

Meeting Date: 2/23/16

Agenda Item 1

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH,
FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO
EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF POMPANO
BEACH AND BW US 1 SAMPLE, LLC; PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

The Development Services Department is seeking to enter into a Developer's Agreement with BW US 1 Sample, LLC, the property owner at 3601 North Federal Highway. The Agreement would enable the City to issue a separate development permit for the underground improvements on the property, exclusive of the vertical construction work associated with the building permit for the Wawa gas station. This Agreement also includes specific details for site restoration and security in order to assure the City that the property will be left in an acceptable condition upon completion of the site development work in the event vertical construction of the project has not commenced. Finally, the Agreement would also allow the property owner to close out the demolition permit without completing required Site Restoration.

- (1) Origin of request for this action: Scott Backman on behalf of BW US 1 Sample, LLC
- (2) Primary staff contact: Robin Bird/ Jennifer Gomez Ext. 4640
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: N/A

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	<u>2-11-16</u>	<u>Approval</u>	<u>[Signature]</u>
City Attorney	<u>2-5-16</u>		<u>CAC #2016-492</u>
Finance	<u>2-16-16</u>	<u>Approval</u>	<u>[Signature]</u>
<u>Budget</u>	<u>2-16-16</u>	<u>Approval</u>	<u>[Signature]</u>
<input checked="" type="checkbox"/> City Manager	<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>

ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading	1 st Reading	Results:	Results:
_____	_____	_____	_____
2 nd Reading	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2016-492

February 5, 2016

TO: Jennifer Gomez, AICP, Assistant Development Services Director
FROM: Mark E. Berman, City Attorney
RE: Resolution – Development Agreement / 3601 North Federal Highway

As requested in your memorandum dated February 3, 2016, Department of Development Services Memorandum #16-047, the following form of resolution, relative to the above-referenced matter, has been prepared and is attached:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BW US 1 SAMPLE, LLC; PROVIDING AN EFFECTIVE DATE.

Please have the appropriate city signature page inserted into the Development Agreement prior to submitting the resolution to the City Commission.


MARK E. BERMAN

/jrm
l:cor/dev-srvc/2016-492

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND BW US 1 SAMPLE, LLC; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement between the City of Pompano Beach and BW US 1 Sample, LLC, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach and BW US 1 Sample, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/jrm
2/5/16
l:reso/2016-125

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into between BW US 1 Sample, LLC, a Florida limited liability company, having an address of 3708 W. Swan Avenue, Suite 200, Tampa, Florida 33609 ("BW") and the City of Pompano Beach, a Florida municipal corporation, having an address of 100 W. Atlantic Boulevard, Pompano Beach, Florida ("City").

WITNESSETH

WHEREAS, BW owns the property located at 3601 North Federal Highway, as further described in Exhibit "A" attached hereto and incorporated herein ("Property"); and

WHEREAS, on January 28, 2015, the Planning and Zoning Board of the City of Pompano Beach approved a site plan application for construction of a Wawa on the Property (P&Z No. 14-1200041) ("Site Plan"). Subsequently, on March 19, 2015, the Zoning Board of Appeals approved a variance to allow parking spaces with bollards in lieu of the required curbing (Appeal # 15-1100002) ("Variance"). The Site Plan and the Variance are collectively referred to herein as the "Project"; and

WHEREAS, on September 17, 2015, the City issued Permit No. BP-15-00006744 for the demolition of structures on the Property in preparation for construction of the Project ("Demolition Permit"). BW subsequently submitted a building permit application to the City (Permit #BP 15-00003126), which is currently under review to allow construction of the Project ("Building Permit"); and

WHEREAS, BW has requested the City to issue a separate site development permit that will allow construction of underground improvements on the Property exclusive of the construction work associated with the Building Permit; and

WHEREAS, by this Agreement, BW is providing specific details for site restoration and financial security in order to assure the City that the Property will be left in an acceptable condition upon completion of the site development work in the event construction of the Project has not commenced.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The recitals to this Agreement are true and correct and are incorporated herein by reference and made a part hereof.
2. Following submittal, review and approval of a permit application for the site development work, the City agrees to issue a separate site development permit to BW authorizing the demolition and improvements identified on Composite Exhibit "B" attached hereto ("Site Development Work").

3. BW acknowledges and agrees that all Site Development Work authorized and commenced in accordance with this Agreement and a valid permit issued by the City shall be subject to the following site restoration activities and improvements (also see site restoration plan attached hereto as Exhibit "C") in the event the Building Permit has not been issued and construction has not commenced for the Project ("Site Restoration Work"):

- a) Installation of a temporary irrigation system to preserve protected trees and Bahia sod.
- b) Bring the Property to grade (building pad and canopy pad are one foot (1') below grades shown on plan and all pavement area is to the top of subbase elevation.
- c) Plant the Property with Bahia sod. The Property will remain sodded until the Building Permit is issued and construction commences for the Project.
- d) Screen any above-ground structures such as meters and backflow preventers on all sides with low shrubs or other acceptable landscaping materials a minimum of six inches (6") high.

4. The City issued Permit No. BP-15-00006744 for the demolition of structures on the Property in preparation for construction of the Project. ("Demolition Permit"). In order to close out the Demolition Permit the City requires completion of certain site restoration activities pursuant to Section 155.5203.A.3.a. of the City Code. BW acknowledges and agrees that if the Site Development Permit is not applied for and pursued in good faith and issued within forty five (45) days of the effective date of this Agreement that it shall initiate the site restoration activities required by Section 155.5203.A.3.a no later than six (6) months from the effective date of this Agreement. Notwithstanding the foregoing, BW anticipates completing all Site Development Work within ninety (90) days from issuance of a valid permit for such work. BW shall commence and complete the Site Restoration Work within thirty (30) days of completing the Site Development Work. All Site Restoration Work shall be completed no later than six (6) months from commencing construction of the Site Development Work. In the event a Building Permit is issued and construction has commenced in accordance with the Building Permit within the six (6) month period noted above, the Site Restoration Work shall not be required and the letter of credit or cashier's check shall be returned to BW within ten (10) business days.

5. BW shall provide a letter of credit or cashier's check with the City in the amount of Thirty Thousand Dollars (\$30,000.00), which represents 125% of the site restoration and tree removal costs, prior to issuance of the Site Development Permit.

6. BW acknowledges that issuance of the Site Development Permit does not vest the Project from any applicable expiration periods for the Site Plan or Variance as established by the City Code. The Project shall only be vested from such expiration periods upon issuance of the Building Permit.

7. This Agreement shall be construed in accordance with the laws of Florida and venue shall be in Broward County, Florida.

8. This Agreement shall not be modified, waived, amended or released as to any portion of the Property except by written instrument executed by the owner of the Property and approved in writing by the City of Pompano Beach.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____

LAMAR FISHER, MAYOR

By: _____

DENNIS W. BEACH, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** 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:

BW US 1 Sample, LLC, a Florida limited liability company

By: Brightwork Real Estate, Inc., a Florida corporation

WITNESSES:


Print name: George Balaban
~~Sergio Martinez~~
Print name: SERGIO MARTINEZ

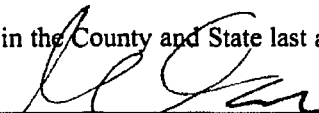
By: 
Print Name: Henry Hilsman
Title: Vice President

10 day of Feb, 2016

STATE OF FLORIDA)
COUNTY OF Palm Beach SS:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Henry Hilsman, the Vice President of DEVELOPER, freely and voluntarily under authority duly vested in him/her by said company. He She is personally known to me or who has produced N/A as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 10 day of February, 2016.


Notary Public

Marisol Levin
Typed, printed or stamped name of Notary Public

My Commission Expires: May 9, 2019

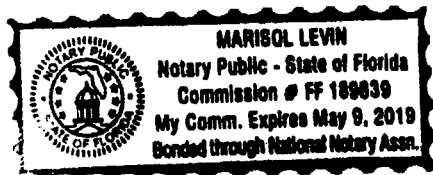


Exhibit "A"

LEGAL DESCRIPTION

Lots 4, 5 and 6, in Block 1, and Lots 1, 2, and 3, in Block 1, less the East 150 feet thereof, of North Pompano Beach Section 'A', according to the Plat thereof, recorded in Plat Book 29, Page 15, of the Public Records of Broward County, Florida; said East 150 feet of Lots 1, 2, and 3, in Block 1, being more particularly described as follows:

BEGINNING at an iron pipe in concrete on the Southeasterly corner of said Block 1, North Pompano Beach Section 'A', which point is also the intersection of the Westerly right of way line of U.S. Highway No. 1 (120 feet wide) with the Northerly right of way line of Sample Road (70 feet wide); extending thence (1) along said Northerly right of way line of Sample Road, which is also the Southerly boundary of said Block 1, North 89 degrees 28 minutes 17 seconds West 150.0 feet to an iron pipe in concrete in line of lands now or formerly of Pemur Holding Company; thence (2) along said line of lands now or formerly of Pemur Holding Company, through said Lots 1, 2 and 3, North 8 degrees 37 minutes 43 seconds East 151.50 feet to an iron pipe in concrete on the Northerly line of said Lot 3; thence (3) along said Northerly line of said Lot 3, South 89 degrees 28 minutes 17 seconds East 150.0 feet to an iron pipe in concrete on said Westerly right of way line of U.S. Highway No. 1; thence (4) along said Westerly right of way line of U.S. Highway No. 1, which is also the Easterly boundary of said Block 1, South 8 degrees 37 minutes 43 seconds West 151.50 feet to the Place Of Beginning, of North Pompano Beach Section 'A', according to the Plat thereof, recorded in Plat Book 29, Page 15, of the Public Records of Broward County, Florida;

LESS the South 15 feet of Lot 1, Block 1, of North Pompano Beach Section 'A', according to the Plat thereof, recorded in Plat Book 29, Page 15, of the Public Records of Broward County, Florida, less the East 150 Feet thereof; and that part of said Lot 1, which is included in the external area formed by a 25 foot radius arc which is tangent to the West line of said Lot 1, and tangent to a line 15 feet North of and parallel to the South line of said Lot 1.

Together with:

BEING the Easterly 150 feet of Lots 1, 2, and 3, Block 1, North Pompano Beach Section 'A', according to the Plat thereof, recorded in Plat Book 29, Page 15, of the Public Records of Broward County, Florida, and being more particularly described as follows:

BEGINNING at an iron pipe in concrete at the Southeasterly corner of said Block 1, North Pompano Beach Section 'A', which point is also the intersection of the Westerly right of way line of U.S. Highway No. 1 (120 feet wide) with the Northerly right of way line of Sample Road (70 feet wide); extending thence (1) along said Northerly right of way line of Sample Road, which is also the Southerly boundary of said Block 1, North 89 degrees 28 minutes 17 seconds West 150.0 feet to an iron pipe in concrete in line of lands now or formerly of Pemur Holding Company; thence (2) along said line of lands now or formerly of Pemur Holding Company, through said Lots 1, 2 and 3, North 8 degrees 37 minutes 43 seconds East 151.50 feet to an iron pipe in concrete on the Northerly line of said Lot 3; thence (3) along said Northerly line of said Lot 3, South 89 degrees 28 minutes 17 seconds East 150.0 feet to an iron pipe in concrete on said Westerly right of way line of U.S. Highway No. 1; and thence (4) along said Westerly right of way line of U.S. Highway No. 1, which is also the

Easterly boundary of said Block 1, South 8 degrees 37 minutes 43 seconds West 151.50 feet to the Place Of Beginning; LESS AND EXCEPT that portion of the above described premises condemned by the State Of Florida Department Of Transportation and Broward County pursuant to the Declaration Of Taking filed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Civil Action No. 70-3539, Parcel No.176, described as follows:

The South 15 feet of the East 150 feet of Lot 1, Block 1, of North Pompano Beach Section 'A', according to the Plat thereof, recorded in Plat Book 29, Page 15, of the Public Records of Broward County, Florida, and that part of said Lot 1, which is included in the external area formed by a 25 foot radius arc, which is tangent to the East line of said Lot 1, and tangent to a line 15 feet North of and parallel to the South line of said Lot 1.

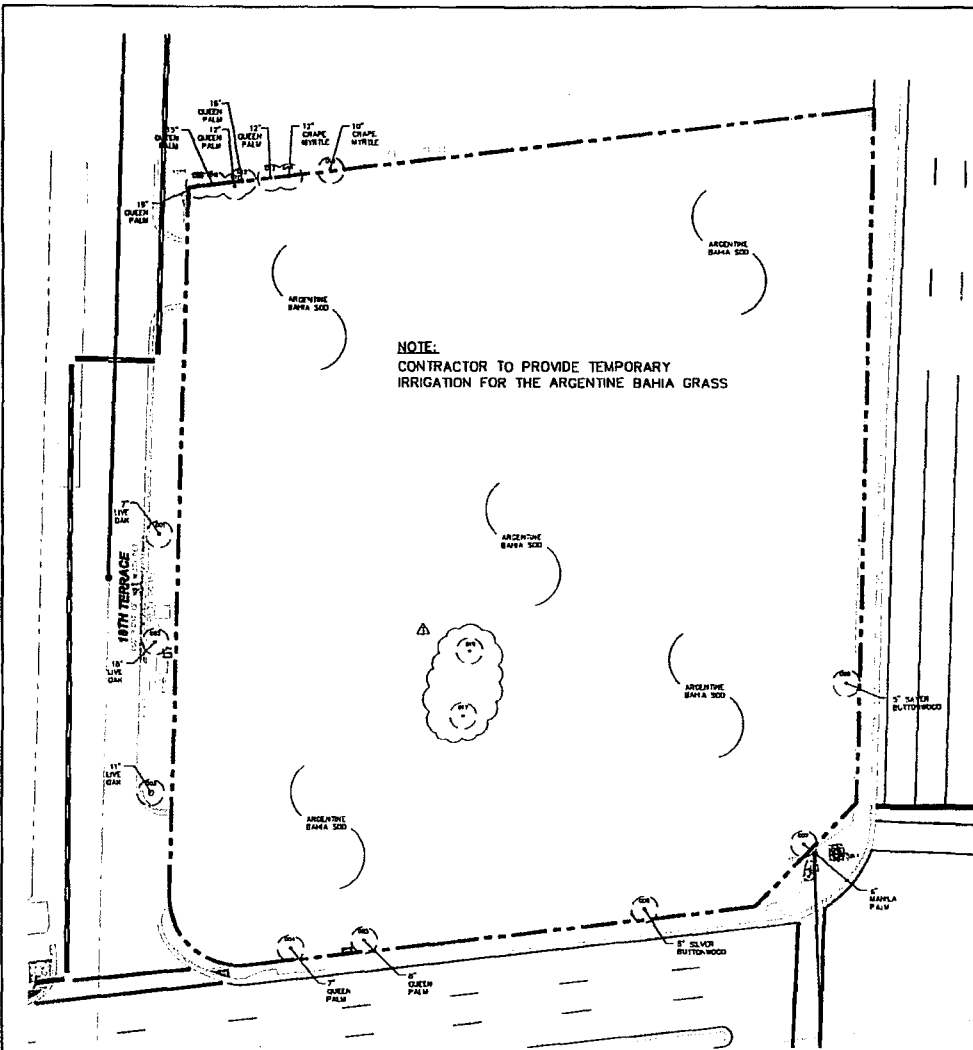
Less and except that certain parcel described in an Order of Taking recorded in O.R. Book 26619, Page 518, of the Public Records of Broward County, Florida, being more particularly described as follows:

That part of Lot 1 as shown on the plat of North Pompano Beach Section 'A', as recorded in Plat Book 29, Page 15, of the Public Records of Broward County, Florida, lying in the Southwest Quarter (SW 1/4) of Section 18, Township 48 South, Range 43 East, Broward County, Florida, said part being more particularly described as follows:

Commence at the Southeast corner of said Southwest Quarter (SW 1/4) of Section 18; thence South 88°46'00" West, along the South line of said Southwest Quarter (SW 1/4) of Section 18, a distance of 249.780 meters (819.49 feet) to the Baseline of Survey for State Road 5 (US 1 - Federal Highway) as shown on that Florida Department of Transportation Right Of Way Map number 86020-2518; thence North 6°51'23" East, along said Baseline, a distance 19.927 meters (65.38 feet); thence North 83°08'37" West, a distance of 14.630 meters (48.00 feet) to the Westerly existing right of way line for State Road 5 (US 1 - Federal Highway), being the POINT OF BEGINNING, being also a point on a tangent curve concave Northwesterly as described in O.R. Book 4149, Page 951, of the said public records, having a chord bearing of South 47°48'41" West; thence Southwesterly along said curve (said curve being also the Northerly existing right of way line for State Road S-834 (Northeast 36th Street - Sample Road)) having a radius of 7.62 meters (25.00 feet), through a central angle of 81°54'37", an arc distance of 10.894 meters (35.74 feet); thence South 88°46'00" West, a distance of 4.400 meters (14.44 feet); thence North 49°26'35" East, a distance of 16.113 meters (52.86 feet); thence South 6°51'23" West, along said Westerly existing right of way line, a distance of 3.700 meters (12.14 feet) to the POINT OF BEGINNING.

EXHIBIT "B"

EXHIBIT "C"



NOTE:
CONTRACTOR TO PROVIDE TEMPORARY IRRIGATION FOR THE ARGENTINE BAHIA GRASS

SITE RESTORATION NOTES:

- THE FOLLOWING LIST OF STRUCTURES REMAINING ON-SITE IS INTENDED FOR THE CONTRACTOR'S COMMENT ONLY. THE CONTRACTOR SHALL VERIFY THE LOCATION AND CONDITION OF EACH STRUCTURE AND REPORT TO THE ENGINEER.
- DEMOLITION AND REMOVAL OF EXISTING CONCRETE BLOCK BUILDING
- DEMOLITION AND REMOVAL OF EXISTING ON-SITE ASPHALT, CONCRETE DRIVE AND CURBING LAYOUT
- REMOVAL OF EXISTING ON-SITE ABOVE-GRADE AND UNDERGROUND UTILITIES AS SHOWN ON PLANS
- BEFORE DEMOLITION OF ANY UNDERGROUND SERVICE LINES AND CONDUITS FROM SERVICE, CONTRACTOR MUST COMPLETELY DRAIN THE SYSTEMS TO AN APPROVED SANITATION LINE FOR DISPOSAL AT AN APPROVED LOCATION AND IN ACCORDANCE WITH LOCAL A STATE REQUIREMENTS.
- ALL ON-SITE UNDERGROUND STRUCTURES AND PIPING MUST BE COMPLETELY REMOVED AND OBTAINED BY A MINIMUM OF 12" BENEATH THE STRUCTURES. CONTRACTOR SHALL USE APPROPRIATE FILLING MATERIAL FOR FILLING THESE AREAS. FILL SHALL BE CLEAN, F.A.C. SAND ACCORD CLASS 4-3 AND SHALL BE PLACED IN LAYERS NOT EXCEEDING 6" IN THICKNESS AND COMPACTED TO AT LEAST 90% OF THE UNIFIED PROCTOR STANDARD DRY DENSITY (ASTM D-1587).

TREE DISPOSITION LEGEND:

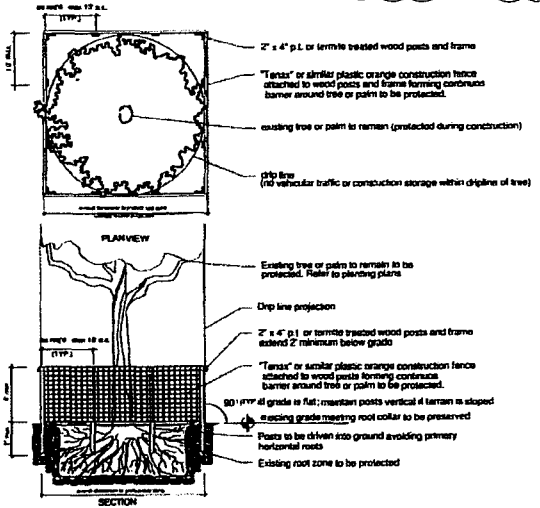


TREE REMOVAL NOTES:

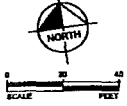
- ALL TREES AND PALMS REMAINING ON-SITE SHALL BE PROTECTED DURING CONSTRUCTION. CONTRACTOR SHALL VERIFY THE LOCATION AND CONDITION OF EACH TREE AND REPORT TO THE ENGINEER.
- CONTRACTOR SHALL PROVIDE TEMPORARY IRRIGATION FOR THE ARGENTINE BAHIA GRASS.
- CONTRACTOR SHALL PROVIDE TEMPORARY PROTECTION FOR EXISTING TREES AND PALMS.
- CONTRACTOR SHALL PROVIDE TEMPORARY PROTECTION FOR EXISTING TREES AND PALMS.

EXISTING TREE CONDITIONS:

EXIST. TREE NUMBER	GENUS/SPECIES NAME	DBH (INCH)	H. (FEET)	CRACKS	DECAY	LEAF LOSS	STEM	COMMENTS
001	QUERCUS MYRTANA / LIVE OAK	7" DBH	30'	10'	70%	REMAIN	\$150	LOCATED IN DRIVE DRIVE
002	QUERCUS MYRTANA / LIVE OAK	11" DBH	35'	25'	70%	REMAIN	\$180	LOCATED CLOSE TO CURB
003	QUERCUS MYRTANA / LIVE OAK	11" DBH	25'	20'	70%	REMAIN	\$150	
004	QUERCUS PALM / STAGS BROMELIAD	7" DBH	15'	8'	60%	REMAIN	\$150	
005	QUERCUS PALM / STAGS BROMELIAD	8" DBH	17'	8'	60%	REMAIN	\$150	
006	SILVER BUTTWOOD / COCCOPIUS CACTUS	5" DBH	10'	10'	35%	REMAIN	\$80	POOR PLANTING
007	WAX PALM / ARCHONIA VERMILIA	4" DBH	12'	10'	65%	REMAIN	\$100	
008	SILVER BUTTWOOD / COCCOPIUS CACTUS	5" DBH	10'	10'	35%	REMAIN	\$80	POOR PLANTING
009	QUERCUS PALM / STAGS BROMELIAD	11" DBH	14'	10'	75%	REMAIN	\$150	
010	QUERCUS PALM / STAGS BROMELIAD	15" DBH	17'	10'	70%	REMAIN	\$150	
011	QUERCUS PALM / STAGS BROMELIAD	17" DBH	17'	10'	70%	REMAIN	\$150	
012	QUERCUS PALM / STAGS BROMELIAD	17" DBH	14'	10'	70%	REMAIN	\$150	
013	QUERCUS PALM / STAGS BROMELIAD	17" DBH	17'	10'	70%	REMAIN	\$150	
014	ARGENTINE BAHIA GRASS	12" DBH	15'	2'	60%	REMAIN	\$135	
015	ARGENTINE BAHIA GRASS	15" DBH	15'	2'	60%	REMAIN	\$135	
016	QUERCUS MYRTANA / LIVE OAK	8" DBH	30'	15'	75%	REMAIN	\$150	
017	QUERCUS MYRTANA / LIVE OAK	8" DBH	30'	15'	75%	REMAIN	\$150	



Temporary tree protection detail for existing trees. NTS



DATE	01/27/16
BY	...
CHECKED BY	...
DATE	...

Alpha Pacifica
PLANNING & ZONING CONSULTANTS
1000 N. GARDEN ST. SUITE 100
ANAHEIM, CA 92810
TEL: 714.771.1111
WWW.ALPHAPACIFICA.COM



DATE	01/27/16
BY	...
CHECKED BY	...
DATE	...

EXHIBIT RESTORATION PLAN

WAWA, INC.
N.W.C. 3601 N. FEDERAL HWY.
POMPANO BEACH, FLORIDA

ISSUED FOR CONSTRUCTION

811 KNOW WHAT'S BELOW ALWAYS CALL 811 BEFORE YOU DIG
www.call811.com

BUILDING PERMIT 15-3126 WAWA
PLANNING AND ZONING RESOLUTION NO. 14-12000041
DEMOLITION PERMIT No. BP-15-00006744

DATE	01/27/16
PROJECT NO.	...
SHEET NUMBER	LA-1