NO. _____

MM BELLAIRE ONE, LLC,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
CITY OF BELLAIRE, TEXAS, EVELYN'S PARK CONSERVANCY, AND KEVIN TAYLOR	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER AND
ORDER SETTING HEARING FOR TEMPORARY INJUNCTION

ON THIS DATE, the Court considered Plaintiff MM Bellaire One, LLC's ("MM Bellaire") application for temporary restraining order ("Application"). After considering the Application, the pleading(s), affidavits, evidence, arguments of counsel, and all other matters properly before it, the Court FINDS that the Application should be granted. The Court further FINDS there is evidence that harm is imminent to MM Bellaire, and if the Court does not issue the temporary restraining order, MM Bellaire will be irreparably injured because the City of Bellaire, Texas (the "City") has widely declared that MM Bellaire's improvements (the "Improvements") at 4300 Bellaire Boulevard (the "Property") will be imminently removed.

An ex parte order, without notice to the City, is necessary because there was not enough time to give notice to the City, hold a hearing, and issue a restraining order before the irreparable injury, loss, or damage would occur. Specifically, the City has required MM Bellaire to file an application for demolition of the Improvements within fourteen days of November 23, 2020. Today is the fourteenth day.

Therefore, by this order, the Court does the following:

a. Restrains the City from directly or indirectly (1) interfering with MM Bellaire's use and enjoyment of the Improvements at the Property; (2) interfering with the use and enjoyment of the Improvements at the Property by MM Bellaire's tenants; (3) destructing, demolishing, or removing the Improvements at the Property; (4) causing the Improvements to be destructed, demolished, or removed; (5) requiring MM Bellaire to submit an application for demolition of the Improvements; or (6) fining MM Bellaire for a failure to submit an application for demolition of the Improvements.

b. Orders the clerk to issue notice to the City that the hearing on MM Bellaire's application for temporary injunction is set for December _____, 2020, at _____ a.m./p.m. The purpose of the hearing will be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.

c. Sets bond at $_____.

This order expires on _____, 2020.

SIGNED on December ____, 2020, at _____.

_____

PRESIDING JUDGE

EXHIBIT A

NO. _____

MM BELLAIRE ONE, LLC, *Plaintiff,* v. CITY OF BELLAIRE, TEXAS AND EVELYN'S PARK CONSERVANCY *Defendants.*	§ § § § § § § § § §	IN THE DISTRICT COURT HARRIS COUNTY, TEXAS _____ JUDICIAL DISTRICT

AFFIDAVIT OF JOHN MORTON

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me the undersigned authority on this day personally appeared JOHN MORTON, who being by me duly sworn on oath stated:

1. My name is John Morton. I am over eighteen (18) years of age, am of sound mind, and am capable and qualified to make this affidavit. The facts stated in this affidavit are true, correct, and based on my personal knowledge. I am the manager of MM Bellaire One, LLC ("MM Bellaire") and am authorized to make this affidavit on MM Bellaire's behalf.

2. I make this affidavit in support of Plaintiff MM Bellaire's Original Petition, Application for Temporary Restraining Order, and Application for Temporary and Permanent Injunctive Relief ("Petition").

3. Evelyn's Park Conservancy ("Evelyn's Park") maintains Evelyn's Park, an outdoor green space located in Bellaire, Texas.

4. In or about 2015, the City of Bellaire, Texas (the "City") created a long-term comprehensive community plan, which specifically identified the Property located 4300 Bellaire Boulevard (the "Property") to be used as parking.[1]

5. In or about April 2017, Evelyn's Park entered into a Parking License Agreement, License No. L124882 ("License"), with CenterPoint Energy Houston Electric, LLC ("CenterPoint"). *See* Exh. A-1. Therein, Evelyn's Park stated intention for entering into the License was "to build and maintain a parking area" on the Property.

6. In or about summer 2018, MM Bellaire began construction of an 80,000 square foot mixed used commercial development called Southside Commons. Southside Commons is located approximately 1,250 feet east of the Property.

7. In early 2018, MM Bellaire began discussions with Evelyn's Park to develop the Property into a parking lot. The proposed lot would serve both Evelyn's Park and Southside Commons.

8. On or about March 27, 2019, CenterPoint consented to Evelyn's Park's proposal to sublicense the Property to MM Bellaire. *See* Exh. A-2.

9. On or about April 30, 2019, Evelyn's Park and MM Bellaire entered into a Sublicense Agreement for the Property ("Sublicense"). *See* Exh. A-3. The purpose of the Sublicense was for MM Bellaire to develop the Property into the parking lot. MM Bellaire agreed to pay Evelyn's Park's rent on the Property and costs of constructing the parking lot.

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[1] *See* Parks Master Plan, CITY OF BELLAIRE, 2015 – 2025 p. 40, *available at* https://www.bellairetx.gov/DocumentCenter/View/3435.

10. MM Bellaire subsequently hired the following parties to work on the parking lot development: ATRR Engineering to complete civil engineering; Raba Kistner to compile a geotechnical report and complete construction materials and testing; Project Solutions, LLC to manage the project; Arch-Con to act as the contractor; and TBG Partners to complete landscape design services.

11. In the summer of 2019, Evelyn's Park and MM Bellaire submitted a permit application to the City for approval and comments. MM Bellaire's engineers corresponded with the City and responded to the City's comments and requirements. *See, e.g.*, Exh. A-4, A-7.

12. The efforts coordinating with the City were successful. On or about January 6, 2020, the City issued a CR – 100K – 499,999 Permit, Number 2000021 (the "Permit"). *See* Exh. A-5. The Permit authorized Arch-Con to proceed with construction of the parking lot. On or about February 24, 2020, William Davidson, a City employee, approved and stamped MM Bellaire's construction plans (the "Plans"). The Plans clearly state that the parking lot was to be constructed with Truegrid system with gravel fill.

13. Work began on the Property shortly thereafter. On or about March 18, 2020, Arch Con issued a notice of substantial completion. *See* Exh. A-6. On the same date, Kevin Taylor, a City employee, emailed Arch-Con to cease work on the Property. *See* Exh. A-7. Despite the fact that construction was substantially complete, the City revoked the Permit and advised that it had been "issued in error."

14. On or about March 26, 2020, Mr. Taylor, on behalf of the City, served a letter upon CenterPoint, Arch-Con, and Evelyn's Park, which stated that the parking lot

did not comply with the Bellaire City Ordinances. *See* Exh. A-8. Evelyn's Park submitted a response on or about April 14, 2020. *See* Exh. A-9.

15. Upon information and belief, Mr. Davidson was reassigned as a result of this error.

16. Around this time, residents of the City began organizing in protest of the now-substantially complete parking lot.

17. Over the spring and summer of 2020, MM Bellaire and Evelyn's Park attempted to work with the City to address and resolve their concerns.

18. Evelyn's Park applied to the City to amend the zoning code. *See* Exh. A-10 and Exh. A-11.

19. Before Evelyn's Park met with the City Planning and Zoning Committee, and in an attempt to alleviate the Bellaire community's concerns, MM Bellaire proposed redesigning the lot to add greenery and additional improvements.

20. On or about August 13, 2020, the City Planning and Zoning Committee voted unanimously that they would not recommend Evelyn Park's application to the City Counsel.

21. On or about November 16, 2020, the City Counsel denied Evelyn's Park's application to amend the zoning code.

22. On November 23, 2020, the City issued a letter to CenterPoint, Evelyn's Park, and MM Bellaire advising that "the Bellaire City Counsel failed to approve the zoning text amendments / [Specific Use Permit] application," that the parking lot improvements were not permitted within the City's zoning, and that CenterPoint,

Evelyn's Park, and MM Bellaire were required to file an application for demolition of the parking lot within 14 days. *See* Exh. A-11. The letter further stated that the recipients would be subject to fines if they failed to meet the fourteen day deadline.

23. The City's reasoning for demanding MM Bellaire remove the parking lot is for thte public use of community aesthetics and beautification and to appease an outcry from City residents.

24. On or about December 1, 2020, CenterPoint notified Evelyn's Park of its intent to terminate the license agreement. *See* Exh. A-13.

25. MM Bellaire spent over $300,000 to construct a parking lot, pursuant to a City-approved Permit and City-approved Plans. The City is now requiring MM Bellaire to pay for the destruction of the newly-constructed lot. The City has not offered MM Bellaire any compensation for the monies it expended.

26. Moreover, MM Bellaire's contractual obligations with third parties are now in jeopardy. Pursuant to MM Bellaire's leases with tenants of Southside Commons, MM Bellaire is required to provide parking. This obligation was satisfied by the lot created at the Property.

27. I am the Manager of MM Bellaire and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities. Attached to this affidavit are true and correct copies of the following records:

Exhibit A-1 [redacted]

Exhibit A-2 Consent to Sublet (Mar. 27, 2019)

Exhibit A-3	Sublicense Agreement (Apr. 30, 2019)
Exhibit A-4	Letter ARKK Engineers to City of Bellaire (Aug. 15, 2019)
Exhibit A-5	Permit and Plan Approval
Exhibit A-6	Notice of Substantial Completion (Mar. 18, 2020)
Exhibit A-7	Email M. Kennedy to P. Case (Mar. 18, 2020)
Exhibit A-8	Letter K. Taylor to CenterPoint (Mar. 26, 2020)
Exhibit A-9	Letter Evelyn's Park to City of Bellaire (Apr. 14, 2020)
Exhibit A-10	Letter Evelyn's Park to City of Bellaire (Apr. 22, 2020)
Exhibit A-11	Letter Evelyn's Park to City of Bellaire (Jun. 24, 2020)
Exhibit A-12	Letter City of Bellaire to CenterPoint, MM Bellaire, and Evelyn's Park (Nov. 23, 2020)
Exhibit A-13	Email L. Waters to J. Morton (Dec. 1, 2020)

28. These are the original records or exact duplicates of the original records. It is the regular practice of MM Bellaire to make these types of record at or near the time of each act, event, condition, opinion, or diagnosis set forth in the records. It is the regular practice of MM Bellaire for this type of record to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them. It is the regular practice of MM Bellaire to keep this type of record in the course of regularly conducted business activity. It is the regular practice of the business activity to make the records.

FURTHER AFFIANT SAYETH NOT.

JOHN MORTON

SUBSCRIBED and SWORN TO BEFORE ME by JOHN MORTON on this 3rd day of December, 2020.

ABBY NEWTON
Notary Public, State of Texas
Comm. Expires 03-17-2024
Notary ID 132407956

Notary Public, State of Texas