantor shall have the sole right (i) to utilize or designate the use of up to 1/2 acre of the Property for public park or recreation purposes, as determined by Grantor in consultation with the Evelyn's Park Conservancy, a Texas non-profit corporation previously established by agreement of Grantor and Grantee; (ii) to erect a monument, plaque or other memorial to the ancestors of Grantor'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.

(c) 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, or as otherwise permitted under park rules and operating guidelines applicable to the Property.

2. Grantor's Rights of Enforcement

(a) All Requirements are expressly deemed to be covenants running with the land constituting the Property, and encumbrances of the title conveyed by Grantor to Grantee, it being the express intent of Grantor and Grantee that Grantee shall have **fee simple absolute title** to the Property, subject to such Requirements and 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, Grantor shall have the right, at its election and as its sole remedy, to seek specific performance and/or other injunctive relief to prevent the violation of or to require compliance with the Requirements. No more than one (1) written notice in any twelve (12) month period shall be required as to any claimed violation. Notwithstanding the foregoing, and for purposes of clarity, Grantor shall have no right to enforce any of the Requirements by the remedy of reversion of title to the Property from Grantee to Grantor, or by the remedy of a suit for damages (whether actual, consequential, punitive or otherwise) under any circumstances or by any means.

(b) Grantee hereby expressly waives its sovereign immunity and consents to be subject to suit by Grantor, but such waiver and consent are limited solely to Grantor's exercise of its sole remedy under Section 2(a) above in the event of Grantee's breach of any Requirements set forth herein.

3. Disclaimer. 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 (I) 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 Requirements and all other matters set forth herein.

This Amended and Restated Deed is given by Grantor and accepted by Grantee for the purpose of fully amending and restating and entirely replacing that certain Deed dated effective as of February 25, 2011, from Grantor to Grantee, and recorded under File No. 20110084390, in the Official Public Records of Real Property of Harris County, Texas, from and after the effective date of this instrument, as expressly set forth below.

Executed on the dates of the acknowledgments set forth below, to be effective for all purposes as of _____, 201_.

[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: Dr. Philip L. Nauert
Title: City Mayor

By: _____
Name: Paul Hofmann
Title: City Manager

Grantee's Address:

City of Bellaire
7008 South Rice Avenue
Bellaire, Texas 77401

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the ___ day of _____, 2014,
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 _____, 2014,
by Dr. Philip L. Nauert, Mayor of the City of Bellaire, Texas.

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 _____, 2014,
by Paul Hofmann, City Manager of the City of Bellaire, Texas.

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

EXHIBIT A

Legal Description

Refer to Exhibit A of that certain Deed dated as of February 25, 2011, recorded under Film Code No. 20110084390, Real Property Records of Harris County, Texas.

The Property also consists of all of Blocks 1 and 2, Teas Addition, an addition in Harris County, Texas, according to the plat thereof recorded under Film Code No. 578065, Harris County Map Records, as replatted as Lot 1, Block 1, Teas Estates, according to the plat recorded under File No. 20121079590, Harris County Map Records.