

This instrument was prepared under the direction of:
City of Port St. Lucie City Attorney's Office
Prepared by and return to:
CITY OF PORT ST. LUCIE
Public Works Department
121 S.W. Port St. Lucie Boulevard
Port St. Lucie, Florida 34984

(Space above this line reserved for recording office use only)

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT ("Agreement") is granted this _____ day of _____, 2024, by the **CITY OF PORT ST. LUCIE, a Florida municipal corporation**, whose mailing address is 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida 34984, as "**Grantor**," or "**City**" to **WAWA FLORIDA, LLC, a Delaware limited liability company**, whose mailing address is c/o Wawa, Inc., 260 West Baltimore Pike, Wawa, PA 19063, as "**Grantee**."

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and their respective heirs, legal representatives, successors and assigns.)

WITNESSETH:

WHEREAS, Grantor is the owner of real property generally described as PORT ST LUCIE-SECTION 33 – THE SOUTH 262.18 FT OF TRACT L-LESS THE SOUTHERN 50 FT OF THE WESTERN 60 FT- as recorded in Book 754, Page 791 of the Official Records of St. Lucie County, Florida ("**Grantor Property**"); and

WHEREAS, Grantee is the owner of real property described as Parcel 1 of Wawa Becker as recorded in Plat Book 119, Page 39 of the Official Records of St. Lucie County, Florida ("**Grantee Property**"); and

WHEREAS, Grantee seeks to utilize a portion of Grantor Property, more specifically described on **Exhibit "A"**, (the "**Drainage Easement Area**") for surface water drainage purposes; and

WHEREAS, Grantee seeks to utilize a portion of Grantor Property, to access the Drainage Easement Area (the "**Drainage Area Access Easement**"); and

WHEREAS, Grantee seeks from Grantor a non-exclusive easement for surface water drainage purposes over the Drainage Easement Area and a non-exclusive easement for access upon the Drainage Area Access Easement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable consideration paid by the Grantee, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing "whereas" clauses are true and corrected and are hereby incorporated by reference.
2. **Grant of Easements.**
 - (a) **Drainage Area Easement.** Grantor hereby conveys, grants, bargains and sells unto the Grantee, a perpetual easement non-exclusive in, on, under, through, over, across, and upon the Drainage Easement Area (subject to easements, restrictions, and reservations of record) for surface water drainage through any now existing or hereafter constructed aboveground for underground surface water drainage systems and related facilities, as approved by the City of Port St. Lucie as part of P22-005, and amended from time to time, with approval by the City of Port St. Lucie (collectively, the "**Facilities**"), with the right, privilege, and authority to construct, reconstruct, install, extend, replace, operate, inspect, patrol, or remove the Facilities.
 - (b) **Drainage Area Access Easement.** Grantor hereby grants and conveys to Grantees a limited right of ingress and egress over and across the Grantor Parcel for the construction, maintenance, repair and replacement of the Facilities. The Grantee shall not interfere with the normal operations of Grantor and shall not obstruct or prevent use of the Grantor Parcel by Grantor during Grantor's normal business hours. If any development has occurred in any portions of the Grantor Parcel, Grantee's right of access will be limited to (i) undeveloped portions of the Easement Parcel and (ii) driveways, parking areas, and other areas intended for pedestrian or vehicular access. Notwithstanding, Grantee shall have an easement for ingress and egress over and across the Easement Parcel for construction, maintenance, repair and replacement of the drainage facilities on the Easement Parcel, to the extent necessary to carry out its rights pursuant to Paragraph 2(a) of this Agreement.
 - (c) The grant of the Drainage Area Easement and Drainage Area Access Easement are subject to the following conditions:
 - i. Grantee shall construct and install the Facilities in accordance with plans and specifications approved by all applicable governmental authorities and Grantor.
 - ii. Grantee shall comply with all applicable laws, codes, rules, regulations, statutes, ordinances, permits, rules and regulations of applicable governmental authorities, including environmental laws, with respect to the installation and construction of the Facilities in accordance with the specifications approved by Grantor. All work performed by Grantee shall be performed in a good and workmanlike manner, free and clear of liens and encumbrances, and in accordance with all applicable governmental requirements and permits.
 - iii. Grantee shall complete construction of the facilities not more than 12 months after Grantee has secured all permits required for the Facilities. The cost of the construction and installation of the Facilities shall be paid by Grantee at Grantee's sole expense.
 - iv. Grantor shall have that the right, at Grantee's sole expense, to relocate the location of the easements granted herein from time to time to a different area of the Grantor Property, by providing thirty (30) days written notice to Grantee, provided in connection with such relocation, surface water drainage from the Grantee Property through the Grantor Property is not obstructed.
 - v. The Grantee (or a successor owner of all or any portion of the Grantee Parcel), shall provide ordinary maintenance of the drainage facilities at Grantee's sole expense, including but not limited to reconstruction, repair, or replacement of the Facilities.

- vi. If flowage is obstructed due to a Grantee's failure to maintain pursuant to Section 2(c)(v), Grantor, shall have the right to take action in compliance with applicable laws in order to maintain the drainage facilities after providing 30 days' written notice to the applicable Grantee (or after a shorter period of time as necessary in event of an emergency) and bill Grantee for expenses incurred.
- vii. In constructing the Facilities, Grantee will not suffer or permit any mechanics' lien, equitable lien, or any other lien or encumbrance of any kind to be filed or otherwise asserted against the Grantor Property and will cause any such lien to be released or transferred to bond within 30 days after the date the lien is filed.

3. Insurance

Prior to the commencement of any work contemplated by this Agreement, Grantee must provide the Grantor a certificate of insurance evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida.

Commercial General Liability Insurance: GRANTEE shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: Grantee shall provide an Additional Insured endorsement attached to the certificate of insurance (should be CG2026) under the General Liability policy. Blanket Additional Insured will be accepted with proof of blanket coverage. Grantee's coverage shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the Grantor. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Grantee's Certificates of Insurance and policies shall clearly state that coverage required by the Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability policy, unless proof of blanket coverage is provided. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured for the WAWA Drainage Easement.**" Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance. The policy shall be specifically endorsed to provide thirty (30) days written notice to the Grantor prior to any cancellation, thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Legal.

In the event that the statutory liability of the Grantor is amended during the term of this Agreement to exceed the above limits, Grantee shall be required, upon thirty (30) days written notice by the Grantor, to provide coverage at least equal to the amended statutory limit of liability of the Grantor.

It shall be the responsibility of Grantee to ensure that all Contractors, independent contractors and/or sub-contractors (CONTRACTOR) comply with the **below insurance requirements**. It shall be the responsibility of Grantee to obtain Certificates of Insurance from all CONTRACTORS listing the Grantor as an Additional Insured without the language “when required by written contract”.

Workers' Compensation Insurance & Employer's Liability: CONTRACTOR shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes, and as may be amended from time to time. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum.

Commercial General Liability Insurance: CONTRACTOR shall agree to maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured:

An Additional Insured endorsement must be attached to the certificate of insurance and must include coverage for on-going and Completed Operations (should be ISO CG2037 & CG2010) under the General Liability policy. Products & Completed Operations coverage to be provided for a minimum of five (5) years from the date of possession by Grantor or completion of contract. Coverage is to be written on an occurrence form basis. **A per project aggregate** limit endorsement should be attached. A waiver of subrogation shall be provided in favor of the Grantor. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work performed. No exclusion for mold, silica or respirable dust or bodily injury/property damage arising out of heat, smoke, fumes, or hostile fire shall apply. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation, Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional

Insured added to its Commercial General Liability, Business Automobile Liability, and Pollution Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured for the WAWA Drainage Easement."** The Policies shall be specifically endorsed to provide thirty (30) day written notice to the Grantor prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Legal. In the event that the statutory liability of the City is amended during the term of this Agreement to exceed the above limits, the CONTRACTOR shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsements coverage shall be attached to the Certificate of Insurance.

Business Automobile Liability Insurance: CONTRACTOR shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the CONTRACTOR does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the CONTRACTOR to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary non-contributory basis.

Pollution Liability Insurance: CONTRACTOR shall agree to maintain in full force during the term of this Agreement, Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, for any operations relating to the handling, storage, and transportation of hazardous materials and/or waste. The City of Port St. Lucie shall be listed as an additional insured. A waiver of subrogation shall be provided in favor of the Grantor. Coverage shall apply on a primary and non-contributory basis.

Waiver of Subrogation: The CONTRACTOR agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONTRACTOR enter into such a Contract on a pre-loss basis..

Deductibles: All deductible amounts shall be paid for and be the responsibility of Grantee for any and all claims under this Agreement.

Grantee and the CONTRACTOR may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, or Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess

Liability is written on Non-Follow Form, the Grantor shall be endorsed as an "Additional Insured."

The Grantor, by and through its Risk Management Department, reserves the right, but is not obligated to review, modify, reject, or accept any required policies of insurance including limits, coverages or endorsements, herein from time to time throughout the term of this Agreement. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of the part of Grantee to execute the Agreement and/or punctually deliver the required insurance, and other documentation may be cause for cancellation of this Agreement

4. Other Provisions

- i. **Indemnification.** Grantee hereby indemnifies, defends and holds harmless Grantor and Grantor's directors, officers, employees and agents, and their respective heirs, successors and assigns, from and against any and all liability to any person or entity for or on account of any death or injury to persons or any damage to property, as well as any loss, damage, lien, claim, injury or expense (including reasonable attorneys' fees and costs) arising out of or occurring in connection with installation, construction and use of the Grantor Property or any Facilities by Grantee and the employees, agents, contractors, tenants, invitees and licensees of Grantee. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall be considered to increase or waive any limits of liability or waive any immunity afforded to Grantor by the Florida Statutes, case law, or any other source of applicable governing law.
- ii. **Easement Runs with the Land.** It is expressly understood and agreed that all grants, obligations, benefits and burdens on the parties under this Agreement shall be covenants appurtenant to and running with the land, and shall apply to, be binding upon and inure to the benefit of all present and future owners of the Easement Parcel and Benefitted Parcels.
- iii. **Amendment.** Agreement may not be modified, amended or terminated without the prior written approval of the owners of the Grantor Property and the Grantee Property.
- iv. **Waiver.** No waiver of any of the provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- v. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Florida and venue for any litigation arising hereunder shall be St. Lucie County, Florida.
- vi. **Captions.** The captions and paragraph headings contained in this Agreement are for reference and convenience only and do not define, describe, extend or limit the scope or intent of this Agreement.
- vii. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement.

TO HAVE AND TO HOLD the same unto the Grantee, together with the right to enforce the intended use stated herein. Grantor and Grantee are used for singular or plural, as the context requires. The easement granted herein shall constitute easements running with the land and shall burden the land described above.

*** * * SIGNATURE PAGES TO FOLLOW * * ***

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed the date and year first above written.

WITNESSES:

GRANTOR:

CITY OF PORT ST LUCIE, a Florida
municipal corporation

BY: _____

Print name

Shannon M. Martin, Mayor

Address

Print name

Address

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2024, by **Shannon M. Martin, as Mayor** of the **City of Port St. Lucie, a Florida municipal corporation** who is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

Notary public
Printed Name: _____
My commission expires: _____
Commission No.: _____

IN WITNESS WHEREOF, the Grantee has caused these presents to be executed the date and year first above written.

WITNESSES:

GRANTEE:

WAWA FLORIDA, LLC, a Delaware limited liability company

Attest: [Signature]
Address: 260 West Baltimore Pike Wawa, PA 19063

By: [Signature]
Name: Michael J. Eckhardt
Title: Vice President

Carolyn Maddaloni, Assistant Secretary
(Print Name)

Witness: [Signature]
Address: 260 West Baltimore Pike Wawa, PA 19063

Tamiko Glover
(Print Name)

STATE OF PENNSYLVANIA
COUNTY OF DELAWARE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 16th day of May, 2024, by Michael J. Eckhardt, as Vice President of WAWA FLORIDA, LLC, a Delaware limited liability company, who is personally known to me or has produced _____ as identification.



Commonwealth of Pennsylvania - Notary Seal
TAMIKO GLOVER, Notary Public
Delaware County
My Commission Expires March 7, 2025
Commission Number 1305635

[Signature]
Notary public
Printed Name: _____
My commission expires: _____
Commission No.: _____