

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20060406

1. ACTION REQUESTED/PURPOSE: Authorize payment in the amount of \$151,500 for the portion of Koreshan Boulevard now known as Estero Parkway in accordance with the Second Development Order Amendment for Miromar Lakes DRI; approve Agreement for Purchase and Sale in Lieu of Condemnation Proceedings for the acquisition of Parcel 105 for the Estero Parkway Extension Project No. 5021, in the amount of \$355,000; authorize payment of costs and fees to close, and the Division of County Lands to handle all documentation necessary to complete the transaction.

2. WHAT ACTION ACCOMPLISHES: Acquires property necessary for the widening of Estero Parkway Extension.

3. MANAGEMENT RECOMMENDATION: Approve

4. Departmental Category: 6

C6D

5. Meeting Date: **04-18-2006**

6. Agenda:
 Consent
 Administrative
 Appeals
 Public
 Walk-On

7. Requirement/Purpose: (specify)
 Statute 73 & 125
 Ordinance
 Admin. Code
 Other

8. Request Initiated:
 Commissioner _____
 Department Independent
 Division County Lands TLM 3/23/06
 By: Karen L.W. Forsyth, Director

9. Background:
Negotiated for: Department of Transportation

Interest to Acquire: Fee interest in 6.09 acres (Estero Parkway dedication - 5.05 acres, and Parcel 105 - 1.043 acres)

Property Details:

Owner: Miromar Lakes, L.L.C., A Florida Limited Liability Company
Portion of Tax Strap Nos. 23-46-25-00-00001.1050 and 23-46-25-00-00001.1040

Purchase Details:

Combined Purchase Price: \$506,500 (\$151,500 and \$355,000)
Costs to Close: \$5,000

Dedication of the Koreshan Boulevard now known as Estero Parkway, is being valued consistent with the provisions of the Lee County LDC, based on the date prior to the Miromar Lakes DRI Development Order approval, November 27, 1999. An appraisal was performed by W. Michael Maxwell, MAI, SRA, indicating a value of \$151,500 for the 5.05 acres.

The Seller has accepted the County's binding offer of \$355,000 (appraised value) for Parcel 105. An appraisal was performed by Coastal Engineering Consultants, Inc., by William H. Reeve, MAI, SRA, indicating a value of \$355,000.

Staff Recommendation: Staff recommends the Board approve the action requested.

Account: 20502118803.506110

Attachments: Agreement for Purchase and Sale of Real Estate in Lieu of Condemnation, Affidavit of Interest in Real Property, In-House Title Search, Appraisal Data, and Sales History

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i>			<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN:
4-16-06
2:02
 COUNTY ADMIN
 POP/ARG/D/TO:
4-16-06 2:05
23-46-25-00-00001.1050

Rec. By CoAtty
 Date: 4/16/06
 Time: 1:00 PM
 Forwarded To:
4/16/06 1:45 PM

This document prepared by
Lee County Division of County Lands
Project: Estero Parkway Extension, #5021
Parcel: 105
Part of STRAP No.: 23-46-25-00-00001.1040

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY
AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE
IN LIEU OF CONDEMNATION PROCEEDINGS

THIS AGREEMENT for purchase and sale of real property is made this 27th day of February 2006, by and between Miromar Lakes, L.L.C., a Florida Limited Liability Company, hereinafter referred to as SELLER, whose address is 10801 Corkscrew Road, Suite 305, Estero, Florida 33928, and Lee County, a political subdivision of the State of Florida, hereinafter referred to as BUYER.

WITNESSETH:

- 1. AGREEMENT TO PURCHASE AND TO SELL:** SELLER agrees to sell and BUYER agrees to purchase, subject to the terms and conditions set forth below, a parcel of land consisting of 1.043 acres more or less, and more particularly described in "Exhibit A" attached hereto and made a part hereof, hereinafter called "the Property." This Property is being acquired for the Estero Parkway Extension Project, hereinafter called "the Project", with the SELLER'S understanding that the Property, if not voluntarily sold, would have been condemned by BUYER through the exercise of its eminent domain powers.
- 2. PURCHASE PRICE AND TIME OF PAYMENT:** The total purchase price ("Purchase Price") will be Three Hundred Fifty-Five Thousand and No/100 (\$355,000), payable at closing by County warrant. The Purchase Price is mutually agreeable to both the SELLER and BUYER and represents the voluntary sale and purchase of the property in lieu of BUYER'S condemnation.

3. **EVIDENCE OF TITLE:** BUYER will obtain at BUYER'S expense an American Land Title Association Form B Title Commitment and provide title insurance Owner's Policy in the amount of the purchase price, from a title company acceptable to BUYER. The commitment will be accompanied by one copy of all documents that constitute exceptions to the title commitment. The commitment will also show title to be good and marketable with legal access, subject only to real estate taxes for the current year, zoning and use restrictions imposed by governmental authority, and restrictions and easements of record.

4. **CONDITION OF PROPERTY; RISK OF LOSS:** BUYER has inspected the Property and, except as is otherwise provided herein, accepts the Property in the condition inspected in "as is" condition. However, no personalty, refuse, or debris will be left upon the property by the SELLER.

5. **SELLER'S INSTRUMENTS AND EXPENSES:** SELLER will pay for and provide:
 - (a) A statutory warranty deed, and an affidavit regarding liens, possession, and withholding under FIRPTA in a form sufficient to allow "gap" coverage by title insurance;
 - (b) taxes or assessments for which a bill has been rendered on or before the date of closing;
 - (c) payment of partial release of mortgage fees, if any;
 - (d) SELLER'S attorney fees, if any.

6. **BUYER'S INSTRUMENTS AND EXPENSES:** BUYER will pay for:
 - (a) Recording fee for deed;
 - (b) survey, (if desired by BUYER).

7. **TAXES:** SELLER will be charged for Real Estate taxes and personal property taxes (if applicable) up to, but not including the date of closing. This voluntary sale and purchase is considered by Florida law to be exempt from the payment of Documentary Stamp Taxes because this transaction was made under the threat of an eminent domain proceeding by the BUYER.

8. **DEFECTS IN TITLE AND LEGAL ACCESS:** Prior to closing, BUYER will have a reasonable time to examine the title and documents establishing legal access to the property. If title or legal access is found to be defective, BUYER will notify SELLER in writing of the defects

and SELLER will make a prompt and reasonable effort to correct such defects. If SELLER fails to make corrections within 60 days after notice, BUYER may elect to accept the Property in its existing condition with an appropriate reduction to the purchase price, or may terminate this Agreement without obligation.

9. **SURVEY:** BUYER may order the Property surveyed at BUYER'S expense. SELLER agrees to provide access to the Property for such survey to be performed. If the survey shows a discrepancy in the size or dimensions of the Property, or shows encroachments onto the Property or that improvements located on the Property encroach onto adjacent lands, or if the survey identifies violations of recorded covenants and/or covenants of this Agreement, upon notice to the SELLER, the BUYER may elect to treat such discrepancies, violations and/or encroachments as a title defect.

10. **ENVIRONMENTAL AUDIT:** BUYER may perform or have performed, at BUYER'S expense, an environmental audit of the Property. If the audit identifies environmental problems unacceptable to the BUYER, BUYER may elect to accept the Property in its existing condition or BUYER may terminate this Agreement without obligation.

11. **ABSENCE OF ENVIRONMENTAL LIABILITIES:** The SELLER warrants and represents to the best of its current actual knowledge that (1) the Property is free from hazardous materials and does not constitute an environmental hazard under any federal, state or local law or regulation, and; (2) no hazardous, toxic or polluting substances have been released or disposed of on the Property in violation of any applicable law or regulation. The SELLER further warrants based upon its current actual knowledge that (1) there is no evidence that hazardous, toxic or polluting substances are contained on or emitting from the property in violation of applicable law or regulation; (2) there are no surface impoundments, waste piles, land fills, injection wells, underground storage areas, or other man-made facilities that have or may have accommodated hazardous materials; (3) there is no proceeding or inquiry by any governmental agency with respect to production, disposal or storage on the property of any hazardous materials, or of any activity that could have produced hazardous materials or toxic effects on humans, flora or fauna; (4) there are no buried, partially buried, or above-ground tanks, storage vessels, drums or containers located on the Property; and (5) there is no evidence of release of hazardous materials onto or into the Property.

The SELLER also warrants that there have been no requests from any governmental authority or other party for information, notices of claim, demand letters or other notification that there is any potential for responsibility with respect to any investigation or clean-up of hazardous substance releases on the property. All warranties described herein will survive the closing of this transaction.

In the event the SELLER breaches the warranties as to environmental liability, SELLER agrees to indemnify and hold the BUYER harmless from all fines, penalties, assessments, costs and reasonable attorneys' fees resulting from contamination and remediation of the property.

12. TIME AND BINDING AGREEMENT: Time is of the essence for closing this transaction. The BUYER'S written acceptance of this offer will constitute an Agreement for the purchase and sale of the Property and will bind the parties, their successors and assigns. In the event the BUYER abandons this project after execution of this Agreement, but before closing, BUYER may terminate this Agreement without obligation.

13. DATE AND LOCATION OF CLOSING: The closing of this transaction will be held at the office of the insuring title company on or before 60 days from the date this Agreement is made. In the event that the closing does not occur within 60 days due to BUYER's delay, then either party may terminate this Agreement by written notice to the other party. The time and location of closing may be changed by mutual agreement of the parties.

14. ATTORNEYS' FEES: The prevailing party in any litigation concerning this Agreement will be entitled to recover reasonable attorneys' fees and costs.

15. REAL ESTATE BROKERS: SELLER hereby agrees to indemnify and hold the BUYER harmless from and against any claims by a real estate broker claiming by or through SELLER. BUYER hereby agrees to indemnify and hold the SELLER harmless from and against any claims by a real estate broker claiming by or through BUYER.

16. POSSESSION: SELLER warrants that there are no parties in possession other than SELLER unless otherwise stated herein. SELLER agrees to deliver possession of Property to BUYER at time of closing unless otherwise stated herein.

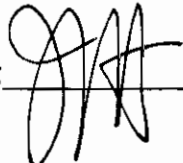
17. **TYPEWRITTEN/HANDWRITTEN PROVISIONS:** Typewritten and handwritten provisions inserted herein or attached hereto as addenda, and initialed by all parties, will control all printed provisions in conflict therewith.

18. **SPECIAL CONDITIONS:** Any and all special conditions will be attached to this Agreement and signed by all parties to this Agreement.


SELLER:

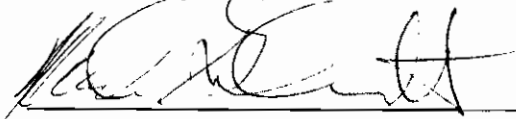
Miromar Lakes, L.L.C., a
Florida Limited Liability Company

By: Miromar Development Corporation, a
Florida Corporation, as Managing Member

BY:  _____ (DATE)
Jerry Schmoyer, Executive Vice President

WITNESSES:





CHARLIE GREEN, CLERK

BUYER:

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

BY: _____
DEPUTY CLERK (DATE)

BY: _____
CHAIRMAN OR VICE CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

COUNTY ATTORNEY (DATE)

A parcel of land being a portion of that certain parcel described as "Area D" per Official Records Book 3380, Page 793 of the Public Records of Lee County, Florida, and lying in the Southeast 1/4 of Section 23, Township 46 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of Section 23, Township 46 South, Range 25 East, Lee County, Florida; thence along the South line of the Southeast 1/4 of said Section 23, N 89°44'35" W for 651.52 feet to a point on the existing Westerly right of way line of Ben Hill Griffin Parkway per Official Records Book 2737, Page 1041 of the Public Records of Lee County, Florida (a 150.00 foot wide right of way) and the POINT OF BEGINNING; thence continue along the South line of the Southeast 1/4 of said Section 23, N 89°44'35" W for 1261.71 feet to a point of intersection with the East line of a parcel known as "Mitigation Area I" per Official Records Book 3550, Page 1204 of the Public Records of Lee County, Florida; thence N 12°28'22" E along the last described East line for 76.74 feet; thence S 89°44'35" E for 1.19 feet to the beginning of a non-tangent curve concave Southerly; thence Easterly along the arc of said curve, having a radius of 5525.00 feet, through a central angle of 06°49'15", for 657.73 feet, and a chord bearing and distance of N 86°19'54" E, for 657.34 feet to the end of, said curve; thence S 89°44'35" E for 586.21 feet to a point of intersection with the aforementioned existing Westerly right of way line of Ben Hill Griffin Parkway; thence along said existing right of way line, S 00°49'48" E for 120.02 feet to the Point of Beginning,

LESS the Southerly 75.00 feet thereof (which contains 2.157 acres, more or less).

The balance of said parcel (excluding the Southerly 75.00 feet thereof) contains 1.043 acres, more or less.

SECTION 23, TOWNSHIP 46 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

This sketch is NOT a survey.

LEGEND

- CB CHORD BEARING
- CH CHORD LENGTH
- CM CONCRETE MONUMENT
- COR CORNER
- Δ CURVE DELTA
- ID IDENTIFICATION
- L CURVE LENGTH
- LB LICENSED BUSINESS
- O.R. OFFICIAL RECORDS BOOK
- PG. PAGE
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- R RADIUS
- R/W RIGHT OF WAY
- SEC SECTION
- TWP TOWNSHIP
- RNG RANGE

SEE SHEET 2 FOR
LEGAL DESCRIPTION



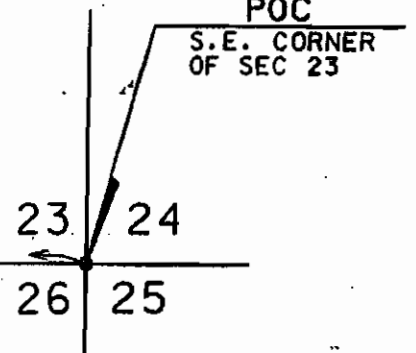
CI 1" = 400'
 Δ -06°49'15"
 R -5525.00'
 L -657.73'
 CH -657.34'
 CB -N. 86°19'54" E

LINE TABLE

L1	N 89°44'35" W	651.52'
L2	N 89°44'35" W	1261.71'
L3	N 12°28'22" E	76.74'
L4	S 89°44'35" E	1.19'
L5	S 89°44'35" E	586.21'
L6	S 00°49'48" E	120.02'

POC

S.E. CORNER
OF SEC 23



E LINE OF PARCEL KNOWN AS
"MITIGATION AREA 1" PER
O.R. 3550, PG. 1204, PUBLIC
RECORDS, LEE COUNTY, FLORIDA

10' WIDE UTILITY EASEMENT
IN FAVOR OF GULF
ENVIRONMENTAL SERVICES, INC.
PER O.R. 3530, PG. 404, PUBLIC
RECORDS, LEE COUNTY, FLORIDA

"AREA D"
PER O.R. 3380, PG. 793,
PUBLIC RECORDS,
LEE COUNTY, FLORIDA

PROPOSED R/W LINE (105)

SOUTH LINE OF SE 1/4 SEC 23

PARCEL NUMBER: 105
 PROPERTY OWNER: MIROMAR LAKES, L.L.C.
 REFERENCE: OFFICIAL RECORDS BOOK 3380, PAGE 793
 STRAP NUMBER: 23-46-25-00-00001.1040
 AREA OF TAKE:

2.157 ACRES, MORE OR LESS, IS WITHIN THE SOUTH 75'
AND 1.043 ACRES, MORE OR LESS IS THE BALANCE.

AREA OF REMAINDER: 12.716 ACRES

Project: Estero Parkway Extension #5021
Parcels 104 and 105

AFFIDAVIT OF INTEREST IN REAL PROPERTY

THIS AFFIDAVIT OF INTEREST IN REAL PROPERTY is made and entered this 6th day of March, 2006, for the sole purpose of compliance with Section 286.23 of the Florida Statutes.

The undersigned hereby swears and affirms under oath, subject to the penalties prescribed for perjury, that the following is true:

The Name and Address of the Grantor is:

Miromar Lakes, LLC, A Florida Limited Liability Company
10801 Corkscrew Road, Suite 305, Estero, FL 33928

The name(s) and address(es) of every person having a beneficial interest in real property that will be conveyed to Lee County are:

1. Miromar Development Corporation
2. Miromar Lakes Community Development District
3. _____
4. _____

The real property to be conveyed to Lee County is known as: See attached Exhibit "X".


FURTHER AFFIANT SAYETH NAUGHT.

Signed, sealed and delivered
in our presences:

Miromar Lakes, L.L.C., a
Florida Limited Liability Company

By: Miromar Development Corporation, a
A Florida Corporation, as Managing Member

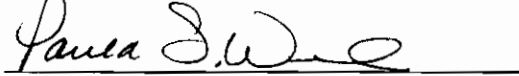
WITNESSES:



Witness Signature

Mark G. Schmeidt


Printed Name



Witness Signature

Paula S. Ward

Printed Name

BY:  _____

Jerry H. Schmoyer, VP 3/6/06
Name/Title (DATE)

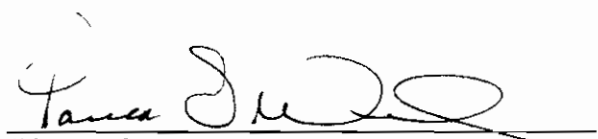
Affidavit of Interest in Real Property

Project: Estero Parkway Extension #5021
Parcels 104 and 105

STATE OF Florida

COUNTY OF Lee

SWORN TO AND SUBSCRIBED before me this 6th day of March, 2006,
by Jerry H. Schmoyer, as Vice President of Miromar Development Corporation, a Florida
corporation, on behalf of the corporation as Managing Member of Miromar Lakes, LLC, a
Florida Limited Liability Company, on behalf of the company. He is personally known to me
or who has produced _____ as identification.



(Notary Signature)

Paula S. Ward

(Print, type or stamp name of Notary)

(SEAL)



Personally known X
OR Produced Identification _____
Type of Identification _____

SECTION 23, TOWNSHIP 46 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

This sketch is NOT a survey.

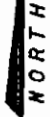
PARCEL NUMBER: 104
PROPERTY OWNER: MIROMAR LAKES L.L.C.
REFERENCE: O.R. 3165, PG. 1800
STRAP NUMBER: NOT AVAILABLE
AREA OF TAKE: 2.892 ACRES
AREA OF REMAINDER: 0 (TOTAL TAKE)

SEE SHEET 2 FOR
LEGAL DESCRIPTION

EXISTING WESTERLY
RIGHT OF WAY LINE
BEN HILL GRIFFIN
PARKWAY

- LEGEND
- CM CONCRETE MONUMENT
 - COR CORNER
 - ID IDENTIFICATION
 - LB LICENSED BUSINESS
 - O.R. OFFICIAL RECORDS BOOK
 - PG. PAGE
 - PL PROPERTY LINE
 - POB POINT OF BEGINNING
 - POC POINT OF COMMENCEMENT
 - R/W RIGHT OF WAY
 - SEC SECTION
 - TWP TOWNSHIP
 - RNG RANGE

CONSERVATION AREA



1" = 400'

POC
OCTAGONAL CM (NO ID)
SE COR SEC 23,
TWP 46S, RNG 25E

W LINE OF PARCEL "AREA D"
PER O.R. 3380, PG. 793
PUBLIC RECORDS,
LEE COUNTY, FLORIDA

POB

EXISTING EASTERLY
RIGHT OF WAY LINE
1-75' WIDE (324)

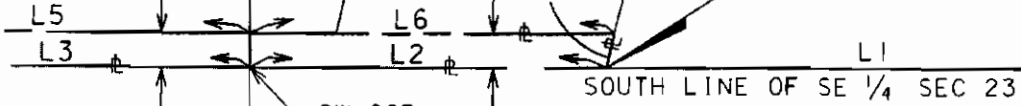
SW 1/4

SE 1/4

PROPOSED
R/W LINE

104

WEST LINE OF SE 1/4 SEC 23



LINE TABLE

L1	N 89°44'35" W	1913.23'
L2	N 89°44'35" W	773.06'
L3	N 89°45'10" W	885.92'
L4	N 18°18'02" W	79.11'
L5	S 89°45'10" E	910.31'
L6	S 89°44'35" E	790.08'
L7	S 12°28'22" W	76.74'

SURVEY NOTES

1. Reproductions of this sketch are not valid unless sealed with an embossed Surveyor's Seal.
2. The sketch shown hereon is for graphic representation only and does not represent a boundary survey.
3. Corner monuments were not set in conjunction with the preparation of this drawing.
4. Legal description prepared by PBS&J.
5. Bearings shown hereon are based on the South line of the SE 1/4 of Sec 23, Twp 46S, Rng 25E, being N 89°44'35" W.

SKETCH AND LEGAL DESCRIPTION
PARCEL 104 TAKE

JOB NO. 100806.08 0300	DATE 9-15-03
FIELD BOOK	REV:
SCALE: 1" = 400'	REV:
DRAWN BY: RM	CHECKED BY: WHF

We hereby certify that the attached "Sketch and Legal Description" is true and correct to the best of our knowledge and belief as recently prepared under our direction and that this sketch meets the intent of the minimum technical standards for surveying pursuant to Section 472.027, Florida Statutes and Chapter 61G17-6, Florida Administrative Code.

PBS&J LB 29
Orris Clark Sartor

ORRIS CLARK SARTOR
PROFESSIONAL LAND SURVEYOR 2685
STATE OF FLORIDA

PBS&J ENGINEERS, PLANNERS & SURVEYORS
5300 WEST CYPRESS STREET, SUITE 300
TAMPA, FLORIDA 33607
(813)-282-7275
SHEET 1 OF 2

PARCEL NUMBER: 104
PROPERTY OWNER: MIROMAR LAKES L.L.C.
REFERENCE: O.R. 3165, PG. 1800
STRAP NUMBER: NOT AVAILABLE
AREA OF TAKE: 2.892 ACRES
AREA OF REMAINDER: 0 (TOTAL TAKE)

LEGAL DESCRIPTION

A strip of land, 75.00 feet in width, lying in the South $\frac{1}{2}$ of Section 23, Township 46 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of Section 23, Township 46 South, Range 25 East, Lee County, Florida; thence along the South line of the Southeast $\frac{1}{4}$ of said Section 23, N 89°44'35" W for 1,913.23 feet to a point of Intersection with the West line of a parcel known as "Area D" per Official Records Book 3380, Page 793, Public Records of Lee County, Florida, said point being the POINT OF BEGINNING; thence continue along the South line of the Southeast $\frac{1}{4}$, N 89°44'35" W for 773.06 feet to the Southwest corner of the Southeast $\frac{1}{4}$ of said Section 23; thence N 89°45'10" W along the South line of the Southwest $\frac{1}{4}$ of said Section 23 for 885.92 feet to a point of Intersection with the existing Easterly right of way line of I-75 (324.00 foot wide right of way); thence N 18°18'02" W along said existing Easterly right of way line for 79.11 feet to an Intersection with a line that is 75.00 feet Northerly of and parallel with the said South line of the Southwest $\frac{1}{4}$; thence S 89°45'10" E along the last described parallel line for 910.31 feet; thence S 89°44'35" E along a line that is 75.00 feet Northerly of and parallel with the aforementioned South line of the Southeast $\frac{1}{4}$ of said Section 23 for 790.08 feet to an Intersection with the aforementioned West line of parcel "Area D"; thence S 12°28'22" W along the last described West line for 76.74 feet to the POINT OF BEGINNING.

Containing 2.892 acres, more or less.

DRAWN BY: RM

CHECKED BY: WHF



ENGINEERS, PLANNERS & SURVEYORS.
5300 WEST CYPRESS STREET, SUITE 300
TAMPA, FLORIDA 33607
(813)-282-7275

SHEET 2 OF 2

SEE SHEET 1 FOR SKETCH