

MEMORANDUM

TO: **Real Estate & Transportation Committee**
Commissioner Mike Musick, Chairman
Commissioner Chad McLeod
Commissioner Bill Read

FROM: City Attorney's Office

DATE: January 17, 2023

RE: **Cross-Access Easement Agreement for Mary's Bagels
Located at 1242 N. Florida Avenue**

Attached for your consideration and approval is a proposed Cross Access Easement Agreement between the Lakeland Community Redevelopment Agency (CRA) and Wainwright Group, LLC (Wainwright). Wainwright owns two parcels of real property where the restaurant, Mary's Bagels, is currently being constructed.

The City's Land Development Code requires that all new development sites that are adjacent to Type I roadways shall have cross-access or service roads in order to control access to high capacity roadways like Florida Avenue. This is part of the City's effort at corridor management to minimize the amount of access drives in order to provide safe ingress and egress.

The attached Agreement provides that Wainwright will convey an easement to the CRA as described in the Exhibit, and in exchange, the CRA will also convey an easement for the same purpose to Wainwright upon the development of the CRA parcel. The CRA's portion of the easement is not currently described in order to leave open options for future development of the site. If the CRA conveys the parcel, the sale must be contingent upon the new owner providing a cross access easement at the time the site is developed by the new owner.

It is requested that the City Commission, acting as the CRA, approve the attached Cross-Access Easement Agreement and authorize the appropriate City officials to execute all associated documents.

Attachment

THIS INSTRUMENT PREPARED BY:

City Attorney's Office
City of Lakeland
228 S. Massachusetts Ave.
Lakeland, FL 33801
(863) 834-6010

CROSS ACCESS EASEMENT AGREEMENT

This Cross Access Easement Agreement (the "Agreement") is hereby made on this ___ day of January, 2023 between the Lakeland Community Redevelopment Agency ("CRA"), 228 S. Massachusetts Ave. Lakeland, FL 33801-5012, and Wainwright Group, LLC, 5337 N Socrum Loop Road, Suite 461, Lakeland, FL 33809-4256, collectively referred to hereafter as the "Parties".

WHEREAS, Wainwright Group, LLC, is the owner of real property more fully described on Exhibit "A" (legal description) attached hereto and incorporated herein by references as "Parcel 1", on which it operates a restaurant known as Mary's Bagel; and

WHEREAS, the CRA, is the owner of real property more fully described on Exhibit "B" (legal description) attached hereto and incorporated herein by references as "Parcel 2"; and

WHEREAS, the Parties to this Agreement desire to create and grant an easement on, over, upon and across portions of each property (Parcel 1 and Parcel 2, collectively, the "Parcels") for purposes of vehicular and pedestrian ingress and egress to and from, and all other uses expressly contemplated by this Agreement; and

WHEREAS, the Parties agree that these mutual easements will be defined, at a minimum, by the designated area in Exhibit "C" attached hereto (the "Easement Area") and that the portion of the easement crossing over Parcel 2 shall be further defined at the time of development of said Parcel; and

WHEREAS, the interested parties representing Parcel 1 and Parcel 2 are seeking approval from the City of Lakeland (the "City") for the development of a restaurant on Parcel 1 as identified in the Mary's Bagel Site Plan ("Site Plan 1") and the future development of Parcel 2, which will be defined at a later time, and the City is requiring the execution and recordation of this Agreement as a condition to the Approval and the issuance of permits; and

WHEREAS, it is the desire of the interested parties representing Parcel 1 and Parcel 2, in consideration for the receipt of permits and as a condition of approval, to create a unified access point between the parcels, so that the requirements of the City will be satisfied; and

WHEREAS the interested parties representing Parcel 1 and Parcel 2 have agreed with the City that, for the intended development of Parcel 1, the interested parties representing Parcel 1 and Parcel 2 shall provide for mutual and reciprocal rights-of-way for the purpose of ingress and egress, the enjoyment of which cross easements shall be shared by the respective parties owning any portion of either Parcel and their respective heirs, successors, assigns and successors in title to all or part of either Parcel and to tenants, lessees, agents, employees, guests and invitees of any owner of either Parcel or any portion thereof and guests and invitees of tenants and lessees legally occupying either Parcel; and

WHEREAS, the City has a health, safety and welfare interest in safe and efficient traffic circulation on the road and driveway system and the establishment of common access through the establishment of the unity of control that covers the Parcels; and

WHEREAS, the City is specifically intended to be a direct, third-party beneficiary to this Agreement;

1. **Recitals.** The above recitals are true and correct and are hereby made a part of and incorporated in this Agreement.
2. **Exempted Areas.** All structures, uses and parking areas on the Parcels are not a part of this Agreement and shall be exempted from this Agreement.
3. **Granting of Easements**
 - 3.1 **Cross Access Easement.** The interested parties representing Parcel 1 and Parcel 2 hereby grant and convey non-exclusive, mutual cross access easements for purposes of vehicular and pedestrian ingress and egress on, over, upon and across the areas defined in the Easement Area. This Cross Access Easement is subject to the terms, conditions, restrictions and limitations set forth herein and in other recorded easements, reservations, rights-of-way, licenses, restrictions, conditions and limitations affecting the Easement Areas; provided, however, that the foregoing shall not unreasonably interfere with the easement rights under this Agreement. This Cross Access Easement is for the benefit of and is appurtenant to each of the Parcels, respectively, and may be used by the record title owner of each of the Parcels, respectively, and each of their respective successors, assigns, employees, contractors, agents, licensees, lessees under leases extending the use thereof to such lessees and other permittees (collectively the "Permitted Users") solely for the uses set forth herein (the "Permitted Uses") and for no other uses. Such Permitted Uses shall be for the benefit of the Parcels as now or hereafter improved, subdivided and/or developed.
 - 3.2 **Common Driveway Easement.** The interested parties representing Parcel 1 and Parcel 2 hereby grant and convey non-exclusive, mutual common driveway easements for purposes of vehicular ingress and egress on, over, upon and across the areas defined in the Easement Area.
 - 3.3 **Development of Parcel 2.** The parties shall amend this Easement Agreement with additional exhibits upon the development or improvement of Parcel 2 and such amendment shall further define the specific Easement Area as it pertains to Parcel 2. If the CRA conveys Parcel 2 to another party, the sale must be contingent upon providing the Cross Access Easement as contemplated herein.
4. **Maintenance**
 - 4.1 **Maintenance of Easement Areas.** Any improvements in the Easement Area shall be completed in a good and workmanlike manner free and clear of any construction liens and in full compliance with all present and future local, municipal, county, state and federal environmental and all other applicable laws, statutes, governmental constitutions, ordinances, codes, rules, regulations, resolutions, requirements, standards, applications and directives, as well as all decisions, judgments, writs, injunctions, orders, decrees or demands of courts, administrative bodies and other authorities construing any of the foregoing (collectively, the

"Laws"). Each party shall maintain its respective Easement Areas, at its sole cost and expense, in a first-class condition and in full compliance with the Laws.

5 Mutual Indemnities

5.1 Indemnity. Each party held by this Agreement will indemnify, defend and hold harmless the other for, from and against any and all claims suffered or incurred in connection with any alleged bodily injury or property damage arising out of use or enjoyment of the Easement Areas, unless caused by negligence or willful misconduct of the party to be indemnified. This provision does not limit or effect the City or the CRA's defenses or limitations of sovereign immunity, F.S. § 768.28.

6. Run with the Land

6.1 The covenants, conditions, restrictions, easements, and other provisions of this Agreement shall run with and be appurtenant to each affected portion of Parcel 1 and Parcel 2 and shall be binding upon each portion of Parcel 1 or Parcel 2 as applicable.

7. Breach

7.1 If any party breaches (such party being referred to as the "Breaching Party") any provision of this Agreement and fails to cure any such breach within fifteen (15) days after written notice thereof is given by the other party (the "Non-breaching party") in addition to any other right or remedy available to the Non-breaching party at law or in equity, the Non-breaching party shall have the right, but not the obligation, to cure any such breach. The Breaching Party shall reimburse the Non-breaching party for the cost thereof upon demand, together with interest accruing thereon at an annual rate of interest equal to the lesser of: (i) four percent (4%) above the prime rate of interest announced by SunTrust Bank, Central Florida, N.A.; or (ii) the highest rate of interest allowable by law (the "Default Rate"), from and after the date of the Non-breaching party's expenditure thereof, until the Non-breaching party's receipt of full payment therefor.

8. Termination and Modification

8.1 The terms and conditions of this Agreement may be abrogated, modified, rescinded or amended in whole or in part only by written instrument executed by all the then owners of Parcel 1 and Parcel 2 after the prior written consent of the City.

9. Assignment

This Agreement involves the granting of an appurtenant easement for the benefit of the Parcels and which burdens the Easement Areas. Therefore, this Agreement and the benefits and/or burdens of the easements granted herein, as applicable, shall be automatically assigned (either in whole or in part as applicable) to any person or entity to whom fee simple title to all or any portion of any of the Parcels and/or the Easement Areas are conveyed. Notwithstanding anything else contained in this Agreement, upon any such assignment or partial assignment, the rights, duties, obligations and liability of

the assignor shall automatically terminate, and the assignee shall be deemed to have assumed and be bound by the applicable duties, obligations and liability so assigned and shall be entitled to all the rights and benefits so assigned with respect to that portion of the Parcels and/or the Easement Areas conveyed. Whenever and wherever the term "successors and assigns" is used in this Agreement, it shall mean only those successors and assigns who acquire their interest by a conveyance of any portion of the Parcels and/or the Easement Area in accordance with and subject to this Section.

10. Notices

10.1 Each notice or communication under this Agreement shall be deemed delivered and received if in writing and either: (i) personally delivered; (ii) delivered by reliable overnight air courier service; or (iii) deposited with the United States Postal Service or any official successor thereto, certified or registered mail, return receipt requested, with adequate postage prepaid, delivered or addressed to the entity entitled or required to receive the same or (iv) sent via facsimile, provided that evidence of successful transmission is retained by the sender and further provided that a copy of such notice is also contemporaneously sent by one of the methods described in the preceding clause (i), (ii) or (iii) of this Section (it being understood and agreed, however, that such notice shall be deemed received upon receipt of such facsimile transmission), at the address (or facsimile number) set forth below or such other address (or facsimile number) as may have been designated by the party by written notice hereunder. Rejection or other refusal by the addressee to accept the notice, and inability to deliver the notice because of a change of address of the party of which no notice was given, shall be deemed to be the receipt of the notice on the third day following the date postmarked by the United States Postal Service or on the second day following the date accepted by the courier service. All notices shall be addressed as herein below set forth, or to such other address as the parties shall hereafter give notice to the other in writing.

Wainwright Group, LLC:

Denise Gilmore
4040 Prima Lago Circle
Lakeland, Fl. 33810
denisegil32@yahoo.com

With copy to:

Mark Dornstauder
Wainwright Group, LLC.
1509 S. Florida Avenue, Suite 2
Lakeland, Fl. 33803
dornstau@yahoo.com

If to City of Lakeland and/or CRA:

Palmer Davis
City Attorney
228 S. Massachusetts Avenue
Lakeland, Fl. 33801
Palmer.Davis@lakelandgov.net

With copy to:

Valerie Ferrell
Lakeland Community Redevelopment Agency
228 S. Massachusetts Avenue
Lakeland, FL 33801
Valerie.Ferrell@lakelandgov.net

Any such notice shall be deemed given and received when actually so personally delivered or when receipt thereof is refused or, if mailed, as aforesaid, three (3) business days after the date of mailing, or, if sent by nationally-recognized overnight courier service, as aforesaid, one (1) business day after delivery of the same to such courier service for overnight delivery or if sent by facsimile, as aforesaid, at the time and on the date of receipt with receipt thereof confirmed by transmittal confirmation and telephonic acknowledgment if such date is a business day or if such day is not a business day, the following business day. Notwithstanding the foregoing, if any notice or other communication has not been sent in compliance with this Section but has in fact actually been received by its intended recipient, then such notice or communication shall be deemed duly given to and received by such recipient effective as of the date of actual notice. Any party may designate a different address or facsimile number for receiving written notices by written notice to the other entities entitled to receive notice, such notice to be given in accordance with this Section.

11. Counterparts

11.1 This Agreement may be executed in counterparts; each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

12. Governing Law

12.1 This Agreement shall be governed by, construed under, interpreted and enforced in accordance with the laws of the State of Florida.

13. Third Party Beneficiary

13.1 The City, as a third-party beneficiary of this Agreement, has the right to enforce this Agreement through legal, equitable, or administrative proceedings.

IN WITNESS WHEREOF, the Wainwright Group, LLC has hereto set hand(s) and seal(s) on the date first written above.

Signed, sealed and delivered
in the presence of:

For the Wainwright Group, LLC:

Witness 1 Signature

Signature for Wainwright Group, LLC

(Print Witness Name Above)

Print Name

Witness 2 Signature

Title

(Print Witness Name Above)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged, before me, by means of physical presence by _____, who is/are [] personally known to me or who [] presented _____ as identification.

WITNESS my hand and official seal in the state and county aforesaid on this ____ day of _____, _____.

NOTARY SEAL:

NOTARY PUBLIC

Print Name Above

IN WITNESS WHEREOF, the Lakeland Community Redevelopment Agency has hereto set hand(s) and seal(s) on the date first written above.

Signed, sealed and delivered
in the presence of:

For the Lakeland Community
Redevelopment Agency:

Witness 1 Signature

Signature for Lakeland Community Redevelopment Agency

(Print Witness Name Above)

Print Name

Witness 2 Signature

Title

(Print Witness Name Above)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged, before me, by means of physical presence by _____, who is/are [] personally known to me or who [] presented _____ as identification.

WITNESS my hand and official seal in the state and county aforesaid on this _____ day of _____, _____.

NOTARY SEAL:

NOTARY PUBLIC

Print Name Above

Exhibit "A"

Parcel 1 Legal Description

Lots 1 and 2 of Block B, less beginning at the Northwest corner of Lot 2, run East 40 feet, South 60 feet, West 40 feet, North 60 feet to point of beginning, less the right-of-way for State Road 700 (U.S. 98), and less the road right-of-way per O.R. Book 12258, Page 405, LOCKHARTS RESUBDIVISION, according to the map or plat thereof, as recorded in Plat Book 8, Page 23, of the public records of Polk County, Florida.

AND

The West 40 feet of the North 6 feet of Lot 1, and the West 40 feet of Lot 2, Block B, LOCKHARTS RESUBDIVISION, according to the map or plat thereof, as recorded in Plat Book 8, Page 23, of the public records of Polk County, Florida.

Exhibit "B"

Parcel 2 Legal Description

Lots 20 and 21 of Block 7, less the right-of-way for State Road 700 (U.S. 98), WASHINGTON PARK, according to the map or plat thereof, as recorded in Plat Book 1, Page 99, of the public records of Polk County, Florida.

**LEGAL DESCRIPTION
Cross Access Easement**

Exhibit "C"

Being a 14-foot wide strip of land that is lying in Lot 1 and Lot 2, Block "B", Lockharts's Resubdivision, according to the plat thereof recorded in Plat Book 8, Page 23 of the Public Records of Polk County, Florida and which is more particularly described as follows:

Commencing at the northwest corner of said Lot 2, Block "B"; thence North 89°07' 50" East 24.00 feet along the south right-of-way line of West 8th Street (having a variable width right-of-way.) (a.k.a. Eighth Street, per plat.) to the **Point of Beginning**; thence continuing North 89°07'50" East 14.00 feet along said south right-of-way line; thence South 00°34'52" East 108.63 feet to the north right-of-way line of a 10-foot wide alley; thence South 89° 08' 02" West 14.00 feet along said north right-of-way line; thence North 00° 34' 52" West 108.63 feet to the **Point of Beginning**.

Containing 1521 square feet, more or less.

Subject to any easements, rights-of-ways, reservations or other matters of title.

Bearings are based upon an assumed plat bearing of North 89° 07' 50" East for the south right-of-way line of West 8th Street.

Prepared by:



T. Alan Neal, P.L.S.
Professional Land Surveyor
State of Florida Reg. No. LS4656

SURVEYOR'S NOTES

1. All dimensions are in feet and decimals thereof.
2. This legal description and sketch of description was prepared without the benefit of an abstract of title or title opinion; therefore it is subject to any easements encumbrances, reservations, restrictions, rights-of-ways, use and other matters of title.
3. This legal description and sketch of description is subject to any underground or not visible improvements.
4. Portions of the property described hereon may be subject to the jurisdiction and restrictions of governmental agencies.
5. This legal description and sketch of description does not reflect or determine ownership.
6. This legal description and sketch of description is **NOT A SURVEY**.

**SEE SHEET 2 OF 2
FOR SKETCH OF
DESCRIPTION**

**LEGAL DESCRIPTION AND SKETCH OF DESCRIPTION
NUJAK COMPANIES
1242 NORTH FLORIDA AVENUE AND 108 WEST 8th STREET
LAKELAND, Florida 33805**

T. Alan Neal, P.L.S.
Professional Land Surveyor
State of Florida Reg. No. LS4656

4919 Stonecrest Drive Lakeland, FL 33813
phone: (239) 248-5120 (863) 868-7733
email: aneal@fl-surveyors.com

Job Number:	125-007-01
Scale:	1" = 30'
Drawing File:	125-007-01
Drawn By:	CTM

SHEET 1 OF 2

Section 12
Township 28 South,
Range 23 East



SCALE: 1" = 30'

NOT A SURVEY

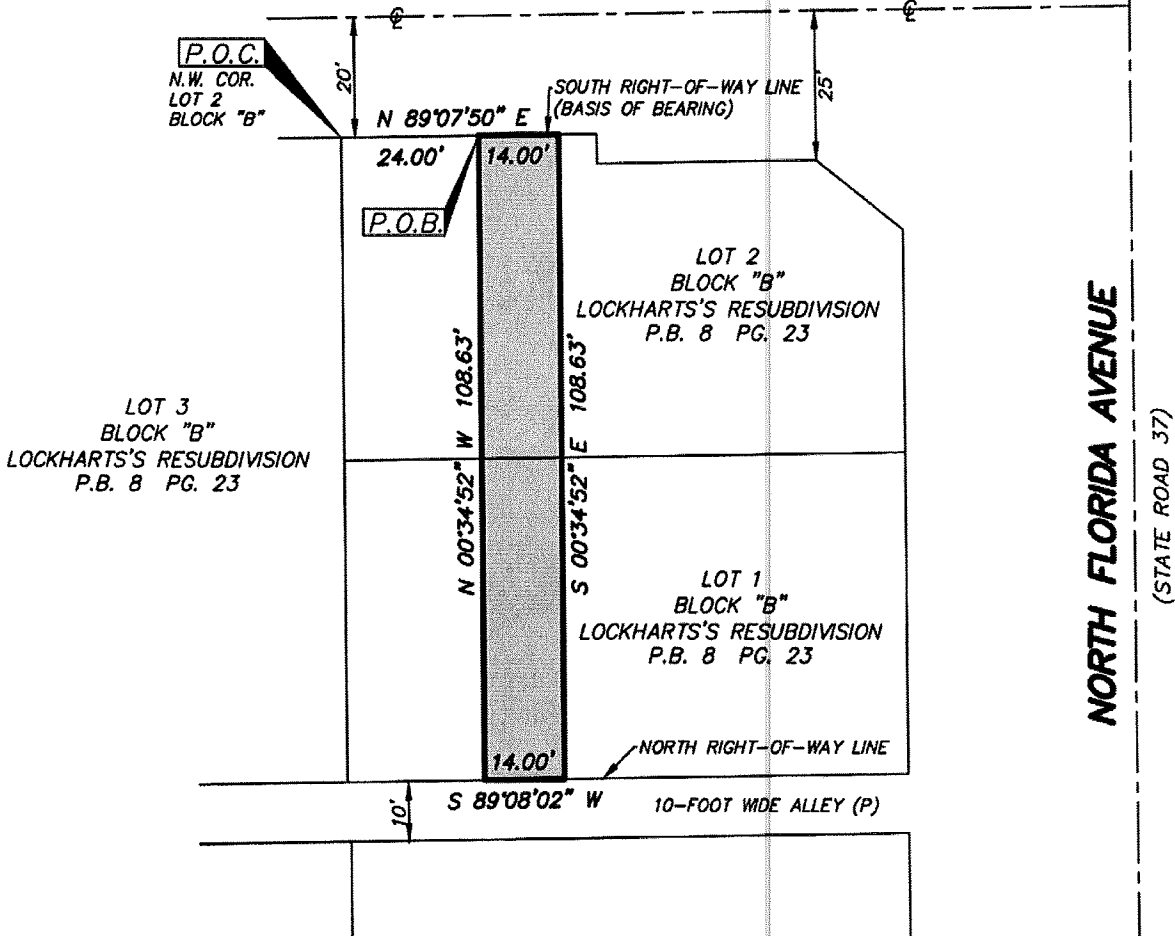
EXHIBIT _____



ASSUMED

WEST 8th STREET (a.k.a. 8th STREET PER PLAT)

(HAVING A VARIABLE WIDTH RIGHT-OF-WAY)



LEGEND

- DENOTES SUBJECT CROSS ACCESS EASEMENT
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- (P) PLAT
- R-O-W RIGHT OF WAY

**SEE SHEET 1 OF 2
FOR LEGAL
DESCRIPTION**

**SKETCH OF DESCRIPTION
NUJAK COMPANIES
1242 NORTH FLORIDA AVENUE AND 108 WEST 8th STREET
LAKELAND, Florida 33805**

T. Alan Neal, P.L.S.
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SHEET 2 OF 2