

RESOLUTION NUMBER 05-30

Case#:DCI2005-00105

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A CPD (COMMERCIAL PLANNED DEVELOPMENT) LOCATED AT 6231 ESTERO BOULEVARD, FORT MYERS BEACH, IN SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA.

WHEREAS, applicant Sunstream, Inc. in re. the Sunstream Realty Office Building has requested a change in zoning for 0.51 +/- acres from CB (Commercial Boulevard) to CPD (Commercial Planned Development) for an office building 3 stories (2 stories over one story of parking) and not to exceed 27.5 feet above Base Flood Elevation (BFE) in height; and

WHEREAS, the subject property is located at 6231 Estero Boulevard, Ft. Myers Beach, FL.; applicant has indicated the property's current STRAP number is 33-46-24-W3-00012.0020; and the legal description is attached as Exhibit "A"; and

WHEREAS, at the public hearing before the Local Planning Agency (LPA) on June 14, 2005, the LPA recommended approval of the requested CPD subject to the conditions set forth in LPA Resolution 2005-08, and

WHEREAS, a public hearing was legally advertised and held before the Town Council on September 26, 2005; and

WHEREAS, the Town Council gave full and complete consideration to the recommendations of the Staff, the LPA, the documents in the file, and the testimony of all interested persons.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

That the Town Council approves the applicant's request to rezone from CB (Commercial Boulevard) to CPD (Commercial Planned Development) with the Conditions listed on pages 2-4 of the Staff Report dated June 3, 2005, which Report is attached hereto as Exhibit "B" and incorporated herein by reference with the following changes:

1. Condition #4 is deleted and a new Condition #4 is added as follows:

Prior to issuance of a local development order, the developer will remove the gas tanks, will test and mitigate for any type of pollution resulting from current or former uses, and will enter into an Agreement to hold the Town harmless against any third party claims resulting from such current or former uses. An official

determination by the agency or agencies with jurisdiction over environmental compliance that the property complies with all relevant environmental regulations must be provided to the Town to satisfy this Agreement. If this Agreement is satisfied prior to issuance of the Certificate of Compliance for the Development Order, the Agreement does not need to be recorded. Otherwise, the Agreement must be recorded in the Public Records of Lee County, Florida, at the developer's sole cost. If the Agreement is satisfied after recording, the Town will record a notice that the Agreement has been satisfied.

2. In Condition #5, the dimensions of the planters are altered as follows:

The planters must be a minimum of 2 feet high, 4.5 feet wide and 8 feet long and must be located in between every other colonnade post.

3. Deviation #1 is modified to allow plants on the development side internal to the project.

Findings and Conclusions—Planned Development Rezoning:

Based upon an analysis of the application and the standards for approval of planned development zoning districts, Town Council makes the following findings and conclusions:

1. The requested RPD (Residential Planned Development) zoning district complies with the Comprehensive Plan, Chapter 34 of the Land Development Code, and other applicable codes and regulations.
2. The requested zoning:
 - A. is consistent with the goals, objectives, policies, intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan; and
 - B. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and
 - C. will, protect, conserve, or preserve environmentally critical areas or natural resources; and
 - D. is compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property.
3. Urban services are, or will be available and adequate to serve the proposed land use change at this location.
4. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and the site will be served by streets with the capacity to carry traffic generated by the development.

5. The proposed use or mix of uses is appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
8. The proposed use or mix of uses meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, including Policy 4-B-5 on development in the Boulevard future land use map category.
9. The requested deviations:
 - A. enhance the objectives of the planned development; and
 - B. preserve and promote the general intent of the LDC to protect the public health, safety and welfare; and
 - C. operate to the benefit, or at least not the detriment, of the public interest; and
 - D. are consistent with the Comprehensive Plan.

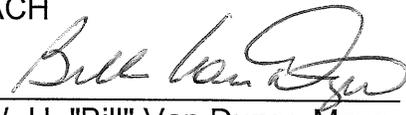
The foregoing Resolution was adopted by the Town Council upon a motion made by Councilman Rynearson and seconded by Councilman Massucco and, upon being put to a vote, the result was as follows:

Howard Rynearson	<u>Aye</u>
Don Massucco	<u>Aye</u>
Ken Katcko	<u>Aye</u>
W. H. "Bill" Van Duzer	<u>Aye</u>
Garr Reynolds	<u>Aye</u>

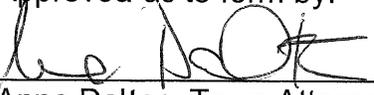
Adopted this 26th day of September, 2005.

ATTEST: TOWN OF FORT MYERS BEACH

By: 
 Marsha Segal-George, Town Clerk

By: 
 W. H. "Bill" Van Duzer, Mayor

Approved as to form by:


 Anne Dalton, Town Attorney

**FT. MYERS BEACH, FLORIDA
ZONING DIVISION
STAFF REPORT**

TYPE OF CASE: PLANNED DEVELOPMENT/DCI

CASE NUMBER: DCI2005-00010

FORT MYERS BEACH LPA DATE: June 14, 2005

TIME: 12:00 Noon

I. APPLICATION SUMMARY:

- A. Applicant:** SunStream, Inc. in ref. to SunStream Realty Office Building
- B. Request:** Rezone 0.51+/- acres from Commercial Boulevard (CB) to Commercial Planned Development (CPD) for an office building, three-story/two-story over parking not to exceed 27.5 feet in height.
- C. Location:** The subject property is located at 6231 Estero Blvd. (turn left after bridge and proceed south on Estero Blvd. to Bahia Via Dr. Property is located on the north corner of Bahia Via Dr. & Estero Blvd.) 33, in S46-TS-R24E, in Fort Myers Beach, Lee County, FL.
- D. Future Land Use Plan Designation, Current Zoning and Use of Subject Property:**

Land Use: Boulevard
Current Zoning: Commercial Boulevard (CB)
Current Use: Gasoline service station

E. Surrounding Land Use:

<u>Existing Zoning & Land Use</u>	<u>Future Land Use Map</u>
North: CB/developed with 7-11 convenience store	Boulevard
East: RC and RS/developed with single family homes	Low Density
South: Bahia Via then CB/developed with Charley's Boathouse restaurant	Boulevard
West: Estero Boulevard then CPD/Outrigger Beach Resort	Mixed Residential

- F. Size of Property:** 0.51± acre

II. **RECOMMENDATION:**

Staff recommend **APPROVAL** of the Applicant's request to rezone from Commercial Boulevard (CB) to Commercial Planned Development (CPD) with the following conditions and deviations:

A. **Conditions**

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Sunstream Realty Office," stamped received March 23, 2005, last revised March 22, 2005, except as modified by the conditions below. This development must comply with all requirements of the Fort Myers Beach LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses:
 - a. **Schedule of Uses**
 - Offices, general or medical
 - Health care facility
 - Personal services
 - Commercial accessory uses
 - b. **Site Development Regulations**
 - Lot area (minimum) - 22,294 square feet
 - Lot width (minimum) - 149.86 feet
 - Lot depth (minimum) - 150.19 feet
 - Minimum Setbacks
 - Street - Estero Boulevard - 10± feet
 - Bahia Via - 12± feet
 - Side (north) - 43± feet (to 7-11 property)
 - Rear (east) - 54± feet (to single-family home)
 - Maximum building height - 27.5 feet (from base flood elevation of 13 feet)
 - Maximum lot coverage - 36%
3. Prior to local development order approval, the plans must show a minimum of 20 percent of the site must be delineated as Open Space.
4. The existing wood fence located along the east property shall be replaced with a solid wall compatible with the architect theme of the proposed office building. The wall is subject to the requirements of the LDC.

5. The applicant shall provide the following landscaping plan at the time of local Development Order and all plantings shall contain 100% native coastal plant communities:
 - Along Estero Boulevard, under the colonnade, (4) four above ground planter boxes shall be placed. The planter boxes shall mimic the same architectural theme of the building. The planters shall be a minimum of 2 feet high, 5 feet wide and 8 feet long and must be located in between every other colonnade post. Each planter must contain weeping or running ground cover plantings. The planter boxes shall be designed and constructed to allow adequate drainage for the plantings.
 - Along Bahia Via, a double hedge row of shrubs in 3-gallon container size and 24 inches in height at time of planting, shall be placed in the area located between the proposed building and the property line;
 - Along the east property line, in addition to the required Type "C", all 8 trees shall be a minimum of 10 feet in height, 2 inches in diameter at 12 inches above the ground and have a 4-foot spread. The required 27 shrubs shall be a minimum 7-gallon size.
 - Along, the north property line, a double hedge row of shrubs in 3-gallon container size and 24 inches in height at time of planting shall be placed in the area located between the proposed parking spaces and the property line;
 - In the north east corner of the property, a gumbo limbo shall be planted. The gumbo limbo shall be a minimum 15-gallon size container a minimum of 10 feet high at time of planting.
6. The existing wood fence shall be replaced and designed with a 6 foot high vinyl railing fence that will mimic a wrought iron fence with pilasters that must blend with the architecture design of the building as shown on Attachment "G".
7. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Fort Myers Beach Land Development Code ("LDC") may be required to obtain a local development order.
8. Approval of this zoning request does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan ("Plan").
9. Development of this property must comply with all of the requirements of the LDC at the time of local development order approval, except as may be granted by deviations approved as part of this planned development.

B. Deviations

Deviation #1 seeks relief from LDC Section 10-416(d)(3), Table 9 which requires a minimum buffer width for a Type "C" buffer of 15 feet, to allow the existing 13.5 feet buffer width. The applicant's justification is the existing conditions provide no buffer other than the wood fence between the residential home and the rear of the existing gasoline service station. This area has been used for vehicle storage in recent years. The proposed development of the property will provide a more compatible neighbor to the residential home and the slightly reduced buffer width will not compromise the ability of the buffer to function as it is intended. Staff was concerned with this requested deviation. While the proposed office building will be a compatible neighbor to the residential homes in the area, the applicant wanted to keep the existing wood fence. This would not enhance the proposed development. However, the applicant has offered to replace the wood fence with a 6 foot high vinyl railing that will mimic a wrought iron fence with pilasters that will blend with the architecture design of the building as shown on Attachment "G". With the new fence design, the enhanced landscaping, and with the recommended conditions #5 and #6, staff believes this use will be compatible for the neighborhood and continue to add to the proposed development. Staff recommends **APPROVAL** of this deviation with condition #5 and #6.

Deviation #2 seeks relief from LDC Section 10-285 which requires a intersection separation of 660 feet from Estero Boulevard, an arterial road to allow the existing north driveway to remain at 74± feet south of the 7-11 driveway and 151± feet north of Bahia Via. Development Services has reviewed the deviation and supports the request because one of the driveway will be eliminated which makes the situation better, see Attachment "E".

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of planned development zoning approval, staff make the following findings and conclusions:

1. The requested Commercial Planned Development zoning district, as conditioned complies with:
 - a. The Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
 - d. the following additional requirements for planned development zoning requests:
2. The proposed use or mix of uses is appropriate at the subject location.
3. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations.

4. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. As to the requested deviations:
 - a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare will be preserved and promoted; and
 - c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
 - d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

III. **BACKGROUND INFORMATION AND ANALYSIS:**

Introduction/Synopsis.

Requested is a rezone from Commercial Boulevard (CB) to Commercial Planned Development (CPD) to allow the development of an office building on property located at 6231 Estero Boulevard.

Subject Property

The subject property is a 0.51± acre parcel that is located on the north corner of Bahia Via and Estero Boulevard. Currently developed on the property is a gasoline service station built in 1966. The service station has a canopy facing Estero Boulevard and one facing Bahia Via with 4 fueling stations. There are 2 existing driveways to the site from Estero Boulevard, a 2 lane arterial road with 100' of right-of-way and 1 driveway from Bahia Via, a 2-lane local road with 50' of right-of-way. The site has minimal landscaping that consists of two grass islands, one located at the northern corner and the other at the center of the property on Estero Boulevard. A grass area with a couple of trees is located at the corner of Estero Boulevard and Bahia Via. A 5' wide public sidewalk extends in the grass areas along Estero Boulevard. A grass area with several palms trees exist along Bahia Via. A 20' x 20' fabric canopy sets in the southeast corner of the property. A wood fence is located along the rear (east) property line.

Master Concept Plan.

It is the applicant's intent to replace the existing service station with an office building. The Master Concept Plan prepared by Source, Inc., entitled Sunstream Realty Office, dated stamped received on March 23, 2005 and attached as "B", reflects a 17,960 square foot office building that will be over parking. Additional parking will be located to the north and east sides of the building. The building will be 3 stories consisting of the following floors:

- 1st floor will contain 3,804 square feet with 14 covered parking spaces underneath the building, the lobby, elevator and equipment room, mechanical/electric room, restrooms, and 2 stairs. A colonnade will be located along the front of the building facing Estero Boulevard.
- 2nd floor will contain 7,078 square feet with a lobby, mechanical/electric room, restrooms and stairs. A balcony will be located on top of the colonnade that faces Estero Boulevard.
- 3rd floor will be identical to the 2nd floor with the exception of the balcony. Around the outside of the 3rd floor will be stone balusters placed at various windows.

The total building area which includes each floor described above, the covered parking and the colonnade will contain 22,106 square feet. The total height of the building will not exceed 27.5' from base flood elevation of 13'. The ground floor elevation is 6' NGVD.

Comprehensive Plan Considerations.

The subject property is located in the Boulevard land use category according to the Fort Myers Beach Future Land Use Map. Policy 4-B-5 describes this district as a mixed use along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. this category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. To obtain approval for new or expanded commercial activities, proposal must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in the comprehensive plan, and meet the design concepts of the plan and the Land Development Code. These qualities and overall consistency with the comprehensive plan shall be evaluated by the town through the planned development rezoning process.

The proposed plan is to replace the existing gasoline service station that is an intense commercial use to the nearby residential homes with a less intense commercial use. The property will be designed with architectural features that will complement the building shown on the architectural plans attached as "C". As conditioned in #5, the proposed development will provide more landscape that complies and exceeds the requirement of the LDC. Therefore, the request is consistent with Policy 4-B-5.

Policy 4-C-2 establishes the maximum intensity of allowable commercial development in any category by a floor area ratio (FAR) as described in Land Development Code, Section 34-705. The allowable FAR within the Boulevard district is 1.0.

The total floor area of 22,106 square feet divided by the total lot area of 22,294 square feet equals 0.99. This is less than the allowable 1.0 FAR. The request is consistent with Policy 4-C-2.

Policy 4-C-3 requires proposals for new or expanded commercial uses in the Boulevard category to be a planned development in order for the proposal to be reviewed as to being sensitive to the nearby residential areas, complement adjoining

commercial uses, contribute to the public realm, and meet the design concepts of the Comprehensive Plan and the Land Development Code.

The proposed plan is seeking a Commercial Planned Development, is removing the gasoline service station that is an intense commercial use to the nearby residential homes and is replacing it with an office building which is a less intense commercial use, is providing architectural features to the new building and as conditioned by #5, will provide more landscape that complies and exceeds the requirement of the LDC. The removal of one of the driveways on Estero and the installation of the new sidewalk contributes to the public realm by providing a safer pedestrian path than what exists on site. Therefore the request is consistent with Policy 4-C-3.

Policy 7-E-3 states buildings close to the street where pedestrian levels are high, should adjoin the sidewalk rather than be separated by parking spaces. Front walls of stores, offices, and restaurants should have large windows rather than blank walls, preferably shaded by awning or canopies. Access to parking areas shall be off side streets whenever possible.

The development has been designed with the building set back of 10' from Estero Boulevard. A 5' wide sidewalk will be located in front of the building along Estero Boulevard. This replaces the existing sidewalk that extends through the grass areas in front of the service station. As shown on the architecture plans attached as "C", the front of the building has been designed with windows underneath the colonnade.

The northern existing driveway along Estero Boulevard will remain along with the Bahia Via driveway. The other driveway along Estero Boulevard will be eliminated. Land Development Code, Section 34-706(c) states wherever possible, parking lots for abutting properties fronting Estero Boulevard shall be interconnected to eliminate or minimize driveways to Estero Boulevard. An interconnection to the adjacent 7-11 store property would require the elimination of parking spaces on both properties. The proposed office building meets the parking space requirement of the Land Development Code and does not have excess to lose.

Also, Land Development Code, Section 34-706(d) requires existing driveways and parking spaces along Estero Boulevard shall be relocated to other streets and new driveways shall connect only to other streets, except where these requirements would prohibit all reasonable access to a property. When a driveway onto Estero Boulevard is unavoidable, the driveway shall be shared with an adjoining property is that property also has access on to Estero Boulevard, Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections. The development will eliminate one of the existing driveways along Estero Boulevard and there is no cross access agreement between this property and the adjacent 7-11 property.

Based on the design of the proposed development, it is consistent with Policy 7-E-3.

Neighborhood Compatibility.

The design of the building will provide architectural features and enhanced landscape as conditioned in #5, makes the development sensitive to the nearby residential homes. A single-family home on pilings is the closest residential home to the subject property located to the east. Further east are other single-family homes. A type "C" buffer is required along the east property line that will consist of 8 trees and 27 shrubs along with a wall. The applicant has requested a deviation from the 15' buffer width requirement to allow a 13.5' wide buffer. The applicant will replace the existing wood fence with a 6 foot high vinyl railing fence that will mimic a wrought iron fence with pilasters that will blend with the architecture design of the building as shown on Attachment "G".

During staff's visit to the site, it was noted the existing site lacks landscaping. The existing landscaping consists of the small grass areas along both Estero Boulevard and Bahia Via and the few trees along Bahia Via. The majority of the property is asphalt/concrete and gravel. It was also noted the existing wood fence looks old and weathered. The fence provides some privacy to the residential home along with some areca palms that are located on the residential property. The new fence along with the enhanced Type "C" buffer and the existing areca palms on the residential side will continue to provide adequate privacy to the single family home.

Commercial development such as 7-11, Charley's restaurant, and the Outrigger Beach Resort are located in the area of the subject property. Most of the buildings in the area are 1 story in height with the exception of the Beach Movie Theater which is 35 feet, a 2 story office building located north of the 7-11, Coquina condominium, a 5 story building, and Sunset condominium, a high rise building.

Staff is concerned the proposed height of the office building will tower over the existing single-family home to the east and the existing wood fence will not provide adequate privacy to the home owner. Therefore, staff recommends the applicant replace the wood fence as conditioned in #4.

The site lacks landscaping along both Estero Boulevard and Bahia Via. The Land Development Code, Section 10-416 (d)(2) does not require a commercial development to provide a right-of-way buffer. However, as part of the planned development review, staff can make recommendations to the Town of Fort Myers for consideration. Staff is recommending the following landscape conditions:

- Along Estero Boulevard, under the colonnade, (4) four above ground planter boxes shall be placed. The planter boxes shall mimic the same architectural theme of the building. The planters shall be a minimum of 2 feet high, 5 feet wide and 8 feet long and must be located in between every other colonnade post. Each planter must contain weeping or running ground cover plantings. The planter boxes shall be designed and constructed to allow adequate drainage for the plantings.
- Along Bahia Via, a double hedge row of shrubs in 3-gallon container size and 24 inches in height at time of planting, shall be placed in the area located between the proposed building and the property line;

- Along the east property line, in addition to the required Type "C", all 8 trees shall be a minimum of 10 feet in height, 2 inches in diameter at 12 inches above the ground and have a 4-foot spread. The required 27 shrubs shall be a minimum 7-gallon size.
- Along, the north property line, a double hedge row of shrubs in 3-gallon container size and 24 inches in height at time of planting, shall be placed in the area located between the proposed parking spaces and the property line;
- In the north east corner of the property, a gumbo limbo shall be planted. The gumbo limbo shall be a minimum 15-gallon size container and be a minimum of 10 feet high at time of planting.

Staff believes with the recommended conditions, the proposed redevelopment of the site with an office building will provide a less intense commercial use than the existing gasoline service station and will be sensitive to the residential homes.

Environmental Issues.

The Division of Environmental Sciences (ES) reviewed the request and offer the findings and conclusions outlined in the staff report dated May 11, 2005 and attached as "D". The ES staff states the LDC Section 10-415(a) requires that small commercial projects provide 20 percent of the site as open space. The proposed Master Concept Plan indicates that a minimum of 20 percent open space will be maintained. In order to confirm that open space requirements are met, ES recommends that prior to local development order approval, the plans must show a minimum of 20 percent of the site must be delineated as Open Space as conditioned in #3.

Traffic

Based on the ITE Trip Generation Report 7th Edition, the proposed office building will generate 28 new trips in the peak hour. Estero Boulevard currently operates at a level of service "A" according to the 2003/2004 - 2004-2005 Concurrency Management Report and the Lee County D.O.T. link-specific service volumes and will continue to operate at the same "A" level of service with the proposed project. See memo attached hereto as Attachment "F".

Conclusion.

The request to rezone to CPD as conditioned, is consistent with the Fort Myers Beach Comprehensive Plan and complies with the Land Development Code. The replacement of the gasoline service station with the office building is a less intense commercial use to the neighborhood and with the recommended conditions, the redevelopment will be sensitive to the neighborhood. Staff recommends **APPROVAL** of the request with conditions.

IV. ATTACHMENTS:

- A. Map of surrounding zoning.

- B. Master Concept Plan prepared by Source, Inc., entitled Sunstream Realty Office, dated stamped received on March 23, 2005 (1 page)
- C. Architectural Plans prepared by Brooks R. Swanson AIA, entitled Sunstream Realty, dated stamped received on January 28, 2005 (4 pages)
- D. ES staff report dated May 11, 2005 (1 page)
- E. Development Services email dated May 25, 2005 (1 page)
- F. Development Services memo dated May 31, 2005 (1 page)
- G. Fence Sketch dated stamped received June 1, 2005

V. EXHIBITS:

- A. Legal Description

cc: Applicant
Town of Fort Myers Beach LPA
Zoning/DCI File

EXHIBIT "A"

BOUNDARY DESCRIPTION

A LOT OR PARCEL OF LAND LYING IN SECTION 33 AND 34, TOWNSHIP 46 SOUTH, RANGE 24 EAST, ON ESTERO ISLAND (TOWN OF FORT MYERS BEACH) IN LEE COUNTY, FLORIDA, WHICH IS DESCRIBED AS FOLLOWS:

FROM THE SOUTHEASTERLY CORNER OF BLOCK 1, UNIT NO. 2, MCPHIE PARK, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, RUN SOUTHEASTERLY PERPENDICULAR TO THE SOUTHEASTERLY LINE OF SAID BLOCK 1 FOR 590 FEET; THENCE RUN NORTHEASTERLY PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID BLOCK 1 TO A POINT ON THE NORTHEASTERLY LINE OF A COUNTY ROAD RIGHT-OF-WAY DESCRIBED IN AND CONVEYED BY DEED RECORDED IN DEED BOOK 193 AT PAGE 583 OF SAID PUBLIC RECORDS AND THE POINT OF BEGINNING OF THE LANDS HEREIN DESCRIBED, WHICH POINT IS MARKED WITH AN IRON REBAR WITH PLASTIC CAP MARKED DENI ASSOC.; THENCE CONTINUE NORTHEASTERLY ON THE SAME COURSE ALONG THE SOUTHEASTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN AND CONVEYED BY DEED RECORDED IN DEED BOOK 194 AT PAGE 433 OF SAID PUBLIC RECORDS, WHICH LINE IS ALSO THE NORTHWESTERLY LINE OF A STREET OR ROAD KNOWN AS BAHIA VIA, RUN N50° 44' 55"E FOR A DISTANCE OF 150.19 FEET TO A POINT MARKED WITH AN IRON REBAR WITH PLASTIC CAP MARKED DOVE LB6611; THENCE RUN N31° 07' 57"W ALONG THE SOUTHWESTERLY SIDE OF THAT PROPERTY CONVEYED IN OFFICIAL RECORD BOOK 588 AT PAGE 790 OF SAID PUBLIC RECORDS, FOR A DISTANCE OF 150.08 FEET TO AN IRON REBAR WITH PLASTIC CAP MARKED DENI ASSOC.; THENCE RUN S50° 38' 49"W PARALLEL TO THE SOUTHEASTERLY LINE OF FLAMINGO PARK SUBDIVISION ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 9 AT PAGE 66 OF SAID PUBLIC RECORDS, FOR A DISTANCE OF 150.16 FEET TO A CONCRETE MONUMENT AT THE NORTHEASTERLY LINE OF THE SAID COUNTY ROAD KNOWN AS ESTERO BOULEVARD; THENCE RUN S31° 06' 35"E ALONG THE NORTHEASTERLY LINE OF SAID COUNTY ROAD FOR 149.86 FEET TO A POINT MARKED WITH AN IRON REBAR WITH PLASTIC CAP MARKED DENI ASSOC.; WHICH IS THE POINT OF BEGINNING OF THE LANDS DESCRIBED HEREIN.

APPROXIMATELY 0.51 ACRES

Applicant's Legal Checked

by Lgm 3/19/2005

RECEIVED

MAR 17 2005

ZONING

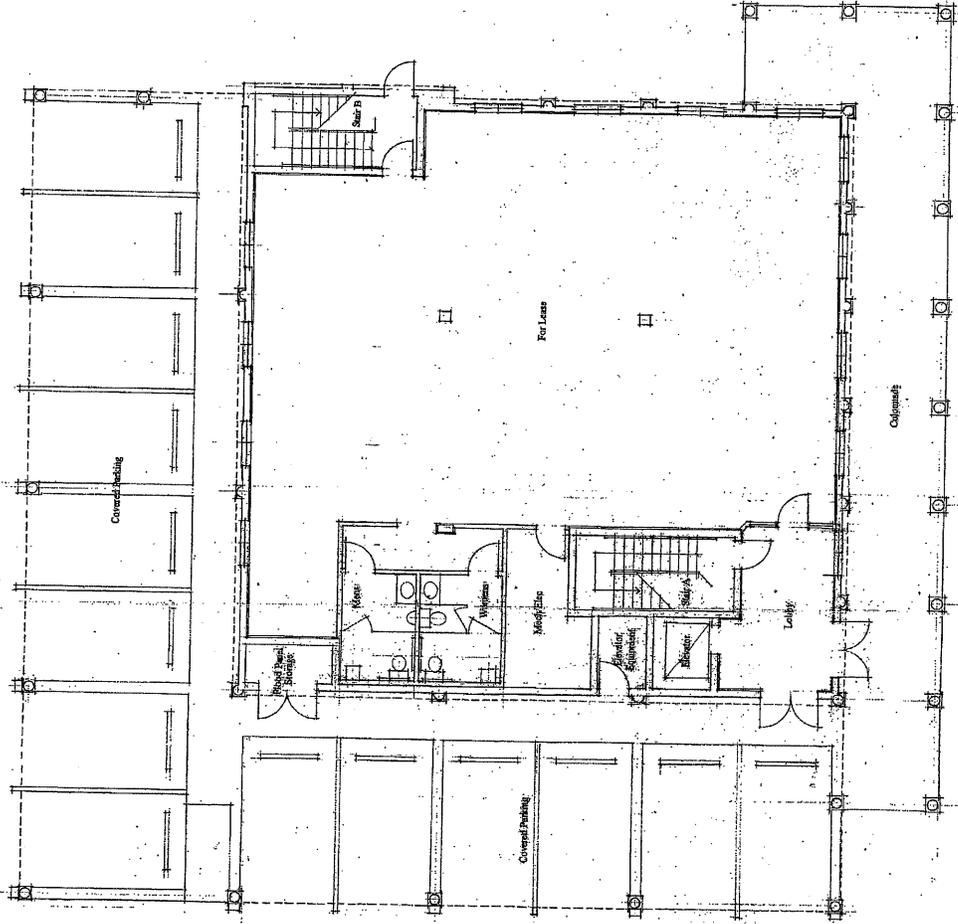
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P#398-5757 F#498-5848
 Brooks R. Swanson AIA
 9220 Bonita Beach Road, Suite 216
 Bonita Springs, Florida 34135

SUNSTREAM REALTY
 Fort Myers Beach, Florida 33931

24 January 2008
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REC'D 2005 00010
 RECEIVED
 JAN 21 2008
 REAL ESTATE COURTESY



FIRST FLOOR PLAN
 210' x 140'

ATTACHMENT C

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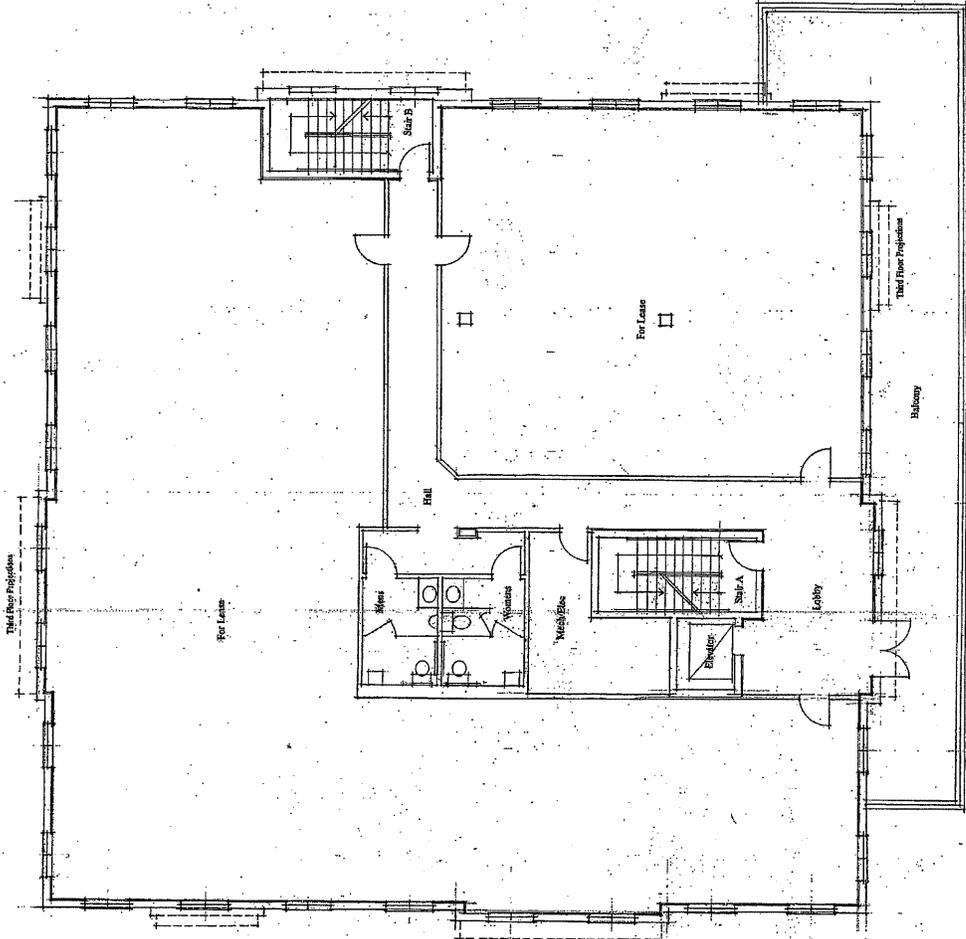
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Brooks R. Swanson AIA
9220 Bonita Beach Road, Suite 216
Fort Myers Beach, Florida 34135

New Office Building
6231 Estero Boulevard
Fort Myers Beach, Florida 33931
SUNSTREAM REALTY

25 January 2005
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RECEIVED
JAN 11 2005
REAR COURTYARD



SECOND & THIRD FLOOR PLAN
A10-1-04

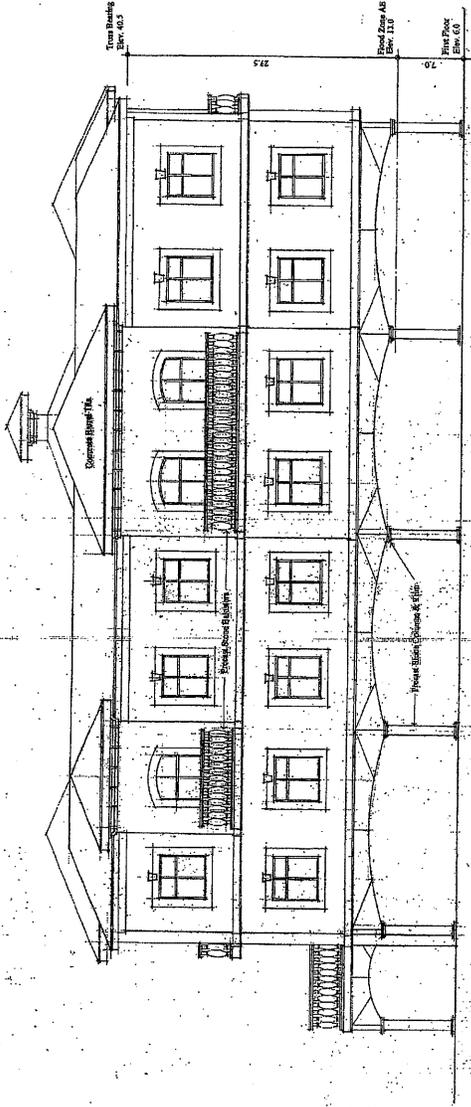
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 Brooks R. Swanson AIA
 9220 Bonita Beach Road, Suite 216
 Bonita Springs, Florida 34135

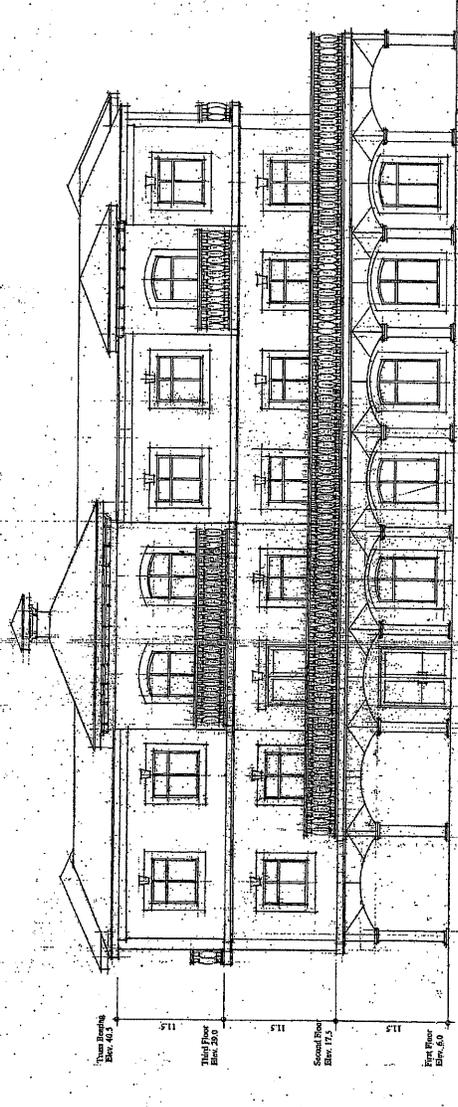
New Office Building
 SUNSTREAM REALTY
 621 Estero Boulevard
 Fort Myers Beach, Florida 33931

20 January 2005
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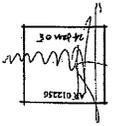
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 PROJECT CONTROL
 001 2005 00010



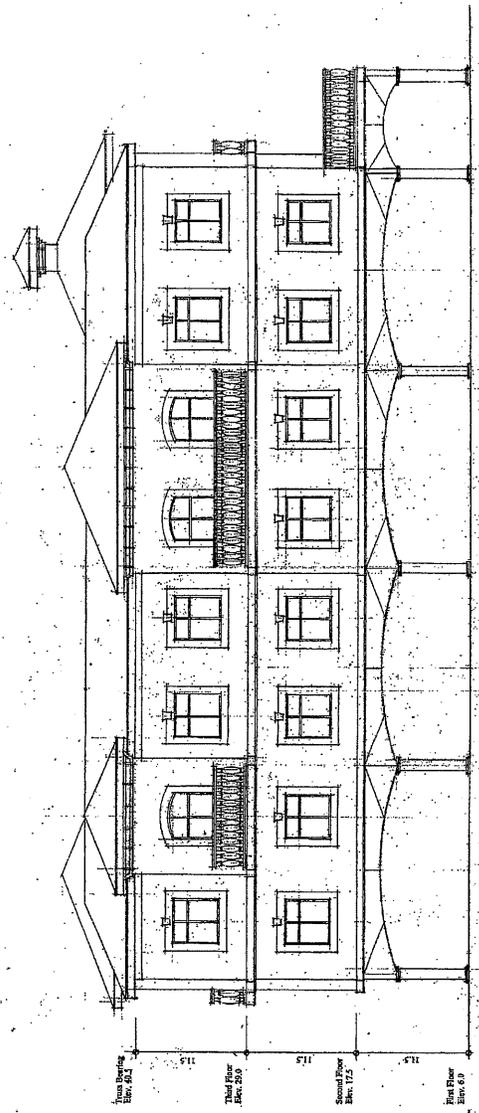
NORTHEAST ELEVATION
 3/16" = 1'-0"



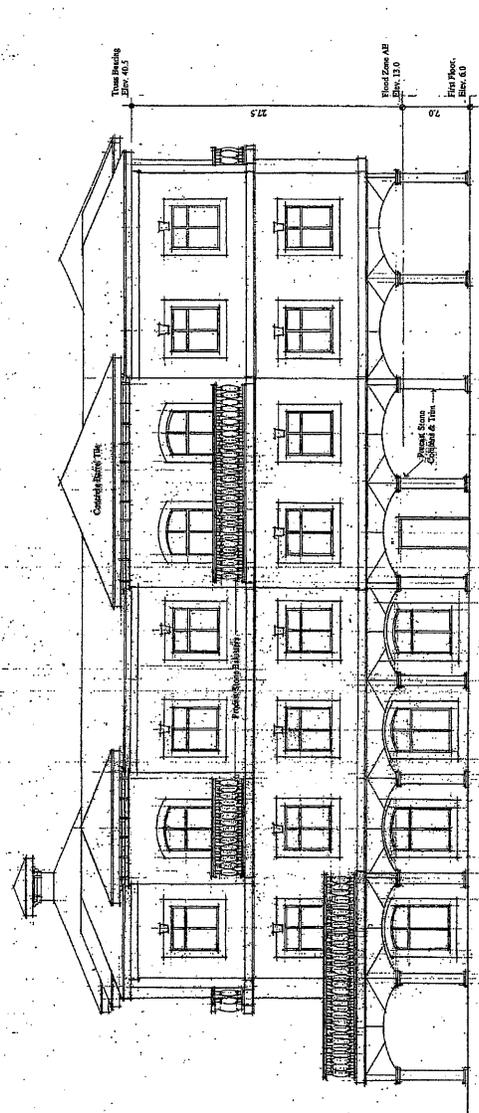
SOUTHWEST ELEVATION
 3/16" = 1'-0"



7298-5757 F-498-5848
 Brooks R. Swanson AIA
 9220 Bonita Beach Road, Suite 216
 Bonita Springs, Florida 34135



NORTHWEST ELEVATION
 344'-0"



SOUTHEAST ELEVATION
 344'-0"

New Office Building
 SUNSTREAM REALTY
 6231 Estero Boulevard
 Fort Myers Beach, Florida 33931

14 January 2005
 A4

RECEIVED
 JAN 14 2005
 PLANNING DEPARTMENT
 DCI 2005 00010

**STAFF REPORT
FROM
DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF ENVIRONMENTAL SCIENCES**

Date: May 11, 2004

To: Nettie Richardson, Principal Planner
From: Alaina Ray, Environmental Planner
Phone: (239) 479-8323
E-mail: aray@leegov.com

Project: Sunstream Realty Office
Case: DCI2005-00010
STRAP: 33-46-24-W3-00012.0020

The Division of Environmental Sciences (ES) has reviewed the application for the proposed Sunstream Realty Office Commercial Planned Development. The following are ES staff findings and conclusions.

Open Space:

LDC Section 10-415(a) requires that small commercial projects provide 20 percent of the site as open space. The proposed Master Concept Plan indicates that a minimum of 20 percent open space will be maintained. In order to confirm that open space requirements are met, ES staff recommends the following condition:

Prior to local development order approval, the plans must show a minimum of 20 percent of the site must be delineated as Open Space.

Deviations:

Deviation 1 requests relief from LDC Section 10-416(d)(4) which requires a 15 foot Type C buffer when commercial abuts residential, to allow the buffer width to be reduced to 13.5 feet. ES staff will defer to Division of Zoning regarding this request.

Nettie Richardson - Sunstream DCI2005-00010

From: Susan Hollingsworth
To: Richardson, Nettie
Date: 5/25/2005 7:41 AM
Subject: Sunstream DCI2005-00010

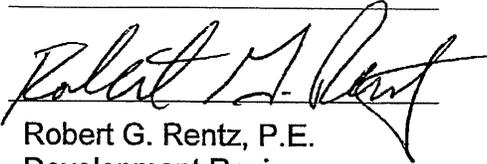
Substantive comments regarding the intersection separation deviation request are as follows:

Development Services supports the location of the remaining existing driveway. By eliminating one driveway, we are ending up with a better situation.

MEMORANDUM
FROM THE
DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION

DATE: May 31, 2005

To: Nettie Richardson
Principal Planner

FROM: 

Robert G. Rentz, P.E.
Development Review
Engineer

RE: **Sunstream Office Building**
Case No. DCI2005-00010

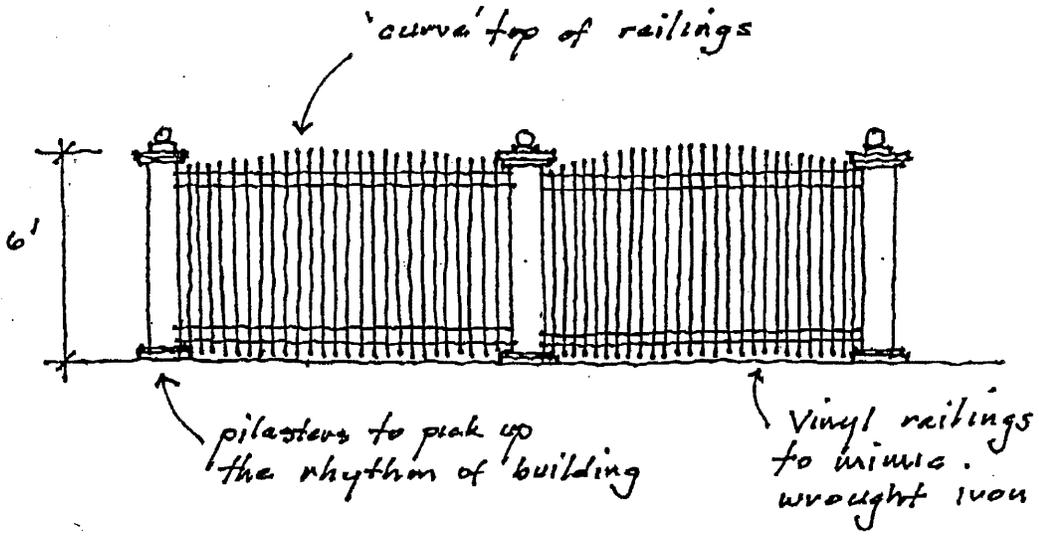
The proposed project is located the northeast corner of Bahia Via and Estero Blvd. Based on the ITE Trip Generation Report 7th Edition the project will generate 28 new trips in the peak hour. The anticipated build out year is 2006.

Based on the 2003/2004 - 2004/2005 Concurrency Management Report, and the Lee County D.O.T. link-specific service volumes, Estero Blvd. operated at level of service "A" in 2004, and will continue to operate at level of service "A" in 2007, with the project traffic.

BGR

S:/WRITERS/RENTZRG/DCI2005-00010SUBSTANTIVETRAFFICCOMMENTS

ATTACHMENT F

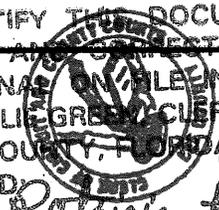


Sonstream Realty Fence
 1/4" = 1'-0" 1 June 05

RECEIVED
 JUN 01 2005
 ZONING

To: Nettie Richardson
 c Fax: 479.8313
 From: Brooks
 please call me
 @ 994-4661
 Thanks

I CERTIFY THIS DOCUMENT TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE CHARLIE GREEN CLERK CIRCUIT COURT LEE COUNTY, FLORIDA DATED: APR 11 2006



BY: Patricia A. Haywood Deputy Clerk

HOLD HARMLESS AGREEMENT

This AGREEMENT, is made the date last indicated below between SUNSTREAM, INC. ("Sunstream") and the TOWN OF FORT MYERS BEACH (the "Town").

RECITALS

WHEREAS, Sunstream submitted an application to the Town for the rezoning of 0.51 ± acres located at 6231 Estero Boulevard, Fort Myers Beach, Lee County, Florida (the "Property"), more specifically described on the attached Exhibit A; and

WHEREAS, the application requested rezoning of the Property formerly used as a gas station from Commercial Boulevard (CB) to Commercial Planned Development (CPD); and

WHEREAS, in response to said rezoning application, and after proper procedures, the Town adopted Resolution Number 05-30 on September 26, 2005, approving Sunstream's request to rezone from CB (Commercial Boulevard) to CPD (Commercial Planned Development) subject to conditions; and

WHEREAS, the aforesaid conditions were incorporated by reference into Resolution Number 05-30 as Exhibit B from the Staff Report dated June 3, 2005, with one change to condition 4; and

WHEREAS, condition 4 requires Sunstream to remove the underground storage tanks, test and mitigate for any pollution resulting from current or former uses of the underground storage tanks, and to enter into this AGREEMENT with the Town prior to the issuance of a local development order by the Town; and

WHEREAS, Sunstream removed the underground storage tanks on or about August 16th and 17th of 2005 under the supervision of Environmental Risk Management, Inc., an environmental consulting firm employed for this purpose by Sunstream, and the site is designated as Facility ID# 36-8519383; and

WHEREAS, after supervising the removal of the underground storage tanks, Environmental Risk Management, Inc. removed contaminated soils, tested soil and groundwater samples; and

WHEREAS, Environmental Risk Management, Inc. concluded from the test results that (1) all laboratory soil and groundwater samples collected and analyzed were below the applicable Cleanup Target Levels, so that no additional cleanup activity is warranted; (2) the work conducted at the Property sufficiently met the F.A.C. 62-761 requirements for a Tank Closure Assessment, and, on behalf of Sunstream, submitted the Tank Closure Assessment and Source Removal Report (the "Report") to Lee County Department of Natural Resources (LCDNR) and to the Florida Department of Environmental Protection (FDEP) requesting a No Further Action status for the Property, as outlined in FAC 62-770.680 from FDEP; and

WHEREAS, after reviewing the Report, the LCDNR determined the Report adequately met the requirement of the DEP's guidelines for a Pollutant Storage System Closure Assessment and that, based upon the information submitted, no further environmental assessment was

required of the Property as of the date of such determination, i.e., on or about November 15, 2005. The LCDNR stated that its letter did not certify that the site is uncontaminated and further reserved the right, on behalf of the FDEP, to require site rehabilitation to reduce concentrations to levels established in Chapter 62-770 F.A.C. if a subsequent discharge of petroleum or petroleum product is discovered. LCDNR forwarded the Report to FDEP for issuance of a No Further Action (NFA) letter providing that the underground storage tanks have been removed in accordance with Chapter 62-761, F.A.C.; and

WHEREAS, FDEP has not issued a No Further Action letter regarding the Property; and

WHEREAS, the Report is currently under review by FDEP; and

WHEREAS, Condition 4 of Resolution Number 05-30 states that an official determination by the agency or agencies with jurisdiction over environmental compliance that the property complies with all relevant environmental regulations must be provided to the Town to satisfy this AGREEMENT. And, if this AGREEMENT is satisfied prior to the issuance of the Certificate of Compliance for the Development Order, the AGREEMENT does not need to be recorded. Otherwise, the AGREEMENT must be recorded in the Public Records of Lee County, Florida at Sunstream's sole cost. If this AGREEMENT is satisfied after recording, the Town will record a notice that the AGREEMENT has been satisfied; and

WHEREAS, the FDEP has jurisdiction over environmental compliance with regard to underground storage tank closure and cleanup and LCDNR is authorized under contract with the FDEP to exercise some or all of the FDEP duties and responsibilities with regard thereto; and

WHEREAS, Sunstream has filed an application for a Development Order for the Property, DOS2005-00219.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt of which is acknowledged herein, Sunstream and Town agree as follows:

1. The above recitals are hereby incorporated into this AGREEMENT.

2. Release and Hold Harmless. Sunstream hereby agrees that Sunstream, its successors, assigns and heirs, hereby fully holds harmless and discharges the Town from and against third party claims, which may arise against the Town resulting from such former uses of the gas tanks on the Property located at 6231 Estero Boulevard, Fort Myers Beach, Lee County, Florida, more specifically described on Exhibit A, attached hereto and incorporated herein. This indemnification and hold harmless of the Town shall include, but not be limited to, any third party claims related to the removal of the aforesaid gas tanks and/or any issues related directly or indirectly to pollution of soil, groundwater and/or other material on the Property. This indemnification and hold harmless shall further include, but not be limited to, claims which may be asserted through administrative action or in some venue other than through the state or federal court system, and shall include but not be limited to reasonable attorney fees and costs, including appellate attorney fees, incurred by the Town related to the gas tanks and/or any issues related directly or indirectly to pollution of soil, groundwater and/or other material on the Property. The Town is indemnified and held harmless from all claims as may arise in the aforestated manner until such time as condition 4 of Resolution Number 05-30 is satisfied.

3. Jurisdiction over Environmental Compliance. FDEP has jurisdiction over environmental compliance with regard to the closure of underground storage tanks and cleanup for the Property and LCDNR is authorized under contract with the FDEP to exercise some or all of the FDEP duties and responsibilities with regard thereto.

4. Satisfaction. Satisfaction of condition 4 is the provision of a FDEP certification to the Town that site ID # 36-8519383 complies with all relevant environmental regulations.

5. Other Agreements. No modification or change in this AGREEMENT shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

6. Venue and Governing Law. The sole and exclusive venue for the resolution of any dispute arising pursuant to this AGREEMENT shall be in a court of competent jurisdiction located in Lee County, Florida, and this AGREEMENT shall be construed in accordance with the laws of the state of Florida.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT on the date last written below.

WITNESSES:

Cathy Baker
(Witness Sign Name)

Cathy Baker
(Witness Print Name)

SUNSTREAM, INC.
[Signature]
Print Name: David A. Lawrence, President
Date: 3/13/06

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 13th day of March, 2006, by David A. Lawrence, as President of Sunstream, Inc. who is personally known to me or who has produced a driver's license as identification.

NOTARY RUBBER STAMP SEAL
OR EMBOSSED SEAL



Brenda C. Stewart
Notary Public, State of Florida
Brenda C. Stewart
Printed Name of Notary Public

DD452217 July 18, 2009
Commission No. Expiration Date

TOWN OF FORT MYERS BEACH

[Signature]
Print Name: Dennis Boback Mayor

Date: 3/15/06

ATTEST:

By: [Signature]

Approved as to form by:
[Signature]
Anne Dalton, Esq.
Town Attorney

From:

03/17/2006 12:41 #186 P.002/002

EXHIBIT A

LEGAL DESCRIPTION

A lot or parcel of land lying in Sections 33 and 34, Township 46 South, Range 24 East, on Estero Island (Town of Fort Myers Beach) in Lee County, Florida, which is described as follows:

From the Southeasterly corner of Block 1, Unit No. 2, McPhie Park, according to the map or plat thereof recorded in Plat Book 8, Page 59, of the Public Records of Lee County, run Southeasterly perpendicular to the Southeasterly line of said Block 1 for 590 feet; thence run Northeasterly parallel with the Southeasterly line of said Block 1 to a point on the Northeasterly line of a county road right-of-way described in and conveyed by deed recorded in Deed Book 193 at Page 583 of said public records and the point of beginning of the lands herein described, which point is marked with a concrete monument; thence continue Northeasterly on the same course along the Southeasterly line of that certain tract of land described in and conveyed by deed recorded in Deed Book 194 at Page 433 of said public records, which line is also the Northwesterly line of a street or road known as Bahia Via for 150 feet to a point marked with a concrete monument; thence deflect $81^{\circ}47'$ to the left and run Northwesterly for 150 feet to a concrete monument; thence run Southwesterly parallel to the Southeasterly line of Flamingo Park Subdivision according to the map or plat thereof recorded in Plat Book 9 at Page 66 of the Lee County Public Records, a distance of 150 feet to the Northeasterly line of the said county road known as Estero Boulevard; thence run Southeasterly along the Northeasterly line of said county road for 150 feet to a point marked with a concrete monument which is the point of beginning of the lands described herein.

Approximately 0.51 acres.