

**Document prepared by:**  
G.Larry Sims, Esquire  
Doran, Sims, Wolfe & Ciochetti  
1020 W International Speedway Blvd  
Daytona Beach, FL 32114

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

## **AFSHARI LPGA PLANNED DISTRICT AGREEMENT**

The CITY OF DAYTONA BEACH, FLORIDA, a Florida municipal corporation located in Volusia County, Florida ("City"), and Afshari LPGA, LLC, a Florida limited liability company, ("Owner" and "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 4.5 +/- acres of real property ("Property") and is described in Exhibit "A", attached hereto and by reference made a part hereof.

B. The Property is currently 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, survey.

Exhibit B: Site Plan, rev. date 9-28-16, prepared by Richard J. Dixon, P.E.,

Exhibit C: Architectural Elevations, rev. date 3-2-17, prepared by Eleven 18 Architects.

Exhibit D: Landscape Plan, rev. date 2-23-17 prepared by Richard B. Truitt, Landscape Architect.

Exhibit E: Preliminary Plat, rev. date N/A, prepared by N/A \_\_\_\_\_,

Exhibit F: Sign Plan, rev. date 3-10-17, prepared by Eleven 18, Architects.

**3. DEVELOPMENT PLAN.**

A. Developer has designated the Property as "Afshari LPGA".

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 65 feet;
- (2) Maximum individual building size of 24,000 sq. ft.
- (3) Setbacks: side 25 ft.; front 50 ft.; rear 25 ft.
- (4) 30% Maximum building coverage;
- (5) 33% Minimum open space;
- (6) 66% Maximum impervious surface area;
- (7) Maximum density \_\_\_\_ (du/ac)
- (8) Slopes within any dry retention pond(s) shall be 4:1 without a fence;
- (9) Dry retention pond(s) shall count toward open space requirements; and
- (10) Landscape requirements shall meet the 50 foot scenic setback criteria for LPGA Blvd.

**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: restaurant with a drive-through lane and offices (medical or professional).

**6. INFRASTRUCTURE.**

A. 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.**

A. As used in this section, "common areas" and "common facilities" refer to all lands and all facilities that are intended to be set aside for common ownership, use, or benefit, whether or not identified as common areas on Exhibit B, such as conservation easements, retention ponds, subdivision entry walls, and passive recreational areas.

B. Prior to final plat approval or prior to issuance of the first certificate of occupancy within the development, whichever is earlier, Developer will form and incorporate a non-profit property owners' association. The final plat shall include such language as the City may deem necessary to reflect the association's responsibilities. The association shall be responsible for operation, maintenance, and control of all common areas and common facilities, including signage, landscaping, parking and driving areas, and retention area. The association shall have authority to establish and assess dues and fees upon its members in order to recoup the cost of maintenance, and the power to impose and enforce liens against those members who fail to pay such assessments. All persons purchasing property within the project shall be members of the property owners' association. Developer may from time to time add additional covenants and restrictions or make changes in association by-laws as may be required to guarantee that the project will be developed in accordance with the policies outlined in this Agreement.

C. Prior to final plat approval or prior to issuance of the first certificate of occupancy within the development or phase, whichever is earlier, Developer shall complete construction and installation of all common areas and common facilities within the development or phase; or, for those common facilities within a phase that may be susceptible to damage due to remaining construction, the City may allow postponement of this requirement subject to Developer's provision of adequate assurances that the work will be

done. For example, the City may require Developer to post a bond sufficient to cover 120% of the cost of such facilities according to certified estimates. Any bond shall be in a form approved by the City Attorney.

**8. ARCHITECTURAL AND DESIGN STANDARDS.**

A. All buildings and accessory structures constructed within the Property shall be developed in compliance with the requirements of this section, and with the applicable provisions of the LDC relating to architectural standards where they do not conflict with 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) False or real windows shall be provided on all elevations visible from public right of way in sufficient size and number to complement the proportions of the building.

(5) 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.

(6) 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.

(7) No outside display or storage shall be permitted.

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

(9) 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 set forth in Exhibit F and any additional signage as may be permitted by the LDC.

**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 60 months 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 6 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.**

A. 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.

B. In recognition of the City's general authority to rezone and legislate land uses and zoning requirements, all signatories to this Agreement and all individual lot owners, fee titleholders, mortgagees, or lien holders who now or hereafter own property subject to the this Agreement, agree as follows:

(1) The property owners association established pursuant to Section 7 above shall be authorized to represent and execute amendments to the Agreement on behalf of all lot owners other than the owners of lots directly impacted by the amendment.

(2) If the property owners association fails to retain its corporate status, then all directly impacted owners shall be authorized to represent and execute an amendment on behalf of all owners not directly impacted who have received notice of the proposed amendment as required by this Agreement or applicable law.

(3) For purposes of this section, a lot is "directly impacted" by an amendment to this Agreement only where the amendment would revise the listed uses, dimensional requirements, architectural requirements, or sign requirements for that lot.

C. No property owner other than one who actually executes an amendment shall be deemed to have waived his or her right to challenge a proposed or executed amendment in the same manner that an affected property owner may challenge zoning or related lot specific changes for property which is not subject to a planned development agreement. Such challenges include: (i) objections to a proposed amendment before the City Planning Board or City Commission, (ii) seeking certiorari review or injunctive action in relation to the

adoption of such amendment as provided by law, or (iii) consistency challenges as provided for in Section 163.3215, Fla. Stat., or any successor provision.

**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

\_\_\_\_\_  
Print Name of Witness 1

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Print Name of Witness 2

By: \_\_\_\_\_  
Derrick L. Henry, Mayor

Attest:

By: \_\_\_\_\_  
Letitia LaMagna, City Clerk

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 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:

**Afshari LPGA, LLC**

G. Larry Sims

Witness 1

G. Larry Sims

Print Name of Witness 1

Sherry Kay Gillan

Witness 2

Sherry Kay Gillan

Print Name of Witness 2

By: Susan Afshari

Name: Susan Afshari

Title: Manager

Date: \_\_\_\_\_

[Corporate Seal]

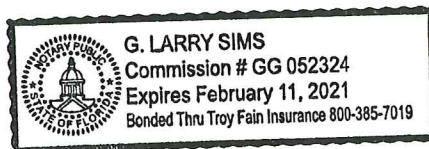
TATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 18 day of September, 2017, by Susan Afshari as Mamager of Afshari LPGA, LLC, a Florida limited liability company, referred to in this agreement as "Developer". He/she is personally known to me and did not take an oath.

G. Larry Sims

Notary Public

Commission No: \_\_\_\_\_



**Approved as to legal form:**

By: \_\_\_\_\_  
Robert Jagger, City Attorney

**[Exhibit pages attached:]**

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**EXHIBIT A**

**Legal Description of the Property**

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**EXHIBIT B**

**Site Plan**

**Site Plan rev. date 2-28-17 Prepared by Richard J. Dixon, P.E.**

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**EXHIBIT C**

**Architectural Elevations, rev date 3-2-17 prepared by Eleven 18 Architects**

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**EXHIBIT D**

**Landscape Plan rev. date 2-23-17 prepared by Richard B. Truitt, Landscape Architect**

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**EXHIBIT F**

**Sign Plan, rev date 3-10-17, prepared by Eleven 18 Architects**

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EXHIBIT "A"

LEGAL DESCRIPTION

FULL PARCEL ID # 03-15-32-00-00-0015

SHORT PARCEL ID # 5203-00-00-0015

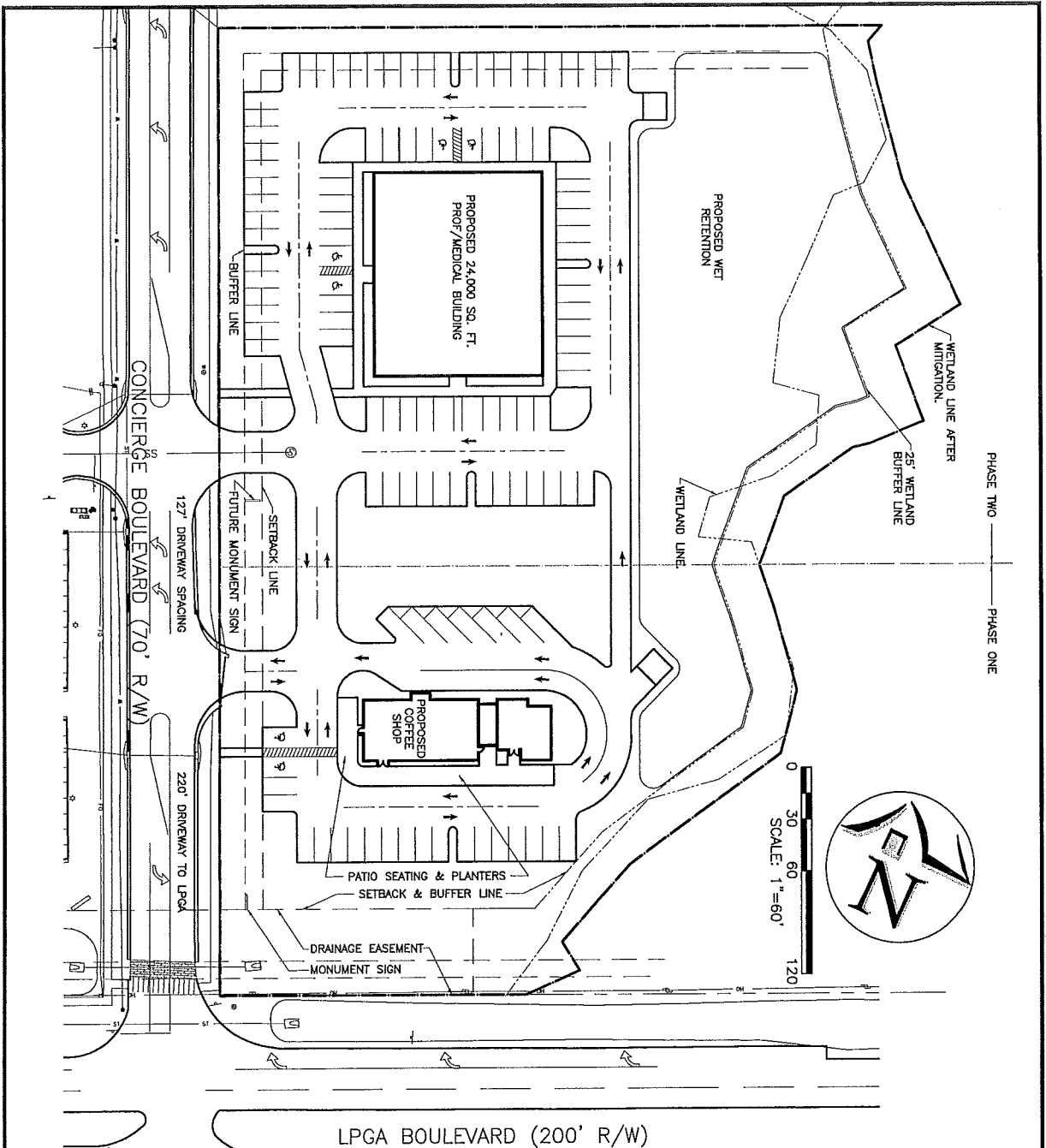
DESCRIPTION: (O.R.B. 6082, PG. 3931)

A PORTION OF PARCEL 34 AS RECORDED IN OFFICIAL RECORDS BOOK 4784, PAGE 628, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LOCATED IN THE SW 1/4 OF SECTION 3, T15S, R32E, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SW 1/4 OF SAID SECTION 3; THENCE N00°02'28"E, ALONG THE WEST LINE OF THE SW 1/4 OF SAID SECTION 3, A DISTANCE OF 127.34 FEET TO A POINT; THENCE LEAVING THE WEST LINE OF THE SW 1/4 OF SAID SECTION 3, N64°20'35"E, ALONG THE EXTENDED NORTHERLY RIGHT-OF-WAY LINE OF LPGA BOULEVARD, A DISTANCE OF 1314.95 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE N28°39'00"W, DISTANCE OF 564.54 FEET TO A POINT; THENCE N64°21'00"E, DISTANCE OF 391.90 FEET TO A POINT; THENCE S14°51'25"W, DISTANCE OF 12.22 FEET, THENCE S37°25'40"E, A DISTANCE OF 24.80 FEET TO A POINT; THENCE S40°16'58"E, A DISTANCE OF 58.23 FEET TO A POINT; THENCE S50°37'47"E, A DISTANCE OF 81.66 FEET TO A POINT; THENCE S32°21'53"W, A DISTANCE OF 45.41 FEET TO A POINT; THENCE S45°58'29"E, A DISTANCE OF 46.99 FEET TO A POINT; THENCE S42°14'12"W, A DISTANCE OF 34.02 FEET TO A POINT; THENCE S50°44'52"W, A DISTANCE OF 10.26 FEET TO A POINT; THENCE S30°09'02"W, A DISTANCE OF 50.15 FEET TO A POINT; THENCE S05°27'03"E, A DISTANCE OF 42.34 FEET TO A POINT; THENCE S44°21'34"E, A DISTANCE OF 25.25 FEET TO A POINT; THENCE S41°28'09"E, A DISTANCE OF 51.09 FEET TO A POINT; THENCE S10°56'09"E, A DISTANCE OF 38.18 FEET TO A POINT; THENCE S28°30'38"W, A DISTANCE OF 109.25 FEET TO A POINT; THENCE S16°45'16"W, A DISTANCE OF 28.56 FEET TO A POINT; THENCE S16°01'11"W, A DISTANCE OF 31.74 FEET TO A POINT; THENCE S57°13'29"E, A DISTANCE OF 19.54 FEET TO A POINT; THENCE S40°23'31"W, A DISTANCE OF 34.19 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF LPGA BOULEVARD; THENCE S64°20'35"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 180.82 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**



<b>PROJECT SITE:</b>	VACANT PARCEL TO BE DEVELOPED IN TWO PHASES WITH COFFEE SHOP & OFFICE BUILDING.
<b>ZONING DATA:</b>	ZONING: PD-G FUTURE LAND USE: MIXED USE
<b>BUILDING SETBACKS:</b>	FRONT:(LPGA) 50' REAR: 25' SIDES: 25'
<b>BUFFERS:</b>	FRONT:(LPGA) 50' SIDES: 15' WETLAND: 25'
<b>SITE DATA:</b>	TOTAL AREA 194,433 S.F. 4.46 AC. "X" & "AE" FLOOD ZONES:
<b>PROPOSED BUILDING AREAS:</b>	COFFEE SHOP 2,775 S.F. FRANCHISE OFFICE 1,036 S.F. PROF./MEDICAL BUILDING 24,000 S.F.
<b>PARKING REQUIRED:</b>	SOUTH BUILDING = 1 PER 50 SQ. FT. COFFEE SHOP = 1,100/50 = 22 (CUSTOMER SERVICE AREA ONLY) FRANCHISE OFFICE = 3.5 PER 1,000 SQ. FT. = 3.5 PER 1,036 = 3 TOTAL PARKING REQUIRED = 27 TOTAL PARKING PROVIDED = 27
<b>NORTH BUILDING:</b>	PROFESSIONAL OFFICE = 3.5 PER 1,000 SQ. FT. (50% OR 12,000 SQ. FT.) = 3.5 PER 12,000 = 42 MEDICAL OFFICE = 4 PER 1,000 SQ. FT. (50% OR 12,000 SQ. FT.) = 4 PER 12,000 = 49 TOTAL PARKING REQUIRED = 90 TOTAL PARKING PROVIDED = 91

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REV	DATE	CITY TRT
1	12/20/16	CITY TRT
2	2/22/17	CITY TRT
DRAFTER: DBA		
CHECKED BY: RD		
PROJECT NO. 1098		

**AFSHARI LPGA CITY PD**  
**CONCEPTUAL SITE PLAN**  
DAYTONA BEACH, FL.

RICHARD J. DIXON, P.E.  
PROFESSIONAL ENGINEER  
FL. REG.# 47544  
102 SOUTH ORANGE STREET  
NEW SMYRNA BEACH, FL  
32168 (386) 428-5834

  
**ANDERSON-DIXON, LLC**  
ENGINEERING • PLANNING • PERMITTING  
PHONE: (386) 428-5834 • FAX: (386) 409-3781

DATE: 09-28-16

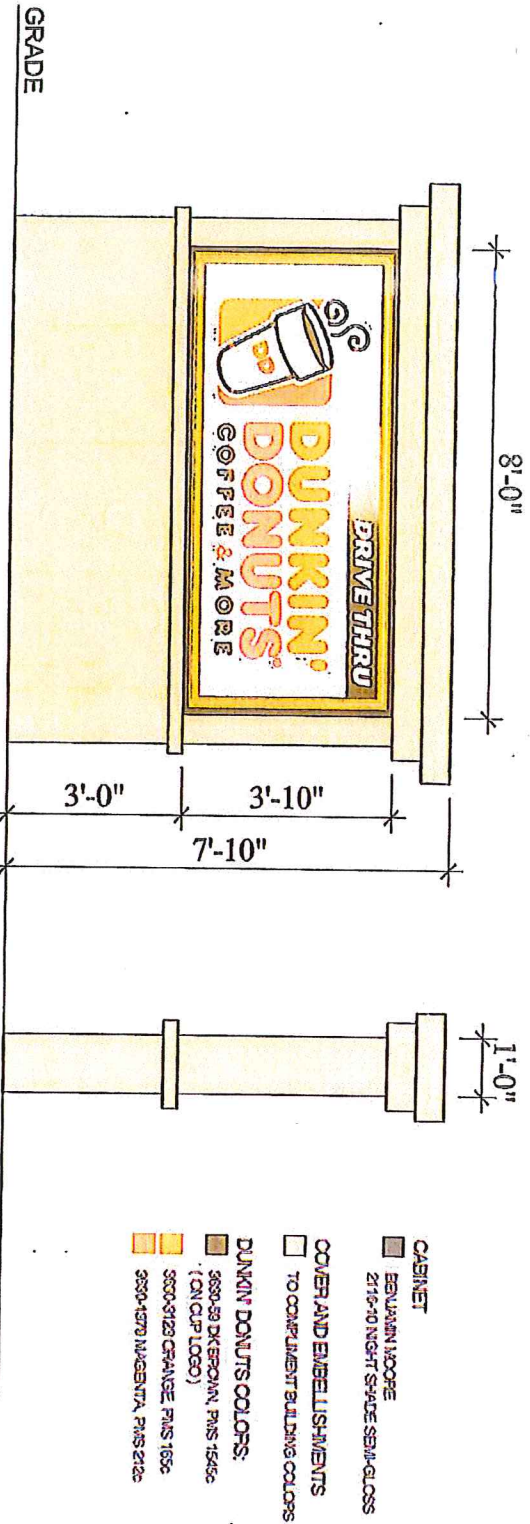






EXHIBIT F

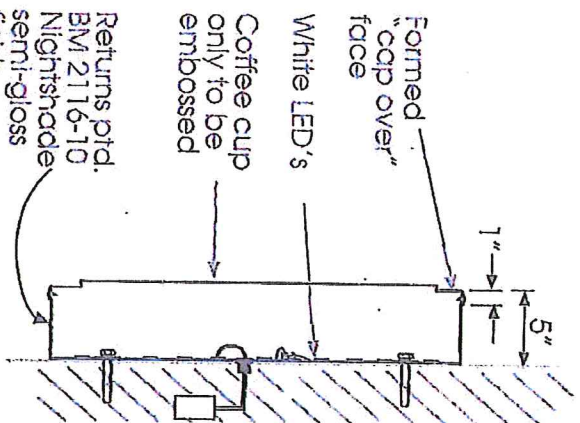
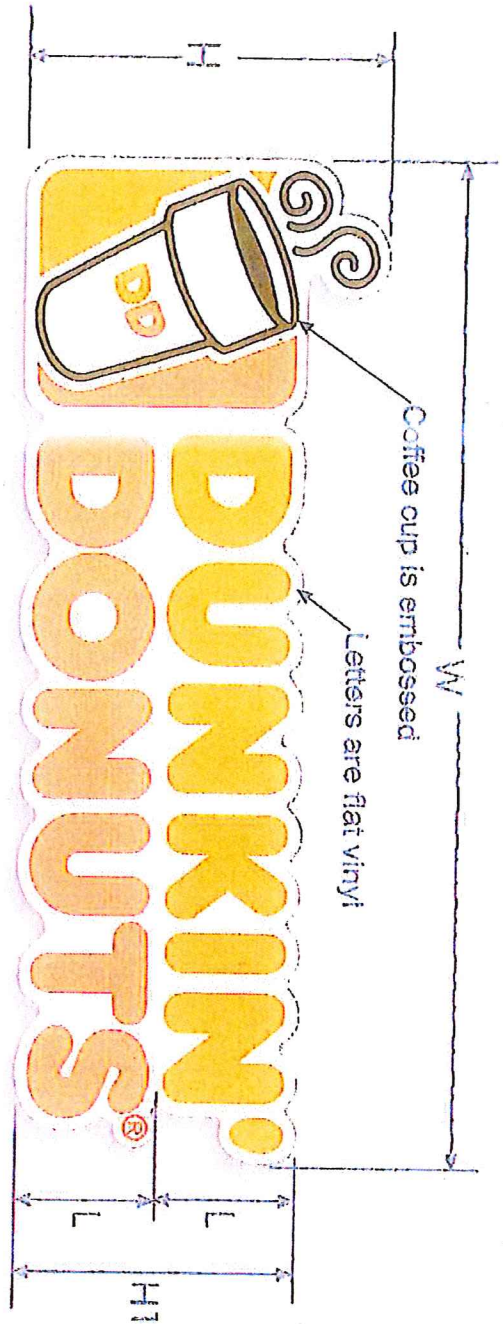
Sign Plan, rev date 3-10-17, prepared by Eleven 18 Architects



DOUBLE SIDED FREESTANDING SIGN

NOTE: FREESTANDING SIGN TO BE CONSTRUCTED OUT OF METAL FRAMING WITH STUCCO FINISH TO MATCH BUILDING.

# STACKED CONFIGURATION



## "STACKED" LOGO LED CLOUD SIGN

Nominal Size	H	H1	L	W	*Area (sq ft)	ILLUMINATION
12" Letter	30'-1/2"	24"	12"	6'-10"	17.36	White LED's
15" Letter	38'-1/8"	30"	15"	8'-6 1/2"	27.13	
18" Letter	45'-3/4"	36"	18"	10'-3"	39.07	
21" Letter	53'-3/8"	42"	21"	11'-11 1/2"	53.18	
24" Letter	61"	48"	24"	13'-8"	69.47	

Side View

Stacked LED cloud sign