

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING PARTIAL RELEASE OF DECLARATION OF AGE RESTRICTIONS FOR THE ASPENS AT TWIN CREEKS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2.E. of Ordinance No. 2843-6-09 (“the Ordinance”) requires the execution of a deed restriction with respect to the 22.036 acres described in the Ordinance limiting said property to residential use by persons 55 years of age or older consistent with the Federal Fair Housing Act and other applicable law; and,

WHEREAS, that certain Declaration of Age Restriction, (“the Original Declaration”) dated and effective June 2, 2009, and recorded as Instrument No. 20090708000855780 in the Official Public Records of Collin County, Texas, was approved by the City Attorney and signed by the property owners in accordance with Section 2.E. of the Ordinance; and,

WHEREAS, the Original Declaration, with the Consent of the City Council as set forth in Resolution No. 2906-4-10(R) was amended by that certain First Amendment to Declaration of Age Restrictions dated April 20, 2010 (the “First Amended Declaration;” together with the Original Declaration, being the “Declaration”) filed for record under Clerk’s File No. 20100428000415010, Official Public Records of Collin County, Texas, to provide that the property subject to the Declaration be occupied by people 62 years of age and older; and,

WHEREAS, the provisions of the Declaration prohibit any amendment or termination to the age restrictions contained in the Declaration unless first approved by the City Council, which approval has been requested by the owner; and,

WHEREAS, the property subject to the Declaration has been replatted and an 11.00 acre portion sold to another party (“the Phase II Property”), whose owner has requested to be released from the Declaration; and,

WHEREAS, Ordinance No. 3545-1-18 was enacted on January 9, 2018, setting forth the development and use regulations of the Phase II Property, including a requirement to execute and record restrictive covenants requiring occupancy of residential units by at least one person who is 55 years of age or older; and,

WHEREAS, the City Council of the City of Allen, Texas, finds that the releasing with respect to the Phase II Property is consistent with the use and development restrictions required by Section 2.E. of the Ordinance and not detrimental to the health, safety, or welfare of the citizens of the City of Allen, and will avoid confusion and conflict with respect to the enforcement of Ordinance No. 3545-1-18; and,

WHEREAS, the City Council of the City of Allen, Texas, further finds it to be in the public interest to consent to the proposed amendment to the Declaration.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to consent to and sign on behalf of the City of Allen, Texas, the Partial Termination to Declaration of Age Restrictions, regarding the property described as the Phase II Property in Exhibit “A,” attached hereto and incorporated herein by reference, the provisions of which partial release shall be substantially as set forth in Exhibit “A,” hereto.

SECTION 2. This Resolution shall become effective immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF FEBRUARY 2018.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY
(KBL:1/25/18:95491)

**PARTIAL TERMINATION TO
DECLARATION OF AGE RESTRICTIONS
(AS TO PHASE II)**

THIS PARTIAL TERMINATION TO DECLARATION OF AGE RESTRICTIONS (this "Partial Termination") is executed by Bossy Boots Holdings, Ltd., a Texas limited partnership ("BBH").

WHEREAS, BBH executed that certain Declaration of Age Restrictions dated June 2, 2009 (the "Original Declaration"), filed for record under Clerk's File No. 20090708000855780, Official Public Records of Collin County, Texas, pursuant to which certain age restrictions were imposed on that certain real property located in the City of Allen (the "City"), Collin County, Texas (the "Property"). (The Property, save and except Phase II as defined herein, shall be referred to as the "Phase I Property"), and is legally described on Exhibit "A" attached hereto;

WHEREAS, BBH conveyed 11.000 acres of the Property to Aspen II by Special Warranty Deed dated July 8, 2009, filed for record under Clerk's File No. 20090708000855820, Official Public Records of Collin County, Texas, which was subsequently conveyed back to BBH by Special Warranty Deed dated May 22, 2012, and filed for record under Clerk's File No. 20120522000600720, (the 11.000 acres of land shall be referred to as the "Phase II Property") and is legally described on Exhibit "B" attached hereto; and

WHEREAS, the Declaration was amended by that certain First Amendment to Declaration of Age Restrictions dated April 20, 2010 (the "First Amended Declaration;" together with the Original Declaration, the "Declaration") filed for record under Clerk's File No. 20100428000415010, Official Public Records of Collin County, Texas, pursuant to which the age restrictions imposed by the Original Declaration were amended; and

WHEREAS, BBH as the current owner of the Phase II Property desires to terminate the Declaration, including, but not limited to, with respect to any age restrictions relating to the Phase II Property, such that any age restrictions currently existing shall hereafter apply only to the Phase I Property.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BBH agrees to terminate the Declaration with respect to the Phase II Property, accompanied by the City's consent to such partial termination:

1. The Declaration, including, but not limited to, any and all age restrictions, is hereby terminated as it relates to the Phase II Property only. Any references contained in the Declaration regarding the Property shall hereinafter refer solely to the Phase I Property as defined herein.

2. The consent of the City to this Partial Termination is attached hereto.

3. Miscellaneous.

(a) Capitalized terms used in this Partial Termination which are not otherwise defined herein shall have the same meaning as given to them in the Declaration.

(b) This Partial Termination may be executed in one or more counterparts, and all such executed counterparts shall constitute one and the same agreement, binding upon the parties hereto.

(c) This Partial Termination shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature page, City consent, and Exhibits to follow]

EXECUTED effective as of the ____ day of _____, 2018.

BOSSY BOOTS HOLDINGS, LTD.,
a Texas limited partnership

By Bossy Boots Investments, Inc.,
a Texas corporation, its General Partner

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2018, by _____, _____ of Bossy Boots Investments, Inc., a Texas corporation, the general partner of BOSSY BOOTS HOLDINGS, LTD., a Texas limited partnership, on behalf of said limited partnership.

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

CITY CONSENT TO PARTIAL TERMINATION

Pursuant to Section 3 of the Declaration, no amendment or termination of the Age Restrictions shall be effective without the prior approval of a majority of the City Council of the City, voting in a duly called meeting pursuant to the Texas Open Meetings Act, as amended. The City of Allen, Texas hereby executes this Partial Termination for the sole purpose of evidencing its consent to the terms and provisions of this Partial Termination and to confirm that this Partial Termination was approved by the City Council of the City of Allen, Texas, in accordance with Section 3 of the Declaration, pursuant to Resolution No. _____-2-18 regularly scheduled meeting held on February 13, 2018. The consent to the Partial Termination provided herein does not waive, and shall not be construed as waiving, the requirements of Section 2.G. of City of Allen, Texas, Ordinance No. 3545-1-18, relating to the development and use of Phase II Property.

Signed this _____ day of _____ 2018.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on _____, 2018, by Peter H. Vargas, City Manager of the CITY OF ALLEN a Texas home rule municipality, on behalf of said municipality.

Notary Public, State of Texas

My commission expires: _____

EXHIBIT A
Phase I Property

ANNEX A

PHASE I

BEING an 11.036 acre tract of land situated in the Catherine Parsons Survey, Abstract No. 711, Collin County, Texas; said tract being part of Lot 1, Block C, Bray Central One, an addition to the City of Allen, Texas, according to the plat recorded in Cabinet G, Slide 120 of the Plat Records of Collin County, Texas; part of a Vacation Plat of Lots 1, 2, 3 and 4, Block A and Lots 1 and 2, Block B, Bray Central One, an addition to the City of Allen, Texas, according to the plat recorded in Cabinet K, Slide 804 of said Plat Records; all of that certain portion of Bray Central Drive abandoned by the plat of Bray Central Drive & Benton Drive, an addition to the City of Allen, Texas, recorded in Cabinet N, Slide 110 of said Plat Records and part of that certain tract of land described as Tract 11 in Special Warranty Deed to Bossy Boots Holdings, Ltd. recorded in Volume 5398, page 6447 of the Deed Records of Collin County, Texas; said 11.036 acre tract being more particularly described as follows:

COMMENCING, at a point (nothing found or set) at the intersection of the northwest right-of-way line of Watters Road (a 110-foot wide right-of-way) and the northeast right-of-way line of Bray Central Drive (a variable width right-of-way, 110 feet wide at this point), said point being the southernmost corner of said Tract 11;

THENCE, along the said northeast line of Bray Central Drive and the southwest line of said Tract 11, the following five (5) calls:

North 50 degrees, 41 minutes, 21 seconds West, a distance of 224.79 feet to a 3-inch aluminum disk stamped "RPLS 5686" (in concrete) found at an angle point;

North 55 degrees, 53 minutes, 01 seconds West, a distance of 11.38 feet to the POINT OF BEGINNING (nothing found or set);

North 55 degrees, 53 minutes, 01 seconds West, a distance of 99.07 feet to a 3-inch aluminum disk stamped "RPLS 5686" (in concrete) found at an angle point;

North 50 degrees, 41 minutes, 21 seconds West, a distance of 131.72 feet to a 5/8-inch iron rod with "CARTER & BURGESS" cap found at the beginning of a tangent curve to the right;

In a northwesterly direction, along said curve to the right, having a central angle of 19 degrees, 44 minutes, 57 seconds, a radius of 2,376.00 feet, a chord bearing and distance of North 40 degrees, 48 minutes, 53 seconds West, 813.93 feet, an arc distance of 818.97 feet to a point for corner (nothing found or set); said point being in the approximate centerline of an un-named creek;

Exhibit B
Phase II Property

PHASE II

BEING an 11.000 acre tract of land situated in the Catherine Parsons Survey, Abstract No. 711, Collin County, Texas; said tract being part of Lot 1, Block C, Bray Central One, an addition to the City of Allen, Texas, according to the plat recorded in Cabinet G, Slide 120 of the Plat Records of Collin County, Texas, and part of that certain tract of land described as Tract 11 in Special Warranty Deed to Bossy Boots Holdings, Ltd., recorded in Volume 5398, page 6447 of the Deed Records of Collin County, Texas; said 11.000 acre tract being more particularly described as follows:

BEGINNING, at a point for corner (nothing found or set) at the intersection of the northwest right-of-way line of Watters Road (a 110-foot wide right-of-way) and the northeast right-of-way line of Bray Central Drive (a variable width right-of-way, 110 feet wide at this point), said point being the southernmost corner of said Tract 11;

THENCE, along the said northeast line of Bray Central Drive and the southwest line of said Tract 11, the following two (2) calls:

North 50 degrees, 41 minutes, 21 seconds West, a distance of 224.79 feet to a 3-inch aluminum disk stamped "RPLS 5686" (in concrete) found at an angle point;

North 55 degrees, 53 minutes, 01 seconds West, a distance of 11.38 feet to a point for corner (nothing found or set);

THENCE, North 39 degrees, 18 minutes, 43 seconds East, departing the said northeast line of Bray Central Drive and the said southwest line of Tract 11, a distance of 200.00 feet to a point for corner (nothing found or set);

THENCE, North 00 degrees, 18 minutes, 56 seconds West, a distance of 714.03 feet to a point for corner (nothing found or set) in the north line of said Lot 1;

THENCE, North 89 degrees, 41 minutes, 04 seconds East, along the said north line of Lot 1, a distance of 732.00 feet to a 1/2-inch iron rod with "NELSON CORP" cap found for corner in the west line of said Watters Road and the east line of said Tract 11, said point being the northeast corner of said Lot 1;

THENCE, along the said west and northwest line of Watters Road, the said east line of Tract 11 and the southeast line of said Tract 11, the following three (3) calls:

South 00 degrees, 41 minutes, 17 seconds East, a distance of 0.36 feet to a point (nothing found or set) at the beginning of a tangent curve to the right;

In a southwesterly direction, along said curve to the right, having a central angle of 40 degrees, 00 minutes, 00 seconds, a radius of 545.00 feet, a chord bearing and distance of South 19 degrees, 18 minutes, 43 seconds West, 372.80 feet, an arc distance of 380.48 feet to a 1/2-inch iron rod found at the end of said curve;

South 39 degrees, 18 minutes, 43 seconds West, a distance of 865.18 feet to the POINT OF BEGINNING;

CONTAINING, 479,160 square feet or 11.000 acres of land, more or less.

The foregoing tract has been platted/re-platted as Lot 1R, Block C, Bray Central One, an addition to the City of Allen, Texas, according to the plat recorded as Instrument No. 2011-156 in the Plat Records of Collin County, Texas.