



AGENDA
Special City Council Meeting
Thursday, March 23, 2023, 6:00 PM
Council Chambers, 116 First Street, Neptune Beach, Florida

1. CALL TO ORDER / ROLL CALL / PLEDGE OF ALLEGIANCE
- PH 2. FIRST OF TWO PUBLIC HEARINGS - First Amendment to Development Agreement between the City of Neptune Beach, Florida and Neptune Beach, FL Realty LLC entered into on March 1, 2021
3. ADJOURN

p. 2

This instrument prepared by and return to:

Jacob T. Cremer, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
PO Box 3299
Tampa, FL 33601

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “First Amendment”) is made and entered into as of the _____ day of _____, 2023 by and between the **CITY OF NEPTUNE BEACH, FLORIDA**, a municipal corporation of the State of Florida (the “City”) and **NEPTUNE BEACH, FL REALTY LLC**, a Florida limited liability company (together with its successors and assigns “Developer”).

RECITALS

WHEREAS, a Development Agreement was entered into on March 1, 2021 and recorded in the Clerk of Court for Duval County Official Records Book 19662, Page 1438 (the “Development Agreement”); and

WHEREAS, after entering into the Development Agreement and beginning the store design process, Developer discovered the City’s current water infrastructure provided insufficient fire flow to the Property for fire protection; and

WHEREAS, to meet fire flow test standards for fire protection approval, Developer constructed and installed an external fire pump and water storage tank; and

WHEREAS, building permit numbers 202200015 and 202201360 are hereby ratified and work may continue as approved; and

WHEREAS, the underlying issue of the City’s water system improvements remains unaddressed; and

WHEREAS, Developer and City have agreed to amend and modify certain provisions contained in the Development Agreement to include water system improvements, as more particularly set forth below; and

WHEREAS, an extension of City of Atlantic Beach utility service to the south side of Atlantic Boulevard between Pine Street and Sherry Drive has been identified as alternative source of sufficient fire flow (the “COAB Extension”); and

WHEREAS, the City conducted a hydraulic study to evaluate the underlying issues described above and determine possible means of addressing such issues sufficient to restore required flow levels; and

WHEREAS, the results of the study demonstrated that no short-term improvements to the water system will result in restoration of sufficient flows and that any solutions will require long-term planning and implementation; and

WHEREAS, the study demonstrated that the most cost-effective and time-effective method for ensuring sufficient water flows to permit the removal of the water tank is to connect to the COAB Extension; and

WHEREAS, Developer and City believe it is in their mutual best interest to provide a process for causing such connection and desire to memorialize same; and

WHEREAS, at the conclusion of two noticed public hearings, the City approved this First Amendment and authorized the Mayor of the City to execute it on behalf of the City.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated into and made a part of this First Amendment. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Development Agreement.

Section 2. **Amendment.** Section 32 is hereby added to the Development Agreement, as follows:

Section 32. Water System Improvements. To eliminate the need for a water storage tank on the Property, the City and Developer commit to the following:

- A. Developer will install a connection to the COAB Extension within six (6) months of the completion of the COAB Extension, subject to the City of Atlantic Beach permitting said connection. The City agrees to permit, allow, and cooperate with the City of Atlantic Beach to extend water service and sewer service to the south side of Atlantic Boulevard. Developer and City agree to use commercially reasonable efforts to timely facilitate such connection.
- B. Developer and the City agree to evenly share the construction costs of installing the connection to the COAB Extension. Notwithstanding the foregoing, the City's contribution shall not exceed sixty thousand (\$60,000) dollars. Developer is responsible for all costs which exceed one-hundred twenty thousand (\$120,000) dollars. The City agrees to

reimburse Developer for the City's portion of the cost within sixty (60) days of receipt of an invoice. Reimbursement of any costs must be sought by Developer within six (6) months of the completion of the connection to the COAB Extension. The responsibilities in this subsection are limited to the connection to the COAB Extension; in no event shall this First Amendment require the City or Developer to construct or contribute funds towards the COAB Extension itself. The City shall have no other monetary obligations regarding these matters except as to the construction of the initial connection.

- C. Prior to the commencement of construction for the connection to the COAB Extension, the City may elect to implement water system improvements to increase the water pressure and flow to the Property and surrounding area. Upon such election, the City shall notify Developer in writing. The City's election to implement water system improvements is in lieu of Developer connecting to the COAB Extension.
- D. Developer shall use commercially reasonable efforts to remove the water storage tank within six (6) months after connection to the COAB Extension or completion of the City's water system improvements provided the applicable water system supplies adequate water pressure and flows to meet required fire flow standards. In no event shall the water storage tank be required to be removed unless and until after six (6) months of adequate water pressure and flows meeting fire flow standards.
- E. If the COAB Extension is not completed within twelve (12) months of this First Amendment, Developer and City mutually agree to cooperate to determine an alternative plan to cause the removal of the water tank.

Section 3. **Amendment.** Section 4 of the Development Agreement is hereby amended, by adding the following:

C. **Enhanced Vegetative Buffer Improvements.** To better serve the privacy needs of the neighboring property owners, Developer has committed to providing enhanced vegetative buffer improvements at the rear of the Property, as depicted in Exhibit G (the "Enhanced Improvements"). No deviation from Exhibit G shall be permitted except by Amendment to this Agreement recorded in the public records of Duval County, Florida; however, the City Manager may approve minor deviations that, in his/her sole judgment and discretion, are not material and that do not relate to landscaping. All improvements must be maintained in a commercially reasonable manner and to reasonably minimize any cost to the City.

Section 4. **Amendment.** Section 4. B. of the Development Agreement is hereby amended, by adding the following:

7. **Return of Escrow.** Pursuant to Section 4. B. 1., the Improvements are deemed complete and escrow funds in the amount of \$1,365,000.00 shall be returned to Developer within thirty (30) days of the date of this First Amendment.

Section 5. **Recording of this First Amendment.** The City Clerk shall, no later than fourteen (14) days after this First Amendment is fully executed, cause this First Amendment to be recorded with the Clerk of Court for Duval County. The Developer shall bear the expense of recording this First Amendment.

Section 6. **Waiver.** This First Amendment is entered as a compromise of a disputed claim regarding the approval and construction of a water storage tank (“Disputed Claim”). The parties, including assignees, agree to waive any and all rights arising out of the Disputed Claim. In the event of a breach of the First Amendment provisions, all parties reserve the right to pursue all available legal remedies.

[Signatures Follow]

IN WITNESS WHEREOF the parties hereto have executed this First Amendment as of the date first above written.

FOR CITY OF NEPTUNE BEACH

Elaine Brown, Mayor

Attest

(City Seal)

_____, City Clerk

Approved to form:

Zachary Roth, Esq., City Attorney

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was signed, delivered, and acknowledged before me by means of ____ physical presence or ____ online notarization this ____ day of _____ 2023, by Elaine Brown, as the Mayor of the City of Neptune Beach, a political subdivision of the State of Florida, on behalf of the City. Such persons ____ are personally known to me or ____ have each produced a _____ as identification.

Notary Public

My Commission Expires:

FOR NEPTUNE BEACH, FL REALTY LLC

By: TLM Realty Corp., Class A
Managing Member

By: Ronald J. Oehl
Title: President

Witnesses:

Print: _____

Print: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was signed, delivered, and acknowledged before me by means of _____ physical presence or _____ online notarization this _____ day of _____ 2023, by Ronald J. Oehl, as the President of TLM Realty Corp., Class A, on behalf of Neptune Beach, FL Realty, LLC. Such persons _____ are personally known to me or _____ have each produced a _____ as identification.

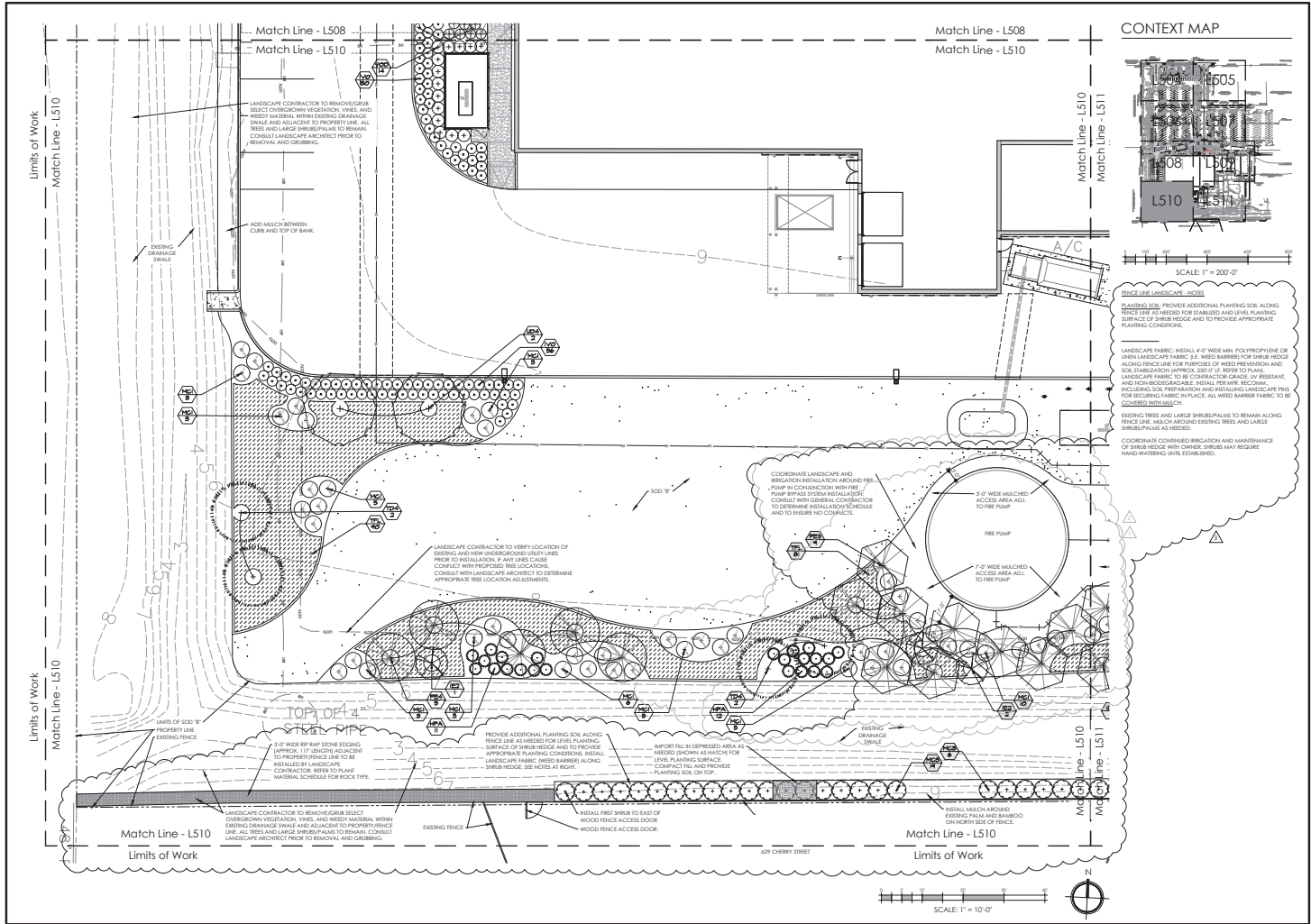
Notary Public

My Commission Expires:

EXHIBIT G

Enhanced Vegetative Buffer Improvements

Exhibit G

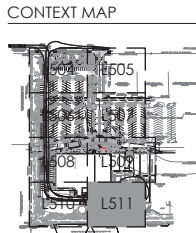
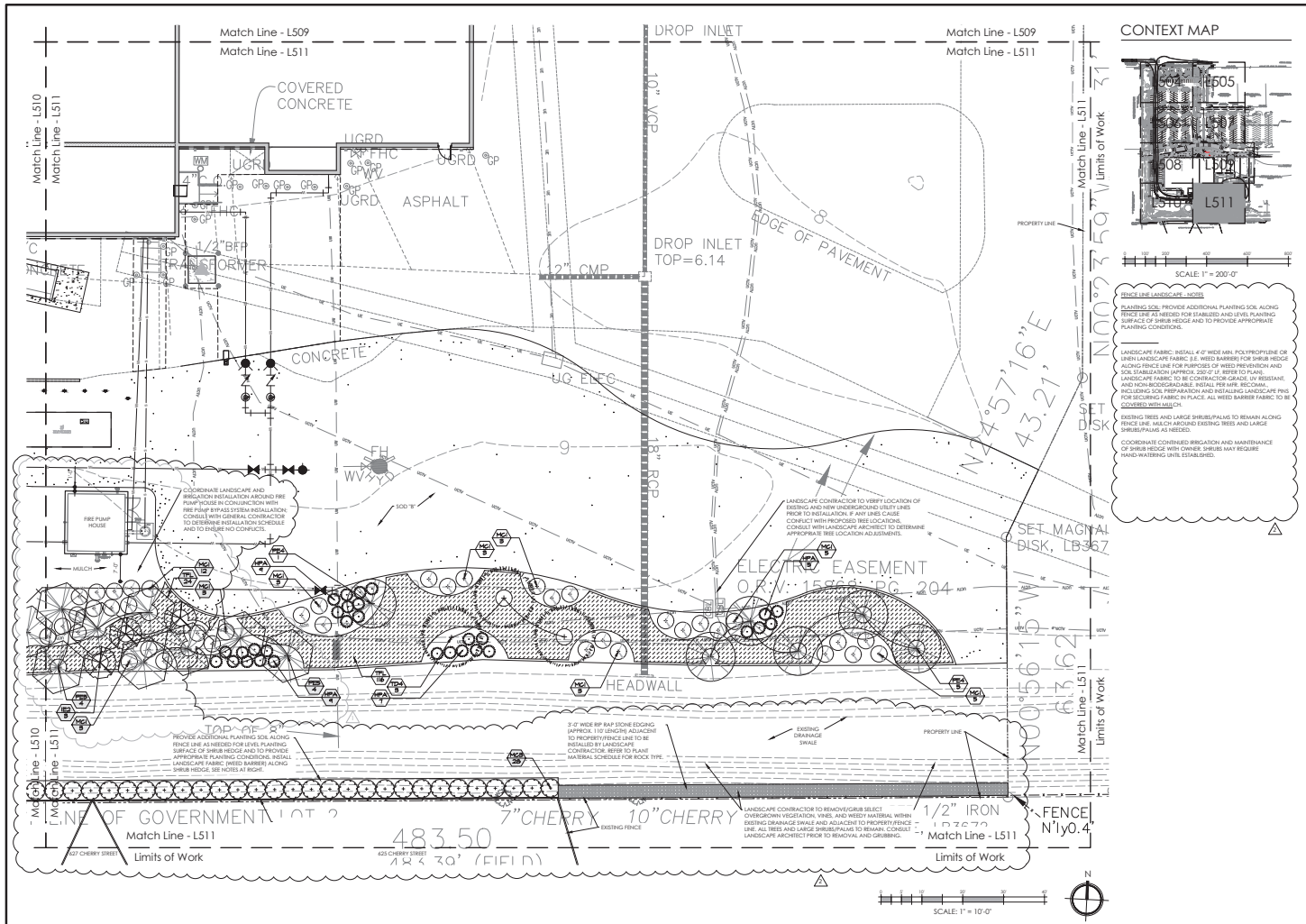


ISSUE DATES

NO.	DESCRIPTION	DATE
1	ISSUE FOR PERMIT	01.28.2021
2	ISSUE FOR CONSTRUCTION	01.28.2021
3	ISSUE FOR CONSTRUCTION	01.28.2021
4	ISSUE FOR CONSTRUCTION	01.28.2021
5	ISSUE FOR CONSTRUCTION	01.28.2021
6	ISSUE FOR CONSTRUCTION	01.28.2021
7	ISSUE FOR CONSTRUCTION	01.28.2021
8	ISSUE FOR CONSTRUCTION	01.28.2021
9	ISSUE FOR CONSTRUCTION	01.28.2021
10	ISSUE FOR CONSTRUCTION	01.28.2021
11	ISSUE FOR CONSTRUCTION	01.28.2021
12	ISSUE FOR CONSTRUCTION	01.28.2021
13	ISSUE FOR CONSTRUCTION	01.28.2021
14	ISSUE FOR CONSTRUCTION	01.28.2021
15	ISSUE FOR CONSTRUCTION	01.28.2021
16	ISSUE FOR CONSTRUCTION	01.28.2021
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19	ISSUE FOR CONSTRUCTION	01.28.2021
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26	ISSUE FOR CONSTRUCTION	01.28.2021
27	ISSUE FOR CONSTRUCTION	01.28.2021
28	ISSUE FOR CONSTRUCTION	01.28.2021
29	ISSUE FOR CONSTRUCTION	01.28.2021
30	ISSUE FOR CONSTRUCTION	01.28.2021

PROVIDING AN EVIDENCE OF CONCEPT AND THE REPORT OF TLM, INC. AND SHALL REMAIN THE PROPERTY OF TLM, INC. AND SHALL REMAIN UNREVOKED. YOU AGREE THAT THE REPORTS ARE SUBJECT TO THE OWNERS USE FOR WHICH IT IS PREPARED AND THAT YOU WILL NOT REPRODUCE OR DISSEMINATE THE REPORTS TO ANY OTHER PARTY WITHOUT THE WRITTEN CONSENT OF TLM, INC.

PROJECT NO: 2021-001
DATE: 01.28.2021
DRAWN BY: MS
CHECKED BY: MS
SCALE: AS SHOWN



SCALE: 1" = 200'-0"

PLANTING SOIL: PROVIDE ADDITIONAL PLANTING SOIL ALONG EXISTING FENCE LINE FOR STABILIZED AND LEVEL PLANTING SURFACE OF SHRUB HEDGE AND TO PROVIDE APPROPRIATE PLANTING CONDITIONS.

LANDSCAPE FABRIC: INSTALL 4" WIDE ACRYL POLYPROPYLENE OR LINEN LANDSCAPE FABRIC (E.G. WEED BARRIER) FOR SHRUB HEDGE ALONG FENCE LINE FOR PURPOSES OF WEED PREVENTION AND SOIL STABILIZATION (APPROX. 200'±). REFER TO PLANS FOR LANDSCAPE FABRIC TO BE CONCRETE-GRADE, UV RESISTANT, AND NON-Biodegradable. INSTALL PER AFR. RECOMM. INCLUDING SOIL PREPARATION AND INSTALLING LANDSCAPE FABRIC FOR SECURING FABRIC IN PLACE. ALL WEED BARRIER FABRIC TO BE COVERED WITH MULCH.

EXISTING TREES AND LARGE SHRUBS/PALMS TO REMAIN ALONG FENCE LINE. MULCH AROUND EXISTING TREES AND LARGE SHRUBS/PALMS AS NEEDED.

COORDINATE CONTINUED IRRIGATION AND MAINTENANCE OF SHRUB HEDGE WITH OWNER. SHRUBS MAY REQUIRE HAND-WATERING UNTIL ESTABLISHED.



planning
architecture
landscape architecture
urban design
visual communication

Jacksonville
6144 Duval
2025 Forge Avenue
Jacksonville, FL 32207
1.904.298.8288
elmjax.com
A20200044 12/20/2020

MICHAEL SCHREIBER
Landscape Architect

TLM REALTY CORP
NEPTUNE PLAZA WEST
NEPTUNE BEACH, FL

ISSUE DATES	
NO.	DESCRIPTION
1	ISSUED
2	REVISED
3	REVISED
4	REVISED
5	REVISED
6	REVISED
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PROVIDING AN EXHIBIT OF THE PLAN TO THE RECORD OF TITLE, AC AND SHALL REMAIN THE PROPERTY OF TLM REALTY CORP. THIS PLAN IS SUBJECT TO THE ORDINANCES FOR WHICH PERMITS ARE REQUIRED AND ANY OTHER APPLICABLE REGULATIONS.

PROJECT NO.: 2020-001
DATE: 12/20/2020
DRAWN BY: JMS
CHECKED BY: JMS
SCALE: AS SHOWN

LANDSCAPE PLAN

SHEET NUMBER
L511
CONSTRUCTION DOCUMENTS