

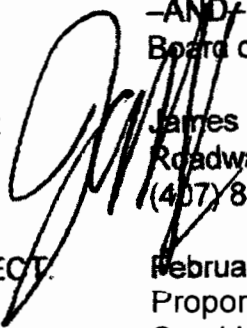


Interoffice Memorandum

AGENDA ITEM

February 4, 2019

TO: Mayor Jerry L. Demings
~~AND~~
Board of County Commissioners

FROM:  James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
(407) 836-5610

SUBJECT: February 26, 2019 – Consent Item
Proportionate Share Agreement For Walk-On's Bistreaux & Bar
Sand Lake Road and Turkey Lake Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Walk-On's Bistreaux & Bar ("Agreement") by and between I Shops, LLC, also known as I Shops Orlando, LLC, and Orange County for a proportionate share payment in the amount of \$59,286. Pursuant to Section 163.3180(5)(h), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a Proportionate Share Agreement and contributing a proportionate share payment. The Proportionate Share Payment is due within 90 days of the effective date of this Agreement.

The Agreement follows the recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts for two deficient trips on the road segment of Sand Lake Road from Dr. Phillips Boulevard to Turkey Lake Road in the amount of \$4,045 per trip, and two deficient trips on the road segment of Turkey Lake Road from Sand Lake Commons Boulevard to Sand Lake Road in the amount of \$25,598 per trip.

The Roadway Agreement Committee approved the Agreement on February 6, 2019. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Walk-On's Bistreaux & Bar Sand Lake Road and Turkey Lake Road by and between I Shops, LLC, and Orange County for a proportionate share payment in the amount of \$59,286. District 6

JEH/HEGB:aw
Attachment

BCC Mtg. Date: February 26, 2019

This instrument prepared by
and after recording return to:
Montaz Barq
1507 S. Hiawassee Rd., Ste 211
Orlando, Florida 32835

Parcel ID Number(s): 36-23-28-3865-04-000

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**PROPORTIONATE SHARE AGREEMENT FOR
Walk-On's Bistreaux & Bar**

Sand Lake Road and Turkey Lake Road

This Proportionate Share Agreement (the "Agreement"), effective as of the latest date of execution (the "**Effective Date**"), is made and entered into by and between I Shops, LLC, a Delaware Limited Liability Company also known in the State of Florida as I Shops Orlando, LLC ("**Owner**"), whose principal place of business is 7940 Via Dellagio Way, Ste 200, Orlando FL 32819, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("**County**"), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as generally depicted on Exhibit "A" and more particularly described on Exhibit "B," both of which exhibits are attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, the Property is located in County Commission District 6, within the County's Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Sand Lake Road and Turkey Lake Road; and

WHEREAS, Owner intends to develop the Property as 7,304 square feet restaurant, referred to and known as Walk-On's Bistreaux & Bar (the "**Project**"); and

WHEREAS, Owner received a letter from County dated December 18, 2018, stating that Owner's Capacity Encumbrance Letter ("**CEL**") application #18-11-096 for the Project was denied; and

WHEREAS, the Project will generate 2 deficient PM Peak Hour trips (the "**Excess Trips 1**") for the deficient roadway segment on Sand Lake Road from Dr. Phillips Boulevard to Turkey Lake Road (the "**Deficient Segment 1**"), and 0 PM Peak Hour trips were available on Deficient

Segment 1 on the date the CEL was denied, as further described in Exhibit "C" attached hereto and incorporated herein; and

WHEREAS, the Project will generate 2 deficient PM Peak Hour trips (the "**Excess Trips 2**") for the deficient roadway segment on Turkey Lake Road from Sand Lake Commons Boulevard to Sand Lake Road (the "**Deficient Segment 2**"), and 0 PM Peak Hour trips were available on Deficient Segment 2 on the date the CEL was denied, as further described in Exhibit "C" attached hereto and incorporated herein; and

WHEREAS the Excess Trips 1 and Excess Trips 2 shall be referred to herein collectively as the "**Excess Trips**"; and

WHEREAS, the Deficient Segment 1 and Deficient Segment 2 shall be referred to herein collectively as the "**Deficient Segments**"; and

WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current anticipated Project buildout is Fifty-Nine Thousand Two Hundred Eighty-Six and 00/100 Dollars (\$59,286.00) (the "**PS Payment**"); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between Owner and County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. PS Payment; CEL.

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segments, as described in Exhibit "C," totals Fifty-Nine Thousand Two Hundred Eighty-Six and 00/100 Dollars (\$59,286.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips constitute the Project's impact on the aforementioned Deficient Segments based upon (i) Owner's Traffic Study titled "Walk-On's Bistreaux & Bar" prepared by Terra-Max Engineering, Inc., dated November, 2018 for BBR I-Drive (the "**Traffic Study**"), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit "C." The Traffic Study was accepted by the Orange County Transportation Planning Division on December, 13 2018, and is on file and available for inspection with that division (CMS

#2018096). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within Orange County's jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segments or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of Fifty-Nine Thousand Two Hundred Eighty-Six and 00/100 Dollars (\$59,286.00) as the PS Payment. The check shall be made payable to "Orange County Board of County Commissioners" and shall be delivered to the Fiscal and Operational Support Division of the Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property's future land use designation and zoning are consistent with the Project's proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of 90 days may be granted by the manager of County's Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segments are actually constructed. Provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, regulations, and/or Orange County Code provisions or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes, and as specifically described in Exhibit "C." County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. No Refund. The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: I Shops, LLC
7940 Via Dellagio Way, Ste 200
Orlando, FL 32819

With copy to: Momtaz Barq
Terra-Max Engineering, Inc.
1507 S. Hiawassee Rd., Ste 211
Orlando, FL 32835

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copy to: Orange County Planning, Environmental, and Development
Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County Planning, Environmental, and Development
Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway
Orlando, Florida 32839

Orange County Planning, Environmental, and Development
Services Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, FL 32801

Section 6. Covenants Running with the Property. This Agreement shall be binding and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

Section 7. Recordation of Agreement. The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

Section 9. Specific Performance. County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 10. Attorney Fees. In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

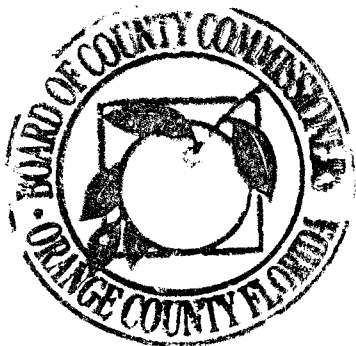
Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

Section 13. Counterparts. This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

Proportionate Share Agreement, Walk-On's Bistreaux & Bar
I Shops, LLC for Sand Lake Road and Turkey Lake Road, 2019

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
by their respective duly authorized representatives on the dates set forth below.



“COUNTY”

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: 26 Feb 19

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Print Name: Katie Smith

Proportionate Share Agreement, Walk-On's Bistreaux & Bar
I Shops, LLC for Sand Lake Road and Turkey Lake Road, 2019

WITNESSES:

[Signature]

Print Name: Amy Barnard

[Signature]

Print Name: Nelly Soto

“OWNER”

I Shops, LLC, a Delaware Limited Liability Company also known in the State of Florida as I Shops Orlando, LLC

By: [Signature]

Print Name: Charles Whittall

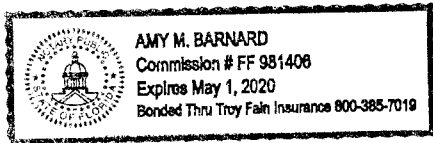
Title: Manager

Date: 1/29/19

STATE OF FLORIDA
COUNTY OF ORANGE

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Charles Whittall, as Manager of I Shops, LLC, a Delaware Limited Liability Company also known in the State of Florida as I Shops Orlando, LLC, who is known by me to be the person described herein and who executed the foregoing, this 29th day of JANUARY, 2019. He she is personally known to me or has produced _____ (type of identification) as identification and did did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 29th day of JANUARY, 2019.



[Signature]
NOTARY PUBLIC

Print Name: Amy Barnard

My Commission Expires: MAY 1, 2020

JOINDER AND CONSENT TO
PROPORTIONATE SHARE AGREEMENT FOR WALK-ON'S BISTREAUX & BAR
SAND LAKE ROAD AND TURKEY LAKE ROAD

The undersigned hereby certifies that it is the holder of the following instruments (the "Instruments"):

Second Amended and Restated Mortgage Assignment of Leases and Rents and Security Agreement by I Shops LLC, a Delaware limited liability company also known in the State of Florida as I Shops Orlando, LLC to BankUnited, N.A., (the "Issuer"), dated April 24, 2014, and recorded April 30, 2014, in Official Records Book 10737, Page 5563, in the original principal amount of \$75,000,000.00; and Financing Statement recorded in Official Records Book 10737, Page 6041, all of the Public Records of Orange County, Florida and the terms and conditions thereof,

upon the property presently owned by I Shops LLC, a Delaware limited liability company also known in the State of Florida as I Shops Orlando, LLC, a description of which is attached hereto as Exhibit "B" (hereinafter the "Property").

The undersigned hereby joins in, and consents to, the recording of the Proportionate Share Agreement for Walk-On's Bistreaux & Bar Sand Lake Road and Turkey Lake Road (the "Agreement"), and agrees that its above-referenced Instruments, as they may be modified, amended, and assigned from time to time, shall be subordinated to the Agreement, as said Agreement may be modified, amended, and assigned from time to time.

[Signatures follow on next page.]

Exhibit A
"Walk-On's Bistreaux & Bar"
Project Location Map

Subject Site

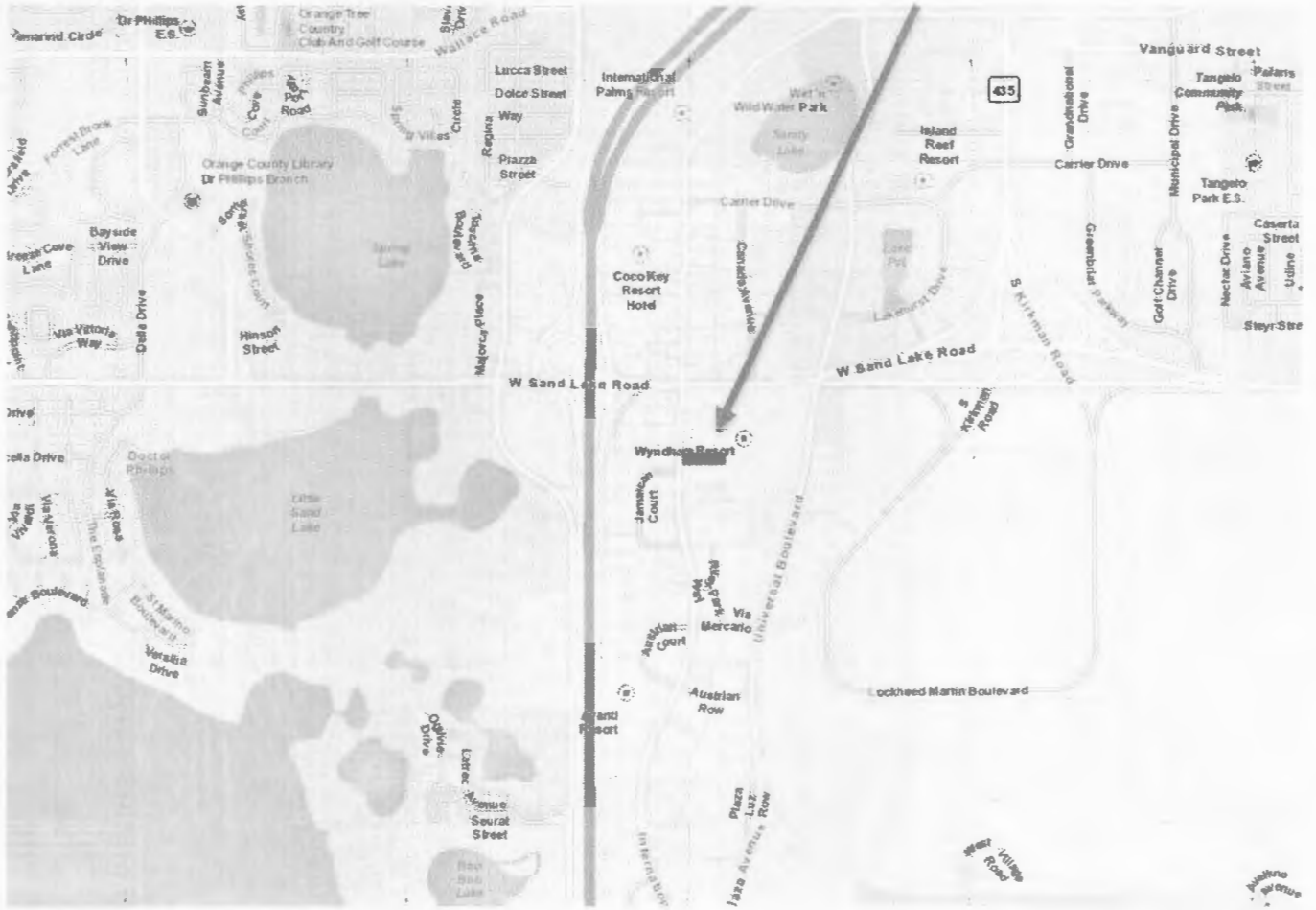


Exhibit "B"

"Walk-On's Bistreaux & Bar"

Parcel ID: 36-23-28-3865-04-000

Legal Description: Lot 4 of I-SHOPS, recorded in that certain plat thereof, Plat Book 89, Pages 101 through 103, Public Records of Orange County, Florida.

Exhibit "C"
"Walk-On's Bistreaux & Bar"
DEFICIENT SEGMENT 1

Log of Project Contributions
Sand Lake Road (Dr. Phillips Blvd to Turkey Lake Rd)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Sand Lake Road	Dr. Phillips Blvd	Turkey Lake Rd	0.62	E	2000	Widen from 4 to 8 lanes	3020	1020	\$4,125,584	\$4,045

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Sand Lake Road	Dr. Phillips Blvd	Turkey Lake Rd	0.62	E	2000	581	3020	1020	\$2,349,954

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Sand Lake Road	Dr. Phillips Blvd	Turkey Lake Rd	0.62	E	2000	3020	1020	581	439	\$1,775,610	\$4,045

Updated: 12/20/18

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Jan-14	Existing plus Committed	511	\$4,133,091
	Jan-14	YMCA	7	\$56,618
	Apr-14	Mango's Tropical Cafe	2	\$6,866
	Jul-14	Mango's Tropical Cafe Amendment	1	\$3,343
	Dec-16	Majorca PD	55	\$693,825
	Jun-18	Cube Smart Sand Lake	5	\$20,225
		Backlogged Totals:	581	\$4,913,788
Proposed	Dec-18	Walk-On's Bistreaux & Bar	2	\$8,090
				\$0
				\$0
				\$0
		Totals:	583	\$4,921,878

Exhibit "C"

"Walk-On's Bistreaux & Bar"

DEFICIENT SEGMENT 2

Log of Project Contributions Turkey Lake Rd (Sand Lake Commons Blvd to Sand Lake Rd)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip

Updated: 12/20/18

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Jun-18	Existing plus Committed	260	\$6,483,100
	Jun-18	Cube Smart Sand Lake	1	\$24,935
	Jun-18	Turkey Lake Pointe	2	\$49,870
				\$0
			\$0	
		Backlogged Totals:	263	\$6,567,905
Proposed	Dec-18	Walk-On's Bistreaux & Bar	2	\$51,196
				\$0
				\$0
				\$0
				\$0
		Totals:	265	\$6,609,101