



## Legislation Text

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File #: 17-110, Version: 1

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**TO:** Mayor and Commissioners  
**FROM:** R. Max Lohman, City Attorney  
**DATE:** January 24, 2017

### ATLANTIC CROSSING SETTLEMENT AGREEMENT - EDWARDS CDS, LLC VS. THE CITY OF DELRAY BEACH

#### **Recommended Action:**

Motion to Approve the omnibus settlement agreement between Edwards CDS, LLC and the City of Delray Beach related to the Atlantic Crossing development.

#### **Background:**

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").

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").

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;

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. 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 surface street 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.

The terms of the proposed Settlement Agreement will resolve all outstanding litigation matters between the parties. The Settlement Agreement, as presented, has been accepted and signed by the Plaintiff.

The Settlement Agreement sets forth a processing schedule for the Site Plan modification and final plat certification as well as the requirement for the City to execute and record certain documents in order to release its reservation of rights related to N.E. 7<sup>th</sup> Ave. and certain abandoned alleys. Within ten (10) days of the later of (1) the expiration of all applicable appeal periods, (2) timeframes during which a third-party challenge can be filed, or (3) final disposition of any such challenges or appeals, the Plaintiff shall dismiss, with prejudice, the State Lawsuit, Federal Lawsuit, and Federal Appeal.

Litigation counsel recommends approval of the Settlement Agreement as presented.