

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into this 16th day of January, 2017 by and between the City of Delray Beach, Florida, a municipality incorporated pursuant to the laws of the State of Florida ("City") and Edwards CDS LLC, a Delaware limited liability company ("Edwards CDS"), Edwards Atlantic Avenue, LLC, an Ohio limited liability company ("Edwards Atlantic") and Edwards Intracoastal, LLC, an Ohio limited liability company (Edwards Intracoastal")(collectively, Edwards CDS, Edwards Atlantic and Edwards Intracoastal will be referred to herein as "Edwards" or "Plaintiffs").

RECITALS

WHEREAS, City is a municipality incorporated under the laws of Florida;

WHEREAS, Edwards Atlantic and Edwards Intracoastal, as successor in title to CDS Delray and CDR Atlantic, own certain property located in the City and subject to certain vested development approvals granted by the City to Edwards as the applicant for a mixed-use development project ("Atlantic Crossing"), including the Conditional Use approved by the City Commission on December 4, 2012 ("Conditional Use") and the site plan approved by the City Site Plan Review and Appearance Board in November and December 2013 and further approved by the City Commission on January 21, 2014 (the "2013 Approved Site Plan");

WHEREAS, the Plaintiffs or their predecessors in interest have filed a lawsuit regarding their rights in connection with Atlantic Crossing in the United States District Court for the Southern District of Florida styled Edwards CDS, LLC, et al., v. City of Delray Beach, Case No. 9:15-CV-81405-DMM (the "Federal Lawsuit");

WHEREAS, on July 26, 2016, the Court granted the City's Motion to Dismiss on the federal damages claims and remanded the remaining causes of action to the Florida state court in the matter styled Edwards CDS, LLC v. City of Delray Beach, 2015 CA 007155 ("State Lawsuit"), which remains pending along with the appeal of the dismissal of the federal court claims in the matter styled Edwards CDS, LLC, et al., v. City of Delray Beach, 16-15693 (11th Cir.) ("Federal Appeal"). The parties agree they cannot use, and will not use, this Agreement or any action taken by any party under this Agreement as a basis for staying or delaying the State Lawsuit, the Federal Lawsuit, and/or the Federal Appeal;

WHEREAS, the State Lawsuit among other things, seeks a declaration as to the ownership of certain property including two former platted alleys that were previously vacated and a portion of N.E. 7th Avenue ("Former Platted Alleys" and "N.E. 7th Avenue") and of rights to certification of the 2013 Approved Site Plan;

WHEREAS, the City, by and through the City Commission, has raised concerns regarding traffic circulation based on the 2013 Approved Site Plan, and in aid of settlement, Plaintiffs are willing to submit for consideration a proposed Class II Modification to, in addition to other small changes, provide a two-way, ingress and egress drive from the Atlantic Crossing central core at N.E. 7th Avenue to U.S. Highway One and change the location of an entrance to one of the parking garages, subject to the terms and conditions of this Settlement Agreement;

WHEREAS, the Former Platted Alleys have been abandoned;

WHEREAS, in an effort to limit risk and conserve their resources, the City and Plaintiffs desire to resolve the State Lawsuit and Federal Appeal by entering into this Settlement Agreement to resolve all issues that were raised or could have been raised in the State Lawsuit and Federal Appeal and between the Parties through the date of this Settlement Agreement.

NOW THEREFORE, in consideration of mutual promises contained herein, the City and Plaintiffs (collectively, the "Parties") agree as follows:

1. Recitals. The Parties represent that the foregoing recitals are true and correct and fully incorporate them as terms of this Settlement Agreement.
2. Effective Date. The Effective Date of this Settlement Agreement (the "Effective Date") shall be the date upon which the last of the Parties to execute this Agreement does in fact execute this Agreement.
3. Processing Schedule. As part of this agreed settlement, Edwards will apply for, and the City will process, a Class II Modification to provide a two-way, ingress and egress drive from the Atlantic Crossing central core at N.E. 7th Avenue to U.S. Highway One and change the location of an entrance to one of the parking garages, ("Modification") which requires minor changes to the Preliminary Plat Approval granted on April 20, 2015 (the "Preliminary Plat Approval") and the presently pending final plat approval for Atlantic Crossing (the "Final Plat Approval"). The City will process the requests concurrently on the following schedule:
 - At a City Commission meeting on January 24, 2017, in conformance with its Code of Ordinances and practice, the City Commission shall consider and vote on any waivers necessary and associated with the Modification application;
 - At a City Commission meeting on January 24, 2017, the City Commission shall consider and vote on whether to approve this Settlement Agreement;
 - In the event the Settlement Agreement is approved by the City Commission at a City Commission meeting on January 24, 2017, Plaintiffs shall have the right to apply for site work and foundation building permits, which will be promptly processed in accordance with City procedures. In the event the Modification is approved by SPRAB and/or approved on appeal by the City Commission, Plaintiffs shall be entitled to apply for all other building permits, which will be promptly processed in accordance with City procedures. In the event that Plaintiffs elect to terminate the Agreement, any permits issued in relation to the Modification shall not survive termination.
 - In the event the Settlement Agreement is approved by the City Commission at a City Commission meeting on January 24, 2017, Plaintiff shall have the right to then seek SPRAB approval of the Modification, provided the Modification application and all reasonably requested information has been submitted to the



City three weeks prior to the SPRAB meeting or a shorter period if acceptable to the City and not inconsistent with its Code of Ordinances;

- In the event the Settlement Agreement is approved by the City Commission at a City Commission meeting on January 24, 2017 but either SPRAB denies the Modification or there is a timely appeal to the Commission of a SPRAB approval of the Modification, then the City will use its best efforts to review the denial of, or the appeal of the approval of, the Modification at the next regularly scheduled meeting or, if that is not possible, to call a special meeting shortly thereafter.
- In the event the Settlement Agreement is approved by the City Commission and the Modification is approved, the City Commission agrees Edwards shall re-submit the Preliminary Plat to P&Z for final plat certification on the next available scheduled or special meeting, P&Z shall consider and vote on whether to certify the final plat to the City Commission along with an accompanying easement for the road identified on the Modification (reserving use of the easement area for purposes of lot frontage calculations) to be recorded immediately after recordation of the Final Certified Plat;
- In the event that all of the conditions in the preceding sub-paragraph are satisfied, the City Commission shall consider and vote on the final plat approval at the next scheduled or special meeting.

The City recognizes that other than changes necessary to conform the Final Plat to the 2013 Approved Site Plan and Modification, no other changes, information, conditions, or tasks are required for the review of the Preliminary Plat or Final Plat. This includes, but is not limited to, the City's recognition that Atlantic Crossing is within the Delray Beach and Palm Beach County Traffic Concurrency Exemption Area and Coastal Residential Exception Boundary and that no traffic study is required for either the Preliminary Plat or Final Plat review or certification.

4. Ownership of Former Platted Alleys and N.E. 7th Avenue. If the City Commission approves the Settlement Agreement, the City will recognize that absent its demand for reconveyance, all right and title to the Former Platted Alleys and N.E. 7th belongs to Plaintiffs; thus, provided that Edwards does not withdraw the Site Plan Amendment pursuant to Paragraph 5 herein, the City will not deem its demand for reconveyance of the Former Platted Alleys and N.E. 7th Avenue as an impediment or title defect preventing plat certification and final plat approval and the Modification (attached as Exhibit A). Within five (5) days after the 2013 Approved Site Plan and Modification and the Plat are final, unappealable and have not been appealed, the City agrees to deliver all documents and such resolutions rescinding any asserted reverter rights and/or reservations of interests therein and would:
 - a. rescind its demand for reconveyance of the Former Platted Alleys and N.E. 7th Avenue and relinquish any and all claim to the Former Platted Alleys and N.E. 7th Avenue;



- b. terminate the Declaration of Reserved Rights and Agreement Not To Encumber N.E. 7th Ave, recorded in the Public Records of Palm Beach County at ORB 23166, Page 1375, and The Declaration of Reserved Rights and Agreement Not To Encumber The Abandoned Alley recorded in the Public Records of Palm Beach County at ORB 23166, Page 1447; and
 - c. execute and record in the Public Records of Palm Beach County, Florida, "Certification of Termination and Release" as set forth in the attached Exhibit B and Exhibit C.
- 5. Termination. If the City Commission approves this Settlement Agreement, waivers, and Modification after duly noticed public hearings on January 24, 2017, and a third party challenge to the Settlement Agreement, waivers or Modification is filed, Plaintiffs shall have a unilateral right to terminate this Agreement in their sole and unilateral discretion. In the event of termination under this Section, such termination will occur without prejudice to either party's rights and positions in the State Lawsuit, Federal Lawsuit or Federal Appeal, including Plaintiffs' position as to the 2013 Approved Site Plan and Plaintiffs may continue to pursue the State and Federal Lawsuits and implementation of the 2013 Site Plan without the road as negotiated for by the City and will seek monetary damages in excess of \$40,000,000 in delay damages. Plaintiffs do not waive any right to seek reimbursement for the reasonable cost of preparation of the Modification and required documents for the process outlined in Section 3 as damages, including against any third party that challenges the Settlement Agreement or Modification.
- 6. Dismissal and Payment of Legal Fees. In the event the 2013 Approved Site Plan and Modification, attached as Exhibit A is final and unappealable (meaning that no timely third party challenge is lodged or all timely third party challenges, administratively and judicially, including by a writ of cert, injunction or declaratory judgment action have been resolved) and certified by the City (including the recordation of the Final Plat) in accordance with the applicable 2013 LDRs ("Applicable LDRs") and the processing schedule set forth in Paragraph 3, all remaining claims pending in the Federal Lawsuit, the State Lawsuit and the Federal Appeal shall be dismissed with prejudice within ten (10) days after the later of (a) the expiration of all applicable appeal periods, (b) timeframes during which a third-party challenge can be filed, or (c) the final disposition of any such challenges or appeals ("Dismissal Date"), with each party bearing their own attorneys' fees and costs.
- 7. Inadmissibility. The Parties have stipulated that because it is in furtherance of settlement, this Settlement Agreement, nor anything related to the Settlement Agreement, Modification, waivers, or the negotiations of the Parties related thereto either prior to or during the Modification and waiver application process shall be admissible in the State Lawsuit, Federal Lawsuit, or Federal Appeal. . The inadmissibility stipulation shall survive this Settlement Agreement, regardless of the outcome of City's review of the Modification, waivers, Settlement Agreement or in the event of withdrawal of same.



8. General Release of Claims by City. Upon the Dismissal Date, City, on behalf of itself, its commissioners, staff, employees, attorneys, representatives and agents ("City Releasing Parties") hereby remises, releases, acquits, waives, satisfies, covenants not to sue and forever discharges, Plaintiffs, and any and all of their members, owners, employees, agents, representatives, consultants, and attorneys ("Plaintiff Released Parties") of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, releases, promises, variances, trespasses, damages, judgments, liabilities, executions, claims (including any claim to ownership of the Former Platted Alleys) and demands whatsoever, in law or in equity, that City Releasing Parties has or may have (known or unknown) against Plaintiff Released Parties other than for the enforcement of this Settlement Agreement, or any outstanding taxes or fees from the beginning of the world up and through the date of this Settlement Agreement, including but not limited to, any claim that was or could have been asserted in the Lawsuit.
9. General Release of Claims by Plaintiffs. Upon the Dismissal Date, Plaintiffs, and any and all of their members, owners, agents, representatives, consultants, and attorneys ("Plaintiff Releasing Parties") hereby remises, releases, acquits, waives, satisfies, covenants not to sue and forever discharges, City, and its commissioners, staff, employees, attorneys, representatives and agents ("City Released Parties") of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, releases, promises, variances, trespasses, damages, judgments, liabilities, executions, claims and demands whatsoever, in law or in equity, that Plaintiff Releasing Parties has or may have (known or unknown) against City Released Parties other than enforcement of this Settlement Agreement from the beginning of the world up and through the date of this Settlement Agreement, including but not limited to, any claim that was or could have been asserted in the Lawsuit.
10. Vesting of 2013 Site Plan And Modification. The Parties agree that the Modification shall not become vested until it becomes final, unappealable and any appeal or challenge, administratively or judicially becoming finally resolved, at which point it shall supersede and replace those portions of the 2013 Approved Site Plan that it modifies. If this Settlement Agreement terminates pursuant to Section 5 above, the parties return to the status quo that existed prior to this Settlement Agreement without any prejudice to any of their rights, which will not be impacted in any manner whatsoever by the Modification or any challenge related to it. Upon the 2013 Approved Site Plan as modified by the Modification ("2013 Approved Site Plan and Modification") becoming final, unappealable and any appeal or challenge, administratively or judicially becoming finally resolved, Plaintiffs, and their successors and assigns, right to build Atlantic Crossing in conformance therewith shall become vested and subject only to the Universal Approval Expiration Date as set forth in the Development Agreement entered into July 28, 2011 and recorded in the public records of Palm Beach County at ORB 24662, Page 1975 (the "Development Agreement") and the Certificate of Universal Approval Expiration Date recorded in the public records of Palm Beach County at ORB 24711, Page 0007. To this end, the City acknowledges that the 2013 Approved Site Plan and Modification as well as the Conditional Use, with which the 2013 Approved Site Plan and Modification is

consistent, shall not expire prior to September 9, 2021. All prior approvals, resolutions, and agreements by and between the Parties, their predecessors, successors or assigns, which are inconsistent with the 2013 Approved Site Plan and Modification and the terms of this Settlement Agreement shall be deemed superseded, rescinded and no longer of any force or effect once the 2013 Approved Site Plan and Modification becomes final and unappealable. In the event of any such appeal or other challenge, any time periods applicable to Atlantic Crossing (including but not limited to the Modification), the action appealed or challenged (administratively or judicially) shall toll (for a like number of days) until after such appeal or challenge is resolved.

11. Authority. The Parties represent and warrant that they have full rights and authority to create a legally binding commitment to each other in entering into this Settlement Agreement and that they have not factored nor pledged any of the rights addressed in this Settlement Agreement.
12. Successors and Assigns. The rights and responsibilities contained in this Settlement Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns and the Parties may assign such rights and responsibilities without the consent of any other party, except for those obligations of City that may not be assigned pursuant to law.
13. Construction. The Parties acknowledge that this is a negotiated Settlement Agreement, both parties were represented by counsel of their choosing, and as such, none of the terms of this Settlement Agreement shall be construed against any party on the basis that such party, or its counsel, drafted this Settlement Agreement.
14. Headings. The headings used in this Settlement Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.
15. Amendment. No waiver, modification, alteration, or amendment to this Settlement Agreement shall be valid unless signed by the party against which such modification, alteration, or amendment seeks to be enforced.
16. Merger. All negotiations, written and oral communications, and correspondence relating to this Settlement Agreement are merged herein. The Parties agree and acknowledge that there have been no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, among or between the Parties about the subject matter of this Settlement Agreement other than those set forth herein.
17. No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and assigns.
18. Governing Law. This Settlement Agreement shall be governed by and construed according to the laws of the State of Florida, without giving effect to the conflicts of laws principles thereof. Jurisdiction and venue for any dispute regarding this Settlement Agreement shall be exclusively in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.



19. Other Agreements. The Parties shall in good faith work together and take such other actions as are reasonable to implement this Agreement.
20. Severability. The Parties agree that if any provision of this Settlement Agreement is contrary to, prohibited by, or deemed invalid under, any applicable law, rule or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement will not be so invalidated, and will be given full force and effect so far as possible.

Furthermore, if any provision of this Agreement may be construed to have more than one meaning, and one meaning would make the provision invalid or otherwise voidable or unenforceable, while another meaning would make the provision valid and enforceable, the provision will have the meaning which makes it valid and enforceable.

This severability clause shall not apply if the provision or provisions to be severed is an essential part of the agreement of the parties.

21. Counterparts. This Settlement Agreement may be executed in any number of counterparts, and by the different Parties hereto on the same or separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange or delivery of copies of this Settlement Agreement and of signature pages by facsimile or email transmission shall constitute effective execution and delivery of this Settlement Agreement as to the parties and may be used in lieu of the original Settlement Agreement for all purposes. The signature of a Party transmitted by facsimile or email shall be deemed to be its original signature for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year noted below.

CITY OF DELRAY BEACH,
a Florida Municipal Corporation

By: _____
Cary Glickstein, Mayor
Dated: January _____, 2017.

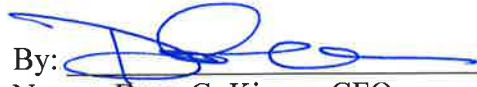
ATTEST:

City Clerk
Approved as to form and legal sufficiency

City Attorney

EDWARDS CDS, LLC,
a Delaware limited liability company

By: EDWARDS ATLANTIC AVENUE, LLC
An Ohio limited liability company

By: 
Name: Dean G. Kissos, CFO

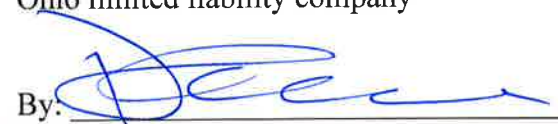
Dated: January 16, 2017.

EDWARDS ATLANTIC AVENUE, LLC,
an Ohio limited liability company

By: 
Name: Dean G. Kissos, CFO

Dated: January 16, 2017.

EDWARDS INTRACOASTAL, LLC, an
Ohio limited liability company

By: 
Name: Dean G. Kissos, CFO

Dated: January 16, 2017.

EXHIBIT A
MODIFICATION

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

EXHIBIT B
CERTIFICATION OF TERMINATION AND RELEASE
FORMER PLATTED ALLEYS

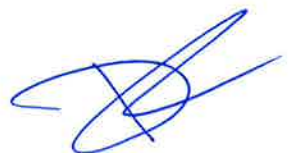
A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

EXHIBIT C
CERTIFICATION OF TERMINATION AND RELEASE
N.E. 7TH AVENUE

A handwritten signature in blue ink, consisting of a stylized, cursive 'C' followed by a loop and a final stroke.