

Prepared by:
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Dunay, Miskel and Backman, LLP
14 S.E. 4 Street, Suite 36
Boca Raton, FL 33432

Return to:
City of Delray Beach
Attn: Lynn Gelin, Esq.
Deputy City Attorney
200 N.W. 1st Avenue
Delray Beach, Florida 33444

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (“Declaration”), is made this _____ day of _____, 2022 (the “Effective Date”), by and between TRG DELRAY BEACH CONGRESS LLC, a Delaware limited liability company, whose address is 8235 Douglas Avenue, Suite 950, Dallas, TX 75225 (referred to herein as “Owner”), and the City of Delray Beach (“City”), a Florida Municipal Corporation, whose address is 100 N.W. 1st Avenue, Delray Beach, Florida, 33444.

WITNESSETH:

WHEREAS, this Declaration, among other things, is intended to set forth the process for establishing the Workforce Housing Unit (hereinafter defined) and terms applicable to those units so designated for rental unit project within the portion of the property more particularly described in Exhibit “A” and made a part hereof (the “Property”); and

WHEREAS, TRG Delray Beach Congress LLC is the owner of property known as Aura Delray Beach, which lies in the City of Delray Beach, County of Palm Beach, and the State of Florida; and

WHEREAS, the proposed development of the Property is a multifamily rental residential project (“Project”) comprised of 292 units that was rezoned from Mixed Industrial and Commercial (“MIC”) to Special Activities District on November 20, 2020, pursuant to Ordinance 32-20 attached hereto as Exhibit “B,” as may be amended from time to time (“Approval”); and

WHEREAS, as a condition to the Approval, Owner is required to record a Declaration of Restrictive Covenant identifying the total number of workforce housing units to be included in the Site Plan; and

WHEREAS, Owner is required to designate twenty five percent (25%) of its residential units as moderate income workforce units to be rented to an Eligible Occupant within the City of Delray Beach, as defined herein, in accordance with the Approval and City Code of Ordinances (“Code”); and

WHEREAS, on September 23, 2020, the City approved a site plan ("Site Plan") for the uses approved in the Approval, as may be amended; and

WHEREAS, for purposes of this Declaration, a Workforce Housing Unit shall be defined as a rental unit which is occupied by a household with a gross, combined income between 81 percent and 120 percent of the Palm Beach County Adjusted Median Income ("AMI") as defined by the Florida Housing Finance Corporation, unless the percentage of AMI for rental or for-sale product is adjusted upwards in the City's Code, at which case the higher percentages shall apply ("Moderate Income"); and

WHEREAS, an individual or family that meets the AMI requirements for a Moderate Income Workforce Housing Unit shall be considered an eligible occupant (an "Eligible Occupant" is further defined in paragraph 4.a. below); and

WHEREAS, the Parties agree to enter into this Declaration which is to be recorded against the Property in the Public Records of Palm Beach County, Florida and shall apply and be enforceable against all current and future owners, as applicable, during the term of this Declaration and shall restrict the rental and use of the Workforce Housing Units as provided herein.

NOW, THEREFORE, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, including but not limited to the mutual promises set forth herein, Owner and the City hereby agree as follows:

1. **Recitals.** The recitations set forth above are true and correct and incorporated in this Declaration as if fully set forth herein.

2. **Designation of Workforce Housing Unit.** In accordance with and subject to Exhibit "B" setting forth the specific Development Standards for the Project, Owner hereby agrees to provide seventy three (73) moderate workforce housing units within the Project which equal a minimum of twenty five percent (25%) of the total approved residential units within the Site Plan. Notwithstanding the variations in product types within the Site Plan, the distribution of Workforce Housing Units among buildings or product types may be modified so long as the total number of Workforce Housing Units within the Site Plan as a whole meets the minimum twenty five percent (25%) Workforce Housing Unit requirement in the Approval and that the Workforce Housing Units are distributed proportionately amongst the proposed bedroom mix. Following the issuance of a certificate of occupancy ("CO") for ninety percent (90%) of the units within the Site Plan, Owner shall submit a report detailing the number and location of existing Workforce Housing Units and the remaining number of Workforce Housing Units required to meet the twenty five percent (25%) minimum. In the event Owner has not met the minimum twenty five percent (25%) workforce housing requirement, the City may withhold additional CO's for the remaining number of units required to meet the Workforce Housing Unit minimum for the Site Plan unless the additional CO's requested are for Workforce Housing Units. Owner shall certify the number of all Workforce Housing Units within the Project to ensure the twenty five percent (25%) minimum is met ("Workforce Housing Certification"). In the event the Project is converted to a for-sale project, the total twenty five percent (25%) minimum workforce housing requirements for all units

constructed within the Property may be achieved through the designation of Workforce Housing Units for sale, rental units, or any combination thereof.

- a. **Designation of Workforce Housing Units for Rental Units.** This Declaration shall be recorded against the Property identifying the total number of rental units to be designated as Workforce Housing Units and restricting the lease of such number of units to the income requirements for Workforce Housing Units as noted above. The reporting of each tenant qualifying to execute a lease for a workforce unit and lease executed in accordance with this Declaration and paragraph 7 below shall be provided to the City to demonstrate compliance with the Approval and this Declaration.
- b. **Designation of Workforce Housing Units for For-Sale Units.** For any residential unit designated as a Workforce Housing Unit, the Owner shall record a restrictive covenant against the for-sale unit ("Covenant") prior to closing identifying such for-sale unit as a Workforce Housing Unit and restricting the future sale of the unit to the income requirements for Workforce Housing Units as noted above. The Covenant shall be recorded in the Public Records of Palm Beach County, Florida and shall run with the land. Upon recording of the Covenant, Owner shall provide the City with a copy of the recorded Covenant.

3. **Reporting of Workforce Housing Unit.** To ensure the Owner's compliance with the affordability controls and restrictions contained in this Declaration, not later than the tenth (10th) day of each calendar month for every month during the term of this Declaration, Owner shall deliver a written report ("Report") to the City containing such information and documents as the City may require to verify that the Owner is in compliance with this Declaration. The Report shall be current as of the first day of the month in which the Report is delivered to the City. The form of the Report is attached hereto as Exhibit "C". At a minimum, the Report shall contain the following information and documents with respect to each Workforce Housing Unit:

- a. With respect to Workforce Housing Unit leases:
 - i. Name and address of each Unit's Eligible Occupant and member of the household;
 - ii. Date lease term commenced;
 - iii. Date lease term terminates;
 - iv. Amount of monthly rent due under the lease;
 - v. Household income;
 - vi. Unit address
 - vii. Number of bedrooms and baths in each Unit;
 - viii. Household size;

ix. Whether Unit is occupied or vacant; and

x. Total number of Workforce Housing Units presently leased.

b. With respect to Workforce Housing Unit sales:

i. Total number of Workforce Housing Units listed for sale;

ii. Total number of Workforce Housing Units transferred by the Owner;

iii. Date of each sale closing;

iv. Household size;

v. Name and address of all Eligible Occupants;

vi. Number of bedrooms and baths in Unit;

vii. A copy of the recorded instrument which transferred the Unit;

viii. Unit address; and

ix. Qualifying household income.

c. The Report shall be executed under oath by the Owner or its authorized agent or representative.

4. **Transfer of Workforce Housing Unit.** Transfer or Transfers are defined as sales, resales, rentals, subleases or any other transaction which transmits occupancy to another. To maintain the availability of Workforce Housing Units within the City the following conditions shall be imposed on the Transfer of any Workforce Housing Unit other than those Transfers pursuant to Section 3.c. below.

a. The Workforce Housing Units shall be available only to an "Eligible Occupant" as defined in the land development regulations for the City of Delray Beach in accordance with Section 4.7.1 (i) as modified by this Declaration. All Transfers require written submission of a notification and affidavit to the City setting forth the Transfer price and the total income of the Eligible Occupant that will occupy the Workforce Housing Unit. Unless the City receives the notice and affidavit, the Transfer may not proceed as scheduled.

b. The Transfer price of the Workforce Housing Unit may not exceed the upper limit of the Moderate Income category to which the Workforce Housing Unit was originally assigned or the AMI applicable at the time of transfer if higher than originally assigned.

c. Transfers under the following circumstances shall be allowed and are not subject to the restrictions included in this Declaration.

- i. Transfers by inheritance to the purchase-owner's spouse or offspring, or;
- ii. Transfers of title to a spouse as part of a divorce dissolution proceeding, or;
- iii. Acquisition of title or interest therein in conjunction with marriage.

d. Closing costs and title insurance if applicable shall be paid pursuant to the custom and practice in Palm Beach County at the time of opening of an escrow account. No charges or fees shall be imposed by the seller or the purchaser of a Workforce Housing Unit which are in addition to or more than charges imposed upon purchasers of market rate units.

e. Workforce Housing Units shall only be transferred to an Eligible Occupant and only as a primary residence. Notwithstanding anything to the contrary, nothing contained herein shall prohibit Owner from leasing or selling the Workforce Housing Unit to low income households.

f. Affordability and occupancy restrictions shall remain in effect for forty (40) years commencing from the date of the first certificate of occupancy of the Workforce Housing Unit and shall apply to any replacement structure or structures constructed if a structure containing a Workforce Housing Unit is demolished or destroyed.

g. Nothing requires an Eligible Occupant to sell a Workforce Housing Unit if the Eligible Occupant's income later exceeds AMI for Moderate Income or accepts employment outside the City.

h. To the extent any term of the current City's Workforce Housing Ordinance is in conflict with Ordinance 32-20, the terms of Ordinance 32-20 shall control. In all other cases, the terms of the City's Workforce Housing Ordinance, as may be modified from time to time, are hereby incorporated by reference, as if fully set forth herein.

5. Covenants and Restrictions as to Price

a. The Workforce Housing Units shall be restricted as workforce housing for Eligible Occupants in accordance with this Declaration for a period of forty (40) years commencing from the date of the first certificate of occupancy of the Workforce Housing Units of each respective Site Plan ("Restricted Period").

b. The Covenant in the case of a workforce for-sale unit or the terms of this Declaration related to a workforce rental unit may be enforced by the Delray Beach Community Land Trust, Affordable Housing Trust Fund or the City (hereinafter referred to as Parties entitled

to enforce restrictive covenants) by virtue of the recording of each Covenant and this Declaration as applicable and the monetary responsibilities and obligations that may arise hereunder shall, at the time they are determined, be a lien upon the Workforce Housing Unit and a filing of such determination may be placed in the public records as evidence of the lien thereon. Such rights and remedies are cumulative and may be exercised independently or concurrently as further set forth herein. The Parties entitled to enforce this Declaration, and any Covenant in the event of a for-sale conversion in addition to any and all other remedies, may cause a forced transfer of a for-sale Workforce Housing Unit transferred in violation of this Declaration. In the event of a violation related to a rental Workforce Housing Unit, Owner will be required to hold and make available the next open unit to be leased to an Eligible Occupant under the Workforce Housing Units requirements.

c. The Parties entitled to enforce this Declaration or Covenant in the event of a for-sale conversion, their successors and assigns may enforce the Covenants separately or in conjunction with each other. No amendments to the Declaration or Covenant shall be made unless by written instrument approved by the City.

d. All deeds transferring the Property during the Restricted Period shall reference the Covenant and shall include the recording information of the Covenant. All sales contracts shall state that the Workforce Housing Unit is part of a workforce housing program and subject to the requirements and restrictions of such program as set forth in the Approval and this Declaration.

e. There shall be no lot premiums charged on the Workforce Housing Units.

f. All leases identified as Workforce Housing Units shall contain language incorporating the Declaration applicable to the Workforce Housing Unit and reference the recording information of the Declaration encumbering the Property.

6. **Approved Site Plan.** Owner hereby acknowledges that any future modification to the Site Plan shall be filed in accordance with the City's LDR's and the Approval. Owner further agrees that if the Property is to be developed in phases and will develop and construct improvements in accordance with any such plans, specifications, elevations and landscape plans, and if modified or amended, such amended plans shall be in accordance with the Standards of the Approval and the applicable City's Land Development Regulations.

7. **Compliance of Workforce Obligation.** The granting of a Certificate of Occupancy for a Workforce Housing Unit shall be evidence that Owner has fully complied with the above obligations; provided the City has received notice and an affidavit, the form of which is attached as Exhibit "D" ("Affidavit") and made a part hereof, and a copy of the recorded Covenant referenced in Paragraphs 2 and 5 above as applicable. In the event of a workforce rental unit, evidence of full compliance shall be in accordance with Paragraph 2.a. and City has received notice, and the Affidavit for the execution of leases by qualified tenants for 73 moderate Workforce Housing Units.

8. **Covenant Running With the Land.** This Declaration and the restrictions set forth herein shall run with the land and shall be binding upon the party granting, making or assuming such obligations, and such party's transferees, lessees, grantees, heirs, personal representatives, successors, assigns and mortgagees, and shall inure to the benefit of the other party hereto and its transferees, lessees, grantees, heirs, personal representatives, successors, assigns and mortgagees. Any lessee, assignee, mortgagee, grantee, transferee, heir, personal representative, or successor as to any part of, or all of, the Property which is the subject of this Declaration shall automatically be deemed, by acceptance of the estate or title of such part, parcel or all thereof, to have assumed all obligations hereof relating thereto. Such assumption shall be automatic without the necessity to perform any other act or do any other thing.

9. **Consistency.** The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of the Declaration dealing with the Property are consistent with the City's adopted Comprehensive Plan, Land Development Regulations, and the Approval. In the event of a conflict between the Declaration and Ordinance 32-20 rezoning the Property, Ordinance 32-20 shall control.

10. **Waiver.**

a. No waiver of any provision of this Declaration shall be effective unless it is in writing, signed by the party against whom it is asserted and the City. Additionally, any such written waiver shall only be applicable to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver.

b. The failure of any party hereto at any time or from time to time to require performance of any of another party's obligations under this Declaration shall in no manner affect the right to enforce any provision of this Declaration at a subsequent time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any subsequent breach.

11. **Pursuit of Rights and Remedies.**

a. For default, violation or breach of any of the provisions of this Declaration, the Delray Beach Community Land Trust, the Affordable Housing Trust or the City (the "Enforcing Party"), either together or on their own, shall have the right to bring suit, either at law or in equity, in a Court of competent jurisdiction, to compel compliance with the terms hereof and/or the terms of the City's Workforce Housing Ordinances, as applicable, and the Approval, or to prevent or enjoin a Violation, or for damages: (i) against the Restricted Units; (ii) against the landlord of a Restricted Unit lease, or (iii) against the tenant of a Restricted Unit lease. The Enforcing Party shall first provide Owner with notice of default in accordance with this Paragraph of this Declaration. Within thirty (30) days receipt of the notice, Owner shall post a bond in the amount of one hundred thousand dollars (\$100,000.00) in order to secure their obligations under this Declaration and cure said default. Owner shall be provided an additional thirty (30) days to demonstrate compliance with this Declaration. If Owner does not cure said default and demonstrate compliance with this Declaration within sixty (60) days, The Enforcing Party may call upon the bond. The Enforcing Party also has the right to foreclose upon for-sale units that have been sold to a purchaser that is unqualified. In cases that involve the health, safety and

welfare of tenants in the Restricted Units or in the case of emergency, Owner shall be provided notice of default, in accordance with this Paragraph of this Declaration, and given forty-eight (48) hours to cure said default, and any additional commercially reasonable time period upon mutual agreement of the Parties if Owner demonstrates continuous action has been taken to cure said default. All of the Enforcing Party's rights and remedies are cumulative, and the Enforcing Party's election to pursue any remedy shall not preclude the Enforcing Party from then or later pursuing any one or more other remedies.

b. In connection with any action to enforce the terms and covenants of this Declaration, each party shall pay for its own its attorneys' fees and costs, including without limitation, at the trial and appellate levels

c. This Declaration is entered into in the State of Florida and shall be governed by the laws of the State of Florida. In the event of litigation concerning this Declaration, the parties agree and consent to the County of Palm Beach as the appropriate venue of such litigation. All parties hereto waive their respective rights to trial by jury. OWNER AND CITY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT THAT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS DECLARATION AND ANY AGREEMENT EXECUTED IN CONJUNCTION HERewith OR THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

d. It is recognized that the terms, provisions and conditions of this Declaration are special, unique, and of extraordinary character, and that in the event of a Violation of the terms, conditions and provisions of this Declaration, the Enforcing Party shall be entitled to institute and prosecute proceedings, either in law or in equity, for foreclosure, specific performance and/or injunction, temporary or permanent or to file, record or enforce a lien as against the Real Property which is the Workforce Housing Unit. In addition, the Enforcing Party shall have the right to obtain any and all such other relief for money damages or injuries and may exercise all such other rights or remedies as may be available to it in law, in equity, or in this Declaration or otherwise. All of the remedies available to the Enforcing Party shall be cumulative and non-exclusive, and the Enforcing Party shall have the right to exercise such remedies at one time or successively without an election. There shall be no requirement to elect remedies and no requirement to sue or institute an action against all parties, namely the Homeowner or Homeowner's buyer. To the extent allowed by law, the Enforcing Party shall be entitled to a waiver by a court of competent jurisdiction of any bond or cash collateral that may otherwise be required in pursuit of specific performance and/or injunction. A suit for foreclosure may be prosecuted pursuant to any lien obtained against the Real Property which is a Workforce Housing Unit pursuant to the appropriate judicial action as allowed by the State of Florida.

e. In the event that the City has reasonable cause to believe that the Owner, lessee, occupant, Household or a Unit Owner is in default of any of the provisions of this Declaration, then the City Manager, or his or her designee, may inspect the Workforce Housing Unit owned by the Owner or such Workforce Housing Unit Owner at any reasonable time and from time to time, after providing the Owner, lessee or such Workforce Housing Unit Owner not

less than twenty-four (24) hours advance written notice, except in the case of an emergency when less advance notice may be given.

f. In the event any Workforce Housing Unit is transferred or leased in a manner that is not in full compliance with the provisions of this Declaration, such transfer or lease shall be wholly null and void and shall confer no title or rights whatsoever upon the purported transferee or lessee.

g. At any time and from time to time, the City may conduct written or oral audits of occupants and to verify the compliance with the terms and conditions of this Declaration, and City may enter the Workforce Housing Unit for the purpose of conducting personal interviews and obtaining other information reasonably necessary to verify the compliance with the City's Workforce Housing Ordinance requirements and this Declaration.

h. Each tenant and occupant of a Workforce Housing Unit shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances relating to the Property.

12. **Notices.** All notices and demands herein required shall be in writing and shall be deemed properly given if sent by overnight, registered or certified mail, return receipt requested, to the addresses below:

a. As to Owner:

TRG DELRAY BEACH CONGRESS LLC

Attention: Jacob Shotmeyer
8235 Douglas Avenue, Suite 950
Dallas, TX 75225
Email: JShotmeyer@trinsicres.com

b. As to the City:

City of Delray Beach

Attention: City Manager
100 N.W. 1st Avenue
Delray Beach, Florida 33444
and;

City of Delray Beach

Attention: Neighborhood and Community Services Director
100 N.W. 1st Avenue
Delray Beach, FL 33444

- c. As to the Delray Beach Community Land Trust

Delray Beach Community Land Trust

Attention: Evelyn Dobson

145 S.W. 12th Avenue

Delray Beach, FL 33444

Any party may change the address to which notices to it are to be sent by giving written notice to the others. Every notice and demand shall be deemed to have been given, made or communicated, as the case may be, at the time that the same shall have been deposited by overnight mail, registered or certified mail, properly addressed as aforesaid, postage prepaid, in the United States mail.

13. **Valid and Binding Agreement.** The parties represent and warrant to the other that the execution and delivery of this Declaration has been duly and validly authorized by all necessary actions, and that when executed and delivered, this Declaration shall constitute a legal and binding obligation of such party.

14. **Partial Invalidity.** Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid under applicable law and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law. If any part of this Declaration shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect or impair any other part of this Declaration. In the event that any provision of this Declaration or the application thereof is to any extent finally determined by a court of competent jurisdiction to be invalid and unenforceable, the reminder of this Declaration, and the application of such, other than those provisions as to which are held invalid and unenforceable, shall not be affected thereby.

15. **Miscellaneous.**

(a) Where necessary or appropriate to the meaning of this Declaration the singular shall be deemed to include the plural, the plural to include the singular, the masculine to include the feminine and neuter, the neuter to include the masculine and the feminine and the feminine to include the masculine and neuter.

(b) Use of other words of similar import refer to this Declaration as a whole and not to any particular articles, section or other paragraph of this Declaration unless specifically noted otherwise in this Declaration.

(c) Each party hereto acknowledges that all parties hereto have participated equally in the drafting of this Declaration and that accordingly, no court construing this Declaration shall construe it more forcefully against one party than the other.

(d) The captions used in connection with the articles, sections or paragraphs of this Declaration are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Declaration.

(e) This Declaration shall be recorded at the expense of Owner. This Declaration shall be senior to, and shall not be subordinated to, any lien or encumbrance, including without limitation, any institutional lender, and shall survive and not be extinguished by the foreclosure or deed-in-lieu of foreclosure regarding any such liens or encumbrances. This includes, but is not limited to, judgment liens, assessment liens, tax liens, construction liens and mortgage liens.

[NOTE: The following is a condition precedent to the City's execution of this Declaration: All existing mortgagees, lienors, and encumbrancers against the Property shall execute and record a subordination and waiver agreement in form reasonably satisfactory to counsel for the City subordinating its/their mortgage, lien and/or claim, to this Declaration. Owner, and its expense, shall furnish to the City prior to the City's execution of this Declaration, a current certified title report of the Property ("Title Report") showing the record title holder of the Property, and all liens, mortgages, and encumbrances against the Property. Owner shall not further encumber, lien, or mortgage the Property from and after the effective date of the Title Report until the recording of this Declaration.]

(f) This Declaration, together with all Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between the parties on this subject matter and there are no promises, agreements conditions, understandings or inducements, oral or written, express or implied, between them other than as expressly set forth herein.

(g) Time is of the essence as to the performance of each party in connection with this Declaration.

16. **Assurances.** During the Term of this Declaration, the parties shall take such action or execute any further instruments or documents as are necessary or desirable to vest or confirm any right or remedy herein granted or required so long as such actions, instruments or documents are consistent herewith and further that such actions, instruments or documents do not enlarge their respective responsibilities or obligations hereunder.

17. **Entire Agreement.** This Declaration, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Declaration may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

18. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of this Declaration, and no party other than the City shall have standing to bring an action for, breach of, or to enforce, the provisions of this Declaration, except for the Delray Beach Community Land Trust which shall be a third party beneficiary of this Declaration with respect to its right of first refusal.

19. **Governmental Functions.** Notwithstanding anything to the contrary contained in this Declaration:

(a) Even though the City has certain contractual obligations under this Declaration such obligations shall not relieve any person subject to this Declaration from complying with all applicable governmental regulations, rules, laws, and ordinances;

(b) To the extent approval or permission must be obtained from the City, such approval or permission shall be granted or denied in accordance with applicable governmental regulations, rules, laws, and ordinances, and no person shall have any vested rights;

(c) The City has not waived its sovereign immunity; and

(d) Any action by City shall be without prejudice to, and shall not constitute a limit on, impairment or waiver of, or otherwise affect City's right to exercise its discretion in connection with its governmental or quasi-governmental functions.

20. This Declaration does not constitute a construction permit or authorization to commence development or construction.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed these presents and affixed their seals hereto as of the day and year first above written.

CITY OF DELRAY BEACH, FLORIDA

Attest:

By: _____
Mayor

City Clerk

Approved as to form and
Legal sufficiency:

By: _____
City Attorney

Signed, sealed and delivered
in the presence of:

TRG DELRAY BEACH CONGRESS LLC, a
Delaware limited liability company

Margie Melchor
Printed Name: Margie Melchor

By: Steven H. Reynolds
Printed Name: Steven H. Reynolds

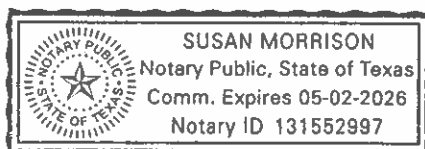
Cynthia Aranda
Printed Name: Cynthia Aranda

Title: Vice President

STATE OF Texas
COUNTY OF Dallas

The foregoing instrument was acknowledged before me by
Steven H. Reynolds, as Vice President
of TRG DELRAY BEACH CONGRESS LLC, a Delaware limited liability company, and that
he/she acknowledged to me, that he/she executed the foregoing instrument on behalf of the limited
liability company, freely and voluntarily under authority duly vested in him/her by said limited
liability company. He/she is personally known to me or has produced
_____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid by means of ☒ physical presence or ☐ online notarization this 3rd day of May, 2022.



Susan Morrison
Notary Public

EXHIBIT "A"
(the "Property")

A PORTION OF TRACT 27, "MODEL LAND COMPANY'S SUBDIVISION OF THE NORTH HALF AND PART OF THE SOUTH HALF OF SECTION 18-46-43", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6 AT PAGE 51 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE SOUTH 89°47'40" WEST, ALONG THE SOUTH LINE OF SAID NORTHEAST ONE-QUARTER, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING, ALSO LYING ON THE WESTERLY RIGHT-OF-WAY LINE OF CONGRESS AVENUE; THENCE CONTINUE SOUTH 89°47'40" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 754.34 FEET; THENCE NORTH 11°08'27" EAST, ALONG THE EAST LINE OF THE LAKE WORTH DRAINAGE DISTRICT E-4 CANAL, A DISTANCE OF 349.89 FEET; THENCE NORTH 89°55'29" EAST, ALONG THE SOUTH LINE AND EASTERLY EXTENSION THEREOF, OF TRACT 1, "PALM TRAN SOUTH COUNTY FACILITY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 127 AT PAGES 194 AND 195 OF SAID PUBLIC RECORDS, A DISTANCE OF 681.33 FEET; THENCE SOUTH 00°54'26" EAST, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF CONGRESS AVENUE, A DISTANCE OF 341.53 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

A PORTION OF TRACTS 38 AND 39, "MODEL LAND COMPANY'S SUBDIVISION OF THE NORTH HALF AND PART OF THE SOUTH HALF OF SECTION 18-46-43", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6 AT PAGE 51 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE SOUTH 89°47'40" WEST, ALONG THE NORTH LINE OF SAID SOUTHEAST ONE-QUARTER, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING, ALSO LYING ON THE WESTERLY RIGHT-OF-WAY LINE OF CONGRESS AVENUE; THENCE SOUTH 00°53'40" EAST, ALONG SAID WESTERLY LINE, A DISTANCE OF 38.29 FEET; THENCE SOUTH 15°07'58" WEST, ALONG THE WEST RIGHT-OF-WAY LINE OF CONGRESS AVENUE, AS RECORDED IN OFFICIAL RECORDS BOOK 29036 AT PAGE 463 OF SAID PUBLIC RECORDS, A DISTANCE OF 67.36 FEET; THENCE SOUTH 00°53'40" EAST, ALONG SAID WEST LINE, A DISTANCE OF 60.32 FEET; THENCE SOUTH 89°49'29" WEST, ALONG THE NORTH LINE OF TRACT A OF "CHEVRON 50128 TRACT", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 60 AT PAGE 187 OF SAID PUBLIC RECORDS, A DISTANCE OF 174.43 FEET; THENCE SOUTH 00°53'52" EAST, ALONG THE WEST LINE OF SAID TRACT A, A DISTANCE OF 319.15

FEET; THENCE SOUTH 53°51'39" WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF WEST ATLANTIC AVENUE (STATE ROAD 806), ACCORDING TO THE ORDER OF TAKING AS RECORDED IN OFFICIAL RECORDS BOOK 29115 AT PAGE 34 OF SAID PUBLIC RECORDS, A DISTANCE OF 109.46 FEET; THENCE NORTH 00°53'52" WEST, A DISTANCE OF 120.83 FEET; THENCE SOUTH 70°17'01" WEST, A DISTANCE OF 128.78 FEET; THENCE NORTH 00°53'52" WEST, A DISTANCE OF 149.91 FEET; THENCE SOUTH 70°12'20" WEST, ALONG THE NORTH LINE AND EASTERLY EXTENSION THEREOF, OF TRACT A, "CAUSEWAY LUMBER PLAT", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 72 AT PAGE 146 OF SAID PUBLIC RECORDS, A DISTANCE OF 474.44 FEET; THENCE NORTH 10°48'51" EAST, ALONG THE EAST LINE OF THE LAKE WORTH DRAINAGE DISTRICT E-4 CANAL, A DISTANCE OF 487.16 FEET; THENCE NORTH 89°47'40" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST ONE-QUARTER, A DISTANCE OF 754.34 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA AND CONTAIN 12.200 ACRES, MORE OR LESS.

EXHIBIT "B"
(Ordinance 32-20)

ORDINANCE NO. 32-20

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, REZONING AND RE-DESIGNATING LAND APPROXIMATELY 12.20 ACRES IN SIZE PRESENTLY ZONED MIXED INDUSTRIAL AND COMMERCIAL (MIC) TO SPECIAL ACTIVITIES DISTRICT (SAD), FOR THE PROPERTY AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES BY AMENDING CHAPTER 4, "ZONING REGULATIONS," SECTION 4.4, "BASE ZONING DISTRICT," SECTION 4.4.25, "SPECIAL ACTIVITIES DISTRICT (SAD)," SUBSECTION 4.4.25(H), "S.A.D.S", TO ADD "AURA DELRAY BEACH"; SAID LAND GENERALLY LOCATED AT THE NORTHWEST CORNER OF NORTH CONGRESS AVENUE AND WEST ATLANTIC AVENUE, AND CONSISTING OF APPROXIMATELY 12.20 ACRES, AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING "CITY OF DELRAY BEACH, ZONING MAP, JUNE 29, 2017"; PROVIDING A CONFLICTS CLAUSE, AND A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the property hereinafter described is shown on the City of Delray Beach Zoning Map, dated June 29, 2017, as being zoned Mixed Industrial & Commercial (MIC); and

WHEREAS, Trinsic Residential (the "Petitioner") is the contract purchaser of an aggregation of parcels (the "Property") that measures approximately 12.20± acres and is generally located at the northwest corner of North Congress Avenue and West Atlantic Avenue and more particularly described in Exhibit A - "Legal Description" and shown on the map in Exhibit B - "Proposed Zoning Map"; and

WHEREAS, the property includes a total of 8 parcels that are identified by the following Property Control Numbers (PCN) and addresses: 12-43-46-18-00-000-1190, 40 North Congress Avenue; 12-43-46-18-00-000-5090, West Atlantic Avenue; 12-43-46-18-00-000-5100, West Atlantic Avenue; 12-43-46-18-00-000-5101, 2101 West Atlantic Avenue; 12-43-46-18-00-000-5110, 2189 West Atlantic Avenue; 12-43-46-18-00-000-5111, 2200 West Atlantic Avenue; 12-43-46-18-00-000-5120, 20 North Congress Avenue; and, 12-43-46-18-00-000-5122, West Atlantic Avenue; and

WHEREAS, the Petitioner has requested a rezoning of the property from MIC to Special Activities District (SAD), providing regulations for the property; and

WHEREAS, Table NDC-1, Land Use Designations: Density, Intensity, and Implementing Zoning Districts of the Always Delray Comprehensive Plan Neighborhoods, Districts, and Corridors Element identifies SAD as a compatible implementing zoning district with the Commerce (CMR) Land Use Map designation and the SAD regulations will neither exceed a residential density of 24 dwelling units per acre nor a maximum floor area ratio (FAR) of 0.60 for commercial development; and

WHEREAS, the Aura Delray Beach SAD provides 292 residential units with 25 percent of the total number of units provided as workforce housing units located on-site; and

WHEREAS, the 2016 "Congress Avenue: Delray Beach's Next Great Street" report identifies the need for additional residential development, transit-oriented development, and diverse housing choices as catalysts for transforming the Congress Avenue corridor; and

WHEREAS, a portion of the Aura Delray Beach SAD along West Atlantic Avenue is located within a half-mile radius of the Delray Beach Tri-Rail Station; and

WHEREAS, the adopted development standards for the Aura Delray Beach Overlay District also contain such restrictions; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, considered this item at a public hearing on July 20, 2020 and voted 4 to 0 to recommend that property hereinafter described be rezoned to Special Activities District (SAD), finding that the request and approval thereof is consistent with the Comprehensive Plan, meets the criteria set forth in the Land Development Regulations; and

WHEREAS, it is appropriate that the Zoning District Map of the City of Delray Beach, Florida, be amended to reflect the revised zoning classification.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. The Zoning District Map of the City of Delray Beach, Florida, be and the same, is hereby amended to reflect a zoning classification of Special Activities District (SAD) for the property described in Exhibit A, "Legal Description," and shown on the map in Exhibit B, "Proposed Zoning Map," attached hereto and incorporated herein.

Section 3. That Section 4.4.25(H), "S.A.D.s", of the Land Development Regulations shall be amended to add the following:

(1) - (15) (These subsections shall remain in full force and effect as previously adopted)

(16) Aura Delray Beach, located at the northwest corner of North Congress Avenue and West Atlantic Avenue, by Ordinance No. 32-20,

Section 4. That Exhibit C, "Permitted Uses, Supplemental Standards, and Development Standards for Aura Delray Beach," is attached hereto and incorporated herein.

Section 5. The Zoning District Map of the City of Delray Beach, Florida, shall, upon the effective date of this ordinance, be amended to conform to the provisions of Section 2 hereof.

Section 6. All ordinances or parts thereof or parts of the Code conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

Section 7. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this ordinance.

PASSED AND ADOPTED in regular session on second and final reading on this 20th day of November, 2020.

ATTEST:

Kateri Johnson
Kateri Johnson, City Clerk

Shelly Petrolia
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin
Lynn Gelin, City Attorney

First Reading 8/18/2020
Second Reading 11/10/2020

**EXHIBIT A
LEGAL DESCRIPTION**

A PORTION OF TRACT 27, "MODEL LAND COMPANY'S SUBDIVISION OF THE NORTH HALF AND PART OF THE SOUTH HALF OF SECTION 18-46-43", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6 AT PAGE 51 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE SOUTH 89°47'40" WEST, ALONG THE SOUTH LINE OF SAID NORTHEAST ONE-QUARTER, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING, ALSO LYING ON THE WESTERLY RIGHT-OF-WAY LINE OF CONGRESS AVENUE; THENCE CONTINUE SOUTH 89°47'40" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 754.34 FEET; THENCE NORTH 11°08'27" EAST, ALONG THE EAST LINE OF THE LAKE WORTH DRAINAGE DISTRICT E-4 CANAL, A DISTANCE OF 349.89 FEET; THENCE NORTH 89°55'29" EAST, ALONG THE SOUTH LINE AND EASTERLY EXTENSION THEREOF, OF TRACT 1, "PALM TRAN SOUTH COUNTY FACILITY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 127 AT PAGES 194 AND 195 OF SAID PUBLIC RECORDS, A DISTANCE OF 681.33 FEET; THENCE SOUTH 00°54'26" EAST, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF CONGRESS AVENUE, A DISTANCE OF 341.53 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

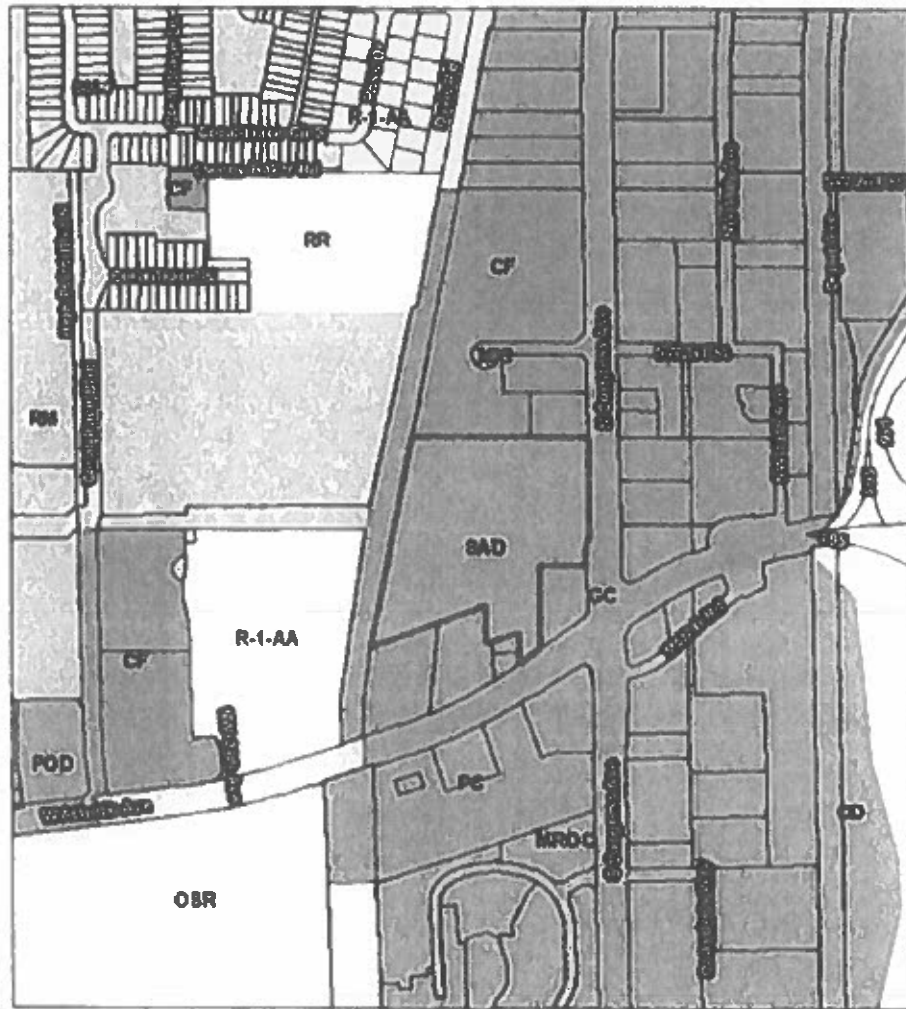
A PORTION OF TRACTS 38 AND 39, "MODEL LAND COMPANY'S SUBDIVISION OF THE NORTH HALF AND PART OF THE SOUTH HALF OF SECTION 18-46-43", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6 AT PAGE 51 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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SAID LANDS SITUATE IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA AND CONTAIN 12.200 ACRES, MORE OR LESS.

ORDINANCE NO. 32-20

EXHIBIT B PROPOSED ZONING MAP



Proposed Zoning	Single Family Residential	Industrial	Open Space/Recreation
	Single Family Residential	Mixed Use	Agricultural
	Medium Density Residential	Industrial	Conservation
	Commercial	Industrial/Commercial	
	CF - Community Facilities	CD - Conservation District	SAD - Special Activities District
	IMC - Mixed Industrial/Commercial	OC - General Commercial	
	OSR - Open Space and Recreation	MRJC - Mixed Residential/Office and Commercial	
	POD - Professional Office/Community	PC - Planned Commercial	
	R-1-AA - Single Family Residential	RR - Rural Residential	
	RL - Medium Density Residential	RM - Medium Density Residential	



0 100 200 Feet

**EXHIBIT C
AURA DELRAY BEACH DEVELOPMENT STANDARDS**

PURPOSE AND INTENT

The Aura Delray SAD regulations provide for multifamily residential and limited neighborhood serving commercial use in a master planned environment. The district encourages standalone residential buildings and small scale neighborhood retail uses adjacent to the transit corridors along Atlantic Avenue and Congress Avenue and in close proximity to the major Interstate 95 thoroughfare, civic and recreation uses, and general commercial uses in order to promote a more walkable and sustainable atmosphere at the Atlantic and Congress node.

USE STANDARDS

Principal Uses and Structures Allowed

The following types of uses are allowed within the Aura Delray SAD as permitted uses:

- (1) General retail uses. Retail uses and/or facilities not to exceed 20 percent of the total building square footage of the entire Aura Delray Beach SAD, including, but not limited to:
 - a. Restaurants, baked goods, books, cheeses, beer, wine, liquor, confectioneries, cosmetics, meats, pharmacies, flowers and plants, fruits and vegetables, food, gifts, glassware, ice cream, leather goods, luggage, medical and surgical equipment, music and musical instruments, nautical supplies, office furniture equipment and supplies, pets and pet supplies, photographic equipment and supplies, sewing supplies, sporting goods, toys, wearing apparel and accessories, appliances, bicycles, business machines, jewelry.
 - b. Barber and beauty shops and salons, caterers, dry cleaning limited to on-site processing for customer pickup only, dry cleaning and laundry pickup stations, outdoor cafes, tailoring, tobacconist.
 - c. Galleries, butcher shops, cocktail lounges, exercise facilities, museums, libraries, newsstands, commercial or public parking lots and parking garages.
- (2) Multi-family Dwelling Units: Multi-family residential uses excluding duplexes with a maximum density of 24 units per acre subject to establishment of a workforce housing incentive program.

Accessory Uses and Structures Permitted

The following uses are allowed when a part of, or accessory to, the principal use:

- (1) Parking lots and parking garages.
- (2) Refuse, service and loading areas.

- (3) Meeting and conference facilities when associated with allowed uses in the Master Plan.
- (4) Provision of services and repair of items incidental to the principal use.
- (5) Recreational facilities attendant to a multi-family residential development, which may include but are not limited to swimming pools, exercise areas, dog parks, leasing facilities, club rooms, business centers, offices, and meeting rooms.
- (6) Family Home Day Care, subject to the provisions of Section 4.3.3(T).
- (7) Urban Agriculture, subject to the provisions of Section 4.3.3(D).

Conditional Uses and Structures Allowed

The following uses are allowed as conditional uses within the Aura Delray SAD:

- (1) Health spas, fitness centers, gymnasiums, and exercise facilities which are open to the general public
- (2) Veterinary clinics.
- (3) Drive-thru facilities associated with any allowed use.
- (4) Twenty-four-hour/late night businesses (except for governmental offices and services) as defined herein must be processed as a conditional use and are subject to the provisions of Section 4.3.3(vv).
- (5) Day Care Centers, subject to the provisions of Section 4.3.3(E).
- (6) Educational Facilities, training centers, and vocational schools.
- (7) Live/Work Unit, subject to the provisions of Section 4.3.3(KKK).
- (8) Large Family Child Care Home, subject to the provisions of Section 4.3.3(TT).

MASTER PLAN & SITE PLAN APPROVAL

1. Review and Approval Process

- a) All development parcels within the development plan shall be governed by regulations set in association with the approval of the Master Plan.
- b) The Master Plan shall consist of a narrative and a land use map designating dwelling units and intensity of development and a supporting development standard document that will include data to be utilized in preparing site plans and landscaping plans.
- c) The Master Plan shall be reviewed by the Planning and Zoning Board to make a recommendation to the City Commission. The Master Plan shall be forwarded to the City Commission with the Planning & Zoning Board's recommendation. The City Commission will conduct two public hearings at which the final action will be taken at the second hearing.
- d) Site Plan(s) shall be reviewed and approved by the Site Plan Review and Appearance Board prior to second reading of the SAD Rezoning and Master Plan. Architectural elevations shall be provided at

the time of submittal of a site plan application.

- e) In accordance with Section 2.4.5(F)(7), upon final approval of the Master Plan, such plan shall be stamped and certified by the Development Services Department as to its status and shall serve as the baseline for any subsequent submittals. All subsequent submissions shall conform in every respect to the Master Plan as may be modified as provided below.

2. Master Plan Modifications

- a) Subsequent to approval of the original Master Plan, any site and development plans shall be filed in accordance with Section 2.4.5(F)(1) through (5). An approved Master Plan may be modified either by administrative approval or by review by the Planning & Zoning Board through the public hearing process, depending on the degree of modification proposed to the Master Plan. If the modification relates to number of dwelling units, parking count, intensity or the dimensional standards, including setbacks ("Standards") and is less than or equal to a 5% deviation from such standard, the modification shall be processed administratively or reviewed by the Planning and Zoning Board as a MDP modification, at the discretion of the Development Services Director. All other modifications to the MDP, development standards, timing obligations (i.e. the sequencing plan, phasing, etc.) or other requirements contained herein, and those modifications of Standards in excess of 5% shall be processed and approved by the Planning and Zoning Board in accordance with 2.4.4 E(6), except for changes that increase density and intensity, (including additional uses not previously adopted as part of the SAD) which shall be processed and approved by the City Commission as an amendment to the SAD Ordinance.
- b) All Site Plan applications for new development, including site plan modifications, must receive approval by Site Plan Review and Appearance Board (SPRAB) and be consistent with the approved Master Development Plan (MDP).

3. Sequencing Plan

- a) The Master Plan establishes the location of the uses which include each use's respective acreage, number of units and unit type, parking, and intensities for the commercial parcel, location of the main streets, buffers, pedestrian paths, and the open space area serving the overall development.
- b) The residential and commercial components may be developed independently as separate phases of development.

PARKING

- a) Guest parking spaces must be accessible to all visitors and guests and may be centralized or located near recreational features within a development project.
- b) Parking adjacent to Congress Avenue must be screened by buildings, landscaping, fencing, and/ or a berm adequately landscaped to obscure the view of the parked cars from Congress Avenue.
- c) Parking lots for the multifamily buildings are located to minimize pedestrian conflicts while providing

locations within close proximity of destinations once cars are parked.

- d) Access to parking lots shall be restricted to specific driveway locations to minimize curb cuts as well as minimize conflicts between vehicles and pedestrians.
- e) Parking shall be provided for the residential multifamily buildings as follows:

PARKING REQUIREMENTS	
Efficiency dwelling unit	1.0 space/unit
One bedroom dwelling unit	1.0 spaces/unit
Two or more bedroom dwelling unit	2.00 spaces/unit
Guest parking shall be provided cumulatively as follows:	
for the first 20 units	0.50 spaces/unit
for units 21— 50	0.30 spaces/unit
for units 51 and above	0.20 spaces/unit

- f) Parking for non-residential uses within the development shall be provided to meet the minimum parking requirements in the LDRs.
- g) For commercial mixed-use developments with a residential component, the shared parking formula under LDR Section 4.6.9(c)(8) may be utilized when a balanced mix of uses is provided.
- h) Parking areas shall be provided in accordance with the following dimensional standards:

MINIMUM PARKING STANDARDS	
PARKING SPACE SIZE	
STANDARD	9' x 18'
COMPACT	8'-16'
PARALLEL	8' x 22'
HANDICAP	12' X 18'
PARKING DRIVING AISLE (TWO-WAY)	24'-0"
PARKING LANDSCAPE ISLAND	9'-0" WIDE
PARKING LANDSCAPE STRIP	5'-0"
FRONT OF BUILDING FAÇADE TO PARKING SPACE	5'-0"

- i) Wheel Stops shall be provided for all parking, other than parallel spaces, in the form of concrete wheel stops or a continuous concrete curb which is located so that there is two feet of clear distance from the front edge of the device to the front of the parking space.
- j) Two-way parking lot driving aisles 24 feet wide must be used when perpendicular parking spaces are used.
- k) The minimum drive aisle for two-way traffic flow for short distances where there are no parking spaces on either side of the driving aisle is 20 feet.

- l) The minimum width of sidewalks along Congress Avenue shall be six feet. All other sidewalks shall be a minimum of five feet.

LANDSCAPING REGULATIONS

Landscaping shall be provided in accordance with the Landscape Regulations as listed below:

1. Perimeter requirements adjacent to public and private rights-of-way:

- a) The landscaping shall consist of at least one tree for each 30 linear feet or fraction thereof. The trees shall be located between the right-of-way line and the off-street parking or vehicular use area. Where the depth of the perimeter landscape strip adjacent to the right-of-way exceeds 15 feet, shade trees may be planted in clusters, but the maximum spacing shall not exceed 50 feet. The remainder of the landscape area shall be landscaped with grass, ground cover, or other landscape treatment excluding pavement.
- b) A hedge, fence, wall or other durable landscape area shall be placed along the interior perimeter of the landscape strip. If a hedge is used, it must be a minimum of two feet in height at the time of planting and attain a minimum height of three feet above the finished grade of the adjacent vehicular use or off-street parking area within one year of planting.
- c) Multiple tier plantings are strongly encouraged for all properties, regardless of the depth of the landscape buffer. Those properties that have a landscape buffer depth of ten feet or more shall be required to provide an additional layer of groundcover. The groundcover shall be located directly in front of the required hedge, so as to be visible from the adjacent right-of-way. This groundcover shall be installed at one-half of the height of the required perimeter hedge.
- d) If a nonliving barrier is used, it shall be a minimum of three feet above the finished grade of the adjacent vehicular use. Nonliving barriers shall require additional landscaping to soften them and enhance their appearance. For each ten feet of nonliving barrier, a shrub or vine shall be planted along the street side of the barrier, in addition to tree requirements.
- e) Earth berms may be used only when installed in conjunction with sufficient plant materials to satisfy the screening requirements. The slope of the berm shall not exceed a 3:1 ratio.
- f) Hedges for multi-family projects which are used to separate a residential use from an adjacent arterial or collector road right-of-way may attain a height of eight feet to mitigate the impact of the adjacent roadway.
- g) The unpaved portion of the right-of-way adjacent to the property line shall be landscaped with sod and provided with irrigation and maintenance.
- h) The width of access ways which provide access to a site or vehicular use areas may be subtracted from the linear dimensions used to determine the number of trees required.

2. Perimeter landscaping requirements relating to abutting properties:

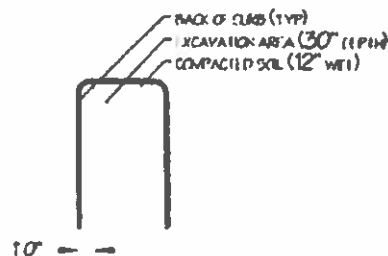
- a) A landscaped barrier shall be provided between the off-street parking area or other vehicular use area and abutting properties. The landscape barrier may be two feet at the time of planting and achieve and

be maintained at not less than three nor greater than six feet in height to form a continuous screen between the off-street parking area or vehicular use area and such abutting property. This landscape barrier shall be located between the common lot line and the off-street parking area or other vehicular use area in a planting strip of not less than five feet in width that is free of any vehicular encroachment, including car overhang. In addition, one tree shall be provided for every 30 linear feet of such landscaped barrier or fraction thereof.

- b) The provisions for perimeter landscape requirements relating to abutting properties shall not be applicable where a proposed parking area or other vehicular use area abuts an existing hedge or established tree line, the existing hedge and trees may be used to satisfy the landscape requirements provided the existing material meets all applicable standards. The landscape strip, a minimum of five feet in depth, however, is still required, and must be landscaped with sod or ground cover and be free of any vehicular encroachment, including car overhang. If the existing landscaping does not meet the standards of this article, additional landscaping shall be required as necessary to meet the standards. In the event the landscaping provided by the adjacent property which has been used to satisfy the landscaping requirements for the property making application is ever removed, the property heretofore using the existing vegetation to satisfy landscaping requirements, must then install landscaping as required to comply with the provisions of this code.
- c) There shall be a cluster of 3 palms or a shade tree for every 125 square feet of required interior landscaping. No more than 35 percent of these required trees shall be palms.
- d) Landscape islands which contain a minimum of 135 square feet of planting area, with a minimum dimension of nine feet, exclusive of the required curb, shall be placed at intervals of no less than one landscaped island for every 13 standard parking spaces. One shade tree shall be planted in every island with a minimum of 75 square feet of shrubs and groundcovers. Tree specifications shall adhere to those listed in Section 4.6.16(E)(5) and 4.6.16(E)(6) of the Land Development regulations. Where approval for the use of compact parking has been approved, islands may be placed at intervals of no less than one island for every 15 compact parking spaces. In locations where both standard and compact spaces are proposed within a parking row, islands may be placed at intervals of no less than one island for every 14 spaces.
- e) The distance between parking islands can be increased up to 15 standard or 17 compact parking spaces but the width of the parking island must be increased by one foot for each additional space (i.e. if the distance between parking islands is 15 standard parking spaces the parking island would have to be 11 feet wide). In locations where both standard and compact parking spaces are proposed within a parking row, the distance between parking islands may be increased up to 16 spaces, but the width of the parking island must be increased by one foot for each additional space.
- f) Unobstructed cross-visibility shall be maintained at all terminal landscape islands where it intersects a right-of-way. Clear visibility shall be maintained between three feet to six feet above ground. Proper plant selection shall be utilized that fully accounts for the mature height and spread of that plant. The proper design shall have low groundcovers within the nose of the island with small shrubs located at the back end of the island.
- g) Each row of parking spaces shall be terminated by landscape islands with dimensions as indicated above. An exception to this requirement is when a landscaped area, with the dimensions above, or

buffer area exists at the end of the parking row.

- h) Perimeter landscape strips which are required to be created by this code or requirements of the zoning code shall not be credited to satisfy any interior landscaping requirements, however, the gross area of perimeter landscape strips which exceed minimum requirements may be credited to satisfy the interior landscape requirements of this section.
- i) Interior landscaping in both parking areas and other vehicular use areas shall, insofar as possible, be used to delineate and guide major traffic movement within the parking area so as to prevent cross-space driving wherever possible. A portion of the landscaping for interior parking spaces, not to exceed 25 percent of the total requirement, may be relocated so as to emphasize corridors or special landscape areas within the general parking area or adjacent to buildings located on the site, if helpful in achieving greater overall aesthetic effect. Such relocated landscaping shall be in addition to the perimeter landscaping requirements.
- j) Existing native soil within all landscape islands, interior landscape strips and perimeter landscape strips, adjacent to vehicular use areas, shall be excavated down to a depth of 30 inches below existing grade, except for a 12-inch buffer from the inside of curb or pavement (see diagram below). A suitable planting soil mixture of 50/50, 60/40 (sand/topsoil) or as otherwise indicated by the Registered Landscape Architect, shall either be backfilled in place of the native soil or efficiently mixed with the native soil to create an optimum environment for successful root development. If native soil is to be mixed, it shall first be screened to remove rocks and debris larger than one-half inch in diameter prior to mixing. All properties under this section shall be required to have an open landscape bed inspection prior to backfilling to insure the 30-inch depth has been met.



- k) All air-conditioning units and other mechanical equipment and refuse areas whose height is five feet or less shall be screened with shrubbery that is tall enough to fully screen the units from view. Equipment five feet to 16 feet above grade shall be screened with hedges that are half of the height of the item to be screened. In such instances, the required hedge shall not be any less than five feet in height. Anything higher than 16 shall be screened with shrubbery that is a minimum of eight in height.
- l) Landscaping may be permitted in easements only with the written permission of the easement holder. Written permission shall be submitted as part of the site plan or landscape plan review.

3. Foundation landscaping requirements

- a) Foundation landscaping shall be required. This shall incorporate trees, shrubs and groundcovers.

Multiple tiers of plant material should be utilized and thoughtfully designed to accomplish the goal of softening the building mass while adding vibrant color and textures.

- b) New multi-story structures shall adhere to the landscape requirements set forth in this section. The purpose of these requirements is to aesthetically and visually buffer larger structures and to maintain an appropriately scaled relationship between the height of the structure and its surrounding landscape.
- c) Foundation trees with specifications listed in Table 1 below shall be planted along the building façade that faces a dedicated Right-of-Way. The spacing of these trees shall be determined based on the average canopy width of the proposed tree.

Foundation Tree Specifications			
Mean Structure Height (feet)	Minimum Tree Height (feet)	Minimum Tree Spread (feet)	Minimum Overall Palm Height (feet)
To 15	12 to 14 (code)	5	12 (code)
15 to 25	14 to 16	6	14
26 to 35	16	7	16
36 and greater	16	7	16

4. Street trees for new residential developments

Street trees are an integral component of creating a themed landscape and shall be required as per this section. Street trees shall be located along the edge of the sidewalk to provide shade for pedestrians.

DEVELOPMENT STANDARDS

DEVELOPMENT STANDARDS		
	Proposed Standard	Provided
Maximum Lot Coverage	70%	48.7%
Minimum Open Space	30%, non-vehicular	43.6%, non-vehicular
Minimum Perimeter Setback (Front, Rear, Side & Site Street)	15 feet	Front (East) - 30 feet Rear (West) - 60 feet Side (North) - 29 feet Side (South) - 111'-8.5"
Maximum Height	55 feet*	55 feet
* Subject to the approval of a Conditional Use, pursuant to LDR Section 4.3.4(J)(4), Increases to height regulations.		

PERIMETER SETBACK AND BUFFER

A minimum setback of 15 feet shall be established around the perimeter of the Aura Delray SAD. Along Congress Avenue and any street side setback, the 15-foot setback area shall be a landscape area and no pavement shall be allowed therein except for pedestrian ways and driveways (or streets) which provide access to the property and which are generally perpendicular to the abutting street.

LOT COVERAGE AND OPEN SPACE

- (1) Lot coverage by building, pavement and hardscape site improvements excluding sidewalks or multipurpose paths shall not exceed 70 percent of the gross area of the Master Plan.
- (2) Land area, equal to at least 30 percent of the total district including the perimeter landscaped boundary, shall be in open space including sidewalks and multi-purpose paths. Paved areas shall not be included in the meeting of this 30 percent open space requirement.

HEIGHT

The maximum height of all buildings shall be 55 feet. Buildings located along Congress Avenue shall be limited to three stories. Floor heights for all buildings shall comply with the following:

- a) Non-residential uses shall have a minimum floor height of nine feet floor to floor on all floors, with the exception of ceiling drops for mechanical distribution and, in that case, no less than seven feet and six inches.
- b) Auxiliary and service rooms, such as, garages, restrooms, closets, laundry rooms, dressing rooms, storage rooms, mechanical, electrical, and plumbing equipment rooms are exempted from the floor height regulations.

BUILDING SEPARATIONS

BUILDING SEPARATIONS (MINIMUM REQUIREMENTS)	
5 Story Multi-family building to 5 Story Multi-Family building	30'-0"
Sidewalk to Multi-Family building	5'-0"
Property line to building	Minimum buffer requirements
NOTE: Distances are measured to the shortest distance between building elements, excluding porches, balconies, and covered entries.	

MINIMUM FLOOR AREA

- a) Residential units are subject to the minimum square footage per the chart below.

UNIT SIZES (MINIMUM REQUIREMENTS)	
Unit Type	Size
Efficiency	450 sq. ft.
One Bedroom	600 sq. ft.
Two Bedroom	900 sq. ft.
Three Bedroom	1,200 sq. ft.

- b) There are no minimum floor area requirements for non-residential uses.
- c) For purposes of bedroom count, a room used as a den, library or study without a closet shall not be counted as a bedroom.

ENCLOSURE SCREENING

Utility enclosures shall be enclosed on three sides and have vision obscuring gates on the fourth side. Landscaping in the form of a hedge must be provided in front of the enclosures to screen the enclosure from view. The enclosure may not be located within a required setback or easement area.

Screening for all ground level and roof top level air-conditioning units and mechanical equipment shall be provided.

TRAFFIC CALMING

The traffic circulation system shall be designed to control speed and reduce volumes on the interior street network, not to include driveways within parking access. This may be accomplished through the use of traffic calming devices which may include but are not limited to the installation different pavement patterns, parallel parking, landscape nodes, striping, and a round-a-bout. Signage will also remind motorists of speed limit and locations of traffic calming devices.

RECREATION FACILITIES

Tot lots and recreational areas, serving children from toddler to teens, shall be a feature as part of the design to accommodate households having a range of ages. Recreation facilities shall include the following:

The Club House is a private recreational facility which may be equipped with but is not limited to the following amenities to serve residents:

- a) Restrooms
- b) Business Center
- c) Fitness Center with yoga/aerobics room
- d) Club Room

Note: The leasing/ management office will be located within the clubhouse.

The outdoor component, distributed within the residential areas of the master plan, may include, but will not be limited to the following elements:

- a) Main private outdoor pool, with cabanas and barbeques;
- b) Tot lot

WORKFORCE HOUSING PROGRAM ESTABLISHED

A Workforce Housing Incentive Program shall be provided as follows:

1. A minimum of 25 percent of the project density shall be provided on-site as Workforce Housing Units to Moderate Income Households as defined herein.
2. If the development contains a mix of different types of units, (e.g. condominium, townhouse, detached, etc.), the proportion of workforce units by bedroom count must be approximately the same (within 10%) as the proportion of market rate units by bedroom count to total market rate units with the exception of efficiency or studio units, which shall not be allowed under the City of Delray Beach family / workforce housing program.
3. Moderate income household. A household with a gross, combined income between 80 percent and 120 percent of the Palm Beach County Median Family Income, published annually for Palm Beach County by the U.S. Department of Housing and Urban Development, for a 2-person household for 1 BR units, for a 3-person household for 2 BR units and for 4-person+ household for 3 BR+ units.
4. For moderate income households, the maximum price shall be established by the Community Improvement Department based on a formula that considers the prevailing mortgage interest rates.
5. Rent ranges shall be based on the monthly rent ranges published annually by Palm Beach County based on the Florida Housing Finance Corporation Multi-Family Rental Programs, by number of bedrooms.
6. For the purposes of annual price updates, the Workforce Housing Unit prices initially established for the rental unit's income category at the time of approval of the subject development shall be the rental floor throughout the affordability period. No Workforce Housing Unit is required to be rented at a price below the rental floor, though an owner may opt to do so.
7. The exteriors of Workforce Housing Units shall be designed compatible with market rate units in the development; however, the developer shall not be required to provide interior design finishes consistent with the market rate units provided within the development.
8. Workforce Housing Units shall be distributed throughout the development, and not clustered in any one location.
9. The breakdown of unit type shall be based upon market demand and there shall be no restriction from providing a certain type of unit, provided that the Workforce Housing Units are provided in the same proportion as the Market Rate Units.

PERFORMANCE STANDARDS FOR SITE PLAN

The intent of the standards is to mitigate the impacts of the additional density both internal and external to the site. The performance standards are as follows:

- a) The traffic circulation system is designed to control speed and reduce volumes on the interior and exterior street network. This can be accomplished through the use of traffic calming devices; street networks consisting of loops and short segments; multiple entrances and exits into the development; and similar measures that are intended to minimize through traffic and keep speeds within the

development at or below 20 m.p.h.

- b) Buildings are placed throughout the development in a manner that reduces the overall massing and provides a feeling of open space.
- c) A number of different unit types, sizes and floor plans are available within the development in order to accommodate households of various ages and sizes. Multi-family housing will at a minimum have a mix of efficiency, one, two- and three-bedroom units with varying floor plans. The development is designed to provide open space and create new native habitat.
- d) The project provides a convenient and extensive pedestrian network, and access to available transit.

The figure contains three main architectural drawings:

- Location Map:** A small map in the top left corner showing the project's location within a larger regional context.
- Master Plan:** A large-scale site plan in the top right corner, showing the overall layout of the school campus, including building footprints, parking areas, and surrounding infrastructure.
- Detailed Site Plan:** A large-scale site plan in the bottom right corner, providing a more detailed view of the school buildings, courtyards, and landscaping. It includes labels for various areas and features.

EXHIBIT "C"
(Form of Report)

Exhibit "C"

1.

Income Household Definition

Household Members (#)

	1	2	3	4	5	6	7	8
Income Limits								
120%	\$72,000	\$82,200	\$92,520	\$102,720	\$111,000	\$119,160	\$127,440	\$135,600

2.

Rental Rate Limits

	Bedroom Count (#)			
	Studio	1	2	3
120%	N/A	\$1,927	\$2,313	\$2,671
				N/A

3.

Income Qualifications/Rental Rate Report

Max Rent : Income	35%	Current Qualified Units	0.0%	of total units
		Studios	#####	of studios
		1 Bedrooms	#####	of 1 bedrooms
		2 Bedrooms	#####	of 2 bedrooms
		3 Bedrooms	#####	of 3 bedrooms
		Total:	—	

*Based on current 2021 Income Limits and Rental Limits updated yearly. Latest rates shall apply.

EXHIBIT "D"
(Form of Affidavit)

WORKFORCE HOUSING AFFIDAVIT/NOTICE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, an officer duly authorized to administer oaths and take acknowledgements, personally came and appeared, _____, well known to me to be the person(s) described and who, being by me first duly sworn, deposes and says:

1. I/We intend to purchase/rent a workforce housing unit numbered _____ and legally described as:

2. As prospective purchaser(s)/tenants(s), I/we understand that I/we must meet the income requirements for moderate Workforce Housing Units as defined Ordinance No. 32-20 approved the City of Delray Beach, Florida, on November 20, 2020, and attached hereto as Exhibit "A". I/We hereby state we meet the income requirements for the unit described above.

3. I/We agree to provide all information in the prescribed time period set forth by the City of Delray Beach or the Community Land Trust, if applicable, as may be needed for the City of Delray Beach or the Community Land Trust, if applicable, to confirm eligibility for the unit. **Failure to provide the information in the time frame prescribed shall result in the denial of the application to purchase/rent the unit.**

4. I/We agree to abide by all applicable laws, ordinances, and restrictive covenants that apply to the unit being purchased.

5. I/We agree that this affidavit, when received by the City, shall be considered notice to the City of Delray Beach or the Community Land Trust of purchasers/tenants intent to purchase or rent a workforce unit pursuant to City of Delray Beach Ordinance No. 32-20.

6. The Affidavit/Notice shall be sent to the attention of the Director of Neighborhood and Community Services at 100 N.W. 1st Avenue, Delray Beach, Florida 33444.

DATED this _____ day of _____, 20_____.

Purchaser(s) or Tenant(s): (circle one)

Sign: _____

Print Name: _____

Sign: _____

Print Name: _____

Sworn to and subscribed before me by ____ physical presence or ____ online notarization, this ____ day of _____, 20____. Affiant(s) is/are personally known to me or has/have produced _____ as identification.

Signature of Notary Public
State of Florida

Approved by the Director of Neighborhood and Community Services

Date: _____

cc: Delray Beach Community Land Trust