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City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, Florida 33444

Address: 601 E. Atlantic Avenue
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P.C.N. 12-43-46-16-P7-001-0010
12-43-46-16-P7-001-0020

RESTATED RESTRICTIVE COVENANT MASTER AGREEMENT

THIS RESTATED RESTRICTIVE COVENANT MASTER AGREEMENT (the "Agreement") is entered into as of the ____ day of _____, 2025 (the "Effective Date"), by and between, Edwards Atlantic Avenue, LLC, a Foreign limited liability company, and Edwards Intracoastal, LLC, a Foreign limited liability company, successors in interest to CDS Delray Redevelopment, LLC, CDR Atlantic Plaza, LTD, CDS Freecore, LLC, and Edwards CDS, LLC (collectively the "Owner"), whose address is 495 South High Street, Suite 150, Columbus, Ohio 43215, and the City of Delray Beach, a Florida Municipal Corporation (the "City"), whose address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444.

WITNESSETH

WHEREAS, on May 22, 2015, the City and CDS Delray Redevelopment, LLC, CDR Atlantic Plaza, LTD, CDS Freecore, LLC, and Edwards CDS, LLC (collectively the "Prior Owners"), entered into a Workforce Housing Covenant (the "Original Agreement") that set forth the Prior Owners' obligations to provide workforce housing units pursuant to an approved development application known as Atlantic Crossing; and

WHEREAS, the Original Agreement was recorded on June 4, 2015, in Official Records Book 27581, Page 1544 in the Office of the Clerk of the Circuit Court of Palm Beach County, State of Florida; and

WHEREAS, the Owner, successor in interest to the Prior Owners, and the City desire to amend the Original Agreement to be restated with this Agreement; and

WHEREAS, this Agreement, among other things, is intended to set forth the process for establishing the Workforce Housing Units (hereinafter defined) and terms applicable to those units so designated for sale and/or rental within the portion of the property more particularly described in Exhibit "A" and made a part hereof (the "Property"); and

WHEREAS, the proposed development of the Property includes a residential component to the development of a larger mixed-use tract (the "Project"); and

WHEREAS, pursuant to the City of Delray Beach Land Development Regulations (the “LDR”), the Project was permitted to exceed thirty (30) dwelling units per acre in exchange for designating Workforce Housing Units divided between Low Income and Moderate Income Households equal to twenty percent (20%) of the residential units above thirty (30) units per acre; and

WHEREAS, pursuant to the LDR, the Project was permitted to increase the maximum building height for Buildings III and VI-South, as identified on the approved site plan as of the date this Agreement is executed, from 48 feet to 60 feet in exchange for designating Workforce Housing Units divided between Low Income and Moderate Income Households equal to twenty percent (20%) of the residential units on the top floor of those Buildings; and

WHEREAS, the Owner intends to obtain approval of one or more site plan(s) (“Site Plan”) based on the plan approved on January 24, 2024, for File No. 2022-191 (“Approval”), as may be amended; and

WHEREAS, the Parties agree to enter into this Agreement 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 Agreement and shall restrict the sale, resale, 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 Agreement as if fully set forth herein.

2. **2013 Land Development Regulations.** Pursuant to a settlement agreement reached in the United States District Court for the Southern District of Florida case Edwards CDS, LLC, v. City of Delray Beach, 2015 CA 007155, the City of Delray Beach Land Development Regulations and Comprehensive Plan as they existed in 2013 apply to the Project. Any reference to the Land Development Regulations or LDR in this Agreement relates to the LDR as they existed in 2013.

3. **Definitions.** The following terms not otherwise defined herein shall have the meanings set forth below for purposes of this Agreement, and if a term is defined in the LDR, the LDR shall control:

- a. **Adjusted Median Income (A.M.I.)** – The Palm Beach County median income, based on a family of four, as published by Florida Housing Corporation.
- b. **Affordability Controls** – Restrictions placed on the Workforce Housing Unit by which the price of such units and/or the income of the purchaser or lessee will be restricted in order to ensure that the Workforce Housing Unit

remains affordable to those households that qualify as Low Income and Moderate Income Households.

- c. **City** – The City of Delray Beach, Florida.
- d. **Development** – The housing development at the Property for which approvals of height and density bonus Units have been granted by the City to the Owner.
- e. **Eligible Occupant** – A Household who is income eligible to own or 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 by an Eligible Occupant.
- f. **Exempt Transfer** – A Transfer of an entire parcel of the Development as recorded in the Public Records of Palm Beach County, Florida, as opposed to a Transfer of one or more individual Units that are separate from a Transfer of an entire parcel.
- g. **Household** – A single person living alone, or two (2) or more persons sharing residency, with a combined income available to cover household expenses.
- h. **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.
- i. **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.
- j. **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.

- k. **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 Agreement), or any interest evidenced by a land contract by which possession of such Unit is transferred while the existing Unit owner retains title.
- l. **Unit** – A single family, condominium, townhouse, or apartment dwelling located in the Development.
- m. **Unit Owner** – The record title owner at any time of a Unit.
- n. **Workforce Housing Unit(s) or Workforce Unit(s)** – 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 or Moderate Income Household and meets the other requirements of the Affordable Housing Program.

4. **Designation of Workforce Housing Unit.**

- a. A minimum of twenty percent (20%) of the total approved residential units above thirty (30) units per acre within the Site Plan shall be Workforce Housing Units. Owner shall identify the proposed number of Workforce Housing Units within each Site Plan for the Project prior to certification. Following approval of each Site Plan, Owner shall record a separate Declaration of Restrictive Covenant (“Declaration”) specifying the number of affordable housing units required. The form Declaration to be utilized following approval of each Site Plan is attached hereto as Exhibit “B”. Notwithstanding the variations in product types within each 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 each Site Plan as a whole meets the minimum twenty percent (20%) 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 a 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 percent (20%) minimum. In the event Owner has not met the minimum twenty percent (20%) workforce housing requirement, the City may withhold additional COs for the remaining number of units required to meet the Workforce Housing Unit minimum for each Site Plan unless the additional COs requested are for Workforce Housing Units. Owner shall certify the number of all Workforce Housing

Units within the Project to ensure the twenty percent (20%) minimum is met (“Workforce Housing Certification”). The total twenty percent (20%) minimum workforce housing requirements for all units constructed over thirty (30) units per acre within the Property may be achieved through the designation of Workforce Housing Units for sale, rental units, or any combination thereof.

- b. In addition to the Workforce Housing Units required in Paragraph 4.a above, Owner shall designate Workforce Housing Units equal to at least twenty percent (20%) of the residential units on the top floor of the Buildings III and VI-South. Owner shall identify the proposed number of Workforce Housing Units within each Site Plan for the Project prior to certification. Following approval of each Site Plan, Owner shall record a separate Declaration specifying the number of affordable housing units required. The form Declaration to be utilized following approval of each Site Plan is attached hereto as Exhibit “B”. Notwithstanding the variations in product types within each Site Plan, the distribution of Workforce Housing Units may be modified so long as the total number of Workforce Housing Units of each Site Plan meets the minimum twenty percent (20%) 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 of a 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 percent (20%) minimum. In the event Owner has not met the minimum twenty percent (20%) workforce housing requirement, the City may withhold additional COs for the remaining number of units required to meet the Workforce Housing Unit minimum of each Site Plan unless the additional COs requested are for Workforce Housing Units. Owner shall certify the number of all Workforce Housing Units of the Project to ensure the twenty percent (20%) minimum is met (“Workforce Housing Certification”). The total twenty percent (20%) minimum workforce housing requirements for the height increase may be achieved through the designation of Workforce Housing Units for sale, rental units, or any combination thereof.
- c. Owner has agreed that it shall be required to make a total payment of Nine Hundred Sixty Thousand Dollars (\$960,000) to the City of Delray Beach Housing Trust Fund in lieu of providing six (6) Workforce Housing Units. This payment shall be made simultaneous or prior to the issuance of the first vertical building permit of any “For Sale” Unit.
- d. Designation of Workforce Housing Units for Rental Units. Owner shall record a Declaration 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.

- e. Designation of Workforce Housing Units for For-Sale Units. For any residential unit designated as a Workforce Housing Unit, the Owner shall record a Declaration against the unit prior to closing, identifying the for-sale unit is designated 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 Declaration shall be recorded in the Public Records of Palm Beach County, Florida and shall run with the land. Upon recording of the Declaration, Owner shall provide the City with a copy of the recorded Declaration.

5. **Reporting of Workforce Housing Unit.** To ensure the Owner's compliance with the Affordability Controls and restrictions contained in this Agreement, not later than the tenth (10th) day of each calendar month for every month during the term of this Agreement, 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 Agreement. 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.

6. **Transfer of Workforce Housing Unit.** 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 6.c. below.

- a. The Workforce Housing Units shall be available only to an Eligible Occupant as defined in the LDR as modified by this Agreement. All Transfers require written submission of a notification and affidavit to the City, the form of which is attached as Exhibit “D” and made a part hereof, 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 Low Income or Moderate Income category, as applicable, 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 Agreement.
 - i. Transfers by inheritance to the Unit Owner’s spouse, qualified domestic partner or offspring;

- ii. Transfers of title to a spouse as part of a divorce decree, dissolution proceeding, or to a qualified domestic partner as part of a court approved property settlement agreement;
 - iii. Acquisition of title or interest therein in conjunction with marriage or qualified domestic partner; or
 - iv. Exempt Transfer.
- 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 recording of the Original Agreement in the Public Records of Palm Beach County, Florida 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 Low Income or Moderate Income, as applicable, or accepts employment outside the City.
- h. To the extent any terms of the City's Workforce Housing Ordinances in the LDR are inconsistent with the terms of the Approval, the terms of the Approval shall control. In all other cases, the terms of the City's Workforce Housing Ordinance in the LDR are hereby incorporated by reference as if fully set forth herein.

7. **Covenants and Restrictions as to Price.**

- a. The Workforce Housing Units shall be restricted as workforce housing for Eligible Occupants in accordance with this Agreement for a period of forty (40) years commencing from the date of recording of the Original Agreement in the Public Records of Palm Beach County, Florida ("Restricted Period").
- b. The covenants and restrictions as to price may be enforced by the City by virtue of the recording of each Declaration and this Agreement 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 City, 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 Agreement. 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 City, its successors, and assigns may enforce the Declarations separately or in conjunction with each other. No amendments to the Declarations shall be made unless by written instrument approved by the City.
- d. All deeds transferring a Workforce Housing Unit during the Restricted Period shall reference the Declaration and shall include the recording information of the Declaration. All sales contracts for Workforce Housing Units 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 Agreement.
- 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, including but not limited to this Agreement.

8. **Approved Site Plan.** Owner hereby acknowledges that all future site plan applications shall be filed in accordance with the City's LDR and the Approval. Owner further agrees that 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 applicable LDR. 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 the affidavit, the form of which is attached as Exhibit "D" and made a part hereof, and a copy of the recorded Covenant referenced in Paragraphs 6 and 7 above, as applicable.

9. **Covenant Running With the Land.** This Agreement 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 Agreement 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.

10. **Consistency.** The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of the Agreement dealing with the Property are consistent with the City's adopted Comprehensive Plan, Land Development Regulations, and the Approval.

11. **Waiver.**

- a. No waiver of any provision of this Agreement 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 Agreement shall in no manner affect the right to enforce any provision of this Agreement 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.

12. **Pursuit of Rights and Remedies.**

- a. For default, violation or breach of any of the provisions of this Agreement, the City (the "Enforcing Party"), 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 in the LDR, as applicable, and the Site Plan, or to prevent or enjoin a violation, or for damages: (i) against the Workforce Housing Units; (ii) against the landlord of a Workforce Housing Unit lease, or (iii) against the tenant of a Workforce Housing Unit lease. The Enforcing Party shall first provide Owner with notice of default in accordance with Paragraph 13 of this Agreement. Owner shall be provided sixty (60) days to demonstrate compliance with this Agreement. If Owner does not cure said default and demonstrate compliance with this Agreement within sixty (60) days, the Enforcing Party may 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 Workforce Housing Units or in the case of emergency, Owner shall be provided notice of default, in accordance with Paragraph 13 of this Agreement, 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 Agreement, each party shall pay for its own its attorneys' fees and costs, including without limitation, at the trial and appellate levels.
- c. This Agreement 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 Agreement, the parties agree and consent to the County of Palm Beach as the appropriate venue of such litigation. OWNER 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 AGREEMENT 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 Agreement are special, unique, and of extraordinary character, and that in the event of a violation of the terms, conditions and provisions of this Agreement, 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 Agreement 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 Agreement, 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 Agreement, 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 surveys of occupants and to verify the compliance with the terms and conditions of this Agreement, 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 requirements of City's Workforce Housing Ordinances in the LDR and this Agreement.
- 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.

13. **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:

Edwards Atlantic Avenue, LLC
495 S. High Street, Suite 150
Columbus, Ohio 43215

Edwards Intracoastal, LLC
495 S. High Street, Suite 150
Columbus, Ohio 43215
- b. As to the City:

City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

With copy to:

City of Delray Beach
200 NW 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

- c. As to Delray Beach Community Land Trust, Inc.:

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

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

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

16. **Miscellaneous.**

- a. Where necessary or appropriate to the meaning of this Agreement 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 Agreement as a whole and not to any particular articles, section or other paragraph of this agreement unless specifically noted otherwise in this Agreement.

- c. Each party hereto acknowledges that all parties hereto have participated equally in the drafting of this Agreement and that accordingly, no court construing this Agreement 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 Agreement are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Agreement.
- e. This Agreement shall be recorded at the expense of Owner. This Agreement 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.
- f. This Agreement, 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 Agreement.

17. **Assurances.** During the term of this Agreement, 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.

18. **Entire Agreement.** This Agreement, 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 Agreement 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.

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

20. **Governmental Functions.** Notwithstanding anything to the contrary contained

in this Agreement:

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

21. This Agreement does not constitute a construction permit or authorization to commence development or construction.

22. All of the Property described in this Agreement shall in all respects be subject to the lien, charge, covenants, and encumbrance of this Agreement, and nothing contained herein or done shall affect the covenants, lien, charge, or encumbrance effected by the Original Workforce Housing Covenant dated May 22, 2015, and recorded on June 4, 2015, in Official Records Book 27581, Page 1544 in the Office of the Clerk of the Circuit Court of Palm Beach County, State of Florida ("Original Agreement"), except as expressly modified by this Agreement.

23. The Owner and City intend that this Agreement shall not disturb the existing priority of the Original Agreement, which this Agreement amends and restates as described above. The parties hereto further intend that this Agreement shall not constitute a novation and shall in no way adversely affect or impair the lien or covenant priority of the Original Agreement. Owner agrees to cooperate with City so that the interests of City are fully protected, and the intent of this Agreement can be effectuated. In the event of a conflict between the terms of this Agreement and the Original Agreement, the terms of this Agreement shall control. Owner agrees that it has no defenses, set-offs, or counter-claims to the Original Agreement, and the City is not in default of any provisions of the Original Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be executed on its behalf by its respective officers thereunto duly authorized.

WITNESS #1

Signature

Printed or Typed Name

Address

OWNER

By: _____

Name: Jeffrey W. Edwards

Title: Manager
for

Company: Edwards Atlantic Avenue, LLC

Date: _____

WITNESS #2:

Signature

Printed or Typed Name

Address

STATE OF OHIO
COUNTY OF FRANKLIN, SS

The foregoing instrument was acknowledged before me this ____ day of _____, 202____, by **JEFFREY W. EDWARDS**, the **MANAGER** of **EDWARDS ATLANTIC AVENUE, LLC**, an Ohio limited liability company, on behalf of the limited liability company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Personally known ____ OR Produced Identification
Type of Identification Produced _____

Notary Public – State of Ohio

WITNESS #1

Signature

Printed or Typed Name

Address

WITNESS #2:

Signature

Printed or Typed Name

Address

STATE OF _____
COUNTY OF _____

STATE OF OHIO
COUNTY OF FRANKLIN, SS

The foregoing instrument was acknowledged before me this ____ day of _____, 202____, by **JEFFREY W. EDWARDS**, the **MANAGER** of **EDWARDS INTRACOASTAL, LLC**, an Ohio limited liability company, on behalf of the limited liability company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Personally known ____ OR Produced Identification
Type of Identification Produced _____

OWNER

By: _____

Name: Jeffrey W. Edwards

Title: Manager
for

Company: Edwards Intracoastal, LLC

Date: _____

Notary Public – State of Ohio

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

By: _____
Alexis Givings, City Clerk

By: _____
Thomas F. Carney, Jr., Mayor

Approved as to Form:

By: _____
Lynn Gelin, City Attorney

[Remainder of Page Intentionally Left Blank]

EXHIBIT “A”
Legal Description

Tract A, “Atlantic Crossing”, according to the Plat thereof, as recorded in Plat Book 125, Page 80 of the Public Records of Palm Beach County, Florida

EXHIBIT "B"
Declaration Form

Prepared by and Return to:

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

Address: _____
PCN: _____

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration"), is made this ____ day of _____, 20__ (the "Effective Date"), by and between _____, whose address is _____, (referred to herein as "Owner"), for the benefit of 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 number of Workforce Housing Units required within the portion of the property more particularly described in Exhibit "A" and made a part hereof (the "Property"); and

WHEREAS, _____ is the owner of property included within a development known as Atlantic Crossing, which lies in the City of Delray Beach, County of Palm Beach, and the State of Florida; and

WHEREAS, a Restated Restrictive Covenant Master Agreement for the Property has been recorded in Official Records Book _____, Page _____, of the Public Records of Palm Beach County, Florida ("Master Agreement"); and

WHEREAS, as a condition to the Master Agreement, Owner is required to designate Workforce Housing Units, divided between Low Income and Moderate Income Households, equal to twenty percent (20%) of the residential units above thirty (30) units per acre and additionally designate Workforce Housing Units, divided between Low Income and Moderate Income Households, equal to twenty percent (20%) of the residential units on the top floor of the Buildings III and VI-South, as defined in the Master Agreement ("Workforce Housing Units") within each site plan, and that Owner is required to record a separate Declaration of Restrictive Covenants following the approval of each site plan, identifying the total number of workforce housing units to be included with that particular site plan; and

WHEREAS, on _____, 20____, the City approved Site Plan Application _____ (application number) allowing for a total of _____ residential units above thirty (30) units per acre and a total of _____ residential units on the top floor of Building _____ on the Property ("Project"); 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 the Master Agreement.

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:

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

ii. **Workforce Housing.** Owner hereby agrees to provide the following number of Workforce Housing Units within the Project:

a. For Sale Units: _____ Moderate Income Workforce Housing Units

b. For Sale Units: _____ Low Income Workforce Housing Units

c. Rental Units: _____ Moderate Income Workforce Housing Units

d. Rental Units: _____ Low Income Workforce Housing Units

iii. **Master Agreement.** Owner hereby acknowledges that the terms of the Master Agreement shall remain in full force and effect. All defined terms in the Master Agreement shall have the same meaning herein.

iv. **Covenant Running with the Land.** This Declaration is to run with the land and shall bind all parties and persons, unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the Declaration in whole, or in part, provided that the Declaration has first been modified, amended or released in accordance with the provisions set forth in Paragraph v herein.

v. **Modification, Amendment, Release.** This Declaration shall not be modified, amended or released as to any portion of the Property except by written instrument, executed by the then owner or owners of the Property affected by such modification, amendment or release and approved in writing by the City. Any amendment, modification or release of this Declaration shall be recorded in the Public Records of Palm Beach County, Florida.

vi. **Recording and Effective Date.** This Declaration shall not become effective and shall not be recorded in the Public Records of Palm Beach County, Florida and the restriction on

the development of the Property contained herein shall not become enforceable until all required governmental entities have approved and adopted the Project, with no appeal having been filed or if filed resolved so as to uphold the approvals, which will allow for the development of the Property in accordance with the restrictions herein (“Final Approval”). Declarant shall record this Declaration not later than 10 business days after Final Approval.

vii. **Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

[Signature Page to Follow]

IN WITNESS WHEREOF, said Grantor has signed and sealed these presents the day and year first above written.

WITNESS #1

Signature

Printed or Typed Name

Address

WITNESS #2:

Signature

Printed or Typed Name

Address

STATE OF _____
COUNTY OF _____

OWNER

By: _____

Name: _____

Title: _____

for

Company: _____

Date: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification

Type of Identification Produced _____

Notary Public – State of _____

ATTEST:

CITY OF DELRAY BEACH

By: _____
City Clerk

By: _____
Director of Development Services

Approved as to Form:

By: _____
City Attorney

EXHIBIT “A” TO DECLARATION
Legal Description

**EXHIBIT “C”
Report Form**

EXHIBIT "D"
Affidavit Form

WORKFORCE HOUSING AFFIDAVIT/NOTICE

STATE OF _____
COUNTY OF _____

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 addressed _____ and legally described as:

PCN: _____

2. As prospective purchaser(s)/tenants(s), I/we understand that I/we must meet the income requirements for either Low Income or Moderate Income Workforce Housing Units as defined by the Restrictive Covenant Master Agreement for the Property recorded in Official Records Book _____, Page _____, of the Public Records of Palm Beach County, Florida ("Master Agreement"). 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 the Master Agreement.

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: _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ (name of person acknowledging).

Personally known ____ OR Produced Identification

Type of Identification Produced _____

Notary Public – State of _____

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

Sign: _____

Print Name: _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ (name of person acknowledging).

Personally known ____ OR Produced Identification

Type of Identification Produced _____

Notary Public – State of _____

Approved by the Director of Neighborhood and Community Services

Sign: _____

Print Name: _____

CC: Delray Beach Community Land Trust