



Town Council Agenda Report

SUBJECT: Request for Council to approve off-site parking

CONTACT PERSON/NUMBER

Name: Mark A. Kutney, AICP
Phone: (954) 797-1101

TITLE OF AGENDA ITEM:

Request by Nova Southeastern University for approval of off-site parking on the Gloria Dei campus, located at the northwest corner of SW 39 Street and SW 76 Avenue, pursuant to Code Section 12-202(A).

REPORT IN BRIEF:

Due to demands placed upon the Family Center of Nova Southeastern University and the education of pre-kindergarten through five-year olds and at the Baudhuin Oral School for education of children with special needs (including those with autism), NSU must look off campus for the construction of a new 93,000 square foot facility to replace the existing facilities on campus. NSU is currently negotiating with the owner of property currently known as the Winston Academy for a future purchase. As the Winston Academy is adjacent to property owned by Gloria Dei Lutheran Church, NSU has worked on a preliminary concept plan, in conjunction with Gloria Dei, which utilizes a portion of the Gloria Dei property for parking. Off-site parking is permitted pursuant to Land Development Code Subsection 12-202 (A), which provides for parking on land within seven hundred (700) feet of the premises being served. The determination of practical difficulties and appropriateness of the request rests with Town Council. NSU will close sale on the property if Town Council determines that the request is appropriate and grants approval.

Staff finds the request consistent with the intent of Subsection 12-202(A), as the parking will be contiguous to the facility being served, will function as a continuation of the on-site parking facilities, and will potentially result in more parking availability for Gloria Dei during special events not coinciding with the Nova facility's operating hours. While this request is for permission to locate a significant portion of the required parking off-site pending site plan approval, it is not a determination by Council that the proposed NSU facility will have provided the appropriate number of parking spaces, nor that any other site planning requirement will have been met.

The proposed parking agreement between Gloria Dei and NSU is attached, and representatives from NSU will be present to discuss this item at the September 6, 2000 Council meeting.

PREVIOUS ACTIONS: None.

CONCURRENCES: None.

FISCAL IMPACT: None

RECOMMENDATION: Motion to approve the concept of locating required parking off-site, noting that conformance with all other site development criteria, including provision of the required number of parking spaces, will be determined during site plan review .

Attachment(s): Parking agreement between NSU and Gloria Dei Church

DRAFT

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2000 by and between **GLORIA DEI LUTHERAN CHURCH, INC.**, a Florida not for profit corporation ("Gloria Dei") and **NOVA SOUTHEASTERN UNIVERSITY, INC.**, a Florida not for profit corporation ("the University").

WITNESSETH:

WHEREAS, Gloria Dei has granted to the University certain "University Easement and Use Rights" set forth in a Cross Access and Parking Easement Agreement dated the ____ day of _____, 2000, a copy of which is attached hereto as Exhibit "A" and made a part hereof (the "Easement Agreement"); and

WHEREAS, the University has granted to Gloria Dei certain "Gloria Dei Easement and Use Rights" set forth in the Easement Agreement; and

WHEREAS, in consideration of Gloria Dei granting to the University the University Easement and Use Rights, the University has agreed to undertake certain obligations, all as more particularly described herein.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Gloria Dei and the University agree as follows:

1. **Recitals.** All of the foregoing recitals are true and correct and are hereby incorporated herein by reference.
2. **Definitions.** Capitalized terms shall have the same meaning as in the Easement Agreement unless otherwise specifically provided for herein.
3. **Drainage Work for a Portion of Gloria Dei's Property.** The University shall design and install upgrades to the drainage system for a portion of Gloria Dei's Property which upgrades will attempt to eliminate the existing standing water and drainage inadequacies. The location of the drainage work to be done by the University is set forth in Exhibit "B" attached hereto and made a part hereof. The University shall provide to Gloria Dei specifications of the work to be done as soon as reasonably practicable, but in no event later than the commencement of the work. The University shall not be required to spend more than Twenty Thousand Dollars (\$20,000) for such work. The drainage work shall commence by December 1, 2000.
4. **Payments for Air Conditioning Maintenance and Repair.** The University shall pay to Gloria Dei the sum of Fifty Thousand Dollars (\$50,000) payable in annual instalments of Ten Thousand Dollars (\$10,000) each for a period of five (5)

years to be used by Gloria Dei for the maintenance, repair and/or replacement of Gloria Dei's air conditioning system. The University's first payment shall be made on September 1, 2000, with future payments to be made on the anniversary date thereof. The annual \$10,000 payment by the University to Gloria Dei shall be made regardless of whether or not Gloria Dei actually expends all of the payment(s) on air conditioning maintenance, repair or replacement.

5. **Improvements to Gymnasium Floor.** Gloria Dei intends to replace or upgrade its gymnasium floor. The University shall pay to Gloria Dei an amount not to exceed Forty Four Thousand Dollars (\$44,000) for such work. Payment shall be made to Gloria Dei upon the University's receipt of invoices from Gloria Dei.
6. **Construction of the Gloria Dei Parking and Road Easement Areas.** The University shall construct, at its expense, the Gloria Dei Parking and Road Easement Areas in accordance with the site plan approved by the Town of Davie. The location of the Gloria Dei Parking and Road Easement Areas shall be within the area delineated in Exhibit "C" attached hereto and made a part hereof. Construction of the Gloria Dei Parking and Road Easement Areas shall be substantially completed by December 1, 2001. The total cost to be expended by the University for the construction of the Gloria Dei Parking and Road Easement Areas and Additional Parking Area, prescribed in Paragraph 8 of this Agreement, is estimated to be approximately Three Hundred Forty-Five Thousand Dollars (\$345,000).
7. **Construction of the Playing Field on the Gloria Dei Property.** The University, at its expense, shall construct a playing field (the "Playing Field") on the Gloria Dei Property in accordance with the site plan approved by the Town of Davie and pursuant to the same construction standards as the University uses in the construction of its best intercollegiate athletic fields. The location of the Playing Field shall be within the area delineated in Exhibit "D" attached hereto and made apart hereof. The estimated cost to be paid by the University for the construction of the Playing Field is approximately One Hundred Twenty-Five Thousand Dollars (\$125,000). The work shall be substantially completed by December 1, 2001. If the University elects to install lighting on the Playing Field then such shall include appropriate metering, timer and lockbox facilities to allow both Gloria Dei and the University to utilize the Playing Field lights but be separately billed for their respective electrical usage. Gloria Dei shall permit the University to use the Playing Field at times which do not conflict with Gloria Dei's use of the Playing Field **by its students or members of its congregation.** The University shall make its request for use of the Playing Field in writing at least three (3) days prior to the time of its desired use. Gloria Dei shall use all reasonable efforts to accommodate the University's requests.

8. **Construction, Maintenance, and Use of the Additional Parking Area.**
- A. **Construction.** The University shall construct, at its expense, on a portion of the Gloria Dei Property, a parking area consisting of forty-eight (48) parking spaces (the "Additional Parking Area") in accordance with the site plan approved by the Town of Davie. The location of the Additional Parking Area shall be within the area delineated in Exhibit "E" attached hereto and made a part hereof. The construction of the Additional Parking Area shall be substantially completed by December 1, 2001. The University shall promptly apply to the Town of Davie for site plan approval. Construction of the Additional Parking Area shall be done in accordance with the approved site plan.
- B. **Maintenance.** The University shall, at its expense, maintain and keep in good repair the Additional Parking Area pursuant to (i) the same standards it uses in the maintenance and repair of its own parking areas, or (ii) the maintenance and repair standards set forth in the approved site plan and any accompanying engineering and landscaping requirements thereto, whichever standards are greater. If the University shall fail to maintain and/or repair the Additional Parking Area, as required herein then, within fifteen (15) days after receipt of written notice from Gloria Dei specifying that such maintenance and/or repair is required to be done, Gloria Dei may perform the necessary maintenance and/or repair and invoice the University for the costs it incurs in connection with such work. The University shall pay any such invoice from Gloria Dei within thirty (30) days of receipt.
- C. **Use.** Except as provided for in the sentence immediately following, Gloria Dei shall have the exclusive use of the Additional Parking Area. Upon the University's request, Gloria Dei shall permit the University to use all or part of the Additional Parking Area in connection with the University Property, provided that Gloria Dei does not intend to use the same during the requested period of time. All requests by the University shall be made in writing at least three (3) days prior to the time of its desired use. Gloria Dei shall use ~~all~~ reasonable efforts to accommodate the University's requests; provided, however, that under no circumstances shall the University's use of the Additional Parking Area be deemed as the acquisition by the University of an easement of any type, quantity or duration.
9. **Maintenance of the Gloria Dei Parking and Road Easement Areas.** The University shall, at its expense, maintain and/or repair the Gloria Dei Parking and Road Easement Areas in accordance with the provisions of the Easement Agreement.

10. **Maintenance of the Playing Field.** The University shall, at its expense, maintain and keep in good repair the Playing Field and all improvements installed thereon, in the same manner as it maintains its best intercollegiate athletic fields. If the University shall fail to maintain and/or repair the Playing Field as required herein then, within five (5) days after receipt of written notice from Gloria Dei specifying that such maintenance and/or repair is required to be done, Gloria Dei may perform the necessary maintenance and/or repair and invoice the University for the costs it incurs in connection with such work. The University shall pay any such invoice from Gloria Dei within thirty (30) days of receipt of the same.
11. **Lawn Maintenance of the Gloria Dei Property.** Commencing on the date of execution of this Agreement and continuing in perpetuity thereafter, the University shall, at its expense, provide lawn maintenance to the Gloria Dei Property as depicted in Exhibit "F" attached hereto and made a part hereof. For purposes of this Agreement, lawn maintenance of the Gloria Dei Property by the University shall be performed in accordance with the attached Lawn Maintenance Schedule "A". If the University shall fail to provide the lawn maintenance to the Gloria Dei Property as required herein, then within five (5) days after receipt of written notice from Gloria Dei specifying that such lawn maintenance is required to be done, Gloria Dei may perform the necessary lawn maintenance and invoice the University for the costs it incurs in connection with such work. The University shall pay any such invoice from Gloria Dei within thirty (30) days of receipt of the same.
12. **Access Easement Granted to the University.** Gloria Dei hereby grants to the University a non-exclusive access easement over, on, across, and through only those portions of the Gloria Dei Property which are necessary for the University to perform its construction and maintenance obligations delineated in Sections 5 through 11 above.
13. **Cooperative Efforts.** The University shall use reasonable efforts to provide to Gloria Dei (i) access to the University's present teachers' supply store at the Fischler Graduate School of Education and Human Services, enabling Gloria Dei's teachers to acquire materials and supplies at no cost, or if there is a cost then at the same terms as offered to other teachers; (ii) access for Gloria Dei's teachers to the University's classes (excluding certificate and degree programs), seminars, and workshops in the field of education taking place on the University Property, at no cost on a space available basis and subject to the discretion of the individual professor or instructor; and (iii) the ability to acquire from the University, at no cost, such teaching supplies, materials, equipment, books, computers, furniture, etc. ("Surplus Items") which are deemed by the University as surplus and which will, from time to time, be listed on schedule(s) to be provided by the University to Gloria Dei when such Surplus Items become available.

14. **No Termination of Easement and Use Rights.** The University's and Gloria Dei's Easement and Use Rights may not be terminated or modified by either party without the express written consent of the other party.
15. **Remedies.** In the event of a default or breach by either party of its obligations under this Agreement or the Easement Agreement after the expiration of any applicable cure periods, then, subject to the limitation contained in Paragraph 14 above, the non-defaulting party shall be entitled to avail itself of all remedies prescribed in law or equity, including, but not limited to, damages, specific performance and injunctive relief.
16. **Arbitration.** In the event that a dispute shall arise regarding the enforcement or interpretation of this Agreement, or the Easement Agreement, the parties will resolve the dispute through neutral binding arbitration to be held in Broward County, Florida, conditioned upon the parties agreeing on an individual to serve as arbitrator. The arbitrator may not alter the terms of the Agreement or award any remedy not prescribed in this Agreement. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery related disputes. Arbitration is a process in which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the rules of the American Arbitration Association or other arbitration organization agreed on by the parties. The successful party to any arbitration is entitled to an award of its reasonable attorney's fees, costs and expenses. The parties will equally split the arbitrator's fees and administrative fees of arbitration.
17. **Attorney's Fees.** In the event that either the University or Gloria Dei incurs legal fees in connection with the enforcement and/or interpretation of this Agreement or the Easement Agreement then the successful party shall be entitled to an award of reasonable attorney's fees through all levels of trial and appeal.
18. **Reimbursement of Gloria Dei's Legal Fees.** The University agrees to reimburse or pay directly, within thirty (30) days of presentation of an invoice(s), the reasonable fees of Gloria Dei's attorneys in connection with their representation of Gloria Dei in the negotiation and preparation of this Agreement and the Easement Agreement; provided, however, that the amount to be paid by the University shall not exceed Four Thousand Dollars (\$4,000).
19. **Entire Agreement and Modification.** This Agreement represents the entire understanding of Gloria Dei and the University with respect to the matters covered herein, and may only be altered, amended, or modified by a writing duly executed on behalf of both parties.

20. **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
21. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action instituted in connection with this Agreement shall lie exclusively in Broward County, Florida.
22. **Notices.** All notices and requests required or permitted under this Agreement shall be in writing and shall be deemed effective upon (i) personal delivery with a receipt obtained, (ii) receipt, refusal of receipt, or the date marked as uncollected if sent by certified mail, postage prepaid and return receipt requested, and (iii) the earlier of receipt or two (2) business days after being deposited with a nationally recognized overnight delivery service (e.g., Federal Express), to the following addresses:

If to the University:

Nova Southeastern University, Inc.
3301 College Avenue
Fort Lauderdale, Florida 33314
Attn.: Executive VP for Administration

If to Gloria Dei:

Gloria Dei Lutheran Church, Inc.
7601 Sw 39th Street
Davie, Florida 33328
Attn.: President

With a copy to:

Kalis & Kleiman, P.A.
7320 Griffin Road, Ste. 109
Davie, Florida 33314
Attn.: Neal Kalis, Esq.

Each party may change the address at which notice shall be given to the other party by providing notice as set forth in this Section 22.

23. **No Recording.** Neither this Agreement, nor any evidence thereof, shall be recorded in the public records of Broward County, Florida.
24. **Force Majeure.** Notwithstanding anything to the contrary contained herein, the University shall not be liable for any delay in the performance of its construction, installation, or maintenance obligations under this Agreement or the Easement Agreement due to acts of God, hurricanes, floods, casualty, national emergency, civil strife, labor troubles, scarcity of materials, inability to

obtain permits, or other causes, similar or dissimilar, which are beyond the reasonable control of the University.

IN WITNESS WHEREOF, the University and Gloria Dei have executed this Agreement on the date first set forth above.

WITNESSES:

NOVA SOUTHEASTERN UNIVERSITY, INC., a Florida not for profit corporation

Signature

By: _____
Print Name: Ray Ferrero, Jr.
Title: President

Print Name

Signature

Print Name

WITNESSES:

GLORIA DEI LUTHERAN CHURCH, INC., a Florida no for profit corporation

Signature

By: _____
Print Name: Dennis Adams
Title: President

Print Name

Signature

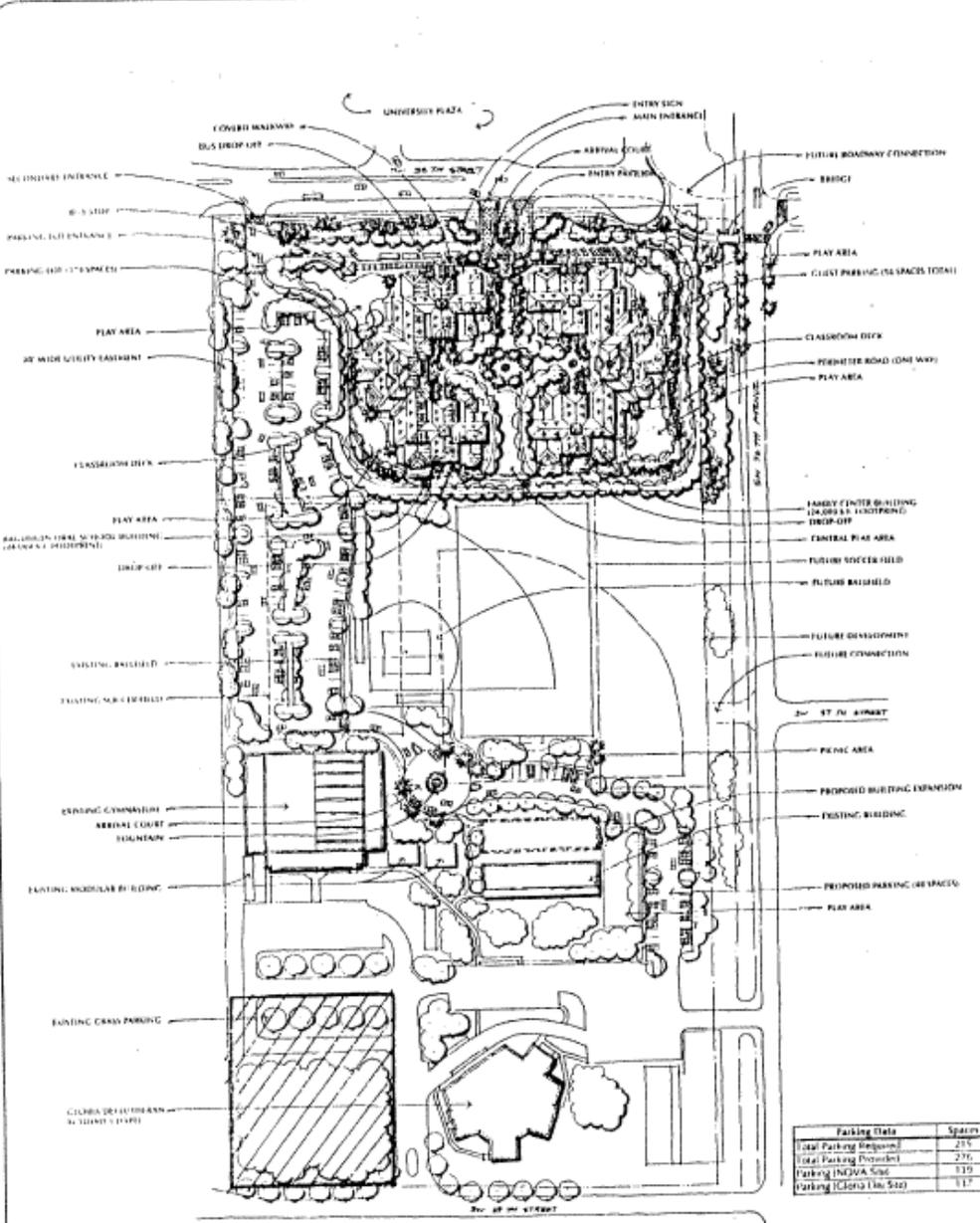
Print Name

SCHEDULE "A"

Lawn Maintenance Schedule

- I. All lawn areas shall be cut on the same frequency as the University cuts the lawn areas on the University Property.
- II. Edge around all flower beds, roadways, walkways, shrubs, lake bulkheads, sprinkler heads, donuts/pyramids.
- III. Excess leaves and cut grass will be blown off from all sidewalks and paved parking areas.

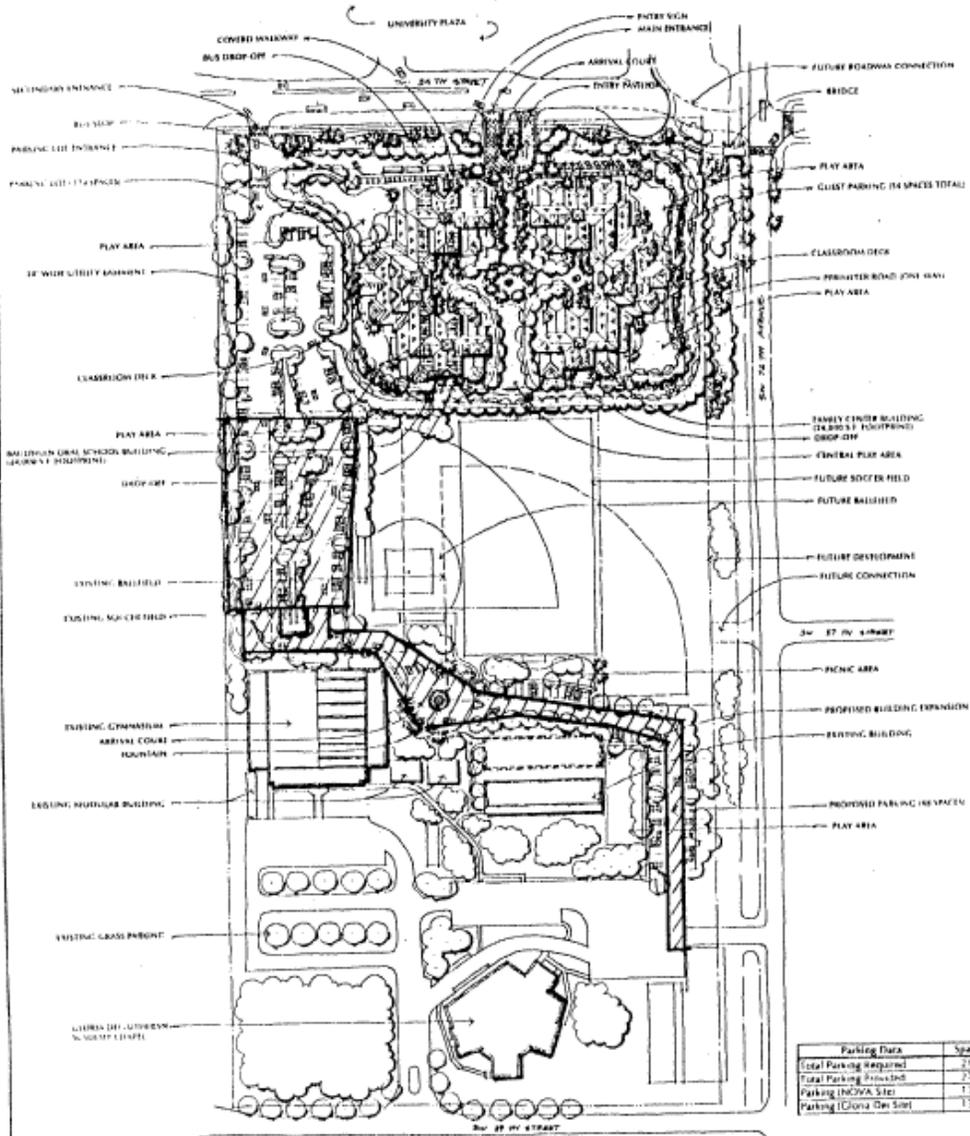
EXHIBIT "B"



CONCEPTUAL MASTER PLAN
NOVA SOUTHEASTERN UNIVERSITY
 BAINBRIDGE ORAL SCHOOL AND FAMILY CENTER
 DAVID, FLORIDA



EXHIBIT "C"



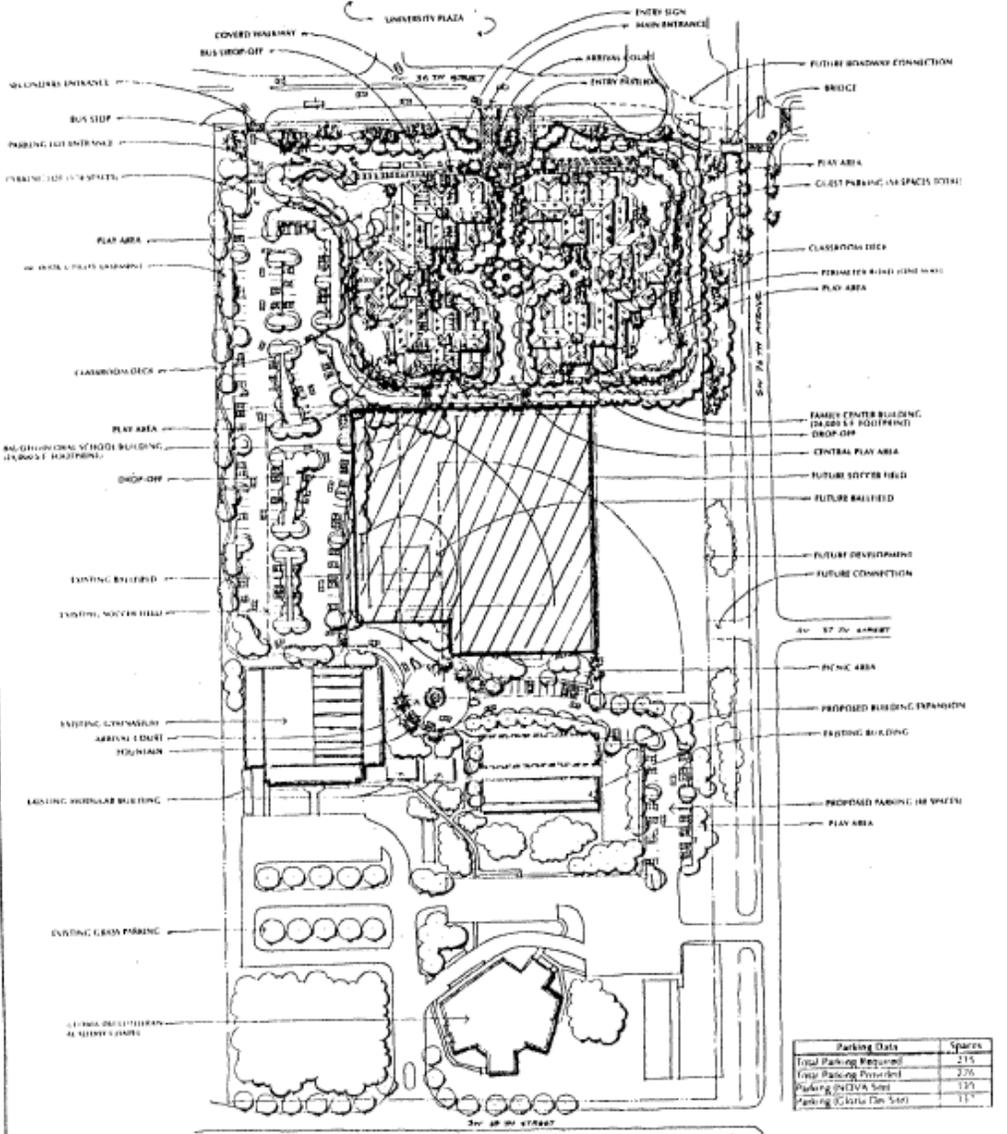
Parking Data	Spaces
Total Parking Required	255
Total Parking Provided	276
Parking (NOVA Side)	110
Parking (Clara Dev Site)	137

CONCEPTUAL MASTER PLAN
NOVA SOUTHEASTERN UNIVERSITY
 BUILDING ORAL SCHOOL AND FAMILY CENTER
 DAVIE, FLORIDA

ARCHIT. & LANDSCAPE ARCHIT.



EXHIBIT "D"



CONCEPTUAL MASTER PLAN
NOVA SOUTHEASTERN UNIVERSITY
 BAUDRIN ORAL SCHOOL AND FAMILY CENTER
 DAVIE, FLORIDA

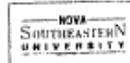
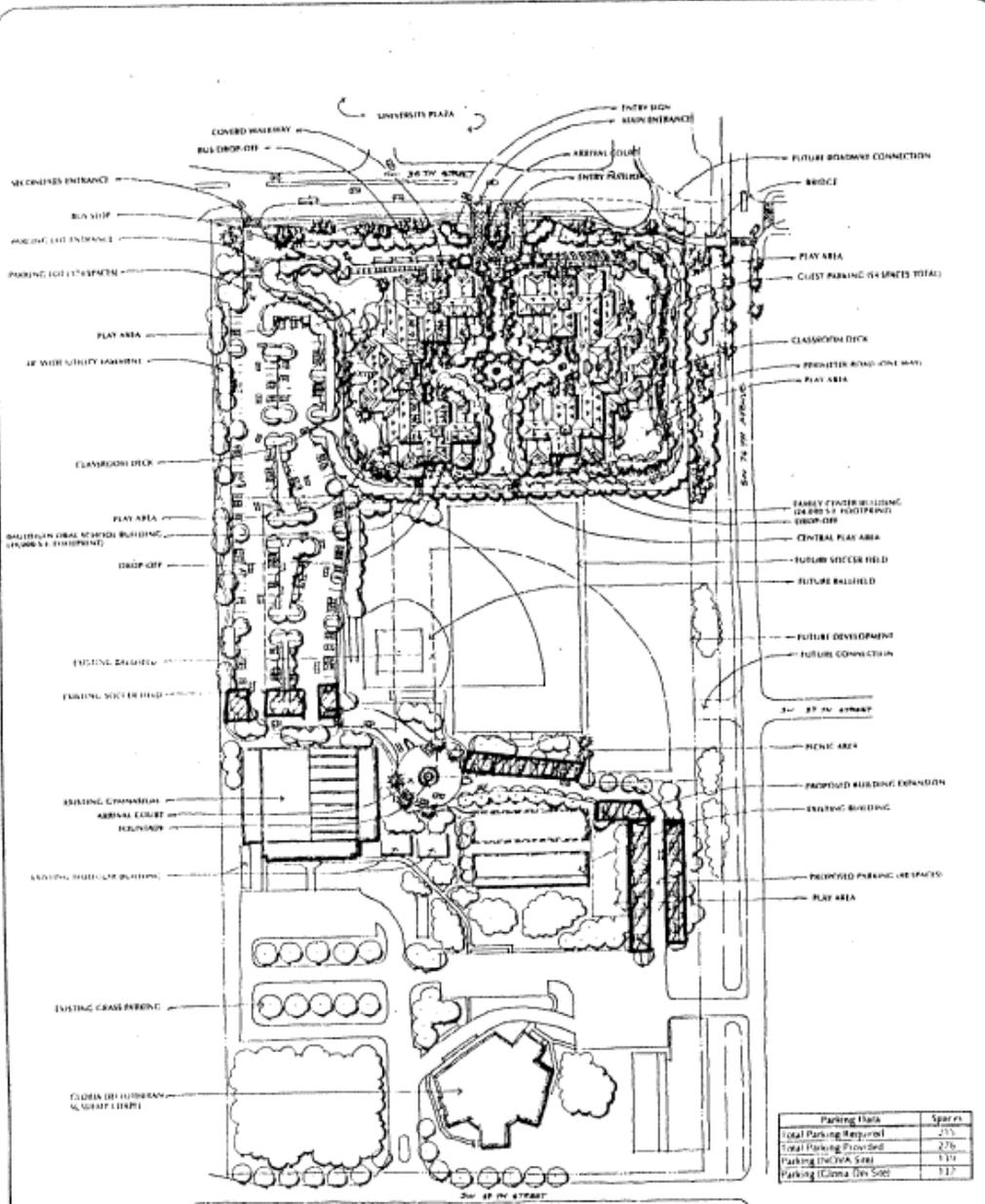


EXHIBIT "E"



Parking Data	Spaces
Total Parking Required	275
Total Parking Provided	275
Parking (On-Campus)	119
Parking (Off-Campus)	157

CONCEPTUAL MASTER PLAN

NOVA SOUTHEASTERN UNIVERSITY
 BUILDING ORAL SCHOOL AND FAMILY CENTER
 DAVID, FLORIDA

ARCHITECT



