

Prepared by: RETURN:

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

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### LANDSCAPE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_, 20\_\_ by and between the City of Delray Beach, Florida ("City") and Edwards Atlantic Avenue, LLC ("Owner").

#### WITNESSETH:

WHEREAS, in order to provide landscaping in the City, the City Commission has adopted ordinances setting forth requirements for landscaping; and,

WHEREAS, in order to comply with the City's landscape Ordinance the Owner shall be allowed to install landscaping material in the right-of-way of Atlantic Avenue\* pursuant to the terms of this Agreement; and,

WHEREAS, this Agreement shall in no way be deemed an actual, constructive or any other type of abandonment by the City of the public right-of-way of Atlantic Avenue; and,

WHEREAS, the City reserves the right at any time to utilize the right-of-way for right-of-way purposes; and,

WHEREAS, the public will benefit from the beautification of areas along its streets by the addition of landscaping; and,

WHEREAS, this Agreement is not effective unless the Owner has submitted a landscape plan and it has been approved by the City; and,

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party.

\* For landscaping and Irrigation on the north side of Atlantic Avenue between the base of the intra-coastal bridge and NE 6th Avenue (Federal Highway)

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Parties hereby represent and warrant that the above recitals are accurate and correct and hereby incorporate them in this Agreement.

2. The Owner shall perform all conditions as required by the City or any Board of the City in conjunction with the site plan and review process for the required installation and maintenance of the landscaping. The subject property, further described in Exhibit "A", shall have an approved landscape plan, Exhibit "B", attached hereto and incorporated herein by reference.

3. The Owner shall be responsible for purchasing and installing all plant, tree, hedge or grass material or any other material as required by the Owner's approved landscaping plan. Owner shall further be responsible for obtaining all permits and approvals from all applicable governmental agencies.

4. The Owner hereby agrees to maintain the plantings in the right-of-way in accordance with the City's Ordinances and the terms and conditions of this Agreement. The Owner shall be responsible to maintain, which means the proper watering and proper fertilization of all plants and keeping them as free as practicable from disease and harmful insects; to properly mulch the plant beds; to keep the premises free of weeds; to mow and/or cut the grass to a proper height; to properly prune all plants which includes (1) removing dead or diseased parts of plants, or (2) pruning such parts thereof which present a visual hazard for those using the roadway. To maintain also means removing or replacing dead or diseased plants in their entirety, or removing or replacing those that fall below original project standards. All plants removed for whatever reason shall be replaced by plants of the same grade, not necessarily the same plant but of acceptable quality to the City and the Owner, as specified in the original plans and specifications and of a size comparable to those existing at the time of replacement. To maintain also means to keep litter removed from the landscaped areas in the right-of-way. Plants shall be those items which would be scientifically classified as plants and include but are not limited to trees, grass, or shrubs.

5. If at any time after the execution of this Agreement by the Owner, it shall come to the attention of the City that the landscaping is not properly maintained pursuant to the terms and conditions of this Agreement then the City may at its option issue a written notice that a deficiency or deficiencies exist, by sending a certified letter to the Owner. Thereafter, the Owner shall have a period of thirty calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the City may at its option, proceed as follows:

- (a) ) Maintain the landscaping or part thereof, and invoice the Owner for expenses incurred.
- (b) ) Terminate this Agreement and require the Owner to comply with the City's current Ordinance on landscaping.
- (c) ) Cite the Owner for failure to comply with the City's Ordinances.

6. At all times hereto, the Owner shall own and maintain all landscaping installed in the right-of-way by the Owner.

7. If for any reason the City decides that it needs the right-of-way of Atlantic Avenue or for any other public purpose this Agreement shall terminate, and the Owner shall be required to comply with the City's current Code of Ordinances regarding landscape requirements. Owner shall remove all landscaping from the right-of-way within 20 days of such notification, if so requested by the City.

8. Owner shall at all times hereafter indemnify, hold harmless and defend the City its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional or negligent act of, or omission of, Owner, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action or demand, Owner shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

The Owner shall indemnify and hold harmless the City, its officers and employees from all suits, actions, claims and liability arising solely out of the Owner's installation and maintenance of landscaping in the City's right-of-way.

9. This Agreement shall constitute the entire Agreement of the parties with respect to the subject matter of it. All prior understandings and agreements between the parties with respect to such matters are merged into this Agreement, which alone fully and completely expresses their understanding.

10. This Agreement may not be assigned or transferred by the Owner, in whole or part without the written consent of the City.

11. This Agreement shall be binding on the Parties, their respective heirs, successors, legal representatives, and permitted assigns and shall be recorded in the Public Records of Palm Beach County and shall run with the land.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Approved as to legal form  
and sufficiency:

\_\_\_\_\_  
City Attorney

WITNESSES:

Susan W. Gos  
Susan W. Gos  
(Print or Type Name)

Rachel Farrell  
Rachel Farrell  
(Print or Type Name)

John A. Leibold  
(OWNER) EDWARDS ATLANTIC AVENUE, LLC  
JOHN A. LEIBOLD, VICE PRESIDENT  
(Print or Type Name)

STATE OF OHIO

COUNTY OF Franklin

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of May, 2018, by John A. Leibold, as \_\_\_\_\_  
(name of officer or agent, title of officer or agent), of \_\_\_\_\_  
Vice-President of Edwards Atlantic Avenue, LLC (name of LLC corporation  
acknowledging), a Ohio limited liability company (state or place of incorporation)  
corporation, on behalf of the corporation. He/She is personally known to me or has produced  
\_\_\_\_\_ (type of identification) as identification.



Susan Wilgus  
Notary Public, State of Ohio  
My Commission Expires 06-25-2026

Susan Wilgus  
Signature of Person Taking Acknowledgment

Susan Wilgus  
Name Typed, Printed or Stamped



947 Clint Moore Road  
Boca Raton, Florida 33487

SURVEYING & MAPPING  
Certificate of Authorization No. LB7264

Tel: (561) 241-9988  
Fax: (561) 241-5182

## SKETCH AND LEGAL DESCRIPTION (NOT A SURVEY) ATLANTIC CROSSING - MAINTENANCE AREA A

### LEGAL DESCRIPTION

A PORTION OF ATLANTIC AVENUE, BEING A PORTION OF THE PLATTED ROADWAY FOR ATLANTIC AVENUE AND PORTIONS OF BLOCK 116, "TOWN OF LINTON", AS RECORDED IN PLAT BOOK 1, PAGE 3 AND TRACT F OF "CDS DELRAY DEVELOPMENT", AS RECORDED IN PLAT BOOK 116 AT PAGES 172 THROUGH 182 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT A OF "ATLANTIC CROSSING", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 125 AT PAGES 80 THROUGH 85 OF SAID PUBLIC RECORDS; THENCE SOUTH  $00^{\circ}52'15''$  EAST, ALONG THE SOUTHERLY EXTENSION OF THE EAST LINE OF SAID TRACT A; A DISTANCE OF 20.00 FEET; THENCE SOUTH  $90^{\circ}00'00''$  WEST, ALONG A LINE 20.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTH ONE-HALF OF SECTION 16, TOWNSHIP 46 SOUTH RANGE 43 EAST, A DISTANCE OF 647.24 FEET; THENCE NORTH  $00^{\circ}52'16''$  WEST, A DISTANCE OF 34.47 FEET; THENCE NORTH  $89^{\circ}07'44''$  EAST, ALONG A LINE RADIAL TO THE NEXT DESCRIBED CURVE, A DISTANCE OF 20.00 FEET TO A POINT ON THE ARC OF A CIRCULAR CURVE TO THE LEFT; THENCE SOUTHERLY AND EASTERLY ALONG THE ARC OF SAID CURVE, ALSO BEING THE SOUTHERLY BOUNDARY OF SAID TRACT A, HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF  $89^{\circ}07'44''$ , A DISTANCE OF 23.33 FEET TO THE POINT OF TANGENCY; THENCE NORTH  $90^{\circ}00'00''$  EAST, ALONG THE SOUTH LINE OF SAID TRACT A, A DISTANCE OF 612.46 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA, AND CONTAIN 13284 SQUARE FEET, MORE OR LESS.

### NOTES

1. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. NO SEARCH OF THE PUBLIC RECORDS WAS MADE IN THE PREPARATION OF THIS SKETCH AND DESCRIPTION.
3. BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING NORTH  $90^{\circ}00'00''$  EAST ALONG THE SOUTH LINE OF TRACT A OF "ATLANTIC CROSSING".

### CERTIFICATION

I HEREBY CERTIFY THAT THE SKETCH AND DESCRIPTION SHOWN HEREON COMPLIES WITH STANDARDS OF PRACTICE AS CONTAINED IN CHAPTER 5J-17.051, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT SAID SKETCH AND DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION.

  
JEFF S. HODAPP  
SURVEYOR AND MAPPER  
FLORIDA LICENSE NO. LS5111

### ABBREVIATIONS

L	•	ARCLength
D	•	DELTA (CENTRAL ANGLE)
L.B.	•	LICENSED BUSINESS
L.S.	•	LICENSED SURVEYOR
MON.	•	MONUMENT
O.R.B.	•	OFFICIAL RECORDS BOOK
P.O.B.	•	POINT OF BEGINNING
P.O.C.	•	POINT OF COMMENCEMENT
P.B.	•	PLAT BOOK
P.B.-C.R.	•	PALM BEACH COUNTY RECORDS
PG.	•	PAGE
P.S.M.	•	PROFESSIONAL SURVEYOR 8 MAPPER
R/W	•	RIGHT-OF-WAY

Project Name:	ATLANTIC CROSSING	DATE:	07/17/2018
JOB NO.	14167	DWG BY:	JSH
		CK'D By:	TP
			SHEET 1 OF 3

# PERIMETER

947 Clint Moore Road  
Boca Raton, Florida 33487

SURVEYING & MAPPING  
Certificate of Authorization No. LB7264

Tel: (561) 241-9988  
Fax: (561) 241-5182

## SKETCH AND LEGAL DESCRIPTION (NOT A SURVEY)



TRACT A  
"ATLANTIC CROSSING"  
(P.B. 125, PGS. 80-85, P.B.C.R.)

US HIGHWAY NO. 1 (NORTHBOUND)  
N.E. 6TH AVENUE

60' PUBLIC RIGHT-OF-WAY  
(P.B. 1, PG. 3)  
(R.P.B. 2, PG. 210)

NON-VEHICULAR  
ACCESS LINE

N89° 07' 44" E  
20.00'  
(RADIAL)

R=15.00'  
L=23.33'  
D=89° 07' 44"

N00° 52' 16" W  
34.47'

9' SIDEWALK EASEMENT N90° 00' 00" E 612.46' 10' SIDEWALK EASEMENT

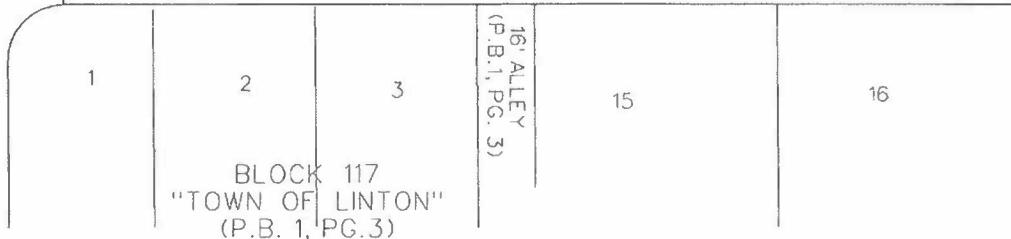
S90° 00' 00" W 647.24'

ATLANTIC AVENUE

S. LINE N $\frac{1}{2}$  SECTION 16-46-43  
80' PUBLIC RIGHT-OF-WAY  
(P.B. 1, PG. 3)  
(P.B. 116, PGS. 172-182)  
(R.P.B. 2, PG. 210)

40' UTILITY EASEMENT  
(O.T.R.B. 23166, PG. 1533)  
INGRESS-EGRESS  
EASEMENT  
AND  
G.U.E.

NE 7TH AVENUE  
40' PUBLIC RIGHT-OF-WAY  
(P.B. 1, PG. 3)



JOB NO.	14167	Project Name:	ATLANTIC CROSSING	DWG BY:	JSH	SCALE:	1"=50'
		CK'D BY:	TP	DATE:	07/17/2018		SHEET 2 OF 3

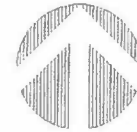


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## SKETCH AND LEGAL DESCRIPTION (NOT A SURVEY)



TRACT A  
"ATLANTIC CROSSING"  
(P.B. 125, PGS. 80-85, P.B.C.R.)

40' UTILITY EASEMENT  
(O.R.B. 23166, PG. 1533)

15' ROAD & UTILITY EASEMENT  
(O.R.B. 2666, PG. 1136)

INGRESS-  
EGRESS  
EASEMENT  
AND  
G.U.E.

**P.O.B.**

SE CORNER TRACT A  
"ATLANTIC CROSSING"  
(P.B. 125, PGS. 80-85, P.B.C.R.)

10' SIDEWALK EASEMENT

N90° 00'00"E 612.46'

S00° 52'15"E  
20.00'

S90° 00'00"W 647.24'

**ATLANTIC AVENUE**

80' PUBLIC RIGHT-OF-WAY  
(P.B. 1, PG. 3)  
(P.B. 116, PGS. 172-182)  
(R.P.B. 2, PG. 210)

NE 7TH AVENUE  
40' PUBLIC RIGHT-OF-WAY  
(P.B. 1, PG. 3)

BLOCK 125  
"TOWN OF LINTON"  
(P.B. 1, PG. 3)

**PALM SQUARE**

JOB NO. 14167

Project Name: ATLANTIC CROSSING

DWG BY: JSH

CK'D By: TP

SCALE: 1"=50'

DATE: 07/17/2018

SHEET 3 OF 3