



April 19, 2010

Gary Balling
Executive Director
Park District of Oak Park
218 Madison Street
Oak Park, IL 60302

Dear Director Balling,

Enclosed please find a Friends of the Oak Park Conservatory (FOPCON) check dated 04/19/2010 in the amount of \$140,000.00 payable to the Park District of Oak Park.

This represents the FOPCON grant approved by the Board of Directors to assist in funding the renewal of the Conservatory Garden to be known as the Herbert Rubinstein Memorial Garden.

Our grant of \$140,000.00 covers our initial approved grant of \$127,254.12 plus an additional grant of \$12,745.88 to fund the cost of Alt. #2-Ornamental Iron Fence; and Alt. #6-Tree & Solar Lighting.

The Friends look forward to the completion of the Garden Project in furthering our mission to preserve and promote community interest in the Oak Pak Conservatory.

Very truly yours,

A handwritten signature in cursive script that reads "Phil Heil".

Phil Heil
Treasurer
FOPCON

Encl.-1

Cc: Sandy Lentz, President
Jackie Paine, Executive Director

AN AGREEMENT AMONG
THE PARK DISTRICT OF OAK PARK,
THE FRIENDS OF THE OAK PARK CONSERVATORY,
AND THE RUBINSTEIN FAMILY

This Agreement is made and entered into on June 18, 2009, (the "*Effective Date*") by and among the Park District of Oak Park, an Illinois park district (the "*Park District*"), the Friends of the Oak Park Conservatory, an Illinois not-for-profit corporation (the "*Friends*"), and the Rubinstein Family (the "*Donors*") (collectively the "*Parties*");

RECITALS:

WHEREAS, the Park District owns and operates the facility known as the Oak Park Conservatory, located at 615 Garfield Street, Oak Park, Illinois (the "*Conservatory*"); and

WHEREAS, in November 2008 the Park District approved a master plan for the grounds surrounding the Conservatory (the "*Master Plan*"), a copy of which is attached to and made a part of this Agreement as Exhibit A; and

WHEREAS, the Park District has allocated the total amount of \$100,000 for implementation of the Master Plan in its entirety; and

WHEREAS, the Friends participated in the development of the Master Plan; and

WHEREAS, the Master Plan consists of four phases, one of which includes renewal of the Clarence Avenue frontage of the Conservatory grounds together with that portion of the Conservatory grounds extending south of the Conservatory Center, as described in the Master Plan (collectively the "*Garden*"); and

WHEREAS, renewal of the Garden, which will benefit the entire Oak Park community, has been and continues to be a priority of the Friends; and

WHEREAS, the Park District originally planned to undertake the first phase of the Master Plan in 2011; and

WHEREAS, in January 2009, the Park District agreed to proceed with renewal of the Garden as the first phase of the Master Plan (the "*Garden Project*") in 2010, one year in advance of the schedule identified in the Master Plan, subject to the availability of funds for that work; and

WHEREAS, on January 5, 2009, the Friends directed that two-thirds of its unallocated reserve funds as determined on January 1, 2009, be allocated to the Garden Project, in the amount of \$84,962.12 (the "*Committed Reserves*"); and

WHEREAS, in addition to the Committed Reserves, the Friends have determined to donate, for the Garden Project, gifts that have been donor-directed for the Garden and that are held by the Friends in the amount, as determined as of January 1, 2009, of \$42,292.00 (the "*Garden Funds*"); and

WHEREAS, the gifts from the Friends, consisting of the Committed Reserves and the Garden Funds, total \$127,254.12 (the "*Friends Total Gift*"); and

WHEREAS, in addition to the Friends Total Gift, the Donors, who are long-time generous supporters of the Conservatory, have committed to making a substantial gift to the Park District for the Conservatory Garden (the "*Donors Gift*") as a civic contribution and in memory of Herbert Rubinstein; and

WHEREAS, the Park District is able, with the Friends Total Gift, the Donors Gift, and an allocation of \$30,000 of Park District funds (the "*Park District Funding*"), to undertake the Garden Project commencing in 2010; and

WHEREAS, the Parties desire to memorialize the gifts and their agreement for undertaking the Garden Project;

NOW THEREFORE, in consideration of the promises and undertakings contained herein, the Parties agree as follows:

1. Recitals. The foregoing recitals are found as facts and made a part hereof.
2. Project Scope. The work to be funded by the Friends Total Gift, the Donors Gift, and the Park District Funding will include preparation of final plans and specifications for the Garden Project and completion of Garden Project work.
3. Management of the Project. The Park District will be responsible for all elements of the Garden Project, including without limitation preparation of final plans and specifications for the work, publicly bidding, and contracting for completion of the work.
4. Project Funding. The Garden Project will be funded as follows:
 - a. The Park District will create a separate account into which all funds described in this Agreement for the Garden Project will be deposited (the "*Conservatory Garden Account*").
 - b. Immediately prior to the award of a contract to the general contractor for the Garden Project, the Friends will transfer to the Park District the Friends Total Gift for deposit into the Conservatory Garden Account. Immediately upon receipt of those funds, the Park District will deposit those funds into the Conservatory Garden Account and use them exclusively for paying costs related to the Garden Project.
 - c. At the same time as the Friends' transfer, the Donors will transfer to the Park District the Donors Gift for deposit into the Conservatory Garden Account. Immediately upon receipt of those funds, the Park District will deposit those funds into the Conservatory Garden Account and use them exclusively for paying costs related to the Garden Project.

- d. At the same time as it deposits the Friends Total Gift and the Donors Gift into the Conservatory Garden Account, the Park District will deposit the Park District Funding into that account for use exclusively for paying costs related to the Garden Project.
 - e. The Park District will draw on the Conservatory Garden Account to pay costs incurred in the Garden Project. If there are funds remaining in the Conservatory Garden Account after completion of the Garden Project, and all costs and expenses related to the Garden Project have been paid, settled, or otherwise retired, then those remaining funds will be held by the Park District for use exclusively to pay costs and expenses incurred for the next phase of the Master Plan.
 - f. In the event of a shortfall of funds in the Conservatory Garden Account, then the Park District, in its discretion, may modify the improvements to be made as part of the Garden Project to reduce costs, or may commit additional Park District funds to the Garden Project, or may take other action as the Park District determines is appropriate.
 - g. At any time that the Park District receives additional funds from the Friends for the Garden Project, the Park District will deposit those funds into the Conservatory Garden Account and treat them the same as the Friends Total Gift.
5. Conservatory Garden Name and Marker. After the Donors Gift is made and the Garden Project is completed, the Park District will name the Garden "*The Herbert Rubinstein Memorial Garden*" and the Garden thereafter will be known by that name for so long as it continues to be maintained by the Park District as a public garden in the form created under this Agreement. If in the future the Garden undergoes major reconstruction, then the Park District may change the name of the Garden to that of a new major donor. The Park District will manufacture, install, and maintain a marker in a visible place in The Herbert Rubinstein Memorial Garden, which marker will be of a size, design, material, and message in keeping with the design of the Garden. The Park District and the Donors will collaborate on the design and placement of the marker. This Agreement does not prevent the Park District from placing a commemorative plant or tree, with a plaque, in the Garden.
6. Ownership and Maintenance.
- a. Ownership. The Conservatory and its grounds are owned by the Park District. This Agreement does not create any property or ownership rights of any kind in the Friends or the Donors.
 - b. Operation and Maintenance. The Park District will maintain The Herbert Rubinstein Memorial Garden as it does all other Conservatory grounds. The Park District may solicit the advice and assistance of members of the Friends, the Garden Club of Oak Park

and River Forest, and other interested parties in developing, installing, and maintaining plantings for the Garden.

7. Authority. Each Party represents that the persons signing this Agreement on its behalf is authorized to do so and to bind that Party to the terms and obligations in this Agreement.
8. No Rights in Third Parties. Nothing in this Agreement is intended to, or may be construed to, confer on or give to any person, firm, or other entity (other than the Parties) any rights or remedies under or by reason of this Agreement.
9. Amendments. This Agreement may be modified or amended only by an instrument in writing executed by each of the Parties.
10. Governing Law. This Agreement is made in the State of Illinois and must in all respects be interpreted, construed, and governed by and in accordance with the laws of the State of Illinois.
11. No Assignments. This Agreement is not assignable by any Party and any attempt to assign any term, right, or obligation under this Agreement will be null and void.
12. No Waiver of Rights. The determination of a Party to waive, or to delay assertion of, a right under this Agreement or a claim of breach of this Agreement by another Party may not be applied or construed to be a waiver of that Party's right to assert the same or other right or the same or other claim for breach.
13. Termination. The Friends or the Park District may terminate this Agreement upon a material breach of this Agreement by the other Party, except that the terminating Party must give the another Party written notice of the breach and not fewer than 30 days after receipt of that notice to cure the breach or, if the breach is not reasonably curable within 30 days, to promptly commence the cure and diligently pursue the cure to completion.
14. Notices. Notices under this Agreement must be in writing and must be given by first class mail, postage paid, or by a reliable overnight delivery courier, as follows:

To the Park District:

Park District of Oak Park
Attention: Executive Director
218 Madison Street
Oak Park, IL 60302

To the Friends:

Friends of the Oak Park Conservatory
Attention: Executive Director
P.O. Box 126
Oak Park, IL 60302

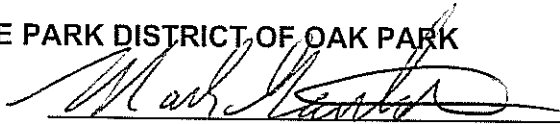
To the Donors:

The Rubinstein Family
c/o Clara Rubinstein
1030 Jackson Street
River Forest, IL 60305

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

THE PARK DISTRICT OF OAK PARK

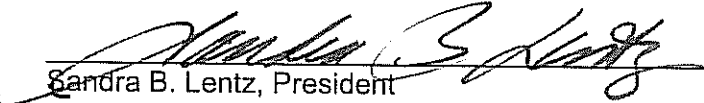
By:



Mark Gartland, President

THE FRIENDS OF THE OAK PARK CONSERVATORY

By:



Sandra B. Lentz, President

THE RUBINSTEIN FAMILY

By:



Clara E. Rubinstein

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EXHIBIT A

**MASTER PLAN
DEPICTING GARDEN PROJECT IMPROVEMENTS**

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