



ORDINANCE NO. 14-034

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 AMENDED AND RESTATED DEED, IN A FORM AS ATTACHED HERETO AND MARKED ATTACHMENT "A," RELATED TO EVELYN'S PARK, BY AND BETWEEN THE JERRY AND MAURY RUBENSTEIN FOUNDATION AND THE CITY OF BELLAIRE, TEXAS (THE "PARTIES"), FOR THE PURPOSE OF SUPERSEDING THE ORIGINAL DEED BY AND BETWEEN THE PARTIES RELATED TO THE CONVEYANCE OF PROPERTY AND COVENANTS AS TO DEVELOPMENT.

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, an *Amended and Restated Deed*, in a form as attached hereto and marked Attachment "A," related to Evelyn's Park, by and between The Jerry and Maury Rubenstein Foundation and the City of Bellaire, Texas (the "Parties"), for the purpose superseding the original *Deed* by and between the Parties related to the conveyance of property and covenants as to development.

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:

A handwritten signature in black ink, appearing to read 'Alan P. Petrov', written over a horizontal line.

Alan P. Petrov
City Attorney



ATTACHMENT A

Amended and Restated Deed Evelyn's Park

Ordinance No.: 14-034
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}**

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.

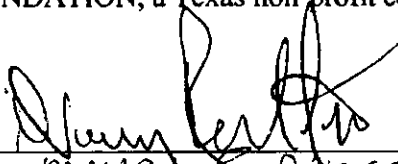
This Amended and Restated Deed is given by Grantor and accepted by Grantee for the purpose of fully amending and restating and entirely replacing that certain Deed dated effective as of February 25, 2011, from Grantor to Grantee, and recorded under File No. 20110084390, in the Official Public Records 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]

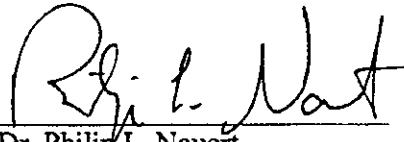
GRANTOR:

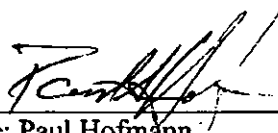
THE MAURY AND JERRY RUBENSTEIN
FOUNDATION, a Texas non-profit corporation

By: 
Name: MAURY RUBENSTEIN
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

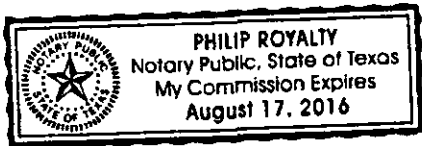
Grantee's Address:

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 21 day of JULY, 2014, by MAURY RUBENSTEIN, TRUSTEE of The Maury and Jerry Rubenstein Foundation, a Texas non-profit corporation.

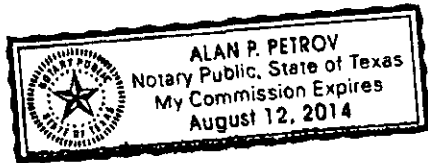


Philip Royalty
Notary Public in and for the State of Texas
My commission expires: 8-7-16

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 21 day of July, 2014, by Dr. Philip L. Nauert, Mayor of the City of Bellaire, Texas.

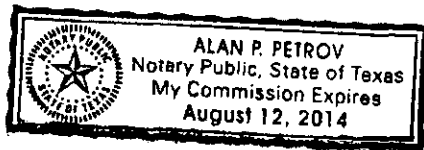


Alan P. Petrov
Notary Public in and for the State of Texas
My commission expires: 8/12/14

THE STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 21 day of July, 2014, by Paul Hofmann, City Manager of the City of Bellaire, Texas.



Alan P. Petrov
Notary Public in and for the State of Texas
My commission expires: 8/12/14

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.