

## **FORCE MAIN MAINTENANCE AGREEMENT**

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**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

**BW ATLANTIC ANDREWS, LLC**, a Florida Limited Liability Company with offices located at 3708 W. Swann Avenue, Suite 200, Tampa, Florida 33609 hereinafter referred to as "DEVELOPER."

### **WITNESSETH:**

**WHEREAS**, DEVELOPER is the owner of real property located on the northwest corner of West Atlantic Boulevard and North Andrews Avenue in the City of Pompano Beach, Florida, identified by the following folio numbers: 48-42-34-00-1010, 48-42-34-00-1011, 48-42-34-00-1001, and 48-42-34-00-1000 ("Property"); and

**WHEREAS**, DEVELOPER submitted a major site plan application to CITY to develop a Wawa convenience store with sixteen fueling stations which was assigned Planning and Zoning No. 18-12000030 and approved by the Planning and Zoning Board on April 24, 2019 ("Project"); and

**WHEREAS**, the Project requires the DEVELOPER to install a force main sewer line and related facilities (collectively referred to as "Sewer Line"), as specifically described and depicted in the Sewer Line Plan attached hereto as Exhibit A, under West Atlantic Boulevard, which is owned by the Florida Department of Transportation ("FDOT"), to connect to the CITY's sewer system on the south side of West Atlantic Boulevard; and

**WHEREAS**, FDOT will not permit a private developer to install and own a sewer line under right-of-way that it owns but instead requires utility providers such as the CITY to install and own the sewer line; and

**WHEREAS**, CITY, to facilitate the Project, has agreed to: (1) sign the FDOT permit application attached hereto as Exhibit B, which is required by FDOT and (2) authorize DEVELOPER and/or its agents/contractors to install the Sewer Line as “Utility Builder” for CITY,

**NOW, THEREFORE**, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, the parties agree as follows:

**1. CITY COMMITMENTS.**

FDOT regulations allow for a utility provider such as CITY to authorize a private developer or contractor to install a sewer line under FDOT right-of-way so long as CITY signs the FDOT permit application and is responsible to FDOT for maintenance of the sewer line. CITY agrees to sign the FDOT permit application in conjunction with DEVELOPER, so the Sewer Line can be installed by DEVELOPER’s contractor. CITY also agrees to serve as proxy for the Sewer Line and be responsible to FDOT to maintain the Sewer Line once installed. CITY may, at any time, decide to assume the maintenance obligations for the Sewer Line by providing ninety (90) day written notice to DEVELOPER and provided CITY shall not reduce sewer services to DEVELOPER or otherwise adversely affect DEVELOPER by its assumption of maintenance obligations. Additionally, should the FDOT right-of-way be acquired by the City, the DEVELOPER shall obtain a revocable licensee agreement with the CITY for the Sewer Line within thirty (30) days of notice from the City. The revocable license agreement shall supersede the presiding agreement and shall run with the Property and be binding upon any future purchasers, transferees, or owners of the Property.

**2. DEVELOPER OBLIGATIONS.**

During the term of this Agreement, DEVELOPER shall be directly responsible to CITY for installation and maintenance of the Sewer Line as set forth further below.

**3. TERM.**

The term of this Agreement shall run in perpetuity unless modified herein. During the term of this Agreement, DEVELOPER shall be obligated to maintain the Sewer Line and the FDOT surrounding property in good condition as reasonably determined by the CITY/FDOT. The DEVELOPER shall establish a direct point of contact with full authority, expertise, licensure and credentials required by local and state governing authorities to investigate and reasonably act upon any reported public health, safety or welfare risk associated with the Sewer Line. Should the CITY/FDOT reasonably determine that the DEVELOPER has failed to maintain the Sewer Line, or that the public's health, safety or welfare is at risk in relation to the Sewer Line, then DEVELOPER'S established point of contact shall be directly contacted and notified in writing and given a reasonable opportunity to cure the issue. In the event DEVELOPER fails to timely cure the issue to CITY'S/FDOT'S satisfaction as requested, CITY may effectuate the required maintenance/repairs/replacement, as the case may be and may (1) seek reimbursement of the actual costs for the maintenance/repair/replacement from the DEVELOPER and (2) record a lien against the DEVELOPER and/or the aforementioned subject property. Such remedies shall not limit the CITY from taking other legal action to obtain maintenance/repair/replacement of the Sewer Line and to recover any and all costs incurred in obtaining maintenance/repair/replacement of the Sewer Line. Notice shall be via the DEVELOPER'S established point of contact and sent in writing, in accordance with Paragraph 12 hereof. In the event any maintenance issues arise with the Sewer Line, CITY shall cooperate and assist DEVELOPER in its efforts and will sign any required

permits or applications required by FDOT to repair any damage to the Sewer Line or replace the Sewer Line.

**4. ASSIGNMENT.**

The Agreement shall run with the Property and be binding upon any future purchasers, transferees, or owners of the Property. In the event DEVELOPER sells or otherwise transfers ownership of the Property, the new owner or transferee must accept responsibility for the obligations contained in this Agreement by signing a written Assignment.

**5. MAINTENANCE.**

DEVELOPER agrees to operate, repair and/or replace the Sewer Line and appurtenances and adjacent property, during the term of this Agreement, at its sole cost and ensure that the Sewer Line is in good working condition, as reasonably determined in the CITY's sole discretion. In the event CITY is made aware of damage or a functional issue with the Sewer Line, CITY shall notify DEVELOPER immediately and DEVELOPER shall be obligated to commence work on remediating the damage or functional issue upon receipt of notice from the CITY. DEVELOPER assumes all risks in the operation and maintenance and/or replacement of the Sewer Line and shall be solely responsible and answerable for damages related to all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, regardless whether occasioned by the DEVELOPER, its officers, employees, contractors or agents. DEVELOPER further agrees that it shall not make any alteration to the Sewer Line that would increase the Sewer Line size or capacity or any other substantial alteration without the CITY's prior written consent.

**6. INDEMNIFICATION.**

A. DEVELOPER shall indemnify, defend and hold harmless the CITY/FDOT and its officials, agents and employees from and against any and all claims, losses, suit actions, damages, liabilities, expenditures, or causes of action, including attorney fees, of any kind arising from this Agreement.

B. DEVELOPER shall be solely responsible and answerable for damages related to all accident or injuries to person or property arising out of or caused in the performance of the Project done pursuant to this Agreement by or on behalf of DEVELOPER. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CITY as provided for in § 768.28, Florida Statutes.

#### **7. INSURANCE.**

DEVELOPER shall procure at its own cost and expense Comprehensive General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may require, which insurance will protect DEVELOPER, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise caused directly or indirectly by the sewer line under the terms of this Agreement. The insurance policy shall contain a sixty (60) day cancellation clause period and a Certificate of Insurance shall be furnished the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the CITY's Risk Manager prior to execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "C."

#### **8. AMENDMENTS.**

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

**9. SURRENDER UPON TERMINATION.**

Upon termination of this Agreement, DEVELOPER shall remove or otherwise abandon, at DEVELOPER's own expense, the Sewer Line and, thereafter, the Agreement shall be considered abandoned and terminated. Upon completion of DEVELOPER's removal, the condition of the right-of-way shall be such that it is safe and not a hazard and in its original condition or better as determined by the CITY and FDOT.

**10. NONWAIVER.**

Failure of the CITY to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties in writing.

**11. TERMINATION.**

This Agreement may be terminated by either party with reasonable cause for the reasons described in Section 3 at any time during the term, upon sixty (60) days written notice to the other of its desire to terminate this Agreement. It is expressly understood by the parties that CITY may terminate this Agreement due to failure by the DEVELOPER to maintain the Sewer Line, DEVELOPER's Sewer Line poses a risk to the public's health, safety or welfare as determined by CITY, or CITY's convenience. DEVELOPER shall be solely responsible for any expenses incurred to remove its personal property including equipment, with no right to compensation of

any kind from CITY. Where DEVELOPER's use poses a risk to the public's health, safety or welfare, the DEVELOPER shall receive written notice to immediately cease and desist such use and shall promptly remove or fix the Sewer Line as determined by CITY, in the CITY's sole discretion.

**12. NOTICES.**

Any notice or demand under the terms of this Agreement or by any statute or ordinance that must be given or made by a party hereto shall be via the DEVELOPER's point of contact and in writing and shall be given by certified mail to the other party at the address set forth below or to such other address as such party may from time to time designate by notice, except where otherwise provided. DEVELOPER shall notify the CITY in writing and shall be given by certified mail provided the point of contact changes.

**DEVELOPER's point of contact in the event there are any urgent issues related to the sewer line:**

**Robert Grassman, Real Estate Engineer for Wawa, Inc.**

**321-243-6148**

**robert.grassman@wawa.com**

Addresses of the parties for general matters are as follows:

**FOR CITY:** City Manager  
City of Pompano Beach  
Post Office Box 1300  
Pompano Beach, Florida 33061

**COPY TO:** City Attorney  
City of Pompano Beach  
Post Office Box 2083  
Pompano Beach, Florida 33061

**FOR DEVELOPER:** BW Atlantic Andrews, LLC  
Brightwork Real Estate, Inc.  
3708 W. Swann Avenue, Ste 200  
Tampa, FL 33609  
Phone: 813-874-1700

**COPY TO:** Wawa Florida, LLC  
7022 TPC Drive, Suite 200  
Orlando, FL 32822

**13. MISCELLANEOUS PROVISION.**

It is expressly understood and agreed that no real or personal property is leased to DEVELOPER as this is not a Lease.

**14. LAWS AND ORDINANCES.**

DEVELOPER shall observe all laws and ordinances of the city, county, state and federal governing authorities directly relating to the Sewer Line.

**15. RECORDATION OF AGREEMENT.**

This Agreement shall be recorded in the Public Records of Broward County, Florida, at the DEVELOPER's expense, with a copy given to CITY. Upon termination of the Agreement, a written termination shall be recorded in the Public Records Broward County, Florida, at the DEVELOPER's expense, with a copy given to CITY.

**16. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL**

A. The Agreement shall be governed by the laws of the state of Florida, both as to interpretation and performance. CITY and DEVELOPER submit to the jurisdiction of state and federal courts located in Florida with respect to claims under this Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise, but the DEVELOPER and the CITY waive all rights to sue or collect from the other any damages other



than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

C. By entering into this Agreement, the Parties expressly waive any rights either party may have to a trial by jury of any litigation related to this agreement. If a party fails to withdraw a request for a jury trial in a lawsuit arising out of this Agreement after written notice by the other party of violation of this section, the party making the request for jury trial shall be liable for the reasonable attorneys' fees and costs of the other party in contesting the request for jury trial, and such amounts shall be awarded by the court in adjudicating the motion.

**17. NO THIRD PARTY BENEFICIARIES.**

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intends to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

**18. NONDISCRIMINATION.**

DEVELOPER shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**19. CONTINUITY.**

This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

## **20. PUBLIC RECORDS.**

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The DEVELOPER shall comply with Florida's Public Records Law, as amended. Specifically, DEVELOPER shall:

(1) Keep and maintain public records required by the CITY in order to perform the service.

(2) Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the DEVELOPER does not transfer the records to the CITY.

(4) Upon completion of the Sewer Line installation, transfer, at no cost to the CITY, all public records in possession of the DEVELOPER, or keep and maintain public records required by the CITY to perform the service. If the DEVELOPER transfers all public records to the CITY upon completion of the installation, the DEVELOPER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the DEVELOPER keeps and maintains public records upon completion of the contract, the DEVELOPER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

B. Failure of the DEVELOPER to provide the above described public records to the CITY within a reasonable time may subject DEVELOPER to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN**

**IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK**  
**100 W. Atlantic Blvd., Suite 253**  
**Pompano Beach, Florida 33060**  
**(954) 786-4611**  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)

**21. FORCE MAJEURE.**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of DEVELOPER be deemed Force Majeure.

**22. ENTIRE AGREEMENT AND INTERPRETATION.**

A. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject

matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

B. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and DEVELOPER and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of one party, and therefore construed against either party.

C. It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:


\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

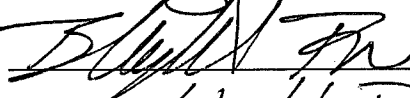
\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

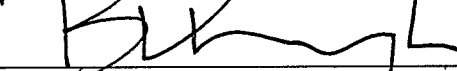
**"DEVELOPER":**

Witnesses:

  
\_\_\_\_\_  
Ashley P. Rutherford  
Print Name

  
\_\_\_\_\_  
Wright Davis  
Print Name

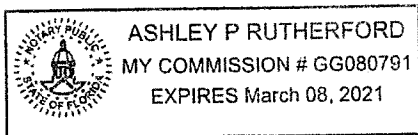
**BW ATLANTIC ANDREWS, LLC**  
By: **Brightwork Real Estate, Inc., as Manager**


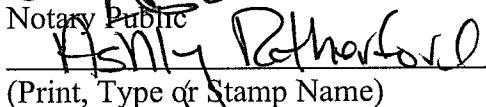
By:   
\_\_\_\_\_  
Bradford G. Douglas, President

(SEAL)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization this 17<sup>th</sup> day of January, 2020 by Bradford G. Douglas, President of Brightwork Real Estate, Inc. a Florida corporation, as Manager of BW ATLANTIC ANDREWS, LLC, a Florida limited liability company, on behalf of said company. He is personally known to me.



  
\_\_\_\_\_  
Notary Public  
  
\_\_\_\_\_  
(Print, Type or Stamp Name)  
My Commission Expires