



Interoffice Memorandum

**AGENDA ITEM**

May 1, 2019

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

FROM: Jon V. Weiss, P.E., Chairman  
Roadway Agreement Committee

SUBJECT: May 21, 2019 – Consent Item  
Proportionate Share Agreement For Cheddars Scratch Kitchen  
Turkey Lake Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Cheddars Scratch Kitchen ("Agreement") by and between Westwood Blvd LLC and Orange County for a proportionate share payment in the amount of \$48,690. 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 recommendation of the Roadway Agreement Committee providing for the mitigation of road impacts for two deficient trips on the road segment of Turkey Lake Road from Central Florida Parkway to Sand Lake Commons Boulevard in the amount of \$24,345 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on May 1, 2019. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5610.

**ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Cheddars Scratch Kitchen Turkey Lake Road by and between Westwood Blvd LLC and Orange County for a proportionate share payment in the amount of \$48,690. District 1**

JVW/HEGB/lme  
Attachment

BCC Mtg. Date: May 21, 2019

This instrument prepared by  
and after recording return to:

Linda Nunn  
1807 S. Indian River Dr.  
Ft. Pierce, FL 34950

Parcel ID Number: 12-24-28-0000-00-023

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

**PROPORTIONATE SHARE AGREEMENT FOR  
Cheddars Scratch Kitchen**

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**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 Westwood Blvd LLC, a New York limited liability company (“**Owner**”), whose principal place of business is 9322 3<sup>rd</sup> Avenue, Suite 502, Brooklyn, NY 11209, 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 1, within the County’s Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Turkey Lake Road; and

WHEREAS, Owner intends to develop the Property as a 7,610 square foot restaurant, referred to and known as Cheddars Scratch Kitchen (the “**Project**”); and

WHEREAS, Owner received a letter from County dated March 21, 2019, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-19-02-015 for the Project was denied; and

WHEREAS, the Project will generate 2 deficient PM Peak Hour trip(s) (the “**Excess Trip(s)**”) for the deficient roadway segment on Turkey Lake Road from Central Florida Parkway to Sand Lake Commons Boulevard (the “**Deficient Segment**”), and 0 PM Peak Hour trips were

available on the Deficient Segment on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Excess Trip(s) will cause the Deficient Segment 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 Trip(s); and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trip(s) on the Deficient Segment through the current anticipated Project buildout is Forty-Eight Thousand Six Hundred Ninety and 00/100 Dollars (\$48,690.00) (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 Segment, as described in Exhibit “C,” totals Forty-Eight Thousand Six Hundred Ninety and 00/100 Dollars (\$48,690.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trip(s) constitute the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled “Cheddars I-Drive Transportation Concurrency Evaluation” prepared by Kimley-Horn and Associates, Inc., dated February, 2019 for Cheddars Casual Café, Inc. (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 March 20, 2019, and is on file and available for inspection with that division (CMS #2019015). 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 Segment 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 Forty-Eight Thousand Six Hundred Ninety and 00/100 Dollars (\$48,690.00) 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 Community, 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 ninety (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 Segment 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 Segment 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: Westwood Blvd LLC  
9322 3<sup>rd</sup> Avenue, Suite 502  
Brooklyn, New York 11209

With copy to: Linda Nunn  
1807 South Indian River Drive  
Ft. Pierce, Florida 34950

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, 2<sup>nd</sup> 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, Florida 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]

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: *21 May 19*

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

By: *Katie Smith*  
Deputy Clerk

Print Name: **Katie Smith**



**WITNESSES:**

[Signature]  
Print Name: Catherine Pappas

[Signature]  
Print Name: Tommy Ziver

**"OWNER"**

**WESTWOOD BLVD LLC**  
a New York limited liability company

By: [Signature]  
Tim Ziss  
Managing Member

Date: 4/29/19

**STATE OF NEW YORK  
COUNTY OF KINGS**

The foregoing instrument was acknowledged before me by Tim Ziss, as Managing Member of Westwood Blvd LLC, a New York limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 29<sup>th</sup> day of April, 2019. He 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 29<sup>th</sup> day of April, 2019.

Rosemary Falkenhainer  
NOTARY PUBLIC

Print Name: Rosemary Falkenhainer

My Commission Expires: 5-4-2019

Rosemary Falkenhainer  
Notary Public, State of New York  
No. 43-4891885  
Qualified in Richmond County  
Commission Expires May 04, 2019

**Exhibit A**  
**“Cheddars Scratch Kitchen”**  
**Project Location Map**



**Exhibit "B"**

**"Cheddars Scratch Kitchen"**

Parcel ID: 12-24-28-0000-00-023

**Legal Description:**

Commence at the Northeast corner of Section 12; thence North 89 degrees 43 minutes 57 seconds West along the North line thereof 621.34 feet; thence South 00 degrees 13 minutes 43 seconds East 109.01 feet to the intersection of the South and West limited access right of way (L.A. R/W) line of the Martin Anderson Bee Line, for the POINT OF BEGINNING; thence South 00 degrees 13 minutes 43 seconds East along said West L.A. R/W line, 406.29 feet to the North right of way line of Westwood Boulevard Phase I, a 120.00 foot width right of way, as recorded in Plat Book 10, Page 69, Public Records of Orange County, Florida; thence South 89 degrees 46 minutes 17 seconds West along the North right of way line of said Westwood Boulevard, 250.00 feet to a point of curvature of a curve concave Southerly having a radius of 1660.00 feet; thence 434.59 feet along the arc of said curve thru a central angle of 15 degrees 00 minutes 00 seconds to the point of tangency thereof; thence South 74 degrees 46 minutes 17 seconds West 73.50 feet; thence North 00 degrees 13 minutes 43 seconds West and leaving the North right of way line of said Westwood Boulevard, 481.88 feet to the South limited access Right of way line of said Bee Line; thence North 89 degrees 46 minutes 17 seconds East along the South limited access right of way line thereof 750.64 feet to the POINT OF BEGINNING.

**Exhibit "C"**

**"Cheddars Scratch Kitchen"**

**DEFICIENT SEGMENT**

Log of Project Contributions

Turkey Lake Road (Central Florida Parkway to Sand Lake Commons Boulevard)

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
Turkey Lake Rd	Central Florida Parkway	Sand Lake Commons Blvd	1.36	E	2000	Widen from 4 to 6 lanes	3020	1020	\$24,831,516	\$24,345

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
Turkey Lake Rd	Central Florida Parkway	Sand Lake Commons Blvd	1.36	E	2000	597	3020	1020	\$14,533,741

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
Turkey Lake Rd	Central Florida Parkway	Sand Lake Commons Blvd	1.36	E	2000	3020	1020	597	423	\$10,297,776	\$24,345

Updated: 3/25/19

Log of Project Contributions				
	Date	Project	Project Trips	Prop Share
Existing	Mar-19	Existing plus Committed	597	\$14,533,965
				\$0
				\$0
				\$0
				\$0
<b>Backlogged Totals:</b>			<b>597</b>	<b>\$14,533,965</b>
Proposed	Mar-19	Cheddars Scratch Kitchen	2	\$48,690
				\$0
				\$0
				\$0
				\$0
<b>Totals:</b>			<b>599</b>	<b>\$14,582,655</b>

**JOINDER AND CONSENT TO**  
**PROPORTIONATE SHARE AGREEMENT FOR CHEDDAR'S SCRATCH KITCHEN**  
**TURKEY LAKE ROAD**

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

**Consolidated, Amended and Restated Mortgage and Security Agreement by Westwood Blvd., LLC, a New York limited liability company (as Mortgagor), to W. Financial Fund, LP, a Delaware limited partnership (as Mortgagee), dated February 28, 2019, and recorded March 6, 2019, in Doc. #: 20190135791 in the original principal amount of \$9,175,000.00 and Financing Statement recorded March 6, 2019 in Doc. #: 20190135792, all of the Public Records of Orange County, Florida, and the terms and conditions thereof,**

upon the property presently owned by **Westwood Blvd., LLC**, a New York limited liability company, the 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 **Cheddar's Scratch Kitchen/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.]*

**IN WITNESS WHEREOF**, the undersigned has executed this Joinder and Consent in manner and form sufficient to bind it.

**Signed, sealed, and delivered  
in the presence of:**

[Signature]  
Name: Jacret Schochet

[Signature]  
Name: Andrew Singer

**W. FINANCIAL FUND, LP**, a Delaware limited partnership duly organized and validly existing under the laws of the United States of America

By: [Signature]  
Print Name: David Heider  
Print Title: Managing Member

STATE OF NEW YORK  
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 29 day of April, 2019, by David Heider, as Managing Member of **W. FINANCIAL FUND, LP**, a Delaware limited partnership, on behalf of the company. S/he is personally known to me or has produced drivers license as identification.

(NOTARY SEAL)

LUCY ANNE KING  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KI6371916  
Qualified in New York County  
My Commission Expires 03-12-2022

[Signature]  
Notary Public, State of New York

Lucy Anne King  
Typed or Printed Name of Notary