

ATLANTIC CROSSING

CFN 20150206743
OR BK 27581 PG 1544
RECORDED 06/04/2015 11:48:57
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1544 - 1562; (19pgs)

Prepared by and
Return to:

Noel M. Pfeffer, Esquire, City Attorney
City of Delray Beach, Florida
200 NW 1st Avenue
Delray Beach, FL 33444

WORKFORCE HOUSING COVENANT

THIS WORKFORCE HOUSING COVENANT (the "Covenant") is entered into as of the 22nd day of May, 2015, by the CITY OF DELRAY BEACH, a Florida Municipal Corporation, (referred to herein as "City"), and CDS DELRAY REDEVELOPMENT, LLC, CDR ATLANTIC PLAZA, LTD, and CDS FREECORE LLC (collectively, the "Owners"), and EDWARDS CDS, LLC (Owners and Edwards CDS, LLC are collectively referred to as "Developer," which term shall include any successor to any Developer as owner of the entire Development).

RECITALS

A. City has implemented Affordability Controls as set forth in Article 4.7 of the Delray Beach Land Development Regulations ("Regulations" or "LDR") by establishing a Family/Work Force Housing Program for the City (hereinafter referred to as the "Affordable Housing Program"). Article 4.7 of the Regulations grants to Developer certain density bonus Units (additional market rate units) beyond the base number allowed per existing Regulations, after performance standards have been met. Furthermore, Article 4.7 of the Regulations grants to Developer additional height beyond the 48 feet allowed per existing Regulations after the height requirements of Section 4.3.4(J)(4)(b) have been met.

B. Developer was required to be part of the Affordable Housing Program with respect to that certain real property which is owned by the Developer and is located in the Central Business District - Commercial Core zoning district in Delray Beach, Florida, and more particularly described in Exhibit "A" which is attached hereto and incorporated by reference herein (the "Real Property"). Developer has agreed to provide Units and a monetary contribution which comply with the Affordable Housing Program within the proposed residential development projects which may be constructed on the Real Property as more specifically set forth in this Covenant.

C. Pursuant to the City's Affordable Housing Program, LDR Section 4.4.13(I)(1), residential development in the Central Business District - Commercial Core zoning district above thirty (30) dwelling units per acre must include a minimum of Twenty Percent (20%) of the residential units above thirty (30) dwelling units per acre as Workforce Housing Units divided between Low Income Households to Moderate Income Households, at rental rates which do not exceed a certain percentage of the Florida Housing Finance Corporation rent limits for the area. Furthermore, pursuant to LDR

ATLANTIC CROSSING

Section 4.7.2(b), developments constructed pursuant to LDR Section 4.3.4(J)(4)(b) must provide Workforce Housing Units equal to at least Twenty Percent (20%) of the residential units on the top floor to qualify for an increase in height. Developer may meet both of these requirements by providing Workforce Housing Units within the development onsite, offsite, or through monetary contributions. For each required Workforce Housing Unit, Developer may make a payment in the amount of \$160,000, payable to the City of Delray Beach Housing Trust Fund in lieu of providing the Workforce Housing Unit within the development.

D. Accordingly, with respect to the site plan approved by the City Commission on January 21, 2014 and based on the prior approval by City with respect to this site plan of a height increase to 60 feet and 33 dwelling units on the top floor, the Developer has agreed, as part of the Development for this site plan, that it shall be required to provide seven (7) Workforce Housing Units for the height increase. Furthermore, based on the prior approval by City of eighty-six (86) dwelling units over thirty (30) dwelling units per acre, the Developer has agreed, as part of the Development for this site plan, that it shall be required to provide eighteen (18) Workforce Housing Units for the increase in density. The required Workforce Housing Units will be constructed within the Development for this site plan as required by the Regulations as follows: Seven (7) two (2) bedroom apartments, twelve (12) one (1) bedroom apartments. In addition, Developer has agreed that it shall be required to make a total payment of \$960,000 to the City of Delray Beach Housing Trust Fund in lieu of providing six (6) Workforce Housing Units, which payment shall be made simultaneous or prior to the issuance of the first vertical building permit of any "For Sale" Unit. Alternatively, should Developer proceed with the Development of the site plan approved by the City Commission on April 7, 2009 and certified on May 23, 2013, the Developer has agreed, as part of the Development for this site plan, that it shall be required to provide a total of nine (9) Workforce Housing Units as follows: Four (4) one (1) bedroom units, three (3) two (2) bedroom units. In addition Developer agrees that it shall be required to make a total payment of \$320,000 to the City of Delray Beach Housing Trust Fund in lieu of providing two (2) Workforce Housing which payment shall be made simultaneous or prior to the issuance of the first vertical building permit for any "For Sale" Unit.

E. Pursuant to Article 4.7 of the Regulations, the Developer has agreed to enter into this Covenant to provide for Units within the Development which meet the Affordable Housing Program and which Covenant is to be recorded against the Real Property in the Public Records of Palm Beach County, Florida.

F. This Covenant shall apply and be enforceable against Developer and all current and future Owners, as applicable, during the term of this Covenant and shall restrict the sale, resale, rental and use of the applicable Units as provided herein.

G. City and Developer agree and acknowledge that the execution, delivery and recording of this Covenant by City shall not be deemed to be or construed as a waiver of any claims, rights, remedies or causes of action, of whatever kind or nature, either in law or equity arising from or relating to the site plan approved by the City on January 21, 2014.

NOW, THEREFORE, City and Developer hereby agree as follows:

I. DEFINITIONS

The following terms not otherwise defined herein shall have the meanings set forth below for purposes of this Covenant, and if a term is defined in the Regulations, the Regulations shall control:

1.1. Adjusted Median Income (A.M.I.) – The Palm Beach County median income, based on a family of four, as published by Florida Housing Finance Corporation.

1.2. Affordability Controls – Restrictions placed on Units by which the rent of such Units and/or the income of the purchaser or lessee will be restricted in order to ensure that the Units remain affordable to those households which qualify as Low Income Households to Moderate Income Households.

1.3. City – The City of Delray Beach, Florida.

1.4. CRA – The Delray Beach Community Redevelopment Agency

1.5. Development – The housing development at the Real Property for which approvals of height and density bonus Units have been granted by the City to the Developer.

1.6. Eligible Occupant – A Household who is income eligible to rent a Workforce Housing Unit. Priority will be given to persons who have lived or worked within the municipal limits of the City continually for the one (1) year period immediately prior to the date of application for a Workforce Housing Unit within the Development by an Eligible Occupant.

1.7. Exempt Transfer – A Transfer of all of the Development, as opposed to a Transfer of one or more individual Units that are separate from a Transfer of the entire Development.

1.8. First Time Home Buyer – A person who has not held ownership in a residence within the past three (3) years.

1.9. HUD – The United States Department of Housing and Urban Development.

1.10. Household – A single person living alone, or two (2) or more persons sharing residency, with a combined income available to cover household expenses.

1.11. Low Income Household(s) – A Household with a gross, combined income between 61% and 80% of the Palm Beach County Adjusted Median Income (as defined by the Florida Housing Finance Corporation) as published more specifically in the "Income Limits Florida Housing Finance Corporation CWHIP Homeownership Program" table for West Palm Beach – Boca Raton HMFA (Palm Beach) area.

ATLANTIC CROSSING

1.12. **Moderate Income Household(s)** - A Household with a gross, combined income between 81% and 120% of the Palm Beach County Adjusted Median Income (as defined by the Florida Housing Finance Corporation) as published more specifically in the "Income Limits Florida Housing Finance Corporation CWHIP Homeownership Program" table for West Palm Beach - Boca Raton HMFA (Palm Beach) area.

1.13. **Purchase Price or Sales Price** - All consideration paid for the Transfer of a Unit either at or outside of closing, but shall not include any proration amounts, taxes, costs and expenses of obtaining financing, the fair market value of furnishings or personal property, lender fees, title insurance fees, closing costs, inspection fees, or other normal and customary costs related to the purchase of property but not paid directly to the seller.

1.14. **Transfer** - Any sale, assignment or transfer, voluntary or involuntary, or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in a Unit, including but not limited to, a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for an affordable housing Unit lease as permitted by this Covenant), or any interest evidenced by a land contract by which possession of such Unit is transferred while the existing Unit Owner retains title.

1.15. **Unit** - A single family, condominium, townhouse, or apartment dwelling located in the Development.

1.16. **Unit Owner** - The record title owner at any time of a Unit.

1.17. **Workforce Housing Unit or Workforce Unit** - A Unit for which the rent or mortgage payment (including principal, interest, taxes and insurance ("P.I.T.I.")) does not exceed 35% of the gross income of households that classify as a Low Income Household or as a Moderate Income Household and meets the other requirements of the Affordable Housing Program.

II. RENTAL OF UNITS

2.1. The Development shall be subject to this Covenant, and each lessee shall be an Eligible Occupant, except as provided in Section 2.5 below.

2.2. In no event shall any Unit in the Development be used for transient, interval or timeshare rental or ownership.

2.3. As more specifically set forth in this Covenant, at all times, the Units in the Development above the thirty (30) dwelling units per acre must include a minimum of 20% Workforce Units to be reserved for occupancy by Eligible Occupants. However, the Developer shall be under no obligation to rent a Unit to any particular Eligible Occupant and may use its standard underwriting criteria to qualify all Eligible Occupants.

2.3.1. Workforce Housing Units targeted to Low Income Households at 61% to the 80% affordability level of the Palm Beach County median income, adjusted for family size, shall not have rental rates that exceed the 120% rent limit for the area (as defined by the Florida Housing Finance Corporation) as published more specifically in

ATLANTIC CROSSING

"Rent Limits Florida Housing Finance Corporation State Housing Initiatives Program (SHIP)" table for West Palm Beach – Boca Raton HMFA (Palm Beach) area.

2.3.2. Workforce Housing Units targeted to Moderate Income Households at 81% to the 120% affordability level of the Palm Beach County median income, adjusted for family size, shall not have rental rates that exceed the 140% rent limit for the area (as defined by the Florida Housing Finance Corporation) as published more specifically in "Rent Limits Florida Housing Finance Corporation State Housing Initiatives Program (SHIP)" table for West Palm Beach – Boca Raton HMFA (Palm Beach) area.

2.3.3. No Workforce Housing Units shall be offered for rent to the general public until all requirements of this Covenant are met.

2.3.4 No efficiency or studio type Workforce Housing Units are allowed.

2.4. The Developer shall provide Workforce Housing Units that include Unit types in the same proportion as the market rate housing Unit types within the Development. The following conditions must be met:

2.4.1. The proportion of one (1) bedroom Workforce Units to total Workforce Units may not exceed the proportion of one (1) bedroom market rate Units to total market rate Units.

2.4.2. The proportion of two (2) bedroom Workforce Units to Total Workforce Units may not exceed the proportion of two (2) bedroom market rate Units to total market rate Units.

2.4.3 If the Development contains a mix of different types of Units, (e.g. condominium, townhouse, detached, etc.), the proportion of Workforce Units of each type to total Workforce Units must be approximately the same as the proportion of market rate Units of each type to total market rate Units.

2.4.3. If the development includes both "For Sale" and "For Rent" Units, the proportion of "For Rent" Workforce Units to "For Sale" Workforce Units must not exceed the proportion of "For Rent" market rate Units to "For Sale" market rate Units; provided however if the Workforce Housing Units are funded under Florida Housing Finance Corporation's Housing Credit or SAIL Programs, the proportionality requirement herein stated shall not apply if the Development provides at least twenty percent (20%) the Units in the Development above the thirty (30) dwelling units per acre of the "For Sale" Units as Workforce Housing Units.

2.4.4. The total number of Units in the Project, including both Workforce Units and market rate Units, are based on the certified site plan for the Development.

2.5. Workforce Housing Units offered for rental shall be marketed continuously as Workforce Housing Units. In the unlikely event that, notwithstanding the marketing efforts of Developer, the total number of occupied Workforce Housing

Unit(s) does not equal 100% of the Workforce Units required for the Development and, as to Workforce Units which have remained vacant for 45 days or more due to a lack of Eligible Occupants, those units may be rented to non-eligible occupants at market rents: provided that the Developer shall pay to the Delray Beach Housing Trust Fund (DBHTF) at the end of each calendar year any rents actually received from the non-eligible occupants of the Workforce Housing Units for that year in excess of the rents that would have been received from Eligible Occupants for such Workforce Housing Units based on workforce rents at the time of signing the lease ("Excess Rental Payments"). Excess Rental Payments shall accrue only for periods in which the required 100% is not satisfied. No later than 20 days following the end of the month, the Developer shall provide the DBHTF with a monthly statement highlighting those units which require Excess Rental Payments. No later than 30 days following the end of the year, the Developer shall provide the DBHTF with an annual statement. The Workforce Housing Units rented to non-eligible occupants will be considered a Workforce Housing Unit. If less than 100% of the total number of Workforce Housing Units required for the Development are occupied with Eligible Occupants, then each subsequent vacant unit shall be marketed to Workforce Housing eligible applicants pursuant to an approved marketing and advertising plan until all required Workforce Housing Units are rented to Eligible Occupants.

III. FUTURE SALE OF WORKFORCE HOUSING UNITS

3.1. Should Units be offered for sale in the future in accordance with Florida Condominium Law, only deeds of those Units to be sold as Workforce Housing Units shall include reference to this Covenant. All sales contracts shall state that the Workforce Housing Unit is part of the Affordable Housing Program and subject to this Covenant. All deeds to Unit Owners of Workforce Housing Units (except for a deed for an Exempt Transfer) shall provide that the Delray Beach Community Land Trust, Inc., a Florida not-for-profit corporation ("DBCLT"), shall have the right of first refusal to purchase the Workforce Housing Unit on the same terms and conditions as a prospective buyer. Developer and/or the owner of the Workforce Housing Unit shall notify the DBCLT and the City in writing within five (5) days after the Developer's or the Unit Owner's acceptance of a contract for sale and purchase (except for an Exempt Transfer) and shall include in the notice a true and correct copy of the contract. The DBCLT shall have fifteen (15) business days after receipt of the Developer/Unit Owner's written notice and contract to deliver written notice to Developer/Unit Owner of the DBCLT's exercise of its right to purchase the Unit on the same terms as stated in the contract, except as stated herein. The DBCLT shall close the transaction within thirty (30) business days after its election to exercise its right of first refusal. In the event the DBCLT is not then in existence or no longer qualifies to act on behalf of the City, then the City, its successors and assigns may exercise the right of first refusal.

3.2. All purchasers of Workforce Housing Units (except a purchaser pursuant to an Exempt Transfer) shall qualify as a Low Income Household or a Moderate Income Household and must be a First Time Home Buyer.

3.3. Owners of Workforce Housing Units (other than the Developer) shall be required to occupy the Unit. If, during ownership, the Owner is unable to continuously

ATLANTIC CROSSING

occupy the Unit due to illness or incapacity, based upon evidence and application made to the City, City may in its discretion, excuse compliance with this requirement.

3.4. Closing costs and title insurance shall be paid pursuant to the custom and practice in Palm Beach County at the time of closing. No charges or fees shall be imposed by the seller on the purchaser of a Workforce Housing Unit which are in addition to or more than charges imposed upon purchasers of market rate Units, except for administrative fees charged by the City, the CRA, or their respective designee.

3.4.1. The maximum sale price of a Workforce Housing Unit (except for an Exempt Transfer) shall be established by the City based upon a formula that considers the prevailing institutional lender mortgage interest rates, as approved by the City Commission by resolution.

3.5. Except for an Exempt Transfer, no Workforce Housing Units shall be offered for sale to the general public until all requirements of this Covenant are met. Each purchaser shall be an Eligible Occupant.

3.6. Except as expressly permitted by this Covenant, no Workforce Housing Unit may be transferred.

3.7. As more specifically set forth in this Covenant, at all times, the Units in the Development above the thirty (30) dwelling units per acre must include a minimum of twenty percent (20%) Workforce Units divided between Low Income Households to Moderate Income Households.

3.8. Not less than ten (10) calendar days prior to the closing on any Workforce Housing Unit sale or resale (except for an Exempt Transfer), the City shall be notified of the sale or resale of the Workforce Housing Unit and the City shall be provided with a true and correct copy of the proposed contract. Developer or owners of a Workforce Housing Unit, respectively, shall deliver written notice of the intent to sell (except for an Exempt Transfer) to the City, and shall provide to the City all information which is necessary for the City to determine that the proposed sale complies with the terms, restrictions, and conditions contained in this Covenant. The information shall be provided to the City on City approved forms and shall be executed under oath by the proposed transferor or transferee, as applicable. The City shall have ten (10) business days after the receipt of the written notice to determine and notify the Developer and/or Unit Owner whether the proposed transfer is in compliance with the terms, conditions, and restrictions contained in this Covenant. If it is not, the proposed transfer shall not be made and any such transfer not in compliance with this Covenant shall be deemed null and void. If the City does not timely deliver written notice to Developer and/or Unit Owner that the proposed contract is not in compliance, such contract shall be deemed approved by the City. City shall have the right to waive this notice requirement at its sole discretion as circumstances may warrant to facilitate sale of Workforce Housing Units. Each contract for sale and purchase of a Workforce Housing Unit (except for a deed for an Exempt Transfer) shall contain a clause which subjects the proposed transfer to the prior review of the City.

IV. ADDITIONAL RESTRICTIONS

4.1. All Workforce Housing Units constructed or rehabilitated in the Development shall be situated within the Real Property so as not to be in less desirable locations than market rate Units in the Development and shall, on average, be no less accessible to public amenities, such as open space, as the market rate Units.

4.2. Workforce Housing Units shall be integrated within the rest of the Development and shall be compatible in exterior design, appearance, construction, and quality of materials and contain comparable HVAC systems and appliances with market rate Units and provide them as standard features. All Workforce Housing Units shall contain comparable square footage to the corresponding market rate Unit.

4.3. The construction schedule for Workforce Housing Units shall be consistent with or precede the construction of market rate Units.

4.4. There shall be no lot premiums charged on the Workforce Housing Units which are not otherwise charged for equally situated market rate Units.

4.5. Resale and Subsequent Rentals of Workforce Housing Units. To maintain the availability of Workforce Housing Units which are constructed within the Development, the following resale and/or rental conditions are imposed on the Workforce Housing Units and the same shall also be included in each deed:

- a. All Workforce Housing Units shall remain affordable for a period of no less and no more than forty (40) years from the date of recording of this Covenant in the Public Records of Palm Beach County, Florida.
- b. Except for an Exempt Transfer, all Workforce Housing Units must be rented or sold to Eligible Occupants except as otherwise provided in Section 2.5.
- c. If the Units in the Development are part of a condominium, cooperative, homeowners association or similar community, these Covenants shall be incorporated into the governing documents of such community and the governing documents shall be approved by the City Attorney. The governing documents may not be amended without the City's consent.
- d. Workforce Housing Unit resales shall be limited to Households of the same category relative to income.
- e. The sales price of Workforce Housing Units may not exceed the upper limit of affordability for the income category to which the Unit was originally assigned.

ATLANTIC CROSSING

- f. Transfers of title under the following circumstances shall be allowed, and are not subject to the restrictions included in this Covenant:
- i. Transfers by inheritance to the Unit Owner's surviving spouse, qualified domestic partner, or lineal descendants, or;
 - ii. Transfers of title to a spouse as part of a divorce decree, or to a qualified domestic partner as part of a court approved property settlement agreement; or
 - iii. Acquisition of title or interest therein by an existing Unit Owner's spouse if it is in conjunction with marriage of the Unit Owner and his/her spouse, or by an existing Unit Owner's qualified domestic partner; or
 - iv. Exempt Transfers.

4.6. No resale of a Workforce Housing Unit is permitted until the requirements of this Covenant are met.

4.7. No Workforce Housing Unit may be sublet or assigned to a tenant(s) or purchaser(s) whose income exceeds the percent of AMI under which the Unit was originally approved, except as otherwise provided in Section 2.5.

4.8. Household income is determined by the cumulative income of all tenants or purchasers intended to occupy a single Unit.

4.9. The maximum permitted resale price of a Workforce Housing Unit may not exceed the initial sale price of the Workforce Housing Unit, subject to an increase at the same rate as the Palm Beach County median income has increased from the initial date of purchase.

4.10. Nothing contained in this Covenant shall require a Household qualified to occupy a Workforce Unit to vacate a rental Workforce Housing Unit or to sell a Workforce Housing Unit if the tenant(s) or purchaser(s) income respectively, later exceeds AMI, provided such Household initially qualified for such lease or purchase.

4.11. The forms of the lease, contract for sale (except for an Exempt Transfer), or deed for the rental or sale of a Workforce Housing Unit, respectively, shall be approved in advance for compliance with this Covenant by the City Attorney, which approval shall not be unreasonably withheld.

4.12. To ensure the Developer's compliance with the Affordability Controls and restrictions contained in this Covenant, not later than the tenth (10th) day of each calendar month for every month during the term of this Covenant, Developer shall deliver a written report ("Report") to the City containing such information and documents as the City may require to verify that the Developer is in compliance with this Covenant. The Report shall be current as of the first day of the month in which the Report is delivered to the City. The

ATLANTIC CROSSING

form of the Report shall be approved by the City Attorney. At a minimum, the Report shall contain the following information and documents with respect to each Workforce Housing Unit:

4.12.1. With respect to Workforce Housing Unit leases:

- a. Name and address of each Unit's Eligible Occupant and member of the Household;
- b. Date lease term commenced;
- c. Date lease term terminates;
- d. Amount of monthly rent due under the lease;
- e. Household income;
- f. Unit address;
- g. Number of bedrooms and baths in each Unit;
- h. Household size;
- i. Whether Unit is occupied or vacant; and
- j. Total number of Workforce Housing Units presently leased;

4.12.2. With respect to Workforce Housing Unit sales:

- a. Total number of Workforce Housing Units listed for sale;
- b. Total number of Workforce Housing Units transferred by the Developer;
- c. Date of each sale closing;
- d. Household size;
- e. Name and address of all Eligible Occupants;
- f. Number of bedrooms and baths in Unit;
- g. A copy of the recorded instrument which transferred the Unit;
- h. Unit address; and

i. Qualifying Household income.

4.12.3. The Report shall be executed under oath by the Developer or its authorized agent or representative.

4.13. Provided no Units are offered for sale by the Developer and the Developer owns all of the Units in the Development, the Developer may redesignate a Unit as a rental Workforce Housing Unit or redesignate a Unit as a market rate rental Unit provided, at all times, the Units in the Development above the thirty (30) dwelling units per acre must include a minimum of twenty percent (20%) Workforce Units divided between Low Income Households to Moderate Income Households as more specifically set forth in this Covenant.

4.14. At any reasonable time and from time to time, after first providing the Developer, Workforce Housing Unit lessee or Workforce Housing Unit Owner with not less than twenty-four (24) hours advance written notice, except in the case of an emergency, when less advance notice may be given, the City may enter the Development for the purpose of conducting personal interviews of such Workforce Housing Unit lessee or such Workforce Housing Unit Owner and obtaining other information from such Workforce Housing Unit lessee or such Workforce Housing Unit Owner reasonably necessary to verify Developer's compliance with the City's Affordable Housing Program requirements.

4.15. Developer shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances relating to the sale and rental of real property.

4.16. Developer shall promptly notify the City upon the occurrence of an Exempt Transfer.

V. DURATION AND AMENDMENT

5.1. For both sale and rental of Workforce Housing Units, this Covenant shall remain in effect for forty (40) years from the date of recording of this Covenant in the Public Records of Palm Beach County, Florida. This Covenant shall apply to any replacement structure or structures constructed if a structure containing a Workforce Housing Unit or Units is demolished or destroyed, provided that if demolition or destruction of a structure containing Workforce Housing Units occurs thirty-five (35) years after recording of this Covenant and demolition or destruction was unintentional, this Covenant with respect to the Unit in the structure shall terminate on demolition or destruction.

5.2. Covenant Running With Land. The terms of this Covenant constitute covenants running with the Real Property and each designated Workforce Housing Unit. This Covenant shall bind, and the benefit hereof shall inure to, Developer, the Workforce Housing Unit Owners, DBCLT, and the City, and any heirs, legal representatives, executors, successors and assignees thereof. The Workforce Housing Units shall be held, conveyed (including pursuant to an Exempt Transfer), hypothecated, encumbered, leased, rented and occupied subject to the covenants, restrictions and limitation set forth herein,

ATLANTIC CROSSING

which are intended to constitute both equitable servitudes and covenants running with the Real Property. Any lessee, buyer, or transferee of a Workforce Housing Unit or any portion thereof, by acceptance of a lease or a deed therefor, or by the signing a lease or of a contract to purchase the same, shall, by acceptance of such lease or deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein, whether or not there is any express reference to this Covenant in such lease, deed or contract.

5.3. Amendment. This Covenant may be amended at any time by a recorded document executed and acknowledged by the respective Unit Owner(s) (including Developer, should Developer hold a Unit for sale) and the City. An amendment may be effective as to some but not all of the Units, in which event it need only be approved by the Unit Owner(s) of the Unit(s) so affected.

VI. ENFORCEMENT

6.1. Right to Enforce. The City reserves, and Developer, all proposed lessees, buyers and the owners of Workforce Housing Units are deemed to have granted the City, the right to review and enforce compliance with all provisions of this Covenant, as further set forth in this Article VI.

(a) In the event that the City has reasonable cause to believe that the Developer, lessee of a Workforce Housing Unit or owner of a Workforce Housing Unit is in default of any of the provisions of this Covenant, then the City Manager, or his or her designee, may inspect the Development at any reasonable time and from time to time, after first providing the Developer, such lessee or such Unit Owner with not less than twenty-four (24) hours advance written notice, except in the case of an emergency, when less advance notice may be given.

(b) Except in the case of a default of this Covenant which constitutes an incurable default or involves the health, safety and welfare of owners of Workforce Housing Units in the Development, or in the case of an emergency (in which event no notice and opportunity to cure are required), the City shall give the Developer (if default is by the Developer), or the tenant or owner of a Workforce Housing Unit (if default is by the tenant or Unit Owner, respectively), fifteen (15) days written notice of such default, which notice shall state the nature of the default. If the default is not cured to the satisfaction of the City within fifteen (15) days from the giving of such notice, or immediately when no notice and opportunity to cure is required, the City may pursue any or all remedies available to it, as set forth in Section 6.1(c) below.

(c) The City hereby reserves the right to enforce this Covenant by pursuing any and all remedies provided by law or in equity. The City's remedies shall include, by way of example and not limitation, the right to specific performance of this Covenant, the right to a mandatory injunction requiring the sale or lease of a Workforce Housing Unit in conformance with this Covenant, the right to cancel and declare void the sale, deed, contract or lease, the right to remove occupants, and damages and injunctive relief for breach of this Covenant. All of the remedies available to the City shall be cumulative, and the City's election to pursue any remedy shall not preclude the City for then or later pursuing any one or more other remedies.

ATLANTIC CROSSING

(d) In the event a party resorts to litigation with respect to any default under this Covenant, the prevailing party shall be entitled to recover its damages and costs, including expert witness fees from the party at fault. Developer shall not be liable for default that was due to misrepresentation or other wrongful act of an occupant. The party in default hereunder shall be responsible for the costs required to enforce the provisions of this Covenant. Venue for any action for breach of, or to enforce, this Covenant shall be in Palm Beach County, Florida.

(e) 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 Covenant, such transfer or lease shall be wholly null and void and shall confer no title or rights whatsoever upon the purported transferee or lessee.

6.2 Priority of Covenant. This Covenant shall be of equal dignity 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.

VII. MISCELLANEOUS

7.1. No Third Party Beneficiaries. There are no intended third party beneficiaries of this Covenant, and no party other than the City shall have standing to bring an action for, breach of, or to enforce, the provisions of this Covenant, except for the DBCLT which shall be an intended third party beneficiary of this Covenant with respect to its right of first refusal.

7.2. Notices. Notices to any person or entity shall be given in writing and delivered in person or mailed, by certified or registered prepaid U. S. Mail, return receipt requested, to the person's or entity's representative set forth below (as may be changed by notice from time to time) at the address set forth below:

Notices to the City shall be sent to:

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

With a copy to:

City Attorney
City of Delray Beach
200 N. W. 1st Avenue
Delray Beach, Florida 33444

ATLANTIC CROSSING

Notices to the Developer shall be sent to:

CDS Delray Redevelopment, LLC,
CDR Atlantic Plaza, Ltd. and
CDS Freecore LLC
c/o William H. Milmoie
CDS International Holdings, Inc.
3299 North West 2nd Avenue
Boca Raton, FL 33431

Edwards CDS, LLC
495 S. High St., Suite 150
Columbus, OH 43215
Attention: Dean Kissos

Notices to the Delray Beach Community Land Trust, Inc. shall be sent to:

Delray Beach Community Land Trust, Inc.
20 North Swinton Avenue
Delray Beach, Florida 33444

Notices to a tenant or owner of a Workforce Housing Unit may be given in like manner addressed to the applicable Unit. Such notice shall be deemed given when hand delivered or when deposited, postage prepaid, in the United States mail.

7.3. Severability. If any provision of this Covenant shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall survive and their validity, legality and enforceability shall not in any way be affected or impaired thereby, and the court may, but shall not be required to, fashion a substitute for the provision held to be invalid or unenforceable.

7.4. Headings. The headings of the sections in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

7.5. Homestead Waiver. This Covenant is prior and superior to each owner of a Workforce Housing Unit's right to a homestead exemption. Each owner of a Workforce Housing Unit waives that owner's homestead rights to the fullest extent that they conflict or impair the City's rights and remedies under this Covenant.

7.6. No Guarantee. Nothing herein shall be construed or give rise to any implied representation, warranty or guarantee, and the City expressly disclaims, that any owner of a Workforce Housing Unit will be able to resell his or her Workforce Housing Unit for the maximum purchase price or recover the purchase price for such Workforce Housing Unit or release for the maximum rent for such Workforce Housing Unit. Such owner of a Workforce Housing Unit recognizes and accepts that his or her Unit may be less marketable than other Units in the Development and may not sell for as great a purchase price.

ATLANTIC CROSSING

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

- a. Even though the City has certain contractual obligations under this Covenant such obligations shall not relieve any person subject to this Covenant 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.

7.8 DEVELOPER AND CITY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS COVENANT 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.

7.9 This Agreement constitutes the entire agreement between City and Developer.

7.10 Recordation. The parties acknowledge and agree that this Covenant shall be recorded in the Public Records of Palm Beach County, Florida, and shall be a covenant running with the Real Property.

7.11 Conflict. To the extent of any conflict between the terms of this Covenant and Section 4.7 of the City's Code of Ordinances in effect as of the date of the execution of this Covenant by the City, the Code of Ordinances shall control.

7.12 Venue. This Agreement shall be governed by the laws of the State of Florida. The venue for actions arising out of this Agreement shall be Palm Beach Florida.

EXHIBIT "A"

Legal Description of Real Property:

THE SOUTH 104.42 FEET OF THE WEST 175 FEET OF BLOCK 123, "TOWN OF LINTON", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 3, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

AND

BEGINNING AT A POINT 157 FEET (156.75 MEASURED) NORTH OF THE SOUTHWEST CORNER OF BLOCK 123 ON THE SOUTH LINE OF THE PLAT OF "SEESTEDT-STEVENSON SUBDIVISION", PLAT BOOK 18, PAGE 3; THENCE EAST 175 FEET; THENCE SOUTH 52 FEET 4 INCHES; THENCE WEST 175 FEET; THENCE NORTH 52 FEET 4 INCHES TO THE POINT OF BEGINNING, ALL IN BLOCK 123, "TOWN OF LINTON", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 3 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

AND

ALL OF "CDS DELRAY REDEVELOPMENT", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 116 AT PAGES 172 THROUGH 182 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT TRACT "F" THEREOF.

SAID LANDS SITUATE IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA AND CONTAIN 9.229 ACRES, MORE OR LESS.

ATLANTIC CROSSING

CITY OF DELRAY BEACH, a
Florida Municipal Corporation

CITY OF DELRAY BEACH, FLORIDA

By: [Signature]
Cary Glickstein, Mayor

Attest:

[Signature]
City Clerk

Approved as to legal form and
Sufficiency

[Signature]
City Attorney

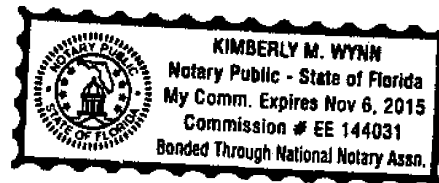
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 22nd day of May 2015, by Cary Glickstein, Mayor, City of Delray Beach, Florida who:
(please check one)
1 is (are) personally known to me OR
 has (have) produced as identification.

[Signature]
Notary Public

My Commission Expires:

November 6, 2015



WITNESSES:

Printed Name: Don G. Kiser

Printed Name: Julie M. Ferree

DEVELOPER:

EDWARDS CDS, LLC,
a Delaware limited liability company

By: **Edwards Atlantic Avenue, LLC,**
an Ohio limited liability company

By: Jeffrey W. Edwards
Jeffrey W. Edwards, its Manager

ACKNOWLEDGMENT

STATE OF OHIO

COUNTY OF FRANKLIN, SS

The foregoing instrument was acknowledged before me this 17 day of March, 2015 by
Jeffrey W. Edwards, the Manager of EDWARDS CDS, LLC, a Delaware limited liability company, on behalf
of the limited liability company.

Signature

My commission expires:



Kendra M. Gilger
Notary Public, State of Ohio
My Commission Expires 10-25-2016

Kendra M. Gilger
10-25-2016

ATLANTIC CROSSING

WITNESSES:

Karen Vermilyea
Printed Name: Karen Vermilyea
Karen Zolnierck
Printed Name: Karen Zolnierck

OWNERS:

CDS DELRAY REDEVELOPMENT, LLC,
a Florida limited liability company

By: **CDS Group Holdings, LLC,**
a Florida limited liability company

By: William H. Milmo
William H. Milmo, President

WITNESSES:

Karen Vermilyea
Printed Name: Karen Vermilyea
Karen Zolnierck
Printed Name: Karen Zolnierck

CDR ATLANTIC PLAZA, LTD.,
a Florida limited partnership

By: William H. Milmo
William H. Milmo, President

WITNESSES:

Karen Vermilyea
Printed Name: Karen Vermilyea
Karen Zolnierck
Printed Name: Karen Zolnierck

CDS FREECORE LLC,
a Florida limited liability company

By: William H. Milmo
William H. Milmo, President

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 14 day of April 2014, by William H. Milmo, President of CDS Delray Redevelopment, LLC, CDR Atlantic Plaza, Ltd., and CDS Freecore LLC, who:

(please check one)

☒ is (are) personally known to me OR

☐ has (have) produced _____ as identification.

My Commission Expires:

Notary Public Maritza F. Benitez

