

Document prepared by:
Mark Dowst & Associates, Inc.
536 N. Halifax Ave, Suite 100
Daytona Beach, FL 32118

Return recorded document to:
City of Daytona Beach Records Clerk
P.O. Box 2451
Daytona Beach, FL 32115-2451

DAYTONA MITSUBISHI PLANNED DISTRICT AGREEMENT

The CITY OF DAYTONA BEACH, FLORIDA, a Florida municipal corporation located in Volusia County, Florida ("City"), and Triple Diamond Real Estate LLC, a Florida limited liability company, the record title property owner ("Owner" or "Developer"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows:

1. PROPERTY DESCRIPTION AND OWNERSHIP.

A. The property subject to this Agreement consists of approximately 4.3± acres of real property ("Property") and is described in Exhibit "A", attached hereto and by reference made a part hereof.

B. The Property is under the sole ownership of Owner.

2. EXHIBITS.

The Exhibits listed below are by reference made a part hereof, and copies or reduced size copies are attached hereto. Full-sized copies of the Exhibits shall be retained by the City Clerk and shall be controlling in case of any ambiguity in the Exhibits. In the event of a conflict between the graphic illustrations of any Exhibit and the textual provisions of this Agreement, the textual provisions shall control.

Exhibit A: Property Legal Description.

Exhibit B: Overall Development Plan, rev. date 6/21/17, prepared by Mark Dowst & Associates, Inc.

Exhibit C: Architectural Elevations prepared by Stanley P. Hoelle, Architect.

Exhibit D: Landscape Plan prepared by Mark Dowst & Associates, Inc.

Exhibit E: Sign Plan prepared by Mark Dowst & Associates, Inc.

3. DEVELOPMENT PLAN.

A. Developer has designated the Property as **DAYTONA MITSUBISHI**.

B. The Property will be developed as a **Planned Development – General (PD-G)** pursuant to the City's Land Development Code (LDC). Development shall be controlled by the LDC and the terms and provisions of this Agreement. In the event of a conflict between this Agreement and the LDC or other ordinances, this Agreement shall control. If this Agreement fails to address a particular subject or requirement, the applicable requirements of the LDC or other City ordinance shall control.

C. Development of the Property shall be consistent with Exhibit B (Site Plan). Exhibit B generally depicts the planned layout of buildings, parking areas, driveways, common areas, and other planned features or improvements to the Property.

D. **ADDITIONAL LOT DEVELOPMENT CRITERIA.** The following lot development criteria shall apply to the Property:

- (1) Maximum building height of 35 feet;
- (2) Setbacks: side 7.5' ft.; front 25 ft.; rear 25 ft.
- (3) 35% Maximum building coverage;
- (4) 20% Minimum open space;
- (5) 80% Maximum impervious surface area;
- (6) Maximum density_0 (du/ac)
- (7) Slopes within any dry retention pond(s) shall be 4:1 without a fence;
- (8) Dry retention pond(s) shall count toward open space requirements; and
- (9) Landscape requirements shall meet the 25 foot scenic setback criteria for Nova Road with waiver adjustment.

4. CONFORMANCE WITH COMPREHENSIVE PLAN; CONCURRENCY; PERMITS.

A. The City has determined that the Property is suitable in size, location, and character for the uses proposed, and that the uses proposed are consistent with the City's comprehensive plan.

B. Developer shall be responsible for obtaining all development permits required by the LDC and applicable federal and state laws. Developer specifically acknowledges that approval of this Agreement does not constitute a Concurrency Certificate as required by the LDC, and that Developer will be required to separately obtain a Concurrency Certificate or, where applicable, to enter into proportionate fair share agreement. Approval of this agreement and exhibits is not a permit to begin clearing, to begin site work, or to begin construction without necessary permits.

C. The City agrees to issue the required permits for development of the Property in the manner set forth in this Agreement and the LDC.

5. PERMITTED USES.

The following uses are permitted within the Property, subject to compliance with the Use-Specific Standards set forth in Article 5, LDC:

- A. Automobile sales and service
- B. Automobile parts sales and installation
- C. Car wash
- D. Sales and rental of light vehicles and light recreation vehicles
- E. Tire sales and mounting
- F. Business services offices

6. INFRASTRUCTURE.

An on-site stormwater retention facility will be constructed in conjunction with the development. The stormwater retention facility will be maintained at a level consistent with the standards of the St. Johns River Water Management District. Collection and transmission facilities shall be located pursuant to the approved site plan, or site plans approved for individual lots or structures.

7. PROPERTY OWNERS' ASSOCIATION AND COMMON AREA MAINTENANCE.

“There will be no common areas in the development.”

8. ARCHITECTURAL AND DESIGN STANDARDS.

A. All buildings and accessory structures constructed within the Property shall be developed in compliance with Exhibit C (Architectural Elevations) and the requirements of this section, and with the applicable provisions of the LDC relating to architectural standards where they do not conflict with Exhibit C the provisions of this section.

B. All of the following requirements shall be met within the Property:

(1) All buildings and accessory structures shall be consistent with a common architectural theme. The theme shall be established by harmoniously coordinating the general appearance of all buildings and accessory structures, including but not limited to: exterior wall finishes or materials; roof styles, slopes, and materials; colors; and architectural details and ornamentation.

(2) All structures shall complement one another and shall convey a sense of quality and permanence. Lower grade materials, such as unfinished concrete and pre-fabricated metal, shall be prohibited.

(3) Corporate prototype design and materials shall be permitted provided they comply with the provisions of this section.

(4). All buildings and accessory structures shall generally be consistent with the Exhibit C (Architectural Elevations) unless, prior to issuance of the initial building permit, Developer submits and the City approves a different conceptual elevation. The City shall have the right to reject any proposed elevation which does not meet the requirements herein, or which involves the use of fewer architectural details and ornamentation than are set forth in Exhibit C.

(5) Through the LDC site plan review process, the City reserves the right to review the proposed construction of all buildings and structures, to recommend the substitution or inclusion of colors, materials, architectural details, and ornamentation, and to require or prohibit the use of the same to ensure compliance with the requirements of this section.

(6) No outside display or storage shall be permitted except as customarily permitted with auto sales uses.

(7) No vending machines shall be permitted on outside walkways or other outdoor pedestrian areas.

(8) The physical appearance of all parking lot lighting fixtures shall be consistent.

9. ENVIRONMENTAL CONSIDERATIONS.

Development of the Property shall comply with the LDC tree preservation requirements. Developer shall comply with all rules, statutes, and regulations pertaining to protected wildlife species, including but not limited to the rules and permitting requirements of the Florida Game and Freshwater Fish Commission concerning gopher tortoises.

10. SIGNAGE.

The PD shall have a uniform sign program, as follows:

The Signage Plan (Exhibit E) shall be the controlling document pertaining to signage on the Property. The amount and location of signage on the Property shall be permitted as provided on the Signage plan. Developer shall be permitted to relocate such signage, so long as the relocation is otherwise consistent with this Agreement. The style and dimensions of the signs shall be substantially as depicted on the Signage Plan. Actual copy area design, sign shape and sign design may be revised so long as the sizes of the signs and the total sign copy are not increased. Signage shall be permitted during the Site Plan approval process, and shall be approved provided that it is substantially consistent with the Signage Plan and meets applicable LDC requirements to the extent not addressed in this Agreement.

A. Ground Signs:

(1) One ground sign located on Nova Road consisting of a 10'10" wide x 12'8" high cabinet (137.2sf) on a 17'4" base with a total overall height of 30'.

(2) One ground sign located on Brentwood Drive consisting of a 8'9 13/16" wide x 7' 4 7/16" high cabinet (64.98sf) with a support pole and has a total overall height of 35'.

B. Wall Signs:

(1) 14'10" wide x 4'0" high wall sign (59.3sf)

(2) 17'4" wide x 4'0" high wall sign (69.3sf)

(3) 9'4" wide x 3'0" high canopy sign (28sf)

(4) 5'5" wide x 4'7" high wall sign (24.8sf)

(5) 6'6" wide x 2'0" high wall sign (13sf)

C. Directional Signs:

(1) 2, 4'3" wide x 1'9" high panels on support posts with an overall height of 4'0".

11. EFFECTIVE DATE; COMPLETION SCHEDULE.

A. This Agreement shall be effective upon execution by all parties. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of its actions as zoning authority.

B. Application shall be submitted for all construction permits for the development, or for the first phase of a phased development, within 18 months of the approval of this Agreement by the City Commission. The filing of an appeal of the land development order by any person shall toll the time for permitting until final resolution of the appeal. If development is phased, application for construction permits for subsequent phases shall be submitted within 10 years from the date of initial approval.

C. Construction of phase one shall be substantially complete within 5 years of the approval of this Agreement. Construction of any other phase must be substantially complete within 10 years of the initial approval of this Agreement.

D. One 12-month extension of the scheduled application or completion dates may be permitted as a minor modification to this Agreement.

E. Failure to comply with the schedule set out above shall cause the development rights granted pursuant to this Agreement to lapse.

12. MINOR MODIFICATIONS.

A. The following may be administratively authorized as minor modifications to this Agreement:

(1) Amendments to an Exhibit that are necessary for compliance with the provisions of this Agreement, the LDC, or extra-jurisdictional permitting requirements, and address technical considerations that could not reasonably be anticipated during the Planned Development approval process;

(2) Have no material effect on the character of the approved PD district, the basic concept and terms of the PD Plan/Agreement. These may include, but are not limited to, the following:

- a) Structural alterations that do not significantly affect the basic size, form, style, and appearance of principal structures;
- b) Minor changes in the location and configuration of streets and driveways that do not adversely affect vehicular access and circulation on or off the site;
- c) Minor changes in the location or configuration of buildings, parking areas, landscaping, or other site features;
- d) Minor changes in the location and configuration of public infrastructure facilities that do not have a significant impact on the City's utility and stormwater management systems;
- e) Increases of five percent or less in the total number of parking spaces.

(3) Modifications of up to 20% to any of the lot dimensional requirements and associated Exhibit revisions, where such modifications are necessary to address minor Exhibit errors or unanticipated conditions that reasonably need to be addressed to ensure the development plan can be implemented, EXCEPT:

- a) Modifications, such as to floor area ratios, that increase intensity or density of the entire project or any phase by more than 2%;
- b) Modifications that increase building height or decrease setbacks, yards, or landscaping along the perimeter of the Property by more than 10%;
- c) Modifications that, when combined with previously approved minor and substantial modifications, would result in a cumulative change of more than 20% of the original requirement for the area in question; and
- d) Modifications that would unduly impact City-owned public utilities.

B. Requests for minor modifications shall be submitted in writing on forms provided by the City. Requests shall be reviewed pursuant to the general technical review process described in the LDC.

C. Denial of a requested minor modification shall be issued in writing to the applicant. Upon denial, or if more than 60 days elapses after the submittal of a completed application without a decision by the City, the applicant may apply for an amendment to the agreement.

D. Approved modifications shall be noted on the official plan documents.

13. AMENDMENTS.

Any revision to this Agreement other than a minor modification as described above shall require an amendment approved by the City Commission after review and recommendation by the Planning Board. Requests for an amendment must be submitted in writing and, except as otherwise provided herein, shall be processed in accordance with the LDC. Notice of public hearings shall be provided as if the application is one to rezone property.

14. VARIANCES.

This Agreement shall not be deemed to prohibit any owner of property within the planned development from seeking or obtaining one or more variances from the requirements of this Agreement pursuant to the LDC. In addition to those entitled to notice pursuant to the LDC, notice of any public hearing to consider a proposed variance shall be provided to all persons owning property within the planned development. No such variance shall be deemed to require formal amendment to this Agreement.

15. POLICE POWER AND SOVEREIGN IMMUNITY NOT WAIVED.

Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules, and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of or attempted waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

16. COMPLETE AGREEMENT; AGREEMENT TO BE RECORDED.

A. This Agreement represents the complete understanding by and between the parties with respect to the development and use of the Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and superseded by this Agreement.

B. This Agreement shall be recorded in the Public Records of Volusia County, Florida, at Developer's expense. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property.

17. VENUE AND SEVERABILITY.

A. In the event of any claim, action, litigation, or proceeding under this Agreement, venue shall be in Volusia County, Florida.

B. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

[Signature pages following]

Signed, sealed and delivered in the presence of:

**THE CITY OF DAYTONA BEACH,
FLORIDA, a Florida municipal corporation**

Witness 1

By: _____
Derrick L. Henry, Mayor

Print Name of Witness 1

Attest:

Witness 2

By: _____
Letitia LaMagna, City Clerk

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 201_ by _____ and _____, Mayor and City Clerk, respectively, of The City of Daytona Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of:

[OWNER]

Lisa Wilsey
Witness 1
LISA Wilsey
Print Name of Witness 1

By: [Signature]
Name: RICHARD NISBETT
Title: MANAGING MEMBER

Date: 8-11-17

Andrea Librizzi
Witness 2
Andrea Librizzi
Print Name of Witness 2

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 11th day of August, 2017, by RICHARD NISBETT as MANAGING MEMBER of TRIPLE DIAMOND REAL ESTATE LLC referred to in this agreement as "Owner." He or she is personally known to me or produced as identification and did not take an oath.

Lisa Wilsey
Notary Public
Commission No. _____



Approved as to legal form:

By: _____
Robert Jagger, City Attorney

2000

...

LIBRARY
Commissioner's Office
Expires July 26, 2000
Bonded for the use of the
State of Florida



[Exhibit pages attached:]

EXHIBIT A

Legal Description of the Property

LEGAL DESCRIPTION:

(PER OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY – SEE SURVEY NOTE 5.)

A PORTION OF LOTS 6, 7, 8, AND 9, BLOCK 24, OF HOME ACRES, UNIT #2, OF RECORD IN MAP BOOK 8, PAGE 103, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND THAT PORTION OF LOTS 5 AND 6, MASON AND CARSWELL'S SUBDIVISION IN HOLLY HILL, OF RECORD IN MAP BOOK 2, PAGE 90, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE, COMMENCE AT A POINT IN THE WESTERLY LINE OF NOVA ROAD AS NOW LAID OUT, BEING STATE ROAD 5-A, SAID POINT BEING A DISTANCE OF 25 FEET NORTHERLY OF THE INTERSECTION OF SAID LINE WITH THE CENTERLINE OF BRENTWOOD AVENUE; THENCE S 64°25'56" W A DISTANCE OF 50 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE S 64°25'56" W ALONG THE NORTHERLY RIGHT OF WAY OF SAID BRENTWOOD AVENUE, A 50 FOOT RIGHT OF WAY AS NOW LAID OUT, A DISTANCE OF 621.77 FEET; THENCE N 24°38'57"W, DEPARTING SAID NORTHERLY RIGHT OF WAY, A DISTANCE OF 280.10 FEET; THENCE N 64°25'56" E A DISTANCE OF 667.00 FEET TO A POINT IN THE WESTERLY RIGHT OF WAY OF NOVA ROAD (STATE ROAD 5-A); THENCE S25°36'12" E ALONG SAID WESTERLY RIGHT OF WAY A DISTANCE OF 257.78 FEET; THENCE S28°42'38" W A DISTANCE OF 20.93 FEET; THENCE S 64°25'56" W, PARALLEL TO THE NORTHERLY RIGHT OF WAY OF SAID BRENTWOOD DRIVE, A DISTANCE OF 32.96 FEET; THENCE S 25°34'04" E A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION THAT LIES WITHIN NOVA ROAD AND BRENTWOOD AVENUE.

EXHIBIT B

Overall Development Plan

EXHIBIT C

Architectural Elevations

EXHIBIT D

Landscape Plan

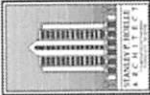
EXHIBIT E

Signage Plan

EXHIBIT B
Overall Development Plan

EXHIBIT C
Architectural Elevations

REVISION
2-15-11

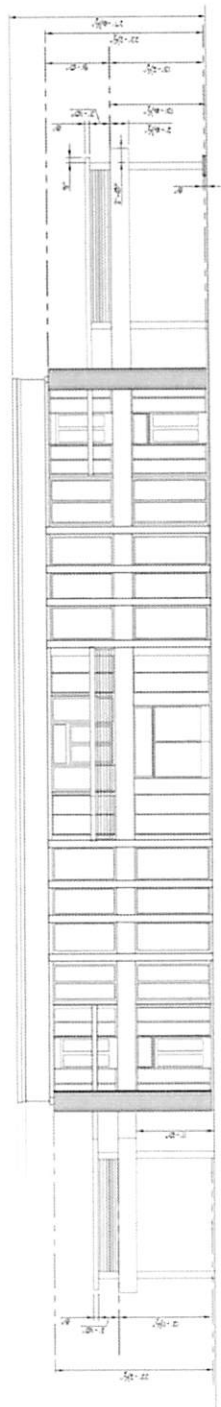


UNIVERSITY OF NORTH FLORIDA
ARCHITECTURAL DEPARTMENT
1 UNIV. BLVD., SE
DAVENPORT, FL 33427
TEL: 904.399.2000
WWW.UNF.EDU

ELEVATIONS
DAYTONA METS BUILDING
900 NORTH KOYA ROAD
DAYTONA BEACH, FLORIDA 32117



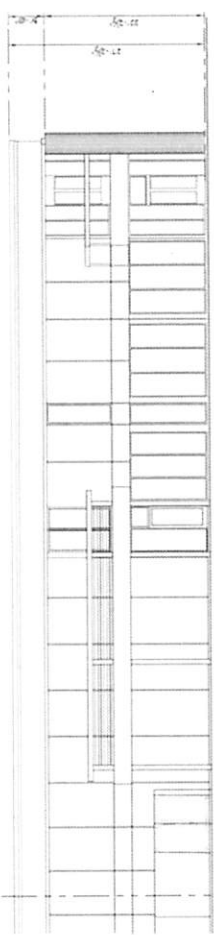
DATE: 02/12/11
DRAWN BY: D. HEATH
JOB NUMBER: 09086-13
A&A
OF 1 SHEETS



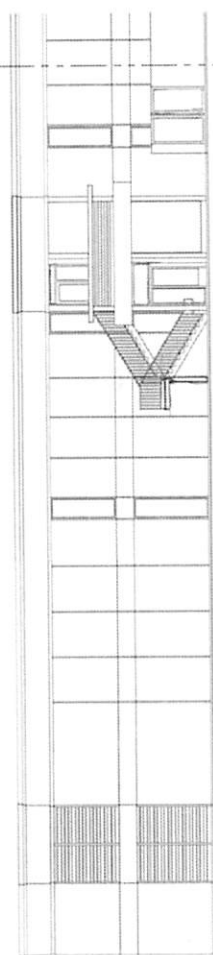
ELEVATION FRONT
SCALE 1/8" = 1'-0"

MATERIAL & COLOR SCHEDULE

NO.	DESCRIPTION	MATERIAL	COLOR
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3	PAINT	PRIMER	PRIMER
4	PAINT	PRIMER	PRIMER
5	PAINT	PRIMER	PRIMER
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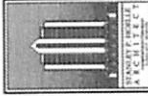


ELEVATION LEFT SIDE
SCALE 1/8" = 1'-0"



ELEVATION LEFT SIDE
SCALE 1/8" = 1'-0"

REVISION: DT



STANDARD SHEET & CULLET
These lines have been drawn on the basis of the information furnished and are not to be construed as a contract or a warranty of any kind. The architect shall not be responsible for the construction of the work shown on these drawings.

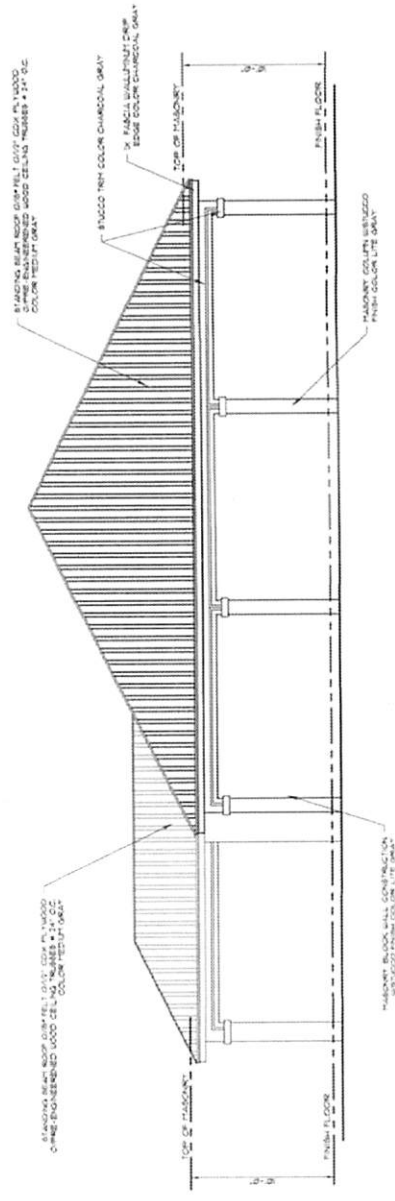
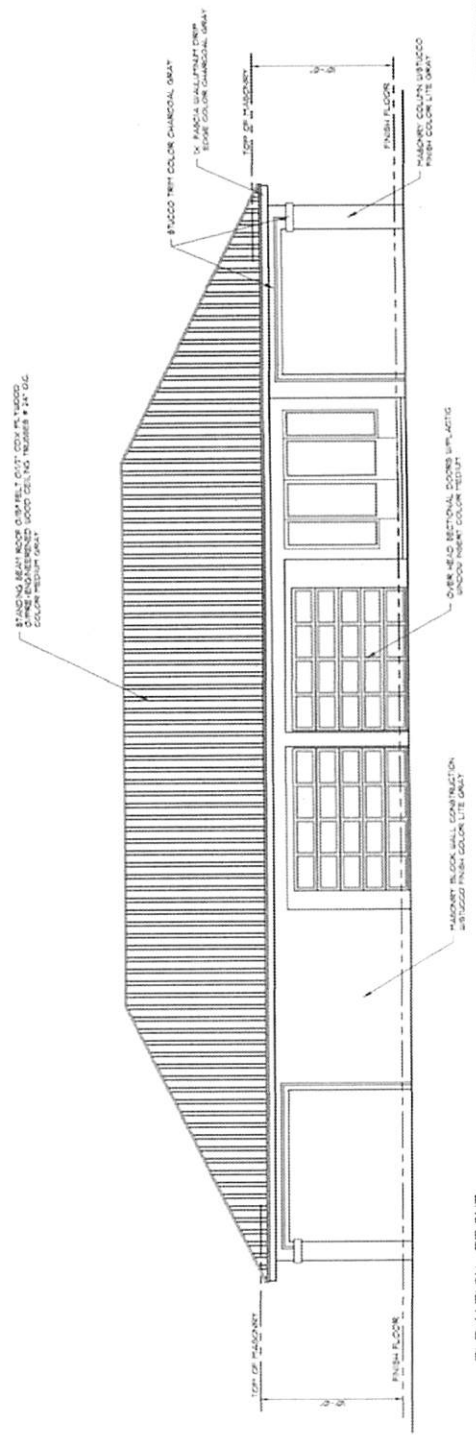
ELEVATIONS CAR MASH
DAYTONA MTSUBISHI
400 NORTH NOVA ROAD
DAYTONA BEACH, FLORIDA 32117

DATE: 02/12/11
DRAWN BY: DHEATH
JOB NUMBER: 022808-13

NO. 9013
STATE OF FLORIDA
REGISTERED PROFESSIONAL ARCHITECT
EXPIRES: 02/12/11

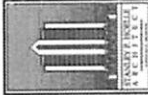
CP - SHEETS

PHASE II



ELEVATION: LEFT SIDE
SCALE: 1/4" = 1'-0"

REVISION	BY



These drawings were prepared by the Architectural Firm of the State of Ohio, under the supervision of the Architect, and they are the property of the Architect. No part of these drawings may be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the Architect.

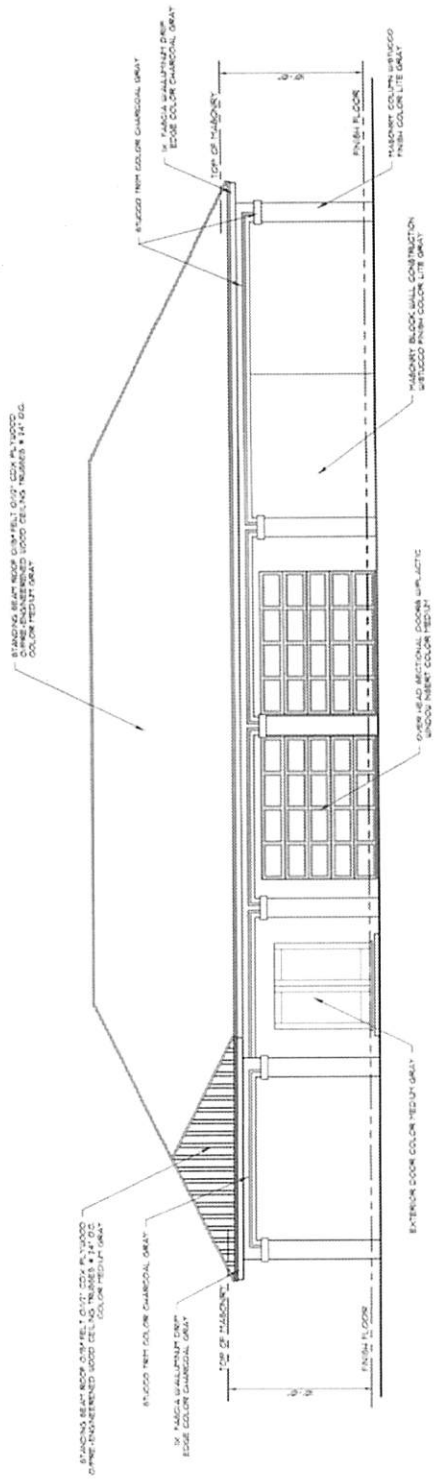
DAYTON MITHRAN
400 NORTH KYA ROAD
DAYTON, OHIO 45424

DAYTON MITHRAN
 ARCHITECTS
 400 NORTH KYA ROAD
 DAYTON, OHIO 45424
 TEL: 513.233.1111
 FAX: 513.233.1112
 WWW.DAYTONMITHRAN.COM

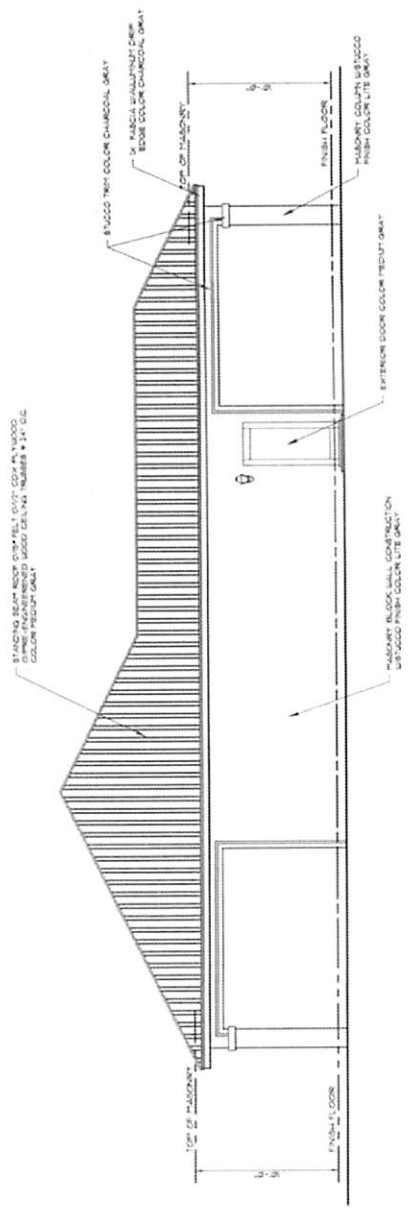
DATE: 07/12/11
 DRAWN BY: DHEATH
 JOB NUMBER: 092216-13

ADD
 OF SHEETS

PHASE II



ELEVATION, REAR
 SCALE: 1/4" = 1'-0"



ELEVATION, RIGHT SIDE
 SCALE: 1/4" = 1'-0"

EXHIBIT D
Landscape Plan

EXHIBIT E
Signage Plan



GRAPHIC SCALE



SCALE 1" = 30'



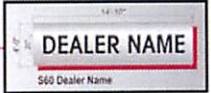
Canopy Sign



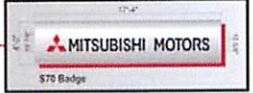
MITSUBISHI MOTORS



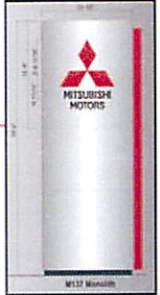
DPNL7 Directional



DEALER NAME



MITSUBISHI MOTORS



Ground Sign



Genuine Parts



Ground Sign



DPNL7 Directional



MITSUBISHI MOTORS

WOM ROAD (STATE ROAD S-5-A)
(WOM WIDTH VARIES PER FOOT N/W MAP 2810-2605)

DRENTWOOD DRIVE (SECOND STREET PER PLAT)
(R/W WIDTH VARIES PER FOOT N/W MAP 2810-2605)

REVISION	
NO.	DATE
MARK DOWST & ASSOCIATES, INC. ENGINEERS • PLANNERS • SURVEYORS 138 N. HALYAL AVENUE, SUITE # 100 • DAYTONA BEACH, FLORIDA 32119 • (386) 248-2298 FAX: (386) 248-2299 SIZE: 17" x 37" DRAWN: MJD DATE: 02-02-17 SHEET: 1 OF 1	
SIGN PLAN	
DAYTONA - MITSUBISHI	
DAYTONA BEACH, FLORIDA	
PROJECT NO.	1366
1:250 - SIGN PLAN	