

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director/ (954) 797-1101
Prepared by Erin A. Degutis, ASLA, AICP, Planner III

SUBJECT: Resolution - Developers Agreement
DA 07-1-04
Developer: Nova Southeastern University, 3100 College Avenue, Davie, Florida
Developer's Representative: Dennis Mele, Esq., Ruden McClosky, 200 E. Broward
Boulevard, Fort Lauderdale, Florida 33302

AFFECTED DISTRICT: District 2

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 NOVA SOUTHEASTERN UNIVERSITY FOR TRAFFIC CONCURRENCY RELATING TO THE YOUNG WORLD PLAT, NOVA UNIVERSITY #1 PLAT, AND NEW WORLD PLAT, FORMING THE NOVA SOUTHEASTERN UNIVERSITY CAMPUS IN DAVIE, FLORIDA; PROVIDING FOR MITIGATION MEASURES TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

Nova Southeastern University has filed a Traffic Concurrency Agreement with Broward County. In order to satisfy concurrency for the University and the Young World Plat, Nova University #1 Plat, and New World Plat, the developer is entering into a Traffic Concurrency Agreement. The developer has agreed to construct the off-site improvements described in the Exhibit "B" of the attached Agreement, and provide to Broward County a Letter of Credit or Surety Bond, which represents 125% of the costs of the improvements. The Town of Davie agrees that, upon notification from the County that developer is in default of this Agreement, the Town shall withhold issuance of all building permit, certificates of occupancy, or any other development permits within the boundaries of the plats, until such time that the County notified the Town that the default has been resolved. In addition, the Town is a party to this Developers Agreement solely for the purpose of issuing or withholding the issuance of building permits for the construction of buildings within these plats subject to this agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy within these plats subject to this Agreement.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

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

Attachments: Resolution and Traffic Concurrency Agreement

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 NOVA SOUTHEASTERN UNIVERSITY FOR TRAFFIC CONCURRENCY RELATING TO THE NOVA SOUTHEASTERN UNIVERSITY CAMPUS IN DAVIE, FLORIDA; PROVIDING FOR MITIGATION MEASURES TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the developer, Nova Southeastern University, proposes to develop the property known as Nova Southeastern University; and

WHEREAS, Broward County requires remedial measures to satisfy concurrency requirements related to Nova Southeastern University.

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 "1", between Broward County, Nova Southeastern University, and the Town of Davie, whereby the Town, upon notification from the County that developer is in default of this Agreement, shall withhold issuance of all building permit, certificates of occupancy, or any other development permits within the boundaries of the plat, until such time that the County notified the Town that the default has been resolved. In addition, the Town shall issue or withhold the issuance of building permits and certificates of occupancy for the construction of buildings within these plats subject to this agreement.

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

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004.

EXHIBIT "1"

Return to: (enclose self-addressed stamped envelope)

Name: Dennis D. Mele, Esq.

Address:

Ruden, McClosky, Smith,
Schuster & Russell, P.A.
200 East Broward Boulevard
Suite 1500
Fort Lauderdale, Florida 33301

This Instrument Prepared by:

Hope W. Calhoun, Esq.
Ruden, McClosky, Smith,
Schuster & Russell, P.A.
200 East Broward Boulevard
Suite 1500
Fort Lauderdale, Florida 33301

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TRAFFIC CONCURRENCY AGREEMENT

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

NOVA SOUTHEASTERN UNIVERISITY, INC., a Florida corporation, its successors and assigns, hereinafter referred to as DEVELOPER,

AND

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 "TOWN."

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 compact deferral areas; and

WHEREAS, DEVELOPER has applied for amendments to the Young World Plat (104-MP-83), Nova University Plat No. 1 (241-MP-89), and the New World Plat (088-MP-97) so that they can be developed collectively, hereinafter referred to collectively as the "PLATS," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on _____, the Broward County Development Management Division issued a Notifications of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network for the PLATS, finding that the applications for approval of or amendments to the PLATS do not satisfy the impact area concurrency standards for the regional road network as stated in the Broward County Land Development Code ("CODE"); and

WHEREAS, the CODE provides remedial measures so that applications for approval of or amendments to plats may satisfy the concurrency standards for the regional road network; and

WHEREAS, one remedial measure is a finding that the proposed development is a project which promotes public transportation by either including or providing a transit terminal serving both regional and local routes; is located within a Regional Activity Center as described in and defined by the Broward County Comprehensive Plan; and is within an area that contains major public and private postsecondary institutions of higher learning; and

WHEREAS, in order to comply with the above remedial measure, the impact of the proposed development on the Florida Intrastate Highway System must also be considered by the Board of County Commissioners; and

WHEREAS, the Developer has coordinated the addition of a transit terminal serving both regional and local routes which is located on one of PLATS, as defined in Exhibit "B" which is designed to alleviate automobile based traffic to and from the PLATS; and

WHEREAS, the parties hereto agree that the remedial measures referenced herein, as described in Exhibit "B" meet the criteria of the CODE for a project that promotes public transportation; and

WHEREAS, COUNTY hereby agrees that remedial measures referenced herein, as described in EXHIBIT "B" creates an interconnected transit system with both regional and local routes and a connection to TRI-RAIL which will alleviate the PLATS' impacts on the Florida Intrastate Highway System; and;

WHEREAS, the County finds that the concurrency requirements for the PLATS, as approved by County, 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, the parties agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. CONSTRUCTION OF IMPROVEMENTS.
 - (a) DEVELOPER agrees to construct and/or perform the Improvement(s) described in Exhibit "B" attached hereto, hereinafter referred to as the "Improvements." DEVELOPER agrees to complete the Improvement(s) prior to January 1, 200_.
 - (b) The Improvements described in Exhibit "B" shall be installed in accordance with applicable COUNTY, State of Florida Department of Transportation standards. The construction plans for the Improvements, including applicable pavement marking and signing plans, shall be submitted to COUNTY for review and approval prior to commencement of construction. Construction shall be subject to inspection and approval by the COUNTY. Any required pavement marking and signing shall

be provided for all of the Improvements and shall be subject to review, field inspections and final approval by the Broward County Traffic Engineering Division, which Improvements shall be consistent with the previously approved plans.

3. FORM OF SECURITY.

(a) DEVELOPER shall provide to COUNTY, contemporaneously with this Agreement, a Letter of Credit attached hereto as Exhibit "C", in the amount of \$64,973.00 in a form acceptable to the COUNTY, which represents 125% of the estimated cost of the Improvement(s).

4. COMPLIANCE WITH CONCURRENCY REQUIREMENTS.

COUNTY and TOWN find that execution of and adherence to this Agreement on the part of DEVELOPER satisfies the requirement of Chapter 5, Article IX, Broward County Code of Ordinances, that plats of land shall be designed to provide for the adequacy of the regional road network, at the adopted levels of service, concurrent with the impact of the development for the PLATS as approved by COUNTY. Nothing in this Agreement shall be construed as constituting a waiver or an exemption from road impact fees authorized to be assessed by COUNTY to DEVELOPER under the provisions of Chapter 5, Article IX, Broward County Code of Ordinances.

5. PROPERTY WITHIN A MUNICIPALITY.

(a) If the property is located within a municipality, TOWN agrees that, upon notification from the COUNTY that DEVELOPER is in default of this Agreement, TOWN shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLATS, until such time that the COUNTY notifies the TOWN that the default has been resolved. If the property is located within the unincorporated area and the DEVELOPER is determined to be in default of this Agreement by the COUNTY, the COUNTY shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLATS, until such time as the default has been resolved.

(b) If the property is located within a municipality, the parties hereto agree that, except as may otherwise be provided herein, the TOWN is a party to this Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property subject to this Agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy for the construction of buildings within the property subject to this Agreement. The parties specifically agree and recognize that nothing in this Agreement is a waiver, specific or otherwise, of the obligation of the DEVELOPER to strictly comply with all the requirements of the TOWN's land development codes.

7. This Agreement shall continue to be in full force and effect and may be enforced against the DEVELOPER or its successors or assigns by the COUNTY through a Court of competent jurisdiction should the DEVELOPER or its successors or assigns fail to construct the Improvements in accordance with Exhibit "B."

8. 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

For the DEVELOPER:

John Santulli
Nova Southeastern University
3301 College Avenue
Fort Lauderdale, FL 33314

For the TOWN:

Tom Willi
Town Administrator
6591 Orange Drive
Davie, FL 33314

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.

15. 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.
16. 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.
17. 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 have made and executed this Regional Road Concurrency 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__, _____, signing by and through its _____, duly authorized to execute same and, if applicable, the TOWN of _____, 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

____ day of _____, 20__

MORTGAGEE (INDIVIDUAL)

Mortgagee, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Agreement.

Witnesses:

(Signature)

Print name: _____

Name
of Mortgagee
(Individual)

(Signature)
Print name: _____

(Signature)
Print name: _____
Print address: _____

____ day of _____, 20__

ACKNOWLEDGMENT - INDIVIDUAL

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is
[] personally known to me, or
[] produced identification. Type of identification produced _____.

NOTARY PUBLIC:

(Seal)

Print name:

My commission expires:

TOWN

WITNESSES:

Town of _____

By _____
Mayor-Commissioner

_____ day of _____, 20__

ATTEST:

Town Clerk
By _____
Town Manager

_____ day of _____, 20__

APPROVED AS TO FORM:

By _____
Town Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

Legal Descriptions for Nova Southeastern University

Parcels A, B, C and D, YOUNG WORLD PLAT, according to the plat thereof as recorded in Plat Book 124, Page 43 of the public records of Broward County, Florida.

Parcel A, NOVA UNIVERSITY No. 1, according to the plat thereof as recorded in Plat Book 146, Page 49 of the public records of Broward County, Florida.

Parcel A, NEW WORLD PLAT, according to the plat thereof as recorded in Plat Book 166, Page 37 of the public records of Broward County, Florida.

EXHIBIT “B”

Specific improvements include the planned modification of Bus Route 75 to stop at the new transit terminal. Bus Route 75 currently runs a loop from Broward Boulevard at University Drive, west to 136th Avenue, south to SR 84, and east to University Drive, where it turns north and returns to Broward Boulevard. This route will be modified to take the bus south to the new transit terminal on SW 30th Street east of University Drive. Bus Route 75 parallels I-595, the closest roadway that is part of the Florida Intrastate Highway System, for most of its length. It provides a valuable transit alternative for area commuters who might otherwise be forced to use I-595.

In addition, the South Florida Educational Complex (SFEC), which includes Nova Southeastern University, is served by an express bus service between the SFEC and the Airport Tri-Rail Station south of Griffin Road. The Express bus currently stops on the east side of the Nova campus far from the new Regional Library. The Express bus route is expected to be modified to include a stop at the new transit terminal, which is only a block from the library, and therefore attract additional passengers who seek to commute to the Regional Library and Nova Southeastern University.

These routes and others such as Bus Route 2, which runs along University Drive, the Town of Davie Community Bus Service, and Nova’s own campus shuttle will all use the new transit terminal.

Broward County’s Mass Transit Division operates Bus Routes 2 and 75. Both rely on large, 60-passenger buses and offer lengthy service hours. Route 2 is a regional bus route that has 20-minute headways and is in operation from approximately 5:10 a.m. to midnight, seven days a week. Route 75 is a more localized bus route with hourly headways and is in operation from approximately 6:00 a.m. to 8:30 p.m. on weekdays and 7:30 a.m. to 6:00 p.m. on Saturdays (there is no Sunday service offered).

The SFEC Shuttle, which provides express bus service between the Airport Tri-Rail Station and the SFEC, has 30-minute headways and operates between approximately 7:00 a.m. and 8:00 p.m. weekdays. This is a free service provided by the SFEC.

The Town of Davie Community Bus Service is a local shuttle bus service that operates between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday and 8:00 a.m. through 4:00 p.m. on Saturday. This is a free service that offers connections to Broward County Mass Transit routes 2, 9, 12, 18 and 75.

Nova’s campus shuttle offers free rides around the campus during normal school hours Monday through Friday.

The new transit terminal will provide a covered shelter for passengers awaiting their bus. Soda machines and newspaper machines will be provided. A separate, air-conditioned lounge will be available to bus drivers. Restroom facilities are available for passengers at the nearby Regional Library. Bus drivers will be provided with keys to the adjacent Nova Business School Building and will be able to avail themselves of the cafeteria service and restrooms there. The terminal will accommodate a maximum of eight buses at one time.