

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101

PREPARED BY: Christopher M. Gratz, Planner II

SUBJECT: Developer's Agreement, DA 1-1-05 Toral Professional Building Plat, 4820 SW 64 Avenue (Davie Road)/Generally located on the east side of Davie Road, 0.24 miles south of Griffin Road

AFFECTED DISTRICT: District 1

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND TORAL PROFESSIONAL BUILDING LLC, FOR THE INSTALLATION OF REQUIRED IMPROVEMENTS RELATING TO THE TORAL PROFESSIONAL BUILDING PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The applicant's request is for the Town Council to authorize the Mayor and Town Administrator to enter into a tri-party agreement for the installation of required improvements for the Toral Professional Building Plat. The plat, P 6-1-04 Toral Professional Building, for 12,000 square feet of office use has been submitted concurrently with this request. When Broward County evaluated the plat request it was determined that improvements are needed to satisfy concurrency requirements for the regional transportation network. Specifically, the owner is required to pay \$25,000 to Broward County for the installation of video detectors at the intersection of Stirling Road and SW 61 Avenue.

The Town is a party to the agreement because Broward County requires that the Town of Davie not issue a certificate of occupancy for any development within the plat until the Town receives confirmation from the County that the payment required for the improvements to satisfy concurrency on the regional road network has been received. Staff has no objection to the request.

PREVIOUS ACTIONS: None.

CONCURRENCES: N/A

FISCAL IMPACT: N/A

RECOMMENDATION(S): Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Agreement, Future Land Use Plan Map, Zoning and Aerial Map

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND TORAL PROFESSIONAL BUILDING LLC, FOR THE INSTALLATION OF REQUIRED IMPROVEMENTS RELATING TO THE TORAL PROFESSIONAL BUILDING PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the proposed plat to be known as the Toral Professional Building was approved by the Town Council of the Town of Davie on March 2, 2005;

WHEREAS, Broward County requires improvements to satisfy concurrency on the regional road network;

WHEREAS, Broward County requires that the Town of Davie not issue a certificate of occupancy on said plat until the Town receives confirmation from the County that the payment required for the improvements to satisfy concurrency on the regional road network has been received.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. Any improvements required to satisfy Traffic Concurrency shall be located within the Town of Davie.

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2005.

Return recorded document to:

Development Management Division
115 S. Andrews Avenue, A240
Fort Lauderdale, FL 33301

Document prepared by:

LEIGH KERR
808 E. LAS OLAS BLVD, SUITE 104
FT. L. FL 33301

NOTICE: PURCHASERS, GRANTEES, HEIRS, SUCCESSORS AND ASSIGNS OF ANY INTEREST IN THE PROPERTY SET FORTH ON EXHIBIT "A" ARE HEREBY PUT ON NOTICE OF THE OBLIGATIONS SET FORTH WITHIN THIS AGREEMENT WHICH SHALL RUN WITH THE PROPERTY UNTIL FULLY PAID AND/OR PERFORMED.

**REGIONAL ROAD CONCURRENCY AGREEMENT -
COUNTY PROJECT**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

TORAL PROFESSIONAL BUILDING LLC its successors and assigns, hereinafter referred to as DEVELOPER,

[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The Town of DAVIE, a municipal corporation, created and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "CITY."

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, more specifically requires that an application for a development permit satisfy concurrency requirements for impact areas; and

WHEREAS, DEVELOPER has applied for approval of or an amendment to the Toral Professional Building Plat (042-MP-04), hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on August 2, 2004, the Broward County Development Management Division issued a Notification of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network, finding that the application for approval of or amendment to the PLAT does not satisfy the impact area concurrency standards for the regional road network as stated in Section 5-182 of the Broward County Land Development Code ("CODE"); and

WHEREAS, the COUNTY has undertaken a countywide project to install video detection equipment at signalized intersections, hereinafter referred to as "Project"; and

WHEREAS, DEVELOPER has agreed to pay to COUNTY the sum of \$25,000 which is the cost of installing video detection equipment, as described in Exhibit "B" attached hereto, at the intersection of Stirling Road and Southwest 61 Avenue; and

WHEREAS, the Broward County Development Management Division has approved this remedial measure and finds that its concurrency requirements for the PLAT will be met with the execution of, and compliance with, the terms of this Agreement by DEVELOPER; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and DEVELOPER agree as follows:

1. The above recitals are true and correct and are hereby incorporated herein.
2. CONSTRUCTION OF IMPROVEMENTS.
 - (a) DEVELOPER agrees to pay \$25,000 which represents COUNTY's cost of the IMPROVEMENT(S) described in Exhibit "B," hereinafter referred to as "the improvements." DEVELOPER agrees that payment must be made either prior to recordation of the plat or the agreement amending the note on the face of the plat.
 - (b) COUNTY and DEVELOPER agree that no security is required for the IMPROVEMENT(S), as the payment will be made prior to recordation of the plat or the agreement amending the note on the face of the plat.
 - (c) In the event that the amount of money or any portion thereof the DEVELOPER has agreed to pay pursuant hereto becomes due and payable as provided herein and continues unpaid for thirty (30) days or more thereafter, the entire unpaid balance of such amount, plus costs and interest accrued from the due date at the rate of twelve (12) per cent per annum, shall become immediately due and payable.

- (d) Developer agrees that this agreement shall be recorded in the Official Records of Broward County, Florida, against the property described in Exhibit "A" to put subsequent purchasers, grantees, heirs, successors and assigns of any interest in such property on notice of the obligations set forth herein, which shall run with the property until fully paid and performed. However, the amount(s) set forth above shall not constitute a lien on the property unless and until the provisions below are activated by the recording of a "Notice of Lien."
3. CONCURRENCY COMPLIANCE. COUNTY finds that by executing and complying with the terms of this Agreement, DEVELOPER has satisfied the adequacy of the Regional Roadway Network requirement of the Broward County Land Development Code for the PLAT as approved by the COUNTY.
4. If the property is within a municipality, CITY agrees not to issue a certificate of occupancy for any development within the PLAT until CITY receives confirmation from COUNTY that the payment required pursuant to Section 2(a) has been received by COUNTY.
5. NOTICE. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director, Development Management Division of Broward County
115 South Andrews Avenue, Room A240
Fort Lauderdale, FL 33301

Director of the Broward County Engineering Division
115 South Andrews Avenue, Room 321
Fort Lauderdale, FL 33301

For the DEVELOPER:

Frank Toral

3107 Stirling Road #208

Fort Lauderdale, Fla. 33312

For the CITY:

Mark Kutney, Town of Davie

6591 Orange Drive

Davie, FL 33314

6. **RECORDATION.** This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.
7. **VENUE; CHOICE OF LAW.** Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.
8. **CHANGES TO FORM AGREEMENT.** DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
9. **CAPTIONS AND PARAGRAPH HEADINGS.** Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.
10. **NO WAIVER.** No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

11. EXHIBITS. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.
12. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.
13. ASSIGNMENT AND ASSUMPTION. DEVELOPER may assign all or any portion of its obligations pursuant to this Agreement to a grantee of the fee title to all or any portion of the property described in Exhibit "A." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement.
14. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the _____ day of _____, 20____, TOWN OF DAVIE, signing by and through its Mayor and Town Manager, duly authorized to execute same, and DEVELOPER, signing by and through its _____ duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY

COMMISSIONERS

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By _____ Mayor

____ day of _____, 20____

Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____

Assistant County Attorney

DEVELOPER-INDIVIDUAL

Witnesses:

B. Boughanmi
(Signature)
Print name: Beldanna T Boughanmi
[Signature]
(Signature)
Print name: Craig B. Kern

Frank Toral
Name of Developer (Individual)
[Signature]
(Signature)
Print name: Frank Toral
Print address: 3107 Stirling Road #208
Fort Lauderdale Fla 33312
13 day of October, 2004

ACKNOWLEDGMENT - INDIVIDUAL

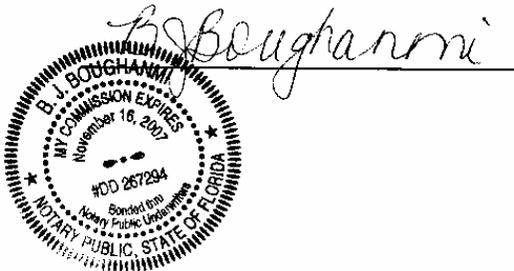
STATE OF Florida)
COUNTY OF Broward) SS.

The foregoing instrument was acknowledged before me this 13th day of October, 2004, by Frank Toral who is
 personally known to me, or
 produced identification. Type of identification produced _____.

NOTARY PUBLIC:

(Seal)

My commission expires:



DEVELOPER-CORPORATION/PARTNERSHIP

Witnesses (if partnership):

Toral Professional Building LLC
Name of Developer (corporation/partnership)

B. Boughanmi
(Signature)
Print name: Behlarna J Boughanmi

By [Signature]
(Signature)
Print name: Frank Toral
Title: President - owner
Address: 3107 Stirling Road # 207
Fort Lauderdale, Fla. 33312

(Signature)
Print name: _____

13 day of October, 2004

ATTEST (if corporation):

[Signature]
(Secretary Signature)
Print Name of Secretary: Frank Toral

(CORPORATE SEAL)

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF Florida)
) SS.
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 13 day of October, 2004, by Frank Toral, as President of Toral Professional Building, LLC limited liability corporation/partnership, on behalf of the corporation/partnership. He or she is:

personally known to me, or
 produced identification. Type of identification produced _____

(Seal)

My commission expires:



NOTARY PUBLIC:

B. Boughanmi
Print name: _____

CITY

(If Property is located within a City)

WITNESSES:

ATTEST:

Town Clerk

TOWN of DAVIE

By _____
Mayor-Commissioner

____ day of _____, 20__

By _____
Town Manager

____ day of _____, 20__

APPROVED AS TO FORM:

By _____
Town Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"

IMPROVEMENTS

Prior to plat or note amendment recordation, pay \$25,000 to Broward County for the installation of video detectors for all approaches at the intersection of Stirling Road and Southwest 61 Avenue.

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